



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

FINDING AND REASONS

Inquiry No. NQ-2008-001

Carbon Steel Welded Pipe

*Finding issued
Wednesday, August 20, 2008*

*Reasons issued
Thursday, September 4, 2008*

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

**THE DUMPING AND SUBSIDIZING OF CARBON STEEL
WELDED PIPE ORIGINATING IN OR EXPORTED FROM
THE PEOPLE'S REPUBLIC OF CHINA**

FINDING

The Canadian International Trade Tribunal, pursuant to section 42 of the *Special Import Measures Act*, has conducted an inquiry to determine whether the dumping and subsidizing of carbon steel welded pipe, commonly identified as standard pipe, in the nominal size range of 1/2 inch up to and including 6 inches (12.7 mm to 168.3 mm in outside diameter) inclusive, in various forms and finishes, usually supplied to meet ASTM A53, ASTM A135, ASTM A252, ASTM A589, ASTM A795, ASTM F1083 or Commercial Quality, or AWWA C200-97 or equivalent specifications, including water well casing, piling pipe, sprinkler pipe and fencing pipe, but excluding oil and gas line pipe made to API specifications exclusively, 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 preliminary determinations dated April 22, 2008, and of final determinations dated July 21, 2008, that carbon steel welded pipe 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 carbon steel welded pipe originating in or exported from the People's Republic of China have caused injury to the domestic industry.

The Canadian International Trade Tribunal hereby excludes the following goods from its injury finding:

- carbon steel welded pipe in the nominal pipe size of 1 inch, meeting the requirements of specification ASTM A53, Grade B, Schedule 10, with a black or galvanized finish, and with plain ends, for use in fire protection applications;
- carbon steel welded pipe in nominal pipe sizes of 1/2 inch to 2 inches inclusive, produced using the electric resistance welding process and meeting the requirements of specification ASTM A53, Grade A, for use in the production of carbon steel pipe nipples; and

- carbon steel welded pipe in nominal pipe sizes of 1/2 inch to 6 inches inclusive, dual-stencilled to meet the requirements of both specification ASTM A252, Grades 1 to 3, and specification API 5L, with bevelled ends and in random lengths, for use as foundation piles.

James A. Ogilvy
James A. Ogilvy
Presiding Member

Ellen Fry
Ellen Fry
Member

Serge Fréchette
Serge Fréchette
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: July 22 to 25, 2008

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Lakeside Steel Corporation

Prudential Steel Ltd.

Importers/Others

Protin Import Ltd.

CANIP Industries Ltd.

Emco Electrical International a.d.b.a. Electrical
Resources International

Pipe & Piling Supplies Ltd.

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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 carbon steel welded pipe, commonly identified as standard pipe, in the nominal size range of 1/2 inch up to and including 6 inches (12.7 mm to 168.3 mm in outside diameter) inclusive, in various forms and finishes, usually supplied to meet ASTM A53, ASTM A135, ASTM A252, ASTM A589, ASTM A795, ASTM F1083 or Commercial Quality, or AWWA C200-97 or equivalent specifications, including water well casing, piling pipe, sprinkler pipe and fencing pipe, but excluding oil and gas line pipe made to API specifications exclusively (CSWP), 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 January 23, 2008, the President of the Canada Border Services Agency (CBSA), following a complaint filed by ArcelorMittal and ArcelorMittal Tubular Products Montreal Inc., initiated an investigation into whether the subject goods had been dumped and subsidized. ArcelorMittal's complaint was supported by Lakeside Steel Corporation (Lakeside) and Prudential Steel Ltd. (Prudential).²

3. On January 24, 2008, 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 March 25, 2008, the Tribunal made a preliminary determination that there was a reasonable indication that the dumping and subsidizing of the subject goods had caused injury.

4. On April 22, 2008, the CBSA issued preliminary determinations of dumping and subsidizing. It was satisfied, as a result of its preliminary investigations, that the subject goods had been dumped and subsidized, that the margin of dumping and the amount of subsidy were not insignificant and that the volumes of dumped and subsidized goods were not negligible.

5. On April 23, 2008, the Tribunal issued a notice of commencement of inquiry.³ In its notice, the Tribunal set out the applicable deadlines for the filing of product exclusion requests, any replies thereto and any responses to these replies, if any. On July 4, 2008, the Tribunal confirmed, by way of letter to counsel and parties of record, that it intended to deal with product exclusion requests by way of written submissions only.⁴

6. The Tribunal's period of inquiry (POI) covered three full years, from January 1, 2005, to December 31, 2007, and an interim period from January 1 to March 31, 2008 (the first quarter of 2008). As part of its inquiry, the Tribunal sent questionnaires to potential domestic producers, importers and foreign producers of CSWP. 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.

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

2. IPSCO Inc. (IPSCO) also supported the complaint, but withdrew its participation in the Tribunal's inquiry on June 20, 2008. Bolton Steel Tube Company Limited (Bolton Steel) indicated its support of the complaint during the Tribunal's preliminary injury inquiry.

3. C. Gaz. 2008.I.1405.

4. Tribunal Exhibit NQ-2008-001-45, Administrative Record, Vol. 1 at 266.

7. On July 21, 2008, the CBSA issued its final determinations of dumping and subsidizing.

8. A hearing, with public and *in camera* testimony, was held in Ottawa, Ontario, from July 22 to 25, 2008. ArcelorMittal Tubular Products Montreal Inc. (ArcelorMittal), Lakeside and Prudential filed submissions, provided evidence and made arguments in support of a finding of injury. They were represented by counsel and presented witnesses at the hearing. Protin Import Ltd. (Protin) filed a submission, provided evidence and made arguments in opposition to a finding of injury. It was represented by its president, who testified at the hearing.

9. The Canadian Fence Industry Association, Western Chapter (CFIA) filed a submission in opposition to a finding of injury, but did not appear at the hearing.

10. The record of this inquiry consists of all Tribunal exhibits, including the record of the preliminary injury inquiry (PI-2007-002), replies to questionnaires, requests for information and replies thereto in accordance with the Tribunal's directions, all documents with respect to the product exclusion process, 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.

11. The Tribunal issued its finding on August 20, 2008.

RESULTS OF THE CBSA'S INVESTIGATIONS

12. The CBSA determined that the weighted average margin of dumping, expressed as a percentage of the export price, was 141 percent and that the weighted average amount of subsidy, expressed as a percentage of the export price, was 73 percent. The CBSA also determined that the margin of dumping and the amount of subsidy were not insignificant. The CBSA found that 100 percent of the subject goods released into Canada from January 1 to December 31, 2007, were dumped and that 100 percent of the subject goods released into Canada from July 1, 2006, to December 31, 2007, were subsidized.⁵

PRODUCT

Product Description

13. CSWP is a category of products commonly referred to as standard pipe, which is generally intended for the low-pressure conveyance of steam, water, natural gas, air and other liquids and gases in applications such as plumbing and heating, air conditioning and sprinkler systems for fire protection. CSWP is also used as piling and as structural support for fencing, as well as for other mechanical and light load-bearing applications.

14. CSWP may also be produced to proprietary specifications rather than to an industry standard, as is often the case with fencing pipe, or to foreign specifications. For example, imported CSWP may be produced to a British Standard, BS 1387.

15. The size of CSWP is generally specified by two values: a nominal pipe size (NPS) and a schedule. For CSWP in the range of diameters included in the subject goods, the NPS relates loosely to the inside diameter. The schedule relates to the wall thickness. For a given NPS, the wall thickness increases with

5. Tribunal Exhibit NQ-2008-001-04A, Administrative Record, Vol. 1 at 198.37, 198.40, 198.52.

larger schedules. For example, CSWP in an NPS of 1 inch (NPS 1) meeting the requirements of specification ASTM A53, Schedule 40, has an outside diameter of 1.315 inches and a wall thickness of 0.133 inch. CSWP in NPS 1 meeting the requirements of specification ASTM A53, Schedule 80, also has an outside diameter of 1.315 inches, but has a wall thickness of 0.179 inch.

16. Common schedules for CSWP are 10, 40 and 80.

Production Process

17. CSWP is produced in mills using either the continuous welding (CW) process or the electric-resistance welding (ERW) process. Both processes begin with strips of steel sheet that have been slit longitudinally from coils of flat steel sheet. The width of the strips is equal to the circumference of the pipe to be produced.

18. In the CW process, the strips of sheet are heated to a welding temperature of approximately 1,420°C in a gas-fired furnace. The hot strips are then passed through a series of rollers to form a tubular shape, with the edges finally being butted together under pressure to form a weld to which no filler metal is added.

19. In the ERW process, cold strips of sheet are passed through a series of rollers to form a tubular shape, and the edges of the strip are heated electrically and welded together under heat and pressure. As in the CW process, no filler metal is added to the weld.

20. Both welding processes produce a bead or “flash”, which is generally trimmed from both sides of the weld.

21. Once the basic pipe is formed using either process, it is cut to length, and the pipe ends may be processed, i.e. cropped, faced and reamed, threaded, coupled, rolled and/or cut-grooved. The pipe may be straightened and tested. Finishes, such as lacquer or zinc (galvanizing), may be applied to the surface of the pipe. Other finishing operations include stencilling and bundling of the pipe.

DOMESTIC PRODUCERS

22. The Tribunal sent questionnaires to nine potential domestic producers. It received complete replies from ArcelorMittal, Lakeside, Prudential and Quali-T-Group ULC (Quali-T-Group).⁶

ArcelorMittal

23. ArcelorMittal is a wholly owned subsidiary of ArcelorMittal and ArcelorMittal Pipes & Tubes N.V. of Luxembourg. ArcelorMittal partly owns Delta Tube and Company Limited (Delta Tube) of Lasalle, Quebec.

24. ArcelorMittal produces CSWP in NPS 1/2 to NPS 4 using the CW process. Its subsidiary, Delta Tube, produces CSWP in NPS 2 to NPS 6 using the ERW process and ships it to ArcelorMittal for finishing and sale. Delta Tube also produces hollow structural sections. During the POI, ArcelorMittal and Delta Tube did not import CSWP.

6. The Tribunal also received limited information from IPSCO, Bolton Steel and Delhi-Solac Inc. In addition, the Tribunal received a reply from Tubular Steel Inc., which indicated that it produced predominantly mechanical steel tube to ASTM A513 specification, and another reply from OSM Tubular Camrose, Evraz Oregon Steel Mills, Inc., which indicated that it was not a producer of CSWP in the size range covered by the Tribunal's inquiry.

Lakeside

25. Lakeside of Welland, Ontario, was formed on November 1, 2005, when it purchased the assets of Stelpipe Ltd. It is a wholly owned subsidiary of Added Capital Corp. Lakeside produces CSWP in NPS 3/4 to NPS 8 using the ERW process. It also produces other tubular products. During the POI, Lakeside did not import CSWP.

Prudential

26. Prudential of Calgary, Alberta, is wholly owned by Maverick Tube Limited Partnership, which, in turn, is owned by Maverick Tube Corporation. Maverick Tube Corporation was acquired by Tenaris S.A. in 2006. Prudential produces a range of ERW products with an outside diameter ranging from 2 3/8 inches to 12 3/4 inches, including oil country tubular goods (OCTG) and line pipe. Prudential's participation in the Canadian CSWP market is now limited to its sales of non-prime material, i.e. seconds from its OCTG and line pipe production. During the POI, Prudential did not import such seconds or any CSWP.

Quali-T-Group

27. Quali-T-Group of Bromont, Quebec, started its operations in the 1950s. It offered hot-dip galvanizing services to industries that produced fencing, power transmission poles and other structural products. Quali-T-Group owns two divisions. The Quali-T-Fab division produces scaffolding and piling pipe from steel pipe produced by its other division and the Quali-T-Tube division produces Commercial Quality CSWP in NPS 3/4 to NPS 3, as well as Commercial Quality round, square and rectangular hollow structural sections. During the POI, Quali-T-Group did not import CSWP.

IMPORTERS, PURCHASERS AND FOREIGN PRODUCERS

28. The Tribunal sent questionnaires to 25 potential importers of CSWP and received 18 questionnaire replies, 3 of which indicated that the respondents did not import CSWP within the ASTM or equivalent specifications covered by the Tribunal's inquiry. It also received 4 letters from companies that indicated that they were either not importers of CSWP covered by the Tribunal's inquiry or such small importers that they could not provide the information as requested.

29. The Tribunal sent questionnaires on market characteristics to 30 purchasers. The Tribunal received 19 replies, of which 17 were from wholesalers/distributors and 2 from end users.

30. The Tribunal sent questionnaires to 11 potential foreign producers/exporters located in China, but received no replies.

DISTRIBUTION

31. The domestic mills sell CSWP to distributors and, to a lesser extent, to large volume end users. Distributors purchase CSWP in a range of sizes and stock the product for resale. End users consist primarily of companies involved in the plumbing, heating or construction businesses in Canada. Distributors and end users of CSWP may purchase pipe from domestic mills or from importers or other distributors located in Canada or abroad. Distributors and end users may also import directly.

PRICING

32. The production cost of CSWP is mostly dependent on the cost of hot-rolled steel coil, which is the major raw material used in the production of CSWP.

33. Domestic producers and importers do not use price lists. CSWP is generally priced in the Canadian marketplace on a customer-specific basis. Prices are quoted exclusive or inclusive of delivery costs to the customer.

ANALYSIS

34. 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 . . .”

35. The Tribunal must therefore first determine what constitutes “like goods”. It will then determine what constitutes the “domestic industry” for the purposes of its injury analysis. The Tribunal must also determine whether it will make an assessment of the cumulative effect of the dumping and subsidizing of the subject goods.

36. The Tribunal will then determine whether the dumping or subsidizing of the subject goods has caused injury to the domestic industry. Should the Tribunal arrive at a finding of no injury, it will then determine whether there exists a threat of injury.⁷ Because a domestic industry is already established, the Tribunal will not consider the question of retardation.⁸

37. In conducting its injury analysis, the Tribunal will also examine other factors alleged to have an impact on the domestic industry to ensure that any injury caused by such factors is not attributed to the effects of the dumping or subsidizing of the subject goods.

Like Goods and Classes of Goods

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

39. 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”.

40. When goods are not identical in all respects to other goods, the Tribunal typically considers a number of factors to determine “likeness”, 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.⁹

41. In its preliminary injury inquiry, the Tribunal found that the goods produced in Canada that were of the same description as the subject goods were like goods. During the final injury inquiry stage, the Tribunal received no submissions that challenged this finding.

42. On the basis of the evidence before it, the Tribunal sees no reason to depart from its preliminary finding. The Tribunal is of the opinion that CSWP produced in Canada closely resembles the subject goods in terms of physical and market characteristics, can generally be substituted for them and competes directly with them in the Canadian market.¹⁰ Accordingly, for the purposes of this injury inquiry, the Tribunal finds that domestically produced CSWP constitutes like goods to the subject goods.

43. Concerning the issue of classes of goods, the Tribunal must consider whether there are sufficient differences based on an analysis of the above-mentioned factors for determining “likeness” to justify separating the goods into different classes. In other words, the Tribunal must consider whether the individual products within the range of goods are “like goods” to one another.

44. In the context of its preliminary injury inquiry, the Tribunal found that CSWP constituted a single class of goods. Again, the Tribunal received no submissions during the final injury inquiry stage that challenged this finding.

45. On the basis of the evidence now before it, the Tribunal sees no reason to depart from this preliminary finding. The Tribunal is satisfied that, overall, while not identical in all respects to each other, all types of CSWP have similar physical and market characteristics. The fact that some types of CSWP may not be fully substitutable for each other for some end uses is not, in the Tribunal’s opinion, a sufficient basis for determining that there exists more than one class of goods. Accordingly, for the purposes of this injury inquiry, the Tribunal concludes that there is a single class of goods.

Domestic Industry

46. Having decided what constitutes the like goods in this injury inquiry, the Tribunal must now consider which domestic producers constitute the domestic industry. 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.

47. 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 domestic production of like goods.

9. See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at 8 [*Copper Pipe Fittings*]; *Oil and Gas Well Casing* (10 March 2008), NQ-2007-001 (CITT) at 7 [*Oil and Gas Well Casing*].

10. *Pre-hearing Staff Report*, revised 16 July 2008, Tribunal Exhibit NQ-2008-001-06B, Administrative Record, Vol. 1.1A at 27, 28.

48. Prudential's participation in the Canadian CSWP market, during the POI, was limited to its sales of seconds of OCTG and line pipe, which are not certified to meet the requirements of any of the CSWP ASTM or equivalent specifications. The Tribunal is of the view that the evidence on the record does not provide a basis for distinguishing between these seconds sold in the Canadian CSWP market and Commercial Quality CSWP, which is explicitly included in the definition of the subject goods. The evidence indicates that Commercial Quality CSWP includes all non-stencilled products, i.e. products that are not certified to meet the requirements of any of the CSWP ASTM or equivalent specifications.¹¹ Accordingly, the Tribunal considers these seconds to be like goods¹² and considers Prudential to be a producer of like goods.

49. The evidence indicates that, during the POI, the combined domestic production of ArcelorMittal, Lakeside, Prudential and Quali-T-Group—the four domestic producers that provided complete replies to the Tribunal's questionnaire—accounted for well over three quarters of the total domestic production of like goods,¹³ which is, in the Tribunal's view, a major proportion of the domestic production of like goods. Consequently, the Tribunal finds that these four producers constitute the domestic industry for the purpose of the Tribunal's injury analysis. Therefore, any references to "like goods", "domestic producers", "domestic production" or "domestic industry" in the Tribunal's injury analysis will be to ArcelorMittal, Lakeside, Prudential and Quali-T-Group only.

Cross-cumulation

50. As noted above, the Tribunal must also determine whether it will make an assessment of the combined effect of the dumping and subsidizing of the subject goods, i.e. whether it will cross-cumulate. Subsection 42(3) of *SIMA* addresses cumulation, which is the effect of the dumping of goods from more than one country, taken together, or of the subsidizing of goods from more than one country, taken together. There are no legislative provisions that directly address cross-cumulation.

51. However, as stated in previous cases, subsections 37.1(1) and (2) of the *Special Import Measures Regulations*¹⁴ prescribe certain factors for the Tribunal to consider in making its finding. These factors have, as their focus, the effect that dumped or subsidized goods have had or may have on a number of economic indices. Goods that are both dumped and subsidized and that originate in a given country (such as China in this instance) are the same goods. It has therefore been the Tribunal's longstanding view that, when conducting an injury analysis, 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 allocate discrete portions to the dumping and the subsidizing.¹⁵

52. The Tribunal will therefore cross-cumulate in the present case.

11. *Transcript of Public Hearing*, Vol. 3, 24 July 2008, at 251.

12. Some other domestic producers reported seconds arising from their production of CSWP. Given that these are simply sub-standard products that cannot be certified but are sold into the low end of the same market for similar end uses, the Tribunal considers them also to be like goods. *Protected Pre-hearing Staff Report*, revised 16 July 2008, Tribunal Exhibit NQ-2008-001-7B (protected), Administrative Record, Vol. 2.1A at 95.

13. *Protected Pre-hearing Staff Report*, revised 16 July 2008, Tribunal Exhibit NQ-2008-001-07B (protected), Administrative Record, Vol. 2.1A at 40.

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

15. See, for example, *Oil and Gas Well Casing* at 12; *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.

INJURY¹⁶

53. Subsection 37.1(1) of the *Regulations* prescribes the factors that the Tribunal must consider in its injury analysis, which are discussed below.

Volume of Imports of Dumped and Subsidized Goods

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

55. ArcelorMittal and Lakeside argued that imports from China increased exponentially, in both absolute and relative terms, during the POI, making China the single largest source of supply in the Canadian market.

56. Imports of dumped and subsidized goods were significant throughout the POI and represented the major share of total imports of CSWP into Canada in most periods. They attained their highest share of the Canadian CSWP market in the first quarter of 2008.

57. The evidence on the record indicates that, in absolute terms, the volume of dumped and subsidized imports increased by 40 percent between 2005 and 2007. While total import volumes of CSWP also increased, the overall increase was only 11 percent from 2005 to 2007. When comparing the first quarter of 2007 to the first quarter of 2008, the volumes of dumped and subsidized imports and of total imports decreased by 6 percent and 9 percent respectively. In the Tribunal's view, the small decrease in imports of the subject goods in the first quarter of 2008 is unlikely to indicate a trend that offsets more than to a small extent the significant increase observed during the preceding three years.¹⁷

58. Expressed as a percentage of the volume of domestic production, the volume of dumped and subsidized imports increased by 35 percentage points between 2005 and 2007 to attain a level that corresponded to a very substantial proportion of domestic production. This trend reflects a decline in domestic production in the face of growing imports of the subject goods. A comparison between the first quarter of 2007 and the first quarter of 2008 shows that the volume of imports of dumped and subsidized goods decreased slightly relative to the volume of production. However, as in previous periods, beginning in 2006, it remained well over three quarters as large as the volume of production of the domestic industry.¹⁸

59. The volume of dumped and subsidized imports also rose relative to the consumption of like goods. In every period of the POI, the volume of imports of the subject goods surpassed the volume of domestic sales of like goods. However, between 2005 and 2007, the difference in volumes grew significantly, as the ratio of imports of the subject goods to domestic consumption increased by more than 50 percentage points.

16. Most of the information filed with the Tribunal and reported in the pre-hearing staff report was designated as confidential. Therefore, references to data in this statement of reasons are limited, for the most part, to percentages and trends.

17. *Pre-hearing Staff Report*, revised 16 July 2008, Tribunal Exhibit NQ-2008-001-06B, Administrative Record, Vol. 1.1A at 44; *Protected Pre-hearing Staff Report*, revised 16 July 2008, Tribunal Exhibit NQ-2008-001-07B (protected), Administrative Record, Vol. 2.1A at 44.

18. *Pre-hearing Staff Report*, revised 16 July 2008, Tribunal Exhibit NQ-2008-001-06B, Administrative Record, Vol. 1.1A at 44; *Protected Pre-hearing Staff Report*, revised 16 July 2008, Tribunal Exhibit NQ-2008-001-07B (protected), Administrative Record, Vol. 2.1A at 40.

A comparison between the first quarter of 2007 and the first quarter of 2008 shows that the volume of imports of the subject goods decreased by nearly 30 percentage points relative to the volume of domestic sales of like goods, remaining, nonetheless, much larger than the volume of domestic sales.¹⁹

60. Basing its conclusion on the foregoing, the Tribunal is of the view that, during the POI, there was a significant increase in the absolute volume of dumped and subsidized imports and an even more significant increase in the relative volume of dumped and subsidized imports compared to the volume of production and consumption of like goods.

Effects of Dumped and Subsidized Imports on Prices

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

62. ArcelorMittal and Lakeside alleged that the low prices of the subject goods have forced down prices in the Canadian market as a whole and have especially resulted in lower selling prices for the domestic industry. They also alleged that the extensive price undercutting by the subject goods prevented the domestic industry from raising its prices throughout the POI and forced it to reduce prices to remain somewhat competitive in the Canadian market.

63. ArcelorMittal and Lakeside argued that CSWP is a commodity product and that price is usually the principal factor dictating purchasing decisions. In the Tribunal's opinion, the evidence on the record supports this view. The lowest price was rated as a "very important" or "somewhat important" factor in the buying decisions of all 19 respondents to the Tribunal's purchasers' questionnaire on market characteristics. Furthermore, 15 of the 19 respondents reported that they usually purchased the lowest-priced product. Several witnesses, including three distributors and a major importer of CSWP, also referred to price as an important factor in CSWP purchasing decisions.²⁰

64. In July 2007, China eliminated the rebate of its 13 percent value-added tax (VAT) on the subject goods. In January 2008, it imposed a 15 percent export tax on the subject goods.²¹ In the Tribunal's view, all other things being equal, the former change should have been fully apparent in the Canadian market by the first quarter of 2008. Beyond this, the Tribunal would have expected at least a portion of the latter change to have manifested itself by the end of the first quarter of 2008.

65. Further, the Tribunal would have expected to see higher delivered prices for the subject goods in the first quarter of 2008 because of the significant increases in ocean transportation costs during this time due largely to increasing fuel costs.²² Moreover, even though the costs of the principal raw material used in the

19. *Pre-hearing Staff Report*, revised 16 July 2008, Tribunal Exhibit NQ-2008-001-06B, Administrative Record, Vol. 1.1A at 44; *Protected Pre-hearing Staff Report*, revised 16 July 2008, Tribunal Exhibit NQ-2008-001-07B (protected), Administrative Record, Vol. 2.1A at 48.

20. *Pre-hearing Staff Report*, revised 16 July 2008, Tribunal Exhibit NQ-2008-001-06B, Administrative Record, Vol. 1.1A at 26, 32; *Transcript of Public Hearing*, Vol. 2, 23 July 2008, at 228-29; *Transcript of Public Hearing*, Vol. 3, 24 July 2008, at 274-75, 335-38, 386.

21. Tribunal Exhibit NQ-2008-001-24.16, Administrative Record, Vol. 1 at 214.44-214.57.

22. Tribunal Exhibit NQ-2008-001-24.07, Administrative Record, Vol. 1 at 214.2-214.9; Tribunal Exhibit NQ-2008-001-24.31 (single copy), Vol. 7 at 229-50; protected record of Preliminary Injury Inquiry No. PI-2007-002, Tribunal Exhibit NQ-2008-001-35 (protected single copy); *Transcript of Public Hearing*, Vol. 1, 22 July 2008, at 22; *Transcript of Public Hearing*, Vol. 2, 23 July 2008, at 230-31; *Transcript of Public Hearing*, Vol. 3, 24 July 2008, at 260-61.

production of CSWP, hot-rolled steel coil, were not at the same levels in China as in North America, they did increase by 30 percent from the first quarter of 2007 to the first quarter of 2008, and this should have been reflected in the delivered prices of the subject goods in Canada.²³

66. Despite these pressures, the price of the subject goods was only 9 percent higher in the first quarter of 2008 than in the first quarter of 2007.²⁴

Price Undercutting

67. ArcelorMittal and Lakeside alleged that the subject goods had aggressively undercut the prices of the like goods and were in fact the lowest-priced CSWP in the Canadian market throughout the POI.

68. The Tribunal agrees that the evidence indicates that the domestic industry lowered its prices during the POI in an attempt to compete with the low-priced subject goods. A comparison of these average unit selling prices in the Canadian market reveals that the dumped and subsidized goods were the lowest-priced throughout the POI, undercutting the domestic industry's average unit selling prices in every period. The largest gap was in 2006, when the average unit selling price of the dumped and subsidized goods was more than CAN\$150 per tonne, i.e. 16 percent, lower than the average unit selling price of the like goods. This price gap narrowed in 2007 and again during the first quarter of 2008, which resulted in the average unit selling prices of the subject goods and the like goods being almost at par, but with the lower-priced subject goods still enjoying a slight advantage.²⁵

69. The Tribunal notes that product mix, i.e. the product range and the sizes and types of the goods, may be a factor in comparing the average selling prices of the like goods with those of the subject goods. Differences in product mix may mask the true price differential between comparable products. In this instance, the evidence on the record indicates that the like goods include a portion of seconds that command lower average selling prices,²⁶ whereas seconds are not present among the subject goods.²⁷ Furthermore, the Tribunal is unaware of imports of any subject goods that are not certified to meet the requirements of ASTM or equivalent specifications,²⁸ whereas the like goods include a significant portion of Commercial Quality CSWP, which, like seconds, tend to have a lower average selling price than CSWP that is certified to meet the requirements of certain ASTM or equivalent specifications, including the most common specification, ASTM A53. On the basis of these factors, which would tend to lower the average selling prices of like goods relative to the subject goods, and noting that the evidence does not suggest that domestic

23. Importer's Exhibit G-02 at para. 1, Administrative Record, Vol. 13; Tribunal Exhibit NQ-2008-001-04A, Administrative Record, Vol. 1 at 198.38-198.39, 198.84-198.85; Tribunal Exhibit NQ-2008-001-24.01 (single copy), Administrative Record, Vol. 7 at 2-3; Tribunal Exhibit NQ-2008-001-24.13 (single copy), Administrative Record, Vol. 7 at 96-97; Tribunal Exhibit NQ-2008-001-24.28 (single copy), Administrative Record, Vol. 7 at 225-27; *Transcript of Public Hearing*, Vol. 1, 22 July 2008, at 72; *Transcript of Public Hearing*, Vol. 2, 23 July 2008, at 168-70.

24. *Pre-hearing Staff Report*, revised 16 July 2008, Tribunal Exhibit NQ-2008-001-06B, Administrative Record, Vol. 1.1A at 55.

25. *Ibid.* at 54.

26. Tribunal Exhibit NQ-2008-001-12.06 (protected), Administrative Record, Vol. 4B at 15, 18; Tribunal Exhibit NQ-2008-001-RI-01A (protected) at 4-7, Administrative Record, Vol. 10; Tribunal Exhibit NQ-2008-001-RI-01E (protected) at 8-11, Administrative Record, Vol. 10; Tribunal Exhibit NQ-2008-001-RI-02A (protected) at 4-5, 8-9, Administrative Record, Vol. 10.

27. Of the 10 importers that reported sales of the subject goods during the POI in their questionnaire replies, none reported sales of seconds. These questionnaire replies are found under collective Tribunal Exhibit NQ-2008-001-15 (protected), Administrative Record, Vol. 6.

28. *Transcript of Public Hearing*, Vol. 1, 22 July 2008, at 131; *Transcript of Public Hearing*, Vol. 3, 24 July 2008, at 250-51.

production has been concentrated in higher-priced goods to an extent likely to offset these factors, the Tribunal is of the view that price gaps between truly comparable subject goods and like goods would likely be greater than the weighted averages shown in the apparent market table in the Tribunal's pre-hearing staff report.²⁹

70. For these reasons, the Tribunal considers that the benchmark product information,³⁰ despite its small volumes, provides the most reliable basis on which to make pricing comparisons. An examination of this information indicates that, of the 32 quarters where there were price comparisons between the subject goods and like goods, average unit selling prices of CSWP from China undercut the domestic industry's average unit selling prices in all but one instance. Comparable sales at specific accounts also show price undercutting by the dumped and subsidized goods, although this information is limited.³¹

71. The Tribunal further observes that the vast majority of replies to the Tribunal's purchasers' questionnaire on market characteristics indicate that imports of the subject goods had the price advantage over the like goods.³²

72. Other evidence on the record in the form of injury allegations provided by ArcelorMittal and Lakeside corroborates the consistent and significant undercutting effect of the selling prices of the subject goods with respect to those of the like goods.³³

73. On the basis of the foregoing analysis, the Tribunal is convinced that the information on the record indicates that, on balance, the prices of the subject goods significantly undercut the prices of the like goods in the Canadian market over the POI.

Price Depression

74. With respect to price depression, the information on the record indicates that the domestic industry's average unit selling prices declined throughout the POI. Between 2005 and 2007, its average unit selling prices fell by 8 percent and remained essentially constant in the first quarter of 2008 relative to the first quarter of 2007. Price depression was also experienced by the domestic industry for three of the five benchmark products over the POI. In addition, there were injury allegations made in respect of certain accounts where the domestic industry encountered competition from the subject goods, whose selling prices were undercutting those of the like goods.³⁴

29. Tribunal Exhibit NQ-2008-001-RI-01A (protected) at 4-7, Administrative Record, Vol. 10; Tribunal Exhibit NQ-2008-001-RI-01E (protected) at 8-11, Administrative Record, Vol. 10; Tribunal Exhibit NQ-2008-001-RI-02A (protected) at 4-5, 8-9, Administrative Record, Vol. 10; Tribunal Exhibit NQ-2008-001-RI-07A (protected) at 4, 6, 8, 10, Administrative Record, Vol. 10.

30. Benchmark product information covers quarterly data from the third quarter of 2006 to the first quarter of 2008.

31. *Protected Pre-hearing Staff Report*, revised 16 July 2008, Tribunal Exhibit NQ-2008-001-07B (protected), Administrative Record, Vol. 2.1A at 61, 64-68.

32. *Pre-hearing Staff Report*, revised 16 July 2008, Tribunal Exhibit NQ-2008-001-06B, Administrative Record, Vol. 1.1A at 28.

33. Tribunal Exhibit NQ-2008-001-12.03 (protected), Administrative Record, Vol. 4 at 69-81, 83-94, 96-97, 101-113; Tribunal Exhibit NQ-2008-001-12.03C (protected), Administrative Record, Vol. 4 at 193; Tribunal Exhibit NQ-2008-001-12.04 (protected), Administrative Record, Vol. 4A at 35-36, 39-44.

34. *Pre-hearing Staff Report*, revised 16 July 2008, Tribunal Exhibit NQ-2008-001-06B (protected), Administrative Record, Vol. 1.1A at 39; *Protected Pre-hearing Staff Report*, revised 16 July 2008, Tribunal Exhibit NQ-2008-001-07B (protected), Administrative Record, Vol. 2.1A at 64, 66-67; Tribunal Exhibit NQ-2008-001-12.03 (protected), Administrative Record, Vol. 4 at 71-72, 74-77, 80, 84, 91-94, 97, 107, 109, 112; Tribunal Exhibit NQ-2008-001-12.04 (protected), Administrative Record, Vol. 4A at 35-37, 39, 41, 43.

75. As noted above, CSWP is a product for which price plays an important role in the purchasing decision. Accordingly, it is reasonable to conclude that the significant price undercutting present in the Canadian market forced the domestic industry to lower its prices to try to meet those of the dumped and subsidized imports. The Tribunal is convinced, therefore, on the basis of this evidence, that the prices of the subject goods significantly depressed the prices of the like goods in the Canadian market.

Price Suppression

76. ArcelorMittal and Lakeside submitted that the severe price undercutting by the low-priced subject goods prevented them from raising prices during periods of rising costs and, consequently, from passing on input cost increases to customers.

77. As mentioned earlier, hot-rolled steel coil is by far the most significant raw material used in the production of CSWP and, in 2007, accounted for more than three quarters of direct material costs for the domestic industry.³⁵ Evidence on the record shows that the benchmark cost of hot-rolled steel coil for North America, expressed in U.S. dollars per tonne, decreased by 15 percent from January 2005 to December 2007, although there was significant year-to-year variability, as the U.S. cost per tonne decreased by 16 percent during 2005 and by a further 4 percent during 2006, before rising by 9 percent from January to December 2007.

78. Since the beginning of 2008, the cost of hot-rolled steel coil has increased dramatically and has reached record levels. From the first quarter of 2007 to the first quarter of 2008, its cost rose by 33 percent to reach US\$838 per tonne and to surpass, in March 2008, the previous peak of US\$816 per tonne registered in September 2004. Since March 2008, the cost of hot-rolled steel coil has continued to climb to well over US\$1,100 per tonne in May, June and July 2008.³⁶ Testimony from the domestic industry indicated that it experienced a significant impact from this rapid rise in the cost of hot-rolled steel coil in 2008.³⁷

79. In the Tribunal's view, producers faced with such increases in costs would normally try to pass these on to their customers in order to maintain existing levels of profitability. In this regard, witnesses for ArcelorMittal and Lakeside testified that, in recent months, they had begun to increase their prices to try to keep up with the significant increases in raw material costs, but that they had not been able to cover the entire amount of the increase.³⁸

80. The Tribunal is convinced that, looking at the POI as a whole, it is the constant competition of low-priced subject goods in the Canadian market that prevented the domestic industry from being able to raise its unit selling prices sufficiently to cover these increases in its costs. The evidence shows that, from 2007 onward, the domestic industry could not even recover its cost of goods sold on either an aggregate or a unit gross margin basis.³⁹

35. *Protected Pre-hearing Staff Report*, revised 16 July 2008, Tribunal Exhibit NQ-2008-001-07B (protected), Administrative Record, Vol. 2.1A at 76.

36. The benchmark cost for hot-rolled steel coil in North America is the *CRU Monitor* domestic (United States) Midwest FOB price. Tribunal Exhibit NQ-2008-001-24.01 (single copy), Administrative Record, Vol. 7 at 2-3; Tribunal Exhibit NQ-2008-001-24.28 (single copy), Administrative Record, Vol. 7 at 225-27; Manufacturer's Exhibit A-16 (single copy) at 3, Administrative Record, Vol. 11A; *Pre-hearing Staff Report* from Expiry Review No. RR-2004-003, revised 5 April 2005, Tribunal Exhibit NQ-2008-001-36E, Administrative Record, Vol. 1.4 at 102.

37. *Transcript of Public Hearing*, Vol. 1, 22 July 2008, at 76-78, 144; *Transcript of In Camera Hearing*, Vol. 1, 22 July 2008, at 40.

38. *Transcript of Public Hearing*, Vol. 1, 22 July 2008, at 20, 77-78.

39. *Protected Pre-hearing Staff Report*, revised 16 July 2008, Tribunal Exhibit NQ-2008-001-07B (protected), Administrative Record, Vol. 2.1A at 71; Manufacturers' Exhibits A-03 at para. 77 and B-03 at para. 34, Administrative Record, Vol. 11.

81. In view of the foregoing, the Tribunal concludes that the subject goods had a significant suppressive effect on the price of like goods throughout the POI. In this regard, the Tribunal observes that, except for very brief periods, the cost of hot-rolled steel coil in China during the POI was consistently cheaper than in North America and that increases in Chinese coil prices during the first seven months of 2008 did not keep pace with global averages, reaching only US\$769 per tonne in March 2008 and US\$870 per tonne in July 2008.⁴⁰ The Tribunal also heard testimony that some Chinese producers of CSWP base their price on hot-rolled strip, which is even cheaper than hot-rolled steel coil.⁴¹

Conclusion

82. In summary, the Tribunal concludes that the subject goods have significantly undercut, depressed and suppressed the prices of like goods in the Canadian market.

Impact of Dumped and Subsidized Imports on the Domestic Industry

83. Pursuant to paragraph 37.1(1)(c) of the *Regulations*, the Tribunal will 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.

84. ArcelorMittal, Lakeside and Prudential argued that the dumped and subsidized imports have adversely affected virtually every relevant indicator of the domestic industry's performance, whether it be production, capacity utilization, sales, market share, gross margin, net income, inventories or employment.

85. Prudential also alleged that the low-priced subject goods in Western Canada prevented it from serving that market with anything other than seconds from its OCTG and line pipe production, as it could not profitably sell CSWP meeting the requirements of any ASTM or equivalent specifications.

Production, Capacity and Capacity Utilization

86. The domestic industry's volume of production fell by nearly 15 percent between 2005 and 2007, with virtually the entire decrease taking place in 2007, following constant volumes in 2005 and 2006. Production increased moderately in the first quarter of 2008 compared to the first quarter of 2007.

87. The domestic industry's capacity increased in 2006 compared to 2005 as a result of Lakeside commencing production in November 2005. Thereafter, capacity remained relatively stable for the remainder of the POI. With respect to the domestic industry's capacity utilization for CSWP, it decreased to a small extent from 2005 to 2007, while a comparison of the first quarter of 2007 with the first quarter of 2008 shows a slight increase. The domestic industry had significant unused capacity throughout the POI.⁴²

40. The benchmark cost for hot-rolled steel coil in China is the *CRU Monitor* domestic (China) ex-warehouse Shanghai price. Tribunal Exhibit NQ-2008-001-24.01 (single copy), Administrative Record, Vol. 7 at 2-3; Tribunal Exhibit NQ-2008-001-24.13 (single copy), Administrative Record, Vol. 7 at 96-97; Tribunal Exhibit NQ-2008-001-24.28 (single copy), Administrative Record, Vol. 7 at 225-27; Manufacturer's Exhibit A-16 (single copy) at 3, Administrative Record, Vol. 11A.

41. *Transcript of Public Hearing*, Vol. 2, 23 July 2008, at 168-70.

42. *Protected Pre-hearing Staff Report*, revised 16 July 2008, Tribunal Exhibit NQ-2008-001-07B (protected), Administrative Record, Vol. 2.1A at 40, 79. Data in these tables of the revised pre-hearing staff report were further revised by the following exhibits to show production and capacity data for the domestic industry only: Tribunal Exhibit NQ-2008-001-12.06A (protected), Administrative Record, Vol. 4B at 51; Tribunal Exhibit NQ-2008-01-12.07 (protected), Administrative Record, Vol. 4B at 86.

Sales From Domestic Production and Market Share

88. Between 2005 and 2007, the domestic industry saw a downward trend in both its domestic sales from domestic production and its market share, which sustained their lowest levels in 2007. In contrast, from 2005 to 2006, the Canadian market grew by 13 percent to its largest size during the POI, before falling by 2 percent in 2007 for a net increase of 11 percent between 2005 and 2007.

89. Between 2005 and 2007, the domestic industry was unable to benefit from the growth in the market, as sales of the subject goods, with their large increase in volume, captured more than the market share lost by the domestic industry and non-subject countries combined. Sales of dumped and subsidized imports in the Canadian market rose by 60 percent from 2005 to 2006 and captured 40 percent of market share, an increase of 12 percentage points in just one year. The market share held by the dumped and subsidized imports did fall by 2 percentage points in 2007, but then it essentially maintained that level for the remainder of the POI. Between 2005 and 2007, the dumped and subsidized imports gained over 50 percent in sales volume and 10 percentage points in market share.

90. The size of the Canadian CSWP market declined by 3 percent in the first quarter of 2008 compared to the first quarter of 2007. Nonetheless, in the first quarter of 2008, the domestic industry managed to increase its volume of sales in the Canadian market for the first time, but only, on an annualized basis, to a level somewhat above that of the baseline year of 2005. The domestic industry attained its highest share of the market during the POI in the first quarter of 2008, having captured some market share relative to the first quarter of 2007. However, the evidence indicates that the domestic industry's gain in market share was at the expense of CSWP imports from non-subject countries and not imports of the subject goods, as the former lost several percentage points of share, while the latter managed to gain 1 percentage point of share in a declining market.⁴³ In the Tribunal's view, this indicates that the domestic industry was competitive against imports of fairly traded CSWP, but not against imports of the subject goods.

91. The Tribunal notes that the evidence on the record shows that Chinese exports of "welded tube", a category of products that includes CSWP, but that is broader in scope, decreased very significantly in the first five months of 2008 in comparison with the corresponding period in 2007. The decreases applied to shipments not only to Canada and the United States, which had provisional duties in place, and the European Union, where an anti-dumping proceeding was pending, but also to the rest of the world.⁴⁴ However, towards the end of the POI, the level of imports of the subject goods into Canada appeared not to be slowed by changes in the Chinese tax structure discussed above or by other forces, as the volumes of CSWP imported and sold in the first quarter of 2008 almost matched the volumes in the first quarter of 2007.⁴⁵ In the Tribunal's view, this persistent presence of the subject goods in the Canadian market, despite a variety of conditions that should have been unfavourable to the dumped and subsidized imports, continued to dampen sales from domestic production and to curb the domestic industry's ability to gain market share.

43. *Pre-hearing Staff Report*, revised 16 July 2008, Tribunal Exhibit NQ-2008-001-06B, Administrative Record, Vol. 1.1A at 39, 48-50; *Protected Pre-hearing Staff Report*, revised 16 July 2008, Tribunal Exhibit NQ-2008-001-07B (protected), Administrative Record, Vol. 2.1A at 48-50.

44. Tribunal Exhibit NQ-2008-001-24.18 (single copy), Administrative Record, Vol. 7 at 101-108.

45. *Pre-hearing Staff Report*, revised 16 July 2008, Tribunal Exhibit NQ-2008-001-06B, Administrative Record, Vol. 1.1A at 44, 48.

92. As will be concluded later in this statement of reasons, while the evidence clearly demonstrates the injury experienced by the domestic industry in the Canadian market as a whole, the Tribunal nevertheless wishes to address the allegation put forward that the domestic industry was not present in Western Canada during the POI and, consequently, did not experience injury in that region.

93. Protin and a Tribunal witness stated that the domestic producers were absent from the Canadian market located west of the Ontario-Manitoba border because it was economically unfeasible to be present there. They cited high transportation costs as the basis for a natural split between eastern and western markets, with the subject goods serving Western Canada and the like goods serving Eastern Canada. Protin suggested that the U.S. market presented a better business opportunity for domestic producers.⁴⁶

94. In response to these allegations, the domestic industry indicated that it can supply and did supply like goods to Western Canada during the POI, but that this was increasingly difficult, as it had to face imports of low-priced subject goods.⁴⁷ The Tribunal also heard testimony that the domestic industry, including producers based in Ontario and Quebec, strongly compete in Western Canada with products other than CSWP, such as OCTG, as these are not pressured by dumped and subsidized goods.⁴⁸

95. The Tribunal observes that the like goods were present in Western Canada throughout the POI, even though the domestic producers based in Ontario and Quebec did not ship large proportions of their production into Western Canada during the POI.

96. The Tribunal is of the view that it was the increasing presence of the low-priced subject goods, which displaced the like goods in Western Canada, and not the rapid increase in ocean and land transportation costs, that made the domestic industry less competitive and, consequently, experience injurious effects in Western Canada.⁴⁹ The Tribunal points out that, while ocean and land transportation costs have increased rapidly since 2007, this is a global phenomenon that affects the domestic industry, as well as producers of CSWP in China and importers of those subject goods. The evidence on the record demonstrates that, even with the subject goods being shipped to Western Canada, they did not necessarily benefit from a shipping cost advantage over the domestic industry. In some cases, the shipping costs from Eastern Canada to Western Canada were comparable to and even lower than from China to Western Canada.⁵⁰

46. *Transcript of Public Hearing*, Vol. 2, 23 July 2008, at 201-202, 207-208; *Transcript of Public Hearing*, Vol. 3, 24 July 2008, at 257-60, 287-88.

47. *Transcript of Public Hearing*, Vol. 1, 22 July 2008, at 91-92, 113, 116-17; Manufacturers' Exhibits A-06 (protected) at 28-34, 49-51 and B-02 (protected) at 20, 27, Administrative Record, Vol. 12; Tribunal Exhibit NQ-2008-001-12.02D (protected), Administrative Record, Vol. 4 at 26.3; Tribunal Exhibit NQ-2008-001-12.03 (protected), Administrative Record, Vol. 4 at 36; Tribunal Exhibit NQ-2008-001-12.04 (protected), Administrative Record, Vol. 4A at 5; Tribunal Exhibit NQ-2008-001-12.06 (protected), Administrative Record, Vol. 4B at 4.

48. *Transcript of Public Hearing*, Vol. 1, 22 July 2008, at 92-93, 112, 130, 134-35; *Transcript of Public Hearing*, Vol. 3, 24 July 2008, at 258-59.

49. *Pre-hearing Staff Report*, revised 16 July 2008, Tribunal Exhibit NQ-2008-001-06B, Administrative Record, Vol. 1.1A at 56; *Protected Pre-hearing Staff Report*, revised 16 July 2008, Tribunal Exhibit NQ-2008-001-07B (protected), Administrative Record, Vol. 2.1A at 56; Tribunal Exhibit NQ-2008-001-12.02D (protected), Administrative Record, Vol. 4 at 26.3; Tribunal Exhibit NQ-2008-001-12.03 (protected), Administrative Record, Vol. 4 at 36, 65-71, 74, 80, 84-85, 90, 93-95, 97, 104-105, 108-109, 112-13; Tribunal Exhibit NQ-2008-001-12.03C (protected), Administrative Record, Vol. 4 at 193; Tribunal Exhibit NQ-2008-001-12.04 (protected), Administrative Record, Vol. 4A at 5, 38, 44; *Transcript of Public Hearing*, Vol. 3, 24 July 2008, at 344-48, 356.

50. *Transcript of Public Hearing*, Vol. 1, 22 July 2008, at 93, 135; *Transcript of Public Hearing*, Vol. 2, 23 July 2008, at 195; *Transcript of Public Hearing*, Vol. 3, 24 July 2008, at 260-62, 343; *Transcript of In Camera Hearing*, Vol. 1, 22 July 2008, at 6.

97. The Tribunal further notes that Prudential is based in Western Canada and serves that market without the cost of transportation from Eastern Canada to Western Canada. Yet, Prudential found that, throughout the POI, it could not sell CSWP certified to meet the requirements of ASTM or equivalent specifications to compete with the low-priced subject goods.⁵¹

98. Along with Protin, some Tribunal witnesses indicated that they or their customers, located in Western Canada, preferred to use ASTM A53, Grade B, CSWP rather than ASTM A53, Grade A, CSWP.⁵² However, the Tribunal also heard that the preference for Grade B over Grade A seems to be an in-house policy of major national distributors in Western Canada and does not indicate a deficiency in the CSWP that the domestic industry is willing to supply to Western Canada.⁵³

99. The Tribunal also points out that it heard testimony from importers and purchasers located in Western Canada that indicated that they use ASTM A53 of both Grades A and B, that for most applications these products are substitutable and that the cost difference between the two is minimal.⁵⁴

100. The Tribunal observes that, while it is true that ArcelorMittal cannot produce CSWP smaller than NPS 2 meeting the requirements of specification ASTM 53, Grade B, other domestic producers have the capability to produce Grade B in the entire size range covered by the subject goods. Further, the domestic producers have the capability to produce CSWP meeting the requirements of specification ASTM A53, Grade A, in the entire size range covered by the subject goods.

101. On the basis of the foregoing, the Tribunal observes that the domestic producers are capable of offering and do offer CSWP meeting the requirements of specification ASTM A53, both Grades A and B, to Western Canada.

102. With respect to the dumped and subsidized goods, the Tribunal notes that, although they originally penetrated the Canadian market principally in Western Canada, they found their way to Eastern Canada both overland and by ship during the POI.⁵⁵ It is clear to the Tribunal that, even with additional freight costs, these products competed with the like goods throughout Canada.⁵⁶ According to the information on the record, subject goods were sold into Eastern Canada throughout the POI, particularly in 2006 and 2007.⁵⁷

51. Tribunal Exhibit NQ-2008-001-12.06 (protected), Administrative Record, Vol. 4B at 4; Manufacturer's Exhibit C-01 at para. 9, Administrative Record, Vol. 11A.

52. *Transcript of Public Hearing*, Vol. 1, 22 July 2008, at 59; *Transcript of Public Hearing*, Vol. 2, 23 July 2008, at 201; *Transcript of Public Hearing*, Vol. 3, 24 July 2008, at 254, 364-65, 389-90, 400-402.

53. *Transcript of Public Hearing*, Vol. 2, 23 July 2008, at 201; *Transcript of Public Hearing*, Vol. 3, 24 July 2008, at 361-62.

54. *Transcript of Public Hearing*, Vol. 1, 22 July 2008, at 59-60, 64-65; *Transcript of Public Hearing*, Vol. 2, 23 July 2008, at 162, 221; *Transcript of Public Hearing*, Vol. 3, 24 July 2008, at 253-54, 351-52, 361-65, 401-402.

55. Tribunal Exhibit NQ-2008-001-24.19 (protected single copy), Administrative Record, Vol. 8 at 2-37.

56. *Transcript of Public Hearing*, Vol. 1, 22 July 2008, at 87, 107; *Transcript of Public Hearing*, Vol. 2, 23 July 2008, at 165, 194; *Transcript of Public Hearing*, Vol. 3, 24 July 2008, at 304, 317; *Transcript of In Camera Hearing*, Vol. 2, 23 July 2008, at 61-64.

57. *Pre-hearing Staff Report*, revised 16 July 2008, Tribunal Exhibit NQ-2008-001-06B, Administrative Record, Vol. 1.1A at 56; Tribunal Exhibit NQ-2008-001-15.08 (protected), Administrative Record, Vol. 6 at 126, 130; Tribunal Exhibit NQ-2008-001-15.08A (protected), Administrative Record, Vol. 6 at 139; Tribunal Exhibit NQ-2008-001-15.14 (protected), Administrative Record, Vol. 6 at 214; Tribunal Exhibit NQ-2008-001-15.14A (protected), Administrative Record, Vol. 6 at 229; Tribunal Exhibit NQ-2008-001-15.16 (protected), Administrative Record, Vol. 6 at 235; Tribunal Exhibit NQ-2008-001-15.16A (protected), Administrative Record, Vol. 6 at 251-52; Tribunal Exhibit NQ-2008-001-15.20 (protected), Administrative Record, Vol. 6 at 279; Tribunal Exhibit NQ-2008-001-15.20B (protected), Administrative Record, Vol. 6 at 297.3.

This indicates to the Tribunal that, were it not for the presence of low-priced subject goods in Western Canada, and even with high transportation costs that affected both the like goods and imports, the like goods would have found their way in larger volumes to Western Canada, just as the subject goods found their way to Eastern Canada. Information on the record confirms that this scenario would likely come about.⁵⁸

103. In summary, the Tribunal concludes that the like goods and the subject goods did compete in all regions of the Canadian market, including Western Canada, throughout the POI, and that the domestic industry experienced injurious effects from the dumping and subsidizing of the subject goods in all regions of Canada, including Western Canada.

Financial Results

104. The dumped and subsidized goods clearly caused financial harm to the domestic industry. The consistency and extent of the price undercutting by the subject goods had a negative impact on the domestic industry's gross margin and net income, on an aggregate basis. The Tribunal notes that the domestic industry had high fixed costs and might have been able to reduce its unit cost of production if it had had the opportunity to increase its production. However, this was not possible in a market that was relatively stable and whose share was being captured by increasing volumes of low-priced subject goods.

105. The evidence on the record shows that, compared to 2005, the domestic industry's gross margin and net income for its domestic sales deteriorated in 2006 and continued their sharp downward trend in 2007. The evidence shows a sharp decline in the first quarter of 2007 and, although there was some degree of recovery in the remaining three quarters of that year and in the first quarter of 2008, the Tribunal observes that the domestic industry's financial results for the first quarter of 2007 and the first quarter of 2008 remained very depressed, with respect to both gross margin and net income, in comparison with the baseline year of 2005. The domestic industry's results, on a unit basis, mirrored its results on an aggregate basis.

106. Even with ArcelorMittal's and Lakeside's reported price increases to offset partially the increase in input costs in the second quarter of 2008,⁵⁹ on the basis of testimony at the hearing, the Tribunal does not expect that they would necessarily achieve profitability in this period.

107. In the Tribunal's view, the domestic industry's financial difficulties are due to the fact that it lost volume and experienced price depression and suppression due to the presence of the dumped and subsidized imports in the Canadian market.

Other Indicators

108. The domestic industry also claimed injury in such areas as return on investment, growth, ability to raise capital and cash flow. Although there is little or no evidence on the record with respect to these indicators in particular, it is reasonable to expect that, due to the extent of the difficulties experienced by the domestic industry in its production, domestic sales, market share and financial performance, it would have also experienced negative effects in these areas.

58. *Transcript of Public Hearing*, Vol. 1, 22 July 2008, at 91, 129-30, 133-34, 141-44; *Transcript of In Camera Hearing*, Vol. 1, 22 July 2008, at 9-13.

59. *Pre-hearing Staff Report*, revised 16 July 2008, Tribunal Exhibit NQ-2008-001-6B, Administrative Record, Vol. 1.1A at 54; *Protected Pre-hearing Staff Report*, revised 16 July 2008, Tribunal Exhibit NQ-2008-001-7B (protected), Administrative Record, Vol. 2.1A at 71, 139-40; *Manufacturers' Exhibits A-17* (protected) at 3 and B-6 (protected) at 3, Administrative Record, Vol. 12.

109. The *Regulations* prescribe that the Tribunal consider in its assessment of the impact of the dumped and subsidized goods on the state of the domestic industry “. . . the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods . . .” As noted above, the CBSA determined that the weighted average margin of dumping, expressed as a percentage of the export price, was 141 percent and that the weighted average amount of subsidy, expressed as a percentage of the export price, was 73 percent. The Tribunal is of the view that the negative impact of the dumped and subsidized goods on the state of the domestic industry was heightened by a margin of dumping and amount of subsidy of these magnitudes.

110. With respect to other indicators of injury, while the Tribunal notes that certain of these performance indicia, namely, employment, productivity and inventories, were positive or only marginally negative over the POI, it does not consider that these results negate the significant deterioration observed in the domestic industry’s other performance indicia.

Conclusion

111. The Tribunal concludes that the preceding analysis of various market and economic indicators demonstrates that the domestic industry experienced injurious effects from the dumping and subsidizing of the subject goods during the POI in the form of a significant deterioration in its financial performance and that it also experienced reduced production, lost sales and lost market share. It is also reasonable to conclude that the domestic industry experienced such injurious effects with respect to its return on investments, cash flow, growth and ability to raise capital. The Tribunal also concludes that the analysis demonstrates that the injurious effects experienced by the domestic industry were material and constitute injury as defined in subsection 2(1) of *SIMA*.

Other Factors

112. The Tribunal is required to consider, pursuant to paragraph 37.1(3)(b) of the *Regulations*, whether any factors other than dumping or subsidizing of the goods have caused injury. Accordingly, the Tribunal carefully examined a number of factors other than the dumping and subsidizing to ensure that any injury caused by those other factors is not attributed to the effects of the dumped and subsidized imports.

Sales From Imports of Non-dumped and Non-subsidized Goods

113. Sales from imports from the Republic of Korea (South Korea) increased between 2005 and 2007, while sales from imports from the United States and the rest of the world decreased. When comparing the first quarter of 2007 to the first quarter of 2008, sales from imports from South Korea declined, sales from imports from the United States remained relatively unchanged, and sales from imports from the rest of the world disappeared. Over the POI, the gains from imports from South Korea and the losses from imports from the United States roughly balanced each other out, as their combined market share remained relatively unchanged. The shift of market share from the United States to South Korea appears to be related to the lower and decreasing average unit selling prices of imports from South Korea, especially in 2007 and the first quarter of 2008. With the exception of these two periods of the POI, average unit selling prices of imports from both South Korea and the United States were well above the average unit selling prices of the dumped and subsidized goods.⁶⁰

60. *Protected Pre-hearing Staff Report*, revised 16 July 2008, Tribunal Exhibit NQ-2008-001-07B (protected), Administrative Record, Vol. 2.1A at 48, 50, 54.

114. It is the Tribunal's view that, in 2007, the low average unit selling price of imports from South Korea may have contributed to the domestic industry being unable to benefit from the loss of sales experienced by imports from the United States. However, given that the shift of sales between imports from South Korea and imports from the United States was relatively neutral in terms of the overall Canadian market, the Tribunal does not regard either country as creating conditions of injury for the domestic industry that render non-material the injury caused by the dumped and subsidized imports.

Intra-industry Competition

115. The Tribunal is of the view that, even where the competition is strong among domestic producers, it does not have an impact on its injury analysis unless the competition has been injurious in some way to the domestic industry as a whole. There is no evidence to that effect in this case, and the Tribunal therefore concludes that this non-dumping, non-subsidizing factor does not contribute to the injury suffered by the domestic industry.

Financial Results From Exports

116. The volume of exports to the United States from domestic production⁶¹ was virtually unchanged during the POI, except for the first quarter of 2008 when it increased slightly. Average unit export selling prices were significantly higher than average unit domestic selling prices in the Canadian market for every period during the POI.⁶² Despite the higher average unit export selling prices and the increase in volume, the domestic industry sustained losses on its export sales for most of the POI.⁶³ The Tribunal does not consider that the domestic industry's export sales and associated financial returns have been sufficient to render non-material the injury on its domestic sales in relation to its domestic production as a whole.

Cost of Production

117. As indicated previously, the cost of the principal raw material used in the production of CSWP, hot-rolled steel coil, increased throughout the POI and especially in the second quarter of 2008.⁶⁴ This is a global phenomenon, due in part to limited supply, that should have increased manufacturing costs equally for producers in all parts of the world. Accordingly, in the absence of the subject goods in the Canadian market, all other things being equal, the domestic producers would not have suffered price suppression and should have been able to pass on at least a portion of these increases to their customers.

118. In addition, Protin argued that the CW process that ArcelorMittal uses to produce CSWP to meet the requirements of specification ASTM A53, Grade A, is outdated and not cost-effective. In reviewing the financial information on the record, the Tribunal does not accept Protin's argument and finds no reason to believe that the cost structure of ArcelorMittal is excessive or not effective. That having been said, the Tribunal assesses injury to the domestic industry as a whole, not to a single producer. It therefore rejects this argument.

61. Manufacturer's Exhibit A-03 at para. 102, Administrative Record, Vol. 11; *Transcript of Public Hearing*, Vol. 1, 22 July 2008, at 99; *Pre-hearing Staff Report*, revised 16 July 2008, Tribunal Exhibit NQ-2008-001-06B, Administrative Record, Vol. 1.1A at 39.

62. *Protected Pre-hearing Staff Report*, revised 16 July 2008, Tribunal Exhibit NQ-2008-001-07B (protected), Administrative Record, Vol. 2.1A at 54, 59.

63. *Ibid.* at 72.

64. Tribunal Exhibit NQ-2008-001-24.01 (single copy), Administrative Record, Vol. 7 at 2-3; Tribunal Exhibit NQ-2008-001-24.13 (single copy), Administrative Record, Vol. 7 at 96-97; Tribunal Exhibit NQ-2008-001-24.28 (single copy), Administrative Record, Vol. 7 at 225-27; *Transcript of Public Hearing*, Vol. 1, 22 July 2008, at 69-71, 77; *Transcript of Public Hearing*, Vol. 2, 23 July 2008, at 144; *Transcript of Public Hearing*, Vol. 3, 24 July 2008, at 302.

Conclusion

119. The Tribunal is of the view that any injurious effect that may be attributable to the above factors is minimal at most and does not negate its conclusion that the dumping and subsidizing of the subject goods have caused injury as defined in subsection 2(1) of *SIMA*.

EXCLUSIONS

Product Exclusions

120. The Tribunal received requests for product exclusions from five parties, namely, Protin, the CFIA, CANIP Industries Ltd. (CANIP), Pipe & Piling Supplies Ltd. (P&P) and Emco Electric International (Emco).⁶⁵ ArcelorMittal, Lakeside and Prudential replied to some or all of these requests. The Tribunal will address each request separately.

121. In *Stainless Steel Wire*,⁶⁶ the Tribunal summarized its views on the matter of product exclusions as follows:

It is well established that the Tribunal has the discretion to grant product exclusions under subsection 43(1) of *SIMA*. *The fundamental principle is that the Tribunal will grant product exclusions only when it is of the view that such exclusions will not cause injury to the domestic industry.* The Tribunal has granted product exclusions for particular products in circumstances when, for instance, the domestic industry does not produce those particular products. The Tribunal also considers factors such as whether there is any domestic production of substitutable or competing goods, whether the domestic industry is an “active supplier” of the product or whether it normally produces the product or whether the domestic industry has the capability of producing the product.

[Footnotes omitted, emphasis added]

122. The Tribunal further notes that, once injury has been found, all the subject goods are covered by that finding. When the Tribunal is requested to grant an exclusion, i.e. to exclude from its finding certain goods that would normally be covered by the finding, the onus is upon the requester to demonstrate that imports of the goods for which the exclusion is requested will not be injurious to the domestic industry.

Protin

123. Protin requested exclusions for the following CSWP produced using the ERW process: (1) ASTM A53, Grade B, Schedule 80, with a black finish, and with plain ends, in NPS 1/2 to NPS 1 1/2 inclusive; (2) ASTM A53, Grade B, Schedule 40, with a black or galvanized finish, and with plain or threaded and coupled ends, in NPS 1/2 to NPS 1 1/2 inclusive; and (3) ASTM A53, Grade B, Schedule 10, with a black or galvanized finish, and with plain ends, in NPS 1 to NPS 1 1/2 inclusive.

124. As a basis for these requests, Protin submitted that ArcelorMittal can only produce ASTM A53, Grade B, CSWP in NPS 2 and larger at its Delta Tube facility. It further submitted that Lakeside does not produce CSWP in NPS 1/2 and that, for NPS 3/4 to NPS 1 1/2, it would have a monopoly position for black pipe. Protin added that Lakeside does not produce galvanized pipe.

65. Emco also does business as Electrical Resources International.

66. (30 July 2004), NQ-2004-001 (CITT) at 22.

125. The Tribunal denies Protin's first two requests. When considering injury, the Tribunal looks at the domestic industry as a whole, not at a single producer. In this case, Lakeside produces identical goods in a wide range of sizes, including NPS 3/4 to NPS 1 1/2. It is also capable of producing identical goods in NPS 1/2, but has not done so in recent years because it cannot do it profitably due to the presence of dumped and subsidized imports. Although Lakeside does not galvanize its own pipe, it provided evidence to demonstrate that it can easily have this operation performed by independent companies.⁶⁷ The Tribunal notes that ArcelorMittal produces CSWP made to specification ASTM A53, Grade A, in the NPS and Schedules requested by Protin and that, based on ArcelorMittal's submissions, this product is substitutable for a Grade B product in the vast majority of applications. The Tribunal further notes that Protin did not argue that these products are not substitutable with regard to end uses. Therefore, based on the evidence submitted, the Tribunal concludes that the goods for which Protin seeks exclusions do not have end-use characteristics that prevent the goods produced by ArcelorMittal from being substituted for them. In light of the foregoing, the Tribunal is of the view that, if Protin's first two requests were granted, imports of these goods from China would likely be injurious to the domestic industry.

126. The Tribunal grants in part Protin's third request. While Lakeside did not oppose Protin's third request, ArcelorMittal argued that the products for which Protin seeks an exclusion are generally used in either plumbing and heating applications, in which its ASTM A53, Schedule 40, CSWP is substitutable, or fire protection applications, i.e. sprinkler pipe, in which its ASTM A795, Schedule 10, CSWP is substitutable. According to ArcelorMittal, it manufactures ASTM A53, Schedule 40, CSWP in all sizes covered by Protin's request and ASTM A795, Schedule 10, CSWP in NPS 1 1/4 and larger. The Tribunal notes that Protin did not indicate why the products identified by ArcelorMittal, which have been available, would not be substitutable for the products for which it requested an exclusion. However, the Tribunal further notes that, although there is evidence on the record that seems to indicate that ASTM A53, Schedule 40, CSWP may be used in fire protection applications,⁶⁸ ArcelorMittal made no argument that this product was substitutable for the thinner-walled ASTM A53, Schedule 10, CSWP in such applications. While the Tribunal accepts ArcelorMittal's argument that its ASTM A795, Schedule 10, CSWP is substitutable for ASTM A53, Schedule 10, CSWP in fire protection applications, it notes that ArcelorMittal produces this product only in NPS 1 1/4 and larger. Given this situation, the Tribunal grants an exclusion for CSWP in NPS 1, meeting the requirements of specification ASTM A53, Grade B, Schedule 10, with a black or galvanized finish, and with plain ends, for use in fire protection applications. In the absence of submissions from Protin as to why the requested exclusion should be granted in respect of the other products, the Tribunal denies the remainder of Protin's third request.

127. Protin also requested an exclusion for hot-dipped galvanized CSWP produced using the ERW process and supplied to meet the requirements of specification ASTM F1083 or BS1387, as well as Commercial Quality CSWP, in NPS 1 to NPS 2 inclusive, with wall thicknesses of 0.065 inch and 0.079 inch. It submitted that these goods are not produced by ArcelorMittal or Lakeside and that Bolton Steel has a limited production capacity and has declared itself to be an importer of goods from China.

128. The Tribunal denies this request. The domestic industry produces fencing pipe made to ASTM A53 and F1083 specifications, as well as Commercial Quality fencing pipe, in NPS 1 to NPS 2. This pipe competes directly with the imported products for which Protin seeks an exclusion, including CSWP made to the BS1387 specification, which is a British standard for fencing pipe. Even if ArcelorMittal acknowledged that it is only capable of producing CSWP with wall thicknesses of 0.100 inch and above, it argued in its

67. Tribunal Exhibit NQ-2008-001-28.02 (protected), Administrative Record, Vol. 2.3 at 69.

68. Tribunal Exhibit NQ-2008-001-14.02, Administrative Record, Vol. 5 at 42; Tribunal Exhibit NQ-2008-001-27.03B, Administrative Record, Vol. 1.3 at 230.32.

reply that such products are substitutable for CSWP with thinner walls used in fencing applications and provided sample invoices in support of its argument.⁶⁹ In the absence of submissions by Protin as to why CSWP with thicker walls would not be substitutable for CSWP with thinner walls in fencing applications or why fencing pipe produced using the CW process would not be substitutable for fencing pipe produced using the ERW process, the Tribunal concludes that CSWP produced by the domestic industry to meet the requirements of specifications ASTM A53 and F1083, as well as Commercial Quality CSWP, is substitutable for the products for which Protin seeks an exclusion. Thus, the Tribunal is of the view that, if Protin's request were granted, imports of these goods from China would likely be injurious to the domestic industry.

CFIA

129. The CFIA requested exclusions for: (1) galvanized CSWP, in NPS 1 to NPS 6 inclusive, meeting the requirements of specification ASTM A53, Grade A, with plain ends; and (2) galvanized CSWP, in NPS 1 to NPS 3 inclusive, with wall thicknesses between 0.060 inch and 0.090 inch, meeting the requirements of light specification BS1387, with plain ends. As a basis for these requests, the CFIA submitted that there are no producers of these products in Western Canada and that shipping costs from Eastern Canada are high.

130. The Tribunal denies the CFIA's first request. The evidence indicates that the domestic industry either produces, or has the capability to produce, identical goods for sale throughout the Canadian market. The Tribunal notes that Prudential, which is located in Western Canada, has the capability to produce identical goods in NPS 2 3/8 to NPS 6 and that it could also produce goods as low as NPS 1 1/4. Moreover, the evidence indicates that the domestic industry also currently produces ASTM A53, Grade B, CSWP throughout the requested NPS range and that this product is substitutable for ASTM A53, Grade A, CSWP in the majority of applications.⁷⁰ Thus, the Tribunal is of the view that, if the CFIA's request were granted, imports of these goods from China would likely be injurious to the domestic industry.

131. The Tribunal also denies the CFIA's second request. The domestic industry produces fencing pipe, i.e. galvanized CSWP made to specifications ASTM A53 and F1083 which competes directly with imports of CSWP produced to meet the requirements of light specification BS1387, which is the British Standard for fencing pipe. Even if ArcelorMittal acknowledged that it is only capable of producing CSWP with wall thicknesses of 0.100 inch and above, it argued in its reply that such products are substitutable for CSWP with thinner walls for fencing applications and provided sample invoices in support of its argument.⁷¹ Although the CFIA argued that CSWP with thicker walls would be more expensive than CSWP with thinner walls for fencing applications, it did acknowledge that thicker pipe is substitutable for thinner pipe. The Tribunal therefore concludes that CSWP produced by the domestic industry to meet the requirements of specifications ASTM A53 and F1083 is substitutable for the products for which the CFIA seeks an exclusion. Thus, the Tribunal is of the view that, if the CFIA's request were granted, imports of these goods from China would likely be injurious to the domestic industry.

69. Tribunal Exhibit NQ-2008-001-28.03 (protected), Administrative Record, Vol. 2.3 at 90, 91.

70. Tribunal Exhibit NQ-2008-001-27.02, Administrative Record, Vol. 1.3 at 153.

71. Tribunal Exhibit NQ-2008-001-28.03 (protected), Administrative Record, Vol. 2.3 at 81-83.

CANIP

132. CANIP requested an exclusion for CSWP in NPS 3/8 to NPS 2 produced using the ERW process and supplied to meet the requirements of specification ASTM A53, Grade A, with end-capping. CANIP stated that it requires these products in order to produce carbon steel pipe nipples at its facility in Burnaby, British Columbia.

133. The Tribunal notes that CANIP's request for exclusion includes CSWP smaller than NPS 1/2. Since these goods are not covered by the definition of the subject goods, they are not covered by the Tribunal's finding and do not require an exclusion. Therefore, the Tribunal will only consider CANIP's request as it pertains to NPS 1/2 to NPS 2. Further, in the Tribunal's view, end-capping is not part of the product itself, but is added thereto.

134. As a basis for its request, CANIP submitted that the products for which it is seeking an exclusion are not currently being produced by the domestic industry. Although it acknowledged that ArcelorMittal uses the CW process to produce CSWP that appears similar to the products for which it is seeking an exclusion, CANIP submitted that its machinery used to produce carbon steel pipe nipples does not function properly or efficiently when using CSWP produced using the CW process or supplied to meet the requirements of specification ASTM A53, Grade B.

135. The Tribunal grants CANIP's request. The evidence on the record indicates that, although it is capable of doing so, the domestic industry does not currently produce goods that are identical to the goods for which CANIP seeks an exclusion.⁷² Moreover, the Tribunal notes that, according to the information contained on the record, the last time that the domestic industry produced CSWP using the ERW process and meeting the requirements of specification ASTM A53, Grade A, was during a period of protection from imports of CSWP from South Korea and before the injurious dumping and subsidizing of Chinese goods began.⁷³ Therefore, it appears that the domestic industry decided not to produce this product even during a period when injury was not occurring. For this reason, coupled with the fact that the record shows that the potential volumes of imports of this product destined for the production of carbon steel pipe nipples are likely to be small,⁷⁴ the Tribunal is of the view that the domestic industry is unlikely to produce this product even with protection in effect against imports of the subject goods.

136. ArcelorMittal argued that it currently produces and sells goods that are substitutable for the products for which CANIP seeks an exclusion. However, the Tribunal accepts CANIP's argument that its production machinery would not function properly or efficiently if it used as inputs goods other than those for which it is requesting an exclusion. Therefore, the Tribunal believes that, while the goods produced by ArcelorMittal may be substitutable for the products for which CANIP seeks an exclusion in other applications, they are not substitutable for CANIP's production requirements. In light of the foregoing, the Tribunal grants an exclusion for CSWP in NPS 1/2 to NPS 2 inclusive, produced using the ERW process and meeting the requirements of specification ASTM A53, Grade A, for use in the production of carbon steel pipe nipples.

72. Tribunal Exhibit NQ-2008-001-27.02, Administrative Record, Vol. 1.3 at 165, 167; Tribunal Exhibit NQ-2008-001-27.03, Administrative Record, Vol. 1.3 at 210.

73. Tribunal Exhibit NQ-2008-001-28.02 (protected), Administrative Record, Vol. 2.3 at 71; *Carbon Steel Welded Pipe* (3 June 2005), RR-2004-003 (CITT).

74. Tribunal Exhibit NQ-2008-001-26.03 (protected), Administrative Record, Vol. 2.3 at 6.

P&P

137. P&P requested an exclusion for steel pipe piles, also referred to as piling pipe (foundation), with an outside diameter of up to 6.625 inches, produced using the ERW, flash welding or fusion welding process, and meeting the requirements of both specifications ASTM A252, Grades 1 to 3, and API 5L, with bevelled ends and in random lengths. As a basis for its request, P&P submitted that there is no domestic production of comparable or substitutable piling pipe that is also dual-stencilled, i.e. meeting the requirements of both ASTM and API specifications listed above.

138. The Tribunal notes that the definition of the subject goods specifically excludes “. . . oil and gas line pipe made to API specifications *exclusively* . . .” [emphasis added]. In the Tribunal’s opinion, pipe that has more than one stencil of which any one is a designation covered by the definition of the subject goods falls within the scope of the finding, notwithstanding the presence of one or more other designations. P&P’s exclusion request concerns dual-stencilled piling pipe of which one designation is ASTM A252—a designation explicitly included within the definition of the subject goods.

139. The Tribunal grants P&P’s request. The evidence on the record indicates that, although it is capable of doing so, the domestic industry does not currently produce CSWP made to the ASTM A252 specification.⁷⁵ The Tribunal notes that, other than to state that its customers specifically request dual-stencilled piling pipe, P&P did not explain why such a product is desirable or necessary for its customers. However, the Tribunal also notes that, based on the information contained on the record, the last time that the domestic industry produced CSWP meeting the requirements of single specification ASTM A252 was during a period of protection from imports of CSWP from South Korea and before the injurious dumping and subsidizing of Chinese goods began.⁷⁶ Therefore, it appears, as it did with the goods for which CANIP sought an exclusion, that the domestic industry chose not to produce this product even during a period when injury was not occurring. For this reason, coupled with the fact that the record shows that the potential volumes of imports of dual-stencilled piling pipe are likely to be small,⁷⁷ the Tribunal is of the view that the domestic industry is unlikely to produce this product even with protection in effect against imports of the subject goods. In light of the foregoing, the Tribunal grants an exclusion for CSWP in NPS 1/2 to NPS 6 inclusive, dual-stencilled to meet the requirements of both specification ASTM A252, Grades 1 to 3, and specification API 5L, with bevelled ends and in random lengths, for use as foundation piles.

Emco

140. While Emco completed and filed a Product Exclusion Request Form pertaining to products referred to as electrical conduit or tubing produced to ANSI or UL specifications, it stated that it was seeking no more than a confirmation that such products are not covered by the definition of the subject goods. The products with which Emco was concerned were defined as follows: (1) rigid metal conduit that meets the ANSI C80.1 and UL 6 specifications in sizes 1/2 inch to 6 inches; (2) electrical metallic tubing that meets the ANSI C80.3 and UL 797 specifications in sizes 1/2 inch to 4 inches; and (3) intermediate metal conduit that meets the ANSI C80.6 and UL 1242 specifications in sizes 1/2 inch to 4 inches.

75. *Pre-hearing Staff Report*, revised 16 July 2008, Tribunal Exhibit NQ-2008-001-06B, Administrative Record, Vol. 1.1A at 19; Tribunal Exhibit NQ-2008-001-27.02, Administrative Record, Vol. 1.3 at 173, 174; Tribunal Exhibit NQ-2008-001-27.03, Administrative Record, Vol. 1.3 at 217.

76. Tribunal Exhibit NQ-2008-001-28.02 (protected), Administrative Record, Vol. 2.3 at 77; *Carbon Steel Welded Pipe* (3 June 2005), RR-2004-003 (CITT).

77. *Pre-hearing Staff Report*, revised 16 July 2008, Tribunal Exhibit NQ-2008-001-06B, Administrative Record, Vol. 1.1A at 21; Tribunal Exhibit NQ-2008-001-26.04 (protected), Administrative Record, Vol. 2.3 at 57.

141. Although ArcelorMittal submitted that it would be inappropriate and unnecessary to grant exclusions for these products if they are not subject goods, it nonetheless consented to Emco's request under the condition that the products be stencilled exclusively to the ANSI and UL specifications noted above. Lakeside did not oppose Emco's request. As for Prudential, it stated that it did not believe that electrical conduit or tubing was covered by the description of the subject goods.⁷⁸

142. The Tribunal agrees with Prudential that electrical conduit or tubing produced exclusively to ANSI or UL specifications is not covered by the definition of the subject goods. Accordingly, these goods are not covered by the Tribunal's finding and do not require exclusions. The Tribunal notes however that dual-stencilled products that include a specification covered by the definition of the subject goods are covered by the Tribunal's finding.⁷⁹

Regional Exclusion

143. The Tribunal received letters from the governments of British Columbia and Saskatchewan requesting it to consider the negative impact that the imposition of duties would have on Western Canada or, at least, that the Tribunal exempt from duties imports of the subject goods that are destined for Western Canada.⁸⁰

144. The Tribunal considers that the above requests raise two separate issues. The first issue is that of public interest, which the Tribunal can only address through a process initiated after it has made an injury finding.⁸¹ The second issue is that of a regional exclusion. As stated earlier with respect to product exclusions, the fundamental principle is that the Tribunal will grant exclusions only when it is of the view that such exclusions will not cause injury to the domestic industry. In this case, the Tribunal has already clearly stated that the domestic industry experienced injurious effects from the dumping and subsidizing of the subject good in all regions of Canada, including Western Canada. Accordingly, the Tribunal is of the view that an exclusion for imports of the subject goods that are destined for Western Canada would likely be injurious to the domestic industry and will therefore not grant such an exclusion.

CONCLUSION

145. Pursuant to subsection 43(1) of *SIMA*, the Tribunal hereby finds that the dumping and subsidizing of CSWP originating in or exported from China have caused injury to the domestic industry.

146. The Tribunal hereby excludes the following goods from its injury finding:

- CSWP in NPS 1, meeting the requirements of specification ASTM A53, Grade B, Schedule 10, with a black or galvanized finish, and with plain ends, for use in fire protection applications;

78. *Transcript of Public Hearing*, Vol. 1, 22 July 2008, at 148.

79. However, dual-stencilled products that meet the terms of the Tribunal's exclusion for piling pipe are not covered by the finding.

80. Tribunal Exhibit NQ-2008-001-38, Administrative Record, Vol. 1 at 232; Tribunal Exhibit NQ-2008-001-52, Administrative Record, Vol. 1 at 293.

81. Section 45 of *SIMA* and subsection 40.1(1) of the *Regulations* provide that, if the Tribunal makes an injury finding, it can initiate, on its own initiative or at the request of an interested person made within 45 days of the finding, a public interest inquiry if it is of the opinion that there are reasonable grounds to consider that the imposition of an anti-dumping or countervailing duty would not be in the public interest.

- CSWP in NPS 1/2 to NPS 2 inclusive, produced using the ERW process and meeting the requirements of specification ASTM A53, Grade A, for use in the production of carbon steel pipe nipples; and
- CSWP in NPS 1/2 to NPS 6 inclusive, dual-stencilled to meet the requirements of both specification ASTM A252, Grades 1 to 3, and specification API 5L, with bevelled ends and in random lengths, for use as foundation piles.

James A. Ogilvy
James A. Ogilvy
Presiding Member

Ellen Fry
Ellen Fry
Member

Serge Fréchette
Serge Fréchette
Member