



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Expiry Review No. RR-2015-001

Steel Grating

*Order issued
Monday, April 18, 2016*

*Reasons issued
Tuesday, May 3, 2016*

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IN THE MATTER OF an expiry review, pursuant to subsection 76.03(3) of the *Special Import Measures Act*, of the finding made by the Canadian International Trade Tribunal on April 19, 2011, in Inquiry No. NQ-2010-002, concerning:

**THE DUMPING AND SUBSIDIZING OF STEEL GRATING ORIGINATING IN
OR EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA**

ORDER

The Canadian International Trade Tribunal, pursuant to subsection 76.03(3) of the *Special Import Measures Act*, has conducted an expiry review of its finding made on April 19, 2011, in Inquiry No. NQ-2010-002, concerning the dumping and subsidizing of carbon steel bar grating and alloy steel bar grating consisting of load-bearing pieces and cross pieces, produced as standard grating or heavy-duty grating, in panel form, whether galvanized, painted, coated, clad or plated, originating in or exported from the People's Republic of China.

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

Rose Ritcey
Rose Ritcey
Presiding Member

Serge Fréchette
Serge Fréchette
Member

Peter Burn
Peter Burn
Member

The statement of reasons will be issued within 15 days.

Place of Hearing: Ottawa, Ontario
Dates of Hearing: March 7 and 8, 2016

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Serge Fréchette, Member
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STATEMENT OF REASONS

INTRODUCTION

1. This is an expiry review, pursuant to subsection 76.03(3) of the *Special Import Measures Act*,¹ of a finding of injury made by the Canadian International Trade Tribunal (the Tribunal) on April 19, 2011, in Inquiry No. NQ-2010-002 [*Steel Grating NQ*], concerning the dumping and subsidizing of carbon steel bar grating and alloy steel bar grating consisting of load-bearing pieces and cross pieces, produced as standard grating or heavy-duty grating, in panel form, whether galvanized, painted, coated, clad or plated, originating in or exported from the People's Republic of China (China) (the subject goods).
2. Under *SIMA*, findings of injury or threat of injury and the associated special protection in the form of anti-dumping or countervailing duties expire five years from the date of the last order or finding, unless an expiry review has been initiated before that date. The finding made on April 19, 2011, is therefore scheduled to expire on April 18, 2016.
3. The Tribunal initiated its expiry review on August 12, 2015. On December 10, 2015, the Canada Border Services Agency determined that there was a likelihood of resumed or continued dumping and subsidizing. The Tribunal's mandate is to determine whether the continued or resumed dumping and subsidizing are likely to result in injury.
4. The period of review (POR) in this case is from January 1, 2013, to December 31, 2015.

PROCEDURAL BACKGROUND

5. As part of its expiry review, the Tribunal requested that domestic producers, importers and foreign producers of steel grating complete questionnaires. From the replies to the questionnaires, and other information on the record, the Tribunal's staff² prepared public and protected investigation reports.
6. The Tribunal did not receive any requests for product exclusions.
7. The Tribunal held a public hearing on March 7 and 8, 2016. The domestic industry provided three witnesses and was represented by counsel. No other parties participated at the hearing. The Tribunal called two witnesses to testify before it.

PRODUCT

Product Definition

8. The goods subject to this expiry review are defined as follows:
carbon steel bar grating and alloy steel bar grating consisting of load-bearing pieces and cross pieces, produced as standard grating or heavy-duty grating, in panel form, whether galvanized, painted, coated, clad or plated, originating in or exported from China.

1. R.S.C., 1985, c. S-15 [*SIMA*].

2. "Staff" refers to staff of the Trade Remedies Investigations Branch of the Secretariat to the Canadian International Trade Tribunal of the Administrative Tribunals Support Service of Canada.

Additional Product Information³

9. The subject goods (commonly referred to as “steel grating”, “metal bar grating” or simply “bar grating”) are a downstream steel product consisting of two or more pieces of steel, including load-bearing pieces (commonly referred to as “bearing bars”) and cross pieces (commonly referred to as “cross-bars”), that are joined to form a “panel” or “mat” (these terms are used interchangeably across the industry).

10. The subject goods are designed and manufactured to support and distribute the weight (commonly referred to as “load”) of objects or people; this is achieved through varying dimensions and spacing of both the bearing bars and cross-bars.

11. The subject goods are produced as either standard bar grating or heavy-duty bar grating. Standard bar grating is commonly manufactured in Canada according to American National Standards Institute (ANSI) and National Association of Architectural Metal Manufacturers (NAAMM) Metal Bar Grating (MBG) 531 specifications with a maximum bearing bar thickness of 3/16 in. (4.76 mm). Heavy-duty bar grating is commonly made in Canada according to ANSI/NAAMM MGB 532 specifications with a maximum bearing bar thickness of 3/8 in. (9.53 mm).

12. The subject goods are produced and sold in “panel” or “mat” form. The mats or panels are typically made in standard sizes, and the most common panel size is 3 ft. (0.91 m) wide by 24 ft. (7.32 m) long, although mats may also be made in lengths of 20 ft. (6.1 m). In accordance with the aforementioned ANSI/NAAMM specifications, the bearing bars usually range in size from 1/8 in. (3.18 mm) thick and 3/4 in. (19.05 mm) wide to 3/8 in. (9.53 mm) thick and 5 in. (127 mm) wide, depending on the load requirements.⁴

13. Excluded from the definition of the subject goods are the following: (1) expanded metal grating comprised of a single piece or coil of sheet or thin plate steel that has been slit and expanded and not consisting of welding or joining of multiple pieces of steel; and (2) plank-type safety grating comprised of a single piece or coil of sheet or thin plate steel, typically in a thickness of 10 to 18 gauge, pierced and cold-formed and without welding or joining of multiple pieces of steel.

14. In its decision in *Steel Grating NQ*, the Tribunal also terminated its inquiry regarding the dumping and subsidizing of stainless steel grating originating in or exported from China.

Product Applications

15. The subject goods have a multitude of load-bearing and load-distribution end uses, including industrial flooring, walkways, mezzanines, catwalks, stairways, trenches, platform for overhead signs (such as highway signs) and fire escapes. They may serve as decking and support for heavy-duty applications, such as drainage pit covers, boat-landing ramps, motor vehicle bridges, railway rolling stock, flooring, etc.

16. Primary markets consist of private industrial and commercial applications, including large-scale oil production structures and systems (for example, the Alberta oil sands and offshore drilling), electric power

3. The descriptions of additional product information, product application and production process are taken from the statement of reasons concerning the expiry review investigation by the Canada Border Services Agency (CBSA) and the Tribunal’s statement of reasons in *Steel Grating NQ*. Exhibit RR-2015-001-03A, Vol. 1A at 87; Exhibit RR-2015-001-01, Vol. 1 at 10-12.

4. According to Fisher & Ludlow, the most common configuration for domestic steel grating and the subject goods comprises bearing bars that are 3/16 in. (4.76 mm) thick and 1 1/4 in. (31.75 mm) wide. *Steel Grating NQ* at 4.

generating plants, steel mills, cement plants, saw mills, pulp and paper mills, mining, automotive plants and other industrial or manufacturing facilities. Although most frequently used in large industrial projects, smaller-scale commercial and residential applications are also commonplace.

Production Process

17. The subject goods are manufactured on specialized machinery which joins two components to form a section of grating into a panel or mat. The main components of the panel are the following: (1) bearing bars which extend across the length of the grating section; and (2) cross-bars that transverse (typically perpendicular to) the bearing bars. The joining of the bearing bars and cross-bars is commonly done through either welding or riveting or by hydraulic press (lock) joining processes. Steel grating is commonly manufactured in Canada in accordance with the aforementioned ANSI/NAAM specifications, notwithstanding the manufacturing process (welding, hydraulic pressing or riveting).

18. Manufacture generally includes three phases: (1) slitting; (2) forming, welding and other methods of joining; and (3) finishing.

19. The first phase involves the sizing of the panel or mat. Hot-rolled steel coils used for the main bearing bars are unrolled and slit lengthwise into the appropriate width and then cut into the appropriate length. Flat steel bars may also be used, pre-cut to the prerequisite lengths and widths. Steel bars or rods used as the cross-bars are also cut to size. For grating that utilizes twisted cross-bars, the rod or bar may be placed into a twisting machine and physically twisted before being cut to length. As with the lengthwise bearing bars, pre-cut and pre-twisted steel cross rods may be employed.

20. The bearing bars are placed into a setter which ensures that the bars are properly spaced. In the case of welded grating, the bars are then run through a high-voltage electrical welder which heats the same spot across each of the bearing bars to high heat. Immediately after heating, the cross-bars are machine-pressed into the heated bearing bars. The pressing of the cross-bars into the bearing bars completes the welding process, forming the semi-finished steel grating into a panel or mat. Next, the panel or mat undergoes testing and inspection to ensure the integrity of the welds and to ensure that it possesses proper tensile strength, that the bearing bars are aligned correctly and that, as a whole, it can withstand load tolerances.

21. There are other joining methods which can be used to produce steel grating. In “pressure-locked” grating, which is produced using a form of hydraulic pressing, the bearing bars and cross-bars are hydraulically pressed together to create a secure bond between the bearing bars and the cross-bars, basically locking them into place. In “swage-locked” grating, another form of hydraulic pressing, the cross-bars are hydraulically driven through the bearing bars (usually through the centre).

22. In the riveting process, reticulated cross-bars are riveted to the bearing bars. The bearing bars are pre-punched with a round hole prior to being placed in the jig. The cross-bar is pressed into a “W” shape and placed between the bearing bars. The height of the “W” becomes the bar spacing. A rivet is used at the apex of the “W” through the hole that was punched in the bearing bar to lock the cross-bar to the bearing bar.

23. The production processes for hydraulically pressed grating and riveted grating are similar to those for welded grating. In each case, the longitudinal bearing bars are placed in a jig that holds the bars in place. The cross-bars are then joined to the bearing bars through each of the various processes: welding, pressing and/or riveting. Hydraulic pressing and riveting are older forms of production, are more labour intensive and entail larger material costs than welding.

24. The final phase of manufacture may involve painting, galvanizing or end finishing. Painted panels are dipped into a bath of lacquer and then air dried. Galvanized panels are dipped into an electrolytically charged bath of zinc to protect against corrosion. End finishing operations may include the addition of end bands, small weldments or basic cut-outs.

25. Additional processing can be performed on the panel or mat before it is sold, e.g. it can be cut, welded and shaped to size. Typically, these additional steps take place subsequent to the forming of the panel or mat and prior to the final phase of manufacture. For instance, if a panel is to be cut to size, this step in the production is typically performed prior to painting or galvanizing the panel.

DOMESTIC PRODUCERS

26. There are two domestic producers of steel grating in Canada, namely, Fisher & Ludlow and Borden Metal Products (Canada) Limited (Borden). Both provided replies to the Tribunal's producers' questionnaire and addendum on steel grating.

Fisher & Ludlow

27. Fisher & Ludlow was established in 1954 as a privately owned Canadian manufacturer of grating and is the largest Canadian manufacturer of steel grating. It has a plant in Burlington, Ontario, where it manufactures standard, heavy-duty grating and stainless steel grating, using primarily the welded method, and other products, such as aluminum grating, safety grating and expanded metal grating. The company has another plant in Wetaskiwin, Alberta, where it has manufactured standard steel grating since 2006.

28. Fisher & Ludlow is a division of Harris Steel ULC, which, in turn, is wholly owned by Nucor Corporation, of Charlotte, North Carolina. It is also affiliated with Fisher & Ludlow Inc., a manufacturer of grating located in Wexford, Pennsylvania.

Borden

29. Borden was incorporated in 1955 and is located in Beeton, Ontario. It manufactures heavy-duty grating and stainless steel grating using the riveting, squeeze and pressure-locking methods. Since 1973, Borden has also produced steel grating using resistance welding.

IMPORTERS AND FOREIGN PRODUCERS

30. The Tribunal requested potential importers of steel grating to complete the importers' questionnaire and addendum on steel grating. The Tribunal received 7 replies from companies stating that they import the subject goods and/or goods meeting the product definition from non-subject countries and 85 replies from companies that do not import steel grating.⁵

31. The Tribunal requested potential foreign producers and exporters to complete the foreign producers' questionnaire. It received one reply from a company (Xinle Boya Metal Products Co. Ltd.) that indicated that it was a foreign producer of the steel grating covered by the Tribunal's expiry review.⁶

32. The Tribunal requested two witnesses, one each from Accurate Screen & Grating (Accurate) and from Amico Canada Inc. (Amico), to testify at the public hearing.

5. Exhibit RR-2015-001-5, Vol. 1.1 at 7.

6. *Ibid.* at 8.

PRICING

33. In the steel grating industry, the vast majority of sales (whether sourced domestically or imported) are made on a “spot price” basis.⁷ Each sale made this way is negotiated individually with the client. Purchasers typically request quotations in order to establish transaction prices. They may also negotiate prices with their suppliers on the basis of available market intelligence.

34. The price of steel grating typically consists of a “base price” for standard grating, to which charges are added for a variety of features that may be specified by the customer to meet the technical requirements of the application for which the steel grating is intended. The important features in determining the price of steel grating are grade, thickness, width, product type, coating, surface finish and the amount of further processing required.

LEGAL FRAMEWORK

35. The Tribunal is required, pursuant to subsection 76.03(10) of *SIMA*, to determine whether the expiry of the finding is likely to result in injury.⁸ The Tribunal is also required, pursuant to subsection 76.03(12), to make an order rescinding the finding, if it determines that the expiry of the finding is unlikely to result in injury, or continuing the finding, with or without amendment, if it determines that the expiry of the finding is likely to result in injury.

36. There are a number of framework or threshold issues that must be decided before the Tribunal makes the above determinations.

37. The likelihood of injury to the domestic industry must be assessed regarding domestic producers of goods, which are like goods in relation to the subject goods. Accordingly, the Tribunal must first determine what constitutes “like goods”. Once that determination has been made, the Tribunal must then determine which domestic producers of the like goods constitute the “domestic industry”.

38. The Tribunal must next determine whether it will make an assessment of the cumulative effect of the dumping and subsidizing of the subject goods (i.e. whether it will cross-cumulate their effects).⁹

LIKE GOODS AND CLASSES OF GOODS

39. 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.

7. Although less common, in addition to facilitating the sale of steel grating and the logistics of moving the product between a producer or importer and purchaser, steel grating may also be sold as part of a “bundle” of products.

8. Subsection 2(1) of *SIMA* defines “injury” as “. . . material injury to the domestic industry” and “retardation” as “. . . material retardation of the *establishment* of a domestic industry” [emphasis added]. Given that there is currently an established domestic industry in this case, the issue of whether the expiry of the order is likely to result in retardation does not arise in this expiry review.

9. Since this expiry review concerns only a single country, there is no issue with regard to assessing the cumulative effect of imports from multiple countries.

Subject and Like Goods Include Fabricated Grating

40. The Tribunal observes that the definition of the subject goods does not explicitly refer to fabrication. Therefore, before determining what the like goods are, the Tribunal will consider whether the subject goods include both plain and fabricated grating. This determination is necessary before the Tribunal determines who the domestic producers of the like goods are.

41. The fabrication of grating essentially involves the customizing of standard 3 ft. by 24 ft. panels,¹⁰ through cutting,¹¹ the insertion of cut-outs and the welding of other steel components (e.g. nosing and kickplates).¹²

42. In other words, grating in a form other than the standard 3 ft. by 24 ft. size (e.g. cut into 3 ft. by 8 ft. panels) is fabricated grating.¹³ Witnesses agreed that the like goods, according to the industry's understanding of the term, includes both plain and fabricated grating. For example, industry standards refer to both cut-outs and welding.¹⁴

43. Accordingly, the Tribunal is of the view that fabricated grating, as described above, is part of the definition of the subject goods.

44. Logically, there is a point at which grating loses its identity as grating, for example, after it is incorporated into a complex industrial structure. However, determining when that point has been reached is an issue for the CBSA to decide in its administration of the order.

45. Regarding the like goods, in *Steel Grating NQ*, the Tribunal determined that domestically produced steel grating, defined in the same manner as the subject goods, constituted like goods in relation to the subject goods.¹⁵ Evidence submitted in this expiry review supports this conclusion.¹⁶

46. Therefore, for the purpose of this expiry review, domestically produced steel grating is like goods in relation to the subject goods.

Classes of Goods

47. In *Steel Grating NQ*, the majority of the Tribunal determined that there were two classes of goods, namely, carbon and alloy steel grating and stainless steel grating.¹⁷ Because the volume of stainless steel grating from China was negligible, the Tribunal terminated its inquiry with respect to those goods.¹⁸ One class of goods remained subject to the finding.

48. There was no evidence submitted in this expiry review to suggest that the Tribunal should reach a different conclusion.

10. *Transcript of Public Hearing*, Vol. 1, 7 March 2016, at 16.

11. The evidence was that cutting can be more or less complex. *Transcript of Public Hearing*, Vol. 1, 7 March 2016, at 125-126.

12. *Transcript of Public Hearing*, Vol. 1, 7 March 2016, at 16, 27, 48, 80.

13. *Ibid.* at 80.

14. *Transcript of Public Hearing*, Vol. 2, 8 March 2016, at 154.

15. *Steel Grating NQ* at para. 87.

16. *Transcript of Public Hearing*, Vol. 1, 7 March 2016, at 18, 70.

17. *Steel Grating NQ* at para. 119.

18. *Steel Grating NQ* at para. 137.

49. Therefore, for the purpose of this expiry review, the Tribunal determines that there is a single class of goods.

DOMESTIC INDUSTRY

50. 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”

Fisher & Ludlow and Borden Constitute the Domestic Industry

51. In defining the domestic industry, the Tribunal must determine if there are domestic producers of like goods and, in doing so, which, if any, of their activities constitute “production” of the like goods.

52. The Tribunal assesses what constitutes “production” in a case-specific manner.

53. The Tribunal notes the ordinary meaning of the term “production”. “Production” is defined, *inter alia*, as “1 The action of making or manufacturing from components or raw materials . . . 1.3 The creation or formation of something as part of a physical . . . process”.¹⁹ Accordingly, in the context of this expiry review, the Tribunal finds that Fisher & Ludlow and Borden are domestic producers of like goods because they use various manufacturing processes in Canada to transform raw materials into like goods, i.e. steel coil and scrap, or bars into plain steel grating.

54. Given, as indicated above, that the like goods include both plain grating and fabricated grating, the issue arises whether companies that *only*²⁰ fabricate plain grating in Canada are also domestic producers of like goods.²¹ In particular, the Tribunal considered whether Accurate²² and Amico²³ should be included in the definition of the domestic industry because they fabricate grating in Canada.

55. Witnesses testified that there is a wide range of value added associated with fabrication and finishing depending on the nature of the activity.²⁴ While fabricated steel grating panels are often destined for specific customer applications,²⁵ they still have the same broad end uses as plain steel grating panels.

56. As a result, the Tribunal is not convinced that market participants that only carry out fabrication activities in Canada, including Accurate and Amico, engage in domestic production of the like goods. Therefore, in this expiry review, the Tribunal maintains the conclusion reached in *Steel Grating NQ*, namely, that Fisher & Ludlow and Borden constitute the domestic industry.

57. Finally, the Tribunal wishes to respond to arguments made at the hearing that the Tribunal cannot reconsider the decisions that it made in an injury inquiry with regard to the composition of the domestic industry.

19. http://www.oxforddictionaries.com/us/definition/american_english/production.

20. Both Fisher & Ludlow and Borden also fabricate steel grating. *Transcript of Public Hearing*, Vol. 1, 7 March 2016, at 16, 43-44.

21. In *Steel Grating NQ*, at para. 140, the Tribunal did not explicitly assess this issue.

22. Mr. Murray McDonald testified that Accurate had increased its fabrication capacity over the POR and now had facilities in Toronto, Ontario, Vancouver, British Columbia, and Calgary, Alberta. *Transcript of Public Hearing*, Vol. 1, 7 March 2016, at 96.

23. *Transcript of Public Hearing*, Vol. 1, 7 March 2016, at 126.

24. *Ibid.* at 28-29, 126; *Transcript of In Camera Hearing*, Vol. 1, 7 March 2016, at 28-29.

25. *Transcript of Public Hearing*, Vol. 1, 7 March 2016, at 35-36.

58. The Tribunal does not adhere to that view. On the contrary, the Tribunal has jurisdiction in an expiry review to reconsider any of the framework decisions reached during the injury inquiry, including decisions regarding like goods, classes of goods, the composition of the domestic industry and cumulation.

59. Legal framework decisions are based on the evidence before the Tribunal in the case under review. Evidence in respect of changes that may have occurred during the period of review may justify changing previous legal framework decisions. For example, the Tribunal does not ignore the existence of new domestic producers or the departure of former producers when defining the domestic industry.²⁶ Likewise, the Tribunal has made different decisions on cumulation in subsequent expiry reviews when market circumstances had changed.²⁷ Given that decisions on like goods and classes of goods are usually significantly influenced by intrinsic product characteristics, it is rare for the Tribunal to change its decisions on these matters in subsequent expiry reviews. However, it is open to the Tribunal to do so if case circumstances warrant.²⁸

Fisher & Ludlow Data will Mostly be Used to Analyze the Domestic Industry

60. The Tribunal recognizes the difficulties that all market participants had in responding to the questionnaires, which used tonnes as the unit of measurement, even though the industry largely operates in terms of square feet.

61. Despite its best efforts, Borden's testimony at the hearing raised doubts about the reliability of certain aspects of its questionnaire response.²⁹ Accordingly, the Tribunal's analysis will generally rely on quantitative data provided by Fisher & Ludlow. Fisher & Ludlow's production represents a major proportion of total domestic production. However, where appropriate, the Tribunal will also refer to the qualitative information submitted by Borden and to the testimony of its witness.

CROSS-CUMULATION

62. In argument, in response to a question from the Tribunal as to how the question of cross-cumulation should be addressed, Fisher & Ludlow submitted that the Tribunal should look at the injurious effects of dumping and subsidizing from a single country in a cross-cumulated manner.

63. *SIMA* is silent in regard to cross-cumulation. Accordingly, in this expiry review, the Tribunal will first assess whether the continued or resumed dumping and subsidizing are likely to result in injury, if the finding is rescinded, on a cross-cumulated basis, considering the effects of the continued or resumed dumping and subsidizing together.

64. If the Tribunal determines that there is a likelihood of injury, given the report in *United States - Countervailing Measures on Certain Hot-rolled Carbon Steel Flat Products From India*,³⁰ the Tribunal will then endeavour to assess separately the effects of the resumed or continued dumping and subsidizing and determine if its decision would be the same as it was on a cross-cumulated basis.

26. *Black Granite Memorials and Black Granite Slabs* (19 July 1999), RR-98-006 (CITT) [*Granite Memorials*] at 13; *Carbon Steel Pipe Nipples and Adaptor Fittings* (15 July 2008), RR-2007-003 (CITT) at paras. 20-22, 34-35.

27. *Certain Concrete Reinforcing Bar* (11 January 2005), RR-2004-001 (CITT) at paras. 66-71; *Hot-rolled Carbon Steel Plate* (9 January 2008), RR-2007-001 (CITT) at paras. 46-59; *Structural Tubing* (20 December 2013), RR-2013-001 (CITT) at paras. 28-41.

28. *Granite Memorials* at 13.

29. *Transcript of In Camera Hearing*, Vol. 1, 7 March 2016, at 42-43.

30. (8 December 2014), WTO Docs. WT/DS436/AB/R. The Appellate Body found that cross-cumulating imports subject to a dumping investigation with those subject only to a subsidizing investigation was a violation of the World Trade Organization Agreement on Subsidies and Countervailing Measures.

LIKELIHOOD OF INJURY ANALYSIS

65. An expiry review is forward-looking.³¹ It follows that evidence from the period of review during which a finding or order was being enforced is relevant insofar as it bears upon the prospective analysis of whether the expiry of the finding or order is likely to result in injury.³²

66. There is no presumption of injury in an expiry review; the Tribunal's findings must be based on positive evidence, in compliance with domestic law and consistent with the requirements of the World Trade Organization agreements.³³ In the context of an expiry review, positive evidence can include evidence based on past facts that tend to support forward-looking conclusions.³⁴

67. In making its assessment of likelihood of injury, the Tribunal has consistently taken the view that the focus should be on circumstances that can reasonably be expected to exist in the near to medium term, which is generally considered to be within 12 to 24 months from the expiry of the finding or order.

68. There was no opposition to this expiry review. In circumstances such as these, the Tribunal strives to be as thorough as possible in its own examination of the evidence and questioning of witnesses.

69. Due to the small number of domestic producers and importers involved in this expiry review, most of the import, sales, pricing, production and financial data, even in aggregate form, cannot be disclosed in order to protect their confidentiality. Where possible, these reasons give an approximate percentage or general range of magnitude.

70. Subsection 37.2(2) of the *Special Import Measures Regulations*³⁵ lists factors that the Tribunal may consider in addressing the likelihood of injury. The factors that the Tribunal considers relevant in this expiry review are discussed below.

Changes in Market Conditions

71. In order to assess the likely volumes and prices of the subject goods and their impact on the domestic industry if the finding is rescinded, the Tribunal typically first considers any changes in international and domestic market conditions.³⁶

72. Both internationally and domestically, changes in conditions since the Tribunal's finding include continuing overall economic weakness, a recent precipitous decrease in oil and gas prices, and falling steel prices.

31. *Certain Dishwashers and Dryers* (25 April 2005), RD-2004-010 (CITT) at para. 16.

32. *Copper Pipe Fittings* (17 February 2012), RR-2011-001 (CITT) at para. 56. In *Thermoelectric Containers* (9 December 2013), RR-2012-004 (CITT) [*Thermoelectric Containers*] at para. 14, the Tribunal stated that the analytical context pursuant to which an expiry review must be adjudged often includes the assessment of retrospective evidence supportive of prospective conclusions. See, also, *Aluminum Extrusions* (17 March 2014), RR-2013-003 (CITT) [*Aluminum Extrusions*] at para. 21.

33. *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (16 August 2006), RR-2005-002 (CITT) at para. 59.

34. *Thermoelectric Containers* at para. 14; *Aluminum Extrusions* at para. 21.

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

36. Paragraph 37.2(2)(j) of the *Regulations* states that the Tribunal may consider "...any changes in market conditions domestically or internationally, including changes in the supply of and demand for the goods, as well as any changes in trends and in sources of imports into Canada"

International Market Conditions

73. Demand for steel grating is largely affected by the health of the oil and gas, construction and manufacturing sectors,³⁷ in which conditions deteriorated substantially over the POR especially in its latter portion.³⁸

74. The global economy saw sluggish growth during the POR.³⁹ In particular, growth in the Chinese economy is decelerating.⁴⁰

75. There have been steep declines in global oil prices and consequent declines in drilling activities.⁴¹ Prices are expected to remain low in 2016, i.e. approximately CAN\$35 to CAN\$40/bbl in 2016.⁴²

76. There has been a decline in the price of steel amid continued declines in input costs and pressure from oversupply.⁴³ There is still massive steel overcapacity in China.⁴⁴ Even if recent initiatives by the Chinese government to decrease steel capacity⁴⁵ are successful, it will take years before there is a meaningful impact.

Domestic Market Conditions

77. The experience of the Canadian economy has been similar to that of the global economy; growth slowed over the POR and the economy contracted in each of the first two quarters of 2015. While real gross domestic product rebounded in 2015 to 2.3 percent annualized growth in the third quarter,⁴⁶ the forecast is for modest growth in the Canadian economy for the next year.⁴⁷

78. Natural gas prices in Canada dropped from an annual average of US\$5.25/MMBtu for the period from 2000 to 2014 to a forecasted annual average of US\$2.63/MMBtu in 2015. Prices are expected to continue to decline and reach an annual average of US\$2.37/MMBtu in 2016.⁴⁸ Oil prices followed a similar trend; the price of West Texas Intermediate oil dropped from an annual average of US\$65/bbl for the period from 2000 to 2014 to a forecasted annual average of US\$49/bbl in 2015.⁴⁹ Prices are expected to continue to decline and reach an annual average of US\$35 to US\$40/bbl in 2016.⁵⁰

79. As oil and gas prices fell, so too did capital expenditures in the mining, quarrying, and oil and gas extraction sectors. Generally, capital expenditures in 2015 were 18.7 percent less than in the previous year⁵¹ and are expected to continue to decrease over the next 12 months.⁵²

37. Exhibit RR-2015-001-A-03, at para. 23, Vol. 11A; Exhibit RR-2015-001-03A, Vol. 1A at 72.

38. Exhibit RR-2015-001-A-01A, tabs 3, 5, 7, Vol. 11.

39. *Ibid.* at 98-108, 114-18.

40. *Ibid.* at 26, 33, 126-43.

41. *Ibid.* at 43-44, 100.

42. *Ibid.* at 27.

43. *Ibid.* at 112.

44. *Ibid.* at 128-29.

45. *Ibid.* at 135-36, 142-64.

46. *Ibid.* at 42.

47. *Ibid.* at 26, 36, 39, 42.

48. *Ibid.* at 27.

49. *Ibid.*

50. *Ibid.*

51. *Ibid.* at 16.

52. *Ibid.* at 3.

80. Mr. David Halcrow of Russel Metals described the significant downturn in steel product sales generally as a result of the decrease in oil prices “. . . from \$100 a barrel to \$30 a barrel”⁵³ He testified that steel grating had exhibited a similar trend of declining sales, especially in Western Canada.⁵⁴

81. In fact, there was general agreement among witnesses that the current state of the grating market was weak, especially in Western Canada.⁵⁵ Although demand in Eastern Canada did not deteriorate as much as in Western Canada, weak conditions in the manufacturing sector means that there was little new construction or expansion of manufacturing plants.⁵⁶

82. Some other developments of note in the Canadian market during the POR include the following:

- the Canadian dollar depreciated by approximately 20 percent against the U.S. dollar, leading to higher costs for imported inputs and investment goods;⁵⁷
- Chinese Taipei replaced China as the largest and lowest-priced source of imported steel grating,⁵⁸ and
- Accurate has expanded its fabrication capacity since 2011.⁵⁹

Likely Performance of the Domestic Industry if the Finding is Continued

83. Paragraph 37.2(2)(c) of the *Regulations* directs the Tribunal to examine the likely performance of the domestic industry, taking into account the industry’s recent performance, including trends in production, capacity utilization, employment levels, prices, sales, inventories, market share, exports and profits.

84. For the purposes of this analysis, the Tribunal will first consider the domestic industry’s recent performance and then assess the likely performance of the domestic industry if the finding is continued. In both cases, the Tribunal will look at whether there are any relevant factors other than the dumping and subsidizing of the subject goods affecting or likely to affect the domestic industry’s performance in the near to medium term.

85. The Tribunal requested questionnaire respondents to provide forecasts of key metrics in two scenarios: first, with the finding continued and, second, with the finding rescinded. The goal was to obtain quantitative evidence to assist the Tribunal in assessing whether rescinding the finding would likely result in material injury to the domestic industry. Not all questionnaire respondents submitted forecasts, and even those respondents that submitted forecasts did not always provide sufficient evidence to support the assumptions that they had made. Accordingly the Tribunal used the forecasts qualitatively to corroborate other evidence.

86. During the POR, with the finding in place, the domestic industry experienced increases in key performance indicators, including production, domestic sales, employment, capacity utilization and productivity.⁶⁰

53. *Transcript of Public Hearing*, Vol. 1, 7 March 2016, at 60.

54. *Ibid.* at 60-62.

55. *Ibid.* at 45, 48, 62, 117-18.

56. *Ibid.* at 62.

57. Exhibit RR-2015-001-05, Vol. 1.1 at 33.

58. *Transcript of Public Hearing*, Vol. 1, 7 March 2016, at 127.

59. *Ibid.* at 96, 112. However, the number and relative size of the other market players has remained more or less as it was during the POI.

60. Exhibit RR-2015-001-05, Vol. 1.1 at 28; Exhibit RR-2015-001-A-03 at paras. 15, 17-20, Vol. 11A; Exhibit RR-2015-001-A-05 at paras. 14-17, Vol. 11A; *Transcript of Public Hearing*, Vol. 1, 7 March 2016, at 13, 25, 46-47, 178.

87. The witness for Fisher & Ludlow testified that the company performed “fairly well” over the POR in terms of positive margins and net income and had been able to invest in a robotic welder.⁶¹ As for Borden, its witness testified that “. . . profit margins [had been] reasonable . . .”⁶² and that the company had invested in a forge welder.⁶³

88. Therefore, the Tribunal is of the view that, despite the weakness in global and domestic market conditions, the finding has been effective in contributing to the health of the domestic industry.

89. Looking to the future, Mr. Michael Fernie indicated in his witness statement that, if the finding is continued, Fisher & Ludlow would be able to maintain positive margins and income in 2016 and 2017 despite the weaker market situation.⁶⁴ Similarly, according to the forecasts submitted by Fisher & Ludlow in response to the Tribunal’s questionnaire, the company does not expect its production to deteriorate in the near to medium term if the finding is continued.⁶⁵

90. In the Tribunal’s view, the domestic industry faces challenges in the near to medium term that could see its performance worsen somewhat. Most importantly, the continued low prices forecast for oil and gas will dampen drilling activity and oil sands expansion and, hence, demand for steel grating. The fact that the Canadian economy is forecast to grow slowly over the next few years does not bode well for future increases in demand for steel grating in other sectors.

91. In addition, Accurate’s expansion in Toronto, Ontario, and Montréal, Quebec, could provide an additional source of competition for the domestic industry in Eastern Canada. This will put pressure on the domestic industry’s sales in its remaining relatively stronger market.

92. Accordingly, even if the finding is continued, the Tribunal is of the view that the domestic industry’s performance may worsen somewhat from what it experienced during the POR.

Likely Volumes of Dumped Goods if the Finding is Rescinded

93. Paragraph 37.2(2)(a) of the *Regulations* directs the Tribunal to consider the likely volume of the dumped or subsidized goods if the finding is rescinded and, in particular, whether there is likely to be a significant increase in the volume of imports of the subject goods, either in absolute terms or relative to the production or consumption of like goods.

94. The Tribunal’s assessment of the likely volumes of imports of the subject goods encompasses the likely performance of the foreign industry, the potential for the foreign producers to produce goods in facilities that are currently used to produce other goods, evidence of the imposition of anti-dumping and/or countervailing measures in other jurisdictions, and whether measures adopted by other jurisdictions are likely to cause a diversion of the subject goods to Canada.

61. *Transcript of Public Hearing*, Vol. 1, 7 March 2016, at 13; Exhibit RR-2015-001-A-03 at para. 32, Vol. 11A.

62. *Transcript of Public Hearing*, Vol. 1, 7 March 2016, at 46.

63. *Ibid.*

64. Exhibit RR-2015-001-A-03 at para. 32, Vol. 11A.

65. Exhibit RR-2015-001-16.03 (protected), Vol. 4 at 63.

95. During the period of inquiry (POI) in *Steel Grating NQ*, i.e. 2007-2009, the volume of imports of the subject goods grew steadily, increasing by more than 300 percent from mid-2009 to mid-2010.⁶⁶ The following evidence gathered in this expiry review shows that the supply conditions permitting such a rapid increase in import volumes will remain in place in the near to medium term:

- The Chinese grating industry is huge. The CBSA identified more than 60 potential exporters in this expiry review and, in the recent U.S. International Trade Commission's "sunset" review, the U.S. industry identified 26 Chinese companies believed to be steel grating manufacturers.⁶⁷
- The capacities of many individual Chinese exporters are larger than the witness estimates of the entire Canadian market.⁶⁸
- Chinese steel grating manufacturers and exporters are operating in a Chinese economy which is decelerating.⁶⁹ The oil and gas industry in China, as is the case worldwide, faces weaknesses and uncertainty in the near to medium term.⁷⁰
- Ocean shipping costs are currently at record lows, reducing the cost barriers to importers.⁷¹
- Chinese exporters have maintained an interest in the Canadian market. The witness for Fisher & Ludlow testified that the company receives daily solicitations from Chinese grating producers.⁷² Further, there were small volumes of imports of the subject goods during the POR, even with substantial duties in place.⁷³
- There is a measure on steel grating in the United States which prevents unrestrained exports from China to that large market;⁷⁴ the proximity of the Canadian market to the U.S. market would likely lead Chinese exporters to resume shipments to Canada if the protection in the Canadian market was to be removed.

96. Therefore, the Tribunal is of the view that, despite sluggish market demand conditions, Canada would certainly be an attractive destination for the subject goods if the finding were rescinded.

97. In this regard, the Tribunal is not convinced by the testimony of the witness for Accurate that Accurate would not return to importing the subject goods if the finding were rescinded, given that its business model is to maximize profit from the importation of steel grating at the lowest price.⁷⁵

98. As for Mr. McDonald's testimony that Accurate had switched from importing the subject goods to importing steel grating from Chinese Taipei in part because of concerns about the quality of the subject goods,⁷⁶ the Tribunal observes that, even if the single Chinese producer from which Accurate imported the subject goods during the POI developed quality issues, there is no reason to believe that the entire Chinese steel grating industry manufactures a poor quality product. It is reasonable to conclude that the rapid

66. *Steel Grating NQ* at 170-72.

67. Exhibit RR-2015-001-A-01A at 201, Vol. 11.

68. Exhibit RR-2015-001-A-03A at 92, Vol. 1A; *Transcript of Public Hearing*, Vol. 1, 7 March 2016, at 50.

69. Exhibit RR-2015-001-A-01A at 126, Vol. 11.

70. *Ibid.* at 33, 47-48, 111.

71. *Transcript of Public Hearing*, Vol. 1, 7 March 2016, at 63.

72. *Ibid.* at 21-22.

73. *Ibid.* at 23.

74. Exhibit RR-2015-001-A-01A at 197, Vol. 11.

75. *Transcript of Public Hearing*, Vol. 1, 7 March 2016, at 101-102.

76. *Ibid.* at 86.

increase in imports during the POI would not have been possible if the subject goods generally were of poor quality.

99. Similarly, Mr. McDonald's testimony that the upfront costs and extended delivery times for importing the subject goods would pose a barrier to importing must be viewed in light of the fact that Accurate was able to import large volumes of the subject goods relatively quickly during the POI. More importantly, Accurate has extensive warehousing facilities to stock large quantities of imported grating products.⁷⁷ Mr. McDonald testified that Accurate had faced similar barriers when it began importing from Chinese Taipei and had managed to overcome them.⁷⁸

100. In particular, the three- to four-month time lag between order and delivery of imported steel grating from Asia does not pose a barrier to importing grating in standard panels, which represented the majority of imports of the subject goods during the POI and currently represents the majority of imports from Chinese Taipei.⁷⁹

101. Such imports would likely increase significantly in the next 18 to 24 months if the finding were rescinded. This would likely force other importers to respond with their own importation of the subject goods, as discussed in the section on likely impact below.

102. In sum, the Tribunal is of the view that, if the finding were rescinded, there would be a significant increase in the volume of imports of the subject goods (both in absolute and relative terms).

Likely Price Effects of Dumped and Subsidized Goods if the Finding is Rescinded

103. Paragraph 37.2(2)(b) of the *Regulations* directs the Tribunal to consider, if the finding is rescinded, the likely prices of the dumped and subsidized goods and whether the dumping and subsidizing of the subject goods is likely to significantly undercut the prices of like goods, depress those prices or suppress them by preventing increases in those prices that would likely have otherwise occurred. In this regard, the Tribunal distinguishes the price effects of the dumped or subsidized goods from any price effects that would likely result from other factors affecting prices.

104. Steel grating is a commodity product.⁸⁰ Price is the major factor influencing purchase decisions,⁸¹ and there is little if any premium for domestic steel grating.⁸² This high level of price sensitivity is exacerbated in the current precarious market environment.⁸³ The market for steel grating is transparent, and pricing intelligence spreads quickly.⁸⁴

105. Witnesses agreed that steel grating from Chinese Taipei is currently the lowest-priced product in the Canadian market and that Accurate is the principal importer from Chinese Taipei.⁸⁵ Fisher & Ludlow submitted evidence of various transactions where it had to respond to low-priced competition from Accurate

77. *Ibid.* at 78-79, 106-108.

78. *Ibid.* at 88.

79. *Ibid.* at 31, 115-16; *Steel Grating NQ* at 75.

80. *Transcript of Public Hearing*, Vol. 1, 7 March 2016, at 116.

81. Mr. McDonald testified that "[t]hat's where business competes, . . . at price." *Transcript of Public Hearing*, Vol. 1, 7 March 2016, at 114.

82. *Transcript of Public Hearing*, Vol. 1, 7 March 2016, at 136.

83. *Ibid.* at 20.

84. *Ibid.* at 26.

85. *Ibid.* at 22, 127.

selling steel grating from Chinese Taipei.⁸⁶ In some cases, it retained the sale by lowering its prices and, in others, it lost the sale.

106. This confidential evidence and corroborating *in camera* testimony⁸⁷ show the degree of price undercutting by goods from Chinese Taipei which took place during the POR.

107. Product mix issues make it difficult to draw conclusions from the pricing data presented in the investigation report. Similarly, even though Accurate agreed that the CAN\$1,200/tonne appeared to be the representative price for steel grating from Chinese Taipei landed in Vancouver,⁸⁸ this price is an average that includes plain, galvanized and fabricated steel grating.⁸⁹

108. Accordingly, the Tribunal requested witnesses at the hearing to provide cost and price data in dollars per square foot for specific steel grating products. These data provide the most appropriate comparisons to assess price competition in the market.

109. Given the relatively high cost of land transport for steel grating and the variety of industry practices with regard to the payment of freight, the Tribunal determined that the most appropriate comparison is between Accurate's costs for the specific steel grating products landed in Calgary and Fisher & Ludlow's standard costs and target selling prices for its Alberta plant.⁹⁰

110. These comparisons indicate a substantial price advantage in favour of steel grating imported from Chinese Taipei compared to the like goods.

111. Since steel grating is a price-sensitive commodity and pricing is transparent, the Tribunal is of the view that, if the finding were rescinded, the domestic industry would quickly face significant price pressure from Chinese goods re-entering the market as they tried to gain sales from existing low-price import sources, especially Chinese Taipei.

112. In this regard, the witness for Amico indicated that there would effectively be no price floor to returning imports from China and stated that "[w]ith the overcapacity that China has and the effort that they -- well, what they need to do to move product, I think any open market they would jump into."⁹¹ The witness for Fisher & Ludlow indicated that the situation would be one similar to the one that existed in 2009 and 2010 where there was "... absolutely no discipline in the market."⁹²

113. Although the domestic industry would likely first face price competition from the subject goods in Western Canada, the cost and pricing data for the above-mentioned specific steel grating products indicate that the price of the subject goods could decrease sufficiently to allow an importer, such as Accurate, to ship the product to Eastern Canada and compete in that market. The Tribunal observes that the impact of the subject goods followed a similar trend during the POI.⁹³

86. Exhibit RR-2015-001-A-04 (protected), attachments, Vol. 12.

87. *Transcript of In Camera Hearing*, Vol. 1, 7 March 2016, at 50, 90.

88. *Transcript of Public Hearing*, Vol. 1, 7 March 2016, at 85.

89. *Ibid.* at 33, 51, 79.

90. Exhibit RR-2015-001-A-04A (protected), Vol. 12; Exhibit RR-2015-001-19.66A (protected), Vol. 6.

91. *Transcript of Public Hearing*, Vol. 1, 7 March 2016, at 129-30.

92. *Ibid.* at 21.

93. *Ibid.* at 23, 63-64, 139; *Steel Grating NQ* at paras. 194, 246; Exhibit RR-2015-001-10.01A, Vol. 1.3A at 64.

114. Even if Mr. McDonald's testimony is correct that the prices of the subject goods are not as low as they were five years ago (due to increases in wages and the cost of environmental controls among other factors),⁹⁴ given the commodity nature of steel grating, the Tribunal remains convinced that, if the finding is rescinded, the subject goods will re-enter Canada at prices low enough to win sales from Chinese Taipei, thus also undercutting the prices of the like goods.

115. In view of the above, the Tribunal finds that the likely outcome of the rescission of the finding is that the domestic industry would face significant price undercutting and would either need to significantly lower the price of the like goods (i.e. there would be price depression)⁹⁵ or risk losing sales and market share. Either way, the likely price effects would impact negatively on the performance of the domestic industry, as set out below.

Likely Impact on the Domestic Industry if the Finding is Rescinded

116. The Tribunal will now assess the likely impact of the above volumes and prices on the domestic industry if the finding is rescinded, taking into consideration the likely performance of the domestic industry if the finding is continued, as discussed above. In this analysis, the Tribunal distinguishes the likely impact of the dumped or subsidized goods from the likely impact of any other factors affecting or likely to affect the domestic industry as discussed above in the section on the likely performance of the domestic industry if the finding is continued.

117. According to Fisher & Ludlow, the return of the subject goods in significant volumes and at aggressive prices would have a "devastating" impact on its steel grating business.⁹⁶

118. Similarly, Borden testified that imports of standard panels would negatively affect its fabricating business.⁹⁷ Although Borden consumes internally almost all its plain grating for further fabrication, it would also be negatively affected because its customers would be able to obtain cheaper fabricated panels by directly importing them, purchasing them from companies such as Accurate or undertaking the fabrication themselves using imported plain panels.⁹⁸

119. In contrast, the witness for Accurate testified that removing duties would have a minimal impact on the domestic market⁹⁹. He disagreed that a small volume of imports of the subject goods would have a significant impact¹⁰⁰ and asserted that it would have no impact at all in Eastern Canada.

120. Having found that significant volumes of imports of the subject will re-enter the Canadian market at prices that will significantly undercut those of the like goods if the finding is rescinded, the Tribunal recalls its decision in *Steel Grating NQ*, where it found that even a *small* volume of imports of the subject goods at *only slightly lower* prices could have a ". . . significant impact on the Canadian steel grating market."¹⁰¹

94. *Transcript of Public Hearing*, Vol. 1, 7 March 2016, at 90.

95. Since the cost of steel is not forecast to rise substantially in the near to medium term, price suppression is not an issue in this expiry review.

96. *Transcript of Public Hearing*, Vol. 1, 7 March 2016, at 24-25.

97. *Ibid.* at 45-46, 51-53.

98. *Ibid.* at 50-52.

99. *Ibid.* at 87-89.

100. *Ibid.* at 119-21.

101. *Steel Grating NQ* at 198.

121. Accordingly, in the context of this expiry review, the Tribunal is of the view that rescission of the finding will have a significant negative effect on the domestic industry. In this regard, as explained above, the Tribunal does not agree with the scenario presented by the witness for Accurate.

122. Since steel grating imported from Asia, whether from China or Chinese Taipei, generally first enters Canada on the west coast, i.e. at the port in Vancouver, the impact of the rescission of the finding would occur first in Western Canada, in the strained oil and gas market. The testimony of witnesses was that it does not take much volume to disrupt the Canadian market; a single boatload landing in Vancouver could easily supply half the market for a month.¹⁰² This is because the Canadian market is very small; in effect there are two domestic producers, two main importers and a handful of large purchasers.

123. However, the negative effects of the subject goods would eventually be experienced in Eastern Canada as well. As the witness for Russel Metals described the situation, it would be “. . . just like a wave that hits the shore”,¹⁰³ meaning that the negative impact of the subject goods would, over time, appear in more distant markets. The cost of transporting steel grating from Western Canada to markets in Eastern Canada acts as a barrier—the freight component to Toronto can be 75 percent to 80 percent more than freight to Vancouver. However, the subject goods would likely enter Canada at a price that would, over time, allow the absorption of the cost of transportation to Eastern Canada.

124. Given the current price differentials between domestic and imported steel grating, any imports of the subject goods would have to undercut import and domestic prices to gain sales. This would no doubt lead to price-cutting as a reaction from both domestic and import suppliers. This market reality would likely have severe negative consequences for the domestic industry, whether that negative impact took the form of lost sales and downward pressure on production and employment, or reduced revenue and margins. Either way, the resultant impacts on profits, cash flow, etc., would be material.

125. In addition, the domestic industry would not be able to continue to make capital investments to improve efficiency and productivity as it did during the POR.¹⁰⁴

126. Accordingly, the Tribunal finds that the impact of the significant volumes and low prices of the subject goods if the finding were rescinded would be materially injurious to the domestic industry.

DETERMINATION

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

SEPARATE ANALYSES WITH RESPECT TO DUMPING AND SUBSIDIZING

128. With all due respect to the approaches taken by previous panels in cases dealing with dumping and subsidizing from a single country,¹⁰⁵ the panel in this expiry review is of the view that the single subject country scenario does not appear to provide sufficient reason to depart from the analytical framework that

102. *Transcript of Public Hearing*, Vol. 1, 7 March 2016, at 69.

103. *Ibid.*

104. *Ibid.* at 25-26; Exhibit RR-2015-001-05, Table 20, Vol. 1.1.

105. *Oil Country Tubular Goods* (2 March 2015), RR-2014-003 (CITT) at 39-40; *Photovoltaic Modules and Laminates* (3 July 2015), NQ-2014-003 (CITT) at 81-82; *Carbon and Alloy Steel Line Pipe* (29 March 2016), NQ-2015-002 (CITT) at 83-85.

the Tribunal established in Expiry Review No. RR-2014-006¹⁰⁶ and Inquiry No. NQ-2015-001.¹⁰⁷ That framework stands for the proposition that the Tribunal must, at least, consider whether case circumstances mean that the effects of dumping and subsidizing in the Canadian market will be different.

129. Consequently, the Tribunal will assess the effects of the resumed or continued dumping and subsidizing separately and will determine if its decision would be the same as it was on a cross-cumulated basis.

130. The Tribunal observes that the volume of imports of steel grating from China would be the same as analyzed above in the cross-cumulated scenario. The key issue, therefore, is to assess the likely price effects in the case of resumed dumping and subsidizing separately.

131. At the conclusion of the last re-investigation on July 14, 2015, in which no Chinese exporters of steel grating participated, the CBSA determined ministerial specifications of 85 percent of the export price for the margin of dumping and 13,064 renminbi per tonne as the amount of subsidy.¹⁰⁸

132. In view of these results, the Tribunal expects that the price of steel grating from China, to which no anti-dumping duties are applied, will be significantly lower than the current price of the subject goods and will significantly undercut the price of the like goods, resulting in price depression and/or loss of sales and the attendant negative impact on industry performance described above. A similar analysis holds true for steel grating from China to which no countervailing duties are applied.

133. Accordingly, in the circumstances of this case, the Tribunal concludes that its determination is the same whether it assesses the effects of dumping and subsidizing on a cross-cumulated basis or separately.

CONCLUSION

134. Pursuant to paragraph 76.03(12)(b) of *SIMA*, the Tribunal continues its finding in respect of the subject goods.

Rose Ritcey
Rose Ritcey
Presiding Member

Serge Fréchette
Serge Fréchette
Member

Peter Burn
Peter Burn
Member

106. *Refined Sugar* (30 October 2015) (CITT) at 39-48.

107. *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate* (6 January 2016) (CITT) at 74-92.

108. Exhibit RR-2015-001-12.06, Vol. 1.4 at 120.