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Canada Border
Services Agency

Agence des services
frontaliers du Canada



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Trade and Anti-dumping Programs Directorate
Canada Border Services Agency
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PROTECTION • SERVICE • INTEGRITY

Canada

Grey, Clark, Shih and Associates, Limited

- Public Affairs - International Trade -

April 9, 2024

NON-CONFIDENTIAL VERSION

SUBMITTED BY E-MAIL

SIMA Registry and Disclosure Unit
Trade and Anti-Dumping Programs Directorate
Canada Border Services Agency
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Dear Sir/Madam,

**Re: Comments on Tenaris Canada's Request for re-investigation of
OCTG 1 and Seamless Casing anti-dumping findings**

I write to you on behalf of my client, Exceed (Canada) Oilfield Equipment Inc. ("Exceed"), to address the March 22, 2024 request of Tenaris Canada (which consists of Algoma Tubes, Inc., Tenaris Global Services Canada, and Hydril Canadian Company Ltd. Tenaris Canada is) for a re-investigation of OCTG 1 and Seamless Casing anti-dumping findings.

Exceed is not persuaded that recent developments alleged by Tenaris justify a re-investigation of Chinese normal values and amounts for subsidy.

Rather, Exceed submits that the current enforcement system as it relates to OCTG 1 and seamless casings from China is not broken and does not require fixing.

The normal values for Chinese OCTG and seamless casings are kept up to date by a carefully designed indexation scheme which is tied to changes to Pipe Logix trends on a quarterly basis. These prices are U.S. prices to distributors in Huston, Texas as reported in Pipe Logix which is the highest in the world. Tenaris appears to prefer relying more directly on U.S. surrogate values based on information provided to CBSA by its U.S. affiliates.

Introducing the indexation system was, for Chinese OCTG and seamless casings in 2023, a great leap forward in bringing greater certainty and predictability to the SIMA Enforcement system. The CBSA should avoid a great slide backwards into the abyss. The fox should not be in charge of the chicken coop.

Tenaris likes to suggest that the purpose of SIMA is to protect Canadian industry. Mr. Justice Jaccett of the Federal Court of Appeal explained it better in *Magnasonic*:¹

“19 We accept it that the object of the Act is to protect the Canadian public interest from dumped goods which may materially cause injury or retard production in Canada and that the inquiry is not, as such, a con-test between opposing parties. It appears clear, however, that the reason for the existence of the Tribunal was that Parliament sought, not only a means whereby to keep out dumped goods when their importation would do injury or retard production, but also a means whereby dumped goods would not be kept out when their importation would not do injury or retard production (and would, therefore, presumably provide Canadian consumers with cheaper goods without doing any harm). Otherwise, that is, if Parliament was not concerned about the danger of keeping out dumped goods unnecessarily, the statute would have simply prohibited all importations of dumped goods.”

This was in the early days of the Canadian trade remedies system but these rules have not changed.

The CBSA cannot properly prosecute one group of Canadian citizens at the behest of another. All citizens must be treated in a fair and evenhanded manner.

OS 2022 RI relied on U.S. surrogates because in the absence of simultaneous investigations of OCTG 2, there were no alternative surrogates. Indeed, throughout the history of the findings until OS 2022 RI, the only surrogates were OCTG 2 surrogates.

¹ *Magnasonic Canada Ltd. v. Canada* (Anti-dumping Tribunal), Federal Court of Canada, Court of Appeal, [1972] F.C.J. No. 106

Here are the Pipe Logix price trends for all seamless OCTG items from November 2020 to March 2024:

If prices are declining it is likely for a variety of reasons including that prices rose to an untenable peak in Q3 2022. These prices are still substantially above the prices in 2020. We recognize these were prices during COVID. U.S. and MEPS global pricing for welded OCTG, which competes with seamless, has fluctuated with the price of hot-rolled coil which has become particularly volatile.

The only reason that other surrogates were not available in OS 2022 RI was that OCTG 2 countries were not investigated simultaneously. Surrogates simply do not volunteer other than in the circumstances proposed by Tenaris. CBSA said:

“Given that no information was provided by producers located in other surrogate countries, including the OCTG2 countries on which the September 6, 2022 normal values were based, the CBSA could only determine section 20 normal values based on the available and verified information provided by the two surrogate vendors located in the US.”²

² OS 2022 RI, Notice of conclusion of a re-investigation: Oil country tubular goods and Seamless casing, March 17, 2023

The current indexed system prevents normal values from becoming stale and eliminates the need for exporters to report changes in market trends and costs – changes which are often beyond exporters' ability to know a SIMA Section 20 environment. The current system eliminates the guesswork and enhances certainty and predictability.

It is clear that prices for OCTG have been declining. This has been reported in Pipe Logix. As a consequence, normal values which have been indexed to changes have also declined.

There is no basis in SIMA or the WTO Agreements for locking in normal values to insulate against declining prices in the highest priced potential surrogate country in the world.

The current indexed system is providing effective relief to Canadian producers of OCTG. Imports of OCTG and seamless casings from China have declined sharply. Not only have imports declined sharply, a number of importers have abandoned imports of OCTG and seamless casings from China.

Imports of OCTG seamless casings from China have been significantly reduced. Mexico and Argentina are relatively much more important sources for, say, seamless casings as reported in Global Affairs Canada ("GAC") 10-digit HS import permits data.

The purpose of SIMA is to protect production in Canada, not imports from "friends and family" of the Canadian industry which in the case of Mexico have been shown to flow into Canada at dumped prices with impunity.³

Independent sourcing of information to enforce the CITT Orders and improved certainty from this regularly updated system will reduce if not eliminate the need for retroactive assessments AD of duties. On the other hand, relying on a surrogate or surrogates influenced directly by Canadian producers through their U.S. intra-corporate relationships will reintroduce uncertainty and unpredictability for importers and exporters to predict market prices and trends – only to be punished for the actions of others beyond their control.

³ CITT NQ-2021-004

The purpose of SIMA is to regulate injurious imports – not to eliminate imports and import competition altogether. CBSA should not lose sight of the fact that Canada has both international trade rights and obligations under the WTO.

Surrogate normal values cannot be based on Canadian prices.⁴ SIMA is not designed to align import prices with Canadian (or U.S.) prices. Reliance on the costs and prices of U.S. producers related to Canadian OCTG producers is even more repugnant. The U.S. is for most steel products, including OCTG, the highest priced market in the world. See the MEPS chart above tracking prices for HRC – the principal input for welded OCTG. Initiatives such as Tenaris is proposing warrant careful monitoring for impacts on Competition.

CBSA's responsibility to enforce the SIMA in a fair and evenhanded manner. This will not be achieved by pursuing administrative options which unduly limit the information and evidence available to CBSA to make balanced and equitable decisions.

An examination of GAC import permits data does not indicate a trend towards increased imports of subject goods from China.

Eliminating the distributor discount when calculating normal values from Pipe Logix pricing will frustrate ensuring a proper comparison. To base such an important change on the alleged experience of a single company without proper industry-wide analysis would be difficult. The issue is whether or not there should be a proper determination of prices from Pipe Logix with the market. It should not be based on an assumption that Tenaris' alleged experience is universal.

Exceed has no knowledge of the narrowing of price gaps between pricing and Tenaris Global Services (U.S.A.) Corporation ("TEUS") pricing and Pipe Logix. This will force exporters to work in the dark and poses a serious risk that the CBSA is being asked to buy a pig in ta poke. This is because the market is moving from prices which were far too high to more reasonable levels.

⁴ SIMA Section 20(1)(c)

There is insufficient evidence to change or eliminate the distributor discount in in the current Ministerial Specification and even less to support a re-investigation. If, indeed, there has been a realignment of prices between TEUS and Pipe Logix, could this be a function of Tenaris' Rig Direct program which finds Tenaris dealing directly with many of its prominent customers? The alleged convergence of TEUS and Pipe Logix pricing has been rather sudden. To what extent is it strategic? It is certainly fortuitous, if it is real for Tenaris' position and has there been a similar experience for the other API 5CT producers in the U.S. or for the distributors in Houston, Texas whose experience creates the Pipe Logix database.

The changes/realignment of pricing between TEUS and Pipe Logix reported by Tenaris is largely protected, but in view of the origins of the initiative within the Tenaris family, this information should be treated the same way that CBSA treats related party data in an investigations or re-investigations – carefully and sparingly, if at all.

Please recall that when KG Dongbu Steel Co. Ltd. requested a re-investigation in COR because prices had declined, the Canadian industry objected⁵ (as follows):

AMD has reviewed the public version of KG Dongbu Steel Co. Ltd's normal value review ("NVR") request, dated September 18, 2020. The CBSA should defer initiating any NVR for COR until price, cost and demand volatility associated with the global pandemic have stabilized. Dongbu's request appears designed to take advantage of the recent decline in prices and costs in order to secure low normal values before prices and costs increase as the global economy recovers from the COVID pandemic.

In addition, we note that the CBSA Antidumping and Countervailing Duty Directorate is facing unprecedented circumstances and an extremely high workload involving proceedings with mandatory statutory deadlines in other priority proceedings under the *Special Import Measures Act* ("SIMA"). The Canadian government even passed extraordinary legislation to extend SIMA's statutory timelines. In particular, the CBSA's final determination for *Corrosion-Resistant Steel 2* (COR2 2019 IN) was extended by four months.

⁵ Response to the request from KG Dongbu Steel Co. Ltd. for a re-investigation of the normal values of Corrosion Resistant Steel (COR) from ArcelorMittal Dofasco G.P. ("AMD"), November 5, 2020

Dongbu seeks to have its normal values updated to reflect prices and/or costs at the bottom of the current economic downturn. With prices now increasing, Dongbu appears to be trying to use this process to gain a competitive advantage in the Canadian market. Any normal values issued to Dongbu based on depressed prices and costs would be outdated as soon as they are issued and provide Dongbu with normal values that would not reflect the prices and costs that are expected to prevail in 2021.

CBSA should make haste slowly in responding to the request to initiate a re-investigation to resolve non-existent problems.

Exceed has no information on the request to initiate a re-investigation of the amount for subsidy. There is too little information in the Tenaris request to assess it properly. Indeed, it appears that this request is largely focused primarily on the experience of one Chinese company.

If the CBSA considers that changes in market conditions warrant re-investigation of Chinese normal values and subsidies then have not market conditions also changed for all OCTG supplying countries which are subject to SIMA findings?

If CBSA determines that a re-investigation is warranted (and Exceed does not believe it should) then it would appear to be prudent (not to mention fair) to ensure that an adequate scope of the re-investigation would ensure that broader participation will create a better pool of surrogate information from responses by participants who will be more or less captive for this purpose.

The CBSA should bear in mind that the current indexed normal values system is not broken. It should not be rejected on the basis of these largely confidential representations to align North American prices with imports from China. This is not the purpose of SIMA. Accepting this proposal would be an abuse of Canada's trade remedy system and would place Canada in serious breach of its obligations under the WTO Anti-dumping Agreement.

Excessive confidentiality frustrates any reasonable effort to comment on the detail. This is clearly an abuse of the right to invoke confidentiality. Much careful work has gone into building and maintaining it.

Canada's SIMA Trade Remedies system is based on Canada's international rights and obligations. It should not be allowed to become a "friends and family" affair in which domestic producers manipulate the system to eliminate competition and competitors.

Thus, Tenaris Canada's request of March 22, 2024 for re-investigation of OCTG 1 and Seamless Casing anti-dumping findings should be denied.

Yours truly,

A handwritten signature in black ink, appearing to read 'Peter Clark', with a stylized, cursive script.

Peter Clark