



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Dumping and Subsidizing

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## FINDING AND REASONS

Inquiry No. NQ-2015-002

Carbon and Alloy Steel Line Pipe

*Finding issued  
Tuesday, March 29, 2016*

*Reasons issued  
Wednesday, April 13, 2016*

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

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

**FINDING**

The Canadian International Trade Tribunal, pursuant to the provisions of section 42 of the *Special Import Measures Act*, has conducted an inquiry to determine whether the dumping and subsidizing of the subject goods, as defined below have caused injury or are threatening to cause injury to the domestic industry.

The subject goods are defined as follows:

carbon and alloy steel line pipe originating in or exported from the People's Republic of China, welded or seamless, having an outside diameter from 2.375 inches (60.3 mm) up to and including 24 inches (609.6 mm), including line pipe meeting or supplied to meet any one or several of API 5L, CSA Z245.1, ISO 3183, ASTM A333, ASTM A106, ASTM A53-B or their equivalents, in all grades, whether or not meeting specifications for other end uses (e.g. single-, dual-, or multiple-certified, for use in oil and gas, piling pipe, or other applications), and regardless of end finish (plain ends, beveled ends, threaded ends, or threaded and coupled ends), surface finish (coated or uncoated), wall thickness, or length, excluding galvanized line pipe and excluding stainless steel line pipe (containing 10.5 percent or more by weight of chromium), excluding goods covered by the Canadian International Trade Tribunal's finding in Inquiry No. NQ-2012-002 and goods covered by the Canadian International Trade Tribunal's order in Expiry Review No. RR-2012-003.

For greater certainty, the product definition includes unfinished line pipe (including pipe that may or may not already be tested, inspected and/or certified to line pipe specifications) originating in the People's Republic of China and imported for use in the production or finishing of line pipe meeting final specifications, including outside diameter, grade, wall thickness, length, end finish or surface finish, and non-prime and secondary pipes ("limited service products").

Further to the Canadian International Trade Tribunal's inquiry, and following the issuance by the President of the Canada Border Services Agency of final determinations dated February 24, 2016, that the aforementioned goods have been dumped and subsidized, the Canadian International Trade Tribunal hereby finds, pursuant to subsection 43(1) of the *Special Import Measures Act*, that the dumping and subsidizing of the above-mentioned goods have caused injury to the domestic industry.

Furthermore, the Canadian International Trade Tribunal hereby excludes from its injury finding unfinished seamless carbon or alloy steel line pipe in the form of mother tubes having outside diameters of 184, 197, 210, 235, 260, 286, 328, 350, 368, 377, 394, 402, 419, 426, 450, 475, 480, 500, 521, 530, 560, 585 or 610 mm, in wall thicknesses from 9 mm to 110 mm and in lengths ranging from 7.72 m to 15.24 m, not stenciled as meeting any line pipe product specification, but imported for use in the production, and not solely for finishing, of seamless line pipe made to any one or several of API 5L, CSAZ245.1, ISO 3183, ASTM A333, ASTM A335, ASTM A106, ASTM A53 or their equivalents.

Jean Bédard

Jean Bédard  
Presiding Member

Jason W. Downey

Jason W. Downey  
Member

Ann Penner

Ann Penner  
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The statement of reasons will be issued within 15 days.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	February 22, 23, 24 and 26, 2016
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## STATEMENT OF REASONS

### INTRODUCTION

1. The mandate of the Canadian International Trade Tribunal (the Tribunal) in this inquiry<sup>1</sup> is to determine whether the dumping and subsidizing of carbon and alloy steel line pipe<sup>2</sup> originating in or exported from the People's Republic of China (China) (the subject goods) have caused or are threatening to cause injury to the domestic industry.

2. The Tribunal has determined, for the reasons that follow, that the dumping and subsidizing of the subject goods have caused material injury. Therefore, the Canada Border Services Agency (CBSA) will impose definitive anti-dumping and countervailing duties on imports of the subject goods.

### BACKGROUND

3. This inquiry stems from a complaint filed on July 10, 2015, by Evraz Inc. NA Canada (Evraz) and Tenaris Global Services (Canada) Inc., Algoma Tubes Inc. and Prudential Steel ULC (collectively Tenaris Canada) and the subsequent decision of the President of the CBSA on August 28, 2015, to initiate dumping and subsidizing investigations.

4. The CBSA's investigations triggered the initiation of a preliminary injury inquiry by the Tribunal on August 31, 2015. The Tribunal issued its preliminary determination on October 27, 2015, that the evidence disclosed a reasonable indication that the dumping and subsidizing of the subject goods had caused or were threatening to cause injury.

5. On November 26, 2015, the CBSA made preliminary determinations of dumping and subsidizing, resulting in the imposition of provisional anti-dumping and countervailing duties on the subject goods and the commencement of this inquiry. On November 27, 2015, the Tribunal issued a notice of commencement of inquiry.<sup>3</sup> On February 24, 2016, the CBSA made final determinations of dumping and subsidizing.

6. The Tribunal's period of inquiry (POI) was from January 1, 2012, to September 30, 2015. On November 27, 2015, the Tribunal sent requests to complete questionnaires to domestic producers, importers, purchasers and foreign producers of carbon and alloy steel line pipe. Using the questionnaire replies and import data from the CBSA, staff of the Administrative Tribunals Support Service of Canada prepared public and protected versions of the investigation report that were distributed, along with the questionnaire replies, to those parties that had filed notices of participation in the inquiry.<sup>4</sup> Parties filed case briefs and evidence in response.

7. The supporting parties are the domestic producers that filed the complaint—Evraz and Tenaris Canada—together with Atlas Tube Canada ULC (Atlas) and DFI Corporation (DFI). The supporting parties submitted evidence and argument, and provided witnesses during the Tribunal's hearing.

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

2. A detailed description of the goods subject to this inquiry is found under "Product Definition" and "Product Information".

3. C. Gaz. 2015.I.2594.

4. All public exhibits were made available to the parties. Protected exhibits were made available only to counsel who had filed the required declaration and confidentiality undertaking with the Tribunal in respect of confidential information.



8. The opposing parties that filed evidence and argument with the Tribunal are the following: Pipe & Piling Supplies Ltd. (Pipe & Piling); the China Iron and Steel Association (CISA) on behalf of the China Steel Pipe Association of China Steel Construction Society, Jiangsu Changbao Steel Tube Co., Ltd., Hengyang Valin Steel Tube Co., Ltd., Tianjin Pipe Manufacturing Co., Ltd. (Tianjin Pipe), Pangang Group Chengdu Steel & Vanadium Co., Ltd. (Pangang), Wuxi Huayou Special Steel Co., Ltd. (Wuxi), and Baoshan Iron & Steel Co., Ltd.; Protin Import Ltd. (Protin); and Optima Steel International, LLC (Optima). Pipe & Piling filed a witness statement and provided witnesses during the Tribunal's hearing.

9. Olympia Tubes Limited and North-East Tubes Inc. (Olympia and North-East) also filed a case brief and witness statement in opposition to the complaint. However, at the hearing, Olympia and North-East clarified that they were not taking a position in respect of the injury claims made by Evraz and Tenaris Canada and limited their submissions to the scope of the product definition and product exclusion requests.<sup>5</sup>

10. Bri-Steel Manufacturing (Bri-Steel) is a domestic producer whose status in the domestic industry was challenged in these proceedings, as will be discussed below. Although it did not take a position or provide submissions on the matter of injury or threat of injury, it filed a product exclusion request and submissions in response to other product exclusion requests, and provided a witness at the hearing.

11. Shell Canada Limited and Seybold International Corp. each filed a notice of participation, but did not file a brief or evidence.

12. On December 21, 2015, Pipe & Piling filed a request with the Tribunal to deny Atlas and DFI the right to participate in this inquiry. The Tribunal dismissed the request and issued an order and a statement of reasons on January 19 and 26, 2016, respectively.

13. On December 21, 2015, Bri-Steel filed a notice of motion requesting that the Tribunal declare that certain goods imported by Bri-Steel were not goods subject to this inquiry. The Tribunal dismissed the motion and issued an order and a statement of reasons on January 22 and 28, 2016, respectively.

14. On January 5, 2016, the parties filed requests for information (RFIs) with the Tribunal. The Tribunal issued directions to the parties on February 2, 2016, regarding the RFIs that required responses. The responses were received by February 2, 2016, and placed on the record of the proceedings.

15. Product exclusion requests were filed by Pipe & Piling, Bri-Steel, Olympia and North-East, Pangang, Tianjin Pipe, Kelly Pipe Canada ULC (Kelly Pipe), BHD Tubular and Comco Pipe & Supply Company (Comco). Witnesses for Bri-Steel, Pipe & Piling, and Olympia and North-East provided oral evidence with respect to their product exclusion requests, as part of their testimony.

16. The Tribunal's hearing was held in Ottawa, Ontario, on February 22, 23, 24 and 26, 2016. It included public and *in camera* sessions. A full day was scheduled on February 25, 2016, to address the requests for product exclusions in order to give the parties an opportunity to examine those witnesses that had filed written statements in relation to the product exclusion requests and to test the evidence provided by other parties. However, the parties that were represented at the hearing collectively decided not to avail themselves of this hearing time and to rely on what was already on the record as of February 24, 2016.<sup>6</sup> Accordingly, the Tribunal agreed to cancel the hearing day reserved for product exclusion requests.

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5. *Transcript of Public Hearing*, Vol. 3, 24 February 2016, at 392-93, Vol. 4, 26 February 2016, at 702-703.

6. *Transcript of Public Hearing*, Vol. 3, 24 February 2016, at 484-88, 555-56.

## RESULTS OF THE CBSA'S INVESTIGATIONS

17. The CBSA's period of investigation for its dumping investigation covered July 1, 2014, to June 30, 2015. The period of investigation for its subsidizing investigation covered January 1, 2014, to June 30, 2015. The CBSA determined that 100 percent of the subject goods imported into Canada had been dumped at a weighted average margin of dumping of 243.1 percent, when expressed as a percentage of the export price.<sup>7</sup> The CBSA also determined that 100 percent of the subject goods imported into Canada had been subsidized at a weighted average amount of subsidy of 7.6 percent, when expressed as a percentage of the export price.<sup>8</sup>

18. Accordingly, the CBSA concluded that the overall margins of dumping and the amount of subsidy were not insignificant.<sup>9</sup>

## PRODUCT

### Product Definition

19. The subject goods are defined as follows:

carbon and alloy steel line pipe originating in or exported from China, welded or seamless, having an outside diameter from 2.375 inches (60.3 mm) up to and including 24 inches (609.6 mm), including line pipe meeting or supplied to meet any one or several of API 5L, CSA Z245.1, ISO 3183, ASTM A333, ASTM A106, ASTM A53-B or their equivalents, in all grades, whether or not meeting specifications for other end uses (e.g. single-, dual-, or multiple-certified, for use in oil and gas, piling pipe, or other applications), and regardless of end finish (plain ends, beveled ends, threaded ends, or threaded and coupled ends), surface finish (coated or uncoated), wall thickness, or length, excluding galvanized line pipe and excluding stainless steel line pipe (containing 10.5 percent or more by weight of chromium), excluding goods covered by the Tribunal's finding in Inquiry No. NQ-2012-002 and goods covered by the Tribunal's order in Expiry Review No. RR-2012-003.

For greater certainty, the product definition includes unfinished line pipe (including pipe that may or may not already be tested, inspected and/or certified to line pipe specifications) originating in China and imported for use in the production or finishing of line pipe meeting final specifications, including outside diameter, grade, wall-thickness, length, end finish or surface finish; and non-prime and secondary pipes ("limited service products").

### Product Information

20. The CBSA provided the following additional product information:<sup>10</sup>

[31] Pipe that is being sold for oil and gas transmission purposes or process piping purposes is line pipe. The subject goods are used by the oil and gas industry in pipelines for the gathering and distribution of oil and gas or as process pipe used in steam generation facilities for steam assisted gravity drainage, petrochemical plants, upgraders, gas transmission facilities, and fabrication of modules.

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7. Exhibit NQ-2015-002-04, Vol. 1A at 39.19.

8. *Ibid.* at 39.20.

9. Exhibit NQ-2015-002-04A at paras. 179, 230, Vol. 1A.

10. *Ibid.* at paras. 31-37.

[32] The Canadian market for oil and gas line pipe is governed by two main design codes depending on whether the line pipe is for pipelines or for process piping. Each code specifies the standards and grades of pipe that are acceptable for use. Together, the complainants manufacture or have the capability to manufacture line pipe under both design codes, in all grades. Pipelines must conform or be equivalent to CSA Z662 (oil and gas pipeline systems), and process piping must conform or be equivalent to ASME B31.1. These systems standards cover multiple pipe standards and can cover multiple grades of pipe. Examples of pipe standards include:

- CSA Z245.1;
- API 5L;
- ISO 3183;
- ASTM A333;
- ASTM A53-B; and
- ASTM A106.

[33] Pipe manufactured to a particular standard may be compatible with the requirements of another standard. This means that a particular pipe may be certified as complying with multiple standards (if all the requirements of each standard/grade are met for that particular pipe). For example, CSA Z245.1 Grade 448 pipe is considered to be equivalent to API 5L Grade X65. The API 5L X grade numbers define the minimum yield strength required of the grade in kilopounds per square inch. Process piping is generally supplied with multiple stencils including API 5L, CSA Z245.1 and ASTM A106.

[34] Equivalent grades of pipe specified under each design code represent products that are equivalent regardless of manufacturing process. As a result, any grade of pipe is considered to be substitutable by a similar grade of pipe designed with a different standard. It is common practice to certify multiple grades of pipe on a mill test report. It is also common practice to substitute grades other than that initially requested by a customer with an equivalent grade. Mill test reports are provided to show that the properties of the supplied pipe meet the requirements of the actual grade supplied.

[35] Line pipe is normally marked or stenciled in paint on the external surface with the API, ASME, or equivalent specifications to which it has been manufactured and tested. The subject goods cover all line pipe meeting or supplied to meet the above specifications, regardless of whether the pipe has been multiple stenciled to indicate that it meets or is supplied to meet additional end use specifications. Line pipe that is manufactured and tested to meet higher API specifications (or equivalent CSA and ISO specifications) is automatically in conformity with lower specifications and may therefore have multiple stencils identifying additional end uses, such as American Society for Testing and Materials (ASTM), and equivalent specifications for end use as standard pipe (for low-pressure conveyance of steam, water, natural gas, air and other liquids in plumbing and heating applications), piling pipe, and other such end uses. Seamless line pipe conforming to API 5L may also be marked as conforming to pressure pipe applications under ASME B31.3. Additionally and for the same reasons, line pipe that is single-stencilled as API 5L may be used in lower specifications absent stencilling identifying that lower specification. All line pipe that is marked as meeting or that is supplied to meet API 5L (or equivalent specifications) for use as oil and gas pipelines or as ASME B31.3 for use as pressure pipe are covered in this investigation as subject goods regardless of whether the pipe is marked as meeting any other end-uses or is supplied to meet any other end-uses.

[36] The subject goods may be manufactured by the seamless or welded process. The typical end finish is a beveled end to allow for welding in the field, although line pipe may also be supplied as plain end (square cut), threaded, and threaded and coupled.

[37] According to the complainants and the producers that support the complaint, since November 12, 2012, the date of the CITT Finding in Inquiry No. NQ-2012-002, steel piling pipe originating in or exported from China (steel piling pipe), the subject goods have been increasingly used in the Canadian market as piling pipe to form deep foundations where soil and ground

conditions are not suitable or strong enough to support the structure load, particularly in drilling platforms and other energy installations in Western Canada.

### Product Scope

21. Just as they did during the Tribunal's preliminary injury investigation, CISA and Olympia and North-East submitted that the product definition was overly broad and captured all sorts of pipe products that are not necessarily "line pipe". Olympia and North-East further submitted that the product definition was ambiguous and asked the Tribunal to clarify its scope.

22. The Tribunal continues to reject these arguments, just as it did in the preliminary injury inquiry. The Tribunal must conduct its inquiry on the basis of the product definition of the dumped or subsidized goods set out in the CBSA's final determinations. As stated in the reasons for its preliminary injury determination, "[t]his means that the Tribunal cannot, on its own initiative, modify or redefine the definition of the subject goods" and that "the allegation that the product definition includes standards or specifications that do not relate to line pipe and should therefore be excluded from the scope of the subject goods is a matter that falls under the CBSA's exclusive jurisdiction."<sup>11</sup>

23. While the product definition of the subject goods may be broad in scope, the Tribunal does not consider it to be ambiguous.<sup>12</sup> It covers a range of steel line pipe products made to given specifications, regardless of whether they are seamless or welded, single-, dual- or multi-stencilled, finished or unfinished, and regardless of grade or end use. Indeed, the product definition specifically states "... including line pipe meeting or supplied to meet any one or several of API 5L, CSA Z245.1, ISO 3183, ASTM A333, ASTM A106, ASTM A53-B or their equivalents, in all grades, *whether or not meeting specifications for other end uses* (e.g. single-, dual-, or multiple-certified, *for use in oil and gas, piling pipe, or other applications*) . . ." [emphasis added]. Accordingly, a plain reading of the definition of the subject goods indicates that it is not purely limited to line pipe for use in oil and gas applications, but captures line pipe used in other applications as well.

24. To the extent that the opposing parties have taken issue with the scope of the product definition in the present inquiry or its application to particular steel pipe or tubular goods that they import from China, the Tribunal views those arguments as matters that fall exclusively within the CBSA's jurisdiction.<sup>13</sup>

### LEGAL FRAMEWORK

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

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11. *Carbon and Alloy Steel Line Pipe* (27 October 2015), PI-2015-002 (CITT) [*Line Pipe PI*] at para. 28.

12. Olympia and North-East referred to certain portions of the Tribunal's statement of reasons for its preliminary determination in support of their submission that the product definition lacks clarity and creates confusion. *Transcript of Public Hearing*, Vol. 4, 26 February 2016, at 706-708. However, the Tribunal made the specified comments with respect to certain subject goods (as they were defined during the preliminary injury inquiry), indicating that the product definition led to confusion because those certain subject goods were already covered by another Tribunal order. As such, the Tribunal terminated the preliminary injury inquiry with respect to those goods. *Line Pipe PI* at paras. 37, 40.

13. *Carbon and Alloy Steel Line Pipe* (22 January 2016), NQ-2015-002 (CITT) [*Line Pipe Order*] at paras. 25-26, 33.

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

27. Given that the CBSA has determined that the subject goods have been dumped and subsidized, the Tribunal must also determine whether it is appropriate to make an assessment of the cumulative effect of the dumping and subsidizing of the subject goods in this inquiry.

28. The Tribunal can then assess whether the dumping and subsidizing of the subject goods have caused material injury to the domestic industry. Should the Tribunal arrive at a finding of no material injury, it will determine whether there exists a threat of material injury to the domestic industry.<sup>14</sup> As a domestic industry is already established, the Tribunal does not need to consider the question of retardation.<sup>15</sup>

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

### LIKE GOODS AND CLASSES OF GOODS

30. As noted above, the Tribunal must begin by determining which domestically produced goods, if any, constitute like goods in relation to the subject goods. The Tribunal must also assess whether there is, within the subject goods and the like goods, more than one class of goods.

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

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

32. In deciding the issue of like goods when goods are not identical in all respects to the other goods, the Tribunal typically considers a number of factors, including the physical characteristics of the goods (such as composition and appearance) and their market characteristics (such as substitutability, pricing, distribution channels, end uses and whether the goods fulfill the same customer needs).<sup>16</sup> While the Tribunal may emphasize certain factors, it must take the totality of the characteristics into account.<sup>17</sup> No single factor is determinative.

33. In addressing the issue of classes of goods, the Tribunal typically examines whether goods potentially included in separate classes of goods constitute “like goods” in relation to each other. If so, they will be regarded as comprising a single class of goods.<sup>18</sup>

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14. Injury and threat of injury are distinct findings; the Tribunal is not required to make a finding relating to threat of injury pursuant to subsection 43(1) of *SIMA* unless it first makes a finding of no injury.

15. Subsection 2(1) of *SIMA* defines “retardation” as “. . . material retardation of the establishment of a domestic industry”. In previous decisions, the Tribunal has consistently held that there could be no retardation if there was domestic production of like goods. *Potassium Silicate Solids* (6 March 2012), PI-2011-003 (CITT) at paras. 35, 37.

16. *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) [*Pipe Fittings*] at para. 48.

17. *Sarco Canada Limited v. Anti-dumping Tribunal*, [1979] 1 F.C. 247 (F.C.) at para. 7.

18. *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) [*Aluminum Extrusions NQ*] at para. 115; *Polyisocyanurate Thermal Insulation Board* (11 April 1997), NQ-96-003 (CITT) at para. 45.

## Like Goods

34. During the course of the preliminary injury inquiry, the Tribunal found that domestically produced line pipe, defined in the same manner as the subject goods, constituted like goods in relation to the subject goods. It rejected the assertion of the supporting parties that the like goods should be defined more broadly than the subject goods to include piling pipe, even though the product definition of the subject goods expressly excludes piling pipe covered by the Tribunal's finding in Inquiry No. NQ-2012-002.<sup>19</sup> On the basis of evidence provided by the parties and the CBSA, as well as responses of numerous producers, importers and purchasers to the Tribunal's questionnaire on like goods, the Tribunal concluded that piling pipe and line pipe are not like goods.<sup>20</sup>

35. During the course of the present inquiry, the Tribunal did not receive any submissions challenging this finding and sees no reason to depart from it now. Indeed, new evidence received in response to the Tribunal's purchasers' questionnaire confirmed that the physical and market characteristics of domestically produced line pipe closely resemble those of the subject goods when they are produced to meet comparable technical specifications and that they are generally substitutable and sold through similar channels of distribution.<sup>21</sup>

36. The Tribunal therefore finds that domestically produced line pipe, defined in the same manner as the subject goods, constitutes like goods in relation to the subject goods.

## Single Class of Goods

37. Several opposing parties argued that the Tribunal should conduct a separate injury analysis for different types of line pipe and/or market segments captured by the product definition. In effect, they essentially asked the Tribunal to reconsider its earlier decision in the preliminary injury inquiry that there was a single class of goods.

38. Both Pipe & Piling and Optima submitted that the subject goods are sold in two separate markets, namely, the oil and gas sector and the piling pipe market. They argued that Tenaris Canada and Evraz do not compete in the piling pipe market and, therefore, could not have been injured by the subject goods imported for use as piling pipe. On this basis, Pipe & Piling submitted that imports of line pipe for use as piling pipe should be removed from the import and market data in the Tribunal's investigation report for the purposes of the injury analysis.

39. Olympia and North-East argued that the subject goods are sold in separate and distinct markets and submitted that the Tribunal should determine that there are at least two classes of goods, i.e. line pipe and standard pipe.

40. CISA submitted that, given the broad scope of the subject goods covering different technical specifications, end uses and distribution channels, the use of a single class of goods for the purposes of the injury analysis was confusing and did not allow for proper comparisons to be made between imports and domestic production. Specifically, CISA argued that dual-stencilled line pipe imported for use as piling pipe should not be included as subject goods and that seamless and welded line pipes should be considered separately. Similarly, Protin argued that seamless and welded pipe are not like goods because ASTM A106 includes seamless only.

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19. *Steel Piling Pipe* (30 November 2012) (CITT) [*Piling Pipe*].

20. *Line Pipe PI* at paras. 46-56.

21. Exhibit NQ-2015-002-06B, Tables 8, 12, 13, Vol. 1.1A.

41. In reply, Evraz submitted that Pipe & Piling's attempt to establish separate classes of subject goods based on end use is improper as such goods are otherwise identical upon importation. Evraz further argued that Pipe & Piling provided no legal basis for the Tribunal to ignore data related to line pipe imported for piling pipe applications in its injury analysis.

42. Tenaris Canada argued that Pipe & Piling, and Olympia and North-East are all resellers of line pipe. As such, it suggested that they could not control the further distribution or end use of their imports of subject goods and, therefore, could not definitively ensure that the imports would be used only in piling and/or plumbing, ventilation and cooling (PVC) applications and not for oil and gas transmission purposes. In particular, it submitted that Pipe & Piling could not credibly assert that its major customers for piling pipe, who also cater to the oil and gas sector, and who also stock line pipe, would not sell line pipe to end users who, in turn, could use it for purposes other than for piling.

43. During the preliminary injury inquiry, the Tribunal received and addressed similar arguments in respect of the classes of goods issue. The Tribunal concluded that the subject goods and the domestically produced like goods constituted a single class of goods for the following reasons:

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

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

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

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

[Footnotes omitted]

44. The Tribunal finds that neither the evidence nor arguments presented during the present inquiry warrant a departure from its previous conclusions. Rather, additional evidence gathered during the present inquiry affirms the Tribunal's decision to conduct the injury analysis on the basis of a single class of goods.

45. Witnesses confirmed that the single class of goods comprises a variety of line pipe products, some of which may not be fully substitutable for each other. For example, Mr. Neil Rasmussen of Bri-Steel testified that seamless pipe is a high-end product that is fully substitutable for welded pipe “100 percent of the time”, albeit at a price premium.<sup>22</sup> At the same time, however, he noted that welded pipe is only substitutable for seamless pipe 85 percent of the time, with seamless products being mandatory for the remaining 15 percent of the market.<sup>23</sup>

46. Mr. Robert Zimmerman of Olympia and North-East suggested that carbon steel welded pipe meeting ASTM A53-B is not substitutable for seamless pipe meeting ASTM A106 or ASTM A333 because the seamless products are required for use in high pressure PVC applications (ASTM A106) or very low temperature applications (ASTM A333).<sup>24</sup> However, Mr. Zimmerman also indicated that the volume of seamless pipe meeting ASTM A106 and ASTM A333 purchased by Olympia and North-East is small relative to its total purchases of pipe.<sup>25</sup> Indeed, the data shows that the collective imports of Olympia and North-East accounted for small volumes, both in absolute terms and relative to the total apparent market during the POI.<sup>26</sup>

47. Conversely, other witnesses testified that, on the whole, there is a high degree of substitutability between the subject goods and the domestically produced like goods. Indeed, Mr. Richard Kruger of Tenaris Canada provided evidence that all the standards or specifications for line pipe covered by the product definition are substitutable (to varying degrees, depending on the requirements for relative fracture toughness), as set out in CSA Z662, a design code for oil and gas pipeline systems.<sup>27</sup>

48. Taken together, the Tribunal finds that this confirms that the single class of goods includes a variety of line pipe products with different grades or specifications for end use, of which approximately 85 percent are fully substitutable for each other. The imports of Olympia and North-East appear to fall within the relatively small segment of the domestic market that cannot accept welded line pipe as a substitute for seamless line pipe. The Tribunal is therefore satisfied with its conclusions that the subject goods and the domestically produced like goods constitute a single class of goods.

49. This conclusion is substantiated all the more, given that the Tribunal heard considerable evidence about the high degree of price transparency in the domestic market for line pipe, notwithstanding differences in product type, technical specifications or end use.<sup>28</sup> According to that evidence, and given the relative importance of price in purchasing decisions, pricing information tends to quickly permeate the domestic market for line pipe as a whole, regardless of different end use, especially where common distributors and customers are involved. Notably, prices of the subject goods for uses other than the transmission of oil and gas have an impact, and spillover effect, on prices of like goods. Although the opposing parties invited the Tribunal to differentiate between different product types (i.e. seamless and welded, or different technical specifications) and/or different end uses for line pipe, the responsiveness of pricing in the market and the potential for spillover effects on the price of line pipe generally were additional factors militating against making such distinctions.

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22. *Transcript of Public Hearing*, Vol. 3, 24 February 2016, at 493-95.

23. *Ibid.* at 493-95, 497-98.

24. Exhibit NQ-2015-002-63.03 at 151-52, Vol. 1.3B.

25. *Ibid.* at 148-49.

26. Exhibit NQ-2015-002-15.22A (protected), Vol. 6B at 153; Exhibit NQ-2015-002-07B (protected), Table 28, Vol. 2.1A.

27. *Transcript of Public Hearing*, Vol. 2, 23 February 2016, at 232, 234-39; Exhibit NQ-2015-002-62.03 (protected), Vol. 2.3 at 105.

28. Exhibit NQ-2015-002-A-03 at para. 10, Vol. 11; Exhibit NQ-2015-002-B-05 at para. 17, Vol. 11A; *Transcript of Public Hearing*, Vol. 1, 22 February 2016, at 22, 74, 141-42.



50. In sum, the Tribunal concludes that domestically produced line pipe constitutes like goods in relation to the subject goods and that the subject goods and like goods constitute a single class of goods.

## DOMESTIC INDUSTRY

51. Subsection 2(1) of *SIMA* defines “domestic industry” as follows:

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

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

53. It was not disputed that Evraz and Tenaris Canada are domestic producers of like goods. However, certain parties questioned Bri-Steel’s status in the domestic industry.

54. Bri-Steel imports seamless hollow shells, or “mother tubes”, which are subject goods,<sup>29</sup> and uses them in a patented thermal pipe expansion process to ultimately produce finished seamless line pipe.<sup>30</sup> It is also a sister entity<sup>31</sup> to Bri-Steel Distribution,<sup>32</sup> another company operating out of Edmonton, Alberta, that imports and distributes the subject goods in the form of finished seamless line pipe. As will be discussed below, both companies are under common control and share some back office resources.

## Submissions of Parties

55. Tianjin Pipe (supported by CISA) submitted that Bri-Steel is not a domestic producer of line pipe because heat-treating operations do not amount to a substantial transformation of the subject goods that would be needed in order to constitute “domestic production”. In this regard, Tianjin Pipe relied on the Tribunal’s decision in Inquiry No. NQ-2014-002<sup>33</sup> that unfinished goods, referred to as “green tubes”, imported into Canada from a non-subject country for heat-treating and processing did not constitute domestic production.<sup>34</sup> Accordingly, Tianjin Pipe submitted that Bri-Steel should not be part of the domestic industry.

56. Optima and Olympia and North-East also challenged Bri-Steel’s status in the domestic industry on the basis that it is an importer of dumped or subsidized goods and/or related to an importer of dumped or subsidized goods.<sup>35</sup> In addition to Bri-Steel’s imports of the subject goods (i.e. mother tubes), they relied on

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29. *Line Pipe Order* at para. 31.

30. Exhibit NQ-2015-002-26, Vol. 1B at 114-15; *Transcript of Public Hearing*, Vol. 3, 24 February 2016, at 513-14.

31. Mr. Rasmussen testified that Bri-Steel and Bri-Steel Distribution are owned by a family trust based in Houston, Texas, with no Chinese ownership. Exhibit NQ-2015-002-25.01A (protected), Vol. 2 at 29; *Transcript of Public Hearing*, Vol. 3, 24 February 2016, at 501-503, 520.

32. As stated above in paragraph 10, Bri-Steel Manufacturing is referred to as “Bri-Steel” for the purposes of these reasons, as distinguished from Bri-Steel Distribution, which is referred to as such throughout these reasons.

33. *Oil Country Tubular Goods* (2 April 2015) (CITT) [*OCTG*].

34. *OCTG* at paras. 50, 53.

35. *Transcript of Public Hearing*, Vol. 4, 26 February 2016, at 697-98, 729, 731.

evidence that Bri-Steel is related to an importer of the subject goods (i.e. Bri-Steel Distribution).<sup>36</sup> On this basis, Optima expressly argued that the Tribunal should exercise its discretion to exclude Bri-Steel from the domestic industry.<sup>37</sup>

57. Bri-Steel did not file submissions in support of, or in opposition to, a finding of injury or threat of injury. However, it filed a product exclusion request for the importation of certain seamless mother tubes (for which it received the consent of Evraz and Tenaris Canada), and opposed certain requests for product exclusions made by other parties on the basis that it is a part of the domestic industry.

58. Mr. Rasmussen indicated that Bri-Steel is a Canadian producer of seamless pipe with outside diameters ranging from 14 to 36 inches and with wall thicknesses up to 3 inches in CSA, ASTM, ASME and API specifications.<sup>38</sup> He noted that Bri-Steel is the only Canadian manufacturer that produces or is capable of producing<sup>39</sup> seamless line pipe with outside diameters of 8 inches and above and, accordingly, stated that granting certain exclusions “. . . would cause injury to Bri-Steel.”<sup>40</sup> Furthermore, Mr. Rasmussen testified that the presence of the subject goods caused Bri-Steel to delay investment in expanding its domestic production activities.<sup>41</sup>

59. In reply to the arguments of the opposing parties, Bri-Steel argued that it does not import mother tubes to capture market share from Tenaris Canada and Evraz since they do not make the same products that Bri-Steel imports, as demonstrated by their consent to its product exclusion request. Instead, it submitted that the level of processing that the mother tubes undergo in Canada in order to produce seamless line pipe involves a specialized thermal pipe expansion process that goes beyond finishing.

60. Bri-Steel admitted that it is related to Bri-Steel Distribution, an importer of the subject goods.<sup>42</sup> Despite this relationship and its own importation of mother tubes, however, it submitted that it should still be included in the domestic industry because its business goals and behaviour in the Canadian market are more aligned with those of a domestic producer than an importer/distributor of the subject goods.<sup>43</sup> In addition, it submitted that its domestic production of like goods is much greater, in terms of volume, than Bri-Steel Distribution's imports of the subject goods.

61. Evraz and Tenaris Canada did not take a position on whether Bri-Steel should be included in the domestic industry. Evraz submitted that Bri-Steel's production is “negligible” in the context of total domestic production, of which it and Tenaris Canada account for a major proportion.<sup>44</sup> Tenaris Canada argued that Bri-Steel's status in the domestic industry has no impact on the consolidated financial

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36. Exhibit NQ-2015-002-63.03, tab 13 at 284-285, Vol. 1.3B; Exhibit NQ-2015-002-64.03 (protected), tab 4, Vol. 2.3A at 320-22.

37. *Transcript of Public Hearing*, Vol. 4, 26 February 2016, at 699.

38. Exhibit NQ-2015-002-61.04, Vol. 1.3A at 189; *Transcript of Public Hearing*, Vol. 3, 24 February 2016, at 489.

39. Bri-Steel currently produces seamless line pipe with an outer diameters of 14 inches and higher. Mr. Rasmussen testified that Bri-Steel is prepared to expand its production to seamless line pipe with outside diameters ranging from 8 inches to 12 inches, which would require a “minimal investment” in equipment, and that it could be ready to start producing those size ranges within a few months if pricing in the domestic market was normalized. Exhibit NQ-2015-002-61.04, Vol. 1.3A at 189; Exhibit NQ-2015-002-62.04 (protected), Vol. 2.3A at 114-26; *Transcript of Public Hearing*, Vol. 3, 23 February 2016, at 489, 491, 496-97.

40. Exhibit NQ-2015-002-61.04, Vol. 1.3A at 184, 186; *Transcript of Public Hearing*, Vol. 4, 26 February 2016, at 689.

41. *Transcript of Public Hearing*, Vol. 3, 24 February 2016, at 491.

42. *Ibid.* at 491, 500-503, 520, Vol. 4, 26 February 2016, at 683.

43. *Transcript of Public Hearing*, Vol. 4, 26 February 2016, at 684-87.

44. Exhibit NQ-2015-002-A-01 at para. 10, Vol. 11; Exhibit NQ-2015-002-A-02 (protected), note 10, Vol. 12.

performance of the domestic industry as a whole.<sup>45</sup> Although Tenaris Canada did not take a position on Bri-Steel's status in the domestic industry, it commented that Bri-Steel imports the subject goods "... for the sole purpose of processing [them] into a product that is of a completely different size and specification" and "... converted [them] into something different than what [they were] when [they] came in."<sup>46</sup>

### **Tribunal's Analysis of Bri-Steel's Status in the Domestic Industry**

62. During the course of the preliminary injury inquiry, the Tribunal indicated that the issue of Bri-Steel's status in the domestic industry would need to be fully examined in the context of a final inquiry.<sup>47</sup> Accordingly, the investigation report included two sets of data: one organized in a way where Bri-Steel would be included in the domestic industry; and the other where Bri-Steel was excluded from the domestic industry.<sup>48</sup>

63. To determine Bri-Steel's status in the domestic industry, there are two issues before the Tribunal: (1) Is Bri-Steel a domestic producer of like goods? (2) If so, are there grounds for the Tribunal to exercise its discretion to exclude Bri-Steel from the domestic industry?

#### Is Bri-Steel a Domestic Producer of Like Goods?

64. The product definition includes "... unfinished line pipe ... imported *for use in the production* or finishing of line pipe meeting final specifications, including outside diameter, grade, wall-thickness, length, end finish or surface finish ..." [emphasis added]. Accordingly, Bri-Steel's importation of unfinished subject goods in the form of mother tubes<sup>49</sup> for use in the *production* of seamless line pipe is consistent with the product definition.

65. The question before the Tribunal, then, is whether Bri-Steel uses the subject goods (i.e. mother tubes) that it imports to *produce* like goods as opposed to solely using the imports to *finish* subject line pipe, given that production of like goods necessarily involves more than finishing. Therefore, the Tribunal must determine whether the subject goods imported by Bri-Steel undergo a substantial transformation after their importation into Canada.<sup>50</sup>

66. The Tribunal finds that Bri-Steel's manufacturing operations in Canada constitute domestic production of like goods and not solely finishing of the subject goods. Bri-Steel provided evidence showing how the imported mother tubes undergo a complex, patented process of thermal heat expansion at a relatively early stage of production at its manufacturing facility in Edmonton.<sup>51</sup> Mr. Rasmussen testified that

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45. *Transcript of Public Hearing*, Vol. 4, 26 February 2016, at 624.

46. *Ibid.* at 639.

47. *Line Pipe PI* at para. 70.

48. In the preliminary injury inquiry, the Tribunal also noted that the status of two other potential domestic producers of like goods, EnergeX Tube and Welded Tube of Canada, would need to be confirmed in the event of an injury inquiry. *Line Pipe PI* at para. 70. EnergeX Tube confirmed that it has ceased production in Canada (Exhibit NQ-2015-002-11.05, Vol. 3B at 10). Welded Tube provided a response that indicated it did not produce like goods that met the product definition (Exhibit NQ-2015-002-12.04 (protected), Vol. 4A at 89-91).

49. *Line Pipe Order* at para. 29.

50. *OCTG* at paras. 50-53.

51. Exhibit NQ-2015-002-26, Vol. 1B at 11, 80-94.

the overall production procedure takes approximately two and a half days,<sup>52</sup> during which the mother tubes are transformed into finished line pipe.<sup>53</sup>

67. This transformation involves a material change of the size (i.e. length, wall thickness and outer diameter) of the original product which occurs by heating and expanding it into a pipe that is then straightened, cut, descaled and tested. In some cases, the pipe dimensions are expanded to double the original size.<sup>54</sup> In the Tribunal's view, this goes beyond finishing operations and amounts to the actual creation of a new and significantly different product. Indeed, Bri-Steel's description of its production process demonstrates that finishing operations (such as bevelling, painting/coating and marking) occur towards the end of the overall production process, after which the mother tubes have already been substantially transformed from the subject goods that were imported into Canada.<sup>55</sup>

68. Bri-Steel also filed evidence that it has a licence granted by the American Petroleum Institute to manufacture seamless pipe to API 5L, is certified as an ISO 9001:2008 manufacturing facility and has been audited as a seamless line pipe manufacturing facility by DNV-GL, an internationally recognized inspection and certification firm.<sup>56</sup>

69. Therefore, the Tribunal finds that Bri-Steel is a domestic producer of like goods. Accordingly, the Tribunal will now consider whether there are reasons for it to exercise its discretion to exclude Bri-Steel from the domestic industry for the purposes of the inquiry.

#### Should Bri-Steel be Excluded from the Domestic Industry?

70. Where a domestic producer contributes to, or benefits from, the potentially injurious dumping or subsidizing, either directly as an importer or indirectly through related companies, the Tribunal may decide to treat that domestic producer as if it were not part of the domestic industry and limit its analysis of injury and threat of injury to the other domestic producers, in order to promote the objectives of *SIMA*. Those objectives include protecting producers in Canada from injury or threat of injury caused by imports of dumped or subsidized goods.<sup>57</sup>

71. As stated above, the Tribunal has established that Bri-Steel is an importer of the subject goods. The Tribunal also finds, on the basis of the evidence, that Bri-Steel and Bri-Steel Distribution are "related"<sup>58</sup> companies. Mr. Rasmussen testified that Bri-Steel and Bri-Steel Distribution share administrative support

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52. Mr. Rasmussen also testified that it would take three days for Bri-Steel to produce 200 tonnes seamless line pipe in large diameters. *Transcript of Public Hearing*, Vol. 3, 24 February 2016, at 537.

53. Exhibit NQ-2015-002-26, Vol. 1B at 11; *Transcript of Public Hearing*, Vol. 3, 24 February 2016, at 513.

54. *Transcript of Public Hearing*, Vol. 3, 24 February 2016, at 510.

55. Exhibit NQ-2015-002-26, Vol. 1B at 11; *Transcript of Public Hearing*, Vol. 3, 24 February 2016, at 512-14.

56. Exhibit NQ-2015-002-26, Vol. 1B at 14, 98-102.

57. *Cross-linked Polyethylene Tubing* (29 September 2006), NQ-2006-001 (CITT) [*Polyethylene Tubing*] at para. 54; *Refill Paper* (27 September 1996), NQ-96-001 (CITT); *Canadian Steel Producers Assn. v. Canada (Commissioner of Customs and Revenue)*, [2004] 2 FCR 642, 2003 FC 1311 (CanLII) at para. 40.

58. Subsection 2(1.2) of *SIMA* provides, *inter alia*, that a producer is "related" to an exporter or importer where "... (b) the producer and the exporter or the importer, as the case may be, are directly or indirectly controlled by a third person ... and there are grounds to believe that the producer behaves differently towards the exporter or importer than does a non-related producer." Subsection 2(1.3) provides that a person is deemed to control another "... where the first person is legally or operationally in a position to exercise restraint or direction over the other person."

employees and office space in Edmonton. Furthermore, Bri-Steel also admitted that it is related<sup>59</sup> to Bri-Steel Distribution, which also imports the subject goods. The Tribunal also notes the relationship that Bri-Steel once had to Wuxi, a Chinese producer/exporter of the subject goods. However, evidence indicates that the relationship ended in July 2014.<sup>60</sup> This fact was not disputed by the parties.

72. This evidence is important for the Tribunal as it considers whether to exercise its discretion to exclude Bri-Steel from the domestic industry. In previous cases, the Tribunal has set out the following factors, which are neither universally applicable or exhaustive, to assist in making its decision whether to exclude a domestic producer from the definition of the domestic industry:

- Structural factors concern the characteristics of the market and the producer's place in that market, including the ratio of the producer's sales of dumped goods to its total sales in the domestic market; the ratio of the producer's volume of dumped goods to its production of like goods; and the producer's actual volume of imports of dumped goods and its share of the total volume of dumped goods.
- Behavioural factors focus on the behaviour of the producer (both directly and in terms of its association with related companies), including whether the producer imported the dumped goods as a defensive measure against other dumped goods or as an aggressive measure to capture market share from other domestic producers of like goods; whether the producer imported the dumped goods to fill a specific market niche or to compete broadly with the like goods produced by other domestic producers; and whether the producer's own like goods compete in the domestic market with the dumped goods that it imports.<sup>61</sup>

73. Applying these factors to the case at hand, the Tribunal sees no compelling reason to exclude Bri-Steel from the domestic industry, even though Bri-Steel is an importer of the subject goods, is related to Bri-Steel Distribution and once had a relationship with Wuxi. Instead, the Tribunal finds that Bri-Steel's activities in the Canadian market have positioned it primarily as a producer of like goods and only secondarily as an importer of the subject goods.

– Structural Factors

74. In terms of structural factors, Bri-Steel does not sell any of its imported mother tubes, as such, in the domestic market but uses them exclusively as inputs in its domestic production of like goods and other pipe outside the product definition. Furthermore, the other domestic producers (i.e. Evraz and Tenaris Canada) do not produce or compete with the subject mother tubes imported by Bri-Steel in the domestic market. Indeed, they did not dispute Bri-Steel's inclusion in the domestic industry nor did they dispute its product exclusion request for the importation of mother tubes. In other words, Evraz and Tenaris Canada themselves conceded that the importation of the mother tubes by Bri-Steel has not caused and does not threaten to cause them injury.

75. Accordingly, the Tribunal did not find it appropriate to include the mother tubes imported by Bri-Steel as part of its analysis of the structural ratios in order to determine Bri-Steel's place in the domestic market. Instead, the Tribunal examined the relevant structural ratios using the data on the volume and sales

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59. *Transcript of Public Hearing*, Vol. 3, 24 February 2016, at 491,500-503, 520, Vol. 4, 26 February 2016, at 683.

60. Exhibit PI-2015-002-02.01, Vol. 1 at 38, 199, 205, 209; *Transcript of Public Hearing*, Vol. 3, 24 February 2016, at 516-20.

61. *Polyethylene Tubing* at paras. 56-59; *Stainless Steel Sinks* (24 May 2012), NQ-2011-002 (CITT) at paras. 64-65; *Pipe Fittings* at para. 65; *Photovoltaic Modules and Laminates* (3 July 2015), NQ-2014-003 (CITT) at para. 59.

of the subject goods imported by Bri-Steel Distribution (i.e. finished line pipe) as compared to the volume of production and sales of Bri-Steel's like goods. For the periods in which such a comparison was possible,<sup>62</sup> the volume of Bri-Steel's like goods vastly outnumbered the volume of the subject goods imported by Bri-Steel Distribution.<sup>63</sup> On the other hand, Bri-Steel exports a significant share of the like goods that it produces in Canada, and its domestic sales are outweighed by Bri-Steel Distribution's domestic sales of the subject goods.<sup>64</sup>

– Behavioural Factors

76. In terms of behavioural factors, the evidence shows that Bri-Steel manages its day-to-day operations independently of Bri-Steel Distribution. Mr. Rasmussen indicated that he makes decisions (and, by extension, so does the owner of both companies) for Bri-Steel's manufacturing operations which are not in any way dictated by Bri-Steel Distribution's import-distribution business.<sup>65</sup> The Tribunal notes that Bri-Steel Distribution neither participated in this inquiry nor opposed a potential finding of injury. Indeed, Mr. Rasmussen testified that the overall corporate strategy is primarily "... to create a manufacturing plant in Canada" and "... we would like to create more in the future."<sup>66</sup> Mr. Rasmussen also made it clear in his testimony that the interests of the manufacturing side take precedence over the interests of the distribution side when corporate decisions are made.<sup>67</sup>

77. In addition, Bri-Steel's like goods do not compete in the domestic market with the subject goods imported by Bri-Steel Distribution, since the latter only imports finished line pipe in size ranges that Bri-Steel does not currently produce in Canada.<sup>68</sup> A comparison of the evidence on the record shows that these import volumes pale in comparison to both the volume of total domestic production and the overall size of the domestic market.<sup>69</sup>

78. Furthermore, there is no indication that Bri-Steel Distribution imports the subject goods as an aggressive measure to capture market share from Bri-Steel or other domestic producers of like goods. In this respect, Mr. Rasmussen testified that the only reason that Bri-Steel has not made the necessary investments to increase the size range of seamless line pipe products that it produces in Canada is the "... import prices [of the subject goods] that are coming into Canada."<sup>70</sup>

79. Finally, Mr. Rasmussen testified that Bri-Steel does not pay any licensing fees to the Chinese makers of the patented equipment that it uses for the thermal heat expansion process. While Bri-Steel imported mother tubes from Tianjin Pipe and Wuxi during the POI, it does not have supply arrangements or any other structural or material contracts with either of those companies and is in no way bound to purchase those same tubes from them. Mr. Rasmussen testified that Bri-Steel imports mother tubes from Wuxi for

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62. Bri-Steel was only able to provide the Tribunal with data on its domestic production for 2014 and interim 2014 and interim 2015.

63. Exhibit NQ-2015-002-15.30 (protected), Vol. 6C at 6; Exhibit NQ-2015-002-12.01 (protected), Vol. 4 at 8.

64. *Ibid.*

65. *Transcript of Public Hearing*, Vol. 3, 24 February 2016, at 524.

66. *Ibid.*

67. *Ibid.* at 491.

68. *Ibid.* at 524.

69. Exhibit NQ-2015-002-07B (protected), Tables 28, 32, Vol. 2.1A; Exhibit NQ-2015-002-15.30 (protected), Vol. 6C at 6.

70. *Transcript of Public Hearing*, Vol. 3, 24 February 2016, at 491.

reasons of convenience and not under any sort of binding supply arrangement.<sup>71</sup> Therefore, the Tribunal finds that Bri-Steel is under no obligation to purchase from Chinese producers/exporters.

80. For these reasons, the Tribunal finds that Bri-Steel behaves primarily as a domestic producer. Bri-Steel neither contributes to, nor benefits from, the potentially injurious effects of the dumping or subsidizing through the importation, either directly or indirectly, of the subject goods.

81. As such, the Tribunal finds that there is no ground to exercise its discretion to exclude Bri-Steel from the domestic industry for the purposes of the inquiry.

82. Accordingly, the Tribunal finds that the domestic industry is comprised of Evraz, Tenaris Canada and Bri-Steel, all three of which have provided information on their production, imports, sales and financial performance. The Tribunal will therefore determine whether there has been injury, or whether there is a threat of injury, to the domestic producers of the like goods as a whole.

### CROSS-CUMULATION

83. Evraz submitted that, since the imports of the subject goods from China have been found to be both dumped and subsidized, it is appropriate for the Tribunal to cross-cumulate the effect of the subsidizing of the subject goods with the effects of the dumping of the subject goods for the purposes of the injury analysis. Conversely, CISA argued that the effects of the dumping and subsidizing must be considered separately, “. . . as neither SIMA nor the WTO [*Anti-Dumping*] or [*Subsidies and Countervailing Measures*] Agreements permit the Tribunal to cross-cumulate these effects when considering material injury . . . .”<sup>72</sup>

84. There are no legislative provisions that directly address the issue of cross-cumulation. Since this inquiry is in respect of dumped and subsidized imports from China only, the effects of dumping and subsidizing of the subject goods from China are manifested in a single set of prices and cannot be isolated.<sup>73</sup> In this respect, the scope of the present inquiry involving imports from a single country is distinguished from the case on which CISA relied<sup>74</sup> and the Tribunal’s decision in Inquiry No. NQ-2015-001.<sup>75</sup> Specifically, those cases involved imports from two or more countries that were not simultaneously subject to subsidizing investigations.

85. Therefore, the Tribunal finds it appropriate to assess the cumulative effects of the dumping and subsidizing of the subject goods on the domestic industry for the purposes of its injury analysis.

### INJURY ANALYSIS

86. In order to determine whether the dumping and subsidizing have caused material injury to the domestic industry, subsection 37.1(1) of the *Special Import Measures Regulations*<sup>76</sup> instructs the Tribunal to consider the volume of the dumped and subsidized goods, their effect on the price of like goods in the

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71. *Ibid.* at 516-20.

72. Exhibit NQ-2015-002-E-01 at para. 88, Vol. 13.

73. *Copper Rod* (28 March 2007), NQ-2006-003 (CITT) at para. 48; *Seamless Carbon or Alloy Steel Oil and Gas Well Casing* (10 March 2008), NQ-2007-001 (CITT) at para. 76; *Aluminum Extrusions NQ* at para. 147; *Line Pipe PI* at para. 73.

74. *United States – Countervailing Measures on Certain Hot-rolled Carbon Steel Flat Products from India* (8 December 2014), WT/DS436/AB/R, Report of the Appellate Body.

75. *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate* (6 January 2016) (CITT).

76. S.O.R./84-927 [*Regulations*].

domestic market, and their resulting impact on the state of the domestic industry. Subsection 37.1(3) directs the Tribunal to consider whether a causal relationship exists between the dumping and subsidizing of the goods and the injury on the basis of such factors.

87. In determining whether the dumping and subsidizing have caused material injury to the domestic industry, the Tribunal must also consider whether any factors other than the dumping and subsidizing of the goods have caused injury, with the injury caused by such other factors not to be attributed to the subject goods. Such other factors may include, *inter alia*, the volumes and prices of non-subject goods imported into Canada or a contraction in market demand.<sup>77</sup>

### **Import Volume of Dumped and Subsidized Goods**

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

#### Submissions of Parties

89. The supporting parties submitted that there was a significant increase in the volume of subject goods during the POI. In addition, they drew specific and repeated attention to Statistics Canada import data, which showed a sharp increase in the import volume of line pipe in November 2015, two months outside of the POI. Atlas and DFI contended that, once the finding in *Piling Pipe* took effect in 2012, importers, such as Pipe & Piling and Platinum Grover, began importing the subject goods for use as piling pipe to fill the void left in the market.

90. The opposing parties did not dispute that there was an increase in import volume over the POI. However, Pipe & Piling argued that imports of line pipe destined for use in the piling pipe market should not be included in the analysis. In its view, when they are removed from the data, there is no significant increase in volume.<sup>78</sup>

91. Similarly, Optima argued that the increase in imports of the subject goods over the POI is not significant when comparing the volumes in 2012 and 2015, based on its own calculations using the data for the period from January to September 2015 (interim 2015) to obtain an estimate of the full-year 2015 volume.

#### Tribunal's Analysis

92. The analytical approach proposed by Pipe & Piling is tantamount to conducting the analysis on the basis of two separate classes of goods. As stated above, the Tribunal will conduct its injury analysis on the basis of a single class of goods. Therefore, it will base its injury analysis on the market for line pipe as a whole, regardless of end use, to determine whether imports of the dumped and subsidized goods have caused injury to the domestic industry. This is especially important, in light of the Tribunal's conclusion that price transparency is prevalent in the domestic market, as will be discussed in more detail below. Accordingly, the Tribunal will not accept Pipe & Piling's proposal to remove imports of the subject goods intended for piling applications from the data for the purposes of its injury analysis.

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77. Paragraph 37.1(3)(b) of the *Regulations*.

78. Exhibit NQ-2015-002-P-01 at para. 85, Vol. 13.



93. The investigation report indicates that the absolute volume of imports of the subject goods decreased (by 7 percent) from 2012 to 2013, before increasing significantly (by 69 percent) to its highest point in 2014.<sup>79</sup> The net increase from 2012 to 2014 was 57 percent, which is significant in absolute terms.<sup>80</sup> However, in interim 2015, imports of the subject goods decreased (by 26 percent) relative to the period from January to September 2014 (interim 2014).<sup>81</sup>

94. When the volume of imports of the subject goods is examined relative to total domestic production or total domestic sales from domestic production, it is clear that the volume of imports of the subject goods increased between 2012 and 2014.<sup>82</sup> While relative imports decreased in interim 2015, they remained notably higher than in 2012 in both cases.

95. Therefore, the Tribunal finds that there was a significant increase in the volume of the dumped and subsidized subject goods in absolute and relative terms over the POI, with the exception of interim 2015.

96. The decline in interim 2015, however, was driven, at least in part, by market factors other than the subject goods. For example, as will be discussed more fully below, a contraction in the size of the total apparent market and the decline in oil prices began to impact market demand in 2015, and several parties acknowledged the impact that this had on the market as a whole.<sup>83</sup>

### **Price Effects of Dumped and Subsidized Goods**

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

#### Submissions of Parties

98. Tenaris Canada and Evraz alleged that line pipe purchasers are price sensitive, that there is a high degree of price transparency in the domestic market and that price is the predominant factor in purchasing decisions, once a supplier has been pre-qualified/certified to supply. Evraz suggested that this price sensitivity has been exacerbated by the deepening decline of the domestic line pipe market due to plunging oil prices.

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79. Exhibit NQ-2015-002-06B, Tables 38, 39, Vol. 1.1A.

80. *Ibid.*

81. *Ibid.*, Table 39.

82. Exhibit NQ-2015-002-07B (protected), Table 56, Vol. 2.1A.

83. *Transcript of Public Hearing*, Vol. 1, 22 February 2016, at 21, 155, Vol. 2, 23 February 2016, at 228, 301-302, Vol. 3, 24 February 2016, at 453, 454; *Transcript of In Camera Hearing*, Vol. 1, 22 February 2016, at 13.

99. Tenaris Canada and Evraz argued that it is in this context that the subject goods have significantly undercut, depressed, and suppressed the price of the domestically produced like goods. They also made several specific allegations of price undercutting, price depression or lost sales due to the subject goods, resulting in lost revenues.<sup>84</sup>

100. Both Pipe & Piling and Optima argued that price is not the driving factor in the decision to buy line pipe. For its part, Pipe & Piling contended that, based on its own adjusted data, the prices of the subject goods were not significantly lower than those of the domestically produced like goods. It also pointed to U.S. mill prices to distributors to demonstrate that prices for line pipe in that market have decreased despite having no imports of Chinese line pipe since trade measures were imposed. This, Pipe & Piling argued, was similar to the price reductions Canadian producers were experiencing and demonstrates that the alleged price effects were attributable to a decline in the economy as a whole as opposed to the subject goods.

#### Tribunal's Analysis

101. In assessing whether the subject goods have undercut, depressed or suppressed the prices of the domestically produced like goods, the Tribunal will begin by considering the specific arguments of the parties and the evidence related to two key issues: (1) the importance of price in purchasing decisions; and (2) price transparency in the market. It will then turn to an analysis of the price effects of the subject goods at different trade levels and evidence related to allegations of undercutting, depression and suppression.

##### – Importance of Price in Purchasing Decisions

102. The investigation report outlines the importance of price in line pipe purchasing decisions. For example, the lowest net price was ranked as “very important” by 11 out of 18 participants and “somewhat important” by the remaining 7 participants.<sup>85</sup> Meanwhile, there were other qualitative factors that were ranked higher as factors in purchasing decisions, such as “meeting required technical specifications”, “reliability of supply”, “product quality”, “after-sales service” and “warranties”.

103. Purchasers indicated that the subject goods and the domestically produced like goods are comparable for a number of qualitative factors.<sup>86</sup> However, when it comes to price, purchasers indicated that the subject goods had the advantage over the like goods.

104. Testimony during the hearing confirmed these responses. Mr. Kelly Smith of Evraz testified to the increasingly determinative role that price has had in purchasing decisions as the apparent market decreased in size and customers became more price-sensitive.<sup>87</sup> He went as far as to indicate that price is now “king”.<sup>88</sup> Furthermore, Mr. David McHattie and Mr. Smith stated that, while the domestic industry may have once enjoyed a domestic price premium over imported goods, that premium is now non-existent.<sup>89</sup>

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84. Exhibit NQ-2015-002-A-04 (protected) at paras. 47-65, Vol. 12; Exhibit NQ-2015-002-B-06 (protected) at paras. 20-37, Vol. 12A; Exhibit NQ-2015-002-12.03 (protected), Vol. 4A at 51-52; Exhibit NQ-2015-002-12.02 (protected), Vol. 4 at 98-99.

85. Exhibit NQ-2015-002-06B, Table 17, Vol. 1.1A.

86. *Ibid.*, Tables 13-15.

87. *Transcript of Public Hearing*, Vol. 1, 22 February 2016, at 57; *Transcript of In Camera Hearing*, Vol. 1, 22 February 2016, at 73.

88. *Transcript of Public Hearing*, Vol. 1, 22 February 2016, at 57; *Transcript of In Camera Hearing*, Vol. 1, 22 February 2016, at 138.

89. *Transcript of Public Hearing*, Vol. 1, 22 February 2016, at 120-21, 299.

105. In light of the above, the Tribunal finds that, once certain pre-conditions are met and qualitative factors are comparable, price becomes the determining factor in purchasing decisions.

– Price Transparency in the Market

106. Both Tenaris Canada and Evraz argued that there is price transparency in the domestic market, such that even small volumes—or mere offers—of the subject goods at unfair low prices could have a market-wide impact. In this context, they noted that prices offered for line pipe imports to be used in piling pipe or PVC applications that are lower than those for use in oil and gas transmission will quickly become known to purchasers in the oil and gas industry. This, in turn, will trigger a price spillover effect and a corresponding decline in prices throughout the entire domestic market.<sup>90</sup>

107. Pipe & Piling and Olympia and North-East rejected the claim that, over the POI, imports of the subject goods sold for use in piling or PVC applications could have had injurious effects on the prices of like goods sold for oil and gas transmission purposes.

108. The Tribunal disagrees. The evidence demonstrates a high degree of price transparency in the domestic market for line pipe, regardless of differences in product type, technical specifications or end use.

109. During the preliminary injury inquiry, both Tenaris Canada and Evraz highlighted the significance of the price transparency issue in their responses to the questionnaire on like goods. Tenaris Canada stated that, “[p]iling pipe and line pipe are both purchased by end users in the upstream . . . , midstream . . . , and downstream . . . ; the availability of dumped/subsidized Chinese line pipe means that prices must be met by Canadian producers of both line pipe and piling pipe, or sales will be lost in both applications.”<sup>91</sup> Similarly, Evraz stated that “[t]he price of Chinese line pipe imports, regardless of their end-use in line pipe applications or piling pipe applications, has had a significant adverse impact on sales volumes and sales pricing to our energy customers who are keenly aware of the current availability and pricing of imported Chinese line pipe and use this information to leverage lower pricing from us.”<sup>92</sup>

110. In the present inquiry, responses to the purchasers’ questionnaire on market characteristics give further credence to the degree of price transparency in the market. For example, 13 of 18 responding purchasers indicated that the domestically produced like goods and the subject goods are sold through the same channels of distribution.<sup>93</sup> In addition, several respondents indicated that it is common for prices to be negotiated through a request for proposal process or under long-term supply arrangements (e.g. an average of 20 months) based on market intelligence on prices.<sup>94</sup>

111. Even more, witnesses for the domestic producers testified that the selling prices of the subject goods are communicated throughout the domestic market, regardless of end use. For example, Mr. Smith stated that “. . . the news of *any* dumped and subsidized Chinese line pipe sold into the Canadian market regardless of its intended end-use has a significant impact on the pricing we can obtain in the market for our line

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90. As stated above at paragraph 49, pricing information tends to quickly permeate the domestic market for line pipe as a whole, regardless of different end uses, especially where common distributors and customers are involved. Such price spillover effects have a direct impact on prices of line pipe used for the transmission of oil, gas and fluids.

91. Exhibit PI-2015-002-08.05, Vol. 5 at 178.

92. Exhibit PI-2015-002-08.11, Vol. 5A at 9.

93. Exhibit NQ-2015-002-06B, Table 8, Vol. 1.1A.

94. *Ibid.*, Tables 20, 23.

pipe”<sup>95</sup> and that Evraz “. . . is unable to raise prices for its line pipe if purchasers are able to source identical pipe made to the same standards for significantly lower prices . . .”,<sup>96</sup> such as API 5L line pipe imported for use in piling pipe applications.<sup>97</sup> In addition, Mr. McHattie stated that “[o]ver time these imports have mushroomed in volume, and their low prices have become the standard above which the market will not pay.”<sup>98</sup>

112. Mr. Smith testified that Evraz, and its customers, study the import data from Statistics Canada closely to ascertain the prices of line pipe being imported from China.<sup>99</sup> He confirmed that the prices at which the subject goods have been imported into Canada have acted as a powerful negotiating tool for customers in securing lower prices of domestically produced line pipe.<sup>100</sup> In other words, the information available on the pricing of the subject goods, regardless of whether or not they were imported for use in the piling pipe or PVC market or for oil and gas transmission purposes, was enough to depress the prices of domestically produced line pipe.

113. The Tribunal heard testimony from witnesses who import and distribute line pipe for piling pipe and PVC applications. When asked if there were price spillover effects between imports of line pipe destined for use in applications other than oil and gas transmission, these witnesses testified that their businesses were restricted to sales for piling pipe or PVC applications and that, as such, they could not comment on the impact of their imports on the domestic industry of line pipe. Specifically, Mr. Jack Dym of Pipe & Piling testified that he was not aware of any price spillover effects because Pipe & Piling’s “. . . focus [is] on the piling industry.”<sup>101</sup> Mr. Zimmerman stated that “[we] do not purchase line pipe, and therefore, cannot discuss its price.”<sup>102</sup> Regardless of Mr. Zimmerman’s reference to the goods that Olympia and North-East import as standard pipe and not line pipe, these goods are still subject goods for the purposes of this inquiry.

114. Nevertheless, other witnesses were very clear that there were price spillover effects caused by imports of the subject goods, regardless of end use, and regardless of whether the line pipe was seamless or welded. The Tribunal heard that line pipe is used extensively in oil and gas projects, both for foundation/structural (or “piling”) purposes, and for the purposes of conveying oil and gas. In particular, witnesses testified that line pipe is sold to the oil and gas industry for transmission and piling applications by the same distributors and often to the very same end users.<sup>103</sup> The Tribunal heard that piling pipe is used in the very same oil and gas projects as line pipe; where one is for foundation/structural purposes, and the other is for the purposes of conveying oil and gas.<sup>104</sup> The Tribunal also heard that, although two such phases of a

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95. Exhibit NQ-2015-002-A-03 at para. 35, Vol. 11.

96. *Ibid.*

97. *Ibid.* at para. 17.

98. Exhibit NQ-2015-002-B-05 at para. 17, Vol. 11A.

99. *Transcript of Public Hearing*, Vol. 1, 22 February 2016, at 22, 74, 141; *Transcript of In Camera Hearing*, Vol. 1, 22 February 2016, at 69. Mr. McHattie provided similar testimony in this respect. *Transcript of Public Hearing*, Vol. 2, 23 February 2016, at 276.

100. *Transcript of Public Hearing*, Vol. 1, 22 February 2016, at 74.

101. *Transcript of Public Hearing*, Vol. 3, 24 February 2016, at 452.

102. Exhibit PI-2015-002-08.13, Vol. 5A at 41.

103. *Transcript of Public Hearing*, Vol. 3, 24 February 2016, at 272-73; *Transcript of In Camera Hearing*, Vol. 3, 24 February 2016, at 268-74.

104. *Transcript of In Camera Hearing*, Vol. 3, 24 February 2016, at 275-78.

project are separate, with different designers and contractors doing the work, common engineering companies will often be used.<sup>105</sup>

115. The Tribunal finds that, in many instances, these end users (or their consultants) would be just as likely to purchase line pipe for oil and gas conveyance applications as they would for piling applications. In this regard, the Tribunal finds it reasonable to expect that both the engineers and end users would be aware of the prices paid for line pipe, being used as piling pipe at the structural/foundation stage of the project. The fact that identical goods can be used for foundation/structural purposes and conveyance is an important factor in demonstrating the price transparency in the market. Therefore, prices paid at the structural/foundation stage of a project would impact negotiations on prices for line pipe required for later stages.

116. There was also evidence of price spillover effects between seamless and welded line pipe in the domestic market. Mr. Brent Quinton of Gateway Tubulars Ltd., a domestic purchaser of line pipe, was particularly instructive in that regard. He testified that, since seamless line pipe is more expensive to produce, and is produced to more stringent standards, it typically commands a significant price premium in the market. Similarly, Mr. Rasmussen testified that it is not uncommon for seamless line pipe to be double the cost of welded line pipe.<sup>106</sup> Despite the usual price premium on seamless line pipe, however, Mr. Quinton testified that the prices of imported Chinese seamless line pipe are so low they have been putting downward pressure on the price of domestically produced welded line pipe during the POI.<sup>107</sup>

117. The Tribunal finds that there is an interplay between the pricing of imported seamless line pipe and domestically produced welded line pipe, whereby the former has price spillover effects on the latter due to the prevalence of price transparency in the market.

118. Accordingly, the Tribunal finds that there is a high degree of price transparency in the market, such that, when any line pipe is imported, the price tends to quickly permeate the domestic market as a whole. This price transparency gives rise to price spillover effects between line pipe that is either seamless or welded, made to various technical specifications and/or intended for different end uses, especially where common distributors, engineers and end users are involved.

– Price Effects Analysis at Different Trade Levels

119. Evraz submitted that the Tribunal should assess whether there is price undercutting by looking at the Canadian producers' selling price of like goods to distributors compared to the selling price of foreign exporters to distributors instead of importer-distributors' sales of imports to other distributors.<sup>108</sup> Evraz claimed that a number of importer-distributors buy domestically produced product as well and imported product, making the price charged by Chinese exporters comparable to the domestic producers' sales price to distributors.

120. The Tribunal typically begins its assessment of price effects on the premise that domestic producers compete with importers at the first level of sale in the domestic market, i.e. the first sale by an importer-distributor to another distributor or to an end user. In this case, information on sales by domestic producers and importers to distributors and end users was collected separately for the investigation report.

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105. *Ibid.* at 277-78.

106. *Transcript of Public Hearing*, Vol. 3, 24 February 2016, at 493-94.

107. *Transcript of Public Hearing*, Vol. 1, 22 February 2016, at 159-60.

108. The selling price of foreign exporters to Canadian distributors can be assessed by using the net delivered purchase value of importers that are distributors. Exhibit NQ-2015-002-07C (protected), Table 4, Vol. 2.1B.

Where an importer is an end user of the goods, its net delivered purchase value was used in the calculation of the weighted average unit value of sales; for the purposes of the Tribunal's analysis, this is considered the "price" of the first sale into Canada.<sup>109</sup>

121. In the marketplace, however, there may be cases where domestic producers compete with foreign producers for sales to certain distributors that also import the subject goods directly. In the particular circumstances of this case, the Tribunal finds that there may be some instances where the domestic producers do in fact compete with foreign exporters for sales to distributors that are also importing the subject goods themselves. Accordingly, the Tribunal accepts the specific submission from Evraz to this effect and agrees that it is reasonable to compare the purchase value of imports by distributors with the domestic industry's selling price of like goods to distributors (hereinafter the "Evraz approach"), when assessing the impact of the subject goods on the domestic industry's sales to distributors.

122. Tenaris Canada proposed a slightly different approach, based on the assertion that the importer-distributors of the subject goods compete with Tenaris Canada's distributors of domestically produced goods for sales to other (smaller) distributors or end users. As such, the level of pricing competition would not be visible from the investigation report data which do not go beyond the first level of sale in the domestic market.

123. While pricing demands from end users or downstream distributors (whether due to the subject goods or other factors) may affect the price at which the domestic industry can sell like goods to its distributors, ultimately the sale to the distributor remains the first level of sale for the domestic producers where any such impacts are felt. In the Tribunal's view, the domestic producers' first sale in the domestic market, whether it is to distributors or end users, is the appropriate level at which to assess pricing impacts on the domestic industry. If distributors are indeed choosing between distributing the subject goods or the like goods, this would support Evraz's argument that the selling price of domestically produced goods to distributors should be compared to the purchase price that importer-distributors are paying for the subject goods.<sup>110</sup>

124. In light of the above, the Tribunal will conduct its analysis of price undercutting, price depression and price suppression on the basis of weighted average prices at both the aggregate level and at the different trade levels for sales to distributors and end users. In terms of the analysis of price effects at the sales to distributor trade level, for the reasons discussed above, the Tribunal compared the selling prices of domestically produced like goods to both the selling price and purchase price of the subject goods. It considered both the traditional approach and the Evraz approach, since it appears that, in some instances, the domestic producers compete with the delivered prices of foreign exporters when selling to certain distributors.

– Price Undercutting

125. When examined at the aggregate level, the average price of the subject goods undercut the average price of the domestically produced like goods in each period of the POI.<sup>111</sup> The percentage of undercutting was significant in 2013, 2014 and interim 2015.

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109. Exhibit NQ-2015-002-06B, Vol. 1.1A at 36.

110. In *Aluminum Extrusions* (17 March 2014), RR-2013-003 (CITT) [*Aluminum Extrusions RR*] at paras. 112-13, the Tribunal used a pricing analysis approach similar to that suggested by Evraz in light of evidence that the domestic producers were selling to distributors that were also importing directly.

111. Exhibit NQ-2015-002-07B (protected), Table 64, Vol. 2.1A.

126. In terms of sales to distributors under the traditional approach, the average price of the subject goods exceeded the price of the like goods in all periods of the POI.<sup>112</sup> Conversely, for sales to end users, the subject goods significantly undercut the price of the like goods in all periods except 2012.<sup>113</sup>

127. Under the Evraz approach, when the domestic producers' selling price to distributors is compared to the distributors' purchase price of imports, the results differ, and significant undercutting occurred in all periods.<sup>114</sup>

128. For sales of benchmark products, when sales to distributors and end users are aggregated, there were many instances where the subject goods were significantly higher-priced than the domestically produced like goods. However, the subject goods undercut the price of the like goods in 34 of 48 instances where they were both sold in the apparent market.<sup>115</sup> The percentage of undercutting ranged from 3 percent to 48 percent.<sup>116</sup> For sales to distributors, undercutting by the subject goods occurred in 16 of 47 periods, ranging from 2 percent to 27 percent.<sup>117</sup> For sales to end users, the subject goods significantly undercut the price of the like goods in 28 of 34 periods, with undercutting ranging from 13 percent to 90 percent.<sup>118</sup>

129. For the benchmark products, the distributors' unit purchase value of the subject goods could not be compared to the domestic producers' selling prices of like goods to distributors because importers that are distributors were only required to provide their sales of these goods rather than their purchases. However, as stated above, the data on sales to distributors show that the subject goods significantly undercut the price of the like goods in some periods. There would likely be even more instances of undercutting based on the purchase value of imports rather than the selling value of imports because the purchase value of imports would be below the selling value of those imports, except for instances where products are being sold at a loss.

130. Witnesses for both Evraz and Tenaris Canada spoke to specific lost sales allegations and provided additional information to supplement their witness statements to demonstrate price undercutting that occurred in relation to particular transactions.<sup>119</sup> The Tribunal finds that there are a number of instances where the domestic producers did indeed lose sales to lower-priced subject goods, which corroborates the evidence of price undercutting presented in the investigation report.

– Price Depression

131. Whether at the aggregate, distributor or end user level, the average selling prices of domestically produced like goods dropped from 2012 to 2013 before increasing in 2014 (albeit not to 2012 levels).<sup>120</sup> Further increases occurred in interim 2015.

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112. *Ibid.*, Table 83.

113. *Ibid.*, Table 85.

114. *Ibid.*, Table 83; Exhibit NQ-2015-002-07C (protected), Table 4, Vol. 2.1B.

115. Exhibit NQ-2015-002-06B, Table 106, Vol. 1.1A.

116. *Ibid.*, Table 105.

117. *Ibid.*, Schedules 38, 39.

118. *Ibid.*, Schedules 53, 54.

119. *Transcript of In Camera Hearing*, Vol. 1, 22 February 2016, at 18, 20, 58-59, 111-12, 133, 143-44, Vol. 2, 23 February 2016, at 201-205.

120. Exhibit NQ-2015-002-07B (protected), Tables 64, 83, 85, Vol. 2.1A.

132. Generally speaking, prices of like goods and the subject goods followed the same trends over the POI. At the aggregate level, the average price of the like goods fell between 2012 and 2014 and the average price of the subject goods also fell but did so to a greater extent over the same period.<sup>121</sup> For sales to end users, the price of the like goods declined between 2012 and 2014, while the price of the subject goods declined to a greater degree.<sup>122</sup> For sales to distributors under the traditional approach, the decline in the average prices of like goods was higher than that of the subject goods between 2012 and 2014.<sup>123</sup>

133. At the distributor level, the trends differ slightly when using the Evraz approach. There were some periods in which the average unit purchase value of the subject goods by distributors declined, whereas the selling price of the like goods to distributors actually increased.<sup>124</sup> The Tribunal notes that the changes in selling price of the like goods to distributors tracked more closely to the changes in the purchase value of the subject goods than they did with the selling value of the subject goods to distributors.

134. Evraz and Tenaris Canada used different strategies in response to the alleged price competition from the subject goods, whereby Evraz lowered its prices to maintain market share while Tenaris Canada sought to maintain pricing (at the expense of market share).<sup>125</sup> During the hearing, however, witnesses for both companies provided specific examples where they had to depress their prices in order to secure sales.<sup>126</sup> As stated above, they indicated that their customers expected them to lower prices to the level at which the subject goods were imported into Canada.<sup>127</sup>

135. In light of the foregoing, the evidence demonstrates that significant price depression occurred between 2012 and 2014.

– Price Suppression

136. In regard to price suppression, the Tribunal compared the domestic industry's cost of goods sold (COGS) on a CAN\$/tonne basis with its selling prices of like goods in the domestic market in order to determine if the domestic industry was able to increase its selling prices in the face of any increasing costs over the POI.

137. The data reveal that the domestic industry's COGS increased somewhat between 2012 and 2014, while its selling price declined by a greater proportion.<sup>128</sup> In interim 2015, the industry's COGS increased, while its selling price also increased, albeit to a lesser extent.

138. In terms of the consolidated financial results, the domestic industry's COGS represented a large and increasing proportion of its consolidated sales revenue in 2014, up from 2012 and 2013, and further increased in 2015.<sup>129</sup>

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121. *Ibid.*, Tables 64, 65.

122. *Ibid.*, Table 86.

123. *Ibid.*, Table 84.

124. Exhibit NQ-2015-002-07C (protected), Table 4, Vol. 2.1B.

125. *Transcript of Public Hearing*, Vol. 4, 26 February 2016, at 621-22.

126. *Transcript of In Camera Hearing*, Vol. 1, 22 February 2016 at 69, 76, 112, Vol. 2, 23 February 2016, at 183-84; Exhibit NQ-2015-002-A-04 (protected) at para. 70, Vol. 12; Exhibit NQ-2015-002-B-06 (protected) at para. 54, Vol. 12A.

127. Exhibit NQ-2015-002-A-04 (protected) at paras. 70-76, Vol. 12; Exhibit NQ-2015-002-B-06 (protected) at paras. 28-33, Vol. 12A; Exhibit NQ-2015-002-12.03 (protected), Vol. 4A at 51-52; Exhibit NQ-2015-002-12.02 (protected), Vol. 4 at 98-99.

128. Exhibit NQ-2015-002-07B (protected), Tables 64, 115, Vol. 2.1A.

129. *Ibid.*, Table 115.



139. Therefore, the Tribunal finds that the high volumes of subject goods entering the domestic market from 2012 to 2014 were priced below the domestically produced like goods, which prevented the domestic industry from raising its prices to offset increasing COGS. As such, a comparison of the COGS and average selling prices of the like goods indicates that significant price suppression occurred during the POI.

– Summary

140. In light of the significant and increasing volume of the subject goods, in both absolute and relative terms, during the POI (with the exception of interim 2015), and the prevalence of price transparency in the domestic market, the Tribunal finds that the low-priced subject goods were clearly a driver of significant and adverse price effects on the domestically produced like goods. This conclusion is not negated by the decrease in import volume in interim 2015 because, as discussed further below, this decrease was driven in part by market factors other than the subject goods.

141. In sum, therefore, the Tribunal finds that subject goods significantly undercut, depressed and suppressed the price of domestically produced like goods over the POI.

### **Resultant Impact on the Domestic Industry**

142. Paragraph 37.1(1)(c) of the *Regulations* requires the Tribunal to consider the resulting impact of the dumped and subsidized goods on the state of the domestic industry and, in particular, all relevant economic factors and indices that have a bearing on the state of the domestic industry.<sup>130</sup> These impacts are to be distinguished from the impact of other factors also having a bearing on the domestic industry.<sup>131</sup> Paragraph 37.1(3)(a) requires the Tribunal to consider whether a causal relationship exists between the dumping or subsidizing of the goods and the injury, retardation or threat of injury, on the basis of the volume, the price effect and the impact on the domestic industry of the dumped or subsidized goods.

#### Submissions of Parties

143. Evraz and Tenaris Canada argued that the increased volumes and the price effects of the subject goods caused material injury by drastically increasing the subject goods' market share at the expense of the domestic industry. They argued that they suffered material injury in the form of significant net and gross margin losses, cancelled or delayed investments, job losses and idling of certain plants (both recently and pending) and were forced to operate with considerable excess capacity. Evraz noted that the impact has been devastating and has pushed it to the brink of collapse.

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130. Such factors and indices include (i) any actual or potential decline in output, sales, market share, profits, productivity, return on investments or the utilization of industrial capacity, (ii) any actual or potential negative effects on cash flow, inventories, employment, wages, growth or the ability to raise capital, (ii.1) the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods, and (iii) in the case of agricultural goods, including any goods that are agricultural goods or commodities by virtue of an Act of Parliament or of the legislature of a province, that are subsidized, any increased burden on a government support programme.

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

144. Atlas and DFI submitted that the subject goods also caused them to suffer injury over the POI. However, as they are producers of piling pipe that do not form part of the domestic industry, the Tribunal did not consider the impact of the subject goods on their performance.<sup>132</sup>

145. In response, the opposing parties submitted that the subject goods did not cause material injury to the domestic industry, as the domestic industry's problems were attributable to other factors. In particular, Pipe & Piling, Optima and Olympia and North-East asserted that any injury was a result of other factors, such as reduced domestic market demand for line pipe due to the collapse in oil prices and the concurrent economic slowdown, intra-industry competition, the export performance and productivity of the domestic industry, the devaluation of the Canadian dollar and the presence of imports from non-subject countries, including those imported by Tenaris Canada and Evraz as part of their respective global corporate strategies.

### Tribunal's Analysis

146. For the reasons that follow, the Tribunal finds that, during the POI, the domestic industry suffered material injury that is attributable to the subject goods, particularly in the form of lost sales and market share, declines in gross margins and production, and delayed plans to expand operations. The Tribunal also finds that any negative effects that other factors may have had on the domestic industry are inconsequential vis-à-vis the material and unquestionable impact that the subject goods had over the POI.

### Production

147. Total domestic production of like goods increased by 4 percent overall from 2012 to 2014, but fluctuated in between, dropping by 33 percent to its lowest point in 2013 before recovering by 56 percent in 2014.<sup>133</sup> Domestic production decreased again by 11 percent in interim 2015 relative to interim 2014.

148. In 2013, domestic production for domestic sales declined by 23 percent<sup>134</sup> and imports of the subject goods decreased by 7 percent.<sup>135</sup> However, in 2014, when the overall market in terms of volume increased by 47 percent, imports of the subject goods increased by 69 percent, while domestic production for domestic sales only increased by 32 percent.<sup>136</sup> The Tribunal finds that the growth in domestic production for domestic sales in 2014 would have been higher had it not been for the significant increase in imports of the subject goods at low prices.

149. While there was a decrease in domestic production in interim 2015 relative to interim 2014, the Tribunal finds that the decline in this particular period was attributable, at least in part, to the collapse in oil prices that occurred in late 2014 and 2015, as will be discussed further below under "Factors Other Than Dumping or Subsidizing". Furthermore, the Tribunal notes that Tenaris Canada temporarily suspended

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132. Mr. Zekelman of Atlas testified that Atlas has an API licence and is equipped to produce line pipe but that it has not produced line pipe due to the presence of low-priced subject goods in the market. *Transcript of Public Hearing*, Vol. 2, 23 February 2016, at 349; Exhibit NQ-2015-002-O-01 at para. 40, Vol. 11B. While the Tribunal's analysis of the resultant impact of the subject goods on the domestic industry does not include Atlas, as it is not a domestic producer of like goods, this evidence points to the low pricing of the subject goods in the domestic market.

133. Exhibit NQ-2015-002-07B (protected), Table 32, Vol. 2.1A; Exhibit NQ-2015-002-06B, Table 33, Vol. 1.1A.

134. Exhibit NQ-2015-002-06B, Table 33, Vol. 1.1A.

135. *Ibid.*, Table 39.

136. *Ibid.*, Tables 33, 39, 59.

production at its Prudential facility in July 2015 (i.e. towards the end of the POI),<sup>137</sup> which would have impacted its production figures.

#### Sales and Market Share

150. Domestic sales from domestic production fluctuated during the POI, decreasing by 30 percent in 2013, before increasing by 46 percent in 2014.<sup>138</sup> In interim 2015, domestic sales from domestic production decreased by 18 percent when compared to interim 2014.<sup>139</sup>

151. The trend in domestic sales aligned with the overall trend in the domestic market; sales of line pipe from all sources decreased by 15 percent from 2012 to 2013 and then grew by 47 percent in 2014, reaching a peak volume of the entire POI.<sup>140</sup> In interim 2015, the market contracted again by 24 percent. In comparison, the volume of sales of the subject goods decreased by only 6 percent from 2012 to 2013, before increasing by 68 percent in 2014 and then decreasing by 25 percent in interim 2015.<sup>141</sup>

152. The domestic industry's market share decreased in 2013 and remained flat until interim 2015, when it increased marginally compared to interim 2014.<sup>142</sup> The subject goods gained market share from 2012 to 2014, while that of the non-subject goods declined.<sup>143</sup>

153. The trend reversed somewhat in interim 2015, with a slight increase in the domestic industry's market share, while that of both the subject goods and non-subject goods dropped slightly; however, the domestic industry's market share was still well below the 2012 level.

154. The Tribunal finds the subject goods captured market share at the expense of domestically produced like goods in 2013. In 2014, the domestic industry would have likely achieved more of an increase in sales had it not been for the presence of the subject goods in the market.

155. The above evidence is further substantiated by the evidence of witnesses for Evraz and Tenaris Canada who provided specific examples of like goods being sold at reduced prices or of sales that were lost entirely due to the lower-priced subject goods.<sup>144</sup> On this point, Optima submitted that the onus is on Tenaris Canada to provide evidence tracking the origin of the line pipe that it sells in Canada and to show that all its specific injury allegations are based on line pipe produced in Canada and not by Tenaris Canada's strategy to sell non-subject goods imported from affiliated companies in other countries.

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137. *Transcript of Public Hearing*, Vol. 2, 23 February 2016, at 277.

138. Exhibit NQ-2015-002-06B, Table 59, Vol. 1.1A.

139. *Ibid.*

140. *Ibid.*

141. *Ibid.*

142. Exhibit NQ-2015-002-07B (protected), Tables 30, 60, Vol. 2.1A.

143. *Ibid.*, Table 30.

144. Exhibit NQ-2015-002-A-04 (protected) at paras. 47-65, Vol. 12; Exhibit NQ-2015-002-B-06 (protected) at paras. 20-37, Vol. 12A; Exhibit NQ-2015-002-12.03 (protected), Vol. 4A at 51-52; Exhibit NQ-2015-002-12.02 (protected), Vol. 4 at 98-99.

156. In this regard, the Tribunal notes that Tenaris Canada, in its response to the producers' questionnaire, distinguished between sales of non-subject imports and sales of domestically produced goods.<sup>145</sup> Furthermore, Tenaris Canada's allegations of lost sales were tested on cross-examination with its witnesses at the hearing,<sup>146</sup> and the Tribunal is satisfied that they related to domestically produced goods.

157. Therefore, the Tribunal finds that the domestic industry lost sales and market share to the subject goods over the POI.

#### Profitability

158. The domestic industry experienced declining gross margins and net income over each period of the POI.<sup>147</sup>

159. The evidence shows that the domestic producers' consolidated gross margin on domestic sales from domestic production was being squeezed by their inability to raise prices in line with the increasing COGS over the POI.<sup>148</sup> This includes the significant price suppression caused by the subject goods. It is noteworthy that the gross margin continuously declined despite the improvement in the overall market in terms of volume in 2014. Meanwhile, the domestic industry's consolidated gross margin on export sales increased over the POI, including a significant uptick in 2014.<sup>149</sup> The Tribunal finds that this evidence shows that the domestic industry's profitability suffered as a result of the low-priced subject goods entering the market in significant volumes during the POI.

#### Employment and Wages

160. Both employment and wages in the domestic industry varied between 2012 and 2014 with employment increasing overall, albeit marginally.<sup>150</sup> Wages decreased significantly in 2013 before increasing in 2014. However, both employment and wages decreased in interim 2015 when compared to interim 2014. Person-hours worked also fluctuated but increased overall.<sup>151</sup>

161. However, the Tribunal notes the idling of certain plants and employee layoffs which took place either towards the end of the POI or since then.<sup>152</sup> As stated above, Tenaris Canada temporarily idled its production at the Prudential facility in July 2015; there was also some evidence that Tenaris Canada's Algoma mill is currently operating at reduced capacity and that Evraz recently idled its Camrose plant.<sup>153</sup> While these events may have taken place outside of the POI and were not necessarily determinative in the Tribunal's decision on injury, they nonetheless point to a worsening situation that can be attributed to the subject goods.

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145. Exhibit NQ-2015-002-12.03 (protected), Vol. 4A at 30.

146. *Transcript of In Camera Hearing*, Vol. 2, 23 February 2016, at 197-205.

147. Exhibit NQ-2015-002-07B (protected), Tables 30, 115, Vol. 2.1A.

148. *Ibid.*

149. *Ibid.*, Table 116.

150. *Ibid.*, Tables 126, 128, 130. This discussion is based on direct employment.

151. Exhibit NQ-2015-002-07B (protected), Table 128, Vol. 2.1A.

152. *Transcript of Public Hearing*, Vol. 1, 22 February 2016, at 30, Vol. 2, 23 February 2016, at 267.

153. *Transcript of Public Hearing*, Vol. 1, 22 February 2016, at 30, 86, Vol. 2, 23 February 2016, at 228, 277.

### Productivity

162. The trends in domestic production and direct employment discussed above were similar in that they both decreased from 2012 to 2013 and then increased in 2014. In 2013, the decline in employment and number of hours worked outpaced the decline in production, which resulted in an increase in productivity in terms of both tonnes per employee and tonnes per thousand hours worked.<sup>154</sup> Conversely, in 2014, the rate of increase in direct employment exceeded the rate of increase in production, which resulted in a decline in productivity compared to the previous year.

163. Notwithstanding the apparent increase in productivity indicators in 2013, the fact remains that both production and employment declined in that period due to imports of the subject goods and related price effects. In 2014, while production and employment rebounded in line with the overall expansion of the market, much of the market growth was captured by the subject goods and not domestic production, which partially resulted in a decline in productivity. Therefore, these productivity indicators mask the true impact of the subject goods and must be considered in conjunction with the trends in domestic production, market share and employment.

### Capacity Utilization

164. Over the course of the POI, the capacity utilization rate of the domestic industry fluctuated, decreasing in 2013, before increasing in 2014 back to 2012 levels.<sup>155</sup> Both data and witness testimony indicated that the capacity utilization rate decreased to its lowest rate during the POI in interim 2015.<sup>156</sup>

165. The Tribunal finds that capacity utilization generally follows the trends discussed above for domestic production from 2012 to 2014 and was similarly affected by the low-priced subject goods entering the domestic market during that period. However, the Tribunal finds that the decline in capacity utilization in interim 2015 was linked, at least in part, to the overall decline in demand due to the collapse in oil prices, as will be discussed further below.

### Investments and Innovation

166. The level of investment by domestic producers almost doubled throughout the POI when 2014 numbers are compared to 2012 levels.<sup>157</sup> However, at the time when information was collected for the investigation report, investments were projected to decline by almost 50 percent in 2015.<sup>158</sup>

167. Indeed, one witness for Tenaris Canada stated that “[p]roposed investments to expand the scope of our production in Canada can no longer be justified with current market prices” and that “. . . the payback from our recent investments [is] lower than [it] had been in the past when sales volumes and prices were higher.”<sup>159</sup> Similarly, witnesses for Evraz testified that, during the POI, the low pricing levels for line pipe due to dumped and subsidized goods have hampered its investment activities, including investments in new equipment and technology, which are linked to the company’s ability to innovate and compete in the

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154. Exhibit NQ-2015-002-07B (protected), Table 132, Vol. 2.1A.

155. *Ibid.*, Table 28.

156. *Ibid.*, Table 28; *Transcript of In Camera Hearing*, Vol. 1, 22 February 2016 at 119.

157. Exhibit NQ-2015-002-07B (protected), Table 138, Vol. 2.1A.

158. *Ibid.*

159. Exhibit NQ-2015-002-B-03 at para. 29, Vol. 11A.

Canadian market.<sup>160</sup> In addition, Bri-Steel provided evidence and testimony that it has held back on expanding its manufacturing operations to 8-inch to 12-inch seamless line pipe, given the impact that the subject goods have had on the market.<sup>161</sup>

168. Therefore, the Tribunal finds that the subject goods have contributed to delays in the investments of certain domestic producers to expand their manufacturing operations in Canada.

#### Inventories

169. Inventories of domestic production fluctuated throughout the POI but increased overall between 2012 and 2014, with a sizable increase from 2012 to 2013.<sup>162</sup> The results for 2013 correspond with the decreased sales that year, while sales of the subject goods were relatively strong. Inventories decreased in interim 2015 as compared to interim 2014, but the levels were still much higher than those that existed between 2012 and 2014.<sup>163</sup>

170. The Tribunal heard evidence that the domestic industry carried more inventory towards the end of the POI due to the increasing difficulty of selling domestically produced goods in competition with the low-priced subject goods in the domestic market. In particular, Mr. Guillermo Moreno testified that Tenaris Canada's domestic mills have temporarily ceased production "... due to the level of inventories that we produce, especially from Prudential, and lack of orders, among other things, due to the imports from China."<sup>164</sup>

#### Factors Other Than the Dumping or Subsidizing

##### – Contraction in Market Demand due to Declining Oil Prices

171. Pipe & Piling, CISA and Optima argued that the predominant factor that affected the domestic injury was the decline in oil prices, coinciding with the downturn in the Canadian economy, and the resulting contraction in market demand for line pipe.<sup>165</sup> CISA submitted that the adverse implications of the oil price crash and economic downturn are being experienced not only by Tenaris Canada and Evraz but also by everyone in the Canadian oil patch, including mud companies, seismic operators, supply stores and drilling/service rig contractors and that similar impacts are being experienced globally. Pipe & Piling submitted that reduced drilling caused by low prices has had a significant detrimental effect on the domestic producers because they sell primarily to the oil and gas sector.

172. For their part, Tenaris Canada and Evraz submitted that the injury experienced by the domestic industry during the POI cannot be attributed to the decline in oil prices that occurred towards the end of 2014. Moreover, Tenaris Canada submitted that there is a lag between the decline in oil prices and demand for line pipe in the domestic market, because of the extended planning timelines required for large projects

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160. Exhibit NQ-2015-002-A-06 (protected) at paras. 51-54, Vol. 12; Exhibit NQ-2015-002-A-10 (protected) at paras. 25-28, 30, Vol. 12.

161. *Transcript of Public Hearing*, Vol. 3, 24 February 2016, at 491.

162. Exhibit NQ-2015-002-07B (protected), Table 140, Vol. 2.1A.

163. *Ibid.*

164. *Transcript of Public Hearing*, Vol. 2, 23 February 2016, at 277.

165. The Tribunal notes that Olympia and North-East made similar arguments on this point; however, at the hearing, they clarified that they were not taking a position in respect of the injury claims made by Evraz and Tenaris Canada and limited their submissions to the scope of the product definition and product exclusion requests. *Transcript of Public Hearing*, Vol. 3, 24 February 2016, at 392-93, Vol. 4, 26 February 2016, at 702-703.

using line pipe. Both producers argued that solely focusing on the recent decline in oil prices and the related contraction in market demand would ignore the injurious price effects caused by the significant and increasing volume of the subject goods during the earlier part the POI.

173. The Tribunal agrees that the injury to the domestic industry cannot be attributed to this factor prior to 2015. Based on evidence on the record, oil prices fluctuated between 2012 and the first half of 2014, but remained within the range of approximately US\$85 per barrel and US\$110 per barrel.<sup>166</sup> In the second half of 2014, oil prices decreased significantly to below US\$50 per barrel and continued to decrease in 2015.<sup>167</sup> Similarly, there is evidence that Canada's annual average rig count, another indicator of demand for line pipe,<sup>168</sup> exhibited a fairly consistent trend from 2012 to 2014 before dropping significantly in 2015.<sup>169</sup>

174. However, the evidence on the record shows that market demand for line pipe was strong over most of the POI and that the decline in oil prices in the fourth quarter of 2014 only started to impact the domestic industry in 2015.<sup>170</sup> The size of total apparent market reached its highest point of the POI in 2014.<sup>171</sup> Witnesses for the supporting parties testified that 2014 was a "healthy" and "good" year in the domestic market for line pipe, until the fourth quarter when the price of oil declined and the market began to soften.<sup>172</sup> Moreover, several witnesses testified that there is generally a time lag between the decline in oil prices and demand for line pipe in the domestic market.<sup>173</sup> The collapse in oil prices appears to have exacerbated this lag effect, resulting in a number of projects having been delayed or cancelled since the end of 2014.<sup>174</sup>

175. The Tribunal finds that, while fluctuations in oil prices undoubtedly have had an impact on the domestic market for line pipe, the price collapse that occurred towards the end of 2014 only began to materialize in terms of declining market demand for line pipe in 2015. Accordingly, the injury suffered by the domestic industry during the POI, and particularly from 2012 to 2014, cannot be attributed to the recent contraction in market demand due to declining oil prices. The extent to which this factor impacted the domestic industry in interim 2015 does not negate the injurious effects of the subject goods over the full POI, and 2012 to 2014 in particular.

– Global Corporate Strategies of Tenaris Canada's and Evraz's Parent Companies

176. Optima and CISA argued that the injury allegations must be examined in the context of the global operations and corporate strategies of the parent companies of Tenaris Canada and Evraz respectively.

177. Optima submitted that Tenaris Canada only produces a limited size range of the like goods and has recently decided to idle its manufacturing operations instead of seeking out possible export markets to increase production and capacity utilization. Meanwhile, it also imports non-subject goods into Canada from

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166. Exhibit NQ-2015-002-69.13, Vol. 1E at 244.

167. *Ibid.*

168. *Transcript of Public Hearing*, Vol. 1, 22 February 2016, at 129.

169. Exhibit NQ-2015-002-69.09, Vol. 1E at 132-33.

170. Exhibit NQ-2015-002-14.18, Vol. 5 at 236; *Transcript of Public Hearing*, Vol. 1, 22 February 2016, at 19-20, Vol. 2, 23 February 2016, at 315.

171. Exhibit NQ-2015-002-07B (protected), Table 28, Vol. 2.1A.

172. *Transcript of Public Hearing*, Vol. 1, 22 February 2016, at 19-20, Vol. 2, 23 February 2016, at 315.

173. *Transcript of Public Hearing*, Vol. 1, 22 February 2016, at 110, 128.

174. Exhibit NQ-2015-002-14.18, Vol. 5 at 236; *Transcript of Public Hearing*, Vol. 1, 22 February 2016, at 128.

eight of its affiliated companies in seven other countries in order to provide what it calls "... a complete bundle of line pipe products."<sup>175</sup>

178. CISA provided similar arguments on this point and asserted that protection under *SIMA* is a privilege, not a right, and that *SIMA* is to be used as a shield and not a sword.<sup>176</sup>

179. Optima drew parallels between the Tribunal's finding in *OCTG* and this case to suggest that "vigilance is necessary" in regard to the potential impact that Tenaris Canada's corporate structure had on its performance.<sup>177</sup> Optima also pointed to the recent greenfield investment of Tenaris S.A., the owner of Tenaris Canada,<sup>178</sup> in a new seamless pipe mill with a capacity of 600,000 tonnes in Bay City, Texas.<sup>179</sup> Optima contrasted this investment with the idling of Canadian assets, arguing that it pointed either to a diminished interest in actual production within the Canadian market or, even potentially, to an eventual withdrawal. In Optima's submission, these decisions reflect a corporate strategy of a global operation by Tenaris S.A., which has impacted Tenaris Canada and has nothing to do with the subject goods.<sup>180</sup>

180. In reply, the witnesses for Tenaris Canada testified that the decision to idle the company's mills in Canada is temporary and, furthermore, that this decision was made by Tenaris Canada and not a parent entity.<sup>181</sup> However, in cross-examination, it was revealed that many corporate decisions for Tenaris Canada are made abroad by its parent or affiliated entities.<sup>182</sup> The Tribunal is mindful of this situation.

181. However, while the parent companies of Tenaris Canada may have had a level of involvement in decisions regarding its manufacturing operations in Canada, the evidence on the record shows that, in this particular case, Tenaris Canada's imports of non-subject goods from its affiliates did not have an injurious impact on the domestic industry.<sup>183</sup> In particular, Tenaris Canada's sales of non-subject imports of line pipe during the POI accounted for a small share of the domestic market and did not take market share away from the domestically produced like goods or the subject goods during the POI; indeed, they were sold at higher prices than the like goods in the domestic market.<sup>184</sup>

182. Regardless of what the situation was in the case of *OCTG*, there is no indication, in the context of this inquiry, that Tenaris Canada, as part of its overall corporate strategy, is attempting to leverage *SIMA* to provide an advantage to its foreign affiliates. Therefore, while the Tribunal acknowledges that the manufacturing operations of Tenaris Canada may be affected by corporate decisions made at the domestic, North American and even global level of operations, it does not negate the effects of the low-priced subject goods on domestic production over the POI.

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175. *Transcript of Public Hearing*, Vol. 2, 23 February 2016, at 250, 254.

176. *Transcript of Public Hearing*, Vol. 4, 26 February 2016, at 828-29, 831.

177. *Ibid.* at 781, 817.

178. Exhibit NQ-2015-002-11.03, Vol. 3 at 65; *Transcript of Public Hearing*, Vol. 2, 23 February 2016, at 242.

179. *Transcript of Public Hearing*, Vol. 2, 23 February 2016, at 264.

180. In support, Optima referred to the discussion of Tenaris Canada's global operations in the Tribunal's reasons for its finding in *OCTG* at paras. 56-60.

181. *Transcript of Public Hearing*, Vol. 2, 23 February 2016, at 277.

182. *Ibid.* at 253-58.

183. Exhibit NQ-2015-002-07B (protected), Tables 58, 60, 64, Vol. 2.1A.

184. *Ibid.*



183. With respect to Evraz, Optima similarly pointed to the impact of global corporate decisions made by its owners (i.e. Evraz North America plc and Evraz Group S.A.).<sup>185</sup> In particular, there was a great deal of discussion at the hearing about the impact of a substantial debt expense on Evraz's financial performance, such as net income, especially in 2014 and 2015.<sup>186</sup> Evraz replied that the Tribunal should focus on its analysis of the impact of the subject goods on its financial performance at the gross margin level, which is not affected by financial expenses or the economic downturn due to oil prices.

184. The Tribunal recognizes the evidence on the record showing that, during the POI, Evraz had substantial financial expenses arising from inter-company debt and related interest expenses.<sup>187</sup> Nevertheless, the Tribunal is also mindful that its injury assessment is based on the domestic industry as a whole. There is no doubt that Evraz's financial expenses in late 2014 and interim 2015 had an impact on its financial performance indicators and those of the entire domestic industry, given its relative size in the Canadian market, including net income and ability to raise capital.<sup>188</sup> However, they do not have any effect on the Tribunal's overall finding about the causal impact that the subject goods had on the domestic industry's lost sales, reduced market share, weak gross margins, delayed plans to expand operations, lay-offs and plant closures during the POI. The impact of the subject goods on the domestic industry had already occurred by the end of 2014, while the financial impact of Evraz's debt expense only had a noticeable impact in interim 2015.<sup>189</sup> Therefore, this financial expense does not sever the causal link between the subject goods and the injury.

– Export Performance

185. The opposing parties argued that the export strategies of the domestic producers had an impact on domestic production that is unrelated to the subject goods. In particular, Evraz increased production for export sales over the POI, and Bri-Steel also relied heavily on production for export, whereas Tenaris Canada did not export at all.<sup>190</sup>

186. The evidence shows that the domestic industry, as a whole, exported an increasing share of its domestic production of like goods over the POI, although the majority of its production was for sale in the domestic market.<sup>191</sup> Domestic production for domestic sales and for export sales both decreased from 2012 to 2013 (by 23 percent and 57 percent respectively) and then recovered in 2014, increasing by 32 percent and 154 percent respectively.<sup>192</sup> The greater magnitude of the changes in domestic production for export sales therefore had a stronger influence on total production during that time. In interim 2015, however, domestic production for domestic sales decreased by 20 percent, whereas the volume for export sales increased by 6 percent.<sup>193</sup>

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185. Exhibit NQ-2015-002-11.02, Vol. 3 at 17; *Transcript of Public Hearing*, Vol. 4, 26 February 2016, at 797-98.

186. *Transcript of Public Hearing*, Vol. 4, 26 February 2016, at 808-809; Exhibit NQ-2015-002-A-18 (protected), Vol. 12B.

187. Exhibit NQ-2015-002-07B (protected), Schedule 61, Vol. 2.1A; *Transcript of Public Hearing*, Vol. 1, 22 February 2016, at 51.

188. Exhibit NQ-2015-002-07B (protected), Table 115, Vol. 2.1A.

189. *Transcript of In Camera Hearing*, Vol. 1, 22 February 2016, at 55; Exhibit NQ-2015-002-12.02 (protected), Vol. 4 at 134; Exhibit NQ-2015-002-07B (protected), Schedule 56, Vol. 2.1A.

190. Exhibit NQ-2015-002-07B (protected), Table 32, Vol. 2.1A.

191. *Ibid.*, Table 34.

192. Exhibit NQ-2015-002-06B, Table 33, Vol. 1.1A.

193. *Ibid.*

187. While the Tribunal is cognizant of the fact that some domestic producers rely more on exports than others, the domestic industry as a whole still produced far more like goods for sale in the domestic market than for export in each period of the POI. Whether looking at the domestic industry's total production or production for domestic sales only, the trend is the same; volume increased marginally from 2012 to 2014 and fell significantly in interim 2015 as compared to interim 2014.<sup>194</sup> However, the domestic industry's production for export sales increased in interim 2015,<sup>195</sup> irrespective of other factors that were impacting the global market for line pipe. Specifically, the collapse in oil prices and resulting contraction in demand were not limited to the domestic market and affected export markets as well.

188. Accordingly, the Tribunal finds that the domestic industry's export performance does not negate the impact of the subject goods on the domestic industry.

– Intra-industry Competition

189. Pipe & Piling submitted that intra-industry competition was responsible for the downward pressure on the pricing of line pipe. It relied on evidence on the record which stated that welded line pipe is stockpiled by domestic distributors that compete aggressively with each other, resulting in margin (i.e. price) suppression at the distributor level. Pipe & Piling further submitted that there are also indications that the domestic line pipe producers sell directly to end users in competition with their own distributors, which would result in increased competition and downward price pressure.

190. Optima submitted that intra-industry competition was driven by the different strategies used by Tenaris Canada and Evraz in response to the alleged price competition from the subject goods, whereby Tenaris Canada sought to maintain pricing (at the expense of market share) and Evraz lowered its prices to maintain market share.

191. The Tribunal acknowledges that intra-industry competition exists among the domestic producers. However, such competition is not a new phenomenon. Despite the existence of intra-industry competition throughout the POI, the evidence shows that the domestic industry still enjoyed healthy margins in 2012, which then declined throughout the POI.<sup>196</sup> It is telling that, even when the domestic market expanded and demand conditions were favourable in 2014, the domestic industry as a whole was unable to increase its market share and experienced declining profitability, while the volume of the subject goods entering the market increased significantly in both absolute and relative terms.<sup>197</sup> Therefore, the Tribunal finds that intra-industry competition does not negate the effects of the low-priced subject goods on domestic production.

– Exchange Rates

192. Optima submitted that, when assessing the impact of the subject goods on the domestic industry, the Tribunal should take into consideration the impact of the declining value of the Canadian dollar (relative to

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194. Exhibit NQ-2015-002-07B (protected), Table 32, Vol. 2.1A.

195. Similarly, the domestic industry's export sales volume fell by 55 percent from 2012 to 2013, before increasing by 142 percent in 2014 and rose by a further 23 percent in interim 2015 compared to interim 2014. The domestic industry's consolidated income statement for export sales from domestic production also demonstrates more favourable profitability indicators than those for domestic sales. Exhibit NQ-2015-002-06B, Table 77, Vol. 1.1A; Exhibit NQ-2015-002-07B, (protected), Table 116, Vol. 2.1A.

196. Exhibit NQ-2015-002-07B (protected), Table 115, Vol. 2.1A.

197. *Ibid.*, Tables 59, 60, 115.

the US dollar), which fell by approximately 25 percent over the POI.<sup>198</sup> It juxtaposed this against the fact that the subject goods declined by 25 percent while their price increased by 18 percent in interim 2015 as compared to interim 2014.<sup>199</sup>

193. From 2012 to 2015, the Canada/United States exchange rate declined relative to both the US dollar and the Chinese renminbi.<sup>200</sup> In 2015, there was a steep drop in the exchange rate that was attributable, at least in part, to the downward pressure due to the weak price of oil and other commodities.<sup>201</sup>

194. In the Tribunal's view, the fact that the Canadian dollar decreased in value against the US dollar and the Chinese renminbi would have contributed to the increase in the price of the subject goods in the Canadian market, particularly in interim 2015. Indeed, this was acknowledged by Optima.<sup>202</sup> However, while the average unit value of exports of the subject goods increased in 2015, it increased<sup>203</sup> modestly in comparison to the decrease in the value of the Canadian dollar.<sup>204</sup>

195. The Tribunal is of the view that the impact of the currency shift did not contribute to the injury experienced by the domestic industry during the POI and most likely even shielded the domestic industry from the full effects of the low-priced subject goods during the POI.

### Materiality

196. The Tribunal will now determine whether the effects of the imports of the subject goods noted above are "material", as contemplated in the definition of "injury" under section 2 of *SIMA*. Neither *SIMA* nor the *Regulations* define the term "material". However, both the extent of injury during the relevant time frame and the timing and duration of the injury are relevant considerations in determining whether any injury caused by the subject goods is "material".<sup>205</sup>

197. On the basis of the above analysis, the Tribunal finds that the dumping of the subject goods did, in and of itself, cause material injury. Between 2012 and 2014, the subject goods entered the domestic market at high volumes in both absolute and relative terms, and at prices which significantly undercut, depressed and suppressed the prices of the domestically produced goods. Other factors unrelated to the dumping and subsidizing of the subject goods, such as the global corporate decisions of Evraz and Tenaris Canada, were undoubtedly at play in the weakening financial performance of the domestic industry.

198. Nevertheless, the Tribunal finds that there is probative evidence of a causal relationship between the subject goods and the injury suffered by the domestic industry during the POI in the form of lost sales and market share, production and declining gross margins. These developments caused domestic producers to carry inventory, delay plans to expand and/or even idle their manufacturing operations in Canada during, or

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198. *Transcript of Public Hearing*, Vol. 4, 26 February 2016, at 800-802.

199. Exhibit NQ-2015-002-06B, Tables 53, 59, Vol. 1.1A.

200. *Ibid.*, Tables 148, 149.

201. Exhibit NQ-2015-002-69.04, Vol. 1E at 51; Exhibit NQ-2015-002-69.13, Vol. 1E at 244; Exhibit NQ-2015-002-06B, Table 148, Vol. 1.1A.

202. *Transcript of Public Hearing*, Vol. 4, 26 February 2016, at 803.

203. Exhibit NQ-2015-002-07B (protected), Table 147, Vol. 2.1A.

204. *Transcript of Public Hearing*, Vol. 4, 26 February 2016, at 631-32.

205. The Tribunal suggested, in *Hot-rolled Carbon Steel Plate* (27 October 1997), NQ-97-001 (CITT) at 13, that the concept of materiality could entail both temporal and quantitative dimensions, "[h]owever, the Tribunal is of the view that, to date, the injury suffered by the industry has not been *for such a duration or to such an extent* as to constitute 'material injury' within the meaning of SIMA" [emphasis added].

just after, the POI. Moreover, the domestic industry experienced these impacts *before* the recent oil price collapse and economic downturn would have had a significant effect on the market demand for line pipe.

### Conclusion of Injury Analysis

199. Therefore, the Tribunal finds that the dumping and subsidizing of the subject goods have caused material injury to the domestic industry.<sup>206</sup>

### **EXCLUSIONS**

200. Having found that the subject goods caused material injury to the domestic industry, the Tribunal will now turn to the 16 requests to exclude products from the finding.

### **General Principles**

201. Exclusions are exceptional discretionary measures. The Tribunal's authority to grant exclusions from the scope of a finding lies implicitly in subsection 43(1) of *SIMA*.<sup>207</sup> Exclusions are not granted automatically upon request; they are extraordinary remedies that may be granted in exceptional circumstances at the Tribunal's discretion, specifically when the Tribunal is of the view that such exclusions are not likely to cause injury to the domestic industry.<sup>208</sup> The rationale for granting an exclusion is that, despite the conclusion that dumped or subsidized goods have caused or are threatening to cause injury, there may be evidence that certain imports of specific products captured by the definition of the goods have not caused or do not threaten to cause injury.

202. In determining whether an exclusion is likely to cause injury to the domestic industry, the Tribunal typically considers such factors as whether the domestic industry produces, actively supplies or is capable of producing identical or substitutable products that would potentially be in direct competition with the subject goods for which the exclusion is requested.<sup>209</sup> Additionally, when deciding whether to exercise its discretion to grant exclusions, the Tribunal is mindful of the objectives of *SIMA*, which are to provide protection, in appropriate circumstances, for companies that produce goods in Canada.

203. In *Aluminum Extrusions RR*, the Tribunal was clear that every party must submit its best evidence either in support of or against an exclusion request. In this way, the evidentiary burden is to be shared by all parties so that the Tribunal can determine whether it will exercise its discretion to grant product exclusions on the basis of its assessment of the totality of the evidence on the record.<sup>210</sup> Therefore, parties are expected to file probative, compelling and case-specific evidence in support of or against the granting of exclusions,

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206. Since an injury determination is sufficient for the application of anti-dumping or countervailing duties, the Tribunal will not address the issue of threat of injury, for reasons of judicial economy. *Caps, Lids and Jars* (20 October 1995), NQ-95-001 (CITT) at 8-10.

207. *Hetex Garn A.G. v. The Anti-dumping Tribunal*, [1978] 2 F.C. 507 (FCA); *Sacilor Aciéries v. Anti-dumping Tribunal* (1985) 9 C.E.R. 210 (CA); Binational Panel, *Induction Motors Originating From the United States of America (Injury)* (11 September 1991), CDA-90-1904-01; Binational Panel, *Certain Cold-Rolled Steel Products Originating or Exported From the United States of America (Injury)* (13 July 1994), CDA-93-1904-09.

208. The Federal Court of Appeal, in *Owen & Company Limited v. Globe Spring & Cushion Co. Ltd.*, 2010 FCA 288 (CanLII), at para. 13, stated that the Tribunal has "... a very broad discretion to grant exclusions as the nature of the matter may require." *Aluminum Extrusions NQ* at para. 339; *Certain Stainless Steel Wire* (30 July 2004), NQ-2004-001 (CITT) at para. 96.

209. *Certain Fasteners* (6 January 2010), RR-2009-001 (CITT) [*Fasteners 2009*] at para. 245.

210. *Aluminum Extrusions RR* at paras. 193-95; *Fasteners 2009* at para. 199.

so that the Tribunal can reach an informed decision on the issue of whether the importation of particular products covered by the definition of the subject goods for which exclusions are requested is likely to cause injury to the domestic industry. The evidentiary burden is shared by all parties and, ultimately, the Tribunal must determine whether it will exercise its discretion to grant product exclusions on the basis of its assessment of the totality of the evidence on the record.

204. It is with these principles in mind that the Tribunal will consider the product exclusion requests received in this case, first in general terms and second in regard to each of the specific requests.

### **Analysis of Product Exclusion Requests**

205. The exclusion requests were generally based on one or both of the following grounds:

- the domestic industry does not produce the specified goods; and/or
- the goods are sold to end users that are not served by the domestic industry.

206. The parties that sought exclusions for products that they claimed are not made by the domestic industry included Bri-Steel, Olympia and North-East,<sup>211</sup> Tianjin Pipe, BHD Tubular, Comco, Kelly Pipe and Pangang Group. The basis for Bri-Steel's request, which received the consent of the other domestic producers, was that unfinished seamless line pipe in the form of mother tubes is not produced in Canada.<sup>212</sup> The rest of these requests, which were opposed by the domestic industry, hinged on the alleged non-substitutability between welded and seamless line pipe for certain end uses that require seamless line pipe only. For example, a number of these requests sought the exclusion of the subject seamless line pipe made to certain specifications in size ranges that Tenaris Canada does not produce domestically.

207. The Tribunal finds that the above parties (with the exception of Bri-Steel) failed to provide detailed, case-specific evidence showing that the domestic industry does not produce, or has the capability to produce, identical or substitutable goods. Even though Bri-Steel's status in the domestic industry was clearly a "live" issue throughout the inquiry,<sup>213</sup> the other requesters made their exclusion arguments on the basis that Bri-Steel was not part of the domestic industry and failed to address the alternative scenario, i.e. that Bri-Steel would be found to be a domestic producer of like goods.<sup>214</sup>

208. In light of the above finding that Bri-Steel is a part of the domestic industry, the Tribunal considered its production together with that of Tenaris Canada and Evraz in assessing whether granting an exclusion would likely cause injury to the domestic industry. The evidence shows that Bri-Steel currently produces seamless line pipe with outer diameters from 14 inches to 24 inches (and higher, which fall outside the scope of this inquiry) and wall thicknesses up to 3 inches in CSA, ASTM, ASME and API specifications,<sup>215</sup> which encompass the specifications stated in several of the exclusion requests, as discussed in detail below.

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211. The requests filed by Olympia and North-East were also based on the claim that the goods are sold for end use markets that are not served by the domestic industry.

212. Exhibit NQ-2015-002-57.08, Vol. 1.3 at 289; Exhibit NQ-2015-002-58.08 (protected), Vol. 2.3 at 39-40.

213. *Line Pipe PI* at para. 70; Exhibit NQ-2015-002-67, Vol. 1C at 192; *Transcript of Public Hearing*, Vol. 4, 26 February 2016, at 567.

214. *Transcript of Public Hearing*, 26 February 2016, Vol. 4 at 697-99, 701, 785.

215. Exhibit NQ-2015-002-61.04, Vol. 1.3A at 189; Exhibit NQ-2015-002-62.04 (protected), Vol. 2.3A at 114-26; *Transcript of Public Hearing*, Vol. 3, 24 February 2016, at 489.

Indeed, Bri-Steel submitted that the granting of these exclusions would cause injury to its domestic production.<sup>216</sup>

209. Moreover, the Tribunal finds that Mr. Rasmussen provided persuasive evidence that Bri-Steel is prepared to expand its production to seamless line pipe in outside diameters ranging from 8 inches to 12 inches, given that it would only require a “minimal investment” in equipment and that it could be ready to start producing those size ranges within a few months.<sup>217</sup> According to Mr. Rasmussen, the reason for which Bri-Steel has not undertaken this investment to date is that it cannot compete with the dumped and subsidized prices of the subject goods in those size ranges.<sup>218</sup> The Tribunal is therefore satisfied that Bri-Steel demonstrated a firm intention to begin production of products that would be identical to those covered by several of the exclusion requests.

210. Even if the Tribunal had not concluded that Bri-Steel is capable of producing identical goods in the full outer diameter size range of products sought to be excluded, it finds that the requesters have failed to demonstrate that the domestic industry does not produce and is not capable of producing substitutable goods or that granting the exclusions would not likely cause injury to the domestic industry, particularly in light of spillover price effects in the domestic market. In this regard, Evraz and Tenaris Canada do not produce *identical* goods that cover the full size range of the products sought to be excluded.<sup>219</sup> However, the evidence shows that Evraz and Tenaris Canada produce or are capable of producing *substitutable* welded line pipe to API 5L and equivalent CSA, ISO and ASTM specifications in the collective size range of 2 3/8 inches to 24 inches outer diameter and wall thicknesses up to 0.5 inches.<sup>220</sup>

211. Substitutability has played an important role in the context of this case. As discussed above, the Tribunal decided to conduct the injury analysis on the basis of a single class of goods, given its conclusion that seamless line pipe and welded line pipe made to different technical specifications share similar physical and market characteristics and are substitutable in “most applications”.<sup>221</sup> However, there is clear evidence on the record showing that all the standards or specifications for line pipe covered by the product definition are substitutable (to varying degrees, depending on the requirements for relative fracture toughness), as set out in CSA Z662, a design code for oil and gas pipeline systems.<sup>222</sup> For the smaller share of other applications in which welded line pipe cannot be used in place of seamless line pipe, the evidence shows, as found above, that there are nevertheless price spillover effects between the imported seamless subject goods and domestically produced welded goods or between the subject goods imported for use in applications other than oil or gas transmission.<sup>223</sup>

212. In the Tribunal’s view, and in the circumstances of this particular case, the prevalence of price transparency in the domestic market is also a relevant factor in the context of its analysis of the exclusion requests that were filed. This is an issue that goes beyond line pipe imported for use in piling pipe

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216. Exhibit NQ-2015-002-61.04, Vol. 1.3A at 191.

217. *Transcript of Public Hearing*, Vol. 3, 24 February 2016, at 491.

218. *Ibid.* at 491, 496.

219. Tenaris Canada produces, or is capable of producing, seamless line pipe in outer diameters ranging from 4 1/2 inches to 6 5/8 inches, and Evraz does not produce any seamless line pipe in Canada. Exhibit PI-2015-002-02.01, Vol. 1 at 37; Exhibit NQ-2015-002-57.06, Vol. 1.3 at 152.

220. Exhibit PI-2015-002-02.01, Vol. 1 at 37, 191; Exhibit NQ-2015-002-A-05 at para. 17, Vol. 11; Exhibit NQ-2015-002-57.06, Vol. 1.3 at 267; Exhibit NQ-2015-002-61.02, Vol. 1.3A at 96.

221. *Line Pipe PI* at para. 60.

222. *Transcript of Public Hearing*, Vol. 2, 23 February 2016, at 232, 234-39; Exhibit NQ-2015-002-62.03 (protected), Vol. 2.3 at 105.

223. *Transcript of Public Hearing*, Vol. 1, 22 February 2016, at 159-61.

applications. Accordingly, the Tribunal was mindful of whether granting the exclusion for the specified subject goods would likely result in price effects or the possible displacement of domestically produced goods in the domestic market and, hence, create a real risk of injury, even if line pipe products made to certain specifications are not fully substitutable in all end uses.

213. However, the requesters generally did not provide persuasive arguments or adequate evidence in response to the key issues of substitutability of like goods and price transparency in the domestic market, which were raised by the domestic producers in response to the exclusion requests. As discussed further below in relation to the specific requests, this meant that the Tribunal was unable to conclude that granting those requests would not cause injury to the domestic industry. As the Tribunal has stated in previous cases, the goal of ensuring that the granting of exclusions will not cause injury to the domestic industry is paramount in light of the Tribunal's finding of injury under section 42 of *SIMA*.<sup>224</sup>

214. In terms of the second ground, the requests filed by Pipe & Piling and Olympia and North-East relied on the claim that the subject goods are imported for sale to end users in markets that are not served by the domestic industry. The proposed descriptions refer to specific end uses, as set out in full below.

215. In support of their respective requests, Pipe & Piling and Olympia and North-East referred to previous cases in which the Tribunal granted various exclusions on the basis of end use.<sup>225</sup> Regardless of any factual similarities that may exist between those examples and the requests in the present case, as stated above, the Tribunal's decision to grant an exclusion is entirely discretionary and is only exercised in exceptional circumstances. While it may draw upon the general principles applied in previous decisions on exclusions in conducting its analysis, past decisions are not binding and create no entitlement to exclusion requests; rather, the Tribunal's decision on whether to grant this extraordinary remedy is based on its consideration of all the evidence and the particular circumstances of each case.

216. That being said, many of the specific end-use exclusions were granted in past cases because they were expressly tied to the manufacture/processing of the goods and/or because the domestic producers opposing the requests failed to demonstrate that they produced, or had the capability to produce, like goods.<sup>226</sup> In this case, Pipe & Piling and Olympia and North-East are distributors, not end users. Ultimately, they cannot control the end use of the subject goods that they resell in the domestic market, despite their assurances of self-restraint and taking additional measures to ensure that the goods are actually sold for their intended end use. As discussed further below in relation to the specific requests, the proposed measures included additional stenciling specifying the end use of the goods or requiring their customers to provide end-use certificates, which could then be verified by the CBSA.

217. The Tribunal finds that Pipe & Piling and Olympia and North-East have not provided sufficient compelling evidence to establish that their customers would not use or resell the subject goods to end users for oil and gas transmission purposes. There was no direct evidence from those customers themselves. This lack of control poses a serious risk of injury to the domestic industry, especially in the case of a commodity product such as line pipe.

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224. *Fasteners* (5 January 2015), RR-2014-001 (CITT) at para. 211.

225. Exhibit NQ-2015-002-63.01, Vol. 1.3A at 224-25; Exhibit NQ-2015-002-63.03, Vol. 1.3B at 114-17.

226. *Machine Tufted Carpeting* (21 April 1992), NQ-91-006 (CITT); *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Plate, Heat-treated or not* (6 May 1993), NQ-92-007 (CITT); *Corrosion-resistant Steel Sheet Products* (29 July 1994), NQ-93-007 (CITT); *Aluminum Extrusions NQ* at paras. 363, 371, 376, 379; *Fasteners 2009* at paras. 267-71.

218. The enforceability of specific end-use exclusions was disputed by the parties.<sup>227</sup> However, regardless of whether the CBSA would be able to enforce specific end-use exclusions where the importers are distributors and not end users, ease of enforceability does not create any entitlement to granting such exclusions and was not a significant factor in the Tribunal's decision. In the particular circumstances of this case and on the basis of the evidence as a whole, the Tribunal is not satisfied that granting the exclusions requested by Pipe & Piling and Olympia and North-East would not be injurious to the domestic industry.<sup>228</sup>

219. In the absence of direct evidence from the distributors and end users to whom Pipe & Piling and Olympia and North-East sell imported line pipe, the Tribunal must rely on the best available evidence on the record. In this respect, the evidence shows that both Pipe & Piling and Olympia and North-East serve, either directly or via sales to other distributors, customers that operate in the oil and gas sector and whose end-use requirements would not necessarily be limited to line pipe for structural/piling or PVC applications.<sup>229</sup> As discussed further below, such evidence points to the potential for the subject goods to be in direct competition with domestically produced like goods and/or in a position to cause price spillover effects in the domestic market for line pipe, especially where common distributors and customers are involved.

220. In the Tribunal's view, even if it were to accept that Pipe & Piling and Olympia and North-East were in a position to provide a credible guarantee that the excluded subject goods would only be sold for end uses other than oil and gas transmission, there would still be the potential for injurious spillover price effects on the domestic industry due to the high level of price transparency in the Canadian market.

221. In light of the above, the Tribunal will now address each of the specific exclusion requests, in turn.

#### Bri-Steel

222. Bri-Steel requested the following product exclusion:<sup>230</sup>

Unfinished seamless carbon or alloy steel line pipe in the form of mother tube originating in or exported from the People's Republic of China having any one of the following outside diameters:

184, 197, 210, 235, 260, 286, 328, 350, 368, 377, 394, 402, 419, 426, 450, 475, 480, 500, 521, 530, 560, 585 and 610 millimetres, in wall thickness from 9 millimetres to 110 millimetres, and in lengths ranging from 7.72 metres to 15.24 metres, not stenciled as meeting any line pipe product specification but supplied to make any one or several of API 5L, CSAZ245.1, ISO 3183, ASTM A333, ASTM A335, ASTM A106, ASTM A53 or their equivalents.

223. Evraz and Tenaris Canada consented to this request.<sup>231</sup> Even so, the Tribunal carefully examined the proposed exclusion in the context of potential injury to the domestic industry, consistent with its approach to all the exclusion requests.

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227. *Transcript of Public Hearing*, Vol. 4, 26 February 2016, at 670.

228. In this regard, the Tribunal notes that Pipe & Piling referred to the Tribunal's decision to grant an end-use exclusion in *Carbon Steel Welded Pipe* (20 August 2008), NQ-2008-001 (CITT); however, in that case, the decision was based on the Tribunal's finding that the domestic industry did not, and was unlikely to, produce like goods and that, therefore, granting the exclusion would not cause injury to the domestic industry (para. 139).

229. *Transcript of In Camera Hearing*, Vol. 3, 24 February 2016, at 235-38, 268-74; Exhibit NQ-2015-002-15.15B (protected), Vol. 6 at 311-14; Exhibit NQ-2015-002-15.22A (protected), Vol. 6B at 156-60.

230. Exhibit NQ-2015-002-57.08, Vol. 1.3 at 289.

231. Exhibit NQ-2015-002-58.08 (protected), Vol. 2.3 at 39-40.



224. As discussed above, Bri-Steel imports mother tubes for internal consumption, i.e. in the domestic production of seamless line pipe, rather than for external sale. Accordingly, the mother tubes imported by Bri-Steel are not sold in the market, as such, and do not compete directly against the domestically produced goods; thus, the Tribunal is satisfied that there is no possibility of displacement of domestically produced like goods or risk of injury posed by the mother tubes imported by Bri-Steel.

225. However, the Tribunal notes that the proposed description of the exclusion is not specific to Bri-Steel or the internal consumption (as opposed to external sale) of the goods. Instead, it refers more generally to “[u]nfinished seamless carbon or alloy steel *line pipe in the form of mother tube . . . not stenciled* as meeting any line pipe product specification *but supplied to make* any one or several of API 5L, CSAZ245.1, ISO 3183, ASTM A333, ASTM A335, ASTM A106, ASTM A53 or their equivalents” [emphasis added]. In the Tribunal’s view, granting the exclusion in this form could potentially be problematic if it is unclear what exactly is meant by the phrase “supplied to make” in relation to unfinished line pipe that is not stenciled.

226. The product definition of the subject goods provided by the CBSA contemplates that the subject goods may include unfinished line pipe imported “. . . for use in the *production or finishing* of line pipe meeting final specifications . . .” [emphasis added]. As the Tribunal previously indicated in this inquiry,<sup>232</sup> the definition covers more than unfinished line pipe that has been produced to the point of only needing “finishing”, since the inclusion of the term “for use in the production” indicates that “unfinished line pipe” also covers tubular inputs at earlier stages of the line pipe production process. It has also been determined that the mother tubes imported by Bri-Steel fall within the meaning of “unfinished line pipe”, as defined by the CBSA.<sup>233</sup>

227. In light of the above, the Tribunal finds it appropriate to change the proposed wording of the exclusion by tracking the language of the product definition. Therefore, the exclusion is granted as follows:

unfinished seamless carbon or alloy steel line pipe in the form of mother tubes having outside diameters of 184, 197, 210, 235, 260, 286, 328, 350, 368, 377, 394, 402, 419, 426, 450, 475, 480, 500, 521, 530, 560, 585 or 610 mm, in wall thicknesses from 9 mm to 110 mm and in lengths ranging from 7.72 m to 15.24 m, not stenciled as meeting any line pipe product specification, but *imported for use in the production, and not solely for finishing, of seamless line pipe* made to any one or several of API 5L, CSAZ245.1, ISO 3183, ASTM A333, ASTM A335, ASTM A106, ASTM A53 or their equivalents.

[Emphasis added to highlight change]

228. In the Tribunal’s view, the above change in wording clarifies that the exclusion is being granted for unfinished line pipe in the form of mother tubes that are imported for use in the production, and not solely for the finishing, of seamless line pipe made to certain specifications. In this instance, the Tribunal finds that the particular circumstances are appropriate to grant a specific end-use exclusion because it is expressly tied to domestic production of like goods, and the Tribunal is satisfied, on the basis of the evidence and the consent of the other domestic producers, that the domestic industry does not produce, or have the capability to produce, such goods, or substitutable goods, in Canada.<sup>234</sup> The Tribunal also sought to preserve the generic wording of the exclusion to avoid the creation of trade distortion or unfair competitive advantages for a particular importer.

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232. *Line Pipe Order* at para. 27.

233. *Ibid.* at para. 29; Exhibit NQ-2015-002-50, Vol. 1C at 139.

234. Exhibit NQ-2015-002-58.08 (protected), Vol. 2.3 at 43-45.

229. In light of the above, particularly given the other domestic producers' consent, the Tribunal finds that this exclusion, as modified, will not cause injury to the domestic industry and, therefore, grants the request.

230. Furthermore, the Tribunal is satisfied that the exclusion of these particular goods does not sever the causal link between the dumping and subsidizing of the rest of the subject goods and the Tribunal's finding of material injury. This is supported by the evidence that, during the POI, the volume of imports of mother tubes for use in the production of finished seamless line pipe was small relative to the volume of total imports of other subject goods.<sup>235</sup> In addition, as stated above, the mother tubes imported by Bri-Steel were not sold in the market, as such, and do not compete directly against the domestically produced goods.

### Pipe & Piling

231. Pipe & Piling requested the following product exclusion:<sup>236</sup>

Welded API 5L X46 to X70 line pipe, uncoated and plain-end or bevelled end(s), in sizes ranging from 6 5/8 [inches] to 16 [inches] outside diameter and in lengths up to 24 meters, stencilled "suitable only for use as piling pipe" and with Mill Test Certificates also indicating that the pipe is suitable only for use as piling pipe, imported by Pipe and Piling Supplied Ltd. for distribution and sales exclusively for use as piling pipe.

232. The supporting parties filed submissions opposing this request. At the hearing, Pipe & Piling indicated that it would be willing to modify its request to grade X46 (and not up to X70),<sup>237</sup> but the request was still unacceptable to the domestic industry.

233. The evidence before the Tribunal shows that the domestic industry produces, or is capable of producing, identical welded API 5L line pipe available in the same size ranges (i.e. grade, outer diameter and length) and finishing described in Pipe & Piling's request.<sup>238</sup> This was not disputed by Pipe & Piling; rather, it argued that the domestic producers have not provided any evidence of injury caused by sales of line pipe into the piling pipe sector.<sup>239</sup> In particular, Pipe & Piling submitted that there is no specific evidence that the domestic industry has lost sales to imports of line pipe for use in piling pipe applications or that such imports have more generally had injurious price effects on the domestic industry, which sells line pipe for different end uses, i.e. oil and gas transmission purposes.

234. Pipe & Piling further submitted that the stenciling and marking requirements in the proposed product exclusion will prevent line pipe imported for use in piling pipe applications from being sold into the line pipe market. When asked if a project engineer would use line pipe marked "suitable for use only as piling pipe", Mr. Bob Clarkson of Pipe & Piling testified as follows: "I can 100 per cent absolutely guarantee they would not...[b]ecause it is labelled 'for piling pipe,' and engineers are very sticky people."<sup>240</sup>

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235. Exhibit NQ-2015-002-07B (protected), Table 38, Vol. 2.1A.

236. Exhibit NQ-2015-002-57.03, Vol. 1.3 at 30.

237. *Transcript of Protected Testimony Made Public after the Conclusion of the Hearing*, Vol. 3 - Excerpt, 24 February 2016, at 289; Exhibit NQ-2015-002-57.03, Vol. 1.3 at 730.

238. Exhibit PI-2015-002-02.01, Vol. 1 at 37, 191; Exhibit NQ-2015-002-A-05 at para. 17, Vol. 11.

239. Exhibit NQ-2015-002-63.01, Vol. 1.3A at 215.

240. *Transcript of Protected Testimony Made Public after the Conclusion of the Hearing*, Vol. 3 - Excerpt, 24 February 2016, at 290.

235. However, Pipe & Piling presented no direct evidence from its customers or end users of line pipe as piling pipe confirming that they would not use or resell the subject goods for oil and gas transmission purposes, despite the evidence showing that some of its major customers are involved in oil and gas projects that would typically require both piling pipe and line pipe, albeit at different stages.<sup>241</sup> As stated above, this lack of control poses a serious risk of injury to the domestic industry.

236. In the Tribunal's view, adding a stencil that says "for use only as piling pipe" to line pipe that is certified to API 5L does not change the fact that these subject goods are line pipe. The pipe would still be stencilled API 5L and certified as meeting this specification on the mill test certificates. As confirmed by the witnesses for Pipe & Piling, the line pipe that it imports to be sold for use in piling applications is, nevertheless, of a kind that can be used in oil and gas pipelines.<sup>242</sup>

237. The proposed description also states that the exclusion would be specific to Pipe & Piling (i.e. "imported by Pipe & Piling Supplies Ltd."). However, if the Tribunal were to grant an importer-specific exclusion to Pipe & Piling, it would create an unfair competitive advantage for Pipe & Piling by providing it with special access to dumped and subsidized goods being sold in the domestic market. In the alternative, if the Tribunal were to grant a generic form of this exclusion, it would create a serious risk of circumvention, as foreign producers/exporters or other importers could simply stencil the subject goods as "for use as piling pipe" to avoid paying duties. As stated by Mr. Clarkson, Pipe & Piling cannot speak for other suppliers of line pipe.<sup>243</sup>

238. Moreover, as indicated above, Pipe & Piling failed to provide persuasive arguments or evidence rebutting the evidence of price spillover effects in this inquiry.<sup>244</sup> Even if the Tribunal were to accept that identical goods produced by the domestic industry are sold in a different segment of the domestic market than the subject goods imported by Pipe & Piling, it finds that there would still be the potential for injurious price spillover effects if the exclusion were granted, particularly where common customers are involved.

239. In fact, when asked about the impact of the prices of the subject goods entering the Canadian market on the line pipe industry, Mr. Dym stated that he did not know the line pipe industry because his focus is on the piling pipe industry.<sup>245</sup> In the Tribunal's view, this admission shows that Pipe & Piling cannot speak to whether there are price spillover effects from line pipe sold for piling applications on line pipe sold for oil and gas transmission purposes.

240. In light of the above, the Tribunal concludes that granting the exclusion would likely be injurious to the domestic industry and, therefore, denies Pipe & Piling's request.

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241. *Transcript of In Camera Hearing*, Vol. 3, 24 February 2016, at 268-74; Exhibit NQ-2015-002-15.15B (protected), Vol. 6 at 311-14.

242. *Transcript of Public Hearing*, Vol. 3, 24 February 2016, at 457-59.

243. *Ibid.* at 466.

244. *Transcript of Public Hearing*, Vol. 4, 26 February 2016, at 765.

245. *Transcript of Public Hearing*, Vol. 3, 24 February 2016, at 451-52.

Olympia and North-East

241. Olympia and North-East requested the following three product exclusions:<sup>246</sup>

Carbon and alloy steel pipe, commonly identified as standard pipe, seamless, in the nominal size range of less than 4 1/2 inches or greater than 6 5/8 inches, single stencilled to meet ASTM A106 or ASTM A333 for sale to PVC supply distributors or for use in plumbing, venting or cooling applications or high pressure or high temperature mechanical or industrial applications.

Carbon and alloy steel pipe, commonly identified as standard pipe, seamless, in nominal size range between 4 1/2 inches to 6 5/8 inches, single stencilled to meet ASTM A106 or ASTM A333 for sale to PVC supply distributors or for use in plumbing, venting or cooling applications or high pressure or high temperature mechanical or industrial applications.

Carbon and alloy steel pipe commonly identified as standard pipe, welded in the nominal size range above 6 inches (163.3 mm in [outside diameter]), coated, with bevelled ends, usually supplied to meet ASTM A53-B for sale to PVC supply distributors or for use in plumbing, venting or cooling applications. For greater certainty, this product exclusion request relates to carbon steel welded standard pipe in sizes exceeding the range in NQ-2012-002.

242. At the hearing, Mr. Zimmerman testified that the subject goods are imported by Olympia and North-East with dual-stencilling, which always includes API 5L for the sole reason that this certification gives their customers added security in the safety of the product over and above their requirements for PVC applications. As Mr. Zimmerman stated, "... the product is a product not only good enough for water, it's even good for oil. It's a level of comfort."<sup>247</sup> Although Mr. Zimmerman indicated that he would be willing to remove the API 5L certification from the line pipe imported by Olympia and North-East if it would provide comfort to the domestic industry,<sup>248</sup> the domestic producers did not accept this proposal.

243. The subject goods sought to be excluded are made to other specifications that are covered by the product definition, namely, ASTM A106, ASTM A333 and ASTM A53-B. Therefore, regardless of whether these goods are dual-stencilled to meet the API 5L certification, they are still subject goods.

244. Mr. Zimmerman stated that A106 seamless pipe is required for use in high-pressure PVC applications and cannot be replaced with welded pipe.<sup>249</sup> This suggests that domestically produced welded line pipe, in other grades, would not be substitutable for A106 seamless pipe for use in such applications.

245. However, as stated above, the Tribunal is satisfied that Bri-Steel produces, or is capable of producing with a minor investment, identical seamless line pipe to the goods sought to be excluded by Olympia and North-East. Furthermore, even if the Tribunal had not concluded that Bri-Steel was capable of producing identical goods in the full outer diameter size range of products sought to be excluded, it finds that Olympia and North-East failed to provide sufficient probative evidence to prove that the domestic industry does not produce substitutable like goods or that granting the exclusions would not likely cause injury to the domestic industry in light of price spillover effects in the domestic market. Olympia and North-East filed the technical specifications for ASTM A106, ASTM A333 and ASTM A53-B certifications but did not adduce any specific evidence from its customers or end users in the PVC industry. On the whole, the evidence before the Tribunal was not sufficient to demonstrate that there would be no

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246. Exhibit NQ-2015-002-57.04, Vol. 1.3 at 49, 67, 85.

247. *Transcript of Public Hearing*, Vol. 3, 24 February 2016, at 398.

248. *Ibid.* at 417.

249. Exhibit NQ-2015-002-63.03, Vol. 1.3B at 152-53.

likelihood of price spillover effects arising from Olympia and North-East's imports of the subject goods into the domestic line pipe market.

246. Olympia and North-East submitted that the domestic producers have not adduced evidence with respect to specific injury allegations and evidence pertaining to ASTM A53-B, ASTM 333 and ASTM A106 products. However, there is no requirement for the domestic industry to make specific injury allegations in respect of every product covered by the product definition. As explained above, the domestic industry did provide persuasive evidence of substitutability of the three specifications requested for exclusion by Olympia and North-East with products that the domestic industry produces, or is capable of producing, as set out in CSA Z662, pertaining to oil and gas pipeline systems. Therefore, even if the Tribunal were to accept that there are some specific end uses for which domestically produced welded line pipe cannot be substituted for seamless line pipe, such as line pipe made to ASTM A106 for certain high-pressure applications, it would still conclude that such substitution is acceptable for the majority of other applications.

247. Notwithstanding the potential limitation in substitutability for some pipe specifications included in Olympia and North-East's exclusion requests (for example, ASTM A106 used in high-pressure applications), the Tribunal has already found that there is a high degree of price transparency in the domestic market. As stated above, there is evidence on the record showing that Olympia and North-East sell to other distributors that in turn sell to customers in the oil and gas sector whose end-use requirements would not necessarily be limited to PVC applications.<sup>250</sup> In addition, Olympia and North-East advertise on their Web sites that they supply steel pipe certified to ASTM A333, ASTM A53 and ASTM A106, for various applications, including industrial, mechanical, HVAC, and oil and gas.<sup>251</sup>

248. This evidence points to the potential for the subject goods imported by Olympia and North-East to be in direct competition with domestically produced goods and/or in a position to cause spillover price effects in the domestic market for line pipe, especially where common distributors and customers are involved. Although Mr. Zimmerman testified that Olympia and North-East only sell to distributors that are plumbing and heating wholesalers,<sup>252</sup> he also admitted that Olympia and North-East do not directly control to whom or the price at which their customers sell the goods because ultimately "[t]hey run their own businesses."<sup>253</sup>

249. In light of the above, the Tribunal finds that Olympia and North-East did not provide compelling or adequate evidence that addressed Bri-Steel's production of identical products or the matters of substitutability and price transparency in relation to the subject goods for which they sought exclusions. Furthermore, they have not provided sufficient compelling evidence to establish that their customers would not use or resell the subject goods to end users for oil and gas transmission purposes. There was no direct evidence from those customers themselves. This lack of control poses a serious risk of injury to the domestic industry, especially in the case of a commodity product such as line pipe.

250. The Tribunal recognizes that Olympia and North-East sought to frame their requests in such a way that would limit them to goods imported for specific end uses (i.e. "... for sale to PVC supply distributors or for use in plumbing, venting or cooling applications or high pressure or high temperature mechanical or

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250. *Transcript of In Camera Hearing*, Vol. 3, 24 February 2016, at 235-38; Exhibit NQ-2015-002-15.22A (protected), Vol. 6B at 156-60.

251. Exhibit NQ-2015-002-A-19, Vol. 11C; *Transcript of Public Hearing*, Vol. 3, 24 February 2016, at 396-97.

252. *Transcript of Public Hearing*, Vol. 3, 24 February 2016, at 393-94.

253. *Ibid.* at 406.

industrial applications”). Mr. Zimmerman also offered to require that all his customers provide end-use certificates in order to ensure that the imported goods are actually used in PVC applications or high-pressure or high-temperature mechanical or industrial applications.

251. While the Tribunal does not doubt the sincerity of Mr. Zimmerman’s offer, granting such an exclusion on a generic basis would not prevent other importer-distributors from importing these goods and, for reasons stated above, there would be no way to ensure that the goods are not used in other applications. The alternative would be to grant an importer-specific exclusion for Olympia and North-East; however, such importer-specific exclusions are rarely granted in order to avoid the creation of an unfair competitive advantage or trade distortion, and the present circumstances do not merit an exception. Furthermore, as discussed above, “for use in” exclusions are potentially problematic especially where the subject goods will be sold in the open market. In other words, as distributors, Olympia and North-East cannot control how, or for what purpose, the line pipe will eventually be used.

252. Having reviewed the totality of the evidence, the Tribunal finds that granting the exclusions requested by Olympia and North-East would likely cause injury to the domestic industry. The Tribunal therefore denies these exclusion requests.

#### Tianjin Pipe

253. Tianjin Pipe requested four product exclusions for “[s]eamless Carbon Steel Line Pipe, hot-rolled, having an outside diameter from 8 [inches] to 24 [inches]” . . . ,<sup>254</sup> with each request covering a different specification or standard to be met, as follows: ASTM A106/ASME SA 106; ASTM A333/ASME SA333; CSA Z245.1 and equivalent specification; and API 5L and equivalent specification.<sup>255</sup> Each request also specified a wall thickness of over 0.5 inches (12.7 mm), with the exception of the request for line pipe meeting ASTM A106/ASME SA 106, which made no reference to wall thickness.

254. The requests were opposed by Evraz, Tenaris Canada and Bri-Steel. In its reply, Tianjin Pipe argued that Bri-Steel should not be part of the domestic industry and made its submissions in support of its request on that basis. As indicated earlier, Tianjin Pipe failed to address the alternative scenario, i.e. that Bri-Steel would be found to be a domestic producer of goods that are identical for almost the entire size ranges covered by these requests. Furthermore, the Tribunal finds that Tianjin Pipe failed to provide detailed, case-specific evidence addressing the key issues of substitutability and price transparency in relation to these products. In fact, the evidence filed in support primarily consisted of copies of the standard specifications for ASTM A106, ASTM A333 and CSA Z245.1.<sup>256</sup> These requests lacked detail and consisted of largely unsupported assertions stated as fact.

255. Having considered the evidence as a whole, and in light of its overall conclusion that dumped or subsidized goods have caused such injury, the Tribunal is not satisfied that granting these requests will not cause injury to the domestic industry. In this respect, the general comments made above in respect of the finding of substitutability between seamless line pipe and welded line pipe and related spillover price effects in the market apply.

256. Tianjin Pipe also submitted that Tenaris Canada only sells to its own distributors, leaving many other distributors with no viable option other than to import. As stated above, the Tribunal must ensure that the granting of exclusions will not cause injury to the domestic industry, in accordance with its statutory

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254. Exhibit NQ-2015-002-57.06, Vol. 1.3 at 101.

255. *Ibid.* at 101, 120, 144.

256. *Ibid.* at 102, 121, 160.

authority under *SIMA* in conducting an injury inquiry. In this case, the Tribunal finds that granting the exclusions requested by Tianjin Pipe would likely cause injury to the domestic industry and, therefore, cannot be granted, regardless of any potential impact on distributors, as such considerations are not relevant to the injury analysis under *SIMA*.

257. The Tribunal therefore denies these exclusion requests.

Pangang Group, BHD Tubular, Kelly Pipe and Comco

258. The remaining exclusion requests are described as follows:

- Pangang Group: seamless carbon steel line pipe, hot-rolled, having an outside diameter from 8 inches to 24 inches and with wall thickness over 0.5 inches (12.7mm).<sup>257</sup>
- BHD Tubular: (1) seamless pressure and process pipe A/SA 333-6, CSA Gr290/359 Cat II/III with outside diameter, 8 inches and above; and (2) seamless pressure and process pipe A/SA 106-B, CSA Gr290 Cat 1 with outside diameter, 8 inches and above.<sup>258</sup>
- Kelly Pipe: (1) seamless pressure and process pipe A/SA333-6 8 inches and above; and (2) seamless pressure and process pipe A/SA 106B 8 inches and above.<sup>259</sup>
- Comco: (1) seamless pressure and process pipe ASTM/ASME A333-6 with outside diameter, 8 inches and above; and (2) seamless pressure and process pipe ASTM/ASME 106B with outside diameter, 8 inches and above.<sup>260</sup>

259. As stated above, these requests alleged that there is no domestic production of the specified seamless line pipe products and that domestically produced welded line pipe is not an acceptable substitute for the above end-use specifications.

260. These requests were opposed by the domestic producers, including Bri-Steel, and similar to the exclusion requests of Tianjin Pipe, the Tribunal notes that these requests lacked detail and did not address the substitutability and price transparency issues so germane to this case. In this respect, the general comments made above in respect of the Tribunal's finding of substitutability between seamless line pipe and welded line pipe and price spillover effects in the market apply to these requests.

261. The Tribunal also notes that none of these parties provided a reply to the submissions of the parties opposing these requests for product exclusion, either in writing or at the hearing.<sup>261</sup>

262. The Tribunal therefore denies these exclusion requests.

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257. Exhibit NQ-2015-002-57.02, Vol. 1.3 at 12.

258. Exhibit NQ-2015-002-57.07, Vol. 1.3 at 280, 283.

259. Exhibit NQ-2015-002-57.01, Vol. 1.3 at 3, 6.

260. Exhibit NQ-2015-002-57.05, Vol. 1.3 at 92, 95.

261. Exhibit NQ-2015-002-61.02, Vol. 1.3A at 29, 37, 57, 81; Exhibit NQ-2015-002-61.03, Vol. 1.3A at 101, 107, 120, 138; *Transcript of Public Hearing*, Vol. 4, 26 February 2016, at 775.

## CONCLUSION

263. For the reasons set out above, the Tribunal finds that the dumping and subsidizing of the subject goods originating in or exported from China have caused injury to the domestic industry.

264. Furthermore, the Tribunal excludes from its injury finding unfinished seamless carbon or alloy steel line pipe in the form of mother tubes having outside diameters of 184, 197, 210, 235, 260, 286, 328, 350, 368, 377, 394, 402, 419, 426, 450, 475, 480, 500, 521, 530, 560, 585 or 610 mm, in wall thicknesses from 9 mm to 110 mm and in lengths ranging from 7.72 m to 15.24 m, not stenciled as meeting any line pipe product specification, but imported for use in the production, and not solely for finishing, of seamless line pipe made to any one or several of API 5L, CSAZ245.1, ISO 3183, ASTM A333, ASTM A335, ASTM A106, ASTM A53 or their equivalents.

Jean Bédard

Jean Bédard  
Presiding Member

Jason W. Downey

Jason W. Downey  
Member

Ann Penner

Ann Penner  
Member