Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Dumping and Subsidizing

DETERMINATION AND REASONS

Preliminary Injury Inquiry
No. PI-2014-002

Oil Country Tubular Goods

Determination issued
Friday, September 19, 2014

Reasons issued
Friday, October 3, 2014

Corrigendum issued
Monday, October 6, 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:

OIL COUNTRY TUBULAR GOODS ORIGINATING IN OR EXPORTED FROM CHINESE TAIPEI, THE REPUBLIC OF INDIA, THE REPUBLIC OF INDONESIA, THE REPUBLIC OF THE PHILIPPINES, THE REPUBLIC OF KOREA, THE KINGDOM OF THAILAND, THE REPUBLIC OF TURKEY, UKRAINE AND THE SOCIALIST REPUBLIC OF VIETNAM

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 of oil country tubular goods, which are casing, tubing and green tubes made of carbon or alloy steel, welded or seamless, heat-treated or not heat-treated, regardless of end finish, having an outside diameter from 2 ⅜ inches to 13 ⅜ inches (60.3 mm to 339.7 mm), meeting or supplied to meet American Petroleum Institute (API) specification 5CT or equivalent and/or enhanced proprietary standards, in all grades, excluding drill pipe, pup joints, couplings, coupling stock and stainless steel casing, tubing or green tubes containing 10.5 percent or more by weight of chromium, originating in or exported from Chinese Taipei, the Republic of India, the Republic of Indonesia, the Republic of the Philippines, the Republic of Korea, the Kingdom of Thailand, the Republic of Turkey, Ukraine and the Socialist Republic of Vietnam and the subsidizing of the above-mentioned goods originating in or exported from the Republic of India, the Republic of Indonesia, the Republic of the Philippines, the Republic of Korea, the Kingdom of Thailand, the Republic of Turkey, Ukraine and the Socialist Republic of Vietnam have caused injury or are threatening to cause injury to the domestic industry.

This preliminary injury inquiry follows the notification, on July 21, 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.

Stephen A. Leach
Stephen A. Leach
Presiding Member

Jason W. Downey
Jason W. Downey
Member

Jean Bédard
Jean Bédard
Member

The statement of reasons will be issued within 15 days.

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

OIL COUNTRY TUBULAR GOODS ORIGINATING IN OR EXPORTED FROM CHINESE TAIPEI, THE REPUBLIC OF INDIA, THE REPUBLIC OF INDONESIA, THE REPUBLIC OF THE PHILIPPINES, THE REPUBLIC OF KOREA, THE KINGDOM OF THAILAND, THE REPUBLIC OF TURKEY, UKRAINE AND THE SOCIALIST REPUBLIC OF VIETNAM

PRELIMINARY DETERMINATION OF INJURY

CORRIGENDUM

Paragraph 26, second bullet, should read as follows:

Borusan and the TSEA contend that green tubes should be a separate class of goods from "finished" OCTG; and

Paragraph 34 should read as follows:

Two parties opposed to the complaint, Borusan and the TSEA, contended that green tubes should be considered a separate class of goods from "finished" OCTG, because green tubes are production inputs, which have different physical and mechanical characteristics and distinct performance capabilities, are sold through different channels of distribution, have no degree of substitutability with finished OCTG, do not compete with finished OCTG and have a significantly different price point.

By order of the Tribunal,

Stephen A. Leach
Stephen A. Leach
Presiding Member

Jason W. Downey
Jason W. Downey
Member

Jean Bédard
Jean Bédard
Member

Tribunal Members:	Stephen A. Leach, Presiding Member Jason W. Downey, Member Jean Bédard, Member
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STATEMENT OF REASONS

BACKGROUND

1. On July 21, 2014, following a complaint filed on June 6, 2014, by Tenaris Canada (Tenaris) and Evraz Inc. NA Canada (Evraz) (together, the complainants), the President of the Canada Border Services Agency (CBSA) initiated investigations into the alleged injurious dumping of oil country tubular goods (OCTG), which are casing, tubing and green tubes made of carbon or alloy steel, welded or seamless, heat-treated or not heat-treated, regardless of end finish, having an outside diameter from 2 3/8 inches to 13 3/8 inches (60.3 mm to 339.7 mm), meeting or supplied to meet American Petroleum Institute (API) specification 5CT or equivalent and/or enhanced proprietary standards, in all grades, excluding drill pipe, pup joints, couplings, coupling stock and stainless steel casing, tubing or green tubes containing 10.5 percent or more by weight of chromium, originating in or exported from Chinese Taipei, the Republic of India (India), the Republic of Indonesia (Indonesia), the Republic of the Philippines (the Philippines), the Republic of Korea (Korea), the Kingdom of Thailand (Thailand), the Republic of Turkey (Turkey), Ukraine and the Socialist Republic of Vietnam (Vietnam) and the alleged injurious subsidizing of the above-mentioned goods originating in or exported from India, Indonesia, the Philippines, Korea, Thailand, Turkey, Ukraine and Vietnam (the subject goods).

2. On July 22, 2014, the Canadian International Trade Tribunal (the Tribunal) issued a notice of commencement of preliminary injury inquiry.[1]

3. Two domestic producers of OCTG, Energex Tube (Energex) and Welded Tube of Canada Corp. (WTC), filed letters with the CBSA in support of the complaint.[2]

4. On August 21, 2014, the Tribunal received submissions from a number of parties opposed to the complaint. In particular, the complaint is opposed by Boly Pipe Co., Ltd. (Boly Pipe) of Thailand, Borusan Mannesmann Boru (Borusan) of Turkey, PT Citra Tubindo TBK (Citra) of Indonesia, HLD Clark Steel Pipes Co. Inc. of the Philippines, Interpipe Ukraine Ltd. and North American Interpipe, Inc. (together, Interpipe) of Ukraine and Jindal Saw Limited (Jindal) of India. One Canadian distributor of OCTG products, BHD Tubular Ltd., filed submissions in opposition to the complaint. In addition, the Turkish Steel Exporters' Association (TSEA) and the Vietnam Competition Authority (VCA) filed submissions opposing the complaint.

5. While not specifically opposed to the complaint, Westcan Oilfield Supply wrote to object to the exclusion in the definition of the subject goods of pup joints manufactured of tubing and casing.

6. Other participants to this preliminary injury inquiry that did not file submissions are the Ministry of Economy of the Republic of Turkey and the Government of Thailand.

7. On September 19, 2014, pursuant to subsection 37.1(1) of the *Special Import Measures Act*,[3] the Tribunal determined that there was a reasonable indication that the dumping and subsidizing of the subject goods had caused or were threatening to cause injury to the domestic industry.

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1. C. Gaz. 2014.I.2021.
2. Exhibit PI-2014-002-03.01 (protected), Attachments 1-1, 1-2, Vol. 2H.
3. R.S.C., 1985, c. S-15 [*SIMA*].

CBSA'S DECISION TO INTITATE INVESTIGATIONS

8. The CBSA was of the opinion that there was evidence that the subject goods had been dumped and subsidized,[4] as well as evidence that disclosed a reasonable indication that the dumping and subsidizing of the subject goods had caused injury or were threatening to cause injury. Accordingly, pursuant to subsection 31(1) of *SIMA*, the CBSA initiated investigations on July 21, 2014.

9. In coming to its decision to initiate investigations, the CBSA used information with respect to the volume of dumped goods for the period from January 1 to December 31, 2013 (POI).

10. The CBSA estimated the margins of dumping and the volumes of dumped goods for the subject countries as follows:[5]

CBSA's Dumping Estimates

Country	Estimated Margin of Dumping (as a percentage of export price)	Estimated Volume of Dumped Goods (as a percentage of total imports)
Chinese Taipei	4.9	2.6
India	11.0	1.3
Indonesia	6.3	1.8
Korea	16.4	4.0
Philippines	18.3	2.2
Thailand	13.1	0.9
Turkey	13.2	7.5
Ukraine	16.8	0.8
Vietnam	28.6	2.4

11. The CBSA estimated the amounts of subsidy and the volumes of subsidized goods for the subject countries as follows:[6]

CBSA's Subsidy Estimates

Country	Estimated Amount of Subsidy (as a percentage of export price)	Estimated Volume of Subsidized Goods (as a percentage of total imports)
India	3.2	1.3
Indonesia	5.4	1.8
Korea	12.1	4.0
Philippines	10.6	2.2
Thailand	8.9	0.9
Turkey	4.3	7.5
Ukraine	9.9	0.8
Vietnam	19.0	2.4

12. The CBSA was of the opinion that the estimated margins of dumping and amounts of subsidy were not insignificant and that the estimated volumes of dumped and subsidized goods were not negligible.[7]

4. With the exception of goods from Chinese Taipei which are alleged to be dumped, but not subsidized.
5. Exhibit PI-2014-002-05, Vol. 1U at 92.
6. *Ibid.* at 104.
7. *Ibid.* at paras. 141, 212.

SUBMISSIONS ON INJURY AND THREAT OF INJURY

Complainants and Domestic Producers in Support of the Complaint

13. In support of their claim that the subject goods have caused injury, the complainants provided evidence of increased volumes of the subject goods, lost sales, price suppression, price depression and a consistent trend of price undercutting. The complainants submitted that the domestic industry experienced significant injury caused by the subject goods beginning in 2011 and escalating into 2013, in the form of reduced market share, sales, revenue, gross margins, profitability, capacity utilization, employment and investment.

14. In addition, the complainants pointed to certain factors indicating that the subject goods pose a threat of injury to the domestic industry, including the export orientation and freely disposable capacity of OCTG producers in the subject countries, in addition to certain anti-dumping measures in the United States which, they argued, would make Canada a more appealing destination for the subject goods.

Parties Opposed to the Complaint

15. Parties opposed to the complaint submitted that any injury that the domestic industry may have suffered over the POI was not caused by the subject goods, particularly in light of the relatively small volume of OCTG imported from the subject countries, and may in fact be due to the domestic industry's own imports from non-subject countries.[8]

16. With respect to the price effects alleged to have been caused by the subject goods, the parties opposed argued that the complainants' claims regarding price effects are exaggerated, based on speculation and lack a factual foundation.[9] Similarly, parties opposed maintained that many of the lost sales allegations made by the complainants were simply unsubstantiated allegations.

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 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."

18. The term "reasonable indication" is not defined in *SIMA*, but is understood to mean that the evidence in question need not be ". . . conclusive, or probative on a balance of probabilities . . . ."[10] Nevertheless, simple assertions are not sufficient and must be supported by relevant evidence.[11]

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8. Exhibit PI-2014-002-06.09 at paras. 14, 44-45, Vol. 3B; Exhibit PI-2014-002-06.03 at paras. 39-40, Vol. 3B; Exhibit PI-2014-002-06.04 at paras. 48-49, Vol. 3B; Exhibit PI-2014-002-06.05 at para. 44, Vol. 3B; Exhibit PI-2014-002-06.07 at paras. 40-41, Vol. 3B; Exhibit PI-2014-002-06.08 at para. 3, Vol. 3B.
9. Exhibit PI-2014-002-06.05 at paras. 35-42, Vol. 3B; Exhibit PI-2014-002-06.07 at para. 36, Vol. 3B.
10. *Ronald A. Chisholm Ltd. v. Deputy M.N.R.C.E.* (1986), 11 CER 309 (FCTD).
11. Article 5 of the World Trade Organization (WTO) *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* requires investigating authorities to examine the accuracy and adequacy of the evidence provided in a dumping 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 dumping or injury. Article 5 also specifies that simple assertions that are not substantiated with relevant evidence cannot be considered sufficient to meet the requirements of the article.

19. The Tribunal recently found that this test is met where (i) the evidence is relevant, accurate and adequate and, (ii) 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.[12]

20. In its preliminary injury determination, the Tribunal takes into account the factors prescribed in section 37.1 of the *Special Import Measures Regulations*,[13] including the import volumes of the dumped and subsidized goods, the effect of the dumped and subsidized goods on the price of like goods, the resulting economic impact of the dumped and subsidized goods on the domestic industry and, if injury or threat of injury is found to exist, whether a causal relationship exists between the dumping and subsidizing of the goods and the injury or threat of injury.

21. However, before examining the allegations of injury and threat of injury, the Tribunal must identify the like goods and the domestic industry that produces those goods. This preliminary analysis is required because subsection 2(1) of *SIMA* defines "injury" as ". . . material injury to a domestic industry" and "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 . . . ."

Like Goods and Classes of Goods

22. The CBSA defined the subject goods as OCTG, which are casing, tubing and green tubes made of carbon or alloy steel, welded or seamless, heat-treated or not heat-treated, regardless of end finish, having an outside diameter of 2 3/8 inches to 13 3/8 inches (60.3 mm to 339.7 mm), meeting or supplied to meet American Petroleum Institute (API) specification 5CT or equivalent and/or enhanced proprietary standards, in all grades, excluding drill pipe, pup joints, couplings, coupling stock and stainless steel casing, tubing or green tubes containing 10.5 percent or more by weight of chromium, originating or exported from Chinese Taipei, India, Indonesia, the Philippines, Korea, Thailand, Turkey, Ukraine and Vietnam. The Tribunal must conduct its preliminary injury inquiry on the basis of this product definition.

23. In order to assess whether the evidence 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 producers of like goods, the Tribunal must first define the scope of the like goods in relation to the subject goods. It may also consider whether the subject goods constitute one or more classes of goods.

24. Subsection 2(1) of the *SIMA* defines "like goods", in relation to 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 characteristics of which closely resemble those of the other goods.

25. In deciding the issue 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), their market characteristics (such as substitutability, pricing, distribution channels and end uses) and whether the goods fulfill the same customer needs.[14]

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12. *Silicon Metal* (21 June 2013), PI-2013-001 (CITT) at para. 16; *Unitized Wall Modules* (3 May 2013), PI-2012-006 (CITT) at para. 24; *Liquid Dielectric Transformers* (22 June 2012), PI-2012-001 (CITT) at para. 86.
13. S.O.R./84-927 [*Regulations*].
14. See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at para. 48; *Bacteriological Culture Media* (31 May 1996), NQ-95-004 (CITT) at 9-10; *Polyisocyanurate Thermal Insulated Board* (11 April 1997), NQ-96-003 (CITT) at 9-10; *Certain Fasteners* (7 January 2005), NQ-2004-005 (CITT) at paras. 60-75; *Cross-linked Polyethylene Tubing* (29 September 2006), NQ-2006-001 (CITT) at paras. 45-47.

26. The complainants have asserted that all OCTG falling within the scope of the subject goods constitute a single class of goods. However, the parties opposed have presented the following arguments in favour of two or more classes of goods:

- Boly Pipe and Jindal both submit that there should be two separate classes of goods: seamless OCTG and welded OCTG;
- Borusan, Boly Pipe, Jindal and the TSEA contend that green tubes should be a separate class of goods from "finished" OCTG; and
- Borusan, Interpipe and the TSEA all argue that a significant portion of green tubes which are exported by the subject countries to the United States, further processed and then exported to Canada as finished products, should be a special class of non-subject goods.

27. The Tribunal will address each of these propositions in turn.

Seamless OCTG Versus Welded OCTG

28. The complainants stated that the domestic industry produces a range of seamless and welded products that constitute a single class of goods. In particular, the complainants asserted that OCTG casing and tubing are all made to the same specifications, are produced on the same equipment, are all used down well and rely on the same channels of distribution.

29. In addition, the complainants pointed to Inquiry No. NQ-2009-004[15] and the United States International Trade Commission (USITC) proceedings involving OCTG, which they allege both involved the same type of energy tubular products as the subject goods, and concluded that there was only a single class of goods. By asserting that there are distinct classes of goods, the complainants argue that the parties opposed are ". . . fighting reality and the long history of case law . . . ."[16]

30. By contrast, Boly Pipe and Jindal submitted that welded OCTG and seamless OCTG should constitute two separate classes of goods, since welded OCTG cannot be substituted for seamless OCTG in certain applications and because there is a significant price differential between the two.

31. The Tribunal notes that the parties opposed provided very little substantive evidence to support their contention that seamless OCTG and welded OCTG constitute separate classes of goods. In fact, the evidence that was tendered consists almost entirely of references to the USITC's determination on OCTG, previous Tribunal decisions and the CBSA's protected complaint analysis.

32. Furthermore, while Jindal states that Metal Bulletin Research (MBR) "suggests" that sales of welded OCTG are replacing sales of seamless OCTG due to the lower cost of the latter,[17] a review of the MBR report reveals that no mention is made of the alleged pricing differential between welded OCTG and seamless OCTG.

33. Given the foregoing, the Tribunal finds that the evidence does not support a conclusion that seamless OCTG and welded OCTG constitute separate classes of goods. The Tribunal, therefore, finds that seamless OCTG and welded OCTG comprise a single class of goods.

15. *Oil Country Tubular Goods* (23 March 2010) (CITT).
16. Exhibit PI-2014-002-08.01 at para. 23, Vol. 3B.
17. Exhibit PI-2014-002-06.03 at para. 18, Vol. 3B.

Green Tubes Versus Finished OCTG

34. Four parties opposed to the complaint, Borusan, Boly Pipe, Jindal and the TSEA, contended that green tubes should be considered a separate class of goods from "finished" OCTG, because green tubes are production inputs, which have different physical and mechanical characteristics and distinct performance capabilities, are sold through different channels of distribution, have no degree of substitutability with finished OCTG, do not compete with finished OCTG and have a significantly different price point.

35. In reply, the complainants maintain that the Tribunal has found, in previous cases, that green tubes and finished OCTG should be considered a single class of goods. Furthermore, the complainants argue that the submissions by the parties opposed are extremely problematic, as they do not offer any parameters to define a green tube or to determine what degree of further processing would be necessary to transform a green tube into a finished OCTG product. To this end, WTC suggests that the parties opposed are confusing the notion of classes of goods with the possibility that there may exist different categories of goods, or states of end finish, within a single class.

36. The main point of contention between the parties is whether or not unfinished products requiring further processing constitute a separate class of goods from their finished counterparts. While the parties opposed stated that green tubes must always undergo further processing, Tenaris noted that a green tube "... may already be classified as a lower API 5CT grade ...",[18] though it could move to a higher classification if heat treatment were applied. Thus, it seems that, while green tubes may require further processing to be used down well in certain applications, they may also be suitable for some applications in their original state (i.e. without having been further processed).

37. As with the arguments regarding seamless OCTG versus welded OCTG, the parties opposed provided very little data or empirical evidence in support of their argument that green tubes should be considered a separate class of goods. For instance, in support of its argument that green tubes are sold through different channels of distribution from finished OCTG, the TSEA simply states as follows in a footnote:

> The Complaint refers to other Canadian producers that purchase or import Green Tubes for processing into Finished Tubes, which necessarily means that they are sold for export to producers, not end-users.[19]

38. Such statements do not allow the Tribunal to properly evaluate or test the merits of the submissions of the parties opposed. The Tribunal is of the view that, rather than being distinct products with identifiable physical characteristics, the primary difference between green tubes and finished OCTG is the level of finishing that the goods have undergone. Therefore, in the absence of compelling evidence to the contrary, the Tribunal finds that green tubes and finished OCTG constitute a single class of goods.

Non-originating Green Tubes

39. As an alternative to the foregoing, Borusan, Interpipe and the TSEA argued that a significant portion of green tubes which are exported by the subject countries to the United States, further processed and then exported to Canada as finished products, should not be considered subject goods, since they do not

18. Exhibit PI-2014-002-08.03 at para. 37, Vol. 3B.
19. Exhibit PI-2014-002-06.07 at para. 13, footnote 12, Vol. 3B. See, also, the TSEA's position regarding the costs of green tubes versus the costs of "finished" OCTG, which similarly have as their only support a footnote interpreting the complainants' submissions.

originate in a subject country. These parties asserted that such finished tubes should be a separate class of non-subject goods, as originating in the United States and not a subject country, and are therefore outside the scope of the subject goods.

40. In its submissions, Borusan argues that the Tribunal should depart from its decision in *Ideal Roofing Company Limited and Havelock Metal Products Inc. v. President of the Canada Border Services Agency*,[20] and instead interpret the term "origin" not only in its ordinary grammatical sense but also ". . . in a manner that accords with the overall scheme of SIMA, its object, the intention of Parliament, the Tribunal's past practice in the context of prior SIMA cases and Canada's obligations under the WTO Antidumping Agreement ('ADA') and the WTO Agreement on Subsidies and Countervailing Measures ('SCM Agreement')."[21]

41. Borusan therefore submitted that the term "originate" should be defined in line with the definition of domestic production in *SIMA* and taken to mean the place where the goods were manufactured, grown or processed.[22] Thus, as the subject green tubes were processed into finished tubes in the United States before being imported into Canada, Borusan argued that they should be deemed to originate in the United States and therefore be excluded from the scope of the subject goods.

42. The parties that submitted this argument contended that the processing which occurred in the United States changed the nature of the green tubes imported into the United States from ". . . an input used in the production of OCTG to finished OCTG ready for end-use."[23] Thus, these parties argued that the green tubes can only be found to originate in a subject country if their nature is identical at the time of export from the subject country and at the time of import into Canada.

43. In response, Tenaris maintained that it is the essential character of the goods that determines their origin for the purposes of *SIMA*. As such, Tenaris claimed that, where finishing operations are performed by third parties, but that such finishing does not change the essential character of the goods, the original producer remains the producer of record for the purposes of determining origin.

44. Tenaris stated that Borusan improperly conflates the concept of "domestic production" under *SIMA* with the concept of "origin."

45. In *Ideal Roofing*, the Tribunal was required to determine the proper definition of "originating in" in the context of an appeal under *SIMA*. After considering the arguments of the parties, the Tribunal found as follows:

> 55. In the absence of a statutory regime for determining origin in the context of *SIMA*, the Tribunal finds that the CBSA's submission to rely on the dictionary definition of the term "originating" is most appropriate for the case at hand and most consistent with the past practice of the Tribunal in the context of *SIMA*. Specifically, the Tribunal will rely on the *Canadian Oxford Dictionary* which defines the term "origin" as ". . . a beginning, cause, or ultimate source of something . . . that from which a thing is derived, a source or a starting point . . ." and "originate" as ". . . begin, arise, be derived, takes its origin . . . ."
>
> [Footnotes omitted]

20. (10 July 2014), AP-2013-008 and AP-2013-009 (CITT) [*Ideal Roofing*].
21. Exhibit PI-2014-002-06.02 at para. 18, Vol. 3B.
22. Exhibit PI-2014-06.03 at paras. 20-23, Vol. 3B.
23. Exhibit PI-2014-002-07.02 (protected) at para. 32, Vol. 4A.

46. In *Ideal Roofing*, the Tribunal looked to whether, at the time of their importation, the goods possessed the same physical and technical characteristics as other goods.[24] Therefore, the relevant comparison is not, as suggested by Borusan, whether the green tubes remain physically identical to their condition when exported, but rather whether they continue to have the physical characteristics of the subject goods when they are imported into Canada.

47. In this respect, it is important to consider the definition of the subject goods set out by the CBSA.[25] When the test in *Ideal Roofing* is examined in conjunction with the definition of the subject goods set out by the CBSA, it is apparent that the green tubes at issue retain the same essential characteristics as the subject goods when they are imported into Canada. While the processing in the United States may alter their degree of finishing, this does not take the green tubes at issue outside the definition of the subject goods.

48. As a result, the Tribunal finds that there are no grounds to exclude green tubes which are exported from the subject countries to the United States, further processed and then exported to Canada, from the scope of the subject goods, nor is there reason to consider that green tubes that undergo such processes in the United States would constitute a separate class of goods for the purposes of the Tribunal's preliminary injury inquiry.

Domestic Industry

49. The complainants stated that they represent the majority of domestic production. When further combined with Energex and WTC, which both provided letters in support of the complaint, the complainants contended that the four companies represent the "vast majority" of OCTG production in Canada.[26]

50. In their opposition submissions, the VCA, the TSEA and Borusan argued that the complainants have not provided any evidence that they comprise the major proportion of the total domestic production of the like goods. In particular, the TSEA contended that a single statement by the complainants that non-participating producers represent only a small proportion of the domestic market is not sufficient to establish that Tenaris, Evraz, Energex and WTC represent a major proportion of domestic production. For its part, Borusan claimed that it was able to discover, by conducting an Internet search, other producers of finished OCTG that use green tubes as their input.

51. In support of its position, the TSEA referred to the Tribunal's decision in Preliminary Injury Inquiry No. PI-2012-004,[27] in which the Tribunal was unable to determine that the complainants in that case represented a major proportion of the total domestic production of the goods. However, in that case, there was evidence before the Tribunal that only 8 of the 25 domestic producers of wall modules filed the complaint and provided data on their share of domestic production.[28]

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24. *Ideal Roofing* at para. 56. This case dealt with the finding in *Certain Fasteners* in which the goods were described in relevant part as ". . . carbon steel and stainless steel fasteners, i.e. screws, nuts and bolts of carbon steel or stainless steel that are used to mechanically join two or more elements . . . originating in or exported from . . . Chinese Taipei."
25. Exhibit PI-2014-002-05 at 73, Vol. 1U. See, also, para. 22 of these reasons.
26. Exhibit PI-2014-002-02.01 at para. 42, Vol. 1.
27. *Unitized Wall Modules* (14 September 2012) (CITT) [*Unitized Wall Modules I*].
28. *Unitized Wall Modules I* at para. 29.

52. By contrast, in the current complaint, the complainants have stated that they are unaware of any other domestic producers, and indeed no convincing evidence has been tendered to confirm the existence of any additional producers. The fact that a cursory Internet search may reveal companies that possibly use green tubes as input products is insufficient for the Tribunal to conclude, as a factual matter, that there are other domestic producers of OCTG whose production, taken collectively, is such that the domestic producers participating in this preliminary injury inquiry would not account for a major proportion of total domestic production. On this very factual basis, the present case is distinguishable from *Unitized Wall Modules I*.

53. Moreover, the evidence before the Tribunal demonstrates that the domestic production of OCTG by the complainants and the two domestic producers that support the complaint accounted for a significant majority of total domestic shipments of OCTG in 2011 and 2012.[29] Therefore, the Tribunal is satisfied that the complainants' collective production does indeed account for a "major proportion" of the total domestic production of like goods, as required by subsection 31(2) of *SIMA*.

Cumulation

54. In the context of a final injury inquiry under section 42 of *SIMA*, subsection 42(3) provides that the Tribunal must make a cumulative assessment of the injurious effects of dumped and subsidized goods that are imported into Canada if the Tribunal is satisfied that certain conditions are met.

55. Specifically, the Tribunal must be satisfied that the margin of dumping or the amount of subsidy in relation to the goods from each of the countries is not insignificant,[30] that the volume of goods imported into Canada from any of those countries is not negligible[31] and that an assessment of the cumulative effect of the goods would be appropriate, taking into account the conditions of competition between the goods from any of the named countries, the other dumped and subsidized goods and the like goods.

56. With respect to the first condition for cumulation under subsection 42(3) of *SIMA*, the Tribunal notes from the CBSA's determination that the margins of dumping and amounts of subsidy in relation to the goods from all the subject countries, as well as the volume of imports from each country, were not insignificant or negligible.[32]

57. In the context of a preliminary injury inquiry, the Tribunal relies on the estimates of volumes and margins of dumping and amounts of subsidy provided by the CBSA, including the CBSA's assessment of whether the volumes and margins are negligible or insignificant respectively. Accordingly, the Tribunal is satisfied that the first condition under subsection 42(3) of *SIMA* is met.

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29. Exhibit PI-2014-002-03.01 (protected), Vol. 2E at 173, Vol. 2F at 139.
30. 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 . . . ."
31. 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".
32. Exhibit PI-2014-002-05 at paras. 141, 212, Vol. 1U.

58. The second requirement which the Tribunal must consider in determining whether or not cumulation is appropriate are the conditions of competition between the goods from the subject countries, the other dumped and subsidized goods and the like goods.

59. The complainants submitted that the conditions of competition in the Canadian market between the subject countries, as well as between the subject goods and the like goods, are identical. They contended that the subject goods and the like goods are used in the same applications, namely, oil and gas exploration and exploitation.

60. The complainants maintained that the subject goods and the like goods have the same technical specifications, are all designed to meet API 5CT standards and all compete directly in the same geographical markets, in particular, the major petroleum exploration regions in Canada. Finally, the complainants noted that the subject goods and the like goods are all sold through the same channels of distribution, either directly to end users or through distributors.[33]

61. In its submissions, Interpipe argued that the subject goods from the Ukraine should be decumulated on the grounds that the subject goods imported from Interpipe compete only in the seamless segment of the marketplace and constitute only a small volume of total imported OCTG. Moreover, Interpipe argued that the conditions of competition differ between welded OCTG and seamless OCTG based on suitability for certain applications (e.g. only seamless OCTG can be used in certain high stress applications), differing production processes for welded OCTG versus seamless OCTG and the fact that seamless OCTG is usually sold at a premium in comparison to welded pipe.

62. While subsection 42(3) of *SIMA* deals with final injury inquiries, the Tribunal has historically found that it would be inconsistent not to cumulate the goods in a preliminary injury inquiry when the available evidence appears to justify cumulation.[34]

63. A decision not to cumulate will generally result from positive evidence of sufficiently differing conditions of competition by the goods from a given country. Typically, the more the goods from various sources are fungible (interchangeable/commodity products) and sold through the same channels of distribution to the same clients, the more likely it is that cumulation will be considered appropriate.[35]

64. Having analyzed the evidence before it, the Tribunal finds that the subject goods are interchangeable with the like goods. While Interpipe has alleged that the subject goods from Ukraine should be decumulated, the Tribunal is not satisfied that it has produced the positive evidence required to support its position that differing conditions of competition exist. Therefore, the Tribunal will not decumulate the subject goods from Ukraine for the purposes of this preliminary injury inquiry.

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33. Exhibit PI-2014-002-08.02 at para. 75, Vol. 3B.
34. *Copper Rod* (30 October 2006), PI-2006-002 (CITT) at para. 20; *Corrosion-resistant Steel Sheet* (2 February 2001), PI-2000-005 (CITT) at 4, 5.
35. The Tribunal is aware of the recent WTO panel decision in *United States - Countervailing Measures on Certain Hot-rolled Carbon Steel Flat Products From India* (14 July 2014), WTO Docs. WT/DS436/R, Report of the Panel, in which the panel found that cross-cumulating imports subject to a dumping investigation with those subject to a subsidizing investigation was a violation of the *SCM Agreement*. However, the Tribunal notes that this decision is currently being appealed before the WTO Appellate Body.

65. On the basis of the foregoing, the Tribunal will now examine whether the evidence discloses a reasonable indication of injury or threat of injury, taking into account the factors prescribed in section 37.1 of the *Regulations.*

Volume of Dumped and Subsidized Goods

66. The complainants submit that, collectively, the subject countries have become an important source of the subject goods in Canada, citing increased volumes both in absolute terms and relative to the production and consumption of like goods in Canada.

67. By contrast, the parties opposed argue that the volumes of the subject goods from any one of the subject countries are insignificant, particularly when compared to the domestic industry's own imports from non-subject countries.[36]

68. The data collected to date indicate that the total volume of the subject goods increased between 2011 and 2013. While the volume of the subject goods imported in 2013 declined slightly from the levels in 2012, these volumes nonetheless remained above 2011 levels.[37]

69. In terms of share of imports by volume, considered collectively, the subject countries accounted for 21 percent, 24.3 percent and 23.5 percent of total imports of OCTG into Canada in 2011, 2012 and 2013 respectively.[38] However, the Tribunal also notes that the rate of imports from "all other countries"[39] rose steadily and significantly between 2011 and 2013. In 2011, "all other countries" accounted for 8.3 percent of the total imports of OCTG into Canada; however, in 2012, this share more than doubled, rising to 18.6 percent and subsequently increased in 2013 to 25.6 percent.[40]

70. The evidence also indicates that there has been an increase in the subject goods relative to domestic production and domestic sales of like goods.[41]

71. Based on the above, the evidence discloses a reasonable indication that, from 2011 to 2013, there was an absolute and relative increase in the volume of imports of the subject goods.

Effect on Price of Like Goods

72. The complainants asserted that, as the result of the dumping and subsidizing of the subject goods, the domestic industry has suffered from price undercutting, price depression and price suppression. The complainants argued that these price effects are a result of the substantially lower selling prices of the subject goods as compared to the like goods.

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36. Exhibit PI-2014-002-06.09 at paras. 14, 44-45, Vol. 3B; Exhibit PI-2014-002-06.03 at paras. 39-40, Vol. 3B; Exhibit PI-2014-002-06.04 at paras. 48-49, Vol. 3B; Exhibit PI-2014-002-06.05 at para. 44, Vol. 3B; Exhibit PI-2014-002-06.07 at paras. 40 41, Vol. 3B; Exhibit PI-2014-002-06.08 at para. 3, Vol. 3B.
37. Exhibit PI-2014-002-02.01, Exhibit 2-4, Vol. 1A.
38. Exhibit PI-2014-002-05, Table 1, Vol. 1U.
39. This does not include the subject countries, the United States or the People's Republic of China.
40. Exhibit PI-2014-002-05, Table 1, Vol. 1U.
41. Exhibit PI-2014-002-02.01, Exhibit 2-4, Vol. 1A; Exhibit PI-2014-002-03.01 (protected), Exhibit 8-1 at 173, Vol. 2E, Exhibit 8-6 at 173, Vol. 2F.

73. The parties opposed argued that the complainants' claims regarding the price effects of the subject goods are exaggerated, based simply on speculation and a lack a factual foundation.[42] In addition, several parties suggested that differences in product mix between the subject goods and the like goods may produce distortions when using average unit values to determine price effects.[43]

74. When the evidence currently available is examined, the average export values indicate that, at the aggregate level, the subject goods were consistently priced lower than the like goods in 2011, 2012 and 2013.[44] Similarly, the subject goods have lower values, on average, than OCTG imports from non-subject countries.[45] The export values of imports of OCTG from non-subject countries tend to be higher than both the domestic industry's selling prices and the prices of the subject goods.

75. With respect to the allegations of price depression, the evidence indicates that, while the weighted average selling price of the like goods declined year over year from 2011 to 2013, these prices still remained higher than the weighted average export values of the subject goods over the POI.[46] While there was some narrowing of the gap between the domestic producers' selling prices and the values associated with the subject goods between 2011 and 2013, the complainants stated that this price reduction was necessary in order to compete with the lower price of the subject goods.[47]

76. At the same time, the Tribunal observed that, on a per tonne basis, the cost of goods sold by the domestic industry increased between 2011 and 2013, during which time selling prices declined.[48]

77. On the basis of the forgoing, the Tribunal finds that the evidence on the record 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

78. As part of its analysis under paragraph 37.1(1)(*c*) of the *Regulations*, the Tribunal considers the impact of the dumped goods on the state of the domestic industry. In particular, it takes into account factors such as actual or potential declines in output, sales, market share, profits, productivity, return on investment, capacity utilization, actual or potential negative effects on cash flow, inventories, employment, wages and various other economic factors that are relevant under the circumstances.

79. The complainants submitted that the domestic industry has experienced significant injury caused by the subject goods, beginning in 2011 and escalating in 2013, in the form of reduced market share, sales, revenue, gross margins, profitability, capacity utilization, employment and investment.

80. While the parties opposed took issue with many of the lost sales allegations presented by the complainants, claiming that they were simply unsubstantiated allegations, they did not provide fulsome submissions about the various other resultant impacts claimed by the complainants.

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42. Exhibit PI-2014-002-06.05 at paras. 35-42, Vol. 3B; Exhibit PI-2014-002-06.07 at para. 36, Vol. 3B.
43. Exhibit PI-2014-002-06.05 at para. 36, Vol. 3B.
44. Exhibit PI-2014-002-05, Table 7, Vol. 1U.
45. Exhibit PI-2014-002-03.01 (protected), Vol. 2E at 175.
46. Exhibit PI-2014-002-03.02 (protected), Vol. 2H at 20.
47. Exhibit PI-2014-002-03.01 (protected), Vol. 2E at 175.
48. *Ibid.*, Exhibit 5-1 at 158, Vol. 2A.

81. With respect to domestic production, the domestic industry's consolidated production declined from 2011 to 2012, and then again from 2012 to 2013.[49] The production data for individual producers show the same general pattern, declines year-over-year, with the exception of 2012 in which one domestic producer experienced an increase over 2011. This increase in production, however, was not sustained, as the 2013 production levels returned to levels lower than in 2011.[50]

82. The evidence also shows that, in terms of volume, the size of the Canadian market for OCTG contracted in both 2012 and 2013, while the volume of sales from domestic production also declined during that time. Sales of the subject goods increased in 2012, but then declined in 2013. During both 2012 and 2013, declines were also seen in the sales of non-subject imports.[51]

83. The Tribunal also examined the financial performance of the complainants, which demonstrates a deteriorating financial performance between 2011 and 2013.[52]

84. Finally, the Tribunal noted a downward trend in the domestic industry's consolidated capacity utilization rate between 2011 and 2013. This trend is also seen when individual producers are examined, although one domestic producer experienced a slight increase in 2012 only.[53]

85. On the basis of the foregoing, and noting that the "reasonable indication" standard applicable in a preliminary injury inquiry is lower than the evidentiary threshold which applies in final injury inquiries under section 42 of *SIMA*, the Tribunal finds evidence that discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury to the domestic industry.

OTHER FACTORS

86. As noted by the parties opposed, the market share held by the subject countries is relatively small compared to the market share held by the domestic industry and the market share held by non-subject imports. More specifically, Citra submitted that Tenaris imports significant volumes of OCTG from non-subject countries in which it has affiliated companies.[54] The parties opposed point to these non-subject imports as the possible cause of any injury suffered by the domestic industry.

87. The Tribunal recognizes that these non-subject imports may in fact have an impact on the domestic industry. Nevertheless, for the purposes of this preliminary injury inquiry, there is insufficient evidence regarding the impact of these non-subject goods to negate the Tribunal's conclusion that the overall evidence on the record discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury. The Tribunal anticipates however that it will be in a position to fully explore the relative importance of these non-subject goods in the context of an inquiry under section 42 of *SIMA*.

88. In addition to the presence of non-subject imports, the parties opposed also noted the following other factors that, they argued, had an impact on the domestic industry: reduced drilling because of the floods in Alberta; low prices for oil and gas; delays in pipeline approvals; increased production capacity in North America and related imports into Canada from the new capacity; intensifying competition within

49. *Ibid.*, Exhibit 8-6 at 64, Vol. 2F.
50. *Ibid.*
51. Exhibit PI-2014-002-03.01 (protected), Exhibit 8-1 at 173, Vol. 2E.
52. *Ibid.*, Exhibit 5-1 at 158-63.
53. *Ibid.*, Exhibit 8-6 at 64.
54. Exhibit PI-2014-002-06.09 at paras. 26-27, Vol. 3B.

Canada; unplanned production stoppages; and a decision by Tenaris to increase the extent of its direct sales to end users, thus competing with its own distribution customers.[55]

89. As with the non-subject imports, there is insufficient evidence currently on the record for the Tribunal to determine that these factors, not the subject goods, have caused the injury to the domestic industry. Accordingly, the Tribunal believes that causation is a key issue in this case and one that must be more fully explored in the context of an inquiry under section 42 of *SIMA*.

THREAT OF INJURY

90. Turning to the issue of threat of injury, the complainants argued that a projected increase in the volumes of the subject goods, the resultant decrease in the market share of the domestic industry, increase in capacity in the subject countries, the continuing harm caused by price undercutting, suppression and depression, and the overall position of Canada as an attractive destination for the subject goods will continue to cause injury to the domestic industry. In addition, they asserted that there is a significant risk of diversion of the subject goods into the Canadian market in the event that the United States makes a finding against OCTG.

91. The parties opposed countered that the claims of threat of injury, particularly those based on diversion from the United States, are merely speculative and based on remote possibility.[56] In particular, Interpipe argued that its small portion of total imports combined with the fact that Ukranian OCTG is no longer subject to Russian import quotas mean that the Canadian market will not be a priority.[57] Similarly, the VCA argues that changes within the Vietnamese OCTG market will limit the exportation of Vietnamese subject goods to Canada.

92. In the most recent period examined, it does not appear that there has been a significant rate of increase of the subject goods imported into Canada at the aggregate level. However, when individual subject countries are examined, the evidence showed that imports of the subject goods continued to increase, in some cases quite substantially, in the period between 2011 and 2013.[58]

93. The Tribunal also notes that the factory-by-factory capacity data compiled by MBR projected that the capacity utilization rate in the subject countries for 2013 was 63 percent, which would mean that the freely disposable capacity in the subject countries would exceed the entire Canadian market demand for OCTG.[59] At the same time, it is anticipated that there will be limited growth in Canadian demand for OCTG over the next several years.[60]

94. On balance, considering that the complainants' claim is supported by relevant evidence and noting again that the "reasonable indication" standard that applies in a preliminary injury inquiry is lower than the evidentiary threshold that applies in a final injury inquiry under section 42 of *SIMA*, the Tribunal concludes that the evidence on the record discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused or are threatening to cause injury.

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55. Exhibit PI-2014-002-06.03 at para. 10, Vol. 3B; Exhibit PI-2014-002-06.01, Vol. 3B, at 4.
56. Exhibit PI-2014-002-06.03 at para. 69, Vol. 3B; Exhibit PI-2014-002-06.04 at para. 60, Vol. 3B; Exhibit PI-2014-002-06.03 at paras. 60-61, Vol. 3B.
57. Exhibit PI-2014-002-06.05 at paras. 49-61, Vol. 3B.
58. Exhibit PI-2014-002-03.01 (protected), Exhibit 8-1 at 176, Vol. 2E.
59. Exhibit PI-2014-002-02.01, Vol. 1A at 62; Exhibit PI-2014-002-03.01 (protected), Attachment 8-10, Vol. 2F.
60. Exhibit PI-2014-002-03.01 (protected), Attachment 8-10, Vol. 2F.

CONCLUSION

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

Stephen A. Leach
Stephen A. Leach
Presiding Member

Jason W. Downey
Jason W. Downey
Member

Jean Bédard
Jean Bédard
Member