



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

FINDING AND REASONS

Inquiry No. NQ-2013-001

Galvanized Steel Wire

*Finding issued
Tuesday, August 20, 2013*

*Reasons issued
Wednesday, September 4, 2013*

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

THE DUMPING OF GALVANIZED STEEL WIRE ORIGINATING IN OR EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA, THE STATE OF ISRAEL AND THE KINGDOM OF SPAIN AND THE SUBSIDIZING OF GALVANIZED STEEL WIRE ORIGINATING IN OR EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA

FINDING

The Canadian International Trade Tribunal, pursuant to the provisions of section 42 of the *Special Import Measures Act*, has conducted an inquiry to determine whether the dumping of cold-drawn carbon or alloy steel wire, of solid cross section with an actual diameter of 1.082 mm (0.0426 inch) to 12.5 mm (0.492 inch), plated or coated with zinc or zinc alloy, whether or not coated with plastic, excluding flat wire, originating in or exported from the People's Republic of China, the State of Israel and the Kingdom of Spain and the subsidizing of the above-mentioned goods originating in or exported from the People's Republic of China have caused injury or retardation or are threatening to cause injury.

Further to the issuance by the President of the Canada Border Services Agency of final determinations dated July 22, 2013, that the aforementioned goods have been dumped and subsidized, and pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that the dumping and subsidizing of the aforementioned goods have not caused injury or retardation and are not threatening to cause injury.

Serge Fréchette
Serge Fréchette
Presiding Member

Jason W. Downey
Jason W. Downey
Member

Daniel Petit
Daniel Petit
Member

Gillian Burnett
Gillian Burnett
Acting Secretary

The statement of reasons will be issued within 15 days.

Place of Hearing: Ottawa, Ontario

Dates of Hearing: July 22 to 26, 2013

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STATEMENT OF REASONS

INTRODUCTION

1. The purpose of this inquiry¹ is to determine whether the dumping of galvanized steel wire (GSW) originating in or exported from the People's Republic of China (China), the State of Israel (Israel) and the Kingdom of Spain (Spain) and the subsidizing of GSW originating in or exported from China (the subject goods) have caused or threaten to cause material injury to the domestic industry for GSW.

2. This inquiry stems from a complaint filed on March 23, 2012, by Tree Island Steel Ltd. (Tree Island) and the subsequent decision of the President of the Canada Border Services Agency (CBSA) to initiate dumping and subsidizing investigations.

3. The CBSA's decision triggered a preliminary injury inquiry by the Tribunal. On March 22, 2013, the Tribunal determined that there was evidence that disclosed a reasonable indication that the dumping and subsidizing had caused injury or were threatening to cause injury.

4. On April 22, 2013, the CBSA made preliminary determinations of dumping and subsidizing, resulting in the imposition of provisional anti-dumping and countervailing duties on the subject goods and the commencement of this inquiry. On July 22, 2013, the CBSA made final determinations of dumping and subsidizing.²

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

6. The Tribunal's period of inquiry (POI) covers three full years, from January 1, 2010, to December 31, 2012, and two interim periods, from January 1 to March 31, 2012, and the corresponding period in 2013. On this basis, Tribunal staff issued questionnaires to domestic producers, importers, purchasers and foreign producers of GSW. Using the questionnaire replies, Statistics Canada import data and data from the CBSA, staff prepared public and protected staff reports that were distributed, along with the questionnaire replies themselves, to counsel of record for the entities that filed notices to participate in the inquiry.³ Parties were then afforded the opportunity to file case briefs and evidence.

1. The inquiry is conducted pursuant to section 42 of the *Special Import Measures Act*, R.S.C. 1985, c. S-15 [SIMA].
2. Tribunal Exhibit NQ-2013-001-04, Administrative Record, Vol. 1A at 2.
3. All public exhibits were made available to the parties. Protected exhibits, including the protected staff report and the confidential portion of questionnaire replies, were made available only to counsel who had filed the required declaration and confidentiality undertaking with the Tribunal in respect of confidential information. The record of this inquiry consists of all Tribunal exhibits, including the record of the preliminary injury inquiry (PI-2012-005), replies to questionnaires, public and protected versions of the pre-hearing 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.

7. The parties which have actively participated in the inquiry are the following: Tree Island and ArcelorMittal Montreal (AMM), domestic producers of GSW; Sacks Industrial Corp. (Sacks), an importer; Structa Wire Corp. (Structa), a purchaser and producer of welded stucco lath; Moreda Riviere Trefilerias S.A. (MRT), a Spanish exporter; and Yehuda Welded Mesh Ltd. (Yehuda), an Israeli exporter.⁴

8. From July 22 to 26, 2013, the Tribunal heard oral submissions from counsel for these parties, as well as testimony from their witnesses in public and *in camera* sessions.

RESULTS OF THE CBSA'S INVESTIGATIONS

9. The CBSA's period of investigation for its dumping investigation covered January 1 to December 31, 2012. The period of investigation for its subsidizing investigation covered January 1, 2011, to December 31, 2012. The CBSA made the following determinations:⁵

- for the goods originating in or exported from China, 100 percent of the subject goods had been dumped at a weighted average margin of dumping of 100.5 percent, and 91.5 percent of the subject goods had been subsidized at a weighted average amount of subsidy of 14.9 percent;
- for goods originating in or exported from Spain, 100 percent of the subject goods had been dumped at a weighted average margin of dumping of 14.2 percent; and
- for goods originating in or exported from Israel, 100 percent of the subject goods had been dumped at a weighted average margin of dumping of 10.2 percent.

PRODUCT

Product Definition

10. The CBSA has defined the subject goods as follows:

cold-drawn carbon or alloy steel wire, of solid cross section with an actual diameter of 1.082 mm (0.0426 inch) to 12.5 mm (0.492 inch), plated or coated with zinc or zinc alloy, whether or not coated with plastic, excluding flat wire, originating in or exported from the People's Republic of China, the State of Israel and the Kingdom of Spain.

Product Information⁶

11. GSW can be round, flat or shaped and is typically sold in coils. It is plated or coated with zinc or zinc alloy, whether by hot-dipping or electroplating. For the purpose of this inquiry, the definition of the subject goods covers most GSW, but does not extend to flat wire. Flat wire is a more expensive specialty product with two flat sides and is produced on a separate rolling mill or by drawing the wire a second time through a special set of dies.

4. Tree Island, Structa, Sacks, MRT and Yehuda filed case briefs with documentary evidence and, with the exception of Yehuda, witness statements in support of their respective positions. AMM and, through Tree Island, Sivaco Wire Group (Sivaco Wire) filed witness statements. Other participants that were not represented by counsel and only sought access to the Tribunal's public record include the following: Quincaillerie A. Karpas Ltée, an importer; the Delegation of the European Union to Canada; and Continental Steel Ltd., the parent company of Davis Wire Ltd. (Davis Wire), a domestic producer of GSW.

5. Tribunal Exhibit NQ-2013-001-04, Administrative Record, Vol. 1A at 23.

6. Tribunal Exhibit NQ-2013-001-01A, Administrative Record, Vol. 1 at paras. 26-31.

12. The subject goods include all galvanized coatings. In North America, galvanizing standards are reflected in the ASTM A641 standard. There are similar standards that may be applicable in other jurisdictions. ASTM A641 provides for minimum mass of zinc per unit of area to qualify under particular classes. The amount of zinc varies with the wire diameter. In addition, zinc-coated wire produced as “regular coating” (also known as commercial grade) does not have a specified minimum weight of coating and tends to range from 50 g/m² (0.17 oz./ft²) and less. Commercial grades are not covered by ASTM A641.

13. GSW is available in a wide range of gauges (diameters), carbon levels, tensile strengths and coating thicknesses. GSW may be sold for use as baling wire or vineyard wire, or for production into a wide range of products, including fencing, fasteners and construction products. For certain applications, GSW may be further coated with polyvinyl chloride plastic (PVC).

14. Products with higher carbon content have increased hardness and are accordingly more difficult to draw. These products tend to be in the higher range of prices for GSW because of the more demanding engineering specifications. The wire must be drawn more slowly, resulting in a higher energy cost per tonne and generates higher wear and tear on equipment such as dies. Major markets for high carbon GSW are the pulp baling market and certain waste baling applications.

15. The gauge or thickness of the wire is also an important determinant of cost. The thinner the wire, the more the product must be drawn, and the higher the relative cost by weight. Similarly, zinc coating can vary. The thicker the coating, measured in ounces per square foot or grams per square metre, the more it costs to produce the product.

16. There is a wide range of terminology used to describe the thickness of the wire. Diameter is most accurately expressed in millimetres or in inches; but the industry commonly refers to the *gauge* of a wire. Although American Steel & Wire wire gauges are most commonly used, other gauge measurements may differ; some with different size ranges, and others that do not incorporate fractional sizes. In addition, there are permitted tolerances for each gauge size or fractional size.

LEGAL FRAMEWORK

17. 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”.

18. 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.

19. Given that the CBSA has determined that the subject goods have been dumped and subsidized, the Tribunal must also determine whether it is appropriate to make an assessment of the cumulative effect of the dumping and subsidizing of the subject goods (i.e. whether it will cross-cumulate the effect) in this inquiry. Given that the subject goods originate in or are exported from more than one country, the Tribunal must also determine if the prerequisite conditions are met in order to make a cumulative assessment of the effect on the domestic industry of the dumping and subsidizing of the subject goods from all the subject countries (i.e. whether it will conduct a single injury analysis or a separate analysis for each subject country).

20. The Tribunal can then assess whether the dumping and subsidizing of the subject goods have caused material injury to the domestic industry.⁷ Should the Tribunal arrive at a finding of no material injury, it will determine whether there exists a threat of material injury to the domestic industry.⁸ As a domestic industry is already established, the Tribunal will not need to consider the question of retardation.⁹

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

LIKE GOODS AND CLASSES OF GOODS

22. 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.¹⁰

23. 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.

24. In deciding the issue of like goods when goods are not identical in all respects to the other goods, the Tribunal typically considers a number of factors, including the physical characteristics of the goods (such as composition and appearance) and their market characteristics (such as substitutability, pricing, distribution channels, end uses, and whether the goods fulfill the same customer needs).¹¹

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

26. During the present inquiry, the Tribunal did not receive any submissions challenging this finding, and the Tribunal sees no reason to depart from it. The evidence indicates that the characteristics of domestically produced GSW closely resemble those of the subject goods when produced to the required specifications.¹²

7. The Tribunal will proceed to determine the effect of the dumping and subsidizing of the subject goods on the domestic industry, for individual countries or for the cumulated countries, as appropriate.

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

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

10. Should the Tribunal determine that there is more than one class of goods, 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.).

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

12. *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-06A, Administrative Record, Vol. 1.1A at 33, 34, 35.

27. The subject goods and domestically produced GSW are also substitutable, as they generally compete against one another in the Canadian market, have the same end uses and are distributed through the same channels.¹³

28. In terms of distribution channels, the evidence shows that both domestically produced GSW and imported GSW are sold primarily to end users,¹⁴ although some of these end users act as resellers. A relatively small share of sales from domestic production was sold to distributors during the POI.¹⁵

29. In the preliminary injury inquiry, the Tribunal accepted an argument advanced by Structa that there may be two classes of goods: (1) 17/18 gauge GSW (diameter ranging from 1.082 mm to 1.41 mm); and (2) the remainder of the subject goods. The Tribunal indicated however that it would examine this issue further in the context of a final inquiry. To this end, it asked parties to submit specific submissions on whether those goods, also known, respectively, as category 1 GSW and category 2 GSW, constituted separate classes of like goods. After considering the evidence and submissions of parties,¹⁶ the Tribunal concludes that there is only one class of goods¹⁷ for the following reasons.

30. In addressing the issue of classes of goods, the Tribunal typically examines whether goods potentially included in separate classes of goods constitute “like goods” in relation to each other. If those goods are “like goods” in relation to each other, they will be regarded as comprising a single class of goods.¹⁸

31. While Structa relied on differences between category 1 GSW and category 2 GSW in terms of size and tensile break strength, production processes, pricing, and end use, the preponderance of the evidence suggests that both types of GSW fall along a continuum of GSW products ranging in size, chemistry and end use, incremental differences which exist across the entire range of subject goods and not just category 1 GSW and category 2 GSW. These differences are not sufficient to treat category 1 GSW and category 2 GSW as distinct classes of goods, especially given that both types of GSW are made using similar input materials and sold through similar distribution channels.

32. Structa argued, in particular, that there is virtually no substitutability between the two proposed classes of goods because category 1 GSW is used almost exclusively for the production of stucco laths, whereas lower gauge GSW has a multitude of other end uses. However, the preponderance of the evidence shows that 16 gauge GSW can be used in the production of woven or welded wire stucco laths, among other

13. *Ibid.* at 27, 31.

14. Protected *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-07C (protected), Administrative Record, Vol. 2.1A at 197.

15. Protected *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-07A (protected), Administrative Record, Vol. 2.1A at 118; *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-06C, Administrative Record, Vol. 1.1A at 177.

16. Both Structa and Tree Island filed submissions on the issue of classes of goods in response to the Tribunal’s invitation to interested parties in the notice of commencement of inquiry.

17. On May 16, 2013, the Tribunal decided to conduct its injury analysis on the basis of a single class of goods and indicated that it would provide its reasons later. See Tribunal Exhibit NQ-2013-001-26, Administrative Record, Vol. 1B at 2-3.

18. *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) at para. 115; see, also, *Thermal Insulation Board* (11 April 1997), NQ-96-003 (CITT) at 10.

downstream products.¹⁹ Moreover, category 1 GSW has been used for purposes other than the production of woven or welded wire stucco laths, even if that is its primary end use.²⁰

33. Accordingly, the Tribunal finds that domestically produced GSW, defined in the same manner as the subject goods, constitutes like goods in relation to the subject goods and that there is a single class of goods.

DOMESTIC INDUSTRY

34. Subsection 2(1) of *SIMA* defines “domestic industry” as follows:

... the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods except that, where a domestic producer is related to an exporter or importer of dumped or subsidized goods, or is an importer of such goods, “domestic industry” may be interpreted as meaning the rest of those domestic producers.

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

36. There are six producers of like goods in Canada: Tree Island, AMM, Bekaert Canada Ltd. (Bekaert), Davis Wire, Oval International (Oval) and Sivaco Wire.²¹ Tree Island, AMM, Bekaert and Sivaco Wire collectively account for a large majority of total domestic production of the like goods and provided complete responses to the Tribunal’s producers’ questionnaire. In response to the Tribunal’s production orders, Davis Wire and Oval provided some limited information. The information provided by Davis Wire and Oval covered domestic production and sales of domestically produced GSW, but did not include information in respect of the companies’ income statements or production and sales of the benchmark products.

37. Therefore, for the purposes of this inquiry and the assessment of whether the dumping and subsidizing of the subject goods have caused or threaten to cause material injury to the domestic industry, the domestic industry generally includes Tree Island, AMM, Bekaert and Sivaco Wire and, in some instances²², extends to Davis Wire and Oval.

38. A significant proportion of domestic production includes production on a tolling basis along with production for further internal processing.²³ Tree Island, notably, uses a portion of the like goods that it produces to manufacture downstream stucco lath products. Income statements in respect of these portions of domestic production were not requested by the Tribunal.

19. Tribunal Exhibit NQ-2013-001-22.02, Administrative Record, Vol. 1.4, Appendix 1 at 20, 31, 36; Tribunal Exhibit NQ-2013-001-24.01, Administrative Record, Vol. 1.4, attachment 1.

20. Tribunal Exhibit NQ-2013-001-25.01 (protected), Administrative Record, Vol. 2.4, confidential attachment 2. See, also, Tribunal Exhibit PI-2012-005-08.01, Administrative Record in Preliminary Injury Inquiry No. PI-2012-005, Vol. 3, Attachment 1 at 15-19; Tribunal Exhibit NQ-2013-001-11.02, Administrative Record, Vol. 3 at 32; Tribunal Exhibit NQ-2013-001-14.06, Administrative Record, Vol. 5 at 70.

21. *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-06A, Administrative Record, Vol. 1.1A at 17.

22. The Tribunal’s injury analysis of import volumes and price effects of the dumped and subsidized goods takes into account the information provided by all six domestic producers.

23. Protected *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-07A (protected), Administrative Record, Vol. 2.1A at 51; *Transcript of In Camera Hearing*, Vol. 1, 22 July 2013, at 75, 76.

39. The Tribunal is satisfied that the issue of accounting for production for further internal processing was sufficiently addressed at the hearing²⁴ for the purposes of its assessment of the effect of the dumping and subsidizing of the subject goods on the domestic industry.

40. The Tribunal has also taken into account, in its injury analysis, the fact that domestic production on a tolling basis for certain domestic producers is not reflected in the domestic industry's financial results for sales of like goods.

CUMULATION

41. Subsection 42(3) of *SIMA* directs the Tribunal to make an assessment of the cumulative effect of the dumping and subsidizing of the subject goods if it is satisfied that the margin of dumping or the amount of subsidy in relation to the subject goods from each country is not insignificant, the volumes of dumped and subsidized goods from each subject country is not negligible,²⁵ and cumulation is appropriate taking into account conditions of competition between the goods of each country or between them and the like goods.

42. In this case, on the basis of the CBSA's final determinations of dumping and subsidizing, the Tribunal is satisfied that the margins of dumping and the amount of subsidy are not insignificant.

43. Likewise, the Tribunal is satisfied that the import volumes are not negligible. For all three full years of the POI, the volume of subject goods from each country exceeded 3 percent of the total volume of GSW imports from all countries.²⁶ Although, in the first quarter of 2013, the share of subject goods from one country was slightly less than 3 percent before rounding,²⁷ the Tribunal is of the view that this is too short a period to justify a reversal of its finding that, overall, during the POI, import volumes were not negligible.

44. In determining whether a cumulative assessment would be appropriate taking into account the conditions of competition, the Tribunal normally considers whether the goods of each country and the like goods are interchangeable, have similar quality and pricing, are distributed through the same channels and by the same modes of transportation, arrive in the Canadian market at the same time and have an overlapping geographic dispersion within the market.²⁸ However, there may be other factors that the Tribunal could consider in a given case, and no single factor is necessarily determinative.²⁹

45. The evidence discloses that the goods of each subject country and the like goods are largely interchangeable,³⁰ have comparable quality and pricing,³¹ are mostly reported as being sold through the same distribution channels³² and typically have overlapping delivery times, especially between the

24. *Transcript of In Camera Hearing*, Vol. 2, 23 July 2013, at 144-46.

25. 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"

26. Protected *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-07C (protected), Administrative Record, Vol. 2.1A at 171.

27. *Ibid.* at 169.

28. See, for example, *Waterproof Footwear* (25 September 2009), NQ-2009-001 (CITT) at note 28.

29. *Ibid.*; *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (17 August 2001), NQ-2001-001 (CITT) at 16.

30. *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-06A, Administrative Record, Vol. 1.1A at 27.

31. *Ibid.*; protected *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-07C (protected), Administrative Record, Vol. 2.1A at 183.

32. *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-06A, Administrative Record, Vol. 1.1A at 31.

subject goods.³³ In addition, it would seem that the subject goods from each country are transported to Canada via ocean freighter. Because the like goods are available in both Eastern Canada and Western Canada,³⁴ there is no issue about geographic dispersion between the subject goods and the like goods.

46. Despite these similar conditions of competition, MRT and Yehuda would have the Tribunal assess the effect of the dumping of the subject goods from Spain and Israel separately. MRT submits that the subject goods from Spain are not causing injury simultaneously with the subject goods from the other countries. Similarly, Yehuda would like a separate assessment for the subject goods from Israel because it contends that the volumes and prices of such goods are not injurious. However, that is not how the legislative scheme works. The Tribunal must decide whether to conduct a cumulative assessment before it determines whether the dumping of the subject goods is causing or threatening to cause injury, not vice versa. The Tribunal cannot assess injury from each country separately and then use the outcome of such assessment to decide whether a cumulative or separate assessment of injury would be appropriate.

47. MRT also emphasizes, among other factors, a lower-cost manufacturing process, which it claims to have, and the fact that only the subject goods from China benefit from subsidies. Having a cost advantage, whether due to an innovative manufacturing technique or production subsidies, however, does not alter the fact that the subject goods from Spain and China compete with each other and with the subject goods of Israel, or with the like goods, in the Canadian market.

48. There are no legislative provisions that directly address the issue of cross-cumulation of the effects of both dumping and subsidizing. However, as noted in previous cases,³⁵ the effects of dumping and subsidizing of the same goods from a particular country are manifested in a single set of injurious price effects, and it is not possible to isolate the effects caused by the dumping from the effects caused by the subsidizing. In reality, the effects are so closely intertwined as to render it impossible to allocate discrete portions to the dumping and the subsidizing respectively. For that reason, the Tribunal's practice is to cumulatively assess the effects of dumping and the effects of subsidizing.

49. Therefore, the Tribunal is satisfied that a cumulative assessment of the effect on the domestic industry of the dumping and subsidizing of the subject goods is appropriate.

INJURY ANALYSIS

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

33. *Ibid.*

34. Tree Island, Bekaert and Davis Wire are located in British Columbia, while AMM and Sivaco Wire are located in Quebec.

35. 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* at para. 147.

Import Volume of Dumped and Subsidized Goods

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

52. Although the import estimates of Tribunal staff, the CBSA and Statistics Canada vary somewhat, the Tribunal is satisfied that the data contained in the staff report are reliable. The estimates of total apparent imports and the total apparent market are based on a combination of numerous replies to questionnaires, as well as on Statistics Canada data. The CBSA's estimates are based, in part, on fewer complete questionnaire responses and import entry data relating to a shorter period of investigation. Therefore, the Tribunal bases its volume analysis on evidence contained in the staff report.

53. The evidence reveals that the absolute apparent import volume of the subject goods almost doubled between 2010 and 2012, and then tripled in the first quarter of 2013 compared to the first quarter of 2012.³⁶ While these absolute increases occurred in the context of an expanding market, they translated into a substantial increase in market share for the subject goods in 2012 and in the first quarter of 2013 at the expense of the like goods.³⁷

54. Indeed, relative to the production of the like goods, the import volume of the subject goods, when expressed as a percentage of domestic production, held steady in 2011 before nearly doubling in 2012, and then quadrupling in the first quarter of 2013 compared to the first quarter of 2012.³⁸ When expressed as a percentage of domestic sales of the like goods, the import volume of the subject goods held steady in 2011, but increased by about 50 percent in 2012, year-over-year before more than quadrupling in the first quarter of 2013 compared to the first quarter of 2012.³⁹

55. Therefore, by all the prescribed measures, there has been a significant increase in the import volume of the subject goods.

Price Effects of Dumped and Subsidized Goods

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

Positions of Parties

57. Tree Island and AMM have taken the position that purchasers of GSW are price sensitive and that the subject goods have significantly undercut, depressed and suppressed the price of like goods. They rely in large part on the average prices of the subject goods and the like goods, as well as on account-specific evidence. The parties opposite dispute that the subject goods have had any significant price effects.

36. Protected *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-07C (protected), Administrative Record, Vol. 2.1A at 169, 170.

37. *Ibid.* at 179.

38. *Ibid.* at 169; protected *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-07A (protected), Administrative Record, Vol. 2.1A at 49.

39. Protected *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-07C (protected), Administrative Record, Vol. 2.1A at 169, 177.

Importance of Price

58. The record shows that price is an important consideration when purchasing GSW, but the price sensitivity of purchasers should not be overstated.⁴⁰ Although the majority of purchasers reported that they usually purchase the lowest-priced product,⁴¹ non-price factors such as product consistency, long-term supply relationships, quality, technical specifications, delivery time and terms, and reliability of supply/supplier also influence purchasing decisions.⁴² With the notable exception of quality, for which the subject goods and the like goods are highly comparable, the domestic industry tends to have a bit of an advantage in respect of non-price factors.⁴³ Some purchasers also reported that no price advantage would ever trump non-price factors.⁴⁴ Only a minority of purchasers said that a 5 percent price difference would be sufficient to outweigh such factors.⁴⁵

Price Undercutting

59. Average pricing information contained on the record suggests, at first blush, that there was significant price undercutting throughout the POI. The average price of the subject goods was from \$209 to \$248 per tonne less than the average price of the like goods.⁴⁶ That equates to apparent price undercutting in the range of 16 to 18 percent. In fact, considering that the net sales values reported by certain domestic producers did not include freight charges,⁴⁷ the apparent price undercutting is probably a little greater (by approximately 1 percent).⁴⁸

60. However, the Tribunal believes that the average prices as reflected in the *Staff Report* represent a mix of products and that the initial conclusion suggested by average pricing information for GSW must be considered in that light.

40. *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-06A, Administrative Record, Vol. 1.1A at 32.

41. Protected *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-07A (protected), Administrative Record, Vol. 2.1A at 41.

42. *Ibid.* at 42.

43. *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-06A, Administrative Record, Vol. 1.1A at 31, 33-35.

44. Protected *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-07A (protected), Administrative Record, Vol. 2.1A at 42.

45. *Ibid.*

46. *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-06C, Administrative Record, Vol. 1.1A at 167.

47. *Transcript of In Camera Hearing*, Vol. 1, 22 July 2013, at 77-78, Vol. 2, 23 July 2013, at 284.

48. Freight costs reported in RFIs were used to determine a net delivered selling value for those domestic producers that did not include delivery charges in their reported net delivered selling values. This information was used along with the net delivered selling value provided by other domestic producers to derive consolidated net delivered selling values on a \$/tonne basis for the domestic industry for the total apparent market and for each market segment and benchmark product grouping discussed. Protected *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-07A (protected), Administrative Record, Vol. 2.1A at 72, 73, 76, 77, 79-81, 88, 89; Protected *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-07C (protected), Administrative Record, Vol. 2.1A at 177, 180, 183, 185-95; Tribunal Exhibit NQ-2013-001-12.02 (protected), Administrative Record, Vol. 4 at 124; Tribunal Exhibit NQ-2013-001-12.03 (protected), Administrative Record, Vol. 4C at 65; Tribunal Exhibit NQ-2013-001-15.06B (protected), Administrative Record, Vol. 6 at 128; Tribunal Exhibit NQ-2013-001-15.08 (protected), Administrative Record, Vol. 6A at 6; Tribunal Exhibit NQ-2013-001-RI-01A (protected), Confidential Appendix 2, Administrative Record, Vol. 10; Tribunal Exhibit NQ-2013-001-RI-10A (protected), Administrative Record, Vol. 10 at 24; Tribunal Exhibit NQ-2013-001-12.02D (protected), Administrative Record, Vol. 4C at 53.28-53.31; Tribunal Exhibit NQ-2013-001-12.03 (protected), Administrative Record, Vol. 4C at 97-106.

61. Witnesses for the domestic industry testified that the different kinds of GSW can vary in price depending on factors such as diameter, gauge, coating, carbon content and package size.⁴⁹ Category 1 GSW, for example, commands higher prices than category 2 GSW and, within category 2 GSW, PVC-coated chain-link fence wire is higher-priced than baling wire, which in turn is more expensive than chain-link fence wire, which is more expensive than core wire.⁵⁰

62. This product mix issue can have an impact on the ultimate reliability of average pricing, since average pricing may overstate the evidence of price undercutting where this is a higher value (price per tonne) mix of like goods compared to a lower value (price per tonne) mix of subject goods. Moreover, as will be discussed below, the mix of like goods differs from the mix of subject goods.⁵¹

63. Consequently, in this inquiry, the Tribunal needs to consider whether average prices constitute a reliable indicator of price undercutting in the apparent market. To this end, the Tribunal will examine pricing information for benchmark products, both individually and grouped by end-use market segment, and account-specific allegations of price undercutting.

64. In consultation with domestic producers and other market participants, the Tribunal's staff collected pricing data for five benchmark products, all of which are category 2 GSW. Three of these benchmark products are for use in the fencing market: zinc-coated chain-link fence wire, PVC-coated chain-link fence wire and core wire for further coating with PVC. Tree Island submitted that this segment shows the best evidence of price undercutting; however, on balance, the evidence suggests otherwise.

65. The price of the subject zinc-coated chain-link fence wire (made to the ASTM A641 standard) was higher than the price of the like goods in the third quarter of 2011, fourth quarter of 2011 and the last three quarters of 2012.⁵² Although the subject goods were lower-priced in the second quarter of 2011, first quarter of 2012 and first quarter of 2013, the degree of price undercutting ranged from less than 1 percent to 1.5 percent. Sales of the subject PVC-coated chain-link fence wire undercut the price of like goods in two quarters only. In one quarter, the undercutting was approximately 4 percent, in the other, it was approximately 19 percent.⁵³ The volumes, however, of sales of this benchmark product by both domestic producers and importers were very small throughout the period examined for the benchmark products. There was price undercutting of domestic core wire in two quarters of the POI, ranging from less than 0.5 percent to approximately 3 percent.⁵⁴ In most quarters, the price of the subject benchmark products was higher than the price of the corresponding like goods.

66. When the prices of these three fencing benchmark products are examined cumulatively, the perspective remains essentially the same. There were 6 points of comparison between the subject fencing wire and the like goods in the three quarters of 2011. The subject goods undercut the price of the like goods only once, and by only less than 1 percent.⁵⁵ In 2012, there were 10 points of comparison, and 3 instances of

49. *Transcript of Public Hearing*, Vol. 1, 22 July 2013, at 50-52, Vol. 2, 23 July 2013, at 115-16.

50. *Ibid.*, Vol. 1, 22 July 2013, at 57-58.

51. See discussion below.

52. Protected *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-07C (protected), Administrative Record, Vol. 2.1A at 185.

53. *Ibid.* at 187.

54. *Ibid.* at 194.

55. Protected *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-07A (protected), Administrative Record, Vol. 2.1A at 76, 77, 79, 88, 89; Protected *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-07C (protected), Administrative Record, Vol. 2.1A at 185, 186, 187, 194, 195.

price undercutting, ranging from less than 1 percent to approximately 9 percent.⁵⁶ In the first quarter of 2013, there were 3 points of comparison, and the subject goods undercut the like goods in all three instances by less than 1 percent to 19 percent. Across all 8 quarters examined, the price of the subject goods was higher than the price of the like goods 12 times out of 19.⁵⁷

67. The other two benchmark products are high-carbon baling wire and low-carbon baling wire. There is no evidence that either of these products was imported from the subject countries during the POI. Therefore, there is no evidence of price undercutting in respect of these two benchmark products.⁵⁸

68. While it was not identified as a benchmark product, there is extensive evidence on file in relation to category 1 GSW, and it is clear that the price of the subject category 1 GSW has undercut the price of like goods to a considerable degree. In the overall scheme, however, this evidence is of limited use to the Tribunal. The domestic producers of category 1 GSW had substantially different selling prices for these goods during the POI, which were also markedly different from the prices of the subject goods. In the Tribunal's view, the high degree of price variation points to a mix of products within this segment that, to some degree, are not directly competing with one another or the subject goods.

69. Moreover, the domestic industry produces only small quantities of category 1 GSW for sale in the domestic market, and the volumes of subject category 1 GSW represent a relatively small proportion of the total apparent market for GSW.⁵⁹ The Tribunal is of the view that these small volumes are explained, to a certain extent, by non-price factors, including the fact that the major importer of the subject category 1 GSW, Sacks, imports it for its affiliate Structa, which competes with Tree Island in the downstream production and sale of stucco lath.⁶⁰ Witnesses for Sacks and Structa indicated that they cannot, as a matter of reasonable business practices, purchase from competitors and prefer not to rely upon Tree Island as its source for category 1 GSW.⁶¹ Sivaco Wire also produces category 1 GSW, but it does not actively supply Western Canada, which is where Structa operates.⁶² In addition, the witnesses for Structa and Sacks testified that the like goods do not meet Structa's very strict technical specifications regarding lead content.⁶³

70. Therefore, although the subject goods have undercut the price of the like goods in this segment, the presence of a product mix, small volumes of the like goods and the subject goods, and other factors diminishes the actual effect that the undercutting had on the price of the like goods.

56. *Ibid.*

57. *Ibid.*

58. Protected *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-07C (protected), Administrative Record, Vol. 2.1A at 189, 191.

59. Tribunal Exhibit NQ-2013-001-12.02 (protected), Administrative Record, Vol. 4 at 124; Tribunal Exhibit NQ-2013-001-12.03 (protected), Administrative Record, Vol. 4C at 65; Tribunal Exhibit NQ-2013-001-15.11A (protected), Administrative Record, Vol. 6A at 94; Tribunal Exhibit NQ-2013-001-15.06B (protected), Administrative Record, Vol. 6 at 128; Tribunal Exhibit NQ-2013-001-15.08 (protected), Administrative Record, Vol. 6A at 6; Tribunal Exhibit NQ-2013-001-15.10 (protected), Administrative Record, Vol. 6A at 49; *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-06C, Administrative Record, Vol. 1.1A at 177.

60. Tribunal Exhibit NQ-2013-001-30.01, Administrative Record, Vol. 1.3 at 18, paras. 26, 27.

61. *Ibid.* at 21-22, paras. 39-41; Importer's Exhibit C-03 at paras. 16-17, Administrative Record, Vol. 13.

62. *Transcript of Public Hearing*, Vol. 2, 23 July 2013, at 93, 94, 101, 102.

63. Tribunal Exhibit NQ-2013-001-30.01, Administrative Record, Vol. 1.3 at 23, 25, paras. 45-46, 52; Importer's Exhibit C-03 at paras. 23, 24, Administrative Record, Vol. 13; *Transcript of Public Hearing*, Vol. 3, 24 July 2013, at 181-84.

71. After removing the reported volumes and values of the fencing benchmark products, baling wire benchmark products and category 1 GSW from the estimate of the total apparent market, the weighted average unit values of the remaining volumes of the subject goods in each period of the POI were notably less than the price of the corresponding like goods.⁶⁴ However, the Tribunal believes that it is reasonable to conclude that these data are also unreliable indicators of price undercutting for the same reason that the average prices are unreliable, i.e. they are a reflection of product mix.

72. The remaining volumes consist of a wide variety of GSW⁶⁵ that, in the Tribunal's view, also likely differs in price per tonne. The like goods that fit this bill include merchant wire and vineyard wire, both of which are packaged in small amounts.⁶⁶ As such, they are on the higher-price-per-tonne end of the spectrum.⁶⁷ Vineyard wire is an important product for Tree Island.⁶⁸ As far as the Tribunal knows, the prices of the remaining volume of subject goods could have been less than the price of the like goods because they included a higher proportion of lower-value GSW than the segments of GSW that the domestic industry competes in or supplies, including vineyard wire. There is no positive evidence that these subject goods have undercut the price of like goods.⁶⁹

73. For sake of completeness, the Tribunal also considered the potential effect on the above pricing analysis, for the benchmark products and category 1 GSW, caused by the failure of certain producers to include delivery costs in their net delivered selling value.⁷⁰ Having added freight charges to the price of like goods for those domestic producers that did not include such delivery costs in their net delivered selling value, the Tribunal's conclusion remains that, ultimately, the data for the benchmark products and category 1 GSW do not support a finding that the subject goods have significantly undercut the price of like goods.

64. Protected *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-07A (protected), Administrative Record, Vol. 2.1A at 72, 73, 76, 77, 79-81, 88, 89; Protected *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-07C (protected), Administrative Record, Vol. 2.1A at 177, 180, 183, 185-95; Tribunal Exhibit NQ-2013-001-12.02 (protected), Administrative Record, Vol. 4 at 124; Tribunal Exhibit NQ-2013-001-12.03 (protected), Administrative Record, Vol. 4C at 65; Tribunal Exhibit NQ-2013-001-15.06B (protected), Administrative Record, Vol. 6 at 128; Tribunal Exhibit NQ-2013-001-15.08 (protected), Administrative Record, Vol. 6A at 6.

65. Tribunal Exhibit NQ-2013-001-11.03, Administrative Record, Vol. 3A at 119; Tribunal Exhibit NQ-2013-001-11.02, Administrative Record, Vol. 3 at 32; Tribunal Exhibit NQ-2013-001-11.04, Administrative Record, Vol. 3A at 136; Tribunal Exhibit NQ-2013-001-20.07, Administrative Record, Vol. 5.2A at 3; Tribunal Exhibit NQ-2013-001-14.05, Administrative Record, Vol. 5 at 56; Tribunal Exhibit NQ-2013-001-14.17, Administrative Record, Vol. 5A at 41; Tribunal Exhibit NQ-2013-001-14.06, Administrative Record, Vol. 5 at 70; Tribunal Exhibit NQ-2013-001-14.08, Administrative Record, Vol. 5 at 102; Tribunal Exhibit NQ-2013-001-20.03, Administrative Record, Vol. 5 at 88; Tribunal Exhibit NQ-2013-001-14.13, Administrative Record, Vol. 5 at 163; Tribunal Exhibit NQ-2013-001-14.21, Administrative Record, Vol. 5A at 91.

66. *Transcript of Public Hearing*, Vol. 1, 22 July 2013, at 51, 52.

67. *Ibid.* at 53.

68. *Ibid.* at 68.

69. Article 3.1 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (15 April 1994, online: World Trade Organization <http://www.wto.org/english/docs_e/legal_e/final_e.htm>) requires that a determination of injury be based on positive evidence and involve an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products and (b) the consequent impact of these imports on the domestic producers of such products. The *Agreement on Subsidies and Countervailing Measures* (15 April 1994, online: WTO <http://www.wto.org/english/docs_e/legal_e/final_e.htm>) includes the same requirement with respect to the determination of injury caused by subsidized imports. The Tribunal can thus only make its determination on the basis of positive evidence. In the present case, it finds that there is a lack of positive evidence to suggest significant price undercutting by the remaining volume of subject goods.

70. *Supra*, note 48.

74. Finally, the domestic industry has submitted several account-specific allegations of price undercutting, which, it says, support a finding that the subject goods have significantly undercut the price of the like goods. However, the Tribunal concludes that many of these allegations are unverifiable, unsubstantiated or speculative. For instance, the Tribunal heard that some of the sales alleged to have been lost by the domestic industry *could* have been lost to non-subject imports or even to other domestic producers.⁷¹ In other instances, the allegations were significantly discredited by witness testimony.⁷² In addition, the volume lost in the remaining sales allegations only account for less than 2 percent of total domestic production during the POI.⁷³

75. Even if the Tribunal were to give the domestic industry the benefit of the doubt,⁷⁴ including those allegations that were unverifiable or unsubstantiated, the total volume lost would only equate to less than 2 percent of total domestic production during the POI. Mr. John Suchecki of AMM testified that there were other instances of sales lost to the subject goods, but he provided no elaboration or further substantiation.⁷⁵ Moreover, the large majority of these allegations and volumes relate to the fencing segment⁷⁶ and, as discussed above, the benchmark pricing analysis reveals that any price undercutting that has taken place in that segment is not significant.

76. Therefore, on balance, the Tribunal finds that the subject goods have not significantly undercut the price of like goods.

Price Depression

77. The Tribunal also finds, for the reasons which follow, that the subject goods have not significantly depressed the price of like goods.

78. The weighted average unit selling values of the like goods increased by 5 percent in 2011 and held steady in 2012.⁷⁷ The average price did drop in the first quarter of 2013, but by just 2 percent.⁷⁸

79. Although the average price masks a product mix component, the trends in the price of benchmark products are broadly similar. From the second quarter of 2011 to the second quarter of 2012, the price of domestic zinc-coated chain-link fence wire held firm.⁷⁹ In the subsequent three quarters, the domestic price dropped, but by a small percentage.⁸⁰ The price of domestic PVC-coated chain-link fence wire actually increased in 2012 before declining in the second half of 2012 and then increasing again in the first quarter of 2013.⁸¹

71. *Transcript of In Camera Hearing*, Vol. 2, 23 July 2013, at 198-201.

72. *Ibid.*, Vol. 1, 22 July 2013, at 45-50.

73. *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-06C, Administrative Record, Vol. 1.1A at 167; Tribunal Exhibit NQ-2013-001-12.02 (protected), Administrative Record, Vol. 4 at 173-76; Manufacturer's Exhibit A-08 (protected), Administrative Record, Vol. 12 at paras. 10-13.

74. When asked to compare the net price of the like goods and that of the subject goods, several purchasers gave the advantage to the subject goods. *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-06A, Administrative Record, Vol. 1.1A at 33-35.

75. *Transcript of Public Hearing*, Vol. 2, 23 July 2013, at 113-14.

76. *Ibid.*, Vol. 1, 22 July 2013, at 25; *Transcript of In Camera Hearing*, Vol. 1, 22 July 2013, at 42-44.

77. *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-06C, Administrative Record, Vol. 1.1A at 184.

78. *Ibid.*

79. Protected *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-07C (protected), Administrative Record, Vol. 2.1A at 185.

80. *Ibid.*

81. *Ibid.* at 187.

The price of domestic core wire increased modestly overall through to the second quarter of 2012 before declining to lower levels on very small volumes.⁸² The price of baling wire was similarly up and down, but there were no imports of these subject goods during the POI,⁸³ and there was little or no evidence of offers for these goods to purchasers in Canada, meaning that it could not have been the subject goods which caused this price depression.

80. The weighted average selling price of the like goods category 1 GSW was not depressed over the POI, in spite of the apparent undercutting. Although there was a decline in the selling price of these like goods in the first quarter of 2012 compared to the first quarter of 2013, the weighted average selling price experienced consistent year-over-year increases between 2010 and 2012.⁸⁴

81. The Tribunal also examined account-specific evidence. Tree Island and Sivaco Wire alleged that they had to lower their prices to retain some business. The sum of these allegations, however, amounts to less than 1 percent of the domestic industry's sales in the domestic market over the POI and, in some instances, the Tribunal was not provided with both an initial proposed price and a final sale price with which to make a comparison. Where the domestic producers provided both, few of the final sales prices were significantly lower than the initial price offered.⁸⁵

82. Mr. Jordi Gotor of MRT testified that GSW prices in Canada have remained among the highest in the world.⁸⁶

83. Therefore, while there has been some price depression, especially toward the end of the POI, it has not been significant and cannot be entirely attributed to the presence of the subject goods in the market.

Price Suppression

84. The domestic producers have alleged that the subject goods have caused significant price suppression by preventing them from raising the price of like goods to offset cost increases.

85. In 2011, the domestic industry's cost of goods sold on a dollar-per-tonne basis increased by almost twice the amount of the increase in the average unit selling price of the like goods (dollars per tonne).⁸⁷ A comparison of cost of goods sold with net sales values on a dollar-per-tonne basis delivers the same result.⁸⁸

82. *Ibid.* at 194, 195.

83. Protected *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-07A (protected), Administrative Record, Vol. 2.1A at 80, 81; Protected *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-07C (protected), Administrative Record, Vol. 2.1A at 188-93.

84. Tribunal Exhibit NQ-2013-001-12.02 (protected), Administrative Record, Vol. 4 at 124; Tribunal Exhibit NQ-2013-001-12.03 (protected), Administrative Record, Vol. 4C at 65.

85. Tribunal Exhibit NQ-2013-001-12.02 (protected), Administrative Record, Vol. 4 at 173-78; Tribunal Exhibit NQ-2013-001-12.01 (protected), Administrative Record, Vol. 4 at 57-59; Tribunal Exhibit NQ-2013-001-12.01A (protected), Administrative Record, Vol. 4 at 112; Tribunal Exhibit NQ-2013-001-12.03B (protected), Administrative Record, Vol. 4C at 140.

86. *Transcript of Public Hearing*, 26 July 2013, Vol. 5 at 328.

87. Protected *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-07A (protected), Administrative Record, Vol. 2.1A at 97; *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-07C (protected), Administrative Record, Vol. 2.1A at 183.

88. Protected *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-07A (protected), Administrative Record, Vol. 2.1A at 97.

It appears that the cost increase was due to a significant rise in the cost of direct materials, including wire rod, as well as higher labour and overhead costs.⁸⁹

86. However, on balance, there is insufficient evidence that the domestic industry's failure to pass along this increase in the cost of goods sold to customers is attributable to the presence of the subject goods in the market. The average apparent market unit value of the subject goods imported by importers increased by 5 percent in 2011, the same percent by which the average unit selling price of the like goods increased.⁹⁰ It is possible that the prices of the like goods would have increased more in 2011 had it not been for competition from low-priced subject goods in 2010, but, as discussed, the Tribunal is not satisfied that the subject goods had significantly undercut or depressed the price of like goods.

87. There was no increase in the domestic industry's cost of goods sold per tonne in 2012 or in the first quarter of 2013.⁹¹

88. Therefore, although there was some price suppression in 2011, none has occurred since then and not to a significant extent overall.

Resultant Impact on the Domestic Industry

89. Paragraph 37.1(1)(c) of the *Regulations* requires the Tribunal to consider the resulting impact of the dumped and subsidized goods on the state of the domestic industry and, in particular, all relevant economic factors and indices that have a bearing on the state of the domestic industry.⁹² In addition, paragraph 37.1(3)(b) directs the Tribunal to consider whether any factors other than dumping or subsidizing of the subject goods have caused injury.⁹³ The Tribunal must ultimately determine whether any resultant impact of the subject goods on the state of the domestic industry, separate and apart from the impact of other factors, constitutes material injury. The extent, timing and duration of the injury are relevant considerations in determining whether any injury caused by the subject goods is "material".⁹⁴

89. *Ibid.* at 100, 102.

90. Protected *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-07C (protected), Administrative Record, Vol. 2.1A at 184.

91. Protected *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-07A (protected), Administrative Record, Vol. 2.1A at 97.

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

93. The factors which are prescribed in this regard are (i) the volumes and prices of imports of like goods that are not dumped or subsidized, (ii) a contraction in demand for the goods or like goods, (iii) any change in the pattern of consumption of the goods or like goods, (iv) trade-restrictive practices of, and competition between, foreign and domestic producers, (v) developments in technology, (vi) the export performance and productivity of the domestic industry in respect of like goods, and (vii) any other factors that are relevant in the circumstances.

94. 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].

Positions of Parties

90. Tree Island, supported by AMM, has taken the position that the dumping and subsidizing of the subject goods have caused material injury in such forms as reduced volumes, sales, market share and gross margins, as well as in the forms of operating losses and stagnant capacity utilization. MRT, Sacks and Structa, and Yehuda have taken the opposite position, noting that some of the domestic industry's performance indicators improved during the POI and that, if the domestic industry has been held back, it is attributable to such other factors as a slow recovery in demand, the lack of investment and innovation, and mismanagement.

Market Conditions

91. In the aftermath of the 2008 financial crisis, the global economy entered a recession, as did Canada and the United States. As a result of the decline in economic activity in Canada and the United States, particularly in the residential and commercial construction sectors, there was a slowdown in the domestic market for GSW.⁹⁵ The Tribunal heard testimony verifying the downward trend in the market for GSW starting in 2008, when "... all hell broke loose",⁹⁶ with demand hitting bottom in 2009. Domestic producers of GSW also faced challenges in relation to plummeting steel rod prices in mid-2008, the major material input in the production of GSW.⁹⁷

92. As economic conditions and construction activity improved in Canada and the United States during the POI,⁹⁸ the demand for GSW also began to recover. The apparent market for GSW in Canada steadily increased by 25 percent from 2010 to 2012 and by 4 percent from the first quarter of 2012 to the first quarter of 2013.⁹⁹ The cost of direct materials, including wire rod, also increased sharply in 2011 compared to 2010.¹⁰⁰ According to witness testimony, the domestic industry saw gradual growth in the market for GSW during the POI, although not yet returned to the pre-2008 levels,¹⁰¹ with continued growth expected in 2013 and 2014.¹⁰²

95. Importer's Exhibit C-05 at 193, Administrative Record, Vol. 7; Importer's Exhibit C-08 at 1, Administrative Record, Vol. 13; Exporter's Exhibit D-05, Tree Island Income Fund Annual Information Form (March 31, 2010) at 13, Administrative Record, Vol. 13A.

96. *Transcript of Public Hearing*, Vol. 2, 23 July 2013, at 121.

97. Importer's Exhibit C-05 at 193, Administrative Record, Vol. 7; Tribunal Exhibit NQ-2013-001-11.02, Administrative Record, Vol. 3 at 67; Exporter's Exhibit D-05, Tree Island Income Fund Annual Information Form (March 31, 2010) at 13, Administrative Record, Vol. 13A; *Transcript of In Camera Hearing*, Vol. 2, 23 July 2013, at 127-28.

98. *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-06A, Administrative Record, Vol. 1.1A at 46; Importer's Exhibit C-08 at 1, Administrative Record, Vol. 13.

99. *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-06C, Administrative Record, Vol. 1.1A at 168.

100. Tribunal Exhibit NQ-2013-001-11.02, Administrative Record, Vol. 3 at 113; Exporter's Exhibit D-05, Tree Island Income Fund Annual Information Form (March 31, 2010) at 14, 15, Administrative Record, Vol. 13A; *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-07A (protected), Administrative Record, Vol. 2.1A at 100.

101. Manufacturer's Exhibit A-03 at 9, para. 39, Administrative Record, Vol. 11; *Transcript of Public Hearing*, Vol. 1, 22 July 2013, at 26, Vol. 2, 23 July 2013, at 114-15; *Transcript of In Camera Hearing*, Vol. 2, 23 July 2013, at 257-59.

102. *Transcript of Public Hearing*, Vol. 2, 23 July 2013, at 114-15; Importer's Exhibit C-08 at 1, Administrative Record, Vol. 13.

Production

93. The presence of the subject goods in the market did not stop domestic production from expanding between 2010 and 2012. In that period, domestic production of like goods increased by 4 percent.¹⁰³ Factoring out domestic production for further manufacture and for other firms under tolling arrangements, domestic production for domestic and export sales increased by 3 percent between 2010 and 2011 and a further 1 percent between 2011 and 2012.¹⁰⁴ These figures, however, hide a weaker export performance in 2011-2012 compared to 2010.¹⁰⁵ Domestic sales of like goods increased approximately 12 percent between 2010 and 2012, meaning that there was a corresponding increase in production of like goods for domestic sales.¹⁰⁶

94. Despite this expansion of production, there is evidence of shutdowns of production lines within the domestic industry. Tree Island closed a production line in 2010.¹⁰⁷ AMM shut down a line in 2012.¹⁰⁸ Both events were in response to reduced orders. However, in one case, this was in no small part due to the lingering effects of the recession and, in the other case, the evidence suggests that the main culprit was a decline in sales to export markets.¹⁰⁹

95. Domestic production for domestic and export sales dropped by 13 percent in the first quarter of 2013 compared to the first quarter of 2012.¹¹⁰ Exports of domestically produced GSW increased in the first quarter of 2013 compared to the first quarter of 2012, meaning that the decline in domestic production was largely attributable to a decline in sales of like goods for sale in the domestic market.¹¹¹ Virtually all of this lost volume was concentrated in the fencing segment. More specifically, the large majority of this lost volume was in respect of a single type of GSW: zinc-coated chain-link fence wire.¹¹² Notably, this decrease coincided with an 8 percent decrease in construction activity.¹¹³ A decline in construction would logically imply a drop in demand for fencing products, including zinc-coated chain-link fence wire, and therefore was likely a factor. In any event, to put this into further perspective, this decreased volume of zinc-coated chain-link fence wire represents a very small percentage of the total domestic production of the like goods in 2012 and was not enough to offset the earlier increases in total output.¹¹⁴ Interestingly, in this quarter, one of Tree Island's two lines ran at full capacity to meet heavy demand for other types of GSW.¹¹⁵

103. *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-06C, Administrative Record, Vol. 1.1A at 168.

104. Protected *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-07A (protected), Administrative Record, Vol. 2.1A at 50.

105. *Ibid.* at 98.

106. *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-06C, Administrative Record, Vol. 1.1A at 177.

107. *Transcript of Public Hearing*, Vol. 1, 22 July 2013, at 26-28, 83.

108. *Ibid.*, Vol. 2, 23 July 2013, at 126.

109. *Ibid.*, Vol. 1, 22 July 2013, at 26, 28-29, 83, Vol. 2, 23 July 2013, at 112; *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-07A (protected), Administrative Record, Vol. 2.1A at 98, 101.

110. *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-06C, Administrative Record, Vol. 1.1A at 168.

111. Protected *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-07A (protected), Administrative Record, Vol. 3.1A at 49, 70; *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-06C, Administrative Record, Vol. 1.1A at 177.

112. Protected *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-07C (protected), Administrative Record, Vol. 2.1A at 186.

113. *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-06A, Administrative Record, Vol. 1.1A, at 46.

114. *Ibid.* at 49; *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-06C, Administrative Record, Vol. 1.1A at 167.

115. *Transcript of Public Hearing*, Vol. 1, 22 July 2013, at 38, 39, *Transcript of In Camera Hearing*, Vol. 1, 22 July 2013, at 7, 8.

Sales

96. The same trend is apparent in the domestic sales from domestic production and the domestic industry's market share. Sales of like goods increased by 9 percent in 2011 and by 3 percent in 2012.¹¹⁶ These data are consistent with the lack of significant price effects of the subject goods despite, in the case of China, the amount of dumping and the amount of subsidy being of an important magnitude. The importance of non-price purchasing factors is therefore telling. Sales decreased by 23 percent in the first quarter of 2013 compared to the first quarter of 2012.¹¹⁷ While the reported sales of the subject zinc-coated chain-link fence wire doubled in this quarter,¹¹⁸ the absolute volume of sales of the subject goods was significantly less than the decline in the sales volume of the like goods, and sales of GSW from non-subject countries declined rather than increase in order to fill the void left by a decline in sales of like goods.¹¹⁹ This implies that, rather than the dumping and subsidizing of the subject goods, the decline in sales in the first quarter of 2013 was largely caused by reduced demand for zinc-coated chain-link fence wire in that quarter compared to the first quarter of 2012.

Market Share

97. The domestic industry's market share was between 71 and 72 percent through 2010-2011 and peaked at 77 percent in the first quarter of 2012.¹²⁰ It fell to 64 percent for 2012 as a whole and to 57 percent in the first quarter of 2013. On an aggregate level, there was a direct correlation between these movements and the market share of the subject goods. The market share of the subject goods was flat in 2010 and 2011, fell in the first quarter of 2012, but then increased significantly in the remainder of 2012 and in the first quarter of 2013.¹²¹ However, while some of this loss in the market share to the subject goods reflects the loss of sales of domestic chain-link fence wire, some of it can be explained by the reduced demand for zinc-coated chain-link fence wire. Overall, imports of the subject benchmark products did not otherwise increase appreciably.

98. The other segments where volumes of the subject goods increased are category 1 GSW and the other non-benchmark products for which there is little or no evidence of direct competition between the domestic industry and the subject goods.¹²² Indeed, the recent experience of the domestic industry has not been uniform; almost half of the loss in market share in 2012 over 2011 was suffered by one of the two largest domestic producers of fencing wire, while the others saw their market share hold fairly steady.¹²³

116. *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-06C, Administrative Record, Vol. 1.1A at 178.

117. *Ibid.* at 177-78.

118. Protected *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-07C (protected), Administrative Record, Vol. 2.1A at 186.

119. *Ibid.*

120. *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-06C, Administrative Record, Vol. 1.1A at 167.

121. Protected *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-07C (protected), Administrative Record, Vol. 2.1A at 167.

122. Protected *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-07A (protected), Administrative Record, Vol. 2.1A at 72,73,76, 77, 79-81, 88, 89; Protected *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-07C (protected), Administrative Record, Vol. 2.1A at 177, 180, 183, 185-95; Tribunal Exhibit NQ-2013-001-12.02 (protected), Administrative Record, Vol. 4 at 124; Tribunal Exhibit NQ-2013-001-12.03 (protected), Administrative Record, Vol. 4C at 65; Tribunal Exhibit NQ-2013-001-15.06B (protected), Administrative Record, Vol. 6 at 128; Tribunal Exhibit NQ-2013-001-15.08 (protected), Administrative Record, Vol. 6A at 6. At least four domestic producers do not have common accounts with the importers of the subject good that responded to the Tribunal's questionnaire. *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-06A, Administrative Record, Vol. 1.1A at 92.

123. Protected *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-07C (protected), Administrative Record, Vol. 2.1A at 177, 179.

Employment and Wages

99. The subject goods have had no discernible effect on the workforce. The number of persons employed by the domestic industry steadily increased throughout the POI, including in the first quarter of 2013.¹²⁴ The number of person-hours was slightly lower in the first quarter of 2013 compared to the first quarter of 2012, but the 2012 level was 8 percent higher than the starting point in 2010.¹²⁵ Wages paid by domestic producers were slightly lower in the first quarter of 2013 compared to the first quarter of 2012, but increased strongly from 2010 to 2012.¹²⁶

Productivity

100. Productivity expressed as tonnes per employee increased by 3 percent in 2011 compared to 2010, then decreased by 8 percent in 2012.¹²⁷ A similar trend was experienced in the first quarter of 2013, when productivity decreased by 15 percent compared to the first quarter of 2012.¹²⁸ When expressing productivity as tonnes per thousands of hours worked, the trends are similar.¹²⁹

101. Given that productivity was lower in 2012 than in 2010, but production volumes and sales were higher in 2012 and 2010, it could be that the domestic industry ramped up employment too much. At the same time, there were significant labour relations issues within the domestic industry during the POI, including a lock-out of employees, and struggles to find and retain experienced personnel. It is therefore unclear to what extent, if any, the subject goods have had an effect on productivity.

102. The decline in productivity is also consistent with the charge levelled at Tree Island by its founder that the company is devoid of much needed investment in modern equipment, engineers and R&D.¹³⁰ By comparison, the Spanish producer, MRT, has boosted productivity by using a much lower-cost mechanical descaling method instead of the “old-fashioned” acid pickling process,¹³¹ while Sacks and Structa’s Chinese supplier is said to operate a “state-of-the-art” facility.¹³²

103. While Tree Island sought to refute its founder’s claims, the record shows that it invested as much in its GSW operations between 2003 and 2009 as it had in 2002 alone, much of which may actually have consisted of maintenance expenses, and that very little investment was made during the POI.¹³³ Indeed, the productivity rates have varied greatly among the domestic producers, though a great deal of this has to do

124. *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-06A, Administrative Record, Vol. 1.1A at 103; *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-06C, Administrative Record, Vol. 1.1A at 167.

125. *Ibid.* at 168.

126. Protected *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-07A (protected), Administrative Record, Vol. 2.1A at 105.

127. *Staff Report*, revised, 26 June 2013, Tribunal Exhibit NQ-2013-001-06B, Administrative Record, Vol. 1.1A at 165.

128. *Ibid.*

129. *Ibid.*

130. *Transcript of Public Hearing*, Vol. 3, 24 July 2013, at 135-36, 138-39.

131. Exporter’s Exhibit D-01 at 17-18, para. 48, Administrative Record, Vol. 13; *Transcript of Public Hearing*, Vol. 3, 24 July 2013, at 200.

132. *Ibid.* at 143.

133. Manufacturer’s Exhibit A-13 at 1, para. 3, Administrative Record, Vol. 11; *Transcript of Public Hearing*, Vol. 3, 24 July 2013, at 138-39; Protected *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-07A (protected), Administrative Record, Vol. 2.1A at 163.

with variations in product mix and diameters in particular.¹³⁴ When asked to account for a significant financial improvement in 2012, a witness for a domestic producer cited an effort to increase productivity. This suggests that any effect that the subject goods has had on productivity is secondary to other factors.

Investment

104. Total investments by the domestic industry increased in value during the POI.¹³⁵ This trend is expected to be short-lived due to a projected decline in investments for 2013 compared to 2012. However, in 2014, investments are anticipated to increase again. Indeed, rather than alleging that the subject goods have impaired the ability of the domestic industry to invest, in this inquiry, the domestic industry has had to defend its record of investment from the charge that it has not invested enough to compete with imports and meet the needs of purchasers.

105. Further, little evidence was submitted to show that the subject goods have adversely affected the return on the domestic industry's investments, and there is nothing to suggest that the domestic industry has lost its ability to raise capital as a result of the presence of the subject goods in the Canadian market.¹³⁶

Capacity Utilization

106. The domestic industry's practical plant capacity was steady from 2010 to 2012 before experiencing a slight decline in the first quarter of 2013 compared to the first quarter of 2012.¹³⁷ The capacity utilization rate stayed virtually the same from 2010 to 2012 and, despite a peak in the first quarter of 2012, returned to the full year 2012 level in the first quarter of 2013.¹³⁸ As discussed, at certain points during the POI, Tree Island ran a line at full capacity and even had to resort to replacing exports of like goods to its U.S. affiliate with imports of GSW from China.¹³⁹

Inventory

107. There is also little evidence that the subject goods have adversely affected inventories. The inventory level of the like goods increased by 27 percent in 2011, but decreased by 11 percent in 2012 and by a further 17 percent in the first quarter of 2013 compared to the first quarter of 2012.¹⁴⁰ This suggests that the domestic industry has not been having difficulty finding buyers for its goods.

Financial Performance

108. If the increasing volumes of the subject goods were causing material injury, then one would expect to see a progressive deterioration in the domestic industry's financial performance.¹⁴¹ While financial results

134. Protected *Staff Report*, revised, 26 June 2013, Tribunal Exhibit NQ-2013-001-07B (protected), Administrative Record, Vol. 2.1A at 165.

135. Protected *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-07A (protected), Administrative Record, Vol. 2.1A at 108.

136. *Transcript of In Camera Hearing*, Vol. 1, 22 July 2013, at 27.

137. Protected *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-07C (protected), Administrative Record, Vol. 2.1A at 167.

138. *Ibid.*

139. *Transcript of Public Hearing*, Vol. 1, 22 July 2013, at 37-39.

140. *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-06A, Administrative Record, Vol. 1.1A at 109.

141. See World Trade Organization Report of the Appellate Body, *Argentina - Safeguard Measures on Imports of Footwear*, WT/DS121/AB/R (14 December 1999) at paras. 144-45.

were poor throughout the POI, the domestic industry's fortunes have been improving. Revenues, or total net sales value, from domestic sales of like goods were down in the first quarter of 2013 compared to the first quarter of 2012, reflecting the decline in sales volume that quarter, but they were otherwise progressively higher during the POI.¹⁴² The domestic industry's gross margins improved from 2011 to 2012 and, especially, in the first quarter of 2013 compared to the first quarter of 2012.¹⁴³ Net income before tax worsened in 2011, but markedly improved in 2012 and in the first quarter of 2013.¹⁴⁴

109. These recent improvements seem to have coincided with important decreases in the cost of goods manufactured, especially direct material costs, but also factory overhead.¹⁴⁵ In general, there is no apparent correlation between the downturn output, sales and market share in the first quarter of 2013 and the financial indicators for that quarter. On the whole, while the domestic industry is still not healthy, it is less unhealthy than it was at the beginning of the POI and is progressing in the right direction as demand slowly returns, notwithstanding the dumping and subsidizing of the subject goods.

Other Factors

110. Besides slow demand, weak export performance, high costs, underinvestment and a lack of innovation, other factors have also weighed on the domestic industry. Tree Island recently experienced a period of corporate turmoil, which recently culminated in the shareholders' decision to effect a major change in the company's direction, forcing out the former chairman before restoring what they currently consider as managerial stability.¹⁴⁶

111. Another domestic producer experienced prolonged labour problems, including a lock-out and the moving of major production equipment out of the country, seriously disrupting output in 2010-2011 with the fallout continuing to be felt through 2012. Imports from non-subject countries have been a continual source of competition, and new entrants to the domestic market have recently emerged.¹⁴⁷ Exchange rate fluctuations between 2010 and 2012 have at times made the like goods from Israel and Spain significantly less competitive to the extent that price is important for some purchasers.¹⁴⁸ The combination of all these factors has held the domestic industry back to a much greater degree than have the subject goods. In addition, these non-price circumstances likely contributed to making the subject goods more attractive to purchasers at certain times during the POI.

Summary

112. The above suggests that the dumping and subsidizing of the subject goods have adversely affected the domestic industry, but only for a limited duration and limited extent in terms of lower production volumes, sales, revenues and market share, particularly in the first quarter of 2013. Even then, much of this impact has been limited to a single product (zinc-coated chain-link fence wire) for which there has been no

142. Protected *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-07A (protected), Administrative Record, Vol. 2.1A at 97.

143. *Ibid.*

144. *Ibid.*

145. *Ibid.* at 100.

146. *Transcript of Public Hearing*, Vol. 1, 22 July 2013, at 14-16, Vol. 3, 24 July 2013, at 131.

147. Protected *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-07C (protected), Administrative Record, Vol. 2.1A at 169; *Transcript of In Camera Hearing*, Vol. 2, 23 July 2013, at 187, 189, 198, 214-15.

148. *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-06A, Administrative Record, Vol. 1.1A at 114, 115; *Transcript of In Camera Hearing*, Vol. 2, 23 July 2013, at 195.

significant price undercutting, price depression or price suppression. This has not translated into a noticeable impact on the consolidated income statement.

113. The domestic industry suffered more significantly in other ways during the POI, including in terms of productivity and profitability, primarily due to factors that are not attributable to the dumping or subsidizing of the subject goods. On the basis of the above analysis, the Tribunal concludes that, to the extent that the subject goods have had an adverse impact on the domestic industry, it is not sufficient to constitute material injury.

MASSIVE IMPORTATION

114. The domestic industry submitted that the conditions exist for a finding of massive importation pursuant to paragraphs 42(1)(b) and (c) of *SIMA*. However, a finding of material injury to the domestic industry is a condition precedent to a finding of massive importation¹⁴⁹ and, therefore, the Tribunal determines that there is no basis for a finding of massive importation in this case.

THREAT OF INJURY ANALYSIS

115. Having found that the dumping and subsidizing of the subject goods have not caused material injury to the domestic industry, the Tribunal must now consider whether they are threatening to cause material 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.¹⁵⁰ 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. Further, subsection 37.1(3) of the *Regulations* directs the Tribunal to consider whether a causal relationship exists between the dumping and subsidizing of the goods and the threat of injury on the basis of the factors listed in subsection 37.1(2) of the *Regulations*, and whether any factors other than the dumping and subsidizing of the goods are threatening to cause injury.

149. *SIMA*, paras. 42(1)(b) and (c). See, also, *Waterproof Footwear and Waterproof Footwear Bottoms* (7 January 2003), NQ-2002-002 (CITT) at 17.

150. 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.”

Positions of Parties

116. Tree Island submitted that there is evidence of a threat of injury that is clearly foreseen and imminent in the present case. In argument, Tree Island relied on the following factors: a significant rate of increase in the volume of imports of the subject goods during the POI; the likelihood of significant freely disposable capacity of exporters; the potential for product shifting; and the potential impact of the subject goods on the prices of like goods. Tree Island's written submissions also referred to China's pro-export policies for higher value-added steel products and the substantial reliance of MRT and Yehuda on export markets as indicators of threat of injury.

117. Structa and MRT opposed a threat of injury finding on the following grounds: the domestic industry has shown signs of improved performance; exporters are already operating at high rates of capacity utilization that, in some cases, are set to increase; and the fact that no anti-dumping or countervailing duties have been imposed on GSW in other countries. Further, Structa argued that there is low likelihood of product shifting and that the markets for GSW and downstream products, such as GSW mesh, are likely to grow in both Canada and the United States. For its part, Yehuda opposed a threat of injury finding but did not elaborate its position other than to note the falling share of the subject import volumes and values from Israel. However, in light of the Tribunal's decision to conduct a cumulative assessment of threat of injury, it has not considered imports of the subject goods from Israel separately from the other subject goods.

Time Frame

118. In assessing threat of injury, the Tribunal typically considers a time frame of 12 to 18 months, and no more than 24 months, beyond the date of its finding. The Tribunal is not necessarily bound by this time frame, as each case is unique. In the present case, the Tribunal notes that very little evidence on the record squarely addresses the domestic industry's perceived threat of injury. Nevertheless, the Tribunal analyzed the prescribed factors in turn on the basis of the available evidence before it. Given that delivery times for direct imports of the subject goods are fairly short,¹⁵¹ the Tribunal used a 12-month time frame in this inquiry.

Likely Volumes

119. Looking at the imports of the subject goods during the POI and the two interim periods, there was a significant rate of increase in volume which may indicate a likelihood of substantially increased imports of the subject goods into Canada. In particular, the volume of imports of the subject goods increased year-over-year, rising by 7 percent in 2011 and by 71 percent in 2012. Imports of the subject goods during the first quarter of 2012 increased by 215 percent when compared to the first quarter in 2011.¹⁵² As discussed above, there has also been a significant increase in the import volume of the subject goods relative to the production of the like goods and domestic sales of the like goods.

120. This trend could continue, considering that GSW prices in Canada are among the highest in the world and, therefore, are attractive to foreign exporters. The Tribunal also recognizes that, because the Canadian market for GSW is relatively small, i.e. compared to the U.S. market, small increases in import volumes are more likely to have a disruptive effect on domestic producers. However, the trends in import volumes must be considered in light of the fact that, apart from the fencing segment, there has been little direct competition between the subject goods and the like goods. Also, for the reasons discussed below, it is not clear that the exporters of the subject goods will have the means or motive to significantly increase shipments to Canada.

151. *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-06A, Administrative Record, Vol. 1.1A at 31.

152. *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-06C, Administrative Record, Vol. 1.1A at 170.

Disposable Capacity

121. In addition, the ability of the exporters of the subject goods to increase the volumes of the subject goods to an injurious level is handicapped by their production capacity. There is also a major evidentiary gap with respect to the freely disposable capacity of Chinese exporters. As noted by Structa, however, the recent investigation by the United States International Trade Commission of GSW from China and Mexico showed high Chinese capacity utilization rates of 86 percent in both 2010 and 2011, followed by a projected 2012 rate of 87.2 percent.¹⁵³

122. Similarly, in respect of Spain and Israel, both MRT and Yehuda reported high capacity utilization rates during the POI and the 2013 interim period.¹⁵⁴ According to Mr. Gotor's testimony, MRT is already near full capacity utilization for GSW production.¹⁵⁵ No evidence was filed to suggest future increases in export capacity and/or export orientation in any of the subject countries. On the basis of the limited evidence available, the Tribunal does not find that there is freely disposable capacity of exporters to a degree that indicates a likelihood of a substantial increase of dumped or subsidized GSW.

Product Shifting

123. In terms of product shifting, the limited evidence on the record of exporters in the subject countries indicates that, in some cases, the machinery used to produce the subject goods is used to produce other goods and, in other cases, it is not.¹⁵⁶ The Tribunal also heard testimony from Mr. Richard Lebel of Sivaco Québec that the machinery used in the production of GSW can differ between the machinery which is designed to produce only wire for chain-link fencing and more sophisticated equipment that is needed to produce higher value-added wires with high carbon content.¹⁵⁷ Mr. Abe Sacks also testified that, typically, in a wire mill, equipment is extremely purpose-specific.¹⁵⁸ Accordingly, the Tribunal is of the view that there may be some potential for product shifting that would likely depend, to a certain extent, on the exporter's product mix and whether or not the machinery used to produce the subject goods can be used to produce other goods. That being said, the Tribunal finds that product shifting is unlikely to be a source of *significantly* increased volumes of the subject goods.

Inventories

124. With respect to inventories of the subject goods, the record shows that there were no inventories of the subject goods reported by importers during the POI.¹⁵⁹ Accordingly, inventories held by importers are unlikely to be a source of increased sales of the subject goods in the domestic market.

153. Importer's Exhibit C-07 at 88, Administrative Record, Vol. 7A.

154. Protected *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-07A (protected), Administrative Record, Vol. 2.1A at 111.

155. *Transcript of Public Hearing*, Vol. 3, 24 July 2013, at 201; *Transcript of In Camera Hearing*, Vol. 3, 24 July 2013, at 320-23.

156. Protected *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-07A (protected), Administrative Record, Vol. 2.1A at 111.

157. *Transcript of Public Hearing*, Vol. 2, 23 July 2013, at 108.

158. *Ibid.*, Vol. 4, 25 July 2013, at 244.

159. *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-06A, Administrative Record, Vol. 1.1A at 109.

Anti-dumping Measures

125. It is also notable that no anti-dumping or countervailing measures have been imposed on GSW in the much larger U.S. market or elsewhere, including markets that are much more proximate to China, Spain and Israel than Canada. Accordingly, there does not appear to be a risk of diversion of increasing volumes of the subject goods to Canada from other export markets.

Demand

126. Also, while there is little evidence with respect to demand forecasts in China and Israel, Mr. Gotor testified that MRT is expecting a small recovery in both Europe and its other export markets.¹⁶⁰

127. Likewise, there is little evidence that exporters in these countries are making a concerted effort to target the Canadian market for increased sales and market share. On the contrary, Mr. Gotor testified that MRT was neither looking for new customers in Canada nor realistically capable of developing much more business here.¹⁶¹

128. While prices in Canada are presently higher than in the United States, U.S. demand is likely to grow at a faster rate than in Canada. There are strong signs of recovery in the U.S. economy, driven by the housing recovery.¹⁶² While Canada is forecast to experience increased economic growth in 2013, the Organisation for Economic Co-operation and Development's economic outlook projects relatively stronger growth of gross domestic product, investment and consumption in the United States.¹⁶³ In particular, home-building activity in the United States is expected to accelerate in 2013 and 2014, with growth forecasts ranging from 20 to 50 percent.¹⁶⁴ Consequently, in terms of volume if not price, the United States will likely be a relatively more attractive market for exporters of the subject goods than the Canadian market.

129. For all the above reasons, it is speculative to think that the exporters of the subject goods will increasingly sell their sales to Canada at dumped or subsidized prices instead of selling more volumes in their home markets at normal values.

Likely Price Effects

130. Even if the volumes were to increase significantly, it is unlikely that they will have sudden significant price effects in the next year. Despite a significant margin of dumping and amount of subsidy, at least in the case of China, the subject goods did not significantly undercut, depress or suppress the price of like goods during the POI. The Tribunal sees little or no evidence that this will likely change. The subject goods have already increased their market share without significantly underselling the domestic industry, in large part because they are not directly competing to a great extent across the various product segments due to various non-price factors.

160. *Transcript of Public Hearing*, Vol. 3, 24 July 2013, at 200-201.

161. *Ibid.* at 198.

162. Importer's Exhibit C-08 at 1, 2, 4, 10, 15, Administrative Record, Vol. 13.

163. Importer's Exhibit C-09 at 1, Administrative Record, Vol. 13.

164. Importer's Exhibit C-08 at 1, 4, 13, Administrative Record, Vol. 13.

Likely Performance of the Domestic Industry

131. Furthermore, the fortunes of the domestic industry are likely to continue to improve gradually. As discussed above, the evidence also shows that the domestic industry has recently brought costs down. This will help the bottom line. In addition, while there is limited evidence with respect to market demand forecasts in Canada, the evidence suggests that the recovery of demand from the 2008 recession will continue. As stated above, the apparent market for GSW steadily increased by 25 percent from 2010 to 2012 and by 4 percent from the first quarter of 2012 to the first quarter of 2013.¹⁶⁵

132. The evidence also indicates an upswing in construction activity in Canada during the POI, with a 2 percent increase in building permits in 2011 compared to 2010 and a further 9 percent increase from 2011 to 2012.¹⁶⁶ Building permits in the first quarter of 2013 declined by 8 percent compared to the first quarter of 2012, but Mr. Suchecki testified that domestic demand for GSW will continue a gradual uptick for the balance of 2013 and into 2014, stating that “[w]e are far from the pre-recession levels, but it is gradually growing”.¹⁶⁷ The domestic industry also stands to benefit substantially from growing export sales, given its focus on exports¹⁶⁸ and the uptick in U.S. demand.

Summary

133. There are no clearly foreseeable and imminent circumstances upon which the Tribunal could find that the dumping and subsidizing of the subject goods are threatening to cause material injury to the domestic industry.

CONCLUSION

134. Therefore, pursuant to subsection 43(1) of *SIMA*, the Tribunal finds that the dumping of GSW originating in or exported from China, Israel and Spain, and the subsidizing of GSW originating in or exported from China have not caused injury and are not threatening to cause injury.

Serge Fréchette
Serge Fréchette
Presiding Member

Jason W. Downey
Jason W. Downey
Member

Daniel Petit
Daniel Petit
Member

165. *Staff Report*, revised, 10 July 2013, Tribunal Exhibit NQ-2013-001-06C, Administrative Record, Vol. 1.1A at 168.

166. *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-06A, Administrative Record, Vol. 1.1A at 46.

167. *Transcript of Public Hearing*, Vol. 2, 23 July 2013, at 115-16.

168. *Staff Report*, revised, 25 June 2013, Tribunal Exhibit NQ-2013-001-06A, Administrative Record, Vol. 1.1A at 70; Tribunal Exhibit NQ-2013-001-12.01 (protected), Administrative Record, Vol. 4 at 109.