Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Dumping and Subsidizing

DETERMINATION AND REASONS

Preliminary Injury Inquiry
No. PI-2015-003

Welded Large Diameter Carbon and Alloy Steel Line Pipe

Determination issued
Tuesday, May 24, 2016

Reasons issued
Wednesday, June 8, 2016

Canada

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

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

PRELIMINARY DETERMINATION OF INJURY

The Canadian International Trade Tribunal, pursuant to the provisions of subsection 34(2) of the *Special Import Measures Act*, has conducted a preliminary injury inquiry into whether the evidence discloses a reasonable indication that the alleged injurious dumping of welded large diameter carbon and alloy steel line pipe with an outside diameter greater than 24 inches (609.6 mm), and less than or equal to 60 inches (1,524 mm), regardless of wall thickness, length, surface finish (coated or uncoated), end finish (plain end or beveled end), or stencilling and certification (including multiple-stenciled/multiple-certified line pipe for oil and gas transmission and other applications), originating in or exported from the People's Republic of China and Japan and the subsidizing of the above-mentioned goods originating in or exported from the People's Republic of China have caused injury or retardation or are threatening to cause injury.

For greater certainty, the goods subject to this preliminary injury inquiry include the following:

- line pipe produced to American Petroleum Institute ("API") specification 5L, in Grades A25, A, B and X up to and including X100, or equivalent specifications and grades, including specification CSA Z245.1 up to and including Grade 690;

- 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 Japan, 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").

This preliminary injury inquiry follows the notification, on March 24, 2016, that the President of the Canada Border Services Agency had initiated investigations into the alleged injurious dumping and subsidizing of the above-mentioned goods.

Pursuant to subsection 37.1(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby determines that there is evidence that discloses a reasonable indication that the dumping and subsidizing of the above-mentioned goods have caused injury or are threatening to cause injury to the domestic industry.

Jean Bédard
Jean Bédard
Presiding Member

Jason W. Downey
Jason W. Downey
Member

Ann Penner
Ann Penner
Member

The statement of reasons will be issued within 15 days.

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STATEMENT OF REASONS

BACKGROUND

1. On February 5, 2016, Evraz Inc., NA Canada and Canadian National Steel Corporation (Evraz) filed a complaint with the President of the Canada Border Services Agency (CBSA) regarding the alleged injurious dumping of certain welded large diameter carbon and alloy steel pipe (the subject goods) originating in or exported from the People's Republic of China (China) and Japan and the alleged injurious subsidizing of the above-mentioned goods from China.

2. On March 24, 2016, the CBSA initiated an investigation into Evraz's complaint.

3. On March 29, 2016, the Canadian International Trade Tribunal (the Tribunal) issued a notice of commencement of preliminary injury inquiry.[1]

4. The complaint is opposed by Baoshan Iron & Steel Co., Ltd. and BaoSteel America Inc. (Canada Office) (Baosteel), Metal One Corporation and Cantak Corporation (MO&C), Kinder Morgan Canada (KMC), JFE Steel Corporation and Nippon Steel and Sumitomo Metal Corporation (JFE), and Sumitomo Corporation and Sumitomo Canada Limited (Sumitomo).

5. Other participants in this preliminary injury inquiry include TransCanada PipeLines Limited (TransCanada), Spectra Energy Transmission and Fraser Surrey Docks. None of these participants filed submissions or indicated either support or opposition to the complaint.

6. On May 24, 2016, pursuant to subsection 37.1(1) of the *Special Import Measures Act*,[2] the Tribunal determined that there was evidence that disclosed a reasonable indication that the dumping and subsidizing of the subject goods had caused or were threatening to cause injury to the domestic industry.

CBSA'S DECISION TO INITIATE INVESTIGATIONS

7. The CBSA determined that there was evidence that the subject goods had been dumped and subsidized, as well as evidence that disclosed a reasonable indication that that the dumping and subsidizing of the subject goods had caused injury or were threatening to cause injury.

8. In arriving at its decision to initiate the investigations pursuant to subsection 31(1) of *SIMA*, the CBSA relied on information with respect to the volume of dumped and subsidized goods for the period from July 1, 2014, to December 31, 2015.[3]

9. The CBSA estimated the margins of dumping at 53.6 percent and 25.4 percent, expressed as a percentage of the export price of the subject goods, for China and Japan respectively.[4] The CBSA also estimated the amount of subsidy for China to be equal to 30.3 percent when expressed as a percentage of the export price of the subject goods.[5]

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1. C. Gaz. 2016.I.1000.
2. R.S.C., 1985, c. S-15 [*SIMA*].
3. Exhibit PI-2015-003-05, Vol. 1CC at 96.
4. *Ibid.* at 100.
5. *Ibid.* at 107.

10. Further, the CBSA determined that the estimated margins of dumping and amount of subsidy were not insignificant and that the estimated volumes of dumped and subsidized goods were not negligible.[6]

ANALYSIS

Legislative Framework

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

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

13. The Tribunal uses the "reasonable indication" standard to fulfill its mandate in a preliminary injury inquiry. This standard is lower than the evidentiary threshold that applies in a final injury inquiry under section 42 of *SIMA*.[7] The term "reasonable indication" is not defined in *SIMA*, but is understood to mean that the evidence in question need not be ". . . conclusive, or probative on a balance of probabilities . . . ."[8] Nevertheless, simple assertions are not sufficient and must be supported by relevant evidence.[9] Outcomes must not be taken for granted.[10] While the complaint will be read generously, it must be supported by positive evidence that is sufficient and relevant, in that it addresses the necessary requirements in *SIMA* and the relevant factors of the *Special Import Measures Regulations*.[11]

14. The Tribunal has previously been satisfied that the threshold for the "reasonable indication" standard was met where:[12]

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

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6. *Ibid.* at 100, 107.
7. *Grain Corn* (10 October 2000), PI-2000-001 (CITT) at 7.
8. *Ronald A. Chisholm Ltd. v. Deputy M.N.R.C.E.* (1986), 11 CER 309 (FCTD).
9. Article 5 of the World Trade Organization (WTO) *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (the *Anti-dumping Agreement*) and Article 11 of the WTO *Agreement on Subsidies and Countervailing Measures* (the *SCM Agreement*) require an investigating authority to examine the accuracy and adequacy of the evidence provided in a dumping and subsidizing complaint to determine whether there is sufficient evidence to justify the initiation of an investigation, and to reject a complaint or to terminate an investigation as soon as an investigating authority is satisfied that there is not sufficient evidence of dumping and subsidizing or injury. Article 5 of the *Anti-dumping Agreement* and Article 11 of the *SCM Agreement* also specify that simple assertions that are not substantiated with relevant evidence cannot be considered sufficient to meet the requirements of the articles.
10. *Concrete Reinforcing Bar* (12 August 2014), PI-2014-001 (CITT) [*Reinforcing Bar*] at paras. 18-19.
11. S.O.R./84-927 [*Regulations*].
12. *Reinforcing Bar* at para. 15; *Silicon Metal* (21 June 2013), PI-2013-001 (CITT) at para. 16; *Unitized Wall Modules* (3 May 2013), PI-2012-006 (CITT) at para. 24; *Liquid Dielectric Transformers* (22 June 2012), PI-2012-001 (CITT) at para. 86.

15. When determining whether the reasonable indication standard has been met in a preliminary injury inquiry, the Tribunal must rely on the information and evidence provided in the complaint, submissions from the parties and, where applicable, responses to enquiries made by the Tribunal, either through questionnaires or letters. However, this information and evidence will, in most cases, be less comprehensive than the evidence collected for the final injury inquiry and will not be tested to the same extent. It is only in a final injury inquiry that the Tribunal will have the opportunity to collect more detailed information, receive submissions on all the evidence on the record and test such evidence through the oral hearing process.

Submissions on Injury and Threat of Injury

Evraz

16. Evraz submitted that the dumping and subsidizing of the subject goods have caused material injury to the domestic industry. In support of its allegations, it provided evidence of increased volumes of imports of the subject goods, lost sales, price undercutting, price suppression, loss of market share, underutilization of production capacity and loss of profitability.

17. Evraz also submitted that the dumping and subsidizing of the subject goods are threatening to cause material injury to the domestic industry. It suggested that the volumes of dumped and subsidized imports are increasing and will continue to do so, given the production capacity in the subject countries, their export focus on the Canadian market and the existence of trade measures on line pipe by countries other than Canada. Further, it argued that the prices of the subject goods are likely to continue to undercut, depress and suppress domestic prices, which will translate into gains in market share for the subject goods at the expense of the like goods.

Parties Opposed to the Complaint

18. The parties opposed to the complaint alleged that Evraz failed to discharge its evidentiary burden and that the evidence presented in the complaint does not disclose a reasonable indication that the alleged injurious dumping and subsidizing of the subject goods have caused injury or threaten to cause injury to the domestic industry.

19. They alleged that neither the complaint nor the CBSA took into consideration other factors, such as the contraction in the demand for oil and corresponding economic downturn, as causes of the injury to the domestic industry. They also argued that Evraz's case rests on its own limited evidence of lost sales and submitted that this evidence contains significant deficiencies.

Nature of the Market for Large Diameter Line Pipe

20. Evidence and information before the Tribunal in this case provided a snapshot of the market for large diameter line pipe and highlighted some issues which may prove to be important after further inquiry. This has been useful for the Tribunal and will become an important point of inquiry in the final phase of the Tribunal's investigation.

21. For example, it appears that large diameter line pipe is the defining component of oil and gas pipeline projects; as such, there is a close relationship between the two industries. Oil and gas pipeline projects appear to be of a large-scale and capital-intensive nature and are subject to a unique combination of economic, environmental, and political pressures or considerations.[13]

22. Procurement of the large diameter line pipe for these projects appears to be done through bidding and a measure of negotiation with suppliers that are often the direct manufacturers of the goods.[14]

23. Factories that produce large diameter line pipe appear to be typically pre-certified to certain quality standards prior to bidding or before contracts are awarded to ensure the physical integrity of the product being supplied.[15] Specifications can vary widely from project to project, with end-use requirements at specific points in a pipeline being an important factor (e.g. when it crosses a river).[16]

24. Contracts can be for the totality or certain phases of a project, and usually comprise price adjustment clauses because it is common for lead times to be long.[17] A measure of diversity of supply is an important consideration for customers.[18]

Product Definition

25. Both Baosteel and MO&C argued that the product definition is overly broad in scope, would be difficult to enforce by the CBSA and includes wall thicknesses that Evraz does not produce. Specifically, they argued that the subject goods include various product specifications serving different end uses, which are not limited to line pipe used in the transmission of oil and gas.

26. For its part, Evraz argued that it does in fact produce all the wall thicknesses covered by the product definition or will do so upon the completion of the scheduled upgrade to its Regina, Saskatchewan, mill, which is scheduled for July 2016.

27. The CBSA has defined the subject goods as welded large diameter line pipe, having certain characteristics, originating in or exported from China and Japan. It is well established that the Tribunal must conduct its preliminary injury inquiry on the basis of the CBSA's product definition of the dumped or subsidized goods.[19] This means that the Tribunal cannot, on its own initiative, modify the definition of the subject goods. Accordingly, the scope of the product definition, and its administrative feasibility, is a matter that falls under the CBSA's exclusive jurisdiction. For those reasons, it will not be changed by the Tribunal now or in the final phase of its investigation.

13. Exhibit PI-2015-003-02.01, Vol. 1 at 35.
14. *Ibid.* at 35-36.
15. Exhibit PI-2015-003-08.03, Vol. 3 at 29.
16. Exhibit PI-2015-003-11.01A, Vol. 3B at 3.
17. Exhibit PI-2015-003-08.03, Vol. 3 at 29.
18. Exhibit PI-2015-003-08.04, Vol. 3A at 10-12.
19. *Canada (DMNR) v. General Electric Canada Inc.*, [1994] FCJ No. 847; *DeVilbiss (Canada) Ltd. v. Canada (Anti-dumping Tribunal)*, [1983] 1 F.C. 706.

Like Goods and Classes of Goods

Like Goods

28. In assessing whether the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury or threaten to cause injury to domestic producers of like goods, the Tribunal may consider whether the subject goods constitute one or more classes of goods and must define the scope of the domestically produced goods in relation to the subject goods.

29. The Tribunal typically considers a number of factors in deciding the issues of like goods and classes of goods, 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).[20]

30. There is no dispute between the parties that Canadian-made welded large diameter line pipe are like goods in relation to the subject goods. In view of the evidence on the record in relation to the above factors, the Tribunal finds that welded large diameter line pipe produced in Canada are like goods in relation to the subject goods.

31. The Tribunal notes that, in Preliminary Injury Inquiry No. PI-2015-002,[21] it was disclosed that Bri-Steel Manufacturing Ltd. (Bri-Steel) was a Canadian producer of seamless line pipe. The Tribunal recognized that fact in the current preliminary injury inquiry and explored with parties, on its own initiative, the issue of whether it needed to consider if seamless large diameter line pipe was also like goods in relation to the subject goods.[22] In doing so, the Tribunal sought out certain information from Bri-Steel, including its domestic production and sales volumes data from 2013 to 2015. Upon review of the data received from Bri-Steel, the Tribunal discovered that the volumes produced and sold in Canada by Bri-Steel were negligible for the size ranges covered by the product definition in this case.[23]

32. Baosteel was the only party to comment on Bri-Steel's production of seamless large diameter line pipe in regard to the issue of like goods, but failed to articulate any reason why the Tribunal should include the domestic production of seamless large diameter line pipe in the scope of this preliminary injury inquiry. Fundamentally, there is insufficient evidence in respect of the substitutability of seamless large diameter line pipe for welded large diameter line pipe, and little or no known importation of seamless large diameter line pipe into Canada.[24] In short, the Tribunal is satisfied that the same market dynamics that existed in *Carbon and Alloy Steel Line Pipe* are not at play in this case.

Classes of Goods

33. Baosteel and MO&C submitted that the subject goods comprise two classes of goods on the basis of different methods of production: (1) helical submerged arc welded (HSAW) line pipe and (2) longitudinal submerged arc welded (LSAW) line pipe. They argued that the different methods of production influence

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20. *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) [*Copper Pipe Fittings*] at para. 48.
21. *Carbon and Alloy Steel Line Pipe* (27 October 2015), PI-2015-002 (CITT) at para. 69.
22. Exhibit PI-2015-003-06, Vol. 1CC.
23. Exhibit PI-2015-003-07 (protected), Vol. 2G at 140. Bri-Steel, the only Canadian producer of seamless large diameter line pipe known to the Tribunal was issued a mini-questionnaire on April 22, 2016, and responded the same day.
24. Exhibit PI-2015-003-11.01A, Vol. 3B at 2.

the respective possible end uses of large diameter line pipe, as well as ". . . perception by customers and end-users."[25]

34. Evraz submitted to the CBSA, and the CBSA agreed, that the subject goods and like goods constitute a single class of goods. Moreover, in its reply, Evraz argued that, while HSAW line pipe and LSAW line pipe may be manufactured using different processes, they should not be separated into two different classes of goods because they serve the same customers, the respective pricing of the two types of pipe are linked and move in parallel and, most importantly, they are almost fully interchangeable in the market. Moreover, Evraz relied upon a decision of the U.S. International Trade Commission in which it was found that HSAW line pipe and LSAW line pipe formed a single class of goods.[26]

35. The Tribunal has made it clear in the past that different production methods, end uses or costs of production do not preclude it from finding a single class of goods. It is well established that goods can belong to the same class even if they come in numerous varieties, including different grades and specifications for end use, which may not be fully substitutable for each other.[27]

36. The focus in a class of goods analysis should be on the products and not on the processes or methods by which they are produced.[28] The Tribunal finds that Baosteel and MO&C failed to provide persuasive evidence on the purported lack of substitutability of large diameter line pipe manufactured using either one of the production processes. Similarly, Baosteel and MO&C provided little or no evidence to demonstrate that distinct markets exist for each product. The Tribunal also finds that, at most, Baosteel and MO&C established that LSAW line pipe may be used in certain discrete portions of pipeline exclusively some of the time (for example, when a pipeline crosses a river) but they failed to establish that the two are not ordinarily substitutable for pipeline usage generally.

37. The Tribunal finds the evidence given by Mr. Harapiak of Evraz regarding the interchangeability of LSAW and HSAW in pipeline projects to be the most persuasive evidence on the record.[29] Furthermore, the discussion below on price transparency points to the fact that the imported dumped and subsidized LSAW is actually drawing down the price of HSAW. This is a phenomenon that would not be observed absent the downward substitutability of LSAW for HSAW. This supports the conclusion that they are in fact substitutable, and constitute a single class of goods.

38. In sum, the Tribunal finds that this is not a situation where two distinct classes of goods exist. The Tribunal has previously found that different manufacturing methods are not an accepted basis for the creation of separate classes of goods. Moreover, substitutability and pricing factors point to there being a single market and, hence, only one class of goods.

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25. Exhibit PI-2015-003-08.03, Vol. 3 at 49-71.
26. *Certain Welded Large Diameter Line Pipe from Japan*, Investigation No. 731-TA-919 (Final) (November 2001), Publication 3464 (USITC) at 5-6.
27. *Steel Piling Pipe* (3 July 2012), PI-2012-002 (CITT) at paras. 75-77; *Carbon Steel Welded Pipe* (11 December 2012), NQ-2012-003 (CITT) at paras. 26-27, 62; *Pup Joints* (10 April 2012), NQ-2011-001 (CITT) at para. 90*; Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate* (2 February 2010), NQ-2009-003 (CITT) at paras. 62-66.
28. *Seamless Carbon or Alloy Steel Oil and Gas Well Casing* (10 March 2008), NQ-2007-001 (CITT) [*Well Casing*] at para. 66; *Copper Pipe Fittings* at para. 9.
29. Exhibit PI-2015-003-11.01A, Vol. 3B at 3-4.

Domestic Industry

39. Evraz argued that it is the only domestic producer of like goods and, consequently, that it is the domestic industry in this matter. The opposing parties did not dispute this. The Tribunal is therefore satisfied that Evraz's production volume constitutes a major proportion, if not the totality, of domestic production of like goods. Accordingly, the Tribunal assessed whether there is a reasonable indication of injury or threat of injury to Evraz's production of like goods.

Cumulation

40. Subsection 42(3) of *SIMA*, which pertains to final injury inquiries, requires the Tribunal to make a cumulative assessment of the injurious effects of the dumped and subsidized goods that are imported into Canada if the Tribunal is satisfied that certain conditions are met. Specifically, the Tribunal must be satisfied that the margin of dumping and amount of subsidy are not insignificant,[30] that the volume of goods imported into Canada from any of those countries is not negligible[31] and that an assessment of the cumulative effect of the subject goods would be appropriate, taking into account the conditions of competition between the goods from any of the named countries, the other dumped and subsidized goods and the like goods. In the past, the Tribunal has also cross-cumulated the effects of dumped and subsidized goods, at both the preliminary and final injury inquiry stages, on the basis of the rationale that the effects of dumped and subsidized goods were intertwined in one set of price effects.[32]

41. Because of the relative novelty of the *United States—Countervailing Measures on Certain Hot-rolled Carbon Steel Flat Products from India*,[33] because that report pertains to a final injury inquiry and not to a preliminary injury inquiry, because *SIMA* is silent as to how the issue of "cumulation" needs be addressed at the preliminary injury inquiry stage and, finally, because the parties have not sufficiently addressed this issue in their submissions to the Tribunal's satisfaction, the Tribunal decided that it need not proceed with a decumulated analysis at this stage.

42. Nevertheless, and subject to its consideration of further submissions from the parties on this issue at the final inquiry stage, the Tribunal gives notice that Evraz may want to present separately its allegations of injury or threat of injury from the dumped and subsidized subject goods originating in or exported from

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30. Subsection 2(1) of *SIMA* defines "insignificant" as meaning, ". . . in relation to a margin of dumping, a margin of dumping that is less than two per cent of the export price of the goods . . ." and ". . . in relation to an amount of subsidy, an amount of subsidy that is less than one per cent of the export price of the goods".
31. Subsection 2(1) of *SIMA* defines "negligible" as meaning, ". . . in respect of the volume of dumped goods of a country, (a) less than three per cent of the total volume of goods that are released into Canada from all countries and that are of the same description as the dumped goods . . . ." The Tribunal also notes that subsection 42(4) of *SIMA* obligates it to take into account the provisions of Article 27.12 of the *SCM Agreement*. This article, which then makes reference to Article 27.10, requires investigations to be terminated against developing countries where ". . . the overall level of subsidies granted upon the product in question does not exceed 2 per cent of its value calculated on a per unit basis . . ." or where ". . . the volume of the subsidized imports represents less than 4 per cent of the total imports of the like product in the importing Member . . . ."
32. *Copper Rod* (28 March 2007), NQ-2006-003 (CITT) at para. 48; *Well Casing* at paras. 76-77; *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) at para. 147; *Photovoltaic Modules and Laminates* (3 July 2015), NQ-2014-003 (CITT) at para. 82.
33. *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. Available online at https://www.wto.org/english/tratop_e/dispu_e/436abr_e.pdf.

China from its allegations of injury or threat of injury from the dumped subject goods originating in or exported from Japan.

43. In the context of this preliminary injury inquiry, the Tribunal relied on the estimated margins of dumping and amount of subsidy, and volumes provided by the CBSA. The Tribunal notes that the margins of dumping and amount of subsidy from China or Japan are not insignificant. Further, the volumes of goods imported into Canada from either of those countries are not negligible. The Tribunal also finds that the conditions of competition between the subject goods, and between the subject goods and like goods appear to be similar.[34] Accordingly, the Tribunal assessed the alleged injurious effects of the subject goods on a cumulative basis.

44. The Tribunal will now examine whether the evidence discloses a reasonable indication of injury or threat of injury, taking into account the factors prescribed in section 37.1 of the *Regulations*.

Volume of Dumped and Subsidized Goods

45. Evraz alleged that there has been a significant increase in imports of the subject goods both in absolute terms and relative to domestic production. Evraz further alleged that this increase in volume resulted in the subject goods gaining market share at the expense of the like goods.

46. By contrast, the parties opposed argued that any market share gained by the subject goods was done at the expense of non-subject goods. MO&C argued further that, while imports of non-subject goods have declined since 2013, the volume of non-subject goods imported in 2013 greatly exceeded the volume of imports from Japan in 2015, when imports from Japan were at their highest level between 2013 and 2015.

47. For the purpose of its analysis, the Tribunal will consider the period from January 1, 2013, to December 31, 2015.

48. Based on the evidence on the record, the total volume of imports of the subject goods increased significantly over that period, but most notably in 2014 when the volume of the subject goods imported into Canada doubled.[35] During 2015, the subject goods increased substantially again and represented a significant percentage of all imports of large diameter line pipe into Canada, while sales of domestic production decreased by 65 percent from 2013 to 2015.

49. According to the CBSA, the market share of the subject goods increased substantially between 2013 and 2015,[36] with imports of the subject goods from China and Japan increasing by 213 percent and 223 percent respectively. During this same period, imports of non-subject goods decreased by 89 percent.[37]

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34. The customers for large diameter line pipe are essentially the same as for the like goods. The subject goods and the like goods are distributed through the same channels. Exhibit PI-2015-003-12.01 (protected), Vol. 4B at 44. Evraz alleged that the same conditions of competition apply, whether the goods are produced in the subject countries or by the domestic industry, or originate in any other import source, as they are interchangeable. Exhibit PI-2015-003-11.01A, Vol. 3B at 3.
35. Exhibit PI-2015-003-03.02 (protected), Vol. 2E at 14.
36. Exhibit PI-2015-003-05, Vol. 1CC at 108.
37. Exhibit PI-2015-003-03.02 (protected), Vol. 2E at 14.

50. Similarly, evidence reveals that the volume of the subject goods relative to domestic production and consumption of the like goods increased in the Canadian market between 2013 and 2015 and especially in 2015.[38] This increase in imports of the subject goods appears to be linked to the overall decline in domestic production between 2013 and 2015.

51. Based on the foregoing, the evidence discloses a reasonable indication that there has been an absolute and relative increase in the volume of imports of the subject goods vis-à-vis like goods.

Effect on the Price of Like Goods

52. Evraz's case is largely based on three lost sales allegations and a number of lost revenue allegations. In all these allegations, Evraz emphasized how certain characteristics of the market for large diameter line pipe (such as the large time lags between order and delivery) impacted its prices, sales values and income statements. Because of these long lag times, price adjustment clauses are built into the supply contracts in order to be responsive to prevailing market conditions and provide flexibility on the pricing of large diameter line pipe over time. According to Evraz, this means that there may be a delay between the price depression experienced in Evraz's bids and when the effect manifests itself on its sales values and income statements Furthermore, Evraz noted that the nature of the market for large diameter line pipe makes account-specific allegations key in an injury analysis.

53. In its complaint, Evraz submitted that, when measured using the average unit value, the subject goods significantly undercut its prices and captured sales and market share at the expense of the domestic industry. Evraz further submitted that its costs of goods sold rose in proportion to its net sales value. Evraz also argued that the subject goods depressed the prices that it was able to secure at the account-specific level and that it was forced to substantially reduce its selling price in order to compete with the subject goods, notwithstanding increased costs, all of which resulted in substantial losses to its domestic sales of the like goods.

54. The parties opposed submitted that, given the customized nature of large diameter line pipe, average selling prices are not a reliable basis upon which to assess the price effects of the subject goods and, consequently, that the pricing comparisons could only be done on a project-specific basis. In particular, Baosteel argued that the average price data do not support a claim of price depression at the average unit value level. Moreover, some of the parties opposed alleged that the product mix could distort the reliability of the average unit values.

55. At this stage, a comparison of the import values of the subject goods with the weighted average selling price of the like goods indicates that the subject goods undercut the price of the like goods in all periods between 2013 and 2015, with the exception of the subject goods from Japan in 2013.[39] Moreover, evidence indicates that the price gap between the subject goods and the like goods grew between 2013 and 2015.

56. In regard to price suppression, Evraz's prices increased in 2014 when compared to 2013 and outpaced the increase in its cost of goods sold for domestic sales.[40] However, in 2015, Evraz's cost of goods sold increased considerably, while its prices only increased marginally. This occurred at a time when the unit values of the subject goods were declining relative to the prices of the like goods.

38. *Ibid.*
39. Exhibit PI-2015-003-03.01A (protected), Vol. 2D at 269; Exhibit PI-2015-003-03.01 (protected), Vol. 2 at 135.
40. Exhibit PI-2015-003-03.01 (protected), Vol. 2 at 55, 98, 135.

57. Regarding price depression, the Tribunal finds that the evidence does not support Evraz's claim that the prices of the like goods were depressed in order to compete with the subject goods, as the average domestic prices actually increased year over year.[41] Although prices of the like goods increased during the period between 2013 and 2015 and did not show signs of erosion, on average, the subject goods became relatively less expensive when compared to the like goods.

58. Accordingly, the Tribunal finds that there is evidence that Evraz may have lost accounts and sales due to price undercutting by suppliers of the subject goods. This evidence includes examples of price undercutting and suppression by the subject goods on specific contracts. However, the evidence does not indicate price depression.

59. At the final injury inquiry stage, under section 42 of *SIMA*, the Tribunal will further investigate the evidence and allegations surrounding lost accounts and sales, with particular attention focused on, *inter alia*, the relative importance of price in purchasing decisions and the specific circumstances of the transactions.

60. On the basis of the foregoing, the Tribunal finds that the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods has resulted in price undercutting and price suppression, but not price depression.

Impact on the Domestic Industry

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

62. Evraz submitted that the dumping and subsidizing of the subject goods have resulted in material injury in the form of lost sales, a decline in production, a reduction in capacity utilization, and declines in net sales and gross margins.

63. Baosteel and MO&C argued that Evraz is performing well. It raised questions regarding Evraz's allegations of lost sales and the evidence on financial performance indicators, suggesting that factors other than the alleged dumping and subsidizing of the subject goods may be responsible for any decline in sales and market share. Both Baosteel and MO&C alleged that other factors have had a bearing on the state of the domestic industry, including reduced market demand in the oil industry that is driving prices lower.

64. Overall, Evraz's sales from domestic production declined significantly between 2013 and 2015. Despite a promising increase in 2014, by 2015, sales from domestic production remained below the 2013 production level.[42]

65. Capacity utilization also declined between 2013 and 2015, but the Tribunal notes that Evraz's decision to invest in improvements to its Regina facility required it to go offline for two months in 2015. The Tribunal finds that development to be at least partly responsible for the drop in Evraz's capacity utilization rates and will investigate this issue further in the final inquiry stage.

41. *Ibid.* at 135.
42. *Ibid.*

66. The market share of the like goods decreased overall between 2013 and 2015. While it first increased significantly in 2014, it then decreased by a greater degree in 2015. Over the same period, the market share of the subject goods increased significantly, while the market share of non-subject goods decreased.

67. Moreover, bids lost may have played a key role in the domestic industry's performance, given the significant quantities that they represent over an extended period of time.[43] In this regard, the Tribunal finds that the lost sales claims appear to be credible, taking into account the evidentiary threshold that applies in this preliminary injury inquiry. However, the Tribunal notes that some of the bids in respect of which Evraz makes lost revenue claims have yet to be awarded. The Tribunal is mindful of the allegations of the parties opposed that Evraz does not supply large diameter line pipe to certain specifications and in certain dimensions and that this may have played in a role in Evraz's alleged lost sales. These allegations will be explored more fully during the final injury inquiry.

68. In terms of Evraz's gross margins and net profits as a percentage of its net sales value, the Tribunal finds that all metrics declined between 2013 and 2015. Despite improved financial performance in 2014, in 2015, gross margin and net income as a percentage of net sales value declined to below 2013 levels. Overall, the Tribunal finds that the domestic industry appears to have experienced declining financial performance, with the most significant decline being experienced in 2015.[44]

Causation and Other Factors

69. In a preliminary injury inquiry, the Tribunal must determine whether the evidence discloses a reasonable indication of a causal link between the dumping and subsidizing of the subject goods and the injury. The Tribunal must further consider, pursuant to paragraph 37.1(3)(b) of the *Regulations*, whether the reasonable indication of injury is attributable to factors other than the dumping and subsidizing.

70. The parties opposed argued that, if the domestic industry has suffered injury, it is attributable to factors other than dumping or subsidizing, including the following: the reduction in construction of pipeline and transmission projects by Evraz's largest customer, Enbridge, in 2015; the lack of public support for building pipelines, given environmental concerns; a decrease in the demand for pipe generally, given reduced oil production; the impact of the weaker Canadian dollar; Evraz's purported limited production capabilities, both in respect of wall thicknesses and lower temperature and strain-based applications; the preference of some purchasers to diversify their line pipe supply amongst multiple suppliers; uncertainty regarding the timing and extent of Evraz's planned upgrade in Regina; and the incurrence of substantial financial expenses by Evraz arising from inter-company debt and related interest expenses.

71. In reply, Evraz submitted that the Tribunal has found in the past that dumping and subsidizing need only be *a* cause of injury to the domestic injury, not *the sole* cause. Evraz also argued that the data suggest a strong correlation between the subject goods and the indicators of injury to the domestic industry and further argued that it is only through a final injury inquiry that the Tribunal will be able to fully explore the causation element and satisfy itself that the dumping and subsidizing of imports are causing and/or threatening to cause material injury.

43. Although not tested, the allegations of lost sales represent approximately one third of Evraz's yearly production between 2014 and 2015.
44. Exhibit PI-2015-003-03.01A (protected), Vol. 2D at 269.

72. In past decisions, the Tribunal has determined that a mere correlation between dumping, subsidizing and indicators of injury is insufficient to establish the required causal relationship in a preliminary injury inquiry.[45] Rather, in a preliminary injury inquiry, the standard is whether there is a reasonable indication that the dumping and subsidizing of goods have, in and of themselves, caused injury to a domestic industry.

73. Although the parties opposed have pointed to a number of other factors that are indeed worthy of further exploration, there is insufficient evidence currently on the record for the Tribunal to determine that these other factors have caused the totality of the injury to the domestic industry and that the subject goods do not constitute *a* cause of that injury. The Tribunal notes however that the parties opposed did raise a number of key issues that it wishes to explore in the context of the final injury inquiry, namely, Evraz's relationship with Enbridge, Evraz's corporate structure (including the allocation and impact of its corporate debt and the degree of integration between the Camrose, Alberta, Regina and Portland, Oregon, mills), and, finally, Evraz's ability to supply market requirements (e.g. all wall thicknesses included in the product definition). Accordingly, the Tribunal believes that causation is a key issue in this case that must be fully explored in the context of an inquiry conducted under section 42 of *SIMA*.

CONCLUSION

74. On balance, the Tribunal finds that the evidence on the record discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused material injury to the domestic industry. As such, the Tribunal does not need to examine whether the subject goods are threatening to cause injury to the domestic industry.

Jean Bédard
Jean Bédard
Presiding Member

Jason W. Downey
Jason W. Downey
Member

Ann Penner
Ann Penner
Member

45. *Copper Rod* (30 October 2006), PI-2006-002 (CITT) at paras. 40, 43; *Galvanized Steel Wire* (22 March 2013), PI-2012-005 (CITT) at para. 75; *Circular Copper Tube* (22 July 2013), PI-2013-002 (CITT) at para. 82.