



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

DETERMINATION AND REASONS

Preliminary Injury Inquiry
No. PI-2012-002

Steel Piling Pipe

*Determination issued
Tuesday, July 3, 2012*

*Reasons issued
Wednesday, July 18, 2012*

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IN THE MATTER OF a preliminary injury inquiry, pursuant to subsection 34(2) of the *Special Import Measures Act*, respecting:

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

**PRELIMINARY DETERMINATION OF INJURY AND
TERMINATION OF THE PRELIMINARY INJURY INQUIRY WITH
RESPECT TO SOME OF THE SUBJECT GOODS**

The Canadian International Trade Tribunal, pursuant to the provisions of subsection 34(2) of the *Special Import Measures Act*, has conducted a preliminary injury inquiry into whether the evidence discloses a reasonable indication that the dumping and subsidizing of carbon and alloy steel pipe piles, commonly identified as piling pipe, in outside diameter ranging from 3 1/2 inches up to and including 16 inches (8.9 cm to 40.6 cm) inclusive, in commercial quality and in various forms and finishes, usually supplied to meet ASTM A252, ASTM A500, CSA G.40.21 or comparable specifications or standards, whether single, dual or multiple certified, originating in or exported from the People's Republic of China have caused injury or retardation or are threatening to cause injury.

This preliminary injury inquiry follows the notification, on May 4, 2012, that the President of the Canada Border Services Agency had initiated an investigation into the alleged injurious dumping and subsidizing of the above-mentioned goods.

The Canadian International Trade Tribunal finds that some of the above-mentioned goods are subject to the finding that it made, pursuant to subsection 43(1) of the *Special Import Measures Act*, in Inquiry No. NQ-2008-001, concerning the dumping and subsidizing of carbon steel welded pipe, commonly identified as standard pipe, in the nominal size range of 1/2 inch up to and including 6 inches (12.7 mm to 168.3 mm) in outside diameter inclusive, in various forms and finishes, usually supplied to meet ASTM A53, ASTM A135, ASTM A252, ASTM A589, ASTM A795, ASTM F1083 or Commercial Quality, or AWWA C200-97 or equivalent specifications, including water well casing, piling pipe, sprinkler pipe and fencing pipe, but excluding oil and gas line pipe made to API specifications exclusively, originating in or exported from the People's Republic of China.

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

For greater certainty, the finding made by the Canadian International Trade Tribunal in Inquiry No. NQ-2008-001 is in respect of carbon steel welded pipe, commonly identified as standard pipe, which includes piling pipe, in the nominal size range of 1/2 inch up to and including 6 inches (12.7 mm to 168.3 mm) in outside diameter inclusive, in various forms and finishes, usually supplied to meet ASTM A252 or equivalent specifications, originating in or exported from the People's Republic of China; this same finding *excludes* carbon steel welded pipe in nominal pipe sizes of 1/2 inch to 6 inches inclusive, dual-stencilled to meet the requirements of both specification ASTM A252, Grades 1 to 3, and specification API 5L, with bevelled ends and in random lengths, for use as foundation piles. Thus, carbon steel welded pipe in the nominal size range of 3 1/2 inches up to and including 6 inches (89 mm to 168.3 mm) in outside diameter inclusive, in various forms and finishes, usually supplied to meet ASTM A252 or equivalent

specifications, are goods in respect of which the Canadian International Trade Tribunal has already made an affirmative injury finding, unless they meet the requirements of the exclusion for certain carbon steel welded pipe for use as foundation piles that was granted by the Canadian International Trade Tribunal in Inquiry No. NQ-2008-001.

Pursuant to paragraph 35(1)(b) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby concludes that the evidence does not disclose a reasonable indication that the dumping and subsidizing of the above-mentioned goods that it found to be subject to the finding that it made in Inquiry No. NQ-2008-001 have caused injury or retardation or are threatening to cause injury to the domestic industry. Therefore, pursuant to paragraph 35(3)(a) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby terminates the preliminary injury inquiry with respect to those goods.

Pursuant to subsection 37.1(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby determines that there is evidence that discloses a reasonable indication that the dumping and subsidizing of the above-mentioned goods, in respect of which the preliminary injury inquiry has not been terminated under section 35 of the *Special Import Measures Act*, have caused injury or are threatening to cause injury. For greater certainty, those goods include (1) carbon steel welded pipe, in the nominal size range of greater than 6 inches up to and including 16 inches (greater than 16.8 cm to 40.6 cm) in outside diameter, in commercial quality and in various forms and finishes, usually supplied to meet ASTM A252, ASTM A500, CSA G.40.21 or comparable specifications or standards, whether single, dual or multiple certified, originating in or exported from the People's Republic of China, and (2) carbon steel welded pipe for use as foundation piles, in nominal sizes of 3 1/2 inches up to and including 6 inches (89 mm to 168.3 mm), dual-stencilled to meet the requirements of both specification ASTM A252, Grades 1 to 3, and specification API 5L, with bevelled ends and in random lengths, that were excluded from the injury finding made by the Canadian International Trade Tribunal in Inquiry No. NQ-2008-001.

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Serge Fréchette
Presiding Member

Pasquale Michaele Saroli
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The statement of reasons will be issued within 15 days.

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STATEMENT OF REASONS

BACKGROUND

1. On May 4, 2012, following a complaint filed on March 21, 2012, by Atlas Tube Canada Inc. (Atlas Tube), the President of the Canada Border Services Agency (CBSA) initiated investigations into the alleged injurious dumping and subsidizing of carbon and alloy steel pipe piles, commonly identified as piling pipe, in outside diameter ranging from 3 1/2 inches up to and including 16 inches (8.9 cm to 40.6 cm) inclusive, in commercial quality and in various forms and finishes, usually supplied to meet ASTM A252, ASTM A500, CSA G.40.21 or comparable specifications or standards, whether single, dual or multiple certified, originating in or exported from the People's Republic of China (China) (the subject goods).
2. On May 7, 2012, the Canadian International Trade Tribunal (the Tribunal) issued a notice of commencement of preliminary injury inquiry.¹
3. The complaint is supported by DFI Corporation and Nova Tube Inc.²
4. The complaint is opposed by Pipe & Piling Supplies Ltd. (Pipe & Piling Supplies) and Platinum Grover Int. Inc. (Platinum Grover), importers of the subject goods.
5. On June 1 and 6, 2012, the Tribunal requested submissions from Atlas Tube, Pipe & Piling Supplies and Platinum Grover on, *inter alia*, the issue of whether there is an overlap between the subject goods in this preliminary injury inquiry and steel products that are covered by any existing Tribunal order or finding, including the finding in Inquiry No. NQ-2008-001.³
6. In its request for information, the Tribunal also requested that parties identify the extent of the overlap (i.e. by listing the specific products that are both the subject goods in this preliminary injury inquiry and goods subject to any existing order or finding), if any, and make submissions on the possible implications and/or legal consequences of this situation in view of the requirements of both domestic and international law.
7. The Tribunal received submissions from Atlas Tube, Pipe & Piling Supplies and Platinum Grover on June 8, 2012.
8. On July 3, 2012, pursuant to paragraph 35(1)(b) of the *Special Import Measures Act*,⁴ the Tribunal concluded that the evidence did not disclose a reasonable indication that the dumping and subsidizing of the above-mentioned goods that it had found to be subject to the finding that it made in *Carbon Steel Welded Pipe* had caused injury or retardation or were threatening to cause injury to the domestic industry. Therefore, pursuant to paragraph 35(3)(a), the Tribunal terminated the preliminary injury inquiry with respect to those goods. However, pursuant to subsection 37.1(1), the Tribunal determined that there was evidence that disclosed a reasonable indication that the dumping and subsidizing of the subject goods, in respect of which the preliminary injury inquiry had not been terminated under section 35, had caused injury or were threatening to cause injury.

1. C. Gaz. 2012.I.1351.

2. Tribunal Exhibit PI-2012-002-02.01, Administrative Record, Vol. 1 at 31-32.

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

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

CBSA'S DECISION TO INITIATE INVESTIGATIONS

9. In accordance with subsection 31(1) of *SIMA*, the CBSA was of the opinion that there was evidence that the subject goods had been dumped and subsidized, as well as evidence that disclosed a reasonable indication that the dumping and subsidizing had caused injury or were threatening to cause injury. Accordingly, the CBSA initiated investigations on May 4, 2012.

10. The CBSA's period of investigation (POI) with respect to the alleged dumping was from January 1, 2011, to March 31, 2012. The CBSA was of the view that all the subject goods imported into Canada during the period from January 1 to December 31, 2011, had been dumped, with an estimated weighted average margin of dumping of 31 percent, expressed as a percentage of the export price of the subject goods.⁵

11. With respect to the alleged subsidizing, during the same POI, the CBSA was of the view that all the subject goods imported into Canada during the period from January 1 to December 31, 2011, had been subsidized, with an estimated amount of subsidy equal to 32 percent of the export price of the subject goods.⁶

12. Further, the CBSA was of the opinion that the estimated margin of dumping and estimated amount of subsidy were not insignificant and that the estimated volumes of dumped and subsidized goods were not negligible.⁷

SUBMISSIONS ON INJURY

Complainant

13. Atlas Tube submitted that the dumping and subsidizing of the subject goods had caused injury. In support of its allegations, Atlas Tube provided evidence of increased volumes of the subject goods and alleged price undercutting, price depression, price suppression, lost sales and sales opportunities, loss of market share, underutilization of production capacity, declining net revenues, profitability and gross margins, and net losses due to the dumping and subsidizing of the subject goods.⁸

14. Atlas Tube also submitted that the dumping and subsidizing of the subject goods threatened to cause injury. In this regard, it submitted that the vast size of production and production capacity in China, when contrasted with the estimated size of the Canadian market, demonstrates that there is sufficient freely disposable production capacity to inundate the Canadian market with dumped and subsidized goods. According to Atlas Tube, the threat is further exacerbated by the continued presence of, and the well-established channels of distribution for, imports of the subject goods into the Canadian market. In addition, Atlas Tube made reference to the imposition of anti-dumping and countervailing duties in the United States on steel piling pipe from China and the alleged diversion of the subject goods into the Canadian market.

5. Tribunal Exhibit PI-2012-002-05, Administrative Record, Vol. 1E at 421, 430.

6. *Ibid.* at 427, 430.

7. *Ibid.* at 421, 427.

8. Tribunal Exhibit PI-2012-002-02.01, Administrative Record, Vol. 1 at 16, 17, 84.

Parties Opposed to the Complaint

15. Pipe & Piling Supplies and Platinum Grover submitted that Atlas Tube had not supported its claim of injury and had failed to present clear and credible evidence in respect of the subject goods and their potential impact on the domestic steel piling pipe industry and that the evidence on the record does not disclose a reasonable indication of injury or threat of injury.

16. Rather, Pipe & Piling Supplies and Platinum Grover submitted, *inter alia*, that the scope of the product definition adopted by Atlas Tube is comprised of imports of Chinese goods that are clearly and demonstrably non-injurious, that Atlas Tube presented unfounded and unsupported assumptions, based on commercial intelligence that is not credible, concerning the alleged dumped and subsidized subject goods, and that any injury suffered by Atlas Tube, if it indeed existed, was self-inflicted and cannot be attributed to the presence of allegedly dumped or subsidized imports.

ANALYSIS

Legislative Framework

17. The Tribunal's mandate in a preliminary injury inquiry is set out in subsection 34(2) of *SIMA*, which requires the Tribunal to determine whether there is evidence that discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury or are threatening to cause injury.⁹ In making its determination, the Tribunal takes into account the factors prescribed in section 37.1 of the *Special Import Measures Regulations*.¹⁰

18. Pursuant to section 35 of *SIMA*, if the Tribunal comes to the conclusion, in respect of some or all of the subject goods, that the evidence does not disclose a reasonable indication that the dumping or subsidizing of the goods has caused injury or is threatening to cause injury, it shall cause the preliminary injury inquiry to be terminated with respect to the goods in respect of which it has come to that conclusion.

19. Subsection 2(1) of *SIMA* defines "injury" as "... material injury to a domestic industry." It also defines "domestic industry" as "... 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" Therefore, the Tribunal must identify the like goods and the domestic industry that produces those goods before examining allegations of injury or threat of injury.

Preliminary Issue—Overlap of Product Definitions

Background

20. During the course of this preliminary injury inquiry, an issue arose relating to the definition of the subject goods provided by the CBSA. More specifically, upon review of the information on the record, the Tribunal had reason to believe that certain steel products that are the subject goods in this preliminary injury inquiry included goods that are already subject to existing findings made under subsection 43(1) of *SIMA*.¹¹

9. Subsection 34(2) of *SIMA* also allows for a finding of a reasonable indication of "retardation", which, according to subsection 2(1), is defined as "... material retardation to the establishment of a domestic industry." Thus, retardation would only be a relevant consideration to the extent that a domestic industry for steel piling pipe does not exist in Canada. However, since, as discussed below, such an industry already exists, "retardation" is not an issue in this preliminary injury inquiry.

10. S.O.R./84-927.

11. For example, goods subject to the Tribunal's finding in *Carbon Steel Welded Pipe*.

21. Consequently, on June 1 and 6, 2012, the Tribunal requested that participants provide their views on, *inter alia*, the issue of whether there is an overlap between the subject goods in this preliminary injury inquiry and steel products that are covered by any existing Tribunal order or finding, including the finding in *Carbon Steel Welded Pipe*. In its request for information, the Tribunal also requested that parties identify the extent of the overlap (i.e. by listing the specific products that are both the subject goods in this preliminary injury inquiry and goods subject to any existing order or finding), if any, and make submissions on the possible implications and/or legal consequences of this situation in view of the requirements of both domestic and international law.

22. On June 8, 2012, Atlas Tube filed its response to the Tribunal's request for information. In its submission, it acknowledged that there was an overlap between the subject goods in this preliminary injury inquiry and the goods subject to the Tribunal's finding in *Carbon Steel Welded Pipe*. Atlas Tube submitted that the only reason for the overlap was to have the Tribunal inquire into the effect of the dumping and subsidizing of certain types of piling pipe that were excluded from the Tribunal's finding in *Carbon Steel Welded Pipe*.¹² It submitted that it was seeking to have that exclusion effectively rescinded by including, within the definition of the subject goods in these proceedings, the type of dual-stencilled piling pipe that meets the requirements of both specification ASTM A252, Grades 1 to 3, and specification API 5L, with bevelled ends and in random lengths, that was excluded from the Tribunal's finding in *Carbon Steel Welded Pipe*.

23. Atlas Tube acknowledged that the product definition in this preliminary injury inquiry is not restricted to the goods that were excluded in *Carbon Steel Welded Pipe* and admitted that it encompasses certain goods that are covered by the finding in *Carbon Steel Welded Pipe*.

24. It noted that the finding in *Carbon Steel Welded Pipe* covers piling pipe supplied to meet specification ASTM A252 or equivalent specifications in the nominal size range of 1/2 inch up to and including 6.625 inches (12.7 mm to 168.3 mm) in outside diameter, whereas the subject goods in this preliminary injury inquiry are defined as piling pipe manufactured to meet ASTM A252 and other specifications in sizes ranging from 3 1/2 inches up to and including 16 inches (8.9 cm to 40.6 cm) in outside diameter. Therefore, Atlas Tube stated that the overlap between the two cases concerns piling pipe covered, as a type of standard pipe, by the finding in *Carbon Steel Welded Pipe* in sizes ranging between 3 1/2 inches and up to and including 6.625 inches in outside diameter (i.e. the upper limit of the size range of goods subject to the finding in *Carbon Steel Welded Pipe*) that do not meet the requirements of the exclusion.¹³

25. Atlas Tube submitted that the definition of the subject goods corresponds to its production range for piling pipe and that it would have been anomalous not to have included piling pipe from 3 1/2 inches in outside diameter and upwards in the product definition. It further submitted that to have defined the subject goods to refer specifically to the excluded goods of a size up to 6.625 inches in outside diameter would have been equally anomalous and would have unnecessarily complicated the product definition.

26. Also on June 8, 2012, Pipe & Piling Supplies and Platinum Grover filed their response to the Tribunal's request for information. As they had previously indicated in their submission opposing a preliminary finding of injury filed on June 7, 2012, they submitted that this inquiry was an improper attempt by Atlas Tube to vacate the product exclusion granted by the Tribunal in *Carbon Steel Welded Pipe*. Their

12. Tribunal Exhibit PI-2012-002-09, Administrative Record, Vol. 1F at para. 2.

13. *Ibid* at 3-4. Atlas Tube noted that, while the product definition in *Carbon Steel Welded Pipe* covers pipe "... in the nominal size range of 1/2 inch up to and including 6 inches (12.7 mm to 168.3 mm in outside diameter) ...", 168.3 mm equates to 6.625 inches in outside diameter.

position is that the Tribunal cannot permit this product exclusion to be rescinded in a subsequent inquiry. They argued that Atlas Tube should have appeared before the Tribunal during the inquiry in *Carbon Steel Welded Pipe* to argue against the product exclusion or sought judicial review of that decision. In their view, Atlas Tube cannot cure its failure to take action at the time through the current proceedings.

27. Pipe & Piling Supplies and Platinum Grover submitted that there is overlap between the product definition in this preliminary injury inquiry and the one for the goods that are already subject to the finding in *Carbon Steel Welded Pipe*. They noted that the finding in *Carbon Steel Welded Pipe* specifically encompasses piling pipe, with an outside diameter of 1/2 inch up to and including 6 inches (12.7 mm to 168.3 mm), meeting the requirements of specification ASTM A252, except for the goods otherwise described in the product exclusion granted by the Tribunal with its finding.

28. They added that the extent of the overlap of product definitions is not limited to this obvious overlap with the product definition in *Carbon Steel Welded Pipe*. They submitted that, because the product definition in this preliminary injury inquiry is broad and includes any pipe originating in or exported from China that is or can be used as piling pipe,¹⁴ there is a significant and intentional overlap between the subject goods in this preliminary injury inquiry and other goods that are already subject to existing Tribunal findings, as follows:

- other standard pipe in sizes ranging from 3 1/2 inches up to and including 6 inches covered by the finding in *Carbon Steel Welded Pipe* (i.e. standard pipe that meets standards and specifications that are more stringent than ASTM A252);
- casing in sizes ranging from 3 1/2 inches up to and including 11 3/4 inches covered by the finding in Inquiry No. NQ-2007-001;¹⁵ and
- tubular goods in sizes ranging from 3 1/2 inches up to and including 13 3/8 inches, excluding drill pipe and seamless casing up to 11 3/4 inches, covered by the finding in Inquiry No. NQ-2009-004.¹⁶

29. Pipe & Piling Supplies and Platinum Grover submitted that the protection already in place by the effect of the findings noted above means that Atlas Tube cannot be injured by imports of these overlapping products, as their alleged injurious dumping is already cured by the imposition of anti-dumping and countervailing duties.

30. They also argued that the extent of the overlap in product definitions will make it difficult, if not impossible, to properly administer an eventual finding in these proceedings and that, in view of the overly broad and vague product definition in this preliminary injury inquiry, it is impossible to know whether an eventual finding would only be applied to the extent necessary and whether it would also affect fairly traded goods. Consequently, Pipe & Piling Supplies and Platinum Grover submitted that the overlap between the product definition in this preliminary injury inquiry and the one for the goods described in the three findings noted above raises serious issues with respect to Canada's compliance with its international trade obligations, including Article 11 of the World Trade Organization (WTO) *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (the WTO *Anti-dumping Agreement*) and Article 21 of the WTO *Agreement on Subsidies and Countervailing Measures* (the WTO *SCM Agreement*).¹⁷

14. In this regard, they referred to an allegation made by Atlas Tube in its complaint to the CBSA according to which casing, line pipe and some types of standard pipe are produced to more stringent standards than steel piling pipe and, therefore, can be substituted in piling applications.

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

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

17. Tribunal Exhibit PI-2012-002-10, Administrative Record, Vol. 1F at 7-15.

31. Since the Tribunal does not have the authority to amend the product definition in order to eliminate the overlap and since, in Pipe & Piling Supplies and Platinum Grover's view, it would be inappropriate for this preliminary injury inquiry to proceed on the basis of the product definition provided by the CBSA, given the implications of its overlap with goods subject to previous findings, they submitted that the only option available to the Tribunal to correct this situation is the termination of this preliminary injury inquiry.

Implications for the Tribunal's Preliminary Injury Inquiry

32. The Tribunal finds that it was open to Atlas Tube to file a new complaint under subsection 31(1) of *SIMA* in view of its concerns that imports of goods that are subject to the exclusion granted by the Tribunal in *Carbon Steel Welded Pipe* are causing injury to the domestic industry. Indeed, the Tribunal has previously found that, where domestic producers become concerned about the injurious impact of imports of goods that are excluded under an existing order or finding, it has no jurisdiction to rescind that product exclusion in an expiry review proceeding. The only recourse available to domestic producers in such situations is to file a new complaint. The Tribunal has stated as follows:

The Tribunal is of the view that, in a review, it has the power to rescind or continue an order or finding against some or all of the goods subject to the order or finding, but it does not have the power to increase or expand the scope of its review beyond the goods covered by the order or finding being reviewed. With respect to exclusions, this means that, if the Tribunal continues an order or finding, it may leave an exclusion as it is or may exclude additional goods. If domestic producers subsequently become concerned about imports of goods that are subject to an exclusion, they may consider filing a new complaint in respect of such goods with the Department of National Revenue.¹⁸

33. The Tribunal finds that this interpretation remains legally sound, since goods that are excluded from a previous injury finding are not subject to anti-dumping or countervailing duties under section 3(1) of *SIMA*.¹⁹ However, the fact remains that they may be sold in the Canadian market at dumped or subsidized prices. Given that this dumping or subsidizing may be causing injury to domestic producers of like goods, there must be recourse available to those producers under *SIMA*. As argued by Atlas Tube, to conclude otherwise would mean that domestic producers would be improperly denied access to the trade remedies available under Canadian law in response to injury caused or threatened by the dumping or subsidizing of those goods.

34. In addressing the issue of product exclusion, Atlas Tube admitted that the product definition of the subject goods provided by the CBSA encompasses goods other than those that were excluded from the Tribunal's finding in *Carbon Steel Welded Pipe*. In fact, the parties agree that there is an overlap between the subject goods in this preliminary injury inquiry and the goods subject to (i.e. goods not excluded from) the Tribunal's finding in *Carbon Steel Welded Pipe*. While they disagree on the degree of overlap, it is common ground between the parties that this overlap between the product definitions includes, at a minimum, piling pipe covered, as a type of standard pipe, by the finding in *Carbon Steel Welded Pipe* in sizes ranging between 3 1/2 inches and up to and including 6 inches in outside diameter that do not meet the requirements of the exclusion.

18. See procedural order in *Certain Carbon Steel Plate and Alloy Steel Plate* (12 December 1997), RR-97-006 (CITT) at 9.

19. Indeed, such goods are *not* goods "... in respect of which the Tribunal has made an order or finding ..." as contemplated by subsection 3(1) of *SIMA* because they have been excluded from any such order or finding.

35. The submission made by Pipe & Piling Supplies and Platinum Grover suggest that there may also be an overlap between the subject goods in this preliminary injury inquiry and other goods subject to the finding in *Carbon Steel Welded Pipe* and with goods that are covered by other orders or findings issued by the Tribunal.

36. In view of the foregoing, the Tribunal finds that some of the subject goods are already subject to the finding in *Carbon Steel Welded Pipe*. On the basis of the information on the record, for purposes of this preliminary injury inquiry, the Tribunal finds that those goods are carbon steel welded pipe in the nominal size range of 3 1/2 inches up to and including 6 inches (89 mm to 168.3 mm) in outside diameter, in various forms and finishes, usually supplied to meet ASTM A252 or equivalent specifications, other than carbon steel welded pipe in nominal pipe sizes of 3 1/2 inches up to 6 inches, that are dual-stencilled to meet the requirements of both specification ASTM A252, Grades 1 to 3, and specification API 5L, with bevelled ends and in random lengths, for use as foundation piles.

37. Indeed, carbon steel welded pipe in the nominal size range of 3 1/2 inches up to and including 6 inches (89 mm to 168.3 mm) in outside diameter inclusive, in various forms and finishes, usually supplied to meet ASTM A252 or equivalent specifications are goods in respect of which the Tribunal has already made an injury finding, subject to the carve-out discussed above, for those goods that meet the requirements of the exclusion for certain carbon steel welded pipe for use as foundation piles, as granted by the Tribunal in *Carbon Steel Welded Pipe*.

38. This overlap in product definitions gives rise to important legal and administrative issues and concerns. As the Tribunal noted in Inquiry No. NQ-2011-001,²⁰ it is well established that the Tribunal must conduct its inquiries in accordance with the definition of the subject goods provided by the CBSA. This means that the Tribunal cannot, on its own initiative, modify the definition of the subject goods, which, in the present case, includes, on its face, goods that are already subject to an existing finding.

39. As was correctly noted by Pipe & Piling Supplies and Platinum Grover, the dumping or subsidizing of goods that are already subject to an order or finding under *SIMA* could not logically be causing or threatening to cause injury to domestic producers of like goods, as it cannot be credibly asserted—as a matter of fact—that these overlapping products are being injuriously dumped or subsidized if measures are already in place to counteract the injurious effect of such dumping or subsidizing.²¹

20. *Pup Joints* (10 April 2012) (CITT) [*Pup Joints*].

21. The Tribunal notes that, as a consequence of its injury order or finding, the CBSA must levy and collect anti-dumping or countervailing duties on subsequent imports of goods of the same description as the products named in the order or finding. Indeed, the CBSA maintains an enforcement program in respect of *SIMA* to ensure that duties are properly collected on subject goods, i.e. that the correct amount of anti-dumping or countervailing duty has been assessed and levied. In the case of dumped goods, the CBSA assesses an anti-dumping duty in an amount equal to the margin of dumping of the imported goods, that is, the amount that the normal value exceeds the export price. In the case of subsidized goods, the CBSA assesses a countervailing duty in an amount equal to the amount of subsidy on the goods. The CBSA's administrative practice is to conduct regular re-investigations to update normal values, export prices and amounts of subsidy to ensure that anti-dumping or countervailing duties are kept current and reflect actual margins of dumping and amounts of subsidy on the subject goods.

40. Moreover, the “stacking” of anti-dumping duties or countervailing duties on the same subject goods would—as a matter of law—almost certainly violate Canada’s obligations under the WTO agreements.²²

41. From an administrative perspective, the enforcement of separate *SIMA* orders and findings in respect of the same subject goods would raise obvious issues in respect of the assessment of liability for duties arising, for instance, from the fact that the overlapping coverage would likely occur under non-synchronous orders and findings.²³

42. Finally, under *SIMA*, it is on the basis of the definition of the subject goods provided by the CBSA that the Tribunal must decide which domestically produced goods are the like goods for the purposes of its injury inquiry. A lack of clarity and precision in the product definition, including the possibility that it covers goods already subject to an existing order or finding, makes it difficult for the Tribunal to determine which domestically produced goods are to be considered like goods in relation to the subject goods and, consequently, to determine which domestic producers constitute the domestic industry.²⁴ This is especially true where, as in this case, there is an allegation that goods that are covered by other existing findings are substitutable for those that are described in the definition of the subject goods.

Tribunal’s Approach to Resolve the Issue of Overlap of Product Definitions

43. As discussed above, the overlap between the subject goods in this preliminary injury inquiry and steel products which are covered by the finding in *Carbon Steel Welded Pipe* and, potentially, with goods subject to other orders or findings is a source of confusion and results in challenges in the conduct of the Tribunal’s preliminary injury inquiry. For this reason, stakeholders that file a complaint with the CBSA are encouraged to define the subject goods as precisely and as accurately as possible.

22. It is noteworthy, in this regard, that the Supreme Court of Canada, in its decision in *National corn growers assn. v. Canada (Import tribunal)*, [1990] 2 S.C.R. 1324, indicated that, in construing *SIMA*, resort could be had to the international agreements which *SIMA* was enacted to implement. In this regard, refer, *inter alia*, to Articles 9.2 and 9.3 of the *WTO Anti-dumping Agreement* and Articles 19.3 and 19.4 of the *WTO SCM Agreement*, which provide as follows:

9.2 When an anti-dumping duty is imposed in respect of any product, such anti-dumping duty shall be collected in the appropriate amounts in each case

9.3 The amount of the anti-dumping duty shall not exceed the margin of dumping

19.3 When a countervailing duty is imposed in respect of any product, such countervailing duty shall be levied, in the appropriate amounts in each case

19.4 No countervailing duty shall be levied on any imported product in excess of the amount of the subsidy found to exist

[Footnote omitted]

As a matter of domestic law, the provisions of Part I of *SIMA* explicitly limit the liability for anti-dumping and countervailing duties to an amount equal to the margin of dumping and the amount of subsidy respectively.

23. One can envisage, for example, a situation where the liability for anti-dumping and countervailing duties in respect of overlapping subject goods is terminated by virtue of the rescission of an order or finding pursuant to an interim review under section 76.01 or an expiry review under section 76.03 of *SIMA*, but continues under another order or finding.

24. In *Pup Joints*, the Tribunal noted that, in some instances, it may be able to resolve an ambiguity in the definition of subject goods by reference to additional product information contained in the CBSA’s statement of reasons, as it has done in the past. However, it added that proceeding in such a manner is not the Tribunal’s preferred approach and is not always conclusive, as was the case in *Pup Joints* and as is the case in this preliminary injury inquiry.

44. Similarly, given that, under *SIMA*, the CBSA has the exclusive jurisdiction to determine the scope of the subject goods, it should provide a definition of subject goods that is as precise and accurate as possible. In particular, and for reasons already discussed, it should avoid the adoption of a definition of subject goods that creates an overlap with goods that are already subject to *SIMA* orders or findings.

45. The failure of Atlas Tube and the CBSA to properly define the subject goods in this case has rendered the Tribunal's task very difficult.

46. For the purposes of this preliminary injury inquiry, the Tribunal accepts the definition of the subject goods provided by the CBSA, since it does not have the authority to alter or modify it in order to eliminate any overlap with goods subject to existing orders or findings. Moreover, the Federal Court of Appeal has also held that the Tribunal cannot interpret the definition of the subject goods in a manner that would result in a redefinition of the class of goods subject to an investigation or inquiry formulated by the CBSA.²⁵

47. After having reviewed the information on the record, the Tribunal is satisfied that, despite the challenges for the conduct of this preliminary injury inquiry caused by the overlap of product definitions, the data collected by the CBSA for the purposes of analyzing the volume of imports of the subject goods are limited to data on goods that are produced and exported to Canada as steel piling pipe (i.e. goods commonly known as piling pipe) and to goods that are excluded from its finding in *Carbon Steel Welded Pipe*.

48. In this respect, the Tribunal notes that the CBSA appears to have made certain adjustments to the data on import volume to notably eliminate the entries of goods that are subject to an existing order or finding.²⁶ On that basis, it seems reasonable to conclude, at this preliminary stage, that the import volume data regarding the subject goods would not cover goods that are already subject to an existing order or finding.

49. With regard to the fact that some of the subject goods are already subject to the finding in *Carbon Steel Welded Pipe*, the Tribunal notes that section 35 of *SIMA* requires it to terminate a preliminary injury inquiry in respect of any goods in respect of which it comes to the conclusion that the evidence does not disclose a reasonable indication that the dumping or subsidizing of those goods has caused injury or is threatening to cause injury.

50. Consequently, considering the evidence before it and, indeed, the admission by Atlas Tube that the subset of the subject goods comprised of carbon steel welded pipe in the nominal size range of 3 1/2 inches up to and including 6 inches (89 mm to 168.3 mm) in outside diameter, in various forms and finishes, usually supplied to meet ASTM A252 or equivalent specifications, other than carbon steel welded pipe in nominal pipe sizes of 3 1/2 inches up to 6 inches, that are dual-stencilled to meet the requirements of both specification ASTM A252, Grades 1 to 3, and specification API 5L, with bevelled ends and in random lengths, for use as foundation piles, are already subject to the finding in *Carbon Steel Welded Pipe*, the Tribunal has come to the conclusion that the evidence does not disclose a reasonable indication that the dumping and subsidizing of those goods has caused injury or is threatening to cause injury.

51. The Tribunal finds that the dumping or subsidizing of those goods cannot, as a matter of law, cause injury or threaten to cause injury, since protection under *SIMA* is already in place to counteract any injurious effects or threat thereof caused by dumping or subsidizing. Specifically, the Tribunal fails to see how those goods could be found to be causing or threatening to cause injury to the domestic industry, given that they can only be imported at prices at or above their normal value, or upon the payment of anti-dumping or countervailing duties.

25. *DeVilbiss (Canada) Limited v. Anti-dumping Tribunal* [1983] 1 F.C. 706.

26. Tribunal Exhibit PI-2012-002-03.02 (protected), Administrative Record, Vol. 2 at 271-72.

52. For these reasons, the Tribunal, pursuant to paragraph 35(1)(b) of *SIMA*, concludes that the preliminary injury inquiry should be terminated with respect to the above-mentioned goods, which it found to be subject to the finding in *Carbon Steel Welded Pipe*.

53. Therefore, for purposes of this preliminary injury inquiry, the Tribunal will examine whether the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods, other than those in respect of which the preliminary injury inquiry has been terminated, have caused injury or are threatening to cause injury. For greater certainty, those goods include the following: (1) carbon steel welded pipe, in the nominal size range of greater than 6 inches up to and including 16 inches (greater than 16.8 cm to 40.6 cm) in outside diameter, in commercial quality and in various forms and finishes, usually supplied to meet ASTM A252, ASTM A500, CSA G.40.21 or comparable specifications or standards, whether single, dual or multiple certified, originating in or exported from China; and (2) carbon steel welded pipe for use as foundation piles, in nominal sizes of 3 1/2 inches up to and including 6 inches (89 mm to 168.3 mm), dual-stencilled to meet the requirements of both specification ASTM A252, Grades 1 to 3, and specification API 5L, with bevelled ends and in random lengths, that were excluded from the finding in *Carbon Steel Welded Pipe*.

54. With respect to the subject goods which, according to Pipe & Piling Supplies and Platinum Grover, are also covered by the findings in *Carbon Steel Welded Pipe*, *Oil and Gas Well Casing* and *Oil Country Tubular Goods*, the Tribunal finds that there is insufficient evidence on the record at this time to determine with certainty whether that is in fact the case. More information is required to assess whether the goods subject to those findings and which are alleged to be substitutable to the subject goods in this preliminary injury inquiry are encompassed within the scope of the definition of the subject goods established by the CBSA and, in that event, to determine the extent of any overlap between the relevant product definitions.

55. However, to the extent that there is a possibility that a broader subset of subject goods is already subject to anti-dumping or countervailing duties as a result of being subject to existing orders or findings, including those identified by Pipe & Piling Supplies and Platinum Grover, it is the Tribunal's intention to establish a process whereby it can reach an early decision on this issue during the final injury inquiry stage, if the CBSA makes a preliminary determination that the subject goods, in respect of which the preliminary injury inquiry has not been terminated under section 35 of *SIMA*, have been dumped or subsidized.

56. Should it then be determined that the overlap of product definitions in this case and existing orders or findings is more extensive and significant than that acknowledged by Atlas Tube, the Tribunal would seek out additional information to determine the precise scope or extent of the overlap of product definitions and solicit submissions from the parties on how overlapping goods could be a cause of injury to the domestic industry. The Tribunal further notes that, in an inquiry conducted pursuant to section 43 of *SIMA*, it has the discretion to exclude subject goods that could not be causing injury, by virtue of being already subject to anti-dumping or countervailing duties, from the scope of any eventual injury finding that it could make.

Like Goods and Classes of Goods

57. The CBSA has defined the subject goods as carbon and alloy steel pipe piles, commonly identified as piling pipe, having certain characteristics, originating in or exported from China, and, as previously indicated, the Tribunal must conduct its preliminary injury inquiry on the basis of this product description.

58. However, in assessing whether the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury or threaten to cause injury to domestic producers of like goods, the Tribunal may consider whether the subject goods constitute one or more classes of goods and must define the scope of the like goods in relation to the subject goods.

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

(a) goods that are identical in all respects to the other goods, or

(b) in the absence of any goods described in paragraph (a), goods the uses and other characteristics of which closely resemble those of the other goods.

60. On the issues of “like goods” and “classes of goods”, the CBSA opined as follows in its statement of reasons for its decision to initiate the investigations:

[24] Piling pipe produced by the domestic industry competes directly with and have the same end uses as the piling pipe imported from China. The goods produced in Canada are completely substitutable with piling pipe produced in China. Therefore, the CBSA has concluded that piling pipe produced by the Canadian industry constitutes like goods to the piling pipe produced in China. Piling pipe can be considered as a single class of goods notwithstanding that the piling pipe from China may be further differentiated in terms of seamless or welded.²⁷

61. In deciding the issues of like goods and classes of goods, the Tribunal typically considers a number of factors, including the physical characteristics of the goods (such as composition and appearance) and their market characteristics (such as substitutability, pricing, distribution channels, end uses and whether the goods fulfill the same customer needs).²⁸

62. With respect to the scope of the like goods in relation to the subject goods, Atlas Tube stated, in its complaint, that the goods produced in Canada and the subject goods are fully substitutable and interchangeable:

17. The subject and like goods are commodity products. Whether produced as ERW (longitudinal or helical) or seamless pipe and whether produced with straight or bevelled ends, the goods have the same physical, chemical and mechanical properties and are made under the same ASTM and equivalent specifications. The subject goods are therefore fully interchangeable and substitutable for domestic product, making them “fungible” in trade law parlance.²⁹

63. In their submissions, Pipe & Piling Supplies and Platinum Grover did not dispute that domestically produced steel piling pipe, defined in the same manner as the subject goods, constitute like goods in relation to the subject goods. In fact, there is no evidence before the Tribunal that would call into question Atlas Tube’s assertion and the CBSA’s finding that steel piling pipe produced in Canada and the subject goods are completely substitutable for one another.

64. On the basis of the evidence on the record in relation to relevant factors, and in the absence of evidence or submissions to the contrary, the Tribunal is of the view that it is reasonable to conclude, for purposes of this preliminary injury inquiry, that the domestically produced steel piling pipe, having the same characteristics as those described in the definition of the subject goods, constitutes like goods in relation to the subject goods.

27. Tribunal Exhibit PI-2012-002-05, Administrative Record, Vol. 1E at 417.

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

29. Tribunal Exhibit PI-2012-002-02.01, Administrative Record, Vol. 1 at 22.

65. However, the Tribunal notes that Pipe & Piling Supplies and Platinum Grover submitted that the goods produced by Atlas Tube and the other domestic producers identified by the CBSA do not constitute the universe of the like goods in this preliminary injury inquiry. They argued that certain standard pipe, oil country tubular goods (commonly identified as OCTG, which is comprised of pipe and tubes) and steel casing products are produced to more stringent standards and, therefore, can be substituted for the subject goods in piling applications.

66. Indeed, Atlas Tube itself recognizes that goods not commonly identified as steel piling pipe can be used in piling applications. It stated as follows:

18. As noted, OCTG (such as API-5CT), line pipe (such as API-5L) and standard pipe (such as ASTM A53) grades, whether welded or seamless, are produced to higher tensile and yield strengths than piling pipe and therefore can be readily used in piling applications. When the price of dual or multiple-certified Chinese imports of these types of pipe is low enough because of dumping and subsidizing, they compete directly with Canadian piling pipe.³⁰

[Footnote omitted]

67. Consequently, a legal issue that arises is whether there is merit in expanding the definition of the like goods in this case to include certain OCTG, line pipe and standard pipe that may be used in piling applications.

68. A similar issue arose in Preliminary Injury Inquiry No. PI-2009-003.³¹ In that case, the definition of the subject goods expressly excluded seamless casing of a size up to 11 3/4 inches (298.5 mm) in outside diameter. Nevertheless, the issue arose as to whether the Tribunal was required to expand the definition of the like goods to include seamless casing with an outside diameter not exceeding 11 3/4 inches (298.5 mm). The Tribunal made the following finding in the context of its preliminary injury inquiry:

24. The Tribunal notes that, in *Oil and Gas Well Casing*, it expanded the definition of the like goods to include both seamless and ERW casing, even though the subject goods comprised only seamless casing. Whether there is merit to expand the definition of the like goods in this case to include seamless casing with an outside diameter not exceeding 298.5 mm (11 3/4 inches) is an issue that will need to be fully addressed in the context of an inquiry under section 42 of *SIMA*, if the CBSA makes a preliminary determination that the subject goods have been dumped or subsidized. The Tribunal is of the opinion that additional evidence will be needed to assess all the elements required to reach a decision. Accordingly, should the CBSA conclude that the subject goods have been dumped or subsidized, the Tribunal will collect data relating to seamless casing with an outside diameter not exceeding 298.5 mm (11 3/4 inches) and will also seek submissions from parties on this question.³²

69. Similarly, in this preliminary injury inquiry, there is limited information on the administrative record upon which to determine whether, in fact, other types of pipe are like goods in relation to goods commonly identified as steel piling pipe. In this regard, the alleged substitutability between these products is one relevant factor that the Tribunal may consider in deciding the issue of like goods. Among the other factors that should be weighed are the physical characteristics of the goods, pricing and distribution channels. There is however little or no evidence on the record regarding these factors.

70. The Tribunal will therefore take an approach similar to that in *Oil Country Tubular Goods*.

30. *Ibid* at 22.

31. *Oil Country Tubular Goods* (23 October 2009) (CITT).

32. *Ibid* at para. 24.

71. The Tribunal is of the view that additional evidence is needed to assess all the elements required to reach a decision. The additional information that is needed to determine whether certain OCTG, line pipe or standard pipe are like goods in relation to the subject goods could be gathered in the context of an eventual final injury inquiry under section 42 of *SIMA*. Accordingly, should the CBSA conclude that the subject goods in respect of which the preliminary injury inquiry has not been terminated under section 35 of *SIMA* have been dumped or subsidized, the Tribunal will collect data and seek submissions from parties on this issue.

72. Turning to the issue of classes of goods in this preliminary injury inquiry, Atlas Tube submitted to the CBSA, and the CBSA agreed, that steel piling pipe can be considered a single class of goods. Atlas Tube's principal argument in this regard is that, in view of the Tribunal's finding in *Carbon Steel Welded Pipe* that standard pipe constituted a single class of goods, despite the fact that it comes in various dimensions and is manufactured to meet various specifications and standards, it follows that steel piling pipe, which is a subset of standard pipe, also constitutes a single class of goods.

73. Pipe & Piling Supplies and Platinum Grover submitted that steel piling pipe is comprised of a number of separate classes of goods distinguishable on the basis of diameter, wall thickness and grade. They argue that, in the vast majority of cases, end users would not allow substitutions between steel piling pipe of a certain diameter that they require and steel piling pipe of other outside diameters. However, they have not filed any evidence to substantiate this assertion nor have they identified the distinct classes of goods which, according to them, ostensibly exist.

74. With respect to the issue of classes of goods, the issue before the Tribunal is whether there are sufficient differences between the various types of steel piling pipe that comprise the subject goods and the like goods to justify separating them into different classes.

75. The Tribunal notes that, in previous cases, it has stated that (1) the fact that certain goods may not be fully substitutable for each other for some end uses is not, in and of itself, a sufficient basis for determining that there exists multiple classes of goods and (2) goods can belong to the same class of goods even if they come in numerous styles and varieties.³³

76. Moreover, in *Oil and Gas Well Casing*, the Tribunal reasoned that steel products that come in numerous grades and strengths can fall along a continuum of like goods. It stated as follows:

50. The Tribunal agrees with the argument that different grades of casing fall along a continuum of like goods. It is therefore of the view that, rather than being categorized as either high-strength oil and gas well casing or low-strength oil and gas well casing on the basis of a distinct dividing line, oil and gas well casing of different strengths falls at various points along a continuum within a single class of goods. The Tribunal also notes that oil and gas well casing of all strengths generally has similar input materials, general end uses, distribution channels and appearance. In addition, higher-strength grades are always substitutable for lower-strength grades. For the foregoing reasons, the Tribunal concluded that there was a single class of goods.³⁴

77. On the basis of the information on the record, the Tribunal finds the concept of a "continuum" of like goods applies in this preliminary injury inquiry and that there is insufficient evidence to separate the goods into multiple classes of goods on the basis of dimension, wall thickness and grade. Consequently, for purposes of determining whether there is a reasonable indication of injury, the Tribunal concludes that steel piling pipe constitutes a single class of goods.

33. For example, *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT).

34. *Oil and Gas Well Casing* at para. 50.

78. With respect to regional market considerations, the Tribunal notes the agreement among all parties that the Tribunal's injury analysis should be conducted on the basis of a national market. In this regard, Pipe & Piling Supplies and Platinum Grover submitted that there is no evidence on the record of a regional market in Western Canada.

79. Atlas Tube also argued against the existence and treatment of Western Canada as a regional market. Atlas Tube claimed that, while the largest portion of the Canadian steel piling pipe market is in Western Canada, and the subject goods are sold largely into the British Columbia, Alberta and Saskatchewan markets, and the injury inflicted comes largely from the dominant presence of the subject goods in the western Canadian market, the injury is not limited to Western Canada. In this regard, Atlas Tube submitted that the subject goods that arrive at the port of Vancouver, British Columbia, have an initial injurious impact on the western Canadian market, but that the ultimate injurious effect is on the Canadian market as a whole.

80. The Tribunal considered the issue of regional markets in Inquiry No. NQ-2005-001³⁵ and noted that "... the regional market provisions [of *SIMA*] are not intended to raise the threshold for a determination of injury where a dumping . . . complaint is brought on the basis of a national market, even if separate regional markets could be identified within the national market. In the case before the Tribunal, the domestic industry has not sought to use the regional market provisions, and the Tribunal will not impose them. Therefore, the Tribunal will conduct its analysis on the basis of a national market."³⁶

81. On the basis of the evidence on the record, the unanimous agreement of the parties and not having received any evidence or submissions to the contrary, the Tribunal will take a similar approach and will therefore conduct its preliminary injury analysis on the basis of a national market. That being said, it is understood that regional considerations that may affect the Tribunal's injury analysis may need to be more fully examined in the context of a final injury inquiry under section 42 of *SIMA*, if the CBSA makes a preliminary determination that the subject goods have been dumped or subsidized.

Domestic Industry

82. In its decision to initiate the investigations, the CBSA estimated that Atlas Tube accounted for a major proportion of the production of like goods in Canada. The CBSA identified DFI Corporation, Pipe & Piling Supplies, Spiralco Inc. and Nova Tube Inc. as other known domestic producers of like goods, two of which supported the complaint.

83. As one of the larger importers of the subject goods, Pipe & Piling Supplies was not considered part of the domestic industry in the complaint. In this regard, subsection 2(1) of *SIMA* confers on the Tribunal the discretion to interpret the term "domestic industry" as meaning only the domestic producers that are not related to an exporter or importer of dumped or subsidized goods, or that are not importers of such goods. In other words, in certain circumstances, a domestic producer that is also an importer of subject goods may be excluded from the domestic industry.

84. Pipe & Piling Supplies, a party in this preliminary injury inquiry, has not made submissions on this issue and appears to be essentially an importer of steel piling pipe. In fact, throughout its submission, it refers to itself as a "piling importer". However, at the preliminary injury inquiry stage, the Tribunal has generally interpreted the term "domestic industry" as including all the domestic producers of like goods, whether or not they imported dumped or subsidized goods. Indeed, determining whether a domestic

35. *Unprocessed Grain Corn* (18 April 2006) (CITT) at paras. 71-74.

36. *Ibid* at para. 74.

producer should be excluded from the domestic industry on the basis of its import activities requires a thorough analysis of the circumstances surrounding the importation of dumped or subsidized goods, which is difficult, if not impossible, in the context of a preliminary injury inquiry.

85. Accordingly, on the basis of the evidence on the record, the Tribunal finds that, for purposes of this preliminary injury inquiry, the domestic industry is comprised of Atlas Tube, Pipe & Piling Supplies, DFI Corporation, Spiralco Inc., Nova Tube Inc. and Evraz Inc. The Tribunal further finds that Atlas Tube accounts for a major proportion of the total production of like goods in Canada.

86. The Tribunal notes that Pipe & Piling Supplies and Platinum Grover submitted that other steel producers should be included in the domestic industry and, in that event, questioned whether there is evidence that the production of the parties that seek an injury finding constitutes a major proportion of the total domestic production of the like goods. This argument is related to the issue of whether there is merit to expanding the definition of the like goods in this case.

87. To the extent that certain OCTG, line pipe and standard pipe are to be considered like goods in relation to the subject goods, it follows that the domestic producers of such goods would have to be included in the domestic industry for the purposes of the Tribunal's injury analysis.

88. However, there is little evidence on the record that would allow the Tribunal to accept the argument that other unidentified producers should be part of the domestic industry. Also, the Tribunal has decided against expanding the definition of the like goods for purposes of this preliminary injury inquiry.

89. That being said, in view of the foregoing, the composition of the domestic industry is an issue that may need to be fully addressed in the context of a final injury inquiry under section 42 of *SIMA*, if the CBSA makes a preliminary determination that the subject goods in respect of which the preliminary injury inquiry has not been terminated under section 35 of *SIMA* have been dumped or subsidized.

Volume of Dumped and Subsidized Goods

90. Atlas Tube submitted that imports of the subject goods have been entering the Canadian market in significant and steadily increasing volumes since 2009. Specifically, Atlas Tube indicated that the volume of subject imports more than tripled between 2009 and 2011, increasing from 25,000 metric tonnes to 88,000 metric tonnes.³⁷

91. Pipe & Piling Supplies and Platinum Grover argued, among other things, that Atlas Tube's estimates of the volume of alleged dumped and subsidized goods are inflated and not based on credible evidence, that Atlas Tube underestimated the market penetration of non-subject imports and overestimated the size of the western Canadian market and its relative importance, and that it was not reasonable for Atlas Tube to assume that all the goods imported into Canada under the applicable Harmonized System (HS) codes were subject goods.

92. For these reasons, Pipe & Piling Supplies and Platinum Grover submitted that Atlas Tube could not determine whether the actual volume of the subject goods had increased, decreased or remained steady from 2009 to 2011.

37. Tribunal Exhibit PI-2012-002-02-01, Administrative Record, Vol. 1 at para. 53.

93. The Tribunal used the import data compiled by the CBSA for the period from January 2009 to December 2011 for purposes of estimating the volume of imports of the subject goods.³⁸ As previously noted, the evidence on the record suggests that the import data were adjusted by the CBSA to account for goods that were already subject to an existing order or finding, and it is on this basis that the Tribunal undertook its analysis.³⁹

94. The import data compiled by the CBSA show trends comparable to those provided by Atlas Tube in terms of the total volume of imports of the subject goods and the relative share of the subject imports in comparison with other countries and in terms of total imports.⁴⁰

95. The evidence shows that there has been a substantial increase in the volume of the subject imports since 2009.⁴¹ Indeed, the import data show that the absolute volume of imports of the subject goods almost tripled from 2009 to 2011, representing an increase of over 160 percent over that period.⁴² Similarly, the data on import volumes from the United States, the other main source of imports of steel piling pipe, show comparable increases over the same period.⁴³

96. The significant increase in imports of the subject goods has coincided with a substantial increase in the overall import volumes of steel piling pipe, which more than doubled between 2009 and 2011.⁴⁴

38. Tribunal Exhibit PI-2012-002-03.02 (protected), Administrative Record, Vol. 2 at 271-72, 286-87; Tribunal Exhibit PI-2012-002-05, Administrative Record, Vol. 1E at 419.

39. The Tribunal has reviewed the import data on record and notes that Atlas Tube and the CBSA provided differing estimates of the volume of imports of the subject goods and of all steel piling pipe that enters the Canadian market. While Atlas Tube relied on the Department of Foreign Affairs and International Trade's import permit data, the CBSA based its analysis on import data from the Facility for Information Retrieval Management. The Tribunal also notes that Atlas Tube identified the subject goods as being imported into Canada under 9 HS codes (as classified prior to January 1, 2012) for the period from 2009 to 2011. However, the CBSA has determined that 3 additional HS codes also applied to the subject goods. Due to limitations concerning the import data available to Atlas Tube for its estimates of imports of steel piling pipe, the Tribunal relied on the estimates provided by the CBSA in looking at the volume of imports of the subject goods and of all steel piling pipe. As explained in the section titled "Tribunal's Approach to Resolve the Issue of Overlap of Product Definitions" above, the Tribunal is satisfied that, despite the challenges for the conduct of this inquiry caused by the overlap of product definitions, the data collected by the CBSA for the purposes of analyzing the volume of imports of the subject goods are limited to data on goods that are produced and exported to Canada as steel piling pipe (i.e. goods commonly known as piling pipe) and to goods that are excluded from its finding in *Carbon Steel Welded Pipe*.

40. The Tribunal notes that the import volumes used in its analysis may be affected by product mix. However, there is insufficient evidence on the record to indicate what role product mix may have had on the CBSA's compilation of import data and consequent reporting of import volumes and prices of the subject goods and the volumes and prices of steel piling pipe imports from the rest of the world. Nevertheless, the evidence available at this stage tends to indicate that imports of the subject goods increased significantly from 2009 to 2011. The Tribunal will examine this matter in the context of an injury inquiry under section 42 of *SIMA*, should there be one.

41. Tribunal Exhibit PI-2012-002-05, Administrative Record, Vol. 1E at 418-19; Tribunal Exhibit PI-2012-002-02.01, Administrative Record, Vol. 1 at 40.

42. Tribunal Exhibit PI-2012-002-03.02 (protected), Administrative Record, Vol. 2 at 272; Tribunal Exhibit PI-2012-002-02.01, Administrative Record, Vol. 1 at 43.

43. Tribunal Exhibit PI-2012-002-03.02 (protected), Administrative Record, Vol. 2 at 272; Tribunal Exhibit PI-2012-002-05, Administrative Record, Vol. 1E at 419, 429.

44. Tribunal Exhibit PI-2012-002-03.02 (protected), Administrative Record, Vol. 2 at 272; Tribunal Exhibit PI-2012-002-05, Administrative Record, Vol. 1E at 419.

97. The evidence also shows that the subject goods constituted a significant and increasing share of the total imports of steel piling pipe. The import data indicate that the subject goods comprised 37 percent of the total imports in 2009 and 44 percent in 2011. Similarly, during the same period, the import share of steel piling pipe from the United States increased from 25 percent to 30 percent.⁴⁵ In contrast, the import share of non-subject countries decreased from 38 percent to 26 percent over the same period, which coincided with a significant increase in subject imports in 2011.⁴⁶

98. The total estimated Canadian market remained relatively stable in 2009 and 2010 and increased significantly in 2011.⁴⁷

99. The evidence reveals that, overall, the subject imports have shown a strong and growing presence in the Canadian steel piling pipe market since 2009, with some fluctuations. In this regard, the market share held by the subject imports rose sharply to approximately 30 percent in 2011, from approximately 10 percent in 2010 and almost 20 percent in 2009.⁴⁸

100. As a result of these trends, the domestic industry's share of the estimated Canadian steel piling pipe market has declined since 2009, from approximately half of the market in 2009 to about one third in 2011. Over the same period, Canadian producers' domestic sales of steel piling pipe increased by less than 10 percent, while the subject imports continued to rise sharply, more than tripling, and their market share increased by more than 10 percentage points, constituting about one third of the Canadian market in 2011.⁴⁹

101. The Tribunal notes that the decrease in market share of the like goods is even more apparent when examining the confidential evidence on the record in respect of the western Canadian market. In this regard, the evidence shows that, in conjunction with an increase in market share of the subject goods from 2009 to 2011, from 27 percent to 59 percent, there was a corresponding decrease in the market share of the like goods, from 55 percent to 29 percent, over the same period.⁵⁰ The evidence suggests that the decreased market share of the like goods was caused by the presence of the subject goods.

45. Tribunal Exhibit PI-2012-002-05, Administrative Record, Vol. 1E at 419; Tribunal Exhibit PI-2012-002-02.01, Administrative Record, Vol. 1 at 40-41; Tribunal Exhibit PI-2012-002-03.02 (protected), Administrative Record, Vol. 2 at 272.

46. Tribunal Exhibit PI-2012-002-05, Administrative Record, Vol. 1E at 419; Tribunal Exhibit PI-2012-002-02.01, Administrative Record, Vol. 1 at 40-41.

47. Tribunal Exhibit PI-2012-002-03.01 (protected), Administrative Record, Vol. 2 at para 55; Tribunal Exhibit PI-2012-002-03.02 (protected), Administrative Record, Vol. 2 at 272.

48. Tribunal Exhibit PI-2012-002-03.02 (protected), Administrative Record, Vol. 2 at 272; Tribunal Exhibit PI-2012-002-02.01, Administrative Record, Vol. 1 at para. 55; Tribunal Exhibit PI-2012-002-05, Administrative Record, Vol. 1E at 419.

49. Tribunal Exhibit PI-2012-03.02 (protected), Administrative Record, Vol. 2 at 272; Tribunal Exhibit PI-2012-002-05, Administrative Record, Vol. 1E at 419; Tribunal Exhibit PI-2012-002-03.01 (protected), Administrative Record, Vol. 2 at para 55.

50. Tribunal Exhibit PI-2012-002-03.01, Administrative Record, Vol. 2 at 36.

102. The volume of the subject imports also increased relative to the volume of domestic production and the volume of domestic consumption of the like goods between 2009 and 2011. While the ratios for imports of the subject goods relative to sales from domestic production calculated for 2009, 2010 and 2011 fluctuated year to year; the ratios were consistently relatively high, although exhibiting a modest decrease in 2010 relative to 2009 and 2011. Overall, however, there was a significant increase of more than 50 percentage points from 2009 to 2011.⁵¹

103. In light of the above, the Tribunal finds that the evidence discloses a reasonable indication that, from January 2009 to December 2011, the volume of imports of the subject goods increased significantly in absolute terms, with imports of the subject goods increasing significantly relative to domestic production and consumption of steel piling pipe.

Effects on the Price of Like Goods

104. Atlas Tube submitted that the Canadian steel piling pipe market has experienced significant price undercutting by the subject imports, as the prices of the subject goods were continually below those of the like goods. Atlas Tube further submitted that, in addition to price undercutting, the low cost of the subject imports caused significant price depression and price suppression by eroding the price of the like goods and preventing domestic price increases which otherwise would have occurred. Further, Atlas Tube submitted that the subject goods have caused it to lose sales.

105. Atlas Tube referred to steel piling pipe as a commodity product that is highly interchangeable and price sensitive. It alleged that it had been unable to penetrate the western Canadian market to any substantial degree due to the dominant presence of low-cost subject goods and notwithstanding buoyant demand conditions. To illustrate the negative effect of competition from the subject goods on its selling prices and to substantiate its claims of price undercutting, price depression, price suppression and lost sales, Atlas Tube provided confidential evidence at the market-, account- and model-specific levels for the period from 2009 to the first two months of 2012.

106. Pipe & Piling Supplies and Platinum Grover argued, among other things, that there is no credible evidence on the record to support Atlas Tube's claim that the subject goods are the price leaders in the Canadian steel piling pipe market, that the presence of the subject goods has resulted in price suppression, that steel piling pipe supplied from other sources is the price leader and that Atlas Tube explicitly distinguished the western and eastern Canadian markets in an attempt to downplay competition and pricing in the eastern Canadian market and to exaggerate the impact of the subject imports.

107. Pipe & Piling Supplies and Platinum Grover also argued that, because Atlas Tube does not know the actual volume of the subject goods in the Canadian market, it cannot credibly determine the impact of the subject goods on price.

108. The Tribunal reviewed the evidence in this preliminary injury inquiry and compared the prices of the like goods to the prices of the subject goods in the Canadian apparent market. While the evidence reveals that the average unit import prices of the subject goods were consistently and significantly lower than Atlas Tube's average unit selling prices from 2010 to the first two months of 2012, the Tribunal is cognizant of the fact that this price gap is overestimated to some extent, as the comparison is between value for duty and selling prices.

51. Tribunal Exhibit PI-2012-002-03.02 (protected), Administrative Record, Vol. 2 at 270-72; Tribunal Exhibit PI-2012-002-03.01 (protected), Vol. 2 at 35; Tribunal Exhibit PI-2012-002-05, Administrative Record, Vol. 1E at 419.

109. The Tribunal also notes that the average prices used in its analysis may be affected by product mix. There may be considerable variation depending on the size of the piling pipe, diameter, wall thickness, grade, etc.

110. The Tribunal is of the view that a comparison of the total average unit selling prices of the like goods and those of the subject goods is not always the best approach to determine the effect of the dumped and subsidized imports on the prices of like goods in the Canadian market, due to the issue of product mix. For this reason, the Tribunal also examined Atlas Tube's anecdotal evidence of specific injury on an account and model basis.

111. Notwithstanding the above, the import data available at this stage indicate that imports of the subject goods undercut the prices of the like goods by a significant margin throughout the period from 2009 to 2011. The data are corroborated, to some extent, by the confidential reports and supporting documents filed by Atlas Tube, which provide evidence that, from 2009 to the first two months of 2012, there were instances where the subject goods were offered to numerous accounts at prices that were significantly lower than the average selling price of Atlas Tube's like goods during the corresponding period. The Tribunal is of the view that, even with adjustments for transportation and other costs, and profit, the estimated average unit selling prices of the subject goods would still undercut Atlas Tube's average unit selling prices.⁵² The Tribunal finds that there is a reasonable indication of significant price undercutting throughout the period.

112. The preliminary data also suggest that imports of the subject goods were exerting downward pressure on the selling prices of the like goods. In this regard, the evidence shows that, while Atlas Tube's selling prices increased in both the eastern and western Canadian markets from 2009 to 2011, in the western Canadian market, its selling prices decreased significantly from 2011 to the first two months of 2012 due to competition from the low-priced subject goods. In addition, Atlas Tube's confidential evidence indicates that, in some instances, it lowered its offer prices in order to capture business lost to the subject goods and to retain its current business.⁵³ The Tribunal is of the view that the decline in the selling prices of the like goods can reasonably be attributed to competition from the subject imports and is reasonably indicative of the subject goods having depressed the price of the like goods.⁵⁴

113. With regard to price suppression, Atlas Tube's confidential evidence shows that, during the period from 2009 to 2011, it experienced increased costs of production. The evidence also shows that, although Atlas Tube's selling prices increased somewhat during the same period, the presence of the low-priced subject goods prevented it from fully reflecting and recouping the cost increases in the selling prices of the like goods in the western Canadian market. Indeed, Atlas Tube's anecdotal evidence shows that, while it experienced increased costs of production, there were numerous instances where its selling prices and price offers for the like goods were not reflective of the price increases which otherwise would have occurred.⁵⁵ The Tribunal therefore finds that there is a reasonable indication that the subject goods suppressed the price of the like goods.⁵⁶

52. Tribunal Exhibit PI-2012-002-03.01 (protected), Administrative Record, Vol. 2 at 81, 82, 108; Tribunal Exhibit PI-2012-002-02.01, Administrative Record, Vol. 1, tab 6 at 202, 208.

53. Tribunal Exhibit PI-2012-002.03.01 (protected), Administrative Record, Vol. 2 at 81, 82, 108; Tribunal Exhibit PI-2012-002-05, Administrative Record, Vol. 1E at paras. 95, 96, 98.

54. The Tribunal will examine the circumstances surrounding the relationship between Atlas Tube's average unit selling prices of like goods to Eastern Canada and Western Canada and the average unit import prices of the subject goods in the western Canadian market in greater detail in the context of a final injury inquiry, should there be one.

55. Tribunal Exhibit PI-2012-002-03.01 (protected), Administrative Record, Vol. 2 at 84-86.

56. Tribunal Exhibit PI-2012-002-05, Administrative Record, Vol. 1E at paras. 95, 96, 98; Tribunal Exhibit PI-2012-002-01, Administrative Record, Vol. 1 at 202, 208; Tribunal Exhibit PI-2012-002-03.01 (protected), Administrative Record, Vol. 2 at 100-102, 104-106, 108.

114. The Tribunal notes that Pipe & Piling Supplies and Platinum Grover did not provide evidence to substantiate their claims that steel piling pipe supplied from other sources is the actual price leader in the Canadian market and that Atlas Tube explicitly distinguished the western and eastern Canadian markets in an attempt to downplay competition and pricing in the eastern Canadian market to exaggerate the impact of the subject imports. Moreover, the Tribunal notes that Pipe & Piling Supplies and Platinum Grover offered no convincing evidence that would contradict the injury claims put forward by Atlas Tube. In fact, the available evidence suggests that the subject goods have indeed had an increasing presence in the Canadian market since 2009 and that the subject goods have been the price leaders.⁵⁷

115. On the basis of the foregoing, the Tribunal finds that the evidence in this preliminary injury inquiry discloses a reasonable indication that the dumping and subsidizing of the subject goods have resulted in price undercutting, price depression and price suppression.

Impact on the Domestic Industry

116. Atlas Tube claimed that the resultant impact of the dumping and subsidizing of the subject goods on the state of the domestic industry is material injury in the form of lost sales and sales opportunities, loss of market share, underutilization of production capacity, declining net revenues, profitability and gross margins, and net losses. Atlas Tube submitted that, while most of the sales of the subject imports are in Western Canada, particularly in British Columbia, Alberta and Saskatchewan, it is feeling the injurious impact throughout Canada. Atlas Tube also noted that its declining financial performance from fiscal year 2009 to 2011 shows the injurious effects of the subject imports.

117. Atlas Tube further claimed that the unfairly priced subject goods took over the lucrative and expanding western Canadian construction market, where the largest volume of steel piling pipe is sold, and that its sales have remained small in this market due to the massive presence of the subject goods.⁵⁸ According to Atlas Tube, this situation has resulted in lost sales and lost sales opportunities in Western Canada, in domestic sales that were made at depressed and suppressed prices, and in reduced profit levels. In support of its allegations, Atlas Tube submitted confidential evidence of reduced selling prices and lost sales.

118. Pipe & Piling Supplies and Platinum Grover submitted that Atlas Tube had not provided the Tribunal with sufficient evidence to conclude that there is a reasonable indication that the dumping and subsidizing of the subject goods have caused injury to the domestic industry. They further submitted that any injury suffered by Atlas Tube was self-inflicted and cannot be attributed to the presence of the allegedly dumped or subsidized imports.

119. The Tribunal examined the evidence on the record, including that provided by Atlas Tube, and observes that the domestic industry's performance, on the basis of a number of injury indicators, declined from January 2009 to March 2012.

57. Tribunal Exhibit PI-2012-003-03.02 (protected), Administrative Record, Vol. 2 at 373; Tribunal Exhibit PI-2012-002-02.01, Administrative Record, Vol. 1, tab 6 at 202-208; Tribunal Exhibit PI-2012-002-03.01 (protected) Administrative Record, Vol. 2 at 81, 82, 100-102.

58. According to Atlas Tube, Pipe & Piling Supplies is its main competitor for sizes greater than 10 3/4 inches to 16 inches in outside diameter. Atlas Tube alleged that Pipe & Piling Supplies can easily compete in the Canadian steel piling pipe market on price, given that it is a large importer of the subject goods, and can mix its sales of domestic production with the sales of the low-cost subject goods.

120. The Tribunal considered the evidence with respect to Atlas Tube's financial performance, including its income statements for 2009, 2010 and 2011 for its plant in Harrow, Ontario.⁵⁹ The evidence shows a deterioration in Atlas Tube's performance, at both the gross margin and net income levels, over the period, and mixed performance results for the eastern and western Canadian markets. For example, while Atlas Tube realized a net profit in the eastern market in 2011, in the western market, it experienced a net loss.⁶⁰ As already noted, Atlas Tube's confidential reports showed a number of instances where it had to lower its selling prices to retain business. In other cases, the reports show lost sales to the low-priced subject imports in the western market.

121. The evidence also shows that Atlas Tube's negative financial performance in the western market had a negative impact on its overall financial performance on the like goods.⁶¹

122. As previously noted, the evidence points to the presence of the low-priced subject imports that prevented Atlas Tube from increasing its sales and market share, raising its prices and recovering increases in the cost of production.

123. The evidence in this preliminary injury inquiry suggests that Atlas Tube's negative financial performance in the western market, and corresponding overall deterioration in financial performance between 2009 and 2011, was caused by the presence and increase in imports of the subject goods.

124. The Tribunal notes that the evidence on the record with respect to Atlas Tube's capacity utilization shows significant capacity underutilization between 2009 and the first two months of 2012.⁶²

125. Although there was very little evidence, if any, concerning the impact on other relevant economic factors and indices, such as productivity, return on investment, cash flow, employment and wages, the Tribunal nevertheless finds that the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury to the domestic industry.

Other Factors

126. Atlas Tube submitted that exchange rates are not a factor in this preliminary injury inquiry, as steel piling pipe is quoted and sold by Chinese exporters in U.S. currency. In this regard, Atlas Tube noted that the Canadian-U.S. dollar exchange rate was stable over the period and that the U.S. dollar-Chinese yuan rate was also relatively stable.

127. In the Tribunal's view, the limited evidence on the record regarding the impact of exchange rates does not negate the Tribunal's conclusion that the available evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused or threaten to cause injury. This will, however, be among the factors that would be more fully examined in the context of an inquiry under section 42 of *SIMA*.

59. The Tribunal notes that Atlas Tube's production at its plant in Harrow, Ontario, is divided between its two main products: steel piling pipe and hollow structural sections.

60. Tribunal Exhibit PI-2012-002-05, Administrative Record, Vol. 1E at 429; Tribunal Exhibit PI-2012-002-03.01 (protected), Administrative Record, Vol. 2 at 84, 104-106.

61. Tribunal Exhibit PI-2012-002-03.01 (protected), Administrative Record, Vol. 2 at 104-106.

62. *Ibid* at 84.

CONCLUSION

128. On the basis of the foregoing analysis, the Tribunal determines that there is evidence that discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury or are threatening to cause injury.

Serge Fréchette
Serge Fréchette
Presiding Member

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Member

Jason W. Downey
Jason W. Downey
Member