Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Dumping and Subsidizing

DETERMINATION AND REASONS

Preliminary injury inquiry
PI-2023-002

Certain Wire Rod

Determination issued
Tuesday, May 7, 2024

Reasons issued
Wednesday, May 22, 2024

TABLE OF CONTENTS

IN THE MATTER OF a preliminary injury inquiry, pursuant to subsection 34(2) of the *Special Import Measures Act*, respecting:

CERTAIN WIRE ROD

PRELIMINARY DETERMINATION OF INJURY

The Canadian International Trade Tribunal, pursuant to the provisions of subsection 34(2) of the *Special Import Measures Act* (SIMA), has conducted a preliminary injury inquiry into whether there is evidence that discloses a reasonable indication that the dumping of certain hot-rolled wire rod of carbon steel and alloy steel of circular or approximately circular cross section, in coils, equal to or less than 25.5 mm in actual solid cross-sectional diameter, originating in or exported from the People's Republic of China, the Arab Republic of Egypt and the Socialist Republic of Vietnam (the subject goods), has caused injury or retardation or is threatening to cause injury, as these words are defined in SIMA. The following products are excluded:

- tire cord quality wire rod;
- stainless steel wire rod;
- tool steel wire rod;
- high-nickel steel wire rod;
- ball-bearing steel wire rod; and
- concrete reinforcing bars and rods (also known as rebar).

a) For greater clarity, tire cord quality wire rod is considered to be rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter, with an average partial decarburization of no more than 70 micrometers in depth (maximum 200 micrometers); having no non-deformable inclusions with a thickness (measured perpendicular to the rolling direction) greater than 20 micrometers; and, containing by weight the following elements in proportion: 0.68% or more carbon; less than 0.01% of aluminum; 0.04% or less, in aggregate, of phosphorus and sulfur; 0.008% or less of nitrogen, and not more than 0.55% in the aggregate, of copper, nickel and chromium.

b) Stainless steel wire rod is rod containing, by weight, 1.2% or less of carbon and 10.5% or more of chromium, with or without other elements.

c) Tool steel wire rod is considered to be rod containing the following combinations of elements in the quantity by weight respectively indicated: more than 1.2 percent carbon and more than 10.5 percent chromium; or not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

d) High-nickel steel wire rod is considered to be rod containing by weight 24% or more nickel.

e) Ball-bearing steel wire rod is considered to be rod containing iron as well as each of the following elements by weight in the amount specified: not less than 0.95 nor more than 1.13 percent of carbon; not less than 0.22 nor more than 0.48 percent of manganese; none, or not more than 0.03 percent of sulfur; none, or not more than 0.03 percent of phosphorus; not less than 0.18 nor more than 0.37 percent of silicon; not less than 1.25 nor more than 1.65 percent of chromium; none, or not more than

0.28 percent of nickel; none, or not more than 0.38 percent of copper; and none, or not more than 0.09 percent of molybdenum.

f) Concrete reinforcing bar, commonly known as rebar, means a steel bar produced with deformations. It is covered by the existing measures in force.

This preliminary injury inquiry follows the notification, on March 8, 2024, that the President of the Canada Border Services Agency had initiated an investigation into the alleged injurious dumping of the subject goods.

Pursuant to subsection 37.1(1) of SIMA, the Tribunal determines that there is evidence that discloses a reasonable indication that the dumping of the subject goods has caused injury or is threatening to cause injury to the domestic industry.

Georges Bujold
Georges Bujold
Presiding Member

Randolph W. Heggart
Randolph W. Heggart
Member

Eric Wildhaber
Eric Wildhaber
Member

The statement of reasons will be issued within 15 days.

Tribunal Panel:	Georges Bujold, Presiding Member Randolph W. Heggart, Member Eric Wildhaber, Member
Tribunal Secretariat Staff:	Ana Poienaru, Lead Counsel Rigers Alliu, Counsel Mark Howell, Lead Analyst Andrew Wigmore, Analyst Matthew Riopelle, Registry Officer

PARTICIPANTS:

Domestic Producers	**Counsel/Representatives**
Ivaco Rolling Mills 2004 LP	Christopher J. Kent Christopher J. Cochlin Andrew Lanouette Michael Milne Hugh Seong Seok Lee Marc McLaren-Caux E. Melisa Celebican Jordan Lebold Jan Nitoslawski Bomin Kim
ArcelorMittal Long Products Canada, G.P.	Paul Conlin Benjamin P. Bedard Linden Dales Anne-Marie Oatway M. Drew Tyler Manon Carpentier Shannon McSheffrey Nasrudin Mumin Ming Fei (Angel) Li Kahina (Nina) Haroune Corum Bok Holtz Selena Zabian Wilfredo Tovar
Importers/Exporters/Others	**Counsel/Representatives**
Hoa Phat Dung Quat Steel Joint Stock Company Hoa Phat Hai Duong Steel Joint Stock Company	Peter Clark
Jebsen and Jessen Metals GmbH	Jesse Goldman Jacob Mantle Danielle Chu Karin Brunetta Anisha Lad
Tree Island Industries Ltd.	Gordon LaFortune

Falcon Fasteners Reg'd Limited	Martin Leistner
Suez Steel Company	Gamal Abdeltouab Mohammed
Foreign Governments	
Ministry of Trade and Industry, Egypt	Yomna El Shabrawy
Unions	**Counsel/Representatives**
Unifor United Steelworkers	Craig Logie Mark Rowlinson Jacob Millar Peter Werhun

Please address all communications to:

The Registry
Telephone: 613-993-3595
Email: citt-tcce@tribunal.gc.ca

STATEMENT OF REASONS

INTRODUCTION

[1] On January 18, 2024, Ivaco Rolling Mills 2004 LP (IRM) filed a complaint with the Canada Border Services Agency (CBSA) alleging that the dumping of certain wire rod, originating in or exported from the People's Republic of China (China), the Arab Republic of Egypt (Egypt) and the Socialist Republic of Vietnam (Vietnam) (the subject goods), has caused injury or is threatening to cause injury to the domestic industry.[1]

[2] On March 8, 2024, the CBSA initiated an investigation respecting the dumping of the subject goods pursuant to subsection 31(1) of the *Special Import Measures Act* (SIMA).[2]

[3] As a result of the CBSA's decision to initiate this investigation, the Canadian International Trade Tribunal began its preliminary injury inquiry pursuant to subsection 34(2) of SIMA on March 11, 2024, to determine whether the evidence discloses a reasonable indication that the dumping of the subject goods has caused injury or is threatening to cause injury to the domestic industry.[3]

[4] The Tribunal received submissions supporting the complaint from domestic producer ArcelorMittal Long Products Canada, G.P. (ArcelorMittal) and labour unions, United Steelworkers (USW) and Unifor.

[5] The Tribunal received submissions opposing the complaint from importers Tree Island Industries Ltd. (Tree Island Industries) and Jebsen and Jessen Metals GmbH (Jebsen and Jessen). The Tribunal also received opposing submissions from foreign producers Hoa Phat Dung Quat Steel Joint Stock Company and Hoa Phat Hai Duong Steel Joint Stock Company (collectively Hoa Phat) and from the Ministry of Trade and Industry, Egypt (Government of Egypt).

[6] Furthermore, foreign producer Suez Steel Company and importer Falcon Fasteners Reg'd Limited filed notices of participation with the Tribunal but did not file submissions.

[7] On May 7, 2024, pursuant to subsection 37.1(1) of SIMA, the Tribunal determined that there was evidence that disclosed a reasonable indication that the dumping of the subject goods had caused injury or is threatening to cause injury to the domestic industry. The reasons for that determination are set out below.

PRODUCT DEFINITION

[8] The CBSA defined the subject goods as follows:[4]

> Certain hot-rolled wire rod of carbon steel and alloy steel of circular or approximately circular cross section, in coils, equal to or less than 25.5 mm in actual solid cross-sectional

---

1 Exhibit PI-2023-002-02.01.
2 R.S.C., 1985, c. S-15.
3 As a domestic industry is already established, the Tribunal need not consider the question of retardation.
4 Exhibit PI-2023-002-05 at para. 14.

diameter, originating in or exported from the People's Republic of China, the Arab Republic of Egypt and the Socialist Republic of Vietnam, excluding the following products:

- tire cord quality wire rod;
- stainless steel wire rod;
- tool steel wire rod;
- high-nickel steel wire rod;
- ball-bearing steel wire rod; and
- concrete reinforcing bars and rods (also known as rebar).

a) For greater clarity, tire cord quality wire rod is considered to be rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter, with an average partial decarburization of no more than 70 micrometers in depth (maximum 200 micrometers); having no non-deformable inclusions with a thickness (measured perpendicular to the rolling direction) greater than 20 micrometers; and, containing by weight the following elements in proportion: 0.68% or more carbon; less than 0.01% of aluminum; 0.04% or less, in aggregate, of phosphorus and sulfur; 0.008% or less of nitrogen, and not more than 0.55% in the aggregate, of copper, nickel and chromium.

b) Stainless steel wire rod is rod containing, by weight, 1.2% or less of carbon and 10.5% or more of chromium, with or without other elements.

c) Tool steel wire rod is considered to be rod containing the following combinations of elements in the quantity by weight respectively indicated: more than 1.2 percent carbon and more than 10.5 percent chromium; or not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

d) High-nickel steel wire rod is considered to be rod containing by weight 24% or more nickel.

e) Ball-bearing steel wire rod is considered to be rod containing iron as well as each of the following elements by weight in the amount specified: not less than 0.95 nor more than 1.13 percent of carbon; not less than 0.22 nor more than 0.48 percent of manganese; none, or not more than 0.03 percent of sulfur; none, or not more than 0.03 percent of phosphorus; not less than 0.18 nor more than 0.37 percent of silicon; not less than 1.25 nor more than 1.65 percent of chromium; none, or not more than 0.28 percent of nickel; none, or not more than 0.38 percent of copper; and none, or not more than 0.09 percent of molybdenum.

f) Concrete reinforcing bar, commonly known as rebar, means a steel bar produced with deformations. It is covered by the existing measures in force.

THE CBSA'S DECISION TO INVESTIGATE

[9] On March 8, 2024, the CBSA initiated an investigation pursuant to subsection 31(1) of SIMA, as it was of the opinion that there was evidence that the subject goods had been dumped and that there was evidence that disclosed a reasonable indication that the dumping had caused and was threatening to cause injury to the domestic industry.

[10] Using information for the period of January 1, 2023, to December 31, 2023, the CBSA estimated that the subject goods were dumped with margins of dumping, expressed as a percentage of the export price of the goods, of 41.3% for China, 47.5% for Egypt, and 14.8% for Vietnam.[5]

PRELIMINARY ISSUES

[11] The Government of Egypt submitted that the CBSA acted inconsistently with the requirements of articles 6.5 and 6.5.1 of the World Trade Organization (WTO) Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, because it failed to provide "good cause" for treating certain information as confidential and failed to provide a non-confidential summary of information treated as confidential in the complaint.

[12] IRM submitted, in reply, that the Tribunal is not the proper forum for addressing confidentiality concerns in respect of a complaint submitted to the CBSA. IRM also submitted that the Government of Egypt's suggestion to aggregate data was ineffective in situations where, such as in this case, the domestic industry is comprised of two entities and the performance trends could reveal and compromise business propriety information to the other industry player.

[13] The Tribunal agrees with IRM that its preliminary injury inquiry is not the proper forum for addressing concerns relating to the designation of information as confidential in the complaint. As previously noted, issues that may arise with respect to such designations fall within the purview of the CBSA. This is because complaints are filed with the CBSA and form part of its administrative record, which is only then transmitted to the Tribunal for the purposes of its preliminary injury inquiry.[6]

[14] The Government of Egypt also claimed that the CBSA incorrectly estimated normal values for the subject goods. However, as the Tribunal has previously noted, given that the CBSA has exclusive jurisdiction to calculate normal values during an investigation, the Tribunal cannot address or review these claims in the context of this preliminary injury inquiry.[7]

LEGISLATIVE FRAMEWORK

[15] The Tribunal's mandate in a preliminary injury inquiry is set out in subsection 34(2) of SIMA, which requires the Tribunal to determine "… whether the evidence discloses a reasonable indication that the dumping or subsidizing of the [subject] goods has caused injury or retardation or

---

5 *Ibid*. at para. 82.

6 *Concrete Reinforcing Bar* (23 November 2020), PI-2020-004 (CITT) [*Concrete Reinforcing Bar PI 2020*] at paras. 11–13; *Oil Country Tubular Goods* (20 September 2021), PI-2021-004 (CITT) at para. 14; *Nitisinone Capsules* (5 December 2018), PI-2018-006 (CITT) at paras. 7–10; *Concrete Reinforcing Bar* (3 November 2016), PI-2016-002 (CITT) at paras. 9–12.

7 *Concrete Reinforcing Bar PI 2020* at para. 17.

is threatening to cause injury." In its assessment of injury, the Tribunal must consider any impacts on workers employed in the domestic industry.[8]

Reasonable indication

[16] The term "reasonable indication" is not defined in SIMA but has been understood to mean that the evidence need not be "conclusive, or probative on a balance of probabilities".[9] The reasonable indication standard is lower than the standard that applies in a final injury inquiry under section 42 of SIMA.[10]

[17] The evidence at the preliminary phase of proceedings tends to be significantly less detailed and comprehensive than the evidence in a final injury inquiry. The evidence that is available at the preliminary phase cannot be tested to the same extent as it would be tested during a final injury inquiry. At this stage of the process, the Tribunal's role is to assess whether there is sufficient evidence of injury or threat of injury caused by the subject goods for the CBSA to continue with an investigation. In the affirmative, the Tribunal will proceed to a final injury inquiry to determine whether the dumping of the subject goods has caused injury or is threatening to cause injury, which would justify the imposition of a trade remedy. Therefore, the standard of "reasonable indication" of injury or threat of injury does not require extensive evidence to satisfy the higher threshold of reliability and cogency that is needed in the context of a final injury inquiry.[11]

[18] Nonetheless, the outcome of preliminary injury inquiries must not be taken for granted.[12] Simple assertions are not sufficient.[13] Complaints, as well as the cases of parties opposed, must be supported by positive evidence that is both relevant and sufficient in that it addresses the requirements in SIMA and the relevant factors of the *Special Import Measures Regulations* (Regulations).[14] In previous cases, the Tribunal stated that the "reasonable indication" test is passed where, in light of the evidence presented, the allegations stand up to a somewhat probing examination, even if the theory of the case might not seem convincing or compelling.[15]

[19] Relying on previous Tribunal cases, Hoa Phat claimed, among other things, that the Tribunal "created new standards for dealing with complaints which are less than persuasive".[16] Hoa Phat also

---

8 See subsection 2(11) of SIMA.

9 *Ronald A. Chisholm Ltd. v. Deputy M.N.R.C.E.* (1986), 11 CER 309 (FCTD).

10 *Sucker Rods* (17 July 2018), PI-2018-001 (CITT) at para. 13; *Certain Fabricated Industrial Steel Components* (10 November 2016), PI-2016-003 (CITT) at para. 13.

11 *Certain Upholstered Domestic Seating* (19 February 2021), PI-2020-007 (CITT) [*UDS PI*] at para. 15.

12 *Concrete Reinforcing Bar* (12 August 2014), PI-2014-001 (CITT) at paras. 18–19.

13 Article 5 of the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 requires an investigating authority to examine the accuracy and adequacy of the evidence provided in a dumping complaint to determine whether there is sufficient evidence to justify the initiation of an investigation and to reject a complaint or to terminate an investigation as soon as an investigating authority is satisfied that there is not sufficient evidence of dumping or injury. Article 5 also specifies that simple assertions that are not substantiated with relevant evidence cannot be considered sufficient to meet the requirements of the article. Article 11 of the WTO Agreement on Subsidies and Countervailing Measures imposes the same requirements regarding subsidy investigations.

14 SOR/84-927.

15 *UDS PI* at para. 16. See, for example, *Silicon Metal* (21 June 2013), PI-2013-001 (CITT) at para. 16; *Unitized Wall Modules* (3 May 2013), PI-2012-006 (CITT) at para. 24; *Liquid Dielectric Transformers* (22 June 2012), PI-2012-001 (CITT) at para. 86.

16 Exhibit PI-2023-002-06.02 at paras. 23–26.

stressed that the standard "must not be set too low".[17] In reply, IRM submitted arguments rebutting these claims, arguing, in essence, that the Tribunal did not raise the applicable threshold standard in preliminary injury inquiries and that there was no basis to alter it.[18]

[20] The Tribunal accepts IRM's arguments rebutting Hoa Phat's claims regarding the applicable standard. The principles which underlie the applicable standard in preliminary injury inquiries, as set out above, are well established in Tribunal jurisprudence.

[21] The Tribunal's interpretation of the evidentiary threshold applied in preliminary injury inquiries is appropriate and need not be revisited. The evidentiary threshold in a preliminary injury inquiry has been carefully crafted to ensure that it conforms to the requirements of SIMA and WTO agreements, and the Tribunal must therefore examine the evidence on the record using that standard, having regard to the specific circumstances of each case.[19]

Injury factors and framework issues

[22] In making its preliminary determination of injury, the Tribunal considers the injury and threat of injury factors that are prescribed in section 37.1 of the Regulations. This includes the import volumes of the dumped goods and the effects of the dumped goods on the price of like goods, the resulting economic impact of the dumped goods on the state of the domestic industry and—if injury or threat of injury is found to exist—whether a causal relationship exists between the dumping of the goods and the injury or threat of injury.

[23] However, before examining whether there is evidence of injury or threat of injury, the Tribunal must address a number of framework issues. Specifically, in this case, it must:

(1) identify the domestically produced goods that are "like goods" in relation to the subject goods and determine whether there is more than one class of goods;

(2) identify the domestic industry that produces those like goods; and

(3) determine whether the effect of the dumping of the subject goods from all the subject countries should be assessed cumulatively or whether a separate analysis should be undertaken for each of the subject countries.

[24] The Tribunal will address these framework issues in turn.

LIKE GOODS AND CLASSES OF GOODS

[25] Subsection 2(1) of SIMA defines "like goods", in relation to any other goods, as goods that are identical in all respects to the other goods or, in the absence of identical goods, goods that have uses and other characteristics that closely resemble those of the other goods. In determining the issue of like goods where goods are not identical in all respects to the other goods, the Tribunal typically considers a number of factors, including the physical characteristics of the goods (such as

---

17 *Ibid*. at para. 26. In doing so, Hoa Phat relied on the dissenting opinion of Member Downey in *Liquid Dielectric Transformers* (22 June 2012), PI-2012-001 (CITT) at paras. 70–86.

18 Exhibit PI-2023-002-13.03 at paras. 5–11.

19 See, for example, *Concrete Reinforcing Bar PI 2020* at paras. 27–28, referring to *Heavy Plate* (27 July 2020), PI-2020-001 (CITT) [*Heavy Plate*].

composition and appearance) and their market characteristics (such as substitutability, pricing, distribution channels, end uses and whether the goods fulfill the same customer needs).[20] The Tribunal also considers these same factors in deciding whether there is more than one class of goods.[21]

[26] On the issue of like goods, IRM claimed, in its complaint, that the domestic industry produces or has the ability to produce the whole range of wire rod included in the product definition. It submitted, among other things, that domestically produced wire rod and imported wire rod have the same physical and market characteristics and fulfill the same customer needs.[22] On the issue of classes of goods, IRM claimed that there is a single class of goods and added that, while the qualities of wire rod may differ depending on end-use applications, wire rod is fully interchangeable and falls within a continuum of like goods.[23]

[27] The parties, with the exception of Hoa Phat, do not dispute that domestically produced wire rod constitutes like goods in relation to the subject goods, and that there is a single class of goods. In its submissions, Hoa Phat appears to question whether the domestic industry has the capacity to produce the full range of wire rod products covered by the product definition and whether there is more than one class of goods. Hoa Phat's assertions seem to be premised on a distinction between various types of wire rod, depending on the extent to which they are processed.[24] However, Hoa Phat has not expanded on these allegations.

[28] Based on the information set out in IRM's complaint and reply,[25] the Tribunal finds that there is sufficient evidence on the record indicating that domestically produced wire rod that meets the product definition competes with the subject goods. These domestically produced goods have uses and other characteristics closely resembling those of the subject goods. As such, the Tribunal finds that they are like goods in relation to the subject goods.

[29] To the extent that Hoa Phat suggests that the subject and the like goods should be separated into two distinct classes of goods, the Tribunal finds this apparent allegation to have been rebutted by IRM in its reply.[26] Indeed, Hoa Phat did not provide any analysis or evidence addressing the relevant factors that are typically considered by the Tribunal in deciding whether there is more than one class of goods.

---

20 See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at para. 48.

21 In order to decide whether there is more than one class of goods, the Tribunal must determine whether goods potentially included in separate classes of goods constitute "like goods" in relation to each other. If they do, they will be regarded as comprising a single class of goods. See, for example, *Certain Fasteners* (7 January 2005), NQ-2004-005 (CITT) at para. 70.

22 See, for example, Exhibit PI-2023-002-02.01 at 48, 1069, 1074–1076; Exhibit PI-2023-002-03.01.A (protected) at 14–16.

23 See, for example, Exhibit PI-2023-002-02.01 at 48–50, 1074–1076; Exhibit PI-2023-002-03.01.A (protected) at 14–16.

24 The Tribunal notes that Hoa Phat's submissions, including the name of the separate classes of wire rod that it is apparently proposing, are based on information that it designated as confidential. However, no justification was provided for such designations. If this matter proceeds to an inquiry pursuant to section 42 of SIMA and Hoa Phat pursues this line of argument, it will have to provide a rationale for designating this information as confidential.

25 See paragraph 26 of these reasons and relevant footnotes.

26 See, in that regard, Exhibit PI-2023-002-13.03 at paras. 42–43, including footnote 130.

[30] Furthermore, there is no evidence supporting a finding that there is a clear dividing line between various types of wire rod such that they would not constitute like goods in relation to each other or fall along the same continuum of like goods.

[31] In this regard, the Tribunal notes that, in previous cases, it has stated that (1) the fact that certain goods may not be fully substitutable for each other for some end uses is not, in and of itself, a sufficient basis for determining that multiple classes of goods exist, and (2) goods can belong to the same class of goods even if they come in numerous varieties.[27] Applying this test, the Tribunal sees nothing strongly supporting a finding of multiple classes of goods at this stage of the proceeding.

[32] Accordingly, the Tribunal will conduct its analysis on the basis that wire rod produced in Canada and meeting the product definition constitutes "like goods" in relation to the subject goods and that there is one class of goods.

DOMESTIC INDUSTRY

[33] Subsection 2(1) of SIMA defines "domestic industry" as "the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods …". The Tribunal must therefore determine whether the evidence discloses a reasonable indication of injury, or a threat of injury, to the domestic producers as a whole or to those domestic producers whose collective production represents a major proportion of the total domestic production of like goods. The term "major proportion" is not defined in SIMA. However, it has been interpreted to mean an important, serious or significant proportion of total domestic production of like goods and not necessarily a majority.[28]

[34] In IRM's complaint, it identified IRM and ArcelorMittal as the sole producers of wire rod in Canada. IRM maintained, in its reply submission before the Tribunal, that it and ArcelorMittal constitute the totality of the domestic wire rod industry. The CBSA also concluded accordingly.[29]

[35] The USW and Unifor, for their part, appear to suggest that Sivaco Inc. (Sivaco), a related company to IRM that is involved in processing wire rod for sale into the domestic market, should be included in the domestic industry on that basis.[30]

[36] The Tribunal notes that Sivaco did not participate in these proceedings. However, the Tribunal asked IRM to provide data for IRM's sales to Sivaco.[31]

[37] The opposing parties did not squarely address the scope of the domestic industry, but Hoa Phat, relying on information contained in the confidential record, seemingly suggests there may be other domestic producers that process wire rod.[32]

---

27 See, for example, *Carbon Steel Welded Pipe* (20 August 2008), NQ-2008-001 (CITT) at para. 45; *Waterproof Footwear and Bottoms* (8 December 2000), NQ-2000-004 (CITT) at 8.

28 *Japan Electrical Manufacturers Assoc. v. Canada (Anti-Dumping Tribunal)*, [1982] 2 FC 816 (FCA).

29 Exhibit PI-2023-002-05 at paras. 46–50.

30 Exhibit PI-2023-002-13.01 at para. 4.

31 Exhibit PI-2023-002-08; Exhibit PI-2023-002-09.A (protected); Exhibit PI-2023-002-09.

32 See Exhibit PI-2023-002-07.02 (protected) at paras. 35–37. See also, for example, Exhibit PI-2023-002-03.01.A (protected) at 7 (para. 18), 134 (paras. 17–18), 142 (para. 44).

[38] For the purposes of this preliminary injury inquiry, the Tribunal will consider the impact of the subject goods on IRM and ArcelorMittal. Based on the information available on the record, IRM and ArcelorMittal are the only two known domestic producers and account for 100% of the total known and definitive production of wire rod in Canada. Regarding IRM's related companies or any other companies for that matter, the Tribunal does not have definitive information on the nature of their operations nor on their involvement in the production, if any, of domestically produced wire rod.

[39] Finally, in light of the USW and Unifor's submissions and the questions raised by Hoa Phat, the issue of the composition of the domestic industry, including the extent to which and how Sivaco's activities should be included, will be addressed more fully during the Tribunal's final injury inquiry should the CBSA make a preliminary determination of dumping.

CUMULATION

[40] In the context of a final injury inquiry, subsection 42(3) of SIMA requires the Tribunal to make an assessment of the cumulative effect of the dumping of goods that are imported into Canada from more than one subject country if it is satisfied that the following two conditions are met:

> (1) the margin of dumping in relation to the goods from each of those countries is not insignificant and the volume of the goods imported from each of those countries is not negligible; and that
>
> (2) such an assessment would be appropriate, taking into account the conditions of competition between the goods from any of those countries and the goods from any other of those countries or the domestically produced like goods.

[41] While subsection 42(3) of SIMA applies to final injury inquiries, the Tribunal's practice has been to adopt the same framework in preliminary injury inquiries.[33] The Tribunal normally considers that it is exceptional not to cumulate the subject goods in a preliminary injury inquiry when the available evidence appears to justify cumulation.[34]

[42] IRM submitted, in its complaint, that the above conditions are met and that the goods from all subject countries should be presented on a cumulated basis. As for the opposing parties, Tree Island Industries took issue with the second condition. It did so on the claimed basis that the "conditions of competition in Eastern and Western Canada are sufficiently different to justify a decumulated assessment of the impact of Chinese and Vietnamese subject imports sold in the Western Canadian geographic market".[35] Essentially, Tree Island Industries claimed that Egyptian wire rod dominates the Eastern market and is not present in the Western Canadian market. It further claimed that there is

---

33 *Galvanized Steel Wire* (22 March 2013), PI-2012-005 (CITT) at para. 40; *Corrosion-resistant Steel Sheet* (2 February 2001), PI-2000-005 (CITT) at 4, 5.

34 See, for example, *Heavy Plate* at para. 51.

35 Exhibit PI-2023-002-06.05 at para. 55. The Tribunal also notes that Tree Island Industries' cumulation submissions were raised "if" the Tribunal finds that the evidence discloses a reasonable indication of injury or threat of injury (see Exhibit PI-2023-002-06.05 at para. 49). That is improper. The Tribunal must first determine, as part of the framework, the cumulation issue before examining whether there is evidence of injury or a threat of injury.

no evidence that the like goods compete with the Chinese and Vietnamese subject goods in the Western Canadian market.

[43] In this case, the Tribunal finds that the evidence available at this stage of the proceedings supports the conduct of an analysis of the cumulative effect of the dumping of the subject goods from the three subject countries.

[44] Regarding the first condition, the Tribunal generally assesses insignificance and negligibility based on the CBSA's estimated margins of dumping and import volumes for its dumping period of investigation. In the present case, the Tribunal finds that the estimated margin of dumping for each country is not insignificant (i.e., it is not less than 2% of the export price of the goods) and the estimated import volume for each country is not negligible (i.e., it is not less than 3% of the total volume of imports from all countries).[36]

[45] Regarding the second condition, in assessing conditions of competition, the Tribunal typically considers a range of factors such as interchangeability, quality, pricing, distribution channels, modes of transportation, timing of arrivals and geographic dispersion. The assessment of whether it is appropriate to cumulate the subject goods of a country involves the weighing of evidence and circumstances in each case.[37] The Tribunal finds that the evidence available at this preliminary stage of the proceedings reasonably indicates similar conditions of competition among the subject goods, and between the subject goods and the like goods.

[46] Tree Island Industries' arguments were mainly limited to one of the relevant factors typically considered by the Tribunal: the presence or absence of sales of imports from different subject countries and the sales of like goods into the same geographical markets. However, in the Tribunal's view, the evidence on the record provides a reasonable indication that there has been competition between Egyptian, Chinese and Vietnamese imports in Eastern Canada; the subject goods appear to compete against one another,[38] and with like goods,[39] across Canada. The Tribunal is therefore unable to accept the argument that the geographical dispersion factor supports decumulating any of the subject countries.

[47] In any event, the evidence available at this preliminary stage of the proceedings on other relevant factors reasonably justifies, in the Tribunal's view, a cumulative assessment.[40] This means that, even if the Tribunal were to accept Tree Island Industries' allegations as established facts, this would not provide a sufficient basis for conducting a separate injury or threat of injury analysis of the

---

36 The terms "insignificant" and "negligible" are defined in subsection 2(1) of SIMA. For the CBSA's estimated margins of dumping, see Exhibit PI-2023-002-05 at paras. 82, 144, and Exhibit PI-2023-002-03.03 (protected) at 21. For the CBSA's estimated volumes of subject imports, see Exhibit PI-2023-002-03.03 (protected) at 22.

37 See, for example, *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (17 August 2001), NQ-2001-001 (CITT) at 16 [*Flat Hot-rolled Carbon NQ*]; *Waterproof Footwear* (25 September 2009), NQ-2009-001 (CITT) at note 28. The Tribunal has recognized that other factors may be considered and that no single factor may be determinative. See *Laminate Flooring* (16 June 2005), NQ-2004-006 (CITT) at para. 80.

38 See, in that regard, Exhibit PI-2023-002-13.03 or Exhibit PI-2023-002-14.03 (protected) at paras. 30–35, and the evidence referred to therein.

39 See, in that regard, Exhibit PI-2023-002-13.03 or Exhibit PI-2023-002-14.03 (protected) at paras. 36–41, and the evidence referred to therein.

40 See, in that regard, Exhibit PI-2023-002-13.03 or Exhibit PI-2023-002-14.03 (protected) at para. 28, *in fine*, and the evidence referred to therein.

effect of the dumping by Egyptian exporters, in view of the evidence available on the other relevant factors.

[48] Finally, the Tribunal notes in passing that Hoa Phat appears to make the argument that a separate injury analysis should be made for the Western Canada market, and in particular the British Columbia market. The Tribunal fails to see a legal basis to divide the country into separate geographical markets to assess whether there is a reasonable indication that the subject goods have caused injury to the domestic industry.[41]

[49] To the extent that Hoa Phat is asking the Tribunal not to cumulate subject goods from Vietnam in its injury or threat of injury analysis on the basis that the domestic producers do not compete with Vietnamese goods in Western Canada, it did not address nor provide evidence on all the relevant factors to substantiate such a claim. Again, considered as a whole, the available evidence on each relevant factor supports cumulation.

[50] Therefore, for the purposes of this preliminary injury inquiry, the Tribunal considers it appropriate to conduct a single injury analysis that will assess the cumulative effect of the dumping of wire rod into Canada from all three subject countries.

INJURY

[51] The Tribunal now turns to an examination of whether the evidence discloses a reasonable indication of injury, taking into account the framework established above and the factors prescribed by section 37.1 of the Regulations.

[52] Before turning to this examination, the Tribunal notes that IRM presented its injury claim in relation to the merchant market, which appears to have excluded from consideration all sales of like goods to related companies. While the Tribunal has, in some previous cases, focused its assessment of injury on the merchant market, it nonetheless assessed the materiality of the injury caused by the subject goods against the domestic production of like goods as a whole.[42] Given that, in its complaint, IRM presented evidence of injury in relation to the merchant market only, the Tribunal will, for the purposes of its preliminary injury inquiry, carry out its assessment of injury in the same manner.

Import volume of subject goods

[53] The Tribunal must consider whether the evidence reasonably indicates that the volume of the subject imports significantly increased in absolute terms and relative to domestic production and consumption.

[54] IRM submitted that the publicly available information shows that subject imports significantly increased in absolute terms, from just over 8,000 tonnes in 2020 to over 120,000 tonnes in 2023.[43] IRM also claimed that there were significant increases in the volume of imports of subject

---

41 The Tribunal is without authority to grant exclusion requests, including regional exclusions, at the preliminary injury inquiry stage. See, in that regard *UDS PI* at paras. 85–89.

42 See, for example, *Mattress Innerspring Units* (24 November 2009), NQ-2009-002 (CITT) [*Mattress Innerspring Units NQ*] at paras. 64–65 and 109.

43 Exhibit PI-2023-002-02.01 at 1140.

goods relative to domestic production and relative to merchant market sales between the years 2021 and 2023,[44] despite a decline in the absolute volume of imports of subject goods during that period.[45]

[55] Although IRM prepared market estimates and provided domestic industry production and sales data for 2021 onward, it argued that absolute imports should be assessed compared to 2020 volumes, as the volume of imports from subject countries increased in 2021 compared to 2020.

[56] Tree Island Industries submitted that analyzing the volume of data beginning in 2020 would clearly lead to an unreasonable result because the 2020 market was distorted by COVID-19 and related shipping issues. The Government of Egypt also submitted that the Tribunal should look at a year-over-year time series as opposed to performing a comparison from end point to end point (i.e., by comparing 2020 to 2023).

[57] In reply, IRM submitted that, even if 2020 is disregarded, there was an increase in imports of subject goods relative to domestic production and sales of domestic production between 2021 and 2023.

[58] Hoa Phat submitted that there is a lack of evidence of an increase in imports from Vietnam. Tree Island Industries also made a similar argument. However, the Tribunal notes that, given its decision to conduct a cumulative injury analysis in this preliminary inquiry, it must assess import volume trends on a cumulative basis, that is, in respect of imports of subject goods from all three subject countries. Therefore, it would be inappropriate for the Tribunal to assess import volume trends of each subject country separately.

[59] The CBSA conducted its own analysis of import volumes of subject goods using data from its own systems,[46] information on customs documents, information provided by the complainant, and its own research.[47] The CBSA found that its data supported the allegation of an increase in the volume of the subject goods on an absolute basis from 2020 to 2023 and on a relative basis from 2021 to 2023.[48]

[60] For the purposes of this preliminary inquiry, the focus of the Tribunal's analysis of the import volume of the subject goods was the period between 2021 and 2023. The Tribunal finds that the evidence reasonably indicates that the volume of the subject goods increased significantly relative to domestic sales between 2021 and 2023. Relative to domestic production, the evidence suggests that the volume of subject goods also increased in 2022, but declined in 2023, for a small net increase over 2021.[49]

[61] Moreover, the Tribunal notes that, while the total apparent Canadian market for wire rod decreased from 2021 to 2023, evidence suggests that imports from the subject countries decreased by

---

44 Exhibit PI-2023-002-03.01.A (protected) at 149, 181. The Tribunal notes that, in calculating imports relative to domestic production, IRM used the total domestic production of all its products, including other products in addition to wire rod.

45 The volumes of subject imports submitted in the complaint show the absolute volume declining from 124,425 tonnes in 2021 to 123,105 tonnes in 2023.

46 CBSA Facility for Information Retrieval Management (FIRM) and Accelerated Commercial Release Operations Support System (ACROSS).

47 Exhibit PI-2023-002-03.03 (protected) at 13.

48 Exhibit PI-2023-002-05 at paras. 102–103.

49 Exhibit PI-2023-002-03.03 (protected) at 13; Exhibit PI-2023-002-03.01.A (protected) at 149, 181.

a significantly lower amount. Specifically, both sales of domestic production and the total Canadian market declined in 2022 and 2023, while imports of subject goods increased in 2022 before declining in 2023. Furthermore, while the domestic industry's market share fell in 2022 before almost fully recovering in 2023, the subject goods' market share increased in both 2022 and 2023.[50]

[62] Taken together, this evidence provides a reasonable indication of a significant increase in imports of the subject goods in relative terms.

Price effects of the subject goods

[63] The Tribunal must also consider whether the evidence reasonably indicates that the subject goods have had significant adverse price effects on the like goods.

[64] At this preliminary stage, the evidence generally indicates that wire rod is a commodity product and that its purchase is driven by price, with a high degree of price transparency in the market.[51]

Price undercutting

[65] IRM argued that, at the aggregate market level, average prices of the subject goods significantly undercut average prices of domestically produced goods between 2021 and 2023. It further argued that there was price undercutting specific to industrial quality and mesh quality wire rod which, according to IRM, are the most common types of wire rod sold in Canada. IRM also claimed to have witnessed extensive price undercutting at specific accounts for the sale of specific products.[52]

[66] Tree Island Industries submitted that trends in CBSA and IRM price data demonstrate that the price data provided in the complaint cannot be relied upon to establish a correlation between domestic industry performance and the subject goods, and that the domestic industry must not have accounted for other market factors. Hoa Phat also made a point of refuting allegations that the domestic industry faced pricing pressure from imports of Vietnamese wire rod.

[67] IRM responded by submitting recent import permit data for low-carbon wire rod, arguing that Chinese and Vietnamese imports were competing against each other, and that price was a key determining factor in purchasing decisions. It submitted that prices of Vietnamese and Chinese goods converged in the first quarter of 2024, and Vietnamese imports appear to be regaining market share.[53]

[68] Jebsen and Jessen submitted that comparing average import prices to average domestic industry selling prices on an aggregated basis between the different categories of wire rod quality, as IRM has done, cannot be a reliable measure to determine price effects. The Tribunal notes, however, that it normally relies on aggregate information in a preliminary inquiry, given that the Tribunal has not yet had the opportunity to collect its own pricing data, including those for benchmark products.

---

50 Exhibit PI-2023-002-03.03 (protected) at 14.
51 Exhibit PI-2023-002-03.01.A (protected) at 14–18; Exhibit PI-2023-002-02.01 at 1074–1078.
52 Exhibit PI-2023-002-03.01.A (protected) at 151–156; Exhibit PI-2023-002-03.01 (protected) at 21–41; Exhibit PI-2023-02.01 at 1081–1101.
53 Exhibit PI-2023-002-13.03 at 52.

[69] The CBSA, for its part, found that its import data indicated that prices of the subject goods undercut the prices of domestically produced goods.[54] However, the Tribunal observes that the CBSA appears to have calculated the level of price undercutting using average import unit values for all wire rod compared to the average price for domestically produced industrial quality and mesh quality wire, rather than using the average price for all domestically produced wire rod.[55] Therefore, the Tribunal conducted its own price undercutting analysis using CBSA average import unit values, inland freight estimates for imports provided by IRM and domestic industry average selling price for all wire rod.[56] The Tribunal's analysis of this data reasonably suggest that prices of the subject goods undercut those of the domestically produced like goods in 2022 and 2023, but not in 2021.

[70] The evidence also contains account-specific injury allegations relating to lost sales due to price undercutting by the subject goods and to instances where the domestic producers had to decrease their prices to retain sales.[57]

[71] The Tribunal finds that the evidence at this stage of the proceedings reasonably indicates that the subject goods significantly undercut the price of domestically produced like goods in 2022 and 2023.

Price depression

[72] IRM submitted that the price undercutting resulted in price depression. To support its allegations, it provided domestic industry pricing data for all like goods and industrial quality and mesh quality wire rod as well as account specific evidence of instances of price depression.[58]

[73] The Tribunal finds that, when looking at the data on a yearly basis, average prices of domestically produced wire rod declined in 2023 but remained above 2021 levels. However, when looking at the data on a half-year basis, prices started declining in the second half of 2022. Therefore, considering these data and evidence of account-specific injury, the Tribunal finds that there is a reasonable indication of price depression caused by the subject goods.

Price suppression

[74] IRM submitted that an examination of prices and costs shows that the domestic industry experienced price suppression.[59]

[75] While IRM's argument on price suppression is redacted, the Tribunal generally only considers price suppression to be occurring when costs are increasing, and the domestic industry is unable to react by implementing equivalent price increases. It generally does not consider price suppression to be occurring when costs are declining. Through this lens, there is only one period showing potential price suppression based on the typical indicators examined by the Tribunal.

---

54 Exhibit PI-2023-002-05 at para. 110.
55 Exhibit PI-2023-002-03.03 (protected) at 25; Exhibit PI-2023-002-03.01.A (protected) at 152.
56 Exhibit PI-2023-002-03.03 (protected) at 25; Exhibit PI-2023-002-03.01.A (protected) at 151.
57 Exhibit PI-2023-002-03.01.A (protected) at 21–41; Exhibit PI-2023-002-02.01 at 1081–1101.
58 Exhibit PI-2023-002-03.01.A (protected) at 151, 152; Exhibit PI-2023-002-03.01.A (protected) at 21–41; Exhibit PI-2023-002-02.01 at 1081–1101.
59 Exhibit PI-2023-002-03.01.A (protected) at 180.

Therefore, the Tribunal is unable to conclude that there is a reasonable indication of price suppression caused by the subject goods.

Impact on the domestic industry

[76] As part of its injury analysis, the Tribunal must consider the impact of the dumped goods on the state of the domestic industry and, in particular, all relevant economic factors and indices that have a bearing on the state of the domestic industry.[60] This includes impacts on workers employed in the domestic industry.[61]

[77] The Tribunal must also determine whether the evidence discloses a reasonable indication of a causal relationship between the dumping of the subject goods and the injury.[62] The standard is whether there is a reasonable indication that the dumping of the subject goods has, in and of itself,[63] caused injury.

[78] IRM alleged that the subject goods caused the domestic industry to suffer material injury in the form of lost market share, lost sales, reduced production and capacity utilization, reduced profitability, reduction in employment and insufficient return on investment.

[79] The evidence before the Tribunal shows that the volume of the domestic industry's merchant market sales decreased between 2021 and 2023.[64] This, in turn, appears to have negatively affected domestic production of wire rod and capacity utilization.[65] However, there was a significant decrease in demand over this period. With respect to market share, the domestic industry appears to have largely maintained its market share, while the subject imports' market share rose in each period.[66]

[80] The evidence provides a reasonable indication that the domestic industry experienced significant pricing pressure from the dumped imports during the relevant period. For instance, the witness for IRM explained that IRM lost revenue due to price depression for key customer accounts, either because it was forced to lower its quoted price to compete with the subject goods or because it was forced to lower prices for existing customers.[67] The Tribunal views this as a defensive strategy

---

60 Such factors and indices at paragraph 37.1(1)(c) of the Regulations include:
> (i) any actual or potential decline in output, sales, market share, profits, productivity, return on investments or the utilization of industrial capacity; (i.1) any actual or potential negative effects on employment levels or the terms and conditions of employment of the persons employed in the domestic industry, including their wages, hours worked, pension plans, benefits or worker training and safety; (ii) any actual or potential negative effects on cash flow, inventories, employment, wages, growth or the ability to raise capital; and (ii.1) the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods.

61 See subsection 2(11) of SIMA.

62 See subsection 37.1(3) of the Regulations.

63 *Certain Mattresses* (PI-2021-005), PI-2021-005 (CITT) at para. 49; *Gypsum Board* (5 August 2016), PI-2016-001 (CITT) at para. 44; *Copper Rod* (30 October 2006), PI-2006-002 (CITT) at paras. 40, 43.

64 Exhibit PI-2023-002-02.01 at 1078–1079 (paras. 55–57); Exhibit PI-2023-002-03.01.A (protected) at 149.

65 Exhibit PI-2023-002-03.01.A (protected) at 181.

66 Exhibit PI-2023-002-02.01 at 1080 (paras. 58–60); Exhibit PI-2023-002-03.01.A (protected) at 149; Exhibit PI-2023-002-03.03 (protected) at 14.

67 Exhibit PI-2023-002-02.01 at 1081; Exhibit PI-2023-002-03.01.A (protected) at 21–23 (paras. 61–68), 30 (para. 85), 104–106.

against competition from the subject goods, which may also explain why IRM was able to maintain its market share in a declining market.[68]

[81] Specifically, the evidence reasonably suggests that the subject goods had a direct and significant adverse impact on the domestic industry's financial results from 2022 to 2023.[69] The Tribunal notes, in particular, the industry's declining net sales revenues and profit margins for sales in the merchant market from 2022 to 2023. This evidence supports the view that the domestic industry experienced the consequences of significant pricing pressure to retain key customer accounts. The Tribunal further notes that, even when IRM's sales to related companies are included in the total domestic sales from domestic production, there is a similar negative trend as for the merchant market.[70]

[82] IRM also reported several account-specific instances of sales that were purportedly lost against subject goods due to their unfairly low prices.[71] Although these allegations with respect to lost revenue appear to be credible, they will warrant more scrutiny in the event of a final injury inquiry should the CBSA make a preliminary determination of dumping. Particularly, the allegations with respect to lost sales warrant scrutiny, as the evidence suggests that the subject goods gained market share at the expense of imports from non-subject countries, while the domestic industry largely maintained its market share.

[83] In summary, the Tribunal is of the view that the evidence provides a reasonable indication that the presence of the subject goods in the market had a significant negative impact on the financial performance of the domestic industry. This is also supported by evidence of the impact on IRM's investment and ability to raise capital.[72]

[84] The USW and Unifor submitted that more than 400 members are directly or indirectly employed in the production of wire rod. Although they stated that the impact on the domestic industry in terms of employment was "clear", they did not provide any evidence of impacts on workers. The USW only pointed to the CBSA's determination and a single paragraph of IRM's complaint, neither of which discuss the impact on workers. For its part, IRM appears to claim that it will be unable to maintain levels of employment, which the Tribunal finds is an argument regarding the threat of injury and not an analysis for injury, since it is forward-looking.[73] Accordingly, considering that the domestic industry maintained market share in a declining market, and no data on employment trends were provided by the domestic industry nor the unions, the Tribunal cannot determine that the subject goods have had a negative impact on workers.

Causation and other factors

[85] Parties opposed to the complaint argued that various non-dumping factors were the cause of injury to the domestic industry. These other factors were, among others, the effect of COVID-19, the downturn in the Canadian market, the role of non-subject imports and transportation costs. IRM

---

68 Exhibit PI-2023-002-03.01 (protected) at 70 (para. 120); Exhibit PI-2023-002-14.03 (protected) at 32 (para. 48).
69 Exhibit PI-2023-002-03.01.A (protected) at 180.
70 Exhibit PI-2023-002-09.A (protected) at 5.
71 Exhibit PI-2023-002-02.01 at 1081–1098; Exhibit PI-2023-002-03.01.A (protected) at 21–22, 25–26, 29–37; Exhibit PI-2023-002-14.03.A (protected) at 2, 6–9; Exhibit PI-2023-002-13.03.A at 2.
72 Exhibit PI-2023-002-03.01.A (protected) at 139–140.
73 *Ibid.* at 138.

responded in detail to these allegations with sufficient evidence and arguments at this stage of the proceedings.

[86] The Tribunal considered these other factors. However, at this stage, given the limited evidence on the record, it is difficult to assess the impact that they had on the domestic industry. It is only at the stage of an eventual final injury inquiry that the Tribunal will be able to determine whether and to what extent these other factors have contributed to the deterioration of the economic performance of the domestic industry. Consequently, the Tribunal determines that these issues will best be resolved if this matter proceeds to a final injury inquiry.

[87] For the purposes of the preliminary injury inquiry, the evidence discussed above sufficiently supports the existence of a reasonable indication of injury caused by the subject goods in and of themselves.

Materiality

[88] While subsection 2(1) of SIMA defines "injury" as "material injury to a domestic industry", the term "material" itself is not defined. In the past, the Tribunal has considered this to mean something more than *de minimis* but not necessarily serious injury.[74] Ultimately, the Tribunal determines the materiality of any injury on a case-by-case basis, having regard to the extent (i.e., severity), timing and duration of the injury.[75]

[89] The Tribunal cannot ignore that the domestic merchant market, which is the focus of the complaint, accounts for a minor proportion of the domestic industry's sales. In this context, arguably a large subset of the total domestic production does not compete with the subject goods and may be insulated from injury. However, the Tribunal must determine whether the injury suffered by the domestic industry in the merchant market is material when considered in relation to the domestic production as a whole.[76]

[90] Nonetheless, the Tribunal has previously noted that it is entirely possible for an industry to do well on one part of domestic production (e.g., export sales or for further internal processing) and still be injured in another (e.g., sales in the domestic merchant market) to the detriment of the industry as a whole.[77] Therefore, when assessing injury to the domestic industry, good performance in one part of the domestic production should not be used as a reason for failing to properly assess the importance of injury caused to another part. This means that, in principle, losses in the merchant market can have a material adverse impact on the domestic industry's overall financial performance.

[91] In this preliminary inquiry, the Tribunal finds that IRM has provided sufficient evidence, including sworn evidence, addressing the materiality of IRM's losses in the domestic merchant

---

74 *ABS Resin* (15 October 1986), CIT-3-86; *Unitized Wall Modules* (12 November 2013), NQ-2013-002 (CITT) at para. 58.

75 *Concrete Reinforcing Bar* (3 May 2017), NQ-2016-003 (CITT) at para. 184. See also *Certain Hot-rolled Carbon Steel Plate* (27 October 1997), NQ-97-001 (CITT) at 13, where the Tribunal suggested that the concept of materiality could entail both temporal and quantitative dimensions.

76 See *Mattress Innerspring Units NQ* at para. 109. In that decision, the Tribunal found that the injury in the merchant market was sufficiently great to be material when considered in relation to the domestic production as a whole. In making this finding, the Tribunal considered that the merchant market comprised over 70% of total domestic production.

77 See, for example, *Flat Hot-rolled Carbon NQ* at 13.

market relative to IRM's overall company performance to support a preliminary determination that the injury that it suffered is material.[78] In other words, the Tribunal is not convinced, based on the evidence available at this stage, that the injury to the domestic industry's merchant market is immaterial relative to the overall production of like goods, including further internal processing of wire rod. Nonetheless, given the magnitude of IRM's sales to related companies, this issue will need to be carefully explored in the final injury inquiry should the CBSA make a preliminary determination of dumping.

[92] Bearing in mind the lower evidentiary threshold applicable at the preliminary inquiry stage, on balance, the Tribunal finds that the evidence on record provides a reasonable indication that the dumping of the subject goods has caused material injury to the domestic industry.

THREAT OF INJURY

[93] In light of the finding that there is a reasonable indication that the dumping of the subject goods has caused injury, the Tribunal will exercise judicial economy and not consider whether there is a reasonable indication that the dumping of the subject goods is threatening to cause injury.

CONCLUSION

[94] On the basis of the foregoing analysis, the Tribunal determines that there is evidence that discloses a reasonable indication that the dumping of the subject goods has caused injury to the domestic industry.

Georges Bujold
Georges Bujold
Presiding Member

Randolph W. Heggart
Randolph W. Heggart
Member

Eric Wildhaber
Eric Wildhaber
Member

78 Exhibit PI-2023-002-03.01.A (protected) at 146–147, 181; Exhibit PI-2023-002-13.03 at 17; Exhibit PI-2023-002-14.03 (protected) at 17.