



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Dumping and Subsidizing

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## FINDING AND REASONS

Inquiry No. NQ-2012-003

Carbon Steel Welded Pipe

*Finding issued  
Tuesday, December 11, 2012*

*Reasons issued  
Thursday, December 27, 2012*

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

**THE DUMPING OF CARBON STEEL WELDED PIPE ORIGINATING IN OR EXPORTED FROM CHINESE TAIPEI, THE REPUBLIC OF INDIA, THE SULTANATE OF OMAN, THE REPUBLIC OF KOREA, THAILAND, THE REPUBLIC OF TURKEY AND THE UNITED ARAB EMIRATES AND THE SUBSIDIZING OF CARBON STEEL WELDED PIPE ORIGINATING IN OR EXPORTED FROM THE REPUBLIC OF INDIA, THE SULTANATE OF OMAN AND THE UNITED ARAB EMIRATES**

**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 of carbon steel welded pipe, commonly identified as standard pipe, in the nominal size range from 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 Chinese Taipei, the Republic of India, the Sultanate of Oman, the Republic of Korea, Thailand, the Republic of Turkey and the United Arab Emirates and the subsidizing of carbon steel welded pipe originating in or exported from the Republic of India, the Sultanate of Oman and the United Arab Emirates have caused injury or retardation or are threatening to cause injury to the domestic industry.

This inquiry is pursuant to the issuance by the President of the Canada Border Services Agency of preliminary determinations dated August 13, 2012, that the aforementioned goods originating in or exported from Chinese Taipei, the Republic of India, the Sultanate of Oman, the Republic of Korea, Thailand, the Republic of Turkey and the United Arab Emirates have been dumped and that, in the case of the Republic of India, the Sultanate of Oman and the United Arab Emirates, the aforementioned goods have also been subsidized.

On November 9, 2012, the President of the Canada Border Services Agency made final determinations that the aforementioned goods originating in or exported from Chinese Taipei, the Republic of India, the Sultanate of Oman, the Republic of Korea, Thailand and the United Arab Emirates have been dumped and that, in the case of the Republic of India, the aforementioned goods have also been subsidized.

In addition, on November 9, 2012, pursuant to paragraph 41(1)(b) of the *Special Import Measures Act*, the President of the Canada Border Services Agency terminated the investigation regarding the dumping of the aforementioned goods originating in or exported from the Republic of Turkey and terminated the investigation regarding the subsidizing of the aforementioned goods originating in or exported from the Sultanate of Oman and the United Arab Emirates.

Pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that the dumping of the aforementioned goods originating in or exported from Chinese Taipei, the Republic of India, the Sultanate of Oman, the Republic of Korea, Thailand and the United Arab Emirates and the subsidizing of the aforementioned goods originating in or exported from the Republic of India have not caused injury, but are threatening to cause injury to the domestic industry.

Furthermore, the Canadian International Trade Tribunal hereby excludes the following carbon steel welded pipe from its threat of injury finding:

- 1 mm thick carbon steel tubing (SPCC-1, 25.6 mm in outside diameter), double coated (first coated with acrylonitrile butadiene styrene, then with polyvinyl chloride);
- non-galvanized, ASTM A53, Grade B, Schedule 80 pipe, with an inside diameter of 1 1/4 inches to 1 1/2 inches, in 22-ft. lengths, with the inside weld scarfed, originating in or exported from the Republic of Korea, and produced with AISI C1022M steel with a carbon content of 0.18 percent to 0.23 percent and a manganese content of 0.80 percent to 1.00 percent.

Serge Fréchette

Serge Fréchette  
Presiding Member

Pasquale Michael Saroli

Pasquale Michael Saroli  
Member

Jason W. Downey

Jason W. Downey  
Member

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Dominique Laporte  
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The statement of reasons will be issued within 15 days.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	November 13 to 15, 2012
Tribunal Members:	Serge Fréchette, Presiding Member Pasquale Michael Saroli, Member Jason W. Downey, Member
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**PARTICIPANTS:****Domestic Producers**

Novamerican Steel Inc.  
Bolton Steel Tube Co. Ltd.

Energex Tube Inc.  
Atlas Tube Canada Inc.  
Welded Tube of Canada

DFI Corporation

Quali-T-Groupe

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Association, Turkey)

North-East Tubes Inc.  
Olympia Tubes Limited

Turkish Embassy  
Ministry of Economy, Turkey

IMCO International Inc.  
Intermetalink Corp.  
Protin Import Ltd.

**Parties that Requested Product Exclusions**

National Integrated System

Continental Steel Ltd.  
M. Brashem Inc.

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## STATEMENT OF REASONS

1. The Canadian International Trade Tribunal (the Tribunal), pursuant to section 42 of the *Special Import Measures Act*,<sup>1</sup> has conducted an inquiry to determine whether the dumping of carbon steel welded pipe (CSWP), commonly identified as standard pipe, in the nominal size range from 1/2 inch up to and including 6 inches (12.7 mm to 168.3 mm in outside diameter [OD]) 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<sup>2</sup> 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 (the subject goods), originating in or exported from Chinese Taipei, the Republic of India (India), the Sultanate of Oman (Oman), the Republic of Korea (Korea), Thailand, the Republic of Turkey (Turkey) and the United Arab Emirates (the UAE) and the subsidizing of the subject goods originating in or exported from India, Oman and the UAE have caused injury or retardation or are threatening to cause injury to the domestic industry.
2. On May 14, 2012, following a complaint filed on March 23, 2012, by Novamerican Steel Inc. (Novamerican) and Bolton Steel Tube Co. Ltd. (Bolton), the President of the Canada Border Services Agency (CBSA) initiated investigations into whether the subject goods had been dumped or subsidized.
3. On May 15, 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 subject goods had caused injury or retardation or were threatening to cause injury.
4. On July 13, 2012, the Tribunal made a preliminary determination, pursuant to subsection 37.1(1) of *SIMA*, that there was evidence that disclosed a reasonable indication that the dumping and subsidizing of the subject goods had caused injury or retardation or were threatening to cause injury.
5. On August 13, 2012, pursuant to subsection 38(1) of the *SIMA*, the CBSA issued preliminary determinations that the subject goods had been dumped and subsidized, that the margin of dumping and the amount of subsidy were not insignificant and that the import volumes of the subject goods were not negligible.
6. On August 14, 2012, the Tribunal issued a notice of commencement of inquiry.<sup>3</sup> The Tribunal's period of inquiry (POI) was from January 1, 2009, to June 30, 2012.
7. As part of its inquiry, the Tribunal requested domestic producers, importers, distributors and foreign producers of CSWP to complete questionnaires. The Tribunal also requested purchasers of CSWP in Canada to complete a questionnaire on market characteristics.
8. From the replies to the questionnaires and other information on the record, the Tribunal's staff prepared public and protected staff reports that were issued on October 3, 2012. Revisions to the staff reports were issued on October 9, 12 and 26 and November 14, 2012.

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

2. American Water Works Association.

3. C. Gaz. 2012.I.2523.



9. On November 9, 2012, the CBSA issued final determinations of dumping and subsidizing. On the same day, the CBSA, pursuant to paragraph 41(1)(b) of *SIMA*, terminated the investigation into the dumping of the subject goods originating in or exported from Turkey and the investigation into the subsidizing of the subject goods originating in or exported from Oman and the UAE. Consequently, as of that date, the Tribunal pursued its inquiry only with respect to the countries to which the final determinations applied.

10. Following the CBSA's final determinations, Celik Ihracatçilari Birligi (Steel Exporters' Association, Turkey), Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (Borusan) and ERBOSAN Erciyas Boru Sanayii ve Ticaret A.S. withdrew all submissions, including witness statements and correspondence, made to the Tribunal. The Ministry of Economy of the Republic of Turkey also withdrew all submissions that it made to the Tribunal. Finally, Mr. Nezih Bosut, President of IMCO International Inc., indicated that he no longer intended to appear as a witness.

11. The Tribunal held a hearing, with public and *in camera* testimony, in Ottawa, Ontario, from November 13 to 15, 2012.

12. Novamerican, Nova Tube Inc. (Nova Tube) and Bolton collectively filed written submissions, provided evidence and made arguments in support of a finding of injury or, alternatively, threat of injury. They were represented by counsel and presented witnesses at the hearing.

13. Atlas Tube Canada Inc. (Atlas), Energex Tube Inc. (Energex) and Welded Tube of Canada (Welded Tube) collectively filed written submissions, provided evidence and made arguments in support of a finding of injury or, alternatively, threat of injury. They were represented by counsel and presented witnesses at the hearing.

14. The following two parties filed written submissions, provided evidence and made arguments in opposition to a finding of injury or threat of injury: Conares Metal Supply Ltd. (Conares), a foreign producer of CSWP and Protin Imports (Protin), an importer-distributor of CSWP. Conares was represented by counsel, whereas Protin was not represented by counsel.

15. Mr. Dennis Costello of Flocor Inc. appeared as a Tribunal witness at the hearing.

16. The notice of commencement of inquiry referred to the procedures for the filing of requests for product exclusions. The Tribunal received eight product exclusion requests: one filed by National Integrated Systems (NIS), one filed by M. Brashem Inc. (Brashem), one filed by Continental Steel Ltd. (Continental) and five filed by Conares. The Tribunal also received a producer exclusion request and a country exclusion request from Conares. Brashem and Conares were present at the hearing and provided clarifications and argument, and answered questions with respect to their product exclusion requests during the hearing. Brashem was represented by counsel in this inquiry.

17. The record of this inquiry consists of all Tribunal exhibits, including the record of the preliminary injury inquiry (PI-2012-003), replies to questionnaires, communications with interested parties, 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.

18. 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.

19. The Tribunal issued its finding on December 11, 2012.

## **RESULTS OF THE CBSA'S INVESTIGATIONS**

20. The CBSA's investigations covered imports of the subject goods released into Canada from January 1 to December 31, 2011. On November 9, 2012, the CBSA made the following determinations:

- For goods originating in or exported from Chinese Taipei, 100 percent of the subject goods had been dumped at a weighted average margin of dumping of 8.9 percent.
- For goods originating in or exported from India, 100 percent of the subject goods had been dumped at a weighted average margin of dumping of 53.9 percent.
- For goods originating in or exported from Korea, 100 percent of the subject goods had been dumped at a weighted average margin of dumping of 54.2 percent.
- For goods originating in or exported from Oman, 100 percent of the subject goods had been dumped at a weighted average margin of dumping of 54.2 percent.
- For goods originating in or exported from Thailand, 100 percent of the subject goods had been dumped at a weighted average margin of dumping of 6.5 percent.
- For goods originating in or exported from the UAE, 69.1 percent of the subject goods had been dumped at a weighted average margin of dumping of 17.9 percent.

21. The CBSA also determined that 100 percent of the subject goods originating in or exported from India and released into Canada from January 1 to December 31, 2011, had been subsidized at a weighted average amount of subsidy of 52.4 percent.

22. For the above-noted countries, the CBSA concluded that the overall margins of dumping and amounts of subsidy were not insignificant.<sup>4</sup>

23. Also, on November 9, 2012, pursuant to paragraph 41(1)(b) of *SIMA*, the CBSA terminated the dumping investigation respecting the above-mentioned goods originating in or exported from Turkey and the subsidizing investigation respecting these goods originating in or exported from Oman and the UAE.

## **PRODUCT**

### **Product Definition**

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

carbon steel welded pipe, commonly identified as standard pipe, in the nominal size range from 1/2 inch up to and including 6 inches (12.7 mm to 168.3 mm in OD) 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.

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4. Tribunal Exhibit NQ-2012-003-04, Administrative Record, Vol. 1 at 127.12, 127.18.

**Product Information<sup>5</sup>**

25. CSWP is generally classified into the following groups according to its end uses: standard pipe, pressure pipe, line pipe, structural pipe, mechanical pipe and oil country tubular goods (OCTG). The products covered by this inquiry are commonly referred to as “standard pipe”.

26. CSWP applications include the low-pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air conditioning systems, and sprinkler systems. CSWP may also be used for light load-bearing applications, such as fence tubing and piling, as well as for a variety of mechanical applications, such as the protection of electrical wiring.

27. CSWP is generally produced to various ASTM industry standards such as ASTM A53, ASTM A135, ASTM A252, ASTM A589, ASTM A795, ASTM F1083, Commercial Quality and AWWA C200-97. CSWP may also be produced to foreign standards, such as British Standard 1387 or to proprietary specifications, as is often the case with fencing pipe. While standard pipe may be manufactured to any of these standards, the ASTM A53 specification is the most common, as it is considered to be the highest quality and is suitable for welding, coiling, bending and flanging.

28. The size of CSWP is generally specified by two values: a nominal pipe size (NPS) and a schedule. The NPS relates roughly to the inside diameter of the pipe, while the schedule relates to the wall thickness. For a given NPS, the wall thickness will increase as the schedule number increases. For example, CSWP with an NPS of 1 inch (NPS 1) and made to ASTM A53, Schedule 40 requirements will have an OD of 1.315 inches and a wall thickness of 0.133 inch, while the same pipe meeting the requirements of ASTM A53, Schedule 80 requirements will have an OD of 1.315 inches and a wall thickness of 0.179 inch. Common schedules for CSWP are 10, 40 and 80.

29. Standard pipe may be sold with a lacquer finish or a black finish, as it is sometimes referred to in the industry. It may also be sold in a galvanized finish, which means that it has been treated with zinc.

**Production Process<sup>6</sup>**

30. CSWP is generally produced in mills using either the electric resistance welding (ERW) process or the continuous welding (CW) process. Both processes begin with coils of flat-rolled steel sheet being slit into strips, the widths of which are equal to the circumferences of the pipe to be manufactured.

31. In the ERW process, the steel strip is passed through a series of rollers to form a tubular shape. The edges are then heated electrically and welded together under heat and pressure. The ERW process normally produces an internal and external weld flash or bead which is generally trimmed from both sides of the weld.

32. In the CW process, the steel strip is heated in a gas-fired furnace. The hot steel strip is then passed through a series of rollers to form a tubular shape. The edges are then butted together under pressure to form a weld.

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

6. Tribunal Exhibit NQ-2012-003-01A, Administrative Record, Vol. 1 at paras. 24-28; Tribunal Exhibit PI-2012-003-02.01, Administrative Record in Preliminary Injury Inquiry No. PI-2012-003, Vol. 1 at 19-20.

33. Although not as prevalent as the aforementioned methods, standard pipe may also be produced using a combination of the ERW process and a hot stretch reduction mill. Under this method, pipe shells are first produced using the ERW process. The shells are then heated in a furnace and are passed through a stretch reduction mill. The mill reduces the OD of the pipe and can be used to increase, maintain or reduce the thickness of the pipe walls.

34. The production of ASTM A53 Grade B requires that special attention be given to the welded seam in order to remove untempered martensite and to be in compliance with the ASTM standard.<sup>7</sup> The standard specification clearly indicates that the welded seam of electric resistance welded pipe in Grade B must be processed so that no untempered martensite remains. However, the standard does not specify the method of processing. In this respect, the Tribunal heard testimony describing two methods used to produce Grade B. In the first method, a seam annealer is used to heat the welded seam, thereby removing the untempered martensite.<sup>8</sup> The second method involves the use of a particular steel chemistry, running the tube mill at a specific speed and testing every coil to ensure that there is no untempered martensite in the weld.<sup>9</sup>

35. Once the basic pipe is formed using one of the manufacturing processes explained above, it is cut to length, straightened and tested. The pipe ends may then be further processed, i.e. cropped, faced and reamed, threaded, coupled, rolled and/or cut grooved. Finishes such as lacquer or zinc (galvanizing) may be applied to the surface of the pipe depending on the intended application. Lastly, the pipe is stenciled and bundled prior to shipment.

## DOMESTIC PRODUCERS

36. The Tribunal sent a producers' questionnaire to nine potential producers of CSWP. It received a reply from each of the companies. Four producers, i.e. Energex, Evraz Inc. NA Canada and Canadian National Steel Corporation (Evraz), Tenaris Canada (Algoma Tubes Inc., Prudential Steel ULC and Tenaris Global Services [Canada]) (Tenaris) and Welded Tube, indicated that they did not produce the CSWP covered by the Tribunal's inquiry during the POI.

37. The Tribunal received complete questionnaire replies from the following five domestic producers of CSWP: Atlas Tube Inc. (Atlas Tube), Bolton, DFI Corporation (DFI), Novamerican and Quali-T-Groupe.

### Atlas Tube

38. Atlas Tube, of Harrow, Ontario, is a division of JMC Steel Group, with its head office in Chicago, Illinois. Atlas Tube produces piling pipe made to the ASTM A252 specification in sizes ranging from 3.5 inches to 6.625 inches OD. It does not produce other types of CSWP.

39. Atlas Tube imported small volumes of CSWP from its plant in the United States during the POI.

### Bolton

40. Bolton, of Bolton, Ontario, is a private company first incorporated in April 1981. Bolton has two pipe mills that produce CSWP.

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7. Exporter's Exhibit C-03A, Administrative Record, Vol. 13.

8. *Transcript of Public Hearing*, Vol. 2, 14 November 2012, at 139-40, 147-48.

9. *Ibid.* at 153-62.

41. Bolton produces ASTM A53 galvanized and commercial quality pipe in the size range of 1 inch to 4 inches OD. Bolton did not import CSWP during the Tribunal's POI.

### **DFI**

42. DFI, of Edmonton, Alberta, is an independently owned and operated oil and gas service company. DFI primarily provides foundation construction services, including the manufacture and installation of driven piles and screw piles. DFI manufactures custom order steel piling pipe in its ERW pipe mill. DFI primarily supplies and installs steel piling pipe within the Western Canada Sedimentary Basin.

43. DFI produces steel piling pipe in sizes ranging from 4 inches to 16 inches to the ASTM A252 specification. DFI did not import CSWP during the Tribunal's POI.

### **Novamerican**

44. Novamerican of Montréal, Quebec, owns the following facilities involved in the production of CSWP:

- Nova Steel Inc. (Nova Steel), in Montréal, is a raw material supplier. Nova Steel is the 100 percent owner of the Baie D'Urfé facility, which produces welded pipe from 0.5 inch to 2.0 inches.
- Nova Tube, in Montréal, tests, finishes and packages. Nova Tube is the 100 percent owner of Delta Tube Inc. (Delta), in Montréal, which produces welded pipe from 1.5 inches to 6.0 inches.

45. Novamerican acquired the Nova Tube facility from ArcelorMittal in October 2009. Also, in 2009, Novamerican purchased the Delta and Baie D'Urfé facilities from Barzel Group.

46. Nova Steel purchases hot-rolled coil from Canadian producers. The coils are slit to width by Nova Steel and then transferred to the Delta and Baie d'Urfé mills for shaping and welding. The unfinished pipes are then shipped to Nova Tube for testing, end finishing, galvanizing or other surface finishing and packaging.

47. Novamerican produces and sells ASTM A53, ASTM A795, ASTM A135, ASTM F1083 commercial grade, ASTM A589 and ASTM A252 pipe in nominal diameters ranging from 0.5 inch to 6 inches that is used in plumbing, heating, fire protection, fencing, water well casing, piling pipe and structural tubing applications. Novamerican did not import CSWP during the Tribunal's POI.

### **Quali-T-Groupe**

48. Quali-T-Groupe is a family-owned business founded in 1929. It is made up of Quali-T-Tube and Quali-T-Fab. Quali-T-Tube produces round, square and rectangular tube and pipe products for a variety of applications. Quali-T-Groupe began manufacturing tube and pipe in 1980. Quali-T-Fab is a full-service fabrication shop with a variety of product lines for the construction and fencing industry.

49. Quali-T-Groupe produces commercial quality pipe in a size range of 0.5 inch to 3.5 inches, with wall thicknesses from 0.057 inch to 0.154 inch. Quali-T-Groupe did not import CSWP during the Tribunal's POI.

## IMPORTERS

50. The Tribunal sent importers' questionnaires to 44 potential importers of CSWP. It received 29 responses. Of these, 7 companies indicated that they did not import CSWP with specifications covered by the Tribunal's inquiry.

## PURCHASERS

51. The Tribunal sent questionnaires to 33 potential purchasers of CSWP. The Tribunal received 18 responses from purchasers, 16 of which were replies from purchasers of CSWP of the same description as the subject goods. The remaining 2 companies indicated that they did not purchase CSWP with specifications covered by the Tribunal's inquiry.

## FOREIGN PRODUCERS

52. The Tribunal sent foreign producers' questionnaires to 188 companies. It received replies from the following 5 companies: ADPICO LLC (Abu Dhabi Metal Pipes and Profiles Industries Complex LLC) (ADPICO) of the UAE, Borusan of Turkey, Conares of the UAE, Erbosan of Turkey, and Universal Tube and Plastic Industries Limited of the UAE.

## DISTRIBUTION AND PRICING

53. Canadian distributors and end users of CSWP may purchase pipe domestically directly from the Canadian mills or from importers or other distributors. Master distributors import CSWP for re-sale in the domestic market. Master distributors and distributors purchase CSWP in a range of sizes and stock the product for re-sale. End users include companies involved in the plumbing, heating and construction businesses in Canada.

54. Domestic producers and importers do not use price lists. CSWP is most generally priced in the Canadian marketplace on a customer-by-customer basis or based on a cost-plus margin or spot prices.

## ANALYSIS

55. 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".

56. Accordingly, the Tribunal must first determine what constitutes "like goods". Once that determination has been made, the Tribunal must determine what constitutes the "domestic industry" for purposes of its injury analysis. Given that the CBSA has determined that the subject goods originating or exported from Chinese Taipei, India, Oman, Korea, Thailand and the UAE were dumped and that the subject goods originating in or exported from India were subsidized, the Tribunal must also determine whether, in this inquiry, it will make an assessment of the cumulative effect of the dumping and subsidizing of the subject goods to which the CBSA's final determinations apply (i.e. whether it will cumulate and cross-cumulate their effects from all sources). The Tribunal can then assess whether the dumping and subsidizing of the subject goods to which the CBSA's final determinations apply have caused injury to the domestic industry. Should the Tribunal arrive at a finding of no injury, it will determine whether there exists

a threat of injury to the domestic industry.<sup>10</sup> As a domestic industry is already established, the Tribunal will not need to consider the question of retardation.<sup>11</sup>

57. In conducting its injury or threat of injury analysis, as necessary, the Tribunal will also examine other factors that might have had an impact on the domestic industry to ensure that any injurious effects caused by such other factors are not attributed to the dumping or subsidizing.

### **Like Goods and Classes of Goods**

58. In order for the Tribunal to 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, it 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.<sup>12</sup>

59. 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.

60. In deciding the issues of like goods and classes of goods, the Tribunal typically considers a number of factors, including the physical characteristics of the goods (such as composition and appearance) and their market characteristics (such as substitutability, pricing, distribution channels, end uses and whether the goods fulfill the same customer needs).<sup>13</sup>

61. In its preliminary injury inquiry, the Tribunal found that CSWP produced in Canada which is of the same description as the subject goods are like goods to the subject goods on the basis that both are commodity products that compete directly with each other. The Tribunal also decided that the subject goods and like goods were comprised of a single class of goods, on the same basis that was given by the Tribunal in Inquiry No. NQ-2008-001.<sup>14</sup>

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10. 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.

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

12. Should the Tribunal determine that there is more than one class of goods in this inquiry, it must conduct a separate injury analysis and make a decision for each class that it identifies. See *Noury Chemical Corporation and Minerals & Chemicals Ltd. v. Pennwalt of Canada Ltd. and Anti-dumping Tribunal*, [1982] 2 F.C. 283 (F.C.).

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

14. (20 August 2008) (CITT) [CSWP 2008].

62. In the present injury inquiry, Protin put forward the view that the subject goods and like goods constituted two classes of goods. The Tribunal rejects that view.<sup>15</sup> The Tribunal finds that the subject goods and like goods are produced from the same raw material using the same methods of manufacture, have similar physical characteristics, are widely substitutable for a range of similar customer needs<sup>16</sup> and are distributed through the same channels of distribution where the same commodity pricing prevails.<sup>17</sup>

63. Accordingly, for the purposes of its final injury determination, the Tribunal reiterates the findings that it made in the preliminary injury inquiry to the effect that CSWP produced in Canada which is of the same description as the subject goods constitutes like goods in relation to the subject goods and that the subject goods and like goods are comprised of a single class of goods.

### Domestic Industry

64. 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.

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15. Protin argued in favour of two classes of goods, one for pipe used to convey fluids, gas and steam, and another used in mechanical and structural applications. In support of its position, Protin relied on its interpretation of a finding made by the Tribunal in *Steel Piling Pipe* (3 July 2012), PI-2012-002 (CITT) [*Steel Piling Pipe*], which, according to Protin, would imply, as the Tribunal understands the argument to be, that there are substitutability issues within the universe of the subject goods. The Tribunal is of the view that Protin’s view is unfounded, essentially because of what appears to be a general misunderstanding by Protin of the universe of which goods were the subject of, on one hand, both *CSWP 2008* and the present inquiry, and, on the other hand, those examined in *Steel Piling Pipe*. On the face of the reasons given by the Tribunal in *Steel Piling Pipe*, that matter concerned “goods commonly known as steel piling pipe”; therefore, CSWP that was not “commonly known as steel piling pipe” were not like goods in that matter. The resulting exclusion of API-5CT, API-5L and ASTM A53 from the scope of the goods examined in that matter (i.e. that they were not subject goods, except in the limited case of certain dual-stenciled pipe) was made on the sole basis of the fact that product made to those standards were not “commonly known as piling pipe”. In the Tribunal’s view, nothing in the Tribunal’s finding in *Steel Piling Pipe* can be construed as being based on any purported product differences within the wider scope of what constitutes CSWP *per se*. In contrast, the present inquiry concerns various CSWP “commonly known as standard pipe”, made to certain specifications, “including water well casing, *piling pipe*, sprinkler pipe and fencing pipe, but excluding oil and gas line pipe made to API specifications exclusively” [emphasis added]. Within that universe, the record shows that such products, including piling pipe of the listed specifications in the current inquiry, are “commonly known as standard pipe” and that they are all interchangeably used in standard pipe applications. The Tribunal further notes that the goods that were the subject of *CSWP 2008* necessarily comprised the type of standard pipe commonly known as piling pipe, since the exclusion in *CSWP 2008* would not, by definition, have been possible had such piling pipe not been included in the scope of that inquiry (and, in effect, the Tribunal’s inquiry into *Steel Piling Pipe* examines goods that the Tribunal excluded from its decision in *CSWP 2008*). As such, the subject goods comprise the type of standard pipe commonly known as piling pipe because the subject goods are defined in exactly the same manner (save for the country of origin or export) as in *CSWP 2008*. Finally, the Tribunal also notes that the various named countries in the present inquiry do not include the one whose goods were examined in *Steel Piling Pipe*.
16. For each of the subject countries, 100 percent of the respondents to the Tribunal’s purchasers’ questionnaire on market characteristics indicated that the subject goods were interchangeable with the like goods. *Pre-hearing Staff Report*, revised, 14 November 2012, Tribunal Exhibit NQ-2012-003-06D, Administrative Record, Vol. 1.1A at 29.
17. *Pre-hearing Staff Report*, revised, 14 November 2012, Tribunal Exhibit NQ-2012-003-06D, Administrative Record, Vol. 1.1A at 27. There exists only one exception to this; as discussed below, DFI sells its production of like goods at a market level other than that of the other domestic producers.



65. The evidence on file indicates that Atlas, Bolton, DFI, Novamerican (through Nova Tube) and Quali-T-Groupe account for the totality of domestic production of like goods.<sup>18</sup> As such, the Tribunal finds that those producers form the domestic industry for the purposes of the Tribunal injury analysis.

66. Conares attempted to cast doubt on whether Nova Tube was a producer of like goods on the basis of the ownership structure of Novamerican. The Tribunal does not accept those allegations. Rather, the Tribunal accepts that Nova Tube is an entity that is integrated into the Novamerican group of companies and is responsible for the production of certain CSWP, as well as for the sale and marketing of all CSWP.

67. Nova Steel makes all of the hot-rolled coil purchases for both Nova Steel and Nova Tube. Nova Steel slits the hot-rolled coil and ships it to either Nova Steel's Baie D'Urfé facility or Nova Tube's Delta facility for processing. The CSWP blanks then go to Nova Tube's Saint-Patrick facility, in Montréal, for final finishing.<sup>19</sup>

68. Essentially, Novamerican's corporate structure is a legacy carry-over from its acquisition of entities that were previously owned by ArcelorMittal. Considering the manner in which ArcelorMittal organized its production in *CSWP 2008*, and the fact that, at that time, ArcelorMittal was recognized as a domestic producer of CSWP, the Tribunal is further satisfied that Nova Tube is part of the domestic industry.

### Cumulation and Cross-Cumulation

69. As noted above, the Tribunal must also determine whether it will make an assessment of the cumulative effect of the dumping and subsidizing of the subject goods from all countries to which the final determinations apply and, ultimately, whether it will cross-cumulate the injurious effects caused by the subject goods in the case of India.

70. Subsection 42(3) of *SIMA* addresses cumulation, which constitutes the assessment of the effects of the dumping of goods from more than one country, taken together.<sup>20</sup> Subsection 42(3) directs the Tribunal to cumulate if it is satisfied that the volumes of dumped and subsidized goods from each subject country is not negligible<sup>21</sup> and that cumulation is appropriate taking into account conditions of competition.

71. In the event that the Tribunal found that the volumes from any country were negligible, the Tribunal is required to terminate its inquiry in respect of any such goods pursuant to subsection 42(4.1) of *SIMA*. In this respect, following the CBSA's final determinations, the Tribunal re-addressed its negligibility analysis.<sup>22</sup>

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18. The Tribunal notes that other producers, such as Energex and Welded Tube, have the ability to produce CSWP covered by the Tribunal's inquiry, but did not engage in such production during the POI, and are therefore not part of the domestic industry for the purposes of this matter.

19. *Transcript of Public Hearing*, Vol. 1, 13 November 2012, at 10-11, 15-16; Manufacturer's Exhibit A-14 at 2, Administrative Record, Vol. 11C.

20. Subsection 42(3) of *SIMA* also addressed the issue of the cumulative assessment of the effects of subsidizing from more than one country, taken together, but that issue is not of concern to the Tribunal in this matter, given the CBSA's final determination that only India is subsidizing.

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

22. *Protected Pre-hearing Staff Report*, revised, 14 November 2012, Tribunal Exhibit NQ-2012-003-07D (protected), Administrative Record, Vol. 2.1A at 55.

72. On the issue of verifying whether the volumes of dumped goods from the UAE are negligible, Conares presented an argument to the effect that, since it had received a zero percent dumping margin from the CBSA, its volumes should be excluded from the total volume from the UAE as non-dumped goods; the Tribunal agrees.

73. However, the manner in which Conares proposed to segregate Conares' volumes would essentially amount to double counting, as the given volumes would end up being subtracted twice, considering that the figures in Table 43 of the revised *Protected Pre-hearing Staff Report* had already segregated Conares' volumes from overall UAE volumes.<sup>23</sup> Accordingly, for the purposes of assessing whether the volumes of dumped goods from the UAE are negligible, the Tribunal will use the data that appear in Table 43 of the revised *Protected Pre-hearing Staff Report*. In this regard, it notes that the volume of dumped goods from the UAE remains above the 3 percent negligibility threshold and that, consequently, such volumes are at non-negligible levels. Indeed, the volumes of dumped goods from all named sources are above the negligibility threshold, as are those of the subsidized goods from India.<sup>24</sup>

74. Conares also argued that the Tribunal should exclude any dumped goods imported by domestic producers from other UAE sources (i.e. other than Conares) on the basis that those importations represented potentially self-inflicted injury on the part of those domestic producers. The Tribunal notes that, while it may take such allegations into account when identifying the domestic producers that constitute the domestic industry, or when examining injury, there is no legal basis upon which to alter import volumes of dumped or subsidized goods for the purposes of a negligibility analysis.<sup>25</sup>

75. While subsection 42(3) of *SIMA* addresses cumulation, there are no legislative provisions that directly address the issue of cross-cumulation of the effects of both dumping and subsidizing from a particular source (in this instance, India).

76. However, as noted in previous cases,<sup>26</sup> subsections 37.1(1) and (2) of the *Special Import Measures Regulations*<sup>27</sup> 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. In this regard, the effects of dumping and subsidizing of the same goods from a particular country (in this case, India) are manifested in a single set of injurious price effects. It is the Tribunal's view that, in the conduct of an injury analysis, it is not possible to isolate the effects caused by the dumping from the

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23. *Pre-hearing Staff Report*, revised, 14 November 2012, Tribunal Exhibit NQ-2012-003-06D, Administrative Record, Vol. 1.1A at 52.

24. *SIMA* defines "negligible" in respect of the volume of dumped goods only, and no definition is provided for "negligible" in respect of subsidized goods. However, paragraph 10 of Article 27 of the World Trade Organization (WTO) *Agreement on Subsidies and Countervailing Measures* (15 April 1994) online: World Trade Organization <[http://www.wto.org/English/docs\\_e/legal\\_e/final\\_e.htm](http://www.wto.org/English/docs_e/legal_e/final_e.htm)> provides for a 4 percent negligibility threshold for developing countries, such as India. Indeed, because India is listed on the *Development Assistance Committee List of Official Development Assistance Recipients* maintained by the Organization for Economic Co-operation and Development (1 January 2012), online: <http://www.oecd.org/dac/aidstatistics/48858205.pdf>, the CBSA recognized India as a developing country for the purposes of actions taken pursuant to *SIMA*. The volume of subsidized goods from India is above 4 percent of total imports and is therefore not negligible.

25. Furthermore, the Tribunal notes that, with respect to imports from the subject countries, no domestic producer was an importer of record during the POI.

26. See, for example, *Copper Rod* (28 March 2007), NQ-2006-003 (CITT) at para. 48; *Seamless Carbon or Alloy Steel Oil and Gas Well Casing* (10 March 2008), NQ-2007-001 (CITT) at para. 76; *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) [*Aluminum Extrusions*] at para. 147.

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

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.<sup>28</sup>

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

## INJURY

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

79. After having considered all relevant factors,<sup>29</sup> the Tribunal will examine whether any injury suffered by the domestic industry during the POI is “material”, as contemplated by section 42 of *SIMA*.<sup>30</sup> 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 caused by the subject goods is “material”.<sup>31</sup>

## Conditions in the Domestic Market for CSWP

80. In 2008, the year leading up to the POI, there were two major events that affected market conditions in Canada for CSWP. First, there was the dumping and subsidizing finding in respect of CSWP from the People’s Republic of China (China) in *CSWP 2008*. On August 20, 2008, the Tribunal found that imports of dumped and subsidized CSWP (with the same definition as the CSWP in this inquiry) originating in or exported from China had caused injury to the domestic industry.<sup>32</sup> Second, the Canadian economy went into a recession, which resulted in a contraction in the domestic market for CSWP in the latter part of 2008 and the early part of 2009.<sup>33</sup> As economic conditions and construction activity in Canada improved during the POI, the demand for CSWP also recovered.<sup>34</sup>

81. In October 2009, Novamerican acquired ArcelorMittal’s CSWP facilities.<sup>35</sup> Given the timing of the acquisition, Novamerican was only able to provide limited data for 2009. Accordingly, the Tribunal considered trends in domestic production, sales volume, total financial results, capacity, capacity utilization

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

29. Much of the consolidated information and data on the record are confidential. Although this limits the degree to which the Tribunal can disclose specific information in its reasons, the relevant confidential information is referenced throughout the Tribunal’s analysis.

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

31. 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, “[h]owever, 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].

32. *CSWP 2008*.

33. Manufacturer’s Exhibit A-07, tab 6, Administrative Record, Vol. 11A; *Pre-hearing Staff Report*, revised, 14 November 2012, Tribunal Exhibit NQ-2012-003-06D, Administrative Record, Vol. 1.1A at 57.

34. *Pre-hearing Staff Report*, revised, 14 November 2012, Tribunal Exhibit NQ-2012-003-06D, Administrative Record, Vol. 1.1A at 57.

35. *Transcript of Public Hearing*, Vol. 1, 13 November 2012, at 12; Tribunal Exhibit NQ-2012-003-11.04, Administrative Record, Vol. 3 at 54.

and employment levels from 2010 onwards to ensure comparability. However, for data based on weighted averages, specifically, prices of the like goods, the Tribunal included Novamerican's partial results and began its analyses in 2009.

82. The Tribunal also notes that two major domestic producers in *CSWP 2008*, Lakeside Steel Corporation (Lakeside) and ArcelorMittal Products Montreal Inc., have since exited the industry. Lakeside manufactured CSWP until 2008, when the company chose to phase out its production of CSWP and focus on the production of OCTG. In 2012, Lakeside was acquired by the JMC Group and became Energex.<sup>36</sup> The Tribunal heard that neither Lakeside nor Energex manufactured CSWP during the POI.<sup>37</sup>

### **Non-dumped and Non-subsidized CSWP**

83. In its final determinations of dumping and subsidizing, the CBSA determined that one exporter from the UAE, namely, Conares, had an overall weighted average margin of dumping of zero percent.

84. The Tribunal notes that the CBSA has exclusive jurisdiction to determine which exporters are dumping or receiving subsidies. In addition, paragraph 3(1)(a) of *SIMA* provides that an anti-dumping or countervailing duty can be levied only on "dumped or subsidized goods" in an amount equal to the margin of dumping or amount of subsidy.<sup>38</sup>

85. Given that the CBSA has determined that Conares has a margin of dumping of zero percent, and therefore not dumping, the Tribunal is of the view that it does not have the jurisdiction to treat Conares' goods as dumped goods for the purposes of its injury analysis.<sup>39</sup> The Tribunal will therefore conduct its injury analysis without considering the subject goods exported by Conares as dumped goods.<sup>40</sup>

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36. Manufacturer's Exhibit D-03 at paras. 2-3, Administrative Record, Vol. 11C.

37. *Transcript of Public Hearing*, Vol. 2, 14 November 2012, at 89.

38. The CBSA's final determination that Conares has a margin of dumping of zero percent and has "not dumped" is in accordance with its current policy on the elimination of "zeroing". The elimination of zeroing was upheld by the Federal Court of Appeal and appears to be consistent with Canada's WTO obligations. The WTO jurisprudence also suggests that the imports of a producer attributed with a margin of dumping of zero percent may not be considered as "dumped" for the purposes of an injury analysis. See *Uniboard Surfaces Inc. v. Kronotex Fussboden GmbH and Co.*, 2006 FCA 398 at paras. 67-75; *European Communities—Anti-Dumping Duties on Imports of Cotton-type Bed Linen from India* (2000), WTO Doc. WT/DS141/R at para. 6.138 (Panel Report) [*Bed Linen*], (2002), WTO Doc. WT/DS141/RW at para. 6.133 (Panel Report); *Argentina—Definitive Anti-Dumping Duties on Poultry from Brazil* (2003), WTO Doc. WT/DS241/R at para. 7.303 (Panel Report); *United States—Measures Relating to Zeroing and Sunset Reviews* (2007), WTO Doc. WT/DS322/AB/R at paras. 108-116, 122 (Appellate Body Report).

39. Subsection 41(1) of *SIMA* requires the CBSA to terminate cases where it makes a final determination that no exporter from a subject country has dumped and none has a margin of dumping that is not insignificant. Accordingly, had Conares been the sole UAE exporter or producer of CSWP, then the CBSA would have terminated its investigation with respect to goods from the UAE, and the Tribunal would have had no jurisdiction to carry out an inquiry with regard to the UAE pursuant to section 42. In the Tribunal's view, the existence of other UAE exporters that have dumped and have significant margins of dumping should not prevent the Tribunal from treating Conares in the same manner that it would have done if Conares had been the only exporter from the UAE.

40. During the CBSA's period of investigation, Conares exported CSWP to Canada to its exclusive Canadian distributor. Exporter's Exhibit C-04 (protected) at paras. 28, 32-35, Administrative Record, Vol. 14. Consequently, the Tribunal excluded Conares' sales of non-dumped goods to its Canadian distributor from the import and market data.

### Volume of Imports of Dumped and Subsidized Goods

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

87. Novamerican and Bolton argued that there has been 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. They contended that the subject goods essentially replaced imports of CSWP from China following the Tribunal's finding in *CSWP 2008*.<sup>41</sup>

88. The evidence shows that, in absolute terms, imports of the dumped and subsidized goods increased in both 2010 and 2011, for a net increase of 256 percent between 2009 and 2011. In the first six months of 2012, imports of these goods remained stable. During the POI, the share of total imports of CSWP held by the dumped and subsidized goods increased by 18 percentage points.<sup>42</sup>

89. Expressed as a percentage of domestic production, imports of the dumped and subsidized goods increased by 31 percentage points in 2011. However, in the first six months of 2012, imports of these goods decreased by 15 percentage points relative to domestic production.<sup>43</sup>

90. In 2011, imports of the dumped and subsidized goods also increased sharply relative to domestic consumption, with the ratio of imports to consumption increasing by 43 percentage points. Conversely, in the first six months of 2012, imports of the dumped and subsidized goods decreased by 6 percentage points relative to domestic consumption.<sup>44</sup>

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

### Effects of Dumped and Subsidized Imports on Prices

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

93. Novamerican and Bolton submitted that CSWP is a commodity product and that price is usually the most important factor in purchasing decisions. They argued that the prices of the subject goods undercut the prices of the like goods during the POI, resulting in price depression and price suppression. As well, they contended that, between 2010 and the first half of 2012, the subject goods were the lowest priced in the Canadian market.

94. Novamerican and Bolton raised the point that the average selling prices in the staff report do not provide an appropriate basis for assessing the adverse price effects of the subject goods.

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41. Manufacturer's Exhibit A-02 (protected) at paras. 67-79, Administrative Record, Vol. 12.

42. *Protected Pre-hearing Staff Report*, revised, 14 November 2012, Tribunal Exhibit NQ-2012-003-07D (protected), Administrative Record, Vol. 2.1A at 52.

43. *Ibid.* at 49, 52.

44. *Ibid.*

95. First, they argued that DFI's selling prices should not be included in the calculation of the average selling price for like goods because DFI has a business model which is not comparable to that of any other domestic producer of the like goods. Second, since several importers are customers (importer-customers) of Novamerican and Bolton, it was submitted that domestic selling prices in the market should be compared to the importer-customers' net import purchase prices for the subject goods and not to the importer-customers' net selling prices, which would include their own markups.

96. The Tribunal accepts the submissions of Novamerican and Bolton that average selling prices in the staff report may not reflect accurate comparisons in this matter. The trade level at which DFI transacts is essentially the retail level of the market, as it sells its piling pipe to the end user as part of a total purchase package which also includes installation. The Tribunal therefore agrees that it would not be appropriate to compare DFI's selling prices to those of other like goods and the subject goods which are at the distributor level.

97. Accordingly, the Tribunal's analysis which follows will assess the pricing data from a number of perspectives. In addition to the macro pricing data, the Tribunal will compare domestic selling prices, without DFI, to importer-distributors' selling prices and to importer-customers'<sup>45</sup> import purchase prices.

98. The Tribunal will first consider the environment in which prices for CSWP are established in the market.

99. The evidence supports the view that the subject goods and the like goods are fully interchangeable,<sup>46</sup> that CSWP is a commodity product and that price is an important factor when purchasing CSWP.<sup>47</sup> Half of the respondents to the Tribunal's purchasers' questionnaire on market characteristics indicated that price differences of 15 percent or less would make price the primary factor outweighing all other factors in their purchasing decisions.<sup>48</sup> The Tribunal also heard testimony that, at a 5 percent price difference, a customer would start to think about changing sources, but that, at a 10 percent difference in price, a customer would shift its purchases from the like goods to the lower-priced subject goods.<sup>49</sup>

100. The evidence and testimony also suggest that the subject goods were the price leaders in the Canadian market during the POI.<sup>50</sup> For Chinese Taipei, India, Oman, Thailand and the UAE, 100 percent of respondents to the Tribunal's purchasers' questionnaire on market characteristics that purchased CSWP from these countries accorded them the "lowest price" advantage compared to Canada.<sup>51</sup> For Korea, four of six respondents that purchased Korean CSWP accorded Korea the "lowest price" advantage compared to Canada.<sup>52</sup>

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45. Manufacturer's Exhibit A-12 (protected), tab 1, Administrative Record, Vol. 12A.

46. For each of the subject countries, 100 percent of the respondents to the Tribunal's purchasers' questionnaire on market characteristics indicated that the subject goods were interchangeable with the like goods. *Pre-hearing Staff Report*, revised, 14 November 2012, Tribunal Exhibit NQ-2012-003-06D, Administrative Record, Vol. 1.1A at 29.

47. *Pre-hearing Staff Report*, revised, 14 November 2012, Tribunal Exhibit NQ-2012-003-06D, Administrative Record, Vol. 1.1A at 28.

48. *Ibid.* at 41.

49. *Transcript of Public Hearing*, Vol. 2, 14 November 2012, at 239.

50. *Ibid.* at 245-46.

51. For each subject country, the Tribunal's purchasers' questionnaire on market characteristics asks respondents to indicate whether Canada and the subject country are comparable in terms of "lowest price" and, if not, which source has the advantage. *Pre-hearing Staff Report*, revised, 14 November 2012, Tribunal Exhibit NQ-2012-003-06D, Administrative Record, Vol. 1.1A at 30, 31, 33, 34, 36.

52. *Pre-hearing Staff Report*, revised, 14 November 2012, Tribunal Exhibit NQ-2012-003-06D, Administrative Record, Vol. 1.1A at 32.

### Price Undercutting

101. The data in the staff report show that the average unit selling price of the subject goods undercut that of the like goods in every period of the POI. The degree of undercutting ranged from 1 to 7 percent.<sup>53</sup>

102. The Tribunal recalculated the average unit selling price of the like goods to exclude DFI results (the adjusted average unit selling price). The average unit selling price of the subject goods undercut the adjusted average unit selling price of the like goods in 2010 and in the two interim periods. The degree of undercutting ranged from 2 to 4 percent.<sup>54</sup> In the remaining periods of the POI, the average unit selling price of the subject goods was higher than the adjusted average unit selling price of the like goods.

103. Next, the Tribunal assessed price undercutting at the distributor trade level. It compared the adjusted average unit selling price of the like goods to the average import purchase price of the subject goods by customers of the domestic producers.<sup>55</sup> The data show that importer-customers' average import purchase price of the subject goods undercut the adjusted average unit selling price of the like goods in all periods of the POI, with the extent of undercutting ranging from less than 1 percent to 30 percent.<sup>56</sup> For importers that were not customers of the domestic producers, their average unit selling prices of the subject goods undercut those of the adjusted average unit selling price of the like goods in two of the five periods of the POI. The degree of undercutting was 4 percent in each period.<sup>57</sup>

104. Novamerican and Bolton further contended that comparing average prices does not provide an accurate picture of price undercutting because of differences in product mix. Specifically, they submitted that the subject goods contain a much greater proportion of galvanized CSWP than black CSWP.

105. In 2011, 13 percent of domestic production was galvanized CSWP.<sup>58</sup> Statistics Canada data for all pipe imports in 2011 classified under the same 10-digit Harmonized System codes as the subject goods indicate that approximately 50 percent of pipe originating in the subject countries was galvanized.<sup>59</sup> While the Statistics Canada data are not specific to the subject goods, the Tribunal considers that they are a reasonable proxy for the ratio of galvanized CSWP to black CSWP for the subject goods.

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53. *Protected Pre-hearing Staff Report*, revised, 14 November 2012, Tribunal Exhibit NQ-2012-003-07D (protected), Administrative Record, Vol. 2.1A at 63.

54. *Ibid.* at 57, 60, 63.

55. For each respondent to its importers' questionnaire, the Tribunal examined the role that each importer played in the marketplace in order to identify its appropriate trade level. For example, importers of the subject goods that also purchased the like goods were identified as "importer-customers" and their net delivered import purchase price was used in the analysis. Importers of the subject goods that did not purchase the like goods were identified as "importer-distributors" and their net delivered selling prices of the subject goods were used in the analysis.

56. Manufacturer's Exhibit A-12 (protected), tab 1, Administrative Record, Vol. 12A; *Protected Pre-hearing Staff Report*, revised, 14 November 2012, Tribunal Exhibit NQ-2012-003-07D (protected), Administrative Record, Vol. 2.1A at 57, 60, 63.

57. Manufacturer's Exhibit A-12 (protected), tab 1, Administrative Record, Vol. 12A; *Protected Pre-hearing Staff Report*, revised, 14 November 2012, Tribunal Exhibit NQ-2012-003-07D (protected), Administrative Record, Vol. 2.1A at 57, 60, 63.

58. *Pre-hearing Staff Report*, revised, 14 November 2012, Tribunal Exhibit NQ-2012-003-06D, Administrative Record, Vol. 1.1A at 50.

59. Manufacturer's Exhibit A-11, tab 6, Administrative Record, Vol. 11C.

106. Given that galvanized CSWP is generally more expensive than black CSWP, a relatively greater proportion of galvanized CSWP in imports of the subject goods could result in higher average prices, which might obscure the degree of price undercutting by the subject goods. To provide for a more analogous price comparison between the subject goods and the like goods, the Tribunal examined pricing data collected for six “benchmark” products (four for black CSWP and two for galvanized CSWP) over seven quarters, starting with the third quarter of 2010 and ending with the first quarter of 2012.<sup>60</sup>

107. For the four black CSWP benchmark products, the prices of the subject goods undercut the prices of the like goods in 12 of 14 quarters where there was competition. The degree of undercutting ranged from less than 1 percent to 22 percent.<sup>61</sup>

108. Next, the Tribunal examined the two benchmark products for galvanized CSWP. Price undercutting occurred in all nine quarters where there was competition. The degree of undercutting for these products ranged from 11 to 29 percent.<sup>62</sup>

109. In summary, the data collected for the six benchmark products show that the prices of the subject goods undercut the prices of the like goods in 21 of the 23 quarters where there was competition. The degree of undercutting ranged from less than 1 percent to 29 percent.

110. On the basis of the foregoing, the Tribunal concludes that the prices of the subject goods significantly undercut the prices of the like goods.

#### Price Depression

111. The Tribunal first considered the overall average unit selling prices. The average unit selling price of the like goods increased steadily throughout the POI, increasing by 1 percent in 2010 and again in 2011. There was a further increase of 3 percent in the first six months of 2012.<sup>63</sup> The average unit selling price of the like goods, excluding DFI, showed similar trends, increasing by 2 percent in 2010, remaining flat in 2011 and then increasing by 1 percent in the first six months of 2012.<sup>64</sup>

112. An examination of the data for the four black CSWP benchmark products shows that the prices of the like goods peaked in the second quarter of 2011 and then began to decline, occasionally remaining flat or increasing for a quarter. By the first quarter of 2012, the prices of the like goods for these benchmark products were 5 to 8 percent lower than they had been at their peak in the second quarter of 2011.<sup>65</sup>

113. In the case of one galvanized CSWP benchmark product (benchmark product 3), the prices of the like goods decreased by 2 percent from the third quarter of 2010 to the first quarter of 2012. In contrast, for

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60. Comparing the volumes of benchmark products sold by the domestic industry and those sold by importers to their respective total volumes of domestic sales in 2011 shows that sales of benchmark products accounted for a majority of sales by the domestic industry, but not by importers. Nonetheless, the Tribunal is satisfied that the pricing activity relating to these benchmark products is an indication of the competition between the like goods and the subject goods that was occurring in the marketplace.

61. *Protected Pre-hearing Staff Report*, revised, 14 November 2012, Tribunal Exhibit NQ-2012-003-07D (protected), Administrative Record, Vol. 2.1A at 70, 72, 78, 80.

62. *Ibid.* at 74, 76.

63. *Ibid.* at 63.

64. *Ibid.* at 57, 60, 63.

65. *Ibid.* at 70, 72, 78, 80.



the other galvanized CSWP benchmark product (benchmark product 4), the prices of the like goods increased by 18 percent over the same period.<sup>66</sup>

114. The Tribunal notes that, on a quarter-by-quarter basis, the incidences of price depression do not always correspond with the incidences of price undercutting.<sup>67</sup> Nonetheless, the Tribunal considers that the different trends in pricing between the subject goods and domestic benchmark products reflect certain pressures experienced by the domestic industry as it competed with the increasing presence of the subject goods in the market. In this regard, the Tribunal heard testimony that customers would use the price of imports of the subject goods during negotiations; which in turn forced the domestic industry to reduce its prices in order to compete.<sup>68</sup>

115. On the basis of the foregoing, the Tribunal is of the view that, although the domestic industry experienced some price depression, it was limited to the black CSWP segment of the market and only to certain periods of the POI.

#### Price Suppression

116. Novamerican and Bolton submitted that they have not been able to increase their prices sufficiently to recover the increasing costs of hot-rolled coil.<sup>69</sup>

117. To assess the extent of price suppression, the Tribunal compared the changes in the domestic industry's average unit cost of goods sold to the changes in the average unit selling prices of the like goods. Once again, the Tribunal performed separate pricing analyses; the first analysis includes DFI's pricing and costs; the second is done excluding DFI's data.

118. In 2010, the average unit cost of goods sold decreased, while the average unit selling price of like goods increased. In 2011, the average unit selling price of the like goods increased by a greater rate than the average unit cost of goods sold. In the first six months of 2012, the average unit cost of goods sold and the average unit selling price both increased by the same rate.<sup>70</sup>

119. Excluding DFI's data from the comparison yields analogous results for 2009 to 2011. Only in the first six months of 2012 did the adjusted average unit cost of goods sold increase by a greater rate than the adjusted average unit selling price of the like goods.<sup>71</sup>

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66. *Protected Pre-hearing Staff Report*, revised, 14 November 2012, Tribunal Exhibit NQ-2012-003-07D (protected), Administrative Record, Vol. 2.1A at 74, 76.

67. *Ibid.* at 70, 72, 74, 76, 78, 80.

68. *Transcript of Public Hearing*, Vol. 2, 14 November 2012, at 251.

69. *Transcript of Public Hearing*, Vol. 1, 13 November 2012, at 19, 62.

70. *Protected Pre-hearing Staff Report*, revised, 14 November 2012, Tribunal Exhibit NQ-2012-003-07D, (protected), Administrative Record, Vol. 2.1A at 63, 90.

71. *Ibid.* at 57, 60, 63, 90.

120. The Tribunal also compared trends in prices of the like goods to those in the cost of hot-rolled coil, the major material input for the production of CSWP, as reported by CRU Monitor.<sup>72</sup> From 2009 to 2011, the price of hot-rolled coil increased significantly, while the average unit selling price of the like goods increased to a much lesser extent. In the first six months of 2012, the price of hot-rolled coil decreased, while the average unit selling price of the like goods increased.<sup>73</sup> Comparing the price of hot-rolled coil to the adjusted average unit selling price of the like goods yields similar results.<sup>74</sup>

121. In the Tribunal's view, the domestic industry was limited in its ability to recover the increased cost of raw materials due, in part, to the price-suppressive effects of the subject goods. At the aggregate level, the Tribunal concludes that the domestic industry did not experience significant price suppression.

### Conclusion

122. 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 suppress the price of the like goods.

### **Impact of Dumped and Subsidized Imports on the Domestic Industry**

123. 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.

124. Novamerican and Bolton argued that the subject goods had negative effects on their production, capacity utilization, sales, market share, financial results, inventories and employment. Novamerican submitted that the negative impact of the subject goods is clearly demonstrated by comparing the different results for its Canadian and U.S. sales.

### Production, Capacity and Capacity Utilization

125. Following the depressed market conditions of late 2008 and early 2009, domestic production began to increase as the demand for CSWP recovered. In 2011, domestic production increased by 3 percent, while

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72. *Pre-hearing Staff Report*, revised, 14 November 2012, Tribunal Exhibit NQ-2012-003-06D, Administrative Record, Vol. 1.1A at 46, 115; Tribunal Exhibit NQ-2012-003-31.01, Administrative Record, Vol. 7 at 3; Tribunal Exhibit NQ-2012-003-31.02, Administrative Record, Vol. 7 at 6. The Tribunal converted the CRU Monitor U.S. mill prices for hot-rolled coil from U.S. dollars into Canadian dollars in order to make its comparison. Conares and Protin argued that the duties put in place as a result of the Tribunal's finding in *Certain Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (17 August 2001), NQ-2001-001 (CITT) resulted in higher costs for hot-rolled sheet in Canada, which contributed to the injury experienced by the domestic CSWP industry. In response, Novamerican and Bolton argued that the market for hot-rolled sheet in Canada is very competitive with four domestic mills and imports from dozens of countries and that the suggestion that *SIMA* is causing injury by imposing duties on unfairly traded imports is at odds with the purpose of *SIMA*. The Tribunal examined the data regarding world prices and Canadian prices of hot-rolled sheet and found Canadian prices to be competitive. Tribunal Exhibit NQ-2012-003-31.02, Administrative Record, Vol. 7 at 6; Tribunal Exhibit NQ-2012-003-31.01, Administrative Record, Vol. 7 at 3; *Protected Pre-hearing Staff Report*, revised, 14 November 2012, Tribunal Exhibit NQ-2012-003-07D (protected), Administrative Record, Vol. 2.1A at 115, 153-54.

73. *Protected Pre-hearing Staff Report*, revised, 14 November 2012, Tribunal Exhibit NQ-2012-003-07D, (protected), Administrative Record, Vol. 2.1A at 46, 63, 115.

74. *Ibid.* at 46, 57, 60, 63, 115.

the apparent market increased by 24 percent and, in the first six months of 2012, it increased by a further 17 percent when the apparent market contracted by 8 percent.<sup>75</sup>

126. The domestic industry's production capacity for CSWP was generally stable during the POI, although at very low utilization rates, i.e. capacity utilization rates were 11 percent in both 2010 and 2011. In the interim period of 2012, the utilization rate increased to 14 percent, compared to a 12 percent utilization rate in the interim period of 2011.<sup>76</sup>

127. The Tribunal observes that the capacity utilization of other products increased by 6 percentage points from 2010 to 2011, while capacity utilization of CSWP remained unchanged. In the interim period of 2012, the capacity utilization of other products increased by 4 percentage points, while the capacity utilization of CSWP increased by 2 percentage points.<sup>77</sup> The Tribunal notes that the ability of some domestic producers to produce other products<sup>78</sup> may have allowed them some flexibility to withstand the influx of the subject goods, thereby offsetting some of the alleged injurious effects of the dumped and subsidized imports.

128. The evidence indicates that not all mills capable of producing CSWP did so during the POI. Specifically, Energex and Welded Tube testified that neither produced CSWP during the POI, but that they had the capability to do so and would be so inclined if they could obtain a reasonable return on production.<sup>79</sup>

129. In the Tribunal's view, the significant unused capacity of the domestic industry indicates that it had the ability to meet the demand for CSWP. As a result, the Tribunal concludes that the imports of the subject goods, especially in 2011, had a negative impact on the capacity utilization rates experienced by the domestic industry. It is reasonable to conclude that the volume of low-priced subject imports reduced the ability of the domestic industry to exploit some of the unused production capacity.

#### Sales from Domestic Production and Market Share

130. Novamerican and Bolton argued that the subject goods have captured market share at the expense of domestic producers and that, following the Tribunal's finding in *CSWP 2008*, the subject goods had essentially replaced the imports of CSWP from China.<sup>80</sup>

131. The domestic market for CSWP increased by 24 percent in 2011, while sales from domestic production decreased by 2 percent. Consequently, the domestic industry's share of the market fell from 32 percent in 2010 to 25 percent in 2011. The market share loss of 6 percentage points was captured by the subject goods. In the first six months of 2012, the domestic market for CSWP decreased by 7 percent, while sales from domestic production increased by 5 percent. The domestic industry regained 3 percentage points

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75. *Pre-hearing Staff Report*, revised, 14 November 2012, Tribunal Exhibit NQ-2012-003-06D, Administrative Record, Vol. 1.1A at 49, 58.

76. *Ibid.* at 102.

77. *Ibid.*

78. *Pre-hearing Staff Report*, revised, 14 November 2012, Tribunal Exhibit NQ-2012-003-06D, Administrative Record, Vol. 1.1A at 149-51.

79. *Transcript of Public Hearing*, Vol. 2, 14 November 2012, at 89, 96-97.

80. Manufacturer's Exhibit A-01 at paras. 4-5, Administrative Record, Vol. 11.

of market share at the expense of non-subject countries, as the subject countries' market share remained unchanged.<sup>81</sup>

132. With respect to market share in Western Canada, Protin submitted that domestic producers were essentially absent from that market because transportation costs made it economically unfeasible for them sell the like goods competitively outside a certain distance from their manufacturing facilities.

133. Witnesses for the domestic producers testified that they sell the like goods in Western Canada, but acknowledged that their competitiveness diminishes with distance. In this regard, they testified that they are currently negotiating better freight rates to improve their competitiveness in Western Canada.<sup>82</sup>

134. The evidence shows that that the like goods were present in Western Canada throughout the POI.<sup>83</sup> In the Tribunal's view, the domestic industry can viably meet demand across Canada.

135. Finally, Conares argued that certain business decisions of the domestic producers had caused uncertainty in the market, which had negatively affected overall domestic sales volumes. For example, certain entities went into bankruptcy protection, various facilities changed ownership, and other facilities were decommissioned. Novamerican and Bolton submitted that any negative consequences attributable to these decisions did not negate the injury caused by the subject goods. The Tribunal considers that a measure of uncertainty likely arose in the marketplace in 2008 and 2009 following the departure of ArcelorMittal and Lakeside. However, there is no evidence to indicate that this uncertainty had more than a temporary impact on the domestic industry's relationships with customers.

136. In the Tribunal's view, the rapidly increasing presence of the subject goods in both Eastern Canada and Western Canada, particularly in 2011, inhibited the domestic industry's ability to gain market share in the growing market in 2011.

#### Financial Results

137. Novamerican submitted that the impact of low-priced competition is clearly demonstrated when comparing its own different financial results between its Canadian and U.S. sales. In this respect, Novamerican suffered losses on Canadian sales while managing to earn a profit on U.S. sales.<sup>84</sup>

138. Similar to the argument made with respect to pricing, Novamerican and Bolton argued that, to properly assess injury, DFI's financial results should be excluded from the Tribunal's analysis. As such, their submissions referred to the consolidated financial results, excluding DFI.<sup>85</sup>

139. It is recognized by all parties that DFI is in a unique situation compared to all other domestic producers of CSWP. The evidence clearly demonstrates that DFI is a producer-installer of piling pipe and sells its pipe to end users; whereas, for the most part, the other domestic producers sell their pipe to distributors. The Tribunal is of the view that, since DFI is a domestic producer of the like goods, its financial results must be included in its analysis. In this respect, DFI submitted that it had been impacted by imported

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81. *Pre-hearing Staff Report*, revised, 14 November 2012, Tribunal Exhibit NQ-2012-003-06D, Administrative Record, Vol. 1.1A at 57, 59.

82. *Transcript of Public Hearing*, Vol. 1, 13 November 2012, at 41-42, 69.

83. *Protected Pre-hearing Staff Report*, revised, 14 November 2012, Tribunal Exhibit NQ-2012-003-07D, (protected), Administrative Record, Vol. 2.1A at 65-66.

84. Manufacturer's Exhibit A-04 (protected) at paras. 77, 81, Administrative Record, Vol. 12.

85. Manufacturer's Exhibit A-02 (protected) at para. 112, Administrative Record, Vol. 12.

piling pipe.<sup>86</sup> Notwithstanding that DFI sells to a different trade level, it still sells into the market. Therefore, although DFI's selling prices may not be directly comparable with other participants at the distributor trade level, its financial results should be considered when looking at the impact of the dumped and subsidized imports on the domestic industry. In this respect, DFI confirmed that the data that it submitted reflect data for CSWP only and that fees for installation and other services are not included.<sup>87</sup>

140. The domestic industry as a whole saw improvements in its financial results in 2010, with improvements in both gross margin and net income. This trend reversed in 2011, as both gross margin and net income decreased. In the first six months of 2012, gross margin improved marginally, while net income continued to decrease.<sup>88</sup>

141. The Tribunal believes that the improved results in 2012 were due in part to the domestic industry's ability to react to the pricing pressures from dumped imports. As a result, the domestic industry was able to maintain a relatively stable level of volume of sales. Also, the evidence indicates that purchasers of CSWP are generally ready to pay more for domestically produced CSWP.

142. For example, the Tribunal heard evidence that, at a 5 percent price difference, a purchaser would start to think about changing sources but would probably keep buying from domestic sources. At a 10 percent difference in price, however, a purchaser would need to shift its purchases from the domestic product to the lower-priced import in order to remain competitive.<sup>89</sup> This view was further supported by respondents to the Tribunal's purchasers' questionnaire on market characteristics where more than one third of respondents indicated that a price difference would become the primary decision factor at a 5 or 10 percent differential.<sup>90</sup>

143. The Tribunal notes that the financial results for certain domestic producers were different from those for the domestic industry as a whole. For these companies, their financial results have been deteriorating at an accelerating rate since 2010, and they suffered losses, especially in 2011 and in the first six months of 2012.<sup>91</sup>

144. The Tribunal is of the view that, while individual domestic producers had varying financial performances, overall, the domestic industry's financial performance has remained positive since 2010, despite increased imports of the subject goods and lost market share.

#### Other Indicators

145. 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.

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86. Tribunal Exhibit NQ-2012-003-12.05 (protected), Administrative Record, Vol. 4A at 21.

87. Tribunal Exhibit NQ-2012-003-RI-09, Administrative Record, Vol. 9.

88. *Protected Pre-hearing Staff Report*, revised, 14 November 2012, Tribunal Exhibit NQ-2012-003-07D, (protected), Administrative Record, Vol. 2.1A at 90.

89. *Transcript of Public Hearing*, Vol. 2, 14 November 2012, at 239.

90. *Pre-hearing Staff Report*, revised, 14 November 2012, Tribunal Exhibit NQ-2012-003-06D, Administrative Record, Vol. 1.1A at 41.

91. *Protected Pre-hearing Staff Report*, revised, 14 November 2012, Tribunal Exhibit NQ-2012-003-07D (protected), Administrative Record, Vol. 2.1A at 90, 124, 126.

146. With respect to employment, the evidence shows that direct employment increased by 5 percent in 2011 and then remained unchanged in the first six months of 2012.<sup>92</sup> In 2011, the number of hours worked decreased by 7 percent, before recovering by 2 percent in the first six months of 2012.<sup>93</sup> The Tribunal heard testimony that the domestic industry tried to preserve jobs through reduced hours and salary reductions, but still had to lay off employees and reduce crews.<sup>94</sup> Productivity levels were relatively stable in 2011, but increased substantially in the first six months of 2012, in terms of both tonnes per employee and tonnes per hour worked.<sup>95</sup>

147. The Tribunal also examined the domestic industry's inventories relative to their sales. The Tribunal notes that, in 2010 and 2011, this ratio was stable, but decreased in the first six months of 2012.<sup>96</sup>

148. The *Regulations* also prescribe that the Tribunal consider, in its assessment, "... the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods". The Tribunal notes that the CBSA's information on the subject goods shows that the weighted average margin of dumping and amount of subsidy were not insignificant.<sup>97</sup>

149. Lastly, several domestic producers claimed that they experienced negative effects with respect to other indicators of injury, such as return on investments, cash flow and ability to raise capital. The Tribunal heard testimony that supports these claims.<sup>98</sup>

#### Materiality

150. The Tribunal will now determine whether the effects of imports of the subject goods noted above are "material", as contemplated in the definition of "injury" under section 2 of *SIMA*. The Tribunal considers that both the extent of the injurious effects during the relevant time frame and the timing and duration of the injurious effects are relevant considerations in determining whether the injurious effects are "material".

151. The Tribunal recognizes that the domestic industry was unable to participate in the expanding market for CSWP in 2011. Indeed, it lost market share in that year, almost entirely to the subject goods. However, the significant increase in imports of the subject goods during the POI, at prices that undercut those of the like goods, did not result in a commensurate deterioration in the domestic industry's overall performance.

152. As noted in the preceding analysis, the incidences of price depression and suppression were not significant and were limited in scope and duration. The domestic industry's gross margins and net profits were positive, though decreasing, in all periods of the POI except 2009. Furthermore, the above examination

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92. *Pre-hearing Staff Report*, revised, 14 November 2012, Tribunal Exhibit NQ-2012-003-06D, Administrative Record, Vol. 1.1A at 96.

93. *Ibid.* at 98.

94. *Transcript of Public Hearing*, Vol. 1, 13 November 2012, at 62-63.

95. *Pre-hearing Staff Report*, revised, 14 November 2012, Tribunal Exhibit NQ-2012-003-06D, Administrative Record, Vol. 1.1A at 101.

96. *Protected Pre-hearing Staff Report*, revised, 14 November 2012, Tribunal Exhibit NQ-2012-003-07D (protected), Administrative Record, Vol. 2.1A at 57, 104.

97. Tribunal Exhibit NQ-2012-003-04, Administrative Record, Vol. 1 at 127.18.

98. *Protected Pre-hearing Staff Report*, revised, 14 November 2012, Tribunal Exhibit NQ-2012-003-07D (protected), Administrative Record, Vol. 2.1A at 105; *Transcript of Public Hearing*, Vol. 1, 13 November 2012, at 19, 63, 70.

of the other performance metrics, including production, sales volume, capacity utilization, employment levels and hours worked, indicated that they either increased or decreased only slightly.

153. In summary, the Tribunal acknowledges that the domestic industry, as a whole, sustained some injury during certain periods of the POI. The domestic industry lost certain market opportunities due to the presence of the subject goods in the Canadian market; however, the Tribunal is of the view that the resulting impact on the domestic industry has not been sufficiently adverse to constitute material injury.

## Conclusion

154. On the basis of the foregoing analysis, the Tribunal finds that the dumping and subsidizing of the subject goods has not caused injury to the domestic industry.

## Other Factors

155. The Tribunal is normally required to consider, pursuant to paragraph 37.1(3)(b) of the *Regulations*, whether any factors other than dumping or subsidizing of the goods have caused injury. However, having determined that the dumping and subsidizing of the subject goods has not caused injury, the Tribunal need not address the submissions on other factors responsible for injury.

## THREAT OF INJURY

156. 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 to be taken into account for the purposes of its threat of injury analysis.<sup>99</sup> Also of relevance is subsection 2(1.5) of *SIMA*, which indicates that a threat of injury finding cannot be made unless the circumstances in which the dumping and subsidizing of the goods would cause injury are clearly foreseen and imminent. In the circumstances of the present case, the Tribunal considers it appropriate to focus on the next 12 to 18 months.

157. Novamerican and Bolton argued that, if there is a continuation of what has been occurring since 2011, the domestic industry will be threatened with injury. They submitted that producers in the subject countries have substantial disposable capacity and a demonstrated pattern of export dependency. Further, Novamerican and Bolton submitted that trade remedy actions against pipe products taken in the two largest

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99. 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.”

export markets, the United States and European Union, exacerbate the threat of injury to Canadian producers.

### **Significant Rate of Increase in the Volume of Dumped and Subsidized Goods**

158. The Tribunal first examined the rate of increase of dumped and subsidized goods imported into Canada during the POI. As discussed above in the injury analysis, there was a significant rate of increase of dumped and subsidized goods over the POI, both in absolute terms and relative to the production and consumption of the like goods. Imports of the subject goods increased by more than threefold between 2009 and 2011. There is nothing to suggest to the Tribunal that the considerable increase in import trends of the subject goods over the POI would not continue in the near future.

159. Over the next 12 to 18 months, Canada will be a particularly attractive destination for the subject goods, given the ongoing weaknesses in many other economies, including those of the subject countries.<sup>100</sup> As well, the subject countries will likely face increasing competition in their home markets from China, because it is seeking new export markets, as many of its pipe and tubular products face anti-dumping and countervailing measures in other markets.

### **Freely Disposable Capacity of Exporters**

160. Evidence on the record indicates that the subject countries have the capacity to produce over 9 million metric tonnes of pipe and tubular products.<sup>101</sup> In comparison, the domestic market is only 200,000 metric tonnes.<sup>102</sup> As such, the capacity of the subject countries is approximately 45 times the size of the Canadian market. Even if the Tribunal were to assume that the subject countries are operating at nearly full capacity, a utilization rate of 95 percent would leave 450,000 metric tonnes of excess capacity, which is more than twice the size of the Canadian market.

161. In 2011, the subject countries exported approximately 1 million tonnes of pipe and tubular products.<sup>103</sup> The evidence demonstrates that the subject countries have a propensity to seek out export markets.

### **Potential Impact of the Subject Goods on the Prices of the Like Goods**

162. As noted above, the subject goods were the price leaders in the market during the POI.<sup>104</sup> The evidence shows that the sales of the subject goods, in the interim period of 2012, undercut the prices of the

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100. Manufacturer's Exhibit A-07A, tabs 17, 24, 47, Administrative Record, Vol. 11B.

101. Manufacturer's Exhibit A-07A, tabs 13, 18, 19, 37, 46, 63, Administrative Record, Vol. 11B; Manufacturer's Exhibit A-08 (protected), tabs 50-53, Administrative Record, Vol. 8; Manufacturer's Exhibit A-08A (protected), tabs 54-56, Administrative Record, Vol. 8A.

102. *Pre-hearing Staff Report*, revised, 14 November 2012, Tribunal Exhibit NQ-2012-003-06D, Administrative Record, Vol. 1.1A at 57.

103. Manufacturer's Exhibit A-02 (protected) at 47, 58, 62-64, 67-68, 77-78, Administrative Record, Vol. 12; Manufacturer's Exhibit A-07A, tab 13 at IV-11-IV-12, IV-14, IV-21, IV-23-IV-24, Administrative Record, Vol. 11B; Manufacturer's Exhibit A-07A, tab 33, Administrative Record, Vol. 11B; *Protected Pre-hearing Staff Report*, revised, 14 November 2012, Tribunal Exhibit NQ-2012-003-07D, Administrative Record, Vol. 2.1A at 107.

104. *Protected Pre-hearing Staff Report*, revised, 14 November 2012, Tribunal Exhibit NQ-2012-003-07D (protected), Administrative Record, Vol. 2.1A at 70, 72, 74, 76, 78, 80.



like goods.<sup>105</sup> There is nothing to indicate that this pricing behaviour will change in the next 12 to 18 months, and the Tribunal expects that the subject goods will continue to arrive in Canada at prices that will put significant pressure on the price of like goods.

163. The Tribunal heard testimony that there is ongoing pressure on domestic producers to provide their customers with competitive pricing.<sup>106</sup> The Tribunal considers that there is a real threat that purchasers of the like goods may increasingly choose to purchase from distributors of the subject goods or choose to import directly in an effort to obtain the lowest prices. The subject goods benefit from an existing distribution network in Canada, and importers are ready to continue to source from the subject countries. Therefore, while the Tribunal does not consider that the prices of the like goods experienced significant price depression or suppression over the POI, the threat of continued large volumes of the subject goods at low prices can be expected to lead to significant adverse price effects in the next 12 to 18 months.

### **Potential Impact of the Subject Goods on the Domestic Industry**

164. The Tribunal is of the view that the potential negative impact of the subject goods on the domestic industry is likely to be severe.

165. The subject goods captured a disproportionate share of the increase in the Canadian market in 2011, virtually entirely at the expense of the domestic industry, whose sales actually declined in that year. Further, when the market receded slightly in the first six months of 2012, the subject goods did not experience any decrease in market share.<sup>107</sup>

166. The Tribunal notes the downward trend of the domestic industry's profitability over the POI. Domestic producers have responded to the presence of the subject goods in the Canadian market by "stretching" their resources and relying on the production of more profitable non-subject goods on the same equipment used to manufacture CSWP.<sup>108</sup> As previously discussed, numerous witnesses testified to concessions that the domestic industry already made during the POI, such as reduced hours and salary reductions, and indicated that they could not withstand the continued effects of the dumped and subsidized goods much longer, particularly in terms of access to capital.<sup>109</sup> The Tribunal believes that, in the short to medium term, no later than in the next 12 to 18 months, the continued pressure from the subject goods will erode profit margins to an unsustainable point and that the viability of certain domestic producers will be in jeopardy.

### **Magnitude of the Margins of Dumping**

167. The margins of dumping for the majority of exporters that co-operated with the CBSA were less than 10 percent. However, for those that did not co-operate with the CBSA, the margin of dumping was 54.2 percent. With respect to the magnitude of the amount of subsidy, the only co-operating exporter had an

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105. *Protected Pre-hearing Staff Report*, revised, 14 November 2012, Tribunal Exhibit NQ-2012-003-07D, Administrative Record, Vol. 2.1A at 57, 60, 63.

106. *Transcript of Public Hearing*, Vol. 2, 14 November 2012, at 244.

107. *Protected Pre-hearing Staff Report*, revised, 14 November 2012, Tribunal Exhibit NQ-2012-003-07D (protected), Administrative Record, Vol. 2.1A at 59.

108. *Pre-hearing Staff Report*, revised, 14 November 2012, Tribunal Exhibit NQ-2012-003-06D, Administrative Record, Vol. 1.1A at 102.

109. *Transcript of Public Hearing*, Vol. 1, 13 November 2012, at 63, 70.

amount of subsidy of less than 10 percent. Those that did not co-operate with the CBSA had an amount of subsidy of 53.1 percent.<sup>110</sup>

### **Imposition of Anti-dumping or Countervailing Measures by the Authorities of a Country Other Than Canada**

168. Besides the demonstrated opportunistic behaviour of the subject countries in the Canadian market during the POI, the Tribunal notes that there are anti-dumping and/or countervailing measures in place for CSWP against Chinese Taipei, India, Korea and Thailand in the European Union and the United States.<sup>111</sup> As well, the Tribunal has previously made injury findings against imports of CSWP from Chinese Taipei, India, Korea and Thailand.<sup>112</sup>

### **Other Factors**

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

169. As previously noted, on November 9, 2012, the CBSA terminated its dumping investigation with respect to CSWP from Turkey. The volume of imports of CSWP from Turkey increased throughout the POI. The average unit selling price of Turkish CSWP was less than the average unit selling price of the like goods in 2009 and 2010.<sup>113</sup> Although imports from Turkey may continue to be a source of competition for the domestic industry in the future, this does not, in the Tribunal's view, negate the threat of injury from the subject goods.

#### Imports from the United States

170. Conares argued that imports of CSWP from the United States have had and will continue to have a greater negative impact on the domestic industry than the subject goods.

171. The data show that the market share of CSWP from the United States remained stable during the POI.<sup>114</sup> Further, the average unit import value of CSWP from the United States exceeded that of the subject countries in every period of the POI, while the average unit selling price of CSWP from the United States exceeded that of the subject countries in every period except 2009.<sup>115</sup> There is no evidence to indicate that that these trends will change; therefore, the Tribunal is not convinced that future imports of CSWP from the United States present a risk to the performance of the domestic industry.

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110. Tribunal Exhibit NQ-2012-003-04, Administrative Record, Vol. 1 at 127.20.

111. *Pre-hearing Staff Report*, revised, 14 November 2012, Tribunal Exhibit NQ-2012-003-06D, Administrative Record, Vol. 1.1A at 14. On November 14, 2012, the United States made a negative injury finding in respect of imports of circular welded carbon-quality steel pipe from India, Oman and the UAE. Tribunal Exhibit NQ-2012-003-36, Administrative record, Vol. 1 at 143-44.

112. *Pre-hearing Staff Report*, revised, 14 November 2012, Tribunal Exhibit NQ-2012-003-06D, Administrative Record, Vol. 1.1A at 13.

113. *Protected Pre-hearing Staff Report*, revised, 14 November 2012, Tribunal Exhibit NQ-2012-003-07D (protected), Administrative Record, Vol. 2.1A at 57, 63.

114. *Ibid.* at 59.

115. *Ibid.* at 54, 54, 63.

## Conclusion

172. On the basis of the above, the Tribunal finds that, looking forward to the next 12 to 18 months, there is an imminent and foreseeable threat of material injury to the domestic industry producing CSWP and that this injury is likely to be directly attributable to the volume and price effects of the subject goods.

## EXCLUSIONS

### Product Exclusions

173. The Tribunal has discretionary authority under subsection 43(1) of *SIMA* to grant exclusions from its findings.<sup>116</sup>

174. The Tribunal will exclude a product upon request if the requester has demonstrated that the exclusion will not cause or threaten to cause injury to the domestic industry.<sup>117</sup> In general, the Tribunal has granted product exclusions when the domestic industry did not actively supply the particular product, did not produce the product or a substitutable or competing product, or was not capable of producing the product.<sup>118</sup>

175. NIS requested a product exclusion for 1 mm thick carbon steel tubing (SPCC-1, 25.6 mm in OD) double coated (first coated with acrylonitrile butadiene styrene, then with polyvinyl chloride). Novamerican and Bolton consented to this request and indicated that they did not produce such goods and that there was no evidence on the record that any other members of the domestic industry produced such goods. Accordingly, the Tribunal grants this product exclusion request.

176. Brashem requested a product exclusion for non-galvanized, ASTM A53, Grade B, Schedule 80 pipe, with an inside diameter of 1 1/4 inches to 1 1/2 inches, in 22-ft lengths, with the inside weld scarfed, originating from Korea, and produced with AISI C1022M steel with carbon content of 0.18 percent to 0.23 percent and manganese content of 0.80 percent to 1.00 percent. Novamerican and Bolton consented to this request, and there is no evidence on the record that there is any domestic production of such goods. Accordingly the Tribunal grants this product exclusion request.

177. Continental requested a product exclusion for polymer powder-coated galvanized round fence framework, BS 1387 and ASTM A53, Grade A, Schedule 40, in OD from 1 3/8 inches up to 3 1/2 inches, pre-cut into various lengths of 6 feet up to 24 feet, galvanized before rolling or hot dipped after, black or green polymer powder coat finish. The Tribunal is satisfied that the domestic industry can produce such goods with the exception of directly ensuring their powder coating. However, the Tribunal heard evidence that third-party powder coating could readily be done in Canada. On those grounds, the Tribunal denies Continental's request.<sup>119</sup>

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116. *Certain Cold-rolled Steel Sheet* (1994), CDA-93-1904-09 (Ch. 19 Panel) at 54; *Hetex Garn A.G. v. The Anti-dumping Tribunal*, [1978] 2 F.C. 507 (FCA).

117. See, for example, *Stainless Steel Sinks* (24 May 2012), NQ-2011-002 (CITT) at paras. 167, 169; *Fasteners* (26 September 2006), NQ-2004-005R (CITT) at para. 17.

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

119. In *Aluminum Extrusions* at para. 347, the Tribunal stated that the reliance by a domestic producer on certain third-party finishing services to create a product in line with customer demands does not, in itself, constitute a valid basis for granting product exclusion.

178. Conares requested a product exclusion for ASTM A795, Grade B, Schedule 10 (black and galvanized). The Tribunal is satisfied that domestic production of such goods has been demonstrated.<sup>120</sup> On that basis, this request is denied.

179. Conares requested a product exclusion for ASTM A53, Grade B, Schedule 40 (black and galvanized) and for ASTM A53, Grade B, Schedule 80 (black and galvanized). The Tribunal finds that these products are at the core of this inquiry and that they are produced by the domestic industry.<sup>121</sup> On that basis, these requests are denied.

180. Finally, Conares submitted product exclusion requests for two products that are non-subject goods. Accordingly, those requests are denied.

### Producer Exclusion

181. Conares requested a producer exclusion. The domestic industry objected to such a request on the grounds that it would be tantamount to providing Conares with a licence to dump. The Tribunal agrees and views such an exclusion, if granted, as a serious and imminent threat, in and of itself, that the domestic industry would thereby be threatened with injury in the foreseeable future. More generally, the Tribunal is of the view that this request offers the opportunity for it to reiterate that producer exclusions are typically not appropriate other than in the most specific set of circumstances.

182. In Inquiry No. NQ-91-006,<sup>122</sup> the domestic industry in that matter, including a domestic producer that had a licence for the “Millitron dyeing technology” consented to an exclusion for carpeting made using that technology by Milliken & Company—in effect, this amounted to nothing more than the granting of a product exclusion that necessarily applied to a sole producer. In Inquiry No. NQ-92-007,<sup>123</sup> with the agreement of the domestic industry in that matter, there was an importer exclusion for the Hibernia Management and Development Company Ltd. for the purposes of the Hibernia offshore project; accordingly, this was a producer-importer exclusion for a very specific end-use purpose. In Inquiry No. NQ-92-009,<sup>124</sup> the Tribunal granted two exporter exclusions to allow two U.S. companies with integrated production facilities in Canada to bring their product into Canada, free of anti-dumping duties, for further processing in Canada, as long as such product was then re-exported and therefore never entered the Canadian market; again, this was a producer-importer exclusion that was for a very discrete purpose. Finally, Inquiry No. NQ-93-007<sup>125</sup> provides another example of what was really a very specific end-use exclusion; in that case, certain specialty steel not manufactured in Canada was excluded—and in various instances, only if it was to be for use in the automotive manufacturing sector in Canada. In this case, the Tribunal essentially indicated that producer exclusions would rarely be granted because they are an exception to the Tribunal’s consideration of the effects of dumping and/or subsidizing *en masse*.

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120. Tribunal Exhibit NQ-2012-003-27.01 (protected), Administrative Record, Vol. 2.3 at 21-22, 29, Attachment 3; *Protected Pre-hearing Staff Report*, revised, 14 November 2012, Tribunal Exhibit NQ-2012-003-07D (protected), Administrative Record, Vol. 2.1A at 51.

121. Tribunal Exhibit NQ-2012-003-27.01 (protected), Administrative Record, Vol. 2.3 at 20-21, 24, 27, Attachment 1, Attachment 2; *Transcript of Public Hearing*, Vol. 2, 14 November 2012, at 153-62.

122. *Machine Tufted Carpeting* (21 April 1992) (CITT).

123. *Certain Hot-rolled Carbon Steel Plate and High-strength Low-alloy Plate* (6 May 1993) (CITT).

124. *Certain Cold-rolled Steel Sheet* (29 July 1993) (CITT).

125. *Certain Corrosion-resistant Steel Sheet Products* (29 July 1994) (CITT).

183. In the case of a commodity product that competes for market share under similar, if not identical, conditions of competition, such as in the present inquiry, the Tribunal is of the view that, absent specific circumstances akin to those examined above, producer exclusions will typically not be appropriate because mere assurances of self-restraint from injurious dumping are easily made and can disappear overnight, even when given by the most sincere of witnesses, such as Mr. Mathew Ambat.

184. In addition, the Tribunal notes that *SIMA* offers other mechanisms by which the behaviour of exporters can be kept in check. Accordingly, Conares' appropriate alternative remedy to ensure that it will continue to be shielded from anti-dumping duties is to continue to maintain its current 0 percent margin of dumping and submit itself to consequent periodic verification of its normal values. The producer exclusion request that it made is therefore denied.

### Country Exclusion

185. Conares also requested a country exclusion for the UAE. That request is also denied because to grant such a request would negate not only the conclusion that the Tribunal just reached with respect to Conares' producer exclusion request but also the requirement that it has to cumulate the effects of the non-negligible volumes of dumped goods from the UAE along with those of the other named sources. Instead, the Tribunal is of the view that, generally speaking, the exclusion of a given country from a positive finding is best examined by way of a decumulation exercise where differing conditions of competition can justify such an approach, thereby ensuring a full separate injury or threat of injury analysis for a given country.<sup>126</sup> The Tribunal heard no evidence that would have warranted decumulation of the UAE in this matter.

### CONCLUSION

186. Pursuant to subsection 43(1) of *SIMA*, the Tribunal hereby finds that the dumping of the subject goods originating in or exported from Chinese Taipei, India, Oman, Korea, Thailand and the UAE and the subsidizing of the subject goods originating in or exported from India have not caused injury but are threatening to cause injury to the domestic industry.

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126. The Tribunal is of the view that only the most specific and unique set of circumstances could warrant a country exclusion, such as in *Certain Cold-rolled Steel Sheet Products* (27 August 1999), NQ-99-001 (CITT). Argentina was excluded as a country from the Tribunal's finding in that matter, but it is fundamental to note that volumes from that country were below the 3 percent negligibility threshold (even though they were deemed non-negligible because the volumes from Argentina, along with the volumes from New Zealand, Spain and Turkey—all three of which were also at negligible levels when examined individually, accounted for 8.28 percent of imports when examined collectively). As examined above, import volumes of the subject goods from the UAE are not negligible.

187. Furthermore, the Tribunal hereby excludes the following CSWP from its threat of injury findings:

- 1 mm thick carbon steel tubing (SPCC-1, 25.6 mm in OD), double coated (first coated with acrylonitrile butadiene styrene, then with polyvinyl chloride);
- non-galvanized, ASTM A53, Grade B, Schedule 80 pipe, with an inside diameter of 1 1/4 inches to 1 1/2 inches, in 22-ft. lengths, with the inside weld scarfed, originating in or exported from Korea, and produced with AISI C1022M steel with carbon content of 0.18 percent to 0.23 percent and manganese content of 0.80 percent to 1.00 percent.

Serge Fréchette

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Presiding Member

Pasquale Michaele Saroli

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Member

Jason W. Downey

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Member