



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

FINDING AND REASONS

Inquiry No. NQ-2006-003

Copper Rod

*Finding issued
Wednesday, March 28, 2007*

*Reasons issued
Thursday, April 12, 2007*

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IN THE MATTER OF an inquiry, under section 42 of the *Special Import Measures Act*,
respecting:

**THE DUMPING OF COPPER ROD ORIGINATING IN OR EXPORTED FROM
BRAZIL AND THE RUSSIAN FEDERATION AND THE SUBSIDIZING OF
COPPER ROD ORIGINATING IN OR EXPORTED FROM BRAZIL**

FINDING

The Canadian International Trade Tribunal, under the provisions of section 42 of the *Special Import Measures Act*, has conducted an inquiry to determine whether the dumping of copper rod with a diameter of at least 6 mm but not exceeding 11 mm, made to American Society for Testing and Materials (ASTM) designation B 49 or equivalent (copper rod), originating in or exported from Brazil and the Russian Federation and the subsidizing of copper rod originating or exported from Brazil have caused injury or retardation or are threatening to cause injury.

This inquiry is pursuant to the issuance by the President of the Canada Border Services Agency of a preliminary determination dated November 28, 2006, and of a final determination dated February 26, 2007, that copper rod originating in or exported from Brazil and the Russian Federation has been dumped and, in the case of Brazil, that copper rod has been subsidized, that the margins of dumping and the amount of subsidy on copper rod from the subject countries are not insignificant and that the volumes of dumped and subsidized copper rod are not negligible.

Pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that the dumping of copper rod originating in or exported from Brazil and the Russian Federation and the subsidizing of copper rod originating in or exported from Brazil have not caused injury and are not threatening to cause injury to the domestic industry.

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Elaine Feldman
Presiding Member

James A. Ogilvy
James A. Ogilvy
Member

Meriel V. M. Bradford
Meriel V. M. Bradford
Member

Hélène Nadeau
Hélène Nadeau
Secretary

The statement of reasons will be issued within 15 days.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	February 26 to 28, 2007
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STATEMENT OF REASONS

1. The Canadian International Trade Tribunal (the Tribunal), under the provisions of section 42 of the *Special Import Measures Act*,¹ has conducted an inquiry to determine whether the dumping of copper rod with a diameter of at least 6 mm but not exceeding 11 mm, made to American Society for Testing and Materials (ASTM) designation B 49 or equivalent, originating in or exported from Brazil and the Russian Federation (Russia) (the subject goods) and the subsidizing of the subject goods originating in or exported from Brazil have caused injury or retardation or are threatening to cause injury.
2. On August 30, 2006, the President of the Canada Border Services Agency (CBSA), following a complaint filed by Nexans Canada Inc. (Nexans), initiated an investigation into whether the subject goods had been dumped and subsidized.
3. On August 31, 2006, pursuant to subsection 34(2) of *SIMA*, the Tribunal issued a notice advising interested parties that it had initiated a preliminary injury inquiry to determine whether the evidence disclosed a reasonable indication that the dumping and subsidizing of the subject goods had caused injury or retardation or were threatening to cause injury. On October 30, 2006, the Tribunal made a preliminary determination that there was evidence that disclosed a reasonable indication that the dumping and subsidizing of the subject goods had caused injury or retardation or were threatening to cause injury.
4. On November 28, 2006, the CBSA issued a preliminary determination of dumping and subsidizing. It was satisfied, as a result of its preliminary investigation, that the subject goods had been dumped and subsidized, that the margins of dumping and the amount of subsidy were not insignificant and that the volumes of dumped and subsidized goods were not negligible.
5. On November 29, 2006, the Tribunal issued a notice of commencement of inquiry. As part of the inquiry, it sent questionnaires to 2 domestic producers, 16 importers and 11 foreign producers. From the replies to the questionnaires and other sources, the Tribunal's research staff prepared public and protected pre-hearing staff reports.
6. On February 26, 2007, the CBSA issued a final determination of dumping and subsidizing, which confirmed that the margins of dumping and the amount of subsidy were not insignificant and that the volumes of dumped and subsidized goods were not negligible.
7. A hearing, with public and in camera testimony, was held in Ottawa, Ontario, from February 26 to 28, 2007. Nexans filed submissions in support of a finding of injury or threat of injury and was present at the hearing. Prysmian Power Cables and Systems Canada Ltd. and Prysmian Power Cables and Systems USA, LLC (Prysmian)² and Caraïba Metais S.A. (Caraïba) opposed a finding of injury or threat of injury and were represented at the hearing. The Tribunal also heard testimony from the witness from Belden CDT Inc. (Belden).
8. The record of this inquiry consists of all Tribunal exhibits, including the public and protected record of the preliminary injury inquiry (PI-2006-002), public and protected replies to questionnaires, requests for information and replies thereto, witness statements and all exhibits filed by the parties throughout the

1. R.S.C. 1985, c. S-15 [*SIMA*].

2. Prior to July 28, 2005, the company was known as Pirelli Cables & Systems. On July 28, 2005, it was purchased by Goldman Sachs Capital Partners and re-named Prysmian Cables & Systems. Tribunal Exhibit NQ-2006-003-12.09, Administrative Record, Vol. 5 at 73.

inquiry, as well as the transcript of the hearing. All public exhibits were made available to the parties. Protected exhibits were made available only to counsel who had filed a declaration and confidentiality undertaking with the Tribunal in respect of confidential information.

9. The Tribunal issued its finding on March 28, 2007.

RESULTS OF THE CBSA'S INVESTIGATION

10. The CBSA determined that the weighted average margin of dumping, expressed as a percentage of the export price, was 10.6 percent for Brazil and 19.7 percent for Russia and that 100 percent of the subject goods released into Canada from January 1, 2005, to June 30, 2006, were dumped. The CBSA further determined that the subsidy amounted to 250 Brazilian reais per tonne.³

PRODUCT

Product Description

11. This product is commonly referred to as "copper rod", but is also referred to as "copper wire rod".

12. The subject goods are made to ASTM designation B 49 or equivalent. This requires the use of "pure" copper of a minimum 99.9 percent copper content in the form of copper cathode.⁴ Copper cathode is typically the raw material used for the production of copper rod.

13. The most common diameter of copper rod used by the wire and cable industry is 8 mm (5/16 in.). The product definition includes copper rod from 6 mm to 11 mm because other sizes of copper rod may be substituted in the wire-making process. Copper rod is typically sold in coils of 4.5 tonnes (10,000 lbs.).⁵

Production Process

14. Nexans produces copper rod using the Contirod process.

15. In the Contirod process, copper cathode is charged to a shaft melting furnace. The molten copper exits the melting furnace, is carried along a launder to a holding furnace and is fed into a tundish. The tundish directs the copper into a casting machine. A solid rectangular bar is formed, partially cooled and directed to the rolling mill. The bar is hot-rolled in the rolling mill in a series of reductions to produce rod that is circular in cross section and of the desired diameter, usually 8 mm. The copper rod travels through a cooling pipe and undergoes surface conditioning. The copper rod is then bent into loops to form a coil, wrapped onto a pallet and shipped.⁶

DOMESTIC PRODUCER

16. In Canada, Nexans is the sole domestic producer of copper rod that matches the description of the subject goods. A second company, Southwire Canada Company (Southwire), was initially identified as a producer but, for reasons given below, the Tribunal determined that it did not produce like goods and,

3. Tribunal Exhibit NQ-2006-003-04, Administrative Record, Vol. 1 at 101.16.

4. Copper cathode is a sheet that measures about one square metre, made of "pure" copper produced using an electrolytic process.

5. Other formats of coil are 2.8 tonnes (6,200 lbs.) and 3.3 tonnes (7,300 lbs.).

6. Tribunal Exhibit NQ-2006-003-09.01, Administrative Record, Vol. 3 at 14.

therefore, was not part of the domestic industry. The Tribunal sent a producers' questionnaire to both companies. Both responded, but Southwire did not take any position in respect of the inquiry and did not otherwise participate in the proceedings.

17. Nexans⁷ is a wholly owned indirect subsidiary of Nexans S.A., a publicly traded company listed on Euronext. Nexans' copper rod mill⁸ is located in Montréal, Quebec, and the North American head office, responsible for the Canadian and U.S. operations,⁹ is in Markham, Ontario.

18. Nexans supplies the Canadian wire and cable industry. It also exports to customers in the United States and other countries. It produces 8 mm copper rod to standard North American technical specifications issued by the ASTM in designation B 49.

19. Nexans' North American operations also include several wire and cable plants in Canada and the United States. These plants produce utility cables, building wires, magnet wires, data wires, fibre optics and specialty wires.

IMPORTERS AND EXPORTERS

20. The Tribunal sent 3 importers' questionnaires, 13 short-form importers' questionnaires and 11 foreign producers' questionnaires.¹⁰

21. The Tribunal received completed importers' questionnaires from Prysmian Power Cables and Systems Canada Ltd. and Mitsubishi International Corporation, while the remaining importer, Domtech Inc., did not complete the Tribunal's questionnaire. The following five companies completed short-form importers' questionnaires: Belden CDT (Canada) Inc., Cables PTI Cables Inc., Electro Cables Inc., General Cable Company and Northern Cables Inc.

22. The Tribunal received two completed foreign producers' questionnaires, one from Caraíba, of Brazil, and one from Russian Copper Company (RCC), of Russia.

PRODUCT DISTRIBUTION AND SALES

23. In Canada, domestic and imported copper rod is sold to wire and cable manufacturers for the fabrication of copper-based electrical conductors. Nexans sells directly to its customers¹¹ in the Canadian market.

24. Typically, sales contracts that set out annual prices and regular monthly volumes coincide with the calendar year. They are usually negotiated and entered into prior to the beginning of the calendar year for which copper rod is to be supplied. Evidence indicates that, from time to time, parties will agree to continue

7. In 1931, Canada Wire established the hot-rolling mill in Montréal, investing in a modern continuous casting line in 1981. In 1991, Alcatel Canada Inc. (Alcatel) acquired Canada Wire. In 2000, Alcatel changed its name to Nexans Canada Inc. In 2001, Nexans S.A. was spun off through an initial public offering. Tribunal Exhibit NQ-2006-003-09.01, Administrative Record, Vol. 3 at 13.

8. The rod mill is certified to ISO 9001-2000. Tribunal Exhibit NQ-2006-003-09.01, Administrative Record, Vol. 3 at 13.

9. *Transcript of Public Hearing*, Vol. 1, 26 February 2007, at 53.

10. Foreign producers' questionnaires were forwarded to several exporters of copper rod in Russia.

11. Nexans has "regular" customers and "tolling" customers. Prices charged to "tolling" customers do not include the underlying cost of copper. Manufacturer's Exhibit A-05 at 27, Administrative Record, Vol. 11.

to abide by lapsed annual terms into subsequent years, while continuing negotiations. Exceptionally, participants in this industry forgo annual supply contracts and, instead, rely on spot sales.

25. Copper rod is the raw material used in the wire-making process. Wire and cable manufacturers draw the copper rod to smaller diameters, apply insulation to the wire and assemble the wire into cables. The end products include telephone wire, power cords, magnet wire, low-, medium- and high-voltage utility cables, building wire and virtually all copper-based electrical conductors.

Pricing

26. Copper rod pricing includes a number of components. The convention is to quote separately the price of copper, a commodity exchanged on the London Metal Exchange (LME) and the New York Commodity Exchange (COMEX), and the rod premium that covers transformation costs, profit and freight. The cathode premium, also published by the LME and COMEX, is charged to the copper rod producer by the supplier of the raw material and covers the supplier's cost of transforming copper to cathode form, its profit and the cost of transporting the copper cathode to the copper rod producer. The copper rod producer may then include the cathode premium in the rod premium charged to its customers or show it as a separate item.

27. Nexans' copper rod invoices show two components: the market price of copper, as quoted on COMEX (typically the current monthly average), plus a rod premium. The rod premium includes the cathode premium that Nexans pays to the cathode producer and Nexans' cost of production, plus a profit. In most cases, Nexans' rod premium also includes freight to deliver the copper rod to the customer's facility.

ANALYSIS

28. In the present case, pursuant to subsection 42(1) of *SIMA*, the Tribunal is required to inquire as to whether the dumping or subsidizing of the subject goods has caused injury or retardation or is threatening to cause injury. "Injury" is defined in subsection 2(1) as "...material injury to a domestic industry". "Domestic industry", in turn, is described 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"

29. The Tribunal must therefore first determine what constitutes "like goods". It will then determine what constitutes the "domestic industry" for the purposes of its injury analysis. The Tribunal must also determine whether it will make an assessment of the cumulative effect of the dumping and subsidizing of the subject goods, in accordance with subsection 42(3) of *SIMA*.

30. The Tribunal will then determine whether the dumping or subsidizing of the subject goods has caused injury to the domestic industry. Should the Tribunal arrive at a finding of no injury, it will then determine whether there exists a threat of injury. Because a domestic industry is already established, the Tribunal will not consider the question of retardation.¹²

31. In conducting its injury analysis, the Tribunal will also examine other factors alleged to have an impact on the domestic industry to ensure that it does not attribute to the dumping or subsidizing any injury caused by such factors.

12. Subsection 2(1) of *SIMA* defines "retardation" as "...material retardation of the establishment of a domestic industry".

Like Goods

32. Given that the Tribunal must determine whether the dumping or subsidizing of the subject goods is causing or threatening to cause injury to the domestic producers of like goods, the Tribunal must determine which domestically produced goods, if any, constitute like goods to the subject goods.

33. Subsection 2(1) of *SIMA* defines “like goods” as “. . . (a) goods that are identical in all respects to the other goods, or (b) in the absence of any goods described in paragraph (a), goods the uses and other characteristics of which closely resemble those of the other goods”.

34. The Tribunal notes that the subject goods comprise copper rod of a diameter of at least 6 mm but not exceeding 11 mm. No party made submissions on the issue of like goods, and the Tribunal is satisfied that Nexans produces goods that are identical to the subject goods in all respects, including their diameter range requirements. However, the Tribunal notes that Southwire’s copper rod casting line produces copper rod with a cross-sectional diameter of 15 mm, which is greater than the maximum diameter of the subject goods. Southwire stated the following:

. . . the molten copper flows upward into a vertical tube (“upcast”) approximately 7.5 feet long. . . . It emerges from the top of the tube as *copper rod* having a diameter of 15mm. The copper rod is stacked in coils weighing about 6000 pounds. These coils are moved to a different location in the plant where they are attached to a wiredrawing machine . . . which employs a series of dies having successively smaller diameters to reduce the *copper rod* from 15mm diameter to 14 gauge *copper wire*.^[13] The first four dies in the breakdown reduce the rod diameter from 15mm rod to 8mm *wire*. Subsequent dies continue the reduction process.

When Southwire Canada buys copper rod from outside sources, the rod diameter is already 8mm. Consequently, the first four dies in the breakdown are by-passed. . . .¹⁴

[Emphasis added]

35. In this description, Southwire distinguishes between “copper rod”, which it produces by casting at a set diameter of 15 mm, and “wire”, which is of progressively smaller diameters produced through the process of drawing. The cast copper rod produced by Southwire therefore falls outside the upper limit of the dimensional range specified for the subject goods. The goods that Southwire produces that are within the range of diameters specified for the subject goods are drawn wire and, therefore, in the Tribunal’s view, a downstream product of a different nature.

36. The Tribunal notes that Southwire also purchases copper rod from other sources and, because that product is of the industry standard of 8 mm, inserts it into the Southwire production line at the 8 mm point.

37. In light of the above, the Tribunal is of the view that, while Southwire may be a user of the subject goods or like goods, the goods that it produces are not like goods to the subject goods.

13. Southwire stated that “. . . 14-gauge wire has a diameter of 2.08 mm . . .” See Tribunal Exhibit NQ-2006-003-09.02, Administrative Record, Vol. 3A at 16.

14. Tribunal Exhibit NQ-2006-003-09.02, Administrative Record, Vol. 3A at 5-8.

Domestic Industry

38. Subsection 2(1) of *SIMA* defines “domestic industry” as follows:

... 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 except that, where a domestic producer is related to an exporter or importer of dumped or subsidized goods, or is an importer of such goods, “domestic industry” may be interpreted as meaning the rest of those domestic producers.

39. The Tribunal must determine whether there has been injury against the domestic producers as a whole or those domestic producers whose production represents a major proportion of the total production of like goods.

40. For the reasons examined under the previous heading, the Tribunal finds that Nexans is the only domestic producer of like goods to the subject goods. The Tribunal notes that, even if the copper rod produced by Southwire were considered like goods, Nexans’ production would still overwhelmingly represent a major proportion of total domestic production of like goods. However, because the Tribunal came to the conclusion that Southwire does not produce like goods, it also finds that Southwire is not part of the domestic industry for the purposes of this inquiry. The Tribunal, therefore, limited the scope of the domestic industry in this inquiry to Nexans.

Cumulation

41. There were no submissions relative to the issue of cumulation. Subsection 42(3) of *SIMA* directs the Tribunal, when conducting an inquiry under subsection 42(1), to make an assessment of the cumulative effect of the dumping and subsidizing of the goods that are imported into Canada from more than one country if it is satisfied that the following conditions are met:

...

(a) the margin of dumping or the amount of the subsidy in relation to the goods from each of those countries is not insignificant and the volume of the goods from each of those countries is not negligible; and

(b) an assessment of the cumulative effect would be appropriate taking into account the conditions of competition between goods to which the preliminary determination applies that are imported into Canada from any of those countries and

(i) goods to which the preliminary determination applies that are imported into Canada from any other of those countries, or

(ii) like goods of domestic producers.

42. Taking into consideration the relevant provisions of *SIMA* and the CBSA’s final determination of dumping and subsidizing, the Tribunal is satisfied that the margins of dumping in relation to the imports from Brazil and Russia are not insignificant.¹⁵ Therefore, the condition under paragraph 42(3)(a) of *SIMA* relative to the margin of dumping has been met.¹⁶

15. Tribunal Exhibit NQ-2006-003-04, Administrative Record, Vol. 1 at 101.12.

16. Subsection 2(1) of *SIMA* defines the term “insignificant” as, “. . . in relation to a margin of dumping, a margin of dumping that is less than two per cent of the export price of the goods . . .”

43. The CBSA's final determination also indicates that the amount of subsidy in relation to the goods from Brazil is not insignificant.¹⁷ Therefore, the condition under paragraph 42(3)(a) of *SIMA* relative to the amount of subsidy has been met.¹⁸

44. To assess whether the volume of dumped or subsidized imports from a country is negligible, the Tribunal looks at the import activity during the CBSA's period of investigation. Given the CBSA's final determination with respect to the volume of imports from the subject countries, the Tribunal is satisfied that the volume of dumped goods from each of the subject countries is not negligible and that the volume of subsidized goods from Brazil is not negligible.¹⁹ Therefore, all the conditions set out in paragraph 42(3)(a) of *SIMA* have been met.

45. With respect to paragraph 42(3)(b) of *SIMA*, regarding the conditions of competition between the goods, the Tribunal typically considers the following factors: the degree to which the subject goods from each subject country are interchangeable with the subject goods from the other subject countries or with the like goods; the presence or absence of sales, or offers to sell, in the same geographical markets, of imports from different subject countries and of the like goods; the existence of common or similar channels of distribution; and differences in the timing of the arrival of imports from a subject country and of those from the other subject countries, and of the availability of like goods supplied by the domestic industry. As the Tribunal has previously stated in other cases, it recognizes that there may be other factors that it can consider in deciding whether the exports of a particular country should be cumulated and that no single factor may be determinative.²⁰

46. The Tribunal observes that the evidence on the record clearly indicates that the subject goods are interchangeable with each other and the like goods. The evidence also indicates that the subject goods and the like goods are available in the same geographical markets.²¹ With respect to channels of distribution, both domestically produced and imported copper rod is sold directly to end users of copper rod. There was also evidence of copper rod being imported by a broker, Mitsubishi International Corporation, which then sells it to end users.²² The Tribunal notes that the subject goods arrive from Brazil and Russia via ocean

17. Tribunal Exhibit NQ-2006-003-04, Administrative Record, Vol. 1 at 101.12.

18. Subsection 2(1) of *SIMA* defines the term "insignificant" as, "... in relation to an amount of subsidy, an amount of subsidy that is less than one per cent of the export price of the goods". However, because Brazil is a developing country, a threshold for "insignificance" of two percent applies. See Tribunal Exhibit NQ-2006-003-04A, Administrative Record, Vol. 1 at 101.43.

19. Pursuant to subsection 2(1) of *SIMA*, the volume of dumped goods of a country is negligible if it comprises less than 3 percent of the total volume of imports from all sources. No definition of "negligible" is provided in *SIMA* in respect of subsidized goods. However, Article 27.10 of the World Trade Organization (WTO) *Agreement on Subsidies and Countervailing Measures* provides for a 4 percent negligibility threshold for developing countries, which include Brazil. Section 41.2 of *SIMA* provides that the CBSA shall, in an investigation respecting the subsidizing of any goods, take into account the provisions of Article 27.10 of the WTO *Agreement on Subsidies and Countervailing Measures*. Accordingly, since *SIMA* provides that the CBSA must terminate its investigation if the volume of the subsidized imports into Canada from a developing country represents less than 4 percent of the total imports of the like goods, the Tribunal is of the opinion that it should interpret subsection 42(4.1) of *SIMA* in light of section 41.2 of *SIMA* and apply the same threshold. For the purposes of its negligibility calculation regarding the subsidized imports, the Tribunal relied on the same type of information as it did in its calculation on dumped imports. Accordingly, the Tribunal determines that the volume of subsidized imports from Brazil is not negligible on this basis.

20. See, for example, *Laminate Flooring* (16 June 2005), NQ-2004-006 (CITT) at 11-13.

21. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2006-003-07A (protected), Administrative Record, Vol. 2.1 at 81.

22. *Ibid.*, at 78, 81; Manufacturer's Exhibit A-02 (protected) at 19, Administrative Record, Vol. 12.

freighter and, therefore, require longer lead times to reach their customers. The subject goods arrive at a Canadian port and are then trucked to Canadian wire and cable manufacturers. Like goods from Nexans are distributed within Canada by truck from its plant.²³

47. Given the above, the Tribunal is satisfied that it is appropriate to assess the cumulative effect of the dumped and subsidized imports of copper rod from the subject countries.

48. With respect to the issue of the so-called “cross-cumulation” between the effects of the dumping and the effects of the subsidizing of the subject goods, and to the arguments advanced by Caraíba²⁴ as to the manner in which the Tribunal should address this issue, the Tribunal reiterates what it has said in previous cases: that subsections 37.1(1) and (2) of the *Special Import Measures Regulations*²⁵ prescribe certain factors for the Tribunal to consider in making its injury, retardation or threat of injury finding and that these factors have, as their primary focus, the effect that dumped or subsidized goods have had or may have on a number of economic indices. Dumped and subsidized goods originating in a given country (such as Brazil in this instance) are one and the same goods. It has therefore been the Tribunal’s practice, when conducting an injury analysis,²⁶ to hold the view that it is not possible to isolate the effects caused by the dumping from the effects caused by the subsidizing because they are so closely intertwined that it is impossible to unravel them. The Tribunal continues to hold this view and, therefore, will not differentiate any effect resulting from the dumping of the subject goods from any effect resulting from the subsidizing. The Tribunal notes that, given the consistency of its pronouncements on this issue, unless it can be presented with a valid method of unravelling any dumping-related effects of the subject goods from any subsidizing-related effects of such goods, this issue is already well settled.

INJURY

49. Subsection 37.1(1) of the *Regulations* prescribes that, in determining whether the dumping or subsidizing has caused injury to the domestic industry, the Tribunal consider the volume of the dumped or subsidized goods, their effect on the price of like goods and their resulting impact on the state of the domestic industry. Subsection 37.1(3) also directs the Tribunal to consider factors other than the dumping and subsidizing to ensure that any injury or threat of injury caused by those other factors is not attributed to the effect of the dumped or subsidized imports.

50. Nexans, Prysmian and Caraíba made representations as to the manner in which the Tribunal should assess the alleged injury to the domestic industry, given that Nexans produces like goods for the domestic merchant market, for its own further processing purposes and for export. The Tribunal does not consider it necessary to revisit this issue, since it has already been clearly addressed before.²⁷ Accordingly, the Tribunal will focus its injury analysis on the merchant market. However, the materiality of any injury caused by the dumping and subsidizing will be assessed against the domestic industry’s production of like goods as a whole.

23. *Transcript of Public Hearing*, Vol. 1, 26 February 2007, at 132.

24. Foreign Producer’s Exhibit C-01 at 4-6, Administrative Record, Vol. 13; *Transcript of Public Argument*, Vol. 1, 28 February 2007, at 106-107.

25. S.O.R./84-927 [*Regulations*].

26. *Unprocessed Grain Corn* (18 April 2006), NQ-2005-001 (CITT) at 12-14 [*Grain Corn*].

27. *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (17 August 2001), NQ-2001-001 (CITT) at 13; see, also, *Re Refrigerators, Dishwashers and Dryers*, (2002), CDA-USA 2000-1904-04 (Ch. 19 Panel), at 17-23.

Volume of Dumped Goods

51. Paragraph 37.1(1)(a) of the *Regulations* requires that the Tribunal consider the volume of the dumped or subsidized goods and, in particular, whether there has been a significant increase in the volume of imports of the dumped or subsidized goods, either in absolute terms or relative to the production or consumption of the like goods.

52. During the period of inquiry, the subject goods first entered Canada from Brazil in 2003, then from Russia in 2005. In 2003, the volume of subject goods that entered Canada from Brazil was extremely small. There was a significant increase in the volume of subject goods between 2003 and 2004, and another large increase in 2005, followed by a significant decrease in the first nine months of 2006 as compared with the first nine months of 2005.²⁸

53. Imports of copper rod from the United States²⁹ also increased significantly during the period of inquiry. They increased by over 100 percent between 2003 and 2004, by over 400 percent between 2004 and 2005, and by a further 40 to 60 percent in the first nine months of 2006 as compared with the same period in 2005.³⁰ In absolute terms, imports from the United States went from amounting to less than half of the volume of imports from the subject countries in 2004, to almost equalling them in 2005. In the first nine months of 2006, more imports came from the United States than from the subject countries.³¹

54. The volume of sales of the subject goods in the merchant market rose from virtually nothing in 2003 to more than 10 percent of the market in 2004, and further increased to more than 30 percent of the market in 2005. The subject goods continued to hold a significant but declining market share in the first nine months of 2006.³² With respect to the relative shares of sales from imports from the subject countries, those from Brazil made up a larger share throughout the period of inquiry. However, the Tribunal notes that, in the first nine months of 2006, sales of imports from Brazil declined compared with the same period in 2005, while sales of imports from Russia stayed about the same.³³ Throughout the period of inquiry, sales of imports from the United States took an ever-increasing share of the merchant market, with sales of imports from the United States accounting for almost 30 percent of the market in 2005 and substantially more in the first nine months of 2006.

55. The total merchant market showed modest growth over the Tribunal's period of inquiry.³⁴

28. *Pre-hearing Staff Report*, revised 5 February 2007, Tribunal Exhibit NQ-2006-003-06B, Administrative Record, Vol. 1.1 at 152-53; *Protected Pre-hearing Staff Report*, revised 5 February 2007, Tribunal Exhibit NQ-2006-003-07B (protected), Administrative Record, Vol. 2.1 at 139.

29. There was no indication that the specifications of U.S. copper rod differed from those of the subject goods or the like goods in any respect.

30. *Pre-hearing Staff Report*, revised 5 February 2007, Tribunal Exhibit NQ-2006-003-06B, Administrative Record, Vol. 1.1 at 152-53; *Protected Pre-hearing Staff Report*, revised 5 February 2007, Tribunal Exhibit NQ-2006-003-07B (protected), Administrative Record, Vol. 2.1 at 139.

31. *Protected Pre-hearing Staff Report*, revised 5 February 2007, Tribunal Exhibit NQ-2006-003-07B (protected), Administrative Record, Vol. 2.1 at 139.

32. *Ibid.* at 143-44.

33. *Pre-hearing Staff Report*, revised 5 February 2007, Tribunal Exhibit NQ-2006-003-06B, Administrative Record, Vol. 1.1 at 152-53; *Protected Pre-hearing Staff Report*, revised 5 February 2007, Tribunal Exhibit NQ-2006-003-07B (protected), Administrative Record, Vol. 2.1 at 139.

34. *Protected Pre-hearing Staff Report*, revised 5 February 2007, Tribunal Exhibit NQ-2006-003-07B (protected), Administrative Record, Vol. 2.1 at 142. In the pre-hearing staff report, the merchant market is referred to as the "apparent market".

56. Nexans' domestic sales decreased in 2004, and then declined sharply in 2005.³⁵ The lost sales volume for 2004 can be attributed to the loss of approximately half of Prysmian's business.³⁶ The decline that Nexans experienced in 2005 can be attributed in part to its having lost the entire Prysmian account, its largest Canadian account representing sales of approximately 20,000 tonnes per year.³⁷ In 2005, Nexans' remaining sales decline can be attributed to the fact that a number of other customers decided to begin switching purchases previously made from Nexans to suppliers of U.S. copper rod. In the first nine months of 2006, as compared with the same period in 2005, Nexans' domestic sales showed limited growth, as that company regained part of the Prysmian account.³⁸ The sales that Nexans lost to all competing suppliers of copper rod, however, had a huge impact on it, as its market share declined from close to 100 percent in 2003 to less than 50 percent in the first nine months of 2006.³⁹

Prices

57. Pursuant to paragraph 37.1(1)(b) of the *Regulations*, the Tribunal must consider the effects of the dumped and subsidized goods on the price of like goods and, in particular, whether the dumped and subsidized goods have significantly undercut or depressed the price of like goods, or suppressed the price of like goods by preventing the price increases for those like goods that would otherwise likely have occurred.

58. The price of copper rod includes a rod premium which reflects the following elements: the cost incurred by the cathode producer for transforming copper into cathode, plus its profit (i.e. the cathode premium); the cost of transforming the cathode into finished rod; the rod producer's profit; and, in most instances, the cost of freight to deliver the goods to the customer. The price of copper and the cathode premium are set on world markets. The costs of the copper, the cathode premium and the freight are passed on to the customers without markup. The rod premium typically accounts for 3 to 5 percent of the price of the delivered copper rod.⁴⁰

59. Since the removal of all Canadian and U.S. tariffs on each other's copper rod in 1998 and the resulting free flow of this product across the Canada-United States border, there has been an integrated North American market for copper rod.⁴¹ Since then, the price of copper rod in Canada has been largely in step with the delivered price of rod from a competitive U.S. producer to a specific location. The evidence indicates that delivery beyond a radius of approximately 800 km is unattractive due to freight costs.⁴²

60. The world price of copper rose significantly during the period of inquiry. Copper prices reached record levels in 2006,⁴³ at more than double their 2003 prices. Largely because the vast majority of the price

35. *Protected Pre-hearing Staff Report*, revised 5 February 2007, Tribunal Exhibit NQ-2006-003-07B (protected), Administrative Record, Vol. 2.1 at 142.

36. *Transcript of Public Hearing*, Vol. 1, 26 February 2007, at 178-79.

37. *Ibid.* at 20.

38. *Protected Pre-hearing Staff Report*, revised 5 February 2007, Tribunal Exhibit NQ-2006-003-07B (protected), Administrative Record, Vol. 2.1 at 142; *Transcript of In Camera Hearing*, Vol. 2, 27 February 2007, at 189.

39. *Protected Pre-hearing Staff Report*, revised 5 February 2007, Tribunal Exhibit NQ-2006-003-07B (protected), Administrative Record, Vol. 2.1 at 144.

40. Manufacturer's Exhibit A-01 at 8, Administrative Record, Vol. 11.

41. *Transcript of Public Hearing*, Vol. 1, 26 February 2007, at 29, 152, 155.

42. *Ibid.* at 13-14.

43. *Ibid.* at 126.

of copper rod is made up of the cost of copper,⁴⁴ the price of copper rod in the domestic market, sourced either from Nexans or from imports, trended upward as well.

61. The annual average unit price of the subject goods⁴⁵ was lower than Nexans' prices to its "regular" customers in 2004.⁴⁶ Due to the increased volatility of copper prices on world markets, for 2005, the Tribunal compared the prices of the subject goods on a quarterly basis. This comparison shows that Nexans' quarterly average selling prices to its largest accounts from the first quarter of 2005 to the fourth quarter of 2005 were consistently higher than the price of the subject goods.⁴⁷ This was also the case in the second quarter of 2006, but not in the first quarter of 2006 or in the third quarter of 2006.

62. Nexans submitted that, starting in 2003, Prysmian used its leverage to force it to lower its prices by threatening to buy dumped and subsidized goods.⁴⁸ Nexans stated that, in response to this threat, it offered more favourable pricing to Prysmian than it was offering to its other Canadian customers.⁴⁹ A review of the evidence shows that, in 2004, Nexans sold copper rod to Prysmian at depressed prices. Nexans made virtually no sales of copper rod to Prysmian in 2005.⁵⁰ In the first half of 2006, sales to Prysmian were made at prices lower than those that Nexans was able to charge other accounts.⁵¹

63. There is no evidence on file to indicate that the presence of the subject goods in the marketplace had any depressive effect on Nexans' prices to any of its accounts other than Prysmian. Rather, the evidence indicates that Nexans' other customers were apparently unaware that the subject goods were present in the Canadian market until the trade remedy actions in this inquiry became public.⁵²

64. During the period of inquiry, imports from the United States were sold at prices comparable to those of Nexans; indeed, Nexans submitted that at no time did imports from the United States injure its operations.⁵³

65. On the basis of the foregoing analysis, the Tribunal is of the view that Nexans incurred price depression on its sales to Prysmian in 2004 and in the first half of 2006.

Impact of Dumped and Subsidized Imports on the Domestic Industry

66. Paragraph 37.1(1)(c) of the *Regulations* requires the Tribunal to consider the resulting impact of the dumped and subsidized goods in light of all relevant economic factors and indices that have a bearing on the state of the domestic industry.

44. Manufacturer's Exhibit A-01 at 6, Administrative Record, Vol. 11.

45. This section compares prices prevailing in the marketplace. The Tribunal recognizes that copper rod is usually sold on a rod premium basis, given that the other components in the price are normally "pass-throughs", i.e. costs that are passed on to the customer without mark-up.

46. *Protected Pre-hearing Staff Report*, revised 5 February 2007, Tribunal Exhibit NQ-2006-003-07B (protected), Administrative Record, Vol. 2.1 at 148.

47. *Protected Pre-hearing Staff Report*, revised 29 January 2007, Tribunal Exhibit NQ-2006-003-07A (protected), Administrative Record, Vol. 2.1 at 104; *Protected Pre-hearing Staff Report*, revised 5 February 2007, Tribunal Exhibit NQ-2006-003-07B (protected), Administrative Record, Vol. 2.1 at 150.

48. *Transcript of Public Hearing*, Vol. 1, 26 February 2007, at 158.

49. *Ibid.* at 160.

50. *Ibid.* at 179.

51. Manufacturer's Exhibit A-04 (protected) at 12, Administrative Record, Vol. 12.

52. *Transcript of Public Hearing*, Vol. 2, 27 February 2007, at 205.

53. *Transcript of Public Hearing*, Vol. 1, 26 February 2007, at 182-83.

67. The Tribunal will focus its injury analysis on the merchant market, but will assess the materiality of the injury caused by the dumping and subsidizing against the domestic industry's production of like goods as a whole.

68. The Tribunal notes that Nexans produces copper rod for three distinct streams: the domestic merchant market; its own further internal processing needs; and the export market. During the period of inquiry, approximately two thirds of Nexans' production was destined for the export market, slightly more than half of the remaining production was destined for further internal processing, and the remainder was destined for the domestic merchant market.⁵⁴ The Tribunal further notes that Nexans is the sole producer in the Canadian market and that it competes on finished products (mainly electrical cables) with companies to which it supplies copper rod.⁵⁵

69. Nexans submitted that the availability of the subject goods in the Canadian merchant market had significant negative price effects on its sales.⁵⁶ More specifically, it argued that the subject goods undercut, depressed and suppressed prices in the Canadian market. Parties opposed argued that any injury suffered by Nexans was mostly self-inflicted and in no way constituted injury to the domestic industry.

70. On the basis of the evidence, the Tribunal identified four factors that had significant effects on Nexans' performance in the merchant market during the period of inquiry: the diversification policies for supply put in place by some of its customers starting in 2003; difficulties arising from a missed payment for Nexans' product by Prysmian in late 2004; a change in the terms of payment imposed by Nexans on Prysmian in the spring of 2006; and the emergence of the United States as an increasingly important source of copper rod in the Canadian market, particularly in 2005 and 2006. The Tribunal will deal with each of these factors sequentially.

71. In the summer of 2003, in accordance with its long-standing corporate policy of diversification of strategic supplies,⁵⁷ Prysmian made a corporate decision that had a profound impact on Nexans. It decided that having Nexans as its sole supplier of copper rod was no longer desirable. In the Tribunal's view, this was a natural and understandable behaviour on Prysmian's part, considering that it competes with Nexans in the electrical cable industry. Prysmian stated that the diversification strategy was no different from Nexans' own avowed business policy of refraining from single-sourcing for any requirement, particularly a strategic input.⁵⁸

72. Belden indicated a similar approach to sourcing. Beginning in May 2004, it started sourcing from a second supplier, due in part to pressure from its U.S. parent company and also because of what the Tribunal sees again as the natural and understandable behaviour of any business to secure more than one source of supply of any strategic and essential input.⁵⁹ As evidenced by the increase in total subject and non-subject imports over the period of inquiry, a number of Nexans' other customers appear also to have made similar decisions.⁶⁰ In the Tribunal's view, this is not surprising. While no duties against copper rod imports from the United States had been in place since 1998, starting in 2004, the Canadian and U.S. dollar exchange rates had made imports of copper rod, the price of which is usually quoted in U.S. dollars, more competitive.

54. *Ibid.* at 144.

55. *Ibid.* at 31.

56. *Ibid.* at 17; Manufacturer's Exhibit A-02 (protected) at 23, Administrative Record, Vol. 12.

57. *Transcript of Public Hearing*, Vol. 2, 27 February 2007, at 267.

58. *Transcript of Public Argument*, Vol. 1, 28 February 2007, at 63.

59. *Transcript of Public Hearing*, Vol. 2, 27 February 2007, at 196-97.

60. *Transcript of Public Hearing*, Vol. 1, 26 February 2007, at 29, 148.

73. With respect to the Prysmian account alone, that company's diversification sourcing strategy had a dramatic impact on Nexans' domestic sales in 2004 as almost 9,000 tonnes of copper rod business were lost to the subject goods.⁶¹ The availability of the imports at dumped and subsidized prices notwithstanding, the Tribunal is of the view that under no circumstances would Prysmian have continued to purchase pre-2004 levels of volume from Nexans once it began to implement its strategy of source diversification. Thus, Nexans cannot claim that, but for the availability of the subject goods, it would have received orders for any substantial portion of the volumes that Prysmian decided to source elsewhere. Accordingly, irrespective of any considerations of injury, the Tribunal is not convinced that there is a sufficient nexus between Nexans' lost volume in 2004 and the availability of the subject goods to conclude that the latter had any necessary bearing on the former.

74. The evidence is clear however that the availability of the subject goods allowed Prysmian to obtain price concessions from Nexans for the copper rod to be delivered in 2004. Not only was Nexans incapable of passing on to Prysmian an increase in the cost of the copper cathode, which was accepted by Nexans' other major accounts, but Nexans also had to take a few dollars off its selling price.⁶² The Tribunal has estimated the cost of this price depression⁶³ and factored it into its analysis.

75. The second factor mentioned above concerns events that happened in late 2004 when Prysmian and Nexans were still negotiating the 2005 supply contract. In December, because of the possible sale of its parent company, Prysmian requested Nexans' agreement that it be allowed to defer one payment to the following month on an invoice in an amount not immaterial to Nexans.⁶⁴ Nexans was not amenable to such a request, although Prysmian offered compensation for the deferred payment.⁶⁵ When Prysmian did not make payment in December, Nexans then stopped shipments to Prysmian and suspended negotiations on a supply contract for 2005.⁶⁶ In January 2005, Prysmian paid Nexans the principal amount for the invoice that it had been late in paying, but compensation issues (which both parties agree amounted to a very small fraction of the value of Nexans' supply contract with Prysmian) were not resolved before the summer of 2005.⁶⁷ Basing its conclusion on the evidence on the record, the Tribunal is of the view that Nexans and Prysmian appear to have jeopardized their business relationship by these actions. Accordingly, Nexans was not able to secure a supply contract with Prysmian for 2005.⁶⁸

76. Nexans submitted that Prysmian was able to delay resolution of the commercial dispute and the resumption of a new supply contract during most of 2005, because Prysmian had secured a supply of the

61. *Ibid.* at 179; *Protected Pre-hearing Staff Report*, revised 5 February 2007, Tribunal Exhibit NQ-2006-003-07B (protected), Administrative Record, Vol. 2.1 at 142.

62. *Transcript of In Camera Hearing*, Vol. 1, 26 February 2007, at 120-22.

63. For this exercise, the Tribunal compared the weighted average rod premiums charged by Nexans to Prysmian and to its four major Canadian accounts, excluding Prysmian, for the first two quarters of 2003, when no subject goods were present in the merchant market, and for 2004 and the first two quarters of 2006 (periods during which the subject goods were present). The value by which the 2004 and 2006 averages differed from the 2003 yardstick multiplied by the volume sold to Prysmian is the total amount of price depression.

64. *Transcript of Public Hearing*, Vol. 1, 26 February 2007, at 123-24.

65. *Transcript of In Camera Hearing*, Vol. 1, 26 February 2007, at 45.

66. *Ibid.* at 41, 42.

67. *Ibid.* at 51; *Transcript of In Camera Hearing*, Vol. 2, 27 February 2007, at 188-89.

68. *Transcript of Public Hearing*, Vol. 2, 27 February 2007, at 234-35.

subject goods as early as late 2004.⁶⁹ Prysmian argued that Nexans' inflexibility, lack of urgency and the consequent delays in finalizing the negotiations eliminated the opportunity for a 2005 supply agreement.⁷⁰

77. Nexans and Prysmian each alleged that the other has the upper hand with respect to setting contract terms, including price. However, the Tribunal is not convinced that either party consistently has the advantage in contract negotiations. Based on the evidence on the record, it is clear to the Tribunal that both Nexans and Prysmian operate in very competitive environments and that each company seeks to maximize its bottom line: Prysmian with respect to the price of a strategic input, and Nexans with respect to the price of its key output. In the present case, which occurred during a time of extremely large increases in the price of copper and the attendant costs associated with financing inventory,⁷¹ the pressure on each of the parties was particularly acute.

78. Because of Prysmian's diversification policy, only half of its account was potentially available to Nexans in 2005, and even that opportunity completely disappeared as a result of the dispute. Consequently, Nexans did not sell any copper rod to Prysmian that year. This lack of sales was unrelated to the presence of the subject goods in the marketplace. On the basis of the record, the Tribunal is unable again to find a sufficient nexus between the availability of the subject goods and Nexans' allegation that they were a source of any injury that it suffered from the loss of the Prysmian account in 2005.

79. In April 2006, with a supply contract in place, Nexans began to deliver copper rod to Prysmian at rod premiums that were somewhat lower than those charged to its other accounts. However, deliveries were short-lived as, in late May, Nexans informed Prysmian that, in view of the high cost of copper, it would change the contractual terms of payment from 30 days to 15 days.⁷² Prysmian did not accept this change in terms, and the contract was ultimately dissolved in August 2006. As a result, Prysmian made no purchases from Nexans in the fourth quarter of 2006. This is the third factor referenced earlier. The Tribunal also notes that there was another irritant, in that Nexans treated Prysmian differently from the way in which it treated some of its Canadian customers by apparently omitting to answer a request by Prysmian to quote in U.S. dollars, but yet providing other Canadian customers with quotes in U.S. dollars.⁷³

80. In May 2006, copper prices reached their highest level at \$8,771 per tonne (as compared with the January 2006 price of \$5,342 per tonne⁷⁴), and these prices had a negative impact on Nexans' cash flow.⁷⁵ The Tribunal recognizes that Nexans changed the payment terms on its five largest accounts, one of which was Prysmian and four of which were companies in the United States. The Tribunal is of the view that Prysmian's decision to terminate the supply agreement for 2006 and seek alternative sources of supply was again a business response brought on by differences regarding the application of the contract between it and Nexans. Nexans did not provide evidence that the availability of the subject goods caused this problem between the parties. For this reason, the Tribunal cannot attribute the loss of this business in 2006 to any negative impact from the subject goods. However, a comparison of the rod premiums charged to Prysmian with those charged to other large Canadian customers in 2006 shows that Prysmian was treated more favourably. In the Tribunal's view, Prysmian's access to a supply of the subject goods resulted in Nexans' providing it with more favourable pricing. Consequently, the Tribunal recognizes that the subject goods had

69. Manufacturer's Exhibit A-06 (protected) at 6, Administrative Record, Vol. 12.

70. Importer's Exhibit B-01 at 8, Administrative Record, Vol. 13.

71. *Transcript of Public Hearing*, Vol. 2, 27 February 2007, at 270.

72. *Transcript of Public Hearing*, Vol. 1, 26 February 2007, at 127.

73. *Ibid.* at 97-98; *Transcript of Public Hearing*, Vol. 2, 27 February 2007, at 279-81.

74. *Pre-hearing Staff Report*, revised 29 January 2007, Tribunal Exhibit NQ-2006-003-06A, Administrative Record, Vol. 1.1 at 130.

75. *Transcript of Public Hearing*, Vol. 1, 26 February 2007, at 126.

a small price-depressing effect on Nexans' volume of business with Prysmian in 2006. Again, the cost of this price depression has been factored into the Tribunal's analysis.⁷⁶

81. Finally, the Tribunal notes that the fourth factor at play relates to imports from the United States, which had a significant role in the merchant market during the period of inquiry. Evidence on the record indicates that the rod premiums charged by Nexans to its Canadian customers have historically reflected delivered U.S. producers' prices in U.S. dollars.⁷⁷ During the period of inquiry, rod premiums for U.S. copper rod became more attractive to Canadian wire and cable manufacturers. The record indicates that a greater volume of imports was sourced in the United States than in the subject countries during the period of inquiry. Despite large volumes of imports from the United States, Nexans claimed that U.S. pricing was comparable and competitive and that there was no indication that imports from the United States were being dumped.⁷⁸ Given that each tonne of copper rod imported from the United States was production lost, and thus not sold by Nexans in the merchant market, the Tribunal considers that, in view of their relatively large volumes, these imports had as much negative impact on Nexans' operations in the merchant market as did imports from the subject countries.

82. In summary, the evidence on the record fails to provide a sufficient nexus between the subject goods and most of the alleged injury suffered by Nexans during the period of inquiry. The Tribunal recognizes that dumped and subsidized imports in 2004 and 2006 caused a certain level of price depression to Nexans, but no negative effects are evident for 2005. The level of this injury over the period of inquiry, when measured against the gross margins realized by Nexans in the merchant market,⁷⁹ was estimated to be somewhat less than 5 percent, which is not significant in the Tribunal's view.

83. During the hearing, Nexans submitted an analysis showing how sales lost to Prysmian in 2004 and 2005 resulted in substantial losses on its gross margins for the rod mill operation.⁸⁰ Nexans claimed that its loss on gross margins was critical because it uses only 25 to 28 percent of its copper rod production for internal processing,⁸¹ unlike copper rod producers in the United States, which use a higher percentage.⁸² The Tribunal finds this analysis flawed, in that it postulates that, by their mere presence in the marketplace, the subject goods caused injury to Nexans' operations. The Tribunal's analysis shows that Nexans lost significant sales during the period due to factors unrelated to the presence of the subject goods and that, therefore, Nexans' premise is not correct. Furthermore, mere availability is not the standard to be applied in an injury assessment; a positive finding can be made only if there is a causal link between the injury suffered by the industry and the presence of the subject goods.

84. Although Nexans only alleged price suppression with respect to the Prysmian account,⁸³ the Tribunal considered whether the continuing availability of the subject goods suppressed the rod premium

76. For this exercise, the Tribunal compared the weighted average rod premiums charged by Nexans to Prysmian and to its four major Canadian accounts, excluding Prysmian, for the first two quarters of 2003, when no subject goods were present in the merchant market, and for 2004 and the first two quarters of 2006 (periods during which the subject goods were present). The value by which the 2004 and 2006 averages differed from the 2003 yardstick multiplied by the volume sold to Prysmian is the total amount of price depression.

77. *Transcript of Public Hearing*, Vol. 1, 26 February 2007, at 30, 42.

78. *Ibid.* at 182-83.

79. *Protected Pre-hearing Staff Report*, revised 29 January 2007, Tribunal Exhibit NQ-2006-003-07A (protected), Administrative Record, Vol. 2.1 at 107.

80. *Transcript of In Camera Hearing*, Vol. 2, 27 February 2007, at 152-53.

81. *Transcript of Public Hearing*, Vol. 1, 26 February 2007, at 35-36.

82. *Ibid.* at 45-46.

83. Manufacturer's Exhibit A-02 (protected) at 25, Administrative Record, Vol. 12.

that Nexans was able to charge in the merchant market as a whole. A year-over-year comparative review of Nexans' financial data indicates that, from 2003 to 2004, Nexans' unit cost of goods sold and the unit value of its sales to "regular" customers, on a per tonne basis, both increased substantially, tracking each other very closely. Between 2004 and 2005, however, the increase in the unit sales value was more than twice the increase in the unit cost of goods sold. From January to September 2006, both unit values increased dramatically and again very closely tracked each other.⁸⁴ Basing its conclusion on the foregoing, the Tribunal does not find any significant degree of price suppression from the subject goods.

85. Nexans also claimed that it suffered injury when it increased its export sales to compensate for sales lost in the merchant market. It claimed that its production for export sales is largely tied to capacity utilization and recovery of fixed costs, that there is no profit to be made in these sales and that such sales serve simply to help keep the overall operation on a more sustainable unit cost basis.⁸⁵ Nexans noted that it has a platform with very large fixed costs, and it tries to optimize this platform by maximizing the utilization of its capacity.⁸⁶

86. The Tribunal notes that Nexans' gross margin on domestic sales is substantially greater than its gross margin on export sales due to freight charges being included in the rod premium for most of its customers.⁸⁷ Since copper rod is a heavy product to ship, freight costs are a significant component. The Tribunal also agrees that rod mill economics dictate that capacity utilization needs to be maximized to keep unit costs as low as possible.⁸⁸ The Tribunal notes however that Nexans' increase in export sales was much greater than its lost sales in the merchant market. In 2004, when Nexans lost approximately half of the Prysmian account, it increased its export sales by almost 50 percent from 2003. This trend in increased exports has continued; the first nine months of 2006 compared with the same period in 2005 shows a significant increase. Therefore, the Tribunal is not convinced, as claimed by Nexans, that its increase in export sales is, to a large extent, to compensate for sales lost in the merchant market. In any event, since the Tribunal has determined that Nexans' loss of domestic sales cannot be attributed to the subject goods, it follows that any impact on export sales from this loss also cannot be attributed to the subject goods.

87. Nexans stated that the appreciation of the Canadian dollar was a factor in the overall deterioration of the rod mill's gross margin. It estimated the impact of the appreciation of the Canadian dollar on the deterioration of the rod mill's gross margin at more than 10 percent during the 2004-2006 period.⁸⁹ While substantial, this impact cannot be attributed to the subject goods.

88. Having determined that the subject goods did not cause injury to Nexans in the merchant market, it follows that, when assessed against total production as required by the statute, any injury suffered by Nexans from the subject goods also fails to meet the threshold of materiality.⁹⁰

84. *Protected Pre-hearing Staff Report*, revised 29 January 2007, Tribunal Exhibit NQ-2006-003-07A (protected), Administrative Record, Vol. 2.1 at 98, 107.

85. *Transcript of Public Hearing*, Vol. 1, 26 February 2007, at 37.

86. *Ibid.* at 131.

87. *Ibid.* at 13; *Protected Pre-hearing Staff Report*, revised 29 January 2007, Tribunal Exhibit NQ-2006-003-07A (protected), Administrative Record, Vol. 2.1 at 107-108.

88. *Transcript of Public Hearing*, Vol. 1, 26 February 2007, at 131.

89. *Ibid.* at 40-41.

90. *Grain Corn* at 24.

Threat of Injury

89. Having found that the subject goods have not caused injury, the Tribunal must now consider whether they are threatening to cause injury. The Tribunal is guided in its consideration of this question by subsection 37.1(2) of the *Regulations*, which prescribes factors to be taken into account for the purposes of its threat of injury analysis.⁹¹ Further, the Tribunal notes that subsection 2(1.5) of *SIMA* indicates that a threat of injury finding cannot be made unless the circumstances in which the dumping and subsidizing of the goods would cause injury are clearly foreseen and imminent.

90. The Tribunal, in conducting its threat of injury analysis, typically considers a time frame of 18 to 24 months beyond the date of its finding with respect to injury. In the present case, given the evidence available on the record, the Tribunal's focus will be on the balance of 2007 and on 2008.

91. The first factor listed in subsection 37.1(2) of the *Regulations* concerns the nature of the subsidy in question and the effects that it is likely to have on trade. The CBSA's final determination indicates that the Brazilian programs⁹² amounted to a subsidy of 250 Brazilian reais per tonne.⁹³ While the programs were in place throughout the CBSA's period of investigation, there is no indication that they will result in higher volumes or lower prices of the subject goods in the foreseeable future than they did during the Tribunal's period of inquiry.

92. Turning to the question of whether there has been a significant rate of increase of dumped or subsidized goods imported into Canada, which might indicate a likelihood of substantially increased imports of these goods, the Tribunal notes that imports from the subject countries, virtually absent in 2003, increased substantially in both 2004 and 2005.⁹⁴ However, in the period prior to the imposition of provisional duties, i.e. the first nine months of 2006, combined imports from the subject countries decreased by more than 25 percent as compared with the corresponding period in 2005.⁹⁵ Further, it would appear that imports from the subject countries have not entered Canada since the imposition of provisional anti-dumping duties on

91. Subsection 37.1(2) of the *Regulations* reads as follows: "For the purposes of determining whether the dumping or subsidizing of any goods is threatening to cause injury, the following factors are prescribed: (a) the nature of the subsidy in question and the effects it is likely to have on trade; (b) whether there has been a significant rate of increase of dumped or subsidized goods imported into Canada, which rate of increase indicates a likelihood of substantially increased imports into Canada of the dumped or subsidized goods; (c) whether there is sufficient freely disposable capacity, or an imminent, substantial increase in the capacity of an exporter, that indicates a likelihood of a substantial increase of dumped or subsidized goods, taking into account the availability of other export markets to absorb any increase; (d) the potential for product shifting where production facilities that can be used to produce the goods are currently being used to produce other goods; (e) whether the goods are entering the domestic market at prices that are likely to have a significant depressing or suppressing effect on the price of like goods and are likely to increase demand for further imports of the goods; (f) inventories of the goods; (g) the actual and potential negative effects on existing development and production efforts, including efforts to produce a derivative or more advanced version of like goods; (g.1) the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods; (g.2) evidence of the imposition of anti-dumping or countervailing measures by the authorities of a country other than Canada in respect of goods of the same description or in respect of similar goods; and (h) any other factors that are relevant in the circumstances."

92. Tribunal Exhibit NQ-2006-003-04A, Administrative Record, Vol. 1 at 101.42.

93. Tribunal Exhibit NQ-2006-003-04, Administrative Record, Vol. 1 at 101.16. Represents approximately \$140 per tonne, based on the Bank of Canada monthly exchange rate prevailing at the time of the final determination.

94. *Protected Pre-hearing Staff Report*, revised 5 February 2007, Tribunal Exhibit NQ-2006-003-07B (protected), Administrative Record, Vol. 2.1 at 139.

95. *Ibid.*

November 28, 2006.⁹⁶ Basing its conclusion on the data concerning the recent volume of imports, the Tribunal finds that there has not been a significant rate of increase of the subject goods imported into Canada.

93. The Tribunal next considered whether Canada is likely to be an attractive market for the subject goods. Nexans argued that Brazil is intently focused on exports to Canada, that it has available production capacity and that Russian copper rod production capacity and exports are increasing. In this regard, the record shows that Russia produced 520,000 tonnes of copper rod and exported over 250,000 tonnes of copper rod in 2004.⁹⁷ As well, a 10 percent duty on exports of copper cathode from Russia, which is not imposed on exports of copper rod, provides a strong incentive for Russian copper companies to produce and export copper rod.⁹⁸ Nexans argued that companies other than RCC (the only known Russian exporter to Canada during the CBSA's period of investigation) were also active in the Canadian market and made offers to sell Russian copper rod in 2005 and 2006.⁹⁹

94. Nexans further argued that trade measures, ongoing and proposed, are likely to continue to make the Canadian market attractive to Brazilian and Russian producers. In support of its position, it referred to a trade measure against imports of Russian copper wire rod imposed by Turkey.¹⁰⁰ It also pointed to a possibility that a duty might be imposed on imports of Brazilian copper rod into the U.S. market.¹⁰¹

95. Nexans argued that the injury that it has suffered has been made worse by the high margins of dumping and the amount of subsidy found regarding the subject goods.¹⁰² The Tribunal notes that the weighted average margin of dumping, expressed as a percentage of the export price, was 10.6 percent for Brazil and, absent any response from Russian exporters, based on Brazil's highest margin, was 19.7 percent for Russia, and that the amount of subsidy for Brazil was 250 Brazilian reais per tonne.¹⁰³ The anti-dumping duty and amount of subsidy, when compared with the rod premium, are very large.¹⁰⁴ This has the result of effectively shutting out imports of copper rod from Brazil and Russia from the Canadian market.

96. The Tribunal considers that available foreign capacity, export orientation, trade measures by other authorities and the magnitude of the margin of dumping and the amount of subsidy are indicators of a potential increase in the volume of dumped and subsidized imports in the near future. However, there was more compelling specific evidence on the record concerning likely future volumes of the subject goods. Witnesses for Prysmian indicated that a significant proportion of their requirements for 2007 had already been contracted for the year and that Prysmian had no current commitments to purchase copper rod from Brazil or Russia.¹⁰⁵ This indicates to the Tribunal that any potential volumes purchased from Brazilian or Russian sources by Prysmian would be modest for the balance of 2007. There were also indications that

96. *Transcript of In Camera Hearing*, Vol. 2, 27 February 2007, at 337-38.

97. Manufacturer's Exhibit A-01 at 31, Administrative Record, Vol. 11.

98. *Ibid.*

99. Manufacturer's Exhibit A-01 at 32, Administrative Record, Vol. 11.

100. *Ibid.*; *Pre-hearing Staff Report*, revised 29 January 2007, Tribunal Exhibit NQ-2006-003-06A, Administrative Record, Vol. 1.1 at 82.

101. Manufacturer's Exhibit A-06 (protected) at 31, Administrative Record, Vol. 12.

102. Manufacturer's Exhibit A-01 at 29, Administrative Record, Vol. 11.

103. Tribunal Exhibit NQ-2006-003-04, Administrative Record, Vol. 1 at 101.15-101.16; Tribunal Exhibit NQ-2006-003-04A, Administrative Record, Vol. 1 at 101.33.

104. *Transcript of Public Hearing*, Vol. 1, 26 February 2007, at 22-23; *Transcript of In Camera Hearing*, Vol. 2, 27 February 2007, at 320-21, 337.

105. *Transcript of In Camera Hearing*, Vol. 2, 27 February 2007, at 292-94, 337-38.

Prysmian was willing to source part of its remaining requirements for 2007 and 2008 from Nexans.¹⁰⁶ Although some information on the record indicates that Canadian customers, other than Prysmian, have brought in very small quantities of the subject goods since 2005, Nexans, as indicated earlier, has not complained about such imports, but has instead focused its case entirely on imports by Prysmian. As well, judging by the usual annual contracting pattern, the Tribunal considers that other potential importers had likely signed contracts with their U.S. suppliers for 2007 by late 2006 or very early 2007, so that they are unlikely to import the subject goods in any significant volumes for the rest of 2007. While Nexans indicated that, contrary to usual practice, it had not yet finalized many signed contracts for 2007, it also indicated that it was continuing to supply its long-standing customers in the Canadian market. Therefore, it is clear to the Tribunal that the volume of subject goods is likely to decline substantially in 2007 from the 2006 levels, which were not themselves found to be injurious.

97. The Tribunal recognizes that the potential exists for the subject goods to enter Canada in greater volumes in 2008 than they did in 2006 or 2007. However, indications are that imports from the United States, which were approximately equal to the volume of the subject goods in 2005 and which were 60 percent greater in volume than the subject goods in the first nine months of 2006, will also continue to increase in 2007 and beyond. In this regard, as indicated earlier, the witness for Belden testified that the company had chosen to source from the United States, starting in 2004, in order to secure a second source of supply (other than Nexans) and that its U.S. parent company had exerted pressure on it to source some of its rod requirements from the company's U.S. supplier.¹⁰⁷ Prysmian testified that it had also undertaken to source a large portion of its purchases from U.S. suppliers for 2007.¹⁰⁸ Therefore, it appears that Nexans will continue to experience a decline in its sales volume for the domestic merchant market, for the remainder of 2007 and into 2008, irrespective of the possibility of increased subject goods. On the other hand, there is evidence that Nexans will sell its magnet wire business unit located in Simcoe, Ontario, to Superior Essex and that, if the sale goes through, the agreement would contain terms whereby Nexans would continue to supply copper rod to that unit until the end of 2008.¹⁰⁹

98. To conclude, the Tribunal finds, based on 2006 import data, that there has not been a recent significant rate of increase in the volume of imports of the subject goods and that few, if any, imports of the subject goods are expected in 2007. With respect to 2008, apart from the minimal evidence on likely buying patterns noted earlier, there were no projections on likely levels of imports of the subject goods. In the Tribunal's view, taking into account the evidence with respect to both 2007 and 2008, the circumstances in which the dumping or subsidizing of the subject goods would cause injury are therefore neither clearly foreseen nor imminent.

99. The Tribunal also reviewed the evidence as to whether the dumped and subsidized goods are likely to have a significant depressing or suppressing effect on prices of like goods and likely to increase demand for further imports of the subject goods. A review of the recent rod premiums provided by Nexans shows that prices charged to its major customers other than Prysmian rose after the second quarter of 2006, generally ending the year at similar levels to those present at the start of the year.¹¹⁰ Nexans' prices to Prysmian rose significantly in the second half of 2006, but these sales to that account were made after the contract had been dissolved.¹¹¹ Further, Nexans' information on its rod premiums set for January 2007 on a

106. *Ibid.* at 292-94.

107. *Transcript of Public Hearing*, Vol. 2, 27 February 2007, at 196-97.

108. *Transcript of In Camera Hearing*, Vol. 2, 27 February 2007, at 292-93.

109. *Transcript of Public Hearing*, Vol. 1, 26 February 2007, at 84-85.

110. Manufacturer's Exhibit A-06 (protected) at 50, Administrative Record, Vol. 12.

111. *Ibid.*; Importer's Exhibit B-03 at 7, Administrative Record, Vol. 13.

going-forward basis indicates an increase to all major customers, except one,¹¹² which is buying from the United States on a cash basis.¹¹³ Therefore, there is no indication that prices of dumped and subsidized goods have caused the prices that Nexans charges to its Canadian customers to decline in the latter part of 2006 and the first quarter of 2007.

100. The Tribunal questioned the witnesses on expected price levels of copper rod and rod premiums for the next 18 to 24 months. A witness for Prysmian indicated that the company is currently paying higher rod premiums for 2007 than it did in 2006, while, for 2008, it expects to pay somewhat lower rod premiums.¹¹⁴ The witness for Belden was unable to predict copper rod pricing for 2007 because of the continued volatility of copper prices.¹¹⁵ There was little or no evidence regarding the expected future trends of the inputs that affect copper rod prices, i.e. energy costs that affect both the manufacturing cost and the cost of freight, and the price of copper.¹¹⁶ The price of copper itself may well continue to remain volatile and be difficult to predict over the foreseeable future, since copper not only serves as an input for many manufacturing sectors but also has become an investment vehicle with commodity investors.¹¹⁷ Given the above, the Tribunal is unable to gauge, with any degree of certainty, the likely price levels for copper rod beyond the first quarter of 2007.

101. The Tribunal also reviewed the testimony of the witness for Belden, who indicated that he and other end users might be interested in purchasing the subject goods if the rod premium were significantly cheaper (by approximately \$45 per tonne).¹¹⁸ However, the Tribunal notes that even this level of interest was not sure, as the witness expressed concerns about the service and delivery time frames associated with offshore supply.¹¹⁹ The witness for Belden also testified that he had never been approached by anyone offering Brazilian or Russian copper rod.¹²⁰ In the Tribunal's view, it is of course possible that Belden will be approached, or that it will seek out offers itself, and that others may also be approached or may seek out the subject goods. However, with respect to Belden alone, it cannot be said with any certainty that any purchases would be clearly foreseen or imminent within the next 18 to 24 months, given its existing sourcing contracts and the reservations of the witness with respect to offshore sourcing of copper rod. Any conclusion on other purchasers' potential behaviour would be equally speculative.

102. The witness for Nexans indicated that, contrary to the usual practice of finalizing contracts in the fall for a subsequent calendar year, it did not have many signed contracts for 2007, apparently due to delays by cathode suppliers in setting the price of the copper cathode.¹²¹ Nexans expects a decline in actual Canadian and export sales to the U.S. market this year compared with 2005 and 2006 sales levels.¹²² Nexans attributes this anticipated decline to the overall downturn in the Canadian and U.S. markets for copper rod that began in the second half of 2006.¹²³ The slowdown is apparently due to the volatility of copper prices

112. Manufacturer's Exhibit A-06 (protected) at 50, Administrative Record, Vol. 12; Manufacturer's Exhibit A-09 (protected), Administrative Record, Vol. 12.

113. *Transcript of Public Hearing*, Vol. 1, 26 February 2007, at 149.

114. *Transcript of Public Hearing*, Vol. 2, 27 February 2007, at 278.

115. *Ibid.* at 224.

116. *Ibid.* at 238.

117. *Ibid.* at 185-87.

118. *Ibid.* at 205-207, 211.

119. *Ibid.* at 205-206.

120. *Ibid.* at 205.

121. *Transcript of In Camera Hearing*, Vol. 2, 27 February 2007, at 222.

122. *Ibid.* at 223-24.

123. *Ibid.* at 223-25; *Transcript of In Camera Hearing*, Vol. 1, 26 February 2007, at 85-86.

that has left buyers nervous¹²⁴ and, in the case of the U.S. market, due to a drop in the demand for copper wire by the housing sector.¹²⁵ High copper prices in 2006 also led to higher inventories carried by distributors into the latter part of the year, as distributors typically stockpile when copper prices are increasing.¹²⁶ However, according to a witness for Prysmian, there are recent signs of a market rebound, as inventories are becoming depleted, and this should lead to a rise in orders.¹²⁷ The witness for Belden expected overall demand in North America to remain flat or decrease slightly in 2007 as compared with 2006.¹²⁸

103. Having regard to all of the above, the Tribunal concludes that the subject goods are not entering Canada at prices likely to have a depressing or suppressing effect on the price of domestic copper rod and are not likely to stimulate demand for further imports of the subject goods.

104. Therefore, the Tribunal is of the view that the evidence on the record does not indicate that the dumped and subsidized goods pose a clearly foreseen and imminent threat of injury to the domestic industry.

105. Accordingly, the Tribunal finds that the dumping and subsidizing of the subject goods are not threatening to cause injury to the domestic industry.

CONCLUSION

106. Therefore, pursuant to subsection 43(1) of *SIMA*, the Tribunal hereby finds that the dumping of copper rod originating in or exported from Brazil and Russia and the subsidizing of copper rod originating in or exported from Brazil have not caused injury and are not threatening to cause injury to the domestic industry.

Elaine Feldman
Elaine Feldman
Presiding Member

James A. Ogilvy
James A. Ogilvy
Member

Meriel V. M. Bradford
Meriel V. M. Bradford
Member

124. *Transcript of Public Hearing*, Vol. 2, 27 February 2007, at 209.

125. *Transcript of In Camera Hearing*, Vol. 2, 27 February 2007, at 224-25; Tribunal Exhibit NQ-2006-003-24.01 (single copy exhibit), Administrative Record, Vol. 7 at 7.

126. Importer's Exhibit B-07 at 1, Administrative Record, Vol. 13; *Transcript of Public Hearing*, Vol. 2, 27 February 2007, at 241-43.

127. *Transcript of Public Hearing*, Vol. 2, 27 February 2007, at 242-43.

128. *Ibid.* at 207-209; *Transcript of In Camera Hearing*, Vol. 2, 27 February 2007, at 223-24.