



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

FINDINGS AND REASONS

Inquiry No. NQ-2013-004

Circular Copper Tube

*Findings issued
Wednesday, December 18, 2013*

*Reasons issued
Thursday, January 2, 2014*

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

**THE DUMPING OF CIRCULAR COPPER TUBE ORIGINATING
IN OR EXPORTED FROM THE FEDERATIVE REPUBLIC OF
BRAZIL, THE HELLENIC REPUBLIC, THE PEOPLE'S
REPUBLIC OF CHINA, THE REPUBLIC OF KOREA AND THE
UNITED MEXICAN STATES, AND THE SUBSIDIZING OF
CIRCULAR COPPER TUBE 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 of circular copper tube with an outer diameter of 0.2 inch to 4.25 inches (0.502 centimetre to 10.795 centimetres) excluding industrial and coated or insulated copper tube, originating in or exported from the Federative Republic of Brazil, the Hellenic Republic, the People's Republic of China, the Republic of Korea and the United Mexican States, and the subsidizing of those goods originating in or exported from the People's Republic of China have caused or are threatening to cause material injury to the domestic circular copper tube industry.

Pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that the dumping of the aforementioned goods originating in or exported from the Federative Republic of Brazil, the Hellenic Republic, the People's Republic of China and the Republic of Korea, and the subsidizing of the aforementioned goods originating in or exported from the People's Republic of China have caused injury.

Pursuant to subsections 43(1) and (1.01) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that the dumping of the aforementioned goods originating in or exported from the United Mexican States has caused injury.

Jason W. Downey

Jason W. Downey
Presiding Member

Serge Fréchette

Serge Fréchette
Member

Pasquale Michaele Saroli

Pasquale Michaele Saroli
Member

Dominique Laporte

Dominique Laporte
Secretary

The statement of reasons will be issued within 15 days.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	November 18 to 20, 2013
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STATEMENT OF REASONS

INTRODUCTION

1. The purpose of this inquiry¹ is to determine whether the dumping of circular copper tube with an outer diameter of 0.2 inch to 4.25 inches (0.502 centimetre to 10.795 centimetres) excluding industrial and coated or insulated copper tube, originating in or exported from the Federative Republic of Brazil (Brazil), the Hellenic Republic (Greece), the People's Republic of China (China), the Republic of Korea (Korea) and the United Mexican States (Mexico), and the subsidizing of the above-mentioned goods originating in or exported from China (the subject goods) have caused or are threatening to cause material injury to the domestic circular copper tube industry.

2. This inquiry stems from a complaint filed on April 2, 2013, by Great Lakes Copper Inc. (GLC), a domestic producer of circular copper tube, and the subsequent decision of the President of the Canada Border Services Agency (CBSA) to initiate dumping and subsidizing investigations.

3. The CBSA's decision prompted a preliminary injury inquiry by the Tribunal, which resulted in the Tribunal's determination, on July 22, 2013, that the evidence disclosed a reasonable indication that the dumping and subsidizing of the subject goods had caused injury or were threatening to cause injury to the domestic industry.

4. On August 20, 2013, the CBSA made preliminary determinations of dumping and subsidizing, resulting in the imposition of provisional duties on the subject goods and the commencement of this inquiry. On November 18, 2013, the CBSA made final determinations of dumping and subsidizing.

5. If the Tribunal determines that such dumping and subsidizing have caused or are threatening to cause material injury to the domestic circular copper tube industry, then the CBSA will impose definitive anti-dumping and countervailing duties on imports of the subject goods.

6. The Tribunal's period of inquiry (POI) covers three full years, from January 1, 2010, to December 31, 2012, and two interim periods, from January 1 to June 30, 2012 (interim 2012) and the corresponding period in 2013 (interim 2013). On this basis, Tribunal staff issued questionnaires to domestic producers, importers, purchasers and foreign producers of circular copper tube. Staff synthesized the questionnaire replies into public and protected staff reports, as well as two public and protected addenda to the staff reports,² that were distributed, along with the questionnaire replies

1. The inquiry is conducted pursuant to section 42 of the *Special Import Measures Act*, R.S.C., 1985, c. S-15 [SIMA].

2. It was necessary for Tribunal staff to collect additional information and to issue the "Second Addendum to the Staff Report – 'As Adjusted'", Exhibit NQ-2013-004-07D (protected), Vol. 2.1A, as new information on levels of trade was filed subsequent to the issuance of the Tribunal's protected staff report, Exhibit NQ-2013-004-07 (protected), Vol. 2.1, and the "Addendum to the Staff Report", Exhibit NQ-2013-004-07A (protected), Vol. 2.1. Indeed, the new information was provided by counsel for GLC in its case brief, at a late stage in the process. See Exhibit NQ-2013-004-A01 at paras. 24-50, Vol. 11 and Exhibit NQ-2013-004-A02 (protected) at paras. 24-50, Vol. 12. The Tribunal notes that counsel for GLC had the opportunity to provide this information to Tribunal staff at an early stage in the process, in particular during the Tribunal's questionnaire consultation process. As "officers of the court", the Tribunal expects counsel, including those whose clients' interests are opposed, to immediately alert the Tribunal to any shortcomings in the record and to be forthcoming in recognizing among each other such situations. To do otherwise may result in serious impediments for parties, and the Tribunal, in properly ascertaining the state of the facts of a given inquiry. This is to no one's advantage. The Tribunal notes that two counsel made submissions to the effect that GLC had alerted the Tribunal in the manner that it did for tactical reasons (Exhibit NQ-2013-004-C-02 [protected] at para. 68, Vol. 14; Exhibit NQ-2013-004-E-02 [protected] at paras. 19-21, Vol. 14A); yet, in the end, these counsel did not dispute that the "Second Addendum to the Staff Report – 'As Adjusted'" was properly warranted (see Exhibit NQ-2013-004-C-08 [protected], Vol. 14A). Had those counsel acted otherwise, so as to provide a bipartisan recognition of the new information on the record, Tribunal staff may have been able to act earlier and issue the "Second Addendum to the Staff Report – 'As Adjusted'" even faster. To recap, the tables and schedules contained in the "Second Addendum to the Staff Report – 'As Adjusted'" replace the corresponding tables and schedules of the Tribunal's protected staff report and the "Addendum to the Staff Report" (for more detailed explanations, see Exhibit NQ-2013-004-07D [protected], Vol. 2.1A at 13-14).

themselves, to counsel of record for those entities that had filed notices to participate in the inquiry.³ Parties filed case briefs and evidence.

7. The following parties actively participated in the inquiry: GLC; 4361814 Canada Inc. o/a Noble Trade (Noble), a Canadian importer of circular copper tube and national distributor of building and plumbing supplies; Nolrad International Inc. (Nolrad), an importer of circular copper tube; 2356986 Ontario Inc. o/a Next Supply (Next Supply), an importer of circular copper tube; Halcor Metal Works S.A. (Halcor), a producer and exporter of circular copper tube in Greece; and the Representative Office - Ministry of Economy of Mexico in Canada (Mexico).⁴ Luvata Monterrey, S. De. R.L. De C.V. (Luvata), a Mexican producer and exporter of industrial copper tube, which is not a subject good, also filed submissions.

8. From November 18 to 20, 2013, the Tribunal heard oral submissions from counsel for these parties, as well as testimony from their witnesses during public and *in camera* sessions.

RESULTS OF THE CBSA'S INVESTIGATIONS

9. The CBSA's period of investigation for its dumping investigation covered May 1, 2012, to April 30, 2013. The period of investigation for its subsidizing investigation covered January 1, 2012, to April 30, 2013. The CBSA made the following determinations:

- 100 percent of the subject goods originating in or exported from Brazil had been dumped at a weighted average margin of dumping of 24.8 percent, when expressed as a percentage of the export price;
- 100 percent of the subject goods originating in or exported from Greece had been dumped at a weighted average margin of dumping of 11 percent, when expressed as a percentage of the export price;
- 100 percent of the subject goods originating in or exported from China had been dumped at a weighted average margin of dumping of 11.4 percent, when expressed as a percentage of the export price, and 100 percent of the subject goods had been subsidized at an overall weighted average amount of subsidy of 12.4 percent, when expressed as a percentage of the export price;
- 100 percent of the subject goods originating in or exported from Korea had been dumped at a weighted average margin of dumping of 14 percent, when expressed as a percentage of the export price; and

3. All public exhibits were made available to the parties. Protected exhibits were made available only to counsel who had filed the required declaration and confidentiality undertaking with the Tribunal in respect of confidential information. The record of this inquiry consists of all Tribunal exhibits, including the record of the preliminary injury inquiry (PI-2013-002), replies to questionnaires, public and protected versions of the pre-hearing staff report, addenda and revisions, requests for information and replies thereto, witness statements, all other exhibits filed by the parties and the Tribunal throughout the inquiry, and the transcript of the hearing.

4. GLC, Noble, Nolrad and Halcor filed case briefs with documentary evidence. GLC and Nolrad filed witness statements in support of their respective positions. Witnesses for GLC attended the hearing. The witness for Nolrad was unable to attend the hearing, or to depose otherwise than by attending the hearing in Ottawa, as per various accommodations that were proposed to his counsel by the Tribunal, given difficult personal circumstances that he was facing contemporaneously with the Tribunal's hearing dates. Noble and Halcor did not file witness statements. Next Supply filed a witness statement but did not attend the hearing. Mexico filed arguments only. Other participants that did not file submissions and only sought access to the Tribunal's public record were the Delegation of the European Union to Canada and the Embassy of Brazil in Ottawa.

- 100 percent of the subject goods originating in or exported from Mexico had been dumped at a weighted average margin of dumping of 33.3 percent, when expressed as a percentage of the export price.

10. The CBSA also determined that the margins of dumping and amount of subsidy, as applicable, were not insignificant.⁵

Product Definition

11. The CBSA defined the subject goods as follows:

... circular copper tube with an outer diameter of 0.2 inch to 4.25 inches (0.502 centimetre to 10.795 centimetres) excluding industrial and coated or insulated copper tube originating in or exported from the Federative Republic of Brazil, the Hellenic Republic (Greece), the People's Republic of China, the Republic of Korea and the United Mexican States.⁶

Product Information

12. Circular copper tube sold in Canada is manufactured to a variety of American Society for Testing and Materials (ASTM) standards and grades. The outer diameter range of the tube includes diameters that are within the allowable tolerances within each standard. Canadian circular copper tube standards and grades are as follows:

Canadian Circular Copper Tube Standards and Grades		
Tube Grade	Standard	Application
Type K	ASTM B88	Domestic water service and distribution, solar, fuel/fuel oil, natural gas, liquefied petroleum gas, snow melting
Type L	ASTM B88	Domestic water service and distribution, solar, fuel/fuel oil, natural gas, liquefied petroleum gas, snow melting
Type M	ASTM B88	Domestic water service and distribution, solar, compressed air
Type DWV	ASTM B306	Drainage, waste, vent
Type ACR	ASTM B280, B68	Air conditioning, refrigeration
Type Medical Gas	ASTM B819	Medical gas uses (e.g. hospitals)

13. There are numerous widely accepted applications of circular copper tube. These include but are not limited to plumbing, heating, cooling and medical gas use. Circular copper tube is produced in straight lengths and in coils, in diameters that correspond with plumbing, air conditioning/refrigeration (ACR) and medical (MED) gas applications.

14. Tube grades for plumbing circular copper tube include the following:

- Type L (ordinarily used in residential and commercial potable water systems);
- Type K (typically used in underground or high-pressure applications);
- Type M (ordinarily used in residential potable water systems); and
- Type DWV (drainage, waste and vent).

5. Exhibit NQ-2013-004-04, Vol. 1A at 12.

6. Exhibit NQ-2013-004-01, Vol. 1 at 11.

15. Types L, K and M of circular copper tube are primarily used for potable water applications, water recirculation systems and heating systems (e.g. solar, geothermal, etc.). Applications include above and below ground, indoor and outdoor systems and can be used in residential, commercial and industrial buildings.
16. DWV circular copper tube is primarily used for above ground vent and drain lines.
17. Tube grades for refrigeration and medical gas circular copper tube include the following:
- ACR
 - MED-L/ACR; and
 - MED-K.
18. ACR circular copper tube is primarily supplied as soft annealed coils for various ACR applications. MED-L and MED-K circular copper tube is primarily supplied for the transfer of medical gases.
19. In Canada, plumbing circular copper tube must be third party certified in order to ensure that the requirements of the standard are met.
20. The subject goods do not include industrial copper tube and coated or insulated copper tube. Industrial copper tube is a custom-made product made to specific dimensions (e.g. outer diameter, inner diameter, wall thickness and length), tolerances and temper as specified by the customer and is normally made in sizes that differ from those in which circular copper tube is offered. Coated or insulated copper tube has a polyethylene/polyvinylchloride or foam coating.

PRELIMINARY MATTERS

Submissions Concerning the Product Definition

21. Halcor, supported by Nolrad, made submissions requesting that the Tribunal terminate its inquiry on the basis that the CBSA's product definition would not allow for a proper distinction to be made between the subject goods and non-subject industrial copper tube. Halcor argued that this rendered the market data before the Tribunal unreliable and thus compromised the Tribunal's inquiry.⁷ GLC made submissions in opposition to that position.⁸ Luvata made extensive submissions in opposition to the submissions by Halcor and Nolrad on the definition of the subject goods, in which it summarized the differences between the subject goods and non-subject industrial copper tube.⁹
22. In this regard, the Tribunal notes that neither Halcor nor Nolrad raised this matter in cross-examination with any of the witnesses that appeared before the Tribunal, nor did they present any witnesses in this inquiry. Moreover, neither Halcor nor Nolrad presented any evidence tending to show that the data before the Tribunal could have been flawed due to a difficulty in distinguishing the subject goods from non-subject industrial copper tube. In this respect, Luvata's submissions ably summarized the distinctions between the subject goods and industrial copper tube which the product definition specifically excludes.

7. Exhibit NQ-2013-004-E-01 at paras. 5-18, Vol. 13; Exhibit NQ-2013-004-C-01 at para. 26, Vol. 13.

8. Exhibit NQ-2013-004-A-08 at paras. 6-8, Vol. 11.

9. Exhibit NQ-2013-004-D-01 at paras. 4-24, Vol. 13.

23. The fact that almost all the participants in the Canadian copper tube market were able to provide the information required by the Tribunal for the purposes of this inquiry without reporting any definitional confusion is consistent with the Tribunal's view that the definition of the subject goods, and by opposition, of industrial copper tube, is well understood by market participants. Indeed, the Tribunal notes that Halcor and Nolrad themselves provided responses to the Tribunal's questionnaire without reporting any difficulty at that time.

24. It is well established that the CBSA has exclusive jurisdiction to define the goods that are subject to a given inquiry.¹⁰ The Tribunal may seek clarification where it has difficulty ascertaining the exact scope of the goods to which a preliminary determination applies, or where it finds that there is ambiguity in the definition,¹¹ and it has not shied away from doing so, when necessary.¹² The present context, however, did not require clarification of the definition of the subject goods, with the information on the record in this matter being such that the Tribunal found no ambiguity and encountered no difficulty in ascertaining the scope of the subject goods.

Procedural Decisions

25. On October 30, 2013, GLC filed a notice of motion seeking to strike portions of the submissions made by Noble opposing an injury finding (Noble's brief).¹³ GLC impugned 22 paragraphs of Noble's brief alleging that they contained statements of fact unsupported by reference to the record, and references to the conduct and positions of persons or companies that would not be appearing as witnesses. GLC claimed that many of the statements made by Noble in those paragraphs were tantamount to counsel giving evidence.

26. On November 3, 2013, Halcor filed an unsolicited submission in response, which was ultimately accepted by the Tribunal on the basis that it provided views of a systemic nature, in addition to useful comments on some of the specific allegations made by GLC. On November 4, 2013, Noble filed a response to GLC's motion in which it denied the allegation that it was introducing evidence through counsel, arguing further that its submissions were simply the presentation of Noble's position in this inquiry. Reply submissions were filed by GLC on November 6, 2013.

27. On November 7, 2013, the Tribunal wrote to the parties indicating that it had denied GLC's motion.¹⁴

28. In so doing, the Tribunal accepted that counsel for Noble did not attempt to give evidence on behalf of her client and that she acted in a forthright manner under instructions from a client who did not want to appear as a witness before the Tribunal, but who nevertheless wanted to offer his views on this inquiry.

29. The Tribunal has often stated that submissions by parties that are unwilling (or unable) to appear before it so as to have their positions subject to cross-examination can only be given the weight that the Tribunal considers appropriate in the circumstances.¹⁵ In most instances, that weight is at best minimal. It is against that backdrop that the Tribunal decided to deny GLC's motion to strike. Unsupported statements of fact will however be treated as such. Consequently, any unsupported statements of fact that are made in

10. *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) at para. 57.

11. *Aluminum Extrusions* at paras. 57-58.

12. In particular, see *Pup Joints* (10 April 2012), NQ-2011-001 (CITT) at paras. 63-92.

13. Exhibit NQ-2013-004-28, Vol. 1B at 2-14.

14. Exhibit NQ-2013-004-35, Vol. 1B at 113.

15. See, for example, *Refined Sugar* (1 November 2010), RR-2009-003 (CITT) at paras. 72-80; *Steel Piling Pipe* (30 November 2012), NQ-2012-002 (CITT) at para. 101.

Noble's brief will be treated in the same manner as those that are made in a witness statement of an individual who fails to appear before the Tribunal.¹⁶

30. By correspondence dated November 14, 2013, to the parties, the Tribunal denied a request by GLC to place certain photographs on the record, the Tribunal not being convinced of the probative value of that evidence.

31. Finally, a preliminary issue was raised at the outset of the hearing concerning the fact that opposing counsel had not been copied on certain late filings of confidential information by counsel for GLC¹⁷, with opposing counsel requesting that this information be struck from the record. For the reasons indicated at the hearing, the Tribunal denied that request.¹⁸

LEGAL FRAMEWORK

32. 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".

33. 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.

34. Given that the subject goods originate in or are exported from more than one country, the Tribunal must also determine whether, under subsection 42(3) of *SIMA*, it is required to make an assessment of the cumulative effect of the dumping or subsidizing of the subject goods (i.e. whether it will conduct a single injury analysis or a separate analysis for each subject country). In particular, the Tribunal must determine whether the conditions set out in subsection 42(3) for the cumulation of the injurious effects of the dumping of the subject goods from each of the subject countries has been met.

35. Moreover, given that the subject goods have been found by the CBSA to be both dumped and subsidized, the Tribunal must also determine whether it is appropriate in the circumstances to make an assessment of the cross-cumulative effects of the dumping and subsidizing of the subject goods (i.e. whether to combine the injury attributable to the effects of dumping with that attributable to the effects of subsidizing).

36. The Tribunal can then assess whether the dumping and subsidizing of the subject goods have caused material injury to the domestic industry. The Tribunal will only consider the issue of threat of injury if it finds that the dumping or subsidizing of the subject goods has not caused injury. As a domestic industry is already established, the Tribunal will not need to consider the question of retardation.¹⁹

16. Such as in the case of submissions made by Next Supply and Nolrad in these proceedings.

17. *Transcript of Public Hearing*, Vol. 1, 18 November 2013, at 10.

18. *Ibid.* at 61-63.

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

37. Finally, the Tribunal will examine other factors that might have had an adverse impact on the domestic industry to ensure that any injury or threat of injury caused by such factors is not attributed to the effects of the dumping and subsidizing.

LIKE GOODS AND CLASSES OF GOODS

38. While the Tribunal must conduct its injury inquiry on the basis of the CBSA's product definition, the Tribunal must define the scope of the like goods in relation to the subject goods in order to assess whether the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury or are threatening to cause injury to the domestic industry of like goods. For this purpose, the Tribunal may also consider whether the like goods constitute one or more classes of goods. If those goods are "like goods" in relation to each other, they will be regarded as comprising a single class of goods.²⁰

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

- (a) goods that are identical in all respects to the other goods, or
- (b) in the absence of any goods described in paragraph (a), goods the uses and other characteristics of which closely resemble those of the other goods.

40. When goods are not identical in all respects to the other goods, the Tribunal typically considers a number of factors, including the physical characteristics of the goods (such as composition and appearance) and their market characteristics (such as substitutability, pricing, distribution channels, end uses, and whether the goods fulfill the same customer needs).²¹

41. In its preliminary injury inquiry, the Tribunal found that domestically produced circular copper tube of the same description as the subject goods were like goods in relation to the subject goods.

Like Goods

42. During the present inquiry, GLC argued that imported and domestic circular copper tube are "like goods". None of the opposing parties, except Mexico, made submissions on this issue.

43. The thrust of Mexico's argument was that the Tribunal's conclusion in the *preliminary injury inquiry* was inadequate and that this required the immediate termination of the proceedings. Mexico further submitted that the Tribunal must compare the production processes for the subject goods and domestic circular copper tube in order to determine whether they are "like goods". Mexico did not comment on the arguments and evidence submitted by GLC in this final injury inquiry.

44. First, with respect to Mexico's argument that the production processes for the subject goods and domestic circular copper tube must be examined in the analysis on like goods, the Tribunal remains convinced, as it was in the preliminary injury inquiry, that the focus should be on the products themselves and not on how they are produced.²² In particular, the Tribunal reiterates its view that the relevant

20. *Aluminum Extrusions* at para. 115; see, also, *Thermal Insulation Board* (11 April 1997), NQ-96-003 (CITT) at 10.

21. See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at para. 48.

22. This view is consistent with the WTO Appellate Body's decision in *United-States—Safeguard Measure on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia* (2001), WTO Docs. WT/DS177/AB/R, WT/DS178/AB/R at para. 94 (Appellate Body Report), where it held that the focus should be on the products, not on how they were produced.

consideration is the comparison between the products themselves, as they are presented and compete in the market. In this analysis, the production process, in and of itself, is usually not a relevant indicator, unless it can be associated with characteristics that affect the competitive relationship between the subject goods and the domestic products. In addition, if different production processes actually do result in differences in the quality, or other competitive characteristics, of the subject goods and like goods, as suggested by Mexico in this case, such differences are usually better considered *per se*, in the context of a direct comparison of the physical and market characteristics of the goods.

45. This being said, Mexico did not submit evidence of actual differences between the subject goods and the domestic circular copper tube, or point to any evidence already on the record in this inquiry showing such differences. Indeed, the Tribunal did not find any evidence on the record that was inconsistent with the view that it reached in the preliminary injury inquiry that the subject goods and the domestic products “. . . compete head-to-head in what largely seems to be a commodity market.”²³

46. Virtually all questionnaire respondents consider domestic circular copper tube and circular copper tube of the same category from the subject countries to be physically and functionally interchangeable,²⁴ and all consider that they are sold through the same channels of distribution.²⁵ Likewise, the great majority of respondents consider them “comparable” from the point of view of physical characteristics, with somewhat more varying views among respondents on the “price” comparability between the subject goods and the corresponding domestic products.²⁶

47. Accordingly, the Tribunal is satisfied that the subject goods and the domestic circular copper tube of the same description are “like goods”.

Class of Goods

48. In the preliminary injury inquiry, the Tribunal indicated that the evidence on the record was insufficient to make a definitive pronouncement on the issue of whether the subject goods constituted one or more class of goods. On August 21, 2013, in its notice of commencement of inquiry in this matter, the Tribunal invited interested parties to file early submissions on the issue of classes of goods and, in particular, to provide facts and arguments on whether the subject goods should be divided in three potential classes of goods, being plumbing, ACR and medical gas circular copper tube.

49. By letter dated September 20, 2013, the Tribunal advised the parties of its determination, on the basis of the early submissions on classes of goods, that the like goods constitute a single class of goods.²⁷ The reasons for that decision follow.

50. The Tribunal received submissions from GLC and Mexico. The Tribunal also received reply submissions from Luvata, which addressed the distinguishing features of non-subject industrial copper tube, which, as discussed above, is specifically excluded from the definition of the subject goods. No other parties made submissions on this matter.

23. *Circular Copper Tube* (22 July 2013), PI-2013-002 (CITT) at para. 35.

24. Exhibit NQ-2013-004-06, Tables 29-31, Vol. 1.1. As shown in Table 31, it is only for Category 3 (Medical Gas Uses) circular copper tube that some respondents indicated that imports were not interchangeable with the domestic product.

25. Exhibit NQ-2013-004-06, Table 23, Vol. 1.1.

26. *Ibid.*, Tables 32-36, Vol. 1.1.

27. Exhibit NQ-2013-004-27, Vol. 1A at 6-7.

51. GLC submitted that the subject goods constitute a single class of goods. With respect to physical characteristics, GLC submitted that all circular copper tube is very similar in appearance, having the same copper content, colour, smoothness and finish. Further, according to GLC, the fact that circular copper tube is manufactured to different technical standards does not detract from the physical similarities of the products.

52. With respect to the market characteristics, GLC submitted that the distribution channels of all circular copper tube are the same, as all its major customers, whether they are wholesalers, distributors or retailers, purchase all types of circular copper tube. The pricing structure for all types of circular copper tube is also the same.

53. GLC further submitted that all circular copper tube products serve the same general end use of conveying liquids and gases. In addition, even though all circular copper tube is not perfectly interchangeable, there is downward substitutability of the higher grade ACR tube for lower grade plumbing applications, and certain circular copper tube products in straight lengths are designed for both ACR and medical gas applications.

54. Mexico submitted that there are at least three different classes of goods, based on distribution channels, markets, customer perceptions/preferences and price differentials. Mexico argued that the only products that may be considered “like” are the ones that share the same technical features. Mexico provided no details in support of its position, other than to state that ACR circular copper tube is typically an engineered product and that plumbing circular copper tube is typically a commodity product that competes with plastic tubing.

55. The evidence shows that all types of circular copper tube are similar in appearance, although they are available in different sizes and may be presented in straight lengths or in coils.²⁸ In addition, the Tribunal agrees with GLC that the distribution channels for all types of circular copper tube are the same, as are their basic price structures. In this respect, GLC provided product catalogues of major distributors, wholesalers and retailers of circular copper tube which indicate that they carry various types and sizes of circular copper tube,²⁹ as well as an order and invoice from Emco showing that circular copper tube of various types is purchased by the same customer as part of the same order.³⁰

56. As acknowledged by GLC, circular copper tube products may be manufactured to a range of ASTM standards and, as a consequence, serve different end uses. Nevertheless, the Tribunal does not find that the evidence supports the existence of more than one class of goods based on end use or ASTM standards. A better qualification of the range of circular copper tube products covered by this inquiry is that it constitutes a continuum of like goods within a single class.

57. Indeed, the evidence shows that there is downward substitutability of ACR circular copper tube for plumbing circular copper tube (although not vice versa). Although substitution should not normally occur because of the price premium that ACR circular copper tube carries, the Tribunal cannot ignore the fact that such substitutability is possible and would be made more plausible by the presence on the market of cheap, dumped and/or subsidized ACR circular copper tube.³¹ As a result, the Tribunal finds that a distinction

28. Exhibit NQ-2013-004-22.01A at paras. 2-7, Vol. 1.4.

29. *Ibid.* at tab 2, Vol. 1.4.

30. Exhibit NQ-2013-004-23.01A (protected) at tab 1, Vol. 2.4.

31. Exhibit NQ-2013-004-22.01A at para. 13, Vol. 1.4.

between plumbing circular copper tube and ACR circular copper tube would not be warranted for the purposes of this inquiry.

58. In addition, there is no clear distinction between ACR circular copper tube and medical gas circular copper tube. The evidence shows that at least one type of ACR circular copper tube (in straight lengths) also meets the ASTM requirement for medical gas tube and, as such, serves two of the end uses identified by the Tribunal.³² GLC explained that it actually has no way of knowing the final end use to which the subsequent purchaser will put this type of product.³³

59. Accordingly, the Tribunal found that there was a single class of goods.

DOMESTIC INDUSTRY

60. 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.

61. GLC is the only known domestic producer of like goods; accordingly, it constitutes the totality of the domestic industry. It is therefore in relation to GLC’s production of like goods that the Tribunal will conduct its injury analysis.

CUMULATION

62. Subsection 42(3) of *SIMA* directs the Tribunal to make an assessment of the cumulative effect of the dumping and subsidizing of the subject goods if it is satisfied that the margin of dumping or the amount of subsidy in relation to the subject goods from each of those countries is not insignificant, the volumes of dumped and subsidized goods from each subject country is not negligible,³⁴ and cumulation is appropriate taking into account conditions of competition between the goods of each country or between them and the like goods.

63. 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, there are no legislative provisions that directly speak to the issue of cross-cumulation. However, as noted in previous cases, subsections 37.1(1) and (2) of the *Special Import Measures Regulations*³⁵ 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. 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

32. *Ibid.* at para. 12, Vol. 1.4.

33. *Ibid.*

34. Subsection 2(1) of *SIMA* defines “negligible” as meaning, “. . . in respect of the volume of dumped goods of a country, (a) less than three per cent of the total volume of goods that are released into Canada from all countries and that are of the same description as the dumped goods . . .”

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

and the subsidizing respectively.³⁶ 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.

64. Relevant factors relating to the conditions of competition could include interchangeability, quality, pricing, distribution channels, modes of transportation, timing of arrivals and geographic dispersion.³⁷

65. Nolrad argued that *SIMA* contains a “presumption” to the effect that “... decumulation should occur”³⁸ The Tribunal does not share that view and has stated, in the past, that *SIMA* contains no such default position whatsoever either in favour of or against cumulation. In *Certain Corrosion-resistant Steel Sheet Products*,³⁹ the Tribunal stated as follows:

68. The Tribunal does not accept the domestic industry’s argument that the Tribunal is obliged to cumulate. The “shall” in subsection 76.03(11) should be read together with the words “if the Tribunal is satisfied” and “would be appropriate”. These words indicate that the Tribunal has some discretion to cumulate the goods in question after taking into account certain factors, i.e. the conditions set out in paragraph (a) or (b). The Tribunal’s exercise of this discretionary authority does not give any party a right to a particular outcome or to the application of a particular legal test. Rather, this discretion is applied by the Tribunal within the conditions set out in subsection 76.03(11).

...

71. The Tribunal notes in passing that this interpretation of subsection 76.03(11) is consistent with Article 3.3 of the *Anti-dumping Agreement*, which provides that the investigating authorities may cumulatively assess the effects of dumped imports “only if they determine that . . . a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic product.” . . . This clearly suggests that, if the investigating authority is not satisfied that cumulation would be appropriate on the basis of the conditions of competition between the goods in question, notwithstanding any similarities or dissimilarities between the conditions of competition between the goods in question and the like goods, the investigating authority may choose not to cumulate.⁴⁰

[Footnote omitted]

66. In the present inquiry, the Tribunal is satisfied that the margins of dumping and, where applicable, the amount of subsidy in relation to the subject goods from each country are not insignificant and that the volume of subject goods from each named country is not negligible.⁴¹

36. See, for example, *Aluminum Extrusions* at para. 147.

37. See, for example, *Copper Pipe Fittings* at para. 73, citing *Laminate Flooring* (16 June 2005), NQ-2004-006 (CITT) at 11-13.

38. *Transcript of Public Hearing*, Vol. 3, 20 November 2013, at 245.

39. (27 July 2004), RR-2003-003 (CITT).

40. This excerpt discusses subsection 76.03(11) of *SIMA* regarding cumulation in the context of an expiry review. It is to the same effect as subsection 42(3) regarding inquiries. Consequently, the same principles apply.

41. In assessing whether the volume of dumped imports from a country is negligible, the Tribunal looks at the import activity during the CBSA’s period of investigation. During this period, the volumes of imports of the subject goods from all the subject countries were not negligible. See Exhibit NQ-2013-004-06B, Tables 61, 62, Vol. 1.1; Exhibit NQ-2013-004-07B (protected), Tables 61, 62, Vol. 2.1. In this respect, Nolrad conceded at the hearing that the margins of dumping were not insignificant and that the volumes of imports were not negligible for the subject goods from Greece and Brazil. See *Transcript of Public Hearing*, Vol. 3, 20 November 2013, at 247.

67. The Tribunal is also satisfied that the same conditions of competition exist between the subject goods among each other, and between the subject goods and the like goods. In all instances, they compete head-to-head with each other on similar considerations of quality and price and through similar channels of distribution.⁴² Further, both the subject goods and the domestic circular copper tube are present throughout Canada.⁴³

68. Nolrad submitted that the major distinguishing condition of competition between the Greek and Brazilian subject goods, and the subject goods from the other subject countries, was that the Greek and Brazilian imports entered the Canadian market through a single “middle man”, i.e. Nolrad, the only importer of the subject goods from those two countries during the POI, and reach the wholesalers in Canada through this middle man, whereas the subject goods from the other subject countries have multiple entry points to the wholesalers, including through direct imports by some wholesalers. Nolrad argued that, on this basis, the markets for the Brazilian and Greek imports, and the other subject goods, were distinguishable.⁴⁴ Nolrad further argued that most of GLC’s injury allegations were based on the impact of these direct imports by major wholesalers.

69. In the Tribunal’s view, regardless of their point of entry into the Canadian market, the subject goods from all the subject countries compete between themselves and with the like goods as more or less fungible goods available for purchase by the wholesalers. Indeed, the very premise of Nolrad’s argument is that all the subject goods (and for that matter, the domestic circular copper tube) are destined for and eventually do reach the wholesale trade level. As such, effectively, all these goods ultimately compete against each other on the usual considerations of price, quality, delivery times, etc.

70. Nolrad did not actually argue that the subject goods from Greece and Brazil were not functionally interchangeable for either the other subject goods or the domestic circular copper tube,⁴⁵ and the Tribunal is not convinced by the argument⁴⁶ that, from the point of view of the wholesaler, the circular copper tube from Nolrad is materially distinguishable, and competes differently, on the single basis that the exact country of origin of Nolrad’s inventories may not be known to the purchasing wholesaler.

71. The evidence on the record⁴⁷ does not indicate that the origin of the product in and of itself is perceived by purchasers as such an important distinguishing feature. While it can be expected that the presence of a middle man would normally increase the price to the wholesalers of imports purchased from Nolrad as compared to the price of direct imports, in the circumstances, this is a consideration to be accounted for in the pricing analysis and not a distinguishing condition of competition for the purposes of the analysis under subsection 42(3) of *SIMA*.

42. As indicated earlier, virtually all questionnaire respondents to the purchasers’ questionnaire in this inquiry consider domestic circular copper tube and circular copper tube of the same category from the subject countries to be physically and functionally interchangeable, and all consider that they are sold through the same channels of distribution. Likewise, the great majority of respondents consider them “comparable” from the point of view of physical characteristics. See Exhibit NQ-2013-004-06, Tables 23, 29-36, Vol. 1.1.

43. See, for example, *Transcript of Public Hearing*, Vol. 1, 18 November 2013, at 24-26; Exhibit NQ-2013-004-A-05 at para. 4, Vol. 11.

44. See, for example, *Transcript of Public Hearing*, Vol. 3, 20 November 2013, at 254.

45. *Ibid.* at 255.

46. *Ibid.* at 271-73.

47. See Exhibit NQ-2013-004-06, Tables 29-36, Vol. 1.1.

72. Further, Nolrad argued that the presence of the Greek and Brazilian imports in the Canadian market was but temporary, as these goods were imported as replacements for circular copper tube from Chile which was unavailable for a short period.

73. The Tribunal must base its inquiry on the data relating to the POI. In this regard, during the POI, the imports of the subject goods from Greece and Brazil were present in Canada in non-negligible volumes and, as such, competed for sales in the domestic market with the other subject goods and the domestic circular copper tube. Indeed, in the circumstances of this case, the Tribunal does not consider the relatively limited volumes and presence of the Greek and Brazilian imports in the Canadian market as a distinguishing condition of competition favouring “decumulation”; the Tribunal notes that the very purpose of subsection 42(3) of *SIMA* is to allow (in fact, it directs) a cumulative assessment of the effects of any dumping and subsidizing of the subject goods, as long as the volumes from the subject countries are not *de minimis* and it is appropriate, considering conditions of competition.

74. On the basis of the foregoing analysis, the Tribunal finds that cumulation and cross-cumulation are appropriate in the circumstances.

INJURY ANALYSIS

75. Subsection 37.1(1) of the *Regulations* prescribes that, in determining whether the dumping and subsidizing have caused material injury to the domestic industry, the Tribunal is to consider the volume of the dumped and subsidized goods, their effect on the price of like goods in the domestic market and their resulting impact on the state of the domestic industry. Subsection 37.1(3) also directs the Tribunal to consider whether a causal relationship exists between the dumping and subsidizing of the goods and the injury on the basis of the factors listed in subsection 37.1(1), and whether any factors other than the dumping and subsidizing of the goods have caused injury.

Import Volume of Dumped and Subsidized Goods

76. Paragraph 37.1(1)(a) of the *Regulations* directs the Tribunal to 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.

77. In absolute terms, imports of the subject goods increased by 24 percent from 2010 to 2011, and by another 31 percent from 2011 to 2012; this represents an increase of 63 percent from 2010 to 2012. Imports of the subject goods were 12 percent higher during interim 2013 than they were during interim 2012.⁴⁸ This represents a significant increase.

78. From 2010 to 2012, the ratio of imports of the subject goods relative to total domestic production of like goods increased by 12 percentage points. In comparison to interim 2012, the ratio of imports of the subject goods relative to total domestic production of like goods increased by 5 percentage points.⁴⁹ From 2010 to 2012, the ratio of imports of the subject goods relative to total domestic sales from domestic production of like goods increased by 31 percentage points. In comparison to interim 2012, the ratio of imports of the subject goods relative to total domestic sales from domestic production of like goods increased by 14 percentage points.⁵⁰ These constitute significant increases.

48. Exhibit NQ-2013-004-06D, Schedule 4, Vol. 1.1A.

49. Exhibit NQ-2013-004-07D (protected), Table 1, Schedule 2, Vol. 2.1A.

50. *Ibid.*, Table 3, Schedule 2, Vol. 2.1A.

79. Of note is the fact that subject imports and non-subject imports each captured approximately half of total imports at the beginning of the POI. A considerable shift in favour of the subject imports occurred during the POI: in 2012, they represented more than three quarters of total imports from all sources; correspondingly, non-subject imports moved to represent less than a quarter of total imports from all sources by 2012. A move of only four percentage points in favour of non-subject imports was observed when comparing interim 2013 and interim 2012.⁵¹

80. On the basis of these foregoing, the Tribunal finds that there was a significant increase in the volume of imports of the subject goods in absolute terms and relative to the production and consumption of like goods.

Price Effects of Dumped and Subsidized Goods

81. Paragraph 37.1(1)(b) of the *Regulations* directs the Tribunal to consider the effects of the dumped and subsidized goods on the price of like goods and, in particular, whether the dumped and subsidized goods have significantly undercut or depressed the price of like goods, or suppressed the price of like goods by preventing the price increases for those like goods that would otherwise likely have occurred. GLC alleges significant price undercutting, depression and suppression, as evidenced, in particular, by changes in unit selling prices of copper tube in terms of GLC's "fabrication charge" or "spread".⁵² The parties opposite disagree.

Importance of Price

82. The Tribunal notes that a majority of questionnaire respondents indicated that the "lowest price" is a "very important" factor in purchasing decisions.⁵³ Even though a majority of questionnaire respondents did not indicate that the lowest price was the most important factor in purchasing decisions, pricing remains the single most cited factor given by questionnaire respondents when asked to report factors associated with choosing a supplier and negotiating a price.⁵⁴ Product consistency and quality, technical specifications, reliability of supply, delivery time and terms, after-sales service or warranties, and credit terms are other important factors cited by questionnaire respondents.⁵⁵

83. The Tribunal notes that eight firms reported that a price difference of 5 to 10 percent would render price the primary factor outweighing all other factors, while two firms reported that price would become a factor starting at a 25 percent difference; five firms reported that price would never be the primary factor.⁵⁶

51. *Ibid.*, Schedule 6, Vol. 2.1A.

52. These terms are explained below.

53. Exhibit NQ-2013-004-06, Tables 25, 26, 27, Vol. 1.1.

54. *Ibid.*, Table 17, Vol. 1.1.

55. *Ibid.*, Tables 17, 25, 26, 27, Vol. 1.1. See, also, testimony of Mr. Louis Pepe discussing the considerations taken into account by purchasers in making sourcing decisions, for example, *Transcript of Public Hearing*, Vol. 2, 19 November 2013, at 143.

56. Exhibit NQ-2013-004-06, Table 41, Vol. 1.1.

Canadian origin was not cited as an important purchasing consideration.⁵⁷ The Tribunal also heard evidence regarding the importance of purchasers being able to secure at least two sources of supply.⁵⁸

84. The Tribunal is satisfied that, in a context such as here where there is widespread physical and functional interchangeability among copper tube of all origins of the same description as the subject goods,⁵⁹ price becomes the defining factor in purchasing choices. This is consistent with a product which is, for all intents and purposes, a commodity.⁶⁰

Price Undercutting

85. The Tribunal will examine whether there is evidence of price undercutting by the subject goods by looking at GLC's account-specific injury allegations, at benchmark product pricing, and finally at average unit pricing over the POI.

– Account-specific Allegations

86. GLC provided the Tribunal with some three dozen account-specific injury allegations. Parties opposite challenged various aspects of the information which they contained and called into question their probative value, citing, amongst other considerations, the fact that they had been prepared for the purpose of the current proceedings and related investigations by the CBSA.

87. The fact that the allegations were prepared for the purposes of these proceedings and the related investigations by the CBSA does not, in and of itself, call into question their credibility.⁶¹ This being said, the Tribunal recognizes that they can only paint a partial picture of what actually occurred in the market. At the same time, the Tribunal notes that the parties opposite did not call witnesses in these proceedings, so they in fact provided little or no evidentiary basis for the positions which they advocated.

88. The Tribunal found that GLC's account-specific injury allegations were useful to the extent that they provide plausible insight into the mechanisms by which undercutting occurs in day-to-day commercial negotiations. In that sense, they are of a certain probative value.

89. The Tribunal also found particularly interesting certain allegations that showed how importers (which therefore, it must be assumed, add a profit margin) are able to resell in the Canadian market at prices that are at or below the domestic industry's costs (i.e. at prices with no profit, or at a loss). One allegation

57. *Ibid.*, Table 28, Vol. 1.1. The witnesses testified at the hearing that any advantage to the domestic industry would usually be the result of the fact that it has product readily available in Canada, thus reducing delivery times. On a case-by-case basis, this may allow GLC to get the sale even if it does not have the lowest price in the market, in cases where time is of the essence. However, the witnesses testified that it would be practically impossible to quantify any such "premium". See *Transcript of Public Hearing*, Vol. 1, 18 November 2013, at 127-28; *Transcript of In Camera Hearing*, Vol. 2, 19 November 2013, at 234-36.

58. See, for example, *Transcript of Public Hearing*, Vol. 1, 18 November 2013, at 80; *Transcript of Public Hearing*, Vol. 2, 19 November 2013, at 163; *Transcript of In Camera Hearing*, Vol. 2, 19 November 2013, at 228-29, 232.

59. Exhibit NQ-2013-004-06, Tables 29-38, Vol. 1.1.

60. Exhibit NQ-2013-004-A-05 at para. 21, Vol. 11.

61. The Tribunal's questionnaire asks parties to provide a sample of lost sales allegations. The allegations usually represent a relatively limited number of lost transactions. Of GLC's 36 allegations, 15 reported volumes; together, they represent a volume equivalent to approximately 1 percent of GLC's domestic sales in 2011, 5 percent in 2012, and 1 percent during interim 2013.

showed how actors behaved in order to ascertain how low the floor price of the subject goods could actually go at that point in time.⁶²

– Benchmark Pricing

90. Benchmark pricing evidence in this matter had certain limitations stemming from the fact that total imports of benchmark products from the subject countries represented only approximately one fifth of sales/purchases of imports from the subject countries in 2012, as well as in both interim 2012 and interim 2013.⁶³

91. During the POI, GLC had sales across the range of benchmark products. However, the range of imports was much more unevenly represented across the same period. The volume of imports of benchmark products 1, 7, 8 and 9 *combined* represented 2 percent of total imports of benchmark products and 3 percent of total value. In contrast, combined domestic sales of benchmark products 1, 7, 8 and 9 represented 45 percent of total domestic sales of all benchmark products, as well as 45 percent of value. Correspondingly, combined domestic sales of benchmark products 2, 3, 4, 5 and 6 represented 55 percent of domestic sales of all benchmark products in terms of both volume and value.

92. Imports of benchmark products 2, 3, 4, 5 and 6 therefore represented 98 percent of the volume and 97 percent of the value of total imports of benchmark products over the eight quarters for which data were collected. Accordingly, the Tribunal focussed the core of its analysis on these specific benchmark products.⁶⁴

93. Imports of benchmark products 2, 3, 4, 5 and 6 were responsible for numerous instances of price undercutting. Overall, out of 141 possible points of comparison (i.e. instances where sales of the subject goods from a given subject country and sales from domestic production both occurred in the same quarter), there were 70 instances where the quarterly average unit sale/purchase price of the subject imports undercut the selling price of the like goods, or in almost 50 percent of cases.⁶⁵

94. For all cases where price undercutting occurred in respect of benchmark products, the Tribunal established the extent to which it occurred (domestic selling price less the blended sale/purchase price of imports, expressed as a percentage of domestic selling price), on a subject country basis, and by quarter, where a price comparison between domestic selling price and the blended sale/purchase price of imports could be made.

95. For benchmark product 2, price undercutting occurred in 15 instances out of 34 possible price comparisons (44 percent) at rates of up to 16.5 percent. The maximum quarterly weighted average percentage of undercutting was 10.6 percent; the overall weighted average percentage of undercutting by the subject goods from all sources, over the eight quarters, was 5.9 percent. Of note is that the weighted average

62. *Transcript of In Camera Hearing*, Vol. 1, 18 November 2013, at 30-31.

63. Exhibit NQ-2013-004-07D (protected), Tables 52, 54, 56, 58, 60, 62, 64, 66, 68, Vol. 2.1A; Exhibit NQ-2013-004-07F (protected), Table 4, Vol. 2.1A.

64. For benchmark products 1, 7 and 9, price undercutting occurred sporadically in only 5 of 120 quarters (8 quarters multiplied by 5 subject countries and 3 benchmark products), or 4 percent. Price undercutting did not occur at all in the case of benchmark product 8. Rates of undercutting were less than 1.7 percent in 3 out of the 5 instances. In the other 2 instances, they were 3.9 and 10.4 percent. Overall, the weighted average of these rates showed no undercutting by the very low volume of imports of these benchmark products.

65. Exhibit NQ-2013-004-07D (protected), Tables 53, 55, 57, 59, 61, Vol. 2.1A.

percentage of undercutting, over the eight quarters, was nil for Brazil, Greece and Mexico; it was 8.7 percent for China and 6.1 percent for Korea.

96. For benchmark product 3, price undercutting occurred in 19 instances out of 33 possible price comparisons (58 percent) at rates of up to 22.0 percent. The maximum quarterly weighted average percentage of undercutting was 9.2 percent. The overall weighted average percentage of undercutting by the subject goods from all sources, over the eight quarters, was 5.8 percent. Of note is that the weighted average percentage of undercutting, over the eight quarters, was nil for Brazil and Greece. It was 8.7 percent for China, 6.1 percent for Korea and 2.1 percent for Mexico.

97. For benchmark product 4, price undercutting occurred in 14 instances out of 30 possible price comparisons (47 percent) at rates of up to 19.8 percent. The maximum quarterly weighted average percentage of undercutting was 15.5 percent. The weighted average percentage of undercutting by the subject goods from all sources, over the eight quarters, was 10.9 percent. Of note is that price undercutting was limited to the subject goods from China and Korea.

98. In China's case, undercutting occurred in each of the eight quarters at quarterly weighted average rates ranging between 10.4 percent and 19.8 percent. The weighted average percentage of undercutting for China, over the eight quarters, was 14.5 percent.

99. In Korea's case, undercutting occurred in six quarters at quarterly weighted average rates ranging between 9.3 percent and 16.3 percent. The weighted average percentage of undercutting for Korea, over the eight quarters, was 10.1 percent.

100. For benchmark product 5, price undercutting occurred in eight instances out of 22 possible price comparisons (36 percent) at rates of up to 16.7 percent. The maximum quarterly weighted average percentage of undercutting was 10.3 percent. The weighted average percentage of undercutting by the subject goods from all sources, over the eight quarters, was 2.1 percent. The only subject country with a weighted average percentage of undercutting above nil, over the eight quarters, was China, at 8.8 percent.

101. For benchmark product 6, price undercutting occurred in 14 instances out of 22 possible price comparisons (64 percent) at rates of up to 18.3 percent. The maximum quarterly weighted average percentage of undercutting was 12.2 percent. The weighted average percentage of undercutting by the subject goods from all sources, over the eight quarters, was 5.3 percent. Of note is that the weighted average percentage of undercutting, over the eight quarters, was nil for Brazil and Greece. It was 11.6 percent for China, 2.5 percent for Korea and 0.3 percent for Mexico.

– Average Unit Pricing

102. As described above, benchmark pricing data show evidence of price undercutting by benchmark products from China and Korea, but little or no evidence of price undercutting by benchmark products from Brazil, Greece or Mexico. Evidence of price undercutting by the subject goods from all countries appears, however, in average unit pricing, although not throughout each period.⁶⁶

66. *Ibid.*, Tables 15, 31, Vol. 2.1A; Exhibit NQ-2013-004-07F (protected), Tables 16, 32, Vol. 2.1A.

103. For importers' sales of imports from Mexico, all trade levels combined, average unit prices undercut those of the domestic industry in 2010 by 8 percent and by 7 percent at the wholesale trade level.⁶⁷

104. For importers' sales of imports from Brazil, all trade levels combined, average unit prices undercut those of the domestic industry by 7 percent in 2012 (and by 5 percent during interim 2012 and interim 2013) and by 6 percent at the wholesale trade level in 2012 (and by 4 percent during interim 2013 compared to 5 percent during interim 2012).⁶⁸

105. For importers' sales of imports from Greece, all trade levels combined, average unit prices undercut those of the domestic industry in 2012 by 3 percent (and by 2 percent during interim 2013 compared to 5 percent during interim 2012). At the wholesale trade level, importers' sales of imports from Greece undercut average unit selling prices of the domestic industry by 2 percent (and by 2 percent during interim 2013 compared to 5 percent during interim 2012).

106. The average unit prices of importers' purchases of imports from China and Korea undercut those of the domestic industry, all trade levels combined, in every period of the POI; the same was true at the wholesale trade level.⁶⁹

107. In 2010, for all subject countries examined together, the average unit price of sales/purchases of the subject goods was 10.5 percent lower than the average unit selling price of sales from domestic production. In 2011, it was 4.6 percent lower, and 7.0 percent lower in 2012; for interim 2012, it was 5.4 percent lower. It was 7.8 percent lower for interim 2013. Over that three-year period, the weighted average unit price of sales/purchases of the subject goods was 7.3 percent lower than the weighted average unit selling price of sales from domestic production.⁷⁰

108. Of note is the fact that, for each of the years of the POI, as well as for the interim periods, the average unit price of sales/purchases of circular copper tube from non-subject countries was higher than the average unit price of sales/purchases of the subject goods. Furthermore, in each of the periods, except for 2010, the average unit price of sales/purchases of circular copper tube from non-subject countries was higher than the average unit selling price of sales from domestic production.

109. More specifically, in 2010, the average unit price of sales/purchases of the subject goods was 6.6 percent lower than the average unit price of sales/purchases of circular copper tube from non-subject countries. In 2011, it was 6.6 percent lower and 7.5 percent lower in 2012. For interim 2012, it was 5.7 percent lower and 8.5 percent lower for interim 2013.

110. Over the three-year period of 2010 to 2012, the weighted average unit price of sales/purchases of the subject goods by importers was 7.2 percent lower than the average unit price of sales/purchases of products from non-subject countries.⁷¹

67. Exhibit NQ-2013-004-07D (protected), Tables 15, 31, Vol. 2.1A; Exhibit NQ-2013-004-07F (protected), Tables 16, 32, Vol. 2.1A.

68. *Ibid.*

69. *Ibid.*

70. Exhibit NQ-2013-004-07D (protected) Tables 3, 9, Vol. 2.1A; Exhibit NQ-2013-004-07F (protected), Tables 4, 10; Vol. 2.1A.

71. Exhibit NQ-2013-004-07F (protected), Tables 4, 10, Vol. 2.1A.

111. Accordingly, when the subject goods undercut like goods, they also undercut goods imported from non-subject countries by an even greater amount. In this context, it is not surprising to have witnessed a progressive retreat of non-subject goods from the Canadian market.

112. Importers were, in fact, able to source cheaper imports from the subject countries than they were from non-subject countries. Conversely, it is therefore plausible to believe that producers in non-subject countries could not compete in Canada with the dumped and subsidized goods from the subject countries any more than the domestic industry could, as GLC has testified, and therefore simply chose to forgo any sales opportunities that the Canadian market had previously presented to them.⁷²

113. An even more apparent portrait of undercutting is given when comparing the importers' average unit purchase price of the subject goods, where the importers were wholesalers, to the average unit price of sales from domestic production. This point of comparison is of crucial importance.⁷³

114. In 2010, the importers' average unit purchase price of the subject goods, where the importers were wholesalers, was 20.7 percent lower than the average unit price of sales from domestic production. It was 11.2 percent lower in 2011 and 13.4 percent lower in 2012. It was 12.8 percent lower for interim 2012 and 13.4 percent below the domestic price for interim 2013.

115. From 2010 to 2012, the domestic industry therefore faced import purchase prices, where the importer was a wholesaler, from the subject countries at a weighted average of 14.3 percent lower than theirs.⁷⁴ An almost identical picture is given when comparing prices at the wholesale level of trade, where the most significant volume of the domestic industry's sales and competition occurs.⁷⁵ Examined as a whole, the evidence on the record shows significant price undercutting by the subject goods.

116. Finally, the Tribunal does not consider it appropriate to assess any price undercutting caused by the dumped and subsidized goods on the basis of spreads, as suggested by GLC.⁷⁶ As will be further explained below, spread is calculated by removing, from the unit value of sales from domestic production, the price of copper, which GLC explained is always passed on to the customer. However, price undercutting is useful to measure differences in price in the market between the subject goods and the domestic products, from the point of view of a purchaser making its buying decision. A producer's spread is not indicative of this dynamic and, therefore, not useful in the analysis on price undercutting.

72. This is consistent with the testimony of Mr. Jean Noelting that the imports from the United States have retreated from the Canadian market which was no longer profitable. See *Transcript of Public Hearing*, Vol. 1, 18 November 2013, at 26-27, 45; *Transcript of In Camera Hearing*, Vol. 1, 18 November 2013, at 30.

73. As explained by GLC's witnesses, two major wholesalers are price leaders in the Canadian market; since these wholesalers have started importing large quantities of the subject goods directly from the subject countries, at these major accounts, GLC effectively competes with the landed prices of these imports. See, for example, the testimony of Mr. Noelting, *Transcript of Public Hearing*, Vol. 1, 18 November 2013, at 22-24, and the testimonies of Mr. Noelting and Mr. Chris Mitchell, *Transcript of In Camera Hearing*, Vol. 1, 18 November 2013, at 8-10.

74. Exhibit NQ-2013-004-07D (protected), Tables 3, 9, Vol. 2.1A; Exhibit NQ-2013-004-07F (protected), Tables 4, 10, Vol. 2.1A.

75. Exhibit NQ-2013-004-07D (protected), Table 31, Vol. 2.1A; Exhibit NQ-2013-004-07F (protected), Table 32, Vol. 2.1A.

76. See, for example, Exhibit NQ-2013-004-A-02 (protected) at para. 26, Vol. 12.

Price Depression and Importance of Spread

117. GLC explains that its price of copper tube has two components: (1) the prevailing cost of copper; and (2) the markup or “fabrication charge” (or spread—all other costs plus an amount for profit). GLC alleges that its financial performance is a reflection of its ability to charge a reasonable spread above its copper costs, because it always passes on its cost of copper to its customers, and that by not doing so would expose it to too great a financial risk. Accordingly, GLC argues that the changes in its fabrication charge are also the only real measure of price erosion and suppression.⁷⁷

118. GLC states that the starting point for its pricing of copper tube is its price list. However, because its price list is rarely updated, the key pricing element at play is really the discount factor that it applies to list prices on a transaction-by-transaction basis in order to manage a financially viable spread. The discount factor takes into account changes in the COMEX price of copper and in the Canadian to U.S. exchange rate. When negotiating prices with customers, GLC applies a discount factor that will enable it to maintain a reasonable spread in which is built in a certain amount for profit.⁷⁸ However, in order to compete during the POI, GLC states that it increasingly had to deviate from this pricing model.⁷⁹ GLC also provides certain rebate programs to large customers or buying groups which are also factored into price negotiations.

119. The Tribunal notes that, for each of the periods of the POI, GLC’s cash discounts and volume rebates as a percentage of gross sales remained, individually and cumulatively, almost identical.⁸⁰ These discounts and rebates were therefore not responsible for any change in circumstance.⁸¹

120. The Tribunal also considered allegations made by parties opposite that differences between the COMEX and London Metal Exchange (LME) index (GLC prices according to COMEX) were a significant factor in price comparison and lack of competitiveness by GLC. To this end, the Tribunal heard testimony that copper pricing accounts for 76 to 78 percent of the domestic selling price of circular copper tube.⁸²

121. The evidence on the record shows that the COMEX and LME prices for copper over the POI were almost identical.⁸³ As such, the Tribunal finds that the pricing of copper has not been a significant factor in GLC’s results, if at all. Further, the Tribunal was presented with little evidence to contradict the reliability of the spread-based pricing model and the real impact that a differential, if any, could have had on the competitiveness of the domestic end product.⁸⁴

122. The Tribunal recognizes that spread constitutes a valid basis upon which to assess any allegations of price depression caused by the dumped and subsidized goods; spread effectively removes from the unit

77. Exhibit NQ-2013-004-A-01 at paras. 22-23, Vol. 11. See, also, the witness statement of Ms. Julie Smith, Exhibit NQ-2013-004-A-04 (protected) at paras. 10-12, Vol. 12.

78. Exhibit NQ-2013-004-A-05 at paras. 16-18, Vol. 11.

79. Exhibit NQ-2013-004-A-06 (protected) at para. 19, Vol. 12A.

80. Exhibit NQ-2013-004-RI-01A (protected) at tab 1, Vol. 10.

81. The Tribunal notes that the parties opposite argued that GLC’s diminishing spreads or margins were a result of its own pricing, discount and rebate strategies. See Exhibit NQ-2013-004-E-01 at paras. 67-70, Vol. 13.

82. This calculation is based on the staff report data which include sales to wholesalers, retailers and end users.

83. Exhibit NQ-2013-004-A-01 at tab 1, Vol. 11.

84. A similar, if not identical, model was described in *Seamless Refined Copper Pipe and Tube from China and Mexico* (November 2010), Investigation Nos. 731-TA-1174-1175 (Final) (USITC) at VI-1.

value of sales from domestic production any variability caused by the fluctuations in copper pricing on the world markets and, therefore, allows for a more accurate appreciation of price depression allegations.⁸⁵

123. The Tribunal notes that the prices of sales from domestic production increased from 2010 to 2011, then fell back to 2010 levels in 2012. They also fell from interim 2012 to interim 2013. It can also be noted that the trend in the unit values of sales from domestic production tend to follow the trend of the COMEX price of copper.⁸⁶

124. For GLC's total sales, gross spread, or sales value less cost of copper, on a unit value basis, declined by 5 percent from 2010 to 2011, then declined by 7 percent from 2011 to 2012; from 2010 to 2012, it therefore declined by 12 percent. No change was observed when comparing interim 2013 to interim 2012.⁸⁷ GLC's gross spread to its top five accounts declined by 6.2 percent from 2010 to 2011, and by another 4.8 percent from 2011 to 2012, or by 10.7 percent from 2010 to 2012. GLC's gross spread to its top five accounts was 3 percent lower in interim 2013 than it was during interim 2012.⁸⁸

125. GLC's gross spread from sales of benchmark products declined by 6 percent from 2010 to 2011, and declined by a further 9 percent from 2011 to 2012, or by a total of 15 percent from 2010 to 2012; no change was observed when looking at the interim periods.⁸⁹ These allegations of price depression concord with reduced net income over the same periods, as examined below. GLC's witnesses further explained that, in order to protect volumes of production over the POI (which is important in covering certain fixed costs), GLC made the decision to reduce spreads and, therefore, net income.⁹⁰

126. The Tribunal finds that the above analysis demonstrates that the dumped and subsidized goods have significantly depressed the price of the like goods.

Price Suppression

127. In order to assess price suppression, the Tribunal usually compares the domestic industry's average unit cost of goods manufactured with its average unit selling values during the POI.

128. The Tribunal accepts GLC's proposition that it is difficult to apply that model to this case because of the preponderant role which the COMEX price of copper plays in GLC's average unit selling prices. In such a context, the Tribunal accepts that price suppression is best observed in terms of the difference between gross spread per pound and plant costs per pound over time (net spread). The Tribunal notes that the parties opposite did not provide a compelling alternative method for the purposes of assessing price suppression in the context of this matter.

129. GLC submits that there was significant price suppression due to the subject goods on the basis that gross spread less plant costs are today well below 2010 levels.⁹¹ GLC's net spread (gross spread less plant costs) declined by 29.3 percent from 2010 to 2011, and by a further 10.3 percent from 2011 to 2012, or by

85. The Tribunal also observes that the converse is true for assessing price undercutting; indeed, because the price of copper is essentially the same for everyone, it can be kept "in" the prices that were examined above in respect of price undercutting.

86. Exhibit NQ-2013-004-07D (protected), Table 15, Vol. 2.1A; Exhibit NQ-2013-004-A-01 at tab 1, Vol. 11.

87. Exhibit NQ-2013-004-A-04A (protected) at para. 15, Vol. 12.

88. *Ibid.* at para. 15, Vol. 12.

89. *Ibid.* at para. 20, Vol. 12.

90. See, for example, *Transcript of Public Hearing*, Vol. 1, 18 November 2013, at 44-45.

91. Exhibit NQ-2013-004-A-01 at para. 52, Vol. 11.

36.6 percent from 2010 to 2012. There was a 19.2 percent improvement in net spread during interim 2013 compared to interim 2012, but to a level that is still 24.4 percent lower than 2010 net spread levels.⁹² The Tribunal notes that this trend is reinforced by the fact that, over the same period, GLC invested in various plant cost reduction measures;⁹³ without such measures, the decrease in net spread levels would have been more pronounced.

130. The Tribunal finds that the subject goods have caused significant price suppression.

Resultant Impact on the Domestic Industry

131. Paragraph 37.1(1)(c) of the *Regulations* requires the Tribunal to consider the resulting impact of the dumped and subsidized goods on the state of the domestic industry and, in particular, all relevant economic factors and indices that have a bearing on the state of the domestic industry.⁹⁴

132. GLC submitted that, as a result of the subject goods, it has experienced decreased sales from domestic production, a decline in its market share and a significant deterioration in its financial performance.⁹⁵

133. Noble, Nolrad and Halcor submitted that the domestic industry did not suffer injury as a result of the subject goods and that any deterioration in its performance is due to other factors.

134. Mexico argued that the subject goods did not cause injury to the domestic industry because they only replaced imports from non-subject countries. In addition, it argued that factors other than price, such as product consistency, technical specifications, reliability of supply, etc.,⁹⁶ may explain GLC's lost sales.⁹⁷

Production, Sales and Market Share

135. Total GLC production of like goods increased by 1 percent from 2010 to 2011, and by a further 5 percent from 2011 to 2012, which represents an increase of 6 percent from 2010 to 2012; it was 5 percent lower in interim 2013 than it was in interim 2012.⁹⁸ A breakdown of production for domestic and export sales provides nuance.

92. Exhibit NQ-2013-004-A-04A (protected) at para. 22, Vol. 12.

93. *Transcript of Public Hearing*, Vol. 1, 18 November 2013, at 53-55; *Transcript of In Camera Hearing*, Vol. 2, 19 November 2013, at 208-210.

94. Such factors and indices include (i) any actual or potential decline in output, sales, market share, profits, productivity, return on investments or the utilization of industrial capacity, (ii) any actual or potential negative effects on cash flow, inventories, employment, wages, growth or the ability to raise capital, (ii.1) the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods, and (iii) in the case of agricultural goods, including any goods that are agricultural goods or commodities by virtue of an Act of Parliament or of the legislature of a province, that are subsidized, any increased burden on a government support programme.

95. Exhibit NQ-2013-004-A-01 at paras. 53-57, Vol. 11; Exhibit NQ-2013-004-A-04 (protected) at paras. 26-28, Vol. 12.

96. Mexico refers to Tables 25 to 27 in the staff report. See Exhibit NQ-2013-004-06, Tables 25-27, Vol. 1.1.

97. Exhibit NQ-2013-004-I-01 at 9-11, Vol. 13.

98. Exhibit NQ-2013-004-06, Table 52, Vol. 1.1.

136. Production for domestic sales decreased by 8 percent from 2010 to 2011, and by a further 3 percent from 2011 to 2012, which represents a decrease of 11 percent from 2010 to 2012; it was down by 14 percent during interim 2013 compared to interim 2012.⁹⁹

137. Production for export sales increased by 16 percent from 2010 to 2011, and by a further 15 percent from 2011 to 2012, which represents an increase of 32 percent from 2010 to 2012; it was up by 6 percent in interim 2013 compared to interim 2012.¹⁰⁰

138. Accordingly, from 2010 to 2012, GLC was able to maintain and increase production volumes; for the interim periods, loss of total production volume is more accurately described as having been dampened by increased production for export sales. However, it is clear that the increase in total production was achieved by increasing production for export sales in order to compensate for diminished production for domestic sales. This is concurrent with the increased penetration of the subject goods and the price effects that they had over the same period, as described above.

139. Net domestic and export sales combined increased by 1 percent in volume and 11 percent in value from 2010 to 2011; they again increased by 3 percent in volume from 2011 to 2012, but declined by 7 percent in value over that period. Again, a breakdown by domestic sales and export sales needs to be examined.¹⁰¹

140. Domestic sales from domestic production decreased by 8 percent in volume, but increased by only 1 percent in value from 2010 to 2011; they decreased by 5 percent in volume and by 13 percent in value from 2011 to 2012. Comparing interim 2013 to interim 2012, they decreased by 12 percent in volume and by 16 percent in value.

141. Export sales from domestic production increased by 15 percent in volume and by 28 percent in value from 2010 to 2011; they increased by another 13 percent in volume from 2011 to 2012, but by only 1 percent in value over that period. Comparing interim 2013 to interim 2012, they increased by another 8 percent in volume, but by only 2 percent in value.¹⁰²

142. In terms of volume, export sales increased at a higher rate than the decline in domestic sales. Export sales values increased significantly from 2010 to 2011 and remained stable through the rest of the POI. On the other hand, domestic sales values remained stable from 2010 to 2011 and then decreased significantly in 2012 and in interim 2013 in comparison to interim 2012.

143. The foregoing corroborates GLC's claim that export sales opportunities have plateaued and that they do not constitute a viable alternative to lost domestic sales, as further discussed below.¹⁰³

144. The evidence shows that these impacts are concurrent with the increased presence of the dumped and subsidized goods in the marketplace during the POI and their price effects over the same period, as described above. This amounts to an increased presence that outstepped, as indicated above, the rate of decline of non-subject goods during the same period.

99. *Ibid.*

100. *Ibid.*

101. Exhibit NQ-2013-004-06, Table 73, Vol. 1.1; Exhibit NQ-2013-004-06D, Tables 5, 11, Vol. 1.1A.

102. *Ibid.*

103. See, for example, *Transcript of Public Hearing*, Vol. 1, 18 November 2013, at 32, 57.

145. GLC lost domestic market share during the POI; its share was 6 percent lower in 2011 compared to the level at which it was in 2010, and 1 percent lower in 2012 compared to its level in 2011; during interim 2013, it was 10 percent lower than its level during interim 2012. Conversely, the subject goods gained market share during the POI; their share was 18 percent higher in 2011 compared to their 2010 level, and 44 percent higher in 2012 compared to their 2011 level. The level at which they sat during interim 2013 was 13 percent higher than the level at which they were during interim 2012.

146. As mentioned above, this coincided with a significant decline in market share held by non-subject goods; in 2011, they were 3 percent lower than their 2010 level and, in 2012, 52 percent lower than their 2011 level; this decline appears to have tapered off with a slight increase observed at the end of the POI where the level during interim 2013 was 13 percentage points higher than the level at which they were during interim 2012.¹⁰⁴

147. Accordingly, the Tribunal concludes that the dumping and subsidizing of the subject goods has had a significant negative impact on production for domestic sales, on domestic sales volume and value, and on domestic market share.

Decline in Profits and Return on Investment and Potential Negative Effects on Growth

148. In 2012 and 2013, despite a certain decline in profits, GLC was a profitable company overall, both in terms of actual profits and cash flow.¹⁰⁵ As Ms. Smith testified at the hearing, "... GLC's performance as a whole ... is acceptable, although the profits declined somewhat."¹⁰⁶

149. As a whole, GLC's total profitability has not yet been impacted by competition from the subject goods.¹⁰⁷ Nevertheless, the Tribunal is of the view that a significant decline in profitability is discernible in GLC's domestic sales of circular copper tube. That part of the business, which was its core product and market,¹⁰⁸ has seen rapidly declining profits. GLC has taken steps to mitigate this situation by increasing plant efficiency, increasing exports and diversifying production towards products other than the like goods, which accounts for the sustained total company profitability.

150. In particular, the Tribunal notes that GLC experienced a decline in gross margins and net income (before tax) for sales of copper tube (domestic sales and export sales combined). While gross margins increased from 2010 to 2011, they declined in larger proportion from 2011 to 2012, resulting in an overall decrease in gross margins from 2010 to 2012. A further, albeit less pronounced, decline was registered from January to June 2012 compared to the same period in 2013. The declines in terms of net income before tax followed the same trends, but were even more pronounced.¹⁰⁹

151. While these declines are already significant, the decrease in profitability is even more notable when looking at the financial performance of GLC in the Canadian copper tube market on its own. Indeed, gross

104. Exhibit NQ-2013-004-07D (protected), Table 7, Vol. 2.1A; Exhibit NQ-2013-004-07F (protected), Table 8, Vol. 2.1A.

105. Exhibit NQ-2013-004-RI-01D (protected), Vol. 10.

106. *Transcript of Public Hearing*, Vol. 1, 18 November 2013, at 51.

107. Testimony of Ms. Smith, *Transcript of Public Hearing*, Vol. 1, 18 November 2013, at 50-52. See, also, *Transcript of In Camera Hearing*, Vol. 1, 18 November 2013, at 65-66.

108. *Transcript of Public Hearing*, Vol. 1, 18 November 2013, at 22, 32, 66; Exhibit NQ-2013-004-07 (protected), Table 117, Vol. 2.1.

109. Exhibit NQ-2013-004-A-04A (protected) at para. 27, Table 6, Vol. 12. See, also, *Transcript of In Camera Hearing*, Vol. 1, 18 November 2013, at 64-66.

margins on GLC's sales of copper tube in Canada declined from 2010 to 2011 and registered even steeper erosion from 2011 to 2012. Overall, this represents a very significant decline from 2010 to 2012. There was some recovery in interim 2013 relative to interim 2012, although GLC expects year-round numbers to show further deterioration in gross margins.¹¹⁰ Again, the deterioration in GLC's financial performance is more evident still in terms of net income before tax.¹¹¹

152. A significant decline in profitability is also apparent when considering gross margin and net income on a per unit basis. For domestic and export sales combined, both gross margin per unit and net income per unit declined significantly from 2010 to 2012. Further declines were registered from interim 2012 to interim 2013, in terms of both gross margin and net income before tax.¹¹²

153. The fact that GLC's copper tube operation and, in particular, its production for domestic sales are suffering is further evident by considering the contribution of GLC's sales of copper tube to its overall business. Concurrently with having been able to increase production volumes of copper tube by increasing its export sales over the POI, GLC saw what Ms. Smith described as a "dramatic decline" in the contribution of its copper tube sales (domestic and exports combined) to its overall profitability. The decline is, once again, even more remarkable when isolating the contribution of GLC's domestic sales of copper tube during the same period.¹¹³

154. In addition, it is notable that, during the same period, GLC invested extensively to improve the efficiency of its operations. In particular, Mr. Mitchell and Mr. Noelting explained that, while GLC was already a plant at the forefront of the industry in 2008, investments worth \$15 million have been implemented over the past five years.¹¹⁴ GLC's witnesses explained that the investments have resulted in changes throughout the plant, resulting in a facility that industry players regard highly.¹¹⁵ Accordingly, it is easy to conclude that the declines noted above would have been even steeper without GLC's cost reduction efforts over the past years.

155. Further, with respect to investments, the above financial trends are evidence that GLC has seen little or no actual financial return on its investments, in terms of increased profits. This led Mr. Noelting to testify that there has been "... zero return on that cash."¹¹⁶ GLC's witnesses explained that the investments have been unable to generate increased profits due to diminishing spreads and changes in GLC's product mix for the Canadian market, the product mix having shifted towards types of copper tube that require more manufacturing steps and yield less profit. This offset to the achieved cost reductions came from the

110. Exhibit NQ-2013-004-A-04A (protected) at para. 22, Tables 5, 26, Vol. 12.

111. *Ibid.* at para. 22, Table 5, Vol. 12. See, also, *Transcript of In Camera Hearing*, Vol. 1, 18 November 2013, at 61-62. Similar trends can be observed in Exhibit NQ-2013-004-07 (protected), Table 114, Vol. 2.1.

112. Exhibit NQ-2013-004-A-04A (protected) at para. 27, Table 6, Vol. 12. See, also, Exhibit NQ-2013-004-07 (protected), Table 114, Vol. 2.1, for gross margins and net income in terms of dollars per pound for domestic sales; these show declining trends over the POI, with some recovery in interim 2013. Both indicators remain below their 2010 levels.

113. *Transcript of In Camera Hearing*, Vol. 1, 18 November 2013, at 54-56; *Transcript of Public Hearing*, Vol. 1, 18 November 2013, at 21-22; Exhibit NQ-2013-004-07 (protected), Table 117, Vol. 2.1.

114. See, also, Exhibit NQ-2013-004-07 (protected), Table 124, Vol. 2.1.

115. *Transcript of Public Hearing*, Vol. 1, 18 November 2013, at 53-55. Mr. Mitchell and Mr. Noelting explained that improvements have been made in manufacturing, drawing and finishing operations, new product lines and training.

116. *Transcript of Public Hearing*, Vol. 1, 18 November 2013, at 53; *Transcript of In Camera Hearing*, Vol. 2, 19 November 2013, at 198.

competition from the subject goods, which was most intense for hard straight length products with lower fabrication costs.¹¹⁷

156. The Tribunal is further satisfied that the decreasing profitability of GLC's domestic copper tube business has a potential to seriously impact GLC's total company growth and viability. Indeed, GLC does not expect further possibilities for growth through increased exports to the United States, so that future compensation for its deteriorating performance in the Canadian market is unlikely to come from exports.¹¹⁸

157. In addition, GLC's witnesses explained that decreasing profitability could endanger GLC's vendor terms, which would have a significant impact on its operations.¹¹⁹ The Tribunal also considers that it is reasonable to believe that diminishing profitability and returns on investment risk making further investment in the company difficult to attract and, ultimately, that a company with low profitability and low returns on investment may not be viable, as a whole, in the long term.¹²⁰

158. Accordingly, the Tribunal concludes that the dumping and subsidizing of the subject goods have had a significant negative impact on the financial performance of GLC in terms of profitability, return on investment and potential for growth.¹²¹

Productivity, Capacity Utilization, Inventories, Employment and Wages

159. Productivity was not appreciably impacted during the POI. Average pounds per employee were down by 14.4 percent in 2011 compared to the 2010 level; they rebounded considerably in 2012 to a level equivalent to only 2.8 percent lower than their 2010 level. During interim 2013, they were 13.1 percent higher than the level at which they were during interim 2012.

160. Similarly, average pounds per hours worked were down by 12.5 percent in 2011 compared to the level at which they were in 2010; they rebounded in 2012 to a level that was only 1.6 percent lower than where they were in 2010. They were 14.8 percent higher during interim 2013 than they were during interim 2012.¹²²

161. Capacity utilization rates for the like goods remained stable during the POI. In fact, they improved slightly when abstraction is made of capacity improvements that were made by GLC during the POI.¹²³

162. Inventories of domestic production were down slightly in 2011 from their 2010 level in terms of volume, but up appreciably in 2012 to levels that were 50.2 percent above their 2010 level in terms of volume. In interim 2013, they were 17.3 percent higher than where they were sitting in interim 2012 in terms of volume.¹²⁴

117. *Transcript of Public Hearing*, Vol. 1, 18 November 2013, at 30-31; *Transcript of In Camera Hearing*, Vol. 2, 19 November 2013, at 142-43, 167, 208-210.

118. *Transcript of Public Hearing*, Vol. 1, 18 November 2013, at 32, 57.

119. *Ibid.* at 53; *Transcript of In Camera Hearing*, Vol. 1, 18 November 2013, at 2-6, 62-69, 78, 82.

120. In this respect, see *Transcript of In Camera Hearing*, Vol. 1, 18 November 2013, at 64, 82; *Transcript of In Camera Hearing*, Vol. 2, 19 November 2013, at 200, 217.

121. In this respect, confidentiality concerns prevent the Tribunal from discussing in further depth the impact of the subject goods on the domestic industry. However, the Tribunal considered significant the issue discussed by the witness at *Transcript of In Camera Hearing*, Vol. 1, 18 November 2013, at 2-6, 62-69, 78, 82.

122. Exhibit NQ-2013-007 (protected), Table 122, Vol. 2.1.

123. *Ibid.*, Table 123, Vol. 2.1.

124. *Ibid.*, Table 124, Vol. 2.1.

163. Direct employment rose in 2011 by 18 percent from its 2010 level, then dropped slightly in 2012 to 9 percent above its 2010 level; during interim 2013, it was lower than during interim 2012, but at a level similar to what it was in 2010. Wages essentially followed the trend in direct employment (number of employees).¹²⁵

Reduction in Spread and Margins of Dumping and Amount of Subsidy

164. Spread was examined above as another relevant economic or financial indicator. The circumstances in this matter are such that relatively low margins of dumping and amount of subsidy have been sufficient to cause significant price effects and resultant material injury to the domestic industry.

Conclusion on Resultant Impacts

165. On the basis of the foregoing analysis, the Tribunal concludes that the domestic industry experienced injurious effects from imports of the subject goods. The Tribunal also concludes that the analysis demonstrates that the injurious effects were material and, accordingly, constitute injury, as defined in subsection 2(1) of *SIMA*.

Factors Other Than Dumping or Subsidizing

166. Paragraph 37.1(3)(b) of the *Regulations* directs the Tribunal to consider whether any factors other than dumping or subsidizing of the subject goods have caused injury.

Volumes and Prices of Imports from Non-subject Countries

167. Imports of copper tube from non-subject countries have played a diminishing role in the Canadian market for copper tube, losing significant market share during the POI.¹²⁶ In particular, the evidence suggests that copper tube from Chile was unavailable for importation for a good part of the POI.¹²⁷ Further, GLC's witnesses indicated that the imports from the United States have abandoned the Canadian market because it was no longer profitable.¹²⁸ Accordingly, the Tribunal is of the view that imports of copper tube from non-subject countries were not a significant factor weighing on the state of the domestic industry during the POI.

Contraction in Demand

168. Demand for copper tube diminished in the Canadian market over the POI.¹²⁹ GLC's witnesses have testified that this particular decline in demand was a result of the current decline in new construction of commercial and industrial developments.¹³⁰

169. The Tribunal notes that the decline in GLC's domestic sales of copper tube has outpaced this contraction in the overall Canadian market for copper tube.¹³¹ As such, the Tribunal considers that any injury resulting from the contracting market does not sever the causal link between the dumping and subsidizing of the subject goods and the deteriorating state of the domestic industry.

125. *Ibid.*, Table 121, Vol. 2.1.

126. See, for example, Exhibit NQ-2013-004-07F (protected), Table 4, Vol. 2.1A.

127. Exhibit NQ-2013-004-C-04 (protected) at paras. 6-18, Vol. 14.

128. Testimony of Mr. Noelting, *Transcript of Public Hearing*, Vol. 1, 18 November 2013, at 26-27; *Transcript of In Camera Hearing*, Vol. 1, 18 November 2013, at 30.

129. See, for example, Exhibit NQ-2013-004-07F (protected), Table 4, Vol. 2.1A.

130. Testimony of Mr. Noelting and Mr. Don Wellington, *Transcript of Public Hearing*, Vol. 1, 18 November 2013, at 38.

131. Exhibit NQ-2013-004-06D, Tables 5-6, Vol. 1.1A; Exhibit NQ-2013-004-06F, Table 6, Vol. 1.1A.

Change in Patterns of Consumption

170. Noble and Halcor further argued that any injury was caused by the availability of alternative products and, in particular, PEX tubing.

171. However, the evidence shows that the shift to PEX tubing, in particular, for residential plumbing, occurred in the 1990s.¹³² Further, GLC's witnesses, as well as Mr. Pepe, testified that, since then and, in particular, during the POI, the overall market for copper tube has been either stable or declining incrementally due to the further adoption of PEX tubing and other replacement products.¹³³ As such, the witnesses were clear that no significant decline was felt due to replacement products in the past few years, or is expected in the near future. The Tribunal is satisfied that any incremental losses to alternative products constitute a market factor well known to GLC, and this factor is, in any case, incapable of explaining the deterioration in the state of the domestic industry during the POI.

Export Performance of Domestic Industry

172. Over the POI, an increasing proportion of GLC's production has been destined for export.¹³⁴ Noble argued that GLC's export orientation was causing injury to the domestic industry in the Canadian market.¹³⁵

173. This argument is not substantiated by the evidence, which rather indicates that exports have helped GLC mitigate the financial impact of declining domestic sales and declining profits from domestic sales of copper tube on GLC's overall business.¹³⁶ Conversely, the evidence also shows that that strategy can be of only limited further assistance to GLC. Indeed, as indicated above, a witness testified that GLC has, in all likelihood, reached a plateau of export opportunities.¹³⁷ Even if further export opportunities existed, if GLC's copper tube business were to move appreciably more towards export sales in order to compensate for an even greater loss of domestic market share, the Tribunal believes that its financial performance would likely deteriorate even more.¹³⁸

Other Factors

174. Parties opposite referred to a number of additional factors unrelated to dumping or subsidizing, which, they argued, were accountable for any injury experienced by GLC. In particular, Noble argued that any deterioration in GLC's performance was due to such things as the unreliability of GLC's supply, the purchasers' need to diversify their sources, GLC's pricing strategy, GLC's inability to offer a varied range of plumbing supplies on quotations for certain projects (which would put it at a disadvantage for those quotations), GLC's decision to compete against its own customers, copper theft, the possibility of speculation on LME and COMEX prices, and exchange rates (which would constitute an advantage to imports in Noble's submission).

175. Nolrad also made some of the same submissions at the hearing, adding that fluctuations in COMEX prices of copper, coupled with the fact that not all players purchase copper at the exact same time, also constitute a factor of injury. Halcor also argued that GLC's injury is a result of its own pricing decisions, as

132. Exhibit NQ-2013-004-A-09 at para. 16, Vol. 11; Exhibit NQ-2013-004-A-05 at paras. 6-7, Vol. 11; *Transcript of Public Hearing*, Vol. 1, 18 November 2013, at 34-36.

133. *Transcript of Public Hearing*, Vol. 1, 18 November 2013, at 36-38; *Transcript of Public Hearing*, Vol. 2, 19 November 2013, at 146-47.

134. Exhibit NQ-2013-004-06E, Table 51, Vol. 1.1A; Exhibit NQ-2013-004-07E (protected), Table 50, Vol. 2.1A.

135. Exhibit NQ-2013-004-B-02 (protected) at paras. 60-62, Vol. 14.

136. *Transcript of Public Hearing*, Vol. 1, 18 November 2013, at 30-32, 50; *Transcript of In Camera Hearing*, Vol. 1, 18 November 2013, at 54-55, 64-66, 71; *Transcript of In Camera Hearing*, Vol. 2, 19 November 2013, at 215.

137. See, for example, *Transcript of Public Hearing*, Vol. 1, 18 November 2013, at 32, 57.

138. Exhibit NQ-2013-004-07 (protected), Table 115, Vol. 2.1.

well as its failure to keep its intention to file this complaint a secret. Mexico alluded to the possibility that the domestic industry may use an inefficient production process.

176. The Tribunal finds that none of these arguments are capable of casting doubt on the Tribunal's determination that the domestic industry has suffered injury as a result of low-priced imports of the subject goods. Indeed, the arguments raised by parties opposite were either not substantiated by probative evidence or, in some cases, were squarely contradicted by the evidence on the record.¹³⁹ Importantly, even if there was some evidence in support of a few of these arguments,¹⁴⁰ that evidence does not indicate that such considerations could have had an impact sufficient to sever the link between the dumping and subsidizing of the subject goods and the deteriorating state of the domestic industry.

CONCLUSION

177. Pursuant to subsection 43(1) of *SIMA*, the Tribunal finds that the dumping of the subject goods originating in or exported from Brazil, Greece, China and Korea, and the subsidizing of the subject goods originating in or exported from China have caused injury.

178. Pursuant to subsections 43(1) and (1.01) of *SIMA*, the Tribunal finds that the dumping of the subject goods originating in or exported from Mexico has caused injury.

Jason W. Downey
Jason W. Downey
Presiding Member

Serge Fréchette
Serge Fréchette
Member

Pasquale Michael Saroli
Pasquale Michael Saroli
Member

139. For example, the evidence before the Tribunal shows that GLC has invested heavily since 2008 to improve efficiency in the production process. See, for example, *Transcript of Public Hearing*, Vol. 1, 18 November 2013, at 54-55. See, also, *Transcript of In Camera Hearing*, Vol. 2, 19 November 2013, at 167, 198-99, 209-210.

140. For example, it is clear indeed that purchasers in the Canadian market wish to have more than one source of supply. As explained by Mr. Wellington, this is not a new dynamic in the Canadian market. As such, this fact cannot, alone, account for the particular injury felt by GLC during the POI. See, for example, *Transcript of Public Hearing*, Vol. 1, 18 November 2013, at 80; *Transcript of Public Hearing*, Vol. 2, 19 November 2013, at 163; *Transcript of In Camera Hearing*, Vol. 2, 19 November 2013, at 228-29, 232.