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Canada Border  
Services Agency

Agence des services  
frontaliers du Canada



**SIMA Registry and Disclosure Unit**  
Trade and Anti-dumping Programs Directorate  
Canada Border Services Agency  
100 Metcalfe Street, 11th Floor  
Ottawa, Ontario K1A 0L8  
Canada

**Centre de dépôt et de communication des  
documents de la LMSI**  
Direction des programmes commerciaux et  
antidumping  
Agence des services frontaliers du Canada  
100, rue Metcalfe, 11e étage  
Ottawa (Ontario) K1A 0L8  
Canada

# Submission received electronically

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# Soumission reçu électroniquement

Submission Date /  
Date de soumission

**October 11, 2023**



Vincent Routhier, esq.  
Direct line : + 514 312-1954  
Fax : + 514 284-3235  
[vrouthier@dsavocats.ca](mailto:vrouthier@dsavocats.ca)

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SIMA Registry and Disclosure Unit  
Anti-dumping and Countervailing Directorate  
Canada Border Services Agency  
100 Metcalfe Street, 11<sup>th</sup> Floor  
Ottawa, ON K1A 0L8

**Re: OCTG2 – Oil Country Tubular Goods**  
**Reply to Evraz Objections of September 22, 2023**  
**Normal Value Review Request - ILJIN Steel Corporation**

Dear Registry,

On behalf of ILJIN Steel Corporation (“ILJIN Steel”), we write in response to the submission made by Evraz Inc. NA Canada (“Evraz”) objecting to our September 14, 2023 request that the CBSA initiate a Normal Value Review in respect of ILJIN exports of OCTG. Evraz’s objection to a CBSA initiation of the proceeding to confer Normal Values upon exports of ILJIN OCTG is trite and somewhat petty.

*First* – That ILJIN chose to forego participating in a proceeding that was initiated over eighteen months ago is not a reason to deny its request for initiating a normal value review. Memorandum D14-1-8, “*Re-investigation and Normal Value Review Policy – Special Import Measures Act (SIMA)*”, clearly sets out that “Re-investigations and normal value reviews are administrative proceedings conducted to update values; establish values for new products or models subject to the measures in force; **and establish values for exporters that do not currently have values.**”

Moreover, the CBSA notes that “As part of the CBSA’s formal monitoring process, interested persons are encouraged to share their views regarding whether the values in place for a particular measure in force should be updated to reflect the current market conditions.” This is precisely what ILJIN is bringing to the CBSA’s attention, most notably because neither of the cooperative and participating Korean exporters, namely Nexteel Co., Ltd and SeAH Steel Co., Ltd. produce or export

DS LAWYERS CANADA LLP

891, boulevard Charest Ouest  
Québec (QC) G1N 2C9, Canada  
T: 1 418 780-4321  
F: 1 418 353-1791

1080 côte du Beaver Hall, # 2100  
Montréal (QC) H2Z 1S8, Canada  
T: 1 514 360-4321  
F: 1 514 284-3235

8 King Street East, #1804  
Toronto (ON) M5C 1B5, Canada  
T: 1 647 477-7317  
F: 1 416 214-1374

1055 Georgia Street West, #2700  
Vancouver (BC) V6E 3P3, Canada  
Tél: 1 604 669-8858  
Fax: 1 604 669-8857

150 Metcalfe Street, Suite 1401  
Ottawa (ON) K2P 1P1, Canada  
T: 1 613 319-9997  
F: 1 613 903-6002

[www.dsavocats.com](http://www.dsavocats.com)

seamless OCTG produced in Korea. Therefore, it is in the CBSA's policy to seek to establish values for models and material for which none are in place.

As noted by the Canadian International Trade Tribunal in [\*Ferrostaal Metals GmbH v. President of the Canada Border Services Agency\*](#), Appeal No. EA-2019-001 (Aug. 17, 2020) at paragraphs 52-55 (emphasis provided, citations omitted):

....under Canada's prospective duty enforcement system, NVs based on data on sales and costs collected during the CBSA's one-year period of investigation are established by the CBSA at the close of an investigation and communicated to exporters. Subject goods priced at or above their specific NVs will not incur any anti-dumping duty liability on importation into Canada. Stated differently, anti-dumping duty liability can be eliminated by increasing the selling price of the goods (i.e. the export price of the goods) to a level that is at or above the NVs previously established by the CBSA (i.e. the prospective NVs). The use of such a system has been said to effectively protect domestic producers from injury caused by dumped goods as well as to provide predictability to foreign exporters and Canadian importers who are aware of duty liability.

[53] Changing market conditions may mean that the NVs established during the investigation are no longer reflective of the prices (and costs) of the goods in the exporter's home market. This may mean that dumping is no longer occurring on export sales to Canada or, conversely, that subject goods are being dumped at higher margins than in the original investigation.

[54] In order to keep prospective NVs up to date to reflect current market conditions, the CBSA conducts re-investigations on a periodic basis. The NVs issued to exporters at the conclusion of these re-investigations, which are normally based on data pertaining to the one-year period immediately preceding the date of initiation of the re-investigations, then apply to all subsequent importations of subject goods.

[55] That being said, while Canada's prospective duty enforcement system is well established and appears to provide a certain level of predictability to foreign exporters and Canadian importers, the fact remains that it is entirely operationalized through administrative policies and procedures. There is in fact no mention of prospective NVs—or re-investigations for that matter—in *SIMA*, its regulations or any other law pertaining to customs matters.

The whole purpose of the process is to act proactively and assist the importing community in obtaining reliable product quotations with a predictability as to costs in the event that the imported goods would attract anti-dumping duty assessments.

Evraz's first comment seems to suggest that ILJIN is seeking a favour from the CBSA when in fact it is simply exercising its responsibilities as an exporter affected by measures under SIMA.

*Second* – Evraz's second comment simply misapprehends the process of proactively seeking predictability as set out under the CBSA's Re-investigation and Normal Value Reviews Policy. Recourse to the "Ship & Appeal" mechanism, while fully understood and necessary, applies to properly calculate the normal values in those circumstances when a shipment lands, is released and no normal values are in place. It is an importer's remedy meant to address the amount of an assessment. It is not a mechanism for which an exporter can avail himself. It is moreover not intended as the means by which a cooperative exporter is to obtain normal values.

In addition, as examined by the Dispute Settlement Body Panel Report of the World Trade Organization in DS482, [\*Canada - Anti-Dumping Measures on Imports of Certain Carbon Steel Welded Pipe from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu\*](#), WT/DS482/R, 21 December 2016 at paragraphs 7.162 to 7.164 (emphasis provided, citations omitted):

... Article 9.3.2 simply provides that, under a prospective assessment system, "provision shall be made for a prompt refund". Such a refund mechanism certainly establishes one means of ensuring that duty collection remains consistent with the requirements of the chapeau of Article 9.3. However, this does not mean that the provision of an effective refund mechanism addresses all potential violations of the chapeau of Article 9.3. If it did, there would be no need for the chapeau.

7.163. In the context of a retrospective assessment system, the Appellate Body has stated that "Article 9.3.1 of the Anti-Dumping Agreement is subject to the overarching requirement in Article 9.3 that the amount of anti-dumping duty 'shall not exceed the margin of dumping as established under Article 2' of that Agreement". We consider that this statement applies equally in respect of Article 9.3.2. If the refund mechanism provided for in sub-paragraph 1 and 2 of Article 9.3 remains "subject to" the "overarching

requirement” of the chapeau, the chapeau must have application independently of those refund mechanisms.

7.164. In addition, if the chapeau of Article 9.3 were understood to allow the approach taken by Canada, any Member could impose an anti-dumping duty that is so high that imports effectively cease, and argue that it was not acting inconsistently with Article 9.3 because its refund mechanism ensured compliance. But the absence of imports would preclude any refund proceeding, and interested parties could be left without recourse under the Anti-Dumping Agreement.

By proceeding as suggested by Evraz, Canada would be in clear violation of its commitments under international trade law mechanisms. Ship, pay the All Others rate of 37.4% just to seek a refund and apply for normal values is a nonsense and further not a mechanism available to ILJIN. The system is not intended to work in this way and only counsel for a domestic producer would suggest otherwise.

Evraz’s comment in this regard also raises the consideration that their action and intent is merely one pursued with the purpose of limiting competition, one which could call for the intervention of the Commissioner for Competition under Section 125 of the [Competition Act](#), R.S.C., 1985, c. C-43. While not subject to any interpretation by the CBSA, it is perhaps useful to also note that the purpose of the Competition Act, as set out at its Section 1.1 establishes that:

The purpose of this Act is to maintain and encourage competition in Canada in order to promote the efficiency and adaptability of the Canadian economy, in order to expand opportunities for Canadian participation in world markets while at the same time recognizing the role of foreign competition in Canada, in order to ensure that small and medium-sized enterprises have an equitable opportunity to participate in the Canadian economy and in order to provide consumers with competitive prices and product choices.

It is understood that SIMA is meant to protect Domestic Producers from Unfair Competition caused by dumping, but keeping a perspective on fair competition in Canada and the role of foreign competition should remain in the CBSA’s mind as well. ILJIN’s request to obtain normal values seeks to ensure that it can offer

seamless OCTG to Canadian consumers at non-dumped prices, nothing more.<sup>1</sup> This is what is meant by fair foreign competition in Canada.

*Third* – Here again, Evraz’s comment misapprehends the scope and purpose of the CBSA’s Normal Value Review process. In its policy iteration, Memo D-14-1-8, equally applicable to Re-investigations and Normal Value Reviews, at paragraph 2, the process is meant to “establish values for exporters that do not currently have values.”

In its submissions, ILJIN has brought to the attention of the CBSA costing and pricing information which was not brought to its attention in the re-investigation, notably in respect of billet costing and seamless OCTG prices. This is exactly what this process is meant to do. Also, ILJIN specifically informs the CBSA of trends since the CBSA’s POI, which was in OCTG2 2022 RI calendar year 2021 – some two years’ ago in a very dynamic and changing marketplace since that time.

As noted in its request for the initiation of a normal value review, ILJIN Steel has received expressions of interest for seamless OCTG by Canadian buyers, interests that should mature into formal sales agreements once this normal value review can have been concluded and ILJIN can undertake to make sales to Canadian customers at non-dumped prices. Again, this is the very purpose of the CBSA’s administrative process of undertaking Normal Value Reviews. ILJIN Steel seeks Normal Values for selected models in its product offering of seamless tubing and casing in API grades J55, K55, L80, N80, C90, C95 and P110 of sizes ranging from 2 3/8 inch to 7 inches in Outer Diameter.

In its Exhibits 4 through 7 PRO, ILJIN provided the CBSA with billet costing trends, internal production data as well as both internal and market sales and pricing data and trends in support its request. Based on data provided by ILJIN, the evidence shows that raw material pricing costs have varied by as much as 60 percent since the beginning of the CBSA’s POI in OCTG2 2022 RI. Costs of production have also varied as significantly since the same period. Selling prices, both as experienced specifically by ILJIN as well as what is supported by global pricing indicators also show wide and significant variations in pricing (over 62 percent) since the end of the CBSA’s last re-investigation, one that we remain mindful did not examine any data on seamless OCTG from Korea.

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<sup>1</sup> The CBSA must moreover remain mindful that, as noted by the Canadian International Trade Tribunal in [Oil Country Tubular Goods](#), Inv. No. NQ-2021-004 (Reasons Feb. 10, 2022) at Footnote 116: “Evraz and WTC only produce welded OCTG...”. Thus, Evraz is not in a position to even offer seamless OCTG from its domestic production to Canadian purchasers.

For the above-mentioned reasons as well as what has been submitted in ILJIN's original application, we respectfully submit that the conduct of a normal value review for ILJIN Steel is warranted and necessary to the proper enforcement of the Tribunal's Order on OCTG from Korea.

**DS LAWYERS CANADA LLP**

A handwritten signature in black ink, appearing to read 'V. Routhier', with a long horizontal flourish extending to the right.

Vincent M. Routhier  
Counsel to ILJIN Steel