



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

FINDINGS AND REASONS

Inquiry No. NQ-2009-004

Oil Country Tubular Goods

*Findings issued
Tuesday, March 23, 2010*

*Reasons issued
Wednesday, April 7, 2010*

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

**THE DUMPING AND SUBSIDIZING OF OIL COUNTRY TUBULAR GOODS
ORIGINATING IN OR EXPORTED FROM THE PEOPLE'S REPUBLIC OF
CHINA**

FINDINGS

The Canadian International Trade Tribunal, pursuant to the provisions of section 42 of the *Special Import Measures Act*, has conducted an inquiry to determine whether the dumping and subsidizing of oil country tubular goods made of carbon or alloy steel, welded or seamless, heat-treated or not heat-treated, regardless of end finish, having an outside diameter from 2 $\frac{3}{8}$ inches to 13 $\frac{3}{8}$ inches (60.3 mm to 339.7 mm), meeting or supplied to meet American Petroleum Institute specification 5CT or equivalent standard, in all grades, excluding drill pipe and excluding seamless casing up to 11 $\frac{3}{4}$ inches (298.5 mm) in outside diameter, originating in or exported from the People's Republic of China, have caused injury or retardation or are threatening to cause injury to the domestic industry.

Further to the issuance by the President of the Canada Border Services Agency of final determinations dated February 22, 2010, that the aforementioned goods have been dumped and subsidized, and pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that:

- the dumping and subsidizing of those aforementioned goods that are coupling stock have not caused injury or retardation and are not threatening to cause injury; and
- the dumping and subsidizing of those aforementioned goods that are casing and tubing have caused injury.

The Canadian International Trade Tribunal hereby excludes pup-joints, welded or seamless, heat-treated or not heat-treated, in lengths of up to 3.66 m (12 feet), from its injury finding.

André F. Scott
André F. Scott
Presiding Member

Serge Fréchette
Serge Fréchette
Member

Jason W. Downey
Jason W. Downey
Member

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The statement of reasons will be issued within 15 days.

Place of Hearing: Ottawa, Ontario
Dates of Hearing: February 22 to 24, 2010

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PARTICIPANTS:**Domestic Producers**

Evraz Inc. NA Canada

Lakeside Steel Corporation

Tenaris Canada (including Prudential Steel Inc.,
Tenaris Global Services [Canada] Inc. and Tenaris
Algoma Tubes)**Importers/Exporters/Others**

Apex Distribution Inc.

Cementing Technology & Equipment Ltd.

SB International Inc.

Top-Co LP

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Weatherford Canada Partnership
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Western Procurement Corporation

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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 oil country tubular goods,² made of carbon or alloy steel, welded or seamless, heat-treated or not heat-treated, regardless of end finish, having an outside diameter from 2 $\frac{3}{8}$ inches to 13 $\frac{3}{8}$ inches (60.3 mm to 339.7 mm), meeting or supplied to meet American Petroleum Institute (API) specification 5CT or equivalent standard, in all grades, excluding drill pipe and excluding seamless casing up to 11 $\frac{3}{4}$ inches (298.5 mm) in outside diameter, 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.

2. On August 24, 2009, the President of the Canada Border Services Agency (CBSA), following a complaint filed by Evraz Inc. NA Canada (Evraz) of Regina, Saskatchewan, Lakeside Steel Corporation (Lakeside) of Welland, Ontario, and Tenaris Canada (including Prudential Steel Inc., Tenaris Global Services [Canada] Inc. and Tenaris Algoma Tubes) (Tenaris) of Calgary, Alberta, initiated investigations into whether the subject goods had been dumped or subsidized.

3. On August 25, 2009, 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 was threatening to cause injury. On October 23, 2009, pursuant to subsection 37.1(1), the Tribunal determined that there was evidence that disclosed a reasonable indication that the dumping and subsidizing of the subject goods had caused injury.

4. On October 26, 2009, the Tribunal requested that the CBSA provide, in addition to the single class of goods defined at the time of initiation, separate information on the dumping and subsidizing of (1) coupling stock³ and (2) all other oil country tubular goods covered by the investigation.

5. On November 23, 2009, the CBSA issued preliminary determinations 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 import volumes of the subject goods were not negligible.

6. On November 24, 2009, the Tribunal issued a notice of commencement of inquiry.⁴ The Tribunal's period of inquiry (POI) covers three full years, from January 1, 2006, to December 31, 2009, and two interim periods, January 1 to September 30, 2008, and the corresponding period in 2009.

7. As part of its inquiry, the Tribunal requested domestic producers, importers and foreign producers of oil country tubular goods to complete questionnaires. The Tribunal also requested purchasers of oil country tubular goods in Canada to complete questionnaires on market characteristics. From the replies to the questionnaires and other information on the record, the Tribunal's staff prepared public and protected staff reports.

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

2. The two principal types of oil country tubular goods are casing and tubing.

3. Coupling stock is a seamless thick-walled tube used in the manufacture of coupling blanks, which, in turn, are used to manufacture couplings.

4. C. Gaz. 2009.I.3601.

8. In its notice of commencement of inquiry, the Tribunal invited parties to file evidence and submissions on whether the subject coupling stock was a separate class of goods from the other subject goods and on whether domestically produced seamless casing having an outside diameter of up to 11 $\frac{3}{4}$ inches (298.5 mm) was “like goods” in relation to the subject goods.
9. On December 21, 2009, after having considered the evidence on the record and the arguments made by parties, the Tribunal determined that the subject coupling stock was a separate class of goods from the other subject goods and that domestically produced seamless casing having an outside diameter of up to 11 $\frac{3}{4}$ inches (298.5 mm) were “like goods” in relation to the subject goods.
10. On February 5, 2010, the Tribunal informed parties that, pursuant to rule 25 of the *Canadian International Trade Tribunal Rules*,⁵ it would decide the issue of product exclusions on the basis of the documentation before it.
11. On February 22, 2010, the CBSA issued final determinations of dumping and subsidizing.
12. A hearing, with public and *in camera* testimony, was held in Ottawa, Ontario, from February 22 to 24, 2010.
13. Evraz, Lakeside and Tenaris filed written submissions, provided evidence and made arguments in support of findings of injury and, alternatively, threat of injury. They were represented by counsel and presented witnesses at the hearing.
14. An importer of the subject goods, Apex Distribution Inc. (Apex), and an exporter of the subject goods, SB International Inc. (SB), filed submissions on like goods and classes of goods, but did not appear at the hearing. Apex filed a submission and argued that there was no injury or threat of injury.
15. Cementing Technology & Equipment Ltd. (Cementing Technology) and Top-Co LP (Top-Co), end users of the subject goods, filed notices of participation, but did not make submissions or appear at the hearing.
16. Mr. Len J. Drach and Mr. Neil McLaren of Husky Energy and Mr. Bruce Stuart of Alberta Tubular Products Ltd. appeared as Tribunal witnesses during the hearing.
17. The record of this inquiry consists of all Tribunal exhibits, including the record of the preliminary injury inquiry (PI-2009-003), replies to questionnaires, public and protected versions of the pre-hearing staff report, requests for information and replies to requests for information, documents with respect to the product exclusion process, witness statements, all other exhibits filed by parties and the Tribunal throughout the inquiry, and the transcript of the hearing.
18. 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.
19. The Tribunal received 14 requests for product exclusions from 9 parties: Apex, Argus Machine Co. Ltd., Cementing Technology, Hunting Energy Services (Canada) Ltd. (Hunting), Top-Co, Weatherford Canada Partnership (Weatherford), Westcan Oilfield Supply Ltd. (Westcan), Western Procurement Corporation (Western Procurement) and Zerocor Tubulars (Zerocor). Five of the 14 requests were for coupling stock,

5. S.O.R./91-499 [Rules].

4 were for particular types of seamless casing and tubing, 3 were for pup joints,⁶ 1 was for coated tubing, and 1 was for casing meeting the requirements of Directive 010 of the Energy Resources Conservation Board (ERCB).⁷

20. The Tribunal issued its findings on March 23, 2010.

RESULTS OF THE CBSA'S INVESTIGATIONS

21. On February 22, 2010, the CBSA determined that 100 percent of the subject goods released into Canada from July 1, 2008, to June 30, 2009, had been dumped at an overall weighted average margin of dumping of 137.6 percent, when expressed as a percentage of the export price. The CBSA also determined that 100 percent of the subject goods released into Canada from January 1, 2008, to June 30, 2009, had been subsidized at an estimated weighted average amount of subsidy of 25.7 percent, expressed as a percentage of the export price. The CBSA concluded that the overall margin of dumping and amount of subsidy were not insignificant. The CBSA also provided confidential information regarding the dumping and subsidizing of coupling stock and all other oil country tubular goods.⁸

PRODUCT

Product Definition

22. The goods subject to this inquiry are defined as:

oil country tubular goods, made of carbon or alloy steel, welded or seamless, heat-treated or not heat-treated, regardless of end finish, having an outside diameter from 2 ³/₈ inches to 13 ³/₈ inches (60.3 mm to 339.7 mm), meeting or supplied to meet API specification 5CT or equivalent standard, in all grades, excluding drill pipe and excluding seamless casing up to 11 ³/₄ inches (298.5 mm) in outside diameter, originating in or exported from China.

Additional Product Information⁹

23. Oil country tubular goods are carbon or alloy steel pipes used for the exploration and exploitation of oil and natural gas. The product definition includes non-prime and secondary pipes (limited service products). It also includes intermediate or in-process tubular goods (green tubes) that require additional processing, such as threading, heat treatment or testing, before they can meet the requirements of a particular API specification.

24. Casing is used to prevent the walls of an oil or gas well from collapsing, both during drilling and after completion of the well. Tubing is used within the casing to convey oil and gas to the surface. Both casing and tubing must be able to withstand outside pressure and internal yield pressures within an oil or gas well. They must also have sufficient joint strength to hold their own weight and must be equipped with threads sufficiently tight to contain the well pressure where lengths are joined.

6. A pup joint is a short length of casing, tubing or plain-end casing liner.

7. On June 30, 2008 (revised December 22, 2009), the Energy Resources Conservation Board of Alberta imposed new requirements for casing in sour service wells above 0.34 kPa (revised to 0.3 kPa) partial pressure of hydrogen sulphide.

8. Tribunal Exhibit NQ-2009-004-04A, Administrative Record, Vol. 1 at 171.44, 171.48; Tribunal Exhibit NQ-2009-004-05 (protected), Administrative Record, Vol. 2 at 29.16-29.21.

9. The information in this section and the two subsequent sections is derived in part from the CBSA's statement of reasons for its preliminary determinations. Tribunal Exhibit NQ-2009-004-01A, Administrative Record, Vol. 1 at 26-28.

25. Oil country tubular goods, including coupling stock, meet or are supplied to meet API specification 5CT, in all applicable grades, including but not limited to, H40, J55, K55, M65, N80, L80, L80 HC, L80 Chrome 13, L80 LT, L80 SS, C90, C95, C110, P110, P110 HC, P110 LT, T95, T95 HC, and Q125, or proprietary grades manufactured as substitutes for these specifications. The most common grades of low-strength casing and tubing are J55, K55 and H40. Heat-treated grades (e.g. N80, P110, and L80) are more sophisticated grades of pipes and are used in deeper wells and more severe environments, such as low-temperature services, sour service and heavy oil recovery. Pursuant to the ERCB's latest revision of Directive 010, issued on December 22, 2009, casing used in sour service wells above 0.3 kPa partial pressure of hydrogen sulphide in Alberta must meet certain material and testing specifications that are additional to those of API specification 5CT.¹⁰

Production Process

26. Seamless casing and tubing, as well as coupling stock, are produced by first forming a central cavity in a solid billet (shell). The shell is then rolled on a retained mandrel and reduced in a stretch reduction mill to produce the finished size before being cooled on a walking beam cooling bed.

27. Electric resistance welded (ERW) casing and tubing can be produced in two different ways. The first is by slitting flat hot-rolled steel in coil form (skelp) to the proper width required to produce the desired diameter of pipe. The skelp is then sent through a series of forming electric resistance welding rolls that bend it into a tubular shape. As the edges of the skelp come together under pressure in the final forming rolls, an electric current is passed between them. The resistance to the current heats the edges of the skelp to the welding temperature, and the weld is formed as the two edges are pressed together.

28. ERW casing and tubing are also produced by the stretch reduction method. In this process, hot-rolled strip is fed into a series of forming rolls that bend the steel in a circular (tubular) shape. An electric current is introduced into the steel to heat the edges of the strip, and the edges are then welded to one another under pressure. The product is then heated to approximately 1,850 degrees Fahrenheit in a process called "annealing" and passed through a series of stretch reduction roll stands until the final outside diameter and wall thickness are achieved.

29. Next, the oil country tubular goods are cut to length, heat treated, if required, straightened and inspected. Oil country tubular goods can have a variety of end finishes, including plain-end (the usual end finish for coupling stock) and threaded.¹¹ Tubing can require that the pipe ends be upset¹² and normalized before threading to ensure a stronger connection with the coupling. Prior to shipment, coupling and coupling protectors can be applied to one end of the casing and tubing and thread protectors applied to the other end.

DOMESTIC PRODUCERS

30. There are four domestic producers of oil country tubular goods: Evraz, Lakeside, Tenaris and Welded Tube of Canada (Welded Tube) of Concord, Ontario.

10. Manufacturer's Exhibit A-09 at paras. 1-3, Administrative Record, Vol. 11; Tribunal Exhibit NQ-2009-004-40.26, Administrative Record, Vol. 1B, at 242.28-242.29.

11. Threading and other end finishing may be performed by a third-party.

12. In the upsetting process, the end of the pipe is heated to forging temperature and then inserted endwise into an upsetting machine. The machine pushes the hot metal back, creating a thicker wall at the end of the pipe.

Evraz

31. Evraz is wholly owned by Evraz Group S.A. (Evraz S.A.) of Luxembourg, a vertically integrated steel, mining and vanadium business.

32. Evraz has three manufacturing facilities in Canada that produce oil country tubular goods.

33. During the POI, Evraz manufactured ERW casing and tubing at a plant in Calgary, which was previously owned by IPSCO Inc. (IPSCO). In June 2008, Evraz S.A. purchased a number of IPSCO's operations, including the plant in Calgary, from SSAB Svenkst Stahl of Sweden, which had purchased IPSCO in July 2007. Evraz also produces hollow structural sections, line pipe and standard pipe at this plant. The size range of the oil country tubular goods produced at that plant is between 2 3/8 inches and 13 3/8 inches in outside diameter.

34. Evraz also produced ERW casing at plants in Regina and in Red Deer, Alberta, during the POI. The plant in Regina also manufactured ERW green tube. These plants were previously owned by IPSCO. The size range of the oil country tubular goods produced at these plants is between 2 3/8 inches and 13 3/8 inches in outside diameter.

35. Canadian National Steel Corporation (CNSC), another company owned by Evraz S.A., operates a plant in Camrose, Alberta, that has the capability of producing ERW casing.¹³ This facility is currently idle. The size range of the ERW casing is between 2 3/8 inches and 13 3/8 inches in outside diameter.

36. During the POI, Evraz imported casing and tubing from the United States. It also exported ERW casing and tubing.

Lakeside

37. Lakeside was formed in November 2005. It purchased the assets of Stelpipe Ltd. and is currently a wholly owned subsidiary of Added Capital Corp.

38. During the POI, Lakeside produced ERW casing and tubing with a size range between 2 3/8 inches and 8.626 inches in outside diameter. It also produces standard pipe, line pipe, mechanical tubing and structural tubing.

39. During the POI, Lakeside exported ERW casing and tubing, but did not import oil country tubular goods of any type.

Tenaris

40. Tenaris is wholly owned by Tenaris S.A. of Luxembourg. It is a global manufacturer of seamless and ERW pipe products and provider of pipe handling, stocking and distribution services to the oil and gas, energy, mechanical and automotive industries. Tenaris S.A. owns companies involved in the manufacture of oil country tubular goods in several other countries, including the United States, Mexico, Argentina, Romania and Japan.

41. Tenaris has two manufacturing facilities that produce oil country tubular goods in Canada.

13. The information provided by Evraz in response to the Tribunal's questionnaire includes information for CNSC.

42. During the POI, Tenaris produced seamless casing, tubing and coupling stock at a plant in Sault Ste. Marie, Ontario, which was previously owned by Algoma Steel Inc. In 2000, Tenaris entered into an agreement to operate the idled plant and, in 2002, it purchased the facility. Tenaris also produces line pipe and mechanical pipe for the automotive industry at this plant. The size range of the oil country tubular goods is between 2 ³/₈ inches and 11 ³/₄ inches in outside diameter.

43. Tenaris also produced ERW casing and tubing at a plant in Calgary during the POI. This plant previously belonged to Prudential Steel Limited, which, in 2000, was acquired by Maverick Tube of Chesterfield, Missouri. In October 2006, Tenaris S.A. acquired Maverick Tube. Tenaris also produces line pipe at this plant. The size range of the oil country tubular goods is between 2 ³/₈ inches and 12 ³/₄ inches in outside diameter.

44. The oil country tubular goods produced by Tenaris in Sault Ste. Marie and Calgary are sold by a related company, Tenaris Global Services, which is also owned by Tenaris S.A.

45. During the POI, Tenaris exported and imported seamless casing, ERW casing, tubing and coupling stock. Its imports were from several non-subject countries, that is, Argentina, Columbia, Italy, Japan, Mexico, Romania and the United States.

Welded Tube

46. Welded Tube was founded in 1970. It commenced manufacturing oil country tubular goods in 1981.

47. During the POI, Welded Tube produced ERW casing having an outside diameter of 4 ¹/₂ inches to 10 ³/₄ inches. It also manufactures limited service products and line pipe. Welded Tube has a threading and finishing operation in Port Colborne, Ontario.

48. During the POI, Welded Tube exported ERW casing, but did not import oil country tubular goods of any type.

IMPORTERS

49. The Tribunal requested 31 potential importers of oil country tubular goods to complete an importers' questionnaire and received 16 useable replies.

PURCHASERS

50. The Tribunal requested 27 companies identified as potential purchasers of oil country tubular goods to complete purchasers' questionnaires on market characteristics and received 20 replies. It received 12 replies from distributors of oil country tubular goods and 7 replies from end users of oil country tubular goods. The Tribunal also received a reply from 1 firm that identified itself as an oil country tubular goods procurement and inventory management firm.

FOREIGN PRODUCERS

51. The Tribunal requested 20 potential producers/exporters of oil country tubular goods to complete foreign producers' questionnaires. It did not receive any replies.

DISTRIBUTION CHANNELS

52. In general, both domestically produced and imported oil country tubular goods are sold to oilfield supply distributors that, in turn, sell the products to end users (oil and gas operating companies). However, some sales are made directly to large volume end users. Either way, both domestically produced and imported oil country tubular goods are sold through the same distribution channels.

53. Shipments of oil country tubular goods are made primarily from stockyards or stock points that are situated throughout the major petroleum natural gas exploration and exploitation regions. Either the manufacturer or the distributor may own the inventory and, for some projects, the oil country tubular goods are delivered directly from the manufacturer to the project location, rather than from stock on the ground in stock yards.

ANALYSIS

54. The Tribunal is required, pursuant to subsection 42(1) of *SIMA*, to inquire as to whether the dumping and subsidizing of the subject goods has caused injury or retardation or is threatening to cause injury, with “injury” being defined, in subsection 2(1), as “. . . material injury to a domestic industry”. In this regard, “domestic industry” is defined in subsection 2(1) by reference to the domestic production of “like goods”.

55. Accordingly, the Tribunal must first determine what constitutes “like goods”. Once that determination is made, the Tribunal determines what constitutes the “domestic industry” for purposes of its injury analysis. Finally, the Tribunal will determine whether the dumping and subsidizing of the subject goods have caused injury to a domestic industry. Should the Tribunal arrive at a finding of no injury, it will then determine whether there exists a threat of injury to the domestic industry.¹⁴ If no domestic industry has been established, the Tribunal will consider the question of retardation.¹⁵

56. 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 and subsidizing of the subject goods.

Like Goods and Classes of Goods

57. Given that the Tribunal must determine whether the dumping and 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 after it has assessed whether all the subject goods are within a single class of goods.

58. Recalling that the subject goods comprise coupling stock, seamless casing having an outside diameter greater than 11 ¾ inches (298.5 mm), and ERW casing, tubing, green tubes and limited service products with an outside diameter from 2 ⅜ inches (60.3 mm) to 13 ⅜ inches (339.7 mm), at the time of its preliminary injury inquiry, the Tribunal expressed its intention to fully address, during the present inquiry, the following related issues:

- whether the subject coupling stock constitutes a separate class of goods from the other subject goods; and

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

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

- whether domestically produced seamless casing having an outside diameter of up to 11 ¾ inches (298.5 mm) constitutes like goods to in relation to the subject goods.

59. As a consequence, in its notice of commencement of inquiry, the Tribunal asked parties for advance submissions on these issues.

60. On December 9, 2009, Evraz, Lakeside, Tenaris, Apex and SB filed such submissions. Evraz, Apex and SB filed reply submissions on December 15, 2009.¹⁶ With the exception of Apex's submission, the submissions on classes of goods and like goods comprised argument with little or no supporting evidence.

61. Evraz, Lakeside and Tenaris took the position that all oil country tubular goods constitute a single class of goods. Between them, they submitted that all oil country tubular goods are made to the same API specifications, are intended to go downhole in the extraction of oil and gas, are distributed through the same marketing channels, are used by the same customers and have very similar pricing.

62. Lakeside and Tenaris also submitted that all oil country tubular goods are made using the same production process. In addition, Lakeside referred to previous inquiries involving steel tubular products where the Tribunal determined that carbon steel welded pipe constituted a single class of goods, notwithstanding the diverse range of products and uses.¹⁷

63. Tenaris submitted that coupling stock is similar to other oil country tubular goods, but that its walls are thicker, that it is used for further processing into couplings or float equipment and that it would not normally be used for downhole applications, since the extra weight associated with its thicker walls makes it more expensive than other oil country tubular goods.

64. However, Tenaris expressed concern that with a finding in effect, dumped and subsidized coupling stock could displace other oil country tubular goods if the price was sufficiently attractive to offset the cost of the extra weight. Evraz echoed this concern and pointed out that the U.S. Department of Commerce treated all oil country tubular goods, including coupling stock, as being within the scope of a recent subsidy investigation.¹⁸

65. Lakeside submitted that green tubes should also be considered part of a single class of oil country tubular goods because they can be used as an intermediate product and heat treated to meet the specifications of a higher-strength API grade.

66. Evraz, Lakeside and Tenaris also took the position that ERW casing and tubing and all seamless casing are like goods. They noted the Tribunal's finding in Inquiry No. NQ-2007-001¹⁹ that ERW casing is "like goods" to seamless casing. Evraz submitted that Chinese exporters immediately switched from seamless casing to ERW casing as soon as the complaint filed with the CBSA in *Oil and Gas Well Casing*

16. On December 15, 2009, Evraz claimed that Apex and SB had filed improper reply submissions. In particular, Evraz claimed that Apex and SB had filed reply submissions that raised new issues or made new arguments and, as such, were procedurally unfair because the other parties had no ability to respond. Evraz requested the Tribunal to strike several portions of Apex's reply submission and the entirety of SB's reply submission. On December 17, 2009, following additional submissions from Apex and Evraz, the Tribunal struck parts of Apex's reply submission from the record. It did not strike SB's reply submission.

17. *Carbon Steel Welded Pipe* (20 August 2008), NQ-2008-001 (CITT); *Carbon Steel Welded Pipe* (3 June 2005), RR-2004-003 (CITT); *Certain Carbon Steel Welded Pipe* (24 July 2001), RR-2000-002 (CITT).

18. (7 December 2009), C-570-944 (International Trade Administration).

19. *Seamless Carbon or Alloy Steel Oil and Gas Well Casing* (10 March 2008) (CITT) [*Oil and Gas Well Casing*].

was initiated and suggested that this was proof that ERW casing and seamless casing are indeed like goods. Evraz further submitted that differences in the method of production are irrelevant and that ERW and seamless oil country tubular goods are substitutable and compete in the marketplace.

67. Apex and SB took the position that coupling stock constitutes a separate class of goods from other oil country tubular goods. According to Apex, coupling stock cannot be used as either casing or tubing because its walls are too thick. SB submitted that some API specifications for coupling stock and other oil country tubular goods are different.

68. Apex submitted that green tubes also constitute a separate class of goods because they are not fit for use in a well or drilling applications unless they are heat treated and that the only two heat treatment facilities in Canada are owned and operated by Evraz and Tenaris.

69. Apex and SB also took the position that the Tribunal should re-evaluate its decision in *Oil and Gas Well Casing* to treat ERW casing and seamless casing as like goods. Apex and SB referred to differences in quality, manufacturing process, API specifications, price and customer requirements.

70. After considering these submissions, the Tribunal rendered a final decision on like goods and classes of goods on December 21, 2009.

71. As noted above, the Tribunal determined that there are two classes of goods: (1) the subject coupling stock; and (2) the other subject oil country tubular goods.²⁰ The Tribunal also determined that the like goods include seamless casing with an outside diameter not exceeding 11 ¾ inches (298.5 mm). The reasons for these decisions follow.

72. When assessing whether the subject goods are all within a single class of goods, the Tribunal considers their likeness to one another.²¹

73. Subsection 2(1) of *SIMA* defines “like 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.

74. When certain subject goods are not identical in all respects to other subject goods, as is the case here, the Tribunal typically considers the physical characteristics of the goods (such as their composition and appearance) and their market characteristics (such as substitutability, pricing, distribution channels and end uses, including whether the goods fulfill the same customer needs).²² None of these characteristics is predominant.²³

20. Oil country tubular goods other than coupling stock includes casing, tubing, limited service products and green tubes. Hereinafter, they will be referred to as “casing and tubing”.

21. See, for example, *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) at para. 115.

22. See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at 8 [*Copper Pipe Fittings*]; *Oil and Gas Well Casing* at 7; *Carbon Steel Welded Pipe* (20 August 2008), NQ-2008-001 (CITT) at 6.

23. In *Sarco Canada Limited v. Anti-dumping Tribunal*, [1979] 1 F.C. 247 (F.C.), the Federal Court of Canada held that a determination of like goods requires a consideration of all the physical and market characteristics of the goods and, while emphasis may be placed on certain characteristics, the totality of the characteristics must be taken into account.

75. On this basis, the Tribunal finds that the physical characteristics of coupling stock differ from those of casing and tubing. In particular, it was not disputed that coupling stock has thicker walls than casing and tubing and that coupling stock is subject to some different API specifications.

76. The market characteristics of coupling stock and of casing and tubing also differ. There was no dispute that, because the outside diameters of coupling stock are larger than those of the casing or tubing to which they connect, they have a different end use.

77. Coupling stock, in itself, is not intended for direct use downhole; rather, it requires further processing to respond to the needs of industry. In addition, the extra thickness of coupling stock means that it is more expensive.²⁴ As a consequence, the Tribunal is of the view that coupling stock is generally not substitutable for and, thus, does not compete with casing and tubing.

78. On the other hand, the casing and tubing covered by this inquiry are sufficiently alike as to constitute a single class of goods. They are made to the same API specifications, have the same or similar appearance and composition, are generally substitutable for one another, are both used downhole to extract oil and gas, and are sold through the same distribution channels.²⁵ The Tribunal accepts that green tubes are part of the same class of goods because there was no dispute that they constitute intermediate products that can be further processed to meet a higher API grade. It notes that casing and tubing include some grades that are not heat-treated either.²⁶

79. While the Tribunal recognizes that there are some differences in the methods of production of these products, Evraz has correctly noted that the Tribunal has held, in previous inquiries, that this factor should not be given much weight, if any. The Tribunal adopts the same approach as it did in *Oil and Gas Well Casing* and *Copper Pipe Fittings* where it agreed with the World Trade Organization (WTO) Appellate Body that the focus should be on the products and not on the manufacturing processes.²⁷

80. Concerning the issue of like goods, the Tribunal took account of the definition of “like goods” in subsection 2(1) of *SIMA* and the characteristics of domestically produced goods vis-à-vis the subject goods. On this basis, the Tribunal found that domestically produced coupling stock constitutes like goods in relation to the subject coupling stock and that domestically produced casing and tubing—including seamless casing having an outside diameter of up to 11 ¾ inches (298.5 mm)—constitute like goods in relation to the subject goods.

81. In the Tribunal’s view, domestically produced coupling stock is identical to, or closely resembles, the subject coupling stock in terms of the physical and market characteristics described above.

24. Compare the average prices in *Staff Report* (Coupling Stock—protected), revised 12 February 2010, Tribunal Exhibit NQ-2009-004-09A, Administrative Record, Vol. 2.2 at 55, with the average prices in *Staff Report* (Casing and Tubing—protected), revised 12 February 2010, Tribunal Exhibit NQ-2009-004-11A, Administrative Record, Vol. 2.3 at 152.

25. *Pre-hearing Staff Report* (General Report), Tribunal Exhibit NQ-2009-004-06, Administrative Record, Vol. 1.1 at 12-16; *Oil and Gas Well Casing* at paras. 65, 67-69.

26. The Tribunal has previously treated unfinished products as like goods in relation to finished products. See *Certain Flat Hot-rolled Steel Sheet* (17 August 2001), NQ-2001-001 (CITT) at 12-13, *Certain Cold-rolled Steel Sheet Products* (9 October 2001), NQ-2001-002 (CITT) at 10-11.

27. *Oil and Gas Well Casing* at para. 66; *Copper Pipe Fittings* at 9. See also *United-States—Safeguard Measure on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia* (2001), WTO Docs. WT/DS177/AB/R, WT/DS178/AB/R at para. 94 (Appellate Body Report).

82. With respect to casing and tubing, the Tribunal notes that, while it must decide which domestically produced goods are the like goods on the basis of the CBSA's determination of the subject goods, the Tribunal has jurisdiction to define the like goods more broadly than the subject goods.²⁸ Thus, in *Oil and Gas Well Casing*, the Tribunal was able to determine that domestically produced ERW casing and seamless casing were like goods without having any effect on the definition of the subject goods (i.e. seamless casing from China).²⁹

83. In light of the foregoing, the Tribunal finds that domestically produced casing and tubing are identical to, or closely resemble, the subject casing and tubing in terms of the physical and market characteristics described above. This includes domestically produced seamless casing having an outside diameter of up to 11 ¾ inches (298.5 mm) because it is made to the same API specifications, is marketed through the same distribution channels, and has the same or similar appearance, composition and end uses as, and is largely substitutable for, the subject ERW products of the same dimensions.

Domestic Industry

84. As discussed, the Tribunal's mandate under section 42 of *SIMA* is to determine whether the dumping and subsidizing of the subject goods have caused injury or retardation or threaten to cause injury.

85. In the present inquiry pursuant to section 42 of *SIMA*, Evraz, Lakeside and Tenaris have taken the position that the dumping and subsidizing of the subject casing and tubing have caused or threaten to cause injury. They have not argued retardation or submitted any evidence to this effect.

86. In addition, Tenaris is taking the position that the dumping and subsidizing of the subject coupling stock threaten to cause injury. Tenaris has not argued injury or retardation or submitted any evidence of injury or retardation in relation to coupling stock.

87. Accordingly, the Tribunal must determine in this inquiry (i) whether the dumping and subsidizing of the subject casing and tubing have caused or threaten to cause injury and (ii) whether the dumping and subsidizing of the subject coupling stock threaten to cause injury.

88. As noted above, subsection 2(1) of *SIMA* defines "injury" as "material injury to a domestic industry".

89. 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.

90. The words "domestic", "producer" and "production" are not defined in *SIMA*, but their grammatical and ordinary senses are clear from their dictionary definitions.

28. *Oil and Gas Well Casing* at para. 56. See also *Noury Chemical Corporation and Minerals & Chemicals Ltd. v. Pennwalt of Canada Ltd. and Anti-dumping Tribunal*, [1982] 2 F.C. 283 (F.C.).

29. The Tribunal's finding of a threat of injury in that inquiry resulted in the imposition of anti-dumping and countervailing duties on the seamless casing at issue, not on imports of ERW casing from China.

91. The *Canadian Oxford Dictionary* defines the word “domestic” as “of or within one’s own country, not foreign or international.”³⁰

92. The dictionary’s definition of the word “producer” is “a person, company, country, etc. that produces goods or materials”³¹ In turn, “produce” means “bring (something) into existence manufacture (goods) from raw materials etc. yield (fruit, a harvest, etc.)”³²

93. The dictionary’s definition of the word “production” is “the act or an instance of producing; the process of being produced. . . . of being manufactured, esp. in large quantities”³³

94. The term “like goods” has already been discussed in the preceding section of this statement of reasons. By defining “domestic industry” in terms of domestic production of “like goods”, *SIMA* implies that there be actual output of Canadian-manufactured or Canadian-harvested goods, especially in large quantities.

95. Thus, it would seem, on the basis of the grammatical and ordinary meaning of the wording of subsection 2(1) of *SIMA*, that there is a “domestic industry” if there is a person or company manufacturing or harvesting like goods in Canada, especially in large quantities.³⁴

96. This interpretation is harmonious with the context and legislative scheme. A finding of injury or threat of injury pursuant to *SIMA* is the outcome of a process that is normally initiated pursuant to subsection 31(1) of *SIMA* when a complaint supported by domestic producers of like goods discloses evidence that foreign goods have been dumped or subsidized and discloses a reasonable indication that the dumping or subsidizing has caused injury or threat of injury.

97. Section 37 of the *Special Import Measures Regulations*³⁵ stipulates that the complaint, in order to be considered, must set out the volume and value of the complainant’s domestic production of like goods, a list of all producers of like goods in Canada and details regarding the estimated volume and value of the production of like goods by those other producers.

98. Section 37.1 of the *Regulations* prescribes various factors for determining whether there is dumping or subsidizing, and whether such dumping or subsidizing has caused injury. These factors include the import volume of the dumped or subsidized goods, their effect on prices of like goods, and the resultant impact on the state of the domestic industry, including any actual or potential declines in output, market share, productivity, employment, growth, etc.

99. Thus, *SIMA* not only expressly contemplates the actual manufacturing or harvesting of like goods in Canada but also implicitly contemplates that such domestic production be non-trivial and that the like goods compete in the Canadian market with the dumped or subsidized goods.

30. Second ed., s.v. “domestic”.

31. s.v. “producer”.

32. s.v. “produce”.

33. s.v. “production”.

34. The Tribunal has reached a similar conclusion in the analogous context of a safeguard inquiry under the *Canadian International Trade Tribunal Act*, R.S.C. 1985 (4th Supp.), c. 47 [*CITT Act*], where the issue was whether imports had caused or threatened to cause injury to a “domestic producer”. See *Textiles and Apparel Goods* (6 October 2006), CS-2005-002 (CITT) [*Textiles and Apparel Goods*] at para. 17.

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

100. Indeed, pursuant to section 76.01 of *SIMA* and rule 72 of the *Rules*, the Tribunal can order the early rescission of anti-dumping or countervailing duties if circumstances have changed since its finding of injury, retardation or threat of injury, and the Tribunal has used this authority in the past when Canadian production of like goods had ceased.³⁶

101. These provisions indicate that the object and purpose of *SIMA* are to protect persons or companies that manufacture or harvest goods in Canada from imports of dumped or subsidized goods with which they compete.³⁷

102. *SIMA* is a trade-off.³⁸ In exchange for higher-priced imports, *SIMA* attempts to foster or maintain meaningful levels of investment and employment in Canada.

103. In the Tribunal's view, it would not be harmonious with the legislative scheme and the intent of Parliament to interpret "domestic industry" in a way that would result in anti-dumping and countervailing duties being imposed on imports in order to protect persons or companies that are not actually manufacturing or harvesting goods in Canada that compete with such imports, or whose levels of domestic production and employment are trivial.³⁹

104. Consequently, it seems reasonable to conclude, for the purposes of *SIMA*, that a "domestic industry" exists if there is a person or company in Canada that actually manufactures or harvests like goods, on a non-trivial scale, that compete with the dumped or subsidized goods.⁴⁰

105. Therefore, in order to find injury or threat of injury in the present inquiry, the Tribunal must first determine whether there is a person or company in Canada that manufactures the like goods (i.e. casing and tubing on the one hand, and coupling stock on the other). It must then determine whether the scale of such manufacture is not trivial and, further, whether the like goods compete with the subject goods.

36. See, for example, *Carbon Steel Pipe Nipples, Threaded Couplings and Adaptor Fittings* (8 June 2007), RD-2006-006 (CITT); *Certain Waterproof Rubber Footwear* (18 August 2005), RD-2004-008 (CITT); *Certain Hot-rolled Carbon Steel Plate* (23 August 2004), RD-2004-002 (CITT); *Certain Stainless Steel Round Bar Products* (6 August 2004), RD-2004-001 (CITT); *Certain Stainless Steel Round Bar Products* (26 January 2004), RD-2003-001 (CITT); *Certain Refrigerators, Dishwashers and Dryers* (19 March 2003), RD-2002-005 (CITT); *Certain Stainless Steel Round Bar Products* (5 March 2003) (CITT); *Certain Flat Hot-rolled Carbon and Alloy Steel Sheet Products* (17 January 2003), RD-2002-003 (CITT); *Fresh Iceberg (Head) Lettuce* (22 April 2002), RD-2001-002 (CITT).

37. See *Preformed Fibreglass Pipe Insulation With a Vapour Barrier* (28 January 1994), PB-93-001 (CITT); *Refined Sugar* (26 July 1996), RD-95-001 (CITT); *Fresh Garlic* (4 September 1998), MP-97-001 (CITT); *Cross-linked Polyethylene Tubing* (29 September 2006), NQ-2006-001 (CITT); *Textiles and Apparel Goods* at para. 22.

38. In their foreword to the Sub-Committee on the Review of the Special Import Measures Act of the Standing Committee on Finance and by the Sub-Committee on Trade Disputes of the Standing Committee on Foreign Affairs and International Trade, "Report on the *Special Import Measures Act*" (December 1996), the Co-Chairs state the following: "As drafted in 1984, *SIMA* represented a balance of interests between those parties requiring protection from injurious dumped or subsidized imports, and those requiring access to imports to ensure profitability of their economic activities. . . . The Law provides basic protection to Canadian producers while limiting unnecessary collateral damage to downstream users."

39. It is a general principle of law that the law does not concern itself with trifles: *de minimis non curat lex*. See *Black's Law Dictionary*, 8th ed. and *Re R. and Webster* (1981), 15 M.P.L.R. 60 (Ont. Dist. Ct.), citing *The Reward* (1818), 2 D.O.D.S. 265 at pp. 269-70, 165 E.R. 1482 at 1484.

40. The Tribunal has reached a similar conclusion in the analogous context of a safeguard inquiry under the *CITT Act* where the issue was whether imports had caused or threatened to cause injury to a "domestic producer". See *Textiles and Apparel Goods* at para. 17.

106. In relation to casing and tubing, the evidence shows that Evraz, Lakeside, Tenaris and Welded Tube manufacture casing and tubing in Canada in large quantities, with Evraz, Lakeside and Tenaris accounting for the largest proportion of this domestic production.⁴¹

107. There is no dispute that the domestically produced casing and tubing compete with the subject casing and tubing. Accordingly, the Tribunal finds that Evraz, Lakeside, Tenaris and Welded Tube constitute the “domestic industry” for casing and tubing and, therefore, it must determine whether the dumping and subsidizing of the subject casing and tubing have caused or threaten to cause material injury to these four companies’ production of casing and tubing in Canada.

108. In relation to coupling stock, the evidence on the record shows that only one company—Tenaris—manufactured coupling stock in Canada during the POI.⁴² However, recent Tenaris production and sales in the Canadian market were trivial.⁴³

109. Tenaris has the equipment needed to manufacture coupling stock, but this equipment is not exclusively dedicated to the manufacture of said coupling stock. Tenaris’s level of employment in relation to coupling stock is nominal at best.⁴⁴

110. Moreover, when Tenaris did manufacture coupling stock, it did so primarily for U.S. affiliates, meaning that its coupling stock did not actually compete with the subject coupling stock to any significant extent, if at all.⁴⁵

111. In the Tribunal’s view, *SIMA* cannot be properly interpreted as offering protection to a company like Tenaris in these circumstances. Therefore, for the purposes of *SIMA* and this inquiry, the Tribunal finds there is no “domestic industry” for coupling stock.

112. Since there is no “domestic industry” for coupling stock and, as indicated above, Tenaris has not alleged or submitted evidence of “material retardation of the establishment of a domestic industry” for coupling stock,⁴⁶ the remainder of the Tribunal’s analysis will only address casing and tubing.

INJURY

113. The Tribunal will now determine whether the dumping and subsidizing of the subject casing and tubing have caused injury to the domestic casing and tubing industry, taking into account the factors prescribed by subsection 37.1(1) of the *Regulations*.

41. *Staff Report* (Casing and Tubing—protected), revised 12 February 2010, Tribunal Exhibit NQ-2009-004-11A, Administrative Record, Vol. 2.3 at 154.

42. *Staff Report* (Coupling Stock), revised 12 February 2010, Tribunal Exhibit NQ-2009-004-08A, Administrative Record, Vol. 1.2 at 55; *Staff Report* (Coupling Stock—protected), revised 12 February 2010, Tribunal Exhibit NQ-2009-004-09A, Administrative Record, Vol. 2.2 at 55.

43. *Staff Report* (Coupling Stock—protected), revised 12 February 2010, Tribunal Exhibit NQ-2009-004-09A, Administrative Record, Vol. 2.2 at 55; *Transcript of Public Hearing*, Vol. 1, 22 February 2010, at 32-33.

44. *Staff Report* (Coupling Stock—protected), revised 12 February 2010, Tribunal Exhibit NQ-2009-004-09A, Administrative Record, Vol. 2.2 at 55.

45. *Transcript of Public Hearing*, Vol. 1, 22 February 2010, at 32-33.

46. The Tribunal does not consider retardation unless the company alleging retardation has proven that it has made a substantial commitment to establish (or re-establish) domestic production of like goods, its venture is commercially feasible and there is a firm assurance that the plan will be implemented in the near future. See *Stainless Steel Sheet* (29 March 1983), ADT-17-82 (ADT) and *Bicycle Tires and Tubes* (15 August 1972), ADT-4-72 (ADT).

Conditions in the Canadian Oil and Natural Gas Markets During the POI

114. Because the demand for casing and tubing is so closely dependent on drilling activity for oil and natural gas,⁴⁷ as background to its assessment of injury, the Tribunal will briefly describe conditions in the Canadian oil and natural gas markets during the POI.

115. Drilling activity is strongly influenced by the prices of oil and natural gas.⁴⁸

116. During the POI, the Tribunal notes that the prices of both oil and natural gas were very unstable.

117. Between January and December 2006, the price of natural gas decreased by more than one third and the price of oil fell by 5 percent.⁴⁹ Between January and December 2007, the price of oil rose by 40 percent, while the price of gas fell by 10 percent.⁵⁰ The total number of wells drilled in 2007 was 20 percent lower than in 2006.⁵¹ The number of oil wells drilled fell to a lesser extent than did the number of gas wells drilled.⁵²

118. At the beginning of 2008, industry forecasts were for a continued decline in drilling activity.⁵³

119. To the surprise of many, the prices of both oil and natural gas increased sharply during the first half of 2008.⁵⁴ During 2008, the price of oil⁵⁵ went from \$94.48 per barrel to \$138.04 per barrel and back down to \$40.93 per barrel at the close of the year. As for natural gas⁵⁶, the prices went from \$6.43 per MMBtu in January 2008, peaked at \$11.38 per MMBtu in July 2008 and closed at \$7.20MMBtu at year end.

120. The oil and gas producers reacted quickly to the unexpected increase in commodity prices by rushing to increase drilling activity. As one witness testified, when commodity prices increase, "It's like a race [to drill]".⁵⁷ Nonetheless, despite the increase in drilling activity in the third quarter of 2008, the actual number of wells drilled in 2008 was still approximately 9 percent lower than in 2007.⁵⁸ As in the previous year, the number of oil wells drilled fell to a lesser extent than did the number of gas wells drilled.⁵⁹

47. *Transcript of Public Hearing*, Vol. 1, 22 February 2010, at 18-19; Manufacturer's Exhibit B-03 at para. 5, Administrative Record, Vol. 11A; Manufacturer's Exhibit C-03 at para. 33, Administrative Record, Vol. 11A.

48. *Transcript of Public Hearing*, Vol. 1, 22 February 2010, at 18-19; *Transcript of Public Hearing*, Vol. 2, 23 February 2010, at 102-103.

49. Oil prices refer to Canadian Par at Edmonton prices per barrel and natural gas prices refer to Alberta gas trading (AECO-C) prices per million British thermal unit. Tribunal Exhibit NQ-2009-004-40.15, Administrative Record, Volume 1A at 337, 342.

50. Oil prices refer to Canadian Par at Edmonton prices per barrel and natural gas prices refer to AECO-C prices per million British thermal unit. Tribunal Exhibit NQ-2009-004-40.15, Administrative Record, Volume 1A at 337, 342.

51. Manufacturer's Exhibit B-05 at 22, Administrative Record, Vol. 11A.

52. Tribunal Exhibit NQ-2009-004-13.01B, Administrative Record, Vol. 3 at 133.

53. Manufacturer's Exhibit B-05 at 23, Administrative Record, Vol. 11A.

54. Tribunal Exhibit NQ-2009-004-40.15, Administrative Record, Vol. 1A at 337, 342.

55. Canadian Par at Edmonton price (\$CAN/bbl), Tribunal Exhibit NQ-2009-004-40.15, Administrative Record, Volume 1A at 337.

56. AECO-C price per million British thermal unit. Tribunal Exhibit NQ-2009-004-40.15, Administrative Record, Volume 1A at 342.

57. *Transcript of Public Hearing*, Vol. 2, 23 February 2010, at 103.

58. Tribunal Exhibit NQ-2009-004-40.25, Administrative Record, Vol. 1B at 242.6, 242.9; Manufacturer's Exhibit B-05 at 22, Administrative Record, Vol. 11A; Tribunal Exhibit NQ-2009-004-13.01B, Administrative Record, Vol. 3 at 133.

59. Tribunal Exhibit NQ-2009-004-13.01B, Administrative Record, Vol. 3 at 133.

121. The prices of both oil and natural gas fell from their mid-2008 peaks through to the first quarter of 2009. In the case of natural gas, the price fell even further during the remainder of 2009 as a result, in part, of advances in shale gas well technology, whereas the price of oil recovered, although not to the levels seen in mid-2008.⁶⁰

122. Changing prices of oil and natural gas affected drilling activity. The Tribunal notes, for example, that, in November 2008, the Petroleum Services Association of Canada had forecast only a 4 percent decrease in drilling activity in 2009 compared to 2008. In January 2009, the forecast was revised to a 21 percent decrease and, in April 2009, it was revised again to a 41 percent decrease.⁶¹ The actual number of wells drilled declined by 52 percent from interim period 2008 to interim period 2009.⁶² Again, the number of oil wells drilled decreased to a lesser extent than the number of gas wells drilled.⁶³

123. The volatility in drilling activity during the POI, which reflected the volatility in the prices of oil and natural gas, coupled with the changing costs of steel,⁶⁴ heavily influenced the demand for casing and tubing, creating spikes as the prices of oil and gas increased and downturns as the prices fell.

124. The evidence indicates that, as commodity prices increased in 2008, both distributors and end users of casing and tubing rushed to secure greater inventory than what had been previously forecast in order to meet increased drilling demand. This, in turn, put pressure on the domestic industry, creating an apparent shortage on the availability of casing and tubing, as purchasers tried to secure sufficient amounts of casing and tubing for the winter months of 2008-2009.⁶⁵

125. Witnesses testified that no one actually “. . . ran out of pipe . . .” during this period,⁶⁶ but that the rapid variations in commodity prices seriously influenced drilling forecasts, as everyone expected the increases in commodity prices and activity to continue throughout 2008 and 2009.⁶⁷

126. Demand for casing and tubing decreased abruptly towards the end of 2008.

127. Witnesses testified that they went from actively looking for casing and tubing in mid-2008 to trying to cancel orders in late fall of the same year. One witness likened this to having “. . . the rug . . . pulled out from under (them). . . .”⁶⁸ As orders for casing and tubing were cancelled and others arrived in the stock yards, the market saw a substantial increase in inventory, much of which “stayed on the ground” through to the winter of 2010.⁶⁹

60. Tribunal Exhibit NQ-2009-004-40.25, Administrative Record, Vol. 1B at 242.8-242.11; Tribunal Exhibit NQ-2009-004-40.15, Administrative Record, Vol. 1A at 337, 342; Tribunal Exhibit NQ-2009-004-40.08, Administrative Record, Vol. 1A at 69; Manufacturer’s Exhibit B-05 at 26, Administrative Record, Vol. 11A.

61. Tribunal Exhibit NQ-2009-004-40.25, Administrative Record, Vol. 1B at 242.7-242.9.

62. Manufacturer’s Exhibit B-05 at 22, Administrative Record, Vol. 11A.

63. Manufacturer’s Exhibit B-05 at 26, Administrative Record, Vol. 11A.

64. Tribunal Exhibit NQ-2009-004-40.30, Administrative Record, Vol. 7 at 163-64.

65. *Transcript of Public Hearing*, Vol. 2, 23 February 2010, at 83-85, 90-91; *Transcript of In Camera Hearing*, Vol. 1, 22 February 2010, at 24-27, 54-55; *Transcript of In Camera Hearing*, Vol. 2, 23 February 2010, at 109-111, 113-15, 128, 143, 165-66; *Transcript of Public Hearing*, Vol. 2, 23 February 2010, at 84, 95, 103; *Transcript of In Camera Hearing*, Vol. 1, 22 February 2010, at 65-67; *Transcript of In Camera Hearing*, Vol. 2, 23 February 2010, at 113, 118, 150-51.

66. *Transcript of Public Hearing*, Vol. 2, 23 February 2010, at 103; *Transcript of In Camera Hearing*, Vol. 2, 23 February 2010, at 143, 165.

67. *Transcript of Public Hearing*, Vol. 2, 23 February 2010, at 111.

68. *Ibid.*; *Transcript of In Camera Hearing*, Vol. 1, 22 February 2010, at 29, 67; *Transcript of In Camera Hearing*, Vol. 2, 23 February 2010, at 116, 128, 130, 166.

69. *Transcript of Public Hearing*, Vol. 1, 22 February 2010, at 56, 69; *Transcript of Public Hearing*, Vol. 2, 23 February 2010, at 109; *Transcript of In Camera Hearing*, Vol. 1, 22 February 2010, at 94-95; Manufacturer’s Exhibit C-02 (protected) at para. 23, attachment G, Administrative Record, Vol. 12.

128. The Tribunal conducted its evaluation of injury considering this particular context of volatility both in prices and demand for oil and natural gas.

Volume of Imports of Dumped and Subsidized Goods

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

130. Evraz, Lakeside and Tenaris argued that the evidence before the Tribunal shows that there was a significant increase in imports of the subject casing and tubing during the POI, both in absolute terms and relative to the production and consumption of the like goods.

131. Apex did not dispute that there had been an increase in imports and noted, in its submission, that import volumes had increased rapidly in the later period of 2008 and in early 2009.

132. In absolute terms, the volume of imports of the subject casing and tubing declined by 43 percent from 2006 to 2007 and increased by 263 percent from 2007 to 2008, with the net effect being an increase of more than 100 percent over the two years.

133. The evidence indicates that there was a substantial increase in the volume of imports of ERW casing following the March 2008 finding on seamless casing in *Oil and Gas Well Casing*.⁷⁰ The increase in imports of the subject casing and tubing continued in 2009, with volumes in interim period 2009 being 44 percent higher than in interim period 2008.⁷¹

134. In 2008, imports of the subject casing and tubing were concentrated in the fourth quarter, with 60 percent of total imports for the entire year occurring in those three months. The Tribunal heard testimony that imports of the subject casing and tubing were particularly high in the last quarter of 2008 and first quarter of 2009 and did not decrease despite the slowing demand for casing and tubing.⁷² The Tribunal also heard testimony that many orders of the subject casing and tubing could not be stopped once drilling activity declined at the end of 2008 and early 2009, which resulted in a large build-up in inventory of the subject casing and tubing.⁷³

135. Turning to the issue of the relative increase in import volumes, the Tribunal notes that the ratio of imports of the subject casing and tubing to the domestic production of the like goods decreased by 2 percentage points from 2006 to 2007 and increased by 12 percentage points from 2007 to 2008. The ratio then increased sharply in interim period 2009, rising by 33 percentage points compared to interim period 2008.⁷⁴

70. *Staff Report* (Casing and Tubing—protected), revised 12 February 2010, Tribunal Exhibit NQ-2009-004-11A, Administrative Record, Vol. 2.3 at 158; *Transcript of Public Hearing*, Vol. 1, 22 February 2010, at 36, 53.

71. *Staff Report* (Casing and Tubing), revised 12 February 2010, Tribunal Exhibit NQ-2009-004-10A, Administrative Record, Vol. 1.3 at 158.

72. *Staff Report* (Casing and Tubing), revised 12 February 2010, Tribunal Exhibit NQ-2009-004-10A, Administrative Record, Vol. 1.3 at 158; *Transcript of Public Hearing*, Vol. 1, 22 February 2010, at 10.

73. *Transcript of Public Hearing*, Vol. 2, 23 February 2010, at 107-111; *Transcript of In Camera Hearing*, Vol. 2, 23 February 2010, at 116-17, 129-30, 166-70.

74. *Staff Report* (Casing and Tubing), revised 12 February 2010, Tribunal Exhibit NQ-2009-004-10A, Administrative Record, Vol. 1.3 at 158; *Staff Report* (Casing and Tubing—protected), revised 12 February 2010, Tribunal Exhibit NQ-2009-004-11A, Administrative Record, Vol. 2.3 at 154.

136. The Tribunal observes similar results when comparing import volumes to the domestic consumption of the like goods. The ratio of imports of the subject casing and tubing to domestic sales of the like goods decreased by 3 percentage points from 2006 to 2007 and increased by 18 percentage points from 2007 to 2008. In interim period 2009, the ratio increased by 33 percentage points compared to interim period 2008.⁷⁵

137. Basing its conclusion on the foregoing, the Tribunal is of the view that there was a significant increase in the volume of the subject casing and tubing, both in absolute terms and relative to the production and consumption of like goods.

Effects of Dumped and Subsidized Imports on Prices

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

139. Evraz, Lakeside and Tenaris submitted that the prices of the subject casing and tubing undercut the prices of the like goods and resulted in price depression and price suppression. They also argued that casing and tubing are commodity products and that, once the specifications have been met, the goods are traded on price.

140. Apex did not dispute this characterization, but submitted that the subject casing and tubing had not been responsible for the declining prices of the like goods in 2009.

141. The Tribunal agrees that price is an important factor when sourcing casing and tubing. All respondents to the Tribunal's purchasers' questionnaire on market characteristics indicated that the lowest price was either a "very important" or "somewhat important" factor when purchasing casing and tubing.⁷⁶

142. The Tribunal heard corroborating testimony that price is always a major factor in a purchase decision, with one witness referring to price as being the "primary influence" when purchasing casing and tubing.⁷⁷ The Tribunal also notes testimony that, depending on market conditions, the like goods can command a small price premium over the subject casing and tubing because of factors such as security of supply and reduced lead times. Witnesses, however, testified that purchasers are only willing to pay an additional 5 to 10 percent, at the most, for like goods.⁷⁸

143. The Tribunal concludes, on the basis of the foregoing, that the subject casing and tubing compete with the like goods largely on the basis of price.

75. *Staff Report* (Casing and Tubing), revised 12 February 2010, Tribunal Exhibit NQ-2009-004-10A, Administrative Record, Vol. 1.3 at 158; *Staff Report* (Casing and Tubing—protected), revised 12 February 2010, Tribunal Exhibit NQ-2009-004-11A, Administrative Record, Vol. 2.3 at 161.

76. *Pre-hearing Staff Report* (General Report—protected), Tribunal Exhibit NQ-2009-004-07, Administrative Record, Vol. 2.1 at 34.

77. *Transcript of Public Hearing*, Vol. 2, 23 February 2010, at 106; *Transcript of In Camera Hearing*, Vol. 1, 22 February 2010, at 16; *Transcript of In Camera Hearing*, Vol. 2, 23 February 2010, at 155, 159.

78. *Transcript of Public Hearing*, Vol. 1, 22 February 2010, at 61; *Transcript of In Camera Hearing*, Vol. 1, 22 February 2010, at 16, 68-69, 103-105; *Transcript of In Camera Hearing*, Vol. 2, 23 February 2010, at 126-28.

Price Undercutting

144. The Tribunal examined a variety of evidence to assess whether the prices of the subject casing and tubing undercut the prices of the like goods during the POI.

145. The Tribunal first considered the overall average unit selling values of the subject casing and tubing and those of the like goods. The data show that the average unit selling values of the subject casing and tubing undercut those of the like goods in every period of the POI. The degree of undercutting ranged from 2 percent in 2007 to 14 percent in both 2006 and interim period 2009.⁷⁹

146. The above results are consistent with the responses to the Tribunal's purchasers' questionnaire on market characteristics. Fourteen out of 18 respondents indicated that the price of the subject casing and tubing was lower than the price of the like goods.⁸⁰

147. The Tribunal also assessed evidence collected on four benchmark products to provide a more detailed price comparison between the subject casing and tubing and the like goods. Data were collected for J55 casing, J55 tubing, L80 casing and L80 tubing, for seven quarters, starting with the first quarter of 2008 and ending with the third quarter of 2009.

148. Comparing the volumes of the benchmark products sold by the domestic industry and importers to the total volume of casing and tubing sold in 2008 and interim period 2009 indicates that the benchmark products account for a majority of sales during those periods.⁸¹ The Tribunal is therefore satisfied that the pricing activity relating to these benchmark products is indicative of what was occurring generally in the marketplace.

149. The Tribunal first examined the two J55 benchmark products because J55 is one of the most common grades⁸² of casing and tubing in the market, particularly for the subject casing and tubing. For these products, the prices of the subject casing and tubing undercut the prices of the like goods in 10 of 14 quarters where there was competition. The degree of undercutting ranged from less than 1 percent to 23 percent.⁸³

150. As for the L80 casing and the L80 tubing, price undercutting occurred in four of seven quarters where there was competition. The degree of undercutting for these products ranged from 14 percent to 28 percent.⁸⁴

151. In summary, the data collected for the four benchmark products show that the prices of the subject casing and tubing undercut the prices of the like goods in 14 of 21 instances where there was competition, with the degree of undercutting ranging from less than 1 percent to 32 percent.⁸⁵

79. *Staff Report* (Casing and Tubing—protected), revised 12 February 2010, Tribunal Exhibit NQ-2009-004-11A, Administrative Record, Vol. 2.3 at 167.

80. *Pre-hearing Staff Report* (General Report), revised 12 February 2010, Tribunal Exhibit NQ-2009-004-06A, Administrative Record, Vol. 1.1 at 61.

81. *Staff Report* (Casing and Tubing—protected), revised 12 February 2010, Tribunal Exhibit NQ-2009-004-11A, Administrative Record, Vol. 2.3 at 161, 217, 219, 221, 223.

82. *Ibid.* at 217, 219, 221, 223; Tribunal Exhibit NQ-2009-004-01A, Administrative Record, Vol. 1 at 27; Manufacturer's Exhibit B-05 at para. 16, Administrative Record, Vol. 11A.

83. *Staff Report* (Casing and Tubing—protected), revised 12 February 2010, Tribunal Exhibit NQ-2009-004-11A, Administrative Record, Vol. 2.3 at 173, 174.

84. *Ibid.* at 175, 176.

85. *Ibid.* at 173-76.

152. The Tribunal also considered the data on sales to each domestic producer's and each importer's five largest accounts, which had been collected on a quarterly basis for 2008 and the first three quarters of 2009.

153. The Tribunal identified eight common accounts at which purchases of both the subject casing and tubing and the like goods were made. In 23 of 33 quarters where comparisons could be made,⁸⁶ the prices of the subject casing and tubing undercut the prices of the like goods. That evidence indicates that the degree of undercutting ranged from 1 percent to 61 percent.⁸⁷

154. Evraz, Lakeside and Tenaris each submitted information with respect to allegations of undercutting at specific accounts. In many instances, this information shows that the offered selling prices for the subject goods were between 10 and 50 percent lower than those that the domestic industry was offering. There were also instances where the distributors' selling prices of the subject casing and tubing offered to end users were lower than the prices offered by the domestic industry to the distributors.⁸⁸

155. Finally, the Tribunal heard testimony from several witnesses that the prices of the subject casing and tubing were significantly lower than the prices of the like goods during the POI. One witness testified that the prices of the subject casing and tubing were 10 to 40 percent lower than the prices of the like goods.⁸⁹

156. On the basis of the foregoing, the Tribunal concludes that the prices of the subject casing and tubing significantly undercut the prices of the like goods during the POI.

Price Depression

157. Having determined that the prices of the subject casing and tubing undercut the prices of the like goods during the POI, the Tribunal will examine the data to determine if the undercutting depressed the prices of the like goods (i.e. caused the prices of the like goods to decline).

158. Commencing with the overall average unit selling values of the like goods, the Tribunal observes that the average unit selling value of the like goods decreased by 7 percent from 2006 to 2007 and increased by 42 percent from 2007 to 2008, for a net increase of 31 percent from 2006 to 2008. There was a further increase of 23 percent from interim period 2008 to interim period 2009.⁹⁰

159. As these aggregate market data include both casing and tubing and are collected on an annual and interim period basis, the Tribunal is of the view that they are not the best indicator of prices in the market over the POI.

86. Comparisons were possible in quarters in which both the subject casing and tubing and the like goods were sold to one of the common accounts.

87. *Staff Report* (Casing and Tubing—protected), revised 12 February 2010, Tribunal Exhibit NQ-2009-004-11A, Administrative Record, Vol. 2.3 at 177-87.

88. Manufacturer's Exhibit A-06 (protected) at paras. 41-65, Administrative Record, Vol. 12; Manufacturer's Exhibit B-06 (protected) at paras. 18-35, attachments 8-21, Administrative Record, Vol. 12; Manufacturer's Exhibit C-02 (protected) at paras. 15-28, attachments A-K, Administrative Record, Vol. 12.

89. *Transcript of Public Hearing*, Vol. 2, 23 February 2010, at 119-20; *Transcript of In Camera Hearing*, Vol. 1, 22 February 2010, at 16.

90. *Staff Report* (Casing and Tubing), revised 12 February 2010, Tribunal Exhibit NQ-2009-004-10A, Administrative Record, Vol. 1.3 at 167-68.

160. To overcome issues relating to product mix and the averaging of prices over 12-month and 9-month periods, the Tribunal turned to the benchmark product data, which were collected on a quarterly basis. The Tribunal considers that these data more accurately reflect pricing in the marketplace.

161. Examining the data for J55 casing and tubing shows that the prices of the like goods declined steadily beginning in the first quarter of 2009. By the third quarter of 2009, the prices of domestic J55 casing and domestic J55 tubing were each 30 percent lower than they had been in the fourth quarter of 2008. In comparison, the price of the subject J55 casing remained essentially stable over this same period, while the price of the subject J55 tubing decreased by 10 percent.

162. The Tribunal notes that, on a quarter-by-quarter basis, the incidences of price depression do not correspond perfectly with the incidences of price undercutting. There are even quarters in which the price of the domestic benchmark product decreased, despite an increase in the price of the corresponding subject benchmark product.⁹¹

163. Nonetheless, the Tribunal considers that the different trends in pricing between the subject and domestic benchmark products over these four quarters reflect the pressure being experienced by the domestic industry as it tried to compete with the increasing presence of the subject casing and tubing in the market, particularly following the substantial influx of imports in the last quarter of 2008. The Tribunal notes that there was a substantial increase in inventories of the subject casing and tubing, which resulted in ongoing downward pressure on prices, as importers tried to liquidate their excess stocks of casing and tubing.

164. The Tribunal also examined the numerous examples of price depression cited in the account-specific injury allegations submitted by Evraz, Lakeside and Tenaris.

165. Evraz submitted that, in some instances where it lowered prices offered to customers to maintain sales, the reductions were still not low enough to win business from competitors selling the subject casing and tubing.⁹²

166. Tenaris cited several examples, mostly for ERW casing and tubing, where it was forced to reduce its prices to maintain business at large accounts.

167. According to Tenaris, however, the prices of the subject ERW casing also had a depressing effect on the prices of like seamless casing, despite the protection provided by the Tribunal's finding in *Oil and Gas Well Casing*. In addition to the impact felt on sales to major clients, Tenaris submitted that price competition was particularly fierce in the spot market and that large inventories of the subject casing and tubing continued to put downward pressure on prices even after import volumes slowed.⁹³

168. Lakeside provided several examples where it was informed by its customers of the availability of low-priced subject casing and tubing in the marketplace and where it subsequently was forced to lower its price.⁹⁴

91. *Staff Report* (Casing and Tubing—protected), revised 12 February 2010, Tribunal Exhibit NQ-2009-004-11A, Administrative Record, Vol. 2.3 at 173-74.

92. Manufacturer's Exhibit B-06 (protected) at paras 18-35, attachments 8-21, Administrative Record, Vol. 12.

93. Manufacturer's Exhibit A-06 at paras. 41-68, Administrative Record, Vol. 12.

94. Manufacturer's Exhibit C-02 at paras. 15-28, attachments A-K, Administrative Record, Vol. 12.

169. The Tribunal also heard testimony that the price of the subject casing and tubing was used by clients as a lever for negotiation, forcing the domestic industry to reduce its prices in order to solicit new business or consolidate existing accounts.⁹⁵

170. On the basis of the foregoing, the Tribunal is of the view that, in light of the numerous examples of price undercutting and depression, the overwhelming evidence that casing and tubing from China and Canada are similar in quality and compete on price, and the uncontested evidence that the subject casing and tubing are the lowest-priced in the Canadian market, the domestic industry experienced significant price depression and that such price depreciation can be attributed to the presence of the subject casing and tubing in the market.

Price Suppression

171. To assess the extent of price suppression, the Tribunal compared the changes in the domestic industry's average unit cost of goods sold to the changes in the average unit selling value of the like goods. It notes that, throughout the first part of the POI, the domestic industry does not appear to have experienced price suppression. From 2006 to 2007, the average unit cost of goods sold was stable, while the average unit selling value decreased. Similarly, from 2007 to 2008, the average unit cost of goods sold and average unit selling value both increased, with the latter increasing by a higher percentage than the former.

172. However, the evidence indicates that the domestic industry did experience price suppression at least during interim period 2009 and possibly in late 2008 as well.

173. In this regard, the Tribunal notes that the increase in the average unit selling value from interim period 2008 to interim period 2009 was far less than the increase in the average unit cost of goods sold.⁹⁶ Prior to the collapse in the global steel markets beginning in late 2008, there had been a sharp increase in the prices of hot-rolled steel coil and steel billets, the principal raw material costs for casing and tubing.⁹⁷

174. Other evidence on the record corroborates the Tribunal's view that the subject casing and tubing suppressed the prices of the like goods.

175. Tenaris submitted that pricing pressures from the subject tubing constrained it from increasing prices in 2008.⁹⁸ The Tribunal also heard testimony that, when Tenaris attempted to institute a price increase in November 2008, several customers objected because their competitors were purchasing the subject casing and tubing at lower prices. Tenaris was forced to either refrain from increasing prices or reduce prices to previous levels.⁹⁹

95. *Transcript of Public Hearing*, Vol. 2, 23 February 2010, at 121-22; *Transcript of In Camera Hearing*, Vol. 2, 23 February 2010, at 155.

96. *Staff Report* (Casing and Tubing—protected), revised 12 February 2010, Tribunal Exhibit NQ-2009-004-11A, Administrative Record, Vol. 2.3 at 167, 188.

97. Tribunal Exhibit NQ-2009-004-40.30, Administrative Record, Vol. 7 at 163, 164.

98. *Transcript of Public Hearing*, Vol. 1, 22 February 2010, at 16, 37; Manufacturer's Exhibit A-06 (protected) at para. 46, Administrative Record, Vol. 12.

99. *Transcript of Public Hearing*, Vol. 1, 22 February 2010, at 16, 37; *Transcript of In Camera Hearing*, Vol. 1, 22 February 2010, at 4-8.

176. Lakeside submitted that, although prices were already lower in 2009 than in 2008, the prices of the subject casing and tubing played a large role in preventing Lakeside from passing on increased material costs to its customers.¹⁰⁰

177. The Tribunal notes that the price suppression experienced by the domestic industry followed the substantial increase in imports of the subject casing and tubing in the fourth quarter of 2008.¹⁰¹

178. In the Tribunal's view, the domestic industry was prevented from recovering the increased cost of raw materials due, in part, to the price-suppressive effects of the subject casing and tubing. Accordingly, the Tribunal concludes that the subject casing and tubing significantly suppressed the prices of the like goods during the POI.

Conclusion

179. Having reviewed the evidence on the record pertaining to the effects of the subject casing and tubing on the prices of the like goods, the Tribunal finds that the subject casing and tubing significantly undercut, depressed and suppressed the prices of the like goods during the POI.

Impact of the Dumped and Subsidized Imports on the Domestic Industry

180. Paragraph 37.1(1)(c) of the *Regulations* requires the Tribunal to consider the resulting impact of the dumped and subsidized goods on the domestic industry.

181. Evraz, Lakeside and Tenaris argued that the subject casing and tubing had negative effects on their production, capacity utilization, sales, market share, financial results, employment, return on investment, growth, ability to raise capital and wages.

182. Apex argued that production of the like goods had declined in Canada because Evraz and Tenaris moved manufacturing to facilities in other countries. It also submitted that any reductions in employment were due to the recession.

Production, Capacity and Capacity Utilization

183. In 2007, domestic production declined by 28 percent from 2006 levels. It increased by 32 percent in 2008 compared to 2007, but still remained 5 percent lower than the 2006 level. Domestic production declined by 65 percent in interim period 2009, compared to interim period 2008.¹⁰²

184. The domestic industry's production capacity decreased minimally during the POI. Capacity utilization rates were 38 percent in 2006, 28 percent in 2007 and 38 percent again in 2008. In interim period 2009, however, the utilization rate fell to 13 percent, compared to 36 percent in interim period 2008.¹⁰³ The Tribunal heard testimony that not all mills are currently in operation and that those in operation are not operating at their maximum capability.¹⁰⁴

100. Manufacturer's Exhibit C-02 (protected) at paras. 29-32, Administrative Record, Vol. 11A.

101. *Staff Report* (Casing and Tubing—protected), revised 12 February 2010, Tribunal Exhibit NQ-2009-004-11A, Administrative Record, Vol. 2.3 at 158.

102. *Ibid.* at 154.

103. *Staff Report* (Casing and Tubing), revised 12 February 2010, Tribunal Exhibit NQ-2009-004-10A (protected), Administrative Record, Vol. 2.3 at 197; *Staff Report* (Casing and Tubing—protected), revised 12 February 2010, Tribunal Exhibit NQ-2009-004-11A, Administrative Record, Vol. 2.3 at 197.

104. *Transcript of Public Hearing*, Vol. 1, 22 February 2010, at 51.

185. In the Tribunal's view, the significant unused capacity of the domestic industry indicates that it had the ability to meet the demand for casing and tubing. In the Tribunal's opinion, the significant market presence of imports of the subject casing and tubing, especially in the last quarter of 2008 and interim period 2009, can only have had a negative impact on the capacity utilization rates experienced by the domestic industry.

Sales from Domestic Production and Market Share

186. The size of the domestic market for casing and tubing decreased by 19 percent from 2006 to 2008, being the net effect of a 37 percent decrease in 2007 and a 28 percent increase in 2008. The market fell by 38 percent in interim period 2009, compared to interim period 2008.

187. Although sales from domestic production declined by 25 percent from 2006 to 2007, the domestic industry was able to increase its share of the contracting market. In 2008, the opposite situation occurred, as the domestic industry was not able to take full advantage of the expanding market and lost market share, despite having a 16 percent increase in sales.

188. The steepest decline in sales from domestic production occurred in interim period 2009, when sales decreased by 53 percent, compared to interim period 2008. This 53 percent decline in sales of domestically produced casing and tubing substantially exceeded the 38 percent decline in the Canadian market for those goods. As a result, in interim period 2009, the domestic industry experienced its greatest loss of market share during the POI.

189. The market share held by the subject casing and tubing continued to increase throughout the POI, from 6 percent in 2006 and 2007 to 16 percent in 2008, and finally from 10 percent in interim period 2008 to 25 percent in interim period 2009.

190. The Tribunal observes that the latter gain of 15 percentage points occurred even though the domestic market was experiencing a significant contraction. The Tribunal further observes that the increase in market share for the subject casing and tubing in 2008 and interim period 2009 closely resembles the loss of market share by the domestic industry during those same periods.¹⁰⁵

191. The above discussion is consistent with the evidence of account-specific allegations of lost sales submitted by parties and corroborated by testimony at the hearing.¹⁰⁶

192. In light of the above, the Tribunal is of the view that the growth in market share of the subject casing and tubing during the POI, particularly in 2008 and 2009, occurred at the expense of the domestic industry.

105. *Staff Report* (Casing and Tubing), revised 12 February 2010, Tribunal Exhibit NQ-2009-004-10A, Administrative Record, Vol. 1.3 at 153, 162; *Staff Report* (Casing and Tubing), revised 22 February 2010, Tribunal Exhibit NQ-2009-004-10C, Administrative Record, Vol. 1.3 at 313; *Staff Report* (Casing and Tubing—protected), revised 12 February 2010, Tribunal Exhibit NQ-2009-004-11A, Administrative Record, Vol. 2.3 at 163.

106. Manufacturer's Exhibit A-06 (protected) at paras. 41-65, Administrative Record, Vol. 12; Manufacturer's Exhibit B-06 (protected), at paras 18-35, attachments 8-21, Administrative Record, Vol. 12; Manufacturer's Exhibit C-02 (protected), paras. 15-28, attachments A-K, Administrative Record, Vol. 12; *Transcript of Public Hearing*, Vol. 1, 22 February 2010, at 49-50; *Transcript of In Camera Hearing*, Vol. 1, 22 February 2010, at 43-44.

Financial Results

193. The domestic industry enjoyed positive financial results from 2006 to 2008, with improvements in both gross margin and net income. However, the financial position of the domestic industry underwent a substantial shift in interim period 2009. The gross margin fell by approximately two thirds compared to interim period 2008. This was the sharpest decline in gross margin experienced by the domestic industry during the POI.¹⁰⁷ A witness for Tenaris testified that the decline in its gross margin exceeded the 40 percent decline in the market.¹⁰⁸

194. The domestic industry's net profit also deteriorated substantially from interim period 2008 to interim period 2009.¹⁰⁹ In the Tribunal's view, this reflects the carry-over of losses stemming from the dramatic drop in production late in 2008 and into 2009.

195. The Tribunal is of the view that the domestic industry's decline in financial position is directly related to the decrease in its sales and market share caused by the subject casing and tubing.

Employment and Productivity

196. Direct employment fluctuated between 2006 and 2008, first decreasing by 15 percent when the market contracted in 2007 and then increasing by 12 percent in 2008 as the market expanded. However, there was a significant decrease in interim period 2009, as direct employment fell by 46 percent compared to interim period 2008.¹¹⁰ The Tribunal heard testimony that the domestic industry tried to preserve jobs through work-sharing programs, but still had to lay off employees and reduce crews.¹¹¹

197. When the Tribunal examines the productivity levels of the domestic industry, the same trends can be found. Between 2006 and 2008, productivity remained relatively stable, but then decreased substantially in interim period 2009 compared to interim period 2008.¹¹²

198. The Tribunal is of the view that the decline in employment and productivity experienced by the domestic industry in interim period 2009 reflects the decrease in production and sales caused by the subject casing and tubing.

Other Indicators

199. As for inventories, the evidence indicates that the ratio of the domestic industry's inventories of like goods to the volume of domestic production remained relatively stable between 2006 and 2008. However, this ratio more than doubled between interim period 2008 and interim period 2009.¹¹³

107. *Staff Report* (Casing and Tubing—protected), revised 12 February 2010, Tribunal Exhibit NQ-2009-004-11A, Administrative Record, Vol. 2.3 at 188.

108. *Transcript of Public Hearing*, Vol. 1, 22 February 2010, at 10-11.

109. The Tribunal notes that Tenaris's financial statements include a goodwill impairment charge for interim period 2009, which overstates the extent of the decline.

110. *Staff Report* (Casing and Tubing), revised 12 February 2010, Tribunal Exhibit NQ-2009-004-10A, Administrative Record, Vol. 1.3 at 195.

111. *Transcript of In Camera Hearing*, Vol. 1, 22 February 2010, at 29-31.

112. *Staff Report* (Casing and Tubing), revised 12 February 2010, Tribunal Exhibit NQ-2009-004-10A, Administrative Record, Vol. 1.3 at 196.

113. *Staff Report* (Casing and Tubing—protected), revised 12 February 2010, Tribunal Exhibit NQ-2009-004-11A, Administrative Record, Vol. 2.3 at 154, 199.

200. The Tribunal is of the view that the relative increase in inventories during this period is the result of the decrease in sales of domestic production caused by competition from the subject casing and tubing.

201. Paragraph 37.1(1)(c) of the *Regulations* also prescribes that the Tribunal consider in its assessment “. . . the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods” The Tribunal notes that the CBSA’s confidential information for casing and tubing shows that the weighted average margin of dumping, expressed as a percentage of the export price was significant.¹¹⁴

202. 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.

203. Finally, the Tribunal notes that several domestic producers claimed to have experienced negative effects with respect to other indicators of injury, namely, return on investments, cash flow, growth, ability to raise capital and wages.¹¹⁵

204. In light of the Tribunal’s conclusions that the subject casing and tubing resulted in a loss of market share, declining sales and deteriorating financial performance, the Tribunal is of the opinion that the subject casing and tubing also negatively impacted the domestic industry’s returns on investments, cash flow, growth, ability to raise capital and wages.

Conclusion

205. On the basis of the foregoing, the resultant impact of the subject casing and tubing on the domestic industry included decreased production and capacity utilization, lost market share, lost sales, declining financial performance and reduced employment, and negative effects on wages, return on investments, cash flow, growth and the ability to raise capital.

206. In the Tribunal’s view, the impact on the domestic industry is sufficiently adverse to constitute material injury.

Causation

207. Evraz and Tenaris argued that the Tribunal could find that the dumping and subsidizing of the subject casing and tubing have caused material injury merely if the dumping and subsidizing are a contributing cause or a significant cause of material injury.¹¹⁶ Their arguments reflect an interpretation of section 42 of *SIMA* that the Tribunal has sometimes made in previous inquiries and that has been upheld as reasonable by a Binational Panel.¹¹⁷

114. Tribunal Exhibit NQ-2009-004-05 (protected), Administrative Record, Vol. 2 at 29.18 and 29.21.

115. *Staff Report* (Casing and Tubing—protected), revised 12 February 2010, Tribunal Exhibit NQ-2009-004-11A, Administrative Record, Vol. 2.3 at 200.

116. *Transcript of Public Argument*, Vol. 1, 24 February 2010, at 14, 30.

117. For example, Machine Tufted Carpeting (21 April 1992), NQ-91-006 (CITT) at 21; Fresh, Whole, Delicious, Red Delicious and Golden Delicious Apples (9 February 1995), NQ-94-001 (CITT) at 21; Certain Stainless Steel Bars in Straight Lengths (13 November 1990), NQ-90-002 (CITT) at 7; Certain Concrete Panels, Reinforced with Fiberglass Mesh (26 August 1998), CDA-97-1904-01 (Binational Panel) at 11–12.

208. However, the Tribunal has, in many other and mostly more recent inquiries, interpreted *SIMA* as prescribing a more rigorous causation standard. In those inquiries, the Tribunal held that a finding of injury is only open to it if the dumping or subsidizing has in and of itself caused material injury.¹¹⁸ This interpretation has also been upheld on bi-national panel review.¹¹⁹

209. In the Tribunal's view, in cases where both dumping or subsidizing and non-dumping or non-subsidizing factors have cumulatively caused injury to a domestic industry, the interpretations proposed by Evraz and Tenaris could result in the Tribunal finding that the dumping or subsidizing has caused material injury when, in fact, the dumping or subsidizing has in of itself only caused immaterial injury. Such a result would be absurd.

210. Section 42 of *SIMA* does not use language such as "has been a cause of material injury", "has been a significant cause of material injury", "has contributed to material injury" or "has been a contributing cause of material injury", as proposed by Evraz and Tenaris.

211. Indeed, for China-specific safeguard inquiries before the Tribunal pursuant to sections 30.2 and 30.22 of the *CITT Act*, Parliament has clearly expressed that imported goods be a "significant cause of material injury". Instead, section 42 of *SIMA* uses the phrase "has caused [material] injury". The plain meaning of these words and the inference that can be drawn from Parliament's different choice of wording are that the dumping or subsidizing must, in itself, be the cause of material injury.

212. This interpretation is harmonious with the context of the provision. Subsection 37.1(3) of the *Regulations* requires the Tribunal, for the purpose of determining whether the dumping or subsidizing has caused injury, to consider whether any factors other than the dumping or subsidizing of the goods have caused injury. This requirement stems from Article 3.5 of the *Anti-dumping Agreement*¹²⁰ and Article 15.5 of the *Agreement on Subsidies and Countervailing Measures*,¹²¹ which require investigating authorities in WTO member countries to ensure that any injury to a domestic industry that has been caused by other factors is not attributed to the dumping or subsidizing of any goods.

213. Thus, the Tribunal must separate and distinguish the adverse effects of the dumping and subsidizing of goods from any adverse effects caused by other factors and determine whether the impact of the former constitutes material injury.¹²²

214. This interpretation is also harmonious with the overall legislative scheme. *SIMA* gives domestic producers recourse in appropriate circumstances only. It is not sufficient that goods have been dumped or subsidized; they must also have caused injury or retardation or threaten to cause injury. *SIMA* prescribes separate proceedings for determining whether goods have been dumped or subsidized and for determining whether such dumping or subsidizing has caused injury or retardation or threatens to cause injury. The injury proceedings consist of both a preliminary inquiry and a final inquiry. Each of these inquiries is typically very complex and involves elaborate procedures, a variety of interested parties represented by

118. For example, *Xanthates of All Grades in Dry or Liquid Forms, Excluding Cellulose Xanthates* (4 March 2003), NQ-2002-003 (CITT) at 11; *Certain Stainless Steel Round Bar* (3 September 2003), RR-2002-003 and RR-2002-004 (CITT) at 19; *Thermoelectric Containers* (11 December 2008), NQ-2008-002 (CITT) at para. 144.

119. *Machine Tufted Carpeting* (7 April 1993), CDA-92-1904-02 (Binational Panel).

120. 15 April 1994, online: World Trade Organization <http://www.wto.org/english/docs_e/legal_e/final_e.htm>.

121. *Ibid.*

122. See Appellate Body Report, *United States – Anti-dumping Measures on Certain Hot-rolled Steel Products from Japan*, WT/DS184/AB/R, adopted 23 August 2001 at paras. 223–24.

counsel, information gathering, written submissions, and public hearings where witnesses testify and are subject to cross-examination by parties with adverse interests. These inquiries take place over a period of months and parties, including domestic producers, can incur considerable expenses.

215. Despite these substantial hurdles, Evraz and Tenaris would in effect have the Tribunal believe that Parliament created a legal threshold for injury that is so low that it intended for the Tribunal to find that dumping or subsidizing “has caused” material injury virtually every time. Such a prospect is simply untenable.

216. Therefore, the Tribunal will assess whether the dumping and subsidizing of the subject casing and tubing have in and of themselves caused material injury to the domestic casing and tubing industry.

Other Factors

217. Subsection 37.1(3) of the *Regulations* directs the Tribunal to consider factors other than the dumping and subsidizing to ensure that any injury or threat of injury caused by those factors is not attributed to the effects of the dumped and subsidized goods. Following is the Tribunal’s assessment of the relevant factors.

– Domestic Industry Inability to Supply

218. Apex submitted that the domestic industry was unable to meet the increase in demand for casing and tubing that occurred in mid-2008. According to Apex, during 2008, Canadian distributors were put on allocation by the domestic industry and told to look elsewhere for supply, as the producers were already “booked solid” with orders. Apex argued that, as a result, distributors had no choice but to rely on imports of the subject casing and tubing to make up the shortfall. As events transpired, by the time the imports actually arrived in Canada, in the fourth quarter of 2008 and the first quarter of 2009, demand had contracted significantly, making the imports surplus to the needs of the market.

219. Evraz, Lakeside and Tenaris submitted that no customers were put on allocation in 2008.¹²³ The Tribunal’s witnesses testified that they were able to purchase domestically produced casing and tubing in 2008, even though it was difficult and there were gaps at times.¹²⁴

220. In the Tribunal’s view, the domestic industry responded as best as it could to satisfy demand for casing and tubing in the abnormal circumstances of the second half of 2008, as its customers reevaluated their needs and increased their purchase forecasts. There may have been instances where the domestic industry could not fulfill every spot order in the lead times desired.¹²⁵ However, the Tribunal does not consider that the domestic industry had a fundamental inability to supply the market, such that it necessitated the significant increase which occurred in import volumes of the subject casing and tubing. As previously mentioned, no one during this period actually “ran out of pipe”, the demand being mostly fuelled

123. Tribunal Exhibit NQ-2009-004-RI-01, Administrative Record, Vol. 9 at 2; Tribunal Exhibit NQ-2009-004-RI-02 (protected), Administrative Record, Vol. 10 at 1; Tribunal Exhibit NQ-2009-004-RI-03, Administrative Record, Vol. 9 at 1; *Transcript of Public Hearing*, Vol. 1, 22 February 2010, at 54; *Transcript of In Camera Hearing*, Vol. 1, 22 February 2010, at 27, 53-54.

124. *Transcript of Public Hearing*, Vol. 2, 23 February 2010, at 84-86, 103, 111-12; *Transcript of In Camera Hearing*, Vol. 2, 23 February 2010, at 110-15, 165.

125. *Transcript of In Camera Hearing*, Vol. 1, 22 February 2010, at 28, 53-54, 98-99, 107-108; *Transcript of In Camera Hearing*, Vol. 2, 23 February 2010, at 116, 136-37, 143; *Transcript of Public Hearing*, Vol. 2, 23 February 2010, at 103-104.

by very volatile markets and speculation as to the continued increase in commodity and oil prices through 2008 and 2009. In this regard, the Tribunal further notes the testimony of one of the witnesses that no drilling activity ceased because of a lack of casing and tubing.¹²⁶

– Recession

221. During the POI, the global economy experienced the most severe recession since the 1930s. In Canada, real GDP contracted for three consecutive quarters, from the fourth quarter of 2008 until the second quarter of 2009, with respective quarter-over-quarter decreases of 3.7 percent, 6.2 percent and 3.1 percent. Growth in the third quarter of 2009 was a meagre 0.4 percent.¹²⁷

222. The domestic industry agreed that the recession had a negative effect on the demand for casing and tubing and, hence, on its production and sales.¹²⁸ The Tribunal's witnesses also testified to the impact of the recession.¹²⁹

– Imports from Non-subject Countries

223. Apex alleged that Evraz and Tenaris increased their volume of imports of casing and tubing from associated mills in non-subject countries during the POI and that it was the low prices of these imports that negatively affected the domestic market.

224. First, the Tribunal notes that the domestic producers' sales of imports of casing and tubing from non-subject countries as a proportion of their total sales in the domestic market declined steadily from 2006 to 2008. The proportion increased in interim period 2009 compared to interim period 2008, albeit only to the same level as in 2006.¹³⁰ Furthermore, the evidence does not support the contention that the domestic producers' imports of casing and tubing from non-subject countries were responsible for the price depression and price suppression experienced in the time periods noted above. The volumes of their imports were low in relation to the overall market, and the prices of those imports were, for the most part, higher than those of the subject casing and tubing.¹³¹

225. The Tribunal observes that, overall, the average unit selling values of casing and tubing from non-subject countries other than the United States were the highest in the domestic market in each of the five periods of the POI.¹³²

126. *Transcript of Public Hearing*, Vol. 2, 23 February 2010, at 103; *Transcript of In Camera Hearing*, Vol. 1, 22 February 2010, at 57; *Transcript of In Camera Hearing*, Vol. 2, 23 February 2010, at 143.

127. Tribunal Exhibit NQ-2009-004-40.07, Administrative Record, Vol. 1A at 25-26, 36.

128. Manufacturer's Exhibit B-01 at para. 2, Administrative Record, Vol. 11A; Manufacturer's Exhibit A-03 at paras. 20-22, 29, Administrative Record, Vol. 11; Tribunal Exhibit NQ-2009-004-14.03 (protected), Administrative Record, Vol. 4B at 17; Manufacturer's Exhibit B-05 at paras. 8, 12, 15, 17, 38, Administrative Record, Vol. 11A; *Transcript of Public Hearing*, Vol. 1, 22 February 2010, at 22-23. *Transcript of In Camera Hearing*, Vol. 1, 22 February 2010, at 49, 102.

129. *Transcript of In Camera Hearing*, Vol. 2, 23 February 2010, at 116, 166-67.

130. Tribunal Exhibit NQ-2009-004-11B (protected), Administrative Record, Vol. 2.3 at 300.

131. *Staff Report* (Casing and Tubing—protected), revised 12 February 2010, Tribunal Exhibit NQ-2009-004-11A, Administrative Record, Vol. 2.3 at 211, 215.

132. *Staff Report* (Casing and Tubing), revised 12 February 2010, Tribunal Exhibit NQ-2009-004-10A, Administrative Record, Vol. 1.3 at 167.

226. As for imports from the United States, witnesses at the hearing generally agreed that the average unit selling values of U.S. casing and tubing were similar to those of the like goods. This corroborates other evidence on the record.¹³³

227. The Tribunal does not find this result surprising. The market for casing and tubing in North America is essentially an integrated market. Producers of casing and tubing in the United States generally faced the same competitive conditions as the domestic industry during the POI, particularly in experiencing rising prices for oil and gas, followed by a dramatic collapse in drilling activity.¹³⁴

– Exchange Rates

228. The Tribunal notes that, during the POI, the value of the Canadian dollar fluctuated considerably against the value of the U.S. dollar. The average annual rate of exchange between the Canadian and U.S. dollars increased from \$0.88 in 2006 to \$0.94 in 2007 and 2008. In interim period 2009, the average rate of exchange was \$0.86, compared to \$0.98 in interim period 2008.¹³⁵

229. The Tribunal heard testimony that the appreciation in the Canadian dollar in 2008 made imports of the subject casing and tubing even more attractive in the domestic market.¹³⁶ However, it does not appear that the fluctuations in the exchange rate significantly impacted the domestic industry as a whole in terms of the cost of its raw materials.¹³⁷

– Directive 010

230. Apex alleged that the domestic industry had struggled to meet the requirements of Directive 010 and, as a result, had lost sales in the later period of the POI.

231. The Tribunal notes the uncontradicted evidence submitted by Evraz, Lakeside and Tenaris showing that they manufacture casing that is fully compliant with the requirements of Directive 010.¹³⁸ Witnesses for Evraz and Tenaris testified that they only had to make minor adjustments to their production processes.¹³⁹

232. Moreover, the Tribunal notes that Directive 010 applies only to casing used in sour-service wells in Alberta, which, according to a witness for Tenaris, represents 25 to 30 percent of total Canadian demand for casing and tubing.¹⁴⁰ Further, the Tribunal notes that there was an initial grace period of one year, from June 2008 to June 2009, for meeting the requirements of Directive 010, which gave ample time to domestic producers to conform to the new specification.¹⁴¹

133. *Ibid.*; *Transcript of Public Hearing*, Vol. 1, 22 February 2010, at 28-29, 58-60; *Transcript of Public Hearing*, Vol. 2, 23 February 2010, at 120-21; *Transcript of In Camera Hearing*, Vol. 1, 22 February 2010, at 51-52, 62-63; *Transcript of In Camera Hearing*, Vol. 2, 23 February 2010, at 184.

134. Tribunal Exhibit NQ-2009-004-40.16, Administrative Record, Vol. 1B at 18-19.

135. *Pre-hearing Staff Report* (General Report—protected), Tribunal Exhibit NQ-2009-004-07, Administrative Record, Vol. 2.1 at 51.

136. *Transcript of In Camera Hearing*, Vol. 1, 22 February 2010, at 77.

137. *Ibid.* at 21-24, 77-78.

138. *Transcript of Public Hearing*, Vol. 1, 22 February 2010, at 13-14, 46-47; Tribunal Exhibit NQ-2009-004-44.03, Administrative Record, Vol. 1.5A at 141.

139. *Transcript of Public Hearing*, Vol. 1, 22 February 2010, at 14, 46.

140. *Ibid.* at 13.

141. Tribunal Exhibit NQ-2009-004-40.26, Administrative Record, Vol. 1B at 242.15. The Tribunal notes that, in December 2009, there was an extension in the grace period.

– Intra-industry Competition

233. The Tribunal notes that there are only four domestic producers of casing and tubing and a relatively limited number of large purchasers, whether distributors or end users.

234. Accordingly, it is not surprising that the domestic producers compete against each other and sometimes lost sales or even whole accounts to one another.¹⁴²

– Direct Competition with Distributors

235. Apex submitted that the domestic producers' own actions had a negative effect on the market because they repeatedly bypassed their affiliated distributors to sell directly to large end users.

236. When questioned on the veracity of this allegation, witnesses explained that direct sales to end users were limited to large accounts and were often based on annual sales agreements. The evidence also discloses that, in many cases where a domestic producer was dealing directly with an end user, the actual sale was closed in association with a distributor that purchased the goods from the domestic producer.¹⁴³

237. Evraz also noted that traditional supply agreements with end users are falling out of favour due to the availability of low-priced subject goods.¹⁴⁴

238. The Tribunal is satisfied that the fact that domestic producers were competing with their own distributors was not a factor that contributed to injury, but rather constitutes a market reality that is accepted and integrated into the domestic sales and distribution model for casing and tubing.

Conclusion

239. Notwithstanding the accumulative losses suffered by the domestic casing and tubing industry that are attributable to some of the above factors, the Tribunal concludes that the dumping and subsidizing of the subject casing and tubing have in and of themselves caused material injury.

EXCLUSIONS

240. The Tribunal excludes particular products from a finding when requesters demonstrate that such exclusions will not cause injury to the domestic industry.¹⁴⁵ In this regard, the Tribunal considers whether the domestic industry normally produces, actively supplies or is capable of producing the particular products or substitutable or competing goods.¹⁴⁶

241. As indicated above, the Tribunal received 14 requests for product exclusions and made its decision solely on the basis of the written submissions received with regard to these requests and any replies to them.

142. *Transcript of Public Hearing*, Vol. 1, 22 February 2010, at 14-17; *Transcript of In Camera Hearing*, Vol. 1, 22 February 2010, at 37, 55-56.

143. Manufacturer's Exhibit B-06 (protected) at paras. 18-31, Administrative Record, Vol. 12; Manufacturer's Exhibit A-06 (protected) at paras. 43, 53, Administrative Record, Vol. 12; *Transcript of In Camera Hearing*, Vol. 1, 22 February 2010, at 8-10, 76, 78-81.

144. Manufacturer's Exhibit B-05 at paras. 32-33, Administrative Record, Vol. 11A.

145. *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) at para. 340.

146. *Certain Stainless Steel Wire* (30 July 2004), NQ-2004-001 (CITT) at para. 96.

242. Five of the 14 requests were for coupling stock. The Tribunal's finding does not cover coupling stock; therefore, these 5 requests are moot.

243. Three of the requests were for pup joints. In particular, Apex requested the exclusion of pup joints, seamless or welded, heat-treated or not heat-treated, having an outside diameter from 60.3 mm to 114.3 mm, with external upset end (EUE), having a joint length less than the average 9.23 m tubing length. Weatherford requested the exclusion of API specification 5CT seamless EUE pup joints, EUE at both ends, sizes 2.375, 2.875 and 3.50 inches, lengths of 2, 4, 6, 8 and 10 feet, grade J55. Westcan requested the exclusion of seamless EUE and non-upset end pup joints, sizes 1.050, 1.315, 1.600, 1.900, 2.063, 2 3/8, 2 7/8 and 3 1/2 inches in lengths of 2 to 12 feet, grades J-55, N-80 and P110.

244. Evraz, Lakeside and Tenaris opposed only the first of these three requests on the basis that 9.23 m is the standard length of tubing, which they produce, and that API specification 5CT generally defines pup joints as tubing up to 3.66 m (12 feet), which they do not produce and have no interest in producing.¹⁴⁷

245. The Tribunal finds that Apex's request exceeds the scope of the standard definition of pup joints and, if granted, could facilitate circumvention of the Tribunal's finding with respect to tubing. Therefore the Tribunal grants an exclusion for pup joints, seamless or welded, heat-treated or not heat-treated, in lengths of up to 3.66 m (12 feet).

246. The Tribunal received two requests, one from Hunting and one from Western Procurement, to exclude seamless casing with a diameter in excess of 7 inches.

247. The Tribunal's finding does not cover seamless casing with a diameter less than or equal to 11 3/4 inches. Therefore, these requests, in effect, deal with seamless casing of a diameter greater than 11 3/4 inches and less than or equal to 13 3/8 inches. These requests assumed that there was little or no domestic production of this product.¹⁴⁸ Tenaris produces seamless casing with a diameter only up to 11 3/4 inches, but both Tenaris and Evraz produce substitutable ERW casing.¹⁴⁹ Therefore, the Tribunal denies these two requests.

248. Hunting and Western Procurement also requested the exclusion of seamless casing and tubing in all weights and diameters for specialty grades L80 HC, Chrome 13, L80 SS, C110, P110 HC, T95 HE that are covered by the finding. They claimed that these products were not produced in Canada.¹⁵⁰

147. Tribunal Exhibit NQ-2009-004-44.01, Administrative Record, Vol. 1.5A at 18-22; Tribunal Exhibit NQ-2009-004-44.02, Administrative Record, Vol. 1.5A at 73-79; Tribunal Exhibit NQ-2009-004-44.03, Administrative Record, Vol. 1.5A at 142-46; Tribunal Exhibit NQ-2009-004-45.03 (protected), Administrative Record, Vol. 2.5 at 107-109.

148. Tribunal Exhibit NQ-2009-004-42.06, Administrative Record, Vol. 1.5 at 140-45; Tribunal Exhibit NQ-2009-004-42.06A, Administrative Record, Vol. 1.5 at 153.2-153.185; Tribunal Exhibit NQ-2009-004-42.07, Administrative Record, Vol. 1.5 at 161-66; Tribunal Exhibit NQ-2009-004-43.06 (protected), Administrative Record, Vol. 2.5 at 31; Tribunal Exhibit NQ-2009-004-43.07 (protected), Administrative Record, Vol. 2.5 at 35.

149. Tribunal Exhibit NQ-2009-004-44.01, Administrative Record, Vol. 1.5A at 33-36, 45-48; Tribunal Exhibit NQ-2009-004-44.02, Administrative Record, Vol. 1.5A at 105-109, 120-24.

150. Tribunal Exhibit NQ-2009-004-42.06, Administrative Record, Vol. 1.5 at 146-53; Tribunal Exhibit NQ-2009-004-42.06A, Administrative Record, Vol. 1.5 at 153.2-153.185; Tribunal Exhibit NQ-2009-004-42.07, Administrative Record, Vol. 1.5 at 167-74; Tribunal Exhibit NQ-2009-004-43.06 (protected), Administrative Record, Vol. 2.5 at 32; Tribunal Exhibit NQ-2009-004-43.07 (protected), Administrative Record, Vol. 2.5 at 36.

249. In fact, there is evidence that Evraz and Tenaris produce or can produce substitutable ERW casing in certain proprietary grades, including HC grades, to API CT specifications.¹⁵¹ Therefore, these requests are also denied.

250. Zerocor requested an exclusion for carbon zirconium internal coat extended-life tubing, which is specialty, premium-priced 60.33- to 114.4-mm tubing with a proprietary internal epoxy coating that extends the life of the tubing.¹⁵²

251. Tenaris, Evraz and Lakeside opposed the request on the basis that they produce substitutable tubing and that an exclusion would facilitate circumvention of the Tribunal's finding, as Chinese producers would simply have to coat their tubing before exporting it to Canada at dumped and subsidized prices.¹⁵³ The Tribunal agrees.

252. Zerocor has not demonstrated that its product is so unique, in a proprietary sense and on market level, that it does not compete with or is not substitutable for tubing produced by Canadian mills and that the domestic producers of tubing are not capable of producing substitutable coated tubing. Therefore, the request is denied.

253. Apex requested an exclusion for the subject casing meeting the specifications of Directive 010, which many wells in Canada now require. This request assumed that the domestic industry was struggling to comply with Directive 010. However, the domestic industry has satisfied the Tribunal that this is not the case.¹⁵⁴ Accordingly, the request is denied.

CONCLUSION

254. Pursuant to subsection 43(1) of *SIMA*, the Tribunal hereby finds that the dumping and subsidizing of the subject casing and tubing have caused injury to the domestic industry.

151. Tribunal Exhibit NQ-2009-004-44.01, Administrative Record, Vol. 1.5A at 37-40, 49-52; Tribunal Exhibit NQ-2009-004-44.02, Administrative Record, Vol. 1.5A at 110-14, 125-29; Tribunal Exhibit NQ-2009-004-45.02 (protected), Administrative Record, Vol. 2.5 at 52-102; Tribunal Exhibit NQ-2009-004-45.03 (protected), Administrative Record, Vol. 2.5 at 110-11.

152. Zerocor's request was filed on February 12, 2010, or 16 days late. After receiving an explanation for the lateness of the filing, the Tribunal decided, on February 15, 2010, to accept the request pursuant to subrule 24.1(4) of the Rules and to allow the domestic producers to reply by February 19, 2010. However, having regard to the fact that the hearing on injury was scheduled to commence on February 22, 2010, out of equity and fairness to the domestic producers, the Tribunal did not provide Zerocor with an opportunity to reply to the responses from the domestic producers.

153. Tribunal Exhibit NQ-2009-004-44.01A, Administrative Record, Vol. 1.5A at 55.6-55.11; Tribunal Exhibit NQ-2009-004-44.02A, Administrative Record, Vol. 1.5A at 130.6-130.11; Tribunal Exhibit NQ-2009-004-44.03A, Administrative Record, Vol. 1.5A at 152.2-152.5; Tribunal Exhibit NQ-2009-004-45.01A (protected), Administrative Record, Vol. 2.5 at 36.8-36.10; Tribunal Exhibit NQ-2009-004-45.02A (protected), Administrative Record, Vol. 2.5 at 102.2-102.5.

154. Tribunal Exhibit NQ-2009-004-44.01, Administrative Record, Vol. 1.5A at 23-28; Tribunal Exhibit NQ-2009-004-44.02, Administrative Record, Vol. 1.5A at 80-99; Tribunal Exhibit NQ-2009-004-45.03 (protected), Administrative Record, Vol. 2.5 at 104-106; Tribunal Exhibit NQ-2009-004-45.01 (protected), Administrative Record, Vol. 2.5 at 36.2-36.7; Tribunal Exhibit NQ-2009-004-45.02 (protected), Administrative Record, Vol. 2.5 at 38-51; Tribunal Exhibit NQ-2009-004-44.03, Administrative Record, Vol. 1.5A at 133-41.

255. Pursuant to subsection 43(1) of *SIMA*, the Tribunal hereby finds that the dumping and subsidizing of the subject coupling stock have not caused injury or retardation and are not threatening to cause injury to the domestic industry.

256. The Tribunal hereby excludes pup joints, seamless or welded, heat-treated or not heat-treated, in lengths of up to 3.66 m (12 feet), from its injury finding.

André F. Scott

André F. Scott
Presiding Member

Serge Fréchette

Serge Fréchette
Member

Jason W. Downey

Jason W. Downey
Member