



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

FINDINGS AND REASONS

Inquiry No. NQ-2011-001

Pup Joints

*Findings issued
Tuesday, April 10, 2012*

*Reasons issued
Wednesday, April 25, 2012*

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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 PUP JOINTS 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 pup joints, 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 4 1/2 inches (60.3 mm to 114.3 mm), in all grades, in lengths from 2 feet to 12 feet (61 cm to 366 cm), 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 March 12, 2012, 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 the aforementioned goods that are tubing pup joints have not caused injury but are threatening to cause injury to the domestic tubing pup joints industry; and
- the dumping and subsidization of the aforementioned goods that are casing pup joints, if any, have not caused injury or retardation and are not threatening to cause injury to the domestic casing pup joints industry.

Stephen A. Leach

Stephen A. Leach
Presiding Member

Serge Fréchette

Serge Fréchette
Member

Jason W. Downey

Jason W. Downey
Member

Dominique Laporte

Dominique Laporte
Secretary

The statement of reasons will be issued within 15 days.

| | |
|---|--|
| Place of Hearing: | Ottawa, Ontario |
| Dates of Hearing: | March 12 to 14, 2012 |
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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 (OCTG) pup joints, 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 4 1/2 inches (60.3 mm to 114.3 mm), in all grades, in lengths from 2 feet to 12 feet (61 cm to 366 cm), originating in or exported from the People's Republic of China (China) (the subject goods) have caused injury or retardation or are threatening to cause injury to the domestic industry.
2. On September 12, 2011, the President of the Canada Border Services Agency (CBSA), following a complaint filed by Dover Corporation (Canada) Limited – Alberta Oil Tool Division (AOT) of Edmonton, Alberta, initiated investigations into whether the subject goods had been dumped or subsidized. The complaint was supported by Tenaris Canada Inc. (Tenaris).
3. On September 13, 2011, pursuant to subsection 34(2) of *SIMA*, the Tribunal issued a notice advising interested parties that it had initiated a preliminary injury inquiry to determine whether the evidence disclosed a reasonable indication that the dumping and subsidizing of the subject goods had caused injury or retardation or were threatening to cause injury. On November 14, 2011, the Tribunal made a preliminary determination, pursuant to subsection 37.1(1), that there was evidence that disclosed a reasonable indication that the dumping and subsidizing of the subject goods had caused injury or retardation or were threatening to cause injury.
4. On December 12, 2011, 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.
5. On December 13, 2011, the Tribunal issued a notice of commencement of inquiry.² The Tribunal's period of inquiry (POI) covered three full years, from January 1, 2009, to December 31, 2011.
6. As part of its inquiry, the Tribunal requested domestic producers, importers, distributors and foreign producers of pup joints to complete questionnaires. The Tribunal also requested purchasers of pup joints in Canada to complete questionnaires on market characteristics.
7. On January 25, 2012, the Tribunal distributed short-form producers' questionnaires to additional potential domestic producers of pup joints.
8. The Tribunal received replies from 4 producers, 9 importers and 13 purchasers. From the replies to the questionnaires and other information on the record, the Tribunal's staff prepared public and protected staff reports that were issued on February 13, 2012. Revisions to both staff reports were issued on March 12, 2012.
9. The Tribunal did not receive any requests for exclusions.
10. On March 12, 2012, the CBSA issued final determinations of dumping and subsidizing.

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

2. C. Gaz. 2011.I.3850.

11. The Tribunal held a hearing, with public and *in camera* testimony in Ottawa, Ontario, from March 12 to 14, 2012.
12. AOT filed written submissions, provided evidence and made arguments in support of a finding of injury or, alternatively, threat of injury. AOT was represented by counsel and presented a witness at the hearing.
13. WestCan Oilfield Supply Ltd. (WestCan) and Hengshui Weijia Petroleum Equipment Manufacturing Co. Ltd. opposed a finding of injury but did not file submissions on the matter of injury or present witnesses at the hearing.
14. Mr. Chad Tomlinson of Tri-alta Oilfield Industries Ltd. (Tri-alta) and Mr. Dave Reed of Weatherford Canada Partnership (Weatherford) appeared as Tribunal witnesses at the hearing.
15. The record of this inquiry consists of all Tribunal exhibits, including the record of the preliminary injury inquiry (PI-2011-001), replies to questionnaires, public and protected versions of the staff report and revisions, requests for information and replies to requests for information, witness statements, all other exhibits filed by the parties and the Tribunal throughout the inquiry, and the transcript of the hearing.
16. All public exhibits were made available to the parties. Protected exhibits were made available only to counsel who had filed a declaration and undertaking with the Tribunal in respect of confidential information.
17. The Tribunal issued its findings on April 10, 2012.

RESULTS OF THE CBSA'S INVESTIGATIONS

18. On March 12, 2012, the CBSA determined that 100 percent of the subject goods released into Canada from July 1, 2010, to June 30, 2011, had been dumped at a weighted average margin of dumping of 144 percent, when expressed as a percentage of the export price.³
19. The CBSA also determined that 100 percent of the subject goods released into Canada from January 1, 2010, to June 30, 2011, had been subsidized at a weighted average amount of subsidy of 31.4 percent, when expressed as a percentage of the export price.⁴
20. The CBSA concluded that the overall margin of dumping and amount of subsidy were not insignificant.⁵

PRODUCT

Product Definition

21. The goods subject to this inquiry are defined as:
OCTG pup joints, 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 4 1/2 inches (60.3 mm to 114.3 mm), in all grades, in lengths from 2 feet to 12 feet (61 cm to 366 cm), originating in or exported from China.

3. Tribunal Exhibit NQ-2011-001-04, Administrative Record, Vol. 1 at 135.18.

4. *Ibid.*

5. *Ibid.* at 135.50.

Additional Product Information⁶

22. The subject goods are OCTG pup joints made from carbon or alloy steel pipes used for the exploration and exploitation of oil and natural gas. These pipes may be made by the electric resistance welded (ERW) or seamless production method, and are generally supplied to meet American Petroleum Institute (API) specifications 5CT or equivalent standard.

23. Pup joints are primarily used for the purpose of adjusting the depth of strings or down hole tools, particularly where exact depth readings in a well are required for any given purpose, such as setting valves, packers, nipples or circulating sleeves. Pup joints are also used with down hole pumps. The number and lengths of pup joints vary widely from well to well, depending on the various equipment and performance requirements established by engineers of the purchasing end users.

24. Pup joints range from 2 feet to 12 feet in length, with a permitted tolerance of plus or minus 3 inches. The sizes are generally 2, 4, 6, 8, 10, and 12 feet in length.

25. The subject goods are, by virtue of the outside diameter range, essentially short lengths of OCTG tubing.

26. Theoretically, the subject goods meet or are supplied to meet any grade, 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, Q125 and proprietary grades manufactured as substitutes for these specifications.

27. The grade numbers define the minimum yield strength required of the grade in kilo-pounds (force) per square inch (ksi), or 1,000 pounds per square inch. Pup joints may also be made to proprietary specifications.

28. As with all OCTG, a standard pup joint must be able to withstand outside pressure and internal yield pressures within the well. Also, it must have sufficient joint strength to hold its own weight and must be equipped with threads sufficiently tight to contain the well pressure where lengths are joined.

29. Perforated pup joints are included as goods subject to this inquiry. These are pup joints with holes in the body of the pup joint (usually 3/8 inch, although they may have holes or slots of various sizes in the body). The product is produced with API 5CT tubing, though once perforated, the product no longer conforms to an API 5CT specification, since it no longer meets the yield strength requirements. Perforated pup joints are employed to allow fluids to enter the production tubing. They can also be used to create a mud anchor.

Production Process

30. AOT manufactures pup joints using plain-end tubing as an input material in production. For J55 grade pup joints, a length of J55 OCTG tubing is employed. For L80 grade pup joints, the input is an A-519 mechanical tube with the appropriate steel chemistry required to meet L80 OCTG specifications.

6. The information in this section is derived from the CBSA's statement of reasons, information contained in AOT's complaint and responses to Tribunal questionnaires.

31. For J55 pup joints, AOT produces an upset end by heating (upset forging) and butting to thicken the end of the pipe diameter. The ends are then threaded to make pup joints. J55 tubing is cut 8 inches longer than the required pup joint length to accommodate this process.

32. In the case of L80 pup joints, the production process uses profiling rather than upset ends and, accordingly, only 1/4 inch of additional length is needed to accommodate finishing. Profiling is a machining process in which the pipe input has the required thickness at the butted end but the rest of the body is reduced to a specific thickness with a mechanical lathe. This process precludes the need for additional heat-treatment at the butted end. The butted ends of the tube are then threaded to make a pup joint.

33. In order to meet API 5CT specifications, the threaded pup joints are tested. This includes drift testing, which is an assessment of the straightness within the hollow of the tube, to ensure no bends or kinks exist after the pup joint is forged, and hydrostatic testing, which is an assessment of the pup joint's ability to withstand internal pressure.

34. Finally, the pup joints are stencilled and painted. For perforated pup joints, the holes are then punched into the body of the tube.

35. In the case of Argus Machine Co. Ltd. (Argus), a coupling is added to the pup joint before it is stored.

DOMESTIC PRODUCERS

36. The Tribunal identified four domestic producers of pup joints in Canada, namely, AOT, Argus, Hunting Energy Services (Canada) Ltd. (Hunting) and Hydril Canadian Company Limited Partnership (TenarisHydril). AOT provided a complete reply to the Tribunal's producers' questionnaire on pup joints. TenarisHydril provided a partial reply to the same questionnaire. In response to the short-form producers' questionnaire, Argus provided a complete reply, while Hunting provided a partial reply.

AOT

37. AOT is a division of Dover Corporation (Canada) Limited (Dover) and operates as part of the Norris Production Solutions business unit, along with Norris Rods. AOT is 100 percent owned by Dover Corporation of Downers Grove, Illinois.

38. Dover produces and markets a wide range of production service equipment for the oil and gas well industry. AOT produces and sells pup joints under the Norris brand at its facilities in Edmonton, Alberta. Other products produced by AOT include sucker rods, drive rods, tubing and casing fittings, butterfly valves and controls, among others.

39. Pup joints were first introduced into AOT's manufacturing and production line in the mid-1960s with the production of J55 pup joints. AOT began producing L80 pup joints in Canada in 2009, prior to which it imported L80 pup joints from the United States.

40. During the POI, AOT produced J55 and L80 seamless pup joints and perforated pup joints in Edmonton. AOT sells pup joints to distributors and original equipment manufacturers (OEMs).

41. AOT also imported some L80 pup joints from the United States during the POI.

Argus

42. Argus is a 100 percent Canadian-owned, privately held firm that was incorporated in 1958 and is located in Edmonton.
43. Argus threads casing and tubing in diameters ranging from 2 3/8 inches to 20 inches and derives 100 percent of its revenues from supporting the oil and gas industry.
44. Argus has manufactured pup joints of various outside diameters and lengths for over 40 years.
45. During the POI, Argus produced L80, P110 and T95 seamless and ERW pup joints. All of Argus's pup joints are sold in the domestic market to distributors and end users.
46. Argus did not import pup joints during the POI.

Hunting

47. Hunting of Calgary, Alberta, was established in 1988. Its parent company is Hunting PLC.
48. Hunting manufactures several grades of pup joints in Canada, including J55 and L80 seamless and welded pup joints and higher-grade pup joints. It sells its pup joints to end users and distributors.
49. Hunting does not have the capacity to produce upset end pup joints. The pup joints that it produces use proprietary Hunting threads or third-party proprietary threads that it is licensed to cut.
50. Hunting did not import pup joints during the POI.

TenarisHydril

51. TenarisHydril of Nisku, Alberta, is 100 percent owned by Tenaris Algoma Tubes Inc. of Sault Ste. Marie, Ontario. The parent company of TenarisHydril is Tenaris, SA of Luxemburg. The Nisku plant began threading premium connections and accessories in Canada in 1985 and was acquired by Tenaris in 2007. Tenaris is a producer of other types of OCTG and was a participant in Inquiry No. 2009-004.⁷
52. TenarisHydril produces what is known in the industry as "premium connection" pup joints at its plant in Nisku; these are sold only in association with its premium connection tubing. TenarisHydril produces pup joints using materials provided by Algoma Tubes, distributors and third parties. It does not produce commodity American Petroleum Institute (API) connections, but has the API certification to do so. TenarisHydril sells pup joints to distributors, end users and OEMs.
53. During the POI, TenarisHydril produced L80, P110 and TN80SS pup joints in Nisku. TenarisHydril did not import pup joints during the POI.

IMPORTERS

54. The Tribunal requested 26 potential importers of pup joints to complete importers' questionnaires. The Tribunal received 16 replies, including 7 from companies that did not import pup joints.

7. *Oil Country Tubular Goods* (23 March 2010) (CITT).

PURCHASERS

55. The Tribunal sent purchasers' questionnaires on market characteristics to 18 companies identified as potential purchasers of pup joints. The Tribunal received 13 replies.

FOREIGN PRODUCERS

56. The Tribunal sent foreign producers' questionnaires to 94 companies and received 1 reply.

DISTRIBUTION

57. The majority of domestically produced and imported pup joints are sold to oilfield supply distributors. These service and supply companies, in turn, sell the products to end users, i.e. oil and gas operating companies.

58. Some sales are made directly to large end users (oil and gas operating companies) without passing through a distributor. Pup joints may also be sold to specialty OEMs that require them as connecting links or complementary products to the ones that they manufacture (such as down-hole pumps and wellheads).

ANALYSIS

59. The Tribunal is required, pursuant to subsection 42(1) of *SIMA*, to inquire as to whether the dumping and subsidizing of the subject goods have caused injury or retardation or are 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".

60. Accordingly, the Tribunal must first determine what constitutes "like goods". Once that determination has been made, the Tribunal must determine what constitutes the "domestic industry" for purposes of its injury analysis. The Tribunal can then assess whether the dumping and subsidizing of the subject goods have caused injury to the domestic industry. Should the Tribunal arrive at a finding of no injury, it will determine whether there exists a threat of injury to the domestic industry.⁸ If necessary, the Tribunal will consider the question of retardation.⁹

61. Given that the CBSA has determined that the subject goods were dumped and subsidized, the Tribunal must also determine whether it will make an assessment of the cumulative effect of the dumping and subsidizing of the subject goods (i.e. whether it will cross-cumulate the effects) in this inquiry.

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

8. 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.

9. Subsection 2(1) of *SIMA* defines "retardation" as "... material retardation of the establishment of a domestic industry". Therefore, should the Tribunal determine that a domestic industry is already established, it will not need to consider the question of retardation.

Subject Goods/Like Goods, and Classes of Goods

63. During the course of the Tribunal's inquiry, an issue arose relating to the definition of the subject goods provided by the CBSA.

Issue Arising from the Definition of the Subject Goods

– Background

64. In a letter to the Tribunal dated February 15, 2012, AOT reported a concern that there may be some confusion as to whether the subject goods comprise OCTG *casing* pup joints as well as OCTG *tubing* pup joints, likely arising from the fact that the maximum and minimum outside diameters for tubing and casing overlap.¹⁰

65. In light of this development, and in order to assist the Tribunal in conducting its inquiry, on February 24, 2012, the Tribunal wrote to the CBSA requesting that it provide certain clarifications with respect to the definition of the subject goods. The questions posed by the Tribunal in that request read as follows:

- Please explain the view of CBSA regarding the subjectivity of casing pup joints to the above-noted inquiry. Seamless casing pup joints with an outside diameter not exceeding 11¾ inches, and meeting the other specifications of the product definition, are covered under the Tribunal's finding in Inquiry No. NQ-2007-001, *Seamless Oil and Gas Well Casing*. On the other hand, welded (ERW) casing pup joints are not covered under the Tribunal's finding in Inquiry No. NQ-2007-001 and are excluded from the Tribunal's finding in Inquiry No. NQ-2009-004, *Oil Country Tubular Goods*. Does the CBSA consider **ERW casing pup joints**, made of carbon or alloy steel, heat-treated or not heat-treated, regardless of end finish, having an outside diameter from 2 3/8 inches to 4 1/2 inches (60.3 mm to 114.3 mm), in all grades, in lengths from 2 feet to 12 feet (61 cm to 366 cm), to be subject goods in this current inquiry, Inquiry No. NQ-2011-001?
- If the CBSA is of the view that **ERW casing pup joints** are not subject goods in Inquiry No. NQ-2011-001, is the CBSA of the view that the subject goods in Inquiry No. NQ-2011-001 are limited to oil country tubular goods **tubing** pup joints, 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 4 1/2 inches (60.3 mm to 114.3 mm), in all grades, in lengths from 2 feet to 12 feet (61 cm to 366 cm)?¹¹

66. In a letter dated March 7, 2012, the CBSA responded that it was of the view that the Tribunal's inquiry did not comprise OCTG *casing* pup joints, but, rather, that it was limited to OCTG *tubing* pup joints.¹²

67. In a letter dated March 8, 2012, the Tribunal acknowledged receipt of the CBSA's letter of March 7, 2012. The Tribunal indicated that, while the clarifications expressed in that letter were informative, they could not form a valid basis for the Tribunal to narrow its inquiry in the same way as if they had been made in the CBSA's preliminary determination under section 38 of *SIMA*. The Tribunal also indicated that, if the CBSA were to make a positive final injury determination that did not implement the clarifications into the product definition itself, any findings that the Tribunal may make under section 43 would have to be made on the basis of the product definition alone.¹³

10. Letter from AOT to the Tribunal dated February 15, 2012. Related correspondence (protected), Vol. 21.

11. Tribunal Exhibit NQ-2011-001-31, Administrative Record, Vol. 1A at 285-86.

12. Tribunal Exhibit NQ-2011-001-34, Administrative Record, Vol. 1A at 299-300.

13. Tribunal Exhibit NQ-2011-001-35, Administrative Record, Vol. 1A at 303.

68. No further correspondence was exchanged between the CBSA and the Tribunal. The definition of the subject goods contained in the CBSA's final determination was in all respects identical to the one contained in the CBSA's preliminary determination.¹⁴

– Resolving the Continued Confusion in the Definition of the Subject Goods

69. It is well established that the Tribunal must conduct its inquiry under section 42 of *SIMA* in accordance with the definition of the subject goods provided by the CBSA.¹⁵ The Tribunal recognizes that the clarifications made by the CBSA in its letter to the Tribunal dated March 7, 2012, (hereafter referred to as the CBSA's Interpretive Letter) could provide certain guidance to the importer community as to the manner in which the CBSA may administer any positive finding made by the Tribunal under section 43. However, as indicated in its letter to the CBSA dated March 8, 2012, the Tribunal is of the view that it cannot conduct its inquiry so as to ignore, on the basis of the CBSA's Interpretive Letter, a product, namely, OCTG casing pup joints, which, on the face of the definition of the subject goods, appears to be included in that definition. This view is not purely academic. It is consonant with very practical concerns.

70. A lack of clarity in the definition of subject goods can be a source of confusion and have unintended commercial consequences. In the present context, this led to challenges in the conduct of the Tribunal's inquiry. Fundamentally, the Tribunal must guard against its findings being applicable to products that were not included in the scope of a given trade remedy investigation or inquiry. To be sure, in some instances, the Tribunal may be able to resolve an ambiguity in the definition of subject goods by reference to additional product information contained in the CBSA's statement of reasons, as it has done in the past.¹⁶ However, proceeding in such a manner is not the Tribunal's preferred approach¹⁷ and is not always instructive or conclusive, as in the present instance.

71. Indeed, the CBSA's Interpretive Letter pointed to the additional product information contained in the statement of reasons for the CBSA's preliminary determination of dumping and subsidizing as indicating that the subject goods "... are *essentially* short lengths of OCTG tubing"¹⁸ [emphasis added]. In the Tribunal's view, the word "essentially" is not instructive, and the Tribunal notes that, by definition, the industry meaning of the term "OCTG" is inclusive of both tubing and casing.¹⁹

72. In addition, AOT indicated that the 10-digit statistical codes listed in the CBSA's preliminary and final determinations of dumping and subsidizing all refer to categories of tubing.²⁰ In the Tribunal's view, that information is not determinative either, as it has found, on several occasions, in the context of appeals

14. Tribunal Exhibit NQ-2011-001-01, Administrative Record, Vol. 1 at 5-8; Tribunal Exhibit NQ-2011-001-04, Administrative Record, Vol. 1 at 135.6-135.9.

15. See *Flat Hot-rolled Carbon and Alloy Steel Sheet Products* (2 July 1999), NQ-98-004 (CITT) at 17-18. See also *Structural Tubing* (21 July 2003), PI-2003-001 (CITT) at 3.

16. See *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) [*Aluminum Extrusions*] at paras. 55-69; *Laminate Flooring* (16 June 2005), NQ-2004-006 (CITT) at paras. 69-71; procedural order and reasons in *Bicycles and Frames* (3 July 1997), RR-97-003 (CITT) at 5.

17. In *DeVilbiss Canada Limited v. Anti-dumping Tribunal* [1983] 1 F.C. 706 (F.C.A.) at para. 14, the Federal Court of Appeal has held that "[t]o do so does not ... necessarily result in a redefinition of the class of goods formulated by the [CBSA]" [emphasis added]. In the Tribunal's view, the word "necessarily" is a warning that the interpretation of the scope of the subject goods by the Tribunal *could* lead to a redefinition of the scope of the subject goods and, therefore, any interpretation must be undertaken with great caution.

18. Tribunal Exhibit NQ-2011-001-04A, Administrative Record, Vol. 1 at 135.27.

19. See *Oil Country Tubular Goods* (23 March 2010), NQ-2009-004 (CITT) [*Oil Country Tubular Goods*] at paras. 22-29.

20. *Transcript of Public Hearing*, Vol. 3, 14 March 2012, at 119.

under subsection 67(1) of the *Customs Act*,²¹ that 10-digit administrative statistical codes are not determinative of customs classification.²² In addition, customs classification is not necessarily determinative of what goods may be of the same description as the subject goods.²³

73. In the context of appeals under section 61 of *SIMA*, the Tribunal has opined, on several occasions, that the starting point for determining whether imported goods are of the same description as the goods described in an order or finding described in sections 4 to 6 (or “subjectivity”) is the order or finding itself, on the basis of their ordinary meaning and usually on the basis of what is stated on the face of such an order or finding alone.

74. Therefore, as a general rule, subjectivity is determined without having recourse to information contained in any accompanying statement of reasons or extraneous documentation.²⁴ The Tribunal finds that this approach is also preferable when examining the definition of goods provided by the CBSA in the context of an inquiry under section 42. Of course, such an assessment can be complicated if the definition of subject goods lacks clarity, is confusing or is at odds with the very inquiry that was conducted by the CBSA, as seems to be the case in this instance.

75. In summary, although a plain reading of the definition of the subject goods in this matter indicates that OCTG *casing* pup joints are included, the CBSA’s Interpretive Letter suggests that the complaint was intended to be in respect of OCTG *tubing* pup joints only and that the CBSA’s investigation was conducted accordingly.

76. However, because the Tribunal cannot, on its own initiative, modify the wording of the definition of the subject goods, which, on its face, includes OCTG *casing* pup joints, the Tribunal must conduct its inquiry as if the subject goods comprise both OCTG *tubing* pup joints and OCTG *casing* pup joints.

Implications for the Tribunal’s Inquiry

77. The Tribunal must determine whether the dumping and subsidizing of the subject goods have caused or are threatening to cause injury to the domestic producers of like goods. The Tribunal must therefore determine which domestically produced goods, if any, constitute like goods in relation to the subject goods. The Tribunal must also assess whether there is, within the subject goods and the like goods, more than one class of goods.

78. Because the Tribunal has found that the definition of the subject goods comprises both OCTG *tubing* pup joints and OCTG *casing* pup joints that meet the technical requirement elements of the definition of the subject goods, and considering that the evidence indicates that tubing pup joints and casing pup joints

21. R.S.C. 1985 (2d Supp.), c. 1.

22. See *Les Pièces d’Auto Transit Inc. v. President of the Canada Border Services Agency* (28 July 2010), AP-2009-005 (CITT), note 25.

23. In the context of appeals under section 61 of *SIMA*, the factors considered by the Tribunal are typically: physical description, end-use applications, interchangeability, competition in the marketplace, price and marketing. See e.g. *Nikka Industries Ltd. v. Deputy M.N.R.C.E.* (20 August 1991), AP-90-018 (CITT); *Macsteel International (Canada) Limited v. Commissioner of the Canada Customs and Revenue Agency* (16 January 2003), AP-2001-012 (CITT); *Zellers Inc. v. Deputy M.N.R.* (25 January 1996), AP-94-351 (CITT); *Cobra Anchors Co. Ltd. v. President of the Canada Border Services Agency* (8 May 2009), AP-2008-006 (CITT).

24. *BMI Canada Inc. and BMI West Inc. v. President of Canada Border Services Agency* (2 August 2011), AP-2010-039 (CITT) at paras. 105-108.

are distinct from an end-use perspective, the Tribunal is confronted with the issue of whether the subject goods comprise a single class of goods or whether OCTG *tubing* pup joints and OCTG *casing* pup joints are two separate classes of goods.²⁵

79. In the Tribunal's view, the evidence is clear that each of these types of OCTG pup joints constitutes a separate class of goods. Fundamentally, they are not substitutable for each other, even with an outside diameter of 4 1/2 inches,²⁶ because each has very distinct end uses and performance characteristics.²⁷

80. The implication of the Tribunal having found two classes of goods is that it will now have to conduct a separate injury analysis and make a decision for each class of goods.²⁸

81. As for OCTG *casing* pup joints, the Tribunal can immediately make a finding of no injury or threat of injury. While there is assuredly a domestic industry of casing pup joints,²⁹ it has not participated fully in this inquiry, nor has it made any claims of injury.³⁰ In fact, the partial, late-hour and apparently unwitting association of the domestic producers of casing pup joints with this inquiry appears to have stemmed

25. There are two kinds of OCTG casing pup joints: seamless and ERW. The former are covered by the finding in *Seamless Carbon or Alloy Steel Oil and Gas Well Casing* (10 March 2008), NQ-2007-001 (CITT) [*Oil and Gas Well Casing*] and, therefore, do not form part of the subject goods. The Tribunal was therefore concerned only with ERW OCTG casing pup joints. When assessing whether goods are a single class of goods, the Tribunal considers their likeness to one another. See e.g. *Aluminum Extrusions* at para. 115. 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." 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). See e.g. *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) [*Copper Pipe Fittings*] at para. 48; *Oil and Gas Well Casing* at para. 46; *Carbon Steel Welded Pipe* (20 August 2008), NQ-2008-001 (CITT) at para. 40. None of the aforementioned characteristics is predominant. 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.

26. The smallest outside diameter for casing pup joints is 4 1/2 inches. That is also the largest outside diameter in the definition of the subject goods and, therefore, the largest outside diameter for the subject tubing pup joints. Accordingly, the only single point of intersection between the subject tubing pup joints and the subject casing pup joints is at the 4-1/2-inch outside diameter measurement.

27. *Transcript of Public Hearing*, Vol. 1, 12 March 2012, at 7-8, 27.

28. *Noury Chemical Corporation and Minerals & Chemicals Ltd. v. Pennwalt of Canada Ltd. and Anti-dumping Tribunal*, [1982] 2 F.C. 283 (F.C.).

29. While it is not necessary to determine the exact scope of the domestic industry of casing pup joints, the Tribunal notes that the responses to the producers' questionnaire indicate that TenarisHydril produces OCTG pup joints with an outside diameter greater than 4 1/2 inches, which are therefore casings (Tribunal Exhibit NQ-2011-001-11.03, Administrative Record, Vol. 3 at 138). Furthermore, in addition to producing the subject goods with an outside diameter up to 4 1/2 inches (the intersection point of OCTG tubing and casing), Argus's response to the producers' questionnaire indicates that it threads casing with an outside diameter up to 20 inches (Tribunal Exhibit NQ-2011-001-23.03, Administrative Record, Vol. 3.1 at 37, 38). Accordingly, the domestic industry of casing pup joints, for the purposes of this inquiry, comprises, at the very least, TenarisHydril and Argus.

30. A somewhat analogous situation was found to exist with respect to processed grain corn in *Grain Corn* (15 November 2005), PI-2005-001 (CITT) at paras. 65-68. See also, with respect to stainless steel nuts and bolts, *Fasteners* (7 January 2005), NQ-2004-005 (CITT) at paras. 93-94.

exclusively from the lack of clarity surrounding the definition of the subject goods as described above. Indeed, there is no margin of dumping or amount of subsidy applicable to OCTG casing pup joints because the CBSA did not include casing pup joints in its dumping or subsidizing investigations.

82. The Tribunal notes that it was not in a position to appreciate the implications of the definition of the subject goods until after its preliminary injury determination and its consideration of AOT's letter to the Tribunal dated February 15, 2012. The Tribunal seizes this opportunity to encourage stakeholders that file a complaint with the CBSA to ensure the adoption of a definition of subject goods that is as precise and as accurate as possible.

83. The Tribunal's finding of no injury or threat of injury to the domestic industry of OCTG casing pup joints is consonant with the scheme of *SIMA* and will ensure greater clarity on the face of its finding. However, it is equally important to clarify that this aspect of the Tribunal's finding does *not* constitute *res judicata* with respect to any alleged injury or retardation, or threat of injury, that a domestic industry of ERW casing pup joints may one day advance as having resulted from any dumping and/or subsidizing that may be found to have occurred during the POI.

84. The remainder of the Tribunal's analysis examines OCTG *tubing* pup joints only.

OCTG Tubing Pup Joints

85. The Tribunal finds that domestically produced OCTG tubing pup joints are "like goods" in relation to the subject tubing pup joints. The evidence on the record discloses that the subject goods and the like goods are interchangeable with one another. Respondents to the purchasers' questionnaire on market characteristics overwhelmingly agreed that pup joints manufactured in Canada were interchangeable with the subject goods or with pup joints made in any other country.³¹ The majority of respondents felt that the subject goods and like goods were comparable on a number of factors, including quality, range of product line and minimum order requirements. The majority of respondents felt that the subject goods had an advantage in terms of price, and that the like goods had an advantage in terms of delivery times and costs.

86. AOT had made written representations to the effect that API 5CT tubing pup joints and premium connection tubing pup joints comprised two classes of like goods but abandoned that argument at the hearing.³²

87. Nevertheless, the Tribunal was presented with evidence to the effect that premium connection OCTG tubing pup joints appear to be reserved for certain specific applications, that they cost more (sometimes significantly more) than API 5CT tubing pup joints and that, for those two reasons, neither would typically be interchangeable for the other.³³

88. Accordingly, the Tribunal must consider whether, in fact, API 5CT and premium connection pup joints constitute separate classes of like goods.

31. *Pre-hearing Staff Report*, 13 February 2012, Tribunal Exhibit NQ-2011-001-06, Administrative Record, Vol. 1.1 at 26.

32. *Transcript of Public Hearing*, Vol. 3, 14 March 2012, at 144. The Tribunal also notes that this distinction was not raised until after the preliminary injury inquiry.

33. *Transcript of Public Hearing*, Vol. 1, 12 March 2012, at 8-10, 13.

89. The Tribunal notes that the definition of the subject goods does not make the distinction between API 5 and premium connection pup joints; in fact, it does not distinguish pup joints in any way, stating instead that the subject goods were considered “regardless of end finish” and “in all grades”, which indicates that differences, such as between how API 5CT and premium connection pup joints are produced, are not a consideration, at least in terms of the subject goods.

90. Furthermore, even though the evidence indicates that certain distinctions may exist between API 5CT and premium connection pup joints, the Tribunal is not prepared, nor is it able, to view OCTG tubing pup joints as so easily split into the two airtight categories, as argued by AOT. Rather, the Tribunal is of the view, on the basis of the evidence presented in this inquiry, that the subject goods comprise a single class of goods representing a spectrum of goods made to varying standards or norms, but which essentially remain “like” goods.³⁴

91. As well, the Tribunal has typically dealt with distinctions of this nature in the context of specific product exclusion requests, where allegations that certain products are not competing with the like goods (such as niche, proprietary or premium-type products) can be tested on a case-by-case basis.

92. No product exclusion requests were filed in this inquiry. In sum, the Tribunal finds that the subject tubing pup joints and the like goods each comprise a single class of “like goods”.

Domestic industry

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

94. 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.

95. In its preliminary injury inquiry, the Tribunal identified AOT and TenarisHydril as comprising the domestic industry. In the course of this inquiry, the Tribunal was able to confirm production of like goods by AOT and TenarisHydril as well as production of a certain amount of like goods by Argus and Hunting.³⁵ In its preliminary injury inquiry, the Tribunal also found that AOT alone constituted a “major proportion” of total domestic production.³⁶ The Tribunal confirms that finding in this inquiry. Therefore, since AOT’s production alone constitutes a major proportion of the total domestic production of like goods, a finding that the dumping and subsidizing of the subject tubing pup joints have caused injury or threat of injury to AOT’s production would be sufficient to conclude that the dumping and subsidizing of the subject tubing pup joints have caused injury or threat of injury to the domestic industry. Therefore, the Tribunal will focus its analysis of injury predominantly on the evidence pertaining to AOT’s production.

34. The Tribunal made a similar finding in *Oil and Gas Well Casing* at para. 50.

35. *Protected Pre-hearing Staff Report*, 13 February 2012, Tribunal Exhibit NQ-2011-001-07 (protected), Administrative Record, Vol. 2.1 at 35; Tribunal Exhibit NQ-2011-001-24.03C (protected), Administrative Record, Vol. 4.1 at 62.14.

36. *Pup Joints* (14 November 2011), PI-2011-001 (CITT) at para. 28.

Cross-cumulation

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

97. However, as noted in previous cases, subsections 37.1(1) and (2) of the *Special Import Measures Regulations*³⁷ prescribe certain factors for the Tribunal to consider in making its findings. These factors have, as their focus, the effects that dumped or subsidized goods have had or may have on a number of economic indices. In this regard, the effects of dumping and subsidizing of the same goods from a particular country (in this case, China) are manifested in a single set of effects caused by pricing. It is therefore the Tribunal's view that, in the conduct of an injury analysis, it is not possible to isolate the effects caused by the dumping from the effects caused by the subsidizing. In reality, they are so closely intertwined as to render it impossible to allocate discrete portions to the dumping and the subsidizing respectively.³⁸

98. Therefore, consistent with its long-standing view on the matter, the Tribunal will cross-cumulate the effects of the dumping and subsidizing of the subject goods in its injury analysis.

INJURY

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

100. At the outset, the Tribunal notes that, as no parties opposed presented evidence or testified at the hearing, there is limited information opposing the claims put forward by AOT in its submissions. Further, with AOT representing the large majority of domestic production and with imports concentrated among a small number of importers, much of the consolidated information on imports and the apparent market for tubing pup joints is confidential in nature. Therefore, the Tribunal has primarily relied on evidence submitted on the confidential record in drawing its conclusions. While the confidentiality of the information may limit the degree to which the Tribunal can disclose specific information in its reasons, the relevant confidential information has been referenced throughout the Tribunal's analysis below.

Volume of Imports of Dumped and Subsidized Goods

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

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

38. See e.g. *Aluminum Extrusions* at para. 147.

102. AOT submitted that there has been a substantial increase in the volume of imports of the subject tubing pup joints, both in absolute terms and relative to production and consumption of the like goods.

103. The Tribunal notes that the starting point of its POI is 2009, which represented a downturn in the oil and gas industry following the financial crisis of 2008. In January 2009, the Petroleum Services Association of Canada (PSAC) revised its 2009 forecast downwards and projected a 21 percent decrease in wells drilled compared to 2008. By April 2009, following the winter drilling season, PSAC revised its forecast downward again and projected a 41 percent decrease in wells drilled. PSAC's final tally for wells drilled in 2009 was 8,450, down 50 percent from its final tally of 16,940 in 2008. In 2010, PSAC's final tally of wells drilled reached 12,158, a 44 percent increase over 2009. The number of wells drilled in 2011 continued to increase to 12,917, a 6 percent increase over 2010.³⁹

104. PSAC forecasted that there would be 13,350 wells drilled in 2012, a 4 percent increase over 2011, which would represent approximately 80 percent of the volume of wells drilled in 2008.⁴⁰ This is corroborated by testimony at the hearing where the Tribunal heard that drilling activity in 2012 was on track to come close to 2008 levels.⁴¹

105. Commensurate with the improvement in activity in the oil and gas industry in 2010 relative to 2009, the Tribunal would expect to see a notable increase in the total apparent market for tubing pup joints in 2010. The evidence shows that the total apparent market for tubing pup joints increased by 76 percent in 2010 relative to 2009. Growth in the volume of imports of the subject tubing pup joints in 2010 was in line with market growth, and the share of the market held by the subject tubing pup joints did not increase in 2010 relative to 2009.⁴²

106. However, the evidence shows a different trend in import activity for the subject tubing pup joints in 2011. As activity in the oil and gas industry continued to increase in 2011, the market for tubing pup joints grew by 14 percent relative to 2010. Growth in the volume of imports of the subject tubing pup joints, however, outpaced market growth, and the share of the market held by imports of the subject tubing pup joints increased by 17 percentage points.⁴³ Towards the end of 2010 and into 2011, AOT became increasingly concerned with the effects of the subject tubing pup joints in the market.⁴⁴

107. The Tribunal heard that an importer of the subject tubing pup joints, Weatherford, bought tubing pup joints from both AOT and an exporter in China during the POI. The witness from Weatherford explained that, as Weatherford divested of its supply business and became focused on its pump business in 2009, it sought out a consistent supplier of pup joints that did not compete with Weatherford in the pump business. Weatherford was not comfortable relying on AOT, whose parent company, Dover, was a

39. Tribunal Exhibit NQ-2011-001-28.07, Administrative Record, Vol. 1A at 258, 261, 265, 268, 270.

40. *Ibid.* at 258, 270.

41. *Transcript of Public Hearing*, Vol. 1, 12 March 2012, at 14, 15; *Transcript of Public Hearing*, Vol. 2, 13 March 2012, at 99.

42. *Protected Pre-hearing Staff Report*, 13 February 2012, Tribunal Exhibit NQ-2011-001-07 (protected), Administrative Record, Vol. 2.1 at 36; *Protected Pre-hearing Staff Report*, revised 9 March 2012, Tribunal Exhibit NQ-2011-001-7A (protected), Administrative Record, Vol. 2.1 at 114; Tribunal Exhibit NQ-2011-001-24.03C (protected), Administrative Record, Vol. 4.1 at 62.14.

43. *Protected Pre-hearing Staff Report*, 13 February 2012, Tribunal Exhibit NQ-2011-001-07 (protected), Administrative Record, Vol. 2.1 at 36; *Protected Pre-hearing Staff Report*, revised 9 March 2012, Tribunal Exhibit NQ-2011-001-7A (protected), Administrative Record, Vol. 2.1 at 114; Tribunal Exhibit NQ-2011-001-24.03C (protected), Administrative Record, Vol. 4.1 at 62.14.

44. Manufacturer's Exhibit A-03 (protected) at paras. 32, 33, Administrative Record, Vol. 12.

competitor in other lines of business, as its sole supplier of pup joints.⁴⁵ The Tribunal observes that, as the oil and gas industry improved over the POI, Weatherford increased its volume of imports of the subject tubing pup joints, contributing to an increase in the share of the domestic market held by the subject tubing pup joints.⁴⁶

108. Additionally, WestCan and Tri-alta, two importers that did not import pup joints in 2009, began importing the subject tubing pup joints in 2010.⁴⁷

109. The Tribunal heard that Tri-alta had purchased pup joints from AOT and domestic distributors prior to importing the subject tubing pup joints, but that its sales of pup joints really “took off” in 2011.⁴⁸

110. WestCan, which had never purchased tubing pup joints from AOT, also began importing the subject tubing pup joints in 2010, sourcing them from Hengshui Weijia Petroleum Equipment Manufacturing, a company in which it held 49 percent ownership.⁴⁹ The CBSA noted in the statement of reasons for its final determination that this foreign producer was the second largest known exporter of the subject goods to Canada during its period of investigation.⁵⁰

111. While Weatherford does not resell its inventory of the subject tubing pup joints on the Canadian market, both Tri-alta and WestCan are distributors of pup joints and compete directly with AOT. Although the Tribunal heard that, even though pup joints are a fairly insignificant accessory in the operations of the oil and gas industry, and more specifically of the pump industry, they are nevertheless an essential component.

112. The major source of imports of tubing pup joints is China, although the data collected by the Tribunal did reveal that there were some imports from the United States and other countries during the POI. Nonetheless, the Tribunal heard that there was limited availability of quality imports from sources other than China and the United States and that, for what availability there was, purchasers had difficulty in securing reliable sources.⁵¹

113. Despite the growth in the apparent market in each year of the POI, only imports from China increased in volume in each year of the POI. Imports from the United States and other countries increased as the market improved in 2010, but retreated from 2010 levels in 2011. Imports from the United States declined by 56 percent in 2011 from 2010 and imports from other countries fell by 94 percent. This is in contrast to a 116 percent increase in the volume of imports of the subject tubing pup joints in 2011.⁵²

45. *Transcript of Public Hearing*, Vol. 2, 13 March 2012, at 72-77.

46. *Protected Pre-hearing Staff Report*, revised 9 March 2012, Tribunal Exhibit NQ-2011-001-7A (protected), Administrative Record, Vol. 2.1 at 114; Tribunal Exhibit NQ-2011-001-15.16 (protected), Administrative Record, Vol. 6 at 231; Tribunal Exhibit NQ-2011-001-24.03C (protected), Administrative Record, Vol. 4.1 at 62.14.

47. Tribunal Exhibit NQ-2011-001-14.12, Administrative Record, Vol. 5 at 149; Tribunal Exhibit NQ-2011-001-14.08, Administrative Record, Vol. 5 at 101.

48. *Transcript of Public Hearing*, Vol. 1, 12 March 2012, at 34-37.

49. Tribunal Exhibit NQ-2011-001-14.08, Administrative Record, Vol. 5 at 100, 102.

50. Tribunal Exhibit NQ-2011-001-04A (protected), Administrative Record, Vol. 4A at 135.42.

51. *Transcript of Public Hearing*, Vol. 1, 12 March 2012, at 36-38; *Transcript of Public Hearing*, Vol. 2, 13 March 2012, at 73, 80; *Transcript of In Camera Hearing*, Vol. 1, 12 March 2012, at 20-22.

52. *Protected Pre-hearing Staff Report*, 13 February 2012, Tribunal Exhibit NQ-2011-001-07 (protected), Administrative Record, Vol. 2.1 at 36; *Pre-hearing Staff Report*, 13 February 2012, Tribunal Exhibit NQ-2011-001-06, Administrative Record, Vol. 1.1 at 37; *Protected Pre-hearing Staff Report*, revised 9 March 2012, Tribunal Exhibit NQ-2011-001-7A (protected), Administrative Record, Vol. 2.1 at 114; Tribunal Exhibit NQ-2011-001-24.03C (protected), Administrative Record, Vol. 4.1 at 62.14.

114. The data⁵³ on the record show that the absolute volume of imports of the subject tubing pup joints increased by 173 percent from 2009 to 2010 and a further 116 percent in 2011. Over the entire POI, imports of the subject tubing pup joints increased by 489 percent.⁵⁴

115. Imports of the subject tubing pup joints increased relative to the domestic production of like goods over the POI. The ratio of imports of the subject tubing pup joints to domestic production of like goods⁵⁵ increased by approximately 4 percentage points from 2009 to 2010 and by approximately 23 percentage points from 2010 to 2011.⁵⁶

116. There was also an increase in imports of the subject tubing pup joints relative to domestic consumption, or domestic sales,⁵⁷ of the like goods over the POI. The ratio of imports of the subject tubing pup joints to domestic consumption increased by approximately 7 percentage points from 2009 to 2010 and by approximately 27 percentage points in 2011.⁵⁸

117. In light of the evidence before it, the Tribunal finds that there have been significant increases in the volume of imports of the subject tubing pup joints, both in absolute terms and relative to the production and consumption of like goods.

Effects of Dumped and Subsidized Imports on Prices

118. Pursuant to paragraph 37.1(1)(b) of the *Regulations*, the Tribunal must consider the effect 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 goods that would otherwise likely have occurred. AOT submitted that the prices of the subject tubing pup joints undercut those of the like goods, depressed those of the like goods and suppressed price increases necessary to offset growing costs.

119. First, the Tribunal will address the issue of price differences between AOT and other domestic producers of tubing pup joints. While AOT manufactures API 5CT tubing pup joints only, the evidence reveals that the other domestic producers manufacture premium connection tubing pup joints.⁵⁹ While the

53. Due to the definition of the subject goods, it is possible that import data collected in replies to the Tribunal's importers' questionnaire may include small amounts of the subject casing pup joints. Imports of the subject goods, however, were highly concentrated among a small number of importers during the POI, and these importers did not import casing pup joints. Therefore, the Tribunal considers that any trace amounts of casing, if any, included in the import data do not affect its conclusions regarding imports of tubing pup joints. Tribunal Exhibit NQ-2011-001-14.12, Administrative Record, Vol. 5 at 151; Tribunal Exhibit NQ-2011-001-RI-03, Administrative Record, Vol. 9 at 32; Tribunal Exhibit NQ-2011-001-14.16, Administrative Record, Vol. 5 at 197.

54. *Protected Pre-hearing Staff Report*, 13 February 2012, Tribunal Exhibit NQ-2011-001-07 (protected), Administrative Record, Vol. 2.1 at 36; *Pre-hearing Staff Report*, 13 February 2012, Tribunal Exhibit NQ-2011-001-06, Administrative Record, Vol. 1.1 at 37.

55. For the purpose of calculating this ratio, domestic production of like goods is comprised of domestic production of tubing pup joints by AOT, Argus, Hunting and TenarisHydril.

56. *Protected Pre-hearing Staff Report*, 13 February 2012, Tribunal Exhibit NQ-2011-001-07 (protected), Administrative Record, Vol. 2.1 at 36, 45; Tribunal Exhibit NQ-2011-001-24.03C (protected), Administrative Record, Vol. 4.1 at 62.14.

57. For the purpose of calculating this ratio, domestic consumption of like goods is comprised of domestic sales of tubing pup joints by AOT, Argus and TenarisHydril.

58. *Protected Pre-hearing Staff Report*, 13 February 2012, Tribunal Exhibit NQ-2011-001-07 (protected), Administrative Record, Vol. 2.1 at 36, 45; Tribunal Exhibit NQ-2011-001-24.03C (protected), Administrative Record, Vol. 4.1 at 62.14.

59. Tribunal Exhibit NQ-2011-001-11.03, Administrative Record, Vol. 3 at 136; Tribunal Exhibit NQ-2011-001-23.01, Administrative Record, Vol. 3.1 at 17-18; Tribunal Exhibit NQ-2011-001-24.03C (protected), Administrative Record, Vol. 4.1 at 62.14.

Tribunal considers premium connection pup joints and API 5CT pup joints as constituting a single class of like goods, it notes that there are substantial price differences between API 5CT pup joints manufactured by AOT and the premium connection pup joints⁶⁰ produced by the other domestic producers. Considering that imports of the subject tubing pup joints were highly concentrated among a small number of importers, and the evidence does not disclose that these importers imported premium connection tubing pup joints, and also considering that benchmark product pricing information was not available for sales of domestically produced premium connection tubing pup joints, the Tribunal is of the view that, given AOT's dominant share of domestic production, the most appropriate price comparison, in the context of this inquiry, is between AOT and importers of the subject tubing pup joints.⁶¹ This is the approach that will be taken by the Tribunal for the purpose of the injury analysis. Where information is available, however, the Tribunal will also examine the prices of TenarisHydril.

120. There was evidence on the record as to the importance of price in the buying decision of purchasers. Nine of the 14 respondents to the purchasers' questionnaire on market characteristics reported that price was "somewhat important" when purchasing pup joints, while 7 of 8 respondents reported that Chinese goods had a price advantage over Canadian goods.⁶²

121. During the hearing, the Tribunal witnesses indicated that, while price was not the most important factor, it was an important factor in the purchasing decision for pup joints.⁶³ Additionally, the witness from Weatherford admitted that, if anti-dumping and countervailing duties were imposed on the subject goods, Weatherford would seek out other sources of supply.⁶⁴

122. Although few purchasers declared that price is a major factor in the decision to purchase pup joints, which was corroborated by the witness from Weatherford,⁶⁵ the Tribunal notes that, when analyzing the purchasing models closely, it appears that price is important, at least in the decision to potentially switch suppliers.

123. For example, a producer of pumps, such as Weatherford, which happens to be a significant importer of the subject tubing pup joints, there is a significant price advantage in importing directly versus buying from AOT or any other distributor of domestic or imported goods.⁶⁶

Price Undercutting

124. AOT submitted that, during the POI, the average selling prices of the subject tubing pup joints undercut the prices of pup joints from all other sources, including those of the like goods. AOT submitted that the price lists of Tri-alta and WestCan demonstrated that the subject tubing pup joints were available

60. Please refer to paragraph 90 regarding API 5CT and premium connection pup joints.

61. *Protected Pre-hearing Staff Report*, revised 9 March 2012, Tribunal Exhibit NQ-2011-001-07A (protected), Administrative record, Vol. 2.1 at 114, 120; Tribunal Exhibit NQ-2011-001-24.03C (protected), Administrative Record, Vol. 4.1 at 62.14.

62. *Pre-hearing Staff Report*, 13 February 2012, Tribunal Exhibit NQ-2011-001-06, Administrative Record, Vol. 1.1 at 25-26.

63. *Transcript of Public Hearing*, Vol. 1, 12 March 2012, at 38, *Transcript of Public Hearing*, Vol. 2, 13 March 2012, at 76, 77.

64. *Transcript of Public Hearing*, Vol. 2, 13 March 2012, at 96.

65. *Pre-hearing Staff Report*, 13 February 2012, Tribunal Exhibit NQ-2011-001-06, Administrative Record, Vol. 1.1 at 29; *Transcript of Public Hearing*, Vol. 2, 13 March 2012, at 72-77.

66. *Protected Pre-hearing Staff Report*, 13 February 2012, Tribunal Exhibit NQ-2011-001-07 (protected), Administrative Record, Vol. 2.1 at 63, 65, 67, 69, 71, 73, 75; Tribunal Exhibit NQ-2011-001-15.16 (protected), Administrative Record, Vol. 6 at 240-46.

from 2009 to 2011 at prices that were lower than those of AOT. AOT also argued that price undercutting was evident in the benchmark product pricing data in the Tribunal's staff report. It argued that this evidence demonstrated not only undercutting by the producers of the subject tubing pup joints but also a causal link between imports of the dumped and subsidized goods and the injury suffered by AOT.

125. The Tribunal began its examination of the evidence on the record to determine if the prices of the subject tubing pup joints undercut those of the like goods during the POI by comparing the average unit selling values of the subject tubing pup joints with those of the like goods produced by AOT and TenarisHydril. The Tribunal notes that, because the pup joints produced by TenarisHydril are premium connection pup joints,⁶⁷ they carry a higher price than the API 5CT pup joints produced by AOT and imports of the subject tubing pup joints. Therefore, the Tribunal considers that the most appropriate comparison indicative of price undercutting is between AOT's prices and the prices of the subject tubing pup joints. The apparent market table of the staff report⁶⁸ indicates that the prices of the subject tubing pup joints undercut the prices of the like goods produced by both AOT and TenarisHydril in each period of the POI.⁶⁹

126. The Tribunal recognizes that differences in average unit values in the apparent market table may be due, in part, to differences in the product mix sold by AOT and importers of the subject tubing pup joints. To minimize the potential effect of product mix, the Tribunal focused its pricing analysis on the seven benchmark products for which it collected detailed quarterly pricing information for 2010 and 2011. These benchmark products allow the Tribunal to compare the prices of the subject tubing pup joints and those of the like goods on a product-by-product, quarterly basis. As a result, the Tribunal considers the benchmark product data to be the most indicative of pricing activity over the POI.

127. Across the seven benchmark products in the staff report, AOT sold the like goods in every quarter (for a total of 56 instances⁷⁰). As for the importers, there were 42 instances of sales of imports of the subject tubing pup joints. Among these 42 instances of competition, the prices of the subject tubing pup joints undercut those of the like goods in 29 instances, or 69 percent of the time. The Tribunal notes that the initiation of the CBSA's dumping investigation in the last quarter of 2011 may have impacted the prices of the subject tubing pup joints during that period, although no provisional duties were in place prior to December 12, 2011. If data for the fourth quarter of 2011 are excluded from the Tribunal's benchmark product pricing analysis, the incidence of undercutting increases to 80 percent.⁷¹

128. To evaluate the nature of this undercutting more thoroughly, the Tribunal examined the competitive circumstances of the different importers included in the benchmark product tables.

67. Please refer to paragraph 90 regarding API 5CT and premium connection pup joints.

68. Argus's average selling price in Table 44 of the revised protected staff report is the average unit value for both casing pup joints and tubing pup joints sold by Argus. Therefore, the Tribunal did not compare Argus's selling price with the selling prices of the subject tubing pup joints for the purposes of assessing price undercutting by the subject tubing pup joints.

69. *Protected Pre-hearing Staff Report*, revised 9 March 2012, Tribunal Exhibit NQ-2011-001-07A (protected), Administrative record, Vol. 2.1 at 120.

70. An "instance" refers to an event where a questionnaire respondent sold the benchmark product in one of the eight quarters for which the data were requested for each benchmark product. An "instance of competition" refers to an event where both AOT and at least one importer of the subject goods sold the benchmark product in one of the eight quarters for which the data were requested for each benchmark product.

71. *Protected Pre-hearing Staff Report*, 13 February 2012, Tribunal Exhibit NQ-2011-001-07 (protected), Administrative Record, Vol. 2.1 at 63, 65, 67, 69, 71, 73, 75.

129. As noted above, Weatherford does not resell the pup joints that it imports but uses them as components of the pumps that it sells. Because of this, the Tribunal considers the appropriate level of pricing comparison between Weatherford and AOT to be Weatherford's landed import price compared to the price at which it could have purchased pup joints from AOT. The evidence shows that Weatherford's landed import price was lower than AOT's selling price in each instance where both companies appear in the benchmark product tables in a given quarter. That stated, the Tribunal considers that, while purchases by Weatherford resulted in lost sales by AOT to Weatherford, the price at which Weatherford purchases the subject tubing pup joints does not have a direct impact on the price at which AOT can sell the like goods to distributors of pup joints.⁷²

130. The Tribunal then examined the sales data for benchmark products submitted by importers that resell the benchmark products in direct competition with AOT. Here, the Tribunal notes that, while there was some undercutting during the POI, it was mostly limited to one importer of the subject tubing pup joints and occurred in the minority of instances where there was competition between the subject tubing pup joints and the like goods.⁷³

131. The Tribunal also compared the price lists of WestCan and Tri-alta with the selling prices that AOT offers to its largest accounts for each of the benchmark⁷⁴ products and found that, in some, but not all, instances the list prices of Tri-alta and Westcan undercut the selling prices offered by AOT. The Tribunal notes, however, that it places more weight on the benchmark product data in the staff report than on the various price lists on the record, as the former includes the actual selling prices of the subject tubing pup joints, regardless of list prices.

132. AOT also provided the Tribunal with some confidential market intelligence gathered through its client base, which showed the subject tubing pup joints being offered at prices that were lower than AOT's selling prices.⁷⁵

133. In light of the foregoing, the Tribunal finds that the prices at which Weatherford purchased the subject tubing pup joints consistently undercut AOT's selling prices, but that, when considering the trade level at which AOT competes directly with resellers of the subject tubing pup joints, there does not appear to be a consistent pattern of price undercutting over the POI, which the Tribunal considers as significant pursuant to *SIMA*.

Price Depression

134. AOT argued that it was forced to lower its prices by 10 percent in September 2009, as a result of competition from the subject tubing pup joints being sold by Tri-alta. AOT submitted that the fact that the price reduction was a direct consequence of Tri-alta's pricing demonstrates the causal relationship between the dumped and subsidized goods and the injury suffered by AOT.

72. *Ibid.*; Tribunal Exhibit NQ-2011-001-15.16 (protected), Administrative Record, Vol. 6 at 240-46.

73. *Protected Pre-hearing Staff Report*, 13 February 2012, Tribunal Exhibit NQ-2011-001-07 (protected), Administrative Record, Vol. 2.1 at 63, 65, 67, 69, 71, 73, 75.

74. Tribunal Exhibit NQ-2011-001-12.01 (protected), Administrative Record, Vol. 4 at 61, 68-72; Tribunal Exhibit NQ-2011-001-15.12 (protected), Administrative Record, Vol. 6 at 135-6; Tribunal Exhibit NQ-2011-001-15.08 (protected), Administrative Record, Vol. 6 at 52.

75. Manufacturer's Exhibit A-05 (protected) at 22-43, Administrative Record, Vol. 12.

135. The Tribunal notes that this price reduction, in September 2009, was in effect a retreat from a 10 percent price increase that AOT had initiated in April 2009.⁷⁶ The Tribunal considers that, while this may have been partly attributable to the subject tubing pup joints, the recession and resulting drop in oil and gas activity in 2009 likely played an equal if not more significant role in AOT being unable to implement a price increase in 2009.

136. In its examination of the apparent market unit values in the staff report, the Tribunal observed that AOT's average selling prices were relatively steady over the POI, with minor fluctuations from year to year, and were slightly higher in 2011 than in 2009.⁷⁷

137. The same pricing trends are visible in the benchmark product pricing for AOT, where prices held constant over the POI. Prices of sales to top accounts, however, varied over the POI, likely a result of product mix changing from quarter to quarter.⁷⁸

138. The Tribunal asked the witness from AOT if, in the face of competition from lower-priced subject tubing pup joints, AOT would choose to lower prices or forgo the sale. In response, the witness from AOT stated that, in 2010 and 2011, AOT chose to lose the sale rather than lower its prices.⁷⁹ In the Tribunal's view, this explains, in part, the relative consistency of AOT's prices over the POI.

139. The Tribunal notes that TenarisHydril did not make any claims of price depression as a result of the subject tubing pup joints. Further, the Tribunal does not find any evidence on the record to suggest that the prices of the subject tubing pup joints depressed the selling prices of the premium connection tubing pup joints⁸⁰ produced by TenarisHydril.

140. On the basis of the evidence before it, the Tribunal finds that, although there was some price undercutting by the subject tubing pup joints during the POI, this undercutting did not result in significant price depression.

Price Suppression

141. AOT argued that the presence of the dumped and subsidized goods restrained its ability to increase prices to offset the growing cost of tubing inputs for use in the production of pup joints. AOT submitted that it has been unable to increase its prices for J55 tubing pup joints since the price drop in September 2009 and that prices for L80 tubing pup joints have not increased since 2006. AOT submitted that the inability to raise prices to offset cost increases further establishes the causal link between the dumped and subsidized goods and AOT's inability to stabilize its margins by increasing prices.

76. Manufacturer's Exhibit A-04 at paras. 63-64, Administrative Record, Vol. 11.

77. *Protected Pre-hearing Staff Report*, revised 9 March 2012, Tribunal Exhibit NQ-2011-001-07A (protected), Administrative Record, Vol. 2.1 at 120-21.

78. *Protected Pre-hearing Staff Report*, 13 February 2012, Tribunal Exhibit NQ-2011-001-07 (protected), Administrative Record, Vol. 2.1 at 63, 65, 67, 69, 71, 73, 75, 77, 79, 81, 83.

79. *Transcript of Public Hearing*, Vol. 1, 12 March 2012, at 19.

80. Please refer to paragraph 90 regarding API 5CT and premium connection pup joints.

142. The data provided by AOT and contained in the staff report show that AOT's cost of goods sold on a per-unit basis decreased from 2009 to 2010 but increased from 2010 to 2011, resulting in a unit cost of goods sold in 2011 that was slightly higher than in 2009.⁸¹

143. Looking at AOT's reported cost of direct materials per pup joint produced in each year of the POI, the evidence in the staff report shows that, after decreasing from 2009 to 2010, the cost of direct materials increased in 2011 to 2009 levels.⁸²

144. The evidence concerning AOT's cost of goods sold and cost of goods manufactured does not reveal to the Tribunal that AOT experienced significant increases in its average annual costs over the POI which it would need to offset with a price increase. Although AOT's cost of goods sold increased in 2011, so did its average unit selling price, although to a slightly lesser degree.

145. In his witness statement, Mr. Harrington raised concerns about the cost of tubular inputs increasing in 2011 compared to 2010. In particular, J55 tubing inputs have been trending upwards, reaching levels approaching the 2008 peak in input costs. He also explained that, although the average prices of L80 tubing inputs were similar in 2010 and 2011, prices of L80 tubing had been increasing in 2011.⁸³ The Tribunal notes that AOT's inputs are priced in US dollars and that the strengthening of the Canadian dollar over the POI helped relieve some of the pressure of increasing input costs.

146. The Tribunal examined the input cost data submitted by AOT and observed that AOT's prices paid for J55 tubular products increased significantly throughout 2011. Average prices in both 2010 and 2011, however, were below average prices in 2009. Finally, the Tribunal notes that, in 2008, average costs were higher than in 2011. However, this reflects the fact that prices escalated in 2008 and that many of AOT's purchases in 2008 actually cost less than in 2011.⁸⁴

147. For the L80 inputs for which AOT provided cost data, the input costs increased throughout 2011. Prices for these inputs, however, were higher in 2010 than in 2011.⁸⁵

148. The Tribunal finds that AOT's costs of material inputs fluctuated over the POI and that direct material costs in 2011 were similar to those in 2009.⁸⁶

149. Therefore, the Tribunal finds that AOT did experience some price suppression over the POI as a result of the subject tubing pup joints, in so far as it was unable to implement a price increase in 2009 due to competition from the subject goods (which, as the Tribunal noted, is partly attributable to economic conditions in the oil and gas industry in 2009). The Tribunal notes that AOT benefitted from the improvement in the oil and gas industry in 2010 and finds that the impact in 2011 was on AOT's sales volume rather than on its prices. Accordingly, the Tribunal does not find that there was significant price suppression.

81. *Protected Pre-hearing Staff Report*, 13 February 2012, Tribunal Exhibit NQ-2011-001-07 (protected), Administrative Record, Vol. 2.1 at 99.

82. *Ibid.* at 103.

83. Manufacturer's Exhibit A-04 at paras. 62-67, Administrative Record, Vol. 11.

84. Manufacturer's Exhibit A-05 (protected) at 45-47, Administrative Record, Vol. 12.

85. *Ibid.* at 48-50, Administrative Record, Vol. 12.

86. *Protected Pre-hearing Staff Report*, 13 February 2012, Tribunal Exhibit NQ-2011-001-07 (protected), Administrative Record, Vol. 2.1 at 103.

150. Finally, the Tribunal notes that TenarisHydril did not make any claims of price suppression and that there is no evidence on the record to indicate that it experienced price suppression as a result of the subject goods.

Conclusion

151. On the basis of its analysis of the pricing factors prescribed by *SIMA*, the Tribunal finds that the prices of the subject tubing pup joints undercut the prices of the like goods in certain instances over the POI, but primarily in the case of Weatherford, which was purchasing and not reselling the subject tubing pup joints. With respect to undercutting by importers selling the subject tubing pup joints in competition with AOT, the Tribunal finds that, while undercutting did occur, it was not significant. The Tribunal also finds that the price undercutting, when it did occur, did not result in significant price depression or price suppression in the domestic industry.

Impact of the Dumped and Subsidized Imports on the Domestic Industry

152. 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.

Production, Capacity and Capacity Utilization

153. AOT submitted that production and capacity utilization fell during the POI due to imports of the subject tubing pup joints.

154. The evidence shows that AOT's production capacity remained constant during the POI, while production and capacity utilization fluctuated. AOT's production and capacity utilization rates increased from 2009 to 2010 and then decreased in 2011. Over the entire POI, however, there was a significant increase in production and capacity utilization in 2011 relative to 2009. When examined as a whole, the domestic producers⁸⁷ increased their production over the POI.⁸⁸

Sales from Domestic Production and Market Share⁸⁹

155. AOT submitted that imports of the subject tubing pup joints increased during the POI, particularly in 2011. AOT argued that it lost sales, market share and revenues as the market share of subject tubing pup joints increased.

156. The evidence shows that the market for tubing pup joints increased in each period of the POI, while sales from domestic production increased in 2010 relative to 2009, but decreased in 2011. The domestic producers gained market share from 2009 to 2010 as the market recovered, but experienced a loss of market share in 2011 coinciding with the relative increase of the subject tubing pup joints, as discussed above. The

87. Domestic production of tubing pup joints by AOT, Argus, Hunting and TenarisHydril.

88. *Protected Pre-hearing Staff Report*, 13 February 2012, Tribunal Exhibit NQ-2011-001-07 (protected), Administrative Record, Vol. 2.1 at 35, 92; Tribunal Exhibit NQ-2011-001-24.03C (protected), Administrative Record, Vol. 4.1 at 62.14-62.15.

89. For the purpose of determining the market volume, the domestic producers of tubing pup joints are AOT, Argus and TenarisHydril. For the purpose of determining the market value, the domestic producers of tubing pup joints are AOT and TenarisHydril.

Tribunal observes that, although the domestic producers' market share at the end of 2011 was below that of 2009, domestic producers still accounted for the greatest share of the total Canadian market throughout the POI. When AOT is examined independently, the same trends are found.⁹⁰

157. The value of sales from domestic production increased in each period of the POI, despite the decrease in volume in 2011. The Tribunal is of the view that this may be attributable to a change in the composition of the domestic sales in the market, with the share of premium connection pup joints increasing in 2011. Examining AOT independently shows that the value of sales from domestic production also increased over the POI. However, a comparison by year shows that the value increased from 2009 to 2010 and then decreased from 2010 to 2011. The Tribunal notes that this decline is contemporaneous with the relative increase in imports of the subject tubing pup joints in 2011. The Tribunal notes however that AOT still occupies a dominant position in the Canadian pup joint market.⁹¹

158. The Tribunal notes that the decline in market share experienced by the domestic industry in 2011 is consistent with the testimony presented by AOT during the hearing to the effect that AOT had increasing difficulty competing with the low prices of the subject tubing pup joints.⁹² The Tribunal is of the view that the significant increase in the volume of imports of the subject tubing pup joints in 2011 impacted the domestic industry by displacing its market share. The Tribunal believes, however, that the impact of the subject tubing pup joints only became prevalent in the latter half of 2011, which coincides with the period during which AOT became increasingly aware of the presence of the subject tubing pup joints.⁹³

159. The Tribunal notes that AOT submitted numerous specific injury allegations to show that the presence of the subject tubing pup joints resulted in price undercutting and lost sales.⁹⁴ The Tribunal considers that these injury allegations support the other evidence on the record demonstrating that price competition took place between the like goods and the subject tubing pup joints on specific orders and accounts.

160. At the hearing, the Tribunal heard testimony regarding competition and relationships within the oil industry. Weatherford stated that AOT's parent company, Dover, was involved in a variety of activities within the oil industry. Weatherford indicated that it competes directly with Dover on downstream business activities and that it consequently does not want to rely on a competitor as a source of product for its supply chain. Weatherford therefore looked for other suppliers during the POI and, as a result, opted to import the subject tubing pup joints.⁹⁵

161. The Tribunal is of the view that Weatherford's decision to change its purchasing model did result in lost sales for AOT, but did not result in direct price competition at the market level. Notwithstanding this, the fact that Weatherford has been able to procure the subject goods at price levels below those of AOT is

90. *Protected Pre-hearing Staff Report*, revised 9 March 2012, Tribunal Exhibit NQ-2011-001-07A (protected), Administrative Record, Vol. 2.1 at 114; Tribunal Exhibit NQ-2011-001-24.03C (protected), Administrative Record, Vol. 4.1 at 62.14.

91. *Ibid.*

92. *Transcript of Public Hearing*, Vol. 1, 12 March 2012, at 19.

93. Manufacturer's Exhibit A-05 (protected) at 22-43, Administrative Record, Vol. 12.

94. Tribunal Exhibit NQ-2011-001-12.01 (protected), Administrative Record, Vol. 4 at 41-54.

95. *Transcript of Public Hearing*, Vol. 1, 13 March 2012, at 73-75; Tribunal Exhibit NQ-2011-001-14.06, Administrative Record, Vol. 5 at 192.

evidence that such opportunities exist in the market for tubing pup joints.⁹⁶ The Tribunal notes that this is an important consideration, due to the fact that Weatherford's decision was based on security of supply and was not solely driven by finding the lowest price.

162. On the basis of the evidence before it, the Tribunal finds that the dumping and subsidizing of the subject tubing pup joints did not negatively impact domestic production and market share in 2010, but did begin to have an impact in 2011. However, the Tribunal is of the view that this impact was primarily felt in the latter half of 2011.

Financial Results⁹⁷

163. AOT submitted that, during the POI, imports of the subject pup joints negatively affected its financial performance through declines in gross margin and net profit.

164. The evidence on the record shows that AOT experienced a significant improvement in sales, gross margin and net income in 2010 compared to 2009, but that this trend did not continue into 2011. In 2011, when imports of the subject goods increased, AOT saw declines in its gross margin and net income. This was largely the result of the decline in revenues and the increase in cost of goods sold as a percentage of the net sales value.⁹⁸ This evidence was corroborated by testimony at the hearing.⁹⁹

165. The Tribunal also examined the financial data on a per-unit basis. The Tribunal notes that, from 2009 to 2010, gross margin and net income increased, while cost of goods sold decreased. In contrast, from 2010 to 2011, both gross margin and net income decreased, and cost of goods sold increased.¹⁰⁰

166. AOT admitted that the 2008-2009 recession was a contributing factor early in the POI, but pointed out that the financial impact on pup joints had been more drastic than it had been on other lines of oil field equipment sold by AOT. AOT suggested that this difference in performance was due to imports of the subject goods. When the Tribunal considers Dover's overall financial results, it is evident that the financial performance of AOT's pup joints production and sales is inconsistent with the overall financial results.¹⁰¹

167. Regarding the decline in the domestic industry's financial performance in 2011, the Tribunal notes that there is evidence on the record to suggest that there were market pressures on AOT in the latter half of 2011.¹⁰² The Tribunal believes that AOT's performance in 2011 is the beginning of a trend that would continue in the foreseeable future in the face of competition from the dumped and subsidized subject tubing pup joints.

96. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2011-001-07 (protected), Administrative Record, Vol. 2.1 at 63, 65, 67, 69, 71, 73, 75; Tribunal Exhibit NQ-2011-001-15.16 (protected), Administrative Record, Vol. 6 at 240-45.

97. The analysis in this section focuses on AOT due to its share of domestic production and the limited availability of data from the other domestic producers.

98. *Protected Pre-hearing Staff Report*, 13 February 2012, Tribunal Exhibit NQ-2011-001-07 (protected), Administrative Record, Vol. 2.1 at 99.

99. *Transcript of In Camera Hearing*, Vol. 1, 12 March 2012, at 14-15.

100. *Protected Pre-hearing Staff Report*, 13 February 2012, Tribunal Exhibit NQ-2011-001-07 (protected), Administrative Record, Vol. 2.1 at 99.

101. *Ibid.* at 101.

102. Manufacturer's Exhibit A-05 (protected) at 22-43, Administrative Record, Vol. 12.

Other Indicators¹⁰³

168. The Tribunal notes that paragraph 37.1(1)(c) of *Regulations* prescribes that the Tribunal consider certain factors, in addition to those discussed above, in its assessment of the impact of the dumped and subsidized goods on the domestic industry. These factors include any actual or potential decline in productivity or return on investments, any actual or potential negative effects on cash flow, inventories, employment, wages, growth or the ability to raise capital, and the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods.

169. In regard to employment, the evidence shows that production occurred at both of AOT's manufacturing facilities and that there was an increase in direct employment from 2009 to 2010, followed by a slight decline in 2011.¹⁰⁴ Despite the fluctuation in employment, AOT's productivity per hour worked remained stable throughout the POI.¹⁰⁵ The Tribunal notes that wages were not negatively impacted by imports of the subject tubing pup joints, as wages increased significantly throughout the POI.¹⁰⁶

170. The evidence indicates that AOT's inventories increased in each period of the POI. However, AOT's inventories compared to its sales in the domestic market were steady in 2009 and 2010 but increased in 2011.¹⁰⁷

171. Subparagraph 37.1(1)(c)(ii.1) 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 information on the subject goods shows that the weighted average margin of dumping and amount of subsidy were not insignificant.¹⁰⁸

172. The Tribunal is of the view that the magnitude of the margins of dumping and amounts of subsidy were not insignificant.

173. Lastly, the Tribunal must examine other indicators of injury, namely, poor return on capital investments, growth and cash flow. The Tribunal is of the view that the evidence with regard to these indicators fails to disclose any negative impacts.

Conclusion

174. On the basis of the foregoing, the Tribunal finds that the domestic industry, and specifically AOT, began to be negatively impacted by the subject tubing pup joints in the latter half of 2011, coinciding with an increase in imports and sales of the subject tubing pup joints. However, the Tribunal notes that the domestic industry saw significant improvement in 2010 relative to 2009, despite a large increase in the

103. The analysis in this section will focus on AOT due to its share of domestic production and the limited availability of data from the other domestic producers.

104. Tribunal Exhibit NQ-2011-001-11.01, Administrative Record, Vol. 3 at 15; *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2011-001-07 (protected), Administrative Record, Vol. 2.1 at 88.

105. *Protected Pre-hearing Staff Report*, 13 February 2012, Tribunal Exhibit NQ-2011-001-07 (protected), Administrative Record, Vol. 2.1 at 91.

106. *Ibid.* at 90.

107. *Ibid.* at 94; *Protected Pre-hearing Staff Report*, revised 9 March 2012, Tribunal Exhibit NQ-2011-001-07A (protected), Administrative Record, Vol. 2.1 at 114.

108. Tribunal Exhibit NQ-2011-001-04A, Administrative Record, Vol. 1 at 135.50.

relative volume in the subject tubing pup joints. Therefore, the Tribunal finds that the subject tubing pup joints may have negatively impacted the domestic industry in 2011, but that this does not constitute material injury to the domestic industry, as prescribed by *SIMA*.

THREAT OF INJURY

175. Having found that the subject tubing pup joints have not caused injury, the Tribunal must now consider whether they are threatening to cause injury. The Tribunal is guided in its consideration of this question by subsection 37.1(2) of the *Regulations*, which prescribes factors to be taken into account for the purposes of its threat of injury analysis.¹⁰⁹ Further, the Tribunal notes that subsection 2(1.5) of *SIMA* indicates that a threat of injury finding cannot be made unless the circumstances in which the dumping and subsidizing of the goods would cause injury are clearly foreseen and imminent.

176. AOT argued that there was a threat of injury from the subject tubing pup joints. It submitted that there has been a growing trend in antidumping and countervailing investigations concerning Chinese steel tubular products around the world. It noted that Chinese OCTG producers can switch between products, as was evident after the Tribunal's finding in *Oil and Gas Well Casing*, which led to an increase in imports of tubing, which was subsequently investigated in *Oil Country Tubular Goods*. AOT argued that the exclusion of pup joints from the Tribunal's finding in *Oil Country Tubular Goods* led to the increase in imports of pup joints over the Tribunal's POI.

177. AOT submitted that the subject tubing pup joints are entering Canada at prices that are likely to have a significant depressing or suppressing effect on the prices of the like goods and that prices of the subject goods declined over the POI since AOT was forced to lower its prices in 2009.

Forecast Drilling Activities and Subsequent Demand for Tubing Pup Joints

178. As noted above, there is evidence on the record indicating that oil and gas drilling activity is expected to increase in 2012 and 2013, as it did in 2010 and 2011. The Tribunal heard testimony that 2012 was on track to have a level of activity comparable to 2008; while another witness said activity would return to 2008 levels by 2013.¹¹⁰

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

110. *Transcript of Public Hearing*, Vol. 1, 12 March 2012, at 14, 15; *Transcript of Public Hearing*, Vol. 2, 13 March 2012, at 99.

179. Forecasts by PSAC also point to growth in the next 12 to 18 months. PSAC forecasts that there will be a 4 percent increase in wells drilled in Canada in 2012, relative to 2011, and notes that oil prices would be adequate to sustain drilling-related activity.¹¹¹

180. In light of this evidence, the Tribunal is of the view that there will be an increase in drilling activity in the next 12 to 18 months.

181. Evidence on the record indicates that drilling activity is the most important factor affecting the demand for pup joints in the Canadian market.¹¹² The evidence also shows that the apparent market for tubing pup joints increased in each year of the POI, which corresponded to the increase in drilling activity.¹¹³

182. As drilling is expected to increase in the next 12 to 18 months, the Tribunal is of the view that there will be a resulting foreseeable increase in demand for tubing pup joints in the Canadian market.

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

183. The Tribunal notes that there was a substantial increase in imports of the subject tubing pup joints during the POI. Volumes increased by 173 percent in 2010 relative to 2009, and by a further 116 percent in 2011 relative to 2010. In total, there was a 489 percent increase in imports of the subject tubing pup joints over the POI.¹¹⁴

184. Looking at the quarterly import volume data for the benchmark products, it is apparent that a large percentage of sales of imports in 2011 occurred in the latter half of the year.¹¹⁵ This increase is corroborated by the market intelligence submitted by AOT, in which its employees reported inventories of imported goods on the ground in Alberta in the fourth quarter of 2011.¹¹⁶

185. While the Tribunal considers that the increase in imports in 2010 is attributable to the increase in drilling activity following the downturn experienced in 2009, the growth in imports in 2011 outpaced the growth in the apparent market, which resulted in imports capturing a substantially greater share of the total apparent market.¹¹⁷

111. Tribunal Exhibit NQ-2011-001-28.07, Administrative Records, Vol. 1A at 258, 259.

112. *Pre-hearing Staff Report*, 13 February 2012, Tribunal Exhibit NQ-2011-001-06, Administrative Record, Vol. 1.1 at 30.

113. *Protected Pre-hearing Staff Report*, revised 9 March 2012, Tribunal Exhibit NQ-2011-001-07A (protected), Administrative Record, Vol. 2.1 at 114, 115.

114. *Pre-hearing Staff Report*, 13 February 2012, Tribunal Exhibit NQ-2011-001-06, Administrative Record, Vol. 1.1 at 37.

115. *Protected Pre-hearing Staff Report*, 13 February 2012, Tribunal Exhibit NQ-2011-001-07 (protected), Administrative Record, Vol. 2.1 at 64, 66, 68, 70, 72, 74, 76.

116. Manufacturer's Exhibit A-05 (protected) at 22-43, Administrative Record, Vol. 12.

117. *Protected Pre-hearing Staff Report*, 13 February 2012, Tribunal Exhibit NQ-2011-001-07 (protected), Administrative Record, Vol. 2.1 at 36; *Protected Pre-hearing Staff Report*, revised 9 March 2012, Tribunal Exhibit NQ-2011-001-07A (protected), Administrative Record, Vol. 2.1 at 114; Tribunal Exhibit NQ-2011-001-24.03C (protected), Administrative Record, Vol. 4.1 at 62.14.

186. As noted above, the evidence shows that oil and gas drilling activity impacts the demand for tubing pup joints. On the basis of observations thus far, the Tribunal expects that, as the market for tubing pup joints increases in the next 12 to 18 months, imports of the subject tubing pup joints will increase as well.

187. In fact, the evidence for 2011 indicates that imports of the subject tubing pup joints may increase at a rate much higher than that of the apparent market.

188. On the basis of the foregoing, the Tribunal is of the view that there will be an increase in imports of the subject tubing pup joints in the next 12 to 18 months.

Chinese Capacity to Produce and Export the Subject Tubing Pup Joints

189. Evidence on the record indicates that there is substantial Chinese capacity available to produce seamless tubing.¹¹⁸ The subject tubing pup joints are short lengths of tubing. Therefore, the Tribunal is of the view that there is sufficient capacity available to produce pup joints in China, which could lead to an increase in exports of the dumped and subsidized goods.

190. The evidence on the record shows that exports of the subject goods found their way to Canada in increasing volumes over the POI, regardless of the degree of market growth, and that anti-dumping and countervailing duties imposed on other oil country tubular goods by the Tribunal have not discouraged the dumping and subsidizing of tubing pup joints.

Acceptance of the Subject Tubing Pup Joints as a Viable Alternative for the Like Goods

191. The evidence indicates that, at least visually, it is difficult to distinguish a Chinese pup joint from a Canadian pup joint¹¹⁹ and that, when bought from a quality supplier, the subject tubing pup joints are fully interchangeable with the like goods.

192. Respondents to the Tribunal's questionnaire on market characteristics overwhelmingly reported that the subject tubing pup joints were interchangeable with the like goods.¹²⁰ This is further apparent in the purchasing behaviour of Weatherford and Tri-alta, which previously purchased tubing pup joints from AOT and shifted their purchases to the subject tubing pup joints.

193. The evidence also shows that some distributors have purchased the subject tubing pup joints on a trial basis, but have remained loyal to AOT.¹²¹ Given the experience of other importers of the subject goods, however, the Tribunal is of the view that such "trials" could lead distributors to increase their purchases of the subject tubing pup joints. This is particularly the case if prices undercut those of the like goods, as all evidence points to the two being interchangeable.

194. The Tribunal considers that Weatherford's ability to meet its pup joint needs through imports of the subject tubing pup joints demonstrates that Chinese tubing pup joints are substitutable for Canadian tubing pup joints and are readily available from Chinese producers. In fact, the Tribunal witnesses indicated that it was very easy to procure the subject tubing pup joints from China.¹²²

118. Manufacturer's Exhibit A-05 (protected) at 55-58, Administrative Record, Vol. 12.

119. *Ibid.* at 37, 42, 43, Administrative Record, Vol. 12.

120. *Pre-hearing Staff Report*, 13 February 2012, Tribunal Exhibit NQ-2011-001-06, Administrative Record, Vol. 1.1 at 26.

121. Manufacturer's Exhibit A-05 (protected) at 22-43, Administrative Record, Vol. 12.

122. *Transcript of Public Hearing*, Vol. 2, 13 March 2012, at 93, 94.

Potential Impacts of the Subject Tubing Pup Joints on Prices of the Like Goods

195. The evidence shows that the subject tubing pup joints can be imported directly at a cost much lower than the selling price of the like goods.¹²³ The Tribunal considers that there is a real threat that purchasers of domestic pup joints may choose to import directly, bypassing distributors of the subject tubing pup joints, resulting in a decline in sales of the like goods.

196. As noted above, the Tribunal does not consider the prices paid by Weatherford for the subject tubing pup joints to have a direct impact on the selling price of AOT's like goods. However, if more purchasers begin to import directly, AOT will be forced to drastically lower its prices to unsustainable levels in order to maintain sales of its like goods.

197. Therefore, while the Tribunal does not consider that the prices of the like goods resulted in significant price depression over the POI, the real threat of increased imports by purchasers could lead to significant price depression in the next 12 to 18 months.

198. In the latter half of 2011, AOT was informed by a number of its customers that they had purchased, or had received offers to purchase, Chinese pup joints at prices significantly below AOT's prices. Although AOT was able to resist lowering its prices, it is clear that this resulted in a decline in sales in 2011. Therefore, the Tribunal considers that pricing pressure from the subject tubing pup joints will continue in the next 12 to 18 months and that, if AOT wishes to maintain sales to its largest clients, it will be forced to lower its prices in response to prices of the subject tubing imports.

199. The evidence submitted by AOT regarding its input prices demonstrates that prices fluctuate. To the extent that prices will continue to increase in the next 12 to 18 months, as they have in the last 12 months,¹²⁴ the Tribunal expects that pricing pressures caused by the subject tubing pup joints will suppress prices of the like goods.

Potential Impact of the Subject Tubing Pup Joints

200. The Tribunal considers that, in the face of increased imports in the next 12 to 18 months, AOT will face increased competition from dumped and subsidized goods. The Tribunal considers that this will result in a loss of sales of like goods. Reduced sales will in turn result in reduced domestic production and capacity utilization.

201. In terms of financial performance and the other factors tied to it, the Tribunal is of the view that, in the face of increased competition from imports in the next 12 to 18 months, AOT will experience declines in its revenues and financial performance.

202. In light of the above, the Tribunal is of the view that the market pressures experienced by AOT in the latter half of 2011, as a result of the dumped and subsidized goods, will continue into the next 12 to 18 months.

Other Factors

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

123. *Protected Pre-hearing Staff Report*, 13 February 2012, Tribunal Exhibit NQ-2011-001-007 (protected), Administrative Record, Vol. 2.1 at 42.

124. Manufacturer's Exhibit A-05 (protected) at 44-50, Administrative Record, Vol. 12.

204. The Tribunal finds that the evidence does not disclose that there are other factors on the horizon in the next 12 to 18 months that, independent of the dumping and subsidizing of the subject goods, threaten to cause injury to the domestic industry.

205. The market for tubing pup joints is expected to improve in the next 12 to 18 months, which will represent an opportunity for the domestic industry, save for an influx of dumped and subsidized goods.

206. The Tribunal also considers imports from other sources and notes that imports of tubing pup joints from countries other than China declined over the POI, despite substantial growth in the apparent market. The Tribunal heard that US producers have little production capacity for export sales and that it is difficult to find quality product from other countries.¹²⁵

207. In light of these other factors, the Tribunal considers that the dumping and subsidizing of the subject goods, in and of themselves, are threatening to cause injury to the domestic industry in the foreseeable future.

CONCLUSION

208. Pursuant to subsection 43(1) of *SIMA*, the Tribunal hereby finds that:

- the dumping and subsidizing of the subject goods that are tubing pup joints have not caused injury but are threatening to cause injury to the domestic industry of tubing pup joints; and
- the dumping and subsidizing of the subject goods that are casing pup joints, if any, have not caused injury or retardation and are not threatening to cause injury to the domestic industry of casing pup joints.

Stephen A. Leach
Stephen A. Leach
Presiding Member

Serge Fréchette
Serge Fréchette
Member

Jason W. Downey
Jason W. Downey
Member

125. *Transcript of Public Hearing*, Vol. 1, 12 March 2012, at 39; *Transcript of Public Hearing*, Vol. 2, 13 March 2012, at 73, 80; *Transcript of In Camera Hearing*, Vol. 1, 12 March 2012, at 20-22.