Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Dumping and Subsidizing

DETERMINATION AND REASONS

Preliminary Injury Inquiry
No. PI-2015-002

Carbon and Alloy Steel Line Pipe

Determination issued
Tuesday, October 27, 2015

Reasons issued
Monday, November 16, 2015

Canada

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

CARBON AND ALLOY STEEL LINE PIPE ORIGINATING IN OR EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA

PRELIMINARY DETERMINATION

The Canadian International Trade Tribunal, pursuant to the provisions of subsection 34(2) of the *Special Import Measures Act*, has conducted a preliminary injury inquiry into whether the evidence discloses a reasonable indication that the alleged injurious dumping and subsidizing of carbon and alloy steel line pipe originating in or exported from the People's Republic of China have caused injury or retardation or are threatening to cause injury to the domestic industry.

The goods subject to this preliminary injury inquiry are defined as follows:

> carbon and alloy steel line pipe originating in or exported from the People's Republic of China, welded or seamless, having an outside diameter from 2.375 inches (60.3 mm) up to and including 24 inches (609.6 mm), including line pipe meeting or supplied to meet any one or several of API 5L, CSA Z245.1, ISO 3183, ASTM A333, ASTM A106, ASTM A53-B or their equivalents, in all grades, whether or not meeting specifications for other end uses (e.g. single-, dual- or multiple-certified, for use in oil and gas, piling pipe, or other applications), and regardless of end finish (plain ends, beveled ends, threaded ends or threaded and coupled ends), surface finish (coated or uncoated), wall thickness, or length, excluding galvanized line pipe and excluding stainless steel line pipe (containing 10.5 percent or more by weight of chromium), excluding the goods covered by the Canadian International Trade Tribunal's finding in Inquiry No. NQ-2012-002.

For greater certainty, the product definition includes the following:

(a) unfinished line pipe (including pipe that may or may not already be tested, inspected and/or certified to line pipe specifications) originating in the People's Republic of China and imported for use in the production or finishing of line pipe meeting final specifications, including outside diameter, grade, wall-thickness, length, end finish or surface finish; and

(b) non-prime and secondary pipes ("limited service products").

This preliminary injury inquiry follows the notification, on August 28, 2015, that the President of the Canada Border Services Agency had initiated investigations into the alleged injurious dumping and subsidizing of the above-mentioned goods.

The Canadian International Trade Tribunal finds that some of the above-mentioned goods are subject to its order made on August 19, 2013, in Expiry Review No. RR-2012-003, concerning the dumping and subsidizing of carbon steel welded pipe, commonly identified as standard pipe, in the nominal size range of 1/2 inch up to and including 6 inches (12.7 mm to 168.3 mm in outside diameter) inclusive, in various forms and finishes, usually supplied to meet ASTM A53, ASTM A135, ASTM A252, ASTM A589, ASTM A795, ASTM F1083 or Commercial Quality, or AWWA C200-97 or equivalent specifications, including water well casing, piling pipe, sprinkler pipe and fencing pipe, but excluding oil and gas line pipe made to API specifications exclusively and excluding (1) carbon steel welded pipe in the

nominal pipe size of 1 inch, meeting the requirements of specification ASTM A53, Grade B, Schedule 10, with a black or galvanized finish, and with plain ends, for use in fire protection applications, (2) carbon steel welded pipe in nominal pipe sizes of 1/2 inch to 2 inches inclusive, produced using the electric resistance welding process and meeting the requirements of specification ASTM A53, Grade A, for use in the production of carbon steel pipe nipples, and (3) carbon steel welded pipe in nominal pipe sizes of 1/2 inch to 6 inches inclusive, dual-stencilled to meet the requirements of both specification ASTM A252, Grades 1 to 3, and specification API 5L, with bevelled ends and in random lengths, for use as foundation piles, originating in or exported from the People's Republic of China.

Pursuant to paragraph 35(1)(*b*) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby determines that the evidence does not disclose a reasonable indication that the dumping and subsidizing of the above-mentioned goods that are covered by its order in Expiry Review No. RR-2012-003 have caused injury or are threatening to cause injury to the domestic industry. Therefore, pursuant to paragraph 35(3)(*a*) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby terminates the preliminary injury inquiry with respect to those goods that are covered by its order in Expiry Review No. RR-2012-003.

Pursuant to subsection 37.1(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby determines that there is evidence that discloses a reasonable indication that the dumping and subsidizing of the above-mentioned goods, in respect of which the preliminary injury inquiry has not been terminated, have caused injury or are threatening to cause injury to the domestic industry.

Jean Bédard
Jean Bédard
Presiding Member

Ann Penner
Ann Penner
Member

Daniel Petit
Daniel Petit
Member

The statement of reasons will be issued within 20 days.

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STATEMENT OF REASONS

BACKGROUND

1. On August 28, 2015, following a complaint filed on July 10, 2015, by Evraz Inc., NA Canada and Canadian National Steel Corporation (Evraz) and Tenaris Global Services Inc., Algoma Tubes Inc. and Prudential ULC (Tenaris) (collectively, the complainants), the President of the Canada Border Services Agency (CBSA) initiated investigations into the alleged injurious dumping and subsidizing of certain carbon and alloy steel line pipe originating in or exported from the People's Republic of China (China).

2. The goods subject to this preliminary injury inquiry are defined as follows:

> carbon and alloy steel line pipe originating in or exported from China, welded or seamless, having an outside diameter from 2.375 inches (60.3 mm) up to and including 24 inches (609.6 mm), including line pipe meeting or supplied to meet any one or several of API 5L, CSA Z245.1, ISO 3183, ASTM A333, ASTM A106, ASTM A53-B or their equivalents, in all grades, whether or not meeting specifications for other end uses (e.g. single-, dual- or multiple-certified, for use in oil and gas, piling pipe, or other applications), and regardless of end finish (plain ends, beveled ends, threaded ends or threaded and coupled ends), surface finish (coated or uncoated), wall thickness, or length, excluding galvanized line pipe and excluding stainless steel line pipe (containing 10.5 percent or more by weight of chromium), excluding the goods covered by the Canadian International Trade Tribunal's finding in Inquiry No. NQ-2012-002.
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> For greater certainty, the product definition includes the following:
>
> (a) unfinished line pipe (including pipe that may or may not already be tested, inspected and/or certified to line pipe specifications) originating in China and imported for use in the production or finishing of line pipe meeting final specifications, including outside diameter, grade, wall-thickness, length, end finish or surface finish; and
>
> (b) non-prime and secondary pipes ("limited service products").

3. The complaint is supported by Atlas Tube Canada Inc. (Atlas) and DFI Corporation (DFI), both domestic producers of piling pipe.[1]

4. The complaint is opposed by the following: Olympia Tubes Ltd. (Olympia); North-East Tubes Inc. (North-East); Pipe & Piling Supplies Ltd. (Pipe & Piling); Protin Import Ltd. (Protin); Cantak Corporation (Cantak); Bri-Steel Manufacturing (Bri-Steel); Seybold International Corp.; and the China Iron and Steel Association (CISA) on behalf of its members involved in the production of the subject goods.[2]

5. On August 31, 2015, the Canadian International Trade Tribunal (the Tribunal) issued a notice of commencement of preliminary injury inquiry.[3]

6. On September 14, 2015, using information provided by the complainants, the supporting parties and the CBSA, the Tribunal asked 49 firms, including producers, importers and purchasers, to complete a

1. Exhibit PI-2015-002-03.01 (protected), Vol. 2 at 171-73, 184.
2. Optima Steel International, LLC filed a notice of participation but did not express a position.
3. C. Gaz. 2015.I.2290.

like goods questionnaire that was posted on the Tribunal's Web site. Firms were asked to comment on the physical and market characteristics of line pipe and piling pipe in order to determine whether piling pipe and line pipe constitute like goods. In light of the allegation by the complainants that the subject line pipe has been sold for use in piling applications since the Tribunal's finding in Inquiry No. NQ-2012-002,[4] several questions were focused on whether piling pipe and line pipe compete directly or are substitutable for one another in the Canadian market. The Tribunal received a total of 15 responses, including 4 from the complainants and the supporting parties, 4 from the parties opposed and 7 from non-participating purchasers of line pipe (of the latter, 2 firms also purchase piling pipe and 3 firms are importers of line pipe or piling pipe).

7. On September 25, 2015, the Tribunal wrote to the CBSA asking for certain clarifications on the product definition. The CBSA responded on October 5, 2015.

8. On October 27, 2015, pursuant to paragraph 35(1)(*b*) of the *Special Import Measures Act*,[5] the Tribunal concluded that the evidence did not disclose a reasonable indication that the dumping and subsidizing of the subject goods that were already subject to its order in Expiry Review No. RR-2012-003[6] had caused injury or were threatening to cause injury to the domestic industry. Therefore, pursuant to paragraph 35(3)(*a*), the Tribunal terminated the preliminary injury inquiry with respect to those goods. However, pursuant to subsection 37.1(1), the Tribunal determined that there was evidence that disclosed a reasonable indication that the dumping and subsidizing of the subject goods, in respect of which the preliminary injury inquiry had not been terminated, had caused injury or were threatening to cause injury to the domestic industry.

CBSA'S DECISION TO INITIATE INVESTIGATIONS

9. The CBSA was of the opinion that there was evidence that the subject goods had been dumped and subsidized, as well as evidence that disclosed a reasonable indication that the dumping and subsidizing of the subject goods had caused injury or were threatening to cause injury. Accordingly, pursuant to subsection 31(1) of *SIMA*, the CBSA initiated investigations on August 28, 2015.

10. In coming to its decision to initiate the investigations, the CBSA used information with respect to the volumes of dumped and subsidized goods for the period from July 1, 2014, to June 30, 2015.

11. The CBSA estimated the overall margin of dumping at 117.8 percent, expressed as a percentage of the export price of the subject goods.[7] The CBSA also estimated the amount of subsidy to be equal to 34.5 percent of the export price of the subject goods.[8]

12. Further, the CBSA opined that the estimated overall margin of dumping and amount of subsidy were not insignificant and that the estimated volumes of dumping and subsidizing were not negligible.[9]

4. *Steel Piling Pipe* (30 November 2012) (CITT) [*Piling Pipe*].
5. R.S.C., 1985, c. S-15 [*SIMA*].
6. *Carbon Steel Welded Pipe* (19 August 2013) (CITT) [*Carbon Steel Welded Pipe*].
7. Exhibit PI-2015-002-05, Vol. 1Z at 64.
8. *Ibid.* at 70.
9. *Ibid.* at 65, 71.

SUBMISSIONS ON INJURY AND THREAT OF INJURY

Complainants

13. The complainants submitted that the dumping and subsidizing of the subject goods have caused and are threatening to cause material injury to the domestic industry. In their view, the domestic industry includes the domestic producers of both line pipe and piling pipe because of the alleged injurious effects of the subject goods on those domestic producers. In support of their allegations, the complainants provided evidence of increased volumes of imports of the subject goods, loss of market share, loss of sales volumes, price undercutting, price suppression, price depression, lost revenues, reduced gross margins, reduced profitability, underutilization of production capacity and loss of employment. They further claimed that the subject goods are being imported for use as piling pipe with injurious effects on the domestic producers of piling pipe.

14. The complainants also submitted that the dumping and subsidizing of the subject goods are threatening to cause injury to the domestic industry. They alleged that the likelihood that a significant increase in the dumped and subsidized imports, and the corresponding reduction of domestic market share, will continue, given the combined export orientation and demonstrable capacity of line pipe producers in China and the existence of trade measures on line pipe from China in place in other jurisdictions. Further, they argued that the prices of the subject goods are likely to continue to undercut, depress and suppress domestic prices.

Parties Opposed to the Complaint

15. Parties opposed to the complaint submitted that the evidence provided with the complaint does not disclose a reasonable indication that the dumping and subsidizing of the subject goods have caused injury or are threatening to cause injury to the domestic industry, particularly with respect to the domestic producers of piling pipe. As discussed further below, the scope of the product definition was challenged by several of the parties opposed as being overly broad and comprised of imports of Chinese goods that are non-injurious and further argued that the subject goods and like goods should be divided into various separate classes of goods. CISA and Protin also submitted that any injury that the complainants and supporting parties may have experienced is attributable to factors other than the dumping and subsidizing.

LEGISLATIVE FRAMEWORK

Reasonable Indication

16. The Tribunal's mandate in a preliminary injury inquiry is set out in subsection 34(2) of *SIMA*, which requires the Tribunal to determine ". . . whether the evidence discloses a reasonable indication that the dumping or subsidizing of the [subject] goods has caused injury or retardation or is threatening to cause injury."

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

18. The "reasonable indication" standard that applies in a preliminary injury inquiry is lower than the evidentiary threshold that applies in a final injury inquiry under section 42 of *SIMA*.[10] The term "reasonable

10. *Grain Corn* (10 October 2000), PI-2000-001 (CITT) at 7.

indication" is not defined in *SIMA*, but is understood to mean that the evidence in question need not be ". . . conclusive, or probative on a balance of probabilities . . . ."[11] Nevertheless, simple assertions are not sufficient and must be supported by relevant evidence.[12]

19. The Tribunal has previously been satisfied that the threshold for the "reasonable indication" standard was met where:[13]

- the alleged injury or threat of injury is substantiated by evidence that is sufficient in the sense that it is "relevant, accurate and adequate"; and,
- in light of the evidence, the allegations stand up to a "somewhat probing examination", even if the theory of the case might not seem convincing or compelling.

20. When determining whether the reasonable indication standard has been met in a preliminary injury inquiry, the Tribunal must rely mainly on the information and evidence provided in the complaint and submissions from the parties. Although the reasonable indication standard is less demanding than the standard that applies in a final injury inquiry pursuant to section 42 of *SIMA*, the outcome of the Tribunal's preliminary injury inquiries must not be taken for granted.[14] While the complaint will be read generously, it must be supported by positive evidence that is sufficient and relevant, in that it addresses the necessary requirements in *SIMA* and the relevant factors of the *Special Import Measures Regulations*.[15] This evidence, however, will in most cases be less comprehensive than the evidence collected for the final injury inquiry and will not be tested to the same extent. It is only in a final injury inquiry that the Tribunal will have the opportunity to collect its own information, receive submissions on all the evidence on the record and test such evidence through the oral hearing process.

Injury and Threat of Injury Factors

21. In making its preliminary determination, the Tribunal takes into account the factors prescribed in section 37.1 of the *Regulations*, including the import volumes of the dumped and subsidized goods, the effect of the dumped and subsidized goods on the price of like goods, the resulting economic impact of the dumped and subsidized goods on the domestic industry and, if injury or threat of injury[16] is found to exist,

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11. *Ronald A. Chisholm Ltd. v. Deputy M.N.R.C.E.* (1986), 11 CER 309 (FCTD).
12. Article 5 of the World Trade Organization (WTO) *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (the *Anti-dumping Agreement*) and Article 11 of the WTO *Agreement on Subsidies and Countervailing Measures* (the *SCM Agreement*) require an investigating authority to examine the accuracy and adequacy of the evidence provided in a dumping and subsidizing complaint to determine whether there is sufficient evidence to justify the initiation of an investigation, and to reject a complaint or to terminate an investigation as soon as an investigating authority is satisfied that there is not sufficient evidence of dumping and subsidizing or injury. Article 5 of the *Anti-dumping Agreement* and Article 11 of the *SCM Agreement* also specify that simple assertions that are not substantiated with relevant evidence cannot be considered sufficient to meet the requirements of the articles.
13. *Concrete Reinforcing Bar* (12 August 2014), PI-2014-001 (CITT) [*Reinforcing Bar*] at para. 15; *Silicon Metal* (21 June 2013), PI-2013-001 (CITT) at para. 16; *Unitized Wall Modules* (3 May 2013), PI-2012-006 (CITT) [*Unitized Wall Modules*] at para. 24; *Liquid Dielectric Transformers* (22 June 2012), PI-2012-001 (CITT) at para. 86.
14. *Reinforcing Bar* at paras. 18-19.
15. S.O.R./84-927 [*Regulations*].
16. In its consideration of whether there is a reasonable indication that the dumping and subsidizing of the subject goods are threatening to cause injury, the Tribunal is guided by subsection 37.1(2) of the *Regulations*, which prescribes factors to be taken into account for the purposes of its threat of injury analysis.

whether a causal relationship exists between the dumping and subsidizing of the goods and the injury or threat of injury.

PRELIMINARY ISSUES

22. Before examining the allegations of injury and threat of injury, the Tribunal must identify the like goods and the domestic industry that produces those goods. The analysis of these preliminary issues is required because subsection 2(1) of *SIMA* defines "injury" as ". . . material injury to a domestic industry" and "domestic industry" as ". . . the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods . . . ."

23. In the present case, a preliminary issue was raised regarding the scope of the subject goods, which the Tribunal had to consider before it could determine the scope of the like goods in relation to the subject goods and, in turn, the composition of the domestic industry.

Overlap of Product Definitions

24. The parties opposed argued that the scope of the CBSA's product definition of the subject goods is overly broad. They argued that it overlaps with other products that are not line pipe or that are covered by existing Tribunal findings made under subsection 43(1) of *SIMA*.

25. Olympia and North-East submitted that ASTM A53-B, ASTM A106 and ASTM A333 are specifications that relate to standard pipe and not line pipe. They requested that the Tribunal terminate the preliminary injury inquiry with respect to the subject goods that are single-certified to meet those specifications on the basis that they should not have been included in the product definition.

26. Olympia and North-East further submitted that the CBSA's product description overlaps with the Tribunal's order in *Carbon Steel Welded Pipe*.

27. CISA submitted that the Tribunal should terminate the preliminary injury inquiry against welded standard pipe products which are covered by a separate order, namely, *Carbon Steel Welded Pipe*. Furthermore, both CISA and Cantak asserted that the over-reaching product definition is comprised of several groups of unlike products from unrelated industries, which creates confusion and may lead to inaccurate results in the investigations by the CBSA and the Tribunal.

28. It is well established that the Tribunal must conduct its preliminary injury inquiry on the basis of the CBSA's product definition of the dumped or subsidized goods.[17] This means that that the Tribunal cannot, on its own initiative, modify or redefine the definition of the subject goods. Accordingly, the allegation that the product definition includes standards or specifications that do not relate to line pipe and should therefore be excluded from the scope of the subject goods is a matter that falls under the CBSA's exclusive jurisdiction.[18]

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17. *Canada (DMNR) v. General Electric Canada Inc.*, [1994] FCJ No. 847; *DeVilbiss (Canada) Limited v. Anti-dumping Tribunal* [1983] 1 F.C. 706.
18. The Tribunal notes however that there is no requirement under Article 2.6 of the *Anti-dumping Agreement* for the investigating authority to define the subject goods to include only products that are "like". See *Korea – Anti-Dumping Duties on Imports of Certain Paper from Indonesia* (28 October 2005), Report of the Panel, WTO Doc. WT/DS312R at para. 7.219; *European Communities – Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China* (15 July 2010), Report of the Appellate Body, WTO Doc. WT/DS397/R at para. 7.277.

29. However, the Tribunal must consider whether the definition of the subject goods includes goods already covered by other findings or orders. In other words, it must consider whether product definitions overlap. Indeed, where protection under *SIMA* is already in place to counteract any injurious effects or threat thereof caused by the dumping or subsidizing of the goods, the application (or "stacking") of additional anti-dumping duties or countervailing duties to the same goods is not permissible.[19]

30. In Preliminary Injury Inquiry No. PI-2012-002,[20] the Tribunal described the legal and administrative issues that arise from overlapping product definitions as follows:

> 39. . . . the dumping or subsidizing of goods that are already subject to an order or finding under *SIMA* could not logically be causing or threatening to cause injury to domestic producers of like goods, as it cannot be credibly asserted—as a matter of fact—that these overlapping products are being injuriously dumped or subsidized if measures are already in place to counteract the injurious effect of such dumping or subsidizing.
>
> 40. Moreover, the "stacking" of anti-dumping duties or countervailing duties on the same subject goods would—as a matter of law—almost certainly violate Canada's obligations under the WTO agreements.
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> 41. From an administrative perspective, the enforcement of separate *SIMA* orders and findings in respect of the same subject goods would raise obvious issues in respect of the assessment of liability for duties arising, for instance, from the fact that the overlapping coverage would likely occur under non-synchronous orders and findings.
>
> 42. Finally, under *SIMA*, it is on the basis of the definition of the subject goods provided by the CBSA that the Tribunal must decide which domestically produced goods are the like goods for the purposes of its injury inquiry. A lack of clarity and precision in the product definition, including the possibility that it covers goods already subject to an existing order or finding, makes it difficult for the Tribunal to determine which domestically produced goods are to be considered like goods in relation to the subject goods and, consequently, to determine which domestic producers constitute the domestic industry. This is especially true where, as in this case, there is an allegation that goods that are covered by other existing findings are substitutable for those that are described in the definition of the subject goods.
>
> [Footnotes omitted]

31. In that case, the Tribunal concluded that the evidence did not disclose a reasonable indication that the dumping and subsidizing of the goods that were already covered by an existing finding had caused injury or were threatening to cause injury, and thus terminated the preliminary injury inquiry with respect to those goods.[21]

32. Similarly, in this case, the Tribunal finds that the product definition overlaps with that of *Carbon Steel Welded Pipe*.

33. The product definition in *Carbon Steel Welded Pipe* reads as follows:

> carbon steel welded pipe, commonly identified as standard pipe, in the nominal size range of 1/2 inch up to and including 6 inches (12.7 mm to 168.3 mm in outside diameter) inclusive, in various forms and finishes, usually supplied to meet ASTM A53, ASTM A135, ASTM A252, ASTM A589, ASTM A795, ASTM F1083 or Commercial Quality, or AWWA C200-97 or equivalent specifications, including water well casing, piling pipe, sprinkler pipe and fencing pipe, but

19. *Unitized Wall Modules* at para. 27.
20. *Steel Piling Pipe* (3 July 2012), PI-2012-002 (CITT) [*Piling Pipe*, PI-2012-002] at paras. 39-42, 51.
21. *Piling Pipe*, PI-2012-002 at para. 50.

> excluding oil and gas line pipe made to API specifications exclusively and excluding (1) carbon steel welded pipe in the nominal pipe size of 1 inch, meeting the requirements of specification ASTM A53, Grade B, Schedule 10, with a black or galvanized finish, and with plain ends, for use in fire protection applications, (2) carbon steel welded pipe in nominal pipe sizes of 1/2 inch to 2 inches inclusive, produced using the electric resistance welding process and meeting the requirements of specification ASTM A53, Grade A, for use in the production of carbon steel pipe nipples, and (3) carbon steel welded pipe in nominal pipe sizes of 1/2 inch to 6 inches inclusive, dual-stencilled to meet the requirements of both specification ASTM A252, Grades 1 to 3, and specification API 5L, with bevelled ends and in random lengths, for use as foundation piles, originating in or exported from the People's Republic of China.

34. Some of those goods are included in the product definition of this case. These overlapping goods include welded pipe with an outside diameter of 2.375 inches to 6 inches that is single-certified to meet ASTM A53-B or dual- or multiple-certified to meet specifications listed in both the product definition in this case and the product definition in *Carbon Steel Welded Pipe*.

35. In reaching this conclusion, the Tribunal relied on the CBSA's response to the Tribunal regarding its product definition where it indicated that ". . . given the similarities in the product definitions of *Carbon Steel Welded Pipe* and *Line Pipe*, there may be unintended potential for certain goods to be subject to both product definitions."[22] The CBSA stated that this would include ". . . welded pipe meeting the specification ASTM A53-B, where the outside is 2.375 inches to 6 inches" and ". . . goods which are dual or multi-stenciled to specifications included in the product definition of *Line Pipe* and also *Carbon Steel Welded Pipe*."[23]

36. Furthermore, the CBSA confirmed that, although the Tribunal's order in *Carbon Steel Welded Pipe* explicitly excluded certain piling pipe, the excluded piling pipe was subsequently subject to the Tribunal's finding in *Piling Pipe*. Therefore, these goods are explicitly excluded from the product definition in the present case. The CBSA also noted that the express exclusion of goods covered by the finding in *Piling Pipe* applies to any line pipe that meets the specifications in the product definition but is dual- or multi-certified in a manner that also renders it subject to the product definition in *Piling Pipe*.[24]

37. The overlap between the subject goods in this preliminary injury inquiry and steel products which are covered by the order in *Carbon Steel Welded Pipe* is a source of confusion. For this reason, when filing a complaint with the CBSA, complainants are encouraged to pay special attention to those issues and to define the goods as precisely and as accurately as possible. In the Tribunal's view, Evraz and Tenaris have failed to do so in this case. The challenge that this situation creates for the Tribunal is reflected by the length of the discussion about those issues in these reasons.

38. Similarly, given that, under *SIMA*, the CBSA has the exclusive jurisdiction to determine the scope of the goods under investigation, it should provide a definition of those goods that is as precise and as accurate as possible. In particular, and for reasons already discussed, the CBSA should avoid the adoption of a definition of goods that creates an overlap with goods that are already subject to orders or findings under *SIMA*.

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22. The CBSA sent a letter to the Tribunal on October 5, 2015, in response to the Tribunal's request for clarification of the product definition. Exhibit PI-2015-002-18, Vol. 1Z at 162.
23. Exhibit PI-2015-002-18, Vol. 1Z at 163.
24. *Ibid.* at 162.

39. In view of the foregoing, the Tribunal finds that there is no reasonable indication that the dumping and subsidizing of the subject goods that are covered by the order in *Carbon Steel Welded Pipe* have caused injury or are threatening to cause injury. Indeed, the dumping or subsidizing of those goods cannot, as a matter of fact and law, cause injury or threaten to cause injury since anti-dumping duties and countervailing duties are already being applied to counteract any injurious effects or threat thereof caused by the dumping or subsidizing.

40. The Tribunal, pursuant to paragraph 35(1)(*b*) of *SIMA*, therefore terminates the preliminary injury inquiry with respect to the subject goods that are already covered by the order in *Carbon Steel Welded Pipe*.

41. As a result, the Tribunal based its analysis on whether the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods, i.e. those for which the preliminary injury inquiry has not been terminated, have caused injury or are threatening to cause injury.

42. The Tribunal is satisfied that, despite the challenges for the conduct of this preliminary injury inquiry caused by the overlap of product definitions, the data collected by the CBSA provide a reasonable basis for analyzing the volume of imports of the subject goods for the purposes of the preliminary injury inquiry, especially given that those subject goods against which the preliminary injury inquiry is terminated are a narrow subset of the broad basket of goods covered by the product definition.

Like Goods and Classes of Goods

43. In order to assess whether the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury or are threatening to cause injury to the domestic producers of like goods, the Tribunal must first define the scope of the like goods in relation to the subject goods. It may also consider whether the subject goods constitute one or more classes of goods.

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

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

45. In deciding the issue of like goods and classes of goods, the Tribunal typically considers a number of factors, including the physical characteristics of the goods (such as composition and appearance), their market characteristics (such as substitutability, pricing, distribution channels and end uses) and whether the goods fulfill the same customer needs.[25] While the Tribunal may emphasize certain factors, it must take the totality of the characteristics into account.[26] No single factor is determinative.

Like Goods

46. The complainants submitted, and the CBSA agreed,[27] that domestically produced line pipe and domestically produced piling pipe are like goods in relation to the subject goods and that the subject goods

25. *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at para. 48; *Bacteriological Culture Media* (31 May 1996), NQ-95-004 (CITT) at 9-10; *Polyisocyanuarate Thermal Insulation Board* (11 April 1997), NQ-96-003 (CITT) at 9-10; *Certain Fasteners* (7 January 2005), NQ-2004-005 (CITT) at paras. 60-75; *Cross-linked Polyethylene Tubing* (29 September 2006), NQ-2006-001 (CITT) at paras. 45-47.
26. *Sarco Canada Limited v. Anti-dumping Tribunal*, [1979] 1 F.C. 247 (F.C.).
27. Exhibit PI-2015-002-05, Vol. 1Z at 58.

and the like goods constitute a single class of goods. The complainants and the supporting parties alleged that line pipe certified to API 5L is fully interchangeable for ASTM A252 and A500-certified piling pipe in piling applications because API 5L is a higher standard. They submitted that the subject line pipe competes directly with domestically produced piling pipe in the Canadian market as a result of the Tribunal's finding of threat of injury in *Piling Pipe* and the imposition of anti-dumping and countervailing duties on Chinese piling pipe since 2012. They also referred to other similarities between piling pipe and line pipe in terms of appearance, channels of distribution and end uses with market sales, in large part, destined for the oil and gas industry.

47. CISA and Pipe & Piling submitted that the scope of the domestically produced "like goods" should not be expanded to piling pipe.

48. The parties opposed also argued that the subject goods and like goods should be subdivided into various classes of goods. These arguments will be further reviewed by the Tribunal in its discussion of classes of goods.

49. As stated earlier in these reasons, the definition of the like goods submitted by the complainants and adopted by the CBSA includes both line pipe and piling pipe, even though the definition of the subject goods expressly excludes goods covered by *Piling Pipe*. A similar issue arose and was considered by the Tribunal in *Piling Pipe*. In that case, the Tribunal determined that various types of steel pipe products that were not commonly identified as piling pipe, including line pipe, were not like goods.[28] This conclusion was based on differences in the physical characteristics of these products, with line pipe being subject to higher certification standards and stricter requirements for physical conditions (i.e. finishing, surface, straightness and wall thickness), heat treatment and chemical properties.[29]

50. In terms of market characteristics, the Tribunal emphasized, in *Piling Pipe*, that, in contrast with the structural applications for piling pipe, line pipe is designed and intended to convey liquids in non-piling applications and is sold through completely different distribution channels. The Tribunal further stated that, while ". . . such goods are, in certain circumstances, such as to clear excess inventory or to recoup a part of production costs in the case of 'seconds', diverted to the typically lower-end piling pipe market . . .",[30] they did not, in the Tribunal's view, meet the closely resembling usage criterion under subsection 2(1) of *SIMA*. Furthermore, the Tribunal did not consider substitution of one product for another to be determinative of the issue of like goods and found, in the context of the inquiry, that it was appropriate to give more weight to other factors, such as the differences in the physical characteristics of the two types of products.

51. The Tribunal accepts the rationale for finding in *Piling Pipe* that line pipe and piling pipe are not like goods as still being valid. This conclusion is supported by the evidence on physical and market characteristics disclosed by the responses to the questionnaire on like goods.[31] Although line pipe and piling pipe share some similarities in terms of physical appearance, they have different technical specifications for end use, with line pipe typically made to more restrictive specifications with different requirements for chemical composition and mechanical properties (i.e. higher grade, tensile and yield strength, hardness, corrosion resistance).

28. *Piling Pipe* at paras. 163, 175.
29. *Ibid.* at paras. 163-65.
30. *Ibid.* at para. 167.
31. The responses to the questionnaire on like goods are contained in Volumes 5, 5A, 6 and 6A of the Tribunal record in this preliminary injury inquiry.

52. The questionnaire replies also showed that there are significant differences in the market characteristics of line pipe and piling pipe. These products are, for the most part, sold through different distribution channels in different markets to different customers for different end uses. The majority of firms responded that line pipe and piling pipe are marketed and priced differently, with line pipe being a higher-value product.

53. Furthermore, the evidence clearly demonstrated that line pipe and piling pipe are not fully substitutable. Due to more stringent technical specifications for line pipe applications, piling pipe cannot be used as a substitute for line pipe (unless it is dual- or multi-certified to meet line pipe specifications). Several firms indicated that downward substitution of line pipe for piling pipe is possible (in the absence of any cost or price differentials). Indeed, some of the non-participating purchasers indicated that "stale surplus" or "scrap" line pipe is sometimes sold for use as piling pipe as a method of disposal. Among the few respondents to the questionnaire that reported having purchased both piling pipe and line pipe, only two of them indicated that they sell piling pipe but not line pipe. One of these, DFI, reported having erroneously received single-certified Chinese line pipe when it purchased piling pipe.[32]

54. While this indicates that there may have been some shift in the end uses of the subject line pipe sold in the Canadian market since the Tribunal's finding in *Piling Pipe*, the Tribunal finds that such activities are being driven by a small share of purchasers or end users and do not characterize the broader market for line pipe. Line pipe is still designed and generally intended for use in transporting oil and gas in a higher-end product market and is mainly sold through distinct channels of distribution from those for piling pipe.

55. In addition, the downward substitutability of line pipe for use in piling applications does not necessarily mean that it is a like good. Substitutability is only one of the many factors that may be relevant in determining whether goods are like goods in relation to one another. The Tribunal has determined that the evidence relating to downward substitutability of line pipe for use in piling applications is outweighed by factors such as the physical characteristics of line pipe, including conformity with specifications and standards identified in the product description of the subject goods, as well as market characteristics including differences in marketing practices, pricing, distribution channels, customers and end uses.

56. Having considered the relevant physical and market characteristics as a whole, the Tribunal concludes that steel piling pipe produced in Canada does not constitute like goods in relation to the subject goods. This is not limited to domestic piling pipe defined in the same manner as the goods covered by the Tribunal's finding in *Piling Pipe*. For greater certainty, any domestically produced piling pipe that falls within the size range stated in the product definition of the subject goods (i.e. even if it is outside the size range covered by the finding in *Piling Pipe*) is not considered like goods.[33]

Classes of Goods

57. The complainants submitted that seamless and welded line pipe constitute a single class of goods on the basis of similar physical and market characteristics between the two types of products, including a high degree of substitutability. Evraz argued that the parties opposed have provided no evidence to support subdividing the subject goods and the like goods into separate classes and, further, there is nothing on the record to warrant departing from previous Tribunal determinations that seamless and welded products

32. Exhibit PI-2015-002-08.10, Vol. 5 at 218.

33. The Tribunal notes however that any domestically produced line pipe that is dual- or multiple-certified to a specification for piling pipe and that falls within the size range stated in the product definition of the subject goods but that is outside the size range covered by the finding in *Piling Pipe* is considered like goods.

constitute a single class of goods. According to Tenaris and Atlas, the fact that goods are made to different specifications that are typically associated with different end uses does not justify a finding of multiple classes of goods, especially since line pipe is commonly multi-certified to several specifications.

58. In contrast, the parties opposed argued in favour of multiple classes of goods on the basis of distinctions between seamless and welded products, and specifications intended for end use in oil and gas applications versus other end use applications (i.e. standard pipe for use in PVC or industrial or mechanical applications, piling pipe for use in piling and other structural applications). The various classes proposed were as follows:

- Olympia and North-East: (1) line pipe certified to API 5L for use in the oil and gas sector; (2) piling pipe certified to ASTM A252, ASTM A53-B, ASTM A500 or API 5L for use as piling pipe; (3) carbon steel welded standard pipe certified to ASTM A53-B, ASTM A333; and (4) seamless carbon steel standard pipe certified to ASTM A53-B, ASTM A106, ASTM A333 or API 5L for use in PVC or industrial or mechanical applications.
- CISA: (1) seamless line pipe; (2) welded line pipe; (3) piling pipe not covered by *Piling Pipe*; and (4) seamless carbon steel standard pipe not covered by *Carbon Steel Welded Pipe*.
- Pipe & Piling: (1) line pipe sold for use as line pipe; and (2) line pipe sold for use as piling pipe.
- Cantak: (1) seamless pipe commonly treated as process or fabrication pipe (i.e. ASTM A106B) for plant, refineries and other end uses; (2) welded line pipe certified to CZA Z245.1 for use in oil and gas pipeline construction; and (3) seamless or welded line pipe certified to API for use in piling and other structural uses.

59. CISA alleged that seamless line pipe is a premium product that does not compete in the same market segment as welded line pipe. Olympia and North-East submitted that only one domestic producer (Tenaris) produces seamless line pipe and offers a limited size range. They also emphasized differences in the manufacturing processes for seamless and welded products.

60. The Tribunal is satisfied that overall, seamless and welded line pipe have similar physical and market characteristics. In particular, they have the same end uses, fulfill the same customer needs and are substitutable for each other in most applications, as the same technical specifications generally apply to both seamless and welded line pipe.[34] Although there may be some differences in manufacturing processes[35] and a price premium for seamless line pipe,[36] these factors are not sufficient to justify a finding of separate classes of goods for seamless and welded products. In addition, the extent to which there is domestic production of seamless line pipe products is not relevant for the purposes of the analysis of classes of goods.

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34. Exhibit PI-2015-002-10.04, Vol. 3 at 45, 77; Exhibit PI-2015-002-09.11 (protected), Vol. 6 at 74; Exhibit PI-2015-002-08.13, Vol. 5A at 75; Exhibit PI-2015-002-10.04, Vol. 3 at 68. The Tribunal notes that the CBSA has indicated that certain types of the ASTM A53-B grade require the use of seamless pipe (see Exhibit PI-2015-002-18, Vol. 1Z at 163).
35. In the context of this particular case, the Tribunal does not consider differences in manufacturing process to be a relevant factor for determining "likeness" and places more emphasis on the products themselves. See *United States – Safeguard Measure on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia* (1 May 2001), Report of the Appellate Body, WTO Docs. WT/DS177/AB/R, WT/DS178/AB/R at para. 94; *Seamless Carbon or Alloy Steel Oil and Gas Well Casing* (10 March 2008), NQ-2007-001 (CITT) [*Well Casing*] at para. 66.
36. Exhibit PI-2015-002-11.07 (protected), tab 3, Vol. 4.

61. The Tribunal has previously found seamless and welded steel products to be a single class of goods on the basis of the relevant "likeness" factors.[37] For the above reasons, it sees no reason to depart from taking a similar approach in the present case, as there were no compelling arguments or evidence to support concluding otherwise.

62. The Tribunal also finds that there is no justification for dividing the subject line pipe, as defined by the CBSA, into separate classes on the basis of different specifications for end use. Goods can belong to the same class of goods even if they come in numerous varieties, including different grades and specifications for end use, which may not be fully substitutable for each other.[38] In Inquiry No. NQ-2013-004,[39] the Tribunal found a single class of goods despite the fact that circular copper tube is made to numerous ASTM standards and grades for a wide range of end uses.[40] Similarly, in the present case the Tribunal finds that there is a single class of subject goods and like goods that encompasses line pipe, as defined in the product definition, made to various specifications intended for a range of end use applications.

63. The Tribunal disagrees with Pipe & Piling's submission that there should be separate classes of goods for line pipe sold for use as line pipe and line pipe sold for use as piling pipe. Such goods are identical in terms of physical characteristics, including their conformity with specifications for line pipe products. As stated above, the evidence shows that sales of line pipe for use in piling applications in Canada are limited to a few importers/distributors and do not characterize the overall Canadian market.

Conclusion on Like Goods and Classes of Goods

64. In light of the foregoing, the Tribunal finds that domestically produced line pipe, defined in the same manner as the subject goods, constitutes like goods in relation to the subject goods and that there is a single class of goods.

65. Furthermore, the Tribunal is of the view that any domestically produced goods that are defined in the same manner as the subject goods against which the preliminary injury inquiry has been terminated, i.e. those goods that are already covered by the finding in *Carbon Steel Welded Pipe*, constitute like goods to the subject goods on the basis that they closely resemble the remaining basket of subject goods, particularly in light of the above conclusion that the welded products are "like" the seamless products and therefore constitute a single class of goods.

Domestic Industry

66. In its decision to initiate the investigations, the CBSA accepted that the domestic industry is comprised of both line pipe producers and piling pipe producers. It determined that the complainants account for a major proportion of domestic production of like goods in Canada.[41]

67. In light of the Tribunal's determination that the like goods do not include piling pipe, the scope of the domestic industry is limited to the domestic producers of line pipe. As such, the Tribunal finds that the

37. *Well Casing* at para. 50; *Certain Oil and Gas Well Casing Made of Carbon Steel* (4 July 2001), RR-2000-001 (CITT) at 10; *Oil Country Tubular Goods* (23 March 2010), NQ-2009-004 (CITT) at para. 78.
38. *Piling Pipe*, PI-2012-002 at paras. 75-77; *Carbon Steel Welded Pipe* (11 December 2012), NQ-2012-003 (CITT) at paras. 26-27, 62; *Pup Joints* (10 April 2012), NQ-2011-001 (CITT) at para. 90; *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate* (2 February 2010), NQ-2009-003 (CITT) at paras. 62-66.
39. *Circular Copper Tube* (18 December 2013) (CITT).
40. *Ibid.* at paras. 12-20, 48-59.
41. Exhibit PI-2015-002-05, Vol. 1Z at 58.

supporting parties, Atlas and DFI, are not part of the domestic industry, as they do not produce like goods in relation to the subject goods.

68. The complaint identified three other domestic producers of line pipe but alleged that they should not be treated as part of the domestic industry. The evidence on the record indicates that EnergeX Tube ceased production of line pipe in Canada in March 2014.[42] The complainants alleged that a second company, Welded Tube of Canada, is licensed to produce line pipe but has not produced these goods since 2012. Lastly, the complainants submitted evidence that Bri-Steel is related to a Chinese producer and exporter of line pipe, which raises the question of whether it should be considered a domestic producer.[43]

69. Bri-Steel, a party in this preliminary injury inquiry, filed a submission opposing the complaint and referred to itself as a domestic producer of line pipe. However, Bri-Steel also explained that it imports unfinished seamless hollows with an outside diameter of 14 inches or larger for the production of seamless line pipes by way of a thermal expansion manufacturing method. Since the product definition covers ". . . unfinished line pipe (including pipe that may or may not already be tested, inspected, and/or certified to line pipe specifications) originating in China and imported for use in the production or finishing of line pipe meeting final specifications, including outside diameter, grade, wall-thickness, length, end finish or surface finish . . .", it appears that the goods imported by Bri-Steel are subject goods.

70. The issue of Bri-Steel's status in the domestic industry would need to be fully examined in the context of a final injury inquiry under section 42 of *SIMA*, if the CBSA makes a preliminary determination that the subject goods, in respect of which the preliminary injury inquiry has not been terminated under section 35 of *SIMA*, have been dumped or subsidized. In addition, the Tribunal will then be in a position to confirm the current status of other possible domestic producers of like goods, including EnergeX Tube and Welded Tube of Canada.

71. However, for purposes of this preliminary injury inquiry, the Tribunal is satisfied that the collective production volumes of Tenaris and Evraz are sufficient to constitute a major proportion of total domestic production of like goods, regardless of the outcome regarding the inclusion of other possible domestic producers of like goods. Accordingly, it will assess whether there is a reasonable indication of injury or threat of injury with respect to these two domestic producers.

Cross-cumulation

72. Given that the preliminary injury inquiry relates to investigations into alleged injurious dumping and subsidizing of goods, the Tribunal is mindful of the issue of cross-cumulation, i.e. whether the impact of the dumping should be assessed separately from the impact of the subsidizing.

73. There are no legislative provisions in *SIMA* that directly address the issue of cross-cumulation of the effects of both dumping and subsidizing. When dealing with goods from an individual country, the effects of dumping and subsidizing are manifested in a single set of price effects, and it is not possible to isolate the effects caused by the dumping from the effects caused by the subsidizing.[44] In reality, the effects are so

42. Exhibit PI-2015-002-02.01, Vol. 1 at 196.
43. *Ibid.* at 199-214. The Tribunal notes that the CBSA excluded Bri-Steel from the domestic industry in its decision initiating the investigations. Exhibit PI-2015-002-05, Vol. 1Z at 59.
44. *Copper Rod* (28 March 2007), NQ-2006-003 (CITT) at para. 48; *Well Casing* at paras. 76-77; *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) [*Aluminum Extrusions*] at para. 147; *Photovoltaic Modules and Laminates* (3 July 2015), NQ-2014-003 (CITT) at para. 82.

closely intertwined as to render it impossible to allocate discrete portions to the dumping and the subsidizing.

74. Accordingly, the Tribunal finds it appropriate to assess the cumulative effects of the dumping and subsidizing of the subject goods for the purposes of its preliminary injury analysis.

INJURY ANALYSIS

Import Volume of Dumped and Subsidized Goods

75. The complainants submitted that the volume of imports of the subject goods has been significant and increasing since 2012, both in absolute terms and relative to the production and consumption of like goods in Canada.

76. Pipe & Piling submitted that the import volume data are insufficient, as they do not provide evidence of the total import volumes of line pipe imported for use as line pipe and for use as piling pipe. As the Tribunal has not found there to be separate classes of goods for line pipe sold for use as line pipe and line pipe sold for use as piling pipe, it must determine only whether there is sufficient evidence with respect to import volumes of line pipe, regardless of end use. The other parties opposed did not make submissions in relation to the issue of import volumes of the dumped and subsidized goods.

77. For the purposes of its analysis, the Tribunal considered the CBSA data for the period from January 1, 2012, to June 30, 2015. Despite a decrease between 2012 and 2013, the total volume of subject imports increased significantly, in absolute terms, between 2013 and 2014. Between July 2014 and June 2015, the subject goods comprised more than half of all apparent imports of line pipe in Canada.[45]

78. Similarly, an examination of the volume of the subject goods relative to domestic production reveals that, despite a slight decrease in imports between 2012 and 2013, the relative volume of the subject goods in the Canadian market increased significantly between 2012 and 2014.[46] This appears to indicate that import sales were being realized to the detriment of like goods during that period. In addition, the volume of imports of the subject goods relative to domestic sales from domestic production significantly increased from 2012 to 2014, despite a marginal decrease in relative volumes in 2013.[47]

79. On the basis of the above, the Tribunal finds that the evidence discloses a reasonable indication that there has been a significant increase in the absolute and relative volume of imports of the subject goods.

Effect on Price of Like Goods

80. The complainants submitted that, as the result of the dumping and subsidizing of the subject goods, the domestic industry has suffered lost sales, price undercutting, price depression and price suppression.

81. In response to the above allegations, Pipe & Piling asserted that the complainants have not provided complete evidence in order for the Tribunal to be able to assess the price impact of the subject goods on the domestically produced like goods. As noted earlier, the complainants are required at the preliminary injury inquiry stage to provide evidence that is sufficient, in the sense that it is relevant, accurate and adequate.

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45. Exhibit PI-2015-002-03.02 (protected), Vol. 2D at 15.
46. The Tribunal was not able to determine the volume of the subject imports in relative terms for the first two quarters of 2015, due to a lack of comparable data across the same period.
47. Exhibit PI-2015-002-03.01 (protected), Vol. 2A at 67, 149; Exhibit PI-2015-002-03.02 (protected), Vol. 2D at 15.

There is no requirement that the evidence be complete or otherwise meet the standard expected at the full injury inquiry stage. Pipe & Piling would have the Tribunal apply a standard that goes beyond what is expected in a preliminary injury inquiry. After reviewing the evidence submitted by the complainants, the Tribunal finds it to be sufficient for the purpose of this preliminary injury inquiry in order to determine if the reasonable indication standard is met. It will only be possible to test the credibility of the evidence in the context of a final injury inquiry.

82. CISA questioned the complainants' reliance on average pricing data and raised concerns about the effects of product mix on the apparent market data. As noted by the complainants, while there may indeed be product mix issues in relation to the line pipe market, the Tribunal would only be able to fully assess how this affects the accuracy and reliability of average prices in the context of a final injury inquiry. The Tribunal agrees that the final injury inquiry is the appropriate forum.

83. At this stage, a comparison of the import values of the subject goods[48] with the weighted average selling price of the like goods indicates that the subject goods undercut the price of the like goods between 2012 and 2014. At the aggregate level, the selling price of the subject goods was consistently less than the selling price of the like goods.[49] The margin of undercutting significantly decreased in the first quarter of 2015; however, whether this is indicative of a trend or a limited occurrence would need to be further explored in a final injury inquiry. On the whole, the Tribunal finds that the comparison of average selling prices provides a reasonable indication of price undercutting.

84. In terms of price depression, the average domestic selling price decreased from 2012 to 2014 but then increased in the first quarter of 2015, nearly attaining the 2012 level.[50] The evidence indicates that the price of the subject goods was consistently below the price of the like goods and decreased throughout the period of inquiry. In the Tribunal's view, this is indicative of price depression, especially in light of the evidence that line pipe imported from non-subject countries likely did not contribute to the price depression that occurred. In this regard, the price of the goods from non-subject countries appears to be higher than the price of the like goods in all periods examined.[51] Also, the price of goods from non-subject countries was higher than the price of the subject goods, with the exception of the first quarter of 2015. Again, at this stage, it is unclear whether the uptick in price in the first quarter of 2015 is indicative of a trend or a limited occurrence.

85. The specific injury allegations provided by the complainants provide a further indication of price undercutting and price depression. Several of those examples referred to sales that went to the subject goods at prices that were below those quoted by the domestic producers[52] or sales secured by the domestic producers but only because they lowered their prices in order to compete with the subject goods.[53] While such evidence would clearly need to be fully examined and tested in the context of a final injury inquiry, the Tribunal accepts that, for the purposes of the preliminary injury inquiry, it is sufficient to meet the reasonable indication standard.

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48. The Tribunal notes that the evidence of sales/purchase pricing for the subject goods is based on value for duty; thus, price differentials may be overstated.
49. Exhibit PI-2015-002-03.01 (protected), Vol. 2A at 67.
50. *Ibid.*
51. The evidence filed with the complaint indicates prices of line pipe from the United States and "all other countries". Exhibit PI-2015-002-03.01 (protected), Vol. 2A at 67.
52. Exhibit PI-2015-002-03.01 (protected), Vol. 2A at 74, 75, 113-17.
53. *Ibid.* at 78, 119-20.

86. With respect to the allegation of price suppression, the average domestic selling price corresponded to the domestic industry's consolidated cost of goods sold from 2012 to 2014. Between 2012 and 2013, the domestic selling price declined by a greater amount than the decline in the cost of goods sold. From 2013 to 2014, the domestic selling price increased by a much lesser amount than the domestic producers' rising costs, indicating that they may have been unable to raise prices to offset rising costs due to dumping and subsidizing.[54] On the basis of the foregoing, the Tribunal notes that the evidence is indicative of price suppression.

87. Overall, the Tribunal finds that the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods have resulted in significant price undercutting and may have resulted in some price depression and price suppression.

Resultant Impact on the Domestic Industry

88. As part of its analysis under paragraph 37.1(1)(*c*) of the *Regulations*, the Tribunal considers the impact of the dumped and subsidized goods on the state of the domestic industry and, in particular, all relevant economics factors and indices that have a bearing on the state of the domestic industry.

89. In a preliminary injury inquiry, the Tribunal must determine whether the evidence discloses a reasonable indication of a causal link between the dumping and subsidizing of the subject goods and the injury on the basis of the resultant impact of the volume and price effects of the dumped and subsidized goods on the domestic industry. The standard is whether there is a reasonable indication that the dumping and subsidizing of the subject goods has, *in and of itself*, caused injury.[55] The Tribunal must further consider, pursuant to paragraph 37.1(3)(*b*) of the *Regulations*, whether the reasonable indication of injury is attributable to factors other than the dumping and subsidizing.

90. The complainants submitted that the domestic industry[56] has experienced significant injury caused by imports of the subject goods over the period from 2012 to 2014, in the form of reduced sales, market share, gross margins, net profits, capacity utilization rates and employment. In addition, the complainants provided information on account-specific sales lost to imports of the subject goods.

91. CISA argued that Canadian producers of line pipe are performing well, particularly Evraz. It raised questions regarding the complainants' allegations of lost sales and the evidence on financial performance indicators, suggesting that factors other than the alleged dumping and subsidizing of the subject goods may be responsible for any decline in sales and market share. Both CISA and Protin alleged that other factors have had a bearing on the state of the domestic industry, including reduced market demand in the oil industry that is driving lower prices, intra-industry competition, declining productivity and reduced export sales. These points will be addressed later in these reasons.

92. Pipe & Piling submitted that the complaint lacks sufficient evidence to substantiate the alleged economic impact of the subject imports on the domestic industry. However, it provided specific submissions on the resultant impacts claimed by the supporting parties (i.e. Atlas and DFI). It took no position on the

54. *Ibid.* at 5, 67.
55. *Copper Rod* (30 October 2006), PI-2006-002 (CITT) at paras. 40, 43; *Galvanized Steel Wire* (22 March 2013), PI-2012-005 (CITT) at para. 75; *Circular Copper Tube* (22 July 2013), PI-2013-002 (CITT) at para. 82; *Reinforcing Bar* at para. 95.
56. Although the complainants submitted that the domestic producers of piling pipe constituted part of the domestic industry, the financial performance data provided with the complaint only related to Tenaris and Evraz.

evidence relating to the complainants' evidence (i.e. Tenaris and Evraz),[57] which is the evidence being reviewed since the Tribunal has determined that Atlas and DFI are not part of the domestic industry.

93. The consolidated production of the complainants declined significantly from 2012 to 2013. Despite an increase in 2014, it remained below the 2012 production level.[58]

94. The evidence also indicates that, in terms of volume, the size of the Canadian market increased from 2012 to 2014.[59] The volume of sales from domestic production declined significantly in 2013 but then increased in 2014. Although the volume of imports of the subject goods indicates a similar pattern, the decrease in 2013 was much smaller, and the increase in 2014 was far more pronounced. The evidence on the record also shows that the domestic industry's market share decreased from 2012 to 2014, while the market share of the subject goods increased over the same period.[60] This suggests a reasonable indication that the subject goods gained market share at the expense of the domestically produced like goods.

95. The consolidated financial data of the complainants reasonably indicate that, from 2012 to 2014, the domestic industry experienced deteriorating net sales, gross margins and net profits.[61] Employment declined from 2012 to 2013 and, despite signs of improvement in 2014, remained below 2012 levels.[62] The data also suggest annual fluctuations in practical plant capacity and capacity utilization but, overall, they remained relatively flat.[63] However, due to a lack of information in relation to the data on production capacity and capacity utilization, the Tribunal gave little weight to that evidence at this stage.

96. As stated above, the complainants provided a number of examples of specific instances where they allegedly lost sales or accounts to imports of the subject goods or had to lower prices in order to maintain sales or accounts in competition with the lower-priced subject goods. This evidence, subject to being fully assessed in the context of a final injury inquiry, reasonably indicates support for the data showing that the complainants' consolidated volume of domestic sales has remained relatively stable despite declining market share, employment and profitability indicators.

97. On balance, the Tribunal finds that the evidence on the record discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury to the domestic industry.

98. The Tribunal recognizes that the other factors raised by the parties opposed may in fact have had an impact on the domestic industry and, as such, are worthy of further investigation and analysis in a final injury inquiry. Nevertheless, for the purposes of this preliminary injury inquiry, there is insufficient evidence regarding the impact of such other factors to negate the Tribunal's conclusion that the overall evidence on the record discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury. The Tribunal anticipates however that the parties will present more evidence in this regard so that the Tribunal will be in a position to fully explore the relative importance of these other factors in the context of a final injury inquiry under section 42 of *SIMA*.

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57. The Tribunal notes that this position stemmed from Pipe & Piling's argument that line pipe for use as line pipe and line pipe for use as piling pipe should be treated as two separate classes of goods for the purposes of the Tribunal's injury analysis, with Pipe & Piling only concerned with the issue of whether there was a reasonable indication of injury or threat in relation to the latter class (i.e. line pipe for use as piling pipe).
58. Exhibit PI-2015-002-03.01 (protected), Vol. 2A at 149.
59. *Ibid.* at 67; Exhibit PI-2015-002-03.02 (protected), Vol. 2D at 15.
60. Exhibit PI-2015-002-03.01 (protected), Vol. 2A at 67; Exhibit PI-2015-002-03.02 (protected), Vol. 2D at 15.
61. Exhibit PI-2015-002-03.01 (protected), Vol. 2A at 4, 5.
62. *Ibid.* at 152.
63. *Ibid.* at 149.

THREAT OF INJURY ANALYSIS

99. The Tribunal must now consider whether there is a reasonable indication that the dumping and subsidizing of the subject goods are threatening to cause injury.

100. The complainants submitted that the dumping and subsidizing of the subject goods pose an imminent and foreseeable threat of injury due to the following:

- the likelihood that the significant increase in imports of the subject goods into Canada, and the corresponding reduction of the domestic industry's market share, is going to continue;
- the combined export orientation and demonstrable capacity of the producers of the subject goods in China and their corresponding ability to sustain and accelerate the increase in imports of those goods into Canada;
- the likelihood that the negative price effects on the domestically produced like goods caused by imports of the subject goods will continue; and
- the injury already manifest and taking root in the domestic industry.

101. CISA and Pipe & Piling countered that the complainants' allegations are not supported by credible evidence. In particular, CISA dismissed the assertions about the nature of the steel industry in China as mere conjecture. However, Pipe & Piling's submission focused on the lack of evidence supporting a threat of injury to the domestic producers of piling pipe (i.e. Atlas and DFI), and it stated that ". . . to the extent that there is threat of injury evidence, it is restricted to injury caused to line pipe producers by line pipe imported for use as line pipe."[64]

102. The evidence before the Tribunal indicates that steel pipe producers in China have significant and excess production capacity.[65] In light of slowing economic growth in China and the recent fall in oil prices globally, there is some indication of oversupply of oil and gas pipe in the Chinese market, although longer term growth is forecast for oil and gas pipeline development in China.[66] Nevertheless, at present, the disposable capacity of Chinese producers suggests that there could be significant volumes of the subject goods available for export that exceeds the total market for line pipe in Canada.[67] Indeed, there is sufficient evidence disclosing a substantial increase in the rate of imports of the subject goods into Canada over the period from 2012 to 2014, which indicates that Canada offers an attractive market for the subject goods. Given that certain line pipe from China is subject to anti-dumping and countervailing measures in other major markets (including the United States, the European Union, Mexico and Brazil), it appears that a significant volume of the subject goods could be available for export to Canada in the near future.

103. As discussed above, there is a reasonable indication that the prices of the subject goods have caused significant price effects on the prices of like goods in the domestic market from 2012 to 2014. The Tribunal finds that this evidence suggests that the subject goods are likely to continue entering the market at prices that are below the price of the like goods, which could foreseeably result in price depression, price suppression and increased demand for imports of the subject goods in the future. This is further supported

64. Exhibit PI-2015-001-10.03 at para. 90, Vol. 3.
65. Exhibit PI-2015-002-02.01, Vol. 1B at 83-84, 94; Exhibit PI-2015-002-03.01 (protected), Vol. 2A at 161, 164, 167-69, 179.
66. Exhibit PI-2015-002-02.01, Vol. 1B at 167, 169, 170; Exhibit PI-2015-002-03.01 (protected), Vol. 2A at 167, Vol. 2B at 45-47, 54, 59-60, 112-13, 172.
67. Exhibit PI-2015-002-03.01 (protected), Vol. 2A at 67.

by the magnitude of the margins of dumping and amounts of subsidy estimated by the CBSA, both of which are significant.

104. These developments could foreseeably make the domestic industry susceptible to imminent injury from the subject goods, especially in light of the Tribunal's finding that the alleged injurious impact of the dumped and subsidized goods on the state of the domestic industry is tenable.

105. The Tribunal is satisfied that the complainants have provided positive evidence that is relevant to the threat of injury factors listed in subsection 37.1(2) of the *Regulations* and appears to be accurate and adequate for the purposes of the preliminary injury inquiry. The reliability of the evidence will need to be tested in the context of a final injury inquiry.

106. Accordingly, bearing in mind the lower evidentiary standard applicable in a preliminary injury inquiry, the Tribunal finds that, overall, there is sufficient evidence disclosing a reasonable indication that the dumping and subsidizing of the subject goods are threatening to cause injury.

EXCLUSIONS

107. The Tribunal received two requests to exclude products from a preliminary determination of injury or threat of injury.

108. While *SIMA* does not expressly authorize the Tribunal to grant exclusions from the scope of an order or finding, this authority is implicit.[68]

109. Exclusions are an extraordinary remedy that may be granted only when the Tribunal is of the view that granting the exclusion will not cause injury or threat of injury to the domestic industry.[69] Applying this principle entails determining whether imports of the specific goods for which exclusions are requested have not caused and are not threatening to cause injury, despite the general conclusion that the dumping and subsidizing of the subject goods have caused or threaten to cause injury to the domestic industry.

110. As stated in the notice of commencement for this preliminary injury inquiry, the Tribunal generally does not consider product exclusion requests at this stage. Although it may deviate from this standard practice in "exceptional circumstances",[70] the evidence relating to the product exclusion requests made in this preliminary injury inquiry does not disclose exceptional circumstances.

111. In light of the above, the Tribunal will reserve judgment on product exclusions until a final injury inquiry under section 42 of *SIMA*, at which stage it will be in a position to properly assess evidence from any and all interested parties on whether or not granting the exclusion will cause injury or threat of injury to the domestic industry.

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68. *Hetex Garn A.G. v. The Anti-dumping Tribunal*, [1978] 2 F.C. 507 (FCA) at 4; *Sacilor Aciéries v. Anti-dumping Tribunal* (1985) 9 C.E.R. 210 (CA); Binational Panel, *Integral Horsepower Induction Motors, One Horsepower (1 hp) to Two Hundred Horsepower (200 HP) Inclusive, with Exceptions Originating 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.
69. *Aluminum Extrusions* at para. 339; *Stainless Steel Wire* (30 July 2004), NQ-2004-001 (CITT) at para. 96.
70. *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate* (12 August 2003), PI-2003-002 (CITT) at 4.

CONCLUSION

112. On the basis of the foregoing analysis, the Tribunal finds that the evidence does not disclose a reasonable indication that the dumping and subsidizing of the subject goods that are already covered by its order in *Carbon Steel Welded Pipe* have caused injury or are threatening to cause injury to the domestic industry. Pursuant to paragraph 35(3)(*a*) of *SIMA*, the Tribunal terminates the preliminary injury inquiry with respect to those goods.

113. The Tribunal determines that the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods, in respect of which the preliminary injury inquiry has not been terminated, have caused injury or are threatening to cause injury to the domestic industry.

Jean Bédard
Jean Bédard
Presiding Member

Ann Penner
Ann Penner
Member

Daniel Petit
Daniel Petit
Member