Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Dumping and Subsidizing

DETERMINATION AND REASONS

Preliminary Injury Inquiry
No. PI-2016-002

Concrete Reinforcing Bar

Determination issued
Wednesday, October 19, 2016

Reasons issued
Thursday, November 3, 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:

CONCRETE REINFORCING BAR ORIGINATING IN OR EXPORTED FROM THE REPUBLIC OF BELARUS, CHINESE TAIPEI, THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA, JAPAN, THE PORTUGUESE REPUBLIC AND THE KINGDOM OF SPAIN

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 hot-rolled deformed steel concrete reinforcing bar in straight lengths or coils, commonly identified as rebar, in various diameters up to and including 56.4 millimeters, in various finishes, excluding plain round bar and fabricated rebar products, originating in or exported from the Republic of Belarus, Chinese Taipei, the Hong Kong Special Administrative Region of the People's Republic of China, Japan, the Portuguese Republic and the Kingdom of Spain, has caused injury or retardation or is threatening to cause injury to the domestic industry. Also excluded is 10 mm diameter (10M) rebar produced to meet the requirements of CSA G30 18.09 (or equivalent standards) that is coated to meet the requirements of epoxy standard ASTM A775/A 775M 04a (or equivalent standards) in lengths from 1 foot (30.48 cm) up to and including 8 feet (243.84 cm).

This preliminary injury inquiry follows the notification, on August 19, 2016, that the President of the Canada Border Services Agency had initiated an investigation into the alleged injurious dumping 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 of the above-mentioned goods has caused injury or is threatening to cause injury to the domestic industry.

Jason W. Downey
Jason W. Downey
Presiding Member

Ann Penner
Ann Penner
Member

Rose Ritcey
Rose Ritcey
Member

The statement of reasons will be issued within 15 days.

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STATEMENT OF REASONS

INTRODUCTION

1. On June 30, 2016, ArcelorMittal Long Products Canada, g.p. (ArcelorMittal), Gerdau Ameristeel Corporation (Gerdau) and AltaSteel Ltd. (AltaSteel) (collectively, the complainants) filed a complaint with the Canada Border Services Agency (CBSA) claiming that the alleged dumping of concrete reinforcing bar (the subject goods) originating in or exported from the Republic of Belarus (Belarus), Chinese Taipei, the Hong Kong Special Administrative Region of the People's Republic of China (Hong Kong), Japan, the Portuguese Republic (Portugal) and the Kingdom of Spain (Spain) had caused injury or was threatening to cause injury to the domestic industry.

2. On August 19, 2016, the President of the CBSA initiated an investigation into the complaint.

3. Consequently, on August 22, 2016, the Canadian International Trade Tribunal (the Tribunal) commenced a preliminary injury inquiry.[1]

4. The complaint is opposed by the Delegation of the European Union to Canada (the EU Delegation), the Embassy of Spain, the Government of Hong Kong,[2] Celsa Atlantic, S.L. (Celsa), Nervacero, S.A. (Nervacero) and MEGASA.[3]

5. On October 19, 2016, pursuant to subsection 37.1(1) of the *Special Import Measures Act*,[4] the Tribunal determined that there was evidence that disclosed a reasonable indication that the dumping of the subject goods had caused or was threatening to cause injury to the domestic industry. The reasons for the Tribunal's determination are provided below.

PRODUCT DEFINITION

6. The subject goods are commonly known as "rebar" and more fully defined as follows for the purpose of the present preliminary injury inquiry:

> Hot-rolled deformed steel concrete reinforcing bar in straight lengths or coils, commonly identified as rebar, in various diameters up to and including 56.4 millimeters, in various finishes, excluding plain round bar and fabricated rebar products, originating in or exported from the Republic of Belarus, Chinese Taipei, the Hong Kong Special Administrative Region of the People's Republic of China, Japan, the Portuguese Republic and the Kingdom of Spain. Also excluded is 10 mm diameter (10M) rebar produced to meet the requirements of CSA G30 18.09 (or equivalent standards) that is coated to meet the requirements of epoxy standard ASTM A775/A 775M 04a (or equivalent standards) in lengths from 1 foot (30.48 cm) up to and including 8 feet (243.84 cm).[5]

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1. C. Gaz. 2016.I.2709.
2. On September 20, 2016, the date of the deadline for the filing of submissions by parties opposed to the complaint, the Government of Hong Kong requested an extension until October 7, 2016, to file its submission. The same day, the Tribunal granted the request, in part, by allowing an extension until September 22, 2016, due to the tight legislative time frames that applied in the preliminary injury inquiry, and the timing of the request. The Government of Hong Kong filed its submission on October 14, 2016, which was too late for consideration as part of the Tribunal's preliminary injury inquiry.
3. Notices of participation were also filed by the Ministry of International Trade, and the Embassy of Belarus in Canada, but they did not file submissions.
4. R.S.C., 1985, c. S-15 [*SIMA*].
5. Exhibit PI-2016-002-05, Vol. 1B at 302.

CBSA'S DECISION TO INITIATE THE INVESTIGATION

7. In its decision to initiate the investigation, the CBSA was of the opinion that there was evidence that the subject goods had been dumped, as well as evidence that disclosed a reasonable indication that the dumping of the subject goods had caused injury or was threatening to cause injury to the domestic industry.

8. Using information for the period from June 1, 2015, to May 31, 2016, the CBSA estimated the margins of dumping and volumes of dumped goods for each of the subject countries as follows:[6]

Country	Margin of Dumping (as a percentage of export price)	Volume of Dumped Imports (as a percentage of total imports)
Belarus	46.6	9.5
Chinese Taipei	11.6	10.4
Hong Kong	31.2	4.5
Japan	35.4	3.7
Portugal	13.8	18.9
Spain	12.8	11.3
All other Countries	-	41.7
Total	-	**100**

PROCEDURAL ISSUE

9. The EU Delegation submitted, as a procedural matter, that the public version of the complaint ". . . does not allow for a reasonable understanding of the substance and does not allow interested parties to exercise their rights of defence"[7] in accordance with the standards prescribed by Article 6.5.1 of the World Trade Organization (WTO) *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*.[8] Its position was supported by the Embassy of Spain, Celsa and Nervacero. As a result, both the EU Delegation and the Embassy of Spain requested public summaries of confidential information filed with the complaint, including import volumes and prices relative to like goods and the domestic industry's performance.

10. In reply, ArcelorMittal and AltaSteel submitted that the CBSA is responsible for determining whether the complaint meets the legal requirements for the initiation of an investigation and that the CBSA determined that the complaint had indeed met those requirements. In their view, the Tribunal's preliminary injury inquiry is not the proper forum for parties to challenge the CBSA's decision in this respect.

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6. *Ibid.* at 313, 314.
7. Exhibit PI-2016-002-06.03 at 1, Vol. 3.
8. https://www.wto.org/english/docs_e/legal_e/19-adp.pdf [WTO *Anti-dumping Agreement*]. Article 6.5.1 provides as follows: "The authorities shall require interested parties providing confidential information to furnish non-confidential summaries thereof. These summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. In exceptional circumstances, such parties may indicate that such information is not susceptible of summary. In such exceptional circumstances, a statement of reasons why summarization is not possible must be provided."

11. Further, ArcelorMittal and AltaSteel argued that the nature of these proceedings is such that parties must typically provide information that is confidential (i.e. commercially sensitive information) and cannot be disclosed on the public record. They submitted that, in the present case, the parties opposed were given a fair and reasonable opportunity to address the substance of the complaint, including public summaries of confidential attachments that were filed with the complaint. The Tribunal agrees.

12. The allegation by the parties opposed that non-confidential summaries of confidential information filed with the complaint are deficient refers to information on the CBSA's administrative record, which was transmitted to the Tribunal for the purposes of its preliminary injury inquiry. Therefore, it is a matter that relates to the CBSA's treatment of confidential information, including non-confidential summaries thereof, provided by parties to the investigation. Accordingly, the Tribunal's preliminary injury inquiry is not the proper forum for addressing those concerns.

SUBMISSIONS ON INJURY AND THREAT OF INJURY

Complainants

13. The complainants submitted that the dumping of the subject goods has caused material injury to the domestic industry. They argued that, since the Tribunal's threat of injury finding in Inquiry No. NQ-2014-001[9] in January 2015 and the resulting imposition of duties on dumped and subsidized rebar from the People's Republic of China, the Republic of Korea and the Republic of Turkey, Canadian importers of rebar have increasingly switched sources to the subject countries. They provided evidence to support their allegations of increased volumes of imports of the subject goods, price undercutting, price depression, price suppression, lost sales, decreased market share, net losses, decreased production, low production capacity utilization rates and unplanned mill shutdowns.

14. The complainants also submitted that the dumping of the subject goods threatened to cause injury to the domestic industry because of the following considerations:

- weak global economic outlook and significant overcapacity in international steel and rebar markets;
- the combination of substantial excess production capacity and weak demand in the subject countries, which is creating an incentive for foreign producers to turn to export markets for sales;
- the export focus of foreign producers in the subject countries on the Canadian market, due to its higher pricing and stronger demand relative to other potential export markets;
- the significant rate of increase in the volume of low-priced subject goods entering the Canadian market;
- the demonstrated propensity of the subject countries to dump steel products; and
- the magnitude of the estimated margins of dumping for each of the subject countries.

Parties Opposed to the Complaint

15. The parties opposed to the complaint submitted that the evidence does not disclose a reasonable indication that the alleged dumping of the subject goods has caused injury or threatens to cause injury to the

9. *Concrete Reinforcing Bar* (9 January 2015) (CITT) [*Rebar NQ*].

domestic industry. They also submitted that any injury that the complainants may have experienced is attributable to factors other than the dumping, such as imports of rebar from non-subject countries, a contraction in domestic market demand, a decline in total imports in 2015, product quality and customer service issues with respect to the like goods and the export performance of the domestic industry.

LEGISLATIVE FRAMEWORK

Reasonable Indication

16. 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"[10] [emphasis added].

17. The "reasonable indication" standard that applies in a preliminary injury inquiry is lower than the evidentiary threshold that applies in a final injury inquiry under section 42 of *SIMA*.[11] The term "reasonable indication" is not defined in *SIMA*, but is understood to mean that the evidence need not be ". . . conclusive, or probative on a balance of probabilities . . . ."[12] Nevertheless, simple assertions are not sufficient and must be supported by relevant evidence.[13] Similarly, the outcome of the Tribunal's preliminary injury inquiry must not be taken for granted.[14]

18. Specifically, the Tribunal has previously been satisfied that the threshold for the "reasonable indication" standard was met where[15]

- 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.

19. 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, the CBSA's record and submissions from the parties.

20. The complaint 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*

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10. The complainants alleged that the evidence discloses a reasonable indication that the dumping of the subject goods has caused injury or is threatening to cause injury; retardation is not alleged.
11. *Grain Corn* (10 October 2000), PI-2000-001 (CITT) at 7.
12. *Ronald A. Chisholm Ltd. v. Deputy M.N.R.C.E.* (1986), 11 CER 309 (FCTD).
13. Article 5 of the WTO *Anti-dumping Agreement* requires an investigating authority to examine the accuracy and adequacy of the evidence provided in a dumping 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 or injury. Article 5 also specifies that simple assertions that are not substantiated with relevant evidence cannot be considered sufficient to meet the requirements of the article.
14. *Concrete Reinforcing Bar* (12 August 2014), PI-2014-001 (CITT) [*Rebar PI*] at paras. 18-19.
15. *Rebar PI* 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.

Regulations.[16] This evidence, however, will in most cases be less comprehensive than the evidence collected for the final injury inquiry and will not be tested to the same extent. Only in a final injury inquiry will the Tribunal have the opportunity to collect its own information, receive submissions on all the evidence on the record and test such evidence through the oral hearing process.

Injury and Threat of Injury Factors

21. In making its preliminary determination, the Tribunal takes into account the injury and threat of injury factors prescribed in section 37.1 of the *Regulations*. For the purposes of the injury analysis, those factors include the import volumes of the dumped goods, the effect of the dumped goods on the price of like goods and the resulting economic impact of the dumped goods on the domestic industry.[17] If injury or threat of injury is found to exist, the Tribunal will consider whether a causal relationship exists between the dumping of the goods and the injury, or threat of injury. The standard is whether there is a reasonable indication that the dumping of the subject goods has, *in and of itself*, caused injury.[18] The Tribunal must further consider, pursuant to paragraph 37.1(3)(b), whether the reasonable indication of injury is attributable to factors other than the dumping.

22. Before examining the allegations of injury and threat of injury, the Tribunal must identify the domestically produced goods that are "like goods"[19] in relation to the subject goods and the domestic industry that produces the like goods. This analysis is required because subsection 2(1) of *SIMA* defines "injury" as ". . . material injury to a domestic industry" and "domestic industry" as ". . . the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods . . . ."

LIKE GOODS AND CLASSES OF GOODS

23. There was no dispute with the complainants' submission[20] that domestically produced rebar is like goods in relation to the subject goods and that there is a single class of goods, similar to the Tribunal's determination in *Rebar NQ*.[21]

24. Accordingly, the Tribunal will conduct its analysis on the basis that domestically produced rebar is like goods in relation to the subject goods. The Tribunal will also analyze the allegations of injury and threat of injury on the basis of one class of goods.

DOMESTIC INDUSTRY

25. In its decision to initiate the investigation, the CBSA accepted that the complainants represent "almost all production of like goods in Canada", with the remainder being attributable to Max Aicher North America Ltd. (MANA).[22] The parties opposed did not dispute this fact.

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16. S.O.R./84-927 [*Regulations*].
17. Subsections 37.1(1) and (2) of the *Regulations*, respectively, prescribe factors to be taken into account for the purposes of the injury and threat of injury analysis.
18. *Circular Copper Tube* (22 July 2013), PI-2013-002 (CITT) at para. 86; *Rebar PI* at para. 95.
19. Subsection 2(1) of the SIMA defines "like goods", in relation to other goods, as follows: "(a) goods that are identical in all respects to the other goods, or (b) in the absence of any goods described in paragraph (a), goods the uses and characteristics of which closely resemble those of the other goods".
20. Exhibit PI-2016-002-02.01, Vol. 1 at 24-26.
21. *Rebar NQ* at paras. 47, 79.
22. Exhibit PI-2016-002-05, Vol. 1B at 306.

26. Having considered the estimated production volumes at play, the Tribunal is satisfied, for the purposes of the preliminary injury inquiry, that the complainants' production constitutes a major proportion of domestic production of like goods. Therefore, the Tribunal will assess whether there is a reasonable indication of injury or threat of injury to the complainants' production of like goods.[23]

CUMULATION

27. In the context of a final injury inquiry, subsection 42(3) of *SIMA* requires the Tribunal to make an assessment of the cumulative effect the dumping or subsidizing of goods that are imported into Canada from more than one subject country if the Tribunal is satisfied that certain conditions are met. Specifically, the Tribunal must be satisfied that (1) the margin of dumping or the amount of subsidy in relation to the goods from each of the countries is not insignificant and the volume of goods imported into Canada from any of those countries is not negligible, and (2) 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 subject countries, the other dumped or subsidized goods, and like goods.[24]

28. While subsection 42(3) of *SIMA* deals with final injury inquiries, the Tribunal normally considers that it is exceptional not to cumulate the subject goods in a preliminary injury inquiry when the available evidence appears to justify cumulation.[25]

29. The complainants submitted that it is appropriate for the Tribunal to make a cumulative assessment of the injurious effects of the dumped goods from the subject countries. While the other parties disputed the allegation of injurious effects of the subject goods imported from Spain and Portugal, in particular, they made no express arguments that those two countries should be de-cumulated for the purposes of the Tribunal's injury analysis.

30. As the CBSA determined that the estimated margins of dumping for all the subject countries are not insignificant and that the estimated volumes of dumped imports are not negligible,[26] the Tribunal finds that the first condition under subsection 42(3) of *SIMA* is met.

31. With respect to the conditions of competition,[27] the evidence and submissions on the record at this stage indicate that rebar is a commodity product and that the subject goods are fungible and interchangeable between themselves and with the like goods.[28] Evidence and submissions also indicate that the subject goods and the like goods compete directly in the same geographic markets and are distributed through the

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23. Although MANA supported the complaint (Exhibit PI-2016-002-02.01, Vol. 1 at 23), the evidence provided in relation to the domestic producers' volumes, prices and economic and financial indicators included information from the complainants only and not from MANA.
24. *Galvanized Steel Wire* (22 March 2013), PI-2012-005 (CITT) at para. 39.
25. *Corrosion-resistant Steel Sheet* (2 February 2001), PI-2000-005 (CITT) at 4, 5.
26. Exhibit PI-2016-002-05, Vol. 1B at 313.
27. In assessing the conditions of competition, the Tribunal has previously taken into consideration such factors as the degree to which the subject goods from each country are (in relation to each other and in relation to the like goods) interchangeable, are present in the same geographic markets at the same time, are distributed through the same channels or use the same means of transportation. *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (17 August 2001), NQ-2001-001 (CITT) at 16.
28. Exhibit PI-2016-002-02.01, Vol. 1 at 18, Vol. 1A at 274; Exhibit PI-2016-002-03.01 (protected), Vol. 2 at 192-97, Vol. 2A at 14-20; Exhibit PI-2016-002-08.02 at paras. 34-37, Vol. 3.

same channels.[29] Therefore, the Tribunal is satisfied that the second condition is met and considers it appropriate to conduct an assessment of the cumulative effect of the subject goods from all sources for the purposes of this preliminary injury inquiry.

32. However, in the event of a final injury inquiry, the Tribunal intends to carefully examine the evidence pertaining to the conditions of competition, particularly whether the subject goods from all subject countries are present in the same geographical markets as each other and the like goods. It will also consider whether they compete similarly with each other on the basis of quality and price considerations and whether they are sold through similar channels of distribution, having regard to shipping rates.

INJURY ANALYSIS

33. The Tribunal will now determine 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*.

Import Volume of Dumped Goods

34. For the purposes of its analysis, the Tribunal considered both the complainants' estimates of import volumes[30] and the import data compiled by the CBSA[31] for the period from January 1, 2013, to May 31, 2016.

35. Both sets of data indicate that, from 2013 to 2015, there was a significant increase, year over year, in the volume of the subject goods entering Canada in absolute terms and relative to domestic production and consumption of like goods.[32] According to the import data compiled by the CBSA, the subject countries accounted for 0 percent, 4.7 percent and 55.8 percent of total imports of rebar into Canada in 2013, 2014 and 2015 respectively.[33] Thus, in addition to an absolute increase in volume, the subject goods accounted for a growing share of imports, capturing more than the share lost by the countries in *Rebar NQ*,[34] as imports from non-subject countries (including the United States) declined or made only marginal gains over the same period.

36. The estimated import volume of the subject goods was also substantial from January to May 2016, with further increases on a month-to-month basis. However, the Tribunal considers full year data to be more

29. Exhibit PI-2016-002-02.01, Vol. 1 at 18, Vol. 1A at 274; Exhibit PI-2016-002-03.01 (protected), Vol. 2 at 201-205, Vol. 2A at 14-20, 69-85; Exhibit PI-2016-002-08.02 at paras. 34-37, Vol. 3.
30. The complainants provided confidential estimates of the import volumes from the subject countries for the period from January 1, 2013, to February 28, 2016, on the basis of publicly available import data obtained from Statistics Canada and for April and May 2016 on the basis of Global Affairs Canada (GAC) import permit data.
31. The CBSA conducted its own independent review of imports of rebar from its Facility Information Retrieval Management (FIRM) database as per the HS classification codes under which the subject goods are imported from the subject countries (i.e. primarily classification Nos. 7213.10.00.00 and 7214.20.00.00). The CBSA also made changes to the FIRM import data on the basis of its review of B3 customs entry supporting documentation. Exhibit PI-2016-002-05, Vol. 1B at 308.
32. Exhibit PI-2016-002-05, Vol. 1B at 308, 309; Exhibit PI-2016-002-03.01 (protected), Vol. 2 at 40, 93-94; 114-15; Exhibit PI-2016-002-03.02 (protected), Vol. 2B at 20-21.
33. Exhibit PI-2016-002-05, Vol. 1B at 309.
34. The estimated import data filed with the complaint indicate that imports from the countries in *Rebar NQ* had nearly disappeared from the Canadian market by 2015. Exhibit PI-2016-002-02.01, Vol. 1 at 87-88; Exhibit PI-2016-002-03.01 (protected), Vol. 2 at 114-15.

representative of actual import behaviour, given that quarterly or monthly data are more likely to be affected by the seasonal nature of rebar shipments[35] and differences in the timing between orders and deliveries.[36]

37. Based on the foregoing, the evidence discloses a reasonable indication that there has been an increase in the volume of imports of the subject goods, both in absolute and relative terms.

Effect on Price of Like Goods

38. As noted above, the complainants alleged that subject goods undercut, depressed and suppressed prices of like goods. The Tribunal finds sufficient evidence to support a reasonable indication of price undercutting and price depression but not of price suppression.

Price Undercutting

39. The complainants' estimates of average prices reasonably indicate that, at the aggregate level, the unit import values[37] for the subject goods significantly undercut the domestic selling prices of the like goods in 2014 and 2015.[38] During the same period, the subject goods were also priced below imports from non-subject countries and were thus the price leaders in the Canadian market.

40. The pricing information in the complainants' specific injury allegations provided further evidence of price undercutting. Several of those examples referred to sales that went to the subject goods at prices that were below those quoted by the domestic producer. The specific injury allegations are set out in sworn witness statements and supported by invoices, purchase orders, sales reports and related internal communications.[39] While such evidence would clearly need to be fully examined and tested in the context of a final injury inquiry, the Tribunal accepts that, for the purposes of the preliminary injury inquiry, it is sufficient to meet the reasonable indication standard.

Price Depression

41. The evidence also shows a decline in the average selling prices of like goods from 2014 to 2015.[40] Supporting documentation and witness statements filed with the complaint referred to sales secured by the

35. According to the complainants, offshore imports of rebar normally do not enter Eastern Canada during the close of navigation (via the St. Lawrence Seaway), which typically occurs from November or December to April or May each year. Exhibit PI-2016-002-02.01, Vol. 1 at 51-52, 81, 89, Vol. 1A at 312, 316.
36. Exhibit PI-2016-002-02.01, Vol. 1 at 34, 47.
37. The complainants' estimated unit selling prices of the subject goods are based on publicly available import data from Statistics Canada and GAC import permit data. Exhibit PI-2016-002-02.01, Vol. 1 at 38; Exhibit PI-2016-002-03.01 (protected), Vol. 2 at 114-19. While import values based on value for duty may differ from the price at which the goods were actually sold in the Canadian market, it is probable that they followed similar trends. The Tribunal is satisfied that the use of these import unit values as a proxy for selling prices of the subject goods provides a sufficient evidentiary basis for the purposes of the price effects analysis in this preliminary injury inquiry.
38. Exhibit PI-2016-002-03.01 (protected), Vol. 2 at 114-15. Given the low volume of imports of the subject goods in Canada in 2013, the Tribunal does not consider the import unit values for that year a meaningful basis for pricing comparisons.
39. Exhibit PI-2016-002-03.01 (protected), Vol. 2 at 192-99, 233-37, Vol. 2A at 8-21, 27-30, 65-91, 108-113.
40. Exhibit PI-2016-002-03.01 (protected), Vol. 2 at 114-15.

domestic producers only after they lowered their prices in order to compete with the subject goods.[41] This evidence is reasonably indicative of price depression.

42. During its final injury inquiry, the Tribunal will however carefully consider and test allegations that the domestic producers were forced to lower their selling prices because their customers received low-priced offers from the subject countries even before the subject goods entered the Canadian market.

Price Suppression

43. The evidence shows that, in each year from 2013 to 2015, average domestic selling prices covered the domestic industry's consolidated unit costs,[42] which declined during the same period.[43] However, the complainants submitted that the dumping forced them to reduce prices faster than costs fell, resulting in a price-cost squeeze and net losses. The complainants relied on quarterly data[44] and specific allegations of price suppression,[45] particularly in early 2016, as year-to-year data on average unit pricing and costing do not demonstrate such a price-cost squeeze. At this stage, in the Tribunal's view, the available 2016 data in relation to costs and prices are insufficient to provide a reasonable indication of price suppression, which is not readily apparent from 2013 to 2015. This issue would be investigated more fully in the event of a final injury inquiry.

44. The Tribunal has focused on the available full year data for 2013 to 2015 for the purposes of its price effects analysis despite the emphasis in the complaint on quarterly and monthly pricing data in 2015 and 2016. In particular, the complainants asserted that, given the longer lead times associated with purchases of the subject goods, ". . . in many cases the appropriate price comparison is the domestic price in a given quarter to the [s]ubject [g]oods price in the previous quarter . . .",[46] i.e. at the time of the offer or sale as opposed to the time of the actual importation of the subject goods.[47]

45. Pricing comparisons between the selling prices of like goods and the average unit values of imports of the subject goods are difficult to make on a quarterly or monthly basis, as they are more likely to be skewed by the seasonality of import shipments and differences in the timing of orders (which would impact purchase prices) and actual deliveries. For example, in the first quarter of 2016, the prices of like goods declined compared to the third and fourth quarters of 2015, and also to full year 2015, and were lower than the average unit value of the subject goods. However, with the addition of the data for April and May 2016 to the first quarter of that year, the unit value of the subject goods dropped significantly below the price of like goods.[48] The Tribunal will be in a better position to examine the 2016 pricing data, as well as lead times and costs in relation to prices, in the context of a final injury inquiry.

46. In summary, the Tribunal finds that the evidence discloses a reasonable indication that the dumping of the subject goods resulted in price undercutting and price depression.

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41. Exhibit PI-2016-002-03.01 (protected), Vol. 2 at 193-95, 201-205, Vol. 2A at 16-18, 20, 71, 75, 77-81.
42. For the purposes of this analysis, the Tribunal considered the domestic industry's consolidated data on both the unit cost of goods sold and the unit cost of goods manufactured and found that they showed similar trends during the period examined.
43. Exhibit PI-2016-002-03.01 (protected), Vol. 2 at 93.
44. *Ibid.* at 93-94.
45. Exhibit PI-2016-002-03.01 (protected), Vol. 2 at 191, 196-98, Vol. 2A at 12, 86.
46. Exhibit PI-2016-002-02.01, Vol. 1 at 47.
47. Exhibit PI-2016-002-08.02 at 30, Vol. 3.
48. Exhibit PI-2016-002-03.01 (protected), Vol. 2 at 118.

Resultant Impact on the Domestic Industry

47. The evidence on the record shows that the domestic industry's performance varied from 2013 to 2015, with domestic production, sales from domestic production and market share declining in 2014 and then increasing in 2015.[49] According to the complainants, however, the apparent improvement in 2015 was largely because one domestic producer changed its business strategy, which had an effect on its manufacturing operations. The results of that strategy allegedly masked the negative impact of the subject goods on the entire domestic industry in 2015.[50] Taking this information into account, subject to being fully assessed in a final injury inquiry, the available market share data indicate that, since the Tribunal's finding in *Rebar NQ* in 2015, the subject goods have captured the market share of non-subject imports from the countries in *Rebar NQ* at the expense of the domestic industry.

48. The complainants' consolidated financial data show that the domestic industry experienced positive gross margins and negative net income levels from 2013 to 2015. Both of these profitability indicators declined in the first quarter of 2016 compared to the first quarter of 2015.[51] The consolidated data also show that, while there was an overall increase in total domestic production of like goods from 2013 to 2015, over the same period, capacity utilization rates remained about the same because capacity increased as well.[52] There was an overall increase in the number of employees from 2013 to 2015; however, hours worked declined during that period.[53] Both employment indicators fell significantly in the first quarter of 2016, which could reflect several unplanned mill shutdowns reported by the complainants in 2015 and early 2016.[54]

49. The complainants provided a number of specific injury allegations to demonstrate lost sales or accounts to imports of the subject goods and how they were forced to lower their prices in order to maintain sales or accounts in competition with the subject goods.[55] This evidence, subject to being fully assessed in the context of a final injury inquiry, reasonably indicates a causal relationship between the alleged dumping and the alleged injury to the domestic industry.

50. Taken together, this evidence discloses a reasonable indication that the dumping of the subject goods has caused injury to the domestic industry.

51. The parties opposed alleged that a number of other non-dumping factors may have had an impact on the domestic industry, namely, reductions in overall market demand and total imports, non-subject goods imported into Canada, quality and customer service issues in relation to the like goods and the export performance of the domestic industry. Parties opposed did not however provide sufficient positive evidence to support their claims at this stage.

52. During a final injury inquiry, however, the Tribunal will be particularly mindful of these issues in order to fully establish whether there is a causal link between the alleged dumping and injury. In particular, the extent to which the alleged injury suffered by the domestic industry was caused by source switching to the subject goods in the wake of *Rebar NQ* versus other non-dumping factors, such as an overall contraction in the size of the domestic market, is a question that the Tribunal intends to fully explore. The capacity of

49. *Ibid.* at 93, 95, 114-15.
50. *Ibid.* at 40-41.
51. *Ibid.* at 93.
52. *Ibid.* at 95.
53. *Ibid.* at 96.
54. *Ibid.*; Exhibit PI-2016-002-02.01, Vol. 1 at 55-56, 297-98, 330.
55. Exhibit PI-2016-002-03.01 (protected), Vol. 2 at 201-205.

the domestic industry to effectively supply key segments of the market across Canada will also be investigated.

THREAT OF INJURY ANALYSIS

53. In finding that there is a reasonable indication that the alleged dumping of the subject goods caused injury to the domestic industry, the Tribunal does not need to consider whether there is also a reasonable indication that the alleged dumping of the subject goods threatens to cause injury. Nevertheless, the Tribunal will briefly turn to the evidence and allegations in regard to threat of injury for completeness and in order to provide guidance to the parties in a final injury inquiry.

54. The Tribunal is satisfied that the complainants provided sufficient evidence that is relevant to the threat of injury factors listed in subsection 37.1(2) of the *Regulations*.

55. The complaint included evidence of a significant rate of increase of the subject goods imported into Canada from 2013 to 2015, which is also shown in the CBSA's import data.[56] The complaint also included positive evidence to support allegations regarding current and anticipated international market conditions,[57] significant excess capacity in the subject countries[58] and the attractiveness of the Canadian market for rebar exports from the subject countries,[59] despite forecasts of modest growth in Canadian demand.[60] It noted several anti-dumping and/or countervailing measures by authorities in other countries in respect of rebar or similar steel products from the subject countries.[61] On the whole, therefore, the Tribunal accepts that there is a reasonable likelihood of substantially increased import volumes of the subject goods into Canada.

56. As discussed above, there is a reasonable indication that the prices of the subject goods caused effects on the prices of like goods in the domestic market from 2013 to 2015. Taken alongside the magnitude of dumping margins estimated by the CBSA, the evidence suggests that the subject goods are likely to continue entering the Canadian market at prices below the price of the like goods, in the absence of anti-dumping duties. This could result in additional price depression and increased demand for imports of the subject goods in the foreseeable future.

57. These developments could therefore cause injury to the domestic industry, especially in light of the Tribunal's determination that the alleged injurious impact of the dumped goods on the state of the domestic industry is tenable.

58. With respect to the submissions by the parties opposed to the complaint, the Embassy of Spain and MEGASA denied that exports of the subject goods from Spain or Portugal pose a threat to the Canadian industry, as those countries have neither excess production capacity nor a propensity to dump nor a specific export interest in Canada. They also cited *inter alia* a recovery in domestic demand and the availability of other potential markets in Europe that are much closer to Spain and Portugal. These allegations were not supported by positive evidence. Furthermore, for the reasons stated above, the Tribunal finds it appropriate to conduct a cumulative assessment of the threat of injury posed by the subject goods, from all sources, for the purposes of this preliminary injury inquiry.

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56. Exhibit PI-2016-002-05, Vol. 1B at 308, 309; Exhibit PI-2016-002-03.01 (protected), Vol. 2 at 40, 93-94; 114-15; Exhibit PI-2016-002-03.02 (protected), Vol. 2B at 20-21.
57. Exhibit PI-2016-002-02.01, Vol. 1 at 58-65 and attachments cited therein.
58. Exhibit PI-2016-002-02.01, Vol. 1 at 66, 69, 72-74, 76-77; Exhibit PI-2016-002-03.01 (protected), Vol. 2 at 146-83.
59. Exhibit PI-2016-002-02.01, Vol. 1 at 80-82 and attachments cited therein.
60. *Ibid.* at 77-78 and attachments cited therein.
61. Exhibit PI-2016-002-02.01, Vol. 1 at 82-85.

59. MEGASA also challenged the manner in which the complainants had projected the import volume of the subject goods for full year 2016.[62] Further, using the same methodology and assumptions, MEGASA projected the full-year volumes of domestic sales from domestic production and imports of non-subject goods. According to MEGASA, the results indicate that the domestic industry would improve its market share over 2013 and 2014.[63] In reply, ArcelorMittal and AltaSteel submitted that, applying the same methodology, the domestic industry is projected to lose market share to the subject goods and experience declining profitability in 2016 compared to 2015.[64]

60. While projections can provide a useful tool for assessing threat of injury, it is important to keep in mind the timing and seasonality of shipments, especially those entering Eastern Canada or Central Canada via the St. Lawrence Seaway, when relying on first quarter import volumes to generate full-year projections of import activity. These projections would need to be more fully examined and in the context of a final injury inquiry, at which point there will be more data available in relation to 2016 imports.

61. On balance, given the lower evidentiary standard in a preliminary injury inquiry, the evidence discloses a reasonable indication that the dumping of the subject goods is threatening to cause injury.

CONCLUSION

62. On the basis of the foregoing analysis, pursuant subsection 37.1(1) of *SIMA*, the Tribunal determines that the evidence discloses a reasonable indication that the dumping of the subject goods has caused injury or is threatening to cause injury to the domestic industry.

Jason W. Downey
Jason W. Downey
Presiding Member

Ann Penner
Ann Penner
Member

Rose Ritcey
Rose Ritcey
Member

62. Exhibit PI-2016-002-03.01 (protected), Vol. 2 at 74-75.
63. Exhibit PI-2016-002-07.01 (protected) at paras. 36-39, Vol. 4.
64. Exhibit PI-2016-002-09.02 (protected) at paras. 79, 122, Vol. 4 at 27.