



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

FINDING AND REASONS

Inquiry No. NQ-2016-001

Welded Large Diameter Carbon
and Alloy Steel Line Pipe

*Finding issued
Thursday, October 20, 2016*

*Reasons issued
Friday, November 4, 2016*

*Corrigenda issued
February 20, 2017*

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IN THE MATTER OF an inquiry, pursuant to section 42 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**

FINDING

The Canadian International Trade Tribunal, pursuant to the provisions of section 42 of the *Special Import Measures Act*, has conducted an inquiry to determine whether the dumping 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 inquiry included 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").

Further to the Canadian International Trade Tribunal's inquiry, and following the issuance by the President of the Canada Border Services Agency of final determinations dated September 20, 2016, that the above-mentioned goods originating in or exported from the People's Republic of China and Japan have been dumped and that the above-mentioned goods originating in or exported from the People's Republic of China have been subsidized, the Canadian International Trade Tribunal hereby finds, pursuant to subsection 43(1) of the *Special Import Measures Act*, that the dumping and/or subsidizing of the above-mentioned goods, originating in or exported from the People's Republic of China and Japan, have caused injury to the domestic industry.

Furthermore, the Canadian International Trade Tribunal hereby excludes the following products from its finding:

- ASME SA 672 or ASME SA 691 electric-fusion welded steel pipe as certified under the ASME "Boiler and Pressure Vessel Code" rules (and stencilled with at least one of the aforementioned standards), of a length not to exceed 15 feet (4.572 m), for use other than in a CSA Z-662 pipeline application and imported with authorized inspection certificates and applicable ASME Partial Data Reports;

- line pipe, regardless of grade, outside diameter and wall thickness, single stenciled as “DNV-OS-F101” for exclusive use in offshore applications and marked “For Offshore Applications Only”;
- submerged arc longitudinal welded line pipe, regardless of grade, outside diameter and wall thickness, in lengths of 60 feet (18.288 m) with no girth welds for exclusive use in slurry or tailings piping systems in oil sands projects and marked “For Use as Slurry/Tailings Pipe Only”; for greater certainty, use in a pipeline meeting CSA Z-662 or as pressure piping meeting CSA B51 Code is not permitted under this exclusion; and
- submerged arc longitudinal welded line pipe, regardless of outside diameter, wall thickness and length, for exclusive use in high-temperature steam distribution pipelines and marked “For Steam Distribution Only”, certified to meet the requirements of CSA Z662-15 Clause 14 and/or Annex I and certified to have proven fatigue/creep test properties as provided in sections I.2.3.2 and I.3.2.1 of CSA Z662-15 as established by means of a creep test of no less than 10,000 hours carried out in accordance with ASTM E139.

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.

IN THE MATTER OF an inquiry, pursuant to section 42 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**

CORRIGENDA

1. In the English version of the statement of reasons for the Tribunal's decision in the above matter, the corrections that follow are warranted:
 - a) The second sentence in paragraph 20 should read as follows:

Witness statements were filed by Cenovus, JFE, KMC, NSSMC, Shell, Suncor and Syncrude, in support of their requests.
 - b) The text of footnote 9 should read as follows: Intentionally blank.
 - c) The first sentence in paragraph 22 should read as follows:

The second pre-hearing conference took place at the Tribunal's hearing room on September 14, 2016, with some parties attending in person and others via telephone or videoconference.
 - d) The second sentence in paragraph 36 should read as follows:

For example, high-pressure steam pipe must meet a "creep test" as set out in section 1.3.2.1 of CSA Z662-15 to ensure that the LDLP withstands high temperatures.
 - e) Footnote 93 should read as follows:

Certain Fasteners (21 January 2005), NQ-2005-005 (CITT) at para. 216.
 - f) The second sentence of paragraph 178 should read as follows:

On this matter, the Tribunal heard testimony from both parties and takes the position that the process at hand cannot play any part in ongoing negotiations between parties.
2. The French translation reflects the above-mentioned corrections.

By order of the Tribunal,

Jean Bédard
Jean Bédard
Presiding Member

Jason W. Downey
Jason W. Downey
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Ann Penner
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Place of Hearing: Ottawa, Ontario
Dates of Hearing: September 19 to 23 and 26 to 28, 2016

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STATEMENT OF REASONS

INTRODUCTION

1. The mandate of the Canadian International Trade Tribunal (the Tribunal) in this inquiry¹ is to determine whether the dumping of certain welded large diameter carbon and alloy steel line pipe² (LDLP) (the subject goods) originating in or exported from the People's Republic of China (China) and Japan and the subsidizing of LDLP originating in or exported from China have caused injury or retardation, or are threatening to cause injury to the domestic industry.
2. The Tribunal has determined, for the reasons that follow, that the dumping and/or subsidizing of the subject goods originating in or exported from China and Japan have caused injury to the domestic industry. Therefore, the Canada Border Services Agency (CBSA) will impose definitive anti-dumping and/or countervailing duties on imports of the subject goods originating in or exported from China and Japan.
3. Certain exclusions from this finding are warranted, as discussed below.

PRODUCT DESCRIPTION

4. The subject goods are defined as follows:

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 China and Japan.

For greater certainty, the goods subject to this 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 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").

5. In its statement of reasons for its preliminary determinations, the CBSA provided the following additional product information:³

[23] Large line pipe is used in the oil and gas sector primarily in pipelines for the transmission of oil and natural gas products over long distances, but also in a variety of mining applications, including as slurry pipe in oil sands operations.

[24] The Canadian market for large line pipe is governed by applicable line pipe specifications including Canadian Standards Association (CSA) specification Z245.1 for line pipe used in pipeline applications. Oil and gas transmission pipelines must, in turn, for example, conform to CSA Z662

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1. The inquiry is conducted pursuant to section 42 of the *Special Import Measures Act*, R.S.C., 1985, c. S-15 [SIMA].
 2. A detailed description of the goods subject to this inquiry is found under "Product Description".
 3. Exhibit NQ-2016-001-01A, Vol. 1 at 27-28.

(Oil and Gas Pipeline Systems). That said, international trade in line pipe is governed primarily by API specification 5L. For example, CSA Z245.1 Grade 448 pipe is considered to be equivalent to API 5L Grade X65. The API 5L X grade numbers define the minimum yield strength required of the grade in kilopounds per square inch. This equivalency applies to other specifications, including International Organization for Standardization (ISO), which means that a particular line pipe may be certified and stenciled as complying with multiple standards if all the requirements of each standard/grade are met (leading to dual-, triple-, and further multiple-stenciled line pipe). Indeed, it is common practice to certify multiple grades of pipe on a Mill Test Report. It is also common practice to substitute grades other than that initially requested by a customer with an equivalent grade. Mill Test Reports are provided to show that the properties of the supplied pipe meet the requirements of the actual grade ordered.

[25] The complainant manufactures or is capable of manufacturing line pipe to API 5L specifications in grades up to and including X100 and to all equivalent grades under CSA Z245.1, and in all outside diameter sizes covered by the product definition.

[26] The product definition covers all large line pipe meeting or supplied to meet the above specifications and grades, as well as equivalent specifications and grades, regardless of whether the line pipe has been multiple-stenciled to indicate that it meets or is supplied to meet additional end-use specifications. For purposes of greater clarity, all large line pipe stenciled or otherwise marked as meeting or supplied to meet API 5L (or equivalent specifications) for use as oil and gas pipelines are included in the product definition regardless of whether the pipe is marked as meeting any other end-uses or is supplied to meet any other end-uses. Line pipe that is manufactured and tested to meet higher API specifications (or equivalent CSA and ISO specifications) automatically conforms to lower specifications and may therefore have multiple stencils identifying additional end uses, such as American Society for Testing and Materials (“ASTM”), and equivalent specifications for end use as standard pipe (for low-pressure conveyance of steam, water, natural gas, air and other liquids in plumbing and heating applications), piling pipe, and other such end uses.

[27] Large line pipe has notable product characteristics that distinguish it from other pipe products. These include being more resistant to highly corrosive (“sour”) environments, which is accomplished by a secondary refining process in the production of the steel to increase the purity of the steel, thereby making it more resistant to corrosion from sour gas. The grain size of the steel plate used as an input into the production of large line pipe is also more refined, which affects the low-temperature toughness of the steel. Large line pipe also typically is sold in API grades of X70 or greater, which speaks to higher strengths of steel. Finally, large line pipe is characterized by higher deformability and higher pressure-crushing properties.

6. Certain parties raised questions as to the scope of the subject goods.⁴ They noted that the nominal metric industry equivalent of the subject goods measuring 24 inches is 610 mm and questioned whether the reference to 609.6 mm in the product definition could create confusion at the border.

7. By letter to counsel and parties of record dated August 17, 2016, the Tribunal indicated that it was bound by the definition of the subject goods provided by the CBSA and that it did not consider the product definition to be ambiguous; the use of the nominal metric industry equivalent would still fall within the product definition, as 610 mm is greater than 609.6 mm.⁵ To the extent that some opposing parties took issue with the scope of the product definition, the Tribunal viewed those arguments as matters that fall exclusively within the CBSA’s jurisdiction and, therefore, outside of the scope of the present inquiry.

4. Exhibit NQ-2016-001-22, Vol. 1A; Exhibit NQ-2016-001-23, Vol. 1A; Exhibit NQ-2016-001-24, Vol. 1A; Exhibit NQ-2016-001-25, Vol. 1A; Exhibit NQ-2016-001-40, Vol. 1A.

5. Exhibit NQ-2016-001-40, Vol. 1A at 216-17. The product definition in *Carbon and Alloy Steel Line Pipe* (29 March 2016), NQ-2015-002 (CITT) included carbon and alloy steel line pipe with an outside diameter up to and including 24 inches (609.6 mm) outside diameter. The product definition in this case covers carbon and alloy steel line pipe with an outside diameter exceeding 24 inches (609.6 mm).

PRELIMINARY DETERMINATIONS

8. On February 5, 2016, EVRAZ Inc. NA Canada and Canadian National Steel Corporation (EVRAZ) filed a complaint alleging injury caused by the dumping and subsidizing of the subject goods from China and the dumping of the subject goods from Japan.

9. On March 24, 2016, the President of the CBSA initiated investigations into those allegations.

10. The CBSA's investigations triggered the initiation of a preliminary injury inquiry by the Tribunal on March 29, 2016. The Tribunal issued its preliminary determination on May 24, 2016, that the evidence disclosed a reasonable indication that the dumping and subsidizing of the subject goods had caused injury or were threatening to cause injury to the domestic industry.

11. On June 22, 2016, the CBSA made preliminary determinations of dumping and subsidizing, resulting in the imposition of provisional anti-dumping and countervailing duties on the subject goods and the commencement of this inquiry. On June 23, 2016, the Tribunal issued a notice of commencement of inquiry.

RESULTS OF THE INVESTIGATIONS BY THE CBSA

12. On September 20, 2016, the CBSA made final determinations of dumping against China and Japan and of subsidizing against China.

13. The CBSA's period of investigation for both its dumping and subsidizing investigations covered the period from July 1, 2014, to December 31, 2015. The CBSA determined that 100 percent of the subject goods imported into Canada had been dumped at weighted average margins of dumping of 95 percent and 48.1 percent, expressed as a percentage of the export price of the subject goods, for China and Japan respectively. The CBSA also determined that 100 percent of the subject goods imported from China were subsidized at a weighted average amount of subsidy of 30.3 percent when expressed as a percentage of the export price.⁶

14. Accordingly, the CBSA concluded that the overall margins of dumping and the amount of subsidy were not insignificant.⁷

TRIBUNAL'S INQUIRY

15. The Tribunal's period of inquiry (POI) was from January 1, 2013, to March 31, 2016. On June 23, 2016, the Tribunal sent requests to complete questionnaires to domestic producers, importers, purchasers and foreign producers of LDLP. Using the questionnaire replies and import data from the CBSA, staff of the Secretariat to the Canadian International Trade Tribunal of the Administrative Tribunals Support Service of Canada prepared public and protected versions of the investigation report (IR) that were distributed, along with the questionnaire replies, to those parties that had filed notices of participation in the inquiry.⁸ Parties filed case briefs and evidence in response.

6. Exhibit NQ-2016-001-04, Vol. 1 at 187-88.

7. Exhibit NQ-2016-001-04A, Vol. 1 at 193.

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

16. In support of its allegations of injury (or threat thereof), EVRAZ, submitted evidence and argument, and provided witnesses during the Tribunal's hearing.

17. The parties that filed evidence and argument with the Tribunal in opposition to EVRAZ's injury and threat of injury allegations are the following: JFE Steel Corporation (JFE), Metal One Corporation and Cantak Corporation; Nippon Steel & Sumitomo Metal Corporation (NSSMC); Sumitomo Corporation and Sumitomo Canada Ltd. (Sumitomo); and TransCanada PipeLines Limited (TCPL).

18. Shell Canada Limited (Shell); Shaw Pipe Protection, a Division of ShawCor Ltd.; and Baoshan Iron & Steel Co., Ltd. and Baosteel America Inc. (Canada Office) (Baosteel) filed case briefs but did not file witness statements, and the only evidence that they filed was their questionnaire responses. Cenovus Energy Inc. (Cenovus), Comco Pipe & Supply Company (Comco), Enbridge Pipelines (Woodland) Inc. (Enbridge), Inter PipeLine Ltd., Kinder Morgan Canada Inc. (KMC), MEG Energy Corp., Panyu Chu Kong Steel Pipe Co., Ltd. (PCK), Suncor Energy Inc. (Suncor), Syncrude Canada Ltd. (Syncrude) and Westcoast Energy Inc. dba Spectra Energy Transmission (Spectra) filed notices of participation but did not file case briefs or evidence on the issue of injury or threat of injury.

19. The parties were permitted to file requests for information (RFIs) with the Tribunal until August 19, 2016. The Tribunal issued directions to the parties on August 25, 2016, regarding the RFIs that required responses. The responses were received by September 6, 2016, and placed on the record of the proceedings.

20. Product exclusion requests were filed by Cenovus, Comco, JFE, KMC, NSSMC, PCK, Shell, Spectra, Suncor, Syncrude and TCPL. Witness statements were filed by Cenovus, JFE, NSMMC, Shell, Suncor and Syncrude, in support of their requests. EVRAZ filed witness statements in opposition to those requests. Witnesses for Cenovus, JFE, KMC,⁹ NSMMC, Shell, Suncor, Syncrude and TCPL provided oral evidence with respect to the product exclusion requests. Witnesses for EVRAZ testified to oppose the product exclusion requests.

21. The Tribunal held three pre-hearing conferences. The first took place by telephone on September 6, 2016, to discuss the logistics and parameters of the hearing, and, specifically, the presentation of evidence related to product exclusion requests.

22. The second pre-hearing conference took place at the Tribunal's hearing room on September 14, 2016, with some parties attending in person and others via telephone. It dealt with the qualification of Mr. David B. Milmine and Dr. J. Malcolm Gray as expert witnesses. Mr. Milmine was proposed by TCPL to provide his opinion on issues pertaining to injury and exclusion requests. Dr. Gray was proposed by EVRAZ to rebut Mr. Milmine's views. Counsel for the parties had the opportunity to test the expertise of each proposed witness. Both Dr. Gray and Mr. Milmine confirmed that they were willing and able to act as independent experts for the Tribunal in accordance with the requirements of *White Burgess Langille Inman v. Abbott and Haliburton Co.*¹⁰ and section 52.2 of the *Federal Courts Rules*.¹¹ Their confirmation was particularly important to the Tribunal, given Mr. Milmine's longstanding close working relationship with TCPL. It also turned out to be equally important to the Tribunal when it came to light that counsel for EVRAZ had provided some administrative assistance to Dr. Gray in the production of his expert report.

9. The witness for KMC did not file a witness statement prior to testifying. The parties and the Tribunal agreed to waive this usual requirement to testifying before the Tribunal on an exceptional basis.

10. [2015] 2 SCR 182, 2015 SCC 23 (CanLII).

11. S.O.R./98-106.

23. Following the second pre-hearing conference, the Tribunal qualified Mr. Milmine as an expert in: quality assurance engineering, manufacturing assessment and surveillance, materials engineering, specification evaluation, inspection and technical evaluation of steel pipe mills, and technical evaluations of responses to proposals for LDLP. It also qualified Dr. Gray as an expert in the following areas: the production of LDLP, including metallurgy, steel making and pipe making, as each relates to the production of LDLP; industry specifications related to LDLP in Canada and globally; and current and anticipated Canadian production capabilities with respect to LDLP by EVRAZ Inc. NA Canada.

24. The third pre-hearing conference took place via telephone on September 14, 2016. The Tribunal attempted to facilitate a visit by Mr. Milmine to assess EVRAZ's steel and pipe mills in Regina, Saskatchewan, and to direct the exchange of various technical documents germane to that matter. After being granted access to the mills through this process, in the end, Mr. Milmine chose not to visit to EVRAZ's Regina mills but did use the technical documents to inform his oral testimony.

25. The Tribunal held public and *in camera* hearings in Ottawa, Ontario, on September 19 to 23 and 26 to 28, 2016. Dr. Gray and Mr. Milmine testified as expert witnesses on September 23, 2016. Due to changes in the scheduling of the hearing, counsel for Baosteel was unable to attend closing arguments on September 28, 2016. Accordingly, the Tribunal allowed closing arguments made on behalf of Baosteel to be submitted in writing by September 30, 2016. EVRAZ was given an opportunity to reply in writing to Baosteel's submissions by October 4, 2016.

26. Parties seeking exclusion requests were afforded the opportunity to make rebuttal arguments in writing after the conclusion of the hearing.

LEGAL FRAMEWORK OF THE TRIBUNAL'S ANALYSIS

27. The Tribunal is required, pursuant to subsection 42(1) of *SIMA*, to inquire as to whether the dumping and subsidizing of the subject goods have caused injury or retardation or are threatening to cause injury, with "injury" being defined, in subsection 2(1), as "... material injury to a domestic industry". To that end, it must determine the scope of the domestic industry, whether the domestically produced goods are "like goods" in relation to the subject goods, and whether the subject goods constitute one or more classes of goods. Finally, it must determine whether to cumulate/cross-cumulate the subject goods in its injury analysis.

28. In this case, EVRAZ is the only domestic producer of LDLP. As such, it constitutes the totality of the domestic industry for the purposes of this inquiry.¹²

29. In deciding the issues of like goods and classes of goods, the Tribunal typically considers a number of factors, including the physical characteristics of the goods (such as composition and appearance), their market characteristics (such as substitutability, pricing, distribution channels and end uses) and whether the goods fulfill the same customer needs. An examination of the market dynamics and conditions of competition that exist between the subject goods and the like goods is therefore germane to that analysis.

12. Subsection 2(1) of *SIMA* defines "domestic industry" as follows: "... the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods except that, where a domestic producer is related to an exporter or importer of dumped or subsidized goods, or is an importer of such goods, 'domestic industry' may be interpreted as meaning the rest of those domestic producers". TCPL argued that Shaw Pipe Limited should be included in the domestic industry because of its coating activities. The Tribunal disagrees. Pipe coating is a finishing process only. It does not constitute production of LDLP.

30. In regards to cumulation, the Tribunal must determine whether it is appropriate to make an assessment of the cumulative effects of the dumping and subsidizing of the subject goods in this inquiry, given the CBSA's determinations. This assessment also requires the Tribunal to examine the conditions of competition in the market to understand the interplay between the subject goods and the like goods. Those conditions of competition are the subject of the next section of these reasons.

31. The Tribunal will therefore begin its analysis by reviewing the conditions of competition in the market for LDLP. These conditions of competition will also set the stage for the Tribunal's injury analysis and its decision on the exclusion requests.

CONDITIONS OF COMPETITION IN THE MARKET FOR LDLP

32. As noted above, the Tribunal must consider the conditions of competition that exist between the subject goods and the like goods when analyzing the issues of like goods and cumulation/cross-cumulation. To that end, the Tribunal will review the general characteristics of the Canadian market for LDLP, the importance of industry standards and technical specifications in the market, the importance of price for purchasers and producers of LDLP, the prevailing method of purchasing LDLP (the bidding process), the issue of substitutability of LDLP and the balancing act that occurs between price and technical specifications as projects are awarded.

General Characteristics of the Canadian Market for LDLP

33. LDLP is used for a variety of end uses by oil and gas transmission companies that build pipelines and by mining and oil sands producers for extraction purposes.

34. LDLP is purchased largely on a project-by-project basis. For the most part, it is purchased directly by end users from suppliers and distributors. Sales by distributors account for a considerably smaller proportion of purchases.¹³ The predominant method of purchasing LDLP is through a Request for Proposal (RFP).

35. LDLP is made by using two main production processes: the helical submerged arc welded (HSAW) and the longitudinal submerged arc welded (LSAW) methods.¹⁴ It is also subjected to a range of highly advanced and specialized tests and/or coating mediums to reflect industry standards and purchaser-driven technical specifications.

13. Exhibit NQ-2016-001-06C, Vol. 1.1A at 9; Exhibit NQ-2016-001-07C (protected), Vol. 2.1A, Tables 14, 17.

14. Some goods within the product definition, notably 610-mm LDLP, are also made using the "electric resistance welding" (ERW) method. However, the Tribunal heard that ERW LDLP represented a minimal portion of the like goods and that the majority of LDLP is manufactured using with the HSAW or LSAW methods. The "SAW" in the terms "HSAW" and "LSAW" describes the stage in the production process wherein the welding arc is submerged into a flux while the welding occurs. The flux protects the steel in the weld area from impurities found in the air when heated to welding temperatures. LDLP produced using the double submerged arc welded (DSAW) method requires both inside and outside welds, which are accomplished in separate processes, hence the "double" prefix. The DSAW method encompasses both the LSAW and HSAW methods. "HSAW" (or spiralweld) describes LDLP having a DSAW seam the entire length of the pipe in a spiral form. HSAW LDLP is produced using hot-rolled coil that is formed into a hollow cylinder by twisting the skelp as it is unrolled (in the same manner that the cardboard core in a roll of paper towel is formed) and then welded as the edges come together using an automated SAW process both inside and outside the cylinder. The end product is a welded pipe. Conversely, LSAW LDLP is formed from a steel plate and has a DSAW seam that is longitudinal running the length of the pipe. Once the plate is formed into a cylinder, it is then welded from both the inside and the outside longitudinally along the length of the cylinder using the SAW process, with up to five welding wires, resulting in a welded pipe. Exhibit NQ-2016-001-01A, Vol. 1 at 29.

36. LDLP is used in many different end uses, some of which have their own requisite testing before a mill can be certified to produce LDLP to industry standards. For example, high-pressure steam pipe must meet a “creep test” as set out in section 1.3.2.1 of CSA 2662-15 to ensure that the LDLP withstands high temperatures. Creep testing involves the completion of a testing period of up to 900 days during which the product sample is continuously exposed to high temperatures (275°C to 300°C or more). LDLP that will be exposed to freezing temperatures is subject to the “Charpy test” and the “Drop Weight Tear Test” as set out in CSA 2245.1-14 to ensure toughness to low temperatures.¹⁵

37. LDLP producers, including EVRAZ and those in Japan and China, make a highly sophisticated product, irrespective of production processes or end uses. LDLP metallurgy and engineering are invariably complex. No two mills are the same in terms of the equipment and know-how, or of the metallurgy that they use.

38. LDLP is neither a commodity product (such as other goods generally encountered in steel cases¹⁶) nor a capital good, even though it is mostly sourced for large-scale capital projects. LDLP is best described as a hybrid product that remains subject to price-driven considerations when purchased by end users in the oil and gas and extraction sectors alike.

Importance of Industry Standards and Purchaser-driven Technical Specifications

39. LDLP specifications vary from one purchaser to the next based on industry standards and purchaser-driven technical specifications (some of which are often proprietary).

40. LDLP is typically sold to meet the industry-wide CSA Z662-15 design code and the CSA Z245.1-14 manufacturing code in API grades up to X100. Parties indicated that LDLP that is manufactured and tested to meet higher API specifications (or equivalent CSA and ISO specifications) automatically conforms to lower specifications and may therefore have multiple stencils identifying additional end uses.

41. In regard to purchaser-driven technical specifications, the Tribunal heard that the nomenclature uses various LDLP designations, which do not necessarily correspond to industry-wide standards but rather reflect how purchasers choose to use them and/or certain characteristics of the pipes themselves. In some cases, the same types of LDLP could easily fall into more than one industry-recognized technical designation.

42. This nomenclature includes LDLP labelled as “mainline”, “steam”, “strain based”, “sour service”, “offshore”, “low temperature” and “slurry”. This is relevant in the sense that no two pipelines are the same, be it in terms of their length, geographic location, the geology of their path, the choices of their designers (i.e. the purchasers), the contents and pressure of what they will transport, etc. As such, purchaser-driven technical specifications change from one project to the next, depending on the requirements of the project itself.¹⁷

43. Pipelines can have important human or wildlife, environmental and consequent economic impacts. As such, the pipeline and extraction industries are the subject of considerable scrutiny. In particular, oil and gas transmission pipeline projects are subject to regulatory approval (notably by the National Energy Board

15. Exhibit NQ-2016-001-26.05, Vol. 1.3A at 3.

16. *Transcript of Public Hearing*, Vol. 3, 21 September 2016, at 268, Vol. 4, 22 September 2016, at 329, 354, 367, Vol. 7, 26 September 2016, at 817.

17. *Transcript of Public Hearing*, Vol. 3, 21 September 2016, at 268.

[NEB]), which includes the approval of its own technical specifications.¹⁸ Purchasers of LDLP are therefore acutely motivated by environmental and safety concerns when developing technical specifications on a project-by-project basis.¹⁹ They bear in mind other corporate responsibility considerations as well, such as partnering with First Nations' workers, enterprises and communities.²⁰

44. These concerns translate into the technical specifications that a purchaser will choose on a project-by-project basis. They impact demand and, therefore, conditions of competition in the market for LDLP as well. For example, the Tribunal heard that more and more purchasers are demanding LDLP with greater wall thicknesses to assuage the public's increased environmental safety concerns and to address the economic imperative of moving more oil or natural gas over longer distances to market.²¹ Changing demand, in turn, impacts producers of LDLP, as they must ensure that their production capabilities keep pace in order to stay relevant, respected and competitive.

Importance of Price for Purchasers and Producers of LDLP

45. Costs are very high for pipeline operators and for those in the mining and extraction sectors. Those costs are both significant up-front, with substantial capital investments at the time of inception, and ongoing, as pipelines are designed to be in service for many decades and require continued maintenance. As such, price is of fundamental importance to purchasers and producers of LDLP alike.

46. Purchasers of LDLP are highly sophisticated market actors that take into consideration all available market data and intelligence before procuring LDLP and that price is acutely important to them because LDLP accounts for a significant proportion of their project costs. The evidence shows that they have their finger on the pulse of market pricing, notably because of the relatively small number of players in the market and the commonly known cost of raw material inputs.²² The evidence also shows that incremental cost savings on LDLP components quickly turn into important dollar figures on total project requirements because of the sheer size of these given projects. Furthermore, comments made by witnesses about the potential negative impact of having to procure LDLP at normal values or paying anti-dumping and countervailing duties (where applicable) support the view that those projects are not price insensitive.²³

47. Price is of prime importance for producers too. They are constantly faced with the dilemma of remaining competitive on price while maintaining gross margins and capacity utilization rates—a dilemma that becomes all the more acute in the context of considerable global excess capacity over demand of LDLP.²⁴ Because LDLP is procured on a project-by-project basis and given that orders for LDLP are generally large, a single lost order can have compounding consequences on a producer's reputation, profitability and ability to keep pace with changing market demand.

48. Mr. Brian Kristofic testified that EVRAZ, and its customers, study the import data from Statistics Canada and the monthly tracking information on the market for LDLP published in Metal Bulletin and other industry publications to ascertain the prices of LDLP being imported from China and Japan.²⁵ The parties

18. *Transcript of Public Hearing*, Vol. 6, 26 September 2016, at 744.

19. *Transcript of Public Hearing*, Vol. 1, 19 September 2016, at 175, Vol. 6, 26 September 2016, at 671, 681, 759.

20. *Transcript of In Camera Hearing*, Vol. 4, 22 September 2016, at 266.

21. *Transcript of Public Hearing*, Vol. 1, 19 September 2016, at 36, 62, 404.

22. *Ibid.* at 91, 278, 293, 414.

23. *Transcript of Public Hearing*, Vol. 3, 21 September 2016, at 412-13.

24. Exhibit NQ-2016-001-A-13 at paras. 5, 6, 11, Vol. 11; Exhibit NQ-2016-001-D-03 at paras. 85-87, Vol. 13.

25. *Transcript of Public Hearing*, Vol. 1, 19 September 2016, at 46.

opposed to EVRAZ's claims acknowledged a certain degree of market price tracking but generally downplayed the degree to which they tracked import data.²⁶

Prevailing LDLP Purchasing Method—The Bidding Process

49. As indicated above, end users are the main direct purchasers of LDLP, and LDLP is mostly purchased on a project-by-project basis. In most cases, purchasers in Canada procure LDLP by way of an RFP process so as to meet specific project needs.

50. The Tribunal heard that purchasers will typically only invite certain “pre-qualified” suppliers to bid on given projects. Suppliers are “pre-qualified” after their mill’s production capabilities and their owner’s reliability (including its financial reliability) have been “pre-approved”.²⁷ Pre-approval is an exacting and multi-faceted process. There is no industry standard for that process. As a result, evidence indicates that the time frame for pre-approval will vary from several weeks to a much longer period of time, depending on a purchaser’s preferences and needs.

51. The Tribunal notes that the RFP process for LDLP is not a competitive tendering process but, rather, simply a call for quotations.²⁸ Initial quotes by “pre-qualified” or pre-approved suppliers are examined, and then subject to negotiations, wherein technical issues may be resolved, potentially acceptable substitutes could be discussed, and further or renewed price quotes are sought from a group of short-listed suppliers.²⁹

52. The evidence also indicates that RFPs may be (and often are) awarded to multiple bidders.³⁰ The Tribunal heard different perspectives about whether producers are prejudiced by not submitting a bid that is responsive to all the specifications within an RFP.³¹ Over the POI, for example, EVRAZ indicated that “split bids” were often awarded.³² However, the Tribunal notes that only some purchasers confirmed that they awarded split bids for given projects, but not as a general rule.³³ Some producers indicated that they will propose all items requested in a given RFP, providing “full quotes” and no alternatives, while knowing that they could not even make the full line of goods in their proposals; they acted in this manner out of an apprehension that only a “full quote” bid would be considered for further examination.³⁴

53. There is also no evidence on the record to indicate that “full award” to one supplier is more prevalent than “bid splitting”. However, the Tribunal heard considerable evidence to the effect that security

26. *Transcript of Public Hearing*, Vol. 3, 21 September 2016, at 276, 358-60.

27. Exhibit NQ-2016-001-06C, Table 5, Vol. 1.1A. Nineteen of 21 respondents stated that they purchase only from pre-qualified suppliers. *Transcript of Public Hearing*, Vol. 3, 21 September 2016, at 385.

28. *Transcript of Public Hearing*, Vol. 5, 23 September 2016, at 461-62.

29. *Transcript of Public Hearing*, Vol. 3, 21 September 2016, at 388-90. To be clear, this procurement method does not follow the tendering model as set out in *The Queen (Ont.) v. Ron Engineering* [1981] 1 SCR 111, 1981 CanLII 17 (SCC) [*Ron Engineering*]. Negotiation is *not* replaced by fair and transparent competition. Rather, in LDLP procurement processes, very explicitly sometimes, the purchasers owe no duty of fairness to bidders having submitted a “compliant” bid as they would under the model in *Ron Engineering*. Exhibit NQ-2016-001-M-06 (protected), tab A at 3, Vol. 14B.

30. *Transcript of Public Hearing*, Vol. 1, 19 September 2016, at 61, 187, Vol. 4, 22 September 2016, at 399-400.

31. *Transcript of Public Hearing*, Vol. 3, 21 September 2016, at 288-89; *Transcript of In Camera Hearing*, Vol. 2, 20 September 2016, at 38.

32. *Transcript of Public Hearing*, Vol. 1, 19 September 2016, at 89.

33. *Transcript of Public Hearing*, Vol. 4, 22 September 2016, at 398-401. The Tribunal notes however that the Investigation Report Supplement shows several instances of split bids. Exhibit NQ-2016-001-07A (protected), Vol. 2.1.

34. Exhibit NQ-2016-001-G-04 (protected) at paras. 21-22, Vol. 14A.

of supply was an important factor; “splitting” would therefore be consonant with meeting that objective, not “full award.”³⁵

54. The ultimate winner of the process is not necessarily chosen among the bidders on the basis of a set of pre-defined and immutable criteria. In fact, the notion of what constitutes a “compliant bid” in the procurement of LDLP in Canada is nothing more than a moving target that remains to be ascertained at the sole discretion of the purchaser based on criteria that can be subject to changes, exceptions or alternatives, between bid receipt and contract award.³⁶ Consequently, there appears to be a carefully orchestrated balancing act between purchaser-driven technical specifications, acceptable alternative products and price as final decisions are made by purchasers and projects awarded to producers, as will be discussed more fully below.

Substitutability of LDLP

55. The Tribunal heard a great deal of evidence and testimony regarding the issue of substitutability of LDLP. Parties put forward very different perspectives to demonstrate whether LDLP made to a given technical specification could be seen as equivalent or comparable to LDLP made to another technical specification. These arguments were typically made in the context of EVRAZ’s purported ability to produce certain types and sizes of LDLP sought by purchasers in Canada. Parties opposed, for example, alleged that EVRAZ lost sales during the POI because it offered substitutable products instead of the precise products requested during bidding processes for certain projects. Allegations of substitutability also figured prominently in the cases for and against exclusion requests.

56. The Tribunal therefore took into account evidence regarding those allegations during its injury analysis and examination of product exclusions. However, the issue of the substitutability of LDLP is relevant in the present discussion of conditions of competition, as it is an important consideration for purchasers and producers alike when LDLP is procured and because of its impact on the Tribunal’s decision on like goods and classes of goods.

57. As noted above, purchasers procure LDLP on a project-by-project basis. Their purchases reflect a myriad of commercial, environmental, regulatory and technical considerations, many of which are unique to specific pipelines and/or mining and extraction end uses. At the same time, the Tribunal heard convincing evidence to the effect that those very same, exacting requirements could evolve over the course of a project. Design specifications do not necessarily appear to be cast in stone and, to some extent, can at times be influenced by cost.³⁷ The only basic industry-wide norm is that all LDLP be made to at least the API 5L standard, the industry-wide CSA Z662-15 design code and CSA Z245.1-14 manufacturing code. Opinions diverged widely on what could be an acceptable alternative for a given application.

58. Evidence indicates that equivalent technical specifications and substitutable products are encouraged in certain RFPs but not in others.³⁸ Dr. Gray, for example, indicated that he had been involved in many projects involving “alternatives” over his long career. Similarly, the Tribunal heard that the standard RFP language used by at least one purchaser encouraged the provision of alternatives.³⁹ Mr. Takashi Ogawa of Sumitomo acknowledged that he has seen language in Canadian RFPs that

35. Exhibit NQ-2016-001-07C (protected), Table 5, Vol. 2.1A.

36. *Transcript of Public Hearing*, Vol. 1, 19 September 2016, at 22-26.

37. *Ibid.* at 177, Vol. 3, 21 September 2016, at 427-28.

38. Exhibit NQ-2016-001-M-06 (protected), tab A, Vol. 14B; *Transcript of Public Hearing*, Vol. 3, 21 September 2016, at 432-33.

39. Exhibit NQ-2016-001-M-06 (protected), tab A at 3, Vol. 14B.

encourages the submission of innovative alternatives to enable the purchaser to achieve its objectives and benefits.⁴⁰ Finally, the Tribunal heard evidence that discussion of alternatives was encouraged so that purchasers could consider equivalent specifications or designs that would have added cost savings.

59. The Tribunal would expect discussions on alternatives to take place for a hybrid type product like LDLP under normal market conditions. In this regard, the Tribunal notes that Dr. Gray discussed how alternatives are bid and accepted so that purchasers can enjoy lower prices. During his testimony, he spoke of “horse trading” to accommodate exceptions/alternatives to technical proposals so that a purchaser could “. . . enjoy the price of the low bidder.”⁴¹ The Tribunal would also expect discussions on alternatives to be common because of how different technology can be from one steel or pipe mill to the next and, similarly, because the metallurgy of each mill’s inputs can vary so much as well. In that context, the Tribunal would expect that low-priced imports would have a significant impact on the market.

60. Nevertheless, the Tribunal recognizes that some purchasers are more reticent to accept alternatives than others. Some witnesses testified that they refrained from proposing “alternatives” to purchasers out of concern that their bids may be disqualified.⁴² Similarly, Mr. Milmine was guarded in his comments about the technical viability of alternatives to what was originally sought in a given RFP. Although Mr. Milmine was a credible expert witness, the Tribunal found that his views on substitutability may have been informed, in part at least, by his longstanding relationship with TCPL and TCPL’s apparent desire to keep substitutions to a minimum.⁴³

61. While the Tribunal does not want to substitute its judgment for that of the purchasers when it comes to specific project needs, it notes that a purchaser’s evaluation of substitutability is often a matter of opinion or preference on its part. The very fact that some RFPs encourage the presentation of suitable alternatives and that there are often a few rounds of back-and-forth negotiations between parties suggests that some purchasers are certainly open to considering a certain amount of substitution during the procurement process.

Balancing Act between Price and Technical Specifications as Projects are Awarded

62. The balancing act between price and technical specifications is influenced to a great extent by the fact that the bidding process for LDLP occurs in a market with just a handful of players.

63. Several witnesses stated that informal feedback on price is often received from the purchasers between the time that a bid is submitted and the time that a contract is awarded.⁴⁴ The Tribunal heard evidence that players in the market for LDLP were keenly aware that overall pricing in the market trended downward over the POI alongside falling prices for raw materials. When evaluating bids, purchasers relied on these trends, as well as on market intelligence about previously awarded bids, in order to demand lower

40. *Transcript of Public Hearing*, Vol. 3, 21 September 2016, at 292-93.

41. *Transcript of Public Hearing*, Vol. 5, 23 September 2016, at 463.

42. *Transcript of Public Hearing*, Vol. 3, 21 September 2016, at 265-66, 283-84.

43. *Transcript of Public Hearing*, Vol. 5, 23 September 2016, at 600.

44. *Transcript of Public Hearing*, Vol. 1, 19 September 2016, at 91, 192, 195, 277-78, 293-94, 414, Vol. 3, 21 September 2016, at 277-78, 293-94, Vol. 4, 22 September 2016, at 414; *Transcript of In Camera Hearing*, Vol. 3, 21 September 2016, at 192, 195.

prices from producers of LDLP.⁴⁵ The evidence also shows that purchasers had, or should have had, their fingers on the pulse of market pricing because of the known cost of raw material inputs.⁴⁶

64. The small number of players in the market for LDLP and the RFP process itself allows for a considerable measure of price transparency.⁴⁷ This is a market where purchasers afford themselves complete discretion in determining whether a bid is compliant or what constitutes an acceptable alternative or exception to a given specification. The discretion to prefer one quote over others is influenced in part by technical requirement considerations and, in part, by a list of other concerns, including price considerations. In such a context, the Tribunal finds that the determination of whether a given specification is a discretionary preference or a mandatory requirement, or whether one product is substitutable for another, suffers distortion by the presence of the low-priced subject goods.⁴⁸

65. When asked about the importance of price in line pipe purchasing decisions, 11 out of 21 respondents to the Tribunal's questionnaires ranked the lowest net price as "very important", while 10 said that it was "somewhat important". Price was therefore ranked completely comparable to, or even with, the relative importance of other non-price-based factors,⁴⁹ including: "meeting required technical specifications", "reliability of supply", "product quality", "delivery time and terms" and "range of product line".

66. After the narrowing-down of initial bidders on an RFP, purchasers will often go back to a number of short-listed qualifiers to request a "rebid", essentially signalling to them that they ought to lower their prices.⁵⁰ During the hearing, Mr. Kei Suemune of Sumitomo testified that purchasers informally ask short-listed suppliers to "restudy" prices.⁵¹ The competitive conditions of this market therefore give suppliers a clear incentive to lower prices in order to win business. This incentive is made all the more significant because projects are not awarded on a regular basis. Price, therefore, becomes the only obvious distinguishing factor among qualified short-listed suppliers that are still in the running for business after initial quotes have been examined and technical specifications met.⁵² Indeed, Mr. Rodger Kemp testified that, "[a]t that point, everything else being equal, it would come down to that commercial value."⁵³ This idea was further supported by statements made by Mr. Allan Cheng of Cantak Corporation. When discussing a certain RFP *in camera*, he indicated that the purchaser of LDLP had chosen the supplier with the lowest price.⁵⁴

67. While evidence indicates that the bid with the lowest price did not necessarily win the award every time during the POI, it also establishes that the most technically acceptable bid that offers the lowest price will win the award. As discussed below, the evidence available to the Tribunal shows that, among technically compliant bids, the lowest-priced subject goods won the award more often than not during the

45. *Transcript of Public Hearing*, Vol. 3, 21 September 2016, at 277-78, 413-14.

46. *Transcript of Public Hearing*, Vol. 1, 19 September 2016, at 91, 192, 195, 277-78, 293-94, 414.

47. *Transcript of Public Hearing*, Vol. 3, 21 September 2016, at 276, 359.

48. This was particularly evident in regard to slurry pipe. EVRAZ received a request to quote after the provisional duties were imposed in this matter, whereas it had been previously told that its alternative would never be considered. Exhibit NQ-2016-001-A-07 at para. 11, Vol. 11.

49. Exhibit NQ-2016-001-06B, Table 5, Vol. 1.1A.

50. *Transcript of Public Hearing*, 21 September 2016, 426-28.

51. *Transcript of Public Hearing*, Vol. 3, 21 September 2016, at 289-90; *Transcript of In Camera Hearing*, Vol. 3, 21 September 2016, at 198.

52. *Transcript of Public Hearing*, Vol. 1, 19 September 2016, at 83, 294, 298, 427.

53. *Transcript of Public Hearing*, Vol. 4, 22 September 2016, at 428.

54. *Transcript of In Camera Hearing*, Vol. 4, 22 September 2016, at 349-50.

POI. As such, the Tribunal concludes that price is ultimately the top-ranking factor when a purchaser determines which of several comparable and technically equivalent bids will win a given award.⁵⁵ Purchasers can command the lowest possible price that any one supplier in a group of compliant bidders is willing to offer precisely because suppliers are urged to offer even better pricing after the initial bid analysis is done.⁵⁶ Put another way, suppliers are motivated to offer technically compliant and competitive bids to secure a sale.

68. In this competitive environment, dumped and subsidized goods can have devastating implications. Indeed, the Tribunal heard evidence that purchasers returned to suppliers to ask for reduced pricing simply on the basis of availability of lower-priced subject goods in the market.⁵⁷ This set the competitive stage for future bidding positions as well because losing bidders could largely approximate the price of winning bids in relation to their own.

LIKE GOODS AND CLASSES OF GOODS

Like Goods

69. 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.

70. As it did at the preliminary injury inquiry stage of this matter, the Tribunal finds that LDLP produced in Canada that is of the same description as the subject goods constitutes like goods. No convincing evidence or arguments were presented to the contrary.⁵⁸

71. As examined above, while the evidence varied on the issue of substitutability, the Tribunal was capable of determining that, where the like goods were not identical to the subject goods, they nevertheless closely resembled each other and were generally substitutable for each other during the POI. Accordingly, it finds that domestically produced LDLP is like goods in relation to the subject goods.

Classes of Goods

72. Baosteel was the only party to suggest that the Tribunal should depart from its preliminary finding that the subject goods and like goods constitute a single class of goods. However, in its closing argument, Baosteel abandoned its earlier position that the subject goods should be divided in two classes of goods along the lines of the HSAW and LSAW production processes,⁵⁹ raising instead a new proposed division along the lines of end-use considerations—slurry versus oil and gas transmission. The Tribunal rejects Baosteel’s argument because to do otherwise would be tantamount to defining classes of goods along the lines of the contents of what the LDLP will transport.

55. *Transcript of Public Hearing*, Vol. 4, 22 September 2016, at 428.

56. *Transcript of Public Hearing*, Vol. 3, 21 September 2016, at 289-90, Vol. 4, 22 September 2016, at 426-28.

57. Exhibit NQ-2016-001-06C, Tables 20, 23, Vol. 1.1A; *Transcript of Public Hearing*, Vol. 3, 21 September 2016, at 289-90; *Transcript of In Camera Hearing*, Vol. 3, 21 September 2016, at 198.

58. *Welded Large Diameter Carbon and Alloy Steel Line Pipe* (24 May 2016), PI-2015-003 (CITT) [*Large Diameter Line Pipe PI*] at para. 30.

59. That argument was rejected by the Tribunal in the reasons for its preliminary injury determination in this matter. *Large Diameter Line Pipe PI* at para. 35.

73. The Tribunal finds no basis upon which to consider more than one class of goods in this matter. Imports are all classified in subheading No. 7305.10 (at the one-dash level as “[l]ine pipe of a kind used for oil and gas pipelines”). While outside physical differences can be ascertained (i.e. welds, diameter and wall thickness), absent distinctive markings, there is little way to tell one piece of LDLP from another, because differences between LDLP are largely determined by the chemistry of the steel with which it is made.

74. As noted above, all LDLP is made to at least the API 5L standard and above. Additional technical specifications are extremely diverse and tend to be purchaser-driven. They are designed on a made-to-order, project-by-project basis. Within a given RFP, purchasers are sometimes willing to accept alternative specifications depending on price and other market forces, indicating at least moderate substitutability. LDLP is a highly sophisticated non-commodity, hybrid-type product. There is no bright dividing line of product classes within the diverse universe that LDLP constitutes.

75. Accordingly, the Tribunal will conduct its injury analysis on the basis of one class of goods.

CUMULATION AND CROSS-CUMULATION

Cumulation

76. EVRAZ submitted that it is appropriate for the Tribunal to conduct its injury analysis on a cumulative basis. In other words, it argued that the Tribunal should cumulate the effects of the subject goods from China (dumped and subsidized) with those of the dumped (but non-subsidized) subject goods from Japan. Other parties argued the opposite, suggesting that decumulated analyses are warranted because of the findings of the Appellate Body of the World Trade Organization (WTO) in *United States - Countervailing Measures on Certain Hot-rolled Carbon Steel Flat Products from India*.⁶⁰

77. In its statement of reasons at the preliminary injury inquiry stage, the Tribunal gave notice that it required cogent reasons to depart from its traditional approach to cumulation. None have been provided. Therefore, it will continue to proceed with a cumulative analysis in keeping with its traditional approach under subsection 42(3) of *SIMA* because the conditions set out in that subsection are met.⁶¹

78. The CBSA determined that the margins of dumping for the subject goods from both China and Japan and the amount of subsidy for China are not insignificant; similarly, it found that the volumes of subject goods from both China and Japan are not negligible. Accordingly, the conditions of paragraph 42(3)(a) of *SIMA* are met.

79. Furthermore, the overarching conditions of competition between the subject goods themselves and between the subject goods and the like goods are similar. As noted above, producers of LDLP in Canada, Japan and China compete within the same RFP process, for the same projects and for the same purchasers. To successfully win a sale, they must propose highly technical and specialized LDLP at a competitive price.

60. (8 December 2014), WT/DS436/AB/R, Report of the Appellate Body, online: https://www.wto.org/english/tratop_e/dispu_e/436abr_e.pdf [*US - Hot-rolled*].

61. Subsection 42(3) of *SIMA* provides as follows: “In making or resuming its inquiry under subsection (1), the Tribunal shall make an assessment of the cumulative effect of the dumping or subsidizing of goods to which the preliminary determination applies that are imported into Canada from more than one country if the Tribunal is satisfied that (a) the margin of dumping or the amount of subsidy in relation to the goods from each of those countries is not insignificant and the volume of the goods from each of those countries is not negligible; and (b) an assessment of the cumulative effect would be appropriate taking into account the conditions of competition between goods to which the preliminary determination applies that are imported into Canada from any of those countries and (i) goods to which the preliminary determination applies that are imported into Canada from any other of those countries, or (ii) like goods of domestic producers.”

Evidence on the record clearly shows sustained head-to-head competition between the Chinese, Japanese and Canadian goods on important RFPs during the POI.⁶²

80. Japanese importers testified that their presence in the Canadian market has typically filled the void for niche LDLP that EVRAZ does not make. They added that their intent has not been to disrupt Canadian pricing.⁶³ The Tribunal finds little evidence on the record to support their claims either before or during the POI. Even assuming that their claim could be verified in the past, the volumes and prices of the subject goods from Japan during the POI are indicative of competition across the LDLP spectrum and product range as captured by the product definition. The Tribunal would have expected that Japanese claims of supplying niche products to be supported by evidence of a price premium for those products; however, the record instead showed that average prices from Japan were below those of the like goods.

81. Accordingly, the Tribunal finds that an assessment of the cumulative effects of the dumped subject goods from the subject countries is appropriate pursuant to subsection 43(3) of *SIMA*.

Cross-cumulation

82. EVRAZ submitted that, since the imports of the subject goods from China have been found to be both dumped and subsidized, it is also appropriate for the Tribunal to cross-cumulate the effects of the dumping and subsidizing of those subject goods. Parties opposing cumulation also opposed cross-cumulation. Their opposition also cited *US - Hot-rolled*.

83. There are no legislative provisions in *SIMA* that directly address the issue of cross-cumulation. The Tribunal does not read in *US - Hot-rolled* a prohibition against cross-cumulation in this case, as it involves two countries that are dumping (Japan and China).⁶⁴

84. As it has done in the past in similar circumstances, because the subject goods from China are both dumped and subsidized, the Tribunal considers that any discrete effects caused by their dumping, as opposed to those caused by their subsidizing, cannot be isolated because the price effects of the subject goods from China manifested themselves in a single set of prices. Accordingly, the Tribunal will continue to cross-cumulate them in its injury analysis.

INJURY ANALYSIS

85. In order to determine whether the dumping and subsidizing have caused material injury to the domestic industry, subsection 37.1(1) of the *Special Import Measures Regulations*⁶⁵ instructs the Tribunal to consider the volume of the dumped and subsidized goods, their effect on the price of like goods in the domestic market and their resulting impact on the state of the domestic industry. Subsection 37.1(3) directs the Tribunal to consider whether a causal relationship exists between the dumping and subsidizing of the goods and the injury on the basis of such factors.

86. In determining whether the dumping and subsidizing have caused material injury to the domestic industry, the Tribunal must also consider whether any factors other than the dumping and subsidizing of the goods have caused injury, with the injury caused by such other factors not to be attributed to the subject

62. Exhibit NQ-2016-001-07A (protected), Vol. 2.1 at 66-69.

63. *Transcript of Public Hearing*, Vol. 3, 21 September 2016, at 265; Exhibit NQ-2016-001-B-03 at para. 18, Vol. 13; Exhibit NQ-2016-001-R-03 at para. 31, Vol. 13C.

64. China is also subsidizing.

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

goods. Such other factors may include, *inter alia*, the volumes and prices of non-subject goods imported into Canada or a contraction in market demand.⁶⁶

87. To that end, the Tribunal will assess the impact of the subject goods on EVRAZ's performance over the POI. At the same time, it will weigh the relative impact that factors unrelated to the subject goods may have had on EVRAZ to ensure that any injury or threat of injury attributable to the subject goods is material in and of itself.

88. The Tribunal will only consider the period between 2013 and 2015 when analyzing the volumes, price effects and impacts of the subject goods on the domestic industry. Given the project-based nature of the market for LDLP, the interim periods of January 1 to March 31, 2015, and January 1 to March 31, 2016 (interim 2015 and interim 2016) are not necessarily indicative of annual trends and may be of limited value in assessing injury or threat of injury.

Import Volume of Dumped and Subsidized Goods

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

Positions of Parties

90. EVRAZ submitted that there was a significant increase in the volume of the subject goods both in terms of absolute volume and relative to domestic production between 2013 and 2015. EVRAZ acknowledged however that fairly traded imports from non-subject countries occupied a large percentage of the market in 2013 and conceded that there was no injury resulting from imports of the subject goods during that specific year.

91. Parties opposed did not dispute that there was an increase in the volume of the subject goods imported during the POI. However, with respect to the subject goods from Japan, some argued that any fluctuation in the volume imported into Canada during the POI was reflective only of the demands of individual customers as opposed to overall market demand. The parties opposed argued that, during the POI, the purchasers of LDLP in the Canadian market continued to demand the same niche products made by the Japanese producers as they had historically supplied for many years. Moreover, JFE and Nippon Steel argued that the volumes of LDLP that EVRAZ allegedly could not produce during the POI should be subtracted from the total amount of the subject goods imported from Japan during the POI.

92. With respect to the subject goods from China, Baosteel argued that volumes were more modest than indicated in the IR and that the few pre-qualified Chinese suppliers of LDLP could not have been causing injury to EVRAZ.⁶⁷ Baosteel also argued that the volumes of the subject goods should be segregated on a class of goods basis according to the two end-use applications of slurry and gas and oil transmission.

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

67. Exhibit NQ-2016-001-Q-02 (protected) at para. 81; Exhibit NQ-2016-001-21.08 (protected), Vol. 6.2 at 121; Exhibit NQ-2016-001-21.09 (protected), Vol. 6.2 at 169; Exhibit NQ-2016-001-21.11 (protected), Vol. 6.2 at 208; Exhibit NQ-2016-001-21.13 (protected), Vol. 6.2A at 7; Exhibit NQ-2016-001-21.15 (protected), Vol. 6.2 at 142; Exhibit NQ-2016-001-21.19 (protected), Vol. 6.2A at 160; Exhibit NQ-2016-001-21.23 (protected), Vol. 6.2B at 7; Exhibit NQ-2016-001-21.24 (protected), Vol. 6.2B at 43; Exhibit NQ-2016-001-21.25 (protected), Vol. 6.2B at 160; Exhibit NQ-2016-001-21.28 (protected), Vol. 6.2B at 149.

Tribunal's Analysis

93. The Tribunal rejects arguments from the parties opposed on the basis of its determination that the subject goods and the like goods constitute a single class of goods. It also rejects these arguments by virtue of its determination to cumulate the subject goods. The Tribunal, therefore, finds that all imports of the subject goods irrespective of country of origin or end uses are properly accounted for *en masse* in the IR's volume data. Separating out imports of certain subject goods would be akin to treating goods within the product definition as belonging to more than one class of goods. In light of the Tribunal's findings on classes of goods and cumulation, there is no basis upon which certain volumes of the subject goods should be examined on a segregated basis.

94. The IR shows that the volume of the subject goods increased by 81 percent from 2013 to 2014 and increased by another 78 percent from 2014 to 2015, which represents an increase of 222 percent from 2013 to 2015. Such an increase is more than substantial.⁶⁸

95. The Tribunal recognizes that EVRAZ enjoyed a demonstrable increase in production volume and market share in interim 2016. However, EVRAZ provided a reasonable explanation for the increase in the volume of like goods in the market, and the Tribunal accepts it as such but cannot comment further, as the explanation is on the confidential record.⁶⁹

96. Because EVRAZ is the only producer of like goods, the precise increase in the volume of the subject goods relative to domestic production can therefore not be stated publicly in these reasons. However, the protected IR shows that the ratio of the subject goods to domestic production more than doubled from 2013 to 2014 and that it more than doubled again from 2014 to 2015; year to year, and over the duration of the POI, the increase was therefore substantial. Also, the volume of the subject goods relative to domestic sales from domestic production increased only marginally from 2013 to 2014, but it then increased dramatically from 2014 to 2015, so much so that the increase can only be qualified as astonishing.⁷⁰

97. The evidence, therefore, demonstrates that there was an undisputed increase in the volume of the subject goods, both in absolute and relative terms, between 2013 and 2015, especially with respect to the sales of like goods by EVRAZ in 2015.⁷¹

Price Effects of the Dumped and Subsidized Goods

Positions of Parties

98. EVRAZ argued that the prices of the subject goods undercut and suppressed the prices of the like goods during the POI. It further argued that the subject goods depressed the prices of the like goods on a project-specific basis.

99. On the issue of price undercutting, EVRAZ argued that the prices of the subject goods undercut the prices of the subject goods both at the aggregate and project-specific levels. The parties opposed argued that the average prices are not indicative of undercutting because the market for LDLP is mostly a project-specific one in which the product mixes change significantly from one project to the next. Moreover, they argued

68. Exhibit NQ-2016-001-06C, Table 8, Vol. 1.1A; Exhibit NQ-2016-001-07C (protected), Table 7, Vol. 2.1A.

69. Exhibit NQ-2016-001-A-02 (protected) at para. 66, Vol. 12; Exhibit NQ-2016-001-A-04 (protected) at para. 20, Vol. 12.

70. Exhibit NQ-2016-001-07C (protected), Table 10, Vol. 2.1A.

71. Exhibit NQ-2016-001-06C, Table 8, Vol. 1.1A; Exhibit NQ-2016-001-07C (protected), Table 10, Vol. 2.1A.

that any indication of project-specific undercutting is not meaningful because any evidence of the quantum of undercutting, even by individual transaction, is important only to that transaction. Finally, the parties opposed argued that the subject goods were not always the lowest priced when examining the individual bids on a given RFP.

100. On the issue of price depression, EVRAZ submitted that the low-priced subject goods forced it to consistently reduce its prices to win sales. Its efforts, however, were largely unsuccessful. EVRAZ relied on account-specific injury allegations to support its claims of price depression, even though it did not file specific injury allegations claiming price depression when it successfully won RFPs over the subject goods during the POI. Parties opposed argued that price depression did not occur over the POI because average unit values increased. Parties opposed also argued that bid information did not support EVRAZ's claim of price depression.

101. Finally, EVRAZ claimed that the subject goods caused price suppression during the POI. EVRAZ argued that it could not keep its net sales value in step with the rising cost of its cost of goods sold (COGS) despite having significantly lowered its cost of goods manufactured (COGM). The parties opposed argued that there is no evidence of price suppression because EVRAZ's average sales prices increased during the POI and outpaced the increase in its COGM. They also argued that COGM decreased on a per unit basis over the POI.

Tribunal's Analysis

102. In assessing whether the subject goods have undercut, depressed or suppressed the prices of the like goods, the Tribunal examined the allegations of the price effects of the subject goods, both in terms of average unit values as set out in the IR and on a project-specific basis, as was set out in the Investigation Report Supplement (IR Supplement).

103. When reviewing RFPs awarded during the POI, the Tribunal focused on RFPs where bids were received from both EVRAZ and an importer of the subject goods, as this was the information that purchasers were requested to provide in their questionnaire replies. According to information published by the Canadian Energy Pipeline Association, the only firms in Canada with natural gas or liquid pipelines currently proposed or under construction are Enbridge, KMC, Spectra and TCPL.⁷² As such, the Tribunal is satisfied that the bid data collected and published in the IR Supplement are representative of competition between EVRAZ, the subject goods and non-subject goods in the transmission pipeline market.

– Price Undercutting

104. When the average unit values of sales of the subject goods are compared to those of the like goods, the evidence demonstrates that the subject goods significantly undercut the like goods during the POI.⁷³ For sales to end users (which represent the overwhelming number of sales in the market for LDLP), the consolidated subject goods also undercut the like goods in all periods.

105. When prices are examined at the project-specific level, it is also clear that the prices of the subject goods often undercut prices of the like goods during the POI.⁷⁴ The subject goods competed head to head with each other, driving down the pricing of LDLP on overall market prices during the POI. When the RFPs were examined on a chronological basis by date awarded over the POI, prices of the subject goods

72. Exhibit NQ-2016-001-32.04, Vol. 1A at 49, 51.

73. Exhibit NQ-2016-001-06C, Table 22, Vol. 1.1A.

74. Exhibit NQ-2016-001-07A (protected), Vol. 2.1A.

progressively became more competitive with one another. Evidence also demonstrates that suppliers of non-subject goods reacted to the pricing of the subject goods in the market and followed suit by decreasing their prices as well.

106. On this basis, the Tribunal finds that the subject goods significantly undercut EVRAZ's prices at both the aggregate and project-specific levels. It accepts arguments by EVRAZ that the aggressive pricing of the subject goods necessarily had an impact on the entire market, such that all producers were forced to lower their prices in order to win RFPs or portions of RFPs.⁷⁵ As demonstrated above, the conditions of competition in the market for LDLP were such that low prices most often won awards over the POI when all other technical considerations were considered equal.

– Price Depression

107. In order to determine whether price depression occurred, the Tribunal examined whether the prices of the subject goods forced EVRAZ to lower its prices in order to maintain sales or market share.

108. At the aggregate level, the prices of the like goods and the subject goods increased between 2013 and 2015.⁷⁶ This trend also holds when examining sales to end users (which represent the overwhelming percentage of sales). Accordingly, there is no evidence of price depression when looking at average unit values for the period from 2015 to 2016.

109. The Tribunal attributes the increased prices of the like goods to the master supply agreement between EVRAZ and Enbridge. To some extent, this agreement allowed EVRAZ a degree of insulation from the effects of the declining prices of raw materials and the effects of the subject goods.⁷⁷

110. However, at the project-specific level, the Tribunal finds that the prices of the subject goods depressed the prices of the like goods throughout the POI. In its questionnaire reply and witness statements, EVRAZ submitted multiple examples where it lowered its bid price on certain LDLP projects, as a result of pricing pressure from the subject goods.⁷⁸

111. Moreover, the project-specific data show that, for the projects awarded over the POI, the lowest bidder won the sale in over half the projects. Of these projects where the lowest bid won the sale, the lowest bidder was overwhelmingly an importer of the subject goods. As the POI progressed, an increasing number of bids were awarded to the lowest bidder. Additionally, in instances where the award went to non-subject goods, the price of those goods was, on certain occasions, very close to that of the subject goods. As previously mentioned, the Tribunal finds that prices of the subject goods led down prices of non-subject goods during the POI. The Tribunal finds that such activity is indicative of a depressive effect on prices that were bid by EVRAZ during the POI.⁷⁹

– Price Suppression

112. As indicated above, parties opposed argued that EVRAZ's average sales prices increased during the POI in relation to its COGM.

75. *Transcript of Public Hearing*, Vol. 8, 28 September 2016, at 973-74.

76. Exhibit NQ-2016-001-06C, Tables 23, 27, Vol. 1.1A.

77. *Transcript of In Camera Hearing*, Vol. 2, 20 September 2016, at 170-74.

78. Exhibit NQ-2016-001-A-06 (protected) at paras. 48-50, 59-62, 91-93, tabs G, H, Vol. 12; Exhibit NQ-2016-001-A-10 (protected) at paras. 37-39, 62-63, Vol. 12A; Exhibit NQ-2016-001-12.01 (protected), Vol. 4 at 261-68.

79. Exhibit NQ-2016-001-07A (protected), Vol. 2.1 at 63-73.

113. However, this argument ignores the fact that the Tribunal assesses price suppression by examining average selling prices and COGS. In its analysis of price suppression, the Tribunal compared the changes in EVRAZ's consolidated COGS, on a per unit basis, to the changes in the net sales value of the like goods to determine if EVRAZ was able to increase selling prices in step with increases in its COGS.⁸⁰

114. The evidence demonstrates that EVRAZ's COGS increased on a per unit basis between 2013 and 2015,⁸¹ while its net sales value on a per unit basis for domestic sales increased at a faster rate than its COGS. From 2014 to 2015, EVRAZ's COGS on a per unit basis for domestic sales increased at a much higher rate than its net sales value, to a point where its gross margin was significantly reduced. Evidence on the record shows that, on a per unit basis, between 2013 and 2015, EVRAZ's COGS increased by a greater extent than did its selling price.⁸² In terms of the financial results for domestic sales, EVRAZ's COGS represented a larger percentage of its sales revenue in 2015 than it did in 2013; in other words, its gross margin declined between 2013 and 2015.⁸³ Accordingly, the Tribunal finds that EVRAZ suffered price suppression over the POI.

115. When examined at the project-specific level, a comparison of EVRAZ's bids and the rise in its COGS over that same period confirms EVRAZ's claims of price suppression all the more. While it could be argued that price suppression was merely theoretical as EVRAZ did not win those bids, evidence confirms that lower-priced bids from the subject countries pressured EVRAZ to lower its prices on successive bids in order to be competitive. Those reduced prices still did not help EVRAZ win bids, and the consequent lost volume of sales increased its costs per unit because it was unable to increase its capacity utilization.

– Summary

116. In sum, the Tribunal finds that the subject goods significantly undercut and suppressed the price of the like goods over the POI when prices are examined at both the average and project-specific levels. While there is no evidence of price depression at the average level, the Tribunal finds that the subject goods significantly depressed prices of the like goods during the bidding process at the project-specific level.

Resultant Impact on the Domestic Industry

117. Paragraph 37.1(1)(c) of the *Regulations* requires the Tribunal to consider the resulting impact of the dumped and subsidized goods on the state of the domestic industry and, in particular, all relevant economic factors and indices that have a bearing on the state of the domestic industry.⁸⁴ These impacts are to be distinguished from the impact of other factors also having a bearing on the domestic industry.⁸⁵ Paragraph 37.1(3)(a) requires the Tribunal to consider whether a causal relationship exists between the

80. EVRAZ's reported net delivered selling values followed the same trend as its unit net sales values over the POI.

81. Exhibit NQ-2016-001-07C (protected), Table 29, Vol. 2.1A.

82. *Ibid.*, Tables 22, 29.

83. *Ibid.*, Table 29.

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

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

dumping or subsidizing of the goods and the injury, retardation or threat of injury, on the basis of the volume, the price effect and the impact on the domestic industry of the dumped or subsidized goods.

Positions of Parties

118. EVRAZ argued that the increased volumes and the price effects of the subject goods caused material injury by drastically decreasing its market share and negatively impacting its gross margins, profitability and capacity utilization rates. Mr. Conrad Winkler stated that "...the Tribunal's proceeding . . . [is of] critical importance . . .",⁸⁶ that "[i]t is difficult for me to overstate the seriousness of the circumstances in which [EVRAZ] find[s] [itself]",⁸⁷ that "...the outcome of this [i]nquiry matters tremendously to our company's operations in Canada"⁸⁸ and that "[t]his [i]nquiry matters like no other trade case that Evraz North America has been involved in."⁸⁹ Mr. Scott McConnell painted an equally dire portrait of EVRAZ's situation, stating that "...both the immediate sustainability and the long-term viability of Evraz Canada's Canadian operations directly depend on our ability to compete with the subject imports on a level playing field."⁹⁰

119. EVRAZ acknowledged that the subject goods did not cause it injury in 2013 and that its performance improved in interim 2016. The Tribunal is satisfied that EVRAZ provided a reasonable and corroborated explanation for the uptake in its performance in interim 2016 in its protected submissions and *in camera* testimony and that events during that period are therefore not indicative of a material change in the effects of the subject goods.

120. For their part, parties opposed submitted that the subject goods did not cause material injury to the domestic industry. They argued that EVRAZ's overall performance was negatively impacted because of the following factors: the limits to EVRAZ's production range; EVRAZ's relationship with Enbridge; EVRAZ's purposed refusal to supply small volumes to purchasers; the impact that Canada's regulatory environment and declining oil prices had on pipeline construction; and price competitiveness of LDLP from non-subject countries.

Tribunal's Analysis

– Production Decline and EVRAZ's Production Limitations

121. Overall, total domestic production of the like goods steadily decreased between 2013 and 2015.⁹¹

122. Domestic production for domestic sales fluctuated between 2013 and 2015, increasing to its highest point in 2014 and then decreasing substantially in 2015.⁹² While domestic sales from domestic production increased by a substantial percentage in 2014, they decreased by an even greater percentage in 2015.

86. Exhibit NQ-2016-001-A-03 at para. 8, Vol. 11.

87. *Ibid.* at para. 10.

88. *Ibid.* at para. 30.

89. *Ibid.* at para. 8.

90. Exhibit NQ-2016-001-A-09 at para. 10, Vol. 11.

91. Exhibit NQ-2016-001-07C (protected), Table 32, Vol. 2.1A. Domestic production increased however in interim 2016 relative to interim 2015. However, for the reasons given above, the Tribunal discounted the relevance of that period.

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

123. EVRAZ acknowledged that its production capabilities were limited, such that it could not always offer products that were identical to all those that were requested in the full range of RFPs that were awarded during the POI. These limitations were a factor in its decision to invest \$200 million in its Regina steel and pipe mills in 2014-2015. Witnesses testified that the investments will broaden its product range to include LDLP for use in strain-based, thicker-walled and cold temperature applications.

124. The Tribunal is cognizant that, even after the completion of EVRAZ's Regina mill upgrades, LDLP for certain end uses will remain beyond EVRAZ's upgraded production capabilities, as will be discussed more fully below in the section on exclusion requests. Nevertheless, the Tribunal is of the view that the domestic industry does not need to produce a basket of goods that are identical to the subject goods in order to be negatively impacted by the subject goods.⁹³

125. There is evidence on the record of general substitutability of LDLP from all sources, be they from subject or non-subject countries, or from EVRAZ. For example, evidence indicates that, of those suppliers that were invited to bid on RFPs during the POI, all were pre-approved and considered to be "top tier" producers by the purchasers. All were deemed capable of manufacturing suitable LDLP for transmission purposes under the CSA Z662-15 design code and the corresponding CSA Z245.1-14 manufacturing code. Therefore, the Tribunal is not persuaded by arguments of the parties opposed that EVRAZ's production limitations contributed to the injury that it suffered over the POI.

– Sales and Market Share

126. The apparent market contracted considerably from 2013 to 2015.⁹⁴ The evidence shows that EVRAZ's market share increased substantially in 2014, before it significantly decreased in 2015 to close to 2013 levels, albeit marginally lower than that level.⁹⁵

127. EVRAZ's increased market share in 2014 occurred at the same time as the subject goods began overtaking the market share of non-subject goods. Between 2014 and 2015, the volume of domestic sales from domestic production dropped significantly. At the same time, the volume of sales/purchases of the subject goods increased by a greater extent. By 2015, with EVRAZ slightly below its 2013 market share, the subject goods had taken over almost all the market share occupied by non-subject goods in 2013. In sum and overall, EVRAZ's market share fell marginally between 2013 and 2015, while the market share of the subject goods increased substantially. By 2015, the market share held by non-subject goods in 2013 had decreased by almost as much as the market share of the subject goods increased.⁹⁶ The actual inversion of these values was revealing.

– EVRAZ's Relationship with Enbridge

128. The parties opposed argued that EVRAZ's relationship with Enbridge was a cause of EVRAZ's lost sales and declining market share. They alleged that EVRAZ sacrificed its relationships, and sales, with other purchasers to keep mill capacity available for Enbridge. Specifically, TCPL argued that EVRAZ's master supply agreement with Enbridge prevented EVRAZ from equipping itself to effectively compete in the Canadian market for LDLP and that EVRAZ's pricing strategy fell out of step with market realities.

93. *Certain Fasteners* (21 January 2005), NQ-2005-005 (CITT) at 216.

94. Exhibit NQ-2016-001-07C (protected), Table 11, Vol. 2.1A.

95. EVRAZ's market share increased substantially in interim 2016 compared to interim 2015. Again, for the same reason given above, the Tribunal discounted the representativeness of this period.

96. Exhibit NQ-2016-001-07C (protected), Table 13, Vol. 2.1A.

129. Witnesses for EVRAZ and Enbridge acknowledged that they strongly value their relationship with one another. They also confirmed that the relationship is not exclusive, in that EVRAZ is free to produce for other purchasers in accordance with terms set out in the master supply agreement. The Tribunal also heard testimony from other witnesses that master supply or arrangement agreements, like the one between Enbridge and EVRAZ, are commonplace in the global market for LDLP.⁹⁷

130. The Tribunal is satisfied that the Enbridge-EVRAZ relationship did not materially affect EVRAZ's behaviour during the POI. EVRAZ continued to bid on a variety of RFPs issued by purchasers other than Enbridge and, in so doing, competed head-to-head with, and lost sales to, lower-priced subject goods. In fact, the Tribunal is satisfied that EVRAZ's relationship with Enbridge allowed EVRAZ to maintain a better position during the POI than it would have absent the existence of the relationship.⁹⁸

– EVRAZ's Ability and Willingness to Supply Small Volumes

131. Parties opposed cited EVRAZ's purported unwillingness to sell small volumes of LDLP to satisfy purchasers as a cause of its declining sales and market share.

132. EVRAZ filed evidence and witness testimony that it filled small volume orders of LDLP over the POI on specific projects.⁹⁹

133. The Tribunal is therefore satisfied that EVRAZ accepts and fills small orders. Moreover, the Tribunal sees no compelling reason to consider this to have been an undue factor of injury to EVRAZ and/or a reason for its declining sales and market share over the POI.

– Regulatory Climate

134. All parties agreed on the unpredictable and time-consuming regulatory approval process that pipeline projects must undergo. Assuredly, this climate creates uncertainty in the market for LDLP generally, and the evidence demonstrates that purchasing decisions were consequently affected during the POI, given regulatory delays.

135. Parties opposed cited this factor as being responsible for EVRAZ's poor financial situation and lost sales rather than the subject goods. Notwithstanding their claims, the Tribunal finds that the pipeline regulatory approval process is a constant overarching condition of competition within the market for LDLP. The go-ahead for such projects, from both a production and a contract-award perspective, is always contingent upon that factor. Put another way, regulatory approval is a fact of life in the LDLP industry.

136. The regulatory climate augments the competitiveness of the market for LDLP, as noted above in the section on conditions of competition. Projects are not awarded on a regular basis. As such, producers must do all they can to secure an order and therefore maximize their production to remain competitive. The very presence of low-priced subject goods in the market, coupled with the fact that they won specific project awards over the POI, convinces the Tribunal that the regulatory climate actually amplified the negative impact of the subject goods on EVRAZ over the POI.

97. Exhibit NQ-2016-001-G-02 (protected) at para. 10, Vol. 14A; Exhibit PI-2015-003-9.03 (protected), tab 11, Vol. 4.

98. *Transcript of In Camera Hearing*, Vol. 2, 20 September 2016, at 170-74.

99. Exhibit NQ-2016-001-A-20 (protected), tab A, Vol. 12D.

– Decline in Oil Prices

137. The parties opposed argued that the decline in oil prices directly affected the market for LDLP, as purchasers delayed some oil and gas transmission projects. They also argued that long project lead times for LDLP delayed the impact caused by falling oil prices which began in 2014, bottoming out in 2016.

138. The Tribunal notes that, despite the decline in oil prices during the POI, purchasers continued to issue and award RFPs for specific projects.¹⁰⁰ Purchasers also continued to initiate planning pipeline and other projects, including significant ones, which continued to be subject to regulatory approval. Accordingly, the Tribunal finds that oil prices do not play as much a role in overall demand for LDLP as they may have in other steel cases.¹⁰¹

– Price Competitiveness of LDLP Originating in Non-subject Countries

139. The parties opposed argued that EVRAZ's prices were not competitive and were the reason that it lost sales during the POI.¹⁰² EVRAZ acknowledged that it lost a significant sale in 2013 to fair competition from a producer in a non-subject country. Moreover, during the hearing, EVRAZ also acknowledged that its market intelligence was incorrect and that at least one additional RFP went to a supplier from a non-subject country during the POI.¹⁰³

140. A review of the project-specific data shows that certain projects awarded to suppliers of non-subject goods were awarded at prices that were within a few dollars from the bid of a least one or the other of the subject countries. In one case, the difference was 0.1 percent.¹⁰⁴ This suggests that the suppliers in non-subject countries essentially matched the price of the suppliers in the subject countries in order to win an award. The Tribunal views this as evidence that non-subject imports behaved, at worst, similarly to the subject goods in causing prices to fall in the market for LDLP. This fact does not negate the effect of the unfairly low prices of the subject goods on the market for LDLP but rather magnifies it.

141. The evidence shows that, at the project-specific level, the subject goods drove down pricing in the market for LDLP.¹⁰⁵ The non-subject goods exacerbated this trend by following suit and fueled this "race to the bottom" for pricing. Overall, because of their average price levels and greatly reduced volume, the Tribunal finds that non-subject goods impacted the Canadian market for LDLP during the POI in a secondary manner to the subject goods.

– Profitability

142. Data reveal that EVRAZ suffered financially during the POI. On a \$/tonne basis, its profitability on domestic sales of like goods fluctuated. Its gross margin increased in 2014, then declined in 2015. EVRAZ's

100. Exhibit NQ-2016-001-051, Vol. 1B; *Transcript of Public Hearing*, Vol. 6, 26 September 2016, at 719-20.

101. In this context, the Tribunal also wishes to distinguish the circumstances in this case from those in *Oil Country Tubular Goods* (OCTG) (2 March 2015), RR-2014-003 (CITT) at paras. 16-18, 57-60. The evidence is clear that LDLP is not like OCTG—a true commodity product. Similarly, the evidence indicates that the market for LDLP is unique and driven by factors that are different from those that exist in the market for OCTG.

102. Exhibit NQ-2016-001-M-05 at para. 45, Vol. 13C.

103. *Transcript of In Camera Hearing*, Vol. 2, 20 September 2016, at 4.

104. Exhibit NQ-2016-001-07A (protected), Vol. 2.1 at 65.

105. Exhibit NQ-2016-001-C-08 (protected), tab 13, Vol. 14.

net income improved in 2014 over 2013 but worsened in 2015. On the whole, its profitability was negatively impacted from 2013 to 2015.¹⁰⁶

– Declining Prices of Raw Materials

143. The parties opposed argued that domestic and global LDLP prices are sensitive to raw material costs, including scrap and coil, and that, since those prices declined during the POI, the purchasers demanded lower prices from LDLP suppliers.¹⁰⁷ For example, Sumitomo submitted that, during the POI, the costs of scrap steel plate decreased along with the costs of other steel inputs, such as iron ore and coaking coal globally. Sumitomo further submitted that the nature of EVRAZ's operations should have made it easier for EVRAZ to reflect those lower costs in its bids to purchasers.¹⁰⁸

144. The Tribunal recognizes that raw material costs can play a role in LDLP pricing and finds that the prices of raw materials declined during the POI.¹⁰⁹ The Tribunal acknowledges that the relative price transparency in the LDLP market allows purchasers to demand lower pricing from producers when the price of raw materials goes down. Despite a decline in raw material costs, EVRAZ's COGS increased between 2013 and 2015.¹¹⁰ As discussed above, EVRAZ's prices rose between 2013 and 2015 to try keep pace with its rising COGS and dwindling margins. Had it not been for the decline in raw materials, EVRAZ's COGS would be higher and presumably EVRAZ's margins would have been even smaller.

– Employment and Wages

145. EVRAZ's direct employment increased steadily between 2013 and 2015, but wages for direct employment showed some decline during the same period. However, EVRAZ idled operations at its Camrose, Alberta, mill in May 2016, resulting in the layoff of 150 employees.¹¹¹ In addition, EVRAZ scaled down LDLP operations at its Regina plant in July 2016, resulting in the layoff of another 125 employees from its pipe mill and 50 from its steel mill.¹¹² The Tribunal notes that both the idling of the Camrose mill and the layoffs in Regina took place outside of the POI and, therefore, did not form part of the injury analysis, but that they are nonetheless indicative of its poor performance over the POI.

– Capacity Utilization

146. The capacity utilization rate of the domestic industry decreased steadily between 2013 and 2015.¹¹³ The Tribunal finds that capacity utilization generally follows the trends discussed above for domestic production from 2013 to 2015 and was similarly affected, in part at least, by the low-priced subject goods entering the Canadian market as a result of lost sales. As such, EVRAZ had unutilized capacity.

106. Exhibit NQ-2016-001-07C (protected), Table 29, Vol. 2.1A. The record indicates that EVRAZ fared better in interim 2016; however, as above, the Tribunal accepts that results in that period are not typical and, therefore, discounted the relevance of that period.

107. *Transcript of Public Hearing*, Vol. 3, 21 September 2016, at 278, 293, 296.

108. Exhibit NQ-2016-001-G-04 (protected) at para. 28, Vol. 14A; Exhibit NQ-2016-001-G-01 at para. 38(d), Vol. 13B.

109. *Transcript of In Camera Hearing*, Vol. 2, 20 September 2016, at 64; Exhibit NQ-2016-001-G-04 (protected), tabs C, D, Vol. 14A.

110. Exhibit NQ-2016-001-07C (protected), Tables 28, 29, Vol. 2.1A.

111. Exhibit NQ-2016-001-A-12 (protected) at para. 45, Vol. 12A.

112. *Transcript of Public Hearing*, Vol. 1, 19 September 2016, at 39.

113. Exhibit NQ-2016-001-07C (protected), Table 32, Vol. 2.1A.

– Investments and Innovation

147. EVRAZ's investments increased substantially, as a result of its \$200 million investment in upgrades to its Regina steel and pipe mills in 2014-2015. The Tribunal accepts the testimony from EVRAZ's witnesses that this investment was undertaken to enable it to keep pace with the demands of purchasers for thicker wall pipe and other technological advances in LDLP.

148. The parties opposed argued that there is an oversupply of LDLP in the North American market and that EVRAZ mistimed its Regina investments. They suggested that EVRAZ did not properly account for risks, such as weakened demand brought on by the decline in oil prices. According to Sumitomo, purchasers' confidence in EVRAZ's solvency and ability to meet future production deadlines was weakened as a result.

149. The Tribunal gives little credence to these arguments. The evidence shows that EVRAZ ranks among a short list of top tier producers of LDLP and will continue to be viewed as such going forward by major Canadian pipeline companies.¹¹⁴ The Tribunal ascribes no negative injurious effect to EVRAZ's decision to invest in its Regina facilities. The timing of such an expansion can likely never be perfect, and hindsight evaluations, such as those made by the parties opposed, are never on the boardroom table when go-ahead decisions are made.

150. The Tribunal accepts the testimony from EVRAZ's witnesses that it is currently commissioning, testing and ramping up its new production facilities. As such, it will likely be ready to submit competitive bids on RFPs that have yet to receive regulatory approval in the short to medium terms. Indeed, the Tribunal finds that, given the project-based nature of the market, it is unlikely that there will be any significant procurement made, if any (other than KMC's Trans Mountain Expansion Project, if approved before the end of this year) before 12 to 18 months, giving full time for EVRAZ to complete its upgrades and to be fully certified and pre-approved by Canadian purchasers. In that sense, the timing of EVRAZ's investments into its Regina facilities could not have been more fortuitous; as its witnesses testified, the timing was such that any expansion would likely not have been possible had the decision been delayed, and it would not have been possible in the wake of the negative impacts of the subject goods.¹¹⁵

151. The expansion has allowed EVRAZ to be in a position where it is poised to provide a greater range of LDLP. It was acknowledged by witnesses for parties opposed that EVRAZ's expanded Regina facilities would be one of the most modern integrated LDLP production facilities in North America.¹¹⁶

152. Finally, the Tribunal notes that, in addition to the Regina mill upgrades, EVRAZ made ongoing investments to its existing production lines over the POI.¹¹⁷ The Tribunal finds that the negative impact of the subject goods on EVRAZ's profitability would result in reduced returns on these investments, should the dumping and subsidizing of the subject goods be allowed to continue.

– Inventories

153. Inventory levels held by EVRAZ decreased overall between 2013 and 2015.¹¹⁸ However, the Tribunal notes that inventory levels are not as indicative in this case as they may be in other injury

114. *Transcript of In Camera Hearing*, Vol. 5, 23 September 2016, at 492-93.

115. *Transcript of Public Hearing*, Vol. 1, 19 September 2016, at 36.

116. *Transcript of Public Hearing*, Vol. 4, 22 September 2016, at 333.

117. Exhibit NQ-2016-001-07C (protected), Table 35, Vol. 2.1A.

118. *Ibid.*, Table 32.

investigations. As noted above, LDLP is a sophisticated product that is procured on a project-by-project basis and is therefore highly customized. As such, low levels of inventory do not necessarily indicate injury, as LDLP is rarely procured “off the shelf”.¹¹⁹

Tribunal Conclusions on Injury

154. On the basis of the above analysis, the Tribunal finds that the dumping and subsidizing of the subject goods did, in and of themselves, cause material injury to EVRAZ. Between mid-2014 and 2015 especially, the subject goods entered the domestic market at high volumes in both absolute and relative terms, and at prices which had significant negative price effects.

155. While many allegations were made about other factors, parties opposed brought very little evidence to support them, especially during the hearing. EVRAZ’s witnesses testified during approximately three and a half days during the hearing and were cross-examined by numerous counsel for a period of approximately 12 hours. The parties opposed had several opportunities to test their allegations with EVRAZ’s witnesses, and the Tribunal is satisfied that the explanations provided by EVRAZ’s witnesses adequately answered the questions raised by those allegations.

156. Even with their own witnesses, the parties opposed failed to convincingly demonstrate and substantiate that factors other than the presence of the subject goods outweighed the subject goods as a cause of injury to EVRAZ.

157. Rather, the Tribunal finds that the evidence provided by EVRAZ constitutes a probative demonstration of a causal relationship between the subject goods and the injury suffered by the domestic industry during the POI. That injury is material. The subject goods caused EVRAZ to experience lost sales and market share, reduced production and declining gross margins. These developments prevented EVRAZ from operating its facility in Camrose and resulted in layoffs of employees at its Regina facilities.¹²⁰ Absent the injurious effects of the subject goods, EVRAZ would have performed better during the POI.

158. Because injury and threat of injury are distinct findings, the Tribunal is not required to make a finding relating to threat of injury pursuant to subsection 43(1) of *SIMA* unless it first makes a finding of no injury. As such, when the Tribunal makes a finding of injury, as it does in this instance, it does not usually consider the issue of threat of injury. The Tribunal will not detract from its usual practice in this matter, other than to make the following remarks.

159. EVRAZ is at a cross-road in terms of its production of like goods because it is on the cusp of important expanded production capabilities, as noted above. As such, absent the protection that definitive anti-dumping and countervailing duties will afford EVRAZ, the Tribunal is convinced that the injurious effects caused by the dumped and subsidized goods beginning in 2014 are likely to continue into the future with even more dire consequences. Indeed, the attractiveness of the pricing of the subject goods, the extent to which such prices are so compelling so as to render superfluous the consideration of alternative or substitutable goods bid by EVRAZ in RFPs and the current context of reduced demand in the market for LDLP because of regulatory delays all point to continued injury in the future absent anti-dumping and countervailing duties.

119. *Transcript of Public Hearing*, Vol. 1, 19 September 2016, at 155-57.

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

160. The important change in market forces in 2015 caused by the subject goods are a good indicator of things to come, notwithstanding an auspicious but temporary recovery of the domestic industry's situation in the early part of 2016. The consolidation of the significant presence and effects of the subject goods in 2015 can clearly be considered as a spring-board for future injury in the short and medium terms.

EXCLUSIONS

Requests and Positions of Parties

161. As noted above, the Tribunal received requests for product exclusions from Cenovus, Comco, JFE, KMC, NSSMC, PCK, Shell, Suncor, Syncrude, Spectra and TCPL.

Requests

– Cenovus

162. Cenovus filed two exclusion requests; the first for certain line pipe for use in high-temperature steam distribution pipelines¹²¹ and the second for certain line pipe for use in sour service environments.¹²² During the course of the hearing, Cenovus modified its exclusion requests, specifying end-use requirements and limiting the requests to LSAW pipe in certain grades meeting certain clauses of the CSA Z662 and CSA Z245.1 specifications.¹²³

– Comco

163. Comco filed two exclusion requests for LSAW line pipe. The first covers certain line pipe for M45C (-45°C) cold temperature service in 40-foot and 60-foot lengths with no girth welds¹²⁴ and the second covers certain line pipe for use as tailings and/or slurry pipe in 60-foot lengths with no girth welds¹²⁵.

– JFE

164. JFE filed five exclusion requests. These requests cover certain line pipe for use in M45C cold temperature service in 40-foot and 60-foot lengths with no girth welds¹²⁶, certain line pipe for use in high pressure steam applications,¹²⁷ certain LSAW high-strain line pipe¹²⁸ and two more general requests for line pipe in certain grade, outside diameter, wall thickness and length combinations.¹²⁹

– KMC

165. KMC filed three exclusion requests for certain line pipe for use in its Trans Mountain Expansion Project. These include certain line pipe in certain grade, outside diameter and wall thickness combinations

121. Exhibit NQ-2016-001-26.06, Vol. 1.3A at 105; Exhibit NQ-2016-001-27.06 (protected), Vol. 2.3B at 3.

122. Exhibit NQ-2016-001-26.06, Vol. 1.3A at 110; Exhibit NQ-2016-001-27.06 (protected), Vol. 2.3B at 49.

123. Exhibit NQ-2016-001-26.06A, Vol. 1.3A at 115.2.

124. Exhibit NQ-2016-001-26.08, Vol. 1.3A at 136; Exhibit NQ-2016-001-27.08 (protected), Vol. 2.3C at 138.

125. Exhibit NQ-2016-001-26.08, Vol. 1.3A at 140; Exhibit NQ-2016-001-27.08 (protected), Vol. 2.3C at 139, 140.

126. Exhibit NQ-2016-001-26.04, Vol. 1.3 at 263; Exhibit 2016-001-27.04 (protected), Vol. 2.3 at 160.

127. Exhibit NQ-2016-001-26.04, Vol. 1.3 at 267; Exhibit NQ-2016-001-27.04 (protected), Vol. 2.3 at 165.

128. Exhibit NQ-2016-001-26.04, Vol. 1.3 at 271; Exhibit NQ-2016-001-27.04 (protected), Vol. 2.3 at 170.

129. Exhibit NQ-2016-001-26.04, Vol. 1.3 at 259, 275; Exhibit NQ-2016-001-27.04 (protected), Vol. 2.3 at 155, 175.

for which it claims EVRAZ has no track record of commercial production,¹³⁰ certain high-strain capacity line pipe¹³¹ and certain line pipe for M45C cold temperature service.¹³²

– NSSMC

166. NSSMC filed eight exclusion requests. These requests cover certain line pipe for steam distribution,¹³³ certain line pipe for sour service applications,¹³⁴ certain line pipe for offshore applications,¹³⁵ certain strain-based design line pipe,¹³⁶ certain line pipe for M18C (-18°C) low-temperature applications,¹³⁷ all line pipe with an outside diameter exceeding 19.05 mm¹³⁸ and all LSAW line pipe produced in lengths over 42 feet with no girth welds.¹³⁹

– PCK

167. PCK filed 31 exclusion requests covering line pipe in various grade, outside diameter and wall thickness combinations, as well as covering some non-subject goods.¹⁴⁰

– Shell

168. Shell filed two exclusion requests. One is for all LSAW line pipe in lengths above 40 feet with no girth welds¹⁴¹ and the other is for all HSAW and LSAW line pipe with high weld toughness¹⁴². Although the proposed wording did not mention slurry pipe, in its reasons for the exclusion requests, Shell indicated that the requested pipe is used in slurry applications.

– Suncor

169. Suncor filed two exclusion requests, one for certain high-pressure steam pipeline¹⁴³ and the other for certain LSAW slurry pipe in 60-foot lengths with no girth welds.¹⁴⁴ Over the course of the hearing, Suncor modified its first exclusion request, adding language to refer to creep testing necessary for line pipe covered by the request and adding an end-use restriction limiting the goods to use in high-pressure steam pipe applications in oil sands operations. Suncor also modified its second exclusion request to add an end-use restriction for use in slurry or tailings applications in oil sands operations.¹⁴⁵

130. Exhibit NQ-2016-001-26.09, Vol. 1.3A at 149; Exhibit NQ-2016-001-27.09 (protected), Vol. 2.3C at 144.

131. Exhibit NQ-2016-001-26.09, Vol. 1.3A at 154; Exhibit NQ-2016-001-27.09 (protected), Vol. 2.3C at 150.

132. Exhibit NQ-2016-001-26.09, Vol. 1.3A at 161; Exhibit NQ-2016-001-27.09 (protected), Vol. 2.3C at 158.

133. Exhibit NQ-2016-001-26.05, Vol. 1.3A at 2, 69; Exhibit NQ-2016-001-27.05 (protected), Vol. 2.3A at 2, 199.

134. Exhibit NQ-2016-001-26.05, Vol. 1.3A at 32; Exhibit NQ-2016-001-27.05 (protected), Vol. 2.3A at 93.

135. Exhibit NQ-2016-001-26.05, Vol. 1.3A at 94; Exhibit NQ-2016-001-27.05 (protected), Vol. 2.3A at 243.

136. Exhibit NQ-2016-001-26.05, Vol. 1.3A at 47; Exhibit NQ-2016-001-26.05 (protected), Vol. 2.3A at 135.

137. Exhibit NQ-2016-001-26.05, Vol. 1.3A at 17; Exhibit NQ-2016-001-27.05 (protected), Vol. 2.3A at 84.

138. Exhibit NQ-2016-001-26.05, Vol. 1.3A at 84; Exhibit NQ-2016-001-27.05 (protected), Vol. 2.3A at 208.

139. Exhibit NQ-2016-001-26.05, Vol. 1.3A at 89; Exhibit NQ-2016-001-27.05, Vol. 2.3A at 217.

140. Exhibit NQ-2016-001-26.02, Vol. 3; Exhibit NQ-2016-001-27.02 (protected), Vol. 2.3.

141. Exhibit NQ-2016-001-26.10, Vol. 1.3A at 168; Exhibit NQ-2016-001-27.10 (protected), Vol. 2.3C at 166.

142. Exhibit NQ-2016-001-26.10, Vol. 1.3A at 172; Exhibit NQ-2016-001-27.10 (protected), Vol. 2.3C at 170.

143. Exhibit NQ-2016-001-26.01, Vol. 1.3 at 8; Exhibit NQ-2016-001-27.01 (protected), Vol. 2.3 at 8.

144. Exhibit NQ-2016-001-26.01, Vol. 1.3 at 2; Exhibit NQ-2016-001-27.01 (protected), Vol. 2.3 at 2.

145. Suncor's Aid to Argument, Exhibit NQ-2016-001, Vol. 17.

– Syncrude

170. Syncrude filed two exclusion requests. The first covers certain LSAW slurry line pipe in various outside diameter, wall thickness and grade combinations.¹⁴⁶ The second covers electric fusion welded (EFW) line pipe for high pressure service.¹⁴⁷ During the hearing, Syncrude modified its first request providing two alternative options, one of which covered all line pipe for use in slurry or tailings piping systems with an end-use restriction to any such systems that are not registered under applicable legislation either as a CSA Z-662 pipeline or as a pressure piping system compliant to CSA B512. It also modified its second request, adding an end-use restriction indicating that the requested EFW pipe was not to be used in a CSA Z-662 pipeline application.¹⁴⁸

– Spectra

171. Spectra filed three exclusion requests. Its first request is for certain line pipe with “. . . a specified supplemental absorbed energy in pipe body and weld metal exceeding 40J.”¹⁴⁹ It described this pipe as being for use in high-pressure gas transmission and processing facilities. Its other requests are for all line pipe with a high temperature process microalloy composition ordered in volumes of 1,000 metric tonnes or less¹⁵⁰ and all LSAW line pipe in 60-foot lengths with no girth welds.¹⁵¹

– TCPL

172. TCPL filed seven exclusion requests. These include requests for certain line pipe for use in M45C cold temperature service,¹⁵² certain line pipe for use in offshore applications,¹⁵³ line pipe to be used for inline fracture arrestors,¹⁵⁴ and a request for line pipe for strain-based design applications.¹⁵⁵ Its remaining three requests were more general in nature covering line pipe in certain grade, outside diameter and wall thickness combinations.¹⁵⁶ One of these is for line pipe with an outside diameter of less than or equal to 610 mm, indicating that the inclusion of such pipe was a misunderstanding on behalf of EVRAZ when the complaint was filed.¹⁵⁷ As previously mentioned in these reasons, by way of letter on August 17, 2016, the Tribunal confirmed its view that goods with an outside diameter exceeding 609.6 mm (which would include goods with an outside diameter of 610 mm) are subject to the inquiry. During the course of the hearing, TCPL modified its exclusion requests to narrow their scope in relation to EVRAZ’s current and imminent production capabilities or to add end-use restrictions.¹⁵⁸

146. Exhibit NQ-2016-001-26.03, Vol. 1.3 at 148; Exhibit NQ-2016-002-27.03 (protected), Vol. 2.3 at 146.

147. Exhibit NQ-2016-001-26.03, Vol. 1.3 at 154.

148. Exhibit NQ-2016-001-26.03B, Vol. 1.3 at 255.2.

149. Exhibit NQ-2016-001-26.07, Vol. 1.3A at 119; Exhibit NQ-2016-001-27.07 (protected), Vol. 2.3B at 100.

150. Exhibit NQ-2016-001-26.07, Vol. 1.3A at 124; Exhibit NQ-2016-001-27.07 (protected), Vol. 2.3C at 3.

151. Exhibit NQ-2016-001-26.07, Vol. 1.3A at 129; Exhibit NQ-2016-001-27.07 (protected), Vol. 2.3C at 123.

152. Exhibit NQ-2016-001-26.11, Vol. 1.3A at 191; Exhibit NQ-2016-001-27.11 (protected), Vol. 2.3C at 215.

153. Exhibit NQ-2016-001-26.11, Vol. 1.3A at 207; Exhibit NQ-2016-001-27.11 (protected), Vol. 2.3C at 234.

154. Exhibit NQ-2016-001-26.11, Vol. 1.3A at 202; Exhibit NQ-2016-001-27.11 (protected), Vol. 2.3C at 228.

155. Exhibit NQ-2016-001-26.11, Vol. 1.3A at 196; Exhibit NQ-2016-001-27.11 (protected), Vol. 2.3C at 221.

156. Exhibit NQ-2016-001-26.11, Vol. 1.3A at 179, 185, 212; Exhibit NQ-2016-001-27.11 (protected), Vol. 2.3C at 158, 175, 240.

157. Exhibit NQ-2016-001-26.11, Vol. 1.3A at 212; Exhibit NQ-2016-001-27.11 (protected), Vol. 2.3C at 240.

158. Exhibit NQ-2016-001-26.11A, Vol. 1.3A at 223.2.

Positions of Parties

173. Parties requesting product exclusions largely based their requests on claims that EVRAZ either was incapable of producing LDLP or did not actively supply the market with those goods during the POI. For select requests, parties submitted correspondence from EVRAZ as evidence to confirm it did not bid on certain goods because it did not produce them or was unable to produce them during the POI.

174. Several parties filed product exclusion requests for LSAW LDLP in 60-foot lengths with no girth welds for use in the transmission of slurry, indicating that such goods are not produced by EVRAZ. Additionally, parties noted that EVRAZ does not have the capability to produce 26-inch or 28-inch outside diameter slurry pipe and that it is unable to produce or did not bid on LDLP for M45C cold temperature service, high pressure service or sour service during the POI.

175. Requesters of product exclusions for LDLP used in strain-based applications claimed that EVRAZ had not conducted the necessary lengthy testing nor did it have a reliable track record as a reliable supplier of LDLP for those applications.

176. The Tribunal also received product exclusion requests for EFW LDLP and for LDLP for use in offshore applications on the basis that EVRAZ did not produce either of these products. Finally, a number of product exclusion requests covered grade, wall thickness and/or outside diameter combinations, which the requesters claimed to be beyond EVRAZ's capabilities.

177. In response, EVRAZ indicated that it consented to those exclusion requests for EFW LDLP and for LDLP for use in offshore applications, provided they were drafted in a manner that ensured that the EFW LDLP is not used in onshore CSA Z-662 pipeline applications and that the LDLP for use in offshore applications was labelled as restricted for use in offshore applications only.

178. EVRAZ also indicated that it was in discussions with KMC in order to come to an agreement on its exclusion requests but that such an agreement could not be reached by the end of the Tribunal's inquiry. On this matter, the Tribunal heard testimony from both parties *in camera* and takes the position that the process at hand cannot play any part in ongoing negotiations between parties. *SIMA* and the specific role played by the Tribunal under legislation cannot be directly solicited and will not be actioned in any way that may affect the interplay of contractual outcomes between parties.

179. For the remainder of the requests, EVRAZ objected on the basis that it produces or is capable of producing an identical or substitutable product, or that the goods covered by the exclusion requests are downwardly substitutable for goods that it does produce. EVRAZ argued that granting such exclusions would make the excluded goods, such as those above its wall thickness capabilities, attractive substitutes for goods produced by EVRAZ and would therefore cause it injury.

180. The Tribunal is satisfied that Mr. Allan Harapiak and Dr. Laurie Collins provided convincing evidence with regard to EVRAZ's imminent production capabilities.¹⁵⁹ Its expanded production capabilities will become available in the near future once upgrades to its steel and pipe mills in Regina are fully operational; this is merely months away. Dr. Gray informed the Tribunal in regard to those capabilities. Although Mr. Milmine had the opportunity to visit EVRAZ's Regina mill to assess its claims of upcoming capabilities, he decided not to do so after examining related documentary material. He did however testify that he had previously assessed the capabilities of both EVRAZ's Canadian installations and other U.S.

159. *Transcript of Public Hearing*, Vol. 7, 27 September 2016, at 844, 846-54, 862-63.

mills with identical equipment that EVRAZ is currently commissioning and did not directly challenge the suggested outcome. In fact, it was acknowledged that, once these upgrades are completed, these new capabilities would be received favourably by purchasers.¹⁶⁰

181. The Tribunal also heard testimony that EVRAZ is highly regarded as an LDLP producer. Both expert witnesses took that view as well. A witness from Enbridge stated that EVRAZ's "Regina mill is one of the best in North America, at least from our point of view, so the quality of the product coming out of that mill is dear to our hearts . . ." ¹⁶¹ In the Tribunal's view, given EVRAZ's track record and its reputation as a top producer, the Tribunal considers that there is a strong likelihood that its forthcoming production (post upgrade) will achieve market acceptance within a reasonable period of time. This consideration will be of paramount importance in the Tribunal's discussion of exclusion requests.

182. With respect to M45C cold service LDLP and other requests for certain grades of LDLP, EVRAZ indicated that it could produce such goods using steel plate purchased from a third party until such time as it is capable to produce the necessary steel on its own. Considerable evidence on the potential capacity of EVRAZ's steel production facility to reach M45C toughness was presented to the Tribunal.¹⁶² As will be discussed below, the Tribunal believes that this threshold will be met within a reasonable timeline. The Tribunal accepts EVRAZ's testimony that it can currently produce such goods using third party steel, and it finds accordingly.

183. With respect to LSAW LDLP in 60-foot lengths with no girth welds, EVRAZ indicated that it can produce substitutable HSAW LDLP that has a single girth weld. For slurry pipe in 26-inch and 28-inch outside diameters, EVRAZ indicated that it could produce these goods with a small investment in tooling at its Camrose facility. It explained that it produced LSAW LDLP in a 30-inch outside diameter out of its Camrose mill. Finally, EVRAZ disputed claims that it was unable to produce LDLP for sour service or strain-based design.

184. Those parties requesting exclusions mainly for slurry/tailings applications countered EVRAZ's position, explaining that HSAW LDLP was not substitutable for LSAW LDLP because of the presence of the helical weld itself. It was explained that slurry/tailings was a very abrasive mixture and that any protrusions (such as a weld) inside the pipe wall created a dynamic eddy behind it, causing increased amounts of abrasion and leading to potential failure and/or the premature necessity to replace the pipe section within as little as six months from the date of service.

185. The same logic applied to girth welds, implying the multiplication of potential wear/failure points in the system. It was explained that a continuous longitudinal weld minimized abrasion points and that the absence of another girth weld in either 20-foot or 40-foot sections reduced the overall quantity of friction points in a given system. Parties essentially conceded that EVRAZ manufactures LSAW pipe with an outside diameter of 30 inches or simply refrained from addressing this situation.

186. All parties requesting product exclusions, with the exception of Comco and Syncrude, responded to EVRAZ's objections, maintaining the initial rationale for their requests and disputing EVRAZ's capabilities to produce identical or substitutable goods. Further, those parties disagreed with EVRAZ's concerns with respect to downward substitutability and argued that purchasers would not buy LDLP made to more stringent specifications because it would involve absorbing substantial costs.

160. *Transcript of In Camera Hearing*, Vol. 5, 23 September 2016, at 497.

161. *Transcript of Public Hearing*, Vol. 4, 22 September 2016, at 333.

162. *Transcript of Public Hearing*, Vol. 7, 27 September 2016, at 846-47, 921.

187. As previously explained under the heading “Conditions of Competition”, the question of substitutability varies from the perspective of one purchaser to the next, and it is each purchaser’s prerogative to choose LDLP with those specifications that it believes is suitable for a given project. As such, it is not surprising that parties requesting product exclusions and EVRAZ did not agree on the substitutability of goods covered by the exclusion requests and the goods produced by EVRAZ. The Tribunal’s finding on substitutability, discussed under the heading “Conditions of Competition”, is also relevant in the Tribunal’s review of the exclusion requests. Furthermore, EVRAZ’s expanded production capacity will clearly increase its product offerings, directly answering certain segments of the marketplace’s requirements without having to consider a substitutable product.

Tribunal Findings on Exclusions

188. It is well established that exclusions are exceptional discretionary measures. The Tribunal’s authority to grant exclusions from the scope of a finding lies implicitly in subsection 43(1) of *SIMA*. The Tribunal stresses their extraordinary nature.¹⁶³ They may be granted when the Tribunal is of the view that such exclusions are not likely to cause injury to the domestic industry.¹⁶⁴

189. This inquiry and exclusion requests made in this matter occur at a time when EVRAZ is on the cusp of expanded production capabilities at its Regina mills. During the POI, EVRAZ was not in an immediate position to provide purchasers with certain products for which exclusions are now being requested. Moreover, purchasers disagreed with EVRAZ’s claims of having the capability to supply substitutable products during the POI. The Tribunal already disposed of this question in its finding related to like goods.

190. However, the Tribunal cannot ignore the importance of the investment being made by EVRAZ at this very moment in order to meet a significant portion of those very same needs going forward and cannot ignore the testimony from witnesses that, once the mill commissioned, the investments will position EVRAZ as a top LDLP mill. The upgrades are, for the most part, operational at present, or will be within a number of months, as commissioning and testing of the upgraded installations are on track at both the steel and pipe facilities in Regina.

191. The Tribunal finds that, during the POI, the willingness of potential purchasers to consider the substitutability of the like goods for the subject goods was at least partially distorted by the presence of the subject goods at low prices. To this effect evidence was tendered by parties as to a certain flexibility in design specifications in order to explore cost saving alternatives. In certain instances, bidders were encouraged to suggest alternate specifications where efficiencies could be realized. The Tribunal fails to see how the proposal of more cost-attractive alternatives would not normally be considered as a win-win situation or why they would not be welcomed under normal market circumstances.

192. The Tribunal is convinced that the prices of the subject goods during the POI were such that purchasers often had little or no incentive to examine whether EVRAZ was proposing products that were equivalent to bids by some other competitors. In some instances, the Tribunal heard evidence that EVRAZ

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

164. The Federal Court of Appeal, in *Owen & Company Limited v. Globe Spring & Cushion Co. Ltd.*, 2010 FCA 288 (CanLII), at para. 13, stated that the Tribunal has “. . . a very broad discretion to grant exclusions as the nature of the matter may require.” *Aluminum Extrusions* (1 April 2009), NQ-2008-003 (CITT) at para. 33; *Certain Stainless Steel Wire* (30 July 2004), NQ-2004-001 (CITT) at para. 96.

had long been dropped by purchasers from being invited to bid on certain requirements because of pervasive industry knowledge that the cheaper subject goods would necessarily always win based on price.¹⁶⁵

193. As such, many of the product exclusion requests based on EVRAZ's past or current production capabilities cannot be granted without risking current and imminent future injury to the domestic producer. The Tribunal is also of the view that it is premature to grant any exclusion request on the basis of hypothetical limitations to EVRAZ's future production capabilities at its Regina mill because those capabilities are set to become operational very soon. No cogent evidence was tendered indicating that EVRAZ *will not* be able to deliver those goods at the very core of the upgrades; at this time, any doubts to this effect are mere speculation.

194. It is true that some capabilities are yet to be fully proven, but their viability cannot be discounted before they are actually put into service. Should EVRAZ fail to fulfil these claimed capabilities in a foreseeable and reasonable future and to offer substitutable products, *SIMA* provides for mechanisms such as an interim review of the Tribunal's findings.

195. Consequently, the Tribunal is of the view that only very circumspect exclusions are warranted at this time. As such, the Tribunal finds that the majority of the exclusion requests in this matter are more properly for consideration only after substitutability and market acceptance of like goods can be assessed under normalized market circumstances that factor out the dumping or subsidizing of the subject goods.

Observations with Regard to Quantitative Values

196. Some parties suggested that the Tribunal could in some way grant exclusions to given importers in limited, designated quantities in order to fulfill either an annual requirement or the specific needs of a selected project. Some of those very same parties raised the possibility that such a measure be contrary to Articles XI and XIII of the WTO's *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*.

197. Although the Tribunal openly solicited parties with regard to required quantities in the context of the exclusion process, these values were not ascertained in consideration of a potential exclusion but, rather, in a wider context of understanding what was being consumed in the marketplace and how. The Tribunal notes however that the absence of quantitative restrictions increases the risk that the importation of the subject goods could cause injury to the domestic industry. Having considered the arguments made in connection with the agreements, the Tribunal decided that the exclusions granted below would be free of any quantitative measure.

Requests that are Denied

198. The exclusion requests made by PCK failed to provide any rationale as to why these requests should be granted, making its submissions largely incomplete. As such, the Tribunal was unable to assess the reasoning behind these requests and, to the extent that they cover the subject goods, they all are denied.

199. Exclusion requests made for goods that do not fall within the product description provided by the CBSA are not germane to this inquiry and are therefore denied.

200. The exclusion requests made by Comco, JFE, KMC, NSSMC and TCPL for cold temperature service LDLP products with temperature specifications (such as M18C and M45C) are denied. EVRAZ

165. *Transcript of Public Hearing*, Vol. 1, 19 September 2016, at 124-25.

indicated that it can currently make such products from third party steel and that it will be able to make them using its own steel, once its Regina steel mill upgrades are fully on-line and able to produce at M45C. Such products would constitute like goods in relation to the subject goods.

201. Evidence indicated that following the current upgrades, EVRAZ would not *immediately* be able to reach the actual -45°C standard required in this product exclusion; portions of the evidence indicated that it would only meet a -40°C rating at commissioning. Nevertheless, given the testimony about EVRAZ's extensive expertise and experience in steel making and the ameliorations/enhancements that it has already brought to its existing equipment, the Tribunal is satisfied that it will be able to make the necessary adjustments, in short order, to meet the incremental difference to reach a -45°C rating.¹⁶⁶

202. Allowing these exclusions would create an injurious exception to the finding with potentially unknown consequences to EVRAZ and could potentially undermine the finding itself.

203. The Tribunal denies exclusion requests made by Cenovus and NSSMC for so-called "sour service" applications. EVRAZ claims that it either makes or has the capability to make LDLP that is identical or which closely resembles the specifications set out by Cenovus and NSSMC.

204. The Tribunal accepts the sufficiency of EVRAZ's evidence in order to deny this category of exclusions at this time. The Tribunal remarks that it was not convinced that there is any specific industry standard that sets out the designated requirements of pipe suitable for such applications or any definitive description of what precisely such environments would be. These end-use limitations would be particularly difficult to define or enforce and were not proposed by the parties. Fundamentally, the subject goods made to the CSA Z662 and CSA Z245.1 standards are also produced by EVRAZ.

205. Also denied are all exclusion requests made by JFE, KMC, NSSMC and TCPL for LDLP concerning strain-based design LDLP, as well as requests to exclude LDLP with specific grade, outside diameter, wall thickness or length combinations with or without girth welds, or that would be used for inline fracture arrestors. Again, parties were unable to provide sufficient and convincing product specifications and/or definitions as to the characteristic nature of these goods other than the general qualities that said goods need to demonstrate. In the absence of industry standards, or other precise, distinctive features, the Tribunal cannot, in this case, simply adhere to general product traits to grant an exclusion. These requests concern LDLP that EVRAZ either is capable of producing or will be capable of producing or for which it has provided evidence of alternatives within its current or future production capabilities. Generally, the Tribunal is also concerned with the potential for such goods to compete, as substitutes, for goods that are within EVRAZ's current or future production capabilities.

206. The request made by Spectra for an exclusion regarding transmission pipe with a controlled high-temperature process microalloy composition was overly broad and presented important overlaps into EVRAZ's production capability scope.¹⁶⁷ It is therefore denied on that basis.

Requests that are Granted

207. The Tribunal grants the product exclusion request made by Syncrude, and consented to by EVRAZ, regarding EFW LDLP, with minor changes in order to clarify grade acceptability.

166. *Transcript of Public Hearing*, Vol. 7, 27 September 2016, at 846-47.

167. Exhibit NQ-2016-001-30.01, Vol. 1.3C at 28.

208. That exception aside, the Tribunal is of the view that none of the other product exclusion requests, as formulated by the parties, provided sufficient guarantees of non-injurious effects, if granted. Nevertheless, with the clearer and more stringent enforcement language contained in the Tribunal's finding, the Tribunal grants exclusions for certain LDLP for specific offshore, slurry and steam applications.

209. EVRAZ does not produce LDLP for offshore use and has admitted that it will not be producing such goods in the foreseeable future.¹⁶⁸ An exclusion for such product is therefore warranted.

210. EVRAZ also failed to demonstrate that it produces a substitutable product for use in steam applications. It also did not convince the Tribunal that it had a sufficient understanding of the requirements for LDLP used in such applications, other than to say that it had embryonic intentions to develop LDLP for such an application at some point in the future. It demonstrated no imminent production plans in respect of such product and, in any event, the requisite testing time frame would bring the viability of such goods to some two years or more beyond the date of the present inquiry.¹⁶⁹ EVRAZ's witnesses were even reluctant to adhere to those time frames. EVRAZ does not have either the capability or reasonable expectations of such capability to produce these goods in any foreseeable future.

211. Finally, a limited exclusion for certain slurry and tailings LDLP is warranted. EVRAZ has the capability to produce slurry pipe with certain diameters and will be able to expand its capabilities with only a small investment. However, its LSAW capabilities do not extend to lengths beyond 40 feet absent girth welds. The minimization of such welds is of concern because of wear caused by slurry and tailings abrasiveness in both the girth welds and the HSAW process.¹⁷⁰

212. Currently, two proposed offerings by EVRAZ for such slurry applications involve the use of HSAW LDLP.¹⁷¹ This LDLP presents a, circular weld throughout the body and inner surface of the pipe itself, greatly increasing abrasion points and making it difficult to adequately use in slurry/tailings applications.

213. The Tribunal heard convincing evidence as to why HSAW and girth-welded LDLP should not be used in slurry/tailings applications, because of premature wear scenarios and potential unexpected failure;¹⁷² the material, economic and environmental consequences of such failure are just too great to be ignored. The goods proposed by EVRAZ to serve this segment of the market are not technically substitutable and would not realistically be purchased by slurry/tailings operators. Otherwise, the last significant sales from EVRAZ into this market emanated out of its California installations over 10 years ago.¹⁷³ The Tribunal is satisfied that the exclusion that it grants on this type of LDLP will not cause injury to EVRAZ and will meet specific necessary requirements for oil sands operations.

CONCLUSION

214. Pursuant to subsection 43(1) of *SIMA*, the Tribunal finds that the dumping and/or subsidizing of the subject goods originating in or exported from China and Japan have caused injury to the domestic industry.

168. *Ibid.* at 26.

169. *Transcript of Public Hearing*, Vol. 7, 27 September 2016, at 894-96.

170. *Transcript of Public Hearing*, Vol. 5, 23 September 2016, at 474-75, Vol. 6, 26 September 2016, at 686, 698, 745.

171. Exhibit NQ-2016-001-27.01 (protected), Vol. 2.3 at 7.

172. *Ibid.* at 5.

173. *Transcript of Public Hearing*, Vol. 1, 19 September 2016, at 129.

215. Furthermore, the Tribunal excludes the following products from its finding:

- ASME SA 672 or ASME SA 691 electric-fusion welded steel pipe as certified under the ASME “Boiler and Pressure Vessel Code” rules (and stencilled with at least one of the aforementioned standards), of a length not to exceed 15 feet (4.572 m), for use other than in a CSA Z-662 pipeline application and imported with authorized inspection certificates and applicable ASME Partial Data Reports;
- line pipe, regardless of grade, outside diameter and wall thickness, single stenciled as “DNV-OS-F101” for exclusive use in offshore applications and marked “For Offshore Applications Only”;
- submerged arc longitudinal welded line pipe, regardless of grade, outside diameter and wall thickness, in lengths of 60 feet (18.288 m) with no girth welds for exclusive use in slurry or tailings piping systems in oil sands projects and marked “For Use as Slurry/Tailings Pipe Only”; for greater certainty, use in a pipeline meeting CSA Z-662 or as pressure piping meeting CSA B51 Code is not permitted under this exclusion; and
- submerged arc longitudinal welded line pipe, regardless of outside diameter, wall thickness and length, for exclusive use in high-temperature steam distribution pipelines and marked “For Steam Distribution Only”, certified to meet the requirements of CSA Z662-15 Clause 14 and/or Annex I and certified to have proven fatigue/creep test properties as provided in sections I.2.3.2 and I.3.2.1 of CSA Z662-15 as established by means of a creep test of no less than 10,000 hours carried out in accordance with ASTM E139.

Jean Bédard

Jean Bédard
Presiding Member

Jason W. Downey

Jason W. Downey
Member

Ann Penner

Ann Penner
Member