Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Dumping and Subsidizing

DETERMINATION AND REASONS

Preliminary Injury Inquiry
No. PI-2014-001

Concrete Reinforcing Bar

Determination issued
Tuesday, August 12, 2014

Reasons issued
Wednesday, August 27, 2014

Canada

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

CONCRETE REINFORCING BAR ORIGINATING IN OR EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA, THE REPUBLIC OF KOREA AND THE REPUBLIC OF TURKEY

PRELIMINARY DETERMINATION OF INJURY

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 hot-rolled deformed steel concrete reinforcing bar in straight lengths or coils, commonly identified as rebar, in various diameters up to and including 56.4 millimeters, in various finishes, excluding plain round bar and fabricated rebar products, originating in or exported from the People's Republic of China, the Republic of Korea and the Republic of Turkey, have caused injury or retardation or are threatening to cause injury to the domestic industry.

This preliminary injury inquiry follows the notification, on June 13, 2014, that the President of the Canada Border Services Agency had initiated investigations into the alleged injurious dumping and subsidizing of the above-mentioned 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 have caused injury or are threatening to cause injury to the domestic industry.

Jason W. Downey
Jason W. Downey
Presiding Member

Daniel Petit
Daniel Petit
Member

Ann Penner
Ann Penner
Member

The statement of reasons will be issued within 15 days.

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STATEMENT OF REASONS

BACKGROUND

1. On June 13, 2014, following a complaint filed on April 24, 2014, by ArcelorMittal LCNA (ArcelorMittal), Gerdau Longsteel North America (Gerdau) and Alta Steel Ltd. (Alta) (collectively, the complainants), the President of the Canada Border Services Agency (CBSA) initiated investigations into the alleged injurious dumping and subsidizing of hot-rolled deformed steel concrete reinforcing bar in straight lengths or coils, commonly identified as rebar, in various diameters up to and including 56.4 millimeters, in various finishes, excluding plain round bar and fabricated rebar products, originating in or exported from the People's Republic of China (China), the Republic of Korea (Korea) and the Republic of Turkey (Turkey) (the subject goods).

2. On June 16, 2014, the Canadian International Trade Tribunal (the Tribunal) issued a notice of commencement of preliminary injury inquiry.[1]

3. The complaint is opposed by Peak Products Manufacturing Inc. (Peak Products), an importer of the subject goods from China, and the Turkish Steel Exporters' Association (ÇIB), representing the Turkish exporters of the subject goods. The Ministry of International Trade, Government of British Columbia, the Ministry of Economy of the Republic of Turkey, and the Independent Contractors and Businesses Association also filed notices of participation, but did not file submissions.

4. On August 12, 2014, pursuant to subsection 37.1(1) of the *Special Import Measures Act*,[2] the Tribunal determined that there was evidence that disclosed a reasonable indication that the dumping and subsidizing of the subject goods have caused injury or were threatening to cause injury to the domestic industry.

CBSA'S DECISION TO INITIATE INVESTIGATIONS

5. 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 of the subject goods have caused injury or were threatening to cause injury. Accordingly, pursuant to subsection 31(1) of *SIMA*, the CBSA initiated investigations on June 13, 2014.

6. In coming to its decision to initiate the investigations, the CBSA used information with respect to the volumes of dumped and subsidized goods for the period from January 1, 2013, to March 31, 2014 (POI).

7. The CBSA estimated the margins of dumping, amounts of subsidy and volumes of dumped and subsidized goods for each of the subject countries as follows:[3]

1. C. Gaz. 2014.I.1636-37.
2. R.S.C., 1985, c. S-15 [*SIMA*].
3. Exhibit PI-2014-001-05, Vol. 1L at 124, 134.

Country	Margin of Dumping (as a percentage of export price)	Amount of Subsidy (as a percentage of export price)	Volume of Dumped/Subsidized Imports (as a percentage of total imports)
China	2.3	4.3	7.4
Korea	8.9	14.6	9.5
Turkey	5.6	18.7	12.0
All Other Countries	-	-	71.1
Total	**-**	**-**	**100**

8. The CBSA concluded that the volumes of dumped and subsidized goods from the subject countries during the POI were not negligible[4] and that the margins of dumping and amounts of subsidy were not insignificant.[5]

SUBMISSIONS ON INJURY AND THREAT OF INJURY

Complainants

9. The complainants submitted that the dumping and subsidizing of the subject goods have caused injury. In support of their allegations, the complainants provided evidence which, they claim, demonstrates increased volumes of imports of the subject goods, lost sales, price undercutting, price suppression, loss of market share, underutilization of production capacity, loss of profitability and decreased employment.[6]

10. The complainants also submitted that the dumping and subsidizing of the subject goods threaten to cause injury. The complainants submitted that volumes of dumped and subsidized imports are increasing and will continue to do so, given the unused and growing production capacity in the subject countries, their export focus on the Canadian market, and the U.S. trade remedy findings against rebar from China and Turkey.[7] Further, they submitted that the prices of these increasing imports are likely to continue to undercut, depress and suppress domestic prices and to gain market share at the expense of the domestically produced goods.[8]

Parties Opposed to the Complaint

11. The parties opposed submitted that the complainants have failed to discharge their evidentiary burden and that the evidence presented in the complaint does not disclose a reasonable indication that the

4. 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, except that (*b*) where the total volume of dumped goods of three or more countries, each of whose exports of dumped goods into Canada is less than three per cent of the total volume of goods referred to in paragraph (*a*), is more than seven per cent of the total volume of goods referred to in paragraph (*a*), the volume of dumped goods from any of those countries is not negligible".
5. Subsection 2(1) of *SIMA* defines "insignificant" as meaning, in relation to a margin of dumping, ". . . a margin of dumping that is less than two per cent of the export price of the goods" and, in relation to an amount of subsidy, ". . . an amount of subsidy that is less than one percent of the export price of the goods".
6. Exhibit PI-2014-001-02.01, Vol. 1 at para. 158.
7. *Ibid.* at para. 240.
8. *Ibid.* at para. 241.

alleged injurious dumping and subsidizing of the subject goods have caused injury or threaten to cause injury to the domestic industry.[9]

12. In addition, the ÇIB submitted that the domestic industry does not produce all the goods for which it is alleging injurious dumping and subsidizing and that the subject goods comprise more than one class of goods.[10] Peak Products submitted that the rebar products that it imports should be excluded from the Tribunal's determination.[11]

ANALYSIS

Legislative Framework

13. 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 the evidence discloses a reasonable indication that the dumping or subsidizing of the [subject] goods has caused injury or retardation or is threatening to cause injury."

14. In the present case, it is alleged that the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury or are threatening to cause injury; retardation is not alleged.

15. The expression "reasonable indication" is not defined in *SIMA*, but it is understood to mean that the evidence need not be ". . . conclusive, or probative on a balance of probabilities . . . ."[12] Rather, the evidence must sufficiently support the alleged injury, retardation or threat of injury to warrant investigation.[13] The Tribunal recently found that this test is passed where:

- the evidence is relevant, accurate and adequate; and
- in light of the evidence, the allegations stand up to a somewhat probing examination, even if the theory of the case might not seem convincing or compelling.[14]

16. The parties opposed submitted that the threshold for what constitutes a "reasonable indication" of injury has recently been raised and that the evidence of injury submitted in the complaint is not sufficient to substantiate the complainants' claims of injury in accordance with this higher standard.

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9. Exhibit PI-2014-001-06.01, Vol. 3 at para. 6; Exhibit PI-2014-001-06.02, Vol. 3 at para. 3.
10. Exhibit PI-2014-001-06.01, Vol. 3 at paras. 3-5.
11. Exhibit PI-2014-001-06.02, Vol. 3 at para. 17.
12. *Ronald A. Chisholm Ltd. v. Deputy M.N.R.C.E.* (1986), 11 CER 309 (FCTD).
13. Article 5 of the World Trade Organization (WTO) *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (commonly known as the *Anti-dumping Agreement*) and Article 11 of the WTO *Agreement on Subsidies and Countervailing Measures* require an investigating authority to examine the accuracy and adequacy of the evidence provided in a dumping and subsidizing complaint to determine whether there is sufficient evidence to justify the initiation of an investigation, and to reject a complaint or terminate an investigation as soon as the investigating authority is satisfied that there is not sufficient evidence of either dumping or injury to justify proceeding with the investigation. Article 5 and Article 11 also specify that simple assertions that are not substantiated with relevant evidence cannot be considered sufficient to meet the requirements of the articles.
14. *Silicon Metal* (21 June 2013), PI-2013-001 (CITT) at para. 16; *Unitized Wall Modules* (3 May 2013), PI-2012-006 (CITT) [*Unitized Wall Modules II*] at para. 24; *Liquid Dielectric Transformers* (22 June 2012), PI-2012-001 (CITT) at para. 86.

17. In reply, the complainants submitted that the Tribunal has recently re-confirmed that the reasonable indication standard is lower than the evidentiary standard that applies in a final injury inquiry and that recent jurisprudence in fact indicates that the threshold is not being raised.[15]

18. The Tribunal agrees with the complainants that the evidentiary threshold in a preliminary injury inquiry is lower than that which is applied in an inquiry conducted pursuant to section 42 of *SIMA*. In a final injury inquiry, the Tribunal may collect its own information, receive submissions on such information and test the evidence through the oral hearing process; in a preliminary injury inquiry, the Tribunal must rely mainly on the information supplied in the complaint.

19. A complaint filed with the CBSA should present the most complete picture possible, supported by positive evidence that addresses all the necessary requirements in *SIMA* and the relevant factors of the *Special Import Measures Regulations*.[16] Although the reasonable indication threshold is less demanding than the standard that applies in a final injury inquiry pursuant to section 42 of *SIMA*, the outcome of the Tribunal's preliminary injury inquiries must not be taken for granted.

20. In the present case, the evidence filed by the complainants certainly appeared relevant and was not shown to be inaccurate; all things considered, the Tribunal concludes that it is adequate. However, as will be discussed below, the Tribunal did not find the theory of the case to be particularly compelling. As the analysis that follows will demonstrate, some elements were lacking, and others only provided a minimal indication of injury or threat of injury, if any at all. This caused the Tribunal some concern. Nevertheless, on the basis of its assessment of the evidence as a whole, the Tribunal finds that the complainants have presented sufficient evidence to meet the reasonable indication threshold in this case.

21. In making its preliminary determination, the Tribunal takes into account the injury and threat of injury factors that are prescribed in section 37.1 of the *Regulations*. These include the import volumes of the dumped or subsidized goods, the effects of the dumped or subsidized goods on the price of like goods, the resulting economic impact of the dumped or subsidized goods on the state of the domestic industry, and—if injury or threat of injury is found to exist—whether a causal relationship exists between the dumping or subsidizing of the goods and the injury or threat of injury.[17]

22. Subsection 2(1) of *SIMA* defines "injury" as "material injury to a domestic industry". The expression "domestic industry" is defined 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 . . . ." The expression "like goods", in relation to dumped or subsidized goods, is defined as ". . . goods that are identical in all respects to the [dumped or subsidized] goods, or . . . in the absence of any [such] goods . . . goods the uses and other characteristics of which closely resemble those of the [dumped or subsidized] goods".

23. Before examining the allegations of injury and threat of injury, the Tribunal must therefore identify the domestically produced goods that are like goods in relation to the subject goods and the domestic industry that produces those goods.

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15. Exhibit PI-2014-001-08.02, Vol. 3 at para. 13; Exhibit PI-2014-001-08.01, Vol. 3 at paras. 2-3.
16. S.O.R./84-927 [*Regulations*].
17. It is not sufficient that dumping or subsidizing contributes to material injury or to a threat of material injury to a domestic industry. There must be evidence that discloses a reasonable indication that the dumping or subsidizing has caused or is threatening to cause material injury. See *Unitized Wall Modules II* at para. 23.

Like Goods and Classes of Goods

24. The CBSA has defined the subject goods as concrete reinforcing bar, commonly identified as rebar, having certain characteristics, originating in or exported from China, Korea and Turkey, and the Tribunal must conduct its preliminary injury inquiry on the basis of this product description.

25. 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 domestically produced goods in relation to the subject goods.

26. 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).[18]

27. There is no dispute between the parties that Canadian-made rebar are "like goods" in relation to the subject goods. In view of the evidence on the record in relation to the above factors, the Tribunal finds, in the context of this preliminary injury inquiry, that rebar produced in Canada are "like goods" in relation to the subject goods.

28. With respect to classes of goods, the complainants submitted to the CBSA, and the CBSA agreed, that the subject goods and like goods constitute a single class of goods.[19]

29. However, the ÇIB submitted that the subject goods comprise more than one class of goods, i.e. (1) uncoated (or black) rebar and (2) coated rebar. Moreover, it submitted that the domestic producers have not filed evidence indicating that they produced or made domestic sales from domestic production of coated rebar products.[20]

30. The ÇIB stated that uncoated rebar cannot be used as a substitute for coated rebar, the latter being for use in certain specific applications that require protection from corrosion.[21] It filed some evidence suggesting that (1) coated rebar carries a cost premium which can be significant compared to uncoated rebar, with epoxy-coated rebar carrying a 33 percent premium over black rebar, and the cost of galvanized and stainless steel clad rebar being more than twice the cost of black rebar;[22] (2) coated and uncoated rebar have different product characteristics, such as their corrosion resistance and bond behaviour;[23] and (3) coated rebar is subject to product and production specifications which do not apply to uncoated rebar.[24] In sum, the ÇIB claimed that uncoated and coated rebar do not share identical physical characteristics and do not overlap in terms of market characteristics, as they do not fulfil the same customer needs and are not similarly priced.[25]

31. ArcelorMittal and Alta replied that (1) the manufacturing process for coated and uncoated rebar is similar, as the various specifications for coated rebar are in addition to the base specifications that apply to all rebar products, (2) coated and uncoated rebar are similar in appearance, in that they have the same

18. See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at para. 48.
19. Exhibit PI-2014-001-05, Vol. 1L at paras. 36-37.
20. Exhibit PI-2014-001-06.01, Vol. 3 at paras. 57-58.
21. *Ibid*. at paras. 34-35.
22. *Ibid*. at para. 48.
23. *Ibid*. at para. 45.
24. *Ibid*. at para. 46.
25. *Ibid*. at para. 53.

deformations and grooves, (3) coated and uncoated rebar are sold through the same distribution channels, (4) there is downward substitutability (i.e. coated rebar can be used in applications that only require uncoated rebar), and (5) the cost comparisons for coated and uncoated rebar filed by the ÇIB are outdated, as more recent data suggest that the cost spread between coated and uncoated rebar is much smaller and that rebar producers in the subject countries offer coated and uncoated rebar at the same price.[26]

32. For its part, Gerdau replied that the ÇIB has not offered persuasive supporting evidence on Canadian market characteristics that would allow the Tribunal to determine that there is more than one class of goods. Furthermore, Gerdau noted that, if the Tribunal were to find separate classes of goods and terminate its inquiry in regard to the corrosion-resistant rebar, the substitutability of coated or corrosion-resistant product for black rebar could allow for the circumvention of the determination, due to low prices and downward substitutability.[27]

33. The information submitted by the ÇIB does point to different applications for coated and uncoated rebar; however, the evidence suggests that these goods share multiple similar characteristics, exist in the same marketplace, are sold to and by the same suppliers and, under the appropriate circumstances, could compete against one another, given the right price points.

34. In *Steel Piling Pipe*,[28] the Tribunal summarized the principles that govern the determination of the issue of classes of goods in a preliminary injury inquiry as follows:

> 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.
>
> . . .
>
> 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.
>
> [Footnote omitted]

35. In *Steel Grating*,[29] the Tribunal stated that price differences between different types of subject goods and like goods did not automatically result in multiple classes of goods. In that case, the Tribunal ultimately determined that different coatings (galvanized or simply painted), offering different levels of corrosion protection for steel grating products and resulting in a price premium for galvanized products, were insufficient to create a separate class of goods for galvanized steel grating products. The Tribunal ultimately found that galvanized products could be used in non-galvanized applications and was not convinced that the price premium was sufficient to prevent this from occurring. In contrast, the Tribunal

26. Exhibit PI-2014-001-08.02, Vol. 3 at paras. 32-35, 37.
27. Exhibit PI-2014-001-08.01, Vol. 3 at para. 8.
28. (3 July 2012), PI-2012-002 (CITT).
29. (19 April 2011), NQ-2010-002 (CITT).

went on to find that stainless steel gratings, due to their different chemical composition, significantly higher price and specialized use, constituted a separate class of goods.[30]

36. In this instance, although coated and uncoated rebar do not *prima facie* appear to be fully substitutable in all applications, there is nevertheless some indication of possible downward substitution of coated rebar in applications requiring uncoated product. The information received thus far on the price premium applicable to the various types of coated rebar is not sufficiently convincing to allow the Tribunal to determine, at this stage, that the pricing differences are of sufficient magnitude to justify a finding of multiple classes of goods.

37. For the purposes of this preliminary injury inquiry, the Tribunal finds that the different types of rebar are part of a "continuum" of goods, as discussed in *Steel Piling Pipe*.

38. The Tribunal was perplexed that the complainants did not fully address this issue, either in the complaint or, more surprisingly, in response to the ÇIB's contention that they do not produce coated rebar. Instead, notwithstanding the evidence regarding apparent price differences and end uses, they chose to either ignore or side-step the issue completely and, instead, submitted that third-party coating services are potentially available if required.[31] This is a cause of concern for the Tribunal.

39. The complainants have the prerogative of providing their view on the scope of the definition of the subject goods at the time of filing a complaint with the CBSA. The Tribunal expects that they would define the scope of the subject goods with circumspection and ensure that it only encompasses goods which are like goods that they actually produce or are legitimately capable of producing. The imposition of anti-dumping and countervailing duties is an extraordinary remedy that, under both domestic and international law, may only be imposed on imported goods once positive evidence of dumping, subsidizing and resulting injury to a domestic industry producing like goods has been accepted by the investigating authorities. The fact that, in this case, provisional duties may now be imposed, should the CBSA make a preliminary determination of dumping or subsidizing, and that the domestic industry may thus receive protection from imports of a subset of the subject goods which ultimately may or may not be shown to be produced domestically, is worrisome.

40. However, *SIMA* provides for the protection of the domestic industry producing goods that are "like goods" in relation to the subject goods and, on the basis of the evidence before it, the Tribunal is unable to conclude that the uncoated rebar produced in Canada are not "like goods" in relation to the subject coated rebar. In fact, the information provided by the parties opposed as to the actual differences in product characteristics, product application, market characteristics, pricing and competition is insufficient to allow the Tribunal to positively assess the existence of two separate classes of goods at this stage of the proceedings. In particular, coating does not appear to change the essential physical or chemical characteristics of, or change the basic production process for, the goods. The evidence supplied by the parties opposed in support of their allegation that the domestic industry does not produce coated rebar was also, at this time, insufficient for the Tribunal to draw a firm conclusion on this issue.

41. In sum, the question as to whether there could exist more than one class of goods is an issue that will need to be fully addressed during an inquiry under section 42 of *SIMA*, if the CBSA concludes, in its preliminary determination, that the subject goods have been dumped or subsidized. Consequently, the Tribunal will collect data on two potential classes of goods and will also ask for further submissions from

30. *Steel Grating* at paras. 101-114.
31. Exhibit PI-2014-001-08.01, Vol. 3 at para. 7.

parties on this issue. These potential classes of rebar are (1) uncoated (or black) rebar and (2) coated rebar. The Tribunal has also requested the CBSA to collect separate information on the dumping and subsidizing of these two potential classes of goods.

Domestic Industry

42. In its decision to initiate the investigations, the CBSA determined that the complainants were the only producers of like goods in Canada.[32]

43. In light of the Tribunal's decision that, for the purposes of this preliminary injury inquiry, the subject goods and like goods constitute a single class of goods, the Tribunal accepts, on the basis of the evidence on the record, that the collective production of ArcelorMittal, Alta and Gerdau constitutes a major proportion of the total domestic production of rebar and, thus, finds that these producers constitute the domestic industry.

Cumulation

44. In the context of a final injury inquiry under subsection 42(1) of *SIMA*, subsection 42(3) requires that the Tribunal make a cumulative assessment of the injurious effects of both dumped and subsidized goods that are imported into Canada, if the Tribunal is satisfied that certain conditions are met. Specifically, the Tribunal must be satisfied that (1) the margin of dumping or the amount of subsidy in relation to the goods from each of the countries is not insignificant and the volume of goods imported into Canada from any of those countries is not negligible, and (2) an assessment of the cumulative effect of the subject goods would be appropriate taking into account the conditions of competition between the goods from any of the subject countries, the other dumped or subsidized goods, and like goods.[33]

45. While subsection 42(3) of *SIMA* deals with final injury inquiries, the Tribunal normally considers that it is exceptional not to cumulate the subject goods in a preliminary injury inquiry when the available evidence appears to justify cumulation.[34]

Margins of Dumping, Amounts of Subsidy and Volumes of Dumped and Subsidized Imports

46. As noted above, the CBSA has determined that the margins of dumping and amounts of subsidy for all the subject countries are not insignificant and that the volumes of imports are not negligible. The Tribunal is of the same opinion.

Conditions of Competition

47. A decision to de-cumulate on the basis of conditions of competition must turn on positive evidence of sufficiently differing conditions of competition among the subject goods, or between subject goods and like goods. This is essentially a question of fact for the Tribunal's consideration. In making this decision, the Tribunal has previously taken into consideration such factors as whether the goods are interchangeable, whether they are present in the same geographic market at the same time and whether they are distributed through the same channels or using the same means of transportation.[35]

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32. Exhibit PI-2014-001-05, Vol. 1L at para. 38.
33. See, for example, *Galvanized Steel Wire* (22 March 2013), PI-2012-005 (CITT) at para. 39.
34. In accordance with its long-standing practice, the Tribunal will also cross-cumulate the effects of dumping and subsidizing.
35. See, for example, *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (17 August 2001), NQ-2001-001 (CITT) at 16.

48. The evidence on the record first indicates that rebar is a commodity product, that the subject goods are interchangeable between themselves as well as with the like goods, and that the subject goods and the like goods are thus fungible in the market. Second, the subject goods and the like goods compete with each other on similar considerations of quality and price and are sold through the same channels of distribution to the same clients (service centres or directly to fabricators).[36] Third, all the subject goods are shipped to Canada using the same mode of transportation (by vessel) and are present in the Canadian market throughout the year.[37]

49. The ÇIB requested that Turkish goods be de-cumulated, claiming that they do not compete in the same geographic market as the other subject goods. Although the ÇIB submitted that Chinese and Korean products are mainly found in Western Canada (*via* Vancouver) and that Turkish products mostly appear in Eastern Canada (*via* Montréal), the evidence on the record suggests in fact that almost half (48 percent) of rebar imports from China in 2013 and the first half of 2014 were also shipped to Ontario and Quebec, where they competed directly with imports from Turkey.[38]

50. There is no positive evidence to demonstrate that the conditions of competition among the subject goods or between the subject goods and the like goods are significantly different. The Tribunal therefore finds that a cumulative assessment of the injurious effects of all the dumped and subsidized goods is warranted.

Volume of Dumped and Subsidized Goods

51. The complainants submitted that substantial and increasing volumes of dumped and subsidized goods were imported into Canada between 2011 and 2013.[39] Moreover, the complainants submitted that the volumes of imports of the subject goods continued to increase in 2014.[40]

52. The ÇIB submitted that the share of imports of the subject goods from Turkey declined between 2013 and 2014. Further, it submitted that imports of the subject goods from Turkey are being displaced by those from the other subject countries.[41]

53. The Tribunal will consider the period from January 1, 2011, to June 30, 2014 (period of interest) for the purpose of its analysis. Based on the import data compiled by the CBSA, the volume of imports of the subject goods more than doubled in absolute terms from 2011 to 2012. The share of total imports held by the subject goods also increased in this period, though not by a similarly significant amount.[42]

54. The CBSA did not provide data for 2013, but instead provided cumulated data for the period from January 1, 2013, to March 31, 2014 (i.e. 5 quarters). This precludes a clear year-to-year comparison beyond the first two years of the period of interest using the CBSA's data. The Tribunal therefore examined the estimates prepared by the complainants, which show that the volume of imports of the subject goods decreased in absolute terms from 2012 to 2013, while their share of the import market remained constant. Overall, however, the absolute volume of the subject imports and their share of the import market in 2013 were still higher than in 2011.[43]

36. Exhibit PI-2014-001-02.01, Vol. 1 at para. 32.
37. Exhibit PI-2014-001-08.02, Vol. 3 at paras. 47-50.
38. *Ibid.* at para. 50 and references contained therein.
39. Exhibit PI-2014-001-02.01, Vol. 1 at para. 164.
40. Exhibit PI-2014-001-08.02, Vol. 3 at para. 75 and references contained therein.
41. Exhibit PI-2014-001-06.01, Vol. 3 at paras. 74-78.
42. Exhibit PI-2014-001-03.02 (protected), Vol. 2B at 32-44.
43. Exhibit PI-2014-001-02.01, Vol. 1B at 163.

55. Relative to domestic production and consumption of like goods, imports of the subject goods increased by 15 percentage points in 2012. This would appear to indicate that import sales were being realized to the detriment of like goods during that period.[44] In 2013, imports of the subject goods relative to domestic production and domestic consumption decreased by 5 and 6 percentage points respectively. Similar to the trends in absolute volume and share of the import market, the values for 2013 were still higher than in 2011.[45]

56. To address the ÇIB's allegations, the Tribunal compiled the data on imports from the subject countries and the United States made available in a document titled "Canadian Steel Imports Permits Industry Class by Country" issued by the Department of Foreign Affairs, Trade and Development for 2012 and 2013, as well as the first half of 2013 and the first half of 2014. Based on the data provided, imports from Turkey did in fact decrease significantly in terms of both volume and value from 2012 to 2013 and again from the first half of 2013 to the first half of 2014.[46] However, the data provided by the complainants show a surge of 120 percent in imports from Turkey between 2011 and 2012.[47]

57. Conversely, the complainants' data show minimal increases in volumes of imports from China and Korea between 2011 and 2012, but significant increases between 2012 and 2013 for both of these countries.[48] These trends are not inconsistent with the complainants' submissions regarding the overall increases in volumes of imports from the subject countries throughout the period of interest.

The Effect of the Dumped and Subsidized Goods on the Price of Like Goods

58. The complainants submitted that they have suffered lost sales, price undercutting, price suppression and loss of market share as a result of competition from imports of the subject goods.[49]

59. The complainants submitted that the subject goods were consistently the lowest-priced product in the Canadian market from 2011 to 2013. In addition, the complainants have each submitted several account-specific injury allegations, which describe instances when the complainants have lost sales, have been forced to reduce their price in order to secure a sale or were not asked to bid.[50]

60. The complainants also submitted that the overall effect of the price undercutting and depression described above, and the high volumes of low-priced subject goods in the Canadian market, has been that they have been unable to increase their sales value to cover their cost of production, resulting in price suppression.[51]

61. Before turning to the analysis of the price effects of the dumped and subsidized goods, the Tribunal would like to address the quality of the evidence put forward to support the complainants' specific injury allegations. Many of these allegations were unsupported by contract documentation, e-mails, correspondence or any other record of the exchanges involved. Moreover, even though, in some instances, the complainants provided volumes allegedly purchased by the Canadian customers, they provided

44. Exhibit PI-2014-001-03.02 (protected), Vol. 2B at 32-44; Exhibit PI-2014-001-03.01 (protected), Vol. 2 at 145, 156.
45. Exhibit PI-2014-001-03.01 (protected), Vol. 2 at 145, 156.
46. Exhibit PI-2014-001-06.01, Vol. 3 at 134-37.
47. Exhibit PI-2014-001-02.01, Vol. 1B at 163.
48. *Ibid*.
49. *Ibid*., Vol. 1 at para. 158.
50. *Ibid*. at para. 173; Exhibit PI-2014-001-03.01 (protected), Vol. 2 at 191-235; *ibid*., Vol. 2A at 3-6.
51. Exhibit PI-2014-001-02.01, Vol. 1 at paras. 175-78.

no supporting documentation confirming the purchase. Further, several of the allegations involved open offers, without evidence as to whether a sale was actually lost to the subject goods, or at what price; this is problematic.

62. While these allegations do demonstrate the presence of offers of the subject goods, without better supporting evidence, it is quite possible that these open offers create a "multiplying effect", where the same product may very well have been offered to a multitude of potential buyers. While the Tribunal recognizes that this may create some disruption in the market, it is nearly impossible to draw any reliable conclusions from the evidence as presented so far.

63. In addition, based on the examples supplied by the complainants, the volume of sales allegedly affected by price depression represents an infinitesimally small percentage of the total volume of domestic producers' sales in the Canadian market in the period during which the affected sales took place. Further analysis of these allegations shows that the actual sales revenue lost during the period in question would constitute only a miniscule percentage of the domestic industry's net sales value during this time. Again, it is difficult for the Tribunal to draw any reliable conclusions on the basis of such a modest sample.

Price Undercutting

64. On an aggregate level, the complainants' estimates of annual average import values show that imports of the subject goods consistently undercut the domestic selling price of the like goods from 2011 to 2013.[52] The CBSA's import data confirm that the unit import values for the subject goods were below the average unit selling price of the like goods in 2011 and 2012 respectively.[53] While the unit value for imports is based on the F.O.B. import price, and therefore differs from the price at which the goods were actually sold in the Canadian market, it is probable that the prices in the Canadian market followed similar trends during the period of interest.

65. The complainants' estimates also show that the subject goods were priced below imports from non-subject countries and were thus the price leaders in the Canadian market in all years during the period of interest.[54] However, these estimates are contradicted by the CBSA's data, which show that the non-subject goods were priced lower than the subject goods in 2011 and 2012, and suggest that non-subject goods were the price leaders at that time.[55]

66. The pricing information available in the individual allegations of injury provided in the complaint demonstrates that prices quoted by suppliers of the subject goods were consistently below those quoted by the domestic producers, notwithstanding the fact that prices of the latter were, in some instances, already below the prevailing market values.[56]

52. Exhibit PI-2014-001-03.01 (protected), Vol. 2 at 145.
53. Exhibit PI-2014-001-03.02 (protected), Vol. 2B at 32-44. As noted above, the CBSA did not provide import data for 2013.
54. Exhibit PI-2014-001-03.01 (protected), Vol. 2 at 145.
55. Exhibit PI-2014-001-03.02 (protected), Vol. 2B at 32-44.
56. Exhibit PI-2014-001-02.01, Vol. 1B at 163; Exhibit PI-2014-001-03.01 (protected), Vol. 2 at 191-235; *ibid.*, Vol. 2A at 3-6; Exhibit PI-2014-001-03.01A (protected), Vol. 2.01 at 30-32; Exhibit PI-2014-001-02.01, Vol. 1H at 72-123; Exhibit PI-2014-001-03.01 (protected), Vol. 2 at para. 355.

67. With respect to instances where volumes were actually purchased by customers, a comparison of prices quoted by the complainants and the suppliers of the subject goods shows that, on all occasions where comparison was possible, the prices of the subject goods undercut those offered by the domestic producers.[57]

68. With respect to open offers by importers of the subject goods available for examination, in the instances where comparison was possible, the prices offered by suppliers of the subject goods also appeared to undercut those offered by the domestic producers.[58]

Price Depression

69. The complainants' estimates show that the average unit value for imports of the subject goods decreased in 2012, and again in 2013, which suggests that their price in the Canadian market also likely decreased during this time.[59] The average unit selling value for domestically produced rebar increased in 2012, but decreased in 2013, falling below the 2011 level.[60]

70. The Tribunal also examined data regarding sales achieved by various suppliers of the subject goods in the Canadian market in 2012, 2013 and from January to April 2014. When considering the importers' selling price ($/metric tonne), the then current U.S. Midwest price for rebar, as indicated by the Steel Business Briefing Group and converted into Canadian currency, the estimated Canadian market price for the month in question and the domestic offer ($/metric tonne), the data consistently demonstrate the prevalence of lower prices in the Canadian rebar market when compared to the U.S. Midwest prices.[61]

71. Finally, the specific injury allegations included a small number of examples where the complainants actually secured a sale after competing with offers from suppliers of the subject goods. In all instances, the data show that the domestic producers had lowered their initial price offers in order to secure the sale.[62]

Price Suppression

72. The cost of goods sold comprised a very high percentage of net sales value in all years from 2011 to 2013, leaving very little room for the domestic producers to pass on any cost increases. In addition, the domestic industry was not able to maintain its total net sales value or net sales value per metric tonne in 2013 when the cost of goods sold (both total and per metric tonne) decreased, which suggests that the complainants were experiencing pressure to decrease prices.[63]

Conclusion

73. Overall, on the basis of the evidence outlined above, the Tribunal finds that the complainants have demonstrated that there is a reasonable indication that the dumped and subsidized goods have had a negative effect on the price of the like goods through price undercutting, depression and suppression throughout the period of interest.

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57. *Ibid.* at 191-235; *ibid*., Vol. 2A at 3-6.
58. *Ibid*., Vol. 2 at 191-235; *ibid*., Vol. 2A at 3-6.
59. Exhibit PI-2014-001-02.01, Vol. 1B at 163.
60. Exhibit PI-2014-001-03.01 (protected), Vol. 2 at 145.
61. Exhibit PI-2014-001-02.01, Vol. 1B at 163; Exhibit PI-2014-001-03.01 (protected), Vol. 2 at 191-235; *ibid*., Vol. 2A at 3-6; Exhibit PI-2014-001-03.01A (protected), Vol. 2.01 at 30-32; Exhibit PI-2014-001-02.01, Vol. 1H at 72-123; Exhibit PI-2014-001-03.01 (protected), Vol. 2 at para. 355.
62. *Ibid.* at 191-235; *ibid*., Vol. 2A at 3-6.
63. *Ibid*., Vol. 2 at 147.

The Impact of the Dumped and Subsidized Goods on the State of the Domestic Industry

74. The complainants submitted that the significant volumes of imports of low-priced subject goods in the period between 2011 and 2013 coincided with substantial financial losses suffered by the domestic industry.[64] They also submit that the presence of the subject goods in the Canadian market has adversely affected the domestic industry's production and employment.[65]

75. The ÇIB pointed to the increases in the domestic industry's net sales volume, net sales value, gross margins and net income before taxes between 2011 and 2013 as indicators that the domestic industry is in fact performing well and not suffering material injury.[66]

Domestic Production

76. The domestic industry's consolidated production increased in 2012 compared to 2011. Although it then declined in 2013, it remained above the 2011 production level.[67]

77. The Tribunal is not convinced that an actual increase in production by the domestic industry over the period of interest suggests a reasonable indication of injury. However, the decrease in 2013 relative to 2012 may indicate an increasing impact of dumped and subsidized goods.

Market Share

78. The CBSA's data show that, in terms of volume, the size of the Canadian market for rebar increased in 2012. Both the volume of sales from domestic production and from imports of the subject goods also increased in 2012; however, the increase in sales from imports of the subject goods was much more pronounced than the increase in sales from domestic production.[68]

79. In 2012, sales of the subject goods gained market share at the expense of sales from domestic production. The market share held by sales of goods from non-subject countries remained constant in 2011 and 2012. However, although sales of the subject goods gained some market share from 2011 to 2012, they accounted for a significantly smaller portion of the Canadian rebar market compared to the shares held by the domestically produced goods and goods from non-subject countries in 2012.[69]

80. In 2013, sales of the subject goods lost market share, while sales from domestic production gained market share, mostly at the expense of sales of goods from non-subject countries, whose market share declined by a similar amount. However, as in 2012, sales of the subject goods accounted for a significantly smaller portion of the Canadian rebar market compared to the shares held by the domestically produced goods and goods from non-subject countries.[70]

81. In short, the above tends to demonstrate a surge in the market share of the subject goods in 2012, which seems to have levelled off in 2013. The Tribunal notes however that the domestic industry was able to maintain its market share and incrementally increase it over the period of interest, demonstrating that it remains competitive in the market, albeit potentially at the expense of maintaining profitability.

64. Exhibit PI-2014-001-08.02, Vol. 3 at para. 5.
65. *Ibid.* at para. 93.
66. Exhibit PI-2014-001-06.01, Vol. 3 at paras. 97-99.
67. Exhibit PI-2014-001-03.01 (protected), Vol. 2 at 156.
68. Exhibit PI-2014-001-03.02 (protected), Vol. 2B at 32-44.
69. *Ibid.*
70. Exhibit PI-2014-001-03.01 (protected), Vol. 2 at 145.

Sales

82. The complainants submitted that the domestic industry's sales increased in 2013 compared to 2011, while the Canadian market also increased.[71] However, the complainants submitted that the increase in sales volumes observed in 2013 does not tell the whole story, as this increase was the result of capturing market share that was held by non-subject goods, and that the market share held by the subject goods grew at a faster pace between 2011 and 2013. They also submitted that there are numerous examples of lost sales due to competition from the subject goods.[72]

83. As noted above, the domestic industry provided a small number of examples of instances where it needed to reduce its price in order to secure a sale as a result of direct competition with the subject goods. In all other instances where the complainants allegedly lost sales, it was not possible to determine with confidence the reasons for which the complainants had not secured sales. In addition, it was not clear whether the complainants in fact lost the entire volume to the importers of the subject goods or were simply not asked to bid. The impact of offers appears more important; however, due to the weaknesses of this evidence discussed above, it is difficult for the Tribunal to rely on it.

Profitability

84. The consolidated financial data provided by the complainants demonstrate a deteriorating financial performance over the period of interest. These data show an impact on gross margins and total net income before taxes. In addition, on a per-metric-tonne basis, the domestic industry suffered net losses in 2011, 2012 and 2013.[73]

85. The domestic industry as a whole, while maintaining market share, thus appears to be doing so at a financial loss, with diminishing margins and through operating deficits. This deteriorating financial performance suggests that the domestic industry, as a whole, has suffered injury.

Productivity and Capacity Utilization

86. The complainants' consolidated production capacity for all products manufactured on the same equipment as the like goods displayed a mild, yet consistent, downward trend throughout the period of interest, whereas the consolidated production of rebar increased in 2012 compared to 2011, before declining in 2013 to a level somewhat above the 2011 level.[74]

87. The complainants' consolidated capacity utilization rate for rebar fluctuated mildly over the period of interest, while the consolidated total capacity utilization rate remained stable.[75]

88. These trends are consistent with the trends in domestic production and the evolution of the market. For example, the surge in consolidated rebar production in 2012 coincides with a surge in the size of the total domestic market; however, surprisingly, this is the same year in which domestic producers lost their greatest proportion of market share. Overall, these data do not provide a compelling indication of actual injury.

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71. Exhibit PI-2014-001-02.01, Vol. 1 at para. 167.
72. Exhibit PI-2014-001-08.02, Vol. 3 at paras. 68-70.
73. Exhibit PI-2014-001-02.01, Vol. 1 at para. 228; Exhibit PI-2014-001-03.01 (protected), Vol. 2 at 147.
74. *Ibid*. at 156.
75. *Ibid*.

Employment

89. Direct employment remained stable between 2011 and 2012 and decreased slightly in 2013.[76] However, despite the decrease in the size of the apparent market, the domestic producers realized a gain in market share in 2013. This would not appear to indicate that any injury suffered by the complainants was felt on the shop floor.

Investments

90. The complainants provided an example of one planned investment related to rebar production, which may be deferred if their financial situation does not improve. However, as compared with the size of the rebar industry and the steel industry as a whole, this planned investment does not appear to represent a significant amount. Again, the complainants provided very little detail, which allows for minimal consideration of this allegation by the Tribunal.

Causation and Other Factors

91. In a preliminary injury inquiry, the Tribunal must determine whether the evidence discloses a reasonable indication of a causal link between the dumping and subsidizing of the subject goods and the injury.

92. The Tribunal must further consider, pursuant to paragraph 37.1(3)(*b*) of the *Regulations*, whether the reasonable indication of injury is attributable to factors other than the dumping and subsidizing.

93. The parties opposed submitted that there is insufficient evidence of a causal relationship between the alleged dumping and subsidizing and any injury in this case.[77]

94. ArcelorMittal and Alta responded that the causation element of the "reasonable indication" test only requires an apparent correlation between injury indicators and the alleged dumping and subsidizing. They cited previous Tribunal jurisprudence in which the Tribunal noted that it is only through an inquiry that the Tribunal will be able to fully explore the causation element and satisfy itself that the dumping and subsidizing of imports are causing material injury.[78]

95. The jurisprudence cited by the complainants dates back to the 1990s. In more recent decisions, the Tribunal has not considered that a mere correlation between dumping, subsidizing and indicators of injury is sufficient to establish the required causal relationship in a preliminary injury inquiry.[79] Rather, in a preliminary injury inquiry, the standard is whether there is a reasonable indication that the dumping and subsidizing of goods has, *in and of itself*, caused injury to a domestic industry.[80]

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76. *Ibid.*
77. Exhibit PI-2014-001-06.01, Vol. 3 at para. 96.
78. Exhibit PI-2014-001-08.02, Vol. 3 at paras. 9-12.
79. See, for example, *Copper Rod* (30 October 2006), PI-2006-002 (CITT) at paras. 40, 43; *Galvanized Steel Wire* (22 March 2013), PI-2012-005 (CITT) at para. 75; *Circular Copper Tube* (22 July 2013), PI-2013-002 (CITT) at para. 82.
80. In inquiries pursuant to section 42 of *SIMA*, there must be positive evidence that the dumping and subsidizing of goods has, *in and of itself*, caused injury to a domestic industry. See *Hot-rolled Carbon Steel Plate* (20 May 2014), NQ-2013-005 (CITT) at para. 180; *Silicon Metal* (19 November 2013), NQ-2013-003 (CITT) at para. 111. It follows that, in a preliminary injury inquiry, the evidence must disclose a reasonable indication that the dumping and subsidizing of goods has, *in and of itself*, caused injury to a domestic industry.

96. With respect to other factors, the ÇIB submitted that the complainants did not seriously consider the potential impact of factors other than the dumping and subsidizing that may have caused injury to the domestic industry.[81] Further, it argued that an examination of the financial results of each individual domestic producer reveals that some domestic producers are faring better than others.

97. The ÇIB also argued that the domestic industry is simply not competitive in the world market, as demonstrated by the fact that the Canadian price offered in the domestic industry's lost sales allegations has consistently been above the world export price at the relevant time.[82]

98. With respect to this last argument, Gerdau noted that the evidence submitted by the ÇIB is flawed. For example, the world prices submitted by the ÇIB are F.O.B. export prices, whereas the Canadian market prices are quoted on a delivered basis.[83] As noted by ArcelorMittal and Alta, this is not an "apples to apples" comparison.[84] ArcelorMittal and Alta also submitted that the ÇIB's comparison of the absolute sales values is misleading. When the data are compared on a per-metric-tonne basis, the net sales values per metric tonne declined between 2011 and 2013.[85]

99. The Tribunal does not find ÇIB's allegations regarding the impact of other factors particularly compelling. As noted by the complainants, the Tribunal is required to assess the injury to the domestic industry as a whole, not on the basis of individual producers. Therefore, evidence regarding the relative performance of individual domestic producers is not necessarily germane to the overall assessment of whether there is a reasonable indication of injury to the domestic industry considered as a whole. Moreover, there is no evidence on the record at this stage that indicates that the fact that some domestic producers may be faring better than others is the result of self-injurious intra-industry competition, for example. The presence of such evidence on the record would warrant consideration of this fact as "other factors".

100. Furthermore, the relative competitiveness of Canadian producers on the world market is irrelevant to the Tribunal's analysis, which focuses on the effect of the subject goods on the domestic production sold in the Canadian market and, therefore, relates to competition within the domestic market. However, given the well-established high degree of integration in the North American market, the Tribunal will potentially need to consider U.S. pricing and the role played by the high volumes of non-subject imports from the United States in an inquiry under section 42 of *SIMA*.

101. In conclusion, as discussed above, the Tribunal does not find that the overall theory of the case presented by the complainants is particularly compelling or convincing. The causal link between dumping, subsidizing and the resultant injury seems somewhat tenuous. However, on balance, the Tribunal finds that the evidence nevertheless discloses a reasonable indication of a causal link between the dumping and subsidizing of the subject goods and the injury to the domestic industry. In particular, the overall increase in volumes of low-priced subject goods has allowed them to gain some market share and appears to have resulted in a loss of profitability for the domestic industry.

Threat of Injury

102. Subsection 37.1(2) of the *Regulations* prescribes the relevant factors for the purposes of determining whether the dumping or subsidizing of any goods is threatening to cause injury. The Tribunal must also have regard to the factors in subsection 37.1(3) in order to assess whether the requisite causal relationship exists between the dumping and subsidizing of any goods and the threat of injury.

81. Exhibit PI-2014-001-06.01, Vol. 3 at para. 96.
82. *Ibid.* at paras. 86-95.
83. Exhibit PI-2014-001-08.01, Vol. 3 at para. 19.
84. Exhibit PI-2014-001-08.02, Vol. 3 at para. 60.
85. *Ibid.* at para. 92.

103. The complainants submitted that imports are increasing and are almost certain to continue to do so, given the unused and growing production capacity in the subject countries, their export focus on the Canadian market, the U.S. trade remedy finding concerning rebar against China and the pending case against Turkey.[86]

104. In addition, the complainants submit the following:

- the steel and rebar markets are weak globally and in each of the subject countries;
- there is significant overcapacity in the steel and rebar sectors globally and in each of the subject countries, which have a combined excess rebar capacity of 61.5 million metric tonnes;
- despite the weak demand, producers in the subject countries are adding new rebar capacity;
- rebar production in the subject countries is outpacing demand in their home markets;
- rebar prices in the subject countries are expected to remain flat;
- rebar exports from the subject countries have increased; and
- Korea and Turkey are facing increasing competition from China and this is negatively impacting producers of the subject goods, which may motivate them to seek alternative markets for their products.[87]

105. The ÇIB submitted that there is no reasonable indication of threat of injury with respect to the subject goods from Turkey. The ÇIB submitted that Turkish exporters will be more interested in developing their own domestic market rather than exporting rebar, over the next 12 to 18 months, as domestic construction steel demand in Turkey is expected to grow by an average of 7 percent per year until 2015.[88]

106. Furthermore, the ÇIB submitted that Turkish rebar exports to Canada have been decreasing since 2013. For example, the volume of Turkish rebar exports to Canada decreased by 51 percent between 2012 and 2013 and was also very low in the first quarter of 2014 (22 metric tonnes total). The ÇIB submitted that, by focusing on the point-to-point comparison of 2011 to 2013, the complainants have ignored this recent downward trend in the data, which is an important predictor of future injury. In contrast, the ÇIB noted that imports from China increased in the first quarter of 2014.[89]

107. In reply, ArcelorMittal and Alta submitted that the outlook for the Turkish steel and rebar industries is not as positive as the ÇIB alleged, and pointed to evidence in the complaint that Turkey's rebar production is almost double its home market demand, and that this significant supply imbalance (over 8 million metric tonnes of excess rebar production) is expected to continue through 2016. Furthermore, Turkish producers have excess rebar capacity of 4.3 million metric tonnes, which is more than three times the size of the Canadian market. Despite weak home market demand, the complainants submitted that Turkish producers will add 780,000 metric tonnes of rolling rebar capacity by 2015, which will contribute to increased reliance on exports. Finally, a depreciating Turkish lira will result in Turkish rebar exports becoming more attractive.[90]

86. Exhibit PI-2014-001-02.01, Vol. 1 at para. 240.
87. Exhibit PI-2014-001-08.02, Vol. 3 at para. 95.
88. Exhibit PI-2014-001-06.01, Vol. 3 at paras. 111-12.
89. *Ibid*. at paras. 115-20.
90. Exhibit PI-2014-001-08.02, Vol. 3 at para. 96.

108. With respect to the ÇIB's argument regarding the recent downward trend in imports from Turkey, ArcelorMittal and Alta noted that, while imports from Turkey were only 22 metric tonnes in the first quarter of 2014, they increased to 7,601 metric tonnes by the first half of 2014. Further, the pricing of the Turkish subject goods was at its lowest in the first half of 2014. Rebar imports from Turkey were also the lowest-priced in the Canadian market, at $581/metric tonne compared to $670/metric tonne for the subject goods from China and Korea and $746/metric tonne for non-subject goods. Prices for imports from Turkey also decreased slightly in the first half of 2014 from the first half of 2013, while the average price of all imports of rebar increased by 6 percent.[91]

109. The Tribunal compiled available forecast data on the subject countries' capacity, production and consumption and calculated implied exports. According to its analysis of these data, the production of rebar in all three subject countries is expected to increase from 2014 onwards. However, the growth rate of production is expected to either slow down or stabilize from year to year across the subject countries. For China and Turkey, these growth rates of production are significantly lower than the growth rates witnessed between 2011 and 2014.[92]

110. The growth rate of consumption in Turkey and China is expected to slow down in 2014 onwards. For Korea, however, consumption is expected to grow at a slightly higher rate than production in 2015, substantially and progressively reducing the quantity of rebar available for export. Most of Chinese production also appears to be taken up by local demand, and this trend is expected to continue. Therefore, China, Turkey and Korea are expected to experience negative or very low annual export growth.[93]

111. Local demand in Turkey, however, does not account for such a high degree of its production, leaving a significant volume available for potential exports.[94] Furthermore, there is evidence that Turkish prices were the lowest among the subject countries in the first half of 2014.[95] As domestic consumption in Turkey is not expected to increase substantially, this suggests that there could be a significant volume of subject goods available for export to Canada in the next 18 to 24 months and that these subject goods may likely be priced significantly below the domestic price.

112. On the basis of the above, and again bearing in mind the lower evidentiary threshold applicable in a preliminary injury inquiry, the Tribunal concludes that, overall, the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods are threatening to cause injury.

EXCLUSIONS

113. In its submissions, Peak Products requested that the Tribunal exclude the following products from its preliminary injury finding:

- 10-mm diameter rebar produced to CSA G30-18.09 and coated to epoxy standard ASTM A 775/A 775M-04a in lengths from one foot up to and including 8 feet (or metric equivalents) with a UPC retail label attached to each piece prior to exportation;

91. *Ibid.* at para. 98.
92. Exhibit PI-2014-001-03.01A (protected), Vol. 2.01 at 37-53.
93. *Ibid.*
94. *Ibid.*
95. Exhibit PI-2014-001-08.02, Vol. 3 at 68.

- 10-mm and 15-mm diameter weldable rebar produced to CSA G30-18.09 standard in lengths up to and including 10 feet (or metric equivalents) with a UPC retail label attached to each piece prior to exportation.[96]

114. These exclusions are sought on the basis that these products do not compete with rebar produced by the Canadian producers, as they are not sold through the same channels of distribution, do not serve the same customers and are more expensive than rebar used in commercial construction, which accounts for virtually all rebar sold in Canada.[97] Peak Products further submits that, when interpreted correctly, the CBSA's data indicate that the products that it has imported have not been dumped.[98]

115. Peak Products submits that the Tribunal has the jurisdiction to exclude products at the preliminary injury inquiry stage pursuant to paragraph 35(1)(*b*) of *SIMA*, as recognized in *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate*:[99]

> The Tribunal is of the view that it is conceivable that, in a preliminary injury inquiry, it could grant exclusions in exceptional circumstances, such as when the evidence clearly establishes the absence of recent or imminent production of like goods for reasons unrelated to dumping. The Tribunal is also of the view that the evidence on the record was clearly insufficient for it to do so in this instance. Moreover, the Tribunal notes that it is incumbent upon the requester of the exclusion to satisfy the Tribunal that the granting of such an exclusion was justifiable at this stage. It failed to do so.[100]

116. In reply, Gerdau submitted that the Tribunal does not grant product exclusions at the preliminary injury inquiry stage, since exclusions can only be properly considered after all the effects of dumping and subsidizing have been assessed. In addition, in the notice of commencement of preliminary injury inquiry, the Tribunal indicated that it will only deal with exclusions in the final injury inquiry.[101] Gerdau also noted that Peak Products has not made any submissions on the ability of the domestic producers to produce these products.[102]

117. ArcelorMittal and Alta also submitted that Peak Products' requests should not be granted on the basis that it is not the Tribunal's practice to deal with exclusions before rendering its final decision on injury. In the alternative, ArcelorMittal and Alta submitted that the requests should not be granted on the basis that there is evidence that the domestic industry is capable of producing the same or substitutable products. With respect to uncoated weldable rebar, they submitted that Gerdau sold significant volumes of 10-mm diameter and 15-mm diameter rebar in various lengths in 2013. With respect to epoxy coated rebar, they submitted that the domestic industry is capable of producing a substitutable product, since epoxy-coated rebar can be used in applications that only require black rebar, thus, an exclusion for this product would be potentially injurious.[103]

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96. Exhibit PI-2014-001-06.02, Vol. 3 at para. 17.
97. *Ibid.* at para. 46.
98. *Ibid.* at para. 47.
99. (12 August 2003), PI-2003-002 (CITT) [*Hot-rolled Plate*].
100. *Hot-rolled Plate* at 4.
101. Exhibit PI-2014-001-08.01, Vol. 3 at paras. 42-43.
102. *Ibid.* at para. 44.
103. Exhibit PI-2014-001-08.02, Vol. 3 at paras. 104, 111, 113.

118. Further, ArcelorMittal and Alta submitted that there is minimal cost associated with adding a UPC label and that, therefore, this presents a potential circumvention issue, since exporters could easily add a UPC label to otherwise subject goods to avoid paying duties.[104]

119. Finally, ArcelorMittal and Alta submitted that, although rebar is usually sold in standard lengths, it can be cut and sold in different lengths as requested by the customer. Therefore, the fact that the products for which the exclusions are requested are sold in shorter lengths than is standard (8 and 10 feet or less compared to the shortest standard length of 6 metres or 20 feet) is not sufficient to justify an exclusion.[105]

120. The complainants also submitted that Peak Products' suggestion that the CBSA's data indicate that they are not dumping is premature, since final normal values will be determined by the CBSA at a later stage in its investigation.[106]

121. The test for granting a product exclusion is whether granting the exclusion would cause injury to the domestic industry, and the key legal question in this analysis is whether the domestic industry produces identical or substitutable goods.[107] Further, the onus is generally on the party requesting the exclusion to provide evidence that the domestic industry does not produce the product for which the exclusion is requested.[108]

122. The standard set out in *Hot-rolled Plate* for granting an exclusion in the context of a preliminary injury inquiry, cited above, requires "exceptional circumstances", where "... the evidence *clearly establishes* the *absence* of recent or imminent production of like goods for reasons unrelated to dumping" [emphasis added]. It also places the onus of providing evidence justifying the exclusion on the requesting party. In this case, the evidence submitted by Peak Products is clearly insufficient to meet this standard.

123. As noted by the complainants, Peak Products did not provide any evidence that the domestic industry does not produce weldable rebar that meets the specifications outlined in its request, and, as noted by ArcelorMittal and Alta, there is evidence on the record that indicates that Gerdau produces 10-mm diameter and 15-mm diameter weldable rebar.[109] With respect to the fact that the products for which the exclusion has been requested are of non-standard lengths, the Tribunal notes that rebar that has been cut-to-length is included in the product definition; therefore, on its own, this would not seem to be a sufficient basis for granting an exclusion. Similarly, the UPC stickers appear to be a minimal addition having little to do with actual product characteristics.

124. The Tribunal acknowledges that, as discussed above, there is some indication that the domestic producers may not produce epoxy-coated rebar and reiterates its concern regarding the complainants' failure to either fully confirm or deny that they produce these goods. However, this fact was not actually raised by Peak Products in the context of its exclusion requests, but by the ÇIB. Peak Products also has not addressed the issue of potential downward substitutability of coated rebar for uncoated products.

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104. *Ibid.* at para. 112.
105. *Ibid.* at para. 111.
106. Exhibit PI-2014-001-08.01, Vol. 3 at para. 48; Exhibit PI-2014-001-08.02, Vol. 3 at para. 115.
107. *Certain Stainless Steel Wire* (30 July 2004), NQ-2004-001 (CITT) at para. 96.
108. *Stainless Steel Sinks* (24 May 2012), NQ-2011-002 (CITT) at para. 169; *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) at paras. 340-41.
109. Exhibit PI-2014-001-03.01 (protected), Vol. 2 at 167-71.

125. Given that the Tribunal usually reserves judgment on product exclusions until it has a much clearer picture of the market, after a final injury inquiry under section 42 of *SIMA*, the Tribunal finds that it is not appropriate to grant these exclusions at this stage of the proceedings.

CONCLUSION

126. 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 to the domestic industry.

Jason W. Downey
Jason W. Downey
Presiding Member

Daniel Petit
Daniel Petit
Member

Ann Penner
Ann Penner
Member