



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

FINDING AND REASONS

Inquiry No. NQ-2007-001

Seamless Carbon or Alloy Steel Oil
and Gas Well Casing

*Finding issued
Monday, March 10, 2008*

*Reasons issued
Tuesday, March 25, 2008*

TABLE OF CONTENTS

FINDING	i
STATEMENT OF REASONS	1
RESULTS OF THE CBSA'S INVESTIGATION	2
PRODUCT	3
Product Description	3
High-strength Versus Low-strength	3
Production Process	3
DOMESTIC PRODUCERS	4
TAT	4
Prudential.....	4
IPSCO.....	4
Lakeside.....	5
OSM Tubular	5
IMPORTERS, PURCHASERS AND FOREIGN PRODUCERS.....	5
DISTRIBUTION	5
PRICING	5
ANALYSIS	6
Like Goods and Classes of Goods.....	6
Domestic Industry.....	11
Cross-cumulation.....	12
INJURY	12
Volume of Dumped and Subsidized Imports	12
Effects of Dumped and Subsidized Imports on Prices.....	14
Impact of Dumped and Subsidized Imports on the Domestic Industry	16
Other Factors.....	20
Conclusion.....	20
THREAT OF INJURY.....	20
REQUEST FOR A REFERENCE TO THE PRESIDENT OF THE CBSA	26
CONCLUSION.....	27

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

**THE DUMPING AND SUBSIDIZING OF SEAMLESS CARBON OR ALLOY
STEEL OIL AND GAS WELL CASING ORIGINATING IN OR EXPORTED
FROM THE PEOPLE'S REPUBLIC OF CHINA**

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 and subsidizing of seamless carbon or alloy steel oil and gas well casing, whether plain end, beveled, threaded or threaded and coupled, heat-treated or non-heat-treated, meeting American Petroleum Institute specification 5CT, with an outside diameter not exceeding 11.75 inches (298.5 mm), in all grades, including proprietary grades, originating in or exported from the People's Republic of China, 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 9, 2007, and of a final determination dated February 7, 2008, that seamless carbon or alloy steel oil and gas well casing originating in or exported from the People's Republic of China has been dumped and subsidized.

Pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that the dumping and subsidizing of seamless carbon or alloy steel oil and gas well casing originating in or exported from the People's Republic of China have not caused injury but are threatening to cause injury to the domestic industry.

Serge Fréchette
Serge Fréchette
Presiding Member

James A. Ogilvy
James A. Ogilvy
Member

Ellen Fry
Ellen Fry
Member

Susanne Grimes
Susanne Grimes
Acting Secretary

The statement of reasons will be issued within 15 days.

Place of Hearing: Ottawa, Ontario
Dates of Hearing: February 4 to 8, 2008

Tribunal Members: Serge Fréchette, Presiding Member
James A. Ogilvy, Member
Ellen Fry, Member

Research Director: Dominique Laporte

Senior Research Officers: Josée St-Amand
Mark Howell

Chief of Statistical Research: Shiu-Yeu Li

Statistical Research Officers: Julie Charlebois
Lise Lacombe
Martine Gagnon
Nadine Comeau

Counsel for the Tribunal: Alain Xatruch

Assistant Registrar: Gillian Burnett

Registrar Officer: Danielle Lanteigne

PARTICIPANTS:**Domestic Producers**

TenarisAlgoMaTubes Inc.

IPSCO Inc.

Lakeside Steel Corporation

Importers/Exporters/Others

Cantak Corporation

Counsel/RepresentativesC.J. Michael Flavell
Geoffrey C. Kubrick
Jennifer Brigandi
Corinne BruléDalton J. Albrecht
Katherine Xilinas
Elena Balkos

Paul Conlin

Counsel/RepresentativesPeter Clark
Chris Hines
Gordon LaFortune
Wallis Stagg
Ryan Clarke

China Iron and Steel Association	Peter Clark Chris Hines Gordon LaFortune Wallis Stagg Ryan Clarke
EnCana Corporation	Douglas G. Mills Romeo Rojas
Embassy of the People's Republic of China in Canada	Jiang Shan Ma Ensheng
Hallmark Tubulars Ltd.	Christopher J. Kent Christopher Cochlin Olivia Wright Caroline Kim
Imex Canada Inc.	Peter Clark Chris Hines Wallis Stagg Ryan Clarke
Nexen Inc.	Gregory Kanargelidis Prakash Narayanan Elysia Van Zeyl Alexis von Finckenstein
Pacific Tubulars Ltd.	Richard Shields
Pacrim Pipes (Canada) ULC	Yei Albert Sun
Tianjin Pipe (Group) Corporation	Peter Clark Chris Hines Wallis Stagg
Western International Forest Products	Scott W. Schmid

WITNESSES:

Alberto Iperiti
Managing Director, Canada
TenarisAlgomaTubes Inc.

David McHattie
Planning Director, Canada
TenarisAlgomaTubes Inc.

Randy P. Sockovie
Vice-President of Sales & Manufacturing, Cold
Draw
Lakeside Steel Corporation

Bob Boyd
Financial Consultant to Lakeside Steel
Lakeside Steel Corporation

Glenn A. Gilmore
Trade Supervisor
IPSCO Inc.

John Palazeti
Director, Sales and Marketing, Canadian Tubulars
IPSCO Inc.

Regula Schoenenberger
President
Imex Canada Inc.

Andy Trenkwalder
Chief Executive Officer
Imex Canada Inc.

C. Allan Cheng
President
Cantak Corporation

Scott Harderer
Operations Manager
Cantak Corporation

Dale Albert
President & CEO
Hallmark Tubulars Ltd.

Gordon Kozak
Director, Engineering/QA
Hallmark Tubulars Ltd.

Kevin Bremner
Manager—Drilling & Completions Supply,
Supply Management
Nexen Inc.

N. Kevin Smith
Supply Management Coordinator,
Corporate Planning,
Strategic Planning & Portfolio Management
Encana Corporation

Kenneth G. Hornby
Director, Oversight—Supply Management,
Strategic Planning
Encana Corporation

Len J. Drach
Manager, Operations & Project Purchasing,
Materials & Services Management
Husky Energy

Please address all communications to:

The Secretary
Canadian International Trade Tribunal
Standard Life Centre
333 Laurier Avenue West
15th Floor
Ottawa, Ontario
K1A 0G7

Telephone: 613-993-3595
Fax: 613-990-2439
E-mail: secretary@citt-tcce.gc.ca

STATEMENT OF REASONS

1. The Canadian International Trade Tribunal (the Tribunal), pursuant to section 42 of the *Special Import Measures Act*,¹ has conducted an inquiry to determine whether the dumping and subsidizing of seamless carbon or alloy steel oil and gas well casing, whether plain end, beveled, threaded or threaded and coupled, heat-treated or non-heat-treated, meeting American Petroleum Institute (API) specification 5CT, with an outside diameter not exceeding 11.75 inches (298.5 mm), in all grades, including proprietary grades, originating in or exported from the People's Republic of China (China) (the subject goods) have caused injury or retardation or are threatening to cause injury to the domestic industry.

2. On August 13, 2007, the President of the Canada Border Services Agency (CBSA), following a complaint filed by TenarisAlgomatubes Inc. (TAT), initiated an investigation into whether the subject goods had been dumped and subsidized.

3. On August 14, 2007, 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 12, 2007, the Tribunal made a preliminary determination that there was 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 October 26, 2007, in the statement of reasons for its preliminary determination of injury, the Tribunal found, based on the evidence on the record at that time, that seamless oil and gas well casing produced by the domestic industry was like goods to the subject goods. The Tribunal stated that whether there was merit to expand the definition of like goods to include electric resistance welded (ERW) oil and gas well casing was an issue that would need to be fully addressed in the context of a final injury inquiry. The Tribunal also found that high-strength oil and gas well casing and low-strength oil and gas well casing constituted a single class of goods, but indicated that this was also an issue that would need to be fully addressed in the context of a final injury inquiry.

5. On November 9, 2007, 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.

6. On November 13, 2007, the Tribunal issued a notice of commencement of inquiry.² The Tribunal's period of inquiry (POI) covers three full years, from January 1, 2004, to December 31, 2006, and an interim period from January 1 to September 30, 2007. As part of its inquiry, the Tribunal sent questionnaires to domestic producers, importers and foreign producers of oil and gas well casing. The Tribunal also sent a questionnaire on market characteristics to purchasers. From the replies to the questionnaires and other information on the record, the Tribunal's staff prepared public and protected pre-hearing staff reports.

7. In its notice of commencement of inquiry, the Tribunal invited the parties to file submissions on the issues of like goods and classes of goods. In addition, on November 29, 2007, the Tribunal distributed to the parties the responses to the questionnaire on market characteristics. On December 3, 2007, the Tribunal distributed to the parties a pre-hearing staff report on market characteristics in order to deal with the issues of like goods and classes of goods. The Tribunal received submissions on like goods and classes of goods from five parties.

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

2. C. Gaz. 2007.I.3252.

8. On December 18, 2007, the Tribunal informed the parties that it had determined that high-strength and low-strength oil and gas well casing constituted a single class of goods and that ERW oil and gas well casing was like goods to seamless oil and gas well casing. In light of this determination, the Tribunal informed the parties that it would conduct its injury analysis on the basis of a single class of goods and that domestically produced like goods included seamless and ERW oil and gas well casing.

9. On February 7, 2008, the CBSA issued its final determination of dumping and subsidizing.

10. A hearing, with public and in camera testimony, was held in Ottawa, Ontario, from February 4 to 8, 2008. TAT, Prudential Steel Inc. (Prudential),³ IPSCO Inc. (IPSCO) and Lakeside Steel Corporation (Lakeside) filed submissions in support of a finding of injury and were present at the hearing. Cantak Corporation (Cantak), China Iron and Steel Association (CISA), EnCana Corporation (EnCana), Hallmark Tubulars Ltd. (Hallmark), Imex Canada Inc. (Imex), Nexen Inc. (Nexen) and Tianjin Pipe (Group) Corporation (TPCO) opposed a finding of injury and were represented at the hearing. Pacific Tubulars Ltd. opposed a finding of injury, but was not represented at the hearing. The Tribunal also heard testimony from a Tribunal witness from Husky Energy (Husky).

11. Pacrim Pipes (Canada) ULC, Western International Forest Products and the Embassy of the People's Republic of China in Canada were also parties to the inquiry, but did not file submissions or appear at the hearing.

12. The record of this inquiry consists of all Tribunal exhibits, including the record of the preliminary injury inquiry (PI-2007-001), replies to questionnaires, requests for information and replies thereto, witness statements, all exhibits filed by parties and the Tribunal throughout the inquiry, and 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.

13. The Tribunal issued its finding on March 10, 2008.

RESULTS OF THE CBSA'S INVESTIGATION

14. The CBSA determined that the weighted average margin of dumping, expressed as a percentage of the export price, was 62 percent and that the weighted average amount of subsidy, expressed as a percentage of the export price, was 19 percent. The CBSA also determined that the margins of dumping and the amount of subsidy were not insignificant and found that 100 percent of the subject goods released into Canada from July 1, 2006 to June 30, 2007 were dumped and that 100 percent of the subject goods released into Canada from January 1, 2006 to June 30, 2007, were subsidized.⁴

3. Although Prudential did not file a separate notice of participation in these proceedings, it was represented by the same counsel as appeared on behalf of its sister company, TAT. The case brief and the witness statements were filed on behalf of TAT and Prudential and, at the hearing, the same witnesses testified on behalf of TAT and/or Prudential. Accordingly, in its reasons, the Tribunal, on occasion, makes reference to the position taken by Prudential and to the testimony and evidence that were specific to this company.

4. Tribunal Exhibit NQ-2007-001-4A, Administrative Record, Vol. 1 at 216.18.

PRODUCT

Product Description

15. Seamless and ERW steel casing falls within a category of products commonly referred to as oil country tubular goods (OCTG), which comprise drill pipe, casing and tubing. OCTG are used in the drilling of oil and gas wells and in the conveyance of these products to the surface. Casing is used to prevent the walls of the bored hole from collapsing during drilling and after the well has been completed.

16. Casing must be able to withstand both outside pressure and internal yield pressures within the well. It must also have sufficient joint strength to hold its own weight and must be equipped with threads sufficiently tight to contain the well pressure where lengths are joined together. The producer or a separate threading operator may perform the threading. Various factors limit the total amount of open hole that can be drilled at any one time, and it may be necessary to set more than one string of casing concentrically for certain portions of the well depth.

17. Oil and gas well casing is produced to meet API specification 5CT, in all grades, including but not limited to H40, J55, K55, M65, N80, L80, L80 HC, L80 Chrome 13, L80 LT, L80 SS, C90, C95, C110, P110, P110 HC, P110 LT, T95, T95 HC and Q125, and proprietary grades manufactured as substitutes for these specifications. The grade numbers define the minimum yield strength required of the grade in kilo-pounds per square inch (ksi).

High-strength Versus Low-strength

18. High-strength casing is used in deeper wells and more severe environments, such as low-temperature services, “sour” environments, heavy oil recovery, etc. Its chemistry also provides for special combinations of mechanical properties and/or resistance to corrosion and environmental cracking. These properties may be for maximum strength (N80, P110, Q125), high-strength with low ductility (normally proprietary enhancements of API grades), and high-strength combined with resistance to corrosion and environmental cracking (L80, CR13, C90, C95, C110, T95 and proprietary enhancements).

19. Low-strength grades, such as H40, J55 and K55, have minimum yield strengths of less than 80 ksi.

Production Process

20. Casing may be produced using one of two processes: the seamless process or the ERW process. Testing is an important element of both processes.

21. Seamless casing is produced by first cutting steel bars of the appropriate chemistry for the desired grade of oil and gas well casing into billets. Some producers also source the billets directly. The billets are heated and pierced under pressure to form a central cavity. The resulting shell is then rolled on a retained mandrel and reduced in a stretch reduction mill to produce the finished size before being cooled on a walking beam cooling bed. The tube rounds are then inspected and cut to the required length. High-strength casing requires heat treatment (normalization) to meet API specifications. Beveling and threading of both ends finish the casing.

22. A coupling and a coupling protector are applied to one end and a thread protector to the other end of the finished casing before it is ready for shipment.

23. ERW casing is produced by slitting flat hot-rolled steel in coil form (skelp) to the proper width required to produce the desired diameter of pipe. The skelp is then sent through a series of forming rolls that bend it into a tubular shape. As the edges of the skelp come together under pressure in the final forming rolls, an electric current is passed between them. The resistance to the current heats the edges of the skelp to the welding temperature, and the weld is formed as the two edges are pressed together. The pipe is then cut to length. High-strength ERW casing also requires heat-treatment to meet API specifications. Casing is then sent to the finishing line where it is beveled and threaded on both ends.⁵ Finally, a coupling and coupling protector are applied to one end of the pipe and a thread protector is applied to the other end before it is ready for shipment.

DOMESTIC PRODUCERS

24. TAT is the only producer of seamless oil and gas well casing in Canada. The Canadian producers of ERW oil and gas well casing are Prudential, IPSCO, Lakeside and OSM Tubular Camrose (OSM Tubular).

TAT

25. TAT has its headquarters in Calgary, Alberta, and its production facilities are located in Sault Ste. Marie, Ontario. TAT is part of Tenaris SA of Luxembourg (Tenaris), a global manufacturer of seamless and welded pipe products and provider of pipe handling, stocking and distribution services to the oil and gas, energy, mechanical and automotive industries.

26. TAT's operations in Canada began in 1999, when it leased the then closed Algoma Tubes mill owned by Algoma Steel Inc. TAT began production in September 2000, after renovation work was completed. In 2002, TAT acquired the plant.

27. TAT can produce low-strength oil and gas well casing in diameters ranging from 4.5 inches to 9.875 inches and high-strength oil and gas well casing in diameters ranging from 4.5 inches to 11.75 inches.

28. TAT'S sales functions are carried out exclusively through Tenaris Global Services (Canada) Inc. (TECA). This entity acts as a master distributor for sales of Tenaris product. TECA is the importer of record for goods from Tenaris companies in Argentina, Mexico, Italy, Romania and Japan.

Prudential

29. Prudential of Calgary, Alberta, began producing ERW steel pipe in 1966. Its production range includes casing in diameters ranging from 4.5 inches to 9.625 inches, primarily in grades H40 and J55 and proprietary grade PS80. In September 2000, Prudential was acquired by Maverick Tube Corporation (Maverick) of Chesterfield, Missouri. In 2006, Maverick was acquired by Tenaris. Since 2006, Prudential production has also been marketed through TECA. Prudential does not import casing.

IPSCO

30. IPSCO, which has production facilities in Red Deer and Calgary, Alberta, and Regina, Saskatchewan, as well as various locations in the United States, produces OCTG in Canada in outside diameters ranging from 4.5 inches to 13 3/8 inches, in several grades, using the ERW process. IPSCO markets its casing through a network of distributors, as well as through direct sales to larger end-user accounts. IPSCO also imports seamless and ERW oil and gas well casing from the United States.

5. Threading may be performed by a third party.

Lakeside

31. Lakeside of Welland, Ontario, was formed in November 2005. Lakeside purchased the assets of Stelpipe Ltd. and is currently a wholly owned subsidiary of Added Capital Corp. Lakeside produces ERW casing, including grades H40 and J55 in diameters ranging from 4.5 inches to 8.626 inches and proprietary grade Stel 80 in diameters ranging from 4.5 inches to 7.0 inches. It sells oil and gas well casing almost exclusively through distributors. Lakeside does not thread and couple its product in-house. Lakeside either contracts out the end-finishing operation or sells its product to its customers as “plain end”. Lakeside does not import oil and gas well casing.

OSM Tubular

32. OSM Tubular is a registered trade name of Canadian National Steel Corporation, a corporation registered in Alberta which is wholly owned by Evraz Oregon Steel Mills, Inc. of Portland, Oregon. Evraz Oregon Steel Mills, Inc. is a wholly owned subsidiary of Evraz Group SA. It operates two mills in Camrose, Alberta.

33. OSM Tubular produces ERW oil and gas well casing in grades H40 and J55 and proprietary grade CP80, in diameters ranging from 4.5 inches to 9.625 inches. It does not import casing.

IMPORTERS, PURCHASERS AND FOREIGN PRODUCERS

34. The Tribunal sent 17 questionnaires to importers and received 15 replies.⁶ In addition, the Tribunal received 4 unsolicited replies to the importers’ questionnaire.

35. The Tribunal sent questionnaires on market characteristics to 25 purchasers. The Tribunal received 23 replies, of which 15 were from end users, 7 from wholesalers/distributors, and 1 from a master distributor.

36. The Tribunal sent foreign producers’ questionnaires to 11 companies located in China. The Tribunal received two completed questionnaires, from TPCO and Wuxi Seamless Oil Pipe Co., Ltd (Wuxi).

DISTRIBUTION

37. Generally, the domestic producers sell their casing to oilfield supply distributors that, in turn, sell the casing to end users. Some sales are made directly to large volume end users. Shipments of casing are made primarily from stockyards or stock points that are situated throughout the major petroleum exploration regions. These stock points are owned and maintained by domestic producers, importers/distributors or independent contractors. Some producers may continue to own the inventory held by distributors that earn a commission to cover their receivables risk and general selling expenses.

PRICING

38. The price to the end user is typically quoted as “on storage racks” at a specific location of a third party trucking and storage firm close to drilling activity, generally referred to as “FOB racks”. Producers are generally responsible for getting the casing to the storage facility, and unloading and racking the product. The end user is responsible for the charges associated with loading the pipes onto trucks and transporting them to the drilling site. The “FOB racks” selling price is based on an agreed price or spot quotation. Supply agreements may vary in duration from a single season to several years.

6. Including one reply from an importer that indicated that it did not import seamless or ERW oil and gas well casing during the POI.

ANALYSIS

39. 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 defined 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”

40. 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 the subsidizing of the subject goods.

41. The Tribunal will then determine whether the dumping and 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.⁷ Because a domestic industry is already established, the Tribunal will not consider the question of retardation.⁸

42. 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.

Like Goods and Classes of Goods

43. As a preliminary matter in this injury inquiry, the Tribunal invited parties to file submissions on the issues of like goods and classes of goods. After having considered those submissions and the evidence on the record, the Tribunal informed parties that it had determined that high-strength oil and gas well casing and low-strength oil and gas well casing constituted a single class of goods and that ERW oil and gas well casing is like goods to seamless oil and gas well casing.⁹ Accordingly, the Tribunal informed parties that it would conduct its injury analysis on the basis of a single class of goods. The Tribunal also indicated that it would determine what constituted the domestic industry and conduct its injury analysis on the basis that like goods included seamless oil and gas well casing and ERW oil and gas well casing. The following are the Tribunal’s reasons for these determinations.

44. The Tribunal first considered whether the subject goods are all within a single class of goods or whether there are sufficient differences based on an analysis of the factors for determining “likeness” to justify separating the subject goods into two classes, namely, high-strength oil and gas well casing and low-strength oil and gas well casing.

45. Subsection 2(1) of *SIMA* defines “like goods”, in relation to any other goods, as follows:

...

(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.

7. Injury and threat of injury are distinct findings; the Tribunal is not required to make a finding relating to threat of injury under subsection 43(1) of *SIMA* unless it first makes a finding of no injury.

8. Subsection 2(1) of *SIMA* defines “retardation” as “... material retardation of the establishment of a domestic industry”.

9. Tribunal Exhibit NQ-2007-001-34, Administrative Record, Vol. 1 at 241.

46. When goods are not identical in all respects to other goods, the Tribunal typically considers a number of factors, including the physical characteristics of the goods (such as composition and appearance), their market characteristics (such as substitutability, pricing, distribution channels and end uses) and whether the goods fulfill the same customer needs.¹⁰

47. At the preliminary injury inquiry stage, Nexen was the only party that submitted that high-strength oil and gas well casing and low-strength oil and gas well casing constituted two distinct classes of goods. It argued that these classes of goods had different physical characteristics and end uses, were not substitutable and had a significant price difference. However, when the Tribunal received submissions from parties regarding the issues of like goods and classes of goods in response to its invitation in the notice of commencement of inquiry, all five parties that filed submissions, including Nexen, were of the view that high-strength oil and gas well casing and low-strength oil and gas well casing constituted a single class of goods. Nexen then argued that, in certain circumstances, high-strength oil and gas well casing and low-strength oil and gas well casing were substitutable (higher-strength grades generally being substitutable for lower-strength grades) and that, in some instances, the price differences between the two were small.

48. TAT submitted that the distinction between high-strength oil and gas well casing and low-strength oil and gas well casing was only used in the complaint to define the scope of TAT's production capabilities and was not reflective of market differences. It submitted that, consequently, the subject goods constituted a single class of goods.

49. IPSCO, Hallmark and EnCana all took similar positions and argued that high-strength oil and gas well casing and low-strength oil and gas well casing were not separate classes of goods, but merely represented different grades (with different specifications) along a continuum of like goods with a least some substitutability between contiguous grades.

50. The Tribunal agrees with the argument that different grades of casing fall along a continuum of like goods. It is therefore of the view that, rather than being categorized as either high-strength oil and gas well casing or low-strength oil and gas well casing on the basis of a distinct dividing line, oil and gas well casing of different strengths falls at various points along a continuum within a single class of goods. The Tribunal also notes that oil and gas well casing of all strengths generally has similar input materials, general end uses, distribution channels and appearance. In addition, higher-strength grades are always substitutable for lower-strength grades. For the foregoing reasons, the Tribunal concluded that there was a single class of goods.

51. Concerning the issue of like goods, the Tribunal then considered whether there was merit in expanding the definition of the like goods to include ERW oil and gas well casing by examining whether ERW oil and gas well casing and seamless oil and gas well casing were like goods to one another.

52. The Tribunal notes that the subject goods, as defined by the CBSA, did not include ERW oil and gas well casing.

53. TAT argued that, because domestically produced seamless oil and gas well casing is identical in all respects to the subject goods, the Tribunal is precluded by the terms of the definition of "like goods" under subsection 2(1) of *SIMA* from considering injury to domestic producers of goods having uses and other characteristics that closely resemble those of the subject goods.

10. See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at 8 [*Copper Pipe Fittings*].

54. Hallmark and EnCana both made reference to the Federal Court of Appeal's decision in *Noury Chemical Corporation and Minerals & Chemicals Ltd. v. Pennwalt of Canada Ltd. and Anti-dumping Tribunal*,¹¹ as support for the proposition that, despite the existence of identical goods, the Tribunal is not precluded from expanding the scope of its injury inquiry to include goods that closely resemble the subject goods. Hallmark submitted that, should the Tribunal refuse to consider evidence concerning domestically produced like goods, it would be ignoring the commercial reality of the Canadian market for oil and gas well casing on which its entire inquiry is based. Hallmark and EnCana added that the various factors typically considered by the Tribunal in its like goods analysis are weighed on a case-by-case basis on the facts before it and that the Tribunal is not bound by the scope of subject goods set out by the CBSA when defining like goods.

55. TAT submitted that the Federal Court of Appeal in *Noury* stated that the definition of like goods must be construed in accordance with the purpose of *SIMA*, which is to protect the production of domestic goods that compete with dumped or subsidized goods. According to TAT, parties that oppose the complaint are trying to broaden the scope of like goods to constrain the ability of the Canadian industry to obtain an injury finding, a purpose contrary to that of *SIMA*.

56. As it has previously stated,¹² the Tribunal agrees that it cannot modify the CBSA's definition of the subject goods. Under *SIMA*, the CBSA has the exclusive jurisdiction to establish the scope of the subject goods and to determine whether a dumping investigation will be initiated.¹³ However, for the purpose of an injury inquiry under section 42, the Tribunal has the jurisdiction to decide which domestically produced goods are like goods to the subject goods. Indeed, it is required to do so, as every injury inquiry conducted pursuant to section 42 necessarily involves an examination of whether the dumping or subsidizing of goods has caused or is threatening to cause injury to a "domestic industry", which is in turn defined as the "... domestic producers ... of the like goods ...". By examining whether there is merit in expanding the definition of like goods to include ERW oil and gas well casing, the Tribunal is not endeavouring to modify or extend the scope of the subject goods.¹⁴ Rather, it is simply determining which domestically produced goods are to be considered like goods to the subject goods, something that it is required to do under *SIMA*.

57. It is agreed by all parties that seamless oil and gas well casing produced by TAT is like goods to the subject goods, as defined by the CBSA in the preliminary determination of dumping and subsidizing. However, there is disagreement as to whether, in the presence of identical goods, the Tribunal has the authority to consider whether domestically produced ERW oil and gas well casing is like goods to the subject goods. The Tribunal is of the view that it need not address this issue, as it believes that, for the purposes of the current inquiry, domestically produced seamless oil and gas well casing is not "identical in all respects" to the subject goods.

11. [1982] 2 F.C. 283 [*Noury*].

12. See *Flat Hot-rolled Carbon and Alloy Steel Sheet Products* (2 July 1999), NQ-98-004 (CITT) at 17-18.

13. *Structural Tubing* (21 July 2003), PI-2003-001 (CITT) at 3.

14. Considering domestically produced ERW oil and gas well casing as like goods to the subject goods would not have any effect on the definition of the subject goods and, thus, would not, in the event of a finding of injury or threat of injury, result in imports of ERW oil and gas well casing from China being subject to anti-dumping and countervailing duties.

58. The use of the words “identical in all respects” in the definition of “like goods” under subsection 2(1) of *SIMA* creates, in the Tribunal’s opinion, a very high standard.¹⁵

59. In the current inquiry, responses to the Tribunal’s market characteristics questionnaire appear to indicate that domestically produced seamless oil and gas well casing is not identical in all respects to the subject goods. For example, some respondents cited product quality as a differentiating factor between the domestically produced seamless oil and gas well casing and the subject goods.¹⁶ It is difficult to imagine how product quality could be different for goods that are identical in all respects. The Tribunal believes that, given the many variables involved in the production process for seamless oil and gas well casing, it is reasonable to conclude that, even if made to the same API standard, small variations in strength, hardness, wall thickness, quality and other such properties are inevitable when comparing goods from different production facilities. This conclusion is supported by the fact that nearly three quarters of the purchasers that responded to the Tribunal’s market characteristics questionnaire indicated that their suppliers were required to be certified or pre-qualified.¹⁷ If all seamless oil and gas well casing manufactured to a given standard were considered by end users to be truly identical, such certification or pre-qualification would not be necessary.

60. Although the Tribunal has determined that domestically produced oil and gas well casing is not identical in all respects to the subject goods, the Tribunal is of the view that the evidence clearly supports a determination that the uses and other characteristics of seamless oil and gas well casing produced by the domestic industry closely resemble those of the subject goods.

61. The Tribunal then proceeded to examine whether domestically produced ERW oil and gas well casing is like goods to the subject goods by considering the same factors¹⁸ as it did in its analysis pertaining to classes of goods. The Tribunal notes that, despite having already found that domestically produced seamless oil and gas well casing is like goods to the subject goods, it is nonetheless required to consider whether any other domestically produced goods also closely resemble, and are in competition with, the subject goods. To do otherwise would constitute a disregard for the commercial reality of the market on which the Tribunal’s injury inquiry is based.

62. TAT submitted that the Tribunal should find that ERW oil and gas well casing is not like goods to the subject goods. It argued that, while there is a certain degree of functional overlap between seamless oil and gas well casing and ERW oil and gas well casing, there is limited commercial overlapping of the products. It also submitted that seamless oil and gas well casing is produced by a substantially different manufacturing process, has characteristics that favour its use in more demanding applications and is a more expensive product. TAT added that, while seamless oil and gas well casing may always replace ERW oil and gas well casing, the reverse is not true.

15. The Tribunal wishes to draw a distinction between the determination of like goods for injury purposes, which looks at whether domestically produced goods are like goods to the subject goods, and the determination of like goods for other purposes under *SIMA*, such as the determination of normal values by the CBSA. Under section 15, normal values for a particular exporter are determined by reference to the selling price of like goods when they are sold by that exporter in its own domestic market. It is clear that, in these circumstances, the like goods will often be identical in all respects to the subject goods, as they are actually produced by the same entity.

16. See responses to question 10B of the Purchasers’ Questionnaire on Market Characteristics, Administrative Record, Vol. 5.2.

17. See protected responses to question 17B of the Purchaser’s Questionnaire on Market Characteristics, Administrative Record, Vol. 6.2.

18. These factors include the physical characteristics of the goods (such as composition and appearance), their market characteristics (such as substitutability, pricing, distribution channels and end uses) and whether the goods fulfill the same customer needs.

63. For their part, IPSCO, Nexen, Hallmark and EnCana submitted that domestically produced ERW oil and gas well casing should be considered like goods to the subject goods. They argued that, in the majority of cases, API specification 5CT, which is the international standard for casing and tubing, does not distinguish between ERW oil and gas well casing and seamless oil and gas well casing and that, as long as products meet the same API specification, they are fully interchangeable and substitutable. Consequently, they submitted that, for the vast majority of applications, ERW oil and gas well casing and seamless oil and gas well casing are substitutable and compete directly with each other in the marketplace. They also added that both products have the same distribution channels and that, while there were differences in price, these were generally modest.

64. Based on the evidence and the arguments of parties, the Tribunal is satisfied that overall, ERW oil and gas well casing and seamless oil and gas well casing have similar physical and market characteristics.

65. In terms of physical characteristics, the Tribunal considered the technical standards, composition and appearance of oil and gas well casing. It is clear to the Tribunal that ERW oil and gas well casing and seamless oil and gas well casing are substitutable for each other in most instances as, for most grades of casing, they must both adhere to the same API technical standards that establish requirements for factors such as yield strength, tensile strength and hardness. With respect to composition, the Tribunal notes that carbon or alloy steel (of various chemistries) is the major raw material input for all types of casing. With regard to appearance, the Tribunal observes that, for the samples provided,¹⁹ the differences between ERW oil and gas well casing and seamless oil and gas well casing were not very noticeable.

66. While the Tribunal recognizes that there are differences in the methods of production for ERW oil and gas well casing and seamless oil and gas well casing, it adopts the same approach as it did in *Copper Pipe Fittings* where it agreed with the World Trade Organization (WTO) Appellate Body that the focus should be on the products and not on the manufacturing processes.²⁰

67. In terms of market characteristics, the evidence demonstrates that, in large proportion and for the vast majority of applications, ERW oil and gas well casing and seamless oil and gas well casing are substitutable, have the same end uses, fulfill the same customer needs and, thus, generally compete directly with each other. There exists a limited number of applications for which only seamless oil and gas well casing is specified but, based on the evidence, the volume of seamless oil and gas well casing purchased for these specialized applications represents a small percentage of the overall volume of purchases of oil and gas well casing.

68. Further, the evidence demonstrates that end users generally treat the most commonly used grades as interchangeable.²¹ In fact, two thirds of the end users that responded to the Tribunal's market characteristics questionnaire, representing 86 percent of the total volume of purchases by those end users, reported that oil

19. Tribunal Exhibits NQ-2007-001-27.01A, -27.01B and -27.01C and NQ-2007-001-27.02A, -27.02B and -27.02C, Administrative Record. TAT provided the Tribunal with samples of seamless oil and gas well casing sections in grades L80, P110 and K55, while IPSCO provided the Tribunal with samples of ERW oil and gas well casing sections in grades L80, P110 and J55.

20. *Copper Pipe Fittings* at 9. See also *United-States—Safeguard Measure on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia* (2001), WTO Docs. WT/DS177/AB/R, WT/DS178/AB/R at para. 94 (Appellate Body Report).

21. *Pre-hearing Staff Report on Market Characteristics*, Tribunal Exhibit NQ-2007-001-06, Administrative Record, Vol. 1.1 at 5.

and gas well casing could be supplied as either ERW oil and gas well casing or seamless oil and gas well casing.²² Additionally, a large proportion of end users that responded to the questionnaire reported that interchangeability between ERW oil and gas well casing and seamless oil and gas well casing had either increased or remained the same over the POI.²³ Those end users that reported an increase in interchangeability represented 50 percent of the total volume of purchases by the end users that responded to the questionnaire.²⁴

69. Concerning pricing, the evidence demonstrates that differences between ERW oil and gas well casing and seamless oil and gas well casing are not significant and, in some cases, may even be non-existent.²⁵ Concerning the distribution of the goods, all 23 respondents to the Tribunal's market characteristics questionnaire indicated that ERW oil and gas well casing and seamless oil and gas well casing were sold through the same channels of distribution.²⁶

70. The Tribunal notes that, in *Oil and Gas Well Casing*,²⁷ it found that ERW oil and gas well casing and seamless oil and gas well casing were like goods based on the factors typically considered by the Tribunal in determining likeness.

71. In light of the foregoing, the Tribunal concluded that both ERW oil and gas well casing and seamless oil and gas well casing produced by the domestic industry constitute like goods to the subject goods.

Domestic Industry

72. 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.

73. The Tribunal must therefore determine whether there has been injury or whether there is a threat of 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.

74. Given its determination that domestically produced like goods comprise both seamless oil and gas well casing and ERW oil and gas well casing, the Tribunal considers that the five domestic producers of oil and gas well casing (i.e. TAT, Prudential, IPSCO, Lakeside and OSM Tubular), which together constitute domestic production as a whole of the like goods, constitute the domestic industry for the purpose of the

22. *Pre-hearing Staff Report on Market Characteristics*, Tribunal Exhibit NQ-2007-001-06, Administrative Record, Vol. 1.1 at 10.

23. *Pre-hearing Staff Report on Market Characteristics*, Tribunal Exhibit NQ-2007-001-06, Administrative Record, Vol. 1.1 at 9.

24. *Pre-hearing Staff Report on Market Characteristics*, Tribunal Exhibit NQ-2007-001-06, Administrative Record, Vol. 1.1 at 9.

25. One of the parties noted, in its confidential submissions, that it regularly offers the same pricing for ERW oil and gas well casing and seamless oil and gas well casing within the same API grade.

26. *Pre-hearing Staff Report on Market Characteristics*, Tribunal Exhibit NQ-2007-001-06, Administrative Record, Vol. 1.1 at 12.

27. (4 July 2001), RR-2000-001 (CITT).

Tribunal's injury analysis. The Tribunal notes that the combined production of the three major domestic producers (TAT, Prudential and IPSCO) accounted for a very high proportion of the total domestic production during the POI.²⁸

Cross-cumulation

75. CISA submitted that the effects of dumping and subsidizing should be considered separately, as neither *SIMA* nor the WTO agreements permit the Tribunal to cross-cumulate these effects when considering injury to the domestic industry. The Tribunal is not persuaded by this argument.

76. The Tribunal refers to what it has stated in previous cases in response to similar arguments, that is, that subsections 37.1(1) and (2) of the *Special Import Measures Regulations*²⁹ 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 China in this instance) are one and the same goods. It has therefore been the Tribunal's practice, when conducting an injury analysis, 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 so as to allocate specific or discrete portions to the dumping and subsidizing.³⁰

77. The Tribunal continues to hold this view and will therefore not differentiate any effect resulting from the dumping of the subject goods from any effect resulting from the subsidizing of the same goods for the purposes of its injury analysis.

INJURY

78. 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.

Volume of Dumped and Subsidized Imports

79. 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 dumped or subsidized goods, either in absolute terms or relative to the production or consumption of the like goods.

80. TAT and Prudential submitted that there was a "surge" of subject imports in late 2006. TAT and Prudential also submitted that imports of the subject goods were low in 2007 as a result of an overhang of inventories from 2006 and the initiation of the present inquiry.

28. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2007-001-09 (protected), Administrative Record, Vol. 2.1 at 69.

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

30. See, for example, *Copper Rod* (28 March 2007), NQ-2006-003 (CITT) at 8; *Copper Pipe Fittings* at 12-13; *Grain Corn* (7 March 2001), NQ-2000-005 (CITT) at 14.

81. CISA, Hallmark and Nexen argued that there was no surge of imports in late 2006. CISA and Nexen added that imports during the last quarter of 2006 represented approximately 22 percent of imports for 2006. Nexen submitted that, while imports of the subject goods increased between 2004 and 2006, the decline in imports of the subject goods in the interim period of 2007 resulted in smaller volumes of imports at the end of that period than at the beginning of the POI.

82. The evidence indicates that, in absolute terms, the total volume of dumped and subsidized goods increased by 90 percent between 2004 and 2005, and by a further 12 percent in 2006. Import volumes of subject goods doubled between 2004 and 2006, from 34,659 metric tonnes to 73,623 metric tonnes. In the interim period of 2007, however, there was a major decline in the volume of subject goods imported. Imports in the first nine months of 2007 were 13,720 metric tonnes, or 76 percent lower than during the same period in 2006.³¹

83. With respect to whether or not there was a “surge” of imports in late 2006, the Tribunal notes that the evidence indicates that purchases of casing are normally at a peak in the first quarter and late fourth quarter of a given year.³² The Tribunal would therefore expect import volumes to be higher in the fourth quarter than in other quarters to fill increased demand in the fourth quarter of the current year and during the first quarter of the following year. This did not however occur in 2006, when imports in the last quarter of the year represented less than a quarter of imports for that entire year. The Tribunal is therefore of the view that there was no surge of imports of the subject goods in late 2006.

84. However, relative to the production of like goods, import volumes of the subject goods remained relatively steady from 2004 to 2006, with the volume of imports of the subject goods expressed as a percentage of domestic production increasing by only 4 percentage points during this period. In interim 2007, there was a decrease in the volume of imports relative to domestic production. During this last period of the POI, the volume of imports of the subject goods expressed as a percentage of domestic production fell by 7 percentage points from the same period in 2006.³³

85. In terms of consumption, the import volume of subject goods expressed as a percentage of sales from domestic production increased by approximately 7 percentage points between 2004 and 2006. In the first nine months of 2007, however, imports of the subject goods declined relative to the consumption of like goods, and the volume of imports of the subject goods expressed as a percentage of consumption of like goods was down by approximately 10 percentage points from the same period in 2006.³⁴

86. Basing its conclusion on the foregoing, the Tribunal is of the view that, from 2004 to 2006, there was a significant increase in the absolute volume of imports of the subject goods and a more modest increase in the relative volume of imports of the subject goods compared to the production and consumption of like goods. The Tribunal notes however that this trend did not continue into 2007, since, during the interim period of 2007, there were significant year-over-year decreases in both the absolute and relative volumes of imports of the subject goods.

31. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2007-001-08, Administrative Record, Vol. 1.1 at 70.

32. Importer’s Exhibit C-05 at para. 7, Administrative Record, Vol. 13.

33. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2007-001-08, Administrative Record, Vol. 1.1 at 70; *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2007-001-09 (protected), Administrative Record, Vol. 2.1 at 69.

34. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2007-001-08, Administrative Record, Vol. 1.1 at 70; *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2007-001-09 (protected), Administrative Record, Vol. 2.1 at 74.

Effects of Dumped and Subsidized Imports on Prices

87. 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 the like goods by preventing the price increases for those like goods that would otherwise likely have occurred.

Price Undercutting and Price Erosion

88. TAT submitted that, although the staff report shows that the subject goods are higher-priced than the like goods, this results from a product mix issue arising from the inclusion of ERW casing in the like goods. TAT submitted that the benchmark product tables demonstrate that price undercutting by sellers of the subject goods occurred during the POI.

89. The witnesses for TAT and Prudential expressed the view that both companies suffered price erosion as a result of the availability of the subject goods. TAT submitted that price undercutting and price erosion began for TAT in 2005 and, eventually, led to losses in 2007. Prudential, on the other hand, submitted that it was not affected by the subject goods until 2007 and noted that Chinese seamless casing was being offered at lower prices into traditional markets for ERW casing.³⁵ TAT indicated that its strategy in response to increased competition from the subject goods was to maintain prices in the Canadian market that would permit returns consistent with those earned in other markets by other Tenaris companies and by other producers of seamless casing.³⁶

90. The witness for IPSCO stated that IPSCO's prices have been declining as a result of the presence of the subject goods in the market. Unlike TAT, which attempted to maintain price levels to achieve desired returns, IPSCO indicated that it lowered its prices in 2007, particularly for the benchmark products, and that it was able to stabilize its sales volume after lowering its prices.³⁷

91. Hallmark disagreed with the domestic producers' position and argued that the prices of the subject goods were not injurious and that TAT's claims of price undercutting ignore the data on the record.

92. CISA submitted that the domestic producers' allegations of price erosion are unsupported and that the price of the subject goods did not fall as fast as the price of domestic goods when the market declined in 2007.

93. Although the market table in the Tribunal's staff report indicates that the subject goods were higher-priced than the like goods in all periods of the POI except for 2004,³⁸ the Tribunal agrees with TAT that the data in this table may be influenced by product mix issues, including the fact that like goods include both seamless casing and ERW casing, while the subject goods comprise exclusively seamless casing and are made up of a larger proportion of high-strength casing than low-strength casing.³⁹ As a result, the Tribunal considers the benchmark products pricing information to be more indicative of what is happening in the marketplace.⁴⁰

35. Manufacturer's Exhibit A-03 at paras. 47-48, Administrative Record, Vol. 11; Manufacturer's Exhibit A-05 at para. 26, Administrative Record, Vol. 11.

36. Manufacturer's Exhibit A-03 at para. 57, Administrative Record, Vol. 11.

37. Manufacturer's Exhibit B-05 at paras. 12-13, Administrative Record, Vol. 11.

38. *Pre-hearing Staff Report*, revised 25 January 2008, Tribunal Exhibit NQ-2007-001-08B, Administrative Record, Vol 1.1 at 229.

39. Tribunal Exhibit NQ-2007-001-02 (protected), Administrative Record, Vol. 2 at 13.

40. Benchmark product information covers quarterly data for 2006 and interim 2007.

94. Benchmark product data collected by the Tribunal reveal that price undercutting by sellers of the subject goods did occur in certain instances. For J55 casing, there was significant undercutting in 2006. For L80 casing, the price of the subject goods consistently undercut that of the like goods, as well as that of the non-subject goods for all the quarters in which imports from China were present. For P110 casing, there was undercutting starting in the fourth quarter of 2006 and continuing into the first and third quarters of 2007.⁴¹

95. Additionally, 10 of the 15 respondents to the Tribunal's market characteristic questionnaire indicated that, in general, the subject goods are priced lower than the like goods.⁴²

96. Turning to the issue of price erosion, the Tribunal observes price erosion for J55 casing in 2006, when those goods faced price undercutting by sellers of the subject goods, and further price erosion in 2007, when the subject goods were competing closely with the like goods. For L80 casing, there was also price erosion that took place in 2007 when price undercutting by a significant amount was taking place. For P110 casing, the price of the like goods declined by about 8 percent between the third quarter of 2006 and the third quarter of 2007 when there was also significant price undercutting taking place.⁴³ The Tribunal is of the view that the price erosion experienced by the domestic industry in 2006 and 2007 could be attributed in part to price undercutting by sellers of the subject goods.

Price Suppression

97. The domestic producers submitted that imports of the subject goods suppressed the prices for the like goods. TAT stated that the subject goods had been suppressing the price of the like goods since 2004, when raw material costs increased, but the price of the subject goods did not increase to the same extent as world prices for seamless casing, thereby suppressing prices in Canada. IPSCO argued that price suppression began in 2006 and continued into 2007. Lakeside argued that the low price of Chinese casing has suppressed prices in the Canadian market and resulted in lower selling prices and sales volume for the company.

98. Parties opposed submitted that the domestic industry has not suffered price suppression as a result of the subject imports. CISA submitted that there was no price suppression over the POI, but instead that the price of the subject goods increased faster and declined at a slower rate than that of the like goods. Nexen argued that the domestic industry has not established that it needed to increase prices to a significant extent to recover increased costs, nor that such increases would have occurred absent imports of the subject goods.

99. Over the POI, the domestic industry's unit cost of goods sold increased from year to year, except for interim 2007.⁴⁴ The evidence does not indicate that the domestic industry has been unable to increase its selling price⁴⁵ in accordance with increases in the cost of goods sold. In addition, there was no convincing evidence that, over the POI, the domestic industry was prevented from increasing its prices for other

41. *Protected Pre-hearing Staff Report*, revised 25 January 2008, Tribunal Exhibit NQ-2007-001-09B (protected), Administrative Record, Vol. 2.1 at 233; *Protected Pre-hearing Staff Report*, revised 4 January 2008, Tribunal Exhibit NQ-2007-001-09A (protected), Administrative Record, Vol. 2.1 at 199; *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2007-001-09 (protected), Administrative Record, Vol. 2.1 at 94.

42. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2007-001-08, Administrative Record, Vol. 1.1 at 48.

43. *Protected Pre-hearing Staff Report*, revised 25 January 2008, Tribunal Exhibit NQ-2007-001-09B (protected), Administrative Record, Vol. 2.1 at 233; *Protected Pre-hearing Staff Report*, revised 4 January 2008, Tribunal Exhibit NQ-2007-001-09A (protected), Administrative Record, Vol. 2.1 at 199; *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2007-001-09 (protected), Administrative Record, Vol. 2.1 at 94.

44. *Protected Pre-hearing Staff Report*, revised 25 January 2008, Tribunal Exhibit NQ-2007-001-09B (protected), Administrative Record, Vol. 2.1 at 234.

45. *Pre-hearing Staff Report*, revised 25 January 2008, Tribunal Exhibit NQ-2007-001-08B, Administrative Record, Vol. 1.1 at 229.

commercial reasons because of the presence of the subject goods. Accordingly, the Tribunal finds that the evidence does not demonstrate that the prices of the like goods have been suppressed as a result of the prices of imports of the subject goods.

Impact of Dumped and Subsidized Imports on the Domestic Industry

100. 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.

101. The domestic producers argue that imports of the subject goods have resulted in a decline in production, sales, market share, profitability, productivity, employment, return on investment, capacity utilization and an increase in inventories.

102. TAT and Lakeside claimed past and present injury attributable to the subject goods. TAT claimed injury caused by the dumped and subsidized goods in 2006 and 2007, while Prudential claimed injury throughout 2007. However, a witness for IPSCO stated that IPSCO was claiming threat of injury rather than actual injury.⁴⁶

103. Parties opposed argued that any injury suffered by the domestic producers cannot be attributed to the subject goods and is due to a decline in the market for oil and gas well casing and to other factors.

Production, Capacity and Capacity Utilization

104. The evidence indicates that production of the like goods increased in 2005 and 2006 by 31 percent and 8 percent respectively. The trends in production observed over the POI are consistent with evidence heard on the market conditions in different years of the POI. The Tribunal heard that there was strong demand for the subject goods in 2004 and 2005.⁴⁷ The Tribunal also heard that there was a shortage of supply from domestic producers during that period and that purchasers had to turn to imports for their procurement needs.⁴⁸ Between 2004 and 2006, there was a significant increase in the volume of domestic production and, given these circumstances, the Tribunal finds that the domestic industry did not suffer injury in respect of this factor over that period.

105. In interim 2007, however, domestic production declined by 34 percent from interim 2006 levels.⁴⁹ This decline in production corresponds with evidence on the record that there was a major decline in the overall market, including a 76 percent decline in imports of the subject goods compared to the same period in 2006. The Tribunal considers that, given the decline in imports of the subject goods in interim 2007, the decline in domestic production observed during that period cannot be attributed to the subject goods.

106. The domestic industry's production capacity increased over the POI, partly as a result of the addition of Lakeside's capacity for 2006 and 2007.

46. *Transcript of Public Hearing*, Vol. 2, 5 February 2008 at 224.

47. *Ibid.* at 235-36; *Transcript of Public Hearing*, Vol. 4, 7 February 2008 at 529, 556.

48. Importer's Exhibit D-03 at paras. 12, 32, Administrative Record, Vol. 13; Importer's Exhibit C-03 at para. 5, Administrative Record, Vol. 13; Importer's Exhibit I-03 at para. 26, Administrative Record, Vol. 13.

49. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2007-001-08, Administrative Record, Vol. 1.1 at 69.

107. The Tribunal recognizes that the practical capacity of the domestic producers may be limited by factors such as heat treating and testing capacity and that the data in the staff report underestimate the actual capacity utilization. To that effect, the evidence on the record indicates that the domestic industry, in practical terms, was producing at its maximum capacity in 2004 and 2005, since it was, on a number of occasions, unable to supply the market in Canada.⁵⁰ Additionally, the fact that TAT indicated that it allocated some of its orders to plants outside of Canada to keep a buffer of capacity available to respond to changes in the Canadian marketplace also suggests that it was operating at its maximum practical capacity in Canada.⁵¹

108. TAT, IPSCO and Lakeside all claimed that their capacity utilization was down in 2007.⁵² The Tribunal notes that the decline in capacity utilization in this period is a result of reduced production of like goods. As noted above, the Tribunal has concluded that the decrease in production in interim 2007 cannot be attributed to imports of the subject goods.

Sales from Domestic Production and Market Share

109. Sales from domestic production increased by 16 percent from 2004 to 2005, but declined by 3 percent in 2006 compared to 2005 and by an additional 32 percent in interim 2007 compared to interim 2006.⁵³ As previously discussed, the Tribunal is of the view that these sales data corroborate the general understanding that the market began to decline in late 2006 and continued to do so in 2007.⁵⁴

110. From 2004 to 2006, the market share held by the domestic producers' sales from domestic production dropped by 8 percentage points, but in interim 2007, it gained 12 percentage points from interim 2006, and market share was thus 4 percentage points over 2004.⁵⁵ The market share held by the subject goods increased from 5 percent in 2004 to 8 percent in 2005 and stayed at 8 percent through 2006, before returning to 5 percent in 2007.⁵⁶ The only year when a decline in market share held by sales from domestic production corresponded with a roughly equivalent increase in the market share held by the subject goods is 2005. This is during the period of high demand when the Tribunal heard that the domestic industry was unable to meet demand and purchasers turned to imports of the subject goods.

111. Based upon this evidence, the Tribunal cannot conclude that the domestic producers lost market share to sales of the subject goods due to dumped or subsidized prices.

50. Importer's Exhibit D-03 at paras. 12, 32, Administrative Record, Vol. 13; Importer's Exhibit C-03 at para. 5, Administrative Record, Vol. 13; Importer's Exhibit I-03 at para. 26, Administrative Record, Vol. 13.

51. *Transcript of Public Hearing*, Vol. 1, 4 February 2008 at 88-89.

52. Manufacturer's Exhibit A-03 at paras. 95-96, Administrative Record, Vol. 11; Manufacturer's Exhibit B-03 at para. 20, Administrative Record, Vol. 11.

53. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2007-001-08, Administrative Record, Vol. 1.1 at 75.

54. *Transcript of Public Hearing*, Vol. 2, 5 February 2008 at 226-27; *Transcript of Public Hearing*, Vol. 3, 6 February 2008 at 351-52; Importer's Exhibit C-05 at para. 12, Administrative Record, Vol. 13; Manufacturer's Exhibit B-05 paras. 7-8, Administrative Record, Vol. 11; Importer's Exhibit I-03 at para. 20, Administrative Record, Vol. 13.

55. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2007-001-09 (protected), Administrative Record, Vol. 2.1 at 76.

56. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2007-001-08, Administrative Record, Vol. 1.1 at 76.

Employment and Productivity

112. The data on the record show that direct employment by the domestic producers increased by 9 percent in 2005 and by 22 percent in 2006. In interim 2007, direct employment decreased by 22 percent.⁵⁷ The Tribunal is of the view that reduced employment in interim 2007 appears to be linked to the reduced production and sales in that period.

113. Although TAT and Prudential attribute the lay-offs to a build-up of inventory of subject goods, the Tribunal observes that the inventory of subject goods at the end of 2006 did not flood the market in 2007, as sales of the subject goods were down by 66 percent in interim 2007 and represented a 5 percent market share.⁵⁸ Accordingly, the Tribunal considers that the reduction in employment is not attributable to imports of the subject goods.

114. Productivity increased in terms of metric tonnes per employee and metric tonnes per hour worked in 2005, but then decreased in 2006, although it remained above 2004 levels. In interim 2007, both measures of productivity decreased compared to interim 2006, making it the least productive period of the POI.⁵⁹ This can be explained by the fact that, although employment was down by 22 percent in interim 2007, production declined to an even greater extent, i.e. by 34 percent. This resulted in a decrease in productivity, despite significant lay-offs by the domestic industry. The Tribunal notes that this decrease in productivity, which is a direct consequence of the decline in production, corresponds with the downturn in the market in interim 2007. Since, as discussed above, the declines in employment and production cannot be attributed to the dumping and subsidizing of the subject goods, the decline in productivity cannot be attributed to the dumping and subsidizing of the subject goods.

Financial Results

115. TAT and Prudential stated that they both experienced reduced profitability in 2007. TAT submitted that it was able to remain profitable during 2005 and 2006 despite price erosion and suppression from the subject goods, but that it began to suffer losses in the first quarter of 2007.⁶⁰ IPSCO also stated that it experienced declining profitability in 2007.⁶¹

116. Evidence on the record concerning the domestic producers' gross margin and net income before taxes leads the Tribunal to conclude that the domestic industry enjoyed robust financial performance in 2004, 2005 and 2006, but that financial performance deteriorated in 2007, along with the reduction in sales of domestic production and the decline in the market.⁶²

117. In interim 2007, the net sales value of sales from domestic production declined by a substantial amount compared to interim 2006. On a dollar per metric tonne basis, the domestic industry also experienced a significant decline in its gross margin, as well as a severe decline in its net income during that period. The reduced profitability is attributable to a decline in both the net sales value of sales from domestic

57. *Ibid.* at 103.

58. *Ibid.* at 74-76.

59. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2007-001-09 (protected), Administrative Record, Vol. 2.1 at 104.

60. Manufacturer's Exhibit A-03 at paras. 47, 116, Administrative Record, Vol. 11.

61. Manufacturer's Exhibit B-03 at para. 19, Administrative Record, Vol. 11.

62. *Protected Pre-hearing Staff Report*, revised 25 January 2008, Tribunal Exhibit NQ-2007-001-09B (protected), Administrative Record, Vol. 2.1 at 234; *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2007-001-08, Administrative Record, Vol. 1.1 at 75.

production and the volume of sales from domestic production.⁶³ The Tribunal notes that the decline experienced in net sales value corresponds to a period when there was a 43 percent decline in the total apparent market for casing. Accordingly, this negative financial performance is largely due to the decline in market demand, which led to a reduction of 32 percent in the volume of sales from domestic production in interim 2007 compared with the same period in 2006. Given that sales of the subject goods declined by 66 percent over that same period, the Tribunal is of the view that the negative financial performance cannot be attributed to the subject goods.

Return on Investment

118. With respect to return on investment, evidence from TAT states that its recent and planned investments are aimed at improving efficiency and establishing broader testing facilities with the goal of shifting virtually all of Tenaris's sales of casing to TAT, but that the subject goods are jeopardizing those investments. TAT also submitted that the expansion of rolling capability was aimed at replacing Tenaris's imports of K55 seamless casing, but that it cannot compete with offers of Chinese K55 casing at current price levels and that Tenaris must import to remain a supplier of K55 casing.⁶⁴

119. The other producers did not submit supporting evidence that indicated that they were experiencing injury with respect to return on investment.

120. The Tribunal is not convinced that the evidence on the record shows that the domestic industry, as a whole, is suffering injury in terms of its return on investment. Indeed, the domestic industry had solid financial performance from 2004 to 2006. This situation does not support claims of injury experienced in respect of return on investment over the POI. In light of the negative financial performance of the domestic industry in 2007, the Tribunal is of the view that the domestic industry also experienced a decline in return on investment in that period, although, as discussed above, this cannot be attributed to the subject goods.

121. The Tribunal is required to also consider whether the domestic industry has suffered injury with respect to cash flow, wages or the ability to raise capital. One producer alleged that it experienced negative effect on its ability to raise capital. The Tribunal considers that this is reasonable given the financial results discussed above. It is also reasonable to assume that domestic producers have suffered injury with respect to cash flow. However, as discussed above, none of these effects can be attributed to the subject goods.

Inventory

122. The domestic producers submitted that they experienced a 71 percent increase in inventory levels at year-end 2006 compared to year-end 2005 and attribute this increase to imports of the subject goods.

123. The Tribunal heard that the demand for casing began to decline in late 2006.⁶⁵ The Tribunal considers that the increase in domestic production in 2006, coupled with the decline in sales, resulted in increased inventory for the domestic producers at the end of 2006. Since the decline in sales was mainly caused by the market contraction that started in late 2006, the increase in inventory levels cannot be attributed to the subject goods.

63. *Protected Pre-hearing Staff Report*, revised 25 January 2008, Tribunal Exhibit NQ-2007-001-09B (protected), Administrative Record, Vol. 2.1 at 234.

64. Manufacturer's Exhibit A-04 (protected) at para. 97, Administrative Record, Vol. 12.

65. *Transcript of Public Hearing*, Vol. 2, 5 February 2008 at 226-27; Importer's Exhibit C-05 at para. 12, Administrative Record, Vol. 13; Manufacturer's Exhibit B-05 at paras. 7-8, Administrative Record, Vol. 11.

Other Factors

124. The evidence on the record shows that drilling activity in 2007 was below levels seen in other periods of the POI. The Tribunal heard various reasons for the decrease in drilling activity, including an early spring thaw in 2007, changes in the tax treatment of income trusts, low natural gas prices and proposed changes to Alberta's royalty regime. Regardless of the cause or magnitude of reduced drilling activity in 2007, there was a sharp decline of 43 percent in the apparent market for oil and gas well casing. The 32 percent decrease in sales from domestic production was accompanied by a 66 percent decrease in sales of the subject goods, a 19 percent decrease in sales of non-subject seamless goods and a 78 percent decrease in sales of non-subject ERW goods, which, combined, constitute the apparent market.⁶⁶

Conclusion

125. Based upon its analysis of the factors listed above, the Tribunal determines that the domestic industry did not suffer injury in the period from 2004 to 2006, but that it did suffer injury during interim 2007. However, the evidence does not reveal that the injury experienced by the domestic industry in 2007 was caused by the subject goods. To the contrary, the evidence shows that the injury was, for the most part, due to the decline in the market.

126. In light of the above, the Tribunal concludes that the dumping and subsidizing of the subject goods did not cause injury to the domestic industry over the POI.

THREAT OF INJURY

127. 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.⁶⁷ 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.

66. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2007-001-08, Administrative Record, Vol. 1.1 at 75.

67. 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."

128. 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, the Tribunal's focus will be on the balance of 2008 and on 2009.

Forecast Drilling Activities and Subsequent Demand for Casing in the Canadian Market

129. The Tribunal will start by examining the evidence pertaining to forecast drilling activity for the next 18 to 24 months. The Tribunal heard mixed forecasts for 2008 and 2009. While the domestic producers submitted that drilling activity and casing sales would be down in 2008 and 2009, parties opposed contended that drilling activity and the market for casing would improve in 2008 and 2009. The Tribunal is of the view that much of the current uncertainty in the market relates to the federal government's changes in income trust regulations and the Alberta government's announcement of a new royalty regime.⁶⁸

130. The witness for Husky testified that the changes to the taxation and royalty regimes initially hit the market as a shock wave, but that it will absorb these changes over a period of time.⁶⁹ With respect to future drilling activities, he stated that, from Husky's perspective, there will be an increase in activities over the next two years.⁷⁰ The witness for Nexen indicated that the market will recover in the short term.⁷¹ Nexen further testified that its purchases of casing in 2008 will be higher than in 2007.⁷² The witnesses for Hallmark and EnCana also testified that drilling activity will improve in late 2008 or 2009.⁷³

131. In light of the evidence on the record, the Tribunal is of the opinion that the effect of the changes in income trust taxation and the new royalty regime in Alberta, as well as the effects of the major downturn seen in 2007, will dissipate over the coming months, as the industry adapts to the new regime and drilling activity increases.

132. Moreover, in the Tribunal's view, while the evidence does not indicate that demand for casing will return to the level of its 2005 peak, it indicates that conditions in the next 18 to 24 months will be significantly more favourable than what was observed during 2007.⁷⁴ The market for the subject goods is of a cyclical nature and is closely linked to drilling activities. The Tribunal is of the opinion that drilling activities will pick up and that, accordingly, demand for casing will rise in the coming months.⁷⁵

Increase in the Volume of Dumped and Subsidized Goods that Indicates a Likelihood of Substantially Increased Imports

133. Over the first three years of the POI, from 2004 to 2006, imports from China more than doubled, increasing from under 35,000 metric tonnes to over 73,000 metric tonnes.⁷⁶ Although there was a significant decline in the volume of imports of the subject goods between interim 2007 and interim 2006, the Tribunal notes that the percentage share of imports represented by imports of the subject goods declined by only

68. *Transcript of Public Hearing*, Vol. 1, 4 February 2008 at 45-46; *Transcript of Public Hearing*, Vol. 2, 5 February 2008 at 258-59; *Transcript of Public Hearing*, Vol. 3, 6 February 2008 at 485-87; *Transcript of Public Hearing*, Vol. 4, 7 February 2008 at 512-15.

69. *Transcript of Public Hearing*, Vol. 4, 7 February 2008 at 580-81.

70. *Ibid.*

71. *Ibid.* at 503.

72. *Ibid.*

73. *Transcript of Public Hearing*, Vol. 3, 6 February 2008 at 475-76, 570.

74. *Transcript of Public Hearing*, Vol. 4, 7 February 2008 at 503-504, *Transcript of Public Hearing*, Vol. 3, 6 February 2008 at 475-76, 570.

75. Importer's Exhibit C-05 at paras. 12, 16, Administrative Record, Vol. 13; *Transcript of Public Hearing*, Vol. 4, 7 February 2008 at 503-504, 580-81, 585-86.

76. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2007-001-08, Administrative Record, Vol. 1.1 at 70.

4 percentage points during that period. Basing its conclusion upon a review of the entire POI, the Tribunal is of the view that the experience observed in the market from 2004 to 2006 indicates that the volume of subject goods is likely to increase as market demand starts to recover.

Imminent and Substantial Increase in the Capacity of an Exporter Indicating a Likelihood of a Substantial Increase of the Subject Goods

134. The Tribunal also considered the state of the seamless casing industry in China in determining whether there was an indication of increased volumes of subject goods. A key factor is the fact that, during the POI, China emerged as a significant net exporter of OCTG, including seamless casing.⁷⁷

135. Evidence indicates that the production capacity of Chinese OCTG (which includes, but is not limited to, seamless casing and ERW casing) has been estimated at 10.7 million metric tonnes in 2006. This capacity is expected to grow by 30 percent in the next few years and would result in capacity reaching three times Chinese consumption.⁷⁸ According to evidence submitted by IPSCO, Chinese production of OCTG grew by approximately 54 percent in 2006 over 2005, increasing from 3.56 million metric tonnes to 5.47 million metric tonnes.⁷⁹

136. Chinese exports of OCTG grew by 85 percent in 2006 over 2005 and reached 1.2 million metric tonnes. Chinese exports continued to increase during 2007. Exports in the first four months of 2007 were 85 percent higher than in the same period of 2006.⁸⁰

137. As noted above, since the beginning of the Tribunal's POI, China has emerged as a major net exporter of OCTG. By 2005, exports of OCTG were twice the volume of imports. In 2006, exports exceeded imports by more than three times. Annualized data for 2007 showed that exports would exceed imports by a multiple of almost 9.⁸¹

138. The evidence shows that, if Chinese OCTG production and consumption continues on the same trend through 2009 as that from 1995 to 2006, production will exceed consumption by 3.4 million metric tonnes, and net exports will be 3.1 million tonnes by 2009.⁸²

139. The evidence indicates that seamless OCTG is approximately 80 percent of OCTG and that approximately 80 percent of seamless OCTG are subject goods. On the basis of these estimates, the Tribunal concludes that roughly 64 percent of the volumes discussed will provide an estimate of capacity, production and net exports of the subject goods.⁸³

140. The Tribunal considers it reasonable to expect that, in the next 18 to 24 months, capacity, production and exports in China will continue to grow at a faster rate than that of Chinese consumption. Evidence on the record indicates that there is substantial capacity to produce the subject goods in China and that there are several planned capacity additions in the next 18 to 24 months. The Tribunal observes that the forecasts discussed above are estimates that are based on recent trends and that Chinese capacity, production

77. Manufacturer's Exhibit B-02 at 1, Administrative Record, Vol. 11; Manufacturer's Exhibit A-03 at para. 103, Administrative Record, Vol. 11; Tribunal Exhibit NQ-2007-001-33.04, Administrative Record, Vol. 1.01 at 116.

78. Manufacturer's Exhibit B-02 at 52-53, Administrative Record, Vol. 11; *Transcript of Public Hearing*, Vol. 2, 5 February 2008 at 207-208.

79. Manufacturer's Exhibit B-02 at 39, Administrative Record, Vol. 11.

80. *Ibid.*

81. Manufacturer's Exhibit B-02 at 44, Administrative Record, Vol. 11.

82. Manufacturer's Exhibit B-02 at 135-36, Administrative Record, Vol. 11.

83. *Transcript of Public Hearing*, Vol. 1, 4 February 2008 at 13-14; Manufacturer's Exhibit B-02 at 43-45, Administrative Record, Vol. 11.

and exports may not necessarily reach these levels. Nevertheless, on the basis of the growth rate observed over the POI, it is reasonable to expect net Chinese exports of OCTG, including the subject goods, to increase significantly over the next two years.

141. The Tribunal considers that developments in the production of the subject goods indicate that Chinese producers will need to find purchasers for increased production. The Tribunal is of the view that, as the Canadian market improves in the next 18 to 24 months, it will be an attractive destination for the increasing quantities of subject goods. WSP Holdings Limited, the parent company of Wuxi, a Chinese manufacturer of the subject goods that is related to a Canadian importer, Eastar Industries Inc.,⁸⁴ has recently issued a prospectus with the U.S. Securities and Exchange Commission in order to finance the establishment of a threading plant in Canada which will be able to process more than 100,000 metric tonnes annually of seamless OCTG from China in Canada.⁸⁵ The Canadian threading plant is expected to commence production in the first half of 2008.⁸⁶ This is a concrete indication of interest by a Chinese manufacturer in the Canadian market and represents in itself a considerable volume of subject goods that would be available in the Canadian market.

Acceptance of the Subject Goods in the Canadian Market as a Viable Alternative to Domestically Produced Casing

142. The rapid penetration of the subject goods in the Canadian market in 2004 and 2005 indicates that Chinese casing is acceptable to purchasers and that importers have been successful in creating market acceptance for the subject goods in Canada. For example, Cantak testified that it has been able to win business from Tenaris's customers. A distribution network that is well-positioned to handle increased imports of the subject goods was also in place for the subject goods in Canada throughout the POI. In that regard, the Tribunal heard from a witness for Cantak that it buys the subject goods from an importer, Imex, that in turn buys from several Chinese mills, including TPCO and Shanghai Baosteel Group Corporation.⁸⁷ These goods are later sold directly to end users, and some are sold to other distributors on a spot basis.⁸⁸

143. The evidence also indicates that the major end users have pre-qualified or are in the process of pre-qualifying Chinese manufacturers of the subject goods and that they can do so in a matter of months.⁸⁹ This leads the Tribunal to conclude that end users are contemplating a market in which Chinese goods will fulfill some of their significant procurement needs. The Tribunal heard testimony from an importer that it was waiting for the outcome of this case to decide whether or not to place orders for the subject goods.⁹⁰

84. Tribunal Exhibit NQ-2007-001-A-07A, Administrative Record, Vol. 11A, at 32; Tribunal Exhibit NQ-2007-001-17.02, Administrative Record, Vol. 5.1 at 65.

85. *Transcript of Public Hearing*, Vol. 1, 4 February 2008 at 167; Tribunal Exhibit NQ-2007-001-A-07A, Administrative Record, Vol. 11A at 1-2, 9, 11-12, 28, 32, 48; Tribunal Exhibit NQ-2007-001-A-09, Administrative Record, Vol. 11 at 15-16.

86. Tribunal Exhibit NQ-2007-001-A-07A, Administrative Record, Vol. 11A at 28.

87. *Transcript of Public Hearing*, Vol. 3, 6 February 2008 at 382.

88. *Ibid.* at 383.

89. Tribunal Exhibit NQ-2007-001-21.03 (protected), Administrative Record, Vol. 6.2 at 18; Tribunal Exhibit NQ-2007-001-21.05 (protected), Administrative Record, Vol. 6.2 at 30; Tribunal Exhibit NQ-2007-001-21.08 (protected), Administrative Record, Vol. 6.2 at 48; Tribunal Exhibit NQ-2007-001-21.10 (protected), Administrative Record, Vol. 6.2 at 60; Tribunal Exhibit NQ-2007-001-21.13 (protected), Administrative Record, Vol. 6.2 at 78; Tribunal Exhibit NQ-2007-001-21.14 (protected), Administrative Record, Vol. 6.2 at 84; Tribunal Exhibit NQ-2007-001-21.21 (protected), Administrative Record, Vol. 6.2 at 166.

90. *Transcript of Public Hearing*, Vol. 3, 6 February 2008 at 330-31.

144. Another factor that leads the Tribunal to believe that there will be increased volumes of imports from China in the next 18 to 24 months is the changing nature of supply agreements between domestic producers and purchasers. Major purchasers have begun to issue requests for proposals for casing where pre-qualified firms, including vendors of both domestically produced goods and the subject goods, are invited to submit proposals.⁹¹ IPSCO submitted that, thus far, it has been somewhat shielded from the effect of the subject goods by the existence of long-term contracts, but that such contracts are expiring in the short term.⁹² Faced with increased financial pressure due to the new royalty regime, end users of the subject goods will be under increased pressure to seek ways to reduce costs. The testimony indicates that casing represents a significant portion, 8 to 20 percent, of well costs,⁹³ and the Tribunal considers that purchasers will be looking to reduce their input costs, including that of casing.

145. In light of the above, the Tribunal is of the opinion that, while constraints on supply available from the domestic industry in the “boom” years of 2004 and 2005 may have led purchasers to seek out imports from China solely as a way to fill supply gaps and secure an alternative source of supply from time to time, the market dynamic has changed and end users are now considering the subject goods as a viable long-term source of supply.

Causal Link Between the Subject Goods and the Price Erosion, Price Suppression and Consequent Negative Impact on the Domestic Industry’s Financial Performance

146. Having determined that dumped and subsidized imports are likely to be present in the Canadian market in significantly increased volumes, the Tribunal must now consider whether they are likely to constitute a threat of injury to the domestic industry. In so doing, the Tribunal assessed the extent to which there were market behaviours associated with dumped and subsidized imports during the POI that could have a negative impact on the domestic industry’s financial performance if they were to continue.

147. In considering the question of threat of injury, the *Regulations* require the Tribunal to consider whether the subject goods are entering Canada at prices that are likely to have a significant depressing or suppressing effect on the price of the like goods and are likely to increase demand for further imports of the subject goods. Although the Tribunal found that the subject goods did not cause injury to the domestic industry over the POI, it did note that there was evidence of price undercutting and price erosion in 2006 and 2007.

148. The Tribunal considers that price undercutting, along with increased volumes of subject goods, will have a depressing and suppressing effect on the price of the like goods. As imports increase, domestic producers will be forced to lower their prices to compete and will be further prevented from raising their prices to recover any increases in production costs. The Tribunal heard testimony that purchasers have used the subject goods as a way to prevent or moderate price increases or to act as a lever to negotiate supply at lower prices.⁹⁴ The Tribunal also notes the testimony of the witness for Nexen to the effect that, if duties are imposed on Chinese casing, further price increases are anticipated in Canada.⁹⁵ This clearly shows that, in the absence of anti-dumping and countervailing duties, the availability of the subject goods in the market will have a negative impact on the ability of the domestic industry to raise prices.

91. *Transcript of In Camera Hearing*, Vol. 4, 7 February 2008 at 519; Manufacturer’s Exhibit B-06 (protected), Tab 8, Administrative Record, Vol. 12; *Transcript of In Camera Hearing*, Vol. 3, 6 February 2008 at 249-52.; Importers’ Exhibit I-04 (protected) at para. 14, Tab 4, Administrative Record, Vol. 14.

92. Manufacturer’s Exhibit B-05 at paras. 20-23, Administrative Record, Vol. 11.

93. *Transcript of Public Hearing*, Vol. 4, 7 February 2008 at 544.

94. *Ibid.* at 544-46; *Transcript of In Camera Hearing*, Vol. 4, 7 February 2008 at 510-11.

95. *Transcript of Public Hearing*, Vol. 4, 7 February 2008 at 533.

149. The Tribunal is of the view that the production imperative associated with the build-up in production capacity for the subject goods will also force the Chinese producers to maintain high capacity utilization in the future. Exporters will ultimately have no alternative but to lower their prices and the price undercutting already experienced in the market during the POI will increase. The Tribunal is of the view that, in the short term, the subject goods will compete at the same price level or at slightly lower prices than the domestic industry's prices. However, the Tribunal notes that they will only be able to do so at highly dumped and subsidized prices. In the absence of anti-dumping and countervailing duties, this will result in price erosion and price suppression, and it will force the domestic industry to lower its prices to meet competition or otherwise to lose sales, resulting in a loss of market share, lower gross margins and reduced profitability.

150. In light of the above, the Tribunal is of the view that, within the next 18 to 24 months, the domestic industry will be injured by the dumping and subsidizing of the subject goods.

Other Factors

151. The *Regulations* also require the Tribunal to examine a series of other factors to determine if any factors other than the dumping and subsidizing are threatening to cause injury and to ensure that any threat of injury attributable to those factors is not attributed to the subject goods.

152. The Tribunal examined the volumes and prices of non-subject goods over the POI to determine if they were likely to increase and to be injurious in the future. The Tribunal notes that, although volumes of non-subject goods, which includes non-subject ERW casing from China, increased over 50 percent from 2004 to 2006, this is less than the increase of 112 percent for the subject goods.⁹⁶ The benchmark product pricing information shows that imports of non-subject goods repeatedly undercut the prices of like goods for J55 casing, but for the other benchmark products, the price of non-subject goods was consistently higher than the price of the like goods.⁹⁷ While it is possible that imports of non-subject goods may have a negative impact on the domestic industry in the future, any threat of injury attributable to the volumes and prices of non-subject goods has not been attributed to the subject goods. Accordingly, it does not negate the Tribunal's conclusion that there exists a threat of injury from the dumping and subsidizing of the subject goods.

153. The Tribunal considered whether there would be any change in the pattern of consumption of the subject goods or like goods. The evidence shows that many purchasers have been substituting ERW casing for seamless casing.⁹⁸ The Tribunal notes that ERW casing is included in the like goods and, accordingly, an increase in demand for domestically produced ERW casing may result in the displacement of sales among producers of seamless casing and ERW casing, but it will not result in injury to the domestic industry overall. As to additional imports of ERW casing into Canada due to a change in the pattern of consumption between seamless casing and ERW casing, the Tribunal is of the view that this could have a negative impact on the domestic industry, as it could lead to additional imports of non-subject goods. However, the Tribunal does not consider that it is likely to be an important factor in the next 18 to 24 months, and it has not been attributed to the subject goods. Therefore, it does not negate the Tribunal's conclusion that there exists a threat of injury from the dumping and subsidizing of the subject goods.

96. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2007-001-08, Administrative Record, Vol. 1.1 at 70.

97. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2007-001-09 (protected), Administrative Record, Vol. 2.1 at 92, 94; *Protected Pre-hearing Staff Report*, revised 4 January 2008, Tribunal Exhibit NQ-2007-001-09A (protected), Administrative Record, Vol. 2.1 at 199; *Protected Pre-hearing Staff Report*, revised 25 January 2008, Tribunal Exhibit NQ-2007-001-09B (protected), Administrative Record, Vol. 2.1 at 233.

98. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2007-001-08, Administrative Record, Vol. 1.1 at 52-54.

154. Regarding any future injury caused by a negative export performance, the Tribunal observes that the domestic industry's exports were significantly less profitable in 2007 than in 2006, despite an increase in export sales volume.⁹⁹ While it is possible that a decline in export performance may have a negative impact on the domestic industry in the future, this has not been attributed to the subject goods. Therefore, it does not negate the Tribunal's conclusion that there exists a threat of injury from the dumping and subsidizing of the subject goods.

155. The Tribunal also notes that the parties opposed submitted that injury experienced by the domestic industry over the POI could be attributed to a number of other factors, including the domestic industry's inability to supply the market, intra-industry competition and exchange rates. Although it is possible that some of these factors may adversely affect the domestic industry in the future, the impact of these other factors has not been attributed to the dumping and subsidizing of the subject goods. Moreover, any evidence on the record regarding the probable effect of these other factors does not negate the Tribunal's conclusion that the dumping and subsidizing of the subject goods, in and of themselves, are threatening to cause injury to the domestic industry.

156. In conclusion, on the basis of the factors considered above, the Tribunal is of the opinion that, in and of themselves, the dumping and subsidizing of the subject goods are threatening to cause injury to the domestic industry.

REQUEST FOR A REFERENCE TO THE PRESIDENT OF THE CBSA

157. IPSCO requested that, pursuant to section 46 of *SIMA*, the Tribunal advise the President of the CBSA of injurious dumping and subsidizing of ERW oil and gas well casing originating in or exported from China. This request did not appear in IPSCO's written submissions, but was made instead at the conclusion of the hearing by IPSCO. Imex, Cantak and CISA opposed this request and argued that it would be improper for the Tribunal to advise the President of the CBSA under section 46, as there is no evidence of dumping or subsidizing of ERW oil and gas well casing from China, and there is no evidence of injury.

158. Section 46 of *SIMA* reads as follows:

Where, during an inquiry referred to in section 42 respecting the dumping or subsidizing of goods to which a preliminary determination under this Act applies, the Tribunal is of the opinion that

(a) there is evidence that goods the uses and other characteristics of which closely resemble the uses and other characteristics of goods to which the preliminary determination applies have been or are being dumped or subsidized, and

(b) the evidence discloses a reasonable indication that the dumping or subsidizing referred to in paragraph (a) has caused injury or retardation or is threatening to cause injury,

the Tribunal, by notice in writing setting out the description of the goods first mentioned in paragraph (a), shall so advise the President.

159. The Tribunal is of the view that, in order to warrant advising the President of the CBSA pursuant to section 46 of *SIMA*, the evidence in the present case must indicate that: (1) ERW oil and gas well casing from China has uses and other characteristics which closely resemble those of the subject goods; (2) ERW oil and gas well casing from China has been or is being imported into Canada at dumped or subsidized prices; and (3) there is a reasonable indication that the dumping or subsidizing of these goods has caused or is threatening to cause injury.

99. *Protected Pre-hearing Staff Report*, revised 25 January 2008, Tribunal Exhibit NQ-2007-001-09B (protected), Administrative Record, Vol. 2.1 at 235.

160. With respect to the conditions listed above, the Tribunal is of the view that it does not have sufficient evidence to form an opinion as to whether imports of ERW oil and gas well casing from China have been or are being dumped or subsidized. The request therefore fails, and the Tribunal declines to advise the President of the CBSA as requested.

CONCLUSION

161. Pursuant to subsection 43(1) of *SIMA*, the Tribunal hereby finds that the dumping and subsidizing of the subject goods have not caused injury but are threatening to cause injury to the domestic industry.

Serge Fréchette
Serge Fréchette
Presiding Member

James A. Ogilvy
James A. Ogilvy
Member

Ellen Fry
Ellen Fry
Member