Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Expiry Review No. RR-2014-003

Oil Country Tubular Goods

Order issued
Monday, March 2, 2015

Reasons issued
Monday, March 23, 2015

TABLE OF CONTENTS

IN THE MATTER OF an expiry review, pursuant to subsection 76.03(3) of the *Special Import Measures Act*, of the findings made by the Canadian International Trade Tribunal on March 23, 2010, in Inquiry No. NQ-2009-004, concerning:

OIL COUNTRY TUBULAR GOODS ORIGINATING IN OR EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA

ORDER

The Canadian International Trade Tribunal, pursuant to subsection 76.03(3) of the *Special Import Measures Act*, has conducted an expiry review of its findings made on March 23, 2010, in Inquiry No. NQ-2009-004 concerning the dumping and subsidizing of oil country tubular goods including, in particular, casing and tubing, made of carbon or alloy steel, welded or seamless, heat-treated or not heat-treated, regardless of end finish, having an outside diameter from 2 3/8 inches to 13 3/8 inches (60.3 mm to 339.7 mm), meeting or supplied to meet American Petroleum Institute specification 5CT or equivalent standard, in all grades, excluding drill pipe, seamless casing up to 11 3/4 inches (298.5 mm) in outside diameter, pup joints, welded or seamless, heat-treated or not heat-treated, in lengths of up to 3.66 m (12 feet), and coupling stock, originating in or exported from the People's Republic of China.

Pursuant to paragraph 76.03(12)(*b*) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby continues its findings in respect of the aforementioned goods.

Stephen A. Leach
Stephen A. Leach
Presiding Member

Jason W. Downey
Jason W. Downey
Member

Jean Bédard
Jean Bédard
Member

The statement of reasons will be issued within 20 days.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	January 26 to 28, 2015
Tribunal Members:	Stephen A. Leach, Presiding Member Jason W. Downey, Member Jean Bédard, Member
Director, Trade Remedies Investigations:	Mark Howell
Senior Trade Remedies Investigations Officers:	Paula Place Rebecca Campbell
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Importer	**Counsel/Representatives**
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WITNESSES:

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Robert Mandel President and Co-CEO Welded Tube of Canada	Randy Boswell President Energex Tube
Jeff S. Hanley Vice-President, Sales, Energy Tubulars Welded Tube of Canada	Brian Kristofic Director – Trade and Government Affairs EVRAZ North America
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STATEMENT OF REASONS

INTRODUCTION

1. This is an expiry review, pursuant to subsection 76.03(3) of the *Special Import Measures Act*,[1] of the findings made by the Canadian International Trade Tribunal (the Tribunal) on March 23, 2010, in Inquiry No. NQ-2009-004 concerning the dumping and subsidizing of oil country tubular goods (OCTG) including, in particular, casing and tubing, made of carbon or alloy steel, welded or seamless, heat-treated or not heat-treated, regardless of end finish, having an outside diameter from 2 3/8 inches to 13 3/8 inches (60.3 mm to 339.7 mm), meeting or supplied to meet American Petroleum Institute (API) specification 5CT or equivalent standard, in all grades, excluding drill pipe, seamless casing up to 11 3/4 inches (298.5 mm) in outside diameter, pup joints, welded or seamless, heat-treated or not heat-treated, in lengths of up to 3.66 m (12 feet), and coupling stock, originating in or exported from the People's Republic of China (China) (the subject goods).

PROCEDURAL BACKGROUND

2. The Tribunal initiated this expiry review on June 27, 2014, and so notified the Canada Border Services Agency (CBSA) and interested parties, including known domestic producers, importers, foreign producers and exporters.

3. On October 24, 2014, the CBSA, having conducted its investigation in this regard, determined pursuant to paragraph 76.03(7)(*a*) of *SIMA* that the expiry of the findings was likely to result in the continuation or resumption of dumping and subsidizing of the subject goods.

4. Following the CBSA's determination, on October 27, 2014, the Tribunal began its part of the expiry review to determine, pursuant to subsection 76.03(10) of *SIMA*, whether the expiry of the findings was likely to result in injury or retardation. The Tribunal's period of review (POR) extends from January 1, 2011, to June 30, 2014. The Tribunal also considered two interim periods: January to June 2013 (interim 2013) and January to June 2014 (interim 2014).

5. As part of these proceedings, the Tribunal sent questionnaires to domestic producers, importers, purchasers and foreign producers of OCTG. The responses received were used to prepare public and protected investigation reports and various supplements.[2]

6. Four domestic producers, namely, Evraz Inc. NA Canada (Evraz), Tenaris Canada (Tenaris), Welded Tube of Canada Corp. (Welded Tube) and Energex Tube (Energex), filed case briefs and evidence in support of the continuation of the findings. Mertex Canada Inc. (Mertex), an importer of OCTG, filed submissions which are described in more detail in the section on preliminary matters.

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1. R.S.C., 1985, c. S-15 [*SIMA*].
2. The record of this proceeding consists of all Tribunal exhibits and all documents accepted for filing by the Tribunal, including the following: the CBSA's protected expiry review report, public statement of reasons and related documents; written Tribunal communications; the Tribunal's notice of expiry review; the protected and public replies to the expiry review questionnaires; the public and protected investigation reports for this expiry review, as well as the revisions and supplements thereto; parties' case briefs and accompanying evidence; and the exhibit list and the Tribunal's findings, statements of reasons and public and protected staff reports prepared for Inquiry No. NQ-2009-004. Public exhibits were made available to all parties. Protected exhibits were made available only to counsel who had filed the required declaration and confidentiality undertaking in respect of confidential information.

7. The Tribunal held a hearing, with public and *in camera* testimony, in Ottawa, Ontario, from January 26 to 28, 2015. The domestic producers all called witnesses who testified at the hearing. Accordingly, the Tribunal heard the following witnesses for the domestic industry: Mr. Guillermo Moreno, Managing Director at Tenaris; Mr. David McHattie, Institutional Relations Director at Tenaris; Mr. Robert Mandel, President and Co-CEO at Welded Tube; Mr. Jeff S. Hanley, Vice-President, Sales, Energy Tubulars at Welded Tube; Mr. Randy Boswell, President at Energex; Mr. Brian Kristofic, Director – Trade and Government Affairs at Evraz; Mr. Allan Harapiak, Vice-President, Tubular Products Group at Evraz; Mr. Kelly Smith, V.P. Sales & Business Development – OCTG – TPG at Evraz; and Mr. Scott McConnell, Director, Finance, Tubular Products Group at Evraz. In addition, the Tribunal called one witness on its own motion: Mr. Allan Cheng, President at Cantak Corporation, a distributor of OCTG and other tubular products. Mertex did not call any witnesses.

PRODUCT

Product Definition

8. The goods that are subject to this expiry review are defined as follows:

> OCTG including, in particular, casing and tubing, made of carbon or alloy steel, welded or seamless, heat-treated or not heat-treated, regardless of end finish, having an outside diameter from 2 3/8 inches to 13 3/8 inches (60.3 mm to 339.7 mm), meeting or supplied to meet API specification 5CT or equivalent standard, in all grades, excluding drill pipe, seamless casing up to 11 3/4 inches (298.5 mm) in outside diameter, pup joints, welded or seamless, heat-treated or not heat-treated, in lengths of up to 3.66 m (12 feet), and coupling stock originating in or exported from China.

Product Information

9. As explained in previous proceedings, OCTG are carbon or alloy steel pipes, either welded or seamless, used for the exploration and exploitation of oil and natural gas. The product definition includes non-prime and secondary pipes (limited service products). It also includes intermediate or in-process tubular goods (green tubes) that require additional processing, such as threading, heat treatment or testing, before they can meet the requirements of a particular API specification.

10. Casing is used to prevent the walls of an oil or gas well from collapsing, both during drilling and after completion of the well. Tubing is used within the casing to convey oil and gas to the surface. Both casing and tubing must be able to withstand outside pressure and internal yield pressures within an oil or gas well. They must also have sufficient joint strength to hold their own weight and must be equipped with threads sufficiently tight to contain the well pressure where lengths are joined.

11. OCTG meet or are supplied to meet API specification 5CT, in all applicable grades, including but not limited to H40, J55, K55, M65, N80, L80, L80 HC, L80 Chrome 13, L80 LT, L80 SS, C90, C95, C110, P110, P110 HC, P110 LT, T95, T95 HC and Q125, or proprietary grades manufactured as substitutes for these specifications. The most common grades of low-strength casing and tubing are J55, K55 and H40. Heat-treated grades (e.g. N80, P110 and L80) are more sophisticated grades of pipe and are used in deeper wells and more severe environments, such as low-temperature services, sour service and heavy oil recovery.

LEGAL FRAMEWORK

12. The Tribunal is required, pursuant to subsection 76.03(10) of *SIMA*, to determine whether the expiry of the findings in respect of the subject goods is likely to result in injury or retardation.[3]

13. The Tribunal is also required, pursuant to subsection 76.03(12) of *SIMA*, to make an order either rescinding the findings in Inquiry No. NQ-2009-004, if it determines that the expiry of the findings is unlikely to result in injury, or continuing the findings, with or without amendment, if it determines that the expiry of the findings is likely to result in injury.

14. Given that the likelihood of injury to a domestic industry must be assessed in relation to domestic producers of like goods in relation to the subject goods, before proceeding with its analysis of the likelihood of injury, the Tribunal must first determine what constitutes "like goods". Once that determination has been made, the Tribunal must determine which domestic producers of the like goods constitute the "domestic industry".

15. The Tribunal must next determine whether it will make an assessment of the cumulative effect of the dumping and subsidizing of the subject goods (i.e. whether it will cross-cumulate their effects).

PRELIMINARY MATTERS

16. At the outset, the Tribunal recognizes that the sudden and precipitous decline in oil and gas prices in the second half of 2014 is a game-changer for those involved in the oil and gas industry, including companies that manufacture and supply OCTG for use in that industry. Demand for OCTG is driven largely by commodity prices for oil and gas.[4] There is no question that the decline in the price of oil and gas will lead to reductions in drilling activity and, accordingly, will drive significant declines in the demand for OCTG.

17. Mr. Moreno testified that the drastic fall-off of oil prices has caused the oil and gas market to enter a "deep and severe crisis" with no prospect of a quick recovery.[5] Mr. Mandel stated that the dramatic fall-off in business is ". . . unlike anything [he has] experienced in the industry to date."[6] Even Mr. Cheng, who testified that he had seen commodity price fluctuations such as these over the course of his career and was generally more optimistic about the long-term prospects for the industry, indicated that, with a few exceptions, prices have generally been stable over the past 10 to 15 years and confirmed that the recent drop in oil prices had been dramatic and would have significant impacts.[7]

18. It is for this reason that the conditions in the domestic and international markets prevalent over the POR and the performance of the domestic industry over the POR cannot be directly relied upon as an accurate predictor of what can be expected on a going forward basis for the near to medium term. While these changes in market conditions, as well as the relationship between oil and gas prices and the Canadian

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3. Subsection 2(1) of *SIMA* defines "injury" as ". . . material injury to a domestic industry" and "retardation" as ". . . material retardation of the *establishment* of a domestic industry" [emphasis added]. Given that there is currently an established domestic industry in this case, the issue of whether the expiry of the findings is likely to result in retardation does not arise in this expiry review.
4. *Transcript of Public Hearing*, Vol. 2, 27 January 2015, at 152.
5. *Transcript of Public Hearing*, Vol. 1, 26 January 2015, at 10.
6. *Ibid.* at 56.
7. *Transcript of Public Hearing*, Vol. 2, 27 January 2015, at 152-53.

dollar, will be discussed in later sections of these reasons, this is the lens through which the Tribunal conducts its analysis.

19. A second preliminary issue that the Tribunal wishes to address concerns ambiguities in the submissions made by Mertex. In the Tribunal's view, Mertex's submissions left the Tribunal and the other parties trying to glean its actual request and the particular products concerned. The brief contained ambiguous statements without pointing to any evidentiary basis to support those statements.[8] Mertex argued that green tubes imported for processing in Canada were non-injurious, but it chose not to take a position on the manner in which the Tribunal ought to arrive at such a finding or on the evidence upon which the Tribunal could rely in support of such a finding.

20. The Tribunal attempted to clarify Mertex's arguments by way of a letter dated January 13, 2015, but Mertex's response was equally vague. When asked whether Mertex considered green tubes to be a separate class of goods, Mertex responded that it was seeking a finding of no injury in respect of green tubes and that "Mertex considers that in order to reach this conclusion, it is not necessary to create a separate class of goods. However, green tubes are different enough from API certified OCTG to constitute a separate class of goods."[9] When asked whether it was seeking an exclusion for green tubes, Mertex indicated that the paper exclusion process[10] was not suited to its request, and it cited difficulty obtaining agreement from the domestic industry for the rescission of this part of the findings. For this reason, Mertex indicated that it ". . . would prefer to address the 76.03(12) option."[11]

21. The Tribunal believes that a few brief comments are warranted before addressing the substance of Mertex's arguments. To begin, while the Tribunal understands the challenges that importers can sometimes face as part of the exclusion process and agrees that there may be circumstances where the Tribunal's paper-based exclusion process may not seem ideal from an importer's point of view, the fact that the request is not well-suited to the typical process does not, in the Tribunal's view, excuse parties from providing sufficient clarity to their requests. Such clarity is important in order to permit opposing parties the opportunity to understand and effectively respond to the issues raised. It is not fair to other parties to have to rely, as they did in this case, on assumptions about the party's arguments until the final stages of closing submissions when, after a series of questions from the Tribunal, Mertex's request was clarified.[12]

22. In addressing the substance of Mertex's arguments, the Tribunal considers that Mertex's first argument essentially amounts to a request for a "subjectivity" determination. In particular, Mertex wants to know whether green tubes for seamless casing with an outside diameter not exceeding 11 3/4 inches, *that is*, green tubes for the seamless casing that are covered by Inquiry No. NQ-2007-001[13] and Expiry Review No. RR-2012-002,[14] are within the scope of the subject goods covered by this expiry review. The Tribunal finds that "subjectivity" questions are properly determined pursuant to section 61 of *SIMA*, where such an

8. For example, Mertex indicated that "[a]rguments about green tubes being used instead of low strength tubing is a myth." Exhibit RR-2014-003-E-01 at para. 24, Vol. 13.
9. Exhibit RR-2014-003-E-02 at 2, Vol. 13.
10. The paper process for requests for exclusions and the related forms were developed to facilitate the filing of requests for specific product exclusions in Tribunal inquiries and expiry reviews, and to ensure that the Tribunal has all the relevant information needed to make a decision on an exclusion request. This process is described in full in the Tribunal's *Guideline to Making Requests for Product Exclusions*.
11. Exhibit RR-2014-003-E-02 at 2, Vol. 13.
12. *Transcript of Public Hearing*, Vol. 3, 28 January 2015, at 269-71.
13. *Seamless Carbon or Alloy Steel Oil and Gas Well Casing* (10 March 2008) (CITT) [*Seamless Casing Inquiry*].
14. *Seamless Carbon or Alloy Steel Oil and Gas Well Casing* (11 March 2013) (CITT) [*Seamless Casing Expiry Review*].

issue would be placed squarely before the Tribunal and the parties. In this case, the Tribunal finds that Mertex's arguments regarding "subjectivity" *simpliciter* are misplaced and, accordingly, the merits of a CBSA opinion letter and the related litigation referred to in Mertex's submissions are irrelevant.

23. Mertex's secondary line of argument is that green tubes of Chinese origin are not injurious to the domestic industry. While Mertex did not take a position one way or the other on how the Tribunal should arrive at such a finding, it indicated that the Tribunal finding that green tubes are a separate class of goods and that there was no injury to that class or the Tribunal granting an exclusion on the basis that the importation of green tubes caused no injury to the domestic industry would be acceptable. However, to the extent that a party makes a request for a finding to be varied by either of these means, it is incumbent on that party to provide evidence in support of such a request, in the form of either documentary evidence or witness testimony. Such was not done by Mertex in this case, as will be discussed later in these reasons.

24. During the course of the hearing, counsel for Mertex also raised an issue of perceived unfairness arising from the Tribunal's practice of accepting the filing by parties of certain licensed publications as confidential, single copy exhibits onto the protected record. Mertex's concern arose from the fact that a specific document was filed during the course of the hearing, and counsel suggested that he would not have time to consult the Tribunal's single copy exhibit prior to the close of the hearing. In order to resolve this matter, counsel for Tenaris provided Mertex and all other parties with a copy of the relevant document.

25. In the context of those discussions, counsel for Mertex expressed the view that the "fair use" doctrine of copyright law ought to apply to situations such as these, a proposition with which counsel for the domestic industry seemed to agree.[15] In response, the Presiding Member stated that the Tribunal will review its practice in this area.[16] The Tribunal is now doing so and will publish a practice notice in the near future.

LIKE GOODS AND CLASSES OF GOODS

26. In order for the Tribunal to determine whether the resumed or continued dumping and subsidizing of the subject goods is likely to cause material 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.[17]

27. 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.

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15. While counsel suggested that the Tribunal may find guidance in what was referred to as the "fair use doctrine" of copyright law (see *Transcript of Public Hearing*, Vol. 2, 27 January 2015, at 90-91), the Tribunal remarks that the concept of "fair use" does not exist *per se* in Canadian copyright law; rather, Parliament has included various provisions in the *Copyright Act* concerning the similar but distinct concept of "fair dealing" (sections 29-29.2).
16. *Transcript of Public Hearing*, Vol. 3, 28 January 2015, at 254.
17. Should the Tribunal determine that there is more than one class of goods in this expiry review, 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.).

28. In deciding the issue of like goods, as well as whether there is more than one class of goods,[18] 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).[19]

29. In the original inquiry, the Tribunal determined that domestically produced tubing and casing of the same description as the subject goods were like goods in relation to the subject goods. In addition, the Tribunal found that domestically produced seamless casing having an outside diameter of *up to* 11 3/4 inches was also sufficiently similar to the subject goods to be considered like goods in relation to the subject goods. Furthermore, the Tribunal found that the like goods, including green tubes, constitute a single class of goods, having regard to their API specifications, appearance and composition, substitutability, distribution channels and end use.[20]

30. In this expiry review, the Tribunal finds nothing on the record that supports a departure from the Tribunal's past conclusions on the issues of like goods or classes of goods. The undisputed evidence on the record indicates that the domestic industry produces substantially the same goods as the subject goods. While the subject goods and like goods are not identical to one another in all respects, they consist of a range of products falling along a continuum of different grades corresponding to different strengths. Moreover, the like goods and the subject goods compete with one another, rely on the same distribution channels and have the same end uses.

31. While Mertex's submissions included some allegations that green tubes are sufficiently different from finished OCTG to constitute a separate class of goods, such allegations were not supported by any evidence filed by Mertex, nor were they supported by other evidence on the record.

32. In contrast with Mertex's unsupported assertions, green tubes and finished OCTG share similar chemical compositions and mechanical properties, and overlap in terms of minimum API requirements.[21] Mr. Harapiak also noted that all the essential and most significant cost components of OCTG are present in green tubes.[22] Accordingly, the Tribunal will not address Mertex's argument that a rescission of the findings in respect of green tubes would not be injurious to the domestic industry on the basis of a separate class of goods for green tubes.

33. For this reason and due to the lack of any compelling evidence to the contrary, the Tribunal finds that domestically produced OCTG are like goods in relation to the subject goods and that they constitute a single class of goods.

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18. In order to decide whether there is more than one class of goods, the Tribunal must determine whether goods potentially included in separate classes of goods constitute "like goods" in relation to each other. If they do, they will be regarded as comprising one class of goods. See, for example, *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) at para. 115; *Polyisocyanuarate Thermal Insulation Board* (11 April 1997), NQ-96-003 (CITT) at 10.
19. See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at para. 48.
20. More precisely, the Tribunal found that coupling stock covered by the original product definition was different from all other OCTG covered by the definition and constituted a class of goods onto itself. As a result of the fact that the Tribunal further found no injury or threat of injury from the subject coupling stock, it was excluded from the Tribunal's finding and is not subject to this expiry review.
21. See, for example, Exhibit RR-2014-003-D-14 at paras. 2, 4, Vol. 11C; Exhibit RR-2014-003-A-09, Affidavit of Bruce Urband at paras. 3-8, Vol. 11.
22. Exhibit RR-2014-003-D-06 at para. 9, Vol. 11B.

DOMESTIC INDUSTRY

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

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

35. The Tribunal must therefore determine whether there is a likelihood 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.[23]

36. The issue of which companies comprise the domestic industry for the purposes of this expiry review was not contested. The evidence indicates that, over the POR, there were four producers of like goods: Tenaris, Evraz, Welded Tube and Energex. Tenaris was the only producer of seamless OCTG, while all producers made electric resistance welded (ERW) OCTG.[24] The evidence also indicates that, in May 2014, Energex idled its Welland production facility, citing unprofitable prices. Nevertheless, Energex further indicated that it may resume production if Canadian prices return to more profitable levels.[25]

37. Further, the Tribunal is satisfied that none of the domestic producers are related to an importer or to an exporter of dumped or subsidized goods and that none of the domestic producers imported dumped or subsidized goods themselves.

38. On the basis of the foregoing, the Tribunal finds that Tenaris, Evraz, Welded Tube and Energex constitute the domestic industry within the meaning of subsection 2(1) of *SIMA* and will assess whether the expiry of the findings is likely to result in injury on this basis.

CROSS-CUMULATION

39. The Tribunal must also determine whether it will make an assessment of the cumulative effect of the dumping and subsidizing of the subject goods. As it has found in previous cases,[26] the Tribunal finds in this instance that the effects caused by the dumping of the subject goods and those caused by the subsidizing of the goods which originate in a single subject country are so closely intertwined as to make it impossible to differentiate them or allocate specific or discrete portions to the dumping and subsidizing respectively.

40. As a result, the Tribunal will conduct its likelihood of injury analysis taking into account the cumulative effect of the dumping and subsidizing of the subject goods.

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23. 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 Doc. 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.
24. Exhibit RR-2014-003-06B (protected), Table 9, Vol. 2.1A; Exhibit RR-2014-003-05B, Vol. 1.1A at 31.
25. Exhibit RR-2014-003-C-03 at paras. 5-9, Vol. 11A; *Transcript of Public Hearing*, Vol. 1, 26 January 2015, at 64.
26. See, for example, *Seamless Casing Inquiry* at paras. 76-77.

LIKELIHOOD OF INJURY ANALYSIS

41. An expiry review is a forward-looking exercise.[27] It follows that evidence from the POR during which an order or a finding was being enforced is relevant insofar as it bears upon the prospective analysis of whether the expiry of the order or finding is likely to result in injury.[28]

42. There is no presumption of injury in an expiry review; findings must be based on positive evidence, in compliance with domestic law and consistent with the requirements of the World Trade Organization.[29] In the context of an expiry review, positive evidence can include evidence based on past facts that tend to support forward-looking conclusions.[30]

43. In making its assessment of likelihood of injury, the Tribunal has consistently taken the view that the focus should be on circumstances that can reasonably be expected to exist in the near to medium term.

44. Subsection 37.2(2) of the *Special Import Measures Regulations*[31] lists factors that the Tribunal may consider in addressing the likelihood of injury in cases where the CBSA has determined that there is a likelihood of continued or resumed dumping. The factors that the Tribunal considers relevant in this expiry review are discussed in detail below.

Changes in Market Conditions

45. In order to assess the likely volumes and prices of the subject goods and their impact on the domestic industry if the findings are rescinded, the Tribunal will first consider changes in international and domestic market conditions,[32] the most significant of which are discussed below.

<u>Strong Global OCTG Consumption and Output over the POR</u>

46. At the global level, the POR saw peaks of consumption and output of OCTG. Based on the most recent comprehensive data available on the record, a Metal Bulletin Research (MBR) report published in 2013, global consumption of OCTG increased by 20 percent in 2011 compared to 2010 and by 1.9 percent in 2012 compared to 2011,[33] and reached 17.8 million tonnes in 2012, a figure that surpassed 2008 consumption prior to the global recession.[34] MBR attributes this expansion to the rapid growth of the U.S. and Canadian markets.[35]

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27. *Certain Dishwashers and Dryers* (25 April 2005), RR-2004-005 (CITT) at para. 16.
28. *Copper Pipe Fittings* (17 February 2012), RR-2011-001 (CITT) at para. 56. In *Thermoelectric Containers* (9 December 2013), RR-2012-004 (CITT) [*Thermoelectric Containers*] at para. 14, the Tribunal stated that the analytical context pursuant to which an expiry review must be adjudged often includes the assessment of retrospective evidence supportive of prospective conclusions. See, also, *Aluminum Extrusions* (17 March 2014), RR-2013-003 (CITT) [*Aluminum Extrusions Expiry Review*] at para. 21.
29. *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (16 August 2006), RR-2005-002 (CITT) at para. 59.
30. *Thermoelectric Containers* at para. 14; *Aluminum Extrusions Expiry Review* at para. 21.
31. S.O.R./84-927 [*Regulations*].
32. See paragraph 37.2(2)(*j*) of the *Regulations*.
33. Exhibit RR-2014-003-16.02A (protected), Vol. 2.01 at 261.
34. *Ibid.* at 22.
35. *Ibid.*

47. Global OCTG output generally followed demand. Output peaked at 17.9 million tonnes in 2012, up by 3 percent compared to 2011 and surpassing the previous peak of 15.9 million tonnes in 2007. According to MBR, most of the increase came from new capacities, namely, in the NAFTA region.[36]

48. The NAFTA region remained the largest market for OCTG, accounting for 42 percent of global consumption in 2012. At 2.5 million tonnes imported in 2012, it was also the largest importer of OCTG by region, although imports remained below 2008 figures.[37] On a country basis, the four largest markets in the world were China, the United States, Russia and Canada.[38]

49. China remained the single largest producer and exporter of OCTG despite the imposition of trade remedies on Chinese OCTG and other tubular products in the United States, Canada, Columbia, Mexico, Brazil and the European Union and the commencement of trade remedy investigations by Russia and Peru.[39] Chinese OCTG output reached 6.1 million tonnes in 2012 (up from 5.7 in 2011), which amounted to 43 percent of the total global output of OCTG in the same year.[40] Chinese OCTG output exceeded domestic consumption, with an estimated 30 percent, or 2.1 million tonnes, of OCTG production in China being exported in 2012.[41]

50. More recent reports from Steel Business Briefing, albeit not specific to OCTG, indicate that China's total production and exports of both seamless pipe and welded pipe increased in 2013, while exports of seamless pipe flattened or declined in 2014.[42]

<u>Declining Domestic OCTG Market over the POR</u>

51. In Canada, the total apparent market for OCTG declined year-over-year during the POR, but improved significantly in interim 2014. In terms of volume, the market declined by 18 percent from 858,876 tonnes in 2011 to 704,792 tonnes in 2013; in terms of value, the market declined by 24 percent over the same period. Interim 2014 registered a 21 percent increase in volume from interim 2013, with a 23 percent increase in terms of value.[43] Mr. McHattie explained at the hearing that the decline in volume from 2011 to 2013 may have resulted from factors such as insufficient pipeline capacity to transport Canadian oil to the United States and a switch to drilling that requires OCTG outside the range covered by this expiry review.[44] Mr. McHattie also explained that, although the apparent market table of the investigation report showed a growing market in interim 2014 compared to interim 2013, on an annualized basis, the market would remain below 2011 levels.[45]

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36. *Ibid.* at 258.
37. *Ibid.* at 22, 262.
38. Exhibit RR-2014-003-D-03 at para. 15, Vol. 11B.
39. Exhibit RR-2014-003-16.02A (protected), Vol. 2.01 at 208, 224, 262; Exhibit RR-2014-003-23.02, Vol. 7 at 46-47; Exhibit RR-2014-003-A-08 (protected) at 110, Vol. 12.
40. Exhibit RR-2014-003-16.02A (protected), Vol. 2.01 at 258-59.
41. *Ibid.* at 208.
42. Exhibit RR-2014-003-A-08 (protected) at 50, 65, 71, 79, 84, Vol. 12; Exhibit RR-2014-003-47 (protected), Vol. 2.01C at 27-28.
43. Exhibit RR-2014-003-05B, Tables 29, 30, 33, Vol. 1.1A.
44. *Transcript of Public Hearing*, Vol. 1, 26 January 2015, at 29-30.
45. *Ibid.* at 27-28; Exhibit RR-2014-003-05B, Table 29, Vol. 1.1A.

52. During the POR, the subject goods maintained a 1 to 3 percent share of the Canadian market, a substantially reduced presence compared to that prior to the imposition of duties.[46]

53. The market share held by OCTG imports generally (subject and non-subject) remained stable, between 32 and 35 percent in every period of the POR.[47] Non-subject OCTG were sourced from the United States and other countries, by importers and the domestic producers.[48]

China's Excess Capacity Remains a Significant Factor

54. On the basis of extensive documentary evidence submitted by the domestic industry which was corroborated by witness testimony, the Tribunal finds that OCTG production and production capacity in China is the most significant factor in global OCTG oversupply. According to MBR, "[t]here is no doubt that the Chinese industry faces the threat of massive oversupply."[49] Of particular relevance to this review is the fact that this observation was made when China's domestic demand for OCTG was described as strong, whereas more recent reports indicate that China's domestic demand has reached record low levels.[50] This information is corroborated by three of four Chinese exporters that stated, in responding to the CBSA's questionnaire in this expiry review, that they expected a gradual reduction in China's domestic demand in 2014 and 2015.[51]

55. As documented in previous cases involving steel products from China, the Government of China has recognized concerns arising from excess production capacity in China's steel sector.[52] The Government of China's "12th Five-Year Plan for the Steel Pipe Industry (14 June 2011)" indicates that, in 2010, the overcapacity problem was particularly severe in the oil well pipes sector, as processing ability reached 10 million tonnes, exceeding domestic demand by over 5 million tonnes.[53] This represents an *excess* capacity topping 80 percent of China's actual output of OCTG and more than double the volume of Chinese exports in 2012.

56. The Tribunal finds that a significant correction of China's overcapacity problem is unlikely to happen in the near to medium term, particularly as capacity continues to be added in certain regions.[54] Furthermore, while there are some recent reports of Chinese OCTG or pipe mills closing, there is no evidence suggesting that these closures would be enough to solve the overcapacity issue in the near to medium term.[55] Additionally, the Tribunal finds that the recent fall in the price of oil and consequent slump in global OCTG demand will exacerbate overcapacity in China's OCTG sector.

Oil Prices: Recent Plunge and Uncertainty Ahead

57. As indicated at the outset of these reasons, the decline in oil prices in the second half of 2014 is likely the most significant factor in determining how the global and domestic OCTG industries will fare in

46. Exhibit RR-2014-003-05B, Table 31, Vol. 1.1A; *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate* (2 February 2010), NQ-2009-003 (CITT) at para. 189.
47. Exhibit RR-2014-003-05B, Table 31, Vol. 1.1A.
48. *Ibid.*; Exhibit RR-2014-003-06B (protected), Table 39, Vol. 2.1A.
49. Exhibit RR-2014-003-16.02A (protected), Vol. 2.01 at 217.
50. *Ibid.*; Exhibit RR-2014-003-46 (protected), Vol. 2.01C at 13.
51. Exhibit RR-2014-003-03A, Vol. 1A at 134.
52. See, for example, *Seamless Casing Expiry Review*.
53. Exhibit RR-2014-003-D-10, tab 7, Vol. 11C.
54. *Ibid.*
55. *Transcript of Public Hearing*, Vol. 2, 27 January 2015, at 162-63.

the near to medium term and, for this reason, the trends in demand, production, sales and pricing over the POR are unlikely to be the best indicators of these trends in the near to medium term.

58. Accordingly, it is important to look at the trend in the price of oil throughout the POR up until the close of the record in this expiry review. Average annual West Texas Intermediate (WTI) oil prices were US$95.10/bbl in 2011, US$94.21/bbl in 2012, US$97.97/bbl in 2013 and US$100.84/bbl in interim 2014.[56] By comparison, as of December 31, 2014, WTI crude was trading at US$53.27/bbl and, as of January 28, 2015, at US$45.57/bbl.[57]

59. Looking forward, the information on the record is clear that the price of oil is expected to remain volatile for some time, and the price over the near to medium term is difficult to predict.[58] Various reports do not foresee a recovery until the second half of 2015.[59] The January 2015 Monetary Policy Report Summary from the Bank of Canada makes projections assuming oil prices around US$60/bbl for 2015, noting that "[p]rices are currently lower but [the Bank's] belief is that prices over the medium term are likely to be higher."[60] The RBC Economics Research dated January 2015 assumes an average WTI price of US$65/bbl in 2015 and US$74/bbl in 2016.[61] More optimistic forecasts expect WTI prices around US$70/bbl in the longer term, depending in part on GDP growth in the United States and in emerging economies.[62]

60. Mr. McHattie testified that the precipitous decline in the price of oil not only has an effect on oil drilling, and thus demand for OCTG used in oil drilling, but also has a "snowball effect" on demand for OCTG used in gas drilling, because many energy companies produce both commodities.[63] In addition, Mr. Smith testified that, due to the current low gas prices and high natural gas storage levels, there is unlikely to be a shift to more gas drilling, creating a "perfect storm" from a commodity standpoint.[64] Indeed, the price of natural gas is trending toward 2012 prices, which were the lowest of the POR. The average price of natural gas according to NYMEX was US$4.08/MMBtu in 2011, US$2.81/MMBtu in 2012 and US$3.67/MMBtu in 2013, with a peak of US$4.73/MMBtu in interim 2014.[65] Buoyed by high prices in interim 2014, the average price for interim 2014 was US$4.39/MMBtu.[66] As of January 28, 2015, the price of natural gas had dropped to US$2.92/MMBtu.[67]

<u>Global Outlook for OCTG</u>

61. Recent reports indicate that the global OCTG industry is already feeling the effects of the drop in oil prices and the subsequent uncertainty surrounding future oil prices and drilling activity. For example, a January 2015 MBR report indicates that sales of seamless OCTG in the United States have been "affected strongly", as orders were cancelled and prices spiralled downwards. MBR expects weak demand for

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56. Exhibit RR-2014-003-05B, Tables 5, 6, Vol. 1.1A.
57. Exhibit RR-2014-003-39.09, Vol. 1C at 82; Exhibit RR-2014-003-51, Vol. 1D at 35.
58. For example, the Petroleum Services Association of Canada (PSAC) characterizes the duration of the current pricing environment as "a real unknown". See Exhibit PR-2014-003-48, Vol. 1D at 25.
59. Exhibit RR-2014-003-47 (protected), Vol. 2.01C at 20; Exhibit RR-2014-003-D-11 (protected) at 1, 5, Vol. 2.01A.
60. Exhibit RR-2014-003-39.13, Vol. 1C at 101.
61. Exhibit RR-2014-003-39.16, Vol. 1C at 114.
62. Exhibit RR-2014-003-39.19, Vol. 1C at 171; Exhibit RR-2014-003-D-11 (protected) at 1, Vol. 2.01A.
63. *Transcript of Public Hearing*, Vol. 1, 26 January 2015, at 23-25.
64. *Transcript of Public Hearing*, Vol. 2, 27 January 2015, at 119-20.
65. Exhibit RR-2014-003-05, Tables 5, 6, Vol. 1.1A.
66. Exhibit RR-2014-003-39.15, Vol. 1C at 108-109.
67. Exhibit RR-2014-003-51, Vol. 1D at 35.

seamless OCTG throughout the year.[68] MBR forecasts that North American oil production will continue to grow in the first quarter of 2015, but more slowly than expected and with shifts to lower cost plays.[69] MBR singles out reduced drilling in shale basins as a particular longer-term threat to OCTG demand, given that this type of drilling usually consumes large quantities of OCTG.[70]

62. Other markets are also feeling the effects of the drop in oil prices on OCTG demand to varying degrees. For example, it is reported that Brazilian energy developments are being "slowed or delayed", as oil prices approach break-even points. In the Middle East, delays in new tenders and increased pressure on OCTG producers to lower prices were reported. Pressure on prices and some delays in new developments are also expected in the North Sea OCTG market, with a "particularly bleak" outlook in the United Kingdom.[71]

63. These reports are consistent with a Baker Hughes active rig count from January 16, 2015, showing that 226 fewer rigs were active in North America than at the same date in 2014. Internationally, there was also a decrease in rig counts, albeit less pronounced.[72] In response to declining global demand for OCTG, there are reports of producers idling mills and contemplating switching from OCTG production to other products.[73]

64. Notwithstanding the weak outlook for global OCTG demand, MBR reports that certain Chinese producers of seamless OCTG are expected to increase output in 2015. MBR also notes that a structure of export tax rebates remains in place in China, meaning that producers will likely continue to target export markets, which would cause further erosion in global OCTG prices.[74]

<u>Domestic Outlook for OCTG</u>

65. The documentary evidence and testimony indicate that the outlook for the Canadian OCTG market is consistent with the outlook globally. During the hearing, witnesses stated that domestic demand for OCTG is at a crisis level and will remain so for the next one or two years.[75] Long-term prospects, however, are "very favourable" due to expected demand from the Canadian oil and gas industry.[76]

66. In a press release dated January 27, 2015, the PSAC revised its 2015 drilling forecast downward by 24 percent from previous estimates. On the basis of its assumptions about oil and natural gas prices, and the Canada-U.S. exchange rate, the PSAC anticipates, in its 2015 forecast, that 7,650 wells will be drilled in Canada this year.[77] This is a significant decrease from the 11,226 wells drilled in 2014, as reported by the Canadian Association of Oilwell Drilling Contractors (CAODC).[78]

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68. Exhibit RR-2014-003-47 (protected), Vol. 2.01C at 18.
69. Exhibit RR-2014-003-46 (protected), Vol. 2.01C at 7; Exhibit RR-2014-003-47 (protected), Vol. 2.01C at 20.
70. Exhibit RR-2014-003-47 (protected), Vol. 2.01C at 20-21.
71. *Ibid.* at 18, 20, 22-26.
72. Exhibit RR-2014-003-39.10, Vol. 1C at 84-85.
73. Exhibit RR-2014-003-47 (protected), Vol. 2.01C at 21; *Transcript of Public Hearing*, Vol. 1, 26 January 2015, at 9-10.
74. Exhibit RR-2014-003-47 (protected), Vol. 2.01C at 27, 28.
75. *Transcript of Public Hearing*, Vol. 1, 26 January 2015, at 9-10, 19-20.
76. *Ibid.* at 25-26.
77. Exhibit RR-2014-003-48, Vol. 1D at 25.
78. Exhibit RR-2014-003-39.08, Vol. 1C at 75.

67. A January 22, 2015, CAODC forecast of active rig counts indicates that the average number of active rigs will be down by 41 percent from 2014. This is significantly below its previous forecast for 2015 which was based on a higher oil price.[79] The Baker Hughes rig count on January 16, 2015, showed 125 less active rigs than on the same date in 2014, which is noteworthy given that the first quarter is traditionally the high season for drilling.[80]

68. The CAODC forecast corroborates the documentary evidence and testimony on the record indicating that the Canadian exploration and production (E&P) sector is reducing its costs by cutting or delaying capital spending until there is more certainty about the price of oil. The cost cuts, should they occur, would add downward pressure on OCTG prices and could force distributors to write-down the value of their relatively high inventory from purchases of OCTG in 2014.[81]

Likely Performance of the Domestic Industry if the Findings Are Continued

69. In order to assess the likely impact of a rescission of the findings on the domestic industry, the Tribunal will start by examining the likely performance of the domestic industry with the findings in place, that is, the likely performance of the industry in the near to medium term having regard to all the relevant circumstances, assuming that the anti-dumping and countervailing duties continue to impose some discipline on the prices of the subject goods. For the purposes of this analysis, the Tribunal will take into account the domestic industry's recent performance,[82] as well as the market conditions affecting or likely to affect the domestic industry's performance in the near to medium term.[83] By first looking at the likely performance of the domestic industry with the findings in place, this analysis will enable the Tribunal to isolate, in the next step of the analysis, the likely impact on the domestic industry attributable to the rescission of the findings from any other factors likely to affect the domestic industry.

70. The domestic producers submitted that, following the Tribunal's findings in 2009, the industry's performance improved. Starting in the fourth quarter of 2012, however, the domestic market for OCTG, domestic production, exports and overall profitability declined. Although higher oil prices in interim 2014 increased demand, domestic producers were unable to recover to the level of profitability in 2011. The domestic producers submitted that the industry's financial position has been pressured by low-priced imports from non-subject countries and was therefore vulnerable prior to the steep drop in demand due to lower oil prices. As a result of the steep drop in demand, the projected domestic sales volume for 2015 provided by the industry shows that there will be a substantial decline on an industry-wide basis when compared to the annualized volume for 2014. The domestic producers also indicated that the drop in demand has created a downward pressure on prices.[84] Going forward, the domestic producers submitted that, given the lower oil prices forecast for 2015-2016 and the consequences on price and demand, they remain vulnerable in the near to medium term.

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79. *Ibid.*
80. Exhibit RR-2014-003-39.10, Vol. 1C at 84.
81. *Transcript of Public Hearing*, Vol. 1, 26 January 2015, at 9-10, 18-19, 79, Vol. 2, 27 January 2015, at 93-94, 99, 115-18. See, for example, Exhibit RR-2014-003-D-10, tab 12, Vol. 11C.
82. See paragraph 37.2(2)(*c*) of the *Regulations*; *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate* (7 January 2014), RR-2013-002 (CITT) at para. 85. In *Thermoelectric Containers*, at para. 14, the Tribunal stated that, in an expiry review, it is required to draw logical conclusions from the relevant information before it and that information will often appropriately include the performance of the domestic and foreign industries during the POR, when anti-dumping and countervailing duties were in place. See, also, *Aluminum Extrusions Expiry Review* at para. 21.
83. See paragraph 37.2(2)(*k*) of the *Regulations*.
84. *Transcript of Public Hearing*, Vol. 2, 27 January 2015, at 100-101, 156.

Production and Domestic Sales

71. The domestic output of like goods declined by 6 percent in 2012 compared to 2011 and by 22 percent in 2013 compared to 2012, with an increase of 26 percent in interim 2014 compared to interim 2013.[85] Correspondingly, the volume of sales in Canada from domestic production declined year over year in 2012 and 2013, by 3 percent and 18 percent, respectively, and increased significantly by 27 percent in interim 2014 compared to interim 2013.[86] The value of sales in Canada from domestic production also declined year over year in 2012 and 2013, by 5 percent and 25 percent, respectively, and increased by 30 percent in interim 2014 compared to interim 2013.[87]

72. The significant increase in domestic production and sales in interim 2014 coincided with the highest average oil and natural gas prices of the POR, which supports the domestic industry's submission on why it performed relatively well in interim 2014.[88] In addition, the evidence indicates that the spring of 2014 was atypical, as anticipation of a busy drilling season in the third and fourth quarters of 2014 kept demand high during the traditionally slow period around spring breakup.[89]

73. The documentary evidence and the testimony clearly show that, compared to interim 2014, the domestic industry is now experiencing a significant drop in demand, with consensus forecasts indicating that demand is unlikely to increase in the near to medium term. Witnesses stated that, due to reduced drilling activity in the first quarter of 2015, there are virtually no new orders and that, while the mills are still producing because of orders placed in the second half of 2014, some of those orders were cancelled.[90] Other witness testimony described the situation not as a slowdown but as a ". . . complete disappearance of business out of Western Canada . . . ."[91]

74. In addition to a significant drop in demand, testimony indicates that whatever demand remains for 2015 will likely be met by inventory already in the market. The witness called by the Tribunal, Mr. Cheng, is a distributor and testified that, in his view, distributors are probably holding "much more than a year's supply", which is double the level of supply that he considers normal at this time of year.[92] Mr. Smith explained in detail that, in the second half of 2014 distributors were buying inventory to meet expected market demand in 2015 and that, as a result, there is likely to be a significant overhang of inventory from the first quarter of 2015 all the way into the third quarter of 2015.[93]

75. In view of the unusually high inventory held by distributors, witnesses testified that distributors and end users are not expected to start placing new orders for a while.[94] Mr. Smith testified that he expects any new sales will be small orders from distributors supplementing their existing inventories.[95] Some witnesses

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85. Exhibit RR-2014-003-05B, Tables 9, 10, Vol. 1.1A.
86. *Ibid.*, Table 30.
87. *Ibid.*, Table 33.
88. *Ibid.*, Table 5.
89. *Transcript of Public Hearing*, Vol. 1, 26 January 2015, at 77-79, Vol. 2, 27 January 2015, at 98-99.
90. *Transcript of Public Hearing*, Vol. 1, 26 January 2015, at 20-22, 55-56; *Transcript of In Camera Hearing*, Vol. 1, 26 January 2015, at 45.
91. *Transcript of Public Hearing*, Vol. 1, 26 January 2015, at 55-56, 78, Vol. 2, 27 January 2015, at 98-99.
92. *Transcript of Public Hearing*, Vol. 1, 26 January 2015, at 79-80, Vol. 2, 27 January 2015, at 168-69.
93. *Transcript of Public Hearing*, Vol. 2, 27 January 2015, at 98-99, 115-18.
94. *Transcript of Public Hearing*, Vol. 1, 26 January 2015, at 21-22, 66.
95. *Transcript of Public Hearing*, Vol. 2, 27 January 2015, at 98-99.

expressed hope that there may be new orders for the U.S. market, but noted that this is uncertain because the U.S. OCTG market has some of the same challenges as the Canadian market.[96]

76. Therefore, the evidence indicates that, unless activity suddenly picks up, of which there is no positive indication, orders for 2015 are likely to be soft, at best. Consequently, the Tribunal finds that, while producers are likely to continue producing in the short term to help cover fixed costs, production is likely to remain at levels significantly lower than those of 2013 and 2014 (based on annualized interim 2014 production figures). Indeed, the forecasts for 2015 provided by the domestic producers in their responses to the Request for Information (RFI) from the Tribunal show an expected decline in production and sales volume and value.[97] This evidence was corroborated by witness testimony that domestic producers are reducing shifts and laying off employees earlier than normal for this time of the year.[98] Accordingly, the Tribunal finds that, due in large part to decreased demand, the domestic industry's near-term performance is likely to decline in terms of production and domestic sales.

<u>Export Performance</u>

77. Similar to the domestic industry's decrease in the overall volume of domestic sales, its overall volume of exports declined over the POR. Export volumes increased in 2012, but decreased in 2013 to a level that was 22 percent lower than in 2011, and decreased by another 15 percent in interim 2014 compared to interim 2013.[99] The value of export sales increased by 21 percent in 2012 but decreased by 31 percent in 2013, with a further decline of 5 percent in interim 2014 compared to interim 2013.[100] The average unit value of export sales from domestic production followed a different trend from domestic sales, increasing by 7 percent in 2012, declining by 12 percent in 2013 and increasing again by 12 percent in interim 2014.[101]

78. The witnesses for the domestic producers testified that export opportunities, which are all to the United States, are likely to be limited going forward due to decreased drilling activity in the United States and to recently added capacity to produce OCTG in the United States.[102] This is consistent with the data from the POR indicating an overall decline in the volume of export sales[103] and documentary evidence indicating forecasts for lower demand for OCTG in the United States.

79. The Tribunal finds that export sales to the United States are likely to follow the same overall trend as the volume of domestic sales, at least in the near term, as demand in both the Canadian and the U.S. markets has significantly decreased. In the medium term, however, the Tribunal finds that some of the

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96. *Transcript of Public Hearing*, Vol. 1, 26 January 2015, at 78.
97. In response to the Tribunal's RFI, Tenaris, Evraz and Welded Tube provided their forecasts for 2015, where available, including in terms of domestic production volume and sales volume and value. See Exhibit RR-2014-003-RI-01A (protected), Vol. 10; Exhibit RR-2014-003-RI-02A (protected), Vol. 10; Exhibit RR-2014-003-RI-04A (protected), Vol. 10; Exhibit RR-2014-003-D-09 (protected) at paras. 23-26, Appendix, Vol. 12A; Exhibit RR-2014-003-06B (protected), Tables 7, 29, Vol. 2.1A. See, also, Exhibit RR-2014-003-D-08 at paras. 8-12, Vol. 11B, with regard to the fixed costs involved in OCTG production.
98. *Transcript of Public Hearing*, Vol. 2, 27 January 2015, at 125-26, Vol. 1, 26 January 2015, at 10; *Transcript of In Camera Hearing*, Vol. 1, 26 January 2015, at 12.
99. Exhibit RR-2014-003-05B, Table 8, Vol. 1.1A.
100. *Ibid.*, Table 60.
101. *Ibid.*, Table 63.
102. *Transcript of Public Hearing*, Vol. 1, 26 January 2015, at 35-37, 77-78, 81; *Transcript of In Camera Hearing*, Vol. 1, 26 January 2015, at 27-30, 34-36; *Transcript of Public Hearing*, Vol. 2, 27 January 2015, at 128-30; Exhibit RR-2014-003-A-03 at paras. 33-36, Vol. 11; Exhibit RR-2014-003-39.03, Vol. 1C at 34.
103. Exhibit RR-2014-003-05B, Table 8, Vol. 1.1A.

domestic producers would likely exploit opportunities to export OCTG to the United States, as currency exchange should provide some competitive advantage or at least a higher margin relative to domestic sales.[104]

Pricing of the Like Goods

80. During the POR, the selling prices of like goods declined between 2011 and 2013, but improved in interim 2014. Selling prices in this period followed trends in the apparent market: as the apparent market contracted in each of 2012 and 2013, so did prices of like goods. Prices increased again as the market grew in interim 2014.[105]

81. The domestic producers' selling prices for export sales increased in 2012, but followed the same trend as domestic sales in the remaining periods of the POR, decreasing in 2013 and increasing in interim 2014. As with domestic sales, prices moved in the same direction as sales volume on a year-over-year basis.[106]

82. On the basis of witness testimony, the Tribunal finds that producers are likely unable to command a price premium over imports, especially in times of high import penetration and declining drilling activity. To this point, Mr. McHattie testified that Tenaris has commitments with its largest customers to sell to them at prices that are competitive in the market. He added that premiums have been especially hard to come by in the latter half of 2014 as a result of unfairly priced imports and declining OCTG prices, noting that, although the apparent market table of the investigation report showed a growing market in interim 2014 compared to interim 2013, on an annualized basis, the market would remain below 2011 levels.[107]

83. Mr. Smith testified that, even when oil was valued at US$100/bbl, there was a considerable focus on price by end users—with a differential of 2 or 3 percent being able to swing an OCTG purchase from one supplier to another. In the context of a 50 percent decline in oil prices, Mr. Smith testified that there would be increased pressure from E&P companies to reduce their costs, as the price of oil is now near the break-even point for new drilling starts. He further explained that E&P companies are coming to the energy service sector, OCTG suppliers included, looking for deep discounts to remain competitive. Mr. Smith stated that he had heard of some E&P companies looking for discounts of 15 and 20 percent, which he noted is not a realistic possibility for the domestic industry.[108] Mr. Cheng, a distributor, agreed in his testimony that the domestic mills might be under additional pressure to help E&P companies reduce their costs.[109]

84. In light of these recent changes in the OCTG market, driven by the decline in oil and gas prices, and the expected resulting decline in oil and gas drilling activity, industry participants could not accurately forecast the pricing of domestic or imported OCTG, except to agree that there will be an inevitable decline in prices in the near to medium term.

85. On the basis of the foregoing, the Tribunal finds that, in the next 12 to 18 months, the domestic industry is likely to experience pricing pressure because of relatively weak demand for OCTG, E&P companies looking for discounts and low-priced competition from imports from non-subject countries.

104. *Transcript of Public Hearing*, Vol. 1, 26 January 2015, at 35-37, 77-78, 81-82; *Transcript of In Camera Hearing*, Vol. 1, 26 January 2015, at 26-27, 30.
105. Exhibit RR-2014-003-05B, Table 7, Vol. 1.1A.
106. *Ibid.*, Tables 57, 63.
107. *Transcript of Public Hearing*, Vol. 1, 26 January 2015, at 27-28; Exhibit RR-2014-003-05B, Table 29, Vol. 1.1A.
108. *Transcript of Public Hearing*, Vol. 2, 27 January 2015, at 100-101.
109. *Ibid.* at 156.

Capacity Utilization and Employment

86. Data from the POR indicate that changes in employment levels lagged trends in sales and production. The total number of employees directly employed by the domestic industry increased by 3 percent between 2011 and 2012 and then declined by 14 percent in 2013.[110] Interim 2014 demonstrates some growth in the number of direct employees, representing an 8 percent increase over interim 2013. The number of hours worked by direct employees followed a similar trend, increasing by 1 percent in 2012 as compared to 2011, but then falling by 15 percent in 2013. Interim 2014 shows slightly more hours worked than in interim 2013.[111] Over the POR, there was a steady decline in the total wages paid by domestic producers to their direct employees, with a slight uptick in interim 2014 as compared to interim 2013.[112]

87. Capacity utilization followed the decline in production rates, both decreasing throughout the POR, except in interim 2014. Utilization rates for OCTG decreased from 75 percent in 2011 to 53 percent in 2013, before increasing to 66 percent in interim 2014. The overall reduction in capacity utilization rates could also be due, at least in part, to the increase in aggregate practical plant capacity over the POR.[113]

88. Although seasonal variations in employment levels are not uncommon in this industry, the evidence on the record indicates that late 2014 and early 2015 have been particularly difficult for domestic industry employees. The Energex plant in Welland, Ontario, was idled in May 2014, and Energex informed the Tribunal that the plant will remain idled until market conditions are more favourable. Mr. Harapiak testified that, while seasonal layoffs may affect up to 50 percent of Evraz's workforce in a typical year, normally these layoffs would not take place until spring breakup, which occurs at the end of March or beginning of April.[114] Mr. Harapiak testified that the layoffs in the industry, including recently announced layoffs by Evraz in Red Deer, Alberta, are beyond what would normally be seen at this time of year.[115] Mr. Moreno indicated that two of Tenaris's facilities, one in Sault Ste. Marie, Ontario, and the other in Calgary, Alberta, were shut down for a two-week period in December 2014 and that, so far, the company has laid off around 330 people.[116]

89. Naturally, these layoffs and shutdowns have resulted in reduced capacity utilization rates.[117] Furthermore, as shown by the evidence, the timing of the recent layoffs is particularly significant, as it is more typical for layoffs to occur just before spring breakup, i.e. in March or April.[118]

90. Going forward, witnesses for the domestic producers testified that they will be following the market outlook and adjusting their operations accordingly.[119] The Tribunal also notes the more specific accounts provided *in camera*.[120]

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110. Exhibit RR-2014-003-05, Tables 7, 102, Vol. 1.1.
111. *Ibid.*, Tables 7, 103.
112. *Ibid.*, Table 104.
113. *Ibid.*, Table 106.
114. *Transcript of Public Hearing*, Vol. 2, 27 January 2015, at 125-26.
115. *Ibid.* at 125.
116. *Transcript of Public Hearing*, Vol. 1, 26 January 2015, at 10.
117. *Transcript of In Camera Hearing*, Vol. 2, 27 January 2015, at 69-70, Vol. 1, 26 January 2015, at 3.
118. *Transcript of Public Hearing*, Vol. 2, 27 January 2015, at 125-26; *Transcript of In Camera Hearing*, Vol. 1, 26 January 2015, at 12.
119. *Transcript of Public Hearing*, Vol. 2, 27 January 2015, at 95-96.
120. *Transcript of In Camera Hearing*, Vol. 1, 26 January 2015, at 3-4, Vol. 2, 27 January 2015, at 69-70, 81-82.

91. Given the significant change in industry drivers for the near to medium term, and especially as 2014 orders are filled, the Tribunal finds that employment levels and capacity utilization will likely decrease over the near to medium term, most likely lagging declining sales.

Domestic Industry's Inventories

92. Data regarding the domestic producers' total consolidated inventories show that the volume and value of inventories decreased at similar rates over the POR, except in interim 2014, in which they increased compared to interim 2013.[121] This trend coincides with the trends in production and sales over the POR.

93. Testimony indicates that it is the distributors that typically carry higher levels of inventory and that producers typically wait for an order before producing OCTG. There is no indication that this business model will change in the near to medium term.[122]

94. Due primarily to weakening market demand, the Tribunal finds that the domestic producers' inventories will likely decrease in volume and value in the near to medium term.

Market Share

95. The market share held by sales from domestic production remained stable during the POR, accounting for 68 percent of the market in 2011 and 2012, falling slightly to 66 percent in 2013 but then recovering to 68 percent in interim 2014.[123] This market share is higher than the market share held by sales from domestic production before the Tribunal's findings were issued.[124]

96. While sales of the subject goods decreased modestly in the Canadian market (between 1 and 3 percent) over the POR, the remaining market share was held by imports from non-subject countries, which increased from a 28 percent share to a 33 percent share between 2011 and 2013 before declining to a 30 percent share in interim 2014.[125]

97. Despite the relatively stable market share held by the various suppliers of OCTG, the evidence also indicates, as already discussed above, that the OCTG market is very competitive, with a strong focus on price. In addition, considering the current context, domestic producers and importers are likely to be competing for a share of a shrinking market.

98. As such, the Tribunal finds that, with increasing pressures on OCTG prices as a result of low demand, the domestic industry's market share is likely to decline in the near to medium term.

Profitability

99. Aggregate domestic industry profitability deteriorated over the POR, except for a significant improvement in interim 2014. The value of net sales in Canada from domestic production decreased by

121. Exhibit RR-2014-003-05B, Tables 108, 109, Vol. 1.1A.
122. *Transcript of Public Hearing*, Vol. 2, 27 January 2015, at 122-24; Exhibit RR-2014-003-D-08 at para. 6, Vol. 11D.
123. Exhibit RR-2014-003-05B, Tables 7, 31, Vol. 1.1A.
124. Exhibit RR-2014-003-11.03C (protected), Vol. 2.3A at 314.
125. Exhibit RR-2014-003-05B, Tables 7, 31, Vol. 1.1A.

5 percent in 2012 and by 24 percent in 2013; meanwhile, interim 2014 shows an increase of 35 percent compared to interim 2013.[126]

100. Gross margins declined by 46 percent in 2012 and by a further 63 percent in 2013, but showed a 400 percent increase in interim 2014. This was due mainly to the decreases in prices of domestic sales over the POR, save the increase seen in interim 2014.[127]

101. Consolidated net income before taxes declined throughout the POR, plunging to an aggregate loss of $68.275 million in 2013. Interim 2014 figures also show a net loss, albeit significantly smaller than in interim 2013.[128]

102. The value of export sales from domestic production also decreased in 2013 when compared to 2011 levels, although they reached a high point in 2012. In addition, the domestic industry incurred a consolidated loss in 2013, though the interim 2014 data show a return to profitability.[129]

103. In addition, the domestic producers provided forecasts of net delivered selling values and volumes for 2015,[130] on the basis of which the Tribunal was able to derive a forecast weighted average net delivered selling value for the domestic industry for 2015, which shows a decline compared to the weighted average net delivered selling value for interim 2014.[131] The Tribunal further examined the potential impact[132] of the forecast net delivered selling value on net sales revenues and financial results of the domestic industry. On the basis of this examination of the evidence, the Tribunal finds it likely that the financial results of the domestic industry will decline in the near term due to the forecast decline in the net delivered selling value.

104. As such, the Tribunal finds that, principally due to weakening market demand and price decline due to the weakening market demand, gross margins and profitability will likely decrease further in the near to medium term, especially as various fixed costs and other overhead costs need to be allocated over lower production volumes.[133]

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126. *Ibid.*, Table 96.
127. *Ibid.*
128. *Ibid.*
129. Exhibit RR-2014-003-06B (protected), Table 97, Vol. 2.1A.
130. As noted previously, in response to the Tribunal's RFI, Tenaris, Evraz and Welded Tube provided their forecasts for 2015, where available, in terms of domestic production volumes, as well as the volumes and values of domestic sales and export sales. While Evraz only provided an estimate of total domestic production volume, and combined domestic and export sales volumes and values, for the purposes of this exercise, the Tribunal relied on data from the POR to estimate the volumes and values of domestic and export sales, relying on the following exhibits: Exhibit RR-2014-003-RI-01A (protected), Vol. 10; Exhibit RR-2014-003-RI-02A (protected), Vol. 10; Exhibit RR-2014-003-RI-04A (protected), Vol. 10; Exhibit RR-2014-003-D-09 (protected) at paras. 23-26, Appendix, Vol. 12A; Exhibit RR-2014-003-06B (protected), Tables 29, 56, Vol. 2.1A.
131. Exhibit RR-2014-003-RI-01A (protected) at 4, Vol. 10; Exhibit RR-2014-003-RI-02A at 2, Vol. 10; Exhibit RR-2014-003-RI-03A at 2, Vol. 10; Exhibit RR-2014-003-RI-04A at 4, Vol. 10; Exhibit RR-2014-003-05B, Table 35, Vol. 1.1A.
132. In establishing this potential impact, the Tribunal held the cost of goods sold on a $/tonne basis constant at 2014 levels, as these were the best data available to the Tribunal for that purpose. The reported net delivered selling values were adjusted for delivery costs where applicable based on net delivered selling values and net sales revenues reported by domestic producers over the POR.
133. Exhibit RR-2014-003-D-08 at paras. 8-12, Vol. 11B; Exhibit RR-2014-003-D-09 (protected) at paras. 8-12, Vol. 12A.

Likely Performance of the Domestic Industry if the Findings are Rescinded

105. The Tribunal will now turn to the effects that would likely result from the findings being rescinded, starting with the likely volumes and prices of the dumped and subsidized goods. On this basis, and taking into account the likely performance of the domestic industry if the findings are continued, as described above, the Tribunal will assess the impact on the domestic industry if the findings are rescinded.

Likely Import Volume of Dumped and Subsidized Goods

106. Paragraph 37.2(2)(*a*) of the *Regulations* directs the Tribunal to consider the likely volume of the dumped or subsidized goods if the findings are rescinded, and, in particular, whether there is likely to be a significant increase in the volume of imports of the dumped or subsidized goods, either in absolute terms or relative to the production or consumption of like goods. This assessment encompasses the likely performance of the foreign industry, the potential for the foreign producers to produce goods in facilities that are currently used to produce other goods, evidence of the imposition of anti-dumping and/or countervailing measures in other jurisdictions, and whether measures adopted by other jurisdictions are likely to cause a diversion of the subject goods to Canada.[134]

107. Evraz argued that Chinese OCTG producers and exporters would almost certainly seek to recapture their prior market position if the findings are rescinded and would be assisted by the fact that they have maintained their ties to the Canadian market. Evraz submitted that this, combined with China's current excess OCTG production capacity and what Evraz characterized as "irrational" capacity expansion, would result in a dramatic surge in imports of the subject goods.

108. Evraz submitted that export markets are the only viable markets for Chinese OCTG producers, given that demand for OCTG in China is not currently sufficient to absorb production and that domestic demand in China is expected to soften further in the foreseeable future. Evraz also noted that Chinese export sales tend to be more profitable than domestic sales in China, resulting from the substantial spread between OCTG pricing in China as compared to pricing in Canada and the United States.[135]

109. Tenaris made arguments similar to those of Evraz. Tenaris provided data associated with line pipe (a closely related steel product, but not subject to this review) as evidence of the significant presence of Chinese exporters of ERW OCTG in the Canadian marketplace and the existing relationships that could be leveraged into the OCTG market.[136]

110. Energex and Welded Tube argued that, in the event of a rescission of the findings, the import volumes of the subject goods would be in the hundreds of thousands of tonnes. They argued that the recent uptick in the volume of imports of other Chinese tubular products in 2013 indicates that Chinese producers have a continuing interest and an ability to sell into Canada, should the findings be rescinded.

111. As discussed above, it is undisputed that China has been and is expected to remain the primary supplier of the world's OCTG in the near future.[137] The evidence on the record indicates that, in 2012, China was the world's largest producer of OCTG at 6.1 million tonnes.[138] At the same time, China's total

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134. Paragraphs 37.2(2)(*a*), (*d*), (*f*), (*h*) and (*i*) of the *Regulations*.
135. Exhibit RR-2014-003-D-02 (protected) at paras. 42-47, Vol. 12A.
136. Exhibit RR-2014-003-A-02 (protected) at paras. 67-72, Vol. 12.
137. Exhibit RR-2014-003-16.02A (protected), Vol. 2.01 at 262, 266.
138. *Ibid.* at 253, 259.

effective OCTG capacity was 11.7 million tonnes.[139] Indeed, China had the world's lowest regional capacity utilization rate.[140] In 2013, Chinese OCTG production was estimated to increase to 6.4 million tonnes in 2015 and 6.5 million tonnes in 2016.[141] Although this projection was made prior to the drop in oil prices and the consequent decline in demand, the Tribunal accepts, consistent with its findings in *Seamless Casing Expiry Review*,[142] that there is a production imperative in China for OCTG producers and that, therefore, the tendency of these producers is to keep producing as long as their net sales exceed their variable manufacturing and general, selling and administrative costs.[143]

112. Indeed, more recently, MBR reported that certain Chinese producers of seamless OCTG are expected to increase output in 2015, notwithstanding the decline in demand.[144] In addition, an abundance of evidence on the record cites continued capacity expansions of Chinese steel tube and pipe mills for 2014 and 2015.[145] For example, China's National Bureau of Statistics data showed that, as new capacity came online, output of welded pipe increased by 7 percent between January and August 2014 compared to the same period in 2013.[146] With the appropriate finishing services (threading, heat treating and testing), this tube and pipe can be converted into OCTG. Recently, a number of new Chinese finishing facilities have been either commissioned or built in order to perform this conversion.[147] According to the CBSA, these capacity expansions would effectively increase China's OCTG capacity by an additional 2 million tonnes.[148] Reports on the record also indicate that Chinese OCTG capacity could rise with relative ease, given that the majority of producers of seamless OCTG also manufacture mechanical pipe, the production of which can be transferred smoothly to the manufacture of green pipe.[149]

113. On this basis, and in light of the decline in global demand for OCTG, the Tribunal finds that China's capacity utilization rate for OCTG production will likely remain low in the short to medium term. Of greater significance, the Tribunal finds that Chinese producers will continue to seize opportunities to increase capacity utilization rates by directing product to export markets to which they have unhindered access. China is export-oriented and, despite the impact of trade remedy measures on Chinese OCTG in many markets, it has remained the world's largest net exporter of OCTG.[150]

114. In fact, one of the main objectives stated by of the Government of China in its "12th Five-Year Plan for the Steel Industry (14 June 2011)" was to increase its exports of steel pipe by 9 percent annually, including exports of seamless pipe representing 18 percent of production and exports of welded pipe representing 11 percent of production in order to alleviate its overcapacity.[151] Mr. Xu Lejiang, Chairperson of China Iron and Steel Association, confirmed the Government of China's view that increased exports is part of the solution to solve China's ever-increasing excess capacity problem.[152]

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139. *Ibid.* at 210.
140. *Ibid.* at 30.
141. *Ibid.* at 264.
142. *Seamless Casing Expiry Review* at para. 122.
143. Exhibit RR-2014-003-A-07 at 146, Vol. 11; Exhibit RR-2014-003-16.02A (protected), Vol. 2.01 at 222-23.
144. Exhibit RR-2014-003-47 (protected), Vol. 2.01C at 27, 28.
145. Exhibit RR-2014-003-A-08 (protected) at 29-38, Vol. 12.
146. *Ibid.* at 43.
147. *Ibid.* at 29-39, 44, 126.
148. Exhibit RR-2014-003-03A, Vol. 1A at 131.
149. Exhibit RR-2014-003-16.02A (protected), Vol. 2.01 at 209.
150. *Ibid.* at 24.
151. Exhibit RR-2014-003-D-10, tab 7, Vol. 11C.
152. *Ibid.*, tab 9.

115. In addition, the evidence shows that China's domestic demand for OCTG has weakened[153] and is not expected to be able to absorb any additional production. Chinese OCTG producers that cannot sell domestically thus appear to have no alternative but to export in order to remain viable. Indeed, evidence on the record which characterized China's domestic market for OCTG as "strong", based on 2012 data, nevertheless indicated that its excess supply had resulted in aggressive competition and low margins,[154] causing the industry to become unprofitable.[155]

116. On the basis of the documentary evidence filed, the Tribunal finds that, despite weakening demand in North America, prices in Canada are likely to remain higher than in other markets, providing an additional incentive for Chinese producers of OCTG to export to Canada. China's seamless OCTG prices continue to be the lowest in the world,[156] with the most recent market analysis for January 2015 showing that the benchmark Chinese seamless 7" OD J/K55 casing prices declined to ". . . an already substantial discounted level relative to other international benchmarks",[157] almost doubling the rate of decline since November 2014.[158] At the same time, current North American prices are at least double the Chinese prices for some OCTG.[159]

117. Meanwhile, as observed earlier, markets for Chinese OCTG have continued to shrink. Currently, Chinese OCTG is subject to anti-dumping or countervailing duties in the United States, Columbia and the European Union, with ongoing investigations into Chinese OCTG in Russia and Peru.[160] Furthermore, a witness for Evraz testified that many of the Russian OCTG producers are related to the oil and gas drilling companies purchasing that same OCTG and would have little interest in sourcing from unaffiliated suppliers.[161] In addition, Russian drilling activity is projected to decrease significantly in 2015 and beyond due to the decreasing oil prices and economic sanctions that have been recently imposed against Russia.[162]

118. Measures have also been imposed with respect to related Chinese tubular steel products in Argentina, Australia, Brazil, the European Union, India, Mexico, Russia, Turkey and the United States.[163] Significantly, in this respect, it is important to note that India has, since 2010, been China's largest foreign market for its seamless pipe[164] and that equipment used to make seamless pipe can also be used to make some types of intermediate or finished OCTG.

119. In conjunction, there are reports that Chinese OCTG producers have established new facilities in other Asian countries in what the domestic industry describes as an effort to circumvent these trade measures.[165] In particular, Chinese OCTG producers, such as Huludao City Steel Pipe Co., Ltd. and Wuxi

153. Exhibit RR-2014-003-A-08 (protected) at 5, 10, 20, 24, 46-54, Vol. 12; Exhibit RR-2014-003-16.02A (protected), Vol. 2.01 at 263; Exhibit RR-2014-003-47 (protected), Vol. 2.01C at 28; Exhibit RR-2014-003-32.03, Vol. 7.1F at 159; Exhibit RR-2014-003-32.01D, Vol. 7.1F at 71-72; Exhibit RR-2014-003-32.04, Vol. 7.1F at 189.
154. Exhibit RR-2014-003-16.02A (protected), Vol. 2.01 at 217.
155. Exhibit RR-2014-003-28.01A, Vol. 7.1 at 104; Exhibit RR-2014-003-A-07 at 148-53, Vol. 11; Exhibit RR-2014-003-A-08 (protected) at 27, 44, 59, 68, 69, Vol. 12.
156. Exhibit RR-2014-003-16.02A (protected), Vol. 2.01 at 275-76.
157. Exhibit RR-2014-003-47 (protected), Vol. 2.01C at 27.
158. *Ibid.*
159. Exhibit RR-2014-003-47 (protected), Vol. 2.01C at 19; Exhibit RR-2014-003-05B, Table 43, Vol. 1.1A.
160. Exhibit RR-2014-003-03A, Vol. 1A at 139; Exhibit RR-2014-003-A-08 (protected) at 109-110, Vol. 12.
161. Exhibit RR-2014-003-D-03 at para. 15, Vol. 11B.
162. Exhibit RR-2014-003-D-11 (protected) at 64, Vol. 2.01A.
163. Exhibit RR-2014-003-03A, Vol. 1A at 139.
164. Exhibit RR-2014-003-A-08 (protected) at 115, Vol. 12.
165. Exhibit RR-2014-003-16.02A (protected), Vol. 2.01 at 23, 233, 249; Exhibit RR-2014-003-D-10 at 6-7, 9, Vol. 11C.

Seamless Pipe Co., Ltd., reportedly expanded or opened production facilities outside China in 2010 and have continued to export into the Canadian market using these facilities.[166]

120. This evidence amply demonstrates that Chinese OCTG producers have a continuing interest in foreign markets, including the Canadian market, the fourth largest in the world, especially as long as duties on Chinese OCTG remain in place in the United States.[167] Indeed, the evidence establishes that, despite trade remedy measures, Canadian OCTG importers have maintained ties with Chinese OCTG producers, as well as with Chinese producers that export closely related Chinese steel products to Canada, such as line pipe.[168] Mr. Cheng, who stated that Cantak Corporation had itself continued to keep "close contact" with certain Chinese mills, testified that, in his opinion, many Chinese suppliers would seek to enter the Canadian market if the findings were rescinded and that they would be able to ship their goods quickly, within 4 to 6 weeks.[169] The Tribunal finds that these existing relationships and market familiarity would facilitate the rapid re-entry of the subject goods in Canada.

121. Prior to the Tribunal's findings, Chinese OCTG accounted for as much as 25 percent of the Canadian market during the first three quarters of 2009, with 83,285 tonnes in volume.[170] By 2013, Chinese OCTG accounted for only 1 percent of the Canadian market.[171] Chinese producers continued to export OCTG to Canada during the POR, albeit in declining volumes, with a significant increase of 42 percent in interim 2014.[172]

122. In light of the foregoing, the Tribunal finds that, if the findings are rescinded, Chinese exporters will seek to regain the market share that they held prior to the issuance of the Tribunal's findings, leading to a significant increase in the volume of the subject goods entering the Canadian market in the near to medium term. This is so, especially relative to the production and consumption of like goods, which, as discussed previously, are both expected to decline. Finally, as in the case of seamless casing,[173] the Tribunal finds that due to the commodity nature of the product and due to the fact that competition is based mainly on price, once in the Canadian market, demand for the dumped and subsidized goods would quickly displace any demand for the like goods.

Likely Price Effects of the Dumped and Subsidized Goods

123. The Tribunal must consider whether, if the findings are rescinded, the dumping or subsidizing of the subject goods is likely to significantly undercut the prices of like goods, depress those prices or suppress them by preventing increases in those prices that would likely have otherwise occurred.[174] In this regard, the

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166. Exhibit RR-2014-003-16.02A (protected), Vol. 2.01 at 233, 249; Exhibit RR-2014-003-D-10 at 6-7, 9, Vol. 11C.
167. In January 2010 and May 2010, the United States made findings of threat of injury by reason of subsidized and dumped imports of certain OCTG from China. The United States began its sunset reviews of these findings in December 2014. Considering the sunset reviews will not be completed until at least February 2016, the U.S. market is likely to attract less Chinese OCTG until that time. See Exhibit RR-2014-003-D-10, tab 15, Vol. 11C.
168. Exhibit RR-2014-003-A-08 (protected) at 84, Vol. 12; Exhibit RR-2014-003-B-05 at 143-47, Vol. 11A; Exhibit RR-2014-003-D-05 (protected) at para. 19, Vol. 12A; *Transcript of Public Hearing*, Vol. 2, 27 January 2015, at 97, Vol. 2, 27 January 2015, at 162.
169. *Transcript of Public Hearing*, Vol. 2, 27 January 2015, at 163-64.
170. Exhibit RR-2014-003-10.03C, Table 1, Vol. 1.3A.
171. Exhibit RR-2014-003-05B, Table 31, Vol. 1.1A.
172. *Ibid.*, Table 30.
173. *Seamless Casing Expiry Review* at paras. 132-38.
174. Paragraph 37.2(2)(*b*) of the *Regulations*.

Tribunal distinguishes the price effects of the dumped or subsidized goods from any price effects that would likely result from other factors affecting prices.

124. The domestic producers argued that, without the discipline of trade remedies, Chinese OCTG producers and exporters will resume selling the subject goods into Canada at prices that undercut the price of like goods. The domestic producers also pointed to the presence of low-priced non-subject goods on the Canadian market and suggested that, if the findings are rescinded, the prices of the subject goods are likely to converge down to the levels of the non-subject goods in order to be competitive and gain back market share.

125. Over the POR, with duties in place, the subject goods were some of the highest priced in the Canadian market.[175] However, the evidence demonstrates that, if the findings are rescinded, Chinese OCTG is likely to be priced substantially lower than it is priced currently and substantially lower than the price of like goods.

126. An analysis of Chinese and U.S. pricing data from MBR demonstrates that, in the second quarter of 2014, seamless J/K55 OCTG from China had a unit value that was up to US$800/tonne less than that of seamless J/K55 from the United States. For P110 OCTG, the unit values of the Chinese goods were more than US$1200/tonne less than the U.S. goods. MBR data for January 2015 show that prices for Chinese J55 and P110 have continued to decline from the last quarter of 2014. MBR also notes that these Chinese prices "have fallen through the floor", are "significantly below comparable international standards" and will continue to fall.[176]

127. Accordingly, if the findings are rescinded, the subject goods would certainly be available at much lower prices than during the POR to any importer in Canada that wished to take advantage of the dumped and subsidized goods. Even after factoring in the costs of shipping, Chinese OCTG prices would still likely be the lowest prices in the market.[177]

128. Indeed, in order to recapture the sales volumes and market share that were lost when the findings were put in place, Chinese exporters would need to price their OCTG at prices lower than the current low price offerings on the market, which, during the POR, were led by OCTG imported from non-subject countries.[178] On this basis and as discussed in further detail below, the Tribunal finds that the subject goods are likely to significantly undercut, depress and suppress the price of like goods if the findings are rescinded.

– Price Undercutting

129. Although the consolidated data show that, on a weighted average basis, the prices of the subject goods exceeded those of the like goods during the POR, the benchmark product data show that, for certain benchmark products, there were several instances where the prices of the subject goods undercut the prices of the like goods.[179]

130. Indeed, the Tribunal is of the view that the findings had the effect of imposing a pricing discipline on the selling prices of the subject goods, as apparent in the investigation report where sales of the subject

175. Exhibit RR-2014-003-06B (protected), Table 43, Vol. 2.1A.
176. Exhibit RR-2014-003-46 (protected), Vol. 2.01C at 5, 7, 13; Exhibit RR-2014-003-A-06 (protected), Table 2, Vol. 12.
177. Exhibit RR-2014-003-A-06 (protected), Table 2, Vol. 12.
178. Exhibit RR-2014-003-06B (protected), Table 43, Vol. 2.1A.
179. Exhibit RR-2014-003-06A (protected), Tables 1, 2, Vol. 2.1A.

goods were some of the highest in the market, despite the evidence of Chinese OCTG being available at prices much lower in the Canadian market in the absence of trade remedies.[180]

131. In this regard, the Tribunal finds that the limited presence of the subject goods in Canada during the POR is evidence of the fact that the subject goods cannot compete in the Canadian market at normal values, or non-dumped or non-subsidized prices. As stated, in order to regain market share, the subject goods would, in the Tribunal's view, converge to the pricing levels of the lowest price OCTG available in the market, i.e. those of OCTG imports from non-subject countries.

132. Accordingly, the Tribunal finds that, if the findings are rescinded, prices of the subject goods are likely to significantly undercut the prices of like goods.

– Price Depression

133. As noted previously, OCTG is a commodity product for which price is an important factor in a purchasing decision. Prices from various sources are relatively transparent to purchasers. Notably, the Tribunal heard that a price difference as small as 2 to 3 percent could sway a sale from one supplier to another.

134. While the Tribunal, like the parties that appeared before it, faces difficulty forecasting a likely price for the subject goods if the findings are rescinded, on the basis of the evidence, there is little doubt that, without the findings in place, prices of the subject goods will decline considerably compared to prices in the market during the POR.

135. The Tribunal notes that, in addition to expectations of a decline in prices put forward by the domestic producers, Mr. Cheng testified that, if the findings are rescinded, prices of the subject goods would decline by up to 20 percent.[181] In addition, Welded Tube and Evraz submitted scenarios demonstrating the potential impact of a 10 percent or less decline in prices for like goods for their firms as a result of a rescission of the findings.[182]

136. Furthermore, the evidence with respect to the available prices of Chinese OCTG compared to the prices of U.S. OCTG or recent domestic prices demonstrates that, without anti-dumping or countervailing duties in place, there is the potential for a significant decline in prices of the subject goods in the Canadian market. As previously noted, MBR data show a price gap of up to and exceeding US$1,000/tonne between Chinese OCTG and U.S. OCTG.

137. Given the apparent potential gap between prices of various OCTG from the United States and from China landed in Edmonton, Alberta,[183] as well as the testimony of Mr. Cheng as to envisioned percentage differentials,[184] the Tribunal finds it reasonable that the rescission of the findings and the corresponding re-entry of Chinese OCTG into the Canadian marketplace will depress the prices of like goods.

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180. Exhibit RR-2014-003-05B, Table 35, Vol. 1.1A; Exhibit RR-2014-003-A-06, Tables 1, 2, Vol. 1.1A; Exhibit RR-2014-003-47 (protected), Vol. 2.01C at 19.
181. *Transcript of Public Hearing*, Vol. 2, 27 January 2015, at 164-65.
182. Exhibit RR-2014-003-D-09 (protected) at paras. 23-26, Appendix, Vol. 12A; Exhibit RR-2014-003-B-04 (protected) at paras. 40-43, Vol. 12A.
183. Exhibit RR-2014-003-A-06 (protected), Tables 1, 2, Vol. 12.
184. *Transcript of Public Hearing*, Vol. 2, 27 January 2015, at 164-65.

138. Of note, the Tribunal finds that the low-priced subject goods would not only depress the prices of new sales of OCTG in the Canadian market but also quickly depress the value of existing inventories already on the ground, as testified by Mr. Cheng. This is particularly significant given that Mr. Cheng also testified that there could be more than a year's supply of inventory in Canada at present, as opposed to a normal supply level of six months.[185]

139. Accordingly, the Tribunal finds that, if the findings are rescinded, the influx of the subject goods will likely drive down OCTG prices in the Canadian market, lowering the value of existing inventory and eroding the prices of the like goods.

– Price Suppression

140. In 2012, the cost of goods manufactured increased on a $/tonne basis, while the average selling prices declined.[186] However, the cost of goods manufactured declined in the remaining periods of the POR. In interim 2014, the cost of goods sold declined from interim 2013, while the average selling prices increased.[187] Accordingly, there is limited evidence of price suppression over the POR, and it is not apparent that there would be price suppression caused by the subject goods in the near to medium term.

141. There is some testimony *in camera* that, going forward, domestic producers' fixed costs on a per tonne basis may increase;[188] however, this is likely due to the expected drops in production volumes and fixed costs then having to be spread over those decreased production volumes. Accordingly, the Tribunal finds that, while domestic producers will likely be unable to increase their selling prices in the near to medium term, this is likely to occur regardless of whether the subject goods are present in Canada.

<u>Likely Impact on the Domestic Industry</u>

142. The Tribunal will now assess the likely impact of the above volumes and prices on the domestic industry if the findings are rescinded, taking into account the relevant economic factors and indices, including potential declines in output, sales, profitability, market share, productivity, production capacity and potential negative effects on employment, wages, inventory, returns on investment and the ability to raise capital.[189] In this analysis, the Tribunal distinguishes the likely impact of the dumped or subsidized goods from the likely impact of any other factors affecting or likely to affect the domestic industry.[190]

143. The domestic industry submitted that the entry of low-priced Chinese OCTG, in current market conditions and given the industry's current vulnerability, would cause serious injury to the domestic industry, in terms of both its short-term profitability and its long-term viability. For Energex, it is argued that a rescission of the findings will foreclose any possibility of re-starting operations at the idled Welland facility.

– Domestic Production, Sales, Profitability and Market Share

144. As discussed above, the Tribunal finds that the rescission of the findings would attract significant volumes of low-priced subject goods in the near to medium term. In addition, there is no doubt that such

185. *Ibid.* at 156, 168-71.
186. Exhibit RR-2014-003-05B, Tables 36, 99, Vol. 1.1A.
187. *Ibid.*, Table 96.
188. *Transcript of In Camera Hearing*, Vol. 2, 27 January 2015, at 72-75.
189. See paragraphs 37.2(2)(*e*) and (*g*) of the *Regulations*.
190. See paragraph 37.2(2)(*k*) of the *Regulations*.

volumes and prices of the subject goods would have a significant adverse impact on the domestic industry's sales, profits, and market share and output.

145. The Tribunal finds that the domestic industry would need to reduce prices to compete for sales against the subject goods. Indeed, the evidence indicates that even a small number of low-priced imports could affect and put downward pressure on other products in the market.[191] As such, even presuming that the subject goods would, at first, be present in lower volumes (notably since many distributors may be wary of purchasing cheaper goods that would devalue inventories currently held), they would nonetheless significantly reduce average pricing and, consequently, the profitability of domestic sales from domestic production.

146. The impact of depressed prices on profitability is convincingly illustrated by hypothetical scenarios put forward by two domestic producers, which show that, had the subject goods been present in the Canadian market in interim 2014 and had they caused a modest reduction in the average unit price of the like goods, all other conditions being equal (i.e. sales volumes, product mix etc.), the domestic producers' profitability would have been affected negatively and significantly.[192] The evidence on the record indicates that the assumptions used in these scenarios are reasonable and, when applied to the domestic industry as a whole, on the basis of annualized interim 2014 figures for net sales volumes and values, the Tribunal finds that a reduction in average selling prices of up to 10 percent, because of dumped and subsidized Chinese goods, would have resulted in a significant deterioration of the domestic industry's performance in 2014.

147. As such, the Tribunal finds that the resurgence of the subject goods, even in more favourable market conditions, such as those of interim 2014, would have an adverse impact on the domestic industry's performance. Of course, and as discussed extensively in previous sections, the market conditions for the near to medium term are expected to be far less favourable than those prevalent in interim 2014 and, accordingly, the domestic industry's vulnerability to any further effects caused by the subject goods will be only increased in the near to medium term. The domestic production and sales volumes and values are expected to decline, as discussed above, due to the current market outlook.[193] In this context, applying a modest further reduction, not exceeding 10 percent, to the average selling prices forecast for 2015 because of the subject goods would, in this scenario, result in further decreases in the domestic industry's profitability, as the same overhead/capital costs would need to be spread over lower volumes of goods produced and sold.[194]

148. Furthermore, the Tribunal finds that the domestic industry would likely lose sales and market share to the subject goods, which would consequently result in further reduced output. Indeed, as long as drilling operators continue to feel and exert pressure to cut costs in efforts to remain competitive in the current environment of relatively low oil and gas prices, it is likely that sales would be lost in favour of the subject goods.

– Productivity, Capacity, Employment and Wages

149. As discussed above, the productivity of domestic producers' operations declined steadily over the POR, although interim 2014 shows a slight improvement compared to interim 2013.[195] Considering the

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191. *Transcript of In Camera Hearing*, Vol. 2, 27 January 2015, at 71-72; *Transcript of Public Hearing*, Vol. 2, 27 January 2015, at 123-24.

192. Exhibit RR-2014-003-D-09 (protected) at paras. 23-26, Vol. 12A; Exhibit RR-2014-003-B-04 (protected) at paras. 42-43, Vol. 12A.

193. Exhibit RR-2014-003-RI-01A (protected), Vol. 10; Exhibit RR-2014-003-RI-02A (protected), Vol. 10; Exhibit RR-2014-003-RI-04A (protected), Vol. 10; Exhibit RR-2014-003-D-09 (protected) at paras. 23-26, Appendix, Vol. 12A; Exhibit RR-2014-003-06B (protected), Tables 29, 56, Vol. 2.1A.

194. Exhibit RR-2014-003-D-08 at paras. 8-12, Vol. 11B.

195. Exhibit RR-2014-003-05B, Table 105, Vol. 1.1A.

sharp drop in demand that has taken place recently and that is expected to continue over the near to medium term, as well as the low prices at which the subject goods would enter the Canadian market, the Tribunal expects that productivity will decline dramatically if the findings are rescinded.

150. Declines in employment levels and wages were also seen over the POR. If the findings are rescinded, given the volumes of the subject goods that would likely be imported and the expected low prices of those subject goods, the Tribunal expects that employment levels and wages will continue to decline, in addition to there being little to no possibility of resuming operations at Energex's Welland facility. The Tribunal is also of the view that the domestic producers' capacity utilization rates are likely to decline further if the findings are rescinded.

– Inventories

151. The evidence on the record indicates that it is distributors and not domestic producers that generally hold inventory. Nevertheless, in the Tribunal's view, if the findings against Chinese OCTG are rescinded, the effect will be a devaluation of those distributors' existing inventories, which would have a corresponding impact on the prices that the domestic industry is able to command for its OCTG on the Canadian market.

152. As discussed earlier, one consequence of the contraction in the Canadian market for OCTG has been a build-up of inventories, which is a concern to both domestic producers and distributors, as was indicated in the testimony of Mr. Smith and Mr. Cheng.[196] Mr. Cheng indicated that, if the Tribunal rescinded its findings, distributors would face additional pressure to offload this inventory overhang at lower pricing in order to maintain cash flow.[197] The corollary is that, in the absence of the subject goods, distributors would be under less pressure to reduce their prices in order to offload inventory.

153. Mr. Smith testified that, to the extent that the Chinese OCTG is permitted to enter the marketplace free of anti-dumping or countervailing duties, the effect will be a de-valuation of distributors' existing inventories, which, insofar as domestic producers are concerned, will manifest itself in distributor expectations of further price reductions by the domestic industry.[198]

– Returns on Investment and Ability to Raise Capital

154. The evidence indicates that the domestic producers' ability to make reasonable returns on investment and, consequently, their ability to raise capital (including by obtaining funds from their parent companies) have already come under stress due to the decline in profitability over the POR and the poor outlook for the near to medium term, as more specifically described on the confidential record.[199]

155. Accordingly, if the profitability of the domestic industry declines further due to the presence of the subject goods in the Canadian market, the Tribunal finds it likely that there would also be significant adverse impacts on the domestic producers' returns on investment and their ability to continue investing in

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196. *Transcript of Public Hearing*, Vol. 2, 27 January 2015, at 99, 115-18, 122-23, 168-69.
197. *Ibid.* at 154-57.
198. *Ibid.* at 123.
199. *Transcript of In Camera Hearing*, Vol. 1, 26 January 2015, at 4-6, 9-11; Exhibit RR-2014-003-B-04 (protected) at paras. 44-48, Vol. 12A; Exhibit RR-2014-003-D-07 (protected) at paras. 17-20, Vol. 12A; Exhibit RR-2014-003-D-08 at paras. 27-33, Vol. 11B; Exhibit RR-2014-003-D-09 (protected) at paras. 27-33, Vol. 12A. It is also relevant to note that Welded Tube's public evidence indicated that significant investments in the past had indeed been directly dependent on the Tribunal's findings and on whether the subject goods would be prevented from entering the Canadian market at injurious prices. *Transcript of Public Hearing*, Vol. 1, 26 January 2015, at 58.

their facilities. Given that ongoing improvements are necessary in order for an OCTG producer to remain competitive,[200] an inability to improve facilities on an ongoing basis would also endanger the longer term viability of the domestic producers.

DETERMINATION

156. The evidence is clear that the domestic industry will experience a significant challenge in the near to medium term due to the drop in demand and in prices of OCTG resulting from the decrease of oil prices over the past few months. The inventory build-up at the distributor level will also have a negative impact on the domestic industry's production in the near future.

157. The evidence further shows that the subject goods will likely be imported into Canada at substantially lower prices than the current prices for like goods if the findings are rescinded.[201] The domestic industry will have to either lower its prices or risk losing market share. It may be faced with both. In this context, the Tribunal accepts the domestic industry's evidence that, in addition to the likely price effects attributable to the drop in oil price, an additional decrease of up to 10 percent in average sale prices will likely occur if the findings are rescinded. The Tribunal finds that this evidence is credible and likely underestimates the negative impact that the rescission of the findings will have on the domestic industry in the near to medium term, as it is currently vulnerable and will likely remain vulnerable over the near and medium term. The Tribunal further finds that, even before the decline in oil prices, such as the market conditions prevalent in interim 2014, the pressure on the domestic industry that would be created by a resumption of the sale of the subject goods in Canada would in itself significantly injure the domestic industry.

158. On the basis of the foregoing analysis, the Tribunal finds that, if the findings are rescinded, the likely resumption or continuation of the dumping and subsidizing of the subject goods will likely cause material injury to the domestic industry.

EXCLUSION REQUEST

159. As the Tribunal has stated on numerous occasions in the past, product exclusions are an extraordinary remedy that may be granted at the Tribunal's discretion.[202] While *SIMA* does not expressly provide for product exclusions from the scope of an order or finding, it has been recognized by the Federal Court and Binational Panels that this authority is implicit.[203]

160. In the context of an expiry review, there is a rationale that, despite the general conclusion that all goods covered by a finding or an order are likely to cause injury to the domestic industry, there may be case-specific evidence that imports of particular products captured by the definition of the goods are not likely to cause injury. Thus, the purpose of product exclusions to an order continuing a previous order or finding is to confine the assessment of anti-dumping and countervailing duties to those goods that are likely to cause or that threaten to cause material injury to the domestic industry.

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200. Exhibit RR-2014-003-D-08 at para. 28, Vol. 11B; Exhibit RR-2014-003-A-03 at paras. 37-39, Vol. 11.
201. *Transcript of Public Hearing*, Vol. 1, 26 January 2015, at 38-39; Exhibit RR-2014-003-A-06 (protected), Tables I, II, Vol. 12.
202. *Aluminum Extrusions Expiry Review* at para. 187.
203. *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.

161. In determining whether or not a product exclusion is likely to cause injury to the domestic industry, the Tribunal typically considers factors such as whether the domestic industry produces, actively supplies or is capable of producing like goods in relation to the subject goods for which the product exclusion is requested.[204] Consistent with its typical practice, the Tribunal examined the evidence relating to these factors in order to address those aspects of Mertex's requests that related to a potential exclusion of green tubes of Chinese origin imported for heat-treating and further processing in Canada to meet the API 5CT standard.[205]

162. As was clarified in previous cases, the evidentiary burden upon requesters is to file documentary evidence in support of product exclusion requests and, if appropriate, produce witnesses to corroborate that evidence.[206] Of course, there is an evidentiary burden upon domestic producers to rebut any documentary evidence and testimony in support of product exclusion requests. The basic point is that, without sufficient evidence, the Tribunal is unable to properly consider and grant or deny product exclusion requests. Ultimately, the Tribunal must determine whether it will exercise its discretion to grant product exclusions on the basis of an assessment of the totality of the evidence on the record.

163. In this case, Mertex argued that its submissions, which were not limited to an exclusion request, were not amenable to the Tribunal's paper process for filing an exclusion request, so it did not file one. The Tribunal takes this opportunity to remind parties that its paper process for exclusion requests does not delimit the evidentiary burden described above. The paper process is an administrative tool that assists the Tribunal to determine the number and nature of exclusion requests, and provides parties with the opportunity to file evidence and make submissions. Unlike the singular request in this case, exclusion requests can sometimes number in the hundreds and, thus, require careful planning in order to ensure a fair, transparent and efficient hearing. In addition, in a number of recent cases, the Tribunal has found it useful to hear *viva voce* evidence and argument on the issue of product exclusions.[207]

164. Consistent evidence from various sources indicates that "green tube" is an industry term used to describe goods which are in the process of becoming finished OCTG. In particular, the CBSA's statement of reasons for its investigation in this case indicates that "[a] tube for which the API 5CT specification requires additional processing such as heat treatment and/or testing is referred to in the industry as a 'green tube'."[208] This is corroborated by the testimony of various witnesses who also indicated that "green tube" is an industry term used to describe in-process or unfinished OCTG.[209]

165. As indicated in the witness statement of Mr. Harapiak, a green tube may have a number of different characteristics (i.e. it may have undergone non-destructive testing, heat-treating, straightening, end-beveling, end-upsetting, weighting, measuring and stenciling), depending on what processing functions have been performed at the mill, but also share a number of attributes with finished OCTG, such as its steel composition, shape, weight per foot and dimensions.[210]

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204. *Certain Fasteners* (6 January 2010), RR-2009-001 (CITT) at para. 245.
205. *Transcript of Public Hearing*, Vol. 3, 28 January 2015, at 255.
206. *Aluminum Extrusions Expiry Review* at para. 192; *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate* (30 January 2015), RR-2014-002 (CITT) at para. 105; *Hot-rolled Carbon Steel Plate* (20 May 2014), NQ-2013-005 (CITT) at para. 202.
207. *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate* (30 January 2015), RR-2014-002 (CITT) at para. 105; *Aluminum Extrusions Expiry Review* at para. 192.
208. Exhibit RR-2014-003-03A, Vol. 1A at 100.
209. *Transcript of Public Hearing*, Vol. 1, 26 January 2015, at 31, 59, 63-64, Vol. 2, 27 January 2015, at 102-103, 166.
210. Exhibit RR-2014-003-D-14 at paras. 3-4, Vol. 11C.

166. Documentary evidence indicates that green tubes do not necessarily need to be heat-treated before they can be API-certified and that green tubes intended for heat treatment to API grades L80 and P110 can meet the chemical and mechanical properties of one of grades H40, J55 and/or K55 before heat treating.[211] As a specific example, a grade referred to by the industry as "J55 upgradeable" may be considered a green tube because, if it were to undergo heat treatment, it could be certified as an API L80 grade.[212] However, J55 upgradeable can also be used as is in a downhole operation, without undergoing heat treatment, as long as it has been threaded and coupled.[213] In other words, while this product is referred to as a green tube, it also has the chemical and mechanical properties of J55 and can be used as J55.[214]

167. The Tribunal finds that there is no question that the domestic industry produces green tubes for its own internal consumption in the manufacture of finished OCTG. Mr. McHattie, in describing what constitutes a green tube, explained Tenaris's production methods and made it quite clear that Tenaris produces green tubes, which are ultimately transformed into finished OCTG.[215] Mr. Harapiak stated that Evraz does the same thing.[216] Mr. Mandel indicated that Welded Tube's facility in Concord, Ontario, is also capable of producing green tubes.[217] Mr. Boswell indicated that Energex's plant in Welland produced green tubes for its internal use until the plant was idled.[218]

168. Mertex argues that its exclusion should be granted on the basis that the domestic industry does not sell green tubes on the Canadian merchant market. However, witness testimony contradicted this assertion. Mr. Mandel recounted purchasing green tubes in the recent past for Welded Tube's own requirements from two Canadian producers and from one U.S. producer.[219]

169. Mr. Boswell also indicated that Energex has previously sold green tubes on the commercial market.[220] Mr. Smith noted the absence of independent heat-treatment facilities in Canada and indicated that this is why Evraz has not received any requests to supply green tubes to purchasers in Canada.[221] On this basis, the Tribunal finds that there have been sales of green tubes on the Canadian market, but that, to date, these sales have been limited to domestic producers buying green tubes for themselves and further processing them into finished OCTG.

170. Testimony indicates that there is also demand for green tubes in the United States[222] and that domestic producers can and do supply green tubes to purchasers in the United States for further processing.[223] On the public record, Mr. McHattie explained that Tenaris sells green tubes to related companies in the United States that will then thread them.[224]

211. Exhibit RR-2014-003-A-09, Affidavit of Bruce Urband at para. 3, Vol. 11; Exhibit RR-2014-003-03A, Vol. 1A at 100.
212. *Transcript of Public Hearing*, Vol. 2, 27 January 2015, at 177-78.
213. *Transcript of Public Hearing*, Vol. 1, 26 January 2015, at 33.
214. *Ibid.*
215. *Ibid.* at 31-32.
216. *Transcript of Public Hearing*, Vol. 2, 27 January 2015, at 103-104.
217. *Transcript of Public Hearing*, Vol. 1, 26 January 2015, at 63.
218. *Ibid.* at 65.
219. *Ibid.* at 62.
220. *Ibid.* at 65.
221. *Transcript of Public Hearing*, Vol. 2, 27 January 2015, at 106, 112-13.
222. *Ibid.* at 166.
223. *Transcript of In Camera Hearing*, Vol. 1, 26 January 2015, at 53.
224. *Transcript of Public Hearing*, Vol. 1, 26 January 2015, at 32.

171. Accordingly, the Tribunal finds that the domestic industry produces green tubes and is capable of supplying green tubes for sale in Canada. These facts, in the Tribunal's view, are sufficient to deny Mertex's request. Nevertheless, the Tribunal will consider whether injury would result to the domestic industry in the event that Mertex's exclusion request was granted.

172. The domestic industry expressed significant concerns regarding Mertex's request for a product exclusion for green tubes, arguing that allowing an exclusion for green tubes would have the same damaging effect on the domestic industry as removing the duties from finished OCTG. Moreover, the domestic industry argued that such an exclusion would invite importers to circumvent the Tribunal's findings on the subject goods.

173. Mr. McHattie explained that the domestic industry's concern with respect to green tubes is that, if the product exclusion is permitted, green tubes will be imported into Canada at an artificially low, dumped and subsidized price and that, given that the cost of heat treating and threading is relatively low in comparison to the cost of manufacturing the pipe from steel billets, these imported green tubes would have an unfair competitive advantage vis-à-vis finished OCTG produced by the domestic industry.[225]

174. According to testimony at the hearing, the most significant cost component of the finished OCTG sold in Canada is the tube itself, which undergoes further processing in order to become finished OCTG.[226] Mr. McHattie estimated that the costs of finishing green tubes to produce saleable OCTG ranged from 10 to 25 percent of the total cost of OCTG, including both heat treatment and threading, one half to two thirds of which would be for threading, and the remainder for heat treatment.[227] Mr. Mandel's estimates were in the same range, although he indicated that the cost varied depending on whether the finished goods were produced from alloy or carbon green tubes.[228] These estimates are consistent with other estimates on the record.[229] The Tribunal accepts the uncontroverted testimony of Mr. McHattie and Mr. Mandel that finishing dumped and subsidized green tubes in Canada would add relatively little value and that the finished products would compete with domestically produced OCTG.

175. While evidence on the record indicates that there are currently no independent heat-treating facilities in Canada, Mr. Mandel's testimony was that, if one were able obtain low-priced Chinese green tubes, then the establishment of a heat-treating facility to finish Chinese green tubes would make commercial sense. Although the costs of doing so would vary depending on the capacity of the plant, the type of furnace used and a host of other factors, Mr. Mandel estimated that it would require an initial capital investment of approximately CAN$75 million.[230]

176. Other producers estimated that a processing facility could be established in Canada in as little as 3 to 6 months and with an investment in the range of CAN$15 million to CAN$20 million, in the event that an idle facility were purchased.[231] In contrast, to establish a facility that would produce OCTG from skelp would generally require an investment of approximately CAN$100 million and could take anywhere from

225. *Ibid.*
226. Exhibit RR-2014-003-D-13 (protected) at para. 20, Vol. 11C.
227. *Transcript of Public Hearing*, Vol. 1, 26 January 2015, at 34.
228. *Transcript of In Camera Hearing*, Vol. 1, 26 January 2015, at 59.
229. Exhibit RR-2014-003-D-13 (protected) at para. 21, Vol. 12A.
230. *Transcript of Public Hearing*, Vol. 1, 26 January 2015, at 75.
231. Exhibit RR-2014-003-D-13 at para. 25, Vol. 11C.

24 to 30 months to construct.[232] Thus, while there are no such facilities at present, it is possible that one or more could be established in Canada relatively quickly and cheaply.

177. Indeed, the green tubes processed by any such facility would ultimately compete with finished OCTG produced by the domestic industry. As Mr. Mandel testified, green tubes have no use other than to be turned into finished OCTG.[233] Chinese green tubes are priced very low; in particular, reports indicate that pricing of API J55 grade green pipes was even lower than standard carbon pipes in 2013.[234] Accordingly, the Tribunal finds that excluding green tubes from its findings would give importers access to a dumped and subsidized intermediate product that, with relatively small additional cost, would compete with finished OCTG sold in the Canadian market.

178. The Tribunal finds that, to the extent that green tubes were permitted to enter Canada without anti-dumping or countervailing duties, even following heat treatment and finishing operations that could be performed in Canada by an independent processer, the final product would compete with like goods in the Canadian market and would likely exert significant price pressures on the domestic industry. In particular, the Tribunal expects that, if the exclusion is granted, the price of OCTG manufactured from imported Chinese green tubes will likely undercut the price of like goods.

179. On the basis of the foregoing, the Tribunal finds that granting Mertex's product exclusion request would cause injury to the domestic industry. Therefore, Mertex's request is denied.

CONCLUSION

180. Pursuant to paragraph 76.03(12)(*b*) of *SIMA*, the Tribunal hereby continues its findings in respect of OCTG originating in or exported from China.

Stephen A. Leach
Stephen A. Leach
Presiding Member

Jason W. Downey
Jason W. Downey
Member

Jean Bédard
Jean Bédard
Member

232. *Ibid.*
233. *Transcript of Public Hearing*, Vol. 1, 26 January 2015, at 60.
234. Exhibit RR-2014-003-A-10 (protected), Vol. 12.