Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Dumping and Subsidizing

FINDING AND REASONS

Inquiry No. NQ-2014-002

Oil Country Tubular Goods

Finding issued
Thursday, April 2, 2015

Reasons issued
Friday, April 17, 2015

Corrigendum issued
Tuesday, April 21, 2015

Canada

TABLE OF CONTENTS

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

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

FINDING

The Canadian International Trade Tribunal, pursuant to the provisions of section 42 of the *Special Import Measures Act*, has conducted an inquiry to determine whether the dumping of oil country tubular goods, which are casing, tubing and green tubes made of carbon or alloy steel, welded or seamless, heat-treated or not heat-treated, regardless of end finish, having an outside diameter from 2 3/8 inches to 13 3/8 inches (60.3 mm to 339.7 mm), meeting or supplied to meet American Petroleum Institute (API) specification 5CT or equivalent and/or enhanced proprietary standards, in all grades, excluding drill pipe, pup joints, couplings, coupling stock and stainless steel casing, tubing or green tubes containing 10.5 percent or more by weight of chromium, originating in or exported from Chinese Taipei, the Republic of India, the Republic of Indonesia, the Republic of the Philippines, the Republic of Korea, the Kingdom of Thailand, the Republic of Turkey, Ukraine and the Socialist Republic of Vietnam, and the subsidizing of the above-mentioned goods originating in or exported from the Republic of India, the Republic of Indonesia, the Republic of the Philippines, the Kingdom of Thailand, Ukraine and the Socialist Republic of Vietnam have caused injury or are threatening to cause injury to the domestic industry.

On March 3, 2015, the President of the Canada Border Services Agency issued final determinations that the aforementioned goods originating in or exported from Chinese Taipei, the Republic of India, the Republic of Indonesia, the Republic of the Philippines, the Republic of Korea, the Kingdom of Thailand, the Republic of Turkey, Ukraine and the Socialist Republic of Vietnam had been dumped and that the above-mentioned goods originating in or exported from the Republic of India, the Republic of Indonesia and the Socialist Republic of Vietnam had been subsidized.

Pursuant to subsections 42(4) and (4.1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal finds that the volumes of subsidized goods are negligible. As such, the Canadian International Trade Tribunal hereby terminates its inquiry regarding the subsidizing of the above-mentioned goods originating in or exported from the Republic of India, the Republic of Indonesia and the Socialist Republic of Vietnam.

Pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that the dumping of the above-mentioned goods originating or exported from Chinese Taipei, the Republic of India, the Republic of Indonesia, the Republic of the Philippines, the Republic of Korea, the Kingdom of Thailand, the Republic of Turkey, Ukraine and the Socialist Republic of Vietnam has not caused injury but is threatening to cause injury to the domestic industry.

Jason W. Downey
Jason W. Downey
Presiding Member

Ann Penner
Ann Penner
Member

Rose Ritcey
Rose Ritcey
Member

The statement of reasons will be issued within 15 days.

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

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

CORRIGENDUM

The list of participants should have included the following:

Importers/Exporters/Others	**Counsel/Representatives**
Turkish Steel Exporters' Association	Jesse I. Goldman Laura Murray Jessica B. Horwitz

By order of the Tribunal,

Jason W. Downey
Jason W. Downey
Presiding Member

Ann Penner
Ann Penner
Member

Rose Ritcey
Rose Ritcey
Member

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	March 2 to 6, 2015
Tribunal Members:	Jason W. Downey, Presiding Member Ann Penner, Member Rose Ritcey, Member
Director, Trade Remedies Investigations:	Mark Howell
Senior Trade Remedies Investigations Officers:	Rebecca Campbell Paula Place
Trade Remedies Investigations Officer:	Andrew Wigmore
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PARTICIPANTS:

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Energex Tube Welded Tube of Canada Corp.	Lawrence L. Herman
Evraz Inc. NA Canada	Christopher J. Kent Christopher J. Cochlin Andrew M. Lanouette Hugh Seong Seok Lee Christopher R. N. McLeod Chenxi Peng Ron Erdmann
Tenaris Canada	Geoffrey C. Kubrick Jonathan O'Hara Timothy Cullen Emily Dandy

Importers/Exporters/Others	**Counsel/Representatives**
Borusan Mannesmann Boru	Victoria Bazan
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Government of Thailand Jindal Saw Limited	Peter Clark Renée Clark Golsa Ghamari Raquel Cardoso
GVN Fuels Limited/Maharashtra Seamless Limited	Sandeep Sarkar
High Commission of India	Rajesh Agarwal
Interpipe Ukraine Ltd. North American Interpipe, Inc.	Gerry Stobo Daniel Hohnstein Andy Bradley
P.T. Citra Tubindo Tbk	James P. McIlroy

WITNESSES:

David McHattie Vice-President, Institutional Relations – Canada Tenaris	Guillermo Moreno Managing Director Tenaris
Robert Mandel President Welded Tube of Canada	Jeff S. Hanley Vice-President Sales, Energy Tubulars Welded Tube of Canada
Randy Boswell President Energex Tube	David Seeger President JMC Steel Group
Kelly Smith V.P. Sales & Business Development - OCTG - TPG EVRAZ North America	Allan Harapiak Vice-President, Tubular Products Group EVRAZ North America
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Çinar Cankut Member of the Board Turkish Steel Exporters' Association	Wayne Chodzicki President & Director Mertex

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Melissa Beck
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STATEMENT OF REASONS

INTRODUCTION

1. The purpose of this inquiry is to determine whether, pursuant to section 42 of the *Special Import Measures Act*,[1] the dumping of oil country tubular goods (OCTG), which are casing, tubing and green tubes made of carbon or alloy steel, welded or seamless, heat-treated or not heat-treated, regardless of end finish, having an outside diameter from 2 3/8 inches to 13 3/8 inches (60.3 mm to 339.7 mm), meeting or supplied to meet American Petroleum Institute (API) specification 5CT or equivalent and/or enhanced proprietary standards, in all grades, excluding drill pipe, pup joints, couplings, coupling stock and stainless steel casing, tubing or green tubes containing 10.5 percent or more by weight of chromium (the subject goods), originating in or exported from Chinese Taipei, the Republic of India (India), the Republic of Indonesia (Indonesia), the Republic of the Philippines (the Philippines), the Republic of Korea (Korea), the Kingdom of Thailand (Thailand), the Republic of Turkey (Turkey), Ukraine and the Socialist Republic of Vietnam (Vietnam), and the subsidizing of the subject goods originating in or exported from India, Indonesia, the Philippines, Thailand, Ukraine and Vietnam have caused injury or are threatening to cause injury to the domestic industry.

2. This inquiry stems from a complaint filed on June 6, 2014, by Tenaris Canada (Tenaris)[2] and Evraz Inc. NA Canada (Evraz) and the decision of the President of the Canada Border Services Agency (CBSA) on June 20, 2014, to initiate dumping and subsidizing investigations.

3. The decision to initiate the investigations triggered the initiation of a preliminary injury inquiry by the Canadian International Trade Tribunal (the Tribunal) on July 22, 2014, which culminated in the Tribunal's preliminary determination of September 19, 2014, that the evidence disclosed a reasonable indication that the dumping and subsidizing of the subject goods had caused or were threatening to cause injury.

4. On December 3, 2014, the CBSA made a preliminary determination of dumping with respect to Chinese Taipei, India, Indonesia, the Philippines, Korea, Thailand, Turkey, Ukraine and Vietnam, and a preliminary determination of subsidizing with respect to India, Indonesia, the Philippines, Thailand, Ukraine and Vietnam. The CBSA terminated the subsidizing investigation with respect to the subject goods from Korea and Turkey.

5. On December 4, 2014, the Tribunal issued a notice of commencement of inquiry.[3]

6. On March 3, 2015, the CBSA made a final determination of dumping in respect of the subject goods from all the subject countries and a final determination of subsidizing in respect of the subject goods from India, Indonesia and Vietnam. The CBSA terminated the subsidizing investigation in respect of the subject goods from the Philippines, Thailand and Ukraine. As a result, the scope of the Tribunal's subsidizing inquiry has been confined to determining whether the subsidizing of the subject goods from India, Indonesia and Vietnam has caused or is threatening to cause injury.

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1. R.S.C., 1985, c. S-15 [*SIMA*].
2. Tenaris operates a number of associated OCTG businesses in Canada, including Tenaris Global Services (Canada) Inc., Algoma Tubes Inc., Prudential Steel ULC and Hydril Canadian Company Limited Partnership. Exhibit NQ-2014-002-A-01 at para. 1, Vol. 11.
3. C. Gaz. 2014.I.3016.

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

8. The Tribunal's period of inquiry (POI) was from January 1, 2011, to June 30, 2014, which included two interim periods: January to June 2013 (interim 2013) and January to June 2014 (interim 2014). On October 27, 2014,[4] the Tribunal sent requests to complete questionnaires to domestic producers and importers of OCTG. On December 4, 2014,[5] the Tribunal sent questionnaires to purchasers and foreign producers of OCTG. Using the questionnaire replies, Statistics Canada import data and data from the CBSA, staff prepared public and protected versions of the investigation report that were distributed, along with the questionnaire replies, to those parties that filed a notice of participation in the inquiry.[6] Parties filed case briefs and evidence in response.

9. The supporting parties are the domestic producers that filed the complaint—Tenaris and Evraz—together with Energex Tube (Energex) and Welded Tube of Canada Corp. (WTC). All four domestic producers submitted evidence and argument, and provided witnesses during the Tribunal's hearing.

10. Of the opposing parties, Borusan Mannesmann Boru (BMB), the Turkish Steel Exporters' Association (TSEA), Boly Pipe Co., Ltd. (Boly Pipe), the Government of Thailand, Jindal SAW Limited (Jindal), North American Interpipe, Inc. and Interpipe Ukraine Ltd. (together, Interpipe), P.T. Citra Tubindo Tbk, the Embassy of Indonesia, the Embassy of the Philippines and Mertex Canada Inc. (Mertex), filed evidence and argument with the Tribunal. BMB, the TSEA, Interpipe and Mertex all provided witnesses during the Tribunal's hearing.

11. Other parties filed notices of participation, but did not file briefs or evidence; these are GVN Fuels Limited/Maharashtra Seamless Limited (GVN) and the High Commission of India.

12. In addition, the Tribunal called two witnesses to testify at the hearing: Mr. Richard Shields of Pacific Tubulars Ltd. (Pacific Tubulars) and Ms. Elizabeth Aquin of the Petroleum Services Association of Canada (PSAC). Both Mr. Shields and Ms. Aquin filed statements in advance of their testimonies.

13. On January 29, 2015, the parties filed requests for information (RFIs) with the Tribunal, which were directed at the other parties. As some parties objected to certain RFIs, the Tribunal issued direction to the parties on February 6, 2015, regarding the RFIs that required responses and also requested the parties respond to the Tribunal's own RFIs. The responses were received by February 13, 2015, and placed on the record of the proceedings.

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4. On October 27, 2014, the Tribunal sent expiry review questionnaires to domestic producers and importers in Expiry Review No. RR-2014-003 concerning certain OCTG from the People's Republic of China (China). Due to the similarity in product descriptions and in order to reduce the response burden for domestic producers and importers, information collected in the responses to the expiry review questionnaires was also used for the investigation report and placed on the record for this inquiry.
5. In addition to the producers' and importers' questionnaires sent in Expiry Review No. RR-2014-003, the Tribunal sent purchasers' questionnaires on market characteristics and foreign producers' questionnaires solely pertaining to the current inquiry when the final injury inquiry commenced on December 4, 2014.
6. All public exhibits were made available to the parties. Protected exhibits were made available only to counsel who had filed the required declaration and confidentiality undertaking with the Tribunal in respect of confidential information.

14. The Tribunal received product exclusion requests from BMB, Interpipe and Mertex, for which the parties submitted arguments and evidence. All three requesters also provided witnesses to testify with respect to their exclusion requests.

15. The hearing was held in Ottawa, Ontario, from March 2 to 6, 2015, and included public and *in camera* sessions.

RESULTS OF THE CBSA'S INVESTIGATION

16. The CBSA's period of investigation for both its dumping and subsidizing investigations covered January 1, 2013, to March 31, 2014. As a result of the investigations, the CBSA made the following determinations:

Dumped Goods[7]

Country	Margin of Dumping (%)	% of Dumped Goods	Dumped Goods as a % of Total Imports
Chinese Taipei	15.8	100	2.5
India	5.6	13.1	0.2
Indonesia	21.7	100	1.9
Philippines	4.2	9.3	0.2
Korea	19.1	77.4	2.4
Thailand	33.0	100	1.2
Turkey	18.9	100	5.3
Ukraine	37.4	100	1.0

Subsidized Goods[8]

Country	Amount of Subsidy (%)	% of Subsidized Goods	Subsidized Goods as a % of Total Imports
India	10.9	100	1.3
Indonesia	16.3	100	1.9
Philippines	0.8	100	2.4
Thailand	1.8	100	1.2
Ukraine	0.3	100	1.0
Vietnam	19.0	100	2.7

17. The CBSA determined that the amounts of subsidy in relation to the subject goods from the Philippines (0.8%), Thailand (1.8%) and Ukraine (0.3%) *were insignificant* and, therefore, *terminated* the subsidizing investigation in respect of those three countries.

18. The CBSA also determined that the amounts of subsidy in relation to the subject goods from India, Indonesia and Vietnam over its period of investigation *were not insignificant* and, therefore, *continued* the subsidizing investigation pertaining to those countries.

7. Exhibit NQ-2014-002-04, Vol. 1A at 309.
8. *Ibid.* at 310.

PRODUCT

Product Definition

19. The CBSA defined the subject goods as follows:

> Oil country tubular goods, which are casing, tubing and green tubes made of carbon or alloy steel, welded or seamless, heat-treated or not heat-treated, regardless of end finish, having an outside diameter of 2 3/8 inches to 13 3/8 inches (60.3 mm to 339.7 mm), meeting or supplied to meet American Petroleum Institute (API) specification 5CT or equivalent and/or enhanced proprietary standards, in all grades, excluding drill pipe, pup joints, couplings, coupling stock and stainless steel casing, tubing or green tubes containing 10.5 percent or more by weight of chromium, originating in or exported from Chinese Taipei, the Republic of India, the Republic of Indonesia, the Republic of the Philippines, the Republic of Korea, the Kingdom of Thailand, the Republic of Turkey, Ukraine and the Socialist Republic of Vietnam.

Product Information[9]

20. OCTG are carbon or alloy steel pipes 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 (known in the industry as "green tubes") that require additional processing, such as threading, heat treatment or testing, before they can meet the requirements of a particular API specification.

21. 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.

22. 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.[10] 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 demanding environments, such as low-temperature services, sour service and heavy oil recovery.

LEGAL FRAMEWORK

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

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9. Exhibit NQ-2014-002-05B, Vol. 1.1 at 20.
10. These proprietary grades are not necessarily API certified, but, rather, are made to proprietary standards which exceed API specification 5CT. *Transcript of Public Hearing*, Vol. 1, 2 March 2015, at 101, 106, 482.

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

25. Given that the subject goods originate in or are exported from more than one country, the Tribunal must first determine if the prerequisite conditions are met in order to make a cumulative assessment of the effect of the dumping and subsidizing of the subject goods on the domestic industry, from all the subject countries, as a whole (i.e. whether it will conduct a single injury analysis for the group of countries together or a separate analysis for one or more of the subject countries).

26. Further, given that the subject goods determined by the CBSA to have been dumped and subsidized originate in or are exported from more than one country, the Tribunal must also determine whether it is appropriate to make an assessment of the cumulative effect of both the dumping and subsidizing of the subject goods (i.e. what is known as *cross-cumulation* of the effects of dumping and subsidizing) in this inquiry.

27. The Tribunal will then assess whether or not the dumping and subsidizing of the subject goods have caused material injury to the domestic industry.[11] Should the Tribunal arrive at a finding of no material injury, it will then need to proceed to examine whether there exists a threat of material injury to the domestic industry.[12] In this case, as the domestic industry is already established, the Tribunal need not consider the question of retardation.[13]

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

LIKE GOODS AND CLASSES OF GOODS

29. In order for the Tribunal to determine whether the dumping and subsidizing of the subject goods have caused or are threatening to cause injury to the domestic producers of like goods, it must first 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.[14]

11. The Tribunal will proceed to determine the effect of the dumping and subsidizing of the subject goods on the domestic industry for individual countries or for the cumulated countries, as appropriate.
12. Injury and threat of injury are distinct findings; the Tribunal is not required to make a finding relating to threat of injury pursuant to subsection 43(1) of *SIMA* unless it first makes a finding of no injury.
13. Subsection 2(1) of *SIMA* defines "retardation" as ". . . material retardation of the establishment of a domestic industry".
14. Should the Tribunal determine that there is more than one class of goods in this inquiry, it must conduct a separate injury analysis and make a decision for each class that it identifies. See *Noury Chemical Corporation and Minerals & Chemicals Ltd. v. Pennwalt of Canada Ltd. and Anti-dumping Tribunal*, [1982] 2 F.C. 283 (F.C.).

Like Goods

30. 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.

31. In deciding the issue of like goods when goods are not identical in all respects to the other goods, the Tribunal will typically consider 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).[15]

32. In its preliminary injury inquiry, the Tribunal found that domestically produced OCTG of the same description as the subject goods were like goods in relation to the subject goods.

33. During the present inquiry, the Tribunal did not receive any submissions challenging this finding; the Tribunal therefore sees no reason to depart from it. In fact, the evidence is clear that the characteristics of domestically produced OCTG closely resemble those of the subject goods when produced to meet comparable specifications,[16] that the subject goods and domestically produced OCTG are substitutable and that they generally compete against one another in the Canadian market, have the same end uses and have the same types of distribution channels.[17]

34. The Tribunal therefore finds that domestically produced OCTG constitute like goods in relation to the subject goods.

Classes of Goods

35. In addressing the issue of classes of goods, the Tribunal typically examines whether goods potentially included in separate classes of goods constitute "like goods" in relation to each other. If those goods are "like goods" in relation to each other, they will be regarded as comprising a single class of goods.[18]

36. To begin, it is important to note that, while much was said by the parties regarding green tubes and the degree to which they constitute OCTG, there is no doubt that green tubes are in fact included in the definition of the subject goods. Although green tubes cannot be said to be identical to finished OCTG, given that they may need to undergo various further processing operations, such as heat treating, threading or testing, before being sold as finished OCTG, green tubes are, at a minimum, in-process OCTG; they are therefore quite clearly included in the scope of the subject goods.

37. In its preliminary injury inquiry, the Tribunal held that there was a single class of goods. However, several of the opposing parties urged the Tribunal to revisit this decision, arguing that it would be appropriate for the Tribunal to find, in its final injury inquiry, that there are multiple classes of goods.

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15. *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at para. 48.
16. Exhibit NQ-2014-002-05B, Tables 18-30, Vol. 1.1A.
17. *Ibid.*, Tables 14, 18, 19-30.
18. *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) at para. 115; *Polyisocyanurate Thermal Insulation Board* (11 April 1997), NQ-96-003 (CITT) at 10.

38. In particular, Mertex submitted that the Tribunal's finding of a single class of goods in the preliminary injury inquiry was untenable, because green tubes, as Mertex describes them,[19] are functionally and physically distinct from finished, graded and API-certified OCTG.

39. In addition, Jindal submitted that there should be four classes of goods: seamless casing, welded casing, seamless tubing and welded tubing.[20] In support of this position, Jindal contended that seamless casing and welded casing compete in different markets, are sold at different price points and are designated for different end uses.[21] Jindal also pointed to the Tribunal's decision in Inquiry No. NQ-2011-001[22] to re-enforce its argument that casing and tubing serve different purposes and would not compete with each other.[23]

40. In response, domestic producers submitted that, notwithstanding pricing differentials for various grades of OCTG, all such grades of OCTG, ". . . including green tubes, are substitutable for and compete with like goods in the same categories throughout the product range."[24] They contended that green tubes and finished OCTG are designed and manufactured for ". . . end use in the drilling of oil and gas wells and the conveyance of the oil and gas to the surface, and for no other purposes."[25] They also argued that green tubes and finished OCTG are physically indistinguishable and have the same chemical composition. The only difference, they maintained, is the level and type of finishing applied.[26]

41. With respect to seamless OCTG and welded OCTG, both Mr. David McHattie of Tenaris and Mr. Shields of Pacific Tubulars testified that most customers and end users view seamless OCTG and welded OCTG as interchangeable products.[27]

42. Having considered the evidence on file and both the written submissions and oral testimony, the Tribunal is satisfied that both green tubes and finished OCTG, either seamless or welded, possess sufficiently similar characteristics, are designed for the same end uses and are interchangeable. Therefore, the Tribunal finds that they constitute a single class of goods for the purposes of this inquiry.

43. With respect to Jindal's argument that the Tribunal had found tubing and casing to be separate classes of goods in *Pup Joints*, the Tribunal notes that a finding on classes of goods cannot simply be imported from one inquiry into another. Rather, the Tribunal must be satisfied that the evidence presented in the current case is relevant, adequate and compelling in order to justify a finding of separate classes of goods; that is not the case here.

44. No persuasive evidence has been presented to support the argument that casing and tubing are separate classes of goods. In any event, the Tribunal's inquiry in *Pup Joints* related to casing pup joints and

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19. Exhibit NQ-2014-002-F-01 at para. 32, Vol. 13: "The green tube described by Mertex for purposes of this consideration by the CITT consists of plain raw tubulars that are hot-rolled, and only hot-rolled, from OCTG grade raw materials (billet or coil). At the time of their importation into Canada, these tubulars will not have been heat treated, quenched, tempered or annealed, will not have been tested, will not have been straightened and will certainly be unmarked (save for origin), as not having been inspected and certified to any API standard."
20. Exhibit NQ-2014-002-H-01 at para. 43, Vol. 13A.
21. *Ibid.* at paras. 35-39.
22. *Pup Joints* (10 April 2012) (CITT).
23. Exhibit NQ-2014-002-H-01 at paras. 41-22, Vol. 13A.
24. Exhibit NQ-2014-002-C-01/D-01 at para. 26, Vol. 11E.
25. Exhibit NQ-2014-002-B-13 at para. 5, Vol. 11D.
26. *Ibid.*
27. *Transcript of Public Hearing*, Vol. 1, 2 March 2015, at 130, Vol. 4, 5 March 2015, at 492.

tubing pup joints, not to casing and tubing. As there is no basis, in this case, upon which to find that tubing and casing are separate classes of goods, the Tribunal finds that there is a single class of goods.

DOMESTIC INDUSTRY

45. 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.

46. The Tribunal must therefore determine whether there has been injury, or whether there is a threat of injury, to the domestic producers as a whole or to those domestic producers whose production represents a major proportion of the total production of like goods.[28]

47. The supporting parties contended that they represent the entirety of the domestic industry for OCTG. However, BMB argued that there are ". . . a number of Canadian producers of OCTG that are not represented."[29] As an example, BMB cited several companies that perform threading operations. According to BMB, these companies essentially perform the same functions as those companies that finish Turkish green tubes in the United States and should therefore be included as part of the domestic industry.[30]

Scope of Domestic Production

48. BMB's argument was predicated on the assumption that finishing operations alone (*i.e.* threading and/or heat treating) constitute actual *production* of OCTG. In addition, BMB argued that, since finishing is considered actual production in the United States, it must equate to production in Canada; the Tribunal does not agree with either of these assumptions.

49. To begin, BMB did not bring forward sufficient, compelling evidence to demonstrate what is actually included in those processing operations, how processers function within the domestic OCTG market or why this processing of OCTG should constitute domestic *production*, rather than simply finishing operations.

50. Moreover, as the Tribunal concluded in the preliminary injury inquiry, finishing operations do not alter the essential characteristics of the subject goods.[31] Rather, green tubes are commonly known within the

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28. 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.
29. Exhibit NQ-2014-002-E-02 (protected) at para. 23, Vol. 14.
30. *Ibid.* at para. 24.
31. *Oil Country Tubular Goods* (19 September 2014), PI-2014-002 (CITT) at para. 47.

industry as "in-process" OCTG where finishing operations are to be applied in order to achieve the required grade and physical characteristics.[32]

51. As noted by Mr. Allan Harapiak, green tubes and finished OCTG share fundamental characteristics and are produced ". . . to the requirements of API for ovality and for eccentricity and for wall thickness and for the chemistry ranges and the length tolerances."[33] While finishing operations may alter discrete properties of the green tube, they do not result in the creation of a distinct OCTG product that is fundamentally different from a green tube itself. The Tribunal therefore finds that those unique finishing operations do not constitute actual *production* of OCTG.[34]

52. Moreover, certain companies proposed by BMB as producers, such Hunting Energy Services (Canada) Ltd., Vallourec Canada Inc. and Hallmark Tubulars Ltd., actually participated in the questionnaire process as importers or distributors of OCTG, never once raising the argument that they should be considered producers.[35]

53. In light of the foregoing, the Tribunal finds that there is no valid basis to include, in the scope of domestic producers, companies that only carry out finishing operations, not actual production of OCTG.

54. Therefore, the Tribunal is satisfied that Tenaris, Evraz, Energex and WTC represent a major proportion of the domestic OCTG industry.

Domestic Producers

55. Of these four domestic producers, only Tenaris, through its production facility in Sault Ste. Marie, Ontario, produces seamless OCTG. Tenaris also produces welded OCTG at its Calgary, Alberta, facility. The remaining domestic producers all produce welded OCTG through their respective facilities (Evraz in Regina, Saskatchewan, and in Calgary, Camrose and Red Deer, Alberta; Energex in Welland, Ontario, and WTC in Concord, Welland and Port Colborne, Ontario). However, Energex idled its production facility in May 2014, as it was of the view that OCTG prices were not high enough to justify production.[36]

56. Throughout the POI, several domestic producers imported OCTG. In particular, both WTC and Evraz reported imports of OCTG from the United States, while Tenaris reported imports of seamless OCTG from a variety of non-subject countries, including the United States, Mexico, Argentina, Romania, Japan and Italy. All four domestic producers exported OCTG during the POI.[37]

57. During the inquiry, several of the opposing parties expressed concerns over the structure of operations by Tenaris and, in particular, the role which Tenaris' international sister companies played in

32. *Transcript of Public Hearing*, Vol. 2, 3 March 2015, at 209-210.
33. *Ibid.* at 284-85.
34. In its statement of reasons for its final determination, the CBSA stated that, "[g]Generally, where a green tube *undergoes full heat-treatment* such that the pipe is upgraded to a higher strength casing or tubing and is end-finished and tested to API specification in a given country, the CBSA will determine the product to be originating in that country for SIMA purposes" [emphasis added]. Exhibit NQ-2014-002-04B, Vol. 1A at 12 The Tribunal relied on the CBSA's estimates of the volume of imports by subject country as presented in its statement of reasons for its final determination.
35. Exhibit NQ-2014-002-13.42, Vol. 5B; Exhibit NQ-2014-002-19.07, Vol. 5.2; Exhibit NQ-2014-002-13.24, Vol. 5A.
36. Exhibit NQ-2014-002-05B, Vol. 5B, at 8-9.
37. *Ibid.*

supplying the Canadian OCTG market. In addition, the opposing parties noted that, of the nine subject countries included in this inquiry, none were home to a Tenaris affiliate other than Indonesia, which appears to have a plant which is limited to threading.[38]

58. In essence, they alleged that Tenaris is effectively seeking protection against imports from countries in which it does not have an affiliated company (with the exception of Indonesia), while ensuring that the flow of imports from its international affiliates remains unaffected by anti-dumping or countervailing duties. Counsel for the opposing parties described Tenaris' strategy as attempting to use *SIMA* as a "sword" (by way of a strategy to secure access to a sheltered market for its own imports), where, in fact, *SIMA* should be more appropriately intended as a "shield".[39]

59. The Tribunal recognizes that many companies now exist in a global landscape, that is, a modern reality.

60. The Tribunal is also aware of the apparent incongruity that may arise when a domestic producer seeks protection under *SIMA*, while at the same time adopting a strategy that seemingly promotes significant volumes of imports from its assets outside Canada; this is of concern. The Tribunal is mindful that, in unique circumstances, *SIMA* may appear to be leveraged in a way to give a domestic producer a domestic advantage for the benefit of its foreign affiliates; vigilance here is necessary.

61. Nonetheless, the Tribunal notes that Tenaris does have substantial Canadian activities as a domestic producer of OCTG, including important installations within Canada. While the Tribunal remains alert to the implications of Tenaris' integrated global structure, and the consequent importation of OCTG from its foreign affiliates, the circumstances in this case, considered as a whole, do not justify the exclusion of Tenaris from the definition of the domestic industry. However, the Tribunal will be mindful of this arrangement in its analysis.

CUMULATION

62. Subsection 42(3) of *SIMA* directs the Tribunal to make an assessment of the cumulative effect of the dumping and subsidizing of the subject goods from the subject countries if it is satisfied that certain conditions are met. Specifically, the Tribunal must be satisfied that (1) the margin of dumping or the amount of subsidy in relation to the goods from each of those countries is not insignificant, and the volumes of dumped or subsidized goods from each subject country is not negligible,[40] and that (2) an assessment of the cumulative effect is appropriate taking into account the conditions of competition between the goods of each country or between those goods and the like goods.

63. Both criteria must be met in order for the Tribunal to cumulate data (and hence the effects) from all countries to be considered as a whole. Where the first part of the test is prescribed by definitions found in

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38. According to the evidence presented, Tenaris' facility in Indonesia is a processing facility for OCTG. The other countries in which Tenaris has affiliated companies are the United States, Mexico, Argentina, Colombia, Brazil, Romania, Italy and Japan. *Transcript of Public Hearing*, Vol. 1, 2 March 2015, at 81-82.
39. *Transcript of Public Hearing*, Vol. 5, 6 March 2015, at 690.
40. Subsection 2(1) of *SIMA* defines "negligible" as meaning, "... in respect of the volume of dumped goods of a country, (*a*) less than three per cent of the total volume of goods that are released into Canada from all countries and that are of the same description as the dumped goods, except that (*b*) where the total volume of dumped goods of three or more countries, each of whose exports of dumped goods into Canada is less than three per cent of the total volume of goods referred to in paragraph (*a*), is more than seven per cent of the total volume of goods referred to in paragraph (*a*), the volume of dumped goods of any of those countries is not negligible".

section 2 of *SIMA*, there is some discretion afforded to the Tribunal in the second part of the test, particularly when considering the conditions of competition.

Significance and Negligibility

64. Pursuant to subsection 2(1) of *SIMA*, a margin of dumping that is less than 2 percent of the export price is defined as "insignificant". In regard to an amount of subsidy, subsection 2(1) indicates that an amount of subsidy that is less than 1 percent of the export price of the goods is considered "insignificant".

65. Under that same subsection, "negligible" is defined as meaning less than 3 percent of the total volume of imports released into Canada; however, this is subject to an exception. If there are three or more subject countries, each of whose dumped exports constitutes less than 3 percent of total imports into Canada by volume, when the total volume of dumped imports from those countries combined is greater than 7 percent of total imports into Canada by volume, the volume will not be considered negligible.

66. With respect to imports from developing countries, subsection 42(4) of *SIMA*, by reference to Article 27 of the *Agreement on Subsidies and Countervailing Measures*,[41] states that an inquiry will be terminated when the overall level of subsidies granted for the subject goods does not exceed 2 percent or the volume of subsidized imports from a *developing country* is less than 4 percent of the total volume of imports into Canada.

67. Again, however, there is an exception. Where the subsidized exports from individual *developing countries* are less than 4 percent of total imports into Canada by volume, those exports will not be considered negligible as long as the total volume of subsidized imports from those countries combined is greater than 9 percent of the total imports by volume released into Canada.

68. As set out by the CBSA, the Tribunal considers developing countries to be those which are included on the Development Assistance Committee List of Official Development Assistance Recipients[42] of the Organisation for Economic Co-operation and Development. In the present case, India, Indonesia and Vietnam are all considered to be developing countries.

69. In this case, the Tribunal notes that the CBSA terminated the subsidizing investigation with respect to the subject goods from the Philippines, Thailand and Ukraine, on the basis that the amount of subsidy was insignificant. With respect to the remaining countries, the Tribunal is satisfied that the margins of dumping for all nine subject countries and the amounts of subsidy are not insignificant for the subject goods from India, Indonesia and Vietnam.[43]

70. Similarly, the Tribunal is satisfied that the import *volumes of dumped goods* are not negligible. While the volume of dumped goods from every subject country, except Turkey, was less than 3 percent of the total volume of OCTG imports from all countries, the combined volume from those countries was 12.1 percent.[44] As Turkey alone meets the threshold of 3 percent, and the total percentage of the remaining

41. https://www.wto.org/english/docs_e/legal_e/24-scm.pdf [*Subsidies Agreement*].
42. http://www.oecd.org/dac/stats/49483614.pdf.
43. Exhibit NQ-2014-002-04, Vol. 1 at 309-310.
44. As the percentage of dumped goods from Turkey was 5.3 percent, this met the 3 percent threshold set out in the definition of negligibility. Therefore, the percentage of dumped imports from Turkey was not included in the calculation of the dumped goods from the remaining subject countries, whose individual percentages were less than 3 percent. See the table setting out the dumped goods as a percentage of total imports.

subject countries is greater than the 7 percent threshold set out in subsection 2(1) of *SIMA*,[45] the Tribunal will conduct its dumping inquiry with respect to all nine subject countries.

71. However, as for the *volumes of subsidized goods*, the Tribunal finds that the negligibility threshold has not been met. Specifically, since India, Indonesia and Vietnam are developing countries, the Tribunal must apply subsections 42(4) and (4.1) of *SIMA*,[46] with specific consideration given to the *Subsidies Agreement*.

72. In doing so, the Tribunal finds that none of those three countries have import volumes of subsidized goods that are greater than 4 percent of the total volume of imports into Canada.[47] Moreover, when the subsidized import volumes from India, Indonesia and Vietnam are combined, they equal 5.9 percent, which is substantially less than the 9 percent threshold set out in the *Subsidies Agreement*.[48]

73. In light of the foregoing, the Tribunal's inquiry with respect to the *subsidized* subject goods is terminated.

Conditions of Competition

74. With respect to the dumped subject goods, the Tribunal must also consider whether cumulation is appropriate, taking into account the conditions of competition between the goods of each country or between them and the like goods. The factors that the Tribunal typically considers in assessing the conditions of competition include interchangeability, quality, pricing, distribution channels, modes of transportation, timing of arrivals and geographic dispersion.[49]

75. Boly Pipe argued that the subject goods from Thailand should be de-cumulated.[50] While it did not explicitly argue that there was a difference in the conditions of competition for the subject goods from Thailand, the Government of Thailand pointed to the limited production of OCTG in Thailand over the course of the POI and submitted that the subject goods from Thailand did not truly compete with the like goods.[51]

76. The cessation or limitation of production activities is certainly a factor that the Tribunal could consider in making a cumulative assessment of the subject goods; the Tribunal recognizes that there have been changes in the production landscape of OCTG in Thailand.

77. Notwithstanding the production limitations that have been attributed to certain producers in Thailand, Boly Pipe remains a fully certified producer of OCTG meeting API specification 5CT, and has been and continues to be active in producing the subject goods. The Tribunal therefore finds that there are no grounds to de-cumulate the subject goods from Thailand on the proposed basis.

45. Exhibit NQ-2014-002-06B (protected), Table 73, Vol. 2.1A.
46. As set out by the CBSA, India, Indonesia and Vietnam are all developing countries in accordance with the Development Assistance Committee List of Official Development Assistance Recipients. Exhibit NQ-2014-002-01A, Vol. 1 at 75.
47. Exhibit NQ-2014-002-06B (protected), Table 74, Vol. 2.1A.
48. See the table setting out the subsidized goods as a percentage of total imports.
49. *Circular Copper Tube* (18 December 2013), NQ-2013-004 (CITT) at para. 64.
50. Exhibit NQ-2014-002-G-01 at para. 34, Vol. 13A.
51. Exhibit NQ-2014-002-I-02 (protected) at paras. 28-30, 66-68, Vol. 14.

78. With respect to Turkey, BMB contended that limited product overlap, combined with differences in channels of distribution and the timing and manner in which imports arrive, justifies a separate analysis of the subject goods imported from Turkey.

79. BMB argued that the subject goods from Turkey are primarily welded J55 OCTG and that there is no production of seamless OCTG, or OCTG with premium or semi-premium connections in Turkey.[52] In addition, BMB stated that subject goods from Turkey "are pre-sold" to Canadian customers and are not offered in the Canadian market on a "spot" basis".[53]

80. BMB asserted that, unlike the other subject goods and the like goods, which are increasingly sold to end users, the subject goods from Turkey are sold by only one importer and are sold exclusively through distributors.[54]

81. Moreover, BMB maintained that, while other subject goods are shipped directly to Canada via large shipments landed by ocean vessels, the majority of imports of the subject goods from Turkey are further processed in the United States before entering Canada by multiple small rail shipments.[55]

82. Similarly, Interpipe argued that, as it is the sole producer of OCTG in Ukraine and its seamless OCTG is priced higher than domestically produced OCTG, it also proposes that the subject goods from Ukraine should be de-cumulated.[56]

83. After reviewing the evidence before it, the Tribunal finds that the conditions of competition do not support the de-cumulation of the subject goods from either Turkey or Ukraine; the Tribunal will discuss each of these countries in turn.

84. With respect to Turkey, even if the Tribunal were to assume that BMB's goods were the only subject goods from Turkey imported into Canada,[57] the interchangeability of the Turkish subject goods with domestic OCTG, the distribution channels, geographic dispersion and modes of transportation of those subject goods in no way support de-cumulation.

85. In particular, a significant majority of the purchasers that responded to the Tribunal's questionnaire indicated that OCTG from Turkey is interchangeable with domestic OCTG.[58] All six purchasers that compared domestic OCTG and Turkish OCTG confirmed that domestic OCTG and Turkish OCTG are comparable in terms of meeting API technical specifications.[59] Similarly, the responses indicated that the vast majority of both the subject goods and domestic OCTG, including the subject goods from Turkey, are sold in Alberta and British Columbia.[60]

86. Otherwise, the fact that the subject goods from Turkey are sold through a single distributor does not, in any way, distinguish them from domestic OCTG. In fact, as set out in the Tribunal's investigation report,

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52. Exhibit NQ-2014-002-E-01 (protected) at para. 8, Vol. 14.
53. *Ibid.* at para. 15.
54. Exhibit NQ-2014-002-E-02 (protected) at para. 12, Vol. 14.
55. *Ibid.* at para. 13.
56. *Transcript of Public Hearing*, Vol. 5, 6 March 2015, at 745-46.
57. Exhibit NQ-2014-002-K-02 (protected) at para. 4, Vol. 14A; *Transcript of In Camera Hearing*, Vol. 3, 4 March 2015, at 258.
58. Exhibit NQ-2014-002-05B, Table 18, Vol. 1.1A.
59. *Ibid.*, Tables 21-27.
60. *Ibid.*, Table 101.

sales to distributors by domestic producers outweigh sales to end users by a ratio of more than 5 to 1.[61] This demonstrates that sales to distributors are at the core of the domestic OCTG market and that sales of the subject goods to distributors could arguably have a substantial impact on the domestic industry.

87. With respect to BMB's argument that it only produces welded J55 OCTG and that, therefore, its goods would only compete in a narrow subset of the domestic market, the Tribunal notes the evidence on the record which indicates that welded J55 casing and tubing (with API connections) constitute approximately 30 percent of all reported sales in Canada;[62] this is a 1 million tonne market. Thus, it is clear that the subject goods from Turkey compete with domestically produced OCTG in a rather important product category.

88. Finally, BMB argued that its modes of transportation somehow distinguished the subject goods from Turkey from other subject goods. Specifically, BMB asserted that its subject goods were exported first to the United States, prior to being exported to Canada.[63] However, as the submissions from the Embassy of the Philippines demonstrate, other subject goods are also imported into Canada through the United States, and this is therefore not a condition unique to Turkey.[64]

89. Moreover, while the subject goods from both BMB and Interpipe are transported from the United States to Canada by rail car shipments, such an arrangement does not prevent those goods from entering the Canadian market in a manner which could significantly impact their competitiveness in the domestic market. Therefore, the Tribunal concludes that the subject goods from Turkey cannot be de-cumulated on this basis.

90. Similarly, the Tribunal is not persuaded that the conditions of competition between the subject goods from Ukraine and domestically produced OCTG are so dissimilar as to not justify their cumulation. Indeed, several of the subject countries noted that only one producer accounted for all, or most, of the OCTG produced within that country.[65] In this respect, therefore, Ukraine is not unique.

91. Furthermore, while Interpipe produces only seamless OCTG, the evidence demonstrates that the subject goods from Ukraine were not in fact consistently priced higher than domestic OCTG. Rather, the subject goods from Ukraine appeared to be priced lower than the like goods at several points during the POI.[66] Thus, the Tribunal finds no basis on which not to cumulate the goods from Ukraine.

92. In light of the foregoing, the Tribunal finds that the conditions of competition between the subject goods and domestic OCTG do not warrant de-cumulating any of the subject countries. The Tribunal will therefore proceed with a single injury analysis to determine the effect of the dumping of the subject goods from the cumulated countries on the domestic industry.

INJURY ANALYSIS

93. Subsection 37.1(1) of the *Regulations* prescribes that, in determining whether dumping has caused material injury to the domestic industry, the Tribunal is to consider the volume of dumped goods, their

61. Exhibit NQ-2014-002-06B (protected), Tables 91, 96, Vol. 2.1A.
62. Exhibit NQ-2014-002-06D (protected), Tables 5, 7, 9, Vol. 2.1A.
63. *Transcript of Public Hearing*, Vol. 5, 6 March 2015, at 656-57.
64. Exhibit NQ-2014-002-Q-01, Vol. 13A.
65. Exhibit NQ-2014-002-K-02 (protected) at para. 4, Vol. 14A; Exhibit NQ-2014-002-I-02 (protected) at paras. 28-30, 66-68, Vol. 14.
66. Exhibit NQ-2014-002-06B (protected), Tables 118, 122, 134, 138, Vol. 2.1A.

effect on the price of like goods and the resulting impact on the state of the domestic industry. Subsection 37.1(3) also directs the Tribunal to consider whether a causal relationship exists between the dumping of the goods and the injury on the basis of the factors listed in subsection 37.1(1), and whether any factors other than the dumping of the goods have caused injury.

Treatment of Non-dumped Imports

94. In an injury analysis, subsection 42(1) of *SIMA* mandates the Tribunal to consider the relationship between the dumped goods and the domestic industry. In particular, subsection 42(1) provides as follows:

> The Tribunal, forthwith after receipt pursuant to subsection 38(3) of a notice of a preliminary determination, shall make inquiry with respect to such of the following matters as is appropriate in the circumstances:
>
> (*a*) in the case of any goods to which the preliminary determination applies, *as to whether the dumping or subsidizing of the goods*
>
> (i) *has caused injury or retardation or is threatening to cause injury* . . . .
>
> [Emphasis added]

95. In the present case, the Tribunal is mindful that not all the subject goods were dumped.

96. On March 3, 2015, the CBSA determined that several companies, namely, Jindal and GVN of India, Hyundai Hysco Co. Ltd. (Hyundai) and Pan Meridian Tubular (USA) (Pan Meridian) of Korea, HLD Clark Steel Pipe Co. Ltd. (HLD) of the Philippines, and BMB of Turkey (together, the non-dumping companies), received a weighted average margin of dumping of 0 percent and, hence, were determined not to have been dumping.[67] These companies play a significant role in the production of OCTG in their countries.[68]

97. The Tribunal has considered how best to focus its injury analysis on the causal relationship between the subject goods that are dumped and the state of the domestic industry during the POI. This focused analysis does not affect the Tribunal's decision to cumulate the dumped imports of the nine subject countries pursuant to subsection 42(3) of *SIMA*; however, it obliges the Tribunal to concentrate its attention on those goods which are actually dumped.

98. This focused approach is consistent with that taken by the Tribunal in Inquiry No. NQ-2012-003,[69] which also involved an exporter that received a margin of dumping of 0 percent from the CBSA.[70] This approach also parallels the directions of the World Trade Organization in *EC-Salmon*, for which the relevant passages read as follows:

> 7.624 There is no dispute between the parties as to the relevant facts. The EC calculated a *de minimis* margin of dumping for Nordlaks, and found that the amount of the definitive anti-dumping duty for Nordlaks shall be 0.0 per cent. In its analysis of volume, price effects, impact on domestic producers, and causation, the EC considered all imports from Norway to be dumped, including

67. The Tribunal recognizes that, although these companies received a weighted average margin of 0 percent, certain transactions could still have involved dumped goods. However, for the purposes of an injury analysis, these goods are considered not to have been dumped. See *European communities – Anti-dumping Measure on Farmed Salmon from Norway* (16 November 2007), WTO Doc. WT/DS337/R, Report of the Panel [*EC-Salmon*] at 7.625.
68. Exhibit NQ-2014-002-B-12A (protected) at 114, 126, 142, 149, 243, 249, 253, Vol. 8B.
69. *Carbon Steel Welded Pipe* (11 December 2012) (CITT).
70. *Polyiso Insulation Board* (6 May 2010), NQ-2009-005 (CITT); *Copper Pipe Fittings*.

> imports attributable to Nordlaks. Thus, Norway's claim in this case raises the question, not previously resolved by any panel of the Appellate Body, whether imports for which a finding of *de minimis* dumping margins is made may be treated as "dumped imports" for purposes of injury analysis.
>
> 7.625 We consider that imports attributable to a producer or exporter for which a *de minimis* margin of dumping is calculated may not be treated as "dumped" for purposes of the injury analysis in that investigation. Article 5.8 of the AD Agreement provides that there shall be "immediate termination in cases where the authorities determine that the margin of dumping is *de minimis*". Thus, it is clear that no anti-dumping duties can be imposed on such imports. In our view, a finding of *de minimis* dumping margins is a finding that there is no legally cognizable dumping by the producer or exporter in question. If there is no legally cognizable dumping by a particular producer or exporter, as a result of a finding of *de minimis* margins, then it seems inescapable to us that imports attributable to such producer or exporter may not be treated as "dumped" imports for purposes of the injury determination, when they cannot be considered as "dumped" for purposes of imposition of anti-dumping duties as a result of the investigation.
>
> . . .
>
> 7.627 . . . We can conceive of no rational basis on which the imports which are not legally cognizable as "dumped" because a *de minimis* margin has been calculated for the producer/exporter in question could be included in the volume of dumped imports taken into account in assessing the question of injury. In our view, the consequences from a determination that there is no legally cognizable dumping must be taken into account in the injury analysis.
>
> 7.628 . . . We consider that an interpretation of "dumped imports" in Article 3 which would allow an investigating authority to include in the volume of dumped imports for purposes of injury analysis imports attributable to a producer/exporter for which a *de minimis* margin has been calculated is impermissible. . . . We therefore conclude that the EC acted inconsistently with Articles 3.1 and 3.2 by treating imports attributable to Nordlaks as dumped in its injury analysis.
>
> [Footnotes omitted]

99. In order to ensure that the injury analysis is not based on non-dumped goods, the Tribunal analyzed the evidence on the record following two alternate approaches, in addition to its traditional approach. By doing so, the Tribunal hopes to ensure, to the greatest extent possible, a conclusion that both is accurate and accords with its legal obligations.

100. In what will be referred to as "Approach 1", the Tribunal excluded the volumes of the subject goods for exporters for whom the CBSA determined a weighted average margin of dumping of 0 percent. As discussed below, this methodology has certain limitations which prompted the necessity for further analysis. As such, the Tribunal proceeded with an additional analysis, referred to as "Approach 2", by which it excluded the volume of the subject goods that the CBSA determined to be non-dumped.

101. In Approach 1, the Tribunal removed the volumes of goods exported by the non-dumping companies from the total volume of subject goods. However, the Tribunal notes that only three of the non-dumping companies, GVN, Jindal and BMB, responded to the Tribunal's questionnaire. Having little or no information on the goods exported by the remaining three non-dumping companies, namely, Hyundai, Pan Meridian and HLD, the Tribunal was not able to remove the non-dumped volumes attributable to these companies. As such, the volumes from those non-dumping companies remained in the volume of subject goods analyzed and, therefore, the volumes of imports from Korea and the Philippines could not be adjusted under Approach 1.

102. In order to address this deficiency, the Tribunal also analyzed the collected data under Approach 2. In the CBSA's final determination, it indicated the percentage of imports from each of the subject countries that it found to be dumped during its period of investigation.[71] The Tribunal applied these percentages to the total apparent imports indicated in the Investigation Report to estimate a volume of dumped goods for each subject country during the Tribunal's POI.

103. The use of these alternate approaches is, for the most part, contained in the analysis of the effects of volumes of the subject goods imported into Canada. As the data used for these two alternate methods could not fully reveal the impact of these goods on the volumes or pricing of the subject goods in the Canadian market, they have not been used in the consideration of the price effects or the impact on the domestic industry.

104. The Tribunal is cognizant of the limitations associated with each of these approaches.[72] As such, in order to ensure a thorough assessment of the impact of the dumped goods, the Tribunal also conducted a more traditional analysis using the total volume of the subject goods as reported in the Investigation Report, in addition to examining the evidence using both of the aforementioned approaches. By considering the data in such a comprehensive way, the Tribunal is satisfied that it has conducted a thorough analysis that accurately and fairly represents the evidence.

Import Volume of Dumped Goods

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

106. The domestic producers submitted that there was a significant increase in the volume of imports of the subject goods over the course of the POI. Tenaris contended that the annualized import data, which show a decrease in imports between 2012 and 2013, masks the significant rise of imports of the subject goods that occurred in the fourth quarter of 2012.[73] In addition, the domestic producers emphasized that import volumes increased while domestic producers' market share declined.

107. While the domestic producers acknowledged that imports of the subject goods declined in the first half of 2014, Tenaris argued that the decline was attributable to the case concerning OCTG before the United States International Trade Commission (USITC), as offshore suppliers rushed product into the United States in advance of a determination.[74] By contrast, Evraz attributed this drop in volume to ". . . anticipation of a Canadian trade case beginning in 2014 . . . ."[75]

108. In response, the opposing parties alleged that increases in the volume of the subject goods imported over the POI were insignificant, particularly when examined in the context of domestic production.[76]

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71. Exhibit NQ-2014-002-04, Vol. 1 at 309.
72. Even though the CBSA determined margins of dumping only for its period of investigation, i.e. January 1, 2013, to March 31 2014, for the purpose of its focused analysis, the Tribunal assumed that the margins applied equally throughout its POI.
73. Exhibit NQ-2014-002-A-02 (protected) at para. 13, Vol. 12.
74. *Ibid.* at para. 15.
75. Exhibit NQ-2014-002-B-02 (protected) at para. 32, Vol. 12B.
76. Exhibit NQ-2014-002-E-01 at para. 27, Vol. 13; Exhibit NQ-2014-002-J-01 at paras. 26, 34, Vol. 13A; Exhibit NQ-2014-002-L-01 at para. 21, Vol. 13A.

Analysis of Import Volumes

109. As noted above, the Tribunal has conducted a traditional injury analysis using the total volume of the subject goods as reported in the Investigation Report. However, it has also examined the evidence using the two aforementioned approaches, the objective of which was to exclude those subject goods that were not dumped.

Traditional Analysis Using Total Volumes as Reported in the Investigation Report

110. The evidence on record indicates that, while there was a notable increase in the volume of imports of the subject goods in 2012,[77] volumes decreased in subsequent periods of the POI.[78] Furthermore, the net increase of 12,727 tonnes between 2011 and 2013 was not significant when examined in light of the total size of the apparent domestic market (approximately 1 million tonnes/year).

111. The percentage share of the apparent market held by the subject goods rose slightly from 9 percent in 2011 to 11 percent in 2012 and to 13 percent in 2013.[79] At the same time, the total apparent market contracted by 13 percent,[80] indicating that the subject goods gained market share in a declining market. However, when examined in terms of absolute volumes, this 4 percentage point increase in the apparent market share held by the subject goods was due to an increase in sales of just 27,000 tonnes of the subject goods. In interim 2014, the market share held by the subject imports decreased by 2 percentage points as the market grew by 18 percent.[81]

112. When imports of the subject goods are examined relative to domestic production and domestic sales from domestic production, the subject goods appear to have gained an increasing foothold from 2011 to 2013. Specifically, imports of the subject goods relative to domestic production increased by 5 percentage points over the POI, while imports of the subject goods relative to domestic sales from domestic production increased by 7 percentage points during the POI. In interim 2014, these trends reversed, as imports of the subject goods fell, compared to domestic production and domestic consumption, by 4 percentage points and 7 percentage points respectively.[82]

113. However, the Tribunal notes that there were additional changes in the apparent market which may have impacted the domestic industry. Imports from non-subject countries, while decreasing over the POI, were 228,011 tonnes to 323,050 tonnes higher than imports of the subject goods throughout the POI.[83] Similarly, other market factors, such as declining export performance, intra-industry competition and a contraction in the size of the apparent market, appear to have impacted the domestic industry during the POI, as will be discussed more fully below.

114. All these data lead the Tribunal to conclude that there do not appear to be clear trends with respect to the absolute volumes of the subject goods or those volumes relative to domestic production or domestic consumption.

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77. This coincides with testimony indicating that there was a sudden rise in imports of the subject goods between the third quarter of 2012 and the first quarter of 2013. *Transcript of Public Hearing*, Vol. 1, 2 March 2015, at 62, 136; *Transcript of In Camera Hearing*, Vol. 4, 5 March 2015, at 207.
78. Exhibit NQ-2014-002-05B, Table 51, Vol. 1.1.
79. *Ibid.*
80. Exhibit NQ-2014-002-05B, Table 75, Vol. 1.1.
81. *Ibid.*, Table 51.
82. *Ibid.*, Table 72.
83. *Ibid.*, Table 56.

Analyses Excluding Non-dumped Imports

115. When Approach 1 is applied, the same general trends in the volumes of dumped imports are as apparent as those reached from applying the traditional analysis of the total import volumes in the Investigation Report. Dumped imports increased from 2011 to 2013, with the highest volume occurring in 2012, before decreasing in interim 2014. Relative to domestic production, dumped imports increased by 6 percentage points between 2011 and 2013, while they increased by 8 percentage points relative to domestic consumption. In interim 2014, these trends reversed, with dumped imports relative to domestic production decreasing by 5 percentage points, while dumped imports relative to domestic consumption decreased by 9 percentage points.[84]

116. An analysis using Approach 2 confirms these same general trends. Again, the dumped imports rose between 2011 and 2013, with the highest volume occurring in 2012, before decreasing in interim 2014. The increase in the percentage share of the subject imports was slightly lower than in Approach 1, as they rose by 5 percentage points over the course of the POI.[85] The increases in the volumes of dumped imports relative to domestic production and domestic sales from domestic production between 2011 and 2013 were marginally lower than in Approach 1, as they amount to 4 percentage points and 7 percentage points respectively.[86] In interim 2014, the trend was consistent with Approach 1, with dumped imports relative to domestic production decreasing by 4 percentage points, while dumped imports relative to domestic consumption decreased by 7 percentage points.

117. As the foregoing demonstrates, when non-dumped goods are excluded through either Approach 1 or Approach 2, the overall trends in the volumes of the subject imports mirror those in the traditional analysis, using the apparent total volumes from the Investigation Report. This lends further support to the Tribunal's finding that, while total volumes of the subject imports did increase over the POI, these increases were not significant.

118. More importantly, the insignificant nature of these increases leads the Tribunal to question the causal link between the subject goods and the resultant impact on the domestic industry, a point that will be discussed more fully below.

Price Effects of Dumped Goods

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

120. The domestic producers asserted that there are difficulties with assessing the prices of the subject goods on an aggregate basis, due to the high number of subject countries and issues of product mix which

84. Exhibit NQ-2014-002-06B (protected), Table 56, Schedules 113, 115, 119, Vol. 2.1A; Exhibit NQ-2014-002-05B, Tables 53, 58, 72, 75, Vol. 1.1.
85. Exhibit NQ-2014-002-06B (protected), Table 56, Vol. 2.1A; Exhibit NQ-2014-002-05B, Tables 53, 72, 75, Vol. 1.1; Exhibit NQ-2014-002-04, Vol. 1 at 309.
86. *Ibid.*

includes some grades and sizes of OCTG that may be priced higher or lower than others.[87] In particular, Tenaris submitted the following:

> Exporters from different countries may move in and out of the market as opportunities arise, and a reaction to an import in the same quarter might not reflect that the import was initially lower priced than a domestic good.[88]

121. As a result, Tenaris suggested that account-specific allegations of price undercutting, depression and suppression were crucial in evaluating the relevant price effects of the subject goods on the domestic producers.

122. Despite these challenges in evaluating the available data, the domestic producers contended that the subject goods held a price advantage in the domestic market and that the subject goods played a "... key role in taking prices down ..." in the domestic market.[89]

123. By contrast, the opposing parties argued that it was the domestic producers, or their affiliated off-shore companies, which pushed prices down in the market and that any downward trends in pricing were due to the internal pressures and competition between the domestic producers and/or the non-subject imports.[90]

124. For example, the TSEA argued that downward changes in the average per unit selling price of the like goods did not consistently correspond to the changes in the average selling price of imports from the subject countries over the POI.[91] In addition, the Embassy of Indonesia pointed to the increase in the average unit price of the like goods between 2013 and the first half of 2014 as evidence that the subject imports did not undercut, suppress or depress prices in the domestic market.[92] Finally, even where price undercutting or depression did apparently occur, BMB argued that the volumes were so small that they were insignificant and that the data available were too limited to arrive at any definitive conclusions about the price effects on the domestic industry.[93]

125. Overarching any analysis undertaken by the Tribunal is the role that price plays in purchasing decisions. While some domestic producers acknowledged that factors other than price may occasionally influence purchasing decisions,[94] 11 of the 15 purchasers that responded to the Tribunal's questionnaire indicated that price was a very important factor that affected purchasing decisions.[95]

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87. Exhibit NQ-2014-002-A-01 at para. 23, Vol. 11; Exhibit NQ-2014-002-B-01 at para. 45, Vol. 11B; Exhibit NQ-2014-002-C-01 at para. 25, Vol. 11E.
88. Exhibit NQ-2014-002-A-01 at para. 24, Vol. 11.
89. *Ibid.* at para. 27; Exhibit NQ-2014-002-B-01 at para. 50, Vol. 11B.
90. Exhibit NQ-2014-002-L-01 at para. 53, Vol. 13A; Exhibit NQ-2014-002-H-01 at paras. 28, 53, Vol. 13A; Exhibit NQ-2014-002-J-01 at para. 53, Vol. 13A.
91. Exhibit NQ-2014-002-K-01 at para. 28, Vol. 13A.
92. Exhibit NQ-2014-002-P-01 at 3, Vol. 13A.
93. Exhibit NQ-2014-002-E-01 at paras. 33-35, 42, Vol. 13.
94. *Transcript of Public Hearing*, Vol. 1, 2 March 2015, at 159.
95. Exhibit NQ-2014-002-05B, Table 38, Vol. 1.1A.

126. The Tribunal also examined the issue of whether there was any price premium afforded to like goods. However, the evidence demonstrated that, while a small price premium of 2 to 3 percent may have existed prior to 2013, it no longer exists in the present market.[96]

127. The Tribunal collected extensive pricing data by apparent market, by trade level, by product category, by common account and by benchmark product. In general, all these data sets included a substantial mix in products, which restricted the utility of the comparisons. However, the data collected for the benchmark products do not suffer from the same product mix issues and are therefore more reflective of trends in the market. The Tribunal has therefore focused its pricing analysis on the benchmark products.

Price Undercutting

– Market and Trade Level Prices

128. When the average unit values of sales of the subject goods are compared to those of the like goods, the evidence demonstrates that the subject goods did not undercut the price of the like goods in any period except 2012, during which time the average unit value of the like goods was $1,839 compared to $1,709 for the subject goods.[97] However, when unit values are broken down by trade level, the trend is distinctly different.

129. With respect to trade levels, the Tribunal notes that the volume of sales to distributors by domestic producers outweighs the volume of sales to end users by a ratio of more than 4 to 1.[98] Evidently, such sales are a crucial part of the domestic industry's sales. Therefore, while the Tribunal is mindful that any price undercutting experienced by the domestic industry with respect to sales to distributors has the potential to cause greater harm, the Tribunal will nonetheless examine both levels of trade.

130. For sales to distributors, the prices of the subject goods undercut those of the like goods throughout the POI, by 16 percent in 2011 and 2012. By 2013, this undercutting was reduced to 4 percent; however, it rose to 9 percent in interim 2014.[99] By contrast, for sales to end users, the subject goods undercut the price of the like goods by 7 percent in 2011 and by 2 percent in 2012, but were then priced 4 percent higher than the like goods in 2013.[100] While the subject goods were priced 2 percent higher in interim 2013, they then undercut the price of the like goods by 11 percent in interim 2014.[101]

131. On the basis of the foregoing, the Tribunal concludes that there was some evidence of price undercutting at the aggregate level. In particular, for sales to distributors, the subject goods consistently undercut the price of like goods throughout the POI.

– Benchmark Products

132. The Tribunal also examined the incidence of price undercutting that occurred with respect to the benchmark products. However, the Tribunal's examination was limited because there were several instances in which the subject goods and the like goods did not compete directly against one another during the same

96. *Transcript of Public Hearing*, Vol. 1, 2 March 2015, at 158-59; *Transcript of Public Hearing*, Vol. 2, 3 March 2015, at 299, 301.
97. Exhibit NQ-2014-002-06B (protected), Table 81, Vol. 2.1A.
98. *Ibid.*, Tables 91, 96.
99. *Ibid.*, Table 94.
100. *Ibid.*, Table 99.
101. *Ibid.*

quarter of the POI. For example, for J55 seamless casing and J55 seamless tubing, there were no instances of head-to-head competition between the subject goods and the like goods for both sales to distributors and sales to end users.[102]

133. Overall, the trend for price undercutting was mixed; however, there were more instances of price undercutting for sales to distributors than there were for sales to end users.

Sales to Distributors

134. For electric resistance welded (ERW) L80 casing, there are only three quarters during the POI that contain unit values of the subject goods for sales to distributors. In two of those quarters (the first quarter of 2013 and the fourth quarter of 2013), the unit values of the subject goods undercut those of the like goods by 9 percent and 18 percent respectively. However, in the third quarter of 2013, the unit value of the subject goods was actually 7 percent higher than that of the like goods.[103]

135. Similarly, for ERW P110 casing, the unit values of the subject goods for sales to distributors are recorded for only three periods. Here too, however, the question of undercutting is mixed. Whereas the subject goods undercut the price of the like goods by 8 percent in the first quarter of 2013, they were priced higher than the like goods in the third quarter of 2013 and were virtually identical in price during the first quarter of 2014.[104]

136. The trends are somewhat more uniform for sales to distributors of the other benchmark products. For instance, with respect to ERW J55 casing, the price of the subject goods undercut that of the like goods for all but two of eight periods, by a range of 3 percent to 22 percent.[105] Similarly, the subject goods undercut the price of the domestically produced P110 seamless casing by 1 percent to 19 percent for seven out of eight periods of the POI.[106]

137. However, while the subject goods undercut the price of sales to distributors of domestically produced ERW J55 tubing in both the third quarter of 2012 and the fourth quarter of 2012, they were then priced higher than the like goods for all reported periods in 2013 and 2014.[107]

Sales to End Users

138. When the unit values of benchmark products sold to end users are examined, the incidences of price undercutting are less apparent. For both ERW J55 casing and ERW J55 tubing, the subject goods undercut the price of the like goods in only one of eight quarters in the POI.[108] The subject L80 seamless casing was only sold during four quarters of the POI and undercut the price of like goods sold to end users in just one of those four quarters.[109]

139. More evidence of price undercutting is evident in the sales to end users of ERW L80 casing and P110 seamless casing. While the subject ERW L80 casing was only sold during two quarters over the POI,

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102. Exhibit NQ-2014-002-06D (protected), Table 1, Vol. 2.1A.
103. *Ibid.*
104. *Ibid.*
105. *Ibid.*
106. *Ibid.*
107. *Ibid.*
108. Exhibit NQ-2014-002-06D (protected), Table 3, Vol. 2.1A.
109. *Ibid.*

the subject goods undercut the domestically produced goods in both quarters by 15 percent and 16 percent.[110] Sales to end users of P110 seamless casing showed undercutting by the subject goods in three of the five quarters in which it was sold. This undercutting occurred in the latter portion of the POI, in the third quarter of 2013, the fourth quarter of 2013 and the first quarter of 2014, during which time the subject goods consistently undercut the price of like goods by 5 percent.[111]

140. As the foregoing demonstrates, incidents of price undercutting were inconsistent throughout the POI, with the trends varying between different trade levels and different benchmark products. However, the Tribunal is cognizant of the fact that price undercutting was more frequent in sales to distributors, which is where a significant majority of the domestic industry's sales are concentrated.

Price Depression

– Account-specific Allegations

141. The domestic producers submitted several account-specific allegations in which they claimed that competition with the subject goods had either resulted in lost sales or forced the domestic producers to significantly lower their prices in order to compete with the subject goods. In particular, the domestic industry alleged that the account-specific allegations demonstrated several occasions on which they were unable to increase prices or were forced to lower prices in response to the prices of the subject goods.[112]

142. In response, the opposing parties argued that the account-specific allegations are without merit, as they are not based on reliable market intelligence and inappropriately rely upon average unit prices of benchmark products rather than on transaction-specific pricing.[113] In addition, they noted that many allegations were general in nature, referring to all nine countries rather than pinpointing the exact source of the alleged competition.[114]

143. The Tribunal also has significant concerns regarding the accuracy and reliability of the allegations made by domestic producers. When questioned during the hearing, witnesses for the domestic producers conceded that much of the information used to support their allegations was obtained indirectly and that they were not able to fully verify the prices or volumes.[115]

144. Similarly, for those account-specific allegations that dealt with lost sales, witnesses were uncertain as to whether sales were actually lost, as there were seeming contradictions within the information presented.[116] Finally, witnesses conceded that ". . . not 100 per cent of that volume was a lost sale"[117] and that some of the like goods listed in the allegations could actually have contained OCTG which was not produced in Canada.[118]

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110. *Ibid.*
111. *Ibid.*
112. Exhibit NQ-2014-002-B-02 at para. 75, Vol. 11B.
113. Exhibit NQ-2014-002-K-01 at paras. 30-31, Vol. 13A.
114. Exhibit NQ-2014-002-H-01 at para. 67, Vol. 13.A.
115. *Transcript of Public Hearing*, Vol. 2, 3 March 2015, at 225; *Transcript of In Camera Hearing*, Vol. 2, 3 March 2015, at 48, 102, 168.
116. *Transcript of Public Hearing*, Vol. 1, 2 March 2015, at 105; *Transcript of In Camera Hearing*, Vol. 2, 3 March 2015, at 60.
117. *Transcript of Public Hearing*, Vol. 1, 2 March 2015, at 109.
118. *Ibid.* at 98.

145. Given the inconsistencies and flaws that were exposed in several of the allegations, the Tribunal will ascribe little weight to these account-specific injury allegations, whether in terms of price depression, price suppression or lost sales.

– Market and Trade-level Prices

146. When the average prices of the like goods are examined, there is some evidence of price depression, even though the trends are not consistent over the course of the POI. At the aggregate level, the unit values of the like goods fell slightly in 2012, and then sharply in 2013 for an overall decrease of 9 percent between 2011 and 2013. The prices of the like goods then increased marginally in interim 2014, but remained well below 2011 and 2012 levels. In comparison, after decreasing by 10 percent in 2012, the price of the subject goods increased in every subsequent period of the POI, although the level in interim 2014 was still below the level in 2011.[119]

147. The above pricing trends were also apparent in sales to distributors of both the like goods and the subject goods. Whereas the price of the subject goods increased from 2011 through 2013, prices of the like goods fell somewhat between 2011 and 2012, before falling sharply in 2013.[120] The prices of the subject goods decreased somewhat in interim 2014 as compared to interim 2013, while the prices of the like goods recovered somewhat in the first half of 2014 over the same period of 2013.[121]

148. With respect to sales to end users, the pricing trends were different. For like goods, although the prices declined in 2012 and 2013, they rose substantially in interim 2014 to attain their highest level in the POI. By contrast, the price of the subject goods sold to end users increased between 2011 and 2013 and remained essentially unchanged in interim 2014 compared to interim 2013.[122]

149. In light of the foregoing, the Tribunal finds that there was some evidence of price depression over the POI. However, given the potential for product mix in the aggregate prices, an examination of the benchmark products is necessary to get a clearer picture of any price depression that may have occurred.

– Benchmark Products

150. When the unit values of benchmark products are examined, the trends regarding price depression are inconsistent from product to product.

151. For both ERW J55 casing and ERW J55 tubing, prices fluctuated from quarter to quarter. In particular, the unit value of sales to distributors of domestic ERW J55 casing increased in the first quarter of 2013, the fourth quarter of 2013 and again in the second quarter of 2014, while the prices of the like goods to end users increased in the third quarter of 2013, dropped slightly in the fourth quarter of 2013 and then increased again for the remaining two quarters of the POI.[123]

152. However, taking the whole POI into account, the unit values of both sales to distributors and sales to end users of domestically produced ERW J55 casing were lower at the end of the POI than they had been at the start. With respect to ERW J55 tubing, unit values of sales to distributors of domestic J55 tubing declined in the fourth quarter of 2012 until the second quarter of 2013, increased slightly in the third quarter

119. Exhibit NQ-2014-002-06B (protected), Table 81, Vol. 2.1A.
120. *Ibid.*, Table 94.
121. *Ibid.*
122. Exhibit NQ-2014-002-06B (protected), Table 99, Vol. 2.1A.
123. *Ibid.*, Tables 112, 128.

of 2013, continued to increase in the fourth quarter of 2013 and then continued to fluctuate in the remaining two quarters of the POI.

153. In respect to sales of J55 tubing to end users, domestic prices fell in the fourth quarter of 2012, the first quarter of 2013, the fourth quarter of 2013 and the second quarter of 2014; however, prices increased in the second quarter of 2013, the third quarter of 2013 and the first quarter of 2014, with prices being at their lowest in the first quarter of 2013.[124]

154. Similarly, the prices of sales to distributors of domestically produced ERW L80 casing and of sales to both distributors and end users of P110 seamless casing decreased in each quarter until the second quarter of 2013, before increasing in each period for the remainder of the POI.[125] However, neither increased to the prices seen at the start of the POI.

155. Finally, the prices of sales to distributors of domestic ERW P110 casing dropped in each quarter from the third quarter of 2012 to the second quarter of 2013, before steadily rising for the remainder of the POI. In fact, the unit values were higher in the second quarter of 2014 than at any other point in the POI.[126] The same cannot be said for the prices of sales to end users of ERW P110 casing, which, although recovering slightly in the second quarter of 2013, dropped to their lowest price in the second quarter of 2014.[127]

156. In light of the foregoing, the Tribunal finds that, while some price depression may have occurred for individual products during certain periods, the trends were inconsistent over the entire POI.

Price Suppression

157. The domestic industry argued that the low prices of the subject goods caused price suppression in the domestic industry.[128]

158. In order to assess price suppression, the Tribunal generally compares the changes in the domestic industry's consolidated $/tonne cost of goods manufactured (COGM) to the changes in the weighted average selling prices of the like goods to determine if domestic producers have been able to increase selling prices in step with increases in their COGM.

159. As the evidence on the record shows, the COGM for domestic sales on a $/tonne basis within Canada increased by 3 percent in 2012 and then declined by 5 percent in 2013. The $/tonne COGM for domestic sales in the first half of 2014 declined by 1 percent from the same period of 2013. Overall, there was a decline in COGM for domestic production during the POI.[129]

160. At the same time, the average selling price of domestically produced goods declined from $1,861/tonne in 2011 to $1,691/tonne in 2013 and was $1,743/tonne in the first half of 2014.[130] While prices did decline over the POI, it does not appear that there were any increases in the COGM that would have required an increase in selling prices. In addition, the domestic producers generally reported decreases in the

124. *Ibid.*, Tables 116, 132.
125. *Ibid.*, Tables 120, 122, 138.
126. Exhibit NQ-2014-002-06C (protected), Table 124, Vol. 2.1A.
127. Exhibit NQ-2014-002-06B (protected), Table 140, Vol. 2.1A.
128. Exhibit NQ-2014-002-B-02 at para. 75, Vol. 11B; Exhibit NQ-2014-002-C-05 at paras. 50-51, Vol. 11E.
129. Exhibit NQ-2014-002-05B, Table 163, Vol. 1.1A.
130. *Ibid.*, Table 81.

cost of their major material components between 2011 and 2013, though there were some increases reported for interim 2014.[131]

161. Therefore, a comparison of the COGM and average selling prices of the like goods indicates that price suppression did not occur during the POI.

Resultant Impact on the Domestic Industry

162. Paragraph 37.1(1)(*c*) of the *Regulations* requires the Tribunal to consider the resulting impact of the dumped and subsidized goods on the state of the domestic industry and, in particular, all relevant economic factors and indices that have a bearing on the state of the domestic industry.[132] These impacts are to be distinguished from the impact of other factors also having a bearing on the domestic industry.[133] Paragraph 37.1(3)(*a*) requires the Tribunal to consider whether a causal relationship exists between the dumping or subsidizing of the goods and the injury, retardation or threat of injury, on the basis of the volume, the price effect, and the impact on the domestic industry of the dumped or subsidized goods.

Positions of Parties

163. The domestic producers argued that the dumped goods have caused material injury. Evraz argued that it saw downward trends, throughout the POI, in respect of total domestic production, market share, domestic sales (both in terms of value and volumes), gross margins, capacity utilization, profitability, reduced employment levels and its ability to make investments.[134] Tenaris,[135] WTC and Energex[136] argued along the same lines.

164. BMB and the TSEA submitted that there was no correlation between the impacts alleged by the domestic industry and the volumes of dumped goods, in particular, the subject goods from Turkey. Rather, BMB attributed declines in domestic production to three factors, namely, a decline in export sales, an increase in sales of imports by domestic producers and an overall contraction in demand for OCTG in the Canadian market.[137]

131. Exhibit NQ-2014-002-06B (protected), Table 165, Vol. 2.1A.
132. Such factors and indices include (i) any actual or potential decline in output, sales, market share, profits, productivity, return on investments or the utilization of industrial capacity, (ii) any actual or potential negative effects on cash flow, inventories, employment, wages, growth or the ability to raise capital, (ii.1) the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods, and (iii) in the case of agricultural goods, including any goods that are agricultural goods or commodities by virtue of an Act of Parliament or of the legislature of a province, that are subsidized, any increased burden on a government support programme.
133. Paragraph 37.1(3)(*b*) of the *Regulations* directs the Tribunal to consider whether any factors other than dumping or subsidizing of the subject goods have caused injury. The factors which are prescribed in this regard are (i) the volumes and prices of imports of like goods that are not dumped or subsidized, (ii) a contraction in demand for the goods or like goods, (iii) any change in the pattern of consumption of the goods or like goods, (iv) trade-restrictive practices of, and competition between, foreign and domestic producers, (v) developments in technology, (vi) the export performance and productivity of the domestic industry in respect of like goods, and (vii) any other factors that are relevant in the circumstances.
134. Exhibit NQ-2014-002-B-02(protected) at paras. 78-92, Vol. 12B.
135. Exhibit NQ-2014-002-A-02 (protected) at paras. 39-46, Vol. 12.
136. Exhibit NQ-2014-002-D-04 (protected) at paras. 30-40, Vol. 12B.
137. Exhibit NQ-2014-002-E-02 (protected) at para. 48, Vol. 14.

165. Similarly, Interpipe argued that the subject goods played a minor role in the domestic market and that any injury experienced by the domestic producers was attributable to declines in export sales and a lack of domestic production of seamless casing. Interpipe also argued that the domestic industry has actually shown growth in terms of employment and capacity utilization when the 2011 figures are compared to more recent numbers. Furthermore, Interpipe argued that the domestic industry's behaviour in the marketplace has resulted in an alienation of its customers, as demonstrated in various confidential questionnaire responses.[138]

166. Finally, the TSEA urged the Tribunal to add the domestic producers' percentage share from domestic production and its percentage share from imports to establish that the domestic producers did not in fact lose market share over the POI.[139]

Tribunal's Analysis

167. At the outset, the Tribunal notes that the idling of Energex's Welland facility in May 2014 may have had a disproportionate impact on the apparent performance of the domestic industry as a whole. While Energex maintained that this facility was idled because of the low prices of the subject goods, there was some suggestion that the poor performance of export sales also played a role in this decision.[140] The Tribunal agrees that the declining export performance had a role to play in the closure of this plant. Therefore, where the idling of the Energex facility had a significant impact on the domestic industry's performance, the Tribunal must be mindful of the extent to which this other factor attributed to any of the declines experienced by the domestic industry in relation to the subject goods.

– Domestic Production

168. Overall, domestic production of OCTG was on a downward trend from 2011 through to 2013, falling by a total of 22 percent over that period before making a partial recovery in the first half of 2014.[141] However, as discussed earlier, the Tribunal is also aware of the globally integrated business model by which Tenaris operates and the consequent flow of non-subject imports from Tenaris affiliates into the Canadian market. In this regard, the Tribunal notes that, while the volume of sales of domestically produced goods fell by 3 percent in 2012 (from 588,251 tonnes in 2011 to 569,983 tonnes in 2012), the producers' sales volume of non-subject imports increased by 69 percent in that same period.[142]

169. In addition, the Tribunal is also cognizant of the fact that the domestic producers are significant exporters and that opposing parties argued that the Tribunal must consider declining domestic production in this light. However, the Tribunal finds that the decline in domestic production cannot be simply explained by an allegedly increasingly export-orientated strategy on the part of the domestic producers over the POI. Rather, the evidence shows that exports fell by approximately 66,000 tonnes between 2011 and 2013 and continued to fall in interim 2014.[143]

170. Therefore, the Tribunal finds that, while domestic production did decrease over the POI, the subject imports do not appear to have been fully responsible for this decline.

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138. Exhibit NQ-2014-002-L-02 (protected) at paras. 42-53, Vol. 14A.
139. Exhibit NQ-2014-002-J-01 at para. 86, Vol. 13A.
140. *Transcript of Public Hearing*, Vol. 2, 3 March 2015, at 231.
141. Exhibit NQ-2014-002-06B (protected), Tables 53, 54, Vol. 2.1A.
142. *Ibid.*, Tables 83, 84.
143. *Ibid.*, Table 102.

– Sales

171. Domestic sales volumes of OCTG by domestic producers fell in each period of the POI from 2011 to 2013, by a total of 21 percent, while sales of imports of the subject goods increased by 28 percent. In interim 2014, the volume of domestic sales increased by 27 percent, while sales of the subject goods remained essentially unchanged.[144]

172. At first glance, this would seem to suggest that sales of imports of the subject goods largely displaced sales of the like goods. However, when expressed in terms of tonnes, there is no convincing correlation between sales of the subject goods and sales of the like goods. Between 2011 and 2013, sales of the like goods fell by 121,406 tonnes, while sales of imports of the subject goods increased by just 26,867 tonnes.[145] All of this occurred as the total apparent market declined by 145,019 tonnes over the POI.[146]

173. When the decline in the volume of domestic sales is compared with the relatively modest increase in the volume of sales of imports of the subject goods, the Tribunal finds there is no clear link between the declines in sales of domestically produced goods and the subject goods. Rather, the Tribunal concludes that the substantial decline in the apparent market seems to have been the root cause of the decrease in domestic sales volumes.

174. Moreover, the evidence on the record indicates that the domestic producers operate within a very competitive market, in which they regularly compete against, and lose sales to, one another.[147] In addition, recent shifts in market dynamics and marketplace strategies appear to have intensified this competition.[148] The Tribunal finds that this intra-industry competition was also an important factor in the lost sales over the POI.

– Market Share

175. Between 2011 and 2013, the market share of the subject goods grew by 4 percentage points, while, at the same time, the market share of the like goods declined by 4 percentage points. The market share of imports from non-subject countries remained relatively steady.[149] In interim 2014, the domestic producers' market share increased by 4 percentage points compared to interim 2013, while the market share of the subject goods declined by 2 percentage points over the same period.[150]

176. Again, however, the actual volumes do not support a direct correlation between the market share lost by the domestic producers and the gains of the imports of the subject goods. As noted above, whereas the volume of sales of the like goods fell by 121,406 tonnes over the POI, the evidence demonstrates that imports of the subject goods could only have accounted for 26,867 tonnes of that decline.[151] As such, the Tribunal finds that the market share gained by the imports of the subject goods over the POI was not significant enough to have caused material injury to the domestic industry.

144. Exhibit NQ-2014-002-05B, Table 75, Vol. 1.1A.
145. *Ibid.*
146. *Ibid.*
147. *Transcript of Public Hearing*, Vol. 2, 3 March 2015, at 217-19, 237, 279.
148. *Transcript of In Camera Hearing*, Vol. 4, 5 March 2015, at 325-26.
149. Exhibit NQ-2014-002-05B, Table 77, Vol. 1.1A.
150. *Ibid.*
151. Exhibit NQ-2014-002-05B, Table 75, Vol. 1.1A.

– Profitability

177. As noted above, the opposing parties argued that much of the decline in the domestic industry's performance was in fact the result of their export-focused strategy and the losses experienced in that sector.[152] To that end, they pointed to decreases in the volumes of exports of domestic production throughout the POI and cautioned that any losses that result from declining export sales could not be attributed to the subject goods.

178. In examining the losses of export sales that the domestic producers reported over much of the POI,[153] the Tribunal does question the viability of a model which apparently sustains repeated losses on export sales year after year.

179. Nevertheless, when the financial performance of the domestic producers is examined solely with respect to sales from domestic production within Canada, substantial decreases in profitability were apparent over the POI. Gross margins declined significantly over the POI, falling from 19 percent of sales in 2011 to 5 percent in 2013. Gross margins recovered somewhat in interim 2014 when they rose to 9 percent; however, this is still notably below their level in 2011.[154]

180. Given the decline in sales volumes and values and the decline in gross margins, it is not surprising that the net income of the domestic industry also fell over the POI. In 2011, the domestic industry's consolidated income statement showed a total net income of slightly over $80 million, which then fell to approximately $4 million in 2012, before resulting in a loss of approximately $68 million in 2013. While the figures for interim 2014 revealed that there was some recovery compared to net income in interim 2013, the domestic industry maintained a net loss position.[155] When the net incomes of the domestic producers were considered individually, the same trends were generally apparent, although not all were in a loss situation.[156]

181. Accordingly, a portion of the net losses experienced by the domestic industry over the POI, particularly those stemming from the closure of Energex's facility in Welland, are attributable in part to other factors.

182. Therefore, while the domestic industry did experience declines in profitability over the POI, given the difficulties in causation described above, the Tribunal finds that these losses cannot be attributed to the subject goods alone.

– Capacity Utilization

183. Over the course of the POI, the capacity utilization of the domestic industry with regard to OCTG was at its highest level in 2011, at 75 percent. This figure fell to 69 percent in 2012 and then fell further to 56 percent in 2013. The data indicate that capacity utilization improved somewhat in interim 2014 over interim 2013, to 67 percent.[157] The capacity utilization of the domestic industry, taking into account all products, shows the same trend. Capacity utilization generally follows the trends discussed above for domestic production, although the Tribunal notes that there was a slight increase in practical plant capacity between 2011 and 2013, which reinforced the impact of declining production.

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152. Exhibit NQ-2014-002-L-01 at paras. 29-34, Vol. 13A.
153. Exhibit NQ-2014-002-06B (protected), Schedules 80-83, Vol. 2.1A.
154. Exhibit NQ-2014-002-05B, Table 160, Vol. 1.1A.
155. *Ibid.*
156. Exhibit NQ-2014-002-06B (protected), Schedules 76-79, Vol. 2.1A.
157. Exhibit NQ-2014-002-05B, Table 170, Vol. 1.1A.

– Employment and Productivity

184. The domestic industry's direct employment levels rose by 3 percent between 2011 and 2012, but then fell by 14 percent in 2013.[158] The average employment figures for 2013 reflect a significant decline that is specific to Energex and which is likely the result of the closure of its facility in Welland. In addition, the Tribunal believes this decline to be largely attributable to the 14 percent decline in the overall market[159] rather than the presence of the subject goods.

185. Productivity declined steadily between 2011 and 2013, whether measured in terms of tonnes per employee or tonnes per hour worked. In interim 2014, both measures of productivity increased slightly. These trends reflect both the decrease in employment (and consequently hours worked) and the decrease in production.[160]

– Investments

186. The level of investment by domestic producers declined by 46 percent in 2012, as compared to levels in 2011, but then recovered somewhat in 2013, rising by 30 percent.[161] The domestic producers noted that ongoing investments will be heavily dependent on the market for OCTG, as well as on the future presence of the subject goods.[162] As already noted several times above, the Tribunal is not convinced that the presence of the subject goods was sufficient to cause the negative results experienced by the domestic industry.

– Materiality

187. The Tribunal will now determine whether the effects of imports of the subject goods noted above are "material", as contemplated in the definition of "injury" under section 2 of *SIMA*. *SIMA* does not define the term "material". However, both the extent of injury during the relevant time frame and the timing and duration of the injury are relevant considerations in determining whether any injury caused by the subject goods is "material".[163]

188. On the basis of the above analysis, the Tribunal finds that the dumping of the subject goods did not, in and of themselves, cause material injury. Rather, the deterioration in performance experienced by the domestic industry during the POI was primarily due to factors other than the dumping of the subject goods.

189. For instance, while domestic production fell over the POI, the Tribunal notes there was also a substantial contraction in the apparent market and declining export sales. Similarly, intra-industry competition and domestic producer imports had an effect on the sales of the like goods.

158. *Ibid.*, Table 166.
159. *Ibid.*, Table 75.
160. *Ibid.*, Table 169.
161. *Ibid.*, Table 171.
162. Exhibit NQ-2014-002-B-01 at para. 88, Vol. 11B.
163. The Tribunal suggested, in *Certain Hot-rolled Carbon Steel Plate* (27 October 1997), NQ-97-001 (CITT) at 13, that the concept of materiality could entail both temporal and quantitative dimensions, "[h]owever, the Tribunal [was] of the view that, [until that time], the injury suffered by the industry [had] not been *for such a duration* or *to such an extent* as to constitute 'material injury' within the meaning of SIMA" [emphasis added].

190. In the instances where there appeared to have been a correlation between imports of the subject goods and the downturn in the domestic industry, the injury incurred by the domestic industry through the effects of the dumping of the subject goods is not material.

191. While there are indications of price undercutting during the POI and while imports of the subject goods did increase in market share, neither of these factors increased to the level of causing material injury.

192. This conclusion becomes all the more apparent in the context of the Tribunal's focused analysis of import volumes discussed above. When the volume of imports that were not dumped are removed in Approach 1 and Approach 2, the relatively insignificant proportion of dumped subject goods in the apparent market enhances the conclusion that they could not, in and of themselves, have caused material injury to the domestic industry.

193. Similarly, while the volume of sales of like goods fell by 121,406 tonnes over the POI, the evidence demonstrates that imports of the subject goods could only have accounted for 26,867 tonnes of that decline.[164] As such, the influx of subject goods did not rise to the level of being a material factor in any injury suffered by the domestic industry.

194. Therefore, the Tribunal finds that the dumping of the subject goods has not caused material injury to the domestic industry.

THREAT OF INJURY ANALYSIS

195. Having found that the dumping of the subject goods has not caused material injury to the domestic industry, the Tribunal must now consider whether the dumping of the subject goods is threatening to cause material injury.

196. The Tribunal is guided in its consideration of threat of injury by subsection 37.1(2) of the *Regulations*, which prescribes factors to be taken into account for the purposes of its threat of injury analysis.[165] Also of relevance is subsection 2(1.5) of *SIMA*, which indicates that a threat of injury finding cannot be made unless the circumstances in which the dumping and subsidizing of the goods would cause injury are clearly foreseen and imminent.

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164. Exhibit NQ-2014-002-05B, Table 75, Vol. 1.1A.

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

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

Context for the Threat of Injury Analysis

198. Before delving into the Tribunal's analysis of the evidence and its consideration of the relevant factors, a few comments are necessary in order to set the context for the Tribunal's finding of threat of injury in this case.

199. The end of 2014 saw a precipitous drop in oil prices which was unforeseen and substantial. It created a new paradigm for those involved in the oil and gas industry. Going forward into 2015, pressures that were not present in the market during the POI or that were only minimally present will challenge those that produce, import, distribute and purchase OCTG, as the current market has now become highly unpredictable and volatile.

200. All actors involved in the exploration, production and distribution of related energies are under great pressure, where market pricing for oil has essentially been cut in half. This has severely impacted their traditional production models and left many in search of solutions in order to ensure both short-term and long-term viability. As such, exploration and production companies will be looking to reduce their costs by substantial margins, so that they too can weather this storm.

201. Under existing business models, distributors hold inventory of both subject goods and like goods. These distributors will be at a disadvantage when inventories are devalued under current market pressures and, accordingly, distributors will also be looking for means by which to reduce their costs. For this reason, pricing will become increasingly important and, indeed, central to all purchasing decisions. As competition intensifies, prices will be forced downward.

202. By all accounts, these new pressures will persist until such time as the market starts to show signs of recovery. However, much of the evidence on file does not forecast such recovery until the end of 2015, where market analysts continue to predict low West Texas Intermediate oil pricing for the remainder of 2015 and going into 2016.[166] These pressures are not limited to Canada, but involve a worldwide dynamic influenced by complex geopolitical pressures.

203. To be clear, this precipitous drop in the price of oil is neither a factor which can be isolated nor a factor to which specific causality can be attributed. It is a new reality to which all involved must adapt. It is also a new paradigm which took hold after the end of the POI and which cannot be ignored as the Tribunal looks ahead. It is therefore the overarching context within which the Tribunal must conduct its analysis of the threat of injury.

Analysis

Time Frame

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

166. Exhibit NQ-2014-002-29.05, Vol. 1B at 56.

205. In this case, while the TSEA argued that the time frame of 12 to 18 months is typically used in steel cases because of market and price fluctuations, Evraz submitted that the appropriate time frame for assessing injury in this case would be 24 months, seemingly on the sole basis that the Tribunal assessed threat of injury over 18 to 24 months in Inquiry No. NQ-2007-001.[167]

206. Considering the volatility of the oil and gas market, the consequent impacts on the market for OCTG and the sudden rate at which these markets can change, the Tribunal finds that its threat of injury analysis in this case is most appropriately conducted on the basis of a 12- to 18-month period. This is most in keeping with the context in which the Tribunal conducts its analysis of threat of injury and consistent with testimony that the Tribunal heard from its two witnesses, Mr. Shields and Ms. Aquin.

207. Both Mr. Shields and Ms. Aquin testified that the market will eventually improve; however, there is a significant amount of uncertainty and unpredictability as to the timing of this recovery. Mr. Shields indicated that the result of certain geopolitical activities, OPEC decisions in particular, could possibly accelerate improvements in the market or could have the opposite result, thereby further delaying the recovery process. Because of the challenges in predicting the condition of the market over longer periods, Mr. Shields indicated that Pacific Tubulars tends not to forecast more than six months in advance.[168] In regard to the oil and gas market generally, Ms. Aquin testified that trying to predict 12 months out can be very difficult, given the geopolitical climate. For this reason, while the PSAC will publish a forecast for a 12-month period, it will also update this forecast on a quarterly basis.[169]

Positions of Parties

208. The domestic producers argued that the subject countries threaten to cause material injury on the basis of a substantial likelihood of increased volumes, a history of shipping significant volumes of dumped goods to Canada, the export orientation of the subject countries and their relationships with Chinese mills.

209. Specifically, the domestic producers claimed that there is substantial production capacity in the subject countries. In their view, this excess capacity will only continue to worsen as demand declines commensurate with declines in oil and gas drilling. Furthermore, this excess capacity will continue to threaten Canadian producers, given that there is little or no domestic demand in certain subject countries, such as Chinese Taipei.

210. Consequently, the domestic producers argued that Canada will remain an attractive market for this excess capacity because of existing relationships between both producers and exporters of the subject goods and importers and subsidiaries in Canada, and due to the fact that other markets are effectively closed by the imposition of trade measures.

211. In terms of price effects, the domestic producers argued that, in the absence of anti-dumping and countervailing duties, the subject goods are likely to continue to undercut, depress and suppress Canadian prices of OCTG in the near to medium term, as price competition will be fierce, given the contraction in the apparent market.

212. Parties opposed to a finding argued that the subject goods do not pose any threat of injury to the domestic industry. In their view, claims of threat of injury by the domestic industry were unsubstantiated by the evidence on the record. They argued that, although imports of the subject goods increased over the POI,

167. *Seamless Carbon or Alloy Steel Oil and Gas Casing* (10 March 2008) (CITT).
168. *Transcript of Public Hearing*, Vol. 4, 5 March 2015, at 489.
169. *Ibid.* at 542.

the increase was not significant and is not indicative of a significant upward trend in subject imports in the near to medium term.[170]

213. For example, Interpipe argued that volumes of the subject goods from Ukraine are likely to remain small in the near to medium term because, notwithstanding the current political climate, Interpipe's export sales to the Russian Federation (Russia) are likely to remain strong. Moreover, in terms of sales in the Americas, the U.S. will remain Interpipe's most important export market because of the company's suspension agreement with the U.S. government. Interpipe claimed that it may make opportunistic sales in Canada at low volumes, but only after having supplied its priority markets.[171]

214. Similarly, Boly Pipe and the Government of Thailand disputed the domestic industry's claims of threat of injury, citing evidence of limited production and declining OCTG capacity in Thailand.[172]

215. Finally, BMB submitted that there is no threat of injury from the subject imports when taken as a whole. Similarly, Turkey, when examined in isolation, poses no threat of injury. BMB pointed to the fact that volumes from Turkey declined over the POI, a fact that it deemed to be indicative of further declines in the future. Furthermore, Turkish OCTG finished in the United States prior to exportation to Canada is almost entirely J55 grade, the demand for which, it claimed, is declining, while, at the same time, the demand for premium products, which Turkey is not capable of producing, is on the rise in Canada. The TSEA suggested that arguments that Turkish OCTG will be diverted from the U.S. market are misplaced, looking at the trend in volumes that has occurred since the U.S. finding came into effect.[173]

Likelihood of Increased Dumped Goods

216. A threat of injury analysis is forward looking. In this case, the evidence on the record indicates that there was a significant rate of increase of dumped goods imported into Canada, particularly during the third quarter of 2014. The significant rate of increase of dumped goods in the third quarter of 2014 leads the Tribunal to accept that an imminent substantial increase is likely in the next 12 to 18 months. This conclusion is based on specific data from Statistics Canada,[174] data which are more recent than the data that were collected in the Investigation Report for the POI.

217. The Tribunal recognizes that these data have some limitations. In particular, given that they are based strictly on tariff codes, they may include some goods that are not subject goods. Nevertheless, notwithstanding these limitations, the Statistics Canada data are helpful as the Tribunal conducts its forward-looking analysis of threat of injury, as it points to trends that took hold after the POI and in the context of the declining prices of oil.

218. Statistics Canada data demonstrate that the volume of imports from the subject countries increased by approximately 16 percent in the second half of 2014, as compared to the second half of 2013. This

170. Exhibit NQ-2014-003-L-01 at para. 72, Vol. 13A.
171. *Ibid.* at para. 81.
172. Exhibit NQ-2014-003-G-01 (protected) at paras. 24, 45, Vol. 14. Exhibit NQ-2014-002-I-01 at paras. 27-30, Vol. 13A.
173. Exhibit NQ-2014-003-K-01 at paras. 52-53, Vol. 13A.
174. The Tribunal notes that both Tenaris and Evraz submitted data from Statistics Canada. One shortfall of Evraz's data is that it does not account for December 2014. Tenaris submitted Statistics Canada data that do cover the full fourth quarter of 2014, albeit only for the subject countries. Exhibit NQ-2014-002-A-07 at 244-50, Vol. 11. The data provided by Tenaris point to the same trend for the subject goods, with the subject goods increasing by approximately 26 percent the latter half of 2014 as compared to the latter half of 2013.

increase in the volume is most noticeable in the third quarter of 2014, where volumes increased by 55 percent above the levels in the third quarter of 2013. It appears that imports from the subject countries have increased at a faster rate than imports from non-subject countries, which remained essentially unchanged when data from the latter half of 2013 are compared to the latter half of 2014.[175]

219. The Tribunal notes that this is an important reversal of the trend seen for the first half of 2014 where the Statistics Canada data show imports from non-subject countries increasing at a significant rate, while imports from the subject countries fell marginally.[176]

220. Furthermore, the Statistic Canada data corroborate the testimony of Mr. McHattie who stated that ". . . at the same time that the price of oil declined by 50 per cent in the last half of 2014, the imports from these nine subject countries increased . . . ."[177] Mr. McHattie estimated that the volumes of imports from the subject countries increased by 35 percent in the latter half of 2014.

221. Taken together, the evidence on the record, the Statistics Canada data and testimony demonstrate a general trend that absolute volumes of the subject goods are likely to increase substantially in the next 12 to 18 months, irrespective of the variances of individual subject countries.

222. The domestic producers submitted that the increase in imports in the second half of 2014, particularly during the third quarter, is the result of strategic decisions that importers made to land the subject OCTG in Canada prior to the imposition of provisional anti-dumping duties.

223. Given that the lead time for imports is approximately 120 days,[178] the orders that would have contributed to the influx of the subject imports in the third quarter of 2014 would likely have been placed in May 2014, or possibly earlier. Indeed, Mr. Scott McConnell testified that, in early 2014, "rumours" of an impending Canadian trade remedy case against the subject imports circulated through the market.[179] As the data indicate that importers acted on these rumours, the Tribunal finds that their behaviour suggests that imports of the subject goods would substantially increase in the future in the absence of a finding of threat of injury.

Capacity of Subject Countries

224. The likelihood that volumes of the subject goods will increase in the next 12 to 18 months is made all the more real given that the subject countries are dependent on export markets for their goods. The evidence on the record indicates that producers in India,[180] Indonesia,[181] Thailand,[182] Turkey[183] and Ukraine[184] exported substantially more OCTG than they sold in their domestic markets during most periods of the POI.

175. Exhibit NQ-2014-002-B-11 at 43, Attachment 2, Vol. 11C.
176. The trends in the Statistics Canada data for the first half of 2014 are similar to the trends reported for volumes of imports in the Investigation Report. Exhibit NQ-2014-002-05B, Table 57, Vol. 1.1.
177. *Transcript of Public Hearing*, Vol. 1, 2 March 2015, at 38.
178. *Transcript of Public Hearing*, Vol. 4, 5 March 2015, at 472.
179. *Transcript of Public Hearing*, Vol. 2, 3 March 2015, at 251.
180. Exhibit NQ-2014-002-06B (protected), Table 182, Vol. 2.1A.
181. *Ibid.*, Table 183.
182. *Ibid.*, Table 184.
183. *Ibid.*, Table 185.
184. *Ibid.*, Table 186.

225. Thailand had no reported domestic sales of OCTG during the POI. Similarly, the volumes of OCTG reportedly sold domestically in Turkey during the POI were dwarfed by Turkey's export sales. Furthermore, data from MBR indicate that Chinese Taipei has no domestic demand for OCTG and that demand in Korea and the Philippines is minimal.[185] Considered collectively, approximately three quarters of all sales made by respondents to the Tribunal's foreign producer's questionnaire were for export.[186]

226. Indeed, the nine subject countries have a much greater capacity to produce OCTG than their own domestic markets can possibly absorb. While the evidence suggests that some subject countries anticipate an increase in domestic demand over the next 12 to 18 months, there is no reason for the Tribunal to believe that this will alter the subject countries' heavy reliance on export markets.

227. Although there may be certain circumstances that might increase demand in the subject countries,[187] their domestic markets will not be immune from the effects of the collapse in oil and gas prices and, thus, declines in demand in the subject countries can be anticipated on this basis.

228. As indicated above, the capacity of the subject countries to produce OCTG is substantial.[188] The questionnaire respondents alone have substantial unused capacity for finished OCTG and also for tube rolling and finishing. These questionnaire respondents represent only a portion of the total OCTG capacity available in the subject countries.[189]

229. According to Mr. McHattie, data presented in the 2014 MBR Outlook revealed that the combined OCTG production capacity of the nine subject countries was over 3.29 million tonnes, as of 2013.[190] Taking into account estimates of 2013 OCTG production volumes, the nine subject countries had excess capacity in the range of 1.135 million tonnes—an amount slightly greater than the total apparent market in Canada during that same year.

230. Mr. McHattie also provided several reasons for which this number may even be understated, one of which is that OCTG capacity in India alone is reported to exceed 1.1 million tonnes by 2016. Further, there is no evidence that the freely disposable capacity of the exporters from the subject countries will decrease in the near term.

231. Given the export-oriented nature of the subject countries and the very real possibility that demand will be soft in their home markets in the next 12 to 18 months, the Tribunal expects that producers and exporters from the subject countries will be highly motivated to find markets that can absorb some of their production. To the extent that trade with Canada remains unhindered by anti-dumping duties on the subject goods and given the existing presence of the subject goods in the Canadian market, Canada is likely to be an attractive destination.

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185. Exhibit NQ-2014-002-B-12A (protected) at 248-50, Vol. 8B.
186. Exhibit NQ-2014-002-06B (protected), Tables 182-186, Vol. 2.1A.
187. In particular, Mr. Fadi Hraibi testified that Interpipe expects higher domestic sales of OCTG, as the Ukrainian National Gas Corporation intends to increase domestic production of natural gas and shift Ukraine towards energy independence, sparked largely by Ukraine's ongoing military conflict with Russia. *Transcript of Public Hearing*, Vol. 3, 4 March 2015, at 432.
188. Exhibit NQ-2014-002-06B (protected), Tables 177-181, Vol. 2.1A.
189. *Ibid.*
190. Exhibit NQ-2014-002-A-05 at para. 15, Vol. 11; Exhibit NQ-2014-002-B-12A (protected) at 114, 126, 142, 149, 243, 249, 253, Vol. 8B.

232. While demand for OCTG in Canada will also be soft given the current market conditions, Canada is the world's fourth largest market for OCTG,[191] behind the United States, Russia and China.[192] Even in the current context of low oil prices and scaled-back drilling forecasts, Canada remains among the top drilling countries in the world, in terms of both meterage and number of rigs. Ms. Aquin testified that, notwithstanding the fact that rig counts are lower now than they have been in the past, the types of wells drilled in Canada have become longer, deeper and more complex and that, therefore, meterage has remained fairly constant.[193] In other words, although forecasts have been downgraded recently, drilling is expected to continue even as oil prices remain low.

233. Accordingly, there is no reason to doubt that the Canadian market will continue to be an attractive destination for the subject imports in the near to medium term, particularly given that the pressures caused by the decline in oil prices, which are felt by OCTG producers worldwide, and that sales of OCTG will become, in this new context, increasingly challenging.

Substantial Risk of Diversion

234. It is also significant that anti-dumping and countervailing duties have been imposed on the subject goods, or on goods of similar description, by authorities of numerous countries other than Canada. There is a very real possibility that measures in place in these other export markets, combined with difficult circumstances created by the current state of the oil and gas market, will motivate producers in the subject countries to pursue opportunities in Canada.

235. Of particular importance is the finding in the United States, imposed in September 2014 against dumped and subsidized imports from six of the nine subject countries in this inquiry, namely, India, Korea, Chinese Taipei, Turkey, Ukraine and Vietnam. As a result of this finding, anti-dumping duties were imposed in the range of 2 percent to 35.9 percent and countervailing duties range from 2.5 percent to 19.1 percent.[194]

236. The potential consequences of this finding are addressed in a July 2014 publication by Pipelogix. Specifically, Pipelogix estimated that these rates of duty would have the effect of diverting over 55,000 tonnes of OCTG to other markets on a monthly basis, or greater than 660,000 tonnes annually.[195]

237. The Tribunal recognizes that the impact of the U.S. finding will not be the same on all subject countries in this inquiry. Based on Pipelogix's estimates, the potential for diversion to Canada appears to be greatest for Korea, India, Vietnam and Turkey. The Tribunal notes that all four of these countries appear to be highly dependent on the U.S. market.[196]

238. Furthermore, it is reasonable to expect that the subject countries for which higher duties are applicable in the United States, particularly Vietnam and Turkey, will be more motivated to seek alternative export markets. For example, Mr. D.E. Little conceded that the countervailing duty imposed by the United

191. Exhibit NQ-2014-002-B-03 at 23, Vol. 11B; *Transcript of Public Hearing*, Vol. 1, 2 March 2015, at 115; Exhibit NQ-2014-002-B-12A (protected) at 64, 70, 119, 228, Vol. 8B.
192. The Tribunal notes that China and Russia are not significant importers of OCTG. Exhibit NQ-2014-002-B-12A (protected) at 115, 227, Vol. 8B.
193. *Transcript of Public Hearing*, Vol. 4, 5 March 2015, at 539.
194. Exhibit NQ-2014-002-B-03 at 18, Vol. 11B.
195. Exhibit NQ-2014-002-11.02 (protected), Vol. 4C at 88; Exhibit NQ-2014-002-B-03 at 19, Vol. 11B.
196. Exhibit NQ-2014-002-29.11, Vol. 1B at 91-93, 95; Exhibit NQ-2014-002-17.07A (protected), Vol. 8 at 65, 67; Exhibit NQ-2014-002-A-07 at 209, 214, Vol. 11A.

States will restrict IMCO International's ability to import green tubes into the United States for processing and further shipment to Canada.[197]

239. Early import data are not likely conclusive as to the impact of the U.S. finding, as imports into the United States from some the countries covered by the finding appear to be increasing.[198] Indeed, at least one industry journal has suggested that Korea would continue to export to the United States.[199] Given the duties faced by exporters from some subject countries, the Tribunal is convinced that at least some portion of the significant volumes of OCTG that were previously shipped to the United States would be available for shipment to Canada.

240. Pipelogix estimates that no volumes will be diverted from either Chinese Taipei or Ukraine as a result of the U.S. ruling. In addition, no anti-dumping or countervailing duties are currently in place in the United States concerning OCTG imports from Indonesia, the Philippines or Thailand and, accordingly, the subject imports from these countries are not likely to be diverted from the United States. Nonetheless, in comparison to the size of the apparent market for OCTG in Canada, taking into account the new paradigm that will exist over the next 12 to 18 months because of oil and gas prices and the difficulties that OCTG producers face in this context, even a lesser volume of OCTG diverted from the United States by some of the subject countries is likely to be problematic for domestic producers and to threaten their ability to compete.

241. The United States is not the only country that has imposed trade remedies against the subject countries. In Russia, OCTG from Ukraine is currently subject to an 18.9 percent duty on casing and 19.9 percent duty on tubing. Exports of certain Ukrainian OCTG are also subject to anti-dumping orders in the European Union, with duties ranging from 12.3 percent to 25.7 percent.[200]

242. Mexico has launched a dumping investigation into imports of carbon steel tubing from India, following a complaint by domestic producers.[201] Brazil has applied provisional anti-dumping duties on Ukrainian seamless pipe exports,[202] and the Eurasian Economic Commission has announced preliminary anti-dumping duties against certain Ukrainian OCTG exports.[203] Turkey, which also happens to be a subject country, has launched an investigation into cold-rolled stainless steel welded tubes from Vietnam.[204]

243. Accordingly, it appears that there is a reasonably high propensity to dump on the part of all the subject countries. In the current economic climate, the effects of unchecked dumping will be incredibly troublesome for domestic producers of like goods, particularly considering that the pricing of OCTG is expected to take on an increasing importance in the current context of low oil prices.

Product Shifting

244. The Tribunal finds that the subject countries could shift production facilities away from the production of other goods, namely, pipe and other tubular products, in order to increase production of the subject goods.

197. Exhibit NQ-2014-002-E-05 at 6, Vol. 13.
198. Exhibit NQ-2014-002-17.07A (protected), Vol. 8 at 52.
199. Exhibit NQ-2014-002-B-12A (protected) at 64, Vol. 8B.
200. Exhibit NQ-2014-002-B-11, Attachment 47, Vol. 11C.
201. Exhibit NQ-2014-002-A-07 at 26, Vol. 11A.
202. Exhibit NQ-2014-002-A-08 (protected) at 50, Vol. 12A.
203. *Ibid.* at 51.
204. Exhibit NQ-2014-002-A-07 at 24, Vol. 11A.

245. The evidence demonstrates that equipment used to produce line pipe, standard pipe and hollow structural sections may also be used to manufacture OCTG. Further, whether producing pipe or OCTG, essentially the same basic processes are employed.

246. On the basis of questionnaire responses, the Tribunal notes that several foreign producers indicated that they currently produce other products using the same equipment as is used to produce OCTG.[205] Looking at the total capacity figures listed by these producers as currently being used for other products, it is apparent that they have substantial capacity that could, if the conditions were right, be shifted toward the production of OCTG. Even if only a portion of that total production capacity were shifted towards the production of OCTG, the amounts are significant. Furthermore, the questionnaire respondents represent only a fraction of the producers in the subject countries.

247. The Tribunal recognizes that some individual mills would require upgrades in order to manufacture OCTG on equipment that is currently used to produce other products or in order to produce OCTG to API specifications. Mr. Hraibi testified that, while Interpipe's Novomoskovsk Pipe Producing Plant can technically produce welded OCTG on equipment that is currently used to produce pipe, the range that the mill can produce and the fact that it can only produce green tubes which would then need to be finished elsewhere makes production of OCTG in that mill less viable. He indicated that the mill could be overhauled and upgraded, although this would require substantial investment.[206] While it may be difficult to justify such an investment under the current financial circumstances, to the extent that the market shows signs of recovery and particularly because the subject imports generally have a price advantage in the Canadian market, such investments may be worthwhile in the future.

248. Furthermore, although Interpipe may need to invest in order to produce finished OCTG at this particular mill, Interpipe is only one producer of many in the subject countries. As discussed earlier in regard to capacity, a number of these producers are already API-certified and, thus, would not need to make similar investments in order to shift production.

Inventories and Likely Price Effects of Subject Goods

249. The parties agreed and the Tribunal accepts that distributors are currently holding high levels of inventory, which includes substantial quantities of the subject goods. This is problematic from a pricing point of view and the amount of pressure that the existence of this inventory will impose on domestic producers, given the market conditions that are likely to exist over the next 12 to 18 months.

250. According to Mr. Kelly Smith's and Mr. McConnell's market intelligence, as of early 2015, there exist substantial inventories of the subject OCTG on the ground in Canada.[207] This market intelligence was corroborated by Mr. Shields who testified that the inventory carried by Pacific Tubulars contains products from several different sources, including Canada, the United States and the European Union a significant portion of which was sourced from the subject countries.[208]

251. In a healthy market, distributors will generally turn their inventory two or three times per year. However, the evidence in this case indicates that there is currently a one-year supply of OCTG being held as inventory on the ground in Canada, the majority of which is held by distributors.[209] As Mr. Shields also

205. Exhibit NQ-2014-002-06B (protected), Schedules 104-110, Vol. 2.1A.
206. *Transcript of Public Hearing*, Vol. 4, 5 March 2015, at 429-30.
207. Exhibit NQ-2014-002-B-07 at para.107, Vol. 11B; Exhibit NQ-2014-002-B-09 at para.40, Vol. 11B.
208. *Transcript of Public Hearing*, Vol. 4, 5 March 2015, at 509-511.
209. *Transcript of Public Hearing*, Vol. 2, 3 March 2015, at 248.

noted, while there is nothing unusual about distributors carrying higher levels of inventory during the first and fourth quarters of the year, the Tribunal is of the view that 2015 is not likely to be a typical year, given the precipitous decline in oil and gas prices and the consequent low levels of anticipated demand for OCTG in the near to medium term.

252. Mr. McConnell and Mr. Smith described why these high levels of inventory are problematic from the domestic industry's perspective.[210] A large proportion of the domestic industry's customers are in fact distributors whose business model involves carrying inventory for their customers. Distributors will be motivated to import and sell low-cost OCTG, before selling their existing inventory at a loss, in order to ensure sufficient sales to cover financing expenses and other operating costs associated with their businesses.

253. As also explained by Mr. McHattie, ". . . distributors are trying to lower their costs and to have competitively priced inventory."[211] Moreover, in supplementing existing inventory with low-priced inventory, distributors could cost average that inventory down, in essence offering bundles of goods more cheaply than otherwise possible.

254. With prices of OCTG in decline and because there is already a significant supply of OCTG in the market, distributors will likely be faced with the possibility of losses on inventories that they carry. Mr. Wayne Chodzicki corroborated the impact that the market, in its current state, will have on existing distributors' inventories.[212] Mr. Shields also acknowledged the pressures that distributors face, given the current state of the market, depending to some extent on their inventory levels and their ability to carry costs associated with this inventory until the market shows signs of improvement.[213]

255. Inventory overhang is largely what appears to be driving mill order reductions at the present time and will likely continue to be the driver going forward, until such time as OCTG consumption returns to more normal levels. As stated by Mr. Randy Boswell, when activity in the market is depressed, it takes a longer time for distributors to run through their inventories.[214]

256. As noted above, price is a key consideration in OCTG purchases and will presumably become more important in the near to medium term, given the condition of the market and the fact that end users are looking to cut costs and that distributors will be under pressure to make sales. In the current context, end users are seeking substantial discounts on the price of OCTG, estimated to be in the realm of 15 percent to 20 percent.[215] Domestic producers are not capable of providing this level of discount; however, by employing the strategies described above, which rely on the subject goods in inventory and additional imports of the subject goods, distributors would likely be able to meet the needs of these end users.[216]

257. During the recent expiry review involving OCTG from China, the Tribunal heard testimony from Mr. Allan Cheng of Cantak Corporation, a distributor of OCTG.[217] Mr. Cheng's testimony during the expiry review was largely consistent with the testimony that the Tribunal heard as part of this hearing, but

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210. *Transcript of In Camera Hearing*, Vol. 3, 4 March 2015, at 157-59; *Transcript of Public Hearing*, Vol. 2, 3 March 2015, at 248-49.
211. *Transcript of Public Hearing*, Vol. 1, 2 March 2015, at 125.
212. *Transcript of In Camera Hearing*, Vol. 3, 4 March 2015, at 282.
213. *Transcript of In Camera Hearing*, Vol. 3, 4 March 2015, at 331-32.
214. *Transcript of Public Hearing*, Vol. 2, 3 March 2015, at 203-204.
215. *Ibid.* at 247.
216. *Transcript of Public Hearing*, Vol. 2, 3 March 2015, at 247-49.
217. Exhibit NQ-2014-002-B-11 at 4-41, Vol. 11C.

goes further to describe the difficulties that distributors are now facing and the strategies that they expect to employ, given the current condition of the market. Mr. Cheng addressed the inventory overhang in the market and, in particular, the need for certain distributors to sell inventory, even at very low prices, in order to ensure a cash flow that is sufficient to sustain ongoing operations and expenses.

258. Mr. Cheng also noted that there is more pressure on distributors to cut prices than on the domestic producers.[218] Mr. Cheng also described how pricing generally works in the market for OCTG, namely, he stated that ". . . it's easy to get the price down but it's hard to get it back up."[219] Accordingly, the Tribunal finds that, to the extent that the subject goods enter Canada in the near to medium term, those subject goods are likely to cause price depression.

259. The Tribunal accepts that strategies used by distributors are likely to force prices down, thereby threatening the financial viability of the domestic industry and making the losses that they sustained during the POI all the more significant. The Tribunal is also concerned that distributors with continued access to the subject imports will leverage these low prices against domestic mill, in order to pressure domestic producers to bring their prices in line with the deep discounts that end users are expecting to obtain in this market.

260. While the Tribunal recognizes that there is some evidence that the distributors are increasingly carrying large volumes of inventory due to a change in the domestic market dynamics, it is nonetheless the low price of imports of the subject goods that will drive this scenario. Given the significant pressure under which the distributors will be in the current market conditions and their levels of existing inventories, the Tribunal concludes that distributors will be drawn to low-priced subject imports for the various reasons described above, which is likely to result in both price undercutting and price depression.

Factors Other Than Dumping

261. Paragraph 37.1(3)(*b*) of the *Regulations* directs the Tribunal to consider whether any factors other than the dumping or subsidizing of the subject goods are threatening to cause injury.

262. There has been much discussion in this case regarding imports of non-subject goods, particularly imports by the domestic producers themselves. The Tribunal expects that imports of non-subject goods will continue in the near to medium term for a number of reasons, including to supplement domestic producers' product offerings with sizes and grades of OCTG that are not currently produced in Canada and in cases where customer delivery times posed challenges that could only be overcome with resort to imported goods.[220]

263. This, combined with the fact that imports from the subject countries increased at a much faster rate than imports from non-subject countries in the latter half of 2014, a reversal of the trend in first half of 2014[221] leads the Tribunal to conclude that imports of non-subject goods do not threaten to cause injury to the domestic industry.

264. While the domestic producers' declining export sales certainly had an impact during the POI, looking forward and with the coming on line of Tenaris's new facility in Texas, Tenaris's traditional export markets will likely have even less capacity to absorb Tenaris's Canadian production. This is another factor that is no doubt troublesome for Tenaris and that could have an impact on its operations over the next 12 to

218. *Ibid.* at 16.
219. *Ibid.*
220. Exhibit NQ-2014-002-A-11 at para. 2, Vol. 11B.
221. Exhibit NQ-2014-002-B-11 at 43, Attachment 2, Vol. 11C.

18 months; however, again, this fact does not detract from the impact that the subject goods are expected to have.

265. While the Tribunal acknowledges that certain exporters obtained zero margins and, for that reason, it is apparent that not all the subject goods are likely to enter Canada at dumped prices in the next 12 to 18 months, the Tribunal finds that there will be sufficient dumped goods to pose a threat of material injury to the domestic industry, given the likelihood of increased volumes and the intense pricing pressures in the market.

266. Finally, looking 12 to 18 months into the future, while there will likely be a contraction in demand for OCTG in the very near term due to the current low prices of oil and gas, the Tribunal is of the view that this contraction in demand does not negate the injury that will be suffered by the domestic industry from the increased volumes of the subject goods in the Canadian market at dumped prices. For a finding of threat of injury, the subject goods must, in and of themselves, pose a threat of material injury, but *SIMA* does not require the subject goods to be the only factor that threatens to cause injury to the domestic industry.

Materiality

267. The Tribunal finds that the threat of injury posed by the subject goods is material.

268. While the domestic industry may still contend with intra-industry competition, declining export prices and the pressures that may result from the globally integrated production strategies of producers such as Tenaris, the new paradigm of low oil prices elevates the threat of a surge in volume of low-priced imports from the subject countries and magnifies their effect.

269. Where there may have been a certain capability for domestic producers to absorb the effects of growing volumes of low-priced subject imports in a $100/barrel oil market, a $50/barrel market gives rise to new sensitivities, offers little to no flexibility and quickly escalates resulting impacts to a level of materiality.

270. As a result, the Tribunal finds that there is a clearly foreseen and imminent threat of material injury caused by the subject goods within the next 12 to 18 months.

EXCLUSIONS

271. The Tribunal received three requests to exclude products from a finding of injury.

General Principles

272. *SIMA* implicitly authorizes the Tribunal to grant exclusions from the scope of an order or a finding.[222] Exclusions are an extraordinary remedy that may be granted at the Tribunal's discretion, i.e. when the Tribunal is of the view that such exclusions will not cause injury to the domestic industry.[223] The rationale is that, despite the general conclusion that the dumping or subsidizing of the goods has caused,

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222. *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.
223. See, for example, *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) at para. 339; *Certain Stainless Steel Wire* (30 July 2004), NQ-2004-001 (CITT) at para. 96.

or is threatening to cause, injury to the domestic industry, there may be case-specific evidence that certain imports of products captured by the definition of the goods have not caused or do not threaten to cause injury.

273. The onus is therefore upon the requester to demonstrate that imports of the specific goods for which the exclusion is requested do not threaten to cause injury to the domestic industry.[224] This necessitates an evidentiary burden on the requester to file probative and compelling evidence in support of its request.[225]

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

275. It is with these considerations in mind that the Tribunal will now address the exclusion requests that it received.

Analysis of Specific Exclusion Requests

BMB

276. BMB requested an exclusion for intermediate or in-process welded tubing and casing meeting the API 5CT specification for grades J55 and H40, produced by BMB.[226] BMB argued that, if these products were imported in the future, they would have to be "finished" in Canada in order to be sold in Canada. BMB submitted that, if the goods are processed into finished OCTG in Canada, they would be considered domestic production. As "domestic production", these goods would not cause injury to domestic producers.

277. The domestic producers opposed the request on the grounds that the goods are green tubes which are clearly included in the description of the subject goods and that the domestic industry can and does produce goods which are identical to or substitutable for those goods.[227] As such, the domestic producers argued that any imports of those goods compete head-to-head with green tubes produced by the domestic industry.[228]

278. The domestic producers disputed BMB's claim that threading and coupling done within Canada constitute domestic production.[229] Rather, they contended that granting an exclusion for those goods would allow them to be imported at dumped prices, undergo low-cost finishing processes and then be sold in direct

224. *Certain Fasteners* (6 January 2010), RR-2009-001 (CITT) at para. 243.
225. *Aluminum Extrusions* (17 March 2014), RR-2013-003 (CITT) at para. 192. The Tribunal will generally reject exclusion requests where there is a lack of cogent case-specific evidence concerning the likely non-injurious effect of imports of particular products covered by the definition of the good in question in support of the requesters' claims.
226. Exhibit NQ-2014-002-21.02, Vol. 1.3 at 8.
227. Exhibit NQ-2014-002-23.01, Vol. 1.3 at 46; Exhibit NQ-2014-002-23.02, Vol. 1.3 at 60; Exhibit NQ-2014-002-23.04, Vol. 1.3 at 113.
228. Exhibit NQ-2014-002-23.04, Vol. 1.3 at 113; Exhibit NQ-2014-002-23.01, Vol. 1.3 at 46.
229. Exhibit NQ-2014-002-23.04, Vol. 1.3 at 113.

competition with domestically produced OCTG.[230] This would, they argued, allow BMB to effectively circumvent any anti-dumping duties if the Tribunal made a finding of injury.[231]

279. BMB did not submit a reply to the domestic producers' arguments.

280. As discussed above, green tubes are clearly included within the definition of the subject goods. Thus, the product that is the subject of this exclusion request falls squarely within the definition of the subject goods in this inquiry.

281. Moreover, the Tribunal has already concluded that, for the purposes of this inquiry, finishing processes do not constitute domestic production. Consequently, the Tribunal finds that the product that is the subject of this exclusion request would not constitute domestic production, if finished in Canada.

282. Furthermore, the evidence demonstrates that the domestic industry produces goods which are both identical to and substitutable for the product that is the subject of this exclusion request.[232] While much of the domestically produced green tubes seem to be for internal consumption, rather than external sale, this does not diminish the fact that open market sales of green tubes in Canada would mean that domestically produced goods would be competing directly against the product that is the subject of this exclusion request; this then equates to possible displacement of like goods, hence the very real risk of injury.

283. The Tribunal therefore denies this exclusion request.

Mertex

284. Mertex submitted an exclusion request for unfinished seamless or welded carbon and alloy steel pipes and tubes for processing in Canada by heat treatment, including quenching, end finishing, testing and inspection for API certification to 5CT casing and tubing. Mertex maintained that its request did not relate to "upgradeable" J55 material, but instead refers to unfinished pipe that must be further processed in order to conform to any grade of OCTG.[233]

285. In response, the domestic producers asserted that Mertex had not sought a supply of green tubes from the domestic industry. Furthermore, they argued that the domestic industry does in fact currently produce green tubes which are identical to the goods in this exclusion request.[234]

286. In addition, as they did in response to BMB's request, the domestic producers contended that granting this exclusion request would effectively allow for circumvention of any injury finding by allowing the goods to be imported into Canada at dumped prices, have low-cost finishing processes applied and then compete directly against domestically produced green tubes.[235]

287. As explained above, the Tribunal notes that the product that is the subject of Mertex's request falls squarely within the definition of the subject goods, as there is no doubt that the product description covers green tubes, regardless of whether the green tubes have been heat treated or otherwise further processed.

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230. *Ibid.* at 114; Exhibit NQ-2014-002-23.01, Vol. 1.3 at 46.
231. Exhibit NQ-2014-002-23.04, Vol. 1.3 at 114.
232. Exhibit NQ-2014-002-23.01, Vol. 1.3 at 46; Exhibit NQ-2014-002-23.02, Vol. 1.3 at 60; Exhibit NQ-2014-002-23.04, Vol. 1.3 at 113.
233. Exhibit NQ-2014-002-25.01 Vol. 1.3 at 163-65.
234. Exhibit NQ-2014-002-23.04, Vol.1.3 at 83, 86; Exhibit NQ-2014-002-23.01, Vol. 1.3 at 45.
235. Exhibit NQ-2014-002-23.04, Vol.1.3 at 87; Exhibit NQ-2014-002-23.01, Vol. 1.3 at 45.

288. Further, the Tribunal finds that the domestic industry is capable of producing the goods that Mertex seeks to have excluded, although, at present, it appears that such production is primarily for internal consumption in the production of finished OCTG.[236] As stated above, however, if there were open market sales of these goods, domestic producers could compete with the goods sought to be excluded.

289. At the hearing, much of the testimony from the witnesses for Mertex centered on the need to have "full availability" to an assured supply of raw materials for further processing.[237] While the witnesses conceded that Mertex could import product from non-subject countries, they maintained that they wished to keep their options open, and it that it would be "inappropriate" if imports from the subject countries were constrained.[238]

290. While the Tribunal recognizes the importance that the availability of raw materials will have on a company seeking to establish a processing facility,[239] the fact remains that all exclusion requests must be examined in the context of potential injury to the domestic industry. On these grounds, the Tribunal finds that, if the goods were excluded from the finding, their importation into Canada would be injurious. Presumably, a company could import the dumped green tubes at a cost substantially less than finished OCTG (given that such goods benefit from dumping) and subsequently finish them in Canada at approximately 20 percent of the cost of finished OCTG, thereby providing a clear market advantage by enabling that dumped product to undercut the prices of domestically produced OCTG.[240]

291. In light of the foregoing, the Tribunal denies the Mertex's exclusion request.

Interpipe

292. Interpipe requested a product exclusion for seamless casing having an outside diameter of 9 5/8 inches (244.475 mm) and greater, consisting of grades L80 and P110 and variations thereof, meeting or supplied to meet API specifications 5CT or equivalent.[241] Interpipe argued that the domestic producers are not capable of producing seamless casing of 9 5/8 inches or greater and that, therefore, any imports of such a product could not cause injury to the domestic industry. In the alternative, Interpipe argued that, if the domestic industry does have the capability to produce such goods, it is not sufficient to supply the market requirements in Canada.

293. While the domestic producers are not capable of producing identical goods, they nonetheless argued that they produce substitutable goods. In particular, Evraz submitted that it produces welded L80 and P110 in sizes up to 16 inches and that welded OCTG of the dimensions stated competes head-to-head with and is substitutable for seamless OCTG.[242] Further, Tenaris stated that, through its Prudential facility, it can produce ERW casing up to 12 3/4 inches in the PS80 grade, which is a proprietary grade comparable to L80.[243]

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236. *Transcript of Public Hearing*, Vol. 2, 3 March 2015, at 207.
237. *Transcript of Public Hearing*, Vol. 3, 4 March 2015, at 408-409.
238. *Ibid.* at 400, 409.
239. *Ibid.* at 392.
240. *Transcript of Public Hearing*, Vol. 1, 2 March 2015, at 163.
241. Interpipe initially requested an exclusion for seamless casing with an outside diameter of 7 inches (177.8 mm) and greater; however, during the hearing, the request was modified to include seamless casing with an outside diameter of 9 5/8 inches and greater. *Transcript of Public Hearing*, Vol. 3, 4 March 2015, at 439.
242. Exhibit NQ-2014-002-24.04 (protected), Vol. 2.3 at 216, 224.
243. Exhibit NQ-2014-002-23.01, Vol. 1.3 at 42.

294. The Tribunal has already concluded that seamless OCTG and welded OCTG are a single class of goods, since they are, among other characteristics, substitutable for one another. This substitutability was confirmed by witnesses throughout the hearing.[244]

295. Thus, the Tribunal finds that the domestic industry does in fact produce a substitutable product, which competes directly with the goods which Interpipe seeks to have excluded. Interpipe's exclusion request therefore cannot succeed on this ground.

296. With respect to Interpipe's argument that the domestic producers do not produce sufficient welded casing to meet demand in Canada, the Tribunal notes that there is no requirement that the domestic industry be able to supply the entire Canadian market.

297. Rather, the key question is whether granting the exclusion will cause injury to the domestic industry. Since the Tribunal has already concluded that product in this exclusion request will compete directly against substitutable domestically produced welded seamless casing, this question must be answered in the affirmative.

298. As such, the Tribunal denies Interpipe's exclusion request.

CONCLUSION

299. On the basis of the foregoing, the Tribunal finds that the dumping of the subject goods originating in or exported from Chinese Taipei, India, Indonesia, the Philippines, Korea, Thailand, Turkey, Ukraine and Vietnam has not caused injury but is threatening to cause injury to the domestic industry.

Jason W. Downey
Jason W. Downey
Presiding Member

Ann Penner
Ann Penner
Member

Rose Ritcey
Rose Ritcey
Member

244. *Transcript of Public Hearing*, Vol. 1, 2 March 2015, at 130; *Transcript of Public Hearing*, Vol. 4, 5 March 2015, at 492.