Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Dumping and Subsidizing

TRIBUNAL OPINION AND SUPPORTING REASONS

Public Interest Inquiry
No. PB-2014-001

Concrete Reinforcing Bar

Opinion and reasons issued
Tuesday, December 22, 2015

Canada

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IN THE MATTER OF a public interest inquiry commenced on April 27, 2015, pursuant to subsection 45(1) of the *Special Import Measures Act* concerning the rate of duty resulting from the finding made by the Canadian International Trade Tribunal on January 9, 2015, in Inquiry No. NQ-2014-001, respecting:

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

OPINION

In accordance with paragraph 45(4)(*a*) of the *Special Import Measures Act*, the Canadian International Trade Tribunal will not provide a report to the Minister of Finance because it is of the opinion that the public interest does not warrant a reduction or elimination of the anti-dumping and countervailing duties resulting from the above-mentioned finding.

Serge Fréchette
Serge Fréchette
Presiding Member

Stephen A. Leach
Stephen A. Leach
Member

Jason W. Downey
Jason W. Downey
Member

Place of Hearing:	Vancouver, British Columbia
Dates of Hearing:	July 27 to 31, 2015
Tribunal Members:	Serge Fréchette, Presiding Member Stephen A. Leach, Member Jason W. Downey, Member

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Parties Opposed	**Counsel/Representatives**
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Province of Manitoba, Jobs and the Economy	Alan Barber
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STATEMENT OF REASONS

INTRODUCTION

1. On January 9, 2015, the Canadian International Trade Tribunal (the Tribunal) found, pursuant to subsection 43(1) of the *Special Import Measures Act*,[1] that the dumping of hot-rolled deformed steel concrete reinforcing bar in straight lengths or coils, commonly identified as rebar, in various diameters up to and including 56.4 millimeters, in various finishes, excluding plain round bar and fabricated rebar products, originating in or exported from the People's Republic of China (China), the Republic of Korea (Korea) and the Republic of Turkey (Turkey), and the subsidizing of the aforementioned goods originating in or exported from China (collectively, the subject goods) had not caused injury but threatened to cause injury to the domestic industry. The Tribunal excluded from that finding 10-mm-diameter (10M) rebar produced to meet the requirements of CSA G30 18.09 (or equivalent standards) and coated to meet the requirements of epoxy standard ASTM A775/A 775M 04a (or equivalent standards) in lengths from 1 foot (30.48 cm) up to and including 8 feet (243.84 cm).

2. Subsection 45(1) of *SIMA* provides that, where the Tribunal makes a finding of injury or threat of injury in respect of imported goods following an inquiry under section 42, the Tribunal shall, on its own initiative or at the request of an interested person, initiate a public interest inquiry if it is of the opinion that there are reasonable grounds to consider that the imposition of anti-dumping or countervailing duties, or the imposition of such duties in the full amount provided by *SIMA*, would not or might not be in the public interest.

3. On February 23, 2015, the Tribunal received a joint request to initiate a public interest inquiry from the B.C. Ministry of International Trade (B.C. government) and the Independent Contractors and Businesses Association (ICBA) (collectively, the requesters), whose members include downstream users of rebar, such as rebar fabricators. The request was based on the allegation that the imposition of anti-dumping and countervailing duties on the subject goods for final use in British Columbia would not be in the public interest.

4. After considering the request, as well as other submissions supporting and opposing the request, the Tribunal was of the opinion that there were reasonable grounds to consider that the imposition of anti-dumping and countervailing duties, or the imposition of such duties in the full amount, would not or might not be in the public interest. Accordingly, on April 27, 2015, the Tribunal commenced a public interest inquiry.

5. A notice of commencement of the public interest inquiry was sent to known interested parties, published in Part I of the May 9, 2015, edition of the *Canada Gazette*[2] and posted on the Tribunal's Web site. Interested parties were invited to file notices of participation with the Tribunal, as well as submissions on the impact of the imposition of the duties on the public interest. Thirty parties filed notices of participation, although two subsequently withdrew from the proceedings.

6. As part of its inquiry, the Tribunal also invited certain known importers, producers and purchasers of rebar to complete questionnaires, which focused on activities related to rebar in British Columbia, for the period from October 1, 2013, to March 31, 2015, and forecasts for the years 2015 and 2016.. The Tribunal subsequently sent requests for information (RFIs) to importers, producers and purchasers regarding their rebar-related activities in the second quarter of 2015. RFIs were also sent to entities participating in the

1. R.S.C., 1985, c. S-15 [*SIMA*].
2. C. Gaz. 2015.I.149.19.

B.C. real estate market, certain U.S. exporters and the B.C. government The Tribunal also requested certain information from the Canada Border Services Agency (CBSA).[3]

7. Using the questionnaire and RFI replies, and other evidence on the record, public and protected versions of an investigation report and an investigation report supplement were prepared and distributed to parties.[4]

8. Five parties filed submissions arguing that the imposition of anti-dumping and countervailing duties on rebar imported for final use in British Columbia would not or might not be in the public interest. These parties are the ICBA and the B.C. government (jointly), the Turkish Steel Exporters' Association (ÇIB), the Turkish Ministry of Economy Directorate General of Exports (Turkey) and C&F International Limited, an importer of steel products, including rebar. C&F International Limited later withdrew from the proceedings.

9. The Tribunal received submissions and/or statements of evidence from 24 parties opposing any reduction or elimination of duties on rebar imported for final use in British Columbia. These parties are the following: three domestic producers of rebar, ArcelorMittal Long Carbon North America and ArcelorMittal Montreal Inc. (together, ArcelorMittal), AltaSteel Inc. (AltaSteel) and Gerdau Longsteel North America (Gerdau); two U.S. producers of rebar exporting to the B.C. market, Nucor Corporation (Nucor) and Cascade Rolling Mills Inc. (Cascade), with mills located in the states of Washington and Oregon, respectively, as well as a producer of coil rebar in Colorado, EVRAZ Inc. NA; three labour organizations, namely, the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers), the International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers, Local 97 (Local 97) and the Canadian Labour Congress; four industry and trade associations, the Alliance of Manufacturers & Exporters Canada c.o.b. Canadian Manufacturers & Exporters (Canadian Manufacturers & Exporters), the Canadian Institute of Steel Construction (CISC), the Canadian Steel Producers Association (CSPA) and the Metal Service Center Institute; six provincial and municipal governments, the Government of Alberta, the Government of Saskatchewan, the Quebec ministère de l'Économie, de l'Innovation et des Exportations, the Ontario Ministry of Economic Development, Employment and Infrastructure, the Province of Manitoba, Jobs and the Economy, and the Corporation of the City of Sault Ste. Marie; and Canadian producers of steel products other than rebar, namely, Essar Steel Algoma Inc., SSAB Central Inc., EVRAZ Inc. NA Canada, Tenaris Canada and U.S. Steel Canada, Inc.

10. In addition, several non-participants, including the City of Hamilton, the City of Oshawa, the Town of Whitby and the Whitby Chamber of Commerce wrote to express their opposition to a reduction or elimination of duties.

11. A hearing, with public and *in camera* testimony, was held in Vancouver, British Columbia, from July 27 to 31, 2015. The B.C. government called witnesses from the B.C. Ministry of Transportation and Infrastructure, B.C. Hydro and B.C. Housing, all of which are B.C. government entities undertaking infrastructure, healthcare or social construction projects. The B.C. government also called witnesses from Klohn Crippen Berger and SSA Quantity Surveyors Ltd., two private firms involved in such projects.

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3. The Tribunal requested Facility for Information Retrieval Management data regarding imports made by C&F International in 2013, 2014 and the first two quarters of 2015 (Exhibit PB-2014-001-34, Vol. 1D at 61). The Tribunal also requested the normal values for all exporters from the subject countries (Exhibit PB-2014-001-30, Vol. 1D at 12).
4. Public exhibits were distributed to all parties. Protected exhibits were made available only to independent counsel who filed a declaration and confidentiality undertaking with the Tribunal in respect of confidential information.

12. The ICBA called witnesses from LMS Reinforcing Steel Group (LMS) and Midvalley Rebar Ltd. (Midvalley), two B.C. rebar fabricators, and Beedie Development Group (Beedie), a B.C. residential and commercial developer. Finally, the Tribunal heard from AltaSteel, ArcelorMittal, Gerdau, the CSPA, the CISC, Canadian Manufacturers & Exporters, Nucor and the United Steelworkers. Local 97 and Cascade were represented by counsel but called no witnesses.[5]

BACKGROUND

Product and Market

13. In Inquiry No. NQ-2014-001, the CBSA defined the subject goods as follows:

> hot-rolled deformed steel concrete reinforcing bar in straight lengths or coils, commonly identified as rebar, in various diameters up to and including 56.4 millimeters, in various finishes, excluding plain round bar and fabricated rebar products, originating in or exported from China, Korea and Turkey.

14. In general terms, rebar of the same description as the subject goods includes all hot-rolled deformed bar, rolled from billet steel, rail steel, axle steel, low-alloy steel and other alloy steels that do not comply with the definition of stainless steel, whether coated or uncoated. The standard lengths for rebar are 6 metres (20 feet), 12 metres (40 feet) and 18 metres (60 feet), although rebar can be cut and sold in other lengths as specified by customers, or in coils.[6]

15. Rebar is used in residential and commercial construction, as well as in large capital infrastructure projects. Rebar is produced in Canada in accordance with the National Standard of Canada CAN/CSA-G30.18-M92 for Billet-Steel Bar for Concrete Reinforcement prepared by the Standards Association and approved by the Standards Council of Canada. The evidence indicates that, in the great majority of cases, rebar used in construction projects in British Columbia must be certified to the CSA standard.[7]

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

17. The evidence indicates that B.C. fabricators import rebar directly or source it from domestic rebar mills, service centres or distributors.[8] They typically receive orders from the construction sector, purchase the rebar, cut and bend it to order, and deliver it to job sites. There are a number of B.C. fabricators, including the largest, LMS and Harris Rebar, as well as Midvalley, G&M Steel and Heritage Steel.[9]

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5. The record of this public interest inquiry includes all Tribunal exhibits filed in this public interest inquiry, including the public and protected replies to the questionnaires and RFIs, all submissions and exhibits filed by the parties, the public and *in camera* transcripts of these proceedings and portions of the record of Inquiry No. NQ-2014-001.
6. See Inquiry No. NQ-2014-001 at paras. 18-27 for a further description of the subject goods.
7. *Transcript of Public Hearing*, Vol. 2, 28 July 2015, at 228-30; *Transcript of In Camera Hearing*, Vol. 5, 31 July 2015, at 270.
8. Exhibit PB-2014-001-12, Vol. 1.1 at 17.
9. *Transcript of Public Hearing*, Vol. 2, 28 July 2015, at 196-97, 299.

Summary of the Tribunal's Threat of Injury Findings

18. On January 9, 2015, the Tribunal found that the dumping of the subject goods from Korea, Turkey and China, and the subsidizing of the subject goods from China, had not caused injury, but threatened to cause injury to the domestic industry in the next 12 to 18 months. The Tribunal found that there was a likelihood of an imminent substantial increase in imports of the subject goods into Canada and that such imports were likely to cause injury in the form of price erosion, lost sales, reduced market share, reduced profitability and a negative impact on future investments.

19. The Tribunal also denied a request for a regional exclusion for all "... rebar imported into the province of British Columbia [from the subject countries] for use or consumption within the province"[10] or, alternatively, "... rebar for final end use in construction projects in the province of British Columbia",[11] sought by the ICBA and supported by the B.C. government. The ICBA argued that the subject goods imported into British Columbia did not cause injury to the domestic industry and that the domestic industry was unlikely to suffer injury in British Columbia in the future, considering its relative absence from that market for many years and its inability to serve the B.C. market competitively.

20. In denying the regional exclusion, the Tribunal emphasized that exclusions are granted only in unique circumstances where cogent evidence shows that doing so will not cause or threaten to cause injury to the domestic industry. It stated that the relevant legal issue for a regional exclusion was whether there is no threat of injury to the domestic industry because the domestic producers have no reasonable prospect of becoming active suppliers in British Columbia, even if duties are imposed. The Tribunal found that, absent dumping and subsidizing, the domestic producers had reasonable prospects of increasing their presence in British Columbia and competitively serving the B.C. market in the next 12 to 18 months.

Resultant Anti-dumping and Countervailing Duties

21. As a result of the Tribunal's findings and the CBSA's final determinations, the subject goods originating in or exported from China, Korea and Turkey for which an exporter had not been issued specific normal values are subject to an anti-dumping duty of 41 percent of the export price. In addition, the Chinese subject goods from exporters for whom specific amounts of subsidy were not determined are subject to a countervailing duty of 469 renminbi per tonne.

22. Normal values were determined for exporters from the subject countries that provided sufficient information as part of the CBSA's investigations. For imports of the subject goods from these exporters, the amount of anti-dumping duty payable would be determined on the basis of the difference, if any, between the normal value and the export price on each import transaction. One Chinese exporter was also issued a specific amount of subsidy of 13 renminbi per tonne.

STATUTORY FRAMEWORK

23. As noted above, pursuant to subsection 45(1) of *SIMA*, where the Tribunal makes a finding of injury or threat of injury in respect of imported goods following an inquiry under section 42, the Tribunal shall, on its own initiative or at the request of an interested person, initiate a public interest inquiry if it is of the opinion that there are reasonable grounds to consider that the imposition of anti-dumping or countervailing duties, or the imposition of such duties in the full amount provided by *SIMA*, would not or might not be in the public interest.

10. Inquiry No. NQ-2014-001 at para. 252.
11. *Ibid.*

24. In determining whether the imposition of the duties, or the imposition of duties in the full amount, would not or might not be in the public interest, the Tribunal must take into account any factors relevant to the particular circumstances, including the prescribed factors. Subsection 45(3) of *SIMA* provides as follows:

> In a public interest inquiry, the Tribunal shall take into account any factors, including prescribed factors, that it considers relevant.

25. The prescribed factors are set out in subsection 40.1(3) of the *Special Import Measures Regulations*:[12]

> For the purposes of subsection 45(3) of the Act, the following factors are prescribed:
>
> (*a*) whether goods of the same description are readily available from countries or exporters to which the order or finding does not apply;
>
> (*b*) whether imposition of an anti-dumping or countervailing duty in the full amount
>
> (i) has eliminated or substantially lessened or is likely to eliminate or substantially lessen competition in the domestic market in respect of goods,
>
> (ii) has caused or is likely to cause significant damage to producers in Canada that use the goods as inputs in the production of other goods and in the provision of services,
>
> (iii) has significantly impaired or is likely to significantly impair competitiveness by
>
> (A) limiting access to goods that are used as inputs in the production of other goods and in the provision of services, or
>
> (B) limiting access to technology, or
>
> (iv) has significantly restricted or is likely to significantly restrict the choice or availability of goods at competitive prices for consumers or has otherwise caused or is otherwise likely to cause them significant harm; and
>
> (*c*) whether non-imposition of an anti-dumping or countervailing duty or the non-imposition of such a duty in the full amount provided for in sections 3 to 6 of the Act is likely to cause significant damage to domestic producers of inputs, including primary commodities, used in the domestic manufacture or production of like goods.

26. If, as a result of the public interest inquiry, the Tribunal is of the opinion that the imposition of the duties, or the imposition of such duties in the full amount, would not or might not be in the public interest, then, pursuant to subsections 45(4) and (5) of *SIMA*, the Tribunal shall provide a report to the Minister of Finance, specifying its reasons, and recommending either a level of reduction in the anti-dumping or countervailing duty, or a price or prices that are adequate to eliminate injury, retardation or threat of injury to the domestic industry.

PUBLIC INTEREST AND WORLD TRADE ORGANIZATION (WTO) AGREEMENTS

27. There is no definition of public interest in *SIMA*. The starting point of the Tribunal's analysis is the modern rule of statutory interpretation, according to which ". . . the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament."[13]

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12. S.O.R./84-927 [*SIM Regulations*].
13. *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, 1998 CanLII 837 (SCC) at para. 21.

28. The expression "public interest" connotes a broad and flexible concept that includes considerations beyond the interests of the parties to a dispute.[14] As recognized by the Tribunal in previous cases, a contextual interpretation is therefore crucial to understanding the concept of public interest in section 45 of *SIMA*.[15]

29. The WTO agreements on anti-dumping and countervailing measures form part of the context within which *SIMA*, including section 45, was enacted, and are thus a useful context within which the domestic legislation is interpreted.[16] While the WTO agreements contain no explicit reference to the concept of public interest, Article 9.1 of the WTO *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*[17] suggests that the imposition of a duty is permissive and that "[i]t is desirable that the imposition . . . [of] the duty be less than the margin [of dumping] if such *lesser duty* would be adequate to remove the injury to the domestic industry"[18] [emphasis added]. The *Agreement on Subsidies and Countervailing Measures* contains similar provisions.

30. Unlike in other countries,[19] the application of the concept of lesser duty in Canada is limited to public interest inquiries and is only used as a method for determining the appropriate level of duty once a public interest is determined.[20]

31. Nevertheless, the Tribunal finds guidance in Article 9.1 of the *Anti-dumping Agreement* and the concept of lesser duty, as it suggests that there should be a balance between the intended consequence of the duty, which is removing injury to a domestic industry, and any unintended consequences. In the Tribunal's

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14. *Certain Prepared Baby Food* (30 November 1998), PB-98-001 (CITT) [*Baby Food*] at 10; *Wang Canada Ltd. v. Canada (Minister of Public Works and Government Services)*, [1999] 1 F.C.R. 3, 1998 CanLII 9093 (FC), in which the words "public interest" were interpreted in the context of a provision of the *North American Free Trade Agreement between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America*, 17 December 1992, 1994 Can. T.S. No. 2, online: Department of Foreign Affairs, Trade and Development <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/nafta-alena/text-texte/toc-tdm.aspx?lang=eng> (entered into force 1 January 1994).
15. In *Refined Sugar* (4 April 1996), PB-95-002 (CITT) [*Refined Sugar*] at 3, the Tribunal stated that the words ". . . 'public interest' . . . suggest that, in any given case, the meaning to be attributed to those words, or words having the same general meaning, should be determined by 'reference to the context and to the objects and purposes' of the relevant statute."
16. *Refined Sugar* at 2-3; *National Corn Growers Assn. v. Canada (Import tribunal)*, [1990] 2 S.C.R. 1324, 1990 CanLII 49 (SCC); *Rahaman v. Canada (Minister of Citizenship and Immigration)*, [2002] 3 F.C.R. 537, 2002 FCA 89 (CanLII) at paras. 35-36.
17. https://www.wto.org/english/docs_e/legal_e/19-adp.pdf [*Anti-dumping Agreement*].
18. Article 9.1 of the *Anti-dumping Agreement* stipulates that the ". . . decision whether or not to impose an anti-dumping duty in cases where all requirements for the imposition have been fulfilled, and the decision whether the amount of the anti-dumping duty to be imposed shall be the full margin of dumping or less, are decisions to be made by the authorities of the importing Member. It is desirable that the imposition be permissive in the territory of all Members, and that the duty be less than the margin if such lesser duty would be adequate to remove the injury to the domestic industry." See also Article 19.2 of the *Agreement on Subsidies and Countervailing Measures* at https://www.wto.org/english/docs_e/legal_e/24-scm.pdf.
19. For example, in the European Union, the European Commission determines a non-injurious price in every investigation. The European Commission then compares this to the weighted average import price of the dumped and subsidized goods and calculates a "margin of injury", which, if it is lower than the margin of dumping, is applied as the prevailing duty rate. The Australian Anti-Dumping Commission also routinely calculates a non-injurious price in its investigations and will set the duty rate on the basis of this price if it is lower than the non-dumped price of the imported goods.
20. *Bill C-35: An Act to Amend the Special Import Measures Act and the Canadian International Trade Tribunal Act* at http://www.parl.gc.ca/About/Parliament/LegislativeSummaries/bills_ls.asp?lang=E&ls=C35&Parl=36&Ses=1.

view, this is the central issue in an inquiry under section 45 of *SIMA*: whether the duty has unintended consequences such that it would be in the public interest to consider the elimination or reduction of such duty.

PUBLIC INTEREST IN CONTEXT

32. The Tribunal's determination of the public interest pursuant to section 45 of *SIMA* does not occur in a vacuum. As the ICBA and the B.C. government recognized in their submissions, it is premised on the conclusions reached in an inquiry under section 42, where it has been demonstrated that dumped or subsidized imports are causing, or are threatening to cause, material injury to a domestic industry.[21]

33. As intended by Parliament, and in conformity with the applicable WTO agreements, once the Tribunal makes a finding of injury or threat of injury pursuant to section 43 of *SIMA*, anti-dumping and countervailing duties are imposed in order to remediate the injury caused to the domestic industry by unfair trade. Consequently, the subject goods imported subsequent to a Tribunal finding are expected to compete in the Canadian market at non-dumped and non-subsidized prices, and, as the market adjusts, new prices and/or sources of supply are likely to emerge for all market participants, including downstream users and consumers of the goods subject to duties.[22]

34. Accordingly, in an inquiry under section 45 of *SIMA*, the Tribunal would normally expect evidence of some negative impact on certain market participants as they adjust to a fairly traded market.[23] These are natural consequences of the imposition of duties and, as such, must be considered as intended consequences of imposing duties and must be differentiated from unintended consequences, such as the following:

- undue reduction of competition in the domestic market, which might lead to unnecessarily high prices;
- unacceptable reduction in choice, quality or quantity of product for consumers;
- significant damage to downstream industries;
- absence of imports from other sources to which the finding or order does not apply;
- inability of the domestic industry to supply all the domestic market, either geographically or seasonally;
- damage to some aspect of society considered to have an overwhelming priority, such as health, safety, education, or public or national security;
- normal values or export prices that, while accurate, may not reflect the economic realities and may force exporters out of the domestic market; and
- price increases larger than necessary to eliminate the injury from dumped or subsidized imports.[24]

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21. In an inquiry under section 45 of *SIMA*, the Tribunal does not re-examine matters determined during the injury inquiry under section 42. However, certain issues of fact examined in an inquiry under section 42 may be relevant. For example, in examining the effect of the trade remedy measures on competition in the domestic market, it may be relevant to examine the participation of the domestic industry in that market. The objective of such an examination would be to assess the effect of the duty on competition in the marketplace and any arising public interest concerns.
22. *Aluminum Extrusions* (30 June 2009), PB-2008-003 (CITT) [*Aluminum Extrusions*] at paras. 16, 29; *Carbon Steel Welded Pipe* (19 December 2008), PB-2008-001 (CITT) [*Carbon Steel Pipe*] at paras. 14-15.
23. *Carbon Steel Pipe* at paras. 14-15; *Aluminum Extrusions* at para. 29.
24. These examples of unintended consequences are derived from the statutory scheme, including the non-exhaustive list of prescribed factors in subsection 40.1(3) of the *SIM Regulations*, and from previous Tribunal jurisprudence.

35. Parliament has long recognized that the imposition of the duties, in the full amount, may not be in the public interest in some circumstances. Parliament first introduced a public interest provision into Canada's trade remedy system in 1984, following an earlier Parliamentary report recommending that anti-dumping and countervailing measures be reviewable in light of national and consumer interests.[25] In the most recent Parliamentary review of *SIMA*, the public interest process was again viewed as an essential feature of Canada's trade remedy system.[26]

36. Thus, when understood within the broader context, a public interest inquiry requires the Tribunal to analyze how the Canadian market for goods subject to duties has changed from one previously distorted by unfair trade to a fairly traded market driven by competitive market forces. This requires analyzing the timing and extent of these changes to determine if there is a balance between remedying the injury or threat of injury to a domestic industry and a broader set of interests.

37. As the Tribunal has stated in past cases, the public interest may, depending on the circumstances, refer to the interests of the public at large, or to those of a segment of that public, provided the effects of the imposition of duties on such things as supply, competition, competitiveness or the welfare of downstream industries, customers or users are sufficient to represent a "public interest". The Tribunal has also indicated that geography could, if appropriate, be a defining element of the relevant segment of the public.[27]

38. Finally, it is also important to note that there is a unique context to the Tribunal's assessment of the public interest, as well as any recommendations that it may make. The balancing exercise carried out by the Tribunal in an inquiry under section 45 of *SIMA* relates to the market conditions that existed during the specific period examined by the Tribunal during its inquiry or that were reasonably foreseeable at that time.

POSITIONS OF PARTIES

Parties Supporting an Elimination or Reduction of Duties

ICBA and B.C. Government

39. The ICBA and the B.C. government submitted that the duties on rebar for final use in British Columbia have resulted and will continue to result in significant negative effects on many aspects of the B.C. residential, commercial and infrastructure construction markets, while providing "... virtually no measurable or sustainable benefit to the domestic industry."[28]

40. The ICBA and the B.C. government submitted that domestic rebar sales in British Columbia have not increased, and are unlikely to increase, as the domestic industry has made insufficient efforts to accommodate B.C. customers and suffers from an inherent competitive disadvantage *vis-à-vis* suppliers in the Western United States and offshore Asian sources whose freight costs to British Columbia are significantly lower. The B.C. government and the ICBA also questioned AltaSteel's future and focus on rebar.

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25. *Report on the Special Import Measures Act* by the Sub-Committee on Import Policy of the Standing Committee on Finance, Trade and Economic Affairs, House of Commons, Issue No. 31, First Session of the Thirty-second Parliament, 1980-81-82, Ottawa, June 1982, at 27-28; *Baby Food* at 7.
26. *Report on the Special Import Measures Act* by the Sub-Committee on the Review of the Special Import Measures Act of the Standing Committee on Finance and the Sub-Committee on Trade Disputes of the Standing Committee on Foreign Affairs and International Trade, House of Commons, Ottawa, December 1996 at http://www.parl.gc.ca/content/hoc/archives/committee/352/fore/reports/04_1996-12/chap6-e.html.
27. *Circular Copper Tube* (14 April 2014), PB-2013-001 (CITT) at para. 8; *Aluminum Extrusions* at para. 11; *Carbon Steel Pipe* at para. 9.
28. Exhibit PB-2014-001-44.02 at para. 5, Vol. 15.

41. Instead of increasing domestic sales, the ICBA and the B.C. government submitted that the duties have merely upset a long-standing supply chain based on the subject goods in favour of other much less desirable imports. They argued that rebar is not readily available from exporters or countries to which the finding does not apply, due notably to a lack of interest from many Asian mills to provide CSA standard rebar for the relatively small B.C. market.

42. The ICBA and the B.C. government acknowledged that rebar has so far been available from certain Asian countries, as well as from the United States, but submitted that this supply came with less favourable terms than those typical of the subject goods and may no longer be viable when domestic demand in these countries increases. They suggested that, if new offshore sources "dry up", U.S. suppliers will be the sole option for B.C. fabricators, leading to potential uncertainty of supply and unreasonable price increases.

43. The ICBA and the B.C. government further argued that the imposition of the duties has negative effects on competition in British Columbia. The duties disrupt the competitive balance between fabricators because they affect the fabricators not affiliated with a U.S. rebar producer, while being unlikely to impact Harris Rebar, which is affiliated with Nucor Steel and sources most of its rebar imports from that company. At the developer-customer level, competition is affected, as independent fabricators have become more circumspect in their project bidding, leading to fewer bids and higher prices.

44. In addition, the ICBA and the B.C. government submitted that fabricators, the primary downstream users of rebar, are negatively affected by the imposition of the duties, as the result has been to ". . . completely disrupt a reliable and efficient supply chain . . . ."[29] This has made independent fabricators more circumspect in their project bidding and required them to carry larger inventories.

45. The ICBA and the B.C. government submitted that the additional costs borne by B.C. residents and taxpayers as a result of the duties on rebar cannot be quantified with certainty, as they depend on a number of unknown factors. Nevertheless, their central argument was that costs are higher than they would be without the duties, and, because the benefits of the duties on rebar imported for use in British Columbia are "virtually non-existent" for the domestic industry, the negative costs of the duties outweigh any potential benefits.

46. Consumers, according to the ICBA and the B.C. government, are likely to face higher real estate prices, particularly in the market for concrete condominiums in the Lower Mainland of British Columbia. For instance, they submitted that, if the price of rebar rose by 10 percent as a result of the duties, it could add $1,650 to the price of a condominium unit. Even if the actual increase in rebar prices is lower than 10 percent, they stressed that rebar prices that are higher by any amount than they otherwise would be *without* the duties will apply upward pressure on condominium prices in the Lower Mainland of British Columbia, which is already amongst the least affordable real estate markets in the world.

47. The ICBA and the B.C. government added that, even if cost increases are not passed on to the ultimate purchasers of condominium units, reduced profit margins for fabricators and real estate developers would mean a lesser contribution by these companies to economic activity in the province, not counterbalanced by any benefit to the domestic industry. Commercial activity in the province could also be negatively affected by the duties, as higher construction costs could make British Columbia less attractive, for example, to the development of liquefied natural gas (LNG) projects due to higher costs of construction.

48. Moreover, the ICBA and the B.C. government argued that the duties impact capital construction projects carried out by the province, including the replacement of the George Massey Tunnel, the expansion and rehabilitation program for bridges and highways, major healthcare facilities, the Site C Clean Energy Project by B.C. Hydro, as well as provincially funded social housing projects.

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29. *Ibid.* at para. 30.

49. The ICBA and the B.C. government provided illustrative cost increase scenarios for selected projects. They emphasized that B.C. rebar prices, although they have been on a declining trend in recent months, are higher than they would be in the absence of the duties. The effect of such cost increases, which will be further compounded by higher borrowing costs, will mean either higher costs to the B.C. taxpayers, the construction of fewer projects or the implementation of less effective alternative solutions.

50. The ICBA and the B.C. government asked the Tribunal to recommend a complete elimination of duties on the subject goods from China and Korea (specifying that Turkish rebar has historically not played a role in the B.C. market). In response to the Tribunal's invitation to submit alternative arguments, they submitted that duties on rebar from China and Korea should be reduced to a level that ensures that it is economically available to B.C. fabricators.

51. They suggested an *ad valorem* duty to replace the existing normal values and anti-dumping and countervailing duties of 10 percent for cooperating exporters and 12.5 percent for non-cooperating exporters. In the further alternative, they submitted that a tariff-rate quota may be considered.

ÇIB

52. The ÇIB echoed the submissions of the ICBA and B.C. government. It agreed that the costs imposed on all new concrete structures outweigh the "theoretical benefits" of the duties on rebar for final use in British Columbia for the domestic industry. The ÇIB also argued that the imposition of the full amount of the duties is not in the public interest when it exceeds the amount necessary to shield the domestic industry from injury. It submitted that, despite a modest margin of dumping, one Turkish exporter is excluded from any possible activity in Canada because its normal value is too high compared to current prices.

53. The ÇIB submitted that the Tribunal should recommend a reduction or elimination of anti-dumping duties on the subject goods for use in British Columbia from all subject countries.

Turkey

54. Turkey submitted that the imposition of the duties on imports of rebar for use in British Columbia is not in the public interest, as it will leave certain countries' companies as the only suppliers in British Columbia, entailing higher prices for consumers and taxpayers. An elimination of the duties would have no impact on jobs in other parts of Canada, as the domestic industry does not have sales in British Columbia.

Parties Opposing an Elimination or Reduction of Duties

ArcelorMittal, AltaSteel and the CSPA

55. ArcelorMittal, AltaSteel and the CSPA submitted that the supporting parties have not adduced sufficient evidence that the imposition of the duties on rebar imported for final use in British Columbia, in whole or in part, would not or might not be in the public interest.

56. They argued that there is no evidence that condominium prices will rise, that infrastructure projects will be jeopardized or faced with significant added costs, or that potential LNG projects will be threatened. According to ArcelorMittal, AltaSteel and the CSPA, the alleged cost increases were unsubstantiated and inconsistent, and included costs not germane to rebar itself.

57. They also pointed out that the projected increased costs were based on rebar prices substantially higher than the prevailing market price and, everything considered, were minor in light of the overall costs of the underlying projects. Furthermore, there is no evidence that rebar price increases are passed through the supply chain to downstream purchasers, and multiple factors that are more significant than the price of rebar influence the costs and viability of LNG, condominium and public infrastructure projects.

58. ArcelorMittal, AltaSteel and the CSPA argued that previous cases where the Tribunal had recommended a duty reduction are distinguishable from this case, in which none of the public interest factors of subsection 40.1(3) of the *SIM Regulations* are present. Namely, rebar remains available from a number of countries to which the findings do not apply, such that there is also no substantial impact on competition.

59. Moreover, their position was that the duties had not caused injury to producers that use rebar as inputs. They maintained that it had not been demonstrated that LMS and Midvalley, the only B.C. rebar fabricators supporting the request to eliminate the duties, had been financially affected or would be unable to adjust to the new market conditions. ArcelorMittal, AltaSteel and the CSPA submitted that the rebar fabrication industry and the development and construction sectors are highly competitive. They added that reducing or eliminating the duties would in fact create an unfair advantage for rebar fabricators over fabricated structural steel (FSS) suppliers, as FSS structures compete with concrete structures.

60. ArcelorMittal, AltaSteel and the CSPA submitted that a reduction of the duties in British Columbia would harm the domestic industry, their supply chains and employees. They argued that the domestic industry's modest sales thus far are due to significant inventory overhang in British Columbia and LMS's and Midvalley's reticence to buy from the domestic industry during these proceedings. They disagreed that freight costs make success in the B.C. market unrealistic and added that concerns about AltaSteel's capacity or focus are not supported by the evidence.

61. ArcelorMittal, AltaSteel and the CSPA submitted that the domestic producers' efforts in British Columbia will be thwarted if dumped and subsidized prices are re-introduced, which would particularly harm AltaSteel, given its market strategy. They further submitted that a reduction or elimination of the duties in British Columbia would impact other markets in Canada by setting low price expectations.

62. ArcelorMittal, AltaSteel and the CSPA reiterated their position from the injury inquiry that there are enforceability concerns with exempting products from the application of duties based on end use. They added that audits of records or sites are not an effective means of enforcement, as it is uncertain that the CBSA has resources to dedicate to such audits, and inspections are not possible once rebar is encased in concrete.

63. Finally, ArcelorMittal, AltaSteel and the CSPA submitted that reducing or eliminating duties on rebar for use in British Columbia ". . . would undermine the integrity of Canada's trade remedy system and its national application . . .",[30] be inconsistent with government policy, set a "dangerous precedent", discourage investment and be contrary to the "spirit and direction" of the *Agreement on Internal Trade*.[31]

64. ArcelorMittal, AltaSteel and the CSPA submitted that no remedy should be recommended. In the alternative, any recommendation should only concern rebar for use in British Columbia, include a

30. Exhibit PB-2014-001-46.02 at para. 137, Vol. 15.
31. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <http://www.ait-aci.ca/agreement-on-internal-trade/> [*AIT*].

recommendation to the Minister of Finance that additional resources be allocated to the CBSA for enforcement, maintain the countervailing duties levied on the subject goods from China, only reduce duties on rebar from China, as it is the only country for which the requesters have shown genuine interest, reduce anti-dumping duties only by the amount that makes imports from China competitive at market prices and should not include changes to existing normal values.

65. Applying these considerations, ArcelorMittal, AltaSteel and the CSPA concluded that no reduction of duties was warranted because current Chinese export prices already permit Chinese rebar to be competitively sold in British Columbia with the full amount of duties.

Gerdau

66. Gerdau submitted that no public interest has been identified that justifies a recommendation pursuant to section 45 of *SIMA* in this case. It emphasized that the public interest must be understood as the Canadian public interest and that the evidence does not show significant negative effects of the duties under any of the prescribed factors. According to Gerdau, rebar is readily available from the domestic producers, the United States and a number of overseas sources, there has been no substantial impact on competition, and prices in British Columbia have actually declined.

67. Gerdau argued that there is also no evidence of significant damage to producers that use rebar as inputs, and the three companies—LMS, Midvalley and Beedie—having participated in the proceedings cannot be presumed to represent other fabricators or developers in British Columbia.

68. In addition, Gerdau submitted that no significant impact on consumers and/or government and taxpayers has been shown, as the numbers put forward were neither substantiated nor contextualized and were overstated, and, even in the worst case scenario, the impact on the cost of projects would be minimal.

69. Gerdau argued that non-imposition of the duties in the full amount would, on the other hand, cause significant harm to the domestic producers. In the alternative, Gerdau submitted that any reduction in the amount of duties would be injurious to the domestic industry, given current Chinese prices, and would also impact the competitiveness of rebar fabricators in other provinces, by making shipment of cheap fabricated rebar from British Columbia into the rest of Canada economically feasible.

Nucor and Cascade[32]

70. Nucor and Cascade submitted that no "public interest" within the meaning of section 45 of *SIMA* that would warrant reducing the applicable duties has been identified in this case. They argued that both Nucor and Cascade have available capacity to serve the B.C. market, have reliably done so in the past and plan to continue doing so in the future and that, generally, both the United States and the world market is "awash" in rebar. Similarly, they argued that there is no impact on competition and that allegations of potential opportunistic pricing by U.S. suppliers are speculative. In particular, they argued that there was no evidence of favouritism by Nucor towards its sister company, Harris.

32. EVRAZ Inc. NA also filed brief submissions indicating, without further detail, that its facility in Pueblo, Colorado, produces rebar in coils in some metric sizes that could be imported into British Columbia. Exhibit PB-2014-001-L-01, Vol. 9B.

United Steelworkers

71. The United Steelworkers submitted that the evidence does not show that there is a public interest in eliminating or reducing the duties. They cautioned the Tribunal against accepting the proposition that the public interest of the citizens of British Columbia can be reduced to that of taxpayers and consumers. They submitted that the broader public interest includes preserving Canadian jobs in basic steel, which are high wage, unionized jobs of substantial benefit to Canadian communities, in contrast to the low environmental, health, safety and labour standards observed by Chinese steel producers. The United Steelworkers submitted that there was insufficient evidence to warrant any remedy recommendation.

Local 97

72. Local 97 argued that price increases are an insufficient basis, in and of themselves, to find that imposing the full amount of duties would not be in the public interest. It submitted that a reduction of duties on rebar for use in British Columbia would harm the domestic industry, as well as rebar placing companies in British Columbia other than LMS, including Harris Rebar and G&M Steel, which employ members of Local 97. It added that an exception on a regional basis would set a bad precedent.

Canadian Labour Congress

73. The Canadian Labour Congress submitted that a reduction of duties would harm the domestic industry and its suppliers and workers, weaken the national integrity of Canada's trade remedy system, diminish Canada's attractiveness to investment and create a dangerous precedent for future regional exclusions.

Canadian Manufacturers & Exporters, the CISC and the Metal Service Center Institute

74. Canadian Manufacturers & Exporters submitted that a reduction of duties on rebar for use in British Columbia would undermine the national integrity of Canada's trade remedy system, set the precedent for other regional exemptions and create a general erosion of the domestic industry, discourage investment, create a new barrier to trade contrary to the spirit of the *AIT* and weaken Canada's position in new free trade agreement negotiations.

75. A witness statement submitted by Mr. Edward Whalen, on behalf of the CISC, indicated that a reduction or elimination of the duties on rebar for use in British Columbia would unfairly affect the FSS industry, as concrete structures compete with FSS structures in British Columbia and elsewhere. He also challenged some of the cost increases for concrete structures as a result of the duties alleged by the B.C. government and the ICBA.

76. The Metal Service Center Institute submitted statements of evidence stressing the importance of fair international trade for its members.

Provinces and Municipalities Opposed

77. The provinces and municipalities opposed all argued that the duties on the subject goods for final use in British Columbia should be maintained in their full amount. For example, Manitoba argued that it is imperative that all trade remedies be implemented on a national basis, as a regional application would create new barriers to internal trade. It urged the Tribunal to apply a high standard for the initiation of public interest inquiries.

78. Ontario submitted that allowing dumping and subsidizing in any province threatens injury to the domestic industry everywhere in Canada. It submitted that there is a clear public interest in ensuring the protection of this industry, unless an "overriding public interest" exists.

79. Quebec submitted that a reduction of duties in British Columbia would materialize the threat of injury to the domestic industry, through distorted pricing in British Columbia and the lack of realistic ways to ensure that low-priced rebar does not reach other provinces. Quebec also submitted that the request does not show true public interest considerations and that allowing it would create an undesirable breach in Canada's trade remedy system.

80. Saskatchewan opposed the request on the basis that reducing duties in British Columbia would injure the domestic industry and its suppliers and employees, and that favouring unfairly traded imports over domestic products is misguided public policy. Saskatchewan opposed the creation of different competitive positions for user groups in different parts of Canada and argued that a differential treatment for British Columbia would create a new barrier to internal trade contrary to the spirit of the *AIT* and the *New West Partnership Trade Agreement*.[33]

81. Alberta submitted that a reduction of duties on a regional basis would render the underlying CBSA and Tribunal decisions meaningless and would not be adequate to eliminate the threat of injury to the domestic industry.

Domestic Producers of Other Steel Products

82. Tenaris Canada, Essar Steel Algoma Inc., SSAB Central Inc., EVRAZ Inc. NA Canada and U.S. Steel Canada, Inc. all filed arguments and/or statements of evidence indicating the opposition of their companies to a reduction or elimination of the duties on rebar for use in British Columbia in this case due to its potential effects in British Columbia and elsewhere, to the precedential value of this case for other steel products and other regions, and to the importance of trade remedies ensuring fair competition in the domestic market for Canadian steel producers and their supply chains.

PUBLIC INTEREST ANALYSIS

83. The supporting parties have argued broadly that the duties on rebar destined for final use in British Columbia are not in the public interest because they result in significant negative effects while providing ". . . virtually no measurable or sustainable benefit to the domestic industry."[34] As such, they submit that the duties are an unnecessary additional burden on B.C. fabricators, ultimate purchasers of condominium units and B.C. taxpayers.

84. The parties opposed broadly argued that the supporting parties have not identified a public interest that would warrant an elimination or reduction of the duties. They argued, on the contrary, that an elimination or reduction of the duties would not be in the public interest, as it would harm the domestic industry, its supply chain and employees, and would undermine the integrity of Canada's trade remedy system.

85. As indicated above, the Tribunal considers it established that the imposition of duties following an inquiry under section 42 of *SIMA* is in the public interest. This basic premise is recognized by the B.C. government and the ICBA.[35]

33. http://www.newwestpartnershiptrade.ca/pdf/NewWestPartnershipTradeAgreement.pdf.
34. Exhibit PB-2014-001-44.02 at para. 5, Vol. 15.
35. *Ibid.* at para. 3.

86. The purpose of a public interest inquiry is to determine whether the duties have unintended consequences such that it would be in the public interest to consider their elimination or reduction. If such is the case, the Tribunal will need to assess whether and in what way these public interest concerns can be mitigated.

87. In other words, the Tribunal will examine whether the three groups identified by the supporting parties, namely, downstream users of rebar (fabricators and developers), purchasers of condominium units and the B.C. government and taxpayers bearing the costs of public infrastructure, are experiencing unintended consequences as a result of the duties that are not in the public interest.

88. As noted above, the ICBA and the B.C. government also argued in their initial submissions that the duties on rebar from China and Korea, by increasing the costs of construction in British Columbia, are having or will likely have a detrimental effect on the development of an LNG industry in the province. They argued that one or more potential LNG proponents might decide not to proceed "... because of uneconomical construction costs ...."[36]

89. However, beyond this broad reference to construction costs, a reference to a letter from the Business Council of British Columbia and a newspaper article from December 2014 concerning one LNG project, the suggestion that the duties on rebar would jeopardize LNG projects was not substantiated by the supporting parties. Indeed, the Tribunal neither heard any further evidence regarding these allegations at the hearing, nor were the allegations regarding a threat that the duties may pose to LNG projects mentioned in the B.C. government and ICBA closing submissions.

90. On the other hand, evidence submitted by some of the parties opposed based on information gathered from news articles regarding certain LNG projects and from other publicly available information appears to show that any potential impact of the duties on rebar on the overall costs of an LNG project is small and that there are other factors such as oversupply and low oil and gas prices that affect decisions on whether LNG projects will proceed.[37] As such, the Tribunal will not further discuss the allegations regarding LNG projects.

91. To assess the impact of the duties, the Tribunal will first examine the evidence of the conditions prevalent in the B.C. rebar market during the period covered by this inquiry or expected to exist in the near future. The Tribunal will then provide a summary of its opinion on the impact of the duties on the three groups identified by the requesters. Finally, the Tribunal will provide its in-depth discussion of the public interest factors prescribed in subsection 40.1(3) of *SIMA* that are relevant in this case, as well as other factors that it considers relevant in the circumstances.

Market Trends in British Columbia

92. The evidence indicates that the B.C. rebar market has, since the imposition of provisional duties in September 2014 and final duties in January 2015, been a competitive market, with multiple sources of supply, consistent overall import volumes and competitive pricing.

93. Over the period from October 1, 2013, through the second quarter of 2015, the B.C. apparent market for rebar appears to have followed a relatively consistent pattern, reaching nearly 214,000 tonnes in the full year of 2014.[38] Virtually all this volume was sourced from imports, with domestic sales remaining at

36. Exhibit PB-2014-001-A-01 at para. 45, Vol. 7.
37. Exhibit PB-2014-001-E-01 at paras. 186-206 and related attachments, Vol. 9.
38. Exhibit PB-2014-001-12C, Tables 1, 4, Vol. 1.1; Exhibit PB-2014-001-13C (protected), Tables 1, 4, Vol. 2.1.

minimal levels through this period, including following the imposition of provisional duties in September 2014 and final duties in January 2015.

94. Meanwhile, overall volumes of imported rebar in the B.C. market (whether imported directly by fabricators or purchased through brokers) appear to have remained fairly consistent with historical levels throughout the period covered by the Tribunal's inquiry, including in the months following the imposition of provisional duties and final duties.[39]

95. Some notable changes were seen however in the sources of supply for the B.C. market. Indeed, in the first quarter of 2015, imports of the subject goods from Korea and China into the B.C. market effectively ceased, while significant volumes from new sources of imports appeared.[40] The evidence indicates that the new sources of rebar imported into British Columbia were Japan, Hong Kong and Taiwan. At the same time, imports from the United States remained consistently important, while no imports or sales of imports of the subject goods from Turkey were recorded at any point of the period covered by the Tribunal's inquiry.

96. With respect to prices, a consistent theme throughout the evidence, particularly witnesses' testimony, has been the declining trend in world rebar prices since the beginning of 2015. Witnesses attributed this trend to the declining price of scrap metal, an input in the production of rebar, while some also mentioned the state of global supply as another factor.[41]

97. This declining trend in the price of rebar has also played out in the Canadian and B.C. markets, as confirmed by the witnesses' consistent accounts,[42] although there is evidence that the drop attributable to lower input costs since the beginning of 2015 has been mitigated by other factors. According to the B.C. government and the ICBA, as a result of an approximate decline of 11 percent in the value of the Canadian dollar since September 2014, imported rebar was 6 percent more expensive in British Columbia in the first quarter of 2015 than in September 2014.[43]

98. In addition, reduced dumped and subsidized imports from China and Korea, and their substitution with relatively higher-priced non-subject imports, also appear to have contributed to raising the average rebar price in the B.C. market in the first and second quarters of 2015. As a result of a mix of these and other factors, based on the data collected by the Tribunal, the average apparent market price for rebar in the B.C. market was $731/tonne in the first quarter of 2015 and $752/tonne in the second quarter of 2015, compared to $732/tonne in the first quarter of 2014, $700/tonne in the second quarter of 2014 and $706/tonne in both the third and fourth quarters of 2014.[44]

99. At the time of the hearing, when asked to describe trends in the B.C. rebar market, the witnesses consistently referred to declining prices, while placing prevailing prices in a range similar to or somewhat lower than the average figures shown by the data collected by the Tribunal for the first half of 2015. For example, according to Mr. Matt Lyons of Nucor, B.C. prices were in the range of $700-$725/tonne

39. Exhibit PB-2014-001-13 (protected), Table 13, Vol. 2.1; Exhibit PB-2014-001-13B (protected), Table 21, Vol. 2.1. The supporting parties also recognize that imports have overall remained close to their longer-term average. Exhibit PB-2014-001-A-01 at para. 14, Vol. 7.
40. Exhibit PB-2014-001-12, Table 14, Vol. 1.1; Exhibit PB-2014-001-13 (protected), Table 13, Vol. 2.1.
41. *Transcript of Public Hearing*, Vol. 3, 29 July 2015, at 347-48, 370, 396, 419-20; *Transcript of In Camera Hearing*, Vol. 3, 29 July 2015, at 112-15; Exhibit PB-2014-001-12, Table 9, Vol. 1.1.
42. *Transcript of Public Hearing*, Vol. 3, 29 July 2015, at 347-48, 370-72, 396, 419-20; *Transcript of Public Hearing*, Vol. 5, 31 July 2015, at 566-67; *Transcript of In Camera Hearing*, Vol. 3, 29 July 2015, at 112-15.
43. Exhibit PB-2014-001-A-01 at paras. 9-12, Vol. 7; Exhibit PB-2014-001-01, Vol. 1 at 21.
44. Exhibit PB-2014-001-12C, Table 7, Vol. 1.1; Exhibit PB-2014-001-13C (protected), Table 7, Vol. 2.1.

delivered at the time of the hearing.[45] Mr. Roger Paiva of Gerdau and Mr. Ben Zurbrigg of AltaSteel both stated that they expect prices in British Columbia to stay close to $750/tonne.[46] Broadly consistent evidence was provided *in camera* by Mr. Norm Streu of LMS.[47] ArcelorMittal, AltaSteel and the CSPA submitted in closing arguments that the current B.C. market price is in the range of $700-$750/tonne, suggesting an average price of $725/tonne.[48]

100. Going forward, witnesses generally testified that they foresee prices remaining at similar levels. Some suggested that further declines in the price of scrap are possible, with resultant lower rebar prices.[49] Indeed, forecasts for 2015 and 2016 submitted in response to Tribunal questionnaires indicate overall apparent market prices of $718/tonne and $728/tonne, respectively, with expected prices of other non-subject imports at levels lower than those of imports from the United States and domestic rebar.[50]

101. In the Tribunal's view, the current global picture of the B.C. rebar market appears to reflect a competitive market for fairly traded rebar, with multiple sources of supply and prices that respond to supply and demand, as well as factors such as fluctuations in the price of scrap and the strength of the Canadian dollar. The duties thus seem to have had their intended consequences of neutralizing the effects of unfair trade practices while allowing market forces to generate a new competitive environment for fairly traded goods.

102. In particular, as will be discussed further below, the evidence also indicates that the new market reality is one in which the domestic industry can compete, notwithstanding its poor performance thus far in British Columbia.

Consequences of the Duties on B.C. Fabricators, Condominium Purchasers and Public Infrastructure Projects

103. After examination of the relevant prescribed factors and other factors, and on the basis of the evidence of current and expected market conditions in British Columbia, the Tribunal is of the opinion that, in this case, the duties have not resulted and are not likely to result in unintended consequences for B.C. fabricators, purchasers of condominium units or public infrastructure projects that warrant a reduction or elimination of the duties.

No Unintended Consequences for Fabricators

104. The Tribunal acknowledges that, as a result of the imposition of duties on imports from the subject countries, fabricators are generally likely to pay more to procure such imports, or to purchase other relatively more expensive goods, than they would if the subject goods at dumped or subsidized prices were available. In addition, the Tribunal recognizes that there is likely to be a period of adjustment and transition to the new supply situation, which may particularly affect fabricators that are historically more reliant on the subject goods.

105. However, no persuasive evidence has been adduced in this case to show that such effects represent anything more than the normal and intended consequences of the application of anti-dumping and

45. *Transcript of Public Hearing*, Vol. 5, 31 July 2015, at 567.
46. *Transcript of Public Hearing*, Vol. 3, 29 July 2015, at 388, 419.
47. *Transcript of In Camera Hearing*, Vol. 2, 28 July 2015, at 60-61, 88.
48. Exhibit PB-2014-001-46.02 at para. 160, Vol. 15.
49. *Transcript of Public Hearing*, Vol. 3, 29 July 2015, at 347-48, 388-89; *Transcript of Public Hearing*, Vol. 4, 30 July 2015, at 438, 491, 497-98.
50. Exhibit PB-2014-001-12B, Table 81, Vol. 1.1; Exhibit PB-2014-001-13B (protected), Table 81, Vol. 2.1.

countervailing duties or to show that any difficulties faced by fabricators cannot be overcome. On the contrary, the evidence indicates that fabricators currently have access to low world rebar prices from multiple sources which, in the Tribunal's view, will allow them to continue to compete for business in the admittedly highly competitive rebar fabrication market in British Columbia, notwithstanding any changes in their operations that may be necessary as a result of the new market conditions.

106. In sum, nothing suggests that fabricators in British Columbia are experiencing unintended consequences as a result of the imposition of duties that would increase to the level of a public interest that could warrant a reduction or elimination of duties.

No Unintended Consequences for Purchasers of Condominium Units

107. The evidence shows that the effect of the duties on the price of new condominium units is very small, if at all registered. Even assuming that the duties have increased real estate prices in British Columbia, particularly in the Lower Mainland, as compared to where they would be without the duties, no evidence has been submitted to demonstrate that the significance of any price increases would result in cancelled or delayed new condominium projects, as alleged by the supporting parties, or significant effects on the affordability of housing.

108. In addition, because real estate prices are driven by other, far more significant factors than the duties on the subject goods, a reduction or elimination of duties would be unlikely to have any material effect on real estate prices. On the basis of the current conditions, the Tribunal is of the view that the consequences of the duties for purchasers of new condominium units do not rise to the level of a public interest that could warrant a reduction or elimination of the duties.

No Unintended Consequences for Public Infrastructure Projects

109. The evidence demonstrates once again that the current market reflects an adequate balance between the level of protection against unfair trade practices required by the domestic industry and the resultant costs for public infrastructure projects. An analysis of current rebar prices shows that no significant cost increases in the price of rebar have ensued further to the imposition of the duties, nor are any expected in the foreseeable future, and that the potential foregone savings to public infrastructure projects are in relative balance with the projected benefits to the domestic industry.

110. These conclusions are reached on the basis of the evidence of current market conditions, as well as evidence that these conditions are likely to continue. Specifically, the evidence suggests that supply conditions are unlikely to change significantly in the near future and that rebar prices are likely to remain constant or decrease further following fluctuations in the price of scrap. Had the evidence demonstrated that there was an imbalance between the level of protection offered to the domestic industry and the costs imposed as a result of that protection, the Tribunal would have considered recommending the adjustment of the duties to a level that balances more appropriately the various interests affected by the duties. However, as will be further discussed below, the evidence does not show any significant imbalance in the market at the moment or in the foreseeable future.

Analysis of Relevant Public Interest Factors

Availability of Goods of the Same Description from Countries or Exporters to which the Finding does not Apply (paragraph 40.1(3)(*a*) of the *SIM Regulations*)

111. The evidence indicates that rebar is readily available in British Columbia, at competitive terms, from countries or exporters to which the finding does not apply.

112. The supporting parties acknowledged that imports from non-subject sources have been available since the duties were imposed, both from the United States, historically the single most important source of rebar for British Columbia, and from new non-subject sources such as Hong Kong, Taiwan and Japan. As Mr. Streu indicated, there has been no shortage of supply as a result of the finding.[51] In fact, the evidence was that there was currently ". . . quite a lot of rebar sitting at the [Vancouver] docks . . ."[52] which would have gone towards meeting jobs on hand.

113. Nevertheless, the supporting parties argued that this rebar is not an adequate long-term replacement for the subject goods. Mr. Streu testified that, despite LMS's best efforts to find alternative sources of rebar, it has found that very few mills in Asia are interested in making the technical adjustments required to produce CSA rebar, given the relatively small size of the B.C. market, that there is a limited pool of mills reasonably proximate to an ocean port (so as to avoid excessive inland freight costs), that none of the alternative mills are in a position to provide the full range of rebar sizes required by LMS and that some do not produce rebar in certain sizes at all.

114. According to Mr. Streu, this has significantly affected LMS's terms of supply, in the form of increased costs and operational risk, when compared to the terms extended historically by Chinese and Korean suppliers. Mr. Streu added that rebar from alternative offshore sources is currently costing B.C. fabricators approximately 25 percent more than what would be available from China, given current Chinese prices.[53] Mr. Streu also testified that Chinese and Korean suppliers would offer long-term fixed prices for 90 days and for as much as one year,[54] while domestic and U.S. mills typically only quote for 30 days, a significant factor given that fabricators themselves submit bids with fixed prices to their customers and need to avoid exposure to fluctuations in their rebar costs.

115. Mr. Streu stressed that LMS purchases rebar for work on hand and cannot operate without a consistent supply of large volumes of rebar at competitive, long-term prices. He added that none of the alternative mills identified have been willing to make long-term commitments to LMS and that one Japanese supplier recently indicated that it would no longer fill orders to Canada, which indicates that other mills may follow suit.[55]

116. With respect to U.S. suppliers, notably Nucor and Cascade, Mr. Streu indicated that LMS has a long-standing and valued relationship with these suppliers. There have nonetheless been busy times when Nucor and Cascade have put LMS on "allocation", i.e. impose a limit on the amount of rebar that can be bought, or have been unable to add orders to their production schedules for a given month. Furthermore, Mr. Streu was concerned that, should Asian sources dry up, U.S. mills would become the sole source of

51. *Transcript of Public Hearing*, Vol. 2, 28 July 2015, at 243.
52. *Ibid.* at 246.
53. *Ibid.* at 207-208.
54. *Ibid.* at 197-98; Exhibit PB-2014-001-J-03 at para. 9, Vol. 7.
55. Exhibit PB-2014-001-J-03 at paras. 9-10, 17, Vol. 7; Exhibit PB-2014-001-J-03A at paras. 17, 21, Vol. 7; *Transcript of Public Hearing*, Vol. 2, 28 July 2015, at 203, 208-212, 225-26.

supply for the B.C. market, a fact especially concerning because Nucor and Harris, its main competitor in the B.C. fabrication market, are related companies.[56]

117. Mr. Anoop Khosla echoed these concerns. He highlighted that, for Midvalley, longer-term fixed prices were an important advantage enjoyed from Chinese and Korean suppliers. He indicated that the world market for rebar was in an oversupply situation at present, but that, once the market stabilizes, rebar supply may become challenging. In particular, he stated that U.S. producers may place B.C. fabricators on allocation, similar to what happened in 2014 with Cascade.[57] Mr. Khosla stated that alternative sources of supply will unlikely be available when demand in their domestic markets improves.[58]

118. In the Tribunal's view, this evidence falls short of indicating that rebar is not readily available in British Columbia from non-subject sources. The Tribunal heard no convincing evidence that the difficulties alleged by the two B.C. fabricators cannot be overcome or are indicative of anything more than the period of transition that must be expected when duties are imposed. For instance, while much insistence was placed on a reluctance of offshore mills to produce to the CSA standard, the Tribunal is convinced by evidence that indicates that standard-related issues can be overcome and addressed by a minimal investment by the producer.[59]

119. In addition, both Mr. Streu and Mr. Khosla indicated their concern that access to alternative sources of rebar may disappear once demand in Asia picks up. However, no convincing evidence of a forthcoming increase in demand for rebar in Asia was presented. On the contrary, the Tribunal found, in Inquiry No. NQ-2014-001, that there is chronic global overcapacity for rebar, including over 112 million tonnes of rebar capacity in China alone.[60] Evidence on the record indicates that this oversupply persists, exacerbated by low domestic Chinese demand. Given the Chinese steel exporters' documented focus on export markets, including neighbouring countries, the oversupply situation in China is also likely to have a broader impact on the regional supply situation and, in the Tribunal's view, makes it unlikely that existing alternative sources from Asia will stop seeking export markets, including Canada.[61]

120. Furthermore, despite claims that fabricators need to incur additional costs, imports from new countries, and purchases of such imports, appear to be priced competitively when compared to B.C. market prices.[62] In the Tribunal's view, these prices are at levels that have been established in a fair market environment, based on factors such as fluctuations in the price of scrap and the strength of the Canadian dollar.

121. While Mr. Streu indicated that current Chinese prices (without the duties) were significantly lower than the prevailing B.C. market price, including the prices of rebar from new Asian sources, in the Tribunal's view, this only underscores what is normally expected in a case where dumping or subsidizing is found, as the B.C. market prices post-finding reflect market conditions that are unaffected by unfair trade practices. In other words, they reflect a market that operates as intended by Parliament when duties are imposed.

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56. Exhibit PB-2014-001-J-03A at paras. 31-35, Vol. 7; *Transcript of Public Hearing*, Vol. 2, 28 July 2015, at 204-205.
57. *Transcript of Public Hearing*, Vol. 2, 28 July 2015, at 306-307.
58. Exhibit PB-2014-001-J-05 at para. 6, Vol. 7; *Transcript of Public Hearing*, Vol. 2, 28 July 2015, at 200-203, 210-11.
59. *Transcript of Public Hearing*, Vol. 3, 29 July 2015, at 402-404, 413-14; *Transcript of Public Hearing*, Vol. 4, 30 July 2015, at 435-37; *Transcript of Public Hearing*, Vol. 5, 31 July 2015, at 584, 596-98, 608-609.
60. Inquiry No. NQ-2014-001 at paras. 223-34.
61. Exhibit PB-2014-001-E-04 (protected), Attachment 3, Vol. 10; Exhibit PB-2014-001-E-03, Tables 3, 4, Vol. 9; Exhibit PB-2014-001-E-03, Attachment 4, Vol. 9.
62. Exhibit PB-2014-001-13C (protected), Table 7, Vol. 2.1.

122. Conversely, the fact that goods from alternative sources are priced higher than Chinese prices, without the duties, does not mean, for the purposes of the analysis under paragraph 40.1(3)(*a*) of the *SIM Regulations*, that rebar from these alternative sources is not available at competitive terms.

123. In addition, Nucor and Cascade remain viable alternative sources of supply. The Tribunal has seen or heard no convincing evidence that they would put Canadian clients on allocation or that they are likely to take advantage of the supply situation in British Columbia to implement disproportionate price increases. On the contrary, Mr. Lyons and Mr. Streu both testified to the importance of the relationship between their two companies. Mr. Streu agreed that Nucor and Cascade can be fairly described as "partners" with an ongoing commitment to the B.C. market, which have provided reliable and competitive supply over a number of years.[63]

124. Ultimately, Mr. Streu indicated that the concern with respect to Nucor was that, if offshore supply is unavailable, Nucor will remain as LMS's only supply option.[64] However, as indicated, the Tribunal is not convinced that U.S. mills are likely to remain as the sole sources of supply available to B.C. fabricators. Thus, for example, even taking into account Mr. Khosla's testimony that Midvalley was placed on allocation by Cascade in 2014, the Tribunal is of the view that, should this happen in the future, any resultant supply shortfall could be met by other supply sources, as was the case in 2014.[65]

125. As such, the circumstances of this case are distinguishable from those in Public Interest Inquiry No. PB-2004-002,[66] where the Tribunal concluded that certain categories of goods were not readily available from non-subject sources. In that case, the evidence indicated that goods from non-subject sources had significantly longer delivery times than the subject goods from the United States, while speed of delivery at short notice was an important aspect of supply for the goods in that case.[67] Nothing of the sort has been shown in this case. While the alleged differences in the terms of supply of rebar from countries other than China and Korea represent certain added costs and inconveniences for fabricators such as LMS and Midvalley, they are more consistent with a period of transition to new sources of supply than a lack of rebar on reasonable terms.

126. Finally, it must be mentioned that, as will be discussed further below, the Tribunal heard convincing testimony that Canadian producers are positioning themselves to supply the B.C. market at competitive prices and terms.

> Competition in the Domestic Market in Respect of Goods (subparagraph 40.1(3)(*b*)(i) of the *SIM Regulations*)

127. The imposition of the duties has not eliminated or substantially lessened, and is not likely to eliminate or substantially lessen, competition in the domestic market in respect of goods.

128. The concerns expressed by the ICBA and the B.C. government regarding competition in the market for rebar at the supplier level appear to relate to the alleged concern that alternative sources of imports would "dry up", leaving U.S. suppliers as the sole sources of rebar for British Columbia and allowing them to impose opportunistic pricing. As outlined in the previous section, however, the Tribunal is not convinced

63. *Transcript of Public Hearing*, Vol. 2, 28 July 2015, at 300-301, 308-309.
64. *Ibid.* at 311.
65. *Ibid.* at 307.
66. *Certain Stainless Steel Round Wire* (22 March 2005) (CITT).
67. *Ibid.* at para. 74.

that this scenario is likely. As such, it cannot be said that the duties have eliminated or substantially lessened competition in the market for the supply of rebar in British Columbia or that they are likely to do so.

129. The evidence of pricing in British Columbia also supports the Tribunal's opinion that the duties have not eliminated or substantially lessened competition in this market. From a competition point of view, the duties seem to have played their intended role. They allowed for the establishment of competitive market conditions free of the influence of unfair trade practices. Of course, the fact that the market price may be higher than it would be if the subject goods, free of duties, were present in the market is a natural and intended consequence of *SIMA*, as discussed above.

130. As stated, measures promote competition free of unfair trade practices, which implies neutralizing the unfair price advantage of the subject goods. Thus, the fact that prices are higher than they otherwise would be cannot, in itself, suggest that the duties are causing competition concerns in the B.C. rebar supply market.

131. Going forward, the witnesses' evidence indicates that prices are likely to remain relatively stable, or fluctuate slightly, potentially declining further, in tandem with trends in the price of scrap.[68] In the Tribunal's view, this denotes a healthy competitive environment, as it indicates that the prices respond to normal market factors.

132. In addition to the fact that there appears to be no shortage of sources of imported rebar, the evidence suggests that Canadian producers can now offer another competitive source of rebar for the B.C. market. The Tribunal heard convincing, detailed evidence during the public hearing that Canadian producers have been making significant efforts towards entering the B.C. market and have a realistic possibility of doing so under current market conditions.

133. For example, Mr. Zurbrigg testified that the duties have helped to improve AltaSteel's material margins, making it possible for AltaSteel to compete in the B.C. market, and that, since the finding, it has aimed to serve both long-standing and new customers.[69] AltaSteel has engaged with fabricators in British Columbia to acquire market intelligence specific to British Columbia, particularly on prices and market needs, which differ from those of the Alberta market, and to elaborate a strategy for the B.C. market.[70]

134. Mr. Ron Molloy and Mr. Zurbrigg described AltaSteel's overall strategy, confirming that rebar is one of its three core products and that the rebar market, particularly the B.C. rebar market, is key to AltaSteel's growth. Mr. Molloy described improvements made, notably to AltaSteel's steel production process, to increase efficiencies.[71]

135. At the time of the hearing, AltaSteel's efforts had started to yield some results.[72] Indeed, Mr. Khosla also testified that Midvalley was prepared to give AltaSteel a fair opportunity in the fall of 2015 if prices are competitive.[73] It was also confirmed that Midvalley had of late accepted an offer to purchase rebar certified to the Leadership in Energy and Environmental Design (LEED) rating system from AltaSteel, as the price was right. While Mr. Khosla explained that projects that require LEED rebar are particular in the sense that

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68. *Transcript of Public Hearing*, Vol. 3, 29 July 2015, at 347-48, 388-89; *Transcript of Public Hearing*, Vol. 4, 30 July 2015, at 438, 491, 497-98.
69. *Transcript of Public Hearing*, Vol. 3, 29 July 2015, at 351, 393; Exhibit PB-2014-001-F-06 (protected) at para. 20, Vol. 10B.
70. *Transcript of Public Hearing*, Vol. 3, 29 July 2015, at 351-52, 379-82.
71. *Ibid.* at 345-46, 356-57, 383-86.
72. *Transcript of In Camera Hearing*, Vol. 3, 29 July 2015, at 130-31.
73. *Transcript of Public Hearing*, Vol. 2, 28 July 2015, at 331-32.

only the U.S. mills and AltaSteel can meet the requirements, and are typically higher-priced, he also testified that projects requiring LEED rebar can represent as much as 40 to 60 percent of projects at a given time.[74]

136. Overall, while LMS and Midvalley voiced certain concerns about AltaSteel's reliability, the evidence shows that many of these concerns related to a unique incident in 2010.[75] Furthermore, the Tribunal is satisfied that AltaSteel has persuasively explained its motivation and strategy to supply rebar in British Columbia and that these are not contingent on demand in its home market in Alberta or for other categories of products.[76] The Tribunal heard further details *in camera* regarding AltaSteel's efforts with respect to rebar and the B.C. market.

137. Similarly, Mr. Paiva testified that Gerdau was ready to participate in the B.C. market. He testified that Gerdau's Whitby, Ontario, mill would be operating with three crews starting in September 2015, which will represent 100,000 tonnes of additional production, as well as significantly diluted costs of production.

138. Mr. Paiva testified that Gerdau's plan is to supply the Canadian rebar market out of the Whitby operation, including those segments like the B.C. market that may previously have been supplied from affiliated U.S. mills.[77] ArcelorMittal also explained its strategy to put "boots on the ground" to realize modest sales in certain segments of the B.C. market; the Tribunal heard details on this strategy *in camera*.[78]

139. On the basis of the foregoing, the Tribunal is of the opinion that competition in British Columbia for the supply of rebar is healthy. Particularly, the Tribunal is convinced that non-U.S. alternative sources of supply, as well as Canadian sources, will impose discipline on U.S. suppliers, which should alleviate the concerns of the supporting parties in respect of competitive supply and prices of rebar.

140. In fact, as noted above, the ICBA and the B.C. government focused most of their submissions under this factor not at the supply trade level but at the fabricator and developer trade levels. The alleged impact of the duties on fabricators and their customers is examined more closely in the following sections.

> Significant Damage to Producers that use the Goods as Inputs in the Production of Other Goods and in the Provision of Services (subparagraph 40.1(3)(*b*)(ii) of the *SIM Regulations*)

141. The ICBA and the B.C. government alleged that, due to the uncertainty of their supply, B.C. rebar fabricators are now required to carry inventories where they were not required to do so before, which has resulted in increased storage and carrying costs. In addition, they alleged that they are being more circumspect in bidding on new projects, which may result in lost revenue. The ÇIB also highlighted the impact that the uncertainty in the market is having on rebar fabricators.

142. ArcelorMittal and AltaSteel submitted that none of the supporting companies have provided any evidence of their lost bidding opportunities or increased costs associated with carrying inventories and that the evidence shows that, for those fabricators that provided information, fabricators' financial performance has not been negatively affected. In addition, ArcelorMittal and AltaSteel noted again that rebar prices have been on a declining trend in 2015 and that there has been no supply shortage.

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74. *Ibid.* at 250-51, 280-81.
75. *Ibid.* at 199-200, 244-45; *Transcript of Public Hearing*, Vol. 3, 29 July 2015, at 355-56, 394.
76. *Transcript of Public Hearing*, Vol. 3, 29 July 2015, at 380-87, 390-91.
77. *Ibid.* at 396-402, 416-17.
78. *Transcript of Public Hearing*, Vol. 4, 30 July 2015, at 430-31; *Transcript of In Camera Hearing*, Vol. 4, 30 July 2015, at 231-35.

143. Gerdau also notes that the fabricators' financial performance does not appear to have been affected by the imposition of the duties. In addition, Gerdau noted that there are other B.C. fabricators that did not import from the subject countries and submitted that the Tribunal must consider damage in the context of the B.C. fabricators as a whole, i.e. that any damage suffered by the supporting B.C. fabricators should be balanced against the damage that the removal of the duties would cause to those fabricators in the B.C. market that do not rely on imports of the subject goods. Similar arguments were put forward by Local 97, whose members include workers from Harris.

144. In this case, the allegations of the fabricators are all in respect of situations or circumstances that the Tribunal has repeatedly found to be the natural result of the re-balancing of the marketplace, which is the intended consequence of the imposition of anti-dumping and countervailing duties. It is worth noting that, despite the submissions of the ICBA and the B.C. government summarized above, at the hearing, Mr. Streu testified that the *only* impact of the duties on the operations of LMS is that it has been required to switch suppliers. Mr. Khosla stated that the impact on Midvalley has been the disruption of the market cycle that has been in place for the past 15 years.[79]

145. As previously stated, it is expected that the market will undergo an initial adjustment phase after the imposition of duties that may be disruptive to those that have been relying on imports of unfairly traded goods. The necessity to locate comparatively more expensive alternative sources of supply, and to potentially incur additional costs related to handling, transportation and storage, is normal and an expected consequence of the "levelling of the playing field" that is the intended result of the imposition of the duties.

146. It is also to be expected that these consequences might ultimately have a negative impact on the businesses of users that were importing or relying on imports of the subject goods. However, the evidence before the Tribunal does not indicate that either rebar fabricators or downstream purchasers in the residential and commercial construction sectors have suffered or are likely to suffer any significant damage.

147. Neither LMS nor Midvalley was able to provide the Tribunal with the information that it requested regarding carrying costs related to inventories.[80] The information submitted to the Tribunal by these companies shows no impact on either their 2014 or forecasted 2015-2016 financial performance.[81]

148. Furthermore, the ICBA and the B.C. government have argued that any increases in costs experienced by fabricators would be passed on, in whole or in part, as appropriate in the particular competitive circumstances, to their customers, as is normally expected from rational economic actors.[82] If this is the case, then fabricators should not incur any significant additional costs themselves.

149. With respect to the impact on the residential and commercial construction sectors, the Tribunal heard from Mr. J.K. Bogusz of Beedie that, because real estate prices in the B.C. market are already prohibitively high, it is difficult to pass any increased costs on to consumers in price-sensitive market segments such as downsizers and first-time homeowners. As a result, Beedie will either have to face reduced margins or cancel some projects.[83] However, the supporting parties have not submitted further evidence of reduced margins or cancelled projects that, according to them, substantiates such allegations.

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79. *Transcript of Public Hearing*, Vol. 2, 28 July 2015, at 218-19.
80. Exhibit PB-2014-001-RI-31A (protected) at 4, Vol. 12; Exhibit PB-2014-001-RI-34A (protected) at 4, Vol. 12.
81. Exhibit PB-2014-001-13 (protected), Schedule 40, Vol. 2.1; Exhibit PB-2014-001-RI-31A (protected), Vol. 12; *Transcript of In Camera Hearing*, Vol. 2, 28 July 2015, at 71-72.
82. *Transcript of Public Hearing*, Vol. 2, 28 July 2015, at 241-42; *Transcript of In Camera Hearing*, Vol. 2, 28 July 2015, at 61-62; Exhibit PB-2014-001-48.01 at paras. 22-24, Vol. 15.
83. *Transcript of Public Hearing*, Vol. 2, 28 July 2015, at 231-32; Exhibit PB-2014-001-J-07 at para. 6, Vol. 7.

Indeed, Mr. Bogusz indicated that the rebar prices that Beedie received when it requested bids have remained flat or been slightly lower, suggesting that Beedie has not seen any increased costs as a result of the finding to date.[84] In addition, should Beedie's fabricated rebar costs increase in the future and should it be unable to pass them on to consumers, the Tribunal heard testimony *in camera* that puts expressed concerns about the viability of projects into perspective.[85] Ultimately, those concerns were not convincing.

150. As a result, the Tribunal is of the opinion that the duties have not caused and are not likely to cause significant damage to producers that use the subject goods as inputs in the production of other goods.

> Significant Impairment to Competitiveness due to Limited Access to Goods used as Inputs in the Production of Other Goods and in the Provision of Services (subparagraph 40.1(3)(*b*)(iii) of the *SIM Regulations*)

151. The ICBA and the B.C. government also alleged that fabricators that had relied on offshore sources are at a competitive disadvantage now as compared to fabricators that have sourced from the United States (particularly Harris because of its relationship with Nucor). Further, they cautioned that, should the current alternative offshore suppliers cease supplying them with rebar, U.S. suppliers will be free to increase prices due to a lack of competition.

152. The ICBA and the B.C. government also alleged that fabricators are being more circumspect in bidding on projects because of anticipated supply issues, which reduces competition for bids and increases prices for developers and, ultimately, for consumers of residential and commercial real estate.

153. Gerdau, AltaSteel, ArcelorMittal and other parties opposed argued that there is no limitation of access to non-subject goods at competitive prices and that, therefore, there should be no effect on competitiveness in the downstream market.

154. The impact of the duties on competition in the rebar market through the limitation of access to sources other than imports from the United States has been extensively discussed above. The Tribunal is of the view that it is not likely that the United States will become the only source of supply for rebar in the B.C. market.

155. At the hearing, the witnesses for the ICBA expressed further concern that they will be at a competitive disadvantage because Harris might receive more favourable treatment from its sister company, Nucor, in terms of pricing, access to rebar or more favourable credit terms. However, these concerns appear to be based purely on speculation.[86] In addition, Mr. Lyons testified that Nucor does not engage in any favouritism towards Harris; specifically, Nucor has no obligation to supply Harris before other purchasers, Harris has no obligation to buy from Nucor over other suppliers, and the price that Nucor offers to Harris is a market price.[87]

156. With respect to the claims of lost opportunity to bid on projects and the resultant decrease in competition among fabricators, although Mr. Khosla reiterated that Midvalley has been "skeptical" of bidding on long-term projects,[88] none of the parties have submitted any examples of projects where B.C. fabricators have declined to bid due to these concerns. In addition, Mr. Khosla testified that there is currently "intense" competition among fabricators in the B.C. market.[89]

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84. *Transcript of Public Hearing*, Vol. 2, 28 July 2015, at 324-25.
85. *Transcript of In Camera Hearing*, Vol. 2, 28 July 2015, at 127-28.
86. *Transcript of Public Hearing*, Vol. 2, 28 July 2015, at 204-205, 312.
87. *Transcript of Public Hearing*, Vol. 5, 31 July 2015, at 575-76.
88. *Transcript of Public Hearing*, Vol. 2, 28 July 2015, at 212.
89. *Ibid.* at 197.

157. Similarly, there is little to no evidence on the record concerning any potential impact of their alleged decreased participation in bidding on competition in the downstream construction market. The witness for Beedie made no mention of any difficulties that it faced in this regard.

> Restricted Choice and Availability of Goods at Competitive Prices for Consumers or Other Significant Harm to Consumers Caused by Duties in the Full Amount (subparagraph 40.1(3)(*b*)(iv) of the *SIM Regulations*)

158. The ICBA and the B.C. government submitted that the impact of the duties on B.C. residents is significant and widespread. They submitted that the duties will increase construction costs, which will result in higher real estate prices for B.C. homebuyers, particularly in the Lower Mainland.

159. With respect to the market for concrete condominiums in the Lower Mainland of British Columbia, the ICBA and the B.C. government submitted that, for example, if the duties result in installed rebar prices that are 10 percent higher than they otherwise would be, this would represent a 1 to 1.5 percent increase in the overall cost of a project.

160. The ICBA and the B.C. government submitted that fabricators and developers cannot simply absorb price increases of this magnitude and will choose to either delay or cancel projects or pass the increased costs on to subsequent purchasers, the effect in both cases being negative. They submitted that fabricators and developers will make every possible effort to pass these costs onwards, which will inevitably drive condominium sale prices up.

161. To illustrate this point, the ICBA and the B.C. government argued that the same 10 percent increase in fabricated and installed rebar costs could result in an increase of up to $1,650 per condominium unit and that this amount does not factor in other compounding costs, such as the additional cost of borrowing. While they conceded that real estate prices are influenced by a number of factors unrelated to rebar, they submitted that the important fact is that rebar prices higher than they otherwise would be will result in condominium prices that are also higher than they otherwise would be and that any upward pressure on the already unaffordable prices of real estate in the Lower Mainland of British Columbia is not in the public interest.

162. Finally, the B.C. government and the ICBA argued that, even if such cost increases are not passed on to the ultimate purchasers, reduced profit margins of fabricators and developers would mean a lesser contribution by these companies to overall economic activity and government tax revenues.

163. The parties opposed submitted that there is no evidence to show significant adverse impacts on B.C. homebuyers. For example, ArcelorMittal, AltaSteel and the CSPA, as well as Gerdau, submitted that the cost increases alleged by the supporting parties were unsubstantiated, inconsistent and exaggerated through either the inclusion of expenses not germane to rebar itself or the use of rebar prices substantially higher than the B.C. prevailing market price.

164. ArcelorMittal, AltaSteel and the CSPA all further submitted that there is no evidence that fabricators and developers directly pass on increases in the price of rebar to downstream purchasers. Finally, ArcelorMittal, AltaSteel and the CSPA submitted that there is no evidence that the cost of rebar influences B.C. housing prices, as these prices did not decrease when the rebar price decreased.

165. While the Tribunal would not expect, as argued by the parties opposed, that housing prices would fall as a result of a decrease in rebar prices, there is no evidence that increases in the cost of rebar are having any material impact on the price of condominiums in the B.C. market.

166. As discussed above, the supporting parties have presented no evidence that fabricators or developers have had to delay or cancel proposed projects. There is no indication, therefore, that the increase in the cost of rebar is impacting the choice or availability of condominium units to consumers at competitive prices in this manner.

167. In addition, as noted above, Mr. Bogusz's testimony indicates that Beedie, for example, has not yet actually experienced any increases in the price of rebar quoted by fabricators.[90] In addition, the evidence indicates that rebar prices should remain at similar levels going forward. Further, the evidence is unclear that any eventual increase in the cost of rebar would be passed through the supply chain to consumers in its entirety.

168. While the witnesses for LMS and Midvalley testified that they will make every effort to pass on these costs, as discussed above, the witness for Beedie stated that it will be difficult to pass on these costs to its customers, at least in some market segments. To what extent the duties themselves impact consumers is questionable.

169. Ultimately, as Mr. Bogusz's testimony confirms, the price of a condominium unit, including the profit margin of the developer, is determined by supply and demand.[91] Indeed, as also recognized by the ICBA and the B.C. government,[92] the cost of housing in British Columbia is driven by a multitude of other market factors independent of the cost of rebar. In other words, in the Tribunal's opinion, it is also unlikely that B.C. housing prices, let alone its affordability issues, would be different in any material degree but for the duties.

170. Nevertheless, even if the Tribunal accepts the supporting parties' contention that installed rebar costs may increase by 10 percent as a result of the duties and cause an increase of up to $1,650 in the cost of an average condominium unit, the impact of such a cost increase on the purchaser is marginal. Amortized over a 25-year mortgage at a 3 percent interest rate, this increase would result in an additional cost of under $1.31 per week to the consumer, or $2.22 per week in pre-tax dollars.[93] In the absence of evidence to the contrary, the Tribunal considers such potential costs to be relatively insignificant.

171. The supporting parties have also argued that such cost increases would represent a significant total cost to the B.C. real estate market. The evidence on the Tribunal's record shows that, measured over the number of new starts for multiple family housing forecast for 2015, an increase of $1,650 per condominium unit would result in an aggregate cost of $28.7 million to $32.5 million.[94] However, when considered in the context of the value for total sales of new multiple family housing in British Columbia, again, the cost increase represents a maximum of about 0.29 percent of the B.C. real estate market for multiple family housing.[95]

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90. *Ibid.* at 324-25.
91. *Ibid.* at 231-32, 254.
92. Exhibit PB-2014-001- 44.02 at para. 46, Vol. 15.
93. Exhibit PB-2014-001-12C, Table 18, Vol. 1.1, which shows the weekly impact of a 10 percent increase in rebar costs on various types of housing. Across the different scenarios, the weekly impact on the consumer is between $0.14 and $1.81 per week.
94. Exhibit PB-2014-001-41.01, Vol. 1D at 82. CMHC projects from 17,400 to 19,700 new starts for multiple family housing units in 2015.
95. Exhibit PB-2014-001-41.01, Vol. 1D at 82. The total value of the B.C. real estate market for new multiple family housing has been calculated on the basis of the average Multiple Listing Service price in the resale market. In the absence of contradictory information, the Tribunal considers this to be a representative price.

172. Finally, even if the Tribunal accepted that the total amount of any increase in the cost of rebar were passed on to consumers and that current market prices for condominium units are or will be higher than they would be if the subject goods were allowed to enter without duties, the Tribunal emphasizes again that increased prices for the subject goods are a normal consequence of the re-balancing of the market after the imposition of duties that is necessary in order to eliminate the unfair price advantages of the subject goods. In the absence of any evidence of significant harm to consumer interests, these increased costs alone cannot be considered an unintended consequence that is contrary to the public interest.

173. The supporting parties have nevertheless argued that any increased cost to consumers is contrary to the public interest where the domestic industry is receiving no benefit from the imposition of the measures. This argument will be addressed below.

Other Relevant Public Interest Factors

– Effect of the Duties on Public Infrastructure Projects

174. The ICBA and the B.C. government argued that the duties have a "significant cost impact" on capital construction projects carried out by British Columbia. Such projects include the replacement of the George Massey Tunnel, the B.C. Ministry of Transportation and Infrastructure's expansion and rehabilitation program for bridges and highways, major healthcare facilities, the Site C Clean Energy Project by B.C. Hydro (a Crown corporation) and provincially funded social housing projects.

175. The ICBA and the B.C. government submitted that they have provided illustrative cost increase scenarios of the potential cost effects of the duties on British Columbia. In this regard, they emphasized that, while rebar prices have fallen since the duties came into effect, they are nevertheless higher than they would otherwise be in the absence of the duties, as evidenced in particular by the differential between the current B.C. market price and the current Chinese prices (without the duties).

176. The ICBA and the B.C. government further stressed that this differential is the most accurate measurement of the additional costs that are being borne by British Columbia as a result of the duties. According to them, the effect of such cost increases, which will be further compounded by higher borrowing costs, will be either higher costs to the B.C. taxpayers or the construction of fewer or less effective projects.

177. The parties opposed submitted that the cost increases alleged by the supporting parties were unsubstantiated, inconsistent and exaggerated through either the inclusion of expenses not germane to rebar itself or the use of rebar prices substantially higher than the B.C. prevailing market price. Further, they submitted that even these exaggerated price increases are minimal when considered in the context of the total budgets allocated to these projects.

178. As underlined by the parties opposed, there were a number of issues with the figures provided by the witnesses for the B.C. government regarding the potential impact of the duties on the canvassed projects. At times, the alleged cost increases were based on the cost of installed rebar.[96] In other projections, the underlying price of rebar was based on outdated or inaccurate information, resulting in a base cost of rebar significantly higher than the current B.C. market price.[97] Some witnesses agreed that their projected cost increases might be too high, in light of the general decline in steel prices in the last several months and,

96. *Transcript of Public Hearing*, Vol. 1, 27 July 2015, at 126.
97. *Ibid.* at 32-33, 37-39.

specifically, the public information on current B.C. market prices for rebar.[98] When apprised of the prevailing market price for rebar in the second quarter of 2015 ($752/tonne based on the investigation report supplement data), one witness stated that there should be no major increase in costs.[99]

179. The Tribunal understands that the witnesses chose their figures in the context of planning or budgeting exercises, or at times on the basis of the limited information available to them, as none of them buy rebar directly. Nevertheless, such evidence is of limited assistance in the exercise before the Tribunal. In order to assess whether the imposition of duties has resulted or will likely result in a significant price impact on B.C. public infrastructure projects and the taxpaying public, the Tribunal is interested in the actual impact of the measures. Yet, given the evidence of the current and expected rebar market in British Columbia, there is no convincing evidence of a significant rebar price increase as a result of the imposition of the duties.

180. In response to the argument that rebar, nevertheless, currently costs more in British Columbia that it would without the duties, the Tribunal undertook an analysis to estimate the theoretical impact of the duties on nine major infrastructure projects identified by the B.C. government in response to the Tribunal's RFI.[100] As such, the Tribunal's calculations do not include the impact on other provincial projects that were not in evidence and do not include such additional expenses as the cost of borrowing, which, based on the evidence, would need to be added in respect of most projects.[101]

181. Using the available evidence, the Tribunal estimated the total volume of rebar required for each of the nine projects identified by the B.C. government. The Tribunal then calculated a theoretical price, on a per metric tonne basis, for Chinese and Korean rebar, landed in Canada with all applicable charges except the anti-dumping and countervailing duties. The Tribunal arrived at this landed price by using an ex-factory price obtained either from *in camera* testimony or by subtracting items (domestic transportation, foreign and domestic dock fees, insurance, duties and interest charges) from offered Canadian prices of the subject goods provided in confidential submissions. Once an ex-factory price was established, the above-noted items were then re-applied as appropriate to obtain a B.C. price for Chinese and Korean rebar without the duties.[102]

182. This analysis shows that, in the absence of the duties, Chinese and Korean rebar would be available at prices that are significantly lower than the current B.C. market price.[103] The Tribunal then calculated the differential between the total potential cost for the volume of rebar required for all nine projects at the current market price and the total cost using the lowest Chinese price absent the duties. The Tribunal used $732/tonne as a reasonable average current market price.[104]

183. This differential represents an estimate of the potential foregone savings on the cost of rebar for the nine projects as a result of the duties. However, this estimate exaggerates the potential savings, in several

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98. *Ibid.* at 32, 37; *Transcript of Public Hearing*, Vol. 2, 28 July 2015, at 164, 177; *Transcript of In Camera Hearing*, Vol. 1, 27 July 2015, at 44-46.
99. *Transcript of Public Hearing*, Vol. 2, 28 July 2015, at 177.
100. Exhibit PB-2014-001-RI-01, Vol. 11.
101. *Transcript of In Camera Hearing*, Vol. 1, 27 July 2015, at 32-35.
102. *Transcript of Public Hearing*, Vol. 2, 28 July 2015, at 274-75; Exhibit PB-2014-001-J-04A (protected) at para. 23, Vol. 8; Exhibit PB-2014-001-19.04 (protected), Vol. 4 at 150, 163.
103. *Transcript of Public Hearing*, Vol. 2, 28 July 2015, at 274; Exhibit PB-2014-001-J-03A at para. 23, Vol. 7; *Transcript of In Camera Hearing*, Vol. 3, 29 July 2015, at 117-20.
104. Based on an average of prices found in public testimonies and the investigation report supplement. *Transcript of Public Hearing*, Vol. 5, 31 July 2015, at 419-20; Exhibit PB-2014-001-12C, Table 7, Vol. 1.1. This estimate was consistent with other evidence on the confidential record.

respects, in order to isolate the maximum potential impact of the duties based on the current market price established with the duties in place. First, it implies that, absent the duties, all rebar supplied to public infrastructure projects would be of Chinese origin and offered at the lowest possible price. This assumption is not realistic, given that there are alternative sources of rebar present in the B.C. market and that their presence would have an impact on the prevailing market price.

184. For example, the United States was a major player in the B.C. market both before and after the duties were imposed, and U.S. prices have generally been higher than those of both the subject goods and non-subject goods from offshore sources. It is reasonable to assume, however, that the presence of the subject goods at these lower prices would lower the average B.C. market price and that the price that would currently be available in the B.C. market, if the duties had never been imposed, would be somewhere between the current market price and the lowest Chinese price.

185. In addition, as with condominium projects, the evidence is unclear whether any cost increases (or, conversely, any savings) are passed on to the government in their entirety. This would depend on the procurement process and on the competitive dynamics at each level of the supply chain. For example, in some instances, the contractors that submit tenders for these projects may choose to absorb any additional costs associated with increases in rebar prices, in order to increase their chances of securing a lucrative government contract. In addition, once the contract is awarded, the per unit rebar price will remain fixed over the lifetime of the project.[105] As a result, although the initial bid price may be higher than it would be absent the duties, any cost variations that take place after the contract is awarded will only affect the contractor or suppliers for that particular project.

186. This analysis shows that, in the extreme scenario, based on current market conditions, the duties result in unrealized potential savings of up to $22.9 million. This represents approximately 0.18 percent of the total budget ($12.7 billion) for these nine projects.[106]

187. Considered in perspective, the Tribunal is firmly of the view that this does not amount to a significant impact of the imposition of the duties. Further, the Tribunal does not accept that such foregone savings would result in the delay or cancellation of these public infrastructure projects.

188. As stressed throughout these reasons, increased prices of goods where anti-dumping and countervailing duties are imposed are considered an intended consequence of *SIMA*. In enacting *SIMA*, Parliament must be presumed to have determined that such increased prices are consistent with the public interest, given the remedial effect of the duties on the domestic industry. The sole fact that the costs may ultimately be incurred by the government (and taxpayers) does not, in and of itself, change this analysis.

189. While several of the witnesses called by the B.C. government indicated that each additional dollar spent ends up having some kind of impact,[107] the same argument could be made in respect of other economic actors and any situation where prices increase when duties are imposed. The Tribunal has heard no convincing evidence to show that such price effects, if ultimately felt by the B.C. government, would be relatively significant.

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105. *Transcript of Public Hearing*, Vol. 1, 27 July 2015, at 20, 31.
106. Exhibit PB-2014-001-E-12 (protected), Vol. 10A; *Transcript of Public Hearing*, Vol. 2, 28 July 2015, at 274-75; Exhibit PB-2014-001-J-04A (protected) at para. 23, Vol. 8.
107. *Transcript of Public Hearing*, Vol. 1, 27 July 2015, at 23, 46, 51-53, 60, 78, 95, 156; *Transcript of In Camera Hearing*, Vol. 2, 28 July 2015, at 30-31, 35-37.

190. In fact, as in the case of condominiums, the supporting parties' position was that any added costs are contrary to the public interest because the duties provide no benefits to the domestic industry in the B.C. market. This is discussed in the next section.

– Remedial Effect of the Duties

191. The theme underlying all the supporting parties' arguments was that any increase in costs to B.C. consumers and taxpayers as a result of the duties, no matter their magnitude, is not in the public interest when considered in light of the fact that the domestic industry has not been and will not be able to compete in British Columbia and is therefore not benefiting from the increased price of rebar in the B.C. market. As a result, the supporting parties maintained that only a complete elimination of the duties on rebar is appropriate.

192. The parties opposed argued that the duties do have an important remedial effect for the domestic industry. They submitted that the domestic industry is currently making significant efforts to increase sales to the B.C. market. However, if anti-dumping and countervailing duties in British Columbia were reduced, they argued that the B.C. rebar price would drop to a level where it would no longer be able to compete. Further, they argued that a decrease in the B.C. market price for rebar would also adversely affect prices in other provinces.

193. As indicated at the outset, the Tribunal agrees that, in situations where the duties have unintended consequences disproportionate to their intended benefit of remedying the injury or threat thereof to the domestic industry, the public interest would warrant a reduction or elimination of the duties. However, contrary to the submissions of the supporting parties, and as already discussed in previous sections, the Tribunal is convinced by testimony that the domestic industry has made a significant investment in increasing its ability to be competitive and gain market share in British Columbia and that these efforts have begun to show some results.

194. Furthermore, the evidence demonstrates that domestic producers can compete with other sources of supply under current market conditions, i.e. in a market that is free from the influence of unfairly traded goods. The Tribunal calculated potential B.C. selling prices for two domestic producers using the most recent cost of production data and applied a reasonable margin for profit (determined by reference to historical information).[108] When considering that the price of scrap, the dominant input for rebar, is falling and domestic producers are pursuing various cost-cutting initiatives, in particular for their B.C. market sales, they are now able to come within the discussed domestic premium of $25-$40 per metric tonne based on the current market uninfluenced by dumping and subsidizing.

195. As such, the Tribunal finds that the domestic industry will be able to compete fairly for substantial benefits in the B.C. market over the duration of the finding, as it establishes an increased market share. These benefits, arising from new sales in the B.C. market, are expected to be realized following full implementation of planned cost-saving initiatives and assuming continued profit margins based on responses to Tribunal questionnaires.[109] These estimated benefits are based on the expectation that the domestic producers will be able to secure a larger volume of the B.C. market, matching what has been previously forecasted.

196. Consequently, the Tribunal cannot accept the argument of the ICBA and the B.C. government that the duties provide no benefit to the domestic industry in the B.C. market. Similarly, the Tribunal cannot

108. Inquiry No. NQ-2014-001 at para. 140; *Transcript of In Camera Hearing*, Vol. 1, 28 July 2015, at 64-67, Vol. 2, 29 July 2015, at 156, 202-204; Exhibit PB-2014-001-13 (protected), Schedules 19, 20, 27, Vol. 2.1.
109. Exhibit PB-2014-001-13 (protected), Schedules 19, 20, 27, Vol. 2.1.

accept the suggestion that any additional costs or any foregone savings, of whatever magnitude, borne by B.C. fabricators, consumers and taxpayers amount to an unintended consequence because they outweigh the allegedly "virtually inexistent"[110] benefits of the duties for the domestic industry.

197. Indeed, when the costs and benefits of the duties are compared, there is a relative equilibrium. There has been no significant nominal increase in the average rebar price in the B.C. market since the imposition of the duties; rather, the duties have allowed for the establishment of a fair market price in conjunction with market factors such as the price of scrap and the strength of the Canadian dollar. Prices are expected to remain at these (or perhaps slightly lower) levels in the near future. In addition, the unrealized potential savings for B.C. fabricators, homebuyers and government do not eclipse the potential benefit for the domestic producers in the current B.C. market. As indicated previously, it is unclear how such unrealized savings would be distributed along the supply chain in each market segment. In particular, it is unclear that any of these unrealized potential savings would actually be concentrated at the ultimate consumer level.

198. Furthermore, while it has been argued that the current price is higher than it otherwise would be in the absence of the duties, given the overall significance, or lack thereof, of the price of rebar as a factor in the final cost of these projects, it is unclear that the duties are raising significant public interest concerns. When balancing this against the reduction in barriers to entry into the B.C. market for the domestic producers, which are now able to compete in a market free of goods with dumped or subsidized prices, the Tribunal finds no disproportionate negative impact of the duties. As a result, even if the Tribunal had found that there is a public interest affected by the imposition of the duties, the complete elimination of the duties, as requested by the supporting parties, would not have been an appropriate remedy.

199. Furthermore, evidence of the current market price strongly suggests that the duties currently in place essentially remove the injurious effect of the dumped and subsidized goods, and no more. As discussed above, the domestic industry has demonstrated that it is able to compete in British Columbia at the current market price which was established following the imposition of the duties. However, if prices fell below this level as a result of a removal or reduction of the duties, the evidence of the domestic industry, as well as the Tribunal's own analysis, demonstrates that the domestic producers, despite current efforts, would not be able to compete with the subject goods at these lower prices.

200. In addition, the evidence suggests that certain subject goods from China are priced such that they could compete at the current market price, even with the application of the full amount of duties. With respect to other subject goods, including those from Korea and Turkey, these could potentially be in a similar situation upon review of their normal values.

201. The evidence before the Tribunal is that world rebar prices have fallen largely due to a decrease in the price of scrap steel that is used to make rebar. Assuming that this decrease has also taken place in the home markets of the subject countries, a review of normal values would likely result in lower normal values for future imports. Further, CBSA policy indicates that change in market conditions, such as a decrease in the cost of inputs, is a reason to request a review of normal values.[111]

202. In sum, the evidence available to the Tribunal indicates that the duties remove the injurious effects of the unfairly traded subject goods while not imposing a cost that is superior to what is needed to protect the domestic industry. This strongly suggests that the duties are having their intended remedial effect, no more and no less.

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110. Exhibit PB-2014-001-44.02 at para. 6, Vol. 15.
111. Memorandum D14-1-8 at para. 7 at http://www.cbsa-asfc.gc.ca/publications/dm-md/d14/d14-1-8-eng.html.

Other Considerations Raised in this Case

203. Given the Tribunal's conclusion in respect of the public interest, it is not necessary to address the other issues raised by the parties opposed, such as the enforceability of a potential remedy, had the Tribunal come to the opposite conclusion, or arguments on the effect of a remedy on the integrity of Canada's trade remedy system. However, the Tribunal will nevertheless briefly address these issues in order to be as thorough as possible in addressing the arguments of the parties.

– Enforceability of an Eventual Remedy

204. Several of the parties opposed raised concerns about the enforceability of an eventual reduction or elimination of duties for rebar imported for use in British Columbia. For example, ArcelorMittal, AltaSteel and the CSPA referred to a letter, filed by the CBSA during the injury inquiry at the Tribunal's request, indicating that a regional product exclusion based on end-use would create uncertainty.[112] ArcelorMittal and AltaSteel filed that letter in the current proceedings and argued that the CBSA's concerns regarding the enforceability of a regional exclusion continue to apply in the context of an elimination or reduction of duties on imports into British Columbia. They also suggested that the CBSA lacks the resources to ensure that rebar imported with reduced duties will not reach other regions of Canada.

205. The Tribunal rejects these arguments. As highlighted by the ICBA and the B.C. government, numerous provisions in Canada's customs regime, notably under the *Customs Tariff*,[113] refer to the end use of a good as a condition for classification under a given tariff provision; as such, anti-dumping and countervailing duties dependent on the end use of the rebar in construction projects in British Columbia would not have been inconsistent with existing customs provisions. Furthermore, had the Tribunal concluded that imposing duties in the full amount on rebar imported into British Columbia might not have been in the public interest, it would have then been within the purview of the Minister of Finance, if inclined to follow the Tribunal's recommendation, to craft any relief, and its requirements, in a way that ensures that it is only available to importers of rebar consumed in construction projects in British Columbia. Enforcement and circumvention matters generally are properly within the purview of the CBSA.

– Precedential Value, Canada's Trade Remedy System and the *AIT*

206. Several of the parties opposed argued that recommending a reduction or elimination of duties on the subject goods destined for final use in British Columbia would "undermine the integrity of Canada's trade remedy system", would be inconsistent with the "spirit of the AIT" and would set a "dangerous precedent". For example, ArcelorMittal, AltaSteel and the CSPA submitted, in closing argument, that reducing or eliminating duties on rebar for use in British Columbia ". . . would undermine the integrity of Canada's trade remedy system and its national application . . . ." They argued that the long-term effect of a reduction or elimination of duties in British Columbia is a ". . . general erosion of a domestic industry" . . . .[114] They also submitted that a reduction or elimination of duties in British Columbia would be inconsistent with government policy, because the government has recently indicated a willingness to ". . . improve the trade remedy system . . . ."[115]

207. Finally, they submitted that Canada's trade remedy system should support the *AIT* in spirit and direction, whereas a reduction or elimination of duties on the subject goods for use in British Columbia

112. Exhibit PB-2014-001-06.04A, Vol. 1C at 104-105.
113. S.C. 1997, c. 36.
114. Exhibit PB-2014-001-46.02 at para. 138, Vol. 15.
115. *Ibid.* at para. 139.

would "... effectively create a new barrier to internal trade."[116] Similar arguments were made by other parties, including Local 97, the Canadian Labour Congress, Canadian Manufacturers & Exporters, the CISC and the provinces that filed submissions opposing a reduction or elimination of the duties on rebar imported for use in British Columbia.

208. However, other than making these broad claims and submitting that a reduction of duties on rebar imported for use in British Columbia would harm the domestic industry—in British Columbia and elsewhere—the parties opposed have not credibly demonstrated how making a recommendation in this case would be inconsistent with *SIMA*. As stated at the outset, section 45 of *SIMA*, and its flexible concept of "public interest", was enacted by Parliament as an integral part of Canada's trade remedy system. The outcome of this particular inquiry cannot, in any case, change this situation nor will it pre-determine the outcome of potential future public interest inquiries, each case being highly fact-specific and considered by the Tribunal on its particular facts.

209. In the absence of a specific demonstration, the Tribunal is also not convinced that purported current government policy or the so-called "spirit" of the *AIT*, neither of which presently form part of *SIMA* or the *SIM Regulations*, is relevant to or inconsistent with the exercise of its jurisdiction under section 45 of *SIMA*. In any event, it has not been established that the elimination or reduction of duties on rebar imported into British Columbia would create an interprovincial barrier to trade. There appear to be no obvious inconsistencies between the *AIT*'s aim to eliminate internal barriers to trade and *SIMA*'s public interest provisions.

CONCLUSION

210. The Tribunal finds no basis to form the opinion that the imposition of the duties in the full amount would not or might not be in the public interest. As such, the Tribunal concludes that the public interest does not warrant a reduction or elimination of the duties on the subject goods imported for use in British Columbia. In accordance with paragraph 45(4)(*a*) of *SIMA*, the Tribunal will not provide a report to the Minister of Finance.

Serge Fréchette
Serge Fréchette
Presiding Member

Stephen A. Leach
Stephen A. Leach
Member

Jason W. Downey
Jason W. Downey
Member

116. *Ibid.* at para. 147.