



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

FINDING AND REASONS

Inquiry No. NQ-2012-002

Steel Piling Pipe

*Finding issued
Friday, November 30, 2012*

*Reasons issued
Monday, December 17, 2012*

TABLE OF CONTENTS

FINDING	i
STATEMENT OF REASONS	1
RESULTS OF THE CBSA'S INVESTIGATIONS	5
PRODUCT	6
Product Definition	6
Additional Product Information.....	6
Product Applications	6
Production Process	7
DOMESTIC PRODUCERS	7
Atlas Tube	7
DFI.....	8
Evraz.....	8
Nova Tube.....	9
Pipe & Piling	9
Atlantic Tube.....	9
IMPORTERS	10
PURCHASERS.....	10
FOREIGN PRODUCERS	10
MARKETING AND DISTRIBUTION	10
PRICING	11
ANALYSIS	12
Preliminary Matters	13
Like Goods.....	21
Domestic Industry.....	27
Cross-cumulation.....	29
INJURY	30
General Considerations	30
Preliminary Considerations.....	30
Regional or National Market	31
Reliability of the Staff Report Data	32
Confidential Information.....	33
Canadian Market Conditions	33
Volume of Imports of Dumped and Subsidized Goods.....	34
Effects of Dumped and Subsidized Imports on Prices.....	36
Conclusion.....	44
Impact of Imports of the Subject Goods on the Domestic Industry	44
CONCLUSION.....	50
THREAT OF INJURY.....	51
CONCLUSION.....	55

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

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

FINDING

The Canadian International Trade Tribunal, pursuant to the provisions of section 42 of the *Special Import Measures Act*, has conducted an inquiry to determine whether the dumping and subsidizing of carbon and alloy steel pipe piles, commonly identified as piling pipe, in outside diameter ranging from 3 1/2 inches up to and including 16 inches (8.9 cm to 40.6 cm) inclusive, in commercial quality and in various forms and finishes, usually supplied to meet ASTM A252, ASTM A500, CSA G.40.21 or comparable specifications or standards, whether single, dual or multiple certified, excluding carbon steel welded pipe, in the nominal size range of 3 1/2 inches up to and including 6 inches (89 mm to 168.3 mm) in outside diameter, in various forms and finishes, usually supplied to meet ASTM A252 or equivalent specifications, other than carbon steel welded pipe in the nominal size range of 3 1/2 inches up to and including 6 inches, dual-stencilled to meet the requirements of both specification ASTM A252, Grades 1 to 3, and specification API 5L, with bevelled ends and in random lengths, for use as foundation piles, originating in or exported from the People's Republic of China, have caused injury or retardation or are threatening to cause injury to the domestic industry.

Further to the issuance by the President of the Canada Border Services Agency of final determinations dated October 31, 2012, that the aforementioned goods have been dumped and subsidized, and pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that the dumping and subsidizing of the aforementioned goods have not caused injury but are threatening to cause injury to the domestic industry.

Serge Fréchette
Serge Fréchette
Presiding Member

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Member

Jason W. Downey
Jason W. Downey
Member

Dominique Laporte
Dominique Laporte
Secretary

The statement of reasons will be issued within 15 days.

Place of Hearing: Ottawa, Ontario
Dates of Hearing: October 29 to November 1, 2012

Tribunal Members: Serge Fréchette, Presiding Member
Pasquale Michael Saroli, Member
Jason W. Downey, Member

Research Director: Matthew Sreter

Research Manager: Simon Glance

Senior Research Officer: Nadine Apollon-Cabana

Senior Statistical Research Officer: Julie Charlebois

Statistical Research Officer: Marie-Josée Monette

Counsel for the Tribunal: Georges Bujold
Courtney Fitzpatrick

Manager, Registrar Programs and Services: Michel Parent

Registrar Officer: Cheryl Unitt

Registrar Support Officer: Rosemary Hong

PARTICIPANTS:**Domestic Producers**

Atlas Tube Canada Inc.

DFI Corporation

Importers/Exporters/Others

Pipe & Piling Supplies Ltd.

4361814 Canada Inc. (o/a Noble Canada)

Counsel/RepresentativesLawrence L. Herman
Alec MilneDalton Albrecht
Rahul Sharma
Noah Bian**Counsel/Representatives**Richard S. Gottlieb
Vincent M. Routhier
Gordon LaFortune
Paul Lalonde
Katrina M. Reyes
Carmen Francis

Cyndee Todgham Cherniak

WITNESSES:

David Seeger
President
JMC Steel Group, Pipe and Tube Solutions

Kristen Erbacci
Senior Financial Analyst
JMC Steel Group

Gerald Varzari
President
Varsteel Ltd.

Mark Agnew
Chief Financial Officer
DFI Corporation

Jack Dym
President
Pipe & Piling Supplies Ltd.

Kevin Kelly
Vice-President of Canadian Sales
Atlas Tube JMC Steel Group

Robert Skelton
District Sales Manager
Skyline P.H.P. Canada ULC/SRI, a Nucor Company

Barry Strauss
Senior Vice-President
DFI Corporation

Paul Shanahan
Assistant Controller
Pipe & Piling Supplies Ltd.

Anshu Bhatia
Sales Manager
Pipe & Piling Supplies Ltd.

Please address all communications to:

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

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

STATEMENT OF REASONS

1. The Canadian International Trade Tribunal (the Tribunal), pursuant to section 42 of the *Special Import Measures Act*,¹ has conducted an inquiry to determine whether the dumping and subsidizing of carbon and alloy steel pipe piles, commonly identified as piling pipe, in outside diameter ranging from 3 1/2 inches up to and including 16 inches (8.9 cm to 40.6 cm) inclusive, in commercial quality and in various forms and finishes, usually supplied to meet ASTM A252, ASTM A500, CSA G.40.21 or comparable specifications or standards, whether single, dual or multiple certified, excluding carbon steel welded pipe, in the nominal size range of 3 1/2 inches up to and including 6 inches (89 mm to 168.3 mm) in outside diameter, in various forms and finishes, usually supplied to meet ASTM A252 or equivalent specifications, other than carbon steel welded pipe in the nominal size range of 3 1/2 inches up to and including 6 inches, dual-stencilled to meet the requirements of both specification ASTM A252, Grades 1 to 3, and specification API 5L, with bevelled ends and in random lengths, for use as foundation piles, originating in or exported from the People's Republic of China (China) (the subject goods) have caused injury or retardation or are threatening to cause injury to the domestic industry.

2. On May 4, 2012, the President of the Canada Border Services Agency (CBSA), following a complaint filed by Atlas Tube Canada Inc. (Atlas Tube) of Harrow, Ontario, initiated investigations into whether carbon and alloy steel pipe piles, commonly identified as piling pipe, in outside diameter ranging from 3 1/2 inches up to and including 16 inches (8.9 cm to 40.6 cm) inclusive, in commercial quality and in various forms and finishes, usually supplied to meet ASTM A252, ASTM A500, CSA G.40.21 or comparable specifications or standards, whether single, dual or multiple certified, originating in or exported from China (the goods described in the CBSA's notice of initiation of investigations) had been dumped or subsidized. The complaint was supported by DFI Corporation (DFI) and Nova Tube Inc. (Nova Tube), two other domestic producers of steel piling pipe.

3. On May 7, 2012, pursuant to subsection 34(2) of *SIMA*, the Tribunal issued a notice advising interested parties that it had initiated a preliminary injury inquiry to determine whether the evidence disclosed a reasonable indication that the dumping and subsidizing of the goods described in the CBSA's notice of initiation of investigations had caused injury or retardation or were threatening to cause injury.

4. On July 3, 2012, as part of its preliminary injury determination, the Tribunal found that a subset of the goods described in the CBSA's notice of initiation of investigations were subject to the finding that it had made, pursuant to subsection 43(1) of *SIMA*, in Inquiry No. NQ-2008-001,² concerning the dumping and subsidizing of carbon steel welded pipe, commonly identified as standard pipe, in the nominal size range of 1/2 inch up to and including 6 inches (12.7 mm to 168.3 mm in outside diameter) inclusive, in various forms and finishes, usually supplied to meet ASTM A53, ASTM A135, ASTM A252, ASTM A589, ASTM A795, ASTM F1083 or Commercial Quality, or AWWA C200-97 or equivalent specifications, including water well casing, piling pipe, sprinkler pipe and fencing pipe, but excluding oil and gas line pipe made to API specifications exclusively, originating in or exported from China.

5. Pursuant to paragraph 35(1)(b) of *SIMA*, the Tribunal concluded that the evidence did not disclose a reasonable indication that the dumping and subsidizing of this subset of the goods described in the CBSA's notice of initiation of investigations had caused injury or retardation or were threatening to cause injury to the domestic industry. Therefore, pursuant to paragraph 35(3)(a), the Tribunal terminated the preliminary injury inquiry in respect of carbon steel welded pipe, in the nominal size range of 3 1/2 inches up to and

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

2. *Carbon Steel Welded Pipe* (20 August 2008) (CITT) [*CSWP*].

including 6 inches (89 mm to 168.3 mm) in outside diameter, in various forms and finishes, usually supplied to meet ASTM A252 or equivalent specifications, other than carbon steel welded pipe in the nominal size range of 3 1/2 inches up to and including 6 inches, dual-stencilled to meet the requirements of both specification ASTM A252, Grades 1 to 3, and specification API 5L, with bevelled ends and in random lengths, for use as foundation piles.³

6. Pursuant to subsection 37.1(1) of *SIMA*, the Tribunal made a preliminary determination that there was evidence that disclosed a reasonable indication that the dumping and subsidizing of the remainder of the goods described in the CBSA's notice of initiation of investigations, that is, those goods in respect of which the preliminary injury inquiry had not been terminated under section 35, had caused injury or were threatening to cause injury to the domestic industry.

7. Those goods include the following: (1) carbon steel welded pipe, in the nominal size range of greater than 6 inches up to and including 16 inches (greater than 16.8 cm to 40.6 cm) in outside diameter, in commercial quality and in various forms and finishes, usually supplied to meet ASTM A252, ASTM A500, CSA G.40.21 or comparable specifications or standards, whether single, dual or multiple certified, originating in or exported from China; and (2) carbon steel welded pipe for use as foundation piles, in nominal sizes of 3 1/2 inches up to and including 6 inches (89 mm to 168.3 mm), dual-stencilled to meet the requirements of both specification ASTM A252, Grades 1 to 3, and specification API 5L, with bevelled ends and in random lengths, that were excluded from the injury finding in *CSWP*.

8. On July 18, 2012, in the statement of reasons for its preliminary determination of injury, the Tribunal noted that there was insufficient evidence on the record to determine with certainty the precise scope or extent of the overlap between the goods subject to the preliminary determination of injury and the steel products which are covered by the Tribunal's finding in *CSWP* and, potentially, goods subject to other orders or findings.

9. In this connection, the Tribunal stated that, to the extent that there is a possibility that a broader subset of goods described in the CBSA's notice of initiation of investigations is already subject to anti-dumping or countervailing duties as a result of being subject to other Tribunal orders or findings, it was the Tribunal's intention to establish a process whereby it could reach an early decision on this issue during an inquiry conducted pursuant to section 42 of *SIMA*, if the CBSA were to make a preliminary determination that the goods in respect of which the preliminary injury inquiry was not terminated under section 35 have been dumped or subsidized.

10. In addition, in its statement of reasons for the preliminary injury inquiry, the Tribunal found, on the basis of the evidence on the record at that time, that steel piling pipe produced by the domestic industry was "like goods" in relation to the subject goods. The Tribunal stated that the question as to whether there was merit to expand the definition of "like goods" to include certain oil country tubular goods (OCTG), line pipe and standard pipe, which may be used in piling applications, was an issue that would need to be fully addressed in the context of a final injury inquiry.

11. On August 2, 2012, the CBSA issued preliminary determinations that the subject goods (i.e. those in respect of which the preliminary injury inquiry had not been terminated under section 35 of *SIMA*) had

3. Carbon steel welded pipe in the nominal pipe sizes 1/2 inch to 6 inches inclusive, dual-stencilled to meet the requirements of both specification ASTM A252, Grades 1 to 3, and specification API 5L, with bevelled ends and in random lengths, for use as foundation piles, were excluded from the Tribunal's injury finding in *CSWP*.

been dumped and subsidized, that the margin of dumping and the amount of subsidy were not insignificant, and that the volumes of dumped and subsidized goods were not negligible.

12. In addition, further to the Tribunal's decision to terminate the preliminary injury inquiry in respect of the goods that it found to be subject to the finding in *CSWP*, the CBSA revised the product definition that it had provided when it initiated its dumping and subsidizing investigations on May 4, 2012, in order to exclude those goods from the scope of its investigations. The revised definition of the subject goods provided by the CBSA is set out in paragraph 1.

13. On August 3, 2012, the Tribunal issued a notice of commencement of inquiry.⁴ In its notice, the Tribunal requested submissions on the issue of product overlap, i.e. whether there remained a product overlap between the subject goods and steel products that are subject to other Tribunal orders or findings and, if so, to identify the extent of the overlap. The Tribunal also requested submissions on the issue of whether there was merit to expand the definition of "like goods" in this inquiry to include certain OCTG, line pipe and standard pipe, which may be used in piling applications. The Tribunal also set out the applicable deadlines for the filing of submissions and replies thereto.

14. The Tribunal's period of inquiry (POI) covered three and one half full years, from January 1, 2009, to June 30, 2012.

15. As part of its inquiry, the Tribunal requested domestic producers, importers/distributors and foreign producers of steel piling pipe and/or other steel pipe products⁵ to complete questionnaires. From these questionnaires, the Tribunal collected information for three full years, from January 1, 2009, to December 31, 2011, and for two interim periods, from January 1 to June 30, 2011 (first half of 2011) and the corresponding period in 2012 (first half of 2012). The Tribunal also requested that purchasers of steel piling pipe and/or other steel pipe products in Canada complete a questionnaire on market characteristics.

16. On August 23, 2012, the Tribunal issued revisions to its producers', importers' and purchasers' questionnaires, amending the information requested in respect of other steel pipe products and seconds or downgraded steel pipe products (seconds or downgraded pipe).⁶

17. On September 10, 2012, in response to a request from Atlas Tube, the Tribunal requested, pursuant to rule 56 of the *Canadian International Trade Tribunal Rules*,⁷ that the CBSA provide the Tribunal with

4. C. Gaz. 2012.I.130.

5. For the purposes of the Tribunal's questionnaires, issued on August 3, 2012, the term "other steel pipe products" referred to steel pipe products that can potentially be substituted for, compete with, or have the same end uses as steel piling pipe, i.e. pipe products that are produced to higher standards than steel piling pipe and for other applications, that can potentially be substituted for, compete with, or have the same end uses as steel piling pipe, such as other standard pipe (such as ASTM A53), tubular goods (such as OCTG API-5CT), line pipe (such as API-5L) and casing products, whether welded or seamless, in outside diameter ranging from 3 1/2 inches up to and including 16 inches (8.9 cm to 40.6 cm) inclusive.

6. For the purposes of the Tribunal's revised questionnaires, issued on August 23, 2012, the term "downgraded pipe or seconds from other steel pipe products" referred to pipe products that were originally produced to higher standards than steel piling pipe and for other applications, but that, as a result of being downgraded or scrapped, for example, were used in a steel piling pipe application. For example, these products include pipe that has been downgraded or scrapped that was originally specified as standard pipe (such as ASTM A53), tubular goods (such as OCTG API-5CT), line pipe (such as API-5L) and casing products, whether welded or seamless, in outside diameter ranging from 3 1/2 inches up to and including 16 inches (8.9 cm to 40.6 cm) inclusive.

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

certain protected exhibits from the administrative records of its dumping and subsidizing investigations. The exhibits related to information submitted by Platinum Grover Int. Inc. (Platinum Grover), Pipe & Piling Supplies Ltd. (Pipe & Piling) and Varsteel Ltd. (Varsteel) for the purposes of the CBSA's investigations. The CBSA transmitted the exhibits to the Tribunal on September 12, 2012.

18. On September 12, 2012, the Tribunal distributed short-form questionnaires to three additional potential domestic producers of steel piling pipe: Pipe & Piling, Atlantic Tube & Steel Inc. (Atlantic Tube) and Spiralco Inc. (Spiralco).

19. On September 18, 2012, the Tribunal dismissed a motion filed on behalf of Pipe & Piling on August 31, 2012, under subrule 24(1) of the *Rules*, for an order disqualifying all counsel of the firm Miller Thomson LLP from acting as counsel of record for DFI in these proceedings.

20. On September 20, 2012, the Tribunal issued its determinations on the overlap of product definitions and the scope of the like goods. After having considered the evidence on the record and the arguments made by parties, the Tribunal determined that there was no overlap between the subject goods in this inquiry and goods subject to other Tribunal orders or findings. In this regard, the Tribunal determined that the only overlap of product definitions was that which had been identified in the Tribunal's determination in the preliminary injury inquiry.

21. The Tribunal also determined that carbon steel welded pipe, in the nominal size range of 3 1/2 inches up to and including 6 inches (89 mm to 168.3 mm) in outside diameter, in various forms and finishes, usually supplied to meet ASTM A252 or equivalent specifications, produced in Canada, constituted like goods in relation to the subject goods, even though they are excluded from the definition of the subject goods.

22. The Tribunal also determined that the scope of "like goods" did not include domestically produced OCTG, line pipe or standard pipe (other than standard pipe supplied to meet ASTM A252 or equivalent specifications), which may be used in piling applications. Accordingly, the Tribunal concluded that tubular goods (such as OCTG API-5CT), line pipe (such as API-5L), standard pipe (such as ASTM A53) and other steel pipe products that are not commonly identified as piling pipe produced in Canada did not constitute like goods in relation to the subject goods. The Tribunal therefore decided to conduct its injury analysis on the basis that domestically produced "like goods" were confined to goods that were commonly identified as steel piling pipe.

23. On September 24, 2012, Platinum Grover indicated, in a letter to the Tribunal, that it was withdrawing from the inquiry.

24. On September 24, 2012, on the basis of the replies to the questionnaires and other information on the record, the Tribunal's staff prepared and issued public and protected staff reports on steel piling pipe. Revisions to both staff reports were issued on October 18, 2012, which included responses to questionnaires from one additional producer, Atlantic Tube, and one additional purchaser.

25. In its notice of commencement of inquiry, the Tribunal referred to the procedures for filing requests for specific product exclusions. The Tribunal did not receive requests for exclusions.

26. On October 31, 2012, the CBSA issued final determinations of dumping and subsidizing.

27. The Tribunal held a hearing, with public and *in camera* testimony, in Ottawa, Ontario, from October 29 to November 1, 2012.

28. Atlas Tube and DFI filed written submissions, provided evidence and made arguments in support of a finding of injury or, alternatively, a finding of threat of injury. Atlas Tube and DFI were both represented by counsel and presented witnesses at the hearing.

29. Pipe & Piling, an importer of the subject goods, filed written submissions, provided evidence and made arguments opposing a finding of injury or threat of injury. Pipe & Piling was represented by counsel and presented witnesses at the hearing.

30. The Tribunal also received a notice of participation from 4361814 Canada Inc. (o/a Noble Canada), an importer of steel pipe products, which was represented by counsel in this inquiry. Noble Canada filed written submissions but did not participate in the hearing.

31. The record of this inquiry consists of all Tribunal exhibits, including the record of the preliminary injury inquiry (PI-2012-002), replies to questionnaires, certain protected exhibits from the administrative records of the CBSA's dumping and subsidizing investigations, public and protected versions of the staff report 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.

32. All public exhibits were made available to the parties. Protected exhibits were made available only to counsel who had filed a declaration and undertaking with the Tribunal in respect of confidential information.

33. The Tribunal issued its finding on November 30, 2012.

RESULTS OF THE CBSA'S INVESTIGATIONS

34. On October 31, 2012, the CBSA determined that 100 percent of the subject goods imported into Canada from January 1, 2011, to March 31, 2012, had been dumped at an estimated weighted average margin of dumping of 89.6 percent, when expressed as a percentage of the export price.⁸

35. The CBSA also determined that 100 percent of the subject goods imported into Canada from January 1, 2011, to March 31, 2012, had been subsidized at an estimated overall weighted average amount of subsidy of 11.7 percent, when expressed as a percentage of the export price.⁹

36. The CBSA concluded that the overall margin of dumping and amount of subsidy were not insignificant.¹⁰

8. Tribunal Exhibit NQ-2012-002-04, Administrative Record, Vol. 1 at 227.

9. *Ibid.*

10. Tribunal Exhibit NQ-2012-002-04, Administrative Record, Vol. 1 at 223.

PRODUCT

Product Definition

37. The goods subject to this inquiry are defined as follows:

carbon and alloy steel pipe piles, commonly identified as piling pipe, in outside diameter ranging from 3 1/2 inches up to and including 16 inches (8.9 cm to 40.6 cm) inclusive, in commercial quality and in various forms and finishes, usually supplied to meet ASTM A252, ASTM A500, CSA G.40.21 or comparable specifications or standards, whether single, dual or multiple certified, excluding carbon steel welded pipe, in the nominal size range of 3 1/2 inches up to and including 6 inches (89 mm to 168.3 mm) in outside diameter, in various forms and finishes, usually supplied to meet ASTM A252 or equivalent specifications, other than carbon steel welded pipe in the nominal size range of 3 1/2 inches up to and including 6 inches, dual-stencilled to meet the requirements of both specification ASTM A252, Grades 1 to 3, and specification API 5L, with bevelled ends and in random lengths, for use as foundation piles, originating in or exported from China.

Additional Product Information¹¹

38. The most common specifications of steel piling pipe are ASTM A500 and ASTM A252 (including “modified” ASTM A252 with increased yield strength), or comparable internationally recognized specifications. Steel piling pipe can also be produced to higher standards which allow the goods to be dual certified or multiple certified for other applications, such as OCTG (casing), API-5L (line pipe) or ASTM A53 (standard pipe).

39. The vast majority of steel piling pipe is made from carbon steel, although small amounts of piling pipe may be made with high-strength low alloy steel or other steels depending on project requirements.

40. Steel piling pipe is available in a variety of sizes, lengths, wall thicknesses and load tolerances. In addition, steel piling pipe can be drilled or driven into the ground on site, using a variety of techniques and specialized equipment.

41. The subject goods are commonly referred to as “steel piling pipe”. However, other names can be used interchangeably, including: pipe piles, driven piles, drilled shafts, caissons, mini caissons, micro piles, piers and casings.

Product Applications

42. Steel piling pipe is commonly used as a permanent load-carrying member, or as a shell to form cast-in-place concrete piles, to form deep foundations in situations when soil and ground conditions are not suitable or strong enough to support the structure load. In such applications, the steel piling pipe is used to transfer the structure load to rock formations or to stronger soil conditions deep beneath the ground.¹²

11. The information in this section is derived from the CBSA’s statement of reasons, information contained in Atlas Tube’s complaint and responses to Tribunal questionnaires. Tribunal Exhibit NQ-2012-002-04A, Administrative Record, Vol. 1 at 236-37.

12. Tribunal Exhibit NQ-2012-002-26.01A, Administrative Record, Vol. 1.4 at 65, 239; Manufacturer’s Exhibit A-04 (protected) at para. 30, Administrative Record, Vol. 12.

43. Steel piling pipe has been used in load-bearing applications, including structural supports, building columns, highway signs, road boring, oil field structures, communication towers, foundations for oil and gas platforms, power stations, high-rise buildings, bridges, marine structures, harbours, etc.¹³

Production Process

44. Steel piling pipe is produced either through electrical-resistance welding (ERW) or seamless processes. Regardless of the production process, welded and seamless piling pipe are identical in terms of physical, tensile and other properties. They are covered by the same ASTM or comparable specifications and are fully substitutable in terms of end-use applications.

45. ERW pipe production is either by longitudinal welding or by spiral (also called helical-butt or helical lap) welding.

46. In longitudinal welding, hot-rolled coil is passed through a series of rollers to form a tubular shape and the edges of the strip are heated electrically and welded together under heat and pressure. Once the round is welded, the pipe passes through a series of cold-forming stands to size it to the appropriate dimension and then cut to length.

47. In spiral/helical welding, pipe of different diameters can be made from a single coil of hot-rolled steel strip. Instead of slitting along its length as in ERW processes, the coil is unrolled and then re-coiled in spiral fashion on a coiler to the desired outside dimension prior to welding. The welding process is more complex and hence more expensive than the ERW welding process because of the spiral form of the steel coil. However, the end product is identical to ERW pipe in its inherent properties.

48. Finally, steel piling pipe produced and certified to meet the applicable standards are stencilled accordingly.¹⁴

DOMESTIC PRODUCERS

49. The Tribunal identified seven known producers of steel piling pipe in Canada, namely, Atlas Tube, DFI, Evraz Inc. NA (Evraz), Nova Tube, Spiralco, Atlantic Tube and Pipe & Piling. Atlas Tube, DFI, Evraz and Nova Tube provided complete replies to the Tribunal's producers' questionnaire. Pipe & Piling did not provide a response to the Tribunal's producers' questionnaire. However, it submitted a response to the Tribunal's importers' questionnaire. Spiralco did not provide a response to the Tribunal's producers' questionnaire.¹⁵ Atlantic Tube provided a complete reply to the Tribunal's short-form producers' questionnaire.

Atlas Tube

50. Atlas Tube is a division of JMC Steel Group, with its head office in Chicago, Illinois.

13. Tribunal Exhibit NQ-2012-002-26.01A, Administrative Record, Vol. 1.4 at 236; Manufacturer's Exhibit A-01 at para. 23, Administrative Record, Vol. 11.

14. Tribunal Exhibit NQ-2012-002-26.01A, Administrative Record, Vol. 1.4 at 70.

15. Spiralco is based in Saint-Félix-de-Kingsey, Quebec. Spiralco's product line starts at 16 inches and goes up to 120 inches (40.6 cm to 304.8 cm) in outside diameter. Tribunal Exhibit PI-2012-002-02.01, Administrative Record in Preliminary Injury Inquiry No. PI-2012-002, Vol. 1 at 31-32.

51. Atlas Tube has the capacity to produce steel piling pipe in sizes ranging from 3 1/2 inches to 16 inches (8.9 cm to 40.6 cm) in outside diameter at its Harrow plant, using the ERW process. Its production includes steel piling pipe produced to ASTM A500-B/C and ASTM A252, Grades 2 and 3, as well as CSA G40.21-50.55, 60.65, 70W specifications, with plain ends. The company also produces hollow structural steel tubing which is not subject to this inquiry.¹⁶

52. During the POI, Atlas Tube produced steel piling pipe in various sizes ranging from 3 1/2 inches to 16 inches (16.8 cm to 40.6 cm) in outside diameter, to ASTM A252, Grades 2 and 3 specification, ASTM A500, as well as CSA G40.21-50.55, 60.65, 70W specifications.¹⁷ All of Atlas Tube's sales of steel piling pipe in the domestic market are to distributors and end users.

53. Atlas Tube also imported limited sizes of steel piling pipe from its affiliated operations in the United States. Atlas Tube has exported steel piling pipe to the United States since 2000.

DFI

54. DFI, of Edmonton, Alberta, is an independently owned and operated oil and gas service company with over 40 years of oilfield experience. DFI operates a pipe mill that has the capability to manufacture and supply steel piling pipe using the ERW process.

55. DFI principally provides foundation construction services, including the manufacture and installation of steel piling pipe. In addition, DFI provides drilling, oilfield trucking, picker, hydro vacuum and infrastructure rehabilitation services. DFI primarily supplies and installs steel piling pipe within the Western Canadian Sedimentary Basin.¹⁸

56. During the POI, DFI produced steel piling pipe in various sizes ranging from 4 inches to 16 inches (10.2 cm to 40.6 cm) in outside diameter, to ASTM A252, Grades 1 to 3, specification.¹⁹ All of DFI's sales of steel piling pipe in the domestic market are to end users. Its products serve primarily the company's pile driving services.

57. DFI also exported some steel piling pipe to the United States.²⁰

Evrax

58. Evrax, of Regina, Saskatchewan, is primarily a producer of OCTG (API 5CT) and line pipe (API 5L), but has produced small quantities of steel piling pipe and sold small volumes of seconds or downgraded pipe into the steel piling pipe market.²¹

16. Tribunal Exhibit NQ-2012-002-15.02, Administrative Record, Vol. 3 at 42-43; Manufacturer's Exhibit A-01 at 13, Administrative Record, Vol. 11; Tribunal Exhibit PI-2012-002-02.01, Administrative Record in Preliminary Injury Inquiry No. PI-2012-002, Vol. 1 at para. 13.

17. Tribunal Exhibit NQ-2012-002-16.02A (protected), Administrative Record, Vol. 4 at 21, 22; Tribunal Exhibit NQ-2012-002-15.02, Administrative Record, Vol. 3 at 42.

18. Tribunal Exhibit NQ-2012-002-15.04, Administrative Record, Vol. 3 at 92.

19. *Ibid.* at 98.

20. *Ibid.* at 95.

21. Tribunal Exhibit NQ-2012-002-15.06, Administrative Record, Vol. 3 at 140, 154. Evrax also participated in previous Tribunal inquiries as a domestic producer of plate.

59. During the POI, Evraz produced steel piling pipe in various sizes ranging from 8.6 inches to 16 inches (21.8 cm to 40.6 cm) in outside diameter, to ASTM A252, Grade 3, specification.²² All of Evraz's steel piling pipe is sold in the domestic market to end users.²³

60. Evraz did not import or export steel piling pipe.

Nova Tube

61. Nova Tube, of Montréal, Quebec, is a wholly owned subsidiary of Novamerican Steel Inc. of Montréal and, as of 2009, wholly owns Delta Tube Inc. of Montréal. Nova Tube's focus is on the production and sale of pipe and tubular products.

62. During the POI, Nova Tube produced ASTM A252, ASTM A500 and ASTM A589 specification pipe,²⁴ in sizes ranging from 3 inches to 6 inches (7.6 cm to 15.2 cm) in outside diameter.²⁵ All of Nova Tube's steel piling pipe is sold in the domestic market to distributors.

63. Nova Tube also sold seconds or downgraded pipe, some of which may have been sold to and entered the steel piling pipe market. It estimated that 5 percent of its seconds or downgraded pipe is used for piling pipe applications.

64. Nova Tube did not import or export steel piling pipe.

Pipe & Piling

65. Pipe & Piling, of St. Hubert, Quebec, identified itself as a producer and distributor of steel piling pipe, as well as other steel pipe products, beams and sheet piling to end users throughout Canada. Notwithstanding the foregoing, as indicated earlier, Pipe & Piling did not provide a response to the Tribunal's producers' questionnaire.

66. In addition to being a producer, Pipe & Piling is an importer of steel piling pipe from China and the United States. It imports single certified (ASTM A252 specification) steel piling pipe and dual certified (ASTM A252 and API 5L specifications) steel piling pipe.

67. Pipe & Piling's imports of the subject goods are dual-stencilled to meet the requirements of both specification ASTM A252 and specification API 5L, with bevelled ends, in sizes ranging from 4 1/2 inches to 16 inches (11.4 cm to 40.6 cm) in outside diameter.

Atlantic Tube

68. Atlantic Tube is based in Mississauga, Ontario. It identified itself as a producer of round and shaped tubing that does not market steel piling pipe.²⁶ Notwithstanding the foregoing, Atlantic Tube produces certain steel pipe that corresponds to the product description of the subject goods.

22. Tribunal Exhibit NQ-2012-002-15.06, Administrative Record, Vol. 3 at 146.

23. *Ibid.* at 143; Tribunal Exhibit NQ-2012-002-16.06A (protected), Administrative Record, Vol. 4C at 22.

24. Tribunal Exhibit NQ-2012-002-15.05, Administrative Record, Vol. 3 at 125.

25. *Ibid.* at 126.

26. Tribunal Exhibit NQ-2012-002-41.01, Administrative Record, Vol. 5.3 at 8, 9.

69. Atlantic Tube manufactures steel piling pipe in sizes ranging from 2 1/2 inches to 6 inches (6.4 cm to 15.2 cm) in outside diameter.²⁷ Atlantic Tube's sales of steel piling pipe have been to distributors.²⁸

IMPORTERS

70. The Tribunal requested 32 of the largest potential importers of steel piling pipe to complete importers' questionnaires. The Tribunal received 21 replies from importers, including 5 complete replies from companies that import steel piling pipe. The Tribunal received 15 replies from companies that indicated that they were not the importers of record.

PURCHASERS

71. The Tribunal sent purchasers' questionnaires on market characteristics to 22 companies identified as potential purchasers of steel piling pipe. In addition to the eight complete replies, the Tribunal received a response from one company indicating that it was not a purchaser of the subject goods or the like goods during the POI.

FOREIGN PRODUCERS

72. The Tribunal sent foreign producers' questionnaires to 166 companies identified by the CBSA as exporters of the subject goods. The Tribunal received only one reply stating that the company did not export carbon and alloy steel pipe piles to Canada during the POI.²⁹

MARKETING AND DISTRIBUTION

73. In Canada, imported and domestically produced steel piling pipe is marketed and sold directly to distributors/service centres or end users, typically piling pipe contractors/installers.³⁰

74. Distributors/service centres may sell the steel piling pipe to other distributors or to other smaller service centres or large end users. Distributors/service centres may also offer custom cutting services to their customers and supply smaller end users and contractors/installers. These distributors/service centres also supply the more immediate needs of accounts that would normally purchase directly from domestic producers.

75. The end-user market segment primarily consists of industrial and commercial applications, including large-scale construction projects, in which steel piling pipe is sold on a project-specific basis and delivered directly to the project site from the mill or distributor. Steel piling pipe may be purchased as part of a "bundle" of products, which may include products other than steel piling pipe, to complete an order, and may also include some piling pipe customization.³¹

27. Tribunal Exhibit NQ-2012-002-41.01, Administrative Record, Vol. 5.3 at 9.

28. Tribunal Exhibit NQ-2012-002-41.01A, Administrative Record, Vol. 5.3 at 23.

29. Tribunal Exhibit NQ-2012-002-21.02, Administrative Record, Vol. 5.1 at 44.

30. Tribunal Exhibit PI-2012-002-02.01, Administrative Record in Preliminary Injury Inquiry No. PI-2012-002, Vol. 1 at para. 46; Tribunal Exhibit NQ-2012-002-16.04 (protected), Administrative Record, Vol. 4A at 6; Importer's Exhibit C-04 at para. 24, Administrative Record, Vol. 13.

31. Tribunal Exhibit NQ-2012-002-15.04, Administrative Record, Vol. 3 at 92; *Transcript of Public Hearing*, Vol. 2, 30 October 2012, at 266-67.

76. A significant proportion of market sales of steel piling pipe are made directly to large end users (oil and gas operating companies) without passing through a distributor. Steel piling pipe may also be sold directly to end users as complementary products to foundation construction services, i.e. the installation of steel piling pipe.

77. Domestic producers market their steel piling pipe products through their sales forces, which either contact customers directly or receive customer requests.³²

78. Steel piling pipe is imported either by traders/importers for resale into the market segments noted above (end users or distributors³³) or occasionally directly by domestic producers.³⁴

79. Importers market and sell their steel piling pipe products in a variety of ways. Certain importers source the products from foreign suppliers, determining product availability and pricing, in response to customer inquiries, requests or orders.³⁵ Therefore, the steel piling pipe products that they import are effectively pre-sold. Importers can also order steel piling pipe in advance, in anticipation of upcoming projects based on their market knowledge.³⁶

80. Other importers utilize advertising and sales agents, or have a dedicated sales force to contact customers and seek orders.³⁷ This is typically done when importers have steel piling pipe products in inventory. Other importers both fill and solicit orders.³⁸

81. Importers/distributors typically have large inventories available to meet the needs of their customers.³⁹

82. Seconds and downgraded pipe (i.e. pipe products that were originally produced to higher standards than steel piling pipe for other applications) also enter the Canadian steel piling pipe market for use in piling pipe applications.⁴⁰

PRICING

83. Steel piling pipe is generally purchased through requests for quotation, although it can also be purchased through competitive bidding or direct negotiation with established suppliers.⁴¹

32. *Transcript of Public Hearing*, Vol. 1, 29 October 2012, at 40-41; *Transcript of Public Hearing*, Vol. 2, 30 October 2012, at 281-82; Manufacturer's Exhibit A-10 (protected), tab 2 at 4, 5 10, 16, 17, 21, 24, 26, Administrative Record, Vol. 12.

33. The Tribunal notes that certain companies are both importers and distributors of steel piling pipe.

34. During the POI, domestic producers imported steel piling pipe from the subject and non-subject countries.

35. Steel trading companies/importers may also be approached and solicited directly by foreign suppliers.

36. *Transcript of Public Hearing*, Vol. 3, 31 October 2012, at 385-86.

37. Tribunal Exhibit NQ-2012-002-18.20, Administrative Record, Vol. 5A at 10, 14; Tribunal Exhibit NQ-2012-002-18.24, Administrative Record, Vol. 5A at 64.

38. Tribunal Exhibit NQ-2012-002-18.17, Administrative Record, Vol. 5 at 124.

39. *Transcript of Public Hearing*, Vol. 3, 31 October 2012, at 385, 386.

40. *Protected Pre-hearing Staff Report*, 24 September 2012, Tribunal Exhibit NQ-2012-002-07 (protected), Administrative Record, Vol. 2.1 at 122; *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 155.

41. *Protected Pre-hearing Staff Report*, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 164.

84. Transactions can be concluded individually on a “spot price” basis, reflecting the prevailing market prices for steel piling pipe, or on the basis of a fixed-term contract, with adjustments for transaction-specific demands.⁴² The vast majority of domestic and imported steel piling pipe sales are made on a “spot price” per hundredweight or per ton delivered basis.⁴³ Several companies did however report purchasing some steel piling pipe on a fixed-term contract basis, with the term of such contracts averaging approximately two years.⁴⁴

85. The price of steel piling pipe is largely dependent on the cost of hot-rolled coil, which is the major raw material used in the production of that product.

86. The domestic producers sell to customers either on a freight prepaid (delivered) basis or free on board (FOB) the Canadian mill.⁴⁵

87. Importers can have the steel piling pipe shipped directly to their customers from the source producers,⁴⁶ sell FOB unloading dock in Canada,⁴⁷ sell FOB their warehouses⁴⁸ or sell on a delivered basis,⁴⁹ depending on the customers’ preferences. Published price lists are not commonly used in the steel piling pipe industry.⁵⁰

ANALYSIS

88. 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”.

89. Accordingly, the Tribunal must first determine what constitutes “like goods”. As noted above, the Tribunal informed the parties of its decision on this issue on September 20, 2012. On the basis of that determination, the Tribunal must determine what constitutes the “domestic industry” for the purposes of its injury analysis. The Tribunal can then assess whether the dumping and subsidizing of the subject goods have caused injury to the domestic industry. Should the Tribunal arrive at a finding of no injury, it will

42. Tribunal Exhibit NQ-2012-002-15.02, Administrative Record, Vol. 3 at 45; Tribunal Exhibit NQ-2012-002-25.07A (protected), Administrative Record, Vol. 6.2A at 128-31; *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 166.

43. *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 166.

44. *Ibid.*

45. Tribunal Exhibit NQ-2012-002-15.02, Administrative Record, Vol. 3 at 45; Tribunal Exhibit NQ-2012-002-16.04 (protected), Administrative Record, Vol. 4A at 6.

46. Tribunal Exhibit NQ-2012-002-19.17 (protected), Administrative record, Vol. 6 at 74; *Transcript of Public Hearing*, Vol. 1, 29 October 2012, at 132.

47. *Transcript of Public hearing*, Vol. 1, 29 October 2012, at 138-39; Tribunal Exhibit NQ-2012-002-19.06 (protected), Administrative Record, Vol. 6 at 14.

48. Tribunal Exhibit NQ-2012-002-19.20A (protected), Administrative Record, Vol. 6A at 93.

49. Tribunal Exhibit NQ-2012-002-18.21, Administrative Record, Vol. 5A at 36; Tribunal Exhibit NQ-2012-002-19.20A (protected), Administrative Record, Vol. 6A at 93.

50. Tribunal Exhibit NQ-2012-002-15.02, Administrative Record, Vol. 3 at 46; *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 164.

determine whether there exists a threat of injury to the domestic industry.⁵¹ If necessary, the Tribunal may also consider the question of retardation.⁵²

90. Given that the CBSA has determined that the subject goods have been dumped and subsidized, the Tribunal must also determine whether it is appropriate to make an assessment of the cumulative effect of the dumping and subsidizing of the subject goods.

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

92. Before turning to the foregoing issues, the Tribunal must address certain preliminary matters that have arisen in this inquiry.

Preliminary Matters

DFI's Request for Leave to File Additional Documentary Evidence

93. On October 26, 2012, DFI transmitted additional documentary evidence to the Tribunal as part of the Tribunal's process for "Matters Arising". At the outset of the hearing, DFI requested leave to file this additional documentary evidence, which included copies of DFI's shipping and receipt records in connection with a transaction involving one of the other parties to the hearing. DFI argued that this evidence was necessary in order for it to rebut allegations that it was unable or unwilling to supply steel piling pipe to domestic distributors. DFI also submitted that the filing of this evidence would not be prejudicial to the parties opposite and that DFI was not able to file this evidence earlier because it was not aware of these documents until recently.

94. Pipe & Piling objected to the acceptance of these additional documents onto the record. It argued that DFI had ample time and opportunity to respond to the allegations that it was unable or unwilling to supply domestic distributors and that DFI has not justified why the evidence could not have been filed sooner.

95. After considering the parties' submissions, the Tribunal denied DFI's request for leave to file additional documentary evidence. In this regard, the Tribunal found that the allegations which DFI was attempting to rebut were known (or should have been known) to it on October 10, 2012, when Pipe & Piling filed its brief and witness statement. The Tribunal found that DFI failed to provide a sufficient explanation as to why these documents were not filed earlier. The Tribunal also determined that it would be unfair to the parties opposed to allow the introduction of new evidence at such a late stage of the inquiry.

Information that Was Struck from the Transcript

96. During the *in camera* testimony of the witnesses for DFI, an issue arose with respect to the content of a question posed by counsel for Pipe & Piling. The Tribunal was of the view that this question could be construed as counsel for Pipe & Piling giving evidence, a practice which is prohibited by the Tribunal as

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

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

being contrary to the rules of procedure. The Tribunal also agreed with DFI's submission that the question posed by counsel for Pipe & Piling referred to a document that did not form part of the record of the proceedings.

97. The Tribunal therefore ordered that both the question posed by Pipe & Piling and the response given by Mr. Mark Agnew be stricken from the record.⁵³

DFI's Motion Seeking the Removal of a Document Included in Pipe & Piling's Aid to Argument

98. During the argument portion of the hearing, Atlas Tube and DFI objected to the contents of Pipe & Piling's aid to argument, claiming that it was unfair, as it presented new material that was selectively taken from the record, with Atlas Tube not having had the opportunity to cross-examine the author of the document on its contents. In this regard, DFI argued that the aid to argument contained evidence that could have been submitted as part of Pipe & Piling's case brief.

99. DFI also brought a motion to strike a portion of the aid to argument from the record, claiming that it did not contain any reference to the record in this inquiry.⁵⁴

100. In response, Pipe & Piling submitted that all the data contained in its aid to argument were based on information that was already on the record and that no new evidence was being introduced through this document.

101. After considering the parties' submissions, the Tribunal decided to admit the aid to argument (which appeared to contain reconfigurations of, and extrapolations from, evidence on the record) in its entirety, indicating that it would give the document the weight that it deserved. It cautioned however that it would not accept any new evidence under the guise of argument.

Product Overlap

102. On July 3, 2012, the Tribunal terminated its preliminary injury inquiry with respect to some of the goods that were covered by the product definition that the CBSA provided when it initiated its dumping and subsidizing investigations on May 4, 2012, because it found that those goods were subject to the finding that the Tribunal made, pursuant to subsection 43(1) of *SIMA*, in *CSWP*, concerning the dumping and subsidizing of certain carbon steel welded pipe. In its statement of reasons for its preliminary determination of injury, issued on July 30, 2012, the Tribunal noted that there was insufficient evidence on the record to determine with certainty the precise scope or extent of the overlap between the subject goods, as they were then defined by the CBSA, and the steel products which are covered by the Tribunal's finding in *CSWP* and, potentially with goods subject to other Tribunal orders or findings. The Tribunal gave notice that, if the CBSA made a preliminary determination that the subject goods, in respect of which the preliminary injury inquiry had not been terminated pursuant to section 35, had been dumped or subsidized, it would seek submissions from the parties to delineate the precise scope or extent of the overlap of product definitions and to determine whether overlapping goods could be a cause of injury to the domestic industry.

103. Accordingly, the Tribunal, in the notice of commencement of inquiry issued on August 3, 2012, invited parties to file submissions on whether there was an overlap between the subject goods, as re-defined by the CBSA further to the Tribunal's preliminary determination of injury, and steel products which are

53. More specifically, lines 12-23 of *Transcript of In Camera Hearing*, Vol. 2, 30 October 2012, at 113, were struck from the record.

54. DFI moved that page 10 of tab 4 of Pipe & Piling's aid to argument be struck.

covered by existing Tribunal orders and findings, having particular regard to *CSWP*, Inquiry No. NQ-2007-001⁵⁵ and Inquiry No. NQ-2009-004.⁵⁶ The parties were also asked for submissions on whether and how goods already covered by a Tribunal order or finding, and therefore already subject to remedial measures, could be a cause of injury to the domestic industry. Parties were requested to file submissions with the Tribunal by August 21, 2012, and replies by August 27, 2012.

104. On August 17, 2012, the Tribunal sent a letter to the CBSA requesting clarification regarding the definition of the subject goods. On August 20, 2012, the Tribunal received a response from the CBSA. This letter was circulated to the parties on August 21, 2012, and the parties were given a revised deadline of August 28, 2012, to file submissions. The deadline to file replies was moved to September 4, 2012.

105. Submissions were received from Atlas Tube, DFI, Pipe & Piling, Platinum Grover and Noble Canada. Replies were received from Atlas Tube, DFI, Pipe & Piling and Platinum Grover. Atlas Tube and DFI submitted that there was no overlap between the subject goods defined in the CBSA's preliminary determinations and goods that are covered by existing Tribunal orders and findings. Atlas Tube and DFI also submitted that imports of goods already covered by existing Tribunal orders and findings cannot be taken to cause or threaten to cause injury. Pipe & Piling and Platinum Grover submitted that there was an overlap between the subject goods defined in the present inquiry and the goods in *CSWP*, *Oil and Gas Well Casing* and *OCTG*.

106. Atlas Tube submitted that this case concerns piling pipe and goods that are "commonly identified as piling pipe" and that other steel pipe products, such as OCTG, line pipe, liquid or gas carrying pipe, or tubular structural goods, are not piling pipe.

107. Atlas Tube submitted that piling pipe, which is used for weight-bearing applications, is marketed as a unique product. It also claimed that piling pipe made to the ASTM A252 specification is recognized as a distinct specification in provincial building and construction codes and that piling pipe is imported under a different heading of the schedule to the *Customs Tariff*⁵⁷ from both line pipe and OCTG.

108. Atlas Tube argued that the goods covered by *Oil and Gas Well Casing* and *OCTG* are higher end products that are subject to more stringent product specifications and demanding pressure testing requirements. Atlas Tube also claimed that these products are not used for weight-bearing applications and that those goods command a substantially higher selling price than does piling pipe.

109. Finally, Atlas Tube argued that, with respect to standard and other pipe, the revised definition of the subject goods does not include piling pipe that is covered by the Tribunal's finding in *CSWP*, that is, ASTM A252 piling pipe from 3 1/2 inches up to and including 6 inches in outside diameter, but that dual-stenciled piling pipe which was excluded from the Tribunal's finding in *CSWP* remains part of the subject goods, since it is clearly not covered by that finding.

110. In its reply, Atlas Tube underscored the fact that, by definition, OCTG and seamless casing are tubular goods, not pipe, which are made to different specifications set by different bodies and have different end uses. It also noted that the assertions made by the importers of piling pipe were made without reference to ASTM, API or other standards.

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

56. *Oil Country Tubular Goods* (23 March 2010) (CITT) [*OCTG*].

57. S.C. 1997, c. 36.

111. For its part, DFI contended that its piling pipe cannot be used for OCTG or line pipe applications. It also submitted that dual-stenciled goods in the nominal size range of 3 1/2 inches to 6 inches meeting the ASTM A252 specification, which were excluded from the findings in *CSWP*, are included in the definition of subject goods. DFI further argued that the definition of subject goods should be simplified in this case and interpreted to cover steel pipe that is certified to meet the ASTM A252, Gades 1 to 3, specification or equivalent specifications, whether single, dual or multiple certified, for use in a structural application.

112. Pipe & Piling and Platinum Grover submitted that the definition of the subject goods is overly broad and imprecise and captures any pipe imported from China, within the size ranges specified in the definition of the subject goods, which can be used as piling pipe.

113. Pipe & Piling and Platinum Grover argued that seamless carbon or steel oil and gas well casing are carbon or alloy steel pipe, which are sold in commercial quality and in various forms, and are supplied to meet a specific or comparable grade, namely, API 5CT. Therefore, in their submission, oil and gas well casing falls within the scope of the definition of the subject goods, thus creating overlap. Similarly, Pipe & Piling and Platinum Grover submitted that OCTG also meets the requirements of the definition of subject goods, resulting in further overlap.

114. Pipe & Piling and Platinum Grover also argued that goods which are the subject of the Tribunal's previous orders and findings do not cause or threaten to cause injury and, therefore, recommended that the Tribunal terminate its inquiry with respect to those goods.

115. In their reply submission, Pipe & Piling and Platinum Grover argued that Atlas Tube improperly interpreted the definition of subject goods as being limited to goods meeting the ASTM A252 specification or goods used for weight-bearing applications. They emphasized that goods "commonly referred to as piling pipe" should be interpreted to mean goods often but not always identified as piling pipe and that, therefore, the definition of the subject goods includes goods that are not identified as piling pipe. They also submitted that Atlas Tube's references to building codes, the CBSA's letter to the Tribunal and their own production and marketing of piling pipe are irrelevant considerations. They argued that the *Customs Tariff* cannot be relied on to determine the scope of the subject goods, especially because piling pipe is not specifically described in the *Customs Tariff*.

116. On September 20, 2012, the Tribunal determined that there was no overlap between the subject goods and any goods covered by existing Tribunal orders or findings. In this regard, the Tribunal determined that the only overlap in product definitions was that which was identified in the Tribunal's preliminary determination of injury and noted that the definition of the subject goods provided by the CBSA in its preliminary determinations expressly excluded the goods that the Tribunal found to be subject to the finding that it made in *CSWP*. The reasons for that determination are set out below.

117. In order to determine whether there was an overlap between the subject goods and any goods covered by existing Tribunal orders or findings, it was necessary to circumscribe the universe of subject goods as defined by the CBSA. It was only when the scope of the goods to which the preliminary determinations apply was clarified that the Tribunal was in a position to determine whether some of those goods were already subject to an existing Tribunal finding or order.

118. As its point of departure, the Tribunal reaffirms that it must accept the definition of the subject goods provided by the CBSA, that the words of the definition of the subject goods must be ascribed their

contextual, plain and ordinary meaning, and that the Tribunal may clarify the scope of the subject goods only where the definition is ambiguous.⁵⁸

119. As correctly noted, for example, by Pipe & Piling and Platinum Grover, “. . . the [product overlap] analysis [must begin] with the product definition as it is actually written . . . on the basis of the ordinary meaning of the words in context . . .”,⁵⁹ with “[t]he Tribunal [having no authority] to amend or revise the product definition adopted by the CBSA . . .”⁶⁰ In short, “. . . the Tribunal has the authority to interpret or clarify terms within the product definition that are unclear or ambiguous, but it has no authority to modify the scope of the product definition.”⁶¹

120. The CBSA initially defined the subject goods as follows:

carbon and alloy steel pipe piles, commonly identified as piling pipe, in outside diameter ranging from 3 1/2 inches up to and including 16 inches (8.9 cm to 40.6 cm) inclusive, in commercial quality and in various forms and finishes, usually supplied to meet ASTM A252, ASTM A500, CSA G.40.21 or comparable specifications or standards, whether single, dual or multiple certified, originating in or exported from the People’s Republic of China.

121. After terminating the inquiry with respect to certain of the above-mentioned goods, the Tribunal clarified the scope of the goods to which preliminary determinations pursuant to subsection 37.1(1) of *SIMA* applied, which caused the CBSA to revise the product definition to read as follows:

carbon and alloy steel pipe piles, commonly identified as piling pipe, in outside diameter ranging from 3 1/2 inches up to and including 16 inches (8.9 cm to 40.6 cm) inclusive, in commercial quality and in various forms and finishes, usually supplied to meet ASTM A252, ASTM A500, CSA G.40.21 or comparable specifications or standards, whether single, dual or multiple certified, originating in or exported from the People’s Republic of China, excluding carbon steel welded pipe, in the nominal size range of 3 1/2 inches up to and including 6 inches (89 mm to 168.3 mm) in outside diameter, in various forms and finishes, usually supplied to meet ASTM A252 or equivalent specifications, other than carbon steel welded pipe in the nominal size range of 3 1/2 inches up to and including 6 inches, dual-stenciled to meet the requirements of both specification ASTM A252, Grades 1 to 3, and specification API 5L, with beveled ends in random lengths, for use as foundation piles.

[Emphasis added]

122. In order to clarify the definition of the subject goods, the Tribunal will consider the operative words of this definition.

“carbon and alloy steel pipe piles”

123. The Tribunal notes that the introductory words of the definition indicate that it is *not* carbon and alloy steel pipe that is covered by the product definition, but rather carbon and alloy steel pipe “*piles*”. Contrary to the assertion of Pipe & Piling and Platinum Grover that “[n]othing in the product definition limits subject goods to those ‘made for in-ground installation to support super-imposed structures’”,⁶² the term “pipe pile” is defined in the *McGraw-Hill Science & Technology Dictionary*⁶³ as follows:

58. *Pup Joints* (10 April 2012), NQ-2011-001 (CITT) [*Pup Joints*] at paras. 69-76.

59. Tribunal Exhibit NQ-2012-002-28.02, Administrative Record, Vol. 1.4A at paras. 4-5.

60. *Ibid.* at para. 6.

61. *Ibid.* at para. 8.

62. *Ibid.* at para. 16.

63. <http://www.accessscience.com/overflow.aspx?SearchInputText=pipe+pile&ContentTypeSelect=4>, s.v. “pipe pile”.

[civil engineering] A steel pipe 6-30 inches (15-76 centimeters) in diameter, usually filled with concrete and *used for underpinning*.

[Emphasis added]

This runs counter to the claim of Pipe & Piling and Platinum Grover that “[n]othing in the product definition limits subject goods to ‘weight-bearing’ products.”⁶⁴ The Tribunal finds that the reference to “pipe piles” at the very outset of the product definition clearly excludes, from its ambit, carbon and alloy steel pipe not of the class of pipes specifically designed for foundation applications.

“commonly identified as piling pipe”

124. In their submission, Pipe & Piling and Platinum Grover claim that “common” is defined to mean “often”. In the Tribunal’s view, this disregards more contextually appropriate meanings of the word. For instance, the definition of “common” in the *Merriam-Webster’s Dictionary of Synonyms*⁶⁵ includes the term “ordinary”, and the definition of “commonly” in the *Shorter Oxford English Dictionary*⁶⁶ includes the terms “usually” and “ordinarily”. Read in the broader context of the definition of the subject goods as a whole, including the reference in the immediately preceding phrase to pipe piles, the Tribunal finds that “ordinarily” or “usually” are more appropriate synonyms, such that the scope of the definition of the subject goods is limited to pipes that are “ordinarily or usually” identified as piling pipes.

125. The claim of Pipe & Piling and Platinum Grover that “. . . nothing in the actual product definition supports Atlas’ interpretation that subject goods are a distinct and limited class of steel pipe”,⁶⁷ bears directly on the question of whether or not there exists a discernible group of steel products “commonly identified as piling pipe”. In the Tribunal’s view, the issue of whether piling pipe is a separate or distinct class of goods is one of fact that turns on the nature of piling pipe itself.

126. In this regard, the Tribunal agrees with Atlas Tube’s contention that that piling pipe is a separate and distinct class of goods that is commonly identified as such. Indeed, the evidence on the record and the submissions of Atlas Tube and DFI support the Tribunal’s view that piling pipe is, by definition, a weight-bearing product (unlike carbon steel welded pipe, OCTG, line pipe, standard pipe and other steel pipe) that is specifically intended for piling applications (i.e. in-ground installation to support super-imposed structures).⁶⁸ The Tribunal also accepts that piling pipe involves a simpler manufacturing process, is typically cheaper to make than OCTG, casing, line pipe and other types of steel pipe, and typically commands a lower price.⁶⁹ Moreover, the Tribunal notes that the fact that piling pipe is classified in provisions in the schedule to the *Customs Tariff* that are distinct from those for line pipe, OCTG or other tubular steel products is also consistent with Atlas Tube’s submission.

64. Tribunal Exhibit NQ-2012-002-28.02, Administrative Record, Vol. 1.4A at para. 15.

65. 1984, s.v. “common”.

66. 2002, s.v. “commonly”.

67. Tribunal Exhibit NQ-2012-002-28.02, Administrative Record, Vol. 1.4A at para. 18.

68. Tribunal Exhibit PI-2012-002-2.01, Administrative Record in Preliminary Injury Inquiry No. PI-2012-002, Vol. 1 at 176, 188; Tribunal Exhibit NQ-2012-002-26.01A, Administrative Record, Vol. 1.4A at para. 10; Tribunal Exhibit NQ-2012-002-26.02, Administrative Record, Vol. 1.4A at 2.

69. Tribunal Exhibit NQ-2012-002-26.01A, Administrative Record, Vol. 1.4A at paras. 33-35, 40, Annex D; Tribunal Exhibit NQ-2012-002-27.01 (protected), Administrative Record, Vol. 2.4, Confidential Annex.

“usually supplied to meet ASTM A252, ASTM A500, CSA G.40.21 or comparable specifications or standards”

127. The Tribunal agrees with the submission of Pipe & Piling and Platinum Grover that the word “usually” implies that the subject goods are often, *but not always*, supplied to the listed standards or specifications. The Tribunal does not agree however with their follow-up assertion that the definition of the subject goods is therefore open-ended so as to include all standards or specifications beyond those listed or determined in accordance with the product definition or all steel pipe regardless of its standard or specification. In the Tribunal’s view, the word “usually”, read contextually, is subject to, and constrained by, the preceding phrase “commonly identified as piling pipe”, such that the only other specifications captured by the product definition are those commonly associated with piling pipe. Indeed, the open-ended interpretation advocated by Pipe & Piling and Platinum Grover would arguably deprive the phrase “ASTM A252, ASTM A500, CSA G.40.21 or comparable specifications” of effective purpose.

“comparable specifications or standards”

128. In its letter to the Tribunal of August 20, 2012, the CBSA indicated that the word “comparable” was used in the sense of “equivalent”, such that “[c]arbon steel pipe originating in or exported from China meeting ASTM A252, ASTM A500, and/or CSA G.40.21, or meeting other equivalent specifications or standards . . .”⁷⁰ would be considered to meet the definition of the subject goods, provided the pipe fell within the size parameters set out in the definition. The Tribunal notes that generally accepted synonyms of the word “comparable” include “equivalent”.⁷¹ In the Tribunal’s view, the interpretation of the phrase “comparable standards” as meaning “equivalent standards” is consistent with a contextual reading of the phrase “comparable standards” as it relates exclusively to piling pipe.

“whether single, dual or multiple certified”

129. The Tribunal finds that dual or multiple certified pipe remains part of the subject goods, provided one of the certifications is as piling pipe. Interpreted in the context of the definition as a whole, this phrase indicates that, as long as the imported steel pipe is certified to meet ASTM A252, ASTM A500, CSA G.40.21 or equivalent specifications or standards, it will be included in the discernible group of steel products commonly identified as piling pipe, even if it may also be certified to meet other specifications or standards.

“other than carbon steel welded pipe in the nominal size range of 3 1/2 inches up to and including 6 inches, dual-stenciled to meet the requirements of both specification ASTM A252, Grades 1 to 3, and specification API 5L, with beveled ends in random lengths, for use as foundation piles”

130. The inclusion of these goods in the definition of the subject goods is consistent with the Tribunal’s acceptance that ASTM A252 is a generally recognized piling pipe standard and that dual or multiple certified pipe remains part of the subject goods, provided one of the certifications is as piling pipe. The Tribunal does not agree with Pipe & Piling and Platinum Grover that the API 5L standard is rendered a “comparable standard” to those specifically listed in the product definition by virtue of the fact that it is stenciled with ASTM A252, a generally recognized piling pipe standard.

70. Tribunal Exhibit NQ-2012-002-33, Administrative Record, Vol. 1.A at 8.

71. Online: Thesaurus: English (U.S.), <http://thesaurus.com/browse/comparable>, s.v. “comparable”.

131. These goods are products that were specifically excluded from the Tribunal's finding in *CSWP*. They meet the definition of the subject goods because they are carbon steel welded pipe, of which piling pipe is a subset, which is supplied to meet the ASTM A252 specification and is not covered by the Tribunal's finding in *CSWP*. As discussed above, any dual or multiple certified piling pipe is included in the product definition because it is piling pipe and certified as such (i.e. certified to meet ASTM A252, ASTM A500, CSA G.40.21 or equivalent specifications or standards), whatever other certifications it may bear. The mere fact that such goods may be certified to also meet the requirements of the API 5L specification does not imply that this specification is a "comparable standard" relative to the ASTM A252 specification or a generally recognized piling pipe standard in the industry.

132. In fact, the Tribunal accepts Atlas Tube and DFI's argument that the API 5L specification is not a standard that is normally associated with steel products used as structural support or for other load-bearing applications. Rather, the API 5L specification relates to steel pipe which is generally intended for the conveyance of steam, water, natural gas, air and other liquids and gases.

133. Finally, the Tribunal rejects the CBSA's statement at the end of its August 20, 2012, letter to the Tribunal, in purported clarification of its definition of the subject goods, that carbon steel pipe falling within the size parameters of the definition of the subject goods that does not meet the criteria of ASTM A252, ASTM A500, CSA 0.40.21 or comparable specifications or standards was not considered part of the subject goods ". . . unless these goods are imported for use in a piling pipe application"⁷² [emphasis added].

134. The Tribunal must interpret the definition of the subject goods as it is actually written. While the statements made by the CBSA in its letter to the Tribunal dated August 20, 2012, could provide certain guidance to the importer community as to the manner in which the CBSA may administer any positive finding made by the Tribunal under section 43 of *SIMA*, they are not binding on the Tribunal. The Tribunal's analysis must be grounded on what is stated on the face of the product definition provided by the CBSA. Information found in extraneous materials is not determinative.⁷³

135. The Tribunal notes, in this regard, that there is no explicit or necessarily implied basis in the definition of the subject goods, as framed by the CBSA, for a usage-based determination of subjectivity. For this reason, carbon steel welded pipe, OCTG, oil and gas well casings, and other steel pipe outside the discernible class of goods commonly identified as piling pipe cannot be brought within the scope of the subject goods on the basis of their possible usage, for example as seconds, in piling applications.⁷⁴

72. Tribunal Exhibit NQ-2012-002-33, Administrative Record, Vol. 1A at 9.

73. *Pup Joints* at paras. 69-75.

74. In this regard, the Tribunal recognizes that the definition of the subject goods includes carbon steel welded pipe in the nominal size range of 3 1/2 inches up to and including 6 inches, dual-stenciled to meet the requirements of both specification ASTM A252, *Grades 1 to 3*, and specification API 5L, with beveled ends in random lengths, *for use as foundation piles*. However, this is a reference to the goods that were specifically excluded from the Tribunal's finding in *CSWP*, a finding which covered certain carbon steel welded pipe that may be used in applications other than piling or load-bearing applications. The inclusion of the phrase "for use as foundation piles" simply limited the scope of the exclusion to certain dual-stenciled carbon steel welded pipe used as piling pipe. In this inquiry, the definition of the subject goods has been expressly and specifically crafted so as to cover only the class of pipes specifically designed for foundation applications, which *includes* the goods that were excluded from the Tribunal's finding in *CSWP*. Therefore, the reference "for use as foundation piles" at the end of the product definition cannot reasonably be interpreted to extend the scope of the definition of the subject goods to all steel products that, while not intended for that purpose, may potentially be used as foundation piles.

136. These goods should be captured under existing applicable orders if they are imported, even if they may potentially go to a piling pipe application. The Tribunal agrees with the argument made by Atlas Tube that the concept of substitutability should not be brought into subjectivity considerations unless the language of the definition requires it explicitly or by necessary implication. The definition of the subject goods in this case does not include such language.

137. In short, the Tribunal is of the view that, correctly interpreted, the definition of the subject goods provided by the CBSA covers a discernible class of steel pipe that is not subject to any existing Tribunal orders or findings. For the foregoing reasons, the Tribunal finds that there is no overlap between the subject goods and goods that are already covered by the Tribunal's existing orders and findings.

Like Goods

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

139. 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.

140. In its preliminary injury inquiry, the Tribunal found that domestically produced steel piling pipe constitutes like goods in relation to the subject goods and that steel piling pipe constitutes a single class of goods. The Tribunal, however, gave notice that it would seek submissions from the parties on whether there was merit in expanding the definition of like goods to include certain OCTG, line pipe and standard pipe that could be used in piling applications.

141. Accordingly, in its notice of commencement of inquiry dated August 3, 2012, the Tribunal invited parties to file evidence and arguments on whether certain carbon steel welded pipe, OCTG, line pipe, standard pipe or other steel pipe products (that can potentially be substituted for, compete with or have the same end uses as steel piling pipe) constituted like goods in relation to the subject goods, with parties being asked to address, in their submissions, the physical and market characteristics of the goods, whether the goods fulfilled the same customer needs, and any other relevant factors. Parties were requested to file submissions with the Tribunal by August 21, 2012, and replies by August 27, 2012. The parties were later given a revised deadline of August 28, 2012, to file submissions. The deadline to file replies was moved to September 4, 2012.

142. Submissions were received from Atlas Tube, DFI, Pipe & Piling, Platinum Grover, Tenaris, and Noble Canada. Replies were received from Atlas Tube, DFI, Pipe & Piling, and Platinum Grover. Atlas Tube, DFI, Tenaris and Noble Canada each submitted that certain carbon steel welded pipe, OCTG, line pipe, standard pipe and other steel pipe products were not like goods, while Pipe & Piling and Platinum Grover countered that they were like goods.

143. Atlas Tube and DFI submitted that like goods consist of piling pipe made to ASTM A252 or equivalent specifications made by Atlas Tube, DFI and other producers in the Canadian piling pipe industry.

Atlas Tube also argued that expanding the scope of the like goods to include all other pipe and tubular products made in Canada would have the effect of depriving it of its recourse under Canadian law.

144. Atlas Tube and DFI both submitted that piling pipe manufactured in Canada to the ASTM A252 specification is identical to the subject goods and that, therefore, the Tribunal does not need to determine if there are goods which closely resemble the subject goods in this case.

145. Atlas Tube contended that, even if the Tribunal were to consider closely resembling goods in this case, tubular goods, line pipe and carbon steel welded pipe are not like goods because they do not share the necessary physical and market characteristics of piling pipe. Specifically, it submitted that these other goods are all made to different and more stringent specifications than piling pipe, with these standards being set by completely different bodies. Atlas Tube submitted that, whereas piling pipe is used in weight-bearing applications, these other steel products are intended for such applications as the conveyance of liquids and gases. Atlas Tube also submitted that other pipe and tubular goods command a higher price than piling pipe.

146. DFI also indicated that piling pipe has different distribution channels than tubular goods, line pipe or standard pipe and fulfills different customer needs, as piling pipe is only used to be driven into the ground to support structures.

147. Finally, Atlas Tube and DFI submitted that line pipe, standard pipe and tubular goods from China that are dual-stenciled to meet the ASTM A252 specification are part of the subject goods and may compete with piling pipe.

148. In reply, Atlas Tube submitted that the importers have failed to address the many differences between piling pipe and other types of steel pipe. Atlas Tube rejected the argument that downgrades and seconds of higher-value pipe can “step down” and be used in piling pipe applications. It asserted that piling pipe is a distinct structural product produced to a well-established set of ASTM and comparable specifications.

149. Tenaris submitted that OCTG does not compete with piling pipe by virtue of the fact that OCTG must conform to specific steel and chemical composition requirements in accordance with a stringent API regime and is therefore typically sold at higher prices than piling pipe. In addition, Tenaris submitted that OCTG is sold through oil and gas distributors, whereas piling pipe is sold through construction distributors. Nonetheless, Tenaris was of the view that Chinese producers could and likely would be willing to sell OCTG in the Canadian piling pipe market at dumped prices, were it not for the Tribunal’s findings in *Oil and Gas Well Casing* and *OCTG*.

150. Noble Canada submitted that standard pipe used for non-piling purposes is priced higher than piling pipe and that standard pipe and line pipe, as a general rule, are leak-proof, whereas piling pipe is not.

151. Pipe & Piling and Platinum Grover argued that, due to the broad definition of the subject goods, like goods include tubular goods, line pipe, standard pipe, and all other carbon and alloy steel pipe products produced in Canada within the size range specified in the definition of the subject goods.

152. In particular, Pipe & Piling and Platinum Grover argued that the Tribunal’s preliminary determination of injury, in which the Tribunal found that the definition of the subject goods overlapped, in part, with the definition of the goods in *CSWP*, was a recognition that water well casing, piling pipe, sprinkler pipe and fencing pipe are part of the subject goods, as well as an acceptance that the range of comparable standards includes ASTM A53, ASTM A135, ASTM A589, ASTM A795, ASTM F1083 or

Commercial Quality, or AWWA C200-97 or equivalent specifications. Pipe & Piling and Platinum Grover further argued that because of this determination, domestically produced steel pipe which meets these criteria are like goods.

153. With respect to market characteristics, Pipe & Piling and Platinum Grover submitted that all carbon and alloy steel pipe can and has been used for piling applications, as long as it meets the minimum standards, because piling pipe is the lowest common denominator pipe product. With respect to physical characteristics, they argued that these pipes meet the physical characteristics of the definition of the subject goods because they are all made of carbon or alloy steel, are all produced in commercial quality and in any form or finish, are all produced in specific size ranges and are all produced in any grade.

154. On September 20, 2012, the Tribunal informed the parties that it would confine its inquiry to goods that are commonly identified as piling pipe, having determined on the basis of the evidence before it that domestically produced carbon steel welded pipe, OCTG, line pipe, standard pipe (other than standard pipe supplied to meet ASTM A252 or equivalent specifications) and other steel pipe products produced in Canada that are not commonly identified as piling pipe are not like goods in relation to the subject goods. The reasons for that determination are set out below.

155. As noted above, 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.

[Emphasis added]

156. A plain reading of this definition, which ascribes meaning and purpose to all its elements, suggests that, in defining the universe of like goods, recourse can be had to paragraph (b) of the definition of “like goods” in subsection 2(1) of the *SIMA*, if, and only if, there are no domestically produced goods that are identical in all respects to the subject goods.

157. The determination of the Federal Court of Appeal, in *Noury Chemical Corporation and Minerals & Chemicals Ltd. v. Pennwalt of Canada Ltd. and Anti-dumping Tribunal*,⁷⁵ that the purpose of anti-dumping measures is to protect domestically produced goods that are in competition with the subject goods, usefully informs the interpretation of the definition of like goods in subsection 2(1) of *SIMA*.⁷⁶

158. In the Tribunal’s view, circumstances could arise where competition with the subject goods is restricted to domestically produced goods that are physically identical in all respects⁷⁷ with those goods, such as in situations where there is a requirement in the market for strict adherence to prescribed product standards or specifications. In these situations, it is reasonable to find that the universe of like goods may necessarily be confined to those identical goods.

75. [1982] 2 F.C. 283 (F.C.) [*Noury*].

76. The issue before the Federal Court of Appeal in *Noury* involved the interpretation of the definition of “like goods” in subsection 2(1) of the former *Anti-dumping Act*. The Tribunal notes, in this regard, that, while that definition did not include a “uses” criterion in paragraph (b), it was otherwise virtually identical to the definition of “like goods” in subsection 2(1) of *SIMA*.

77. Read in light of the Federal Court of Appeal’s decision in *Noury*, the Tribunal is of the view that the phrase “in all respects” in paragraph (b) of the definition of “like goods” in subsection 2(1) of the *SIMA* is in reference to those aspects of domestically produced goods that bear upon competition with the subject goods.

159. In the present case, the fact that the scope of the subject goods was limited to those imports that satisfied the prescribed standards or specifications for goods commonly identified in the trade as piling pipe suggests that the universe of like goods should be limited in a similar manner to those goods that are “identical” to the subject goods by virtue of their conformity to the same (or equivalent) standards and specifications.

160. Indeed, Atlas Tube and DFI both argued that domestically produced piling pipe manufactured to the ASTM A252 specification is identical in all respects to the subject goods and that there is nothing in the record to warrant a search for closely resembling goods under paragraph (b) of the definition of “like goods” found in subsection 2(1) of *SIMA*. Atlas Tube also submitted that the reason for which the definition of like goods in *SIMA* includes closely resembling goods is to allow a complainant access to trade remedies when it does not make identical goods, but makes similar goods which compete with imported goods. It argued that the definition of like goods should be applied in that context. In its reply, Atlas Tube noted that Pipe & Piling and Platinum Grover do not dispute that domestically produced piling pipe is like goods in relation to the subject goods and, in fact, have reported that the goods produced by Atlas Tube are completely substitutable for piling pipe produced in China.⁷⁸

161. At first glance, a conclusion that identical goods exist in this case may appear inconsistent with the Tribunal’s position in *Oil and Gas Well Casing*, where the Tribunal stated that the use of the words “identical in all respects” in the definition of “like goods” under subsection 2(1) of *SIMA* creates a very high standard, and the Tribunal did not accept that goods made to the same specifications were necessarily identical.⁷⁹ However, in Inquiry No. NQ-2010-001,⁸⁰ the Tribunal clarified its view on the issue of identical goods as follows:

... it is unlikely that Parliament would have intended minor differences of an insignificant nature to be sufficient to render goods non-identical. Indeed, to suggest otherwise could lead to unreasonable results, including the overly narrow description of the like goods and the frustration of the remedial effect of anti-dumping and countervailing measures under *SIMA*. In this regard, the Tribunal is of the view that goods will be “identical in all respects” to one another when they are identical in all characteristics of a significant nature. That issue is a question of fact to be determined on a case-by-case basis.⁸¹

162. A review of the evidence filed in this case demonstrates that there are goods produced in Canada which are identical to the subject goods. The responses to the Tribunal’s purchasers’ questionnaire reveal that nearly three quarters of respondents indicated that there is physical (or functional) interchangeability between domestic piling pipe and the subject goods, and the same number of firms indicated that there were never any observed differences between domestically produced steel piling pipe and imported steel piling pipe.⁸² This presents a different factual scenario from that which the Tribunal faced in *Oil and Gas Well Casing*. In that case, the Tribunal’s decision was based in large part on evidence that product quality was an important differentiating factor between the domestically produced goods and the imported goods and that nearly three quarters of responding purchasers indicated that their suppliers were required to be certified or pre-qualified. In this case, all the respondents indicated that they always or usually buy the lowest-priced

78. *Steel Piling Pipe* (3 July 2012), PI-2012-002 (CITT) at para. 63; Tribunal Exhibit NQ-2012-002-01A, Administrative Record, Vol. 1 at para. 41.

79. *Oil and Gas Well Casing* at para. 58.

80. *Greenhouse Bell Peppers* (19 October 2012) (CITT).

81. *Ibid.* at note 16.

82. *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 157, 160.

product, and all or almost all of the respondents indicated that product availability and delivery time were reasons for not purchasing the lowest-priced product. Significantly fewer respondents (just over half) cited product quality as a factor.⁸³ In addition, less than 50 percent of respondents in this case indicated that certification or pre-qualification of suppliers was a requirement.⁸⁴

163. However, even if the previous view is rejected and the Tribunal were to consider whether there are goods that closely resemble the subject goods despite the alleged presence of identical goods, the Tribunal does not consider that carbon steel welded pipe, OCTG, line pipe or standard pipe could be brought within the ambit of like goods through application of the closely resembling uses and characteristics criteria in paragraph (b) of the definition of “like goods” in subsection 2(1) of *SIMA*. In that respect, the Tribunal notes that the arguments advanced by Pipe & Piling and Platinum Grover in favour of expanding the scope of the like goods to include certain carbon steel welded pipe, OCTG, line pipe, standard pipe or other steel pipe products are largely rooted in its interpretation of the definition of the subject goods, which, as the Tribunal has explained above, is flawed.

164. Turning first to the issue of physical characteristics, the evidence on the record indicates that carbon steel welded pipe, OCTG, line pipe and standard pipe undergo certain necessary processes that add to their cost of production and which are not necessary for pipe designed for use as what is commonly identified as piling pipe. On this point, the Tribunal agrees with the submissions of Atlas Tube that casing, tubing and line pipe are certified by the American Petroleum Institute and are subject to stricter testing requirements with respect to finishing, surface, straightness and other physical conditions.

165. The Tribunal also notes that there is evidence which indicates that the only specification designed specifically for piling is ASTM A252.⁸⁵ In addition, casing, tubing and line pipe products have different, more detailed wall thickness requirements and stricter chemical properties, and are required to be heat-treated.⁸⁶ With respect to carbon steel welded pipe, Atlas Tube submitted, and the Tribunal accepts, that piling pipe is generally subject to higher tensile strengths and has thicker walls than other carbon steel welded pipe and that carbon steel welded pipe requires hydrostatic and pressure testing that piling pipe does not require.⁸⁷ The Tribunal also accepts the submissions of Atlas Tube that tubular goods, line pipe and carbon steel welded pipe are generally made in different dimensional ranges and lengths and with different ends (i.e. threaded, coupled or beveled) than piling pipe.⁸⁸

166. With respect to Pipe & Piling and Platinum Grover’s submissions that the range of standards comparable to the ASTM A252 specification includes specifications ASTM A53, ASTM A135, ASTM A589, ASTM A795, ASTM F1083 or Commercial Quality, or AWWA C200-97 or equivalent specifications, the Tribunal notes that the evidence on the record does not support this assertion. Indeed, there is no evidence that steel products supplied to meet those specifications are generally considered as viable substitutes in piling applications. On the contrary, Atlas Tube has filed evidence indicating that OCTG or line pipe or products that meet, for example, specifications A53, A589 or A795 are not acceptable substitutes for pipe that meets the ASTM A252 specification in piling applications.⁸⁹

83. *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 163.

84. *Ibid.* at 166.

85. Tribunal Exhibit NQ-2012-002-26.01A, Administrative Record, Vol. 1.4 at para. 6, Annex A at 87.

86. *Ibid.* at paras. 65-66, 81-85, Annex A.

87. *Ibid.* at paras. 101-104, Annex A.

88. *Ibid.* at paras. 64, 80, 97, 99, 100.

89. Tribunal Exhibit NQ-2012-002-28.01, Administrative Record, Vol. 1.4A at paras. 48-51, Annex B.

167. On the issue of “uses”, the Tribunal agrees with the submissions of Atlas Tube and DFI that, in contrast with piling pipe’s structural applications, casing and tubing are intended to convey oil and gas and that line pipe is intended to convey liquids. In addition, the Tribunal accepts the submissions of DFI and Tenaris that piling pipe is sold through completely different distribution channels.⁹⁰ The additional processing and related higher costs associated with carbon steel welded pipe, OCTG, line pipe and standard pipe clearly indicate that they are designed and intended to compete in the market for higher-end, non-piling applications. That such goods are, in certain circumstances, such as to clear excess inventory or to recoup a part of production costs in the case of “seconds”, diverted to the typically lower-end piling pipe market, does not, in the Tribunal’s view, meet the closely resembling usage criterion in paragraph (b) of the definition of “like goods” in subsection 2(1) of the *SIMA*.

168. Indeed, the Tribunal agrees with the submissions of Atlas Tube that to ascribe a broad interpretation to the notion of closely resembling uses would risk skewing the indicia of injury and depriving domestic producers of a remedy to which they might otherwise be entitled under *SIMA*. For example, an expansion, through an unduly broad interpretation of closely resembling uses, of the definition of “like goods” and, by extension, of the definition of “domestic industry”, could result in the understatement of import penetration figures and the overstatement of overall industry performance during the POI.

169. In short, while *SIMA* does not preclude a definition of “like goods” that is somewhat broader than the scope of the subject goods, the Tribunal, guided by the Federal Court of Appeal’s decision in *Noury*, as well as the need to avoid depriving *SIMA* of its intended remedial effect, is of the view that the definition of “like goods” in this inquiry is necessarily limited to those goods that compete directly rather than by default with the subject goods. In addition, the Tribunal is of the view that the scope of the like goods does not include domestically produced downgraded pipe products and “seconds”, which are not certified to meet a piling pipe standard such as ASTM A252, but may be sold into the piling pipe market and, therefore, compete by default with the like goods.

170. In this regard, the Tribunal notes that, in its case brief, Pipe & Piling argued that the Tribunal determined in its September 20, 2012, decision that these seconds and downgraded pipe products were like goods in relation to the subject goods. This interpretation is incorrect.

171. While the Tribunal’s determination did not specifically address the status of seconds and downgraded pipe products initially made to meet a more stringent specification than, for example, the ASTM A252 specification, the Tribunal stated that the scope of the like goods did not include domestically produced OCTG, line pipe and standard pipe (other than standard pipe supplied to meet ASTM A252 or equivalent specifications), which may be used in piling applications. Thus, in accordance with the Tribunal’s decision, any steel pipe that was not initially supplied to meet the requisite specifications for use in piling applications (i.e. ASTM A252, ASTM A500, CSA G.40.21 or equivalent specifications or standards) does not constitute like goods in relation to the subject goods, even if it may be used in piling applications. The same reasoning applies to seconds or downgraded pipe products. To the extent that such products are not certified to meet the above-noted specifications, they are not like goods in relation to the subject goods.⁹¹

90. Tribunal Exhibit NQ-2012-002-26.02, Administrative Record, Vol. 1.4A at 7; Tribunal Exhibit NQ-2012-002-26.05, Administrative Record, Vol. 1.4A at 1.

91. The Tribunal further notes that, to the extent that seconds or downgraded pipe products are certified or re-certified to meet the ASTM A252 specification or comparable standards, then they can no longer be characterized as seconds or downgraded pipe products and essentially become goods that can be described as piling pipe.

172. In its decision, the Tribunal also stated that the like goods are confined to goods that are “commonly identified as steel piling pipe”. On this issue, the Tribunal finds that there is insufficient evidence to conclude that, as a matter of fact, seconds or downgraded pipe products are “commonly identified as steel piling pipe”.

173. While Pipe & Piling has filed some evidence which suggests that seconds and downgraded pipe may be “. . . sold as ASTM A252 grade piling pipe . . .”,⁹² there is no clear evidence on the record that seconds or downgraded steel pipe are “commonly identified as steel piling pipe”. In his statement of evidence, Mr. Jack Dym merely stated that these products are sold for use as piling pipe.⁹³ The Tribunal finds that this statement is not unequivocal and does not necessarily mean that these products are commonly identified as steel piling pipe in the industry. Something may be sold “for use as piling pipe” without constituting piling pipe *per se*.

174. In addition, the Tribunal accepts Atlas Tube’s argument that merely because a type of product can be substituted for another does not necessarily mean that it is a like good. Substitutability is only one of the many factors that may be relevant in determining whether goods are like goods in relation to one another. In the context of this inquiry, the Tribunal has already determined that factors such as the physical characteristics of goods commonly identified as steel piling pipe, including their conformity with specifications or standards typically associated with piling pipe products, should be given more weight in the analysis of the issue of like goods than factors such as substitutability or end uses.

175. In light of the foregoing, the Tribunal concludes that steel piling pipe produced in Canada, defined in the same manner as the subject goods, constitutes like goods in relation to the subject goods.

176. Moreover, with respect to the goods specifically excluded from the definition of the subject goods because they are covered by the Tribunal’s finding in *CSWP*, the Tribunal notes that they constitute goods that are commonly identified as piling pipe on the basis of the fact that they constitute carbon steel welded pipe supplied to meet ASTM A252 or equivalent specifications. For this reason, domestically produced carbon steel welded pipe that corresponds to the description of the goods excluded from the definition of the subject goods (i.e. carbon steel welded pipe in the nominal size range of 3 1/2 inches up to and including 6 inches (89 mm to 168.3 mm) in outside diameter, in various forms and finishes, usually supplied to meet ASTM A252 or equivalent specifications) constitutes like goods in relation to the subject goods.

177. Turning to the issue of classes of goods, the Tribunal received no submissions during the final injury inquiry stage to challenge the conclusion that it reached during the preliminary injury inquiry that steel piling pipe constitutes a single class of goods. The Tribunal further notes that the parties did not file evidence to persuade the Tribunal to depart from its preliminary determination on this issue. Therefore, on the basis of the evidence before it, the Tribunal finds that steel piling pipe comprises a single class of goods.

Domestic Industry

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

92. Manufacturer’s Exhibit C-02 at para. 21, Administrative Record, Vol. 13; Manufacturer’s Exhibit C-03 (protected) at para. 8, Administrative Record, Vol. 14.

93. Manufacturer’s Exhibit C-03 (protected) at paras. 6-8, 41-43, Administrative Record, Vol. 14.

179. 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.

180. The Tribunal must therefore determine whether there has been injury, or whether there is a threat of injury, to the domestic producers as a whole or those domestic producers whose production represents a major proportion of the total production of like goods.

181. In its preliminary injury inquiry, the Tribunal found that, for the purposes of that inquiry, the domestic industry was comprised of Atlas Tube, Pipe & Piling, DFI, Spirarco, Nova Tube and Evraz. The Tribunal also found that Atlas Tube accounted for a major proportion of the total production of like goods in Canada.

182. In its preliminary injury inquiry, the Tribunal also noted that, to the extent that certain OCTG, line pipe and standard pipe are to be considered like goods in relation to the subject goods, it followed that the domestic producers of such goods would have to be included in the domestic industry for the purposes of the Tribunal’s injury analysis. However, as noted above, the Tribunal has decided against expanding the definition of the like goods to include goods that are not commonly identified as steel piling pipe. Therefore, the domestic producers of certain carbon steel welded pipe, OCTG, line pipe or steel pipe products that may potentially be substituted for steel piling pipe do not form part of the domestic industry for the purposes of this inquiry.

183. Pipe & Piling submitted that the Tribunal does not have sufficient evidence before it concerning domestic production and sale of “seconds” and downgraded pipe sold as piling pipe and does not have any evidence concerning the domestic production of the carbon steel welded pipe excluded from its finding in *CSWP* (i.e. pipe in the nominal size range of 3 1/2 inches up to and including 6 inches, dual-stencilled to meet the requirements of both specification ASTM A252, Grades 1 to 3, and specification API 5L, with bevelled ends in random lengths, for use as foundation piles) and that, therefore, the Tribunal cannot determine whether the production of like goods by Atlas Tube and DFI constitutes a major proportion of the total domestic production of like goods in this inquiry. The Tribunal is unable to accept this argument.

184. With respect to the domestic production of “seconds” and downgraded pipe sold as piling pipe, Pipe & Piling’s argument rests on the premise that the Tribunal determined in its September 20, 2012, decision that these seconds and downgraded pipe products were like goods in relation to the subject goods and that these goods are “commonly identified as steel piling pipe”. However, as previously noted, the Tribunal found that seconds and downgraded pipe products are not like goods in relation to the subject goods. Thus, contrary to Pipe & Piling’s assertions, any domestic production of such seconds or downgraded pipe products does not have to be included in the total domestic production of like goods.

185. With respect to the domestic production of the carbon steel welded pipe excluded from the Tribunal’s finding in *CSWP*, the Tribunal notes that potential producers of such pipe have been canvassed and that there is information on the record concerning the production of such carbon steel welded pipe.⁹⁴

94. *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 201-207.

For this reason, Pipe & Piling's claim that there are other unidentified producers of steel piling pipe that should be included in the definition of the domestic industry is not supported by the evidence on the record.

186. The Tribunal further notes that Pipe & Piling identified itself as both a producer and importer of steel piling pipe. However, it did not argue that it should be treated as a producer of like goods in this inquiry, nor did it provide a response to the producer's questionnaire. In view of these facts, the Tribunal finds that Pipe & Piling is, first and foremost, an importer of steel products, including the subject goods.

187. As indicated in the definition of "domestic industry" in subsection 2(1) of *SIMA*, where a domestic producer is an importer of such goods, that producer may be excluded from the "domestic industry". The Tribunal considers that the fundamental question is whether the domestic producer is essentially a producer of like goods in Canada or, instead, essentially an importer of dumped or subsidized goods.⁹⁵ There is no evidence on the record which suggests that Pipe & Piling is essentially a producer of like goods in Canada. On that basis, the Tribunal finds that it should be excluded from the domestic industry for the purposes of this inquiry.

188. The information on the record indicates that Atlas Tube, DFI, Nova Tube, Atlantic Tube, Evraz and Spiralco are the Canadian producers of like goods. Among the domestic producers, Atlas Tube and DFI, together, represent the vast majority of the total Canadian production.⁹⁶ As Atlas Tube and DFI's collective production constitutes a major proportion of the total domestic production of the like goods, the Tribunal's injury analysis will, where appropriate, focus on the impact of the subject goods on those two large producers.

189. Finally, the Tribunal notes that, at the hearing, Pipe & Piling argued that DFI was not a producer of like goods since its production serves primarily the company's foundation construction and installation services division and is sold in the market by DFI with related installation and engineering services. Indeed, the evidence indicates that DFI's business model is to provide all the materials (including the piling pipe that it produces), labour and equipment required to supply installation services.

190. However, there is no statutory basis to exclude DFI's production from the production of like goods in Canada for the purposes of determining whether the subject goods have caused injury or threaten to cause injury. All production of like goods must be considered. That DFI's production may be sold with related services or as part of contracts for the supply of piling pipe installation services does not change the fact that DFI is a producer of like goods in Canada.

Cross-cumulation

191. As noted above, the Tribunal must determine whether it would be appropriate to assess the cumulative effect of the dumping and subsidizing of the subject goods (i.e. whether to cross-cumulate the injurious effects caused by each). While subsection 42(3) of *SIMA* addresses cumulation, (which refers to the assessment of the effects of the dumping of goods from more than one country, taken together, or of the subsidizing of goods from more than one country, taken together), the legislation does not explicitly address the issue of cross-cumulation.

95. *Cross-Linked Polyethylene Tubing* (29 September 2006), NQ-2006-001 (CITT) at para. 56.

96. *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 172.

192. However, as noted in previous cases,⁹⁷ subsections 37.1(1) and (2) of the *Special Import Measures Regulations*⁹⁸ prescribe certain factors for the Tribunal to consider in making its finding. These factors have, as their focus, the effects that dumped or subsidized goods have had or may have on a number of economic indices.

193. 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 price-related effects. It is the Tribunal's view that, in the conduct of an injury analysis, it is not possible to disentangle and isolate the effects caused by the dumping from the effects caused by the subsidizing. In reality, they are so closely intertwined as to render it impossible to allocate discrete portions to the dumping and the subsidizing respectively.⁹⁹

194. Accordingly, the Tribunal considers it appropriate to cross-cumulate the effects of the dumping and subsidizing of the subject goods in its injury analysis.

INJURY

General Considerations

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

196. Section 37.1 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 the like goods in the domestic market and their resulting impact on the domestic industry. Subsection 37.1(3) also directs the Tribunal to consider factors other than the dumping and subsidizing to ensure that any injury caused by these other factors is not attributed to the dumped and subsidized goods.

197. After having considered all relevant factors, the Tribunal will examine whether any injury suffered by the domestic industry during the POI is "material", as contemplated by section 42 of *SIMA*.¹⁰⁰ In this regard, the Tribunal notes that *SIMA* does not define the term "material". However, the Tribunal considers that both the extent of injury during the relevant time frame and the timing and duration of the injury are relevant considerations in determining whether any injury is "material".¹⁰¹

Preliminary Considerations

198. This inquiry presented the Tribunal with several unique challenges, including the manner in which to assess the alleged injury. The Tribunal will therefore address certain preliminary issues that arose during the inquiry before proceeding to the injury analysis itself.

97. See, for example, *Copper Rod* (28 March 2007), NQ-2006-003 (CITT) at para. 48; *Oil and Gas Well Casing* at para. 76; *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) [*Aluminum Extrusions*] at para. 147.

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

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

100. The term "injury" in section 42 of *SIMA* is defined as "... material injury to a domestic industry" in subsection 2(1).

101. The Tribunal suggested, in *Certain Hot-rolled Carbon Steel Plate* (27 October 1997), NQ-97-001 (CITT) at 13, that the concept of materiality could entail both temporal and quantitative dimensions, i.e.: "However, the Tribunal is of the view that, to date, the injury suffered by the industry has not been *for such a duration* or *to such an extent* as to constitute 'material injury' within the meaning of *SIMA*" [emphasis added].

Regional or National Market

199. Before conducting its analysis of injury to the domestic industry, the Tribunal must clarify what constitutes the production of the domestic industry against which the alleged injury caused by the subject goods is to be measured. The domestic producers' case and, in particular, the submissions of Atlas Tube focused on the impact of the subject goods in Western Canada and on Atlas Tube's performance in that part of the national market.

200. Atlas Tube submitted that it has had limited success in Western Canada, despite its diligent efforts to penetrate that part of the Canadian market, with this being largely due to the influx of the subject goods into that region. According to Atlas Tube, it was able to make sales to only a handful of customers in Western Canada, with these sales being at significantly suppressed and depressed prices. Atlas Tube claimed that, as a result, its performance in Western Canada had been directly and materially injured by the subject goods.

201. For this reason, Atlas Tube presented separate information on production, sales, pricing and financial performance for Western Canada and for Eastern Canada. Atlas Tube further submitted that, while the staff report dealt with the Canadian market as a whole and the domestic industry's financial performance on a Canada-wide basis, the effects of the subject goods must be examined in that part of the national market where they have had the most direct injurious impact, that being Western Canada.

202. Where the requirements of subsections 2(1.1) and 42(5) of *SIMA* are met, an injury inquiry may be conducted on a regional market basis. Given, however, the exceptional nature of a regional market inquiry, stricter thresholds are applicable than in a national market case. The regional market provisions are not intended however to raise the bar for a determination of injury where a dumping or subsidizing complaint is brought on the basis of a national market, even if separate regional markets could be identified within the national market.¹⁰²

203. With the domestic industry having brought its complaint on the basis of a national market, and with the parties agreeing that this is not a regional market case,¹⁰³ the Tribunal will not restrict its injury analysis to the effects of the subject goods in Western Canada, but rather will conduct its analysis on the basis of a national market, even though the injurious effects of the subject goods may have been concentrated in the western part of the Canadian market. In this regard, it is possible for domestic producers to do well in one part of the country and, yet, be injured in another to the material detriment of the industry's production as a whole. Simply put, the question is whether any injury suffered in Western Canada is sufficient to be material to the domestic industry's production of like goods as a whole.

204. On the basis of the above, and albeit the fact that any injury to the domestic industry may have been concentrated in Western Canada, the Tribunal will conduct its injury inquiry on the basis of the broader national market. In this respect, should the Tribunal indeed find that injury was concentrated in the western part of the Canadian market, it will consider these injurious effects in the context of the broader national market for the purpose of assessing the materiality of any such injury to the domestic industry.

102. *Unprocessed Grain Corn* (18 April 2006), NQ 2005-001 (CITT) at paras. 71-74.

103. Tribunal Exhibit PI-2012-002-11.01, Administrative Record in Preliminary Injury Inquiry No. PI-2012-002, Vol. 3 at 16; Tribunal Exhibit PI-2012-002-07.01, Administrative Record in Preliminary Injury Inquiry No. PI-2012-002, Vol. 3 at 12-14.

Reliability of the Staff Report Data

205. Pipe & Piling submitted that the staff report does not accurately reflect the steel piling pipe market, as it does not contain sufficient information on imports of seconds and downgraded pipe sold as piling pipe. Consequently, Pipe & Piling argued that the staff report does not provide reliable, positive evidence upon which the Tribunal can base an injury finding.

206. The Tribunal does not accept Pipe & Piling's arguments.

207. Although it had determined that seconds and downgraded pipe sold as steel piling pipe were not like goods in relation to the subject goods,¹⁰⁴ the Tribunal nevertheless solicited information concerning the importation and domestic production of seconds and downgraded pipe products in its questionnaires. As a result, in response to the Tribunal's domestic producers' questionnaire, the Tribunal received data on domestic purchases, imports, production and sales of seconds and downgraded pipe. In response to the importers' questionnaire, the Tribunal received data on the purchases of seconds and downgraded pipe from import sources.

208. Thus, contrary to Pipe & Piling's assertions that the information contained in the staff report on volumes and prices is unreliable due to its failure to include information on seconds and downgraded pipe, the Tribunal is confident that the data that it collected on these performance metrics are reliable, as they specifically included seconds and downgraded pipe products, as reflected in various tables in the staff report.¹⁰⁵

209. Accordingly, it is the Tribunal's view that the staff report contains ample reliable information on the subject goods and the like goods, as well as seconds and downgraded pipe products, upon which to assess the impact of sales of those products in the steel piling pipe market.

210. The Tribunal notes that the basis for Pipe & Piling's arguments appears to reside in its assertion that Atlas Tube and the CBSA failed to properly identify and define the subject goods at the initiation of CBSA's investigations.¹⁰⁶ In this regard, Pipe & Piling stated the following:

78. Because of the failure to properly identify subject goods, it is impossible to know whether imports of allegedly dumped and subsidized subject goods have had any effect on the price of like goods. As noted above, due to the poor product definition which "failed" to properly define subject goods, it is impossible for the Tribunal to know whether information concerning imports of subject goods was properly identified and collected and, therefore, cannot know whether there has been any price impact.

79. In these circumstances, which are due entirely to the failure of Atlas and the CBSA to properly define subject goods, Pipe & Piling submits that the evidence on the record cannot be relied on to accurately determine whether imported subject goods have any price impact.¹⁰⁷

211. As regards Pipe & Piling's assertion that the data contained in the staff report are unreliable due to the "failure" of the CBSA to properly identify and define the subject goods at the initiation of its

104. Unless these products are re-certified to meet the requirements of the ASTM A252 specification or equivalent specifications.

105. *Protected Pre-hearing Staff Report*, 24 September 2012, Tribunal Exhibit NQ-2012-002-07 (protected), Administrative Record, Vol. 2.1 at 62-69.

106. Importer's Exhibit C-02 at paras. 67-79, Administrative Record, Vol. 13.

107. Importer's Exhibit C-02 at paras. 78-79, Administrative Record, Vol. 13.

investigations and the alleged “. . . vague and imprecise product definition advanced by Atlas and adopted by the CBSA . . .”,¹⁰⁸ the Tribunal is of the view that these arguments seek to re-open a preliminary matter upon which the Tribunal has already rendered its decision, which was communicated to the parties on September 20, 2012. In this regard, the Tribunal’s data on imports of the subject goods cover the goods to which the CBSA’s preliminary determinations apply.

212. Indeed, the data on imports received in response to the Tribunal’s importers’ questionnaire represented approximately 94 percent of all imports of the subject goods examined by the CBSA.¹⁰⁹ Similarly, the respondents to the Tribunal’s purchasers’ questionnaire on market characteristics represented 76 percent of the Canadian steel piling pipe market in 2011.

213. For the reasons stated above, the Tribunal is satisfied that the information contained in the staff report is reliable and provides positive evidence with respect to the steel piling pipe market relevant to the Tribunal’s injury analysis.

Confidential Information

214. The Tribunal notes that, with two domestic producers representing the large majority of domestic production of steel piling pipe, one of which imported steel piling pipe during the POI, and with the bulk of the subject goods being imported by a few major importers, much of the consolidated information on imports and the apparent market for steel piling pipe is confidential in nature.

215. As a result, the Tribunal had to rely heavily on evidence placed on the confidential record in arriving at its conclusions. While confidentiality requirements may limit the degree to which the Tribunal can disclose specific information in its reasons, the relevant confidential information has been referred to throughout the Tribunal’s analysis.

Canadian Market Conditions

216. The Canadian steel piling pipe market is subject to the same economic forces that affect the Canadian industrial and commercial construction industries, particularly in relation to large infrastructure projects in Western Canada. In this regard, demand for steel piling pipe is strongly influenced by pipe installation activity in the oil and gas industry.

217. The global financial crisis of 2008 had a negative impact on the Canadian oil and gas industry and, consequently, on the steel piling pipe market.

108. Importer’s Exhibit C-02 at para. 17, Administrative Record, Vol. 13.

109. *Protected Pre-hearing Staff Report*, 24 September 2012, Tribunal Exhibit NQ-2012-002-07 (protected), Administrative Record, Vol. 2.1 at 53; Tribunal Exhibit NQ-2012-002-05 (protected), Administrative Record, Vol. 2 at 23.22; Tribunal Exhibit NQ-2012-002-19.06 (protected), Administrative Record, Vol. 6 at 22; Tribunal Exhibit NQ-2012-002-19.17A (protected), Administrative Record, Vol. 6A at 2; Tribunal Exhibit NQ-2012-002-19.17E (protected), Administrative Record, Vol. 6A at 632; Tribunal Exhibit NQ-2012-002-19.21A (protected), Administrative Record, Vol. 6B at 39, 40, 55; Tribunal Exhibit NQ-2012-002-19.20A (protected), Administrative Record, Vol. 6A at 110-11; Tribunal Exhibit NQ-2012-002-19.24 (protected), Administrative Record, Vol. 6B at 125; Tribunal Exhibit NQ-2012-002-19.24A (protected), Administrative Record, Vol. 6B at 149.

218. As a result of the recession in Canada, which began in 2008, and the generally negative spending trends in the oil and gas construction and extraction industry,¹¹⁰ the market for steel piling pipe contracted by 21 percent, from 2009 to 2010, to reach its lowest level during the POI in 2010.¹¹¹

219. Planned and forecasted investments in the construction and extraction sectors of the oil and gas industry were expected to increase in 2010, and then onwards to at least 2013.¹¹²

220. To date, these forecasts have proven to be relatively accurate and indeed, following the rebound in spending in the oil and gas construction and extraction industry in 2010, the steel piling pipe market improved significantly, increasing by 156 percent in 2011, for a net overall increase of 101 percent between 2009 and 2011.¹¹³

221. In line with the forecasts for increased investment and expenditure in 2011 and 2012, the steel piling pipe market continued to improve through the first half of 2012, increasing by 92 percent over the same period in 2011.¹¹⁴

222. During the hearing, the Tribunal heard testimony from all witnesses present, corroborating these trends in the Canadian steel piling pipe market. In particular, the Tribunal heard that the steel piling pipe market grew significantly in 2011 and the first half of 2012, with the expectation of continued growth in 2013.¹¹⁵

Volume of Imports of Dumped and Subsidized Goods

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

224. The domestic industry submitted that the subject goods had entered Canada in dramatically increasing volumes since 2009.¹¹⁶ In particular, DFI argued that there was a “surge” in imports of the subject goods in 2011 and in early 2012.¹¹⁷ Atlas Tube submitted that the evidence before the Tribunal indicated that there was an increase in import volumes of the subject goods both in absolute terms and

110. In this regard, the Tribunal notes that the effect of spending in the oil and gas construction and extraction industry is not instantaneous and can take some time to filter through to the steel piling pipe market. Therefore, the negative spending pattern in the oil and gas construction and extraction industry prior to 2009 manifested itself in a contraction in the steel piling pipe market in 2009-2010.

111. *Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-06A, Administrative Record, Vol. 1.1 at 175.

112. *Ibid.* at 169; Manufacturer’s Exhibit A-09 at 151, Administrative Record, Vol. 11A; Tribunal Exhibit NQ-2012-002-15.02, Administrative Record, Vol. 3 at 48, 58, 63; Tribunal Exhibit PI-2012-002-02.01, Administrative Record in Preliminary Injury Inquiry No. PI-2012-002, Vol. 1 at 222, 226, 227, 241-42, 254, 256, 276; *Transcript of Public Hearing*, Vol. 1, 29 October 2012, at 210-11.

113. *Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-06A, Administrative Record, Vol. 1.1 at 175.

114. *Pre-hearing Staff Report*, 24 September 2012, Tribunal Exhibit NQ-2012-002-06, Administrative Record, Vol. 1.1 at 55.

115. *Transcript of Public Hearing*, Vol. 1, 29 October 2012, at 210-11; *Transcript of Public Hearing*, Vol. 3, 30 October 2012, at 351.

116. Manufacturer’s Exhibit A-01 at para. 2, Administrative Record, Vol. 11.

117. Manufacturer’s Exhibit B-01 at para. 8, Administrative Record, Vol. 11B.

relative to the production and consumption of the like goods over the POI.¹¹⁸ Atlas Tube added that, since 2011, the dumped and subsidized goods have dominated the western part of the Canadian market, where the largest volume of steel piling pipe was being sold.¹¹⁹

225. The three importers present at the hearing, i.e. Pipe & Piling, Skyline P.H.P. Canada ULC/SRI, a Nucor Company (Skyline) and Varsteel, confirmed the above-described market trends.¹²⁰ Varsteel testified that, to its knowledge, imports of the subject goods increased over the POI to capture over 100,000 metric tonnes (MT) of an estimated market of 150, 000 MT in 2011.¹²¹

226. Pipe & Piling stated that it would not dispute the evidence on the record in respect of the volume or pricing of the subject goods.¹²² In oral testimony, Pipe & Piling indicated that it imported significant quantities of the subject goods during the POI and that its imports increased significantly in 2011 and continued at these elevated levels in 2012.¹²³

227. The evidence on the record shows that the subject goods accounted for nearly all imports of steel piling pipe during the POI.¹²⁴

228. The evidence on the record also shows that imports of the subject goods generally followed the same trends as the Canadian market for steel piling pipe over the POI, albeit with more pronounced decreases and increases. In particular, after decreasing by 44 percent in 2010, imports of the subject goods increased by a staggering 467 percent in 2011, for a net overall increase of 220 percent between 2009 and 2011. In the first half of 2012, imports of the subject goods increased by 21 percent compared to the same period in 2011.¹²⁵ From these data, the Tribunal concludes that there was a significant absolute increase in the volume of the subject goods over the POI.

229. The Tribunal also observes that, as the oil and gas industry recovered over the POI and conditions improved in the steel piling pipe industry, large importers, such as Pipe & Piling, Varsteel and Platinum Grover, increased their volumes of imports of the subject goods, particularly in 2011. This contributed to a significant increase in the share of the domestic market held by the subject goods in that year,¹²⁶ with the evidence on the record confirming that the subject goods were highly concentrated in Western Canada.¹²⁷

230. Despite the substantial growth in the Canadian market for steel piling pipe over the POI, domestic production of the like goods remained relatively stable between 2009 and 2011, before increasing significantly in the first half of 2012.¹²⁸ The evidence shows that, between 2009 and 2011, the import volume of the subject goods increased by more than threefold (186 percentage points) relative to the volume

118. Manufacturer's Exhibit A-01 at paras. 87-90, Administrative Record, Vol. 11.

119. Manufacturer's Exhibit A-01 at para. 2, Administrative Record, Vol. 11.

120. *Transcript of Public Hearing*, Vol. 1, 29 October 2012, at 133, 194; *Transcript of Public Hearing*, Vol. 2, 30 October 2012, at 214, 228-29; *Transcript of Public Hearing*, Vol. 3, 31 October 2012, at 359-60.

121. *Transcript of Public Hearing*, Vol. 2, 30 October 2012, at 214.

122. *Ibid.* at 363-66.

123. *Transcript of In Camera Hearing*, Vol. 3, 31 October 2012, at 200-201.

124. *Protected Pre-hearing Staff Report*, 24 September 2012, Tribunal Exhibit NQ-2012-002-07 (protected), Administrative Record, Vol. 2.1 at 49.

125. *Ibid.*

126. *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 176.

127. *Ibid.* at 190.

128. *Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-06A, Administrative Record, Vol. 1.1 at 172; *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 172; *Protected Pre-hearing Staff Report*, 24 September 2012, Tribunal Exhibit NQ-2012-002-07 (protected), Administrative Record, Vol. 2.1 at 49.

of domestic production of the like goods.¹²⁹ However, in the first half of 2012, the ratio of imports of the subject goods to the domestic production of the like goods fell by 111 percentage points, as the volume of domestic production increased by a much greater extent than did the import volume of the subject goods.¹³⁰

231. From 2009 to 2011, there was a corresponding increase in imports of the subject goods relative to domestic consumption, with the ratio of the volume of imports of the subject goods to domestic consumption also increasing by more than threefold (218 percentage points).¹³¹ In the first half of 2012, this ratio decreased by 161 percentage points, as domestic consumption (i.e. domestic sales from domestic production) increased, while imports of the subject goods decreased.¹³²

232. In light of the evidence before it, the Tribunal finds that there was a significant increase in the volume of imports of the subject goods, both in absolute terms and relative to the production and consumption of the like goods.

Effects of Dumped and Subsidized Imports on Prices

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

234. Atlas Tube alleged that the few sales that it was able to make in Western Canada were at depressed and suppressed prices, and that the price suppression occurred in particular with regard to its sales to distributors.¹³³

235. DFI also submitted that the prices at the distributor level had been suppressed, but acknowledged that prices at the end user level had increased with market demand in 2011 and 2012.¹³⁴ Furthermore, DFI submitted that, because its installation division sells directly to end users, its prices for steel piling pipe "... are not reflective of the wholesale (or merchant) market prices of other domestic producers or importer/distributor prices to regional distributors or contractors."¹³⁵

236. DFI submitted that the evidence on the record shows that the selling prices of the subject goods to end users were below its selling prices to end users in all but one period of the POI.¹³⁶

129. *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 172; *Protected Pre-hearing Staff Report*, 24 September 2012, Tribunal Exhibit NQ-2012-002-07 (protected), Administrative Record, Vol. 2.1 at 49.

130. *Ibid.*

131. *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 174; *Protected Pre-hearing Staff Report*, 24 September 2012, Tribunal Exhibit NQ-2012-002-07 (protected), Administrative Record, Vol. 2.1 at 49.

132. *Pre-hearing Staff Report*, 24 September 2012, Tribunal Exhibit NQ-2012-002-06, Administrative Record, Vol. 1.1 at 49; *Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-06A, Administrative Record, Vol. 1.1 at 174.

133. Manufacturer's Exhibit A-01 at para. 4, Administrative Record, Vol. 11; Manufacturer's Exhibit A-01 at paras. 103-4, Administrative Record, Vol. 11.

134. Manufacturer's Exhibit B-01 at para. 4, Administrative Record, Vol. 11B.

135. Manufacturer's Exhibit B-03 at para. 10, Administrative Record, Vol. 11B.

136. Manufacturer's Exhibit B-01 at para. 11, Administrative Record, Vol. 11B.

237. The Tribunal also heard that Varsteel began purchasing steel piling pipe from Atlas Tube three to four years ago.¹³⁷ In oral testimony, Varsteel explained that, during the POI, the company began to actively source steel piling pipe from China due to the low cost of imports of the subject goods.¹³⁸ Indeed, the witness for Varsteel stated that, in the first half of 2012, China was the company's main source of imported steel piling pipe.¹³⁹

238. Although Pipe & Piling did not dispute the evidence on the record in respect of the pricing of imports of the subject goods, it contested the assertions of the domestic industry that the subject goods were the lowest-priced product in the steel piling pipe market.¹⁴⁰ Pipe & Piling submitted that seconds and downgraded pipe, which were present in the Canadian market in significant volumes, were the price leaders in the market and competed directly with the like goods and the subject goods.¹⁴¹ In support of its position, Pipe & Piling provided evidence of purchases of seconds and/or downgraded pipe at significantly lower prices than the average selling prices of the subject goods.¹⁴²

239. The domestic producers, as well as two importers, Varsteel and Skyline, disagreed with Pipe & Piling and argued that its assertions were not substantiated by the evidence. Varsteel and Skyline submitted that the subject goods were the price leaders in the market.¹⁴³ Varsteel argued that the low prices of the subject goods were the main reason for which steel piling pipe imported from China dominated the market in Western Canada.¹⁴⁴

240. Varsteel and Skyline both added that seconds and downgraded pipe represented only a fraction of the steel piling pipe market and were therefore not significant enough to influence the prices of steel piling pipe in Canada.¹⁴⁵ Skyline testified that seconds and downgraded pipe constituted a small factor in the steel piling pipe market, given their small volumes and intermittent availability. Consequently, according to Skyline and Varsteel, seconds and downgraded pipe could not have had the same overwhelming price impact as the subject goods.¹⁴⁶

241. Before the Tribunal begins its analysis of the evidence of the adverse price effects of the subject imports (i.e. price undercutting, price depression and price suppression), it will first consider submissions relating to the price sensitivity of steel piling pipe and price leadership in the Canadian market.

137. *Transcript of Public Hearing*, Vol. 2, 30 October 2012, at 236-37.

138. *Ibid.* at 211.

139. *Ibid.* at 228-29.

140. *Transcript of Public Hearing*, Vol. 3, 31 October 2012, at 363-64, 366.

141. Importer's Exhibit C-04 at paras. 40-47, Administrative Record, Vol. 13; Importer's Exhibit C-02 at paras. 84-88, Administrative Record, Vol. 13.

142. Importer's Exhibit C-03 (protected) at paras. 40-44, Administrative Record, Vol. 14.

143. Manufacturer's Exhibit A-07 at para. 15, Administrative Record, Vol. 11; Manufacturer's Exhibit A-05 at para. 4, Administrative Record, Vol. 11.

144. Manufacturer's Exhibit A-07 at para. 15, Administrative Record, Vol. 11.

145. Manufacturer's Exhibit A-05 at paras. 30-31, Administrative Record, Vol. 11; Manufacturer's Exhibit A-07 at para. 7, Administrative Record, Vol. 11; *Transcript of Public Hearing*, Vol. 1, 29 October 2012, at 136-37; *Transcript of Public Hearing*, Vol. 2, 30 October 2012, at 215.

146. *Transcript of Public Hearing*, Vol. 2, 30 October 2012, at 215; Manufacturer's Exhibit A-05 at paras. 30-31, Administrative Record, Vol. 11; Manufacturer's Exhibit A-07 at para. 7, Administrative Record, Vol. 11; *Transcript of Public Hearing*, Vol. 1, 29 October 2012, at 136-37.

Price-sensitivity of Steel Piling Pipe

242. The domestic industry submitted that steel piling pipe is a fungible, commodity-like product for which price is usually the principal factor influencing purchasing decisions.

243. Atlas Tube submitted that, because steel piling pipe is produced to established specifications (such as ASTM 252), purchasing decisions are sensitive to price, with the lowest price offer almost always winning the sale.¹⁴⁷ Testimony by Skyline and Varsteel supported these views.¹⁴⁸ Skyline further described steel piling pipe as a “generic” “commodity-like” product where “brand” is not a significant market driver.¹⁴⁹

244. Pipe & Piling countered that steel piling pipe is not simply a commodity bought and sold solely on the basis of price and that other factors influence purchasing decisions, such as the reputation of the supplier, service, reliability of supply and quality of the product.¹⁵⁰

245. The Tribunal recognizes that, in terms of pricing and substitutability, the market, on the whole, tends to treat steel piling pipe, a product produced to recognized specifications, as a commodity-like product that is fully interchangeable regardless of source.

246. However, the Tribunal also accepts that price is not the only factor considered by purchasers when purchasing the subject goods or the like goods.

247. While the responses to the Tribunal’s purchasers’ questionnaire on market characteristics are consistent with the view that price is a major factor in purchasing decisions (with seven of the nine respondents indicating that the lowest price was a “very important” factor in a buyer’s decision), other factors, such as technical specifications and reliability of supply, were also considered “very important” by all respondents.¹⁵¹ All purchasers indicated that they “always” or “usually” purchase the lowest-priced steel piling pipe product.¹⁵²

248. Witness testimony supported the claim that, while price may not be the most important factor, it was a major factor in the purchasing decision of steel piling pipe.¹⁵³

249. Notwithstanding the importance of price in steel piling pipe purchasing decisions, the evidence collected through the purchasers’ questionnaire on market characteristics suggested a reluctance on the part of purchasers to switch suppliers in response to small differences in price. The Tribunal notes that only one quarter of questionnaire respondents indicated that a price difference of 5 percent would be sufficient to

147. Manufacturer’s Exhibit A-01 at para. 107, Administrative Record, Vol. 11; *Transcript of Public Hearing*, Vol. 1, 29 October 2012, at 60-61.

148. *Transcript of Public Hearing*, Vol. 1, 29 October 2012, at 164; Manufacturer’s Exhibit A-07 at paras. 15, 22, Administrative Record, Vol. 11.

149. *Transcript of Public Hearing*, Vol. 2, 30 October 2012, at 137-38.

150. Importer’s Exhibit C-02 at para. 89, Administrative Record, Vol. 13.

151. Additional factors considered “very important” are delivery times and terms, quality and experience with suppliers. *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A, Administrative Record, Vol. 2.1 at 159.

152. *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 163.

153. *Transcript of Public Hearing*, Vol. 1, 29 October 2012, at 60-61, 164-67.

make them switch suppliers.¹⁵⁴ Half of questionnaire respondents indicated that it would take a price difference of 20 percent or more for them to switch suppliers, while another 25 percent of the respondents indicated that price would never be a primary factor in choosing a supplier.¹⁵⁵

250. The Tribunal recognizes that non-price factors, such as service, reputation and reliability of the supplier, may play a more prominent role in the purchasing decisions of end users. However, for sales to distributors, the principal trade level at which the subject goods enter the Canadian market, purchasing decisions tend to be more price sensitive.

251. On the basis of the foregoing, the Tribunal finds that steel piling pipe is a commodity-like product which is sensitive to price. In this regard, price is a key criterion used in purchasing decisions, although product quality, reliability of supply and technical specifications are also important factors considered by purchasers.

Price leadership in the Canadian market

252. The Tribunal also considered the assertions made by Pipe & Piling that seconds and downgraded pipe were in fact the price leaders in the Canadian steel piling pipe market.

253. The Tribunal notes that the evidence provided by Pipe & Piling with regard to the presence of seconds and downgraded pipe in the Canadian market covers a very small volume of purchases within a narrow window of a few days in 2012, making comparisons with other data on the record very difficult and inconclusive.

254. As indicated earlier, the Tribunal heard witness testimony to the effect that seconds and downgraded pipe products typically enter the steel piling pipe market on an intermittent basis and at a lower cost than the subject goods and the like goods, but that, due to their small volumes, they had no significant impact on the market price of the subject goods and like goods.¹⁵⁶

255. The evidence on the record confirms that seconds and downgraded pipe are often sold in the Canadian market, to maximize their salvage value, at prices that are lower than those of steel piling pipe.¹⁵⁷

154. *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 164.

155. *Ibid.*

156. Manufacturer's Exhibit A-05 at paras. 30-31, Administrative Record, Vol. 11.

157. *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 188; *Protected Pre-hearing Staff Report*, 24 September 2012, Tribunal Exhibit NQ-2012-002-07 (protected), Administrative Record, Vol. 2.1 at 68.

256. The Tribunal compared the average unit purchase price of the subject goods with the average unit selling price of domestically produced seconds and downgraded pipe.¹⁵⁸ This comparison showed that the average unit selling price of seconds and downgraded pipe was lower than the average unit purchase price of the subject goods in 2009 and 2010, but higher than the average unit purchase price of the subject goods in 2011 and the first half of 2012.

257. Notwithstanding the evidence of lower prices for seconds and downgraded pipe in 2009 and 2010, the Tribunal notes that the volumes of these goods, particularly in direct competition with the subject goods, were quite low.¹⁵⁹ Given these low volumes and the inherently sporadic and unpredictable supply of seconds and downgraded pipe, the Tribunal is not convinced that these goods had any significant impact on price in the domestic market for steel piling pipe. Indeed, as discussed above, the evidence and witness testimony, other than those of Pipe & Piling, point to the subject goods being the price leaders in the steel piling pipe market.

258. On the basis of the foregoing, the Tribunal is of the view that the subject goods, as the price leaders, drive the prices in the steel piling pipe market.

259. The Tribunal will next examine the prices of the subject goods and their impact on the prices of the like goods during the POI.

Price Undercutting

260. The Tribunal began its examination of the evidence on the record to determine if the prices of the subject goods undercut those of the like goods during the POI by comparing the average unit selling prices of the subject goods with the average unit selling prices of the like goods in the steel piling pipe market.

261. The data indicate that the prices of the subject goods undercut the prices of the like goods in each period of the POI. The margin of price undercutting of the subject goods was 24 percent in 2009, 18 percent in 2010, 23 percent in 2011 and 25 percent in the first half of 2012.¹⁶⁰

262. The Tribunal also notes that five out of eight respondents to the purchasers' questionnaire on market characteristics reported that steel piling pipe imported from China was available at lower prices than domestic steel piling pipe.¹⁶¹

158. The Tribunal compared the average unit purchase price of the subject goods (calculated as the weighted average of the net delivered purchase value of the subject goods imported by distributors and the net delivered selling price of the subject goods by importer-traders to distributors) to the average unit selling price of seconds and downgraded pipe (calculated as the weighted average net delivered selling price of seconds and downgraded pipe from domestic production). As discussed below, this comparison reflects competition at the distributor trade level. *Protected Pre-hearing Staff Report*, 24 September 2012, Tribunal Exhibit NQ-2012-002-07 (protected), Administrative Record, Vol. 2.1 at 68; *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 213.

159. The Tribunal notes that, in response to the purchasers' questionnaire on market characteristics, firms indicated that they had purchased a significant volume of seconds and downgraded pipe in 2011. However, a significant portion of these purchases were made by a distributor in Eastern Canada. In its questionnaire response, this company indicated no knowledge of the subject goods. Tribunal Exhibit NQ-2012-002-25.10, Administrative Record (protected), Vol. 6.2B at 85, 119; *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 155; *Protected Pre-hearing Staff Report*, 24 September 2012, Tribunal Exhibit NQ-2012-002-07 (protected), Administrative Record, Vol. 2.1 at 62.

160. *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 180.

161. *Ibid.* at 161.

263. To evaluate the nature of the price undercutting more thoroughly, the Tribunal examined it at both the distributor and end-user trade levels.

264. Evidence on the record indicates that competition at the distributor trade level takes place primarily between sales of like goods by Atlas Tube and imports of the subject goods by distributors themselves.¹⁶² In fact, the Tribunal notes that Atlas Tube is the major domestic supplier to distributors and that distributors constitute its primary customer base.¹⁶³

265. In view of the above, the Tribunal considers that the appropriate (apples to apples) comparison to assess price undercutting at the distributor trade level is between the net delivered selling prices of the like goods to distributors and distributors' net delivered purchase costs of the subject goods.¹⁶⁴

266. This comparison shows that distributors' net purchase costs of the subject goods were consistently below the net delivered selling prices of the like goods during the POI. Indeed, the price undercutting of the subject goods increased continuously, from approximately 7 percent in 2009 to 13 percent in 2010, to 15 percent in 2011 and to almost 20 percent in the first half of 2012.¹⁶⁵

267. At the end-user trade level, evidence on the record indicates that DFI competes largely with distributors selling the subject goods. DFI submitted that virtually all of its sales were to end users during the POI.¹⁶⁶ The evidence also shows that Atlas Tube made some small volume sales of steel piling pipe to end users during the POI.¹⁶⁷

268. The Tribunal assessed price undercutting at the end-user trade level by comparing the selling prices of the like goods to the selling prices of the subject goods.

269. This analysis indicated that the selling prices of the subject goods by distributors to end users undercut the selling prices of the like goods to end users by a relatively consistent margin in each period of the POI. In this regard, the price undercutting was approximately 33 percent in 2009, 26 percent in 2010, 30 percent in 2011 and 28 percent in the first half of 2012.¹⁶⁸

270. The Tribunal also examined the pricing information that it gathered for specific "benchmark" products that are representative of the product range and data on sales to common accounts. However, because the Tribunal received limited pricing information for the benchmark products and sales to common

162. *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 182, 212; Tribunal Exhibit NQ-2012-002-16.02A (protected), Administrative Record, Vol. 4 at 58.

163. *Transcript of Public Hearing*, Vol. 1, 29 October 2012, at 117-18; Tribunal Exhibit NQ-2012-002-16.02A (protected), Administrative Record, Vol. 4 at 38, 58; *Transcript of Public Hearing*, Vol. 1, 29 October 2012, at 147.

164. The Tribunal compared the net delivered purchase cost of the subject goods (calculated as the weighted average of the net delivered purchase value of the subject goods imported by distributors and the net delivered selling price of the subject goods by importer-traders to distributors) to the net delivered selling price of the like goods to distributors by domestic producers.

165. *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 188, 213.

166. Manufacturer's Exhibit B-03 at para. 10, Administrative Record, Vol. 11B; Tribunal Exhibit NQ-2012-002-16.04 (protected), Administrative Record, Vol. 4A at 30, 50.

167. Tribunal Exhibit NQ-2012-002-16.02A (protected), Administrative Record, Vol. 4 at 38, 58.

168. *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 188, 213.

accounts, it was unable to draw any definitive conclusions from these benchmark products or data on sales to common accounts.

271. Finally, the Tribunal considered the evidence regarding the account-specific injury allegations lodged by the domestic industry in this inquiry.

272. The information shows that, of the 22 injury allegations made by Atlas Tube,¹⁶⁹ in the few instances where Atlas Tube provided competing price information for injury allegations respecting sales to distributors, the price of the subject goods was between 3 percent and 18 percent lower than that offered by Atlas Tube. For injury allegations in respect of end-user accounts, the price of the subject goods undercut Atlas Tube's prices by an average of 4 percent.

273. The Tribunal notes that several of these injury allegations were refuted by Pipe & Piling during the *in camera* session.¹⁷⁰ The Tribunal accepts the arguments put forward by Pipe & Piling in respect of those allegations. However, the Tribunal has carefully examined the remainder of the uncontested injury allegations and notes the extent of price undercutting by the subject goods in those injury allegations.

274. On the basis of the foregoing, the Tribunal is of the view that the evidence demonstrates significant price undercutting of the subject goods during the POI, including at the distributor and the end-user trade levels.

– Price Depression

275. Having determined that the prices of the subject goods undercut those of the like goods during the POI, the Tribunal will next examine whether the undercutting depressed the prices of the like goods (i.e. caused the prices of the like goods to decline).

276. The Tribunal observes that, at the aggregate level, the unit selling price of sales from domestic production demonstrated some price variability from 2009 to 2011, decreasing by 4 percent in 2010 and then increasing by 8 percent in 2011, for a net increase of 4 percent between 2009 and 2011.¹⁷¹ The unit selling price of the like goods increased by 20 percent in the first half of 2012 compared to the same period in 2011, for a net increase of about 17 percent over the POI.¹⁷²

277. Therefore, although the evidence shows that there was price undercutting throughout the POI, average domestic selling prices only decreased in 2010. In fact, in 2011 and the first half of 2012, the prices of the like goods increased at a higher rate than did the prices of the subject goods.

278. The Tribunal notes that the negative effects of decreased demand in 2010, a time of market contraction, may also have had a negative impact on selling prices. However, the Tribunal further notes that the domestic industry likely benefited, to some extent, from the increased investment and spending in the oil

169. Tribunal Exhibit PI-2012-002-03.01 (protected), Administrative Record in Preliminary Injury Inquiry No. PI-2012-002, Vol. 2 at 84-86; Manufacturer's Exhibit A-02 (protected) at 42-46, Administrative Record, Vol. 12; Tribunal Exhibit NQ-2012-002-16.02A (protected), Administrative Record, Vol. 12 at 176-209; Manufacturer's Exhibit A-10 (protected), tab 2 at 9-31, Administrative Record, Vol. 12.

170. Importer's Exhibit C-03 (protected) at paras. 51-56, Administrative Record, Vol. 14; *Transcript of In Camera Hearing*, Vol. 3, 31 October 2012, at 169-71.

171. *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 181.

172. *Ibid.*

and gas industry over the POI. In this respect, the evidence clearly indicates that the positive effects of the increased demand for steel piling pipe filtered through to domestic producers in the form of higher selling prices in 2011 and the first half of 2012.

279. At the distributor trade level, the evidence shows that the unit selling price of sales from domestic production to distributors increased continuously over the POI, by 6 percent in 2010 and by 12 percent in 2011, for a net increase of 18 percent between 2009 and 2011.¹⁷³ The selling prices of the like goods at this trade level increased again, by almost 7 percent, in the first half of 2012.¹⁷⁴

280. Therefore, the Tribunal is of the view that the evidence does not indicate price depression at the distributor trade level.

281. At the end-user trade level, the unit selling price of sales from domestic production to end users decreased by 6 percent in 2010 and then increased by 7 percent in 2011, for a net increase between 2009 and 2011 of less than 1 percent. The selling prices of the like goods then increased again, by 14 percent, in the first half of 2012.¹⁷⁵

282. The results at the end-user trade level are the same as for the aggregate level, i.e. the only year of the POI in which there may have been price depression is 2010.

283. On the basis of the evidence before it, the Tribunal finds that, although there was significant price undercutting by the subject goods throughout the POI, this undercutting did not result in significant price depression.

– Price Suppression

284. To assess the extent of price suppression, the Tribunal compared the changes in the domestic industry's average unit cost of goods manufactured to the changes in the average unit selling price of the like goods.

285. The information on the record in respect of the consolidated cost of goods manufactured shows that the average unit cost of goods manufactured decreased by 6 percent in 2010 and increased by 11 percent in 2011, for a net increase of less than 5 percent between 2009 and 2011.¹⁷⁶ The cost of goods manufactured then increased again by 6 percent in the first half of 2012 compared to the same period in 2011.¹⁷⁷

286. By comparison, as noted above, the average unit selling price of sales from domestic production decreased by 4 percent in 2010 and then increased by 8 percent in 2011, for a net increase of 4 percent

173. *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 188-89.

174. *Ibid.*

175. *Ibid.*

176. *Protected Pre-hearing Staff Report*, 24 September 2012, Tribunal Exhibit NQ-2012-002-07 (protected), Administrative Record, Vol. 2.1 at 105.

177. *Ibid.*

between 2009 and 2011.¹⁷⁸ The average unit selling price of the like goods increased by 20 percent in the first half of 2012 compared to the same period in 2011.¹⁷⁹

287. On the basis of these trends in average cost of goods manufactured and those in average domestic selling prices discussed above, it is difficult to conclude that the domestic industry suffered price suppression.

288. The Tribunal also considered whether there was price suppression at the distributor and end-user trade levels.

289. As noted above, because of the strength of the market for steel piling pipe, prices for sales from domestic production to distributors improved in 2011 and again in the first half of 2012. However, the rate of price increase for the like goods slowed significantly, as price undercutting by the subject goods increased.¹⁸⁰

290. In contrast, at the end-user trade level, although the subject goods also undercut the prices of the like goods, the extent of undercutting remained relatively constant over the POI. Consequently, the rate of price increase for the like goods did not slow in 2011 and in the first half of 2012.¹⁸¹

291. The Tribunal is therefore of the view that the increasing price undercutting by the subject goods on domestic sales to distributors may have suppressed the prices of those goods, in that domestic producers may have been able to increase their prices further had the price undercutting by the subject goods not been increasing. However, the evidence is less convincing with respect to sales to end users, as the more constant price undercutting may not have limited potential price increases for the like goods to end users in the same way as for sales to distributors.

292. On the basis of the evidence before it, the Tribunal finds that, although there was significant price undercutting by the subject goods during the POI, this undercutting did not result in significant price suppression.

Conclusion

293. On the basis of its analysis of the pricing factors prescribed by *SIMA*, the Tribunal finds that the prices of the subject goods significantly undercut the prices of the like goods over the POI. The Tribunal finds however that this price undercutting did not significantly depress or significantly suppress the price of the like goods.

Impact of Imports of the Subject Goods on the Domestic Industry

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

178. *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 180-81.

179. *Ibid.*

180. *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 188-89, 213.

181. *Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-06A, Administrative Record, Vol. 1.1 at 189, 213.

295. Atlas Tube submitted that capital investment and construction activity in the mining and oil and gas industries, particularly in Western Canada, have increased the market for steel piling pipe in that region to an estimated 150,000 MT in 2011 and are expected to expand further in 2012.¹⁸² According to Atlas Tube, notwithstanding its diligent efforts to penetrate this market since 2009, it has largely been shut out because of the aggressive pricing of the subject goods.¹⁸³

296. To demonstrate the negative effects that the subject goods had on Atlas Tube's financial performance over the POI and to substantiate its claims of price undercutting, price depression and price suppression, Atlas Tube provided an Eastern Canada versus Western Canada comparison of its financial performance on sales of 6.625-inch to 16-inch steel piling pipe.¹⁸⁴ Atlas Tube also provided a total of 22 specific examples of alleged injury.

297. On a national basis, Atlas Tube submitted that, while its net income from sales of steel piling pipe improved over the POI, these financial results were not indicative of the actual material injury that it suffered during that period. In this respect, Atlas Tube claimed that the real impact of the subject goods could only be assessed through an Eastern Canada versus Western Canada comparison.¹⁸⁵

298. In this regard, Atlas Tube submitted that its net revenues on sales to Western Canada were better than its net revenues in Eastern Canada in 2009. However, in 2010 and onward, average unit net revenues increasingly diverged, with results being much lower in Western Canada. Consequently, its average unit gross margins on sales to Western Canada were lower than for Eastern Canada in 2011 and the first half of 2012.¹⁸⁶

299. Atlas Tube submitted that its average net income per unit showed a similar divergence by region. In particular, while its average net income per unit was negative for both regions in 2009 and 2010, it was positive on sales in Eastern Canada in 2011 and the first half of 2012, but remained negative in Western Canada.¹⁸⁷ Atlas Tube alleged that the difference in average net income per unit between Eastern Canada and Western Canada caused a significant loss of income.¹⁸⁸

300. Atlas Tube submitted that the difficulty that it experienced in growing its sales in the rapidly expanding market for steel piling pipe in Western Canada had led to an underutilization of production capacity, with lower production volumes, in turn resulting in lower employment.¹⁸⁹

301. DFI submitted that domestic producers were unable to share in the market growth of 2011 and 2012, with DFI's sales from domestic production being lower in 2011 than in 2009 and with increasingly large volumes of Chinese steel piling pipe having had a serious impact on DFI's business in 2011.¹⁹⁰

182. Manufacturer's Exhibit A-01 at para. 117, Administrative Record, Vol. 11.

183. Manufacturer's Exhibit A-01 at para. 4, Administrative Record, Vol. 11.

184. Manufacturer's Exhibit A-10 (protected), tab 1 at 5-7, Administrative Record, Vol. 12.

185. Manufacturer's Exhibit A-01 at paras. 121-22, Administrative Record, Vol. 11.

186. Manufacturer's Exhibit A-02 (protected) at paras. 126-27, Administrative Record, Vol. 12.

187. Manufacturer's Exhibit A-02 (protected) at 53, 54, Administrative Record, Vol. 12.

188. Manufacturer's Exhibit A-02 (protected) at paras. 128-31, Administrative Record, Vol. 12.

189. Manufacturer's Exhibit A-02 (protected) at paras. 132-33, Administrative Record, Vol. 12.

190. Manufacturer's Exhibit B-01 at paras. 2, 5, 6, Administrative Record, Vol. 11B; Manufacturer's Exhibit B-01 at para. 12, Administrative Record, Vol. 11B; Manufacturer's Exhibit B-04 (protected) at para. 19, Administrative Record, Vol. 12A.

302. DFI indicated that it was operating below half of its capacity over the POI.¹⁹¹ It submitted that, in 2012, it increased production of steel piling pipe in anticipation of an improved market, but additional sales did not materialize due to the increased volumes of the subject goods in the Canadian market. The forgone sales have resulted in a build-up of inventory.¹⁹²

303. DFI claimed that the price undercutting of the subject goods in the steel piling pipe market is evident, adding that the sale of the subject goods to distributors at prices below its own cost of production and, in certain instances, below its purchase cost for hot-rolled coil explains the significant price suppression or price erosion.¹⁹³

304. Pipe & Piling argued that any material injury to Atlas Tube, if it indeed existed, was self-inflicted, that there was no link between any injury being suffered by Atlas Tube and the dumping and subsidizing of the subject goods and that any injury must be attributed to factors other than dumping and subsidizing.¹⁹⁴

305. Pipe & Piling alleged that Atlas Tube was a new entrant to the steel piling pipe market in Western Canada, that it had not yet developed an adequate sales network, that it did not yet have the reputation of a reliable supplier¹⁹⁵ and that its market penetration objectives were, and remain, overly optimistic.¹⁹⁶

306. Pipe & Piling claimed that Atlas Tube's lost sales, if any, were the result of its insufficient sales effort, in part due to its limited sales force, and an "... incoherent marketing strategy"¹⁹⁷ for Western Canada. In this regard, and as evidence of an ineffectual marketing strategy, Pipe & Piling testified that, despite it being the largest distributor in Western Canada, it has never been approached by any of Atlas Tube's sales staff.¹⁹⁸

307. Pipe & Piling suggested that the marketing and selling of steel piling pipe to end users is a departure from Atlas Tube's business model of selling to distributors. In doing so, Pipe & Piling alleged that Atlas Tube sent confusing signals to the distributors in Western Canada with which it was purportedly trying to develop a business relationship.¹⁹⁹

308. Lastly, Pipe & Piling contended that Atlas Tube's production and capacity utilization had been reduced by the fact that steel piling pipe orders were being filled out of Atlas Tube's Chicago facility rather than being produced at its Harrow facility.²⁰⁰

309. Atlas Tube countered that it was not a new entrant to Western Canada, since it had been active for many years in that market as a supplier of hollow structural steel tubing. Atlas added that it was known by

191. *Transcript of Public Hearing*, Vol. 2, 30 October 2012, at 270; *Protected Pre-hearing Staff Report*, 24 September 2012, Tribunal Exhibit NQ-2012-002-07 (protected), Administrative Record, Vol. 2.1 at 140.

192. Manufacturer's Exhibit B-01 at para. 5, Administrative Record, Vol. 11B.

193. Manufacturer's Exhibit B-03 at para. 25, Administrative Record, Vol. 11B.

194. Importer's Exhibit C-02 at paras. 4-5, 70, Administrative Record, Vol. 13; *Transcript of Public Hearing*, Vol. 4, 1 November 2012, at 543, 544.

195. *Transcript of Public Hearing*, Vol. 4, 1 November 2012, at 537, 538; Importer's Exhibit C-02 at para. 69, Administrative Record, Vol. 13.

196. *Transcript of Public Hearing*, Vol. 4, 1 November 2012, at 537, 538.

197. *Transcript of Public Hearing*, Vol. 3, 31 October 2012, at 434.

198. *Ibid.* at 348.

199. *Ibid.* at 349-50.

200. Importer's Exhibit C-02 at para. 116, Administrative Record, Vol. 13.

distributors of steel piling pipe, such as Varsteel, a long-time customer, that buys more than 50 percent of its purchases from Atlas Tube.²⁰¹

310. Atlas Tube argued that its market penetration objectives were reasonable and not unduly optimistic. According to Atlas Tube, at the time of the recession, it had identified Western Canada as an attractive market for its steel piling pipe. At the beginning, Atlas Tube tried to sell steel piling pipe to the largest distributors with which it was already familiar, including Pipe & Piling,²⁰² but after several attempts, Atlas Tube realized that it could not compete with the subject goods.

311. Atlas Tube submitted that its marketing strategy in Western Canada was, and remains, to target the distributor trade level. It explained that there are only three or four large distributors representing 80 percent of its sales of all products.²⁰³ Atlas Tube testified that it has the necessary resources to achieve sales in Western Canada.²⁰⁴

312. Turning to DFI, Pipe & Piling submitted that DFI had not pursued selling opportunities throughout Western Canada. In this regard, Pipe & Piling claimed that DFI produces steel piling pipe for its own consumption and not for sale into the merchant market. Specifically, Pipe & Piling alleged that DFI refused to sell steel piling pipe to distributors and end users. Pipe & Piling submitted that these self-imposed limitations were holding back DFI's sales of steel piling pipe.²⁰⁵

Sales From Domestic Production and Market Share

313. The Tribunal notes that sales from domestic production remained relatively stable throughout the 2009-2011 period before increasing significantly in the first half of 2012, to almost double the amount in the same period of 2011.

314. During the contraction in the market in 2010, domestic producers were able to increase their market share by 12 percentage points. However, in 2011, despite an increase of 150 percent in the size of the market, sales from domestic production declined slightly, with the domestic industry's market share plummeting by 39 percentage points. Even with increased sales in the first half of 2012, the domestic industry's market share managed to recover only to the level achieved at the start of the POI.

315. In contrast, the Tribunal notes that, in 2011, the subject goods captured virtually all the increase in the domestic market.

316. The domestic industry's performance in terms of sales value and market share in value terms followed a similar trend to sales volumes.

317. The Tribunal has considered Pipe & Piling's arguments that any injury suffered by Atlas Tube was self-inflicted because of its late entry in the market and/or its insufficient sales efforts and incoherent marketing strategy in the steel piling pipe market in Western Canada.

318. The Tribunal notes that Atlas Tube only entered the rapidly expanding market for steel piling pipe in Western Canada in 2009, even though testimony before the Tribunal indicated that demand for steel

201. *Transcript of Public Hearing*, Vol. 1, 29 October 2012, at 52-53.

202. *Ibid.* at 22-23.

203. *Ibid.* at 44.

204. *Ibid.*

205. Importer's Exhibit C-01 (protected) at paras. 127-30, Administrative Record, Vol. 14.

piling pipe in Western Canada had been growing strongly since about 2000.²⁰⁶ In the meantime, other distributors filled the void and became entrenched as reliable suppliers serving Western Canada.

319. The Tribunal agrees with Pipe & Piling that, as a late comer to the steel pipe and piling market in Western Canada, Atlas Tube could not have reasonably expected to achieve significant market penetration in the short term, even if it was already familiar with some of the large distributors operating in the region. In this regard, and given the importance of supplier reliability, including the timely fulfillment of piling pipe purchase orders, the forging of relationships with potential customers usually takes some time. Accordingly, a new entrant could not reasonably expect to immediately capture a large share of the market.

320. The Tribunal considers that Atlas Tube's expectations in terms of its potential rate of market penetration may have been overly optimistic. Furthermore, its decision to sell to both distributors and end users may have conveyed mixed signals to its preferred, distributor-level, customer base.

321. That being said, there is no testimony or other evidence on the record indicating that Atlas Tube's sales to end users had undercut or otherwise alienated its potential distributor-level customer base. More specifically, there is no positive evidence that Atlas Tube's strategy of not selling exclusively to distributors has resulted in lost sales or, alternatively, that distributors will not buy from Atlas Tube because it had occasionally sold directly to end users. The evidence shows, in this regard, that Atlas Tube's sales volumes at the end-user level over the POI were relatively small.²⁰⁷

322. Therefore, on the basis of the evidence before it, the Tribunal is of the view that Atlas Tube's business decisions may have had some adverse impact on its domestic sales of steel piling pipe in Western Canada. Indeed, the Tribunal is of the view that, had Atlas Tube established a more conspicuous presence in this part of the Canadian steel piling pipe market earlier, it likely would have been in a much stronger position to share in the significant growth in the steel piling pipe market over the POI. For this reason, the Tribunal cannot attribute the loss of this business to any negative impact from the subject goods.

323. However, the Tribunal is not convinced that Atlas Tube's business decisions entirely explain its inability, let alone DFI's inability, to share in the growth in the domestic steel piling pipe market over the POI. In the Tribunal's view, it is likely that the domestic industry lost a small volume of sales as a result of the presence of imports of the subject goods in the market.

Production and Capacity Utilization

324. As noted above, domestic production of the like goods remained relatively stable from 2009 to 2011, before increasing in the first half of 2012. More specifically, after declining by 5 percent in 2010, domestic production increased by 8 percent in 2011, for a net increase of only 2 percent from 2009 to 2011. Domestic production then increased significantly by 72 percent in the first half of 2012 compared to the same period in 2011. This latter increase was largely due to a significant increase in DFI's production in the first half of 2012 in anticipation of improved market conditions.

206. *Transcript of Public Hearing*, Vol. 3, 31 October 2012, at 344.

207. Tribunal Exhibit NQ-2012-002-16.02A (protected), Administrative Record, Vol. 4 at 38, 58.

325. As a consequence, capacity utilization dedicated to the production of the like goods remained low but stable over the POI, with the exception of a 9 percentage point increase in the first half of 2012 compared to the same period in 2011.²⁰⁸

326. The absence of significant improvement in domestic production volume and capacity utilization takes on added significance when juxtaposed against an apparent market that doubled between 2009 and 2011 and continued to expand in the first half of 2012.

327. With respect to Pipe & Piling's assertions that the production volumes and capacity utilization at Atlas Tube's Harrow facility were intentionally reduced by its own decision to produce the like goods at its Chicago plant, the Tribunal finds that these assertions to be largely unsubstantiated by the evidence on the record. The testimony of the witnesses for Atlas Tube corroborates other evidence on the record that the volumes of steel piling pipe produced at Atlas Tube's Chicago facility and sold in Canada were insignificant.²⁰⁹

328. In view of the above, the Tribunal finds that the growing volumes of the subject goods in the expanding Canadian market for steel piling pipe had a negative impact on the production and capacity utilization rates of the domestic industry.

Financial Results

329. The consolidated financial performance of the domestic industry showed a continuous improvement over the POI, in terms of both total sales and sales on a per unit basis.²¹⁰ Indeed, both gross margins and net income increased over the period.²¹¹ Net income as a percent of sales increased by more than 50 percent between 2009 and 2011.²¹² The first half of 2012 compared to the same period in 2011 shows an even larger improvement in financial performance.

330. On the basis of the foregoing, the Tribunal is of the view that the domestic industry's performance has been positive and improved over the POI.

Other Indicators

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

208. *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 200.

209. *Transcript of Public Hearing*, Vol. 1, 29 October 2012, at 26; Tribunal Exhibit NQ-2012-002-16.02A (protected), Administrative Record, Vol. 12A at 29-36.

210. *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 194.

211. *Ibid.*

212. *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 171.

– Employment and Productivity

332. The Tribunal notes that the domestic industry realized growth in direct employment over the POI.²¹³ In particular, the evidence shows that direct employment increased substantially in 2011 and the first half of 2012. Likewise, the evidence shows that wages and hours worked increased in 2011 and the first half of 2012.²¹⁴

333. In addition to the growth in direct employment, the record indicates improved productivity in terms of both tonnes per hour and tonnes per employee during the period commensurate with the growth in the apparent market.²¹⁵

– Inventories

334. The Tribunal observes that inventories of finished goods held by domestic producers remained fairly stable over the 2009-2010 period. However, coincident with the significant increase in imports of the subject goods, inventory volumes of the like goods increased by almost 50 percent from 2010 to 2011. Inventories for the first half of 2012 were approximately 50 percent higher than in the same period of 2011.²¹⁶

335. The build-up in inventories of finished goods by domestic producers is also evident through an analysis of the trend in the sales-to-inventory ratio, also referred to as inventory turnover. This ratio was 5.2 in 2009 and improved to 6.6 in 2010. Inventory turnover then declined to 4.4 in 2011. For the first half of 2012, the ratio was 2.3, only slightly better than the 1.9 ratio for the first half of 2011.²¹⁷

Margins of Dumping and Amounts of Subsidy

336. Subparagraph 37.1(1)(c)(ii.1) of the *Regulations* also prescribes that the Tribunal consider in its assessment “. . . the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods . . .” The Tribunal notes that the CBSA’s information on the subject goods shows that the estimated weighted average margin of dumping and estimated overall weighted average amount of subsidy were not insignificant.²¹⁸

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

CONCLUSION

338. In conclusion, the Tribunal finds that, despite a significant increase in the volume of imports of the subject goods in the rapidly expanding market for steel piling pipe during the POI, the domestic industry generally performed well and was able to increase its selling prices and improve financial performance

213. *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 196.

214. *Ibid.* at 197, 198.

215. *Ibid.* at 199.

216. *Protected Pre-hearing Staff Report*, 24 September 2012, Tribunal Exhibit NQ-2012-002-07 (protected), Administrative Record, Vol. 2.1 at 114.

217. *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 174; *Protected Pre-hearing Staff Report*, 24 September 2012, Tribunal Exhibit NQ-2012-002-07 (protected), Administrative Record, Vol. 2.1 at 114.

218. Tribunal Exhibit NQ-2012-002-04, Administrative Record, Vol. 1 at 213-28.

(including gross margin and net income), productivity, employment and wages, in addition to maintaining its sales volume, production, capacity and capacity utilization.

339. In the Tribunal's view, while the evidence suggests that the subject imports had some degree of adverse effect on the price of the like goods during the POI, the resulting injury to the domestic industry did not attain a level of significance that would render it "material", within the intended meaning of that term under *SIMA*. Specifically, the resulting impact on the domestic industry's performance and, in particular, on its sales revenues and market share in Western Canada cannot be considered "material" when assessed against the domestic production of like goods as a whole and the domestic industry's overall performance in the Canadian market during the POI. Indeed, DFI conceded that it had not experienced injury due to imports of the subject goods.²¹⁹

THREAT OF INJURY

340. Having found that the subject goods have not caused injury, the Tribunal must now consider whether they are threatening to cause injury. The Tribunal is guided in its consideration of this question by subsection 37.1(2) of the *Regulations*, which prescribes factors relevant to a threat of injury analysis.²²⁰ Also of relevance is subsection 2(1.5) of *SIMA*, which indicates that the dumping or subsidizing of goods shall not be found to be threatening to cause injury or to cause a threat of injury unless the circumstances in which the dumping or subsidizing of goods would cause injury are clearly foreseen and imminent.

341. In conducting its analysis of threat of injury, the Tribunal typically considers a time frame of up to 24 months beyond the date of its finding. Having regard to the limitations imposed by the available data in this case, the Tribunal considers it appropriate to focus on a period of approximately 12 to 18 months.

342. Atlas Tube argued that there was a threat of injury from the subject goods. It submitted that the domination of the market by the subject goods had only been possible through massive dumping and subsidizing. In this regard, Atlas Tube argued that injury to domestic production would become more serious unless permanent anti-dumping and countervailing duties were imposed.²²¹

219. Manufacturer's Exhibit B-03 at para. 21, Administrative Record, Vol. 11B.

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

221. Manufacturer's Exhibit A-01 at para. 6, Administrative Record, Vol. 11.

343. Atlas Tube contended that there is a demonstrated propensity on the part of Chinese producers to export dumped and subsidized carbon and alloy steel pipe products onto world markets.²²²

344. According to Atlas Tube, import permit data showed a clear and substantial rate of growth in imports of the subject goods from 2010 to the first half of 2012.²²³ Atlas Tube submitted that the extent and progressive nature of this growth over this short period was evidence of a likelihood of continued import penetration into the latter half of 2012 and into the near future.²²⁴

345. Atlas Tube submitted that the magnitude of Chinese welded pipe and tube production has been reviewed previously by the Tribunal.²²⁵ While those data cover all classes of welded pipe and tubes, there is little doubt that the scale of Chinese piling pipe production and freely disposable capacity are many times the size of the total Canadian market for these goods.²²⁶

346. Atlas Tube noted that Chinese producers are export oriented and that export sales have become more critical for Chinese producers of piling pipe as a result of the current economic slowdown in the steel industry in China.²²⁷ In this regard, Atlas Tube noted that the main Canadian importers and distributors of the subject goods, i.e. Pipe & Piling, Platinum Grover and the Varsteel/Dominion Pipe group, have large stocking facilities and well-established channels to source and distribute imported products throughout the Canadian market.²²⁸

347. Atlas Tube reported making significant investments in the production of steel piling pipe at its Harrow facility. It submitted that, should the presence of dumped and subsidized Chinese goods in Western Canada continue, it would have a seriously negative effect on the expected returns on these investments.²²⁹

348. DFI alleged that the Chinese propensity to sell at below market prices and the excess capacity in China provides incentive to export, thus threatening to cause injury to the domestic industry.²³⁰ It further alleged that Chinese importers of OCTG can switch between pipe products, as became evident after the Tribunal's finding in *Oil and Gas Well Casing*, which led to an increase in imports of steel tubing, which, in turn, were subsequently investigated in *OCTG*.²³¹

349. DFI submitted that the large volumes of the subject goods imported into Canada were suppressing the selling prices realized by steel piling pipe manufacturers, including DFI, to approximately the cost of producing the steel piling pipe and even to the cost of the hot-rolled coil substrate. If DFI's manufacturing division were to transfer pipe to the installation/service division at prevailing market prices, it would be in danger of having to close its steel piling pipe mill.²³²

350. DFI submitted that its inventory of steel piling pipe has increased rapidly in conjunction with the rapid increase in the level of the subject goods into the Canadian market in 2011 and the first half of 2012.²³³

222. Manufacturer's Exhibit A-01 at paras. 175-78, Administrative Record, Vol. 11.

223. Manufacturer's Exhibit A-01 at paras. 83-84, Administrative Record, Vol. 11.

224. Manufacturer's Exhibit A-01 at paras. 85, 151, Administrative Record, Vol. 11.

225. Manufacturer's Exhibit A-01 at paras. 152-56, Administrative Record, Vol. 11.

226. Manufacturer's Exhibit A-01 at para. 152, Administrative Record, Vol. 11.

227. Manufacturer's Exhibit A-01 at para. 159, Administrative Record, Vol. 11.

228. Manufacturer's Exhibit A-01 at paras. 163-64, Administrative Record, Vol. 11.

229. Manufacturer's Exhibit A-01 at paras. 135-36, Administrative Record, Vol. 11.

230. Manufacturer's Exhibit B-01 at para. 7, Administrative Record, Vol. 11B.

231. Manufacturer's Exhibit B-01 at para. 16, Administrative Record, Vol. 11B.

232. Manufacturer's Exhibit B-03 at paras. 25-26, Administrative Record, Vol. 11B.

233. Manufacturer's Exhibit B-01 at para. 5, Administrative Record, Vol. 11B; Tribunal Exhibit NQ-2012-002-16.04 (protected), Administrative Record, Vol. 4A at 15, 17.

351. The Tribunal notes, on the basis of the evidence before it, that the Canadian economic outlook is positive for the remainder of 2012 and 2013, with forecasted GDP growth of approximately 2.6 percent in 2012 and 2013.²³⁴ With a growth rate of 4 percent, Alberta is projected to achieve the highest growth of all Canadian provinces for 2012. Due to their heavy exposure to the natural resource sector, both Alberta and Saskatchewan are expected to grow by 3.9 percent in 2013, which will be the highest growth rate of all provinces and territories.²³⁵

352. Indeed, as noted above, forecasts are for increased capital spending in the oil and gas construction and extraction industry in Alberta and Saskatchewan in 2012 and 2013. This suggests continued expansion of the piling pipe market in Western Canada above 2011 levels.²³⁶

353. The Tribunal heard testimony that the oil and gas industry was expected to increase activity levels in 2012, which were already on track to exceed those of 2011, and that the increase would continue in 2013.²³⁷

354. In light of this evidence, the Tribunal is of the view that there will likely be an increase in activity in the oil and gas industry in the next 12 to 18 months.

355. The evidence on the record shows that the steel piling pipe market has consistently followed the trends of the oil and gas sectors.²³⁸ The evidence also shows, as noted above, that the performance of the oil and gas industry affects the demand for steel piling pipe.²³⁹

356. The Tribunal heard corroborating testimony from witnesses, who indicated that the performance of the oil and gas industry was indicative of the performance of the steel piling pipe market, which is expected to expand in 2012 and 2013, to levels above those reached in 2011.²⁴⁰

357. In light of this evidence, the Tribunal is of the view that, as activity and capital expenditures in the oil and gas industry are expected to increase in 2012 and 2013, there will be a corresponding increase in demand for steel piling pipe in the Canadian market in the next 12 to 18 months.

358. The positive outlook for the domestic market is in contrast to the forecasts for the global economy, including China, the United States and Europe.²⁴¹ The relatively slower pace of economic growth in these regions will accentuate the attractiveness of Canada as one of the few markets with growth opportunities.

359. The Tribunal also considers that Chinese exporters would capture the lion's share of the projected growth in the Canadian steel piling pipe market in the next 12 to 18 months, given their propensity toward aggressive pricing and marketing behaviour, as clearly demonstrated in 2011 when, despite a 150 percent increase in the size of the Canadian market, sales from domestic production actually declined, with China appropriating most of that growth, with subject imports having increased by 467 percent that year.

234. Tribunal Exhibit NQ-2012-002-15.02, Administrative Record, Vol. 3 at 74.

235. *Ibid.*

236. Manufacturer's Exhibit A-01 at para. 67, Administrative Record, Vol. 11.

237. *Transcript of Public Hearing*, Vol. 2, 30 October 2012, at 210-11; Manufacturer's Exhibit A-07 at paras. 9-10, Administrative Record, Vol. 11.

238. *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 169, 174.

239. Manufacturer's Exhibit A-07 at para. 9, Administrative Record, Vol. 11; Manufacturer's Exhibit A-01 at paras. 23, 64, 67; Administrative Record, Vol. 11; Manufacturer's Exhibit B-03 at para. 12, Administrative Record, Vol. 11B; *Transcript of Public Hearing*, Vol. 1, 29 October 2012, at 124-25.

240. *Transcript of Public Hearing*, Vol. 1, 29 October 2012, at 124, 125; *Transcript of Public Hearing*, Vol. 2, 30 October 2012, at 210-11.

241. Manufacturer's Exhibit B-04 (protected) at 12, 264-65, Administrative Record, Vol. 12A.

360. In the Tribunal's view, the testimony of several witnesses also supports the submission by domestic producers that the U.S. and Canadian steel piling pipe markets are integrated into a single North American market²⁴² and that, therefore, the Canadian steel piling pipe industry is sensitive to the risk of trade diversion of steel piling pipe from the United States to Canada.²⁴³

361. The Tribunal has no doubt, on the basis of the evidence of its export performance in 2011, that China has both sufficient available capacity and the inclination to capture any growth in the Canadian market for steel piling pipe. Indeed, the evidence indicates that there are a large number of steel piling pipe producers in China²⁴⁴ with a large underutilized capacity that can be devoted to the production of the subject goods.²⁴⁵

362. The evidence shows that imports of the subject goods have been and continue to be imported at a laid-in price much lower than the selling price of the like goods.²⁴⁶

363. The Tribunal considers that there is a real possibility that, should the price undercutting continue, additional distributors or purchasers of domestic steel piling pipe may choose to import directly. Indeed, Varsteel testified that, since 2010, it had been actively sourcing the subject goods, with China becoming the main source of its imports of steel piling pipe in 2011.

364. Testimony before the Tribunal has indicated that exports of the subject goods from China are continuing to land in Western Canada at even lower prices than the prices of the subject goods observed during the POI.²⁴⁷

365. Should this trend continue, which the Tribunal considers likely given the general economic outlook described above, domestic producers of steel piling pipe will experience increased pricing and market pressures from dumped and subsidized steel piling pipe, which can be expected to have serious repercussions on domestic sales and domestic producers' financial performance. The Tribunal is convinced that there is a real risk that these increased pressures would ultimately drive producers rapidly toward a pricing "cliff" beyond which production in Canada of steel piling pipe would be materially, if not fatally, injured.

366. DFI submitted that the continued importation of the subject goods at delivered prices that have been only marginally above the cost to Canadian producers of hot-rolled steel coil would likely compel it, as a rational economic actor in the pile-driving market, to de-commission its dedicated pipe mill.²⁴⁸

367. Similarly, the Tribunal is of the view that the price and market pressures experienced by Atlas Tube in 2011 and the first half of 2012, as a result of the dumped and subsidized goods, will continue and likely be more pronounced into the next 12 to 18 months. In this regard, the Tribunal agrees with Atlas Tube that circumstances will change compared to the 2009-2010 period and will lead to increased imports of even lower-priced steel piling pipe from China.²⁴⁹

242. *Transcript of In Camera Hearing*, Vol. 1, 29 October 2012, at 4-5, 15, 64, 67.

243. Manufacturer's Exhibit A-09, tab 12 at 206, Administrative Record, Vol. 11A; Manufacturer's Exhibit A-01 01 at paras. 179-80, Administrative Record Vol. 11.

244. Tribunal Exhibit NQ-2012-002-05 (protected), Administrative Record, Vol. 2 at 23.6-23.20.

245. Manufacturer's Exhibit B-03 at para. 38, Administrative Record, Vol. 11B.

246. *Transcript of Public Hearing*, Vol. 3, 31 October 2012, at 363-65, 367-68; *Transcript of In Camera Hearing*, Vol. 3, 31 October 2012, at 180, 189-200; *Protected Pre-hearing Staff Report*, revised, 18 October 2012, Tribunal Exhibit NQ-2012-002-07A (protected), Administrative Record, Vol. 2.1 at 173, 180, 188, 213.

247. *Transcript of Public Hearing*, Vol. 2, 30 October 2012, at 212; *Transcript of In Camera Hearing*, Vol. 2, 30 October 2012, at 77-78.

248. Manufacturer's Exhibit B-04 (protected) at paras. 25, 26, 42-43, Administrative Record, Vol. 12A.

249. *Transcript of Public Hearing*, Vol. 4, 29 October 2012, at 596-97.

368. The relative pricing trends of the subject goods threatens Atlas Tube's continued participation in the growing market for steel piling pipe in Western Canada. The loss of sales and revenues would result in a decline in the economies of scale realized from the production of larger volumes of steel piling pipe and in related employment levels and wages, as well as severely affecting the expected return on investment made to the Harrow facility to service the market for steel piling pipe in Western Canada.

369. In light of the above, the Tribunal considers that there is a clearly imminent and foreseeable threat that the expected price competition and volumes from dumped and subsidized goods will result in price depression, price suppression and loss of sales to the domestic industry which, in turn, will result in reduced domestic production, capacity utilization and negative indices of financial performance.

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

371. The Tribunal finds that the evidence does not disclose that there are other factors on the horizon in the next 12 to 18 months that, independent of the dumping and subsidizing of the subject goods, threaten to cause injury to the domestic industry. Indeed, as noted above, the market for steel piling pipe is likely to continue to grow, which, all other things being equal, would represent an opportunity for the domestic industry to improve its performance. Thus, the Tribunal finds that any threat of injury to the domestic production of like goods is directly attributable to the likely volume and prices of the subject goods.

372. The Tribunal therefore finds that, looking forward to the next 12 to 18 months, the circumstances in which the subject goods would cause injury are clearly foreseen and imminent. For these reasons, the Tribunal finds that the subject goods are threatening to cause injury to the domestic industry.

CONCLUSION

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

Serge Fréchette
Serge Fréchette
Presiding Member

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Member

Jason W. Downey
Jason W. Downey
Member