Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Dumping and Subsidizing

FINDING AND REASONS

Inquiry No. NQ-2014-001

Concrete Reinforcing Bar

Finding issued
Friday, January 9, 2015

Reasons issued
Monday, January 26, 2015

Canada

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

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

FINDING

The Canadian International Trade Tribunal, pursuant to the provisions of section 42 of the *Special Import Measures Act*, has conducted an inquiry to determine whether the dumping 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 are threatening to cause injury.

Further to the issuance by the President of the Canada Border Services Agency of final determinations dated December 10, 2014, that the aforementioned goods originating in or exported from the People's Republic of China, the Republic of Korea and the Republic of Turkey have been dumped, and that the aforementioned goods originating or exported from the People's Republic of China have been subsidized, and pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that the dumping of the aforementioned goods originating or exported from the People's Republic of China, the Republic of Korea and the Republic of Turkey, and the subsidizing of the aforementioned goods originating or exported from the People's Republic of China have not caused injury but are threatening to cause injury to the domestic industry.

Furthermore, the Canadian International Trade Tribunal hereby excludes 10-mm-diameter (10M) rebar produced to meet the requirements of CSA G30 18.09 (or equivalent standards) and coated to meet the requirements of epoxy standard ASTM A775/A 775M 04a (or equivalent standards) in lengths from 1 foot (30.48 cm) up to and including 8 feet (243.84 cm) from the present threat of injury finding.

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.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	December 15 to 18, 2014
Tribunal Members:	Jason W. Downey, Presiding Member Daniel Petit, Member Ann Penner, Member
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STATEMENT OF REASONS

INTRODUCTION

1. The purpose of this inquiry[1] is to determine whether 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 (the subject goods), originating in or exported from the People's Republic of China (China), the Republic of Korea (Korea) and the Republic of Turkey (Turkey) have caused or are threatening to cause injury to the domestic rebar industry.

2. This inquiry stems from a complaint filed on April 24, 2014, by ArcelorMittal LCNA (ArcelorMittal), Gerdau Long Steel North America (Gerdau) and AltaSteel Ltd. (AltaSteel) and the decision of the President of the Canada Border Services Agency (CBSA) on June 13, 2014, to initiate dumping and subsidizing investigations.

3. The decision to initiate the investigations triggered the initiation of a preliminary injury inquiry by the Canadian International Trade Tribunal (the Tribunal) on June 16, 2014, which culminated in the Tribunal's preliminary determination of on August 12, 2014, that the evidence disclosed a reasonable indication that the dumping and subsidizing of the subject goods had caused or were threatening to cause injury.

4. On September 11, 2014, the CBSA made preliminary determinations of dumping and subsidizing, resulting in the imposition of provisional anti-dumping and countervailing duties on the subject goods and the commencement of this inquiry. On September 12, 2014, the Tribunal issued a notice of commencement of inquiry.[2]

5. On December 10, 2014, the CBSA made a final determination of dumping in respect of the subject goods from China, Korea and Turkey, and a final determination of subsidizing in respect of the subject goods from China. The CBSA terminated the subsidy investigation in respect of the subject goods from Korea and Turkey. As a result, the scope of the Tribunal's inquiry has been narrowed and is confined to determining whether the dumping of rebar from China, Korea and Turkey, and the subsidizing of rebar from China, have caused or are threatening to cause injury.

6. If the Tribunal determines that such dumping or subsidizing has caused or is threatening to cause material injury to the domestic industry producing like goods in relation to the subject goods, then the CBSA will impose definitive anti-dumping duties on imports of the subject goods from China, Korea and Turkey, and countervailing duties on imports of the subject goods from China.

7. The Tribunal's period of inquiry (POI) was from January 1, 2011, to December 31, 2013, and included two interim periods, from January 1 to June 30, 2013, and the corresponding period in 2014. On this basis, on September 12, 2014, the Tribunal sent requests to complete questionnaires to domestic producers, importers, purchasers and foreign producers of rebar. Using the questionnaire replies, Statistics Canada import data and data from the CBSA, staff prepared public and protected versions of the

1. The inquiry is conducted pursuant to section 42 of the *Special Import Measures Act*, R.S.C., 1985, c. S-15 [*SIMA*].
2. C. Gaz. 2014.I.148.38.

investigation report that were distributed, along with the questionnaire replies, to those parties that filed a notice of participation in the inquiry.[3] Parties filed case briefs and evidence in response.

8. The supporting parties are the domestic producers that filed the complaint—ArcelorMittal, Gerdau and AltaSteel. All three supporting parties submitted evidence and argument, and provided witnesses for the Tribunal's hearing.

9. Only the Turkish Steel Exporters' Association (ÇIB) filed a brief and evidence in opposition to an injury finding. The Independent Contractors and Businesses Association (ICBA) of British Columbia filed a brief and evidence further addressing its request for a regional exclusion for British Columbia, but refrained from comment on the issues of injury and threat of injury to the domestic industry.

10. Peak Products Manufacturing Inc. (Peak Products) also participated in the exclusions process, but did not file a brief or evidence addressing the questions of injury and threat of injury to the domestic industry.

11. The other parties that filed notices of participation, but did not file briefs or evidence, are C&F International Inc. and the Ministry of International Trade, Government of British Columbia. On December 9, 2014, counsel for the Ministry of International Trade sought the Tribunal's permission to make closing remarks at the hearing in support of the ICBA's position. This request was submitted to the Tribunal less than a week prior to the commencement of the hearing, and the domestic industry objected to its participation on the grounds that its participation would not likely be of any assistance to the Tribunal.[4] The Tribunal informed the parties that counsel would not be calling witnesses or cross-examining others; however, as the Ministry of International Trade had filed a notice of participation, the Tribunal allowed counsel to present his remarks during closing argument.[5]

12. On November 18, 2014, the parties submitted, to the Tribunal, requests for information (RFIs) directed at the other parties. As some parties objected to certain RFIs, the Tribunal issued directions to the parties on November 26, 2014, regarding the RFIs that required responses. The Tribunal also directed all importers that had provided responses to the Tribunal's questionnaire to respond to certain RFIs. The majority of the responses were received by the December 4, 2014, deadline and placed on the record of the proceedings. Acierco KSE Inc. did not respond by the deadline and was further directed to respond to the RFI. A response from Acierco KSE Inc. was received on December 12, 2014.

13. The Tribunal also received two exclusion requests. The first was a product exclusion request. As the domestic producers consented to this exclusion, the Tribunal did not hear evidence or argument with respect to this exclusion request. The second was a regional exclusion request concerning the subject goods imported for use or consumption in British Columbia. Testimony and oral submissions with respect to this exclusion request were heard during the course of a hearing, which included public and *in camera* sessions. The hearing was held in Ottawa, Ontario, from December 15 to 18, 2014.

14. The Tribunal issued its finding on January 9, 2015.

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3. All public exhibits were made available to the parties. Protected exhibits were made available only to counsel who had filed the required declaration and confidentiality undertaking with the Tribunal in respect of confidential information.
4. *Transcript of Public Hearing*, Vol. 1, 15 December 2014, at 10-11.
5. *Ibid.* at 11-13, Vol. 4, 18 December 2014, at 647-48.

RESULTS OF THE CBSA'S INVESTIGATION

15. The CBSA's period of investigation with respect to the alleged dumping and subsidizing was from January 1, 2013, to March 31, 2014. On December 10, 2014, the CBSA made the following determinations:

- 100 percent of the subject goods originating in or exported from China had been dumped by a margin of 26.6 percent and had been subsidized by an amount of 6.1 percent, when expressed as a percentage of the export price;
- 100 percent of the subject goods originating in or exported from Korea had been dumped by a margin of 25.1 percent and had been subsidized by an amount of 0.02 percent, when expressed as a percentage of the export price;
- 100 percent of the subject goods originating in or exported from Turkey had been dumped by a margin of 6.5 percent and had been subsidized by an amount of 0.1 percent, when expressed as a percentage of the export price.[6]

16. For the above-noted countries, the CBSA concluded that the overall margins of dumping and the amount of subsidy for China were not insignificant. However, the amounts of subsidy for Korea and Turkey were determined to have been insignificant, as they were less than 1 percent of the export price. Therefore, as previously noted, the subsidy investigation with respect to Turkey and Korea was terminated.[7]

PRODUCT

Product Definition

17. The CBSA defined the subject goods as follows:

> 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.

Product Information[8]

18. For further clarity, the subject goods include all hot-rolled deformed bar, rolled from billet steel, rail steel, axle steel, low-alloy steel and other alloy steels that do not comply with the definition of stainless steel.

19. Uncoated rebar, sometimes referred to as black rebar, is generally used for projects in non-corrosive environments where anti-corrosion coatings are not required. On the other hand, anti-corrosion coated rebar is used in concrete projects that are subjected to corrosive environments, such as those where road salt is used. Examples of anti-corrosion coated rebar are epoxy and hot-dip galvanized rebar. The subject goods include uncoated rebar and rebar that has a coating or finish applied.

20. Fabricated rebar is not included in the definition of the subject goods. Fabricated rebar products are generally engineered using computer-automated design programs and are made to the customer's unique project requirements. Rebar that is simply cut-to-length is not considered to be a fabricated rebar product and it is included in the product definition of the subject goods.

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6. Exhibit NQ-2014-001-04, Vol. 1A at 83.19.
7. *Ibid.* at 83.11-83.13.
8. Exhibit NQ-2014-001-01A, Vol. 1 at 26-27.

21. Rebar is produced in Canada in accordance with the National Standard of Canada CAN/CSA-G30.18-M92 for Billet-Steel Bar for Concrete Reinforcement (National Standard) prepared by the Standards Association and approved by the Standards Council of Canada.

22. The following are the most common bar designation numbers for the subject goods in Canada, with the corresponding diameter, in millimeters, in brackets: 10 (11.3), 15 (16.0), 20 (19.5), 25 (25.2), 30 (29.9) and 35 (35.7). Rebar sizes are commonly referred to as the bar designation number combined with the letter "M". Thus, 10M rebar has a designation number of 10 and a diameter of 11.3 millimeters.

23. The National Standard identifies two grades of rebar, namely, regular or "R" and weldable or "W". "R" grades are intended for general applications, while "W" grades are used where welding, bending or ductility is of special concern. Welded rebar was a premium product for the Canadian industry, reflecting the higher cost of alloy steel; however, since all imports have been weldable products, Canadian production has shifted to weldable as a standard product. Weldable rebar is substitutable for regular rebar in all applications, though the reverse does not hold.

24. The National Standard also identifies yield strength levels of 300, 400 and 500. This number refers to the minimum yield strength and is measured in megapascals (MPa). The grade and yield strength of rebar is identified by combining the yield strength number with the grade. Thus, 400R is regular rebar with a yield strength of 400 MPa, and 400W is weldable rebar with a yield strength of 400 MPa.

25. The standard lengths for rebar are 6 metres (20 feet), 12 metres (40 feet) and 18 metres (60 feet), although rebar can be cut and sold in other lengths as specified by customers, or sold in coils.

26. Deformed steel rebar can be produced in an integrated steel production facility or by using ferrous scrap metal as the principal raw material. Scrap metal is melted in an electric arc furnace and is further processed in a ladle arc-refining unit. The molten steel is then continuously cast into rectangular billets of steel that are cut-to-length. An integrated facility would also produce billets from molten steel. The billets are then rolled into various sizes of rebar, which is cut to various lengths depending on the customers' requirements.

27. Deformed rebar is rolled with deformations on the bar, which provides gripping power so that concrete adheres to the bar and provides reinforcing value. The deformations must conform to requirements set out in the national standards.[9]

LEGAL FRAMEWORK

28. The Tribunal is required, pursuant to subsection 42(1) of *SIMA*, to inquire as to whether the dumping and subsidizing of the subject goods have caused injury or retardation or are threatening to cause injury, with "injury" being defined, in subsection 2(1), as ". . . material injury to a domestic industry". In this regard, "domestic industry" is defined in subsection 2(1) by reference to the domestic production of "like goods".

29. Accordingly, the Tribunal must first determine what constitutes "like goods". Once that determination has been made, the Tribunal must determine what constitutes the "domestic industry" for purposes of its injury analysis.

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9. *Ibid.* at 27.

30. Given that the subject goods that the CBSA determined to have been dumped originate in or are exported from more than one country, the Tribunal must also determine if the prerequisite conditions are met in order to make a cumulative assessment of the effect of the dumping of the subject goods from all the subject countries on the domestic industry (i.e. whether it will conduct a single injury analysis or a separate analysis for each subject country). In particular, the Tribunal must determine whether the conditions set out in subsection 42(3) of *SIMA* for the cumulation of the injurious effects of the dumping of the subject goods from each of the subject countries have been met.

31. Moreover, given that the CBSA has determined that the subject goods from China have been dumped and subsidized, the Tribunal must also determine whether it is appropriate to make an assessment of the cumulative effect of the dumping and subsidizing of the subject goods (i.e. whether it will cross-cumulate the effect or combine the effects of the injury attributable to the dumping with those attributable to the subsidizing).

32. The Tribunal can then assess whether the dumping and subsidizing of the subject goods have caused material injury to the domestic industry.[10] Should the Tribunal arrive at a finding of no material injury, it will determine whether there exists a threat of material injury to the domestic industry.[11] As a domestic industry is already established, the Tribunal will not need to consider the question of retardation.[12]

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

34. As a preliminary remark, the Tribunal wishes to mention that, at the outset of the hearing, the Tribunal addressed what it saw as a series of arguments presented in the parties' briefs, particularly in relation to the regional exclusion request brought forward by the ICBA, which concerned issues that would properly be considered within the context of a public interest inquiry under section 45 of *SIMA* and not in a inquiry under section 42.

35. While inquiries under sections 42 and 45 of *SIMA* may at times deal with subject matter which is not completely dissimilar, the two processes serve different purposes in the context of Canada's trade remedy legislation. The focus of an inquiry under section 42 deals with the impact of the dumping and subsidizing on the domestic industry, whereas an inquiry under section 45, which can only occur after a finding of injury or threat thereof under section 42, is specifically designed to address the impact of the finding on other actors in the marketplace, with a view of providing them with some relief where, on the recommendation of the Tribunal, the Minister of Finance deems it warranted.

36. Accordingly, the Tribunal's mandate in this inquiry does not extend to the consideration of the potential impact of a finding of injury or threat of injury on Canadian importers or consumers of the subject goods. Accordingly, the Tribunal has not considered and will not address arguments based on public interest considerations in these reasons.

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10. The Tribunal will proceed to determine the effect of the dumping and subsidizing of the subject goods on the domestic industry, for individual countries or for the cumulated countries, as appropriate.
11. Injury and threat of injury are distinct findings; the Tribunal is not required to make a finding relating to threat of injury pursuant to subsection 43(1) of *SIMA* unless it first makes a finding of no injury.
12. Subsection 2(1) of *SIMA* defines "retardation" as ". . . material retardation of the establishment of a domestic industry".

LIKE GOODS AND CLASSES OF GOODS

37. In order for the Tribunal to determine whether the dumping and subsidizing of the subject goods have caused or are threatening to cause injury to the domestic producers of like goods, it must determine which domestically produced goods, if any, constitute like goods in relation to the subject goods. The Tribunal must also assess whether there is, within the subject goods and the like goods, more than one class of goods.[13]

Like Goods

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

> (*a*) goods that are identical in all respects to the other goods, or
>
> (*b*) in the absence of any goods described in paragraph (*a*), goods the uses and other characteristics of which closely resemble those of the other goods.

39. In deciding the issue of like goods when goods are not identical in all respects to the other goods, the Tribunal typically considers a number of factors, including the physical characteristics of the goods (such as composition and appearance) and their market characteristics (such as substitutability, pricing, distribution channels, end uses and whether the goods fulfill the same customer needs).[14]

40. ArcelorMittal and AltaSteel submitted that, in previous orders or findings against imported rebar, defined in a manner that is very similar to the definition of the subject goods in the present inquiry (except for the exclusion of coated rebar in previous cases), the Tribunal determined that domestically produced rebar products constituted like goods in relation to the goods that were at issue at that time, including rebar from Korea and Turkey.

41. They further submitted that rebar produced in Canada and the subject goods are commodity products that compete with one another in the Canadian marketplace and are fully interchangeable. In this regard, they referred to data on the Tribunal's record which show the substitutability and comparability between Canadian-made rebar and the subject goods. Accordingly, they argued that domestically produced rebar products are like goods in relation to the subject goods.

42. In its preliminary injury inquiry, the Tribunal found that domestically produced rebar of the same description as the subject goods were like goods in relation to the subject goods.[15] The Tribunal sees no reason to depart from that finding in this inquiry.

43. The domestic goods and the subject goods are used for the same purpose (to reinforce concrete), they are sold through the same channels of distribution, and they are used by the same end users.[16] They all have the same physical characteristics,[17] being steel bars with particular grooves that are designed to allow for better bonding with the concrete in which they are embedded.

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13. Should the Tribunal determine that there is more than one class of goods in this inquiry, it must conduct a separate injury analysis and make a decision for each class that it identifies. See *Noury Chemical Corporation and Minerals & Chemicals Ltd. v. Pennwalt of Canada Ltd. and Anti-dumping Tribunal*, [1982] 2 F.C. 283 (F.C.).
14. See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at para. 48.
15. *Concrete Reinforcing Bar* (12 August 2014), PI-2014-001 (CITT) at para. 27.
16. Exhibit NQ-2014-001-07A (protected), Tables 19-26, Vol. 2.1A.
17. *Ibid.*, Table 59.

44. The data on the Tribunal's record indicate that the subject goods are considered substitutable for both the domestic rebar and other foreign rebar.[18] They are considered "like" by end users and market actors in terms of physical characteristics, the only reported differences being the price advantage enjoyed by the subject goods and the advantage in delivery time enjoyed by domestic producers.[19]

45. Witnesses were also very clear to the effect that the subject goods and the domestic goods are fungible in the marketplace, with mostly price being a determining factor, as quality and product characteristics are mostly considered to be identical.[20]

46. The subject goods and the domestic goods are also produced in largely the same grades, yield strengths and sizes. Interestingly, the Canadian market uses particular metric measurements for rebar diameter that are different from all other measurements worldwide,[21] and all the subject goods sold in Canada are supplied in this metric form, which further supports the likeness of the subject goods and the domestic goods. Similarly, the subject goods are also produced to meet Canadian CSA standards.

47. In sum, the subject goods and domestically produced rebar are commodity products that compete with one another in the Canadian marketplace on the basis of price and are otherwise fully interchangeable. Therefore, they are like goods within the meaning of *SIMA*.

Classes of Goods

48. In the preliminary injury inquiry, the Tribunal accepted an argument advanced by the ÇIB that there may be two classes of goods: (1) uncoated (or black) rebar; and (2) coated rebar. The Tribunal indicated however that it would examine this issue further in the context of a final injury inquiry. On September 24, 2014, in its revised notice of commencement of inquiry in this matter,[22] the Tribunal invited interested parties to file early submissions on the issue of classes of goods and, in particular, to provide facts and arguments on whether the subject goods should be divided in two potential classes of goods, being uncoated and coated rebar.

49. By letter dated October 27, 2014, the Tribunal informed the parties of its determination, on the basis of the early submissions on classes of goods, that the subject goods and the like goods constituted a single class of goods.[23] The reasons for that decision follow.

50. In addressing the issue of classes of goods, the Tribunal typically examines whether goods potentially included in separate classes of goods constitute "like goods" in relation to each other. If those goods are "like goods" in relation to each other, they will be regarded as comprising a single class of goods.[24]

51. The ÇIB submitted that uncoated rebar and coated rebar constituted two separate classes of goods. In terms of physical characteristics, the ÇIB argued that coated rebar and uncoated rebar have different

18. *Ibid.*, Tables 28-30.
19. *Ibid.*, Tables 59-61.
20. Exhibit NQ-2014-001-A-05 at para. 30, Vol. 11; Exhibit NQ-2014-001-A-07 at para. 6, Vol. 11A; Exhibit NQ-2014-001-B-05 at para. 2, Vol. 11B; Exhibit NQ-2014-001-C-05 at para. 9, Vol. 11B.
21. Exhibit NQ-2014-001-B-05 at para. 3, Vol. 11B.
22. Exhibit NQ-2014-001-03A, Vol. 1A at 72.
23. Exhibit NQ-2014-001-30, Vol. 1A.
24. *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) at para. 115; see, also, *Polyisocyanurate Thermal Insulation Board* (11 April 1997), NQ-96-003 (CITT) [*Polyiso*] at 10.

compositions, since the application of the coating renders the product corrosion-resistant. Coated rebar must meet different technical specifications from uncoated rebar. Further, the coated product is readily distinguishable from the uncoated product based on the colour of the coating. Finally, coated rebar undergoes a different production process that requires additional equipment to apply the coating.

52. In terms of market characteristics, the ÇIB submitted that uncoated rebar and coated rebar have different end uses and serve different market needs due to the above-mentioned corrosion-resistant properties of coated rebar. According to the ÇIB, uncoated rebar is not substitutable for coated rebar in certain applications requiring corrosion resistance. In addition, construction project specifications often call for a particular standard of material, and substitutions will not be accepted. Even if a particular type of rebar is not specified in the project plans, the ÇIB submitted that the minimum 30 percent price premium for coated rebar is significant enough to prevent substitution of coated rebar for uncoated rebar.

53. Finally, the ÇIB submitted that coated rebar and uncoated rebar are sold through different channels of distribution. Uncoated rebar is sold by the domestic producers to both fabricators and distributors; however, because the domestic producers do not produce coated rebar directly, distributors can only source coated rebar from fabricators or third-party coating applicators and not directly from the domestic producers.[25]

54. ArcelorMittal and AltaSteel submitted that uncoated rebar and coated rebar share the same physical and market characteristics and constitute a single class of goods. They submitted that, despite the differences in colour that are the result of the different types of coating, uncoated rebar and coated rebar are largely similar in appearance, come in the same grades, sizes and varieties, and are composed of the same materials (mainly steel). Uncoated rebar and coated rebar are largely produced using the same method of production, except for the additional step of coating.

55. According to ArcelorMittal and AltaSteel's submissions, the coating step is simply an enhancement of the basic product that does not justify a finding of separate classes of goods. With respect to technical standards, ArcelorMittal and AltaSteel emphasized that all rebar used in Canada must meet the same basic Canadian CSA standard and that additional technical standards for different sub-types of product should again not be considered determinative of the issue of classes of goods.

56. In terms of market characteristics, ArcelorMittal and AltaSteel submitted that, broadly speaking, uncoated rebar and coated rebar have the same end use; they are used in the construction industry to reinforce concrete. Further, there is downward substitutability between the two products, as coated rebar can be used in applications that more commonly call for uncoated rebar (e.g. parking barriers). Thus, while uncoated rebar and coated rebar may not be fully interchangeable with each other across the range of potential end uses, they may still be said to fall on a continuum of like goods within a single class.

57. ArcelorMittal and AltaSteel acknowledged that coated rebar carries a price premium, but submitted that it is not prohibitively high and is within the range that the Tribunal has previously considered as insufficient to find that products should be considered to fall into separate classes of goods. Finally, they submitted that uncoated rebar and coated rebar are sold through similar, although not identical, channels of distribution and noted that domestic fabricators that also produce coated rebar from uncoated rebar sell coated rebar to other fabricators, as well as to distributors.[26]

25. Exhibit NQ-2014-001-28.03 at paras. 19-20, Vol. 1.4A.
26. Exhibit NQ-2014-001-26.03 at para. 21, Vol. 1.4.

58. Gerdau made similar arguments to those submitted by ArcelorMittal and AltaSteel. In addition, Gerdau noted that there are corrosion-resistant types of black rebar (e.g. ASTM A1035, trade name MMFX2) and other ways to ensure enhanced corrosion resistance when using uncoated rebar products and that, therefore, the argument that corrosion resistance differentiates coated rebar from uncoated rebar is unfounded.

59. The evidence before the Tribunal is that uncoated rebar is manufactured from hot-rolled steel and forms the base, or input, for all other coated rebar products upon which a subsequent coating is applied. There is no evidence on the record indicating that black rebar and coated rebar are manufactured in a different way from one producer to the other, including those from the subject countries. The coatings are only applied after the black rebar has been created and, in Canada, these coatings are applied by fabricators or other third-party coating applicators, not by the domestic rebar manufacturers themselves. The Tribunal has also learned that there are many different types of coatings, for example, epoxy, enamel, galvanized and stainless steel clad.

60. While both coated rebar and uncoated rebar have a black rebar core, all the varieties of coated rebar have enhanced corrosion resistance and are often used in applications where the rebar may be exposed to corrosive elements, such as the salt in seawater or road salt, due to seepage through the overlying concrete structure. However, despite these differences in end-use applications, both coated rebar and uncoated rebar have the same general end use, as they are destined to be used in concrete in order to give structural strength to the final product.

61. The Tribunal accepts that the ASTM standards are different for the different varieties of coated rebar, but also notes that all varieties of coated rebar must first meet the national standard for the base black rebar product (in terms of strength, pliability, elasticity, weldability, etc.); the additional specifications are only met through the corrosion resistance brought about by the coating. Therefore, all coated rebar products are dual-certified, but the base specification for black rebar covers the essential and defining characteristics of the product.

62. The Tribunal has previously found that goods that meet different grades and standards and that are used in different applications on the basis of their varying specifications can nevertheless have similar physical and market characteristics and, therefore, comprise a single class of goods. For example, in *Carbon Steel Welded Pipe*,[27] the Tribunal concluded that there was a single class of goods, despite the fact that the pipe products covered by the product definition met a variety of standards, and that the goods were used in a wide range of applications (e.g. plumbing and heating, piling, load bearing, protection of electrical wiring, fencing) and included different surface finishes.

63. Therefore, the Tribunal is unable, in the present case, to accept the arguments that the fact that the production of coated rebar involves additional steps in the production process, results in products that meet additional standards and that coated rebar is used in applications, that may differ from those of uncoated rebar, means that coated rebar necessarily constitutes a separate class of goods.

64. The parties focused much of their arguments on the issue of the substitutability of uncoated rebar in coated rebar applications and vice versa. The Tribunal accepts that, where coated rebar is specified by architects and designers, uncoated rebar cannot be used because of the additional technical properties described above; however, coated rebar *can* be used where uncoated rebar is specified, as there is no corresponding technical barrier to using coated rebar in applications that would call for uncoated rebar.

27. (11 December 2012), NQ-2012-003 (CITT) at paras. 25-29, 62-63.

65. This means that, while uncoated rebar and coated rebar are not perfectly substitutable in one direction, there is the possibility of downward substitutability of the coated rebar for applications that require only black rebar.

66. Even if such substitution should not normally occur because of the price premium which coated rebar carries, the Tribunal has previously found that the possibility of downward substitutability militates against separating certain goods into multiple classes. This, in fact, suggests that the range of goods of various specifications or standards serving the same general end use, but used in different specific applications, exist on a continuum of like goods within a single class.[28]

67. Moreover, the fact that certain goods may not be fully substitutable for some end uses is not, in and of itself, a sufficient basis for determining that there exist multiple classes of goods. Indeed, in *Stainless Steel Wire*,[29] the Tribunal found the presence of a single class of goods even if the product definition encompassed different kinds of wire having a multitude of end uses.

68. On that basis, the Tribunal is of the view that the differences between uncoated rebar and coated rebar, in terms of physical characteristics and end uses, are narrower than the difference between the range of products that it found to comprise a single class of goods in previous cases.

69. The ÇIB also argued that the price premium for coated rebar would be a barrier to its use in applications where its corrosion-resistant properties are not required. The evidence on the record supports the submission that there are price differences between uncoated rebar and all types of coated rebar, some minimal (e.g. for paint or some types of epoxy), progressing through galvanization, enamel and stainless steel cladding.[30]

70. The augmenting price differences correspond to both the higher input costs associated with the different types of coating and the added value (degree of corrosion resistance and other technical properties) provided by each different type of coating. It cannot therefore be said that uncoated rebar and the various types of coated rebar all compete at the same price points.

71. The Tribunal has previously found that a price premium of 30 percent to 35 percent for a coated versus an uncoated product (in that case, steel grating) was not necessarily a determining factor to justify separating the coated product and uncoated product into separate classes of goods.[31] This precedent further suggests that the fact that goods have different corrosion-resistance properties does not necessarily mean that they should constitute separate classes of goods.

72. Similarly, in the present inquiry, on balance, the Tribunal is not convinced that the evidence on the record concerning the price differences between coated rebar and uncoated rebar is, on its own and in light of the evidence on the other relevant factors, sufficient to conclude that coated rebar and uncoated rebar constitute separate classes of goods.

73. In addition, the replies to the Tribunal's purchaser's questionnaire indicate that, while the total purchases of rebar in 2013 amounted to 641,708 metric tonnes, the purchases of the higher-value types of coated rebar (including epoxy-coated, hot-dip galvanized and stainless steel clad) in Canada were a

28. *Circular Copper Tube* (18 December 2013), NQ-2013-004 (CITT) at paras. 55-58.
29. (30 July 2004), NQ-2004-001 (CITT) at paras. 38-40.
30. Exhibit NQ-2014-001-26.01, Vol. 1.4 at 11-12.
31. *Steel Grating* (19 April 2011), NQ-2010-002 (CITT) at paras. 107-109.

negligible proportion of that amount, at best.[32] This evidence lends additional support to the position that there is no valid basis to conduct the injury analysis on the basis of multiple classes of goods.

74. Overall, the evidence on the record supports the finding in the preliminary injury inquiry that, while coated rebar and uncoated rebar are not fully substitutable across the entire spectrum of end uses, they nevertheless fall within the same continuum of goods and are, under the right circumstances, sufficiently substitutable for one another to justify the consideration of a single class of goods.

75. There is also some evidence on file, albeit limited, as to the possibility of eventual circumvention of the finding at the correct price points, where, at equal or lower pricing, coated rebar could certainly be used to replace black rebar.[33] In a similar vein, the Tribunal was also alive to the potential that any low-value type of coating, such as paint, shellac, wax or even oil, could be applied to black rebar at a minimal or incremental additional cost, allowing for possible circumvention of an eventual finding against "uncoated rebar".

76. Otherwise, the preponderant evidence is that coated rebar and uncoated rebar compete in the same market and are distributed by the same distributors or consumed by the same fabricators.[34]

77. Finally, the Tribunal wishes to address the quality of the evidence placed before it in support of the argument that coated rebar and uncoated rebar constitute separate classes of goods. Although the domestic producers are not to be commended for their failure to be forthright, at the outset of the proceedings, as to whether they actually produced coated rebar or not,[35] once the submissions on the question of classes of goods were filed, the ÇIB did not for its part provide further evidence of a particularly probative nature, beyond what it had previously submitted in the preliminary injury inquiry stage, in its effort to convince the Tribunal of the necessity of considering these goods separately.

78. Apart from the obvious arguments that one good has a coating and the other does not, and the fact that both can be specified for applications in some structures and not in others, the ÇIB provided very little in the way of actual product, market differences or further convincing price differences which could ultimately justify considering one type of good separately from the other in the Tribunal's injury analysis. Ultimately, in considering the actual evidence, which held little compelling value, the Tribunal had little

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32. Exhibit NQ-2014-001-24.03A, Vol. 5.2 at 157; Exhibit NQ-2014-001-25.03 (protected), Vol. 6.2 at 49; Exhibit NQ-2014-001-24.12, Vol. 5.2C at 82; Exhibit NQ-2014-001-25.12 (protected), Vol. 6.2A at 181; Exhibit NQ-2014-001-25.04B (protected), Vol. 6.2 at 128; Exhibit NQ-2014-001-24.04A, Vol. 5.2 at 189; Exhibit NQ-2014-001-24.17, Vol. 5.2F at 3; Exhibit NQ-2014-001-25.17 (protected), Vol. 6.2B at 127; Exhibit NQ-2014-001-25.15 (protected), Vol. 6.2B at 49; Exhibit NQ-2014-001-25.13 (protected), Vol. 6.2A at 222; Exhibit NQ-2014-001-24.15, Vol. 5.2E at 3, 5, 11; Exhibit NQ-2014-001-25.15A (protected), Vol. 6.2B at 72; Exhibit NQ-2014-001-24.13, Vol. 5.2 at 3, 11; Exhibit NQ-2014-001-25.13 (protected), Vol. 6.2A at 224. These data which were filed with the Tribunal and available before October 27, 2014, were later compiled in the investigation report. See Exhibit NQ-2014-001-06A, Table 12, Vol. 1.1A.

33. Exhibit NQ-2014-001-26.02, Vol. 1.4 at 25-26.

34. Exhibit NQ-2014-001-26-03, Attachments 1, 6, 8, Vol. 1.4.

35. As noted in the reasons for the preliminary determination of injury preceding this inquiry, the domestic producers did not fully address this point in the complaint or in response to submissions by the ÇIB that they did not produce coated rebar (see *Concrete Reinforcing Bar* [12 August 2014], PI-2014-001 [CITT] at para. 38); in their later submissions on the issue of classes of goods, only Gerdau explicitly acknowledged that it does not produce coated rebar in Canada (Exhibit NQ-2014-001-26.02, Vol. 1.4 at 32). The fact that the other domestic producers did not produce coated rebar became clear through their responses to the Tribunal's purchasers' questionnaire (Exhibit NQ-2014-001-15.01, Vol. 3 at 8; Exhibit NQ-2014-001-15.03, Vol. 3 at 88).

choice but to conclude that coated rebar competes in the exact same market as uncoated rebar and that there is insufficient evidence to support a finding that these goods constitute a separate class of goods.

79. Accordingly, the Tribunal found that there was a single class of goods.

DOMESTIC INDUSTRY

80. Subsection 2(1) of *SIMA* defines "domestic industry" as follows:

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

81. In applying subsection 2(1) of *SIMA*, the Tribunal is mandated to determine whether there has been injury, or whether there is a threat of injury, to the domestic producers as a whole or those domestic producers whose production represents a major proportion of the total production of like goods.[36]

82. ArcelorMittal and AltaSteel submitted that the domestic industry producing rebar is comprised of ArcelorMittal, AltaSteel and Gerdau.

83. In this inquiry, it is manifest that the collective production of ArcelorMittal, AltaSteel and Gerdau accounts for a major proportion of the total domestic production of like goods.

84. The preponderance of the evidence on the Tribunal's record indicates that the three domestic producers are responsible for the vast majority, if not all, of the production of uncoated rebar in Canada.[37]

85. With respect to coated rebar, there is evidence that a rebar fabricator, Harris Rebar, is also a known producer of coated rebar.[38] However, Harris Rebar is primarily a fabricator of rebar and, although the Tribunal has considered the information available on the company's production volume, the Tribunal finds that the collective production of ArcelorMittal, AltaSteel and Gerdau accounts for almost all of the total domestic production of rebar (both coated and uncoated). It is therefore appropriate for the Tribunal to conclude that ArcelorMittal, AltaSteel and Gerdau constitute the domestic industry for the purposes of this inquiry.

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36. The term "major proportion" means an important, serious or significant proportion of total domestic production of like goods and not necessarily a majority. See *Japan Electrical Manufacturers Assoc. v. Canada (Anti-Dumping Tribunal)*, [1982] 2 FC 816 (F.C.A), *China – Anti-dumping and Countervailing Duties on Certain Automobiles from the United States* (23 May 2014), WTO Docs. WT/DS440/R, Report of the Panel at para. 7.207; *European Community – Definitive Anti-dumping Measures on Certain Iron or Steel Fasteners from China* (15 July 2011), WTO Doc. WT/DS397/AB/R, Report of the Appellate Body at paras. 411, 419, 430; *Argentina – Definitive Anti-dumping Duties on Poultry from Brazil* (22 April 2003), WTO Doc. WT/DS241/R, Report of the Panel at paras. 7.341-7.344.
37. There was some peripheral evidence alluded to at the hearing that other companies in Canada may produce rebar, at least on occasion, through either end-run productions on similar equipment or special orders used to complement production schedules. The Tribunal, however, can only conclude from this limited evidence and the responses from witnesses that this incidental production is minimal at best, representing insignificant volumes in regard to the domestic industry as a whole and the total Canadian market for rebar.
38. Exhibit NQ-2014-001-24.04, Vol. 5.2 at 185.

86. Finally, the Tribunal considered the ÇIB's submission that, as a result of the Tribunal's decision on the issue of classes of goods, the three domestic producers of uncoated rebar may achieve the surprising result of receiving protection against imports of a subset of the subject goods (coated rebar) which they do not even produce. Framed in this way, this is not a valid concern.

87. The Tribunal's ruling that uncoated rebar and coated rebar constitute a single class of goods entails that uncoated rebar produced by the domestic producers constitutes like goods in relation to *any* coated rebar originating in or exported from the subject countries.

88. To be clear, given that coated rebar and uncoated rebar constitute a single class of goods, the domestic producers do not necessarily have to establish that there is production of coated rebar in Canada in order to obtain protection against the importation of coated rebar from the subject countries. What matters is that there is clear evidence of domestic production of uncoated rebar, a product which is "like" *both* the subject coated rebar and the subject uncoated rebar.

CUMULATION

89. Subsection 42(3) of *SIMA* directs the Tribunal to make an assessment of the cumulative effect of the dumping of the subject goods from the subject countries if it is satisfied that certain conditions are met.[39] Specifically, the Tribunal must be satisfied that (1) the margin of dumping in relation to the goods from each of the three subject countries is not insignificant and that the volume of goods imported into Canada from any of those countries is not negligible, and (2) an assessment of the cumulative effect is appropriate taking into account the conditions of competition between the goods of each country or between those goods and the like goods.

90. It is noteworthy that *both* conditions must be met in order for the Tribunal to proceed with a cumulative assessment of the effects of the dumping of the subject goods from all the subject countries on the domestic industry (i.e. to conduct a single injury analysis instead of a separate injury analysis for each subject country). The Tribunal will examine each condition in turn.

Margins of Dumping and Volume of Dumped Goods

91. As noted above, the margins of dumping in relation to the subject goods from China, Korea and Turkey are not insignificant, as they are all greater than the 2 percent of the export price threshold set out in subsection 2(1) of *SIMA*.

92. The Tribunal is also satisfied that the volume of subject goods from each subject country is not negligible. Under subsection 2(1) of *SIMA*, "negligible" is defined as meaning a volume of dumped goods that is less than 3 percent of the total volume of imports of subject and non-subject goods that are of the same product description as the dumped goods and released into Canada. In assessing whether the volume of dumped imports from a country is negligible, the Tribunal typically looks at the import activity during the CBSA's period of investigation. During this period, the volumes of imports of the subject goods from each of the subject countries were all greater than 3 percent of total apparent imports.[40]

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39. As the CBSA determined that only the subject goods from China were subsidized, the issue of the assessment of the cumulative effect under subsection 42(3) of *SIMA* only arises in respect of the dumping of the subject goods from China, Korea and Turkey.
40. Exhibit NQ-2014-001-06H, Vol. 1.1A at 305; Exhibit NQ-2014-001-07H (protected), Table 87, Vol. 2.1A.

Conditions of Competition

93. Having determined that the margins of dumping are not insignificant and that the volumes of dumped goods are not negligible, the Tribunal will next assess whether it is appropriate to consider the cumulative effect of the subject goods on the basis of the conditions of competition between the goods from the subject countries or between those goods and the like goods.

94. Historically, the Tribunal has held that relevant factors relating to the conditions of competition can include interchangeability, quality, pricing, distribution channels, modes of transportation, timing of arrivals and geographic dispersion.[41]

95. ArcelorMittal and AltaSteel submitted that the same conditions of competition exist amongst the subject goods, and between the subject goods and the like goods. In particular, they argued that a review of the evidence on the record reveals that rebar is a commodity product; the subject goods are fungible with the like goods, as well as with rebar from other sources. They also submitted that the relevant tables of the investigation report demonstrate the interchangeability between the like goods and the subject goods. Finally, they noted that exporters from all subject countries use the same mode of transportation to ship the subject goods to Canada, that rebar, irrespective of its origin, is distributed through the same channels of distribution and that the subject and like goods compete head to head and are sold across Canada.

96. Gerdau submitted that the evidence on the Tribunal's record makes it clear that rebar is a commodity product which is produced to a Canadian product specification and that goods from each of the three subject countries compete with Canadian production through the same channels of distribution, that is, fabricators and service centres/distributors. Accordingly, it submitted that the Tribunal should make an assessment of the cumulative effect of the dumping of the subject goods from the three subject countries.

97. The ÇIB submitted that the effects of imports of rebar from Turkey should not be cumulated with the effects of the imports from the other subject countries. It submitted that there was a complete absence of imports and offers to sell Turkish rebar in Western Canada. It added that the imports from Turkey decreased significantly during the latter part of the period of inquiry, whereas imports from China increased significantly between 2012 and 2013 and during interim 2014.

98. The ÇIB further submitted that the domestic producers have experienced difficulties in supplying demand in the Canadian market even though they benefit from customer demand for domestically produced rebar. According to the ÇIB, significant regional discrepancies characterize the Canadian market, and domestic rebar is unavailable in certain regions of Canada.

99. After considering the totality of the evidence and submissions on this issue, the Tribunal is satisfied that similar conditions of competition exist amongst the subject goods, and between the subject goods and the like goods. The evidence indicates that the goods of each subject country and the like goods are largely interchangeable. Indeed, most respondents to the Tribunal's purchasers' questionnaire are of the view that the subject goods and domestically produced rebar are fully substitutable products.[42]

100. Other evidence indicates that rebar from each subject country is shipped to Canada using the same mode of transportation (i.e. ocean freighter) and is largely distributed in Canada through the same channels

41. See, for example, *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (17 August 2001), NQ-2001-001 (CITT) at 16; see, also, *Waterproof Footwear* (25 September 2009), NQ-2009-001 (CITT) at note 28.
42. Exhibit NQ-2014-001-07A (protected), Tables 28, 29, Vol. 2.1A.

of distribution as domestically produced rebar.[43] Moreover, the subject goods and the like goods have similar physical characteristics and are generally viewed as comparable in terms of quality, reliability of supply and other factors affecting purchasing decisions. Overall, the evidence indicates that rebar is a commodity-type product. Price, therefore, becomes a key driving factor in capturing sales, regardless of the source of the product.[44]

101. Despite this evidence, which strongly suggests that a cumulative assessment of the effects of the dumping of the subject goods from the three subject countries would be appropriate, the ÇIB argued that the subject goods from Turkey should not be cumulated with the goods from the other subject countries, primarily because they are allegedly not sold or offered for sale in Western Canada where domestic rebar is allegedly not available. In short, the ÇIB focuses on only one relevant factor in the cumulation analysis: the presence or absence of sales of imports from different subject countries and sales of the like goods into the same geographical markets.

102. The Tribunal is of the view that, even if it were to accept the ÇIB's allegations in this regard as established fact, this would not provide a sufficient basis for the de-cumulation of the effect of dumping by the Turkish exporters, in view of the above-noted evidence on the other relevant factors. In fact, as discussed below, this argument fails in part because of competition of the like goods with goods from all three subject countries across Canada and because Turkish rebar competes with Chinese rebar in Eastern Canada.

103. The evidence indicates that Turkish rebar has been offered for sale in Western Canada, in particular in Manitoba and Saskatchewan.[45] Examples of offers of Turkish rebar in Western Canada are also found in the witness statement of Mr. Gary Vaughan of Gerdau.[46] In the same vein, Mr. Ben Zurbrigg of AltaSteel further stated that he has seen a few offers of Turkish rebar shipped from Ontario or Quebec to Western Canada.[47]

104. Moreover, the evidence filed by the ICBA in support of its request for a regional exclusion also suggests that there have been imports from Turkey sold in the B.C. market. According to this evidence, while the relative percentage of rebar imports coming from major suppliers like the United States, Turkey, Korea and China has varied over time, British Columbia has been well served by competition amongst these countries to supply its market.[48] Accordingly, the ÇIB's claim that there is no competition in Western Canada between the subject goods from Turkey and those from the other subject countries is not borne out by the evidence on the record.

105. Similarly, the Tribunal cannot conclude that there is no competition between the subject goods, including Turkish rebar, and the like goods in Western Canada. In this respect, while it is true that the

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43. While there is evidence suggesting that imported rebar and domestically produced rebar may not always be sold through the same distribution channels (see Exhibit NQ-2014-001-06A, Table 26, Vol. 1.1A), on balance, the Tribunal accepts the evidence filed by ArcelorMittal and AltaSteel, which indicates that the subject goods and the like goods are in fact sold in direct competition to the same customers (fabricators and service centres) either by domestic or foreign mills, albeit sometimes through import brokers in the latter case (see Exhibit NQ-2014-001-A-02 (protected) at paras. 51-54, Vol. 12, and the evidence referred to therein).
44. Exhibit NQ-2014-001-06A, Table 55, Vol. 1.1A.
45. *Transcript of Public Hearing*, Vol. 3, 17 December 2014, at 318, 323-26, 329-30, Vol. 2, 16 December 2014, at 232-33.
46. Exhibit NQ-2014-001-B-06 (protected) at paras. 14-18, Vol. 12A.
47. Exhibit NQ-2014-001-C-11 at para. 20, Vol. 11B; *Transcript of Public Hearing*, Vol. 2, 16 December 2014, at 266.
48. Exhibit NQ-2014-001-34.02, Vol. 1.3 at 24.

majority of the domestic producers' sales are made in Ontario and Quebec, there is evidence that they are present, albeit to a lesser extent, in Western Canada.[49] While, historically, the domestic producers have only minimally supplied the B.C. market, the fact remains that they did make some sales in British Columbia during the POI.[50]

106. At the hearing, Mr. Zurbrigg testified that AltaSteel has customers throughout British Columbia and competed with rebar from China and Korea in Alberta, Saskatchewan and Manitoba to a certain (albeit limited) extent.[51] In sum, while it is beyond dispute that Western Canada is primarily served by imports of the subject goods from China and Korea and by non-subject imports from the United States, it cannot be said that imports from Turkey do not compete with the other subject goods and the like goods in that market.

107. The preponderant evidence also indicates that there is competition between the subject goods from Turkey and the subject goods from China, and between the subject goods from those two subject countries and the like goods, in Central Canada. In this regard, it is clear that the majority of the subject goods from Turkey are sold in Ontario and Quebec. The evidence, however, indicates that the subject goods from China have started to make inroads into those provinces as well, where imported goods of all sources undoubtedly compete with the like goods.[52]

108. ArcelorMittal also provided examples of offers of both Turkish and Chinese rebar to a customer located in Ontario.[53] There is however no direct evidence of the presence of the subject goods from Korea in Central or Eastern Canada. The Tribunal finds that this fact alone does not provide a sufficient basis to de-cumulate the effect of the subject goods from Korea, considering that they compete with the other subject goods and with the like goods in other parts of the country.[54]

109. Accordingly, there is insufficient evidence to de-cumulate the imports from any of the subject countries on the basis of their absence or presence in specific geographical markets. On balance, the evidence instead supports the following conclusions:

- There exist similar conditions of competition between the Chinese and Korean goods, which are clearly present in the B.C. and western geographical markets together at the same time. It is

49. Exhibit NQ-2014-001-06D, Table 98, Vol. 1.1A.
50. Exhibit NQ-2014-001-07G (protected), Tables 31, 32, Vol. 2.1A; Exhibit NQ-2014-001-A-14 (protected) at paras. 2-6, Vol. 12C; Exhibit NQ-2014-001-C-12 (protected) at paras. 11-16, Vol. 12C.
51. *Transcript of Public Hearing*, Vol. 2, 16 December 2014, at 269-71.
52. *Transcript of Public Hearing*, Vol. 1, 15 December 2014, at 122-25, Vol. 2, 16 December 2014, at 231-33, Vol. 3, 17 December 2014, at 340-41.
53. Exhibit NQ-2014-001-A-08 (protected) at paras. 32-37 and Attachments 14, 15, 16, Vol. 12A. At the hearing, ArcelorMittal also provided a confidential list of examples of Chinese and Turkish goods offered to the same customers in Ontario and Quebec and of examples of direct competition between Korean and Chinese goods in Western Canada. This list was a compilation of information found in the responses to the producers' questionnaire.
54. Indeed, this is not a situation where it can be concluded that the Korean goods are sold in regions where they never compete, taking into account all relevant conditions of competition, with the other subject goods or with the like goods. Also, the Tribunal typically makes a cumulative assessment of the effect of the subject goods from all subject countries unless a party requests that imports from a given source not be cumulated and provides evidence indicating that a cumulative assessment would not be appropriate. See *Waterproof Footwear and Waterproof Footwear Bottoms* (7 January 2003), NQ-2002-002 (CITT) at 7. In this inquiry, there was no request to separately assess the effect of the dumping of the subject goods from Korea, and the Tribunal found no reason to proceed otherwise.

also accepted that, although limited, the domestic producers of rebar do make sales of rebar into the western market, including British Columbia. Given the evidence indicating that the subject goods from Turkey are also present in Western Canada, the Tribunal finds that the Chinese and Korean goods do compete amongst themselves and, at least minimally, with Turkish rebar and domestic goods in Western Canada.

- Domestic goods and the subject goods from Turkey do compete against each other in the eastern market and, as the evidence reveals, following the entry of Chinese rebar through the St. Lawrence Seaway, also compete with the subject goods from China in Central or Eastern Canada.
- Although specific geographical realities exist in the Canadian rebar market, the varying presence of both the subject goods and like goods, at both ends of the country, notwithstanding the different ports of entry, and the fact that the subject goods and like goods appear to compete for the same sales, the same projects, through the same fabricators, distributors (which are themselves at times geographically dislocated from the final application) and end users, allows the Tribunal to make an assessment of the cumulative effect of the dumping of the subject goods from the three subject countries.

110. As a result, the Tribunal will proceed with a single injury analysis to determine the effect of the dumping of the subject goods from the cumulated countries on the domestic industry.

CROSS-CUMULATION

111. The Tribunal must now determine whether it will cross-cumulate the effect of the subsidizing of the subject goods from China with the effects of the dumping of the subject goods from the three subject countries. There are no legislative provisions that directly address the issue of cross-cumulation of the effects of both dumping and subsidizing. However, as noted in previous cases,[55] the effects of dumping and subsidizing of the same goods from a particular country are manifested in a single set of injurious price effects and it is not possible to isolate the effects caused by the dumping from the effects caused by the subsidizing. In reality, the effects are so closely intertwined as to render it impossible to allocate discrete portions to the dumping and the subsidizing respectively. Therefore, having not received any arguments from the parties opposed that it should depart from its long-standing practice in this regard, the Tribunal will make a cumulative assessment of the effects of the dumping and subsidizing of the subject goods.

112. The Tribunal will therefore consider that the effects of the dumping and subsidizing of the subject goods from China are manifested in a single set of effects, and it does not deem it possible to assess those effects separately.

INJURY ANALYSIS

113. Subsection 37.1(1) of the *Special Import Measures Regulations*[56] prescribes that, in determining whether the dumping and subsidizing have caused material injury to the domestic industry, the Tribunal is to consider the volume of the dumped and subsidized goods, their effect on the price of like goods in the domestic market, and their resulting impact on the state of the domestic industry. Subsection 37.1(3) also

55. See, for example, *Copper Rod* (28 March 2007), NQ-2006-003 (CITT) at para. 48; *Seamless Carbon or Alloy Steel Oil and Gas Well Casing* (10 March 2008), NQ-2007-001 (CITT) at para. 76; *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) at para. 147.
56. S.O.R./84-927 [*Regulations*].

directs the Tribunal to consider whether a causal relationship exists between the dumping and subsidizing of the goods and the injury on the basis of the factors listed in subsection 37.1(1), and whether any factors other than the dumping and subsidizing of the goods have caused injury.

Import Volume of Dumped and Subsidized Goods

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

115. The domestic producers submitted that there has been a significant increase in the volume of imports of dumped and subsidized subject goods into Canada, both in absolute terms and relative to domestic production and consumption. Further, they claim that imports from the subject countries have displaced higher-priced imports from non-subject countries.

116. The domestic producers also submitted data from the Department of Foreign Affairs, Trade and Development (DFATD) which indicate that approximately 100,000 metric tonnes of the subject goods from China and Turkey were imported in August 2014.[57]

117. Upon request by Gerdau, the Tribunal sent requests for information to all importers that had replied to the Tribunal's importers' questionnaire to obtain the volume of any imports of the subject goods in the period between the end of the POI and the CBSA's preliminary determinations on September 11, 2014.[58] The Tribunal also requested information as to their inventories of the subject goods as of either August 31, 2014, or September 11, 2014, as compared to the same respective date in 2013.[59]

118. For its part, the ÇIB submitted that, relative to both domestic production and domestic sales from domestic production, imports from Turkey steadily decreased over the POI.[60]

119. In reply, Gerdau pointed to the volume of Turkish rebar that was imported in August 2014 as an indication that imports from Turkey are not exiting the market. More importantly, Gerdau submitted that the impact of the volume of the subject imports must be based on an assessment of the subject imports as a whole. Specifically, Gerdau proposed that "[t]he fact that more recently importers have increased purchases of Chinese product does not undo the injury caused by [earlier] Korean and Turkish exports."[61]

120. The Tribunal first notes that, as a whole, the domestic market for rebar grew by 15 percent over the POI.[62]

121. The data on the Tribunal's record show that the absolute volume of imports of the subject goods, for its part, increased by 144 percent between 2011 and 2012, but remained comparatively stable between 2012 and 2013, increasing by only 4 percent. The absolute volume of the subject imports decreased by 22 percent

57. Exhibit NQ-2014-001-B-07, Vol. 11B at 7.
58. Exhibit NQ-2014-001-01, Vol. 1.
59. Exhibit NQ-2014-001-RFI-01 to RFI-07, Vol. 9.
60. Exhibit NQ-2014-001-E-01 at paras. 55-56, 59, Vol. 13.
61. Exhibit NQ-2014-001-B-09 at para. 14, Vol. 11B.
62. Exhibit NQ-2014-001-06A, Table 90, Vol. 1.1A.

in interim 2014 as compared to interim 2013, but the volume imported in the first half of 2014 was already higher than the volume imported for all of 2011.[63]

122. In contrast, between 2011 and 2012, imports from non-subject countries increased, and then decreased in 2013, when imports of the subject goods were further increasing, albeit modestly. This would seem to support the domestic producers' claim that imports of the subject goods were displacing higher-priced imports of non-subject goods. However, the Tribunal notes that, in interim 2014, non-subject imports increased slightly over the same period in 2013, while imports of the subject goods decreased by 22 percent.[64]

123. The volumes of imports of the subject goods followed similar trends whether considered in absolute terms or relative to domestic production and consumption. Relative to domestic production, the volume of imports of the subject goods increased substantially between 2011 and 2013. This ratio decreased in interim 2013 as compared to interim 2014, but remained higher than it was in full year 2013. The trends in the ratios of the volume of imports of the subject goods relative to domestic sales are similar.[65]

124. Despite decreases in interim 2014, the data indicate that there was a significant increase in the volume of imports of the subject goods over the POI, both in terms of absolute volume and relative to domestic production and consumption.

125. In addition, the replies to the Tribunal's RFIs confirmed that there was a surge of low-priced imports of the subject goods in the period leading up to the CBSA's preliminary determinations. Specifically, the responses revealed that several importers brought in the subject goods totalling 168,111 metric tonnes in the period between July 1 and September 11, 2014, at an average price of CAN$662 per metric tonne.[66]

126. Specifically with respect to these volumes, the Tribunal heard testimony that importers in Ontario and Quebec often import large volumes of rebar in November or December, before navigation on the Great Lakes closes for the winter, in order to ensure that there is sufficient rebar on hand to continue work on construction projects in those provinces in the winter months. This year, however, because of the potential imposition of provisional duties in September, these importations appear to have arrived in August rather than in November or December. A witness testified that the volumes imported into Eastern Canada in August 2014 were comparable to those imported in the fourth quarter of 2012.[67]

127. The Tribunal accepts that some of these importations were driven by the inquiry process itself and will not consider that this surge in imports in the third quarter of 2014 reflects a clear trend which will continue at similar rates to the end of 2014. However, the fact remains that, as a result of this unusual volume of the subject goods imported between July and September 2014, the total import volume for 2014 will be larger as compared to 2013. Also, the Tribunal cannot ignore or discount the demonstration of the relative ease at which large volumes of the subject goods can enter the Canadian market over short periods and on such short notice.

128. In sum, the data on the record of this inquiry show that significant volumes of the subject goods were imported into Canada during and after the POI.

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63. *Ibid.*, Table 80; Exhibit NQ-2014-001-07A (protected), Table 79, Vol. 2.1A.
64. Exhibit NQ-2014-001-07A (protected), Table 80, Vol. 2.1A.
65. *Ibid.*, Table 89.
66. Exhibit NQ-2014-001-44, Vol. 1A at 166.
67. *Transcript of Public Hearing*, Vol. 3, 17 December 2014, at 345, 358-59.

Price Effects of Dumped and Subsidized Goods

129. Paragraph 37.1(1)(*b*) of the *Regulations* directs the Tribunal to consider the effects of the dumped and subsidized goods on the price of like goods and, in particular, whether the dumped and subsidized goods have significantly undercut or depressed the price of like goods, or suppressed the price of like goods by preventing the price increases for those like goods that would otherwise likely have occurred. In this regard, the Tribunal distinguishes the price effects of the dumped or subsidized goods from any price effects that have resulted from other factors.

130. The domestic producers submitted that the dumped and subsidized subject goods have undercut the prices of domestic goods and caused lost sales, price depression and price suppression. They have relied heavily on account-specific injury allegations to support these claims.

131. The ÇIB submitted that the pricing trends in the domestic industry are unclear and that there is some evidence that the domestic producers are the price leaders in the Canadian market.

132. In reply, the domestic producers submitted that the data on the Tribunal's record clearly establish that the subject goods were the price leaders in the Canadian market throughout the POI. ArcelorMittal and AltaSteel also suggested that a single low-priced offer, with no attendant purchase, can nevertheless have a significant ripple effect on pricing in the market, driving prices down for that immediate period.

Price Undercutting

133. ArcelorMittal and AltaSteel submitted that the average per-tonne selling prices of the subject imports have consistently undercut the average per-tonne domestic selling prices in the Canadian market. ArcelorMittal and AltaSteel also submitted that they compete directly with import prices and that the price difference was significant.

134. Looking at the data on average annual per-tonne pricing in the investigation report, sales from imports of the subject goods appear to have undercut sales from domestic production throughout the POI. Sales from imports of the subject goods also appear to have been priced lower than sales of imports from non-subject countries throughout the POI, as the prices of non-subject imports were generally higher than the prices for sales from domestic production.[68]

135. The Tribunal collected information on the average annual selling prices per tonne for three different trade levels: sales to service centres/distributors, sales to fabricators, and sales to retailers. On an aggregate level, sales of the subject goods to service centres/distributors and to fabricators undercut domestic sales throughout the POI, except for sales to service centres/distributors in 2011.[69] There were no domestic sales from domestic production to retailers; therefore, a comparison at this trade level is not possible.[70]

136. The Tribunal also identified eight benchmark products and collected data on domestic sales and imports of these products to two different trade levels (service centres/distributors and fabricators).[71] For

68. Exhibit NQ-2014-001-07A (protected), Table 96, Vol. 2.1A.
69. *Ibid.*, Tables 99, 101.
70. *Ibid.*, Table 103.
71. 10M 400W Straights – Category 1 – Uncoated (or Black); 10M 400W Coils – Category 1 – Uncoated (or Black), 15M 400W Straights – Category 1 – Uncoated (or Black), 15M 400W Coils – Category 1 – Uncoated (or Black), 20M 400W – Category 1 – Uncoated (or Black) Rebar, 25M 400W – Category 1 – Uncoated (or Black) Rebar, 30M 400W – Category 1 – Uncoated (or Black) Rebar, 35M 400W – Category 1 – Uncoated (or Black) Rebar.

sales of all benchmark products to service centres/distributors, more than half of the possible comparisons had the import price of the subject goods undercutting the domestic selling price; there were only minimal instances where the import price of non-subject goods was lower.[72]

137. For sales to fabricators, there were a significant number of instances out of the total possible comparisons where the import price of the subject goods undercut the domestic selling price, as compared to a slight number of instances where the import price of non-subject goods was lower.[73]

138. Finally, in order to assess direct competition between the like goods and the subject goods, the Tribunal identified six customers that purchased from both domestic producers and importers, and compared the sales made by each to these common accounts. Of nine instances where comparisons of the unit sales value of the subject imports, non-subject imports and domestic production were possible, the subject goods were the lowest-priced product in five instances. Non-subject imports were the lowest-priced product in three instances and domestically produced goods were the lowest-priced in the remaining one instance.[74]

139. In its recent decision in *Hot-rolled Carbon Steel Plate*,[75] the Tribunal found however that, in order to better isolate the advantage enjoyed by domestic producers in the Canadian market when assessing the degree of price undercutting, any price premium attributable to non-price factors should be deducted from the domestic selling price.[76] The Tribunal has acknowledged in past cases that to be fully weighted, the degree of undercutting has to exceed any price premium/value-added advantage enjoyed by domestic producers in order to be considered significant.[77]

140. Beyond the data on file, the Tribunal heard clear and convincing testimony that the domestic producers enjoy a CAN$25 to CAN$40 premium per metric tonne due to the added value which they qualified in terms of "boots on the ground".[78] Thus, if the domestic offer is within CAN$25 per metric tonne above the offering price of the subject goods, the domestic producers can usually retain that given sale; however, the more the difference in price increases towards the CAN$40 mark, the more difficult it becomes for the domestic producers to retain the sale; testimony was almost unanimous that, beyond a CAN$40 difference, the sale will almost always be lost.[79]

141. Reflecting its approach in previous cases,[80] in order to better isolate actual price undercutting effects, the Tribunal decided to deduct a representative CAN$30 per metric tonne in order to account for the price premium component allegedly enjoyed by domestic producers from the average annual price per tonne

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72. Exhibit NQ-2014-001-07C (protected), Table 138, Vol. 2.1A.
73. *Ibid.*, Table 143.
74. Exhibit NQ-2014-001-07A (protected), Tables 96, 154, Vol. 2.1A.
75. (20 May 2014), NQ-2013-005 (CITT).
76. *Ibid.* at paras. 102, 104.
77. See, for example, *Carbon Steel Pipe Nipples and Adaptor Fittings* (15 July 2008), RR-2007-003 (CITT) at para. 69 where the Tribunal stated as follows: "The testimony of both parties and Tribunal witnesses expressed the view that Chinese imports would easily undercut current domestic prices well beyond the approximate 10 to 15 percent premium that purchasers who are currently buying domestically produced goods or non-subject imports are willing to pay for non-price considerations."
78. *Transcript of Public Hearing*, Vol. 1, 15 December 2014, at 41, 64, Vol. 2, 16 December 2014, at 268.
79. *Transcript of Public Hearing*, Vol. 1, 15 December 2014, at 41-42, 47, 68, Vol. 4, 18 December 2014, at 536-37.
80. See, for example, *Carbon Steel Welded Pipe* (25 July 1996), RR-95-002 (CITT) at 10; *Stainless Steel Wire* (29 July 2009), RR-2008-004 (CITT) at para. 125; *Bicycles and Frames* (9 December 2002), RR-2002-001 (CITT) at 13.

of sales from domestic production. This, in turn, revealed that the degree to which the subject goods undercut domestic prices was in fact significantly less than set out above. Indeed, price undercutting was completely eliminated in 2011, along with interim 2014, and substantially lessened in 2012 and 2013 (both interim 2013 and full year 2013).[81]

142. When these numbers are broken down by trade level, the CAN$30 per metric tonne price premium component also eliminates price undercutting at the aggregate level in interim 2014 for sales to service centres/distributors. For sales to fabricators, the deduction of the price premium at the aggregate level also eliminates price undercutting in 2011.[82]

143. The Tribunal also considered the impact of a CAN$30 per metric tonne price premium on the account-specific injury allegations submitted by the domestic producers. The Tribunal believes that it had sufficient information to make the comparison in relation to 45 injury allegations. The comparison showed that, when the prices were adjusted by deducting the premium, the domestic industry's prices became lower than those of the subject goods in four instances.

144. In some instances, the domestic producers also agreed that the Tribunal needed to account for inland shipping charges in its price evaluations, as they routinely sold their rebar "delivered" to customers. In contrast, much of the pricing information available for the subject goods was reported as FOB destination port (e.g. to the docks at Oshawa, Ontario, or Sorel, Quebec). This, in fact, prompted the Tribunal to further abate amounts (supplied by the domestic producers themselves) in order to isolate actual head-to-head pricing competition, as the subject goods must also account for inland freight at some point in their journey to the client. Accordingly, the Tribunal found that, if the additional inland freight was removed from the pricing of the like goods, the domestic industry found itself in an even better position to capture additional sales.

145. In sum, a first glance at the data reveals that price undercutting appears to be present at the aggregate level throughout the POI. However, taking into account the price premium component, which applies to all domestic producers, and further adjusting the prices to account for costs related to inland shipping, the severity or extent of the actual price undercutting happening in the market appears to be significantly reduced. With this specific regard applied to both the aggregate prices and the injury allegations themselves, the Tribunal cannot conclusively find that the subject goods undercut domestic prices significantly during the POI.

Price Depression

146. With respect to price depression, ArcelorMittal and AltaSteel submitted that low-priced offers of the subject goods in the Canadian market forced them to reduce their prices in order to secure sales. The domestic industry relied solely on account-specific injury allegations to support its claims of price depression.

147. The Tribunal has already cautioned the domestic producers regarding the quality of the evidence submitted in support of these specific injury allegations in the reasons for the preliminary determination of injury preceding this inquiry.[83]

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81. Exhibit NQ-2014-001-07A (protected), Tables 144, 146, 148, 150, 152, 154, Vol. 2.1A.
82. *Ibid.*, Tables 99, 101.
83. *Concrete Reinforcing Bar* (12 August 2014), PI-2014-001 (CITT) at para. 61.

148. The domestic producers responded by explaining that the nature of their industry and the sensitivity of the information involved meant that they could usually only get this type of information from their customers verbally. They further postulated that this information could be verified by cross-checking it against DFATD import data.

149. In *Hot-rolled Carbon Steel Plate*, the Tribunal made the following comment regarding unsubstantiated account-specific injury allegations:

> 106. . . . In reviewing these [import activity reports (IARs)], the Tribunal found them to be generally wanting in key details, such as *delivery price, base price, delivery location and company to whom the goods were offered, as well as volume offered and sold by the foreign competitor and the domestic industry, and the name of the foreign competitor, with not much in the way of corroborating evidence on the written record.* Moreover, in at least one instance, the IAR appeared to involve a plate specification which the witness for the foreign producer confirmed was in fact not produced by its mill.
>
> 107. In this regard, the Tribunal finds it curious that Essar Algoma was unable to provide reliable contemporaneous records in support of its IARs. Given the frequency of price quotations, the specifications and other considerations that factor into a price quotation and the importance of this intelligence-gathering work to the ongoing operational viability of a plate mill, the Tribunal finds the evidence of the witnesses for Essar Algoma that it is all "done verbally", which was confirmed by the witness for Samuel, somewhat surprising.
>
> 108. Despite Essar Algoma's submission that, in at least one case, its pricing intelligence, as reflected in the IAR, was very accurate and that this indicated the general reliability of the IARs, the Tribunal cannot infer from this one example alone that all the IARs are equally reliable. In light of these considerations, the Tribunal can only ascribe limited weight to this evidence.
>
> [Emphasis added, footnotes omitted]

150. In this inquiry, the IARs submitted by some of the domestic producers appear to contain more of the "key details" than those described in the above citation and, for price depression allegations, can be linked to specific transactions between the domestic industry and their customers (as supported by invoices)[84] or to the prices reported by specific purchasers and importers in their questionnaire responses.[85] On the other hand, some of the documentation also lacks important details and appears to be based on third-hand information.[86]

151. While the IARs in the present case are somewhat more detailed than some which the Tribunal has seen in the past, they remain largely based on hearsay evidence emerging out of negotiations with purchasers that were probably attempting to get a lower price from the domestic producers by applying pressure tactics. In addition, the domestic producers have, in several instances, failed to provide an "apples to apples" comparison to their account-specific injury allegations by neglecting to factor in the direct comparative shipping costs (where applicable).

152. The lack of details in some of the account-specific injury allegations required the Tribunal to seek additional information through questions to witnesses at the hearing. However, at the hearing, the witnesses could often only offer estimates. In their testimony, witnesses for ArcelorMittal proceeded to revise certain

84. Exhibit NQ-2014-001-A-08 (protected), Attachments 1-22, Vol. 12A.
85. Exhibit NQ-2014-001-B-08 (protected) at 1-36, Vol. 12B; Exhibit NQ-2014-001-B-02 (protected) at paras. 24-46, Vol. 12A.
86. See, for example, Exhibit NQ-2014-001-C-06 (protected), Attachment 3, Attachment 4 at 1, Attachment 5 at 1, Vol. 12B.

parts of the IARs themselves. At times, they invited the Tribunal to account for a given amount in a given comparison, but to deduct that same amount in others. At times, they asked the Tribunal to further factor in a certain cost and then to compare that amount with a given price. At times, a given price was asked to be compared with another price, recognizing that the initial price contained within the IAR was not a direct comparison; sometimes, no comparative price was given at all.[87] Recognizing that the witnesses were intent on being helpful, the Tribunal is nevertheless of the mind that this exercise, as a whole, belies the relative quality of this evidence.

153. The Tribunal, therefore, relied on the account-specific allegations only where the information contained therein was confirmed through testimony and secondary sources of information, and where they accord with the greater trends in the market. On balance, the allegations indicate that the domestic producers had to reduce their prices in order to compete and retain the business of certain customers in some instances during the POI, which suggests that there was some price depression. However, these allegations, in and of themselves, do not support a definitive conclusion that price depression was significant throughout the POI.

154. Turning to the other evidence on the record, the Tribunal notes that the changes in the overall per unit selling price of domestically produced goods do not consistently correspond to the changes in the overall selling price of the subject goods. The selling price of the subject goods decreased by 6 percent in 2012 as compared to 2011, while the selling price of domestically produced goods increased slightly. In 2013, the selling prices of both domestic goods and the subject goods decreased. In interim 2014, the selling price of the subject goods increased by 3 percent as compared to interim 2013, while the selling price of domestically produced goods decreased. The same general pattern in the changes in the selling prices is observed when the data are broken down by trade level.[88]

155. It is therefore difficult to tie the movement of domestic prices securely to the pricing behaviour of the subject goods. While the Tribunal recognizes that the subject goods are generally lower-priced, it cannot come to the conclusion that a significant price depression occurred throughout the POI because of the lack of correlation in comparative pricing trends. The Tribunal does however note that there is some indication of price depression towards the end of the POI.

Price Suppression

156. With respect to price suppression, ArcelorMittal and AltaSteel submitted that, except for 2012, the domestic industry was unable to raise its net selling price in response to changes in the cost of goods manufactured (COGM).

157. The evidence on the Tribunal's record does not fully support this claim. To assess price suppression, the Tribunal compared the changes in the domestic industry's consolidated COGM, on a per unit basis, to the changes in the weighted average selling prices of the like goods, to determine if domestic producers have been able to increase selling prices in step with increases in their COGM.

158. The evidence on the Tribunal's record is that the domestic industry's COGM actually decreased throughout the POI, except in interim 2014, when it increased slightly over interim 2013. This increase did coincide with a decrease in both the average domestic selling price and the net sales price per tonne.[89]

87. *Transcript of In Camera Hearing*, Vol. 1, 15 December 2014, at 9-13, 35-41, 55-56, 58-59.
88. Exhibit NQ-2014-001-07A (protected), Tables 97, 100, 102, Vol. 2.1A.
89. Exhibit NQ-2014-001-07C (protected), Tables 156, 158, Vol. 2.1A; Exhibit NQ-2014-001-07A (protected), Table 96, Vol. 2.1A.

159. The only indication of price suppression, therefore, appears in interim 2014. Contrary to the domestic producers' position, there is nothing to suggest that price suppression occurred throughout the POI; there is however limited evidence indicating a trend towards price suppression at the end of the POI.

Summary of Price Effects

160. Overall, the above analysis demonstrates that, over the POI, there was a degree of price undercutting, although the Tribunal did not find the evidence of price undercutting to be conclusive. In addition, there was no significant price depression or suppression, although there was a trend towards increasing price suppression and price depression in the last period of the POI. As a result, the Tribunal finds that the imports of the subject goods did not have a significant effect on the pricing of the like goods in the domestic market.

Resultant Impact on the Domestic Industry

161. Paragraph 37.1(1)(*c*) of the *Regulations* requires the Tribunal to consider the resulting impact of the dumped and subsidized goods on the state of the domestic industry and, in particular, all relevant economic factors and indices that have a bearing on the state of the domestic industry.[90] These impacts are to be distinguished from the impact of other factors also having a bearing on the domestic industry.[91] Paragraph 37.1(3)(*a*) requires the Tribunal to consider whether a causal relationship exists between the dumping or subsidizing of the goods and the injury, retardation or threat of injury, on the basis of the volume, the price effect, and the impact on the domestic industry of the dumped or subsidized goods.

162. The domestic producers submitted that imports of the dumped and subsidized subject goods have resulted in lost sales, loss of market share, loss of revenue, a detrimental impact on gross margins and profits, and decreased production and capacity utilization.

163. The domestic producers submitted that they lost market share over the course of the entire POI and that higher-priced imports from the United States also lost a similar amount of market share over the same period, while the subject goods gained a significant amount of market share.

164. According to the domestic producers, the cost of steel increased in 2011, but the domestic industry was unable to raise its prices to cover this increased cost due to the presence of dumped and subsidized goods, which resulted in a negative impact on gross margins and net income in 2011. As steel costs eased in mid-2012, the domestic industry's performance improved.

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

91. Paragraph 37.1(3)(*b*) of the *Regulations* directs the Tribunal to consider whether any factors other than dumping or subsidizing of the subject goods have caused injury. The factors which are prescribed in this regard are (i) the volumes and prices of imports of like goods that are not dumped or subsidized, (ii) a contraction in demand for the goods or like goods, (iii) any change in the pattern of consumption of the goods or like goods, (iv) trade-restrictive practices of, and competition between, foreign and domestic producers, (v) developments in technology, (vi) the export performance and productivity of the domestic industry in respect of like goods, and (vii) any other factors that are relevant in the circumstances.

165. However, due to lost sales and price erosion caused by increasing volumes of the subject imports, the domestic producers still saw a loss of market share and were only able to capture a portion of the overall growth in the apparent market. In 2013, there was a 10 percent contraction in the overall apparent market, but sales of the subject goods were able to increase, while sales from domestic production and sales from imports of non-subject goods decreased.

166. With respect to production and capacity utilization, the domestic producers submitted that their rebar production is not as high as it could have been, absent the presence of the dumped and subsidized subject imports. They submitted that the utilization rate for rebar only increased by a negligible amount over the POI and decreased in the first half of 2014. Finally, the domestic producers submitted that they had excess capacity in 2013 and in the first half of 2014.

167. The ÇIB submitted that the domestic industry showed strong performance indicators throughout the POI. Specifically, they claimed that the domestic producers maintained a "commanding presence" in the market,[92] benefitted from an overall growth in the apparent market, and experienced growth in their production and sales from domestic production.

168. In reply, ArcelorMittal and AltaSteel submitted that the growth in production and sales from domestic production must be considered in the context of the companies' loss of market share, failure to capture the full amount of the growth in the Canadian market over the POI and the increasing volumes of imports of the subject goods.

169. The ÇIB also submitted that the domestic producers have been unable to supply domestic demand and that the domestic construction industry has always needed to rely on imports to fill the gaps in domestic production.

170. In reply, the domestic producers submitted that the Tribunal has repeatedly found that it is not necessary that the domestic industry be able to supply the entire needs of the domestic market in order to establish that it is being injured by dumped and subsidized imports.

Domestic Production

171. The Tribunal wishes to preface its discussion of domestic production with some observations arising from the testimony of the witnesses for Gerdau.

172. It became apparent through the course of the investigation and the subsequent hearing that Gerdau has developed and implemented a product-specific market strategy for rebar which considers the North American market as a whole.[93] The Tribunal has learned that Gerdau's head office for North America is situated in Tampa, Florida, and that some of its plants producing rebar are located in New Jersey, Minnesota, California and Ontario.[94] Testimony revealed that, while Gerdau's sales forces do try to sell material within a certain radius of a given mill,[95] it is fully possible that a Canadian order for rebar could be filled from any of Gerdau's North American rolling mills and not necessarily from one of Gerdau's Canadian operations. These decisions are made by the head office and take into consideration rolling schedules, profitability and the maximization of certain mills in terms of geography and other, more

92. Exhibit NQ-2014-001-E-01 at para. 47, Vol. 13.
93. *Transcript of Public Hearing*, Vol. 2, 16 December 2014, at 166-67.
94. *Ibid.* at 176, 182.
95. *Ibid.* at 176.

intangible factors related to corporate strategy.[96] Gerdau's business model has therefore created a unique situation between Gerdau's imports of rebar from its sister installations in the United States over the POI and its domestic production, not necessarily to the full benefit of the latter.[97]

173. The ÇIB argued throughout the course of these proceedings that this corporate strategy was a major contributor to the poor performance of Gerdau's Canadian mills. It argued that Gerdau's imports from the United States should be included in Gerdau's total domestic production, which would then show an overall healthy growth in its presence in the Canadian market.[98]

174. It did strike the Tribunal as peculiar that a domestic producer would solicit protection under *SIMA* when it deliberately acts in a way that takes away from its own domestic viability by strategically preferring, in some instances, other assets outside Canada to serve the Canadian market. The Tribunal does consider this as another potential explanation for any apparent injury which may have been suffered by the Canadian industry and by Gerdau, in particular.

175. Turning to the data on the record, the total domestic production of like goods increased in 2012 over 2011 but then fell in 2013. In interim 2014, domestic production fell slightly as compared to interim 2013. Overall, there was no net decrease in domestic production; in fact, domestic production increased across the entire POI.[99]

176. This increase may be partially explained by the fact that, as a result of its corporate restructuring, AltaSteel decided to refocus its efforts on the production of rebar in 2011-2012.[100] The Tribunal finds this fact somewhat unique, even contradictory to the domestic industry's claims of injury; 2012 was the year when the highest volume of imports of the subject goods entered the Canadian market. For a company to decide to re-orient its production strategy in order to target the rebar market at a time when alleged injury was at its peak certainly raises some questions; it seems at least counterintuitive that a company would consciously redirect its assets and investments to serve a market that is allegedly oppressed by lower-priced imports.

Sales

177. In terms of both volume and value, sales of the like goods increased in 2012 over 2011 but then fell slightly in 2013, although they remained above 2011 levels. In interim 2014, domestic sales from domestic production fell as compared to interim 2013.[101]

178. In comparison, in 2012, the volume and value of sales of the subject goods increased dramatically as compared to 2011, while the volume and value of sales of non-subject imports increased slightly. In 2013, sales of the subject goods continued to increase, but to a lesser extent than was experienced in 2012. During the same period, sales of non-subject imports fell.[102]

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96. *Ibid.*, at 184-85.
97. Exhibit NQ-2014-001-07 (protected), Tables 78-79, Vol. 2.1.
98. Exhibit NQ-2014-001-E-02 (protected) at paras. 51-53, Vol. 14; *Transcript of Public Hearing*, Vol. 4, 18 December 2014, at 608-611.
99. Exhibit NQ-2014-001-07A (protected), Table 78, Vol. 2.1.
100. *Transcript of Public Hearing*, Vol. 2, 16 December 2014, at 264, 290.
101. Exhibit NQ-2014-001-07A (protected), Tables 90-91, 93-94, Vol. 2.1A.
102. *Ibid.*

179. In interim 2014, sales of the subject goods decreased, while sales of non-subject imports increased as compared to interim 2013.[103]

180. Overall, there was no decline in domestic sales over the POI, despite a significant increase in sales of the subject goods. In addition, the decrease in domestic sales in 2014 seems to be attributable to sales of non-subject imports rather than the subject goods.

181. Considered in the context of overall trends in the Canadian market, the increasing sales by all actors in 2012 correspond to a 27 percent increase in the apparent market, and the domestic producers were able to capture a significant proportion of this market growth, despite high volumes of imports of the subject goods.

182. While the market contracted by 10 percent in 2013, sales of the like goods and non-subject imports also decreased, while sales of the subject goods continued to increase, although, as noted above, sales of non-subject imports suffered more than sales from domestic production. Finally, when the market further contracted by 8 percent in interim 2014, it appears that it is the sales of non-subject goods which were responsible for the decrease in domestic sales, rather than sales of the subject goods.[104]

Market Share

183. The domestic producers have seen an overall loss in market share. This loss appears to correspond to the increasing presence of the subject goods, as they have gained market share over the POI, whereas imports of non-subject goods have lost more market share than domestic goods. For instance, the market share of the subject goods doubled between 2011 and 2012.[105]

184. These trends reversed themselves somewhat in interim 2014, with the domestic producers and the imports of non-subject goods making slight gains, and the imports of the subject goods seeing a corresponding decrease; however, the domestic industry's market share in 2014 was still below its 2011 share.[106]

Profitability

185. The domestic industry's profitability improved in 2012 over 2011 but then declined in 2013, still remaining slightly better than it had been in 2011. The data for interim 2014 show a further downward trend as compared to interim 2013.[107]

186. The Tribunal, however, finds that the domestic producers successfully competed in the market throughout the POI despite the presence of dumped and subsidized goods. In particular, the improvement of the domestic industry's financial situation in 2012, which was also the year with the largest increase in the volumes of dumped and subsidized goods, indicates that, in a strong market, there is no direct correlation between the presence of the subject goods and reduced profitability. That being said, such a correlation potentially appears towards the latter part of the POI with more sustained indicators of declining profitability.

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103. *Ibid.*
104. Exhibit NQ-2014-001-06A (protected), Table 91, Vol. 2.1A; Exhibit NQ-2014-001-07A (protected), Table 91, Vol. 2.1A.
105. Exhibit NQ-2014-001-07A (protected), Tables 92, 95, Vol. 2.1A.
106. *Ibid.*
107. Exhibit NQ-2014-001-07C (protected), Table 156, Vol. 2.1A.

Productivity and Capacity Utilization

187. Productivity expressed as metric tonnes of rebar produced per employee improved in 2012 as compared to 2011, then decreased slightly in 2013 as compared to 2012, but still remained above 2011 levels. In interim 2014, metric tonnes produced per employee increased as compared to interim 2013. Productivity expressed as metric tonnes per hour worked followed the same trends, except in the interim periods.[108]

188. Practical plant capacity remained stable from 2011 to 2012 and then dropped somewhat in 2013. However, plant capacity increased in interim 2014 as compared to interim 2013.[109]

189. Although all the domestic producers had high rates of total capacity utilization throughout the POI,[110] rebar is manufactured on equipment that is also used to make other non-rebar products, such as merchant bar and wire, which generally yield higher profit margins.[111] While the total capacity utilization rate increased at the end of the POI, the capacity utilization rate for rebar remained fairly consistent and fell only slightly in interim 2014 as compared to interim 2013.[112]

190. The Tribunal heard testimony that the production of rebar was scheduled on the basis of forecasted demand, as well as practical plant considerations, such as maintaining the efficient operation of an integrated steel production facility.[113] Since the highest total capacity utilization rate remained below 100 percent,[114] it would seem that the domestic industry does have some excess capacity that could be allocated to rebar production if the conditions were favourable. However, testimony revealed that the domestic producers could potentially fill this excess capacity by rolling more profitable products.[115]

Employment

191. Direct employment increased slightly in 2012 as compared to 2011 and remained the same in 2013 as compared to 2012. Direct employment then fell in interim 2014 as compared to interim 2013. Total employment (direct and indirect) followed a similar trend, the only difference being that there was a slight increase in 2013 instead of no change. Total wages paid also increased over the POI.[116]

192. The presence of the subject goods does not appear to have had any negative effects on employment by the domestic industry.

Investments

193. Investments remained steady between 2011 and 2012, but decreased in 2013; they are projected to decrease in 2014 as well. However, in 2015, investments are anticipated to increase.[117]

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108. Exhibit NQ-2014-001-07I (protected), Table 163, Vol. 2.1A.
109. *Ibid.*, Table 164.
110. Exhibit NQ-2014-001-07E (protected), Table 165, Vol. 2.1A.
111. *Transcript of Public Hearing*, Vol. 2, 16 December 2014, at 163.
112. Exhibit NQ-2014-001-07E (protected), Table 165, Vol. 2.1A.
113. *Transcript of Public Hearing*, Vol. 1, 15 December 2014, at 130-36, Vol. 2, 16 December 2014, at 160, 172, 184, 291.
114. Exhibit NQ-2014-001-07E (protected), Table 165, Vol. 2.1A.
115. *Transcript of Public Hearing*, Vol. 1, 15 December 2014, at 131-36.
116. Exhibit NQ-2014-001-07I (protected), Tables 160, 162, Vol. 2.1A.
117. Exhibit NQ-2014-001-07A (protected), Table 166, Vol. 2.1A.

194. With respect to planned investments, all the witnesses for the domestic producers testified that, as part of large multinational companies, they have to compete internally for investment capital with other sister plants throughout the world. In a depressed rebar market, those investments may not be forthcoming from head offices, as investment decisions are made on the basis of whether the plants are efficient and functioning in a profitable market.[118]

195. The Tribunal does note, however, that investments were continued during the POI, even as the mills were allegedly suffering depressed performance due to the presence of the subject goods.

Materiality

196. The Tribunal will now determine whether the effects of imports of the subject goods noted above are "material", as contemplated in the definition of "injury" under section 2 of *SIMA*. *SIMA* does not define the term "material". However, both the extent of injury during the relevant time frame and the timing and duration of the injury are relevant considerations in determining whether any injury caused by the subject goods is "material".[119]

197. The Tribunal believes that the domestic producers have essentially "weathered the storm" thus far. The analysis above shows that the domestic industry has in fact increased its production and largely maintained its sales volume and value over the course of the POI, despite significant volumes of imports of the subject goods.

198. While the domestic producers did see a loss in market share over the POI, they were still able to capture a significant proportion of growth in the market. The domestic industry also saw increases in productivity and maintained employment and wages throughout the POI.

199. Although there is evidence that the domestic industry has some excess total capacity, the Tribunal is not convinced that this would be allocated to rebar production, as other products with better profit margins are also produced on the same equipment.

200. While performance indicators suggest that the subject goods started to have an adverse impact on the state of the domestic industry at the end of the POI, the Tribunal thus finds that the domestic producers were not impacted in a material way by the presence of the subject goods in the market during most of the POI.

201. Furthermore, while the account-specific injury allegations demonstrate that domestic producers are feeling some pressure from the subject goods in the form of some undercutting and price depression, in many instances, they have nevertheless managed to either maintain sales or limit losses by occasionally lowering their prices, when necessary, which, according to certain witnesses, have been artificially high as compared to international market prices.[120] To date, the Tribunal does not find that this injury has been of such an extent that it can be considered material.

202. Finally, the Tribunal believes that at least some of the data on the record are skewed by the impact of import volumes from Gerdau and AltaSteel's previous rebar production and supply policies. The

118. *Transcript of Public Hearing*, Vol. 1, 15 December 2014, at 62-63, Vol. 2, 16 December 2014, at 180, 240, 273.
119. The Tribunal suggested, in *Certain Hot-rolled Carbon Steel Plate* (27 October 1997), NQ-97-001 (CITT) at 13, that the concept of materiality could entail both temporal and quantitative dimensions, "[h]owever, the Tribunal is of the view that, to date, the injury suffered by the industry has not been *for such a duration* or *to such an extent* as to constitute 'material injury' within the meaning of SIMA" [emphasis added].
120. *Transcript of Public Hearing*, Vol. 3, 17 December 2014, at 341, 349, Vol. 4, 18 December 2014, at 492.

Tribunal finds that the domestic producers are partly responsible for at least some of the negativity in the performance indicators, making it difficult to attribute injury to the dumping and subsidizing in and of themselves.

THREAT OF INJURY ANALYSIS

203. Having found that the dumping and subsidizing of the subject goods have not caused material injury to the domestic industry, the Tribunal must now consider whether they are threatening to cause material injury.

204. In its consideration of this question, the Tribunal is guided by subsection 37.1(2) of the *Regulations*, which prescribes factors to be taken into account for the purposes of its threat of injury analysis.[121] Also of relevance is subsection 2(1.5) of *SIMA*, which indicates that a threat of injury finding cannot be made unless the circumstances in which the dumping and subsidizing of the goods would cause injury are clearly foreseen and imminent.

205. Further, subsection 37.1(3) of the *Regulations* directs the Tribunal to consider whether a causal relationship exists between the dumping and subsidizing of the goods and the threat of injury on the basis of the factors listed in subsection 37.1(2), and whether any factors other than the dumping and subsidizing of the goods are threatening to cause injury.

206. ArcelorMittal and AltaSteel submitted that the evidence on the record supports the conclusion that the domestic industry is threatened with material injury as a result of the dumping and subsidizing of the subject goods from the subject countries.

207. They argued and filed evidence indicating that the international market conditions remain weak; Canadian market demand is flat and is expected to remain so in the near term; imports from the subject countries are increasing and are almost certain to continue to do so considering the massive unused and growing production capacity in the subject countries; the rebar producers in the subject countries are export-oriented, in view of the weakening demand in their home markets, and aggressively price their products in export markets; Korean and Turkish rebar producers are facing increasing competition from low-priced Chinese rebar exports in their home market and traditional export markets; and there are findings against rebar from the subject countries in other jurisdictions.

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121. Subsection 37.1(2) of the *Regulations* reads as follows: "For the purposes of determining whether the dumping or subsidizing of any goods is threatening to cause injury, the following factors are prescribed: (*a*) the nature of the subsidy in question and the effects it is likely to have on trade; (*b*) whether there has been a significant rate of increase of dumped or subsidized goods imported into Canada, which rate of increase indicates a likelihood of substantially increased imports into Canada of the dumped or subsidized goods; (*c*) whether there is sufficient freely disposable capacity, or an imminent, substantial increase in the capacity of an exporter, that indicates a likelihood of a substantial increase of dumped or subsidized goods, taking into account the availability of other export markets to absorb any increase; (*d*) the potential for product shifting where production facilities that can be used to produce the goods are currently being used to produce other goods; (*e*) whether the goods are entering the domestic market at prices that are likely to have a significant depressing or suppressing effect on the price of like goods and are likely to increase demand for further imports of the goods; (*f*) inventories of the goods; (*g*) the actual and potential negative effects on existing development and production efforts, including efforts to produce a derivative or more advanced version of like goods; (*g.1*) the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods; (*g.2*) evidence of the imposition of anti-dumping or countervailing measures by the authorities of a country other than Canada in respect of goods of the same description or in respect of similar goods; and (*h*) any other factors that are relevant in the circumstances."

208. According to ArcelorMittal and AltaSteel, these factors increase the likelihood that the subject countries will export significant volumes of the subject goods to Canada at low prices and cause material injury to the domestic industry in the near future.

209. Gerdau made similar submissions, noting that the remarkable increase in the volume of the subject imports in August 2014 was evidence of the threat of injury posed by the subject goods. It submitted that there is compelling evidence in relation to the relevant factors which demonstrate that the dumping and subsidizing of the subject goods are threatening to cause injury.

210. The ÇIB submitted that the apparent market in Canada is growing and that the data on the general economic indicators summarized in the investigation report show sustained growth in the areas that affect domestic demand for rebar. In particular, it noted the recent increases in building permits (both residential and non-residential).

211. The ÇIB added that, as demand is maintained, pricing in Canada is also showing indications of increases, referring to the more recent unit price data in the investigation report. The ÇIB added that the apparent market share of the domestic industry increased in interim 2014 compared to interim 2013 and that the market share held by imports of the subject goods, in particular the share held by Turkish rebar, decreased significantly in the same period.

212. Finally, the ÇIB argued and provided evidence indicating that the trends in the Turkish market demand for rebar are positive in the near to medium term.

Time Frame

213. In assessing threat of injury, the Tribunal typically considers a time frame of 12 to 18 months, and no more than 24 months, beyond the date of its finding. The Tribunal is not necessarily bound by this time frame, as each case is unique.

214. In this inquiry, the domestic producers emphasized their threat of injury claims in both evidence and argument and stressed that, if the subject goods had not already materially injured the domestic industry, such injury was about to happen soon. It was quite apparent that threat of injury was an important, if not the main, underlying theme of their respective cases. The domestic producers all underscored that the circumstances in which the dumping and subsidizing of the goods would cause injury were clearly foreseeable and imminent.

215. For example, Gerdau stated, in its closing arguments, that the case supporting a threat of injury finding was even more compelling than the case supporting past or present injury, in view of recent developments in the international market and the recent downward trend for rebar prices.[122] The examination-in-chief of the witnesses who testified on behalf of ArcelorMittal also began with questions related to threat of injury as opposed to the injury allegedly already sustained.[123] The Tribunal understood these indicators as a perceived imminence of injury which had been gradually building through the very latter part of the POI.

216. On a more temporal basis, evidence on the record indicates that the lead times for the arrival of the subject goods in Canada after placing a purchase order are fairly short. The subject goods from Turkey

122. *Transcript of Public Hearing*, Vol. 4, 18 December 2014, at 603.
123. *Transcript of Public Hearing*, Vol. 1, 15 December 2014, at 29.

generally arrive in Canada two months after they have been ordered,[124] whereas the time lag between the placement of an order for the purchase of the subject goods from both China and Korea and their actual arrival in Canada varies between two and five months, depending on the specific product ordered.[125] The closure of the St. Lawrence Seaway makes it impossible for shipments to arrive at certain ports along the waterway in winter months. There is evidence that, for the above reason, Turkish goods imported in the fall (usually in November) sometimes stay at the port of Oshawa for a certain period of time before being delivered to end users in Ontario. However, by and large, the subject goods are not kept in inventory for a long period of time and are consumed, at most, within a couple of months of their importation.[126]

217. These elements suggest that the Tribunal should consider a time frame shorter than the next 24 months in its threat of injury analysis. Given the circumstances of this case, the Tribunal considers that it is appropriate to focus on the next 12 to 18 months to assess whether the dumping and subsidizing of the subject goods are threatening to cause injury to the domestic industry.

Likelihood of Increased Dumped and Subsidized Goods and Substantial Disposable Capacity

218. As noted above, there was a significant increase in the volume of imports of subject goods over the POI, both in terms of absolute volume and relative to domestic production and consumption. The absolute volume of imports of subject goods increased by more than 150 percent between 2011 and 2013.[127] While the absolute volume of subject imports decreased in interim 2014 compared to interim 2013, the volume imported in the first half of 2014 was already higher than the total volume imported for all of 2011.[128]

219. Moreover, it is clear that the total volume of imports of the subject goods in 2014 will exceed the volume imported in 2013, given that the responses to the Tribunal's RFIs indicate that over 168,000 metric tonnes of the subject goods were imported into Canada between July 1 and September 11, 2014.[129] This important volume of the subject goods, which was essentially imported in a calendar quarter, is larger than the total volume imported in the first six months of 2014. By adding the recent importation of 168,000 metric tonnes to the known volume of the subject goods imported in the first half of 2014,[130] as of September 11, 2014, the total volume imported in 2014 was already higher than the total volume of imports of the subject goods for all of 2013.

220. While this recent significant increase of dumped and subsidized goods may be attributable, in part, to the need for certain users and fabricators located in Ontario to stockpile rebar in Oshawa in anticipation of the closure of the St. Lawrence Seaway during the winter months,[131] the fact remains that it indicates that exporters in the subject countries at least have the capacity to rapidly increase volumes of rebar destined for Canada if the market conditions warrant and if there is demand for their dumped or subsidized products.

221. The Tribunal cannot ignore, however, that this recent surge in imports of the subject goods occurred after the initiation of the CBSA's investigations and before the imposition of provisional anti-dumping and

124. *Transcript of Public Hearing*, Vol. 3, 17 December 2014, at 328.
125. *Ibid.* at 396-97.
126. *Ibid.* at 329-30, 344-45, 367-68; *Transcript of In Camera Hearing*, Vol. 3, 17 December 2014, at 168-69.
127. Exhibit NQ-2014-001-06A, Table 80, Vol. 1.1A.
128. Exhibit NQ-2014-001-07A (protected), Table 79, Vol. 2.1A.
129. Exhibit NQ-2014-001-44, Vol. 1A at 166.
130. Exhibit NQ-2014-001-07A (protected), Table 79, Vol. 2.1A.
131. However, this rationale would not apply to importers of Chinese or Korean rebar through the port of Vancouver, British Columbia, or of Turkish rebar through the port of Sorel which are open all year.

countervailing duties.[132] This suggests that certain importers, including those that need a constant supply of rebar for use in their fabrication operations during the winter months, deemed it opportune to order the subject goods ahead of their typical schedule to secure access to dumped and subsidized goods for their purposes. At any rate, whatever the cause of this occurrence, the recent increase in the volume of imports of the subject goods indicates that there is continuing demand for dumped and subsidized rebar in the Canadian marketplace.

222. The Tribunal also notes that, according to public information, rebar imports from China and Turkey in August 2014 alone account for over 100,000 metric tonnes where the total apparent annual market for Canada is only 1.0 million to 1.3 million metric tonnes.[133] The recent surge in imports of the subject goods thus demonstrates that it is possible for exporters in the subject countries to quickly disrupt the market by supplying large quantities of dumped rebar over a very short period of time. If anything, this is a clear testament to both inclination and capacity.

223. The chronic global overcapacity situation and the estimated consolidated excess capacity in the subject countries, which is approximately 100 times the size of the Canadian market, are also significant issues to consider. The evidence on the record indicates that there are over 112 million metric tonnes of excess rebar capacity in China alone, which, in itself, is 95 times larger than the Canadian market as a whole.[134] Excess capacity is estimated to be close to 4 million metric tonnes in Korea and approximately 5 million metric tonnes in Turkey, which amounts to levels 3 to 5 times greater than the total Canadian apparent market.[135]

224. Other than in Turkey where, as Mr. Veysel Yayan indicated at the hearing, excess capacity is expected to decrease in the coming years (a period that goes beyond the time frame examined by the Tribunal),[136] there is no evidence that the freely disposable capacity of the exporters from the subject countries will decrease in the near term. While the Tribunal recognizes that not all this excess capacity will logically be used to increase exports of the subject goods to Canada, if even a fraction of this excess capacity is used to increase the presence of dumped and subsidized goods, this can have a significant impact in a relatively small market such as Canada.

225. It is also well established that, in commodity product industries where there are high fixed costs, there is an incentive to maintain a high level of production and capacity utilization in order to achieve economies of scale and reduce average costs. It is generally recognized that this production imperative is operative in the steel industry. In this connection, as long as prices are above the marginal cost of production, a firm may lower its average costs by producing more product. In the face of weak demand or oversupply, a firm may try to export its production beyond the level that clears the domestic market.

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132. Initially, ArcelorMittal and AltaSteel submitted that a massive importation of the subject goods occurred in the 90-day period prior to the CBSA's preliminary determinations on September 11, 2014, and requested that the Tribunal issue a finding to that effect pursuant to paragraphs 42(1)(*b*) and (*c*) of *SIMA*. However, on November 28, 2014, ArcelorMittal and AltaSteel informed the Tribunal that they would not be pursuing a massive importation claim. They also indicated that they were withdrawing their allegations and submissions in this respect.
133. Exhibit NQ-2014-001-A-07 at paras. 50-52, Vol. 11.
134. Exhibit NQ-2014-001-A-03 at paras. 27-28, Vol. 11; Exhibit NQ-2014-001-06A, Tables 76, 90, Vol. 1.1A.
135. Exhibit NQ-2014-001-A-03 at paras. 41, 51, Vol. 11; *Transcript of Public Hearing*, Vol. 4, 18 December 2014, at 478, 510.
136. *Transcript of Public Hearing*, Vol. 4, 18 December 2014, at 495.

226. There is evidence that this production imperative and incentive to export, as long as the export price covers variable costs and makes a contribution to fixed costs, exists in the rebar sector.[137] Other evidence indicates that there was decreasing demand for rebar in China and Korea and that production will continue to outpace consumption by a wide margin in the three subject countries.[138] Accordingly, the Tribunal finds that high levels of exports of rebar from the three subject countries can be expected to continue in the near term.

227. There is also evidence indicating that other export markets will not be readily available to absorb rebar originating in or exported from either China, Korea or Turkey. In this regard, there are a number of anti-dumping or countervailing measures concerning goods imported from the three subject countries or in respect of similar goods in other jurisdictions.[139] These include findings in the United States against the dumping of Chinese rebar and the subsidizing of Turkish rebar. In addition, Malaysia is currently investigating the dumping of rebar from China and Korea, and Australia has initiated a dumping investigation against rebar from Turkey and Korea. Egypt (one of Turkey's largest export markets for rebar) began a safeguard investigation on rebar imports from Turkey in October 2014, and Morocco has a safeguard measure in place against rebar from which Turkey is no longer exempt.[140]

228. These trade measures and actions will limit the options of exporters from the three subject countries and are likely to increase the likelihood that they will look to sell rebar in other export markets such as Canada. The evidence also indicates that the volume of Turkish exports to the United States increased since the U.S. authorities issued a finding, in September 2014, that the Turkish exporters were not dumping rebar in the United States.[141]

229. Also, Mr. Vaughan stated that, since the finding in the United States, in which Turkish rebar was found to be subsidized but not dumped, the prices of Turkish rebar have decreased significantly and Turkish exporters continue to ship excessive volumes to the United States.[142] This indicates, as Mr. Yayan confirmed, that the Turkish industry will export rebar to maintain capacity utilization if a market is attractive.[143]

230. On the basis of this evidence, the Tribunal finds that the United States is an attractive export market for Turkish producers and that, as another North American market where the rebar prices are recognized as

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137. Exhibit NQ-2014-001-A-03 at paras. 91-92, Vol. 11; *Transcript of Public Hearing*, Vol. 1, 15 December 2014, at 32-33.
138. Exhibit NQ-2014-001-A-03 at paras. 24-27, 42-44, 52-56, Vol. 11. While Mr. Yayan testified that Turkish consumption of domestic rebar is expected to increase in the coming years, he submitted evidence that Turkey currently internally consumes about 60 percent and exports 40 percent of its rebar production. He suggested that Turkey will increase its domestic consumption to 70 percent, but did not provide a time frame for this to occur. Accordingly, the Tribunal is unable to conclude that the current Turkish allocation of production between domestic consumption and exports will drastically change in the next 12 to 18 months. Even accepting his evidence that the domestic consumption of rebar in Turkey will increase by 4 percent in 2014, assuming that its current production of 20 million metric tonnes remains stable and that this increase in consumption would be fulfilled exclusively by Turkish rebar, Turkey would still produce a substantial volume of rebar in excess of its domestic consumption. Nothing suggests that this will change in the near to medium term. See *Transcript of Public Hearing*, Vol. 4, 18 December 2014, at 478-79, 495, 510, 514.
139. Exhibit NQ-2014-001-06A, Vol. 1.1A at 3; Exhibit NQ-2014-001-A-01 at paras. 274-79 (and evidence referred to therein), Vol. 11.
140. *Transcript of Public Hearing*, Vol. 1, 15 December 2014, at 33.
141. *Transcript of Public Hearing*, Vol. 4, 18 December 2014, at 498.
142. *Transcript of Public Hearing*, Vol. 2, 16 December 2014, at 249-50.
143. *Transcript of Public Hearing*, Vol. 4, 18 December 2014, at 497-98.

being higher,[144] Canada is also likely to be such an attractive market for Turkish producers in the absence of a threat of injury finding.

231. The Tribunal also notes that most producers of rebar are able to produce both rebar and other long steel products using the same equipment. In fact, the domestic producers provided uncontroverted evidence that most machinery used to produce rebar can also be used to produce a variety of other products, such as wire rod, flat bars and merchant bars.[145] As a result, trade remedy findings in other jurisdictions against imports from the subject countries, such as wire rod, might potentially exacerbate the pressure experienced by producers in those countries to switch to the production of rebar products. In other words, the Tribunal cannot ignore that the potential for product shifting exists in the circumstances of this case.

232. Another relevant factor considered by the Tribunal is the increasing competition from Chinese exporters of rebar in a multitude of world markets. There is specific evidence that China's rebar exports continue to exert pressure on the rebar industries within the other subject countries, posing challenges to their ability to compete in their own domestic markets and traditional export markets.[146]

233. In this regard, Mr. Henry Wegiel noted, in his witness statement and attached supporting evidence, that Asian countries, including Korea, are predominantly affected by the surge of Chinese steel exports, including rebar.[147] With respect to Turkey, while Mr. Yayan indicated that the level of current Chinese rebar exports to Turkey is low, he stated, however, that (1) Turkish exporters are facing competition from high volumes of low-priced Chinese products in domestic and international markets, (2) because of exceptionally low Chinese prices, Turkey has "lost the Gulf market", but was in the process of trying to win back former customers in that region due to the quality of its products, and (3) China was essentially "destroying the markets" with its sustained low-price offerings.[148] This is consistent with other evidence on the record indicating that Turkey is facing increasing competition from China in its traditional export markets.[149]

234. This situation creates a domino effect whereby producers in the subject countries must turn to other markets in which to sell their goods. As indicated above, Chinese rebar producers aggressively pursued regional export markets in Asia, the Middle East and other markets such as Canada, as evidenced by the surge in imports from China in August 2014, and will likely continue to do so. This scenario is not likely to change in the near future, given the fact that Chinese rebar demand is weakening, such that its internal market for rebar is not expected to be as robust as in recent years.[150] As such, it is likely that, in the next 12 to 18 months, exporters in the three subject countries will turn to markets like Canada in order to export rebar products.

235. While there is limited information on the record concerning the inventories of the subject goods, Gerdau provided evidence indicating that Korean inventories of the subject goods are increasing (currently standing at approximately 400,000 metric tonnes) and sit above levels considered to be adequate.[151] Thus, in

144. *Ibid.* at 492, 498.
145. *Transcript of Public Hearing*, Vol. 1, 15 December 2014, at 28, 76-78, 129-30, Vol. 2, 16 December 2014, at 277-79.
146. Exhibit NQ-2014-001-A-03 at paras. 22-23, Vol. 11.
147. *Ibid.* at paras. 45-46.
148. *Transcript of Public Hearing*, Vol. 4, 18 December 2014, at 484-85, 502-503. Mr. Yayan also confirmed that political problems in neighbouring countries created great difficulties for Turkey in exporting rebar to its traditional markets.
149. Exhibit NQ-2014-001-A-03 at paras. 60-65 and attachment 23, Vol. 11.
150. *Ibid.* at paras. 24-27.
151. Exhibit NQ-2014-001-B-08 (protected) at 85-88, Vol. 12B.

view of the evidence concerning the weakening market conditions for rebar in Korea,[152] it is likely that Korean producers will seek opportunities to sell this rebar in any available export market.

236. In view of the foregoing considerations and the fact that the price of rebar is known to be higher in the Canadian market than in other world markets,[153] Canada is likely to be an attractive destination for exporters of the subject goods in the next 12 to 18 months. Accordingly, the Tribunal finds that there is a likelihood of an imminent substantial increase in imports of the subject goods into Canada.

Likely Price Effects and Performance of the Domestic Industry

237. As noted above, the adverse price effects of the subject goods were noticeable at times during the course of the POI in the form of price undercutting, and in the form of price depression, becoming particularly evident in the latter part of the POI. There are also clearer indications of price suppression in interim 2014. Moreover, the evidence indicates that the subject goods were the price leaders in the market during the POI, as their prices were consistently lower than the prices of the domestic producers.[154]

238. In response to the offers for the sale of the subject goods, the evidence indicates that the domestic producers often chose to reduce their prices in order to compete and retain the business of certain customers.[155] This strategy already had an adverse impact on the domestic industry's profitability during the POI. Indeed, profitability as a whole, declined in 2013 and data for interim 2014 show a further significant downward trend as compared to interim 2013.

239. There is no indication that prices of the subject goods are likely to increase in the next 12 to 18 months. To the contrary, the average unit value of the subject goods imported between July 1 and September 11, 2014, was CAN$662 per metric tonne,[156] and witnesses at the hearing reported that Chinese and Turkish rebar prices are currently very low. For example, Mr. Clifford Sacks of Acierco KSE Inc. confirmed that Turkish mills' FOB rebar prices are currently below CAN$500 per metric tonne; he also noted that the price of Chinese rebar is even lower than what he described as the prevailing international price.[157] The recent availability of both Turkish and Chinese rebar at very low prices is corroborated by confidential evidence on the record.[158]

240. Given these recent developments, the Tribunal finds that the prices of the subject goods will remain significantly lower than those of domestic prices, which will need to continue to decrease in order for the domestic industry to remain competitive. Accordingly, the projected increased imports of the subject goods are likely to have a significant depressing effect on the prices of the like goods in the very near future.

241. As discussed above, while the domestic industry managed to "weather the storm" during the POI and has yet to sustain losses that amount to material injury, the Tribunal is of the view that the domestic

152. *Ibid.* at 81-83.
153. *Transcript of Public Hearing*, Vol. 1, 15 December 2014, at 30, Vol. 3, 17 December 2014, at 316-18, Vol. 4, 18 December 2014, at 492.
154. Exhibit NQ-2014-001-07A (protected), Tables 96, 99, 101, 103, 143, Vol. 2.1A; *Transcript of Public Hearing*, Vol. 1, 15 December 2014, at 39-40.
155. Exhibit NQ-2014-001-A-08 (protected) at paras. 14-45, Vol. 12A; Exhibit NQ-2014-001-C-06 (protected) at paras. 20-33, Vol. 12B; Exhibit NQ-2014-001-B-06 (protected) at paras. 5, 11-39, Vol. 12A; *Transcript of Public Hearing*, Vol. 1, 15 December 2014, at 44-45, 49-50.
156. Exhibit NQ-2014-001-44, Vol. 1A at 166.
157. *Transcript of Public Hearing*, Vol. 3, 17 December 2014, at 349-52, 363-64.
158. *Transcript of In Camera Hearing*, Vol. 3, 17 December 2014, at 157, 180-81.

industry cannot continue to compete on price with the subject goods in the same way as it did during the POI. Indeed, the Tribunal notes that most performance indicators were trending downward at the end of the period. The continuing presence of the subject goods at low prices is likely to further impede the domestic industry's ability to maintain sales and realize reasonable profit margins. Building on indicators from the end of the POI and moving forward, the Tribunal finds that the subject goods are threatening to cause injury in the form of price erosion, lost sales, reduced market share and reduced profitability.

242. Another factor which the Tribunal considers relevant in the circumstances is the large volume of subject goods which was imported between July 1 and September 11, 2014, and has yet to be consumed in its entirety by purchasers and end users of rebar (although it is set to be consumed in the coming months, up to the end of March 2015). This volume will definitely cause demand for rebar to lag in the Canadian market, particularly in the early months of 2015. In this regard, Mr. Geoffrey Inniss testified that 40,000 to 50,000 metric tonnes of that material is still potentially in inventory and will continue to have an adverse impact on the domestic industry well into the first quarter of 2015.[159]

243. The Tribunal also considered the domestic producers' evidence that, in the absence of an injury finding, the current market conditions can be expected to remain unfavourable and that this would pose a significant threat to their ability to make the necessary investments at their rebar production facilities to improve their operations. The value of the proposed investments that might be delayed or cancelled in the current depressed market conditions is significant.[160] The Tribunal notes that the domestic producers' evidence in this regard was not contradicted.

244. In terms of the magnitude of the margins of dumping or subsidizing, while some of the margins of dumping for certain specific exporters, from Turkey in particular, are not high (the margin for one Turkish exporter is as low as 3.8 percent when expressed as a percentage of the export price), the margins applying to the subject goods from China and Korea are substantial (averaging over 25 percent). The margin applying to "all other" Turkish exporters is 41 percent, which is also substantial.

245. The Tribunal accepts ArcelorMittal's argument and evidence that, in a highly competitive and price-sensitive market such as the rebar market, adding only 3.8 percent to the price of offshore rebar can be the difference between making and losing a sale for domestic producers.[161] Accordingly, the Tribunal is unable to find that the lower margins of dumping which may apply to some of the subject goods from Turkey suggest that imports from that country are unlikely to cause material injury to the domestic industry in the near term.

246. Finally, there is no positive evidence that any factors other than the dumping or subsidizing of the subject goods are threatening to cause injury to the domestic industry. While there were limited imports of rebar from non-subject countries during the POI, there is no indication that the volumes and prices of rebar from non-subject countries pose a threat to the domestic industry.

247. Indeed, the prices of non-subject imports, including imports from the United States, were generally higher than the prices for sales from domestic production during the POI. Moreover, although the witnesses who testified on behalf of the ICBA indicated that their firms were currently exploring the possibility of importing rebar from other Asian countries to replace imports from China and Korea into Western

159. *Transcript of Public Hearing*, Vol. 1, 15 December 2014, at 45-46.
160. *Transcript of In Camera Hearing*, Vol. 1, 15 December 2014, at 23-26, Vol. 2, 16 December 2014, at 77-78, 121-23.
161. *Transcript of Public Hearing*, Vol. 1, 15 December 2014, at 69.

Canada,[162] there is no information suggesting that the volumes and prices of the rebar poised to replace the subject goods in that market could injure the domestic producers.

248. The Tribunal further notes that there is some indication that demand in the Canadian market will grow in 2015. Mr. Sacks also testified that he expects 2015 to be a good year.[163] However, other evidence suggests that demand is projected to remain stable or to grow only moderately.[164] In any event, the key factor to consider is that increases in demand appear to have been predominantly filled by the subject goods during the POI, and the Tribunal is of the view that any further growth in Canadian demand is likely to be captured, in large part, by the subject goods in the absence of a threat of injury finding.

249. In summary, after having reviewed the totality of the evidence, the Tribunal draws the following conclusions:

- Over the POI, the subject goods have captured significant market share on the basis of pricing alone. As discussed above, so far, this has been more at the expense of non-subject imports than domestic production.
- As this trend is likely to continue, the Tribunal finds that, since the domestic industry has little remaining flexibility to respond, the like goods will likely be the next to suffer from the pricing advantages of the subject goods.
- Mr. Sacks testified that low-priced imports from Turkey were imported into Canada because of the demand for lower-priced rebar in the market. He also testified that his import activities were driven by actual demand and that, while his company was unable to supply enough of the imports from Turkey to actually meet this demand, the availability of the subject goods from Turkey was not problematic.[165] The same situation appears to hold true for rebar imports from China and Korea.
- When price is the driving factor, the subject goods are the price leaders, and their availability is not an issue; one can only conclude that sustained and even increased volumes of the subject goods will be present in the Canadian market at low prices absent a finding.
- The imposition of the provisional duties has made the domestic producers more competitive against the subject goods since September 2014, even allowing them to make inroads into markets which, historically, were out of their reach.[166]
- If the duties were removed, the domestic producers would lose market equivalence and it is foreseen that purchasers would again converge towards the lowest price, which is undoubtedly that of the subject imports.
- The continued and sustained presence of low-priced subject imports will have a further depressing effect on Canadian production; although the domestic producers have not yet suffered material injury, the Tribunal considers that they cannot keep losing money and that eventually, within the next 12 to 18 months, the accumulated depressing effects will have an imminent and material impact when they reach a point of non-sustainability.

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162. *Transcript of Public Hearing*, Vol. 3, 17 December 2014, at 419-20, 432, 454; *Transcript of In Camera Hearing*, Vol. 3, 17 December 2014, at 189.
163. *Transcript of Public Hearing*, Vol. 3, 17 December 2014, at 319-20.
164. Exhibit NQ-2014-001-A-12 (protected) at paras. 76-78 (and evidence referred to therein), Vol. 12C.
165. *Transcript of Public Hearing*, Vol. 3, 17 December 2014, at 316, 318, 326, 331, 333, 334.
166. *Transcript of Public Hearing*, Vol. 1, 15 December 2014, at 60-62, Vol. 2, 16 December 2014, at 265.

- Canadian prices, the domestic producers' financial performance and market share, although not materially injured during the POI, can only continue to fall to a given point until the situation becomes critical. The Tribunal finds that the domestic industry is on the cusp of this occurrence, potentially set to occur with the next fiscal year.
- The domestic producers also testified that the future of their installations, in the rebar market, including the sustainability of certain production facilities as a whole, was dependent on the outcome of these proceedings;[167] the Tribunal ascribes some truth to these affirmations.

250. On the basis of the foregoing analysis, the Tribunal finds that that there is a clearly foreseen and imminent threat of material injury caused by the subject goods within the next 12 to 18 months.

EXCLUSIONS

251. The Tribunal received two requests to exclude certain goods from the scope of any injury or threat of injury finding. The first request was filed by Peak Products, an importer of the subject goods, in respect of "10 mm diameter (10M) rebar produced to CSA G30 18.09 (or equivalent) and coated to epoxy standard ASTM A 775/A 775M 04a (or equivalent) in lengths from one foot up to and including 8 feet (or metric equivalents)".[168] This is a request to exclude a specific product from the scope of the Tribunal's finding.

252. The second request was filed by the ICBA and sought a regional exclusion for all ". . . rebar imported into the province of British Columbia [from the subject countries] for use or consumption within the province."[169] At the hearing, in order to alleviate perceived concerns regarding the eventual enforcement of this exclusion, the ICBA suggested the following alternative wording for the Tribunal's consideration: ". . . rebar for final end use in construction projects in the province of British Columbia".[170]

253. The Ministry of International Trade, Government of British Columbia, supported the ICBA's request. Although it was represented by counsel at the hearing, the Ministry of International Trade did not file submissions nor witness statements and did not provide *viva voce* or documentary evidence for consideration. It only addressed brief closing observations to the Tribunal.

254. At the outset, it is important to note that the Tribunal has historically recognized that the power to grant exclusions from the scope of a finding implicitly lies in subsection 43(1) of *SIMA*.[171] Exclusions have always been considered as an extraordinary remedy that may be granted at the Tribunal's discretion, specifically, when the Tribunal is of the view that such exclusions will not cause injury to the domestic industry.[172] The rationale is that, despite the general conclusion that the dumping or subsidizing of the goods has caused, or is threatening to cause, injury to the domestic industry, there may be case-specific evidence

167. *Transcript of Public Hearing*, Vol. 1, 15 December 2014, at 62-63, Vol. 2, 16 December 2014, at 180, Vol. 4, 18 December 2014, at 547.
168. Exhibit NQ-2014-001-34.01, Vol. 1.3 at 3.
169. Exhibit NQ-2014-001-34.02, Vol. 1.3 at 8.
170. *Transcript of Public Hearing*, Vol. 4, 17 December 2014, at 619.
171. *Hetex Garn A.G. v. The Anti-dumping Tribunal*, [1978] 2 F.C. 507 (FCA); *Sacilor Aciéries v. Anti-dumping Tribunal* (1985) 9 C.E.R. 210 (CA); Binational Panel, *Induction Motors Originating In or Exported From the United States of America (Injury)* (11 September 1991), CDA-90-1904-01; Binational Panel, *Certain Cold-Rolled Steel Products Originating or Exported From the United States of America (Injury)* (13 July 1994), CDA-93-1904-09.
172. See, for example, *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) at para. 339; *Stainless Steel Wire* (30 July 2004), NQ-2004-001 (CITT) at para. 96.

that certain imports of products captured by the definition of the goods have not caused or do not threaten to cause injury.

255. The onus is therefore upon the requester to demonstrate that imports of the specific goods for which the exclusion is requested do not threaten to cause injury to the domestic industry.[173] This entails that an evidentiary burden lies with the requester to file probative and compelling evidence in support of its request.[174]

256. At one point, an evidentiary burden is then borne upon the domestic producers to file evidence in order to rebut the evidence filed by the requester. Ultimately, the Tribunal must then determine whether it will exercise its discretion to grant a given exclusion on the basis of its assessment of the totality of the evidence on the record.

257. It is with these considerations in mind that the Tribunal will now address the exclusion requests pertaining to the subject goods that it received from each of the requesters indicated above.

Request for Product Exclusion from Peak Products

258. From the outset, ArcelorMittal and AltaSteel consented to the request for a product exclusion filed by Peak Products. Gerdau did not object to the request, but suggested that the following addition be made to the description of the products covered by the requested exclusion: ". . . imported by Peak Products for sale in the retail sector".[175] Gerdau claimed that the suggested wording would facilitate enforcement activities by the CBSA and prevent circumvention.

259. In view of the consent of the domestic producers and given that there is no evidence that they normally produce products identical or similar to the product for which an exclusion was requested, or that they have the intention of becoming active suppliers of this product, the Tribunal finds that the granting of the exclusion, as requested by Peak Products, will not cause or threaten to cause injury to the domestic industry and should be granted.

260. Turning to Gerdau's suggestion that the description of the exclusion be amended to refer to the requester and to a particular market segment, the Tribunal's position is that any exclusion to a finding should normally be defined as generically as possible to avoid potential trade distortions and unfair competitive advantages.[176] For this reason, the amendments suggested by Gerdau are not warranted.

261. Accordingly, the Tribunal excludes the following subject goods from its threat of injury finding: 10-mm-diameter (10M) rebar produced to meet the requirements of CSA G30 18.09 (or equivalent standards) and coated to meet the requirements of epoxy standard ASTM A775/A 775M 04a (or equivalent standards) in lengths from 1 foot (30.48 cm) up to and including 8 feet (243.84 cm).

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173. *Certain Fasteners* (6 January 2010), RR-2009-001 (CITT) at para. 243.
174. *Aluminum Extrusions* (17 March 2014), RR-2013-003 (CITT) at para. 192. The Tribunal will generally reject exclusion requests where there is a lack of cogent case-specific evidence concerning the likely non-injurious effect of imports of particular products covered by the definition of the subject good in support of the requesters' claims.
175. Exhibit NQ-2014-001-36.01, Vol. 1.3 at 52.
176. *Flat Hot-rolled Carbon and Alloy Steel Sheet Products* (17 January 2003), RD-2002-003 (CITT) at 3.

Request for a Regional Exclusion

262. The ICBA submitted that the subject goods imported into British Columbia did not cause injury to the domestic industry during the POI and that the domestic industry is unlikely to suffer injury in British Columbia in the future, considering its relative absence from that market for many years.

263. According to the ICBA, to the extent that imports from the subject countries increased their market share in British Columbia, it would be at the expense of imports from the United States or other countries as opposed to the domestic producers. It further submitted that the domestic producers have never demonstrated any real interest in the B.C. market and, beyond their hopes and wishes, have not demonstrated a reasonable prospect of becoming active suppliers in British Columbia.

264. In summary, the ICBA argued that the domestic producers could not be injured or threatened by injury because they have been unable to competitively serve the B.C. market, given the costs and logistical difficulties involved in transporting steel from other regions of Canada to British Columbia. The ICBA noted that the Tribunal and its predecessor, the Canadian Import Tribunal, have granted regional exclusions in certain cases and that excluding British Columbia from the scope of a Tribunal's finding would not pose insurmountable enforcement challenges.

265. The domestic producers disputed these claims and submitted that they would be competitive in British Columbia in the absence of dumped and subsidized goods. More specifically, ArcelorMittal and AltaSteel submitted that they sold to customers in British Columbia, including in the Lower Mainland, throughout the POI.

266. They also noted that their sales in British Columbia have increased since the provisional duties were put in place. They further submitted that the costs of shipping rebar to British Columbia are not prohibitive, particularly in the case of AltaSteel whose production facility is in Alberta.

267. They also submitted that British Columbia was an important market that they could serve, given that they have available capacity and that it was their firm intention to do so, to the extent that an affirmative injury finding would level the playing field and ensure that they would no longer have to compete with unfairly traded rebar.

268. Gerdau added that current costs to transport domestically produced rebar to British Columbia are well below the range that was contemplated in *Polyiso*, a precedent relied upon by the ICBA in support of its request. Gerdau argued that any freight advantage from which China and Korea might benefit is far outweighed by the substantial margins of dumping and the amount of subsidy in this case. Finally, Gerdau noted that the requested regional exclusion would be very difficult to enforce, given that the subject goods can easily be imported into British Columbia and subsequently shipped to Alberta and other provinces.

269. The Tribunal finds that, even if the ICBA's request for a regional exclusion is not, strictly speaking, a request for a product-specific exclusion, the same principles that govern the granting of product exclusions should apply to this request, given that it would also have to be granted pursuant to subsection 43(1) of *SIMA*.

270. In this regard, the Tribunal wishes to emphasize that exclusions are granted only in those unique circumstances where there is cogent evidence that the granting of exclusions will not cause or threaten to cause injury to the domestic industry. Therefore, the circumstances under which the Tribunal would exclude

the subject goods imported in a region or a province from a finding of injury or threat of injury would have to be adequately demonstrated and would be singular in nature.

271. Considering Tribunal precedent and the state of the law in regard to exclusions, the ICBA's request for a regional exclusion for goods imported into British Columbia for final use or consumption in that province must therefore be considered through the lens of whether it would threaten to cause injury to the domestic industry. This is the only consideration which can apply to the exclusion process.

272. As such, the Tribunal finds that the ICBA's arguments pertaining to the impact of the duties on purchasers or users of rebar in British Columbia are not legally relevant in an injury inquiry pursuant to section 42 of *SIMA* and/or a request for exclusion under section 43. As noted above, and as repeatedly stated during the hearing, the ICBA's arguments that find themselves within the realm of considerations which may be pursued in the context of a public interest inquiry pursuant to section 45 need not be addressed.

273. As mentioned by the Tribunal during the course of the hearing, the objects considered in hearings pursuant to sections 42 and 45 of *SIMA* are quite different. Where one focuses on the impact of given goods on the domestic industry, the other deals with the impact of the finding on downstream actors in the market place. The fact that some consumers may find themselves in difficult situations following the imposition of duties does not equate with the object of an inquiry under section 42, nor is it a consideration in the exclusion process of such an inquiry. It is the injury/threat of injury factors that must be analyzed and frame the purview of the Tribunal's considerations under section 42.

274. In other words, the Tribunal does not consider potential negative effects that downstream users of the subject goods may experience as a result of higher selling prices following an injury finding to be relevant considerations for the purposes of determining whether or not to grant exclusions. Such concerns do not support a request for exclusion in an inquiry pursuant to section 42 of *SIMA*, although they may be relevant in an inquiry pursuant to section 45.

275. In addition, the ICBA's arguments about the availability of the subject goods to supply the B.C. market with a finding in place are not properly placed in an exclusion request. The Tribunal's threat of injury finding does not prohibit rebar from being imported from the subject countries. It simply requires that they be imported from those countries at the applicable normal values. Likewise, the Tribunal's finding does not preclude downstream users from sourcing rebar from other (non-subject) countries, a possibility that some firms appear to be pursuing at the present time, given testimony from the witnesses for the ICBA.[177]

276. In regard to arguments made about *Polyiso*, the Tribunal's decision in that case indicated that the test for determining when a regional exclusion is warranted is whether, absent dumping or subsidizing, the domestic industry would be in a position to competitively serve the region for which the exclusion is requested. In that case, the Tribunal found that the domestic industry was unable to supply the B.C. market due to factors unrelated to the presence of the dumped goods. The domestic industry in that case could not have been injured by the subject goods imported into British Columbia since the Tribunal found that it was unable to supply this market, even in the absence of competition from the dumped goods.[178]

277. Applying the Tribunal's decision in *Polyiso* to this case, the relevant legal issue is thus whether the evidence on the record supports the ICBA's claim that the subject goods imported for use and consumption

177. *Transcript of Public Hearing*, Vol. 3, 17 December 2014, at 420, 432; *Transcript of In Camera Hearing*, Vol. 3, 17 December 2014, at 189.
178. *Polyiso* at 26.

in British Columbia do not threaten to cause injury to the domestic industry because the domestic producers have no reasonable prospect of becoming active suppliers in British Columbia, even if anti-dumping and countervailing duties are imposed.[179] Simply put, if the evidence shows that domestic producers will be unable to competitively supply the B.C. market due to factors unrelated to the presence of the subject goods in British Columbia in the next 12 to 18 months, these goods can hardly threaten to cause injury to the domestic industry in that market.

278. It is evident that the domestic industry has not been active in the B.C. market for many years. The evidence on the record indicates that domestic producers' sales in the B.C. market over the POI were small.[180] Nevertheless, after having reviewed the totality of the evidence on the record, the Tribunal is satisfied that the domestic producers *could* serve the B.C. market with the benefit of the protection afforded by *SIMA*.

279. As discussed below, the preponderant evidence indicates that the domestic producers are willing to serve the B.C. market and that the presence of the subject goods at low prices is a cause, if not the principal cause, of the domestic producers' difficulties in making sales of the like goods in British Columbia; in other words, the dominating presence of dumped and subsidized goods in the B.C. market has evolved over time into a veritable barrier for the domestic producers.

280. The evidence demonstrates that rebar is a commodity product and that price is the key consideration affecting purchasing decisions. It follows that, even if there is some evidence indicating that the subject goods have certain non-price-related competitive advantages over the like goods,[181] it is the availability of the subject goods at discounted prices that explains their prevalence in the B.C. market. Indeed, the witnesses who testified on behalf of the ICBA confirmed that the rebar fabrication market in British Columbia was very competitive and that, given that their competitors have access to lower-priced imported rebar, purchasers of rebar are always looking for the best possible price.[182]

281. Thus, the Tribunal is not convinced that the fact that the B.C. market has grown so dependent on the subject goods, in particular on imports from China and Korea during the POI, is uniquely the result of the domestic producers' inability to adequately supply rebar in that market. The fact that certain domestic producers have increased their sales in British Columbia since the provisional duties were imposed in September 2014, and the evidence that the domestic producers have noticed that pricing has increased since that date, negates that conclusion.[183]

282. On balance, the Tribunal accepts the testimony of the witnesses for the domestic producers that they can and did supply like goods to British Columbia during the POI, but that this is always difficult, as they have to face stiff competition from the low-priced subject goods.[184] The Tribunal also has no reason to doubt the veracity of Mr. Vaughan's statement that Gerdau had to temporarily suspend shipments of rebar to British Columbia because of competition from the subject goods.[185]

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179. That is, after having taken the impact of the dumping or subsidizing of the goods out of the equation.
180. Exhibit NQ-2014-001-07G (protected), Tables 31, 32, Vol. 2.1A.
181. *Transcript of Public Hearing*, Vol. 3, 17 December 2014, at 377-85, 390-93.
182. *Ibid.* at 427, 433.
183. Exhibit NQ-2014-001-37.02 (protected), Vol. 2.3 at 48, 51; *Transcript of Public Hearing*, Vol. 2, 16 December 2014, at 265.
184. *Transcript of Public Hearing*, Vol. 1, 15 December 2014, at 56, Vol. 2, 16 December 2014, at 270-73.
185. *Transcript of Public Hearing*, Vol. 2, 16 December 2014, at 186-88.

283. The Tribunal therefore finds that the demand for the subject goods in British Columbia is primarily a function of their attractive price, which also largely explains why the domestic industry has historically been less competitive in British Columbia and, in the case of Gerdau, why it is not servicing the B.C. market at this point in time.

284. As acknowledged by the witnesses for the ICBA, Mr. Robert James and Mr. Anoop Khosla, at the hearing,[186] the imposition of anti-dumping and countervailing duties on the subject goods would significantly raise the floor price of rebar in the B.C. market. While the new floor price would likely not be as high as the prevailing prices for domestically produced rebar (or rebar imported from the United States) as purchasers would seek to import rebar from other Asian countries, the fact remains that the conditions of competition in the B.C. market would be at the very least levelled for the domestic producers with a finding in place. In this way, the apparent reliance on low-priced subject goods by purchasers in British Columbia would certainly be atoned.

285. Conversely, the granting of the requested exclusion would essentially prevent the domestic industry from making additional sales and becoming an active supplier in British Columbia, thereby contributing to threat of injury caused by the subject goods which has already been found by the Tribunal.

286. On the basis of the evidence on the record, the Tribunal finds that, absent dumping and subsidizing, the domestic industry would be in a position to competitively serve the B.C. market. In other words, the Tribunal is unable to conclude that the fact that the domestic producers have not been active suppliers in that market can be exclusively attributed to factors other than the dumping and the subsidizing of the subject goods or that they have no reasonable prospect of becoming active suppliers in British Columbia, even if anti-dumping and countervailing duties are imposed.

287. Further, considering that the domestic industry has never been required to serve the entire Canadian market or be in a position to accept every purchase order to be afforded protection under *SIMA*, the Tribunal cannot ignore the evidence indicating that the domestic producers are interested in the B.C. market and have the will and capacity to supply, at least in part, the needs of that market.[187]

288. In this regard, AltaSteel provided compelling evidence that its rebar business was now a priority for the company's operations (which was not the case at the beginning of the POI) and that access to the B.C. market was important to the success of this strategy.[188] Since it would prevent AltaSteel from making inroads into British Columbia, the granting of the requested regional exclusion is thus likely to have a particularly injurious effect on AltaSteel, given its proximity to that market.

289. In summary, contrary to the ICBA's submissions, this case is distinguishable on the facts from the situation that was at issue in *Polyiso*. In this inquiry, it cannot be said that, absent dumping or subsidizing, the domestic industry will not be in a position to competitively serve this market, especially considering that there is a domestic producer that is located in Western Canada (which was not the case in *Polyiso*).

290. Moreover, regarding the transportation costs from Ontario and Quebec to British Columbia, relative to the value of the goods shipped, the evidence in this case is that they are much lower than what they were

186. *Transcript of Public Hearing*, Vol. 3, 17 December 2014, at 450-53.

187. Exhibit NQ-2014-001-37.02 (protected), Vol. 2.3 at 37-39, 42-52; Exhibit NQ-2014-001-A-12 (protected) at paras. 111-16 (and the evidence referred to therein), Vol. 12C; Exhibit NQ-2014-001-A-14 (protected) at paras. 2-11, Vol. 12C; Exhibit NQ-2014-001-C-12 (protected) at paras. 2-17, Vol. 12C; *Transcript of Public Hearing*, Vol. 1, 15 December 2014, at 83, Vol. 2, 16 December 2014, at 269.

188. *Transcript of Public Hearing*, Vol. 2, 16 December 2014, at 263-64, 297, 309-310.

in *Polyiso*.[189] Consequently, the Tribunal cannot conclude that it is the transportation costs that make the like goods uncompetitive in the B.C. market.

291. The Tribunal is also aware that, in January 2005, when it rescinded the 1999 finding against rebar from Cuba, Turkey and Korea, it stated that the domestic industry was not supplying the Lower Mainland of British Columbia and that the subject goods in that case were likely to compete with rebar from China and the United States, rather than with the like goods of domestic producers in that region.

292. In that case, the Tribunal also noted that the Lower Mainland of British Columbia was not served by AltaSteel and that it was in this region, which, in the Tribunal's view, the domestic industry had chosen not to supply, that rebar from China, the United States and Korea had been mainly concentrated. These were facts that supported the Tribunal's conclusion that the continuation or resumption of dumping was unlikely to cause injury to the domestic industry at that time.

293. However, the Tribunal finds that the evidence in this inquiry indicates that the circumstances have changed. As noted above, the domestic producers have provided sufficient evidence to convince the Tribunal that they are willing and able to supply customers in British Columbia and that they could compete with the subject goods in that region absent the dumping and subsidizing. Despite the able submissions of the ICBA and the evidence that it adduced in support of its request, the Tribunal is not persuaded that the domestic producers have no reasonable prospect of increasing their presence in British Columbia, even with a finding in place, or that their limited involvement in the B.C. market is entirely due to factors other than the dumping and the subsidizing of the subject goods.

294. Finally, the Tribunal notes that the CBSA has indicated that it has concerns regarding the enforcement of a finding with respect to product exclusions based on the location of use or consumption because the CBSA is required to determine whether a good is subject to an injury finding at the time of importation into Canada. The CBSA added that a product exclusion that is based on the end use of a good within Canada introduces an element of subjectivity into the determination that cannot be known for sure at the time of importation.[190] The Tribunal shares this concern, especially considering that there is evidence that 15 percent to 20 percent of the subject goods imported for use in British Columbia could make their way out of the province.[191] While it is not a determining factor, such enforcement concerns militate against the granting of the requested regional exclusion.

295. For the foregoing reasons, the ICBA's request for a regional exclusion is denied.

CONCLUSION

296. On the basis of the foregoing analysis, the Tribunal finds that the dumping of the subject goods originating in or exported from China, Korea and Turkey and the subsidizing of the subject goods originating in or exported from China have not caused injury but are threatening to cause injury to the domestic industry.

189. Exhibit NQ-2014-001-36.01, Vol. 1.3 at 45, 51; Exhibit NQ-2014-001-16.01B (protected), Vol. 4 at 252-56; *Transcript of Public Hearing*, Vol. 1, 15 December 2014, at 126-27; Exhibit NQ-2014-001-B-14 (protected), Vol. 12C; *Transcript of Public Hearing*, Vol. 2, 16 December 2014, at 168; *Transcript of In Camera Hearing*, Vol. 2, 16 December 2014, at 95.
190. Exhibit NQ-2014-001-47, Vol. 1A.
191. *Transcript of Public Hearing*, Vol. 3, 17 December 2014, at 458.

297. Furthermore, the Tribunal excludes 10-mm-diameter (10M) rebar produced to meet the requirements of CSA G30 18.09 (or equivalent standards) and coated to meet the requirements of epoxy standard ASTM A775/A 775M 04a (or equivalent standards) in lengths from 1 foot (30.48 cm) up to and including 8 feet (243.84 cm) from its threat of injury finding.

Jason W. Downey
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Presiding Member

Daniel Petit
Daniel Petit
Member

Ann Penner
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Member