



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Expiry Review No. RR-2017-003

Steel Piling Pipe

*Order and reasons issued
Wednesday, July 4, 2018*

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IN THE MATTER OF an expiry review, pursuant to subsection 76.03(3) of the *Special Import Measures Act*, of the finding made by the Canadian International Trade Tribunal on November 30, 2012, in Inquiry No. NQ-2012-002, concerning:

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

ORDER

The Canadian International Trade Tribunal, pursuant to subsection 76.03(3) of the *Special Import Measures Act*, has conducted an expiry review of the finding made on November 30, 2012, in Inquiry No. NQ-2012-002, in respect of the aforementioned goods.

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

Peter Burn
Peter Burn
Presiding Member

Jean Bédard
Jean Bédard
Member

Serge Fréchette
Serge Fréchette
Member

Place of Hearing: Ottawa, Ontario
Date of Hearing: May 7, 2018

Tribunal Panel: Peter Burn, Presiding Member
Jean Bédard, Member
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STATEMENT OF REASONS

INTRODUCTION

1. The Canadian International Trade Tribunal (the Tribunal) has conducted an expiry review¹ of its finding in Inquiry No. NQ-2012-002,² concerning the dumping and subsidizing of certain carbon and alloy steel pipe piles, commonly identified as piling pipe, originating in or exported from the People's Republic of China (China) (the subject goods).³

2. The Tribunal's mandate in this review is to determine whether the expiry of the finding is likely to result in injury to the domestic industry and then, accordingly, to make an order either continuing or rescinding the finding, with or without amendment.

3. In the present case, the Tribunal determined that such injury is likely and, therefore, orders the continuation of the finding, without amendment. The reasons for its determination are set out below.

PROCEDURAL BACKGROUND

4. The finding in the *Piling Pipe NQ* was scheduled to expire on November 29, 2017, unless the Tribunal initiated an expiry review before that date.⁴

5. The Tribunal initiated its expiry review on August 28, 2017, which triggered the initiation of an investigation by the Canada Border Services Agency (CBSA) to determine whether the expiry of the Tribunal's finding was likely to result in the continuation or resumption of dumping or subsidizing. On January 25, 2018, the CBSA determined that there was a likelihood of resumed or continued dumping and subsidizing of the subject goods.⁵

6. On January 26, 2018, the Tribunal initiated the investigation phase of its expiry review to determine whether the continuation or resumption of dumping and subsidizing of the subject goods is likely to result in injury to the domestic industry if the finding expires.

7. The period of review (POR) for the Tribunal's investigation is from January 1, 2014, to September 30, 2017. For comparative purposes, information was also collected for the interim period of January 1 to September 30, 2016. The Tribunal requested that domestic producers, importers and foreign producers of steel piling pipe complete questionnaires. The Tribunal received completed questionnaires from two domestic producers⁶—Atlas Tube Canada ULC (Atlas) and DFI Corporation (DFI)—and two importers. No responses were received from foreign producers. Using the questionnaire replies and other information on the record, staff of the Canadian International Trade Tribunal's Secretariat prepared public

1. The expiry review is conducted pursuant to subsection 76.03(3) of the *Special Import Measures Act*, R.S.C., 1985, c. S-15 [SIMA].

2. *Steel Piling Pipe* (30 November 2012), NQ-2012-002 (CITT) [*Piling Pipe NQ*].

3. The full product definition is set out in paragraph 16.

4. Pursuant to subsection 76.03(1) of SIMA, findings of injury or threat of injury and the associated protection in the form of anti-dumping or countervailing duties expire five years from the date of the finding, unless the Tribunal initiates an expiry review before that date.

5. Exhibit RR-2017-003-03, Vol. 1 at 290.

6. The Tribunal received replies from four other domestic steel producers (Atlantic Tube & Steel Inc., Evraz NA Canada, Nova Steel Inc. and Tenaris Algoma Tubes) indicating that they did not produce piling pipe during the POR. Exhibit RR-2017-003-05, Table 2, Vol. 1.1; Exhibit RR-2017-003-RI-04, Vol. 9.

and protected investigation reports and investigation report supplements that were placed on the record. In addition, the Tribunal sent requests for information to specific firms, including parties and non-parties, and received public and protected replies that were placed on the record.⁷

8. Atlas and DFI filed submissions and evidence in favour of an order continuing the finding.

9. Although Pipe & Piling Supplies Ltd. (Pipe & Piling), an importer and distributor, filed a submission opposing the continuation of the finding,⁸ it subsequently withdrew its participation in the proceedings on April 25, 2018. Its counsel also requested that all confidential information filed by Pipe & Piling be immediately returned or that confirmation of its destruction be provided as quickly as possible.

10. The Tribunal denied the request for immediate destruction or return of confidential information as it did not consider Pipe & Piling's withdrawal from the proceedings to warrant a departure from the standard procedures for dealing with confidential information as set out in the Tribunal's *Confidentiality Guidelines*.⁹ As a result, the Tribunal indicated that the confidential information filed by Pipe & Piling will be destroyed upon the conclusion of the proceedings, in accordance with those procedures.

11. Following Pipe & Piling's withdrawal, counsel for Atlas sought clarification from the Tribunal on whether materials filed by Pipe & Piling would remain part of the record and available for use in closing arguments, subject to confidentiality requirements. The Tribunal confirmed that all materials filed by Pipe & Piling would remain on the record. It further stated that it would not take into consideration Pipe & Piling's arguments in its case brief, and the attachments thereto, since Pipe & Piling was no longer taking a position in the proceedings. However, the Tribunal would still take into consideration the replies filed by Pipe & Piling in response to questionnaires and requests for information from the Tribunal, as such data and information were collected further to the Tribunal's investigative role in this expiry review.

12. Following Pipe & Piling's withdrawal, the Tribunal held a public pre-hearing teleconference with counsel for the remaining parties (Atlas and DFI) on April 27, 2018, to discuss the public hearing that was scheduled for May 7, 2018, and other procedural matters.¹⁰

7. The public investigation report and supplement were distributed, along with the replies to public questionnaires and the Tribunal's requests for information, to parties who had filed notices of participation in the inquiry. The protected versions of those documents, containing information designated as confidential, were distributed to counsel who had signed the required declaration and undertaking.

8. On April 10, 2018, DFI filed a motion to strike from the record several attachments to Pipe & Piling's case brief as "they contain purported factual or evidentiary statements or refer to unproved documents that are not taken from or based on the Record in this Inquiry or are not proved by a witness that is available for examination." Atlas supported the motion. On April 16, 2018, Pipe & Piling filed a response opposing the motion.

9. The *Confidentiality Guidelines*, available online at http://www.citt-tcce.gc.ca/en/Confidentiality_guidelines_e, provide that "[u]pon conclusion of proceedings, in accordance with the Declaration and Undertaking of Confidentiality, counsel must provide the Registrar of the Tribunal with a certificate of destruction or a letter attesting that any confidential information provided in hard-copy by the Tribunal or by any other party, or printed by counsel, including any notes, have been destroyed. This ensures that there are no copies of commercially sensitive information stored indefinitely outside the Tribunal. . . . Upon conclusion of proceedings, counsel must return to the Tribunal all USB keys (or other electronic media) on which confidential information has been provided."

10. During the teleconference, the Presiding Member (Mr. P. Burn) asked counsel for DFI about the status of its motion to strike, given Pipe & Piling's withdrawal and in light of the Tribunal's decision that Pipe & Piling's case brief and attachments would remain on the record but not be taken into consideration by the Tribunal in making its decision. Counsel for DFI indicated that it would not pursue the motion to strike, given the circumstances.

13. Having consulted the parties, and given that the case was no longer opposed, the Tribunal decided to hold a hearing by way of written submissions. On May 1 and 4, 2018, the Tribunal requested additional information from DFI, to which DFI filed its responses on May 3 and 8, 2018.

14. The file hearing was held on May 7, 2018, in Ottawa.

15. Atlas and DFI filed their respective written closing submissions on May 9, 2018.

PRODUCT

Product Definition

16. The subject goods are defined as follows:¹¹

carbon and alloy steel pipe piles, commonly identified as piling pipe, in outside diameter ranging from 3 1/2 inches up to and including 16 inches (8.9 cm to 40.6 cm) inclusive, in commercial quality and in various forms and finishes, usually supplied to meet ASTM A252, ASTM A500, CSA G.40.21 or comparable specifications or standards, whether single, dual or multiple certified, originating in or exported from the People's Republic of China, excluding carbon steel welded pipe, in the nominal size range of 3 1/2 inches up to and including 6 inches (89 mm to 168.3 mm) in outside diameter, in various forms and finishes, usually supplied to meet ASTM A252 or equivalent specifications, other than carbon steel welded pipe in the nominal size range of 3 1/2 inches up to and including 6 inches, dual-stencilled to meet the requirements of both specification ASTM A252, Grades 1 to 3, and specification API 5L, with bevelled ends and in random lengths, for use as foundation piles.

Additional Product Information¹²

17. The most common grades of steel piling pipe are made to ASTM A500, ASTM A252 (including “modified” ASTM A252 with increased yield strength) or comparable internationally-recognized specifications. The vast percentage of steel piling pipe is made from carbon steel, although small amounts of steel piling pipe may be made with high-strength low-alloy (HSLA) steel or of other steel grades depending on project requirements.

18. Steel piling pipe is produced either through electrical-resistance welding (“ERW”) or seamless processes. ERW pipe production is either by longitudinal welding or by spiral (also called helical-butt or helical lap) welding. Regardless of the production process, welded and seamless piling pipe are identical in terms of physical, tensile and other properties. They are covered by the same ASTM or comparable specifications and are fully substitutable in terms of end-use applications.

19. The common North American specification for steel piling pipe is ASTM A500 and/or ASTM A252. Steel piling pipe can also be produced to higher standards which allows the goods to be dual-certified or multiple-certified for other applications, such as oil country tubular goods (casing), API-5L (line pipe) or A53 (standard pipe). Casing, line pipe and some types of standard pipe are produced to more stringent standards than steel piling pipe, which allows them to be fully substituted in steel piling pipe applications.

20. The goods are referred to as steel “piling pipe”. However, other names can be used interchangeably, including the following: pipe piles, driven piles, drilled shafts, caissons, mini caissons, micro piles, piers and casings.

11. Exhibit RR-2017-003-03A, Vol. 1A at 6.

12. *Ibid.*

LEGAL FRAMEWORK

21. The Tribunal is required, pursuant to subsection 76.03(10) of *SIMA*, to determine whether the expiry of the finding in respect of the subject goods is likely to result in injury or retardation to the domestic industry, with “injury” being defined, in subsection 2(1), as “. . . material injury to a domestic industry”.¹³ In this regard, “domestic industry” is defined in subsection 2(1) by reference to the domestic production of “like goods”.

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

23. Before proceeding with its analysis of the likelihood of injury, the Tribunal must first determine what constitutes “like goods”. Once that determination has been made, the Tribunal must determine what constitutes the “domestic industry” for the purposes of its likely injury analysis.

24. Given that the CBSA has determined that the expiry of the finding is likely to result in the continuation or resumption of dumping or subsidizing of the subject goods, the Tribunal must also determine whether it is appropriate to make an assessment of the cumulative effect of the dumping and subsidizing of the subject goods (i.e. whether it will cross-cumulate the effect) in this expiry review.

LIKE GOODS AND CLASSES OF GOODS

25. In order for the Tribunal to determine whether the resumed or continued dumping and subsidizing of the subject goods is likely to cause material injury to the domestic producers of like goods, it must determine which domestically produced goods, if any, constitute like goods in relation to the subject goods. The Tribunal must also assess whether there is, within the subject goods and the like goods, more than one class of goods.¹⁴

26. 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.

27. In the *Piling Pipe NQ*, the Tribunal determined that domestically produced piling pipe defined in the same manner as the subject goods constituted a single class of “like goods” in relation to the subject goods.¹⁵ The Tribunal further determined that the like goods also included domestically produced carbon steel welded pipe that met the description of goods excluded from the definition of the subject goods,¹⁶ on

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

14. Should the Tribunal determine that there is more than one class of goods in this inquiry, it must conduct a separate injury analysis and make a decision for each class that it identifies. See *Noury Chemical Corporation and Minerals & Chemicals Ltd. v. Pennwalt of Canada Ltd. and Anti-dumping Tribunal*, [1982] 2 F.C. 283 (FC).

15. *Piling Pipe NQ* at paras. 138-175.

16. The product definition, which is the same in the present review, expressly excludes “carbon steel welded pipe in the nominal size range of 3 1/2 inches up to and including 6 inches (89 mm to 168.3 mm) in outside diameter, in various forms and finishes, usually supplied to meet ASTM A252 or equivalent specifications, other than carbon steel welded pipe in the nominal size range of 3 1/2 inches up to and including 6 inches, dual-stencilled to meet the requirements of both specification ASTM A252, Grades 1 to 3, and specification API 5L, with bevelled ends and in random lengths, for use as foundation piles.”

the basis that such carbon steel welded pipe was commonly identified as piling pipe and supplied to meet ASTM 252, a specification designed specifically for piling.¹⁷

28. Accordingly, in this review, the Tribunal's Domestic Producers' Questionnaire requested information on domestically produced carbon steel welded pipe that corresponds to the description of goods excluded from the product definition of the subject goods. These data were presented separately in the Investigation Report to facilitate a segregated analysis, if needed.¹⁸

29. No arguments or evidence were submitted concerning the scope of the like goods or to suggest that the Tribunal should reach a different conclusion from the original inquiry.¹⁹

30. The Tribunal is satisfied that domestically produced piling pipe, defined in the same manner as the product definition of the subject goods, constitutes "like goods" in relation to the subject goods. However, the Tribunal finds it appropriate, on its own initiative, to reconsider the treatment of domestically produced carbon steel welded pipe that meets the description of goods that are excluded from the product definition of the subject goods. By way of background, that product exclusion originally resulted from the Tribunal's decision to terminate the preliminary injury inquiry that preceded the *Piling Pipe NQ* in respect of certain goods that it found to be already subject to another finding concerning carbon steel welded pipe products, namely, in Injury Inquiry No. NQ-2008-001.²⁰ Further to that decision, the CBSA revised the product definition in order to exclude such carbon steel welded pipe from the scope of its investigations in the piling pipe case.²¹ Accordingly, the domestically produced carbon steel welded pipe that corresponds to those excluded goods is already subject to protection under the Tribunal's order in relation to *CSWP*.²²

31. Moreover, in the present review, the Tribunal was not presented with any evidence that this subset of domestically produced goods should be treated as "like goods" to piling pipe for the purposes of its likely injury analysis. In fact, the parties, in their respective submissions, did not specifically comment on the separate data in the Investigation Report relating to domestically produced carbon steel welded pipe.

32. In the Tribunal's view, while such domestically produced carbon steel welded pipe may be commonly identified as piling pipe in the domestic market, that does not warrant its inclusion as like goods when it is already considered to be like goods in relation to *CSWP* and covered by the related order.

33. As a result, the Tribunal does not consider domestically produced carbon steel welded pipe that is expressly excluded from the scope of the subject goods in this expiry review to be included within the scope of the "like goods" for the purposes of its likely injury analysis.²³

17. *Piling Pipe NQ* at paras. 165, 176.

18. In the Investigation Report, data collected with respect to domestically produced carbon steel welded pipe are labelled as "Steel Piling Pipe – Subset" or "Subset product". See Exhibit RR-2017-003-05A, Table 4, Vol. 1.1A; Exhibit RR-2017-003-05, Schedule 11, Vol. 1.1.

19. The above statement regarding the lack of argument and evidence on this issue was unaffected by Pipe & Piling's withdrawal from the proceedings, as it did not make any arguments on the scope of the like goods in its case brief.

20. *Carbon Steel Welded Pipe* (20 August 2008) (CITT) [*CSWP*].

21. *Piling Pipe NQ* at para. 12.

22. *Carbon Steel Welded Pipe* (19 August 2012), RR-2012-003 (CITT).

23. This determination is also consistent with the Tribunal's approach in recent cases where the scope of the like goods was co-extensive with the scope of the subject goods, in that the like goods captured the subject goods or a subset of same. See *Unitized Wall Modules* (12 November 2013), NQ-2013-002 (CITT) at para. 34; *Certain Fabricated Industrial Steel Components* (25 May 2017), NQ-2016-004 (CITT) [*FISC*] at para. 45.

34. In light of the above, the Tribunal finds that domestically produced piling pipe constitutes a single class of “like goods” in relation to the subject goods.²⁴

DOMESTIC INDUSTRY

35. 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.

36. The Tribunal must therefore determine whether there is a likelihood of injury to the domestic producers as a whole or those domestic producers whose production represents a major proportion of the total production of like goods.²⁵

37. The evidence shows that there are currently two major domestic producers of piling pipe in Canada: Atlas and DFI.²⁶

38. There is also evidence before the Tribunal indicating that Pipe & Piling produces small volumes of piling pipe. Similar to the *Piling Pipe NQ*,²⁷ the Tribunal finds it appropriate to exclude Pipe & Piling from the domestic industry in this review on the basis that it behaves primarily as an importer of piling pipe in the domestic market. Pipe & Piling was the largest importer of Chinese piling pipe in the original inquiry and continued to actively import a significant volume of piling pipe and (as discussed further below) non-subject Chinese line pipe for sale into the domestic piling pipe market during the POR. Those import volumes and sales dwarfed its domestic production volume and related domestic sales during the POR.²⁸ Accordingly, Pipe & Piling will not be treated as part of the domestic industry for the purposes of the Tribunal’s likely injury analysis.

24. The Tribunal notes that the volumes of domestic production and domestic sales of carbon steel welded pipe that met the terms of the exclusion were relatively small during the POR, representing 2.1% of both the total domestic production volume of piling pipe and domestic market sales of domestically produced piling pipe. Thus, even if such goods had been included within the scope of “like goods” for the purposes of the likely injury analysis, their effect would have been negligible in terms of the domestic industry’s consolidated performance indicators. See Exhibit RR-2017-003-06A (protected), Tables 4, 8 and Schedule 11, Vol. 2.1.

25. The term “major proportion” means an important, serious or significant proportion of total domestic production of like goods and not necessarily a majority: *Japan Electrical Manufacturers Assn. v. Canada (Anti-Dumping Tribunal)*, [1986] F.C.J. No. 652 (FCA); *McCulloch of Canada Limited and McCulloch Corporation v. Anti-Dumping Tribunal*, [1978] 1 F.C. 222 (FCA); *China – Anti-dumping and Countervailing Duties on Certain Automobiles from the United States* (23 May 2014), WTO Docs. WT/DS440/R, Report of the Panel at para. 7.207; *European Community – Definitive Anti-dumping Measures on Certain Iron or Steel Fasteners from China* (15 July 2011), WTO Docs. WT/DS397/AB/R, Report of the Appellate Body at paras. 411, 419, 430; *Argentina – Definitive Anti-dumping Duties on Poultry from Brazil* (22 April 2003), WTO Docs. WT/DS241/R, Report of the Panel at paras. 7.341-7.344.

26. Although the CBSA identified Nova Tube Inc. as a third domestic producer, the evidence before the Tribunal indicates that it did not produce piling pipe in Canada during the POR, and there is no indication that it plans to resume domestic production of piling pipe in the near term. See footnote 6.

27. *Piling Pipe NQ* at paras. 186-187.

28. Exhibit RR-2017-003-RI-03A (protected) at 3, Vol. 10; Exhibit RR-2017-003-19.11 (protected), Vol. 6 at 38; Exhibit RR-2017-003-06 (protected), Table 8, Vol. 2.1.

39. This conclusion in respect of Pipe & Piling may be unsurprising in the circumstances of this particular case, especially given that none of the parties argued that it should be included in the domestic industry.²⁹ Nevertheless, in this review it was important for the Tribunal to ascertain to what extent, if any, importer-distributors were engaging in domestic production activities³⁰ in order to better understand the commercial realities of the domestic market for piling pipe and their role in it, as well as how market conditions may have changed since the original inquiry. In turn, those domestic market conditions provide the context for the likely injury analysis, as discussed further below.

40. In light of the above, the Tribunal is satisfied that the collective domestic production of Atlas and DFI represents a major proportion of the total domestic production of the like goods. Therefore, it finds that Atlas and DFI constitute the “domestic industry” for the purposes of this expiry review.

CROSS-CUMULATION

41. The Tribunal must also determine whether it will make an assessment of the cumulative effect of the dumping and subsidizing of the subject goods. There are no legislative provisions that directly address the issue of cross-cumulation of the effects of both dumping and subsidizing. However, as noted in previous cases, the effects of dumping and subsidizing of the same goods from a particular country are manifested in a single set of injurious price effects and it is not possible to isolate the effects caused by the dumping from the effects caused by the subsidizing. In reality, when the dumped and subsidized goods originate from a single country, the effects are so closely intertwined as to render it impossible to allocate discrete portions to the dumping and the subsidizing respectively.³¹

42. Given that this expiry review is in respect of dumped and subsidized goods from China only, the likely effects of the resumption of dumping and subsidizing of the subject goods will likewise be manifested in a single set of prices. Therefore, the Tribunal will make a cumulative assessment of the likely impact of the continuation or resumption of dumping and subsidizing of the subject goods on the domestic industry.

LIKELIHOOD OF INJURY ANALYSIS

43. An expiry review is forward-looking.³² It follows that evidence from the POR during which an order or a finding was being enforced is relevant insofar as it bears upon the prospective analysis of whether the expiry of the order or finding is likely to result in injury.³³

29. Nor did Pipe & Piling claim that it should be included in the domestic industry, prior to its withdrawal.

30. In this respect, the Tribunal sent and received replies to requests for information from Pipe & Piling and other major importer-distributors from the original inquiry, namely, Platinum Grover Intl. Inc. and Varsteel Ltd.

31. See, for example, *FISC* at paras. 72-73; *Silicon Metal* (2 November 2017), NQ-2017-001 (CITT) at para. 59; *Pup Joints* (7 April 2017), RR-2016-001 (CITT) [*Pup Joints*] at paras. 30-31; *Welded Large Diameter Carbon and Alloy Steel Line Pipe* (20 October 2016), NQ-2016-001 (CITT) at para. 84; *Carbon and Alloy Steel Line Pipe* (29 March 2016), NQ-2015-002 (CITT) [*Line Pipe I*] at paras. 84-85; *Aluminum Extrusions* (17 March 2014), RR-2013-003 (CITT) [*Aluminum Extrusions*] at paras. 56-57.

32. *Certain Dishwashers and Dryers* (procedural order dated 25 April 2005), RR-2004-005 (CITT) at para. 16.

33. *Copper Pipe Fittings* (17 February 2012), RR-2011-001 (CITT) at para. 56. In *Thermoelectric Containers* (9 December 2013), RR-2012-004 (CITT) [*Thermoelectric Containers*] at para. 14, the Tribunal stated as follows: “...the analytical context pursuant to which an expiry review must be adjudged often includes the assessment of retrospective evidence supportive of prospective conclusions. ... The requirement in an expiry review is that the Tribunal draw logical conclusions from the relevant information before it, and that information will often appropriately include the performance of the domestic and foreign industries during the POR, when anti-dumping and countervailing duties were in place”. See also *Aluminum Extrusions* at para. 21.

44. There is no presumption of injury in an expiry review; findings must be based on positive evidence, in compliance with domestic law and consistent with the requirements of the World Trade Organization.³⁴ In the context of an expiry review, positive evidence can include evidence based on past facts that tend to support forward-looking conclusions.³⁵

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

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

47. Subsection 37.2(2) of the *Special Import Measures Regulations*³⁶ lists factors that the Tribunal may consider in addressing the likelihood of injury in cases where the CBSA has determined that there is a likelihood of continued or resumed dumping and subsidizing. The factors that the Tribunal considers relevant in this expiry review are discussed in detail below.

Changes in Market Conditions

48. The following overview of the international and Canadian markets for piling pipe, including changes since the finding, gives important context for the Tribunal's assessment of the likely volumes and prices of the subject goods and their likely impact on the domestic industry if the finding were rescinded.³⁷

49. The most significant changes in market conditions since the finding are the following: the collapse of oil and gas prices in 2014 and 2015, which resulted in a downturn in domestic demand for piling pipe; and competition from low-priced non-subject imports, including Chinese API 5L line pipe imported for sale into the Canadian piling pipe market.

International Market Conditions

50. As the Tribunal has previously found in other recent cases, there is significant global steel overcapacity.³⁸ This is primarily due to the Chinese steel industry's production imperative and strong export orientation in the face of weak domestic demand.³⁹ According to the World Steel Association, China accounted for 49% of the 1.7 billion metric tonnes of steel produced globally in 2017.⁴⁰ The domestic

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

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

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

37. See paragraph 37.2(2)(j) of the *Regulations*.

38. See, for example, *Carbon Steel Welded Pipe* (27 December 2012), RR-2012-003 (CITT) at para. 59; *Oil Country Tubular Goods* (23 March 2015), RR-2014-003 (CITT) at para. 113; *Pup Joints* at para. 53.

39. Exhibit RR-2017-003-A-01 at paras. 43-52, Vol. 11; Exhibit RR-2017-003-A-01A, tabs 5, 10, Vol. 11; Exhibit RR-2017-003-A-03 at 10, Vol. 11A; Exhibit RR-2017-003-B-01 at para. 11, Vol. 11A; Exhibit RR-2017-003-B-03, tabs 9, 10, Vol. 11; Exhibit LE-2017-002-02.01, tabs 4, 5, Vol. 1; Exhibit LE-2017-002-02.02, attachment 2, Vol. 1.

40. Exhibit RR-2017-003-B-03, tab 9, Vol. 11.

producers submitted evidence indicating that this represents 60% to 70% of global steel overcapacity.⁴¹ Further increases in the Chinese industry's production capacity and output are expected in the near term, despite the Government of China's stated efforts to reduce overcapacity.⁴²

51. The global market problem stemming from excess Chinese steel could potentially be exacerbated by the United States' recent imposition, effective March 23, 2018, of a tariff surcharge of 25% on imports of "steel articles".⁴³ Atlas and DFI submitted that the U.S. measures will likely reduce sales of Chinese and other offshore steel to the large U.S. market and create a risk of diversion of such steel to Canada.⁴⁴

Domestic Market Conditions

52. In the original inquiry, the Tribunal found that the Canadian steel piling pipe market has the following features:⁴⁵

- It is largely driven by pile installation in the oil and gas industry, particularly for exploratory drilling activities.
- Steel piling pipe is generally purchased through requests for quotation, although it can also be purchased through competitive bidding or direct negotiation with established suppliers.
- The majority of domestic and imported sales are made on a "spot price" per hundredweight or per ton delivered basis. Some sales are on a fixed-term contract basis (typically a two-year term). Published price lists are uncommon in the industry.
- The domestic producers sell to customers either on a freight prepaid (delivered) basis or FOB the Canadian mill. Importers may sell on a delivered basis, FOB unloading dock in Canada or FOB their warehouse, depending on customer preferences.
- The selling price of steel piling pipe is largely dependent on the cost of hot-rolled coil (HRC), which is the main raw material used in the production of piling pipe.
- Price is a major factor in purchasing decisions. Distributors tend to be more price sensitive than end users, and non-price factors (service, reliability) may also play a prominent role in the purchasing decisions of end users.

53. There is little evidence that these conditions have changed.

54. There has been a change in the level of demand, notably in the oil and gas sector in Western Canada.⁴⁶ Oil prices collapsed in 2014 and 2015, sending non-residential construction value, crude oil

41. Exhibit RR-2017-003-B-01 at para. 30, Vol. 11A; Exhibit RR-2017-003-B-03, tab 10, Vol. 11.

42. Exhibit RR-2017-003-03A, Vol. 1A at 18; Exhibit RR-2017-003-12.19, Vol. 1.4B at 206-332.

43. On March 8, 2018, the President of the United States issued a Proclamation concurring with the U.S. Department of Commerce's findings of February 16, 2018, following a section 232 investigation under the U.S. *Trade Expansion Act of 1962* (19 U.S.C. §1862), in which the Department of Commerce determined that steel imports are a threat to national security. The Proclamation defines "steel articles" at the 6-digit Harmonized System code level. See Exhibit RR-2017-003-A-01A, tab 5, Vol. 11.

44. Exhibit RR-2017-003-A-01 at paras. 4, 9-11, Vol. 11; Exhibit RR-2017-003-B-01 at paras. 4, 35, Vol. 11A; Exhibit RR-2017-003-A-01A, tab 6, Vol. 11.

45. *Piling Pipe NQ* at paras. 83-87, 216, 246, 251.

46. Exhibit RR-2017-003-15.03, Vol. 3 at 34-35; Exhibit RR-2017-003-15.04, Vol. 3 at 103; Exhibit RR-2017-003-B-03 at para. 12, Vol. 11; Exhibit RR-2017-003-03A, Vol. 1A at 17.

production volume and industrial construction permits lower from 2015 to 2016. In the interim 2017 period, crude oil production and industrial construction permits markedly increased. At the same time, there was a further decrease in non-residential construction value.⁴⁷ Against this backdrop, the total apparent market size for piling pipe (in terms of volume) decreased by 31% from 2014 to 2015 (from 183,974 tonnes to 126,610 tonnes) and by a further 23% in 2016 (to 97,416 tonnes), before increasing by 26% in the first nine months of 2017 as compared to the 2016 interim period (from 74,877 to 94,183 tonnes).⁴⁸ Overall, domestic demand in 2017 was below pre-2014 levels.⁴⁹

55. According to the evidence filed by Atlas and DFI, demand is likely to slowly improve in the near to medium term, driven by an expected moderate recovery in the oil and gas sector in Western Canada.⁵⁰ Oil prices increased from 2016 to 2017, and are forecasted to hold relatively steady with a modest increase in 2018, based on expected OPEC production cuts and “limited increases in investment by oil and gas companies though this follows two years of marked declines”.⁵¹

56. On the supply side, there has been a significant change in the mix of imports sold into the domestic market, which now includes both piling pipe and API 5L line pipe sold in place of piling pipe.

57. Following the Tribunal’s finding at the end of 2012 in the *Piling Pipe NQ*, imports of the subject goods decreased to a negligible volume in 2014, and then ceased entirely.⁵² Total imports decreased by 66% from 2014 to 2016, and then increased by 56% in the 2017 interim period as compared to the 2016 interim period.⁵³ Throughout the POR imports maintained a consistent share of domestic market sales (approximately two thirds).⁵⁴

58. This stable import market share was initially driven by significant volumes of low-priced non-subject Chinese API 5L line pipe that were imported by Pipe & Piling in 2014 and 2015, for sale into the Canadian piling pipe market.⁵⁵ Those imports ceased in 2016, i.e. after the Tribunal’s injury finding in *Line Pipe I*;⁵⁶ however, inventories of non-subject Chinese line pipe continued to be sold into the domestic piling pipe market in 2016 and 2017 (albeit in decreasing volumes) at prices below those of domestically produced goods.⁵⁷

59. As sales of non-subject Chinese line pipe into the domestic piling market continue to decline, non-subject piling pipe imports have held a growing market share and surpassed the share of sales from domestic production in 2016 and the 2017 interim period.⁵⁸ This was largely driven by sales of non-subject piling

47. Exhibit RR-2017-003-05, Table 24, Vol. 1.1.

48. *Ibid.*, Tables 8, 9.

49. Exhibit RR-2017-003-15.03, Vol. 3 at 34-35; Exhibit RR-2017-003-15.04, Vol. 3 at 103, 117.

50. Exhibit RR-2017-003-A-01 at 10-13, Vol. 11; Exhibit RR-2017-003-A-01A, tabs 1, 2, Vol. 11; Exhibit RR-2017-003-A-07 at 3, Vol. 11A; Exhibit RR-2017-003-15.03, Vol. 3 at 35, 39, 45, 61, 84, 87-89; Exhibit RR-2017-003-15.04, Vol. 3 at 103, 106-118.

51. Exhibit RR-2017-003-25.01B, Vol. 7.1A at 221.

52. Exhibit RR-2017-003-05, Table 5, Vol. 1.1; Exhibit RR-2017-003-06 (protected), Table 4, Vol. 2.1.

53. Exhibit RR-2017-003-05, Table 5, Vol. 1.1; Exhibit RR-2017-003-06 (protected), Table 4, Vol. 2.1.

54. Exhibit RR-2017-003-06 (protected), Table 10, Vol. 2.1.

55. *Line Pipe I* at paras. 89-90, 113, 239; Exhibit RR-2017-003-23.02, at 55-56, vol. 7; Exhibit RR-2017-003-06 (protected), Table 4, Vol. 2.1; Exhibit RR-2017-003-19.11 (protected), Vol. 6 at 38.

56. Exhibit RR-2017-003-05, Table 5, Vol. 1.1; Exhibit RR-2017-003-06 (protected), Table 4, Vol. 2.1.

57. Exhibit RR-2017-003-05, Table 9, Vol. 1.1; Exhibit RR-2017-003-06 (protected), Tables 8, 13, Vol. 2.1.

58. Exhibit RR-2017-003-06 (protected), Table 10, Vol. 2.1.

pipe from countries other than the U.S. The Tribunal notes an 84% increase of those imports in the interim 2017 period as compared to the interim 2016 period.⁵⁹

60. Another key change in supply-side factors relates to rising raw material costs. While HRC prices initially fell sharply from 2014 to 2015, they have been increasing since 2016.⁶⁰ CRU data showed that both China and USA (Midwest) prices of HRC fell by 30% from 2014 to 2015, followed by increases in 2016 and 2017.⁶¹ In the first quarter of 2018, both prices increased to levels not reached since 2011 and 2012.⁶²

Likely Performance of the Domestic Industry if the Finding Is Continued

61. The Tribunal will now examine the likely performance of the domestic industry were the finding continued, taking into account that industry's recent performance while anti-dumping and countervailing duties were in place.⁶³

62. For the purposes of this analysis, the Tribunal will consider whether there are any relevant factors other than the dumping and subsidizing of the subject goods affecting or likely to affect the domestic industry's performance in the near to medium term.⁶⁴

63. In the context of this particular case, an important "other factor" that affected the state of the domestic industry were Pipe & Piling's imports, in significant volumes, of non-subject dumped and subsidized Chinese API 5L line pipe for sale into the domestic piling pipe market. Accordingly, the likely performance analysis will take into account such non-subject imports and sales thereof in the domestic piling pipe market as they form part of the commercial reality facing the domestic industry, both during the POR and currently.

64. The average unit selling prices (\$/tonne) of both non-subject Chinese line pipe and non-subject piling pipe were well below the average unit selling prices of the domestically produced like goods in 2015 and 2016.⁶⁵ They remained lower during the 2017 interim period, even though the average unit selling prices of non-subject goods increased by 11% from the 2016 interim period compared to a 4% increase for like goods over the same period.⁶⁶

65. As discussed above, following the finding in *Line Pipe I*, non-subject piling pipe imports played a more dominant role in the low-price competition facing the domestic producers, particularly in the latter part of the POR (i.e. 2016 and 2017). Mr. Rabideau of Atlas indicated that "[a]s in the 2012 inquiry when Atlas had to match the delivered prices of Chinese pipe at importers' facilities in . . . western Canada, we now have to match the prices of imports from these new [Asian] sources".⁶⁷ Non-subject imports of piling pipe also captured the market share lost by declining sales of non-subject Chinese line pipe in 2016 and the 2017 interim period.⁶⁸

59. Exhibit RR-2017-003-05, Table 5, Vol. 1.1.

60. Exhibit RR-2017-003-A-04 (protected) at 12, Vol. 12; Exhibit RR-2017-003-06A (protected), Table 1, Vol. 2.1.

61. Exhibit RR-2017-003-06A (protected), Schedule 13, Vol. 2.1.

62. *Ibid.*, Schedule 14.

63. Paragraph 37.2(2)(c) of the *Regulations*.

64. See paragraph 37.2(2)(k) of the *Regulations*.

65. Exhibit RR-2017-003-06 (protected), Table 13, Vol. 2.1.

66. Exhibit RR-2017-003-05, Table 14, Vol. 1.1.

67. Exhibit RR-2017-003-A-03 at 7, Vol. 11A.

68. Exhibit RR-2017-003-06 (protected), Table 10, Vol. 2.1.

66. Moreover, Atlas generally sells to the same purchaser and/or end-user market segment as do large importer-distributors in Canada (such as Pipe & Piling). Therefore, it competes with the landed price of imports at those importer-distributors' facilities.⁶⁹ Accordingly, the Tribunal not only considered the domestic market sales prices of non-subject goods, but also examined import unit values in comparison with the domestic market sales prices of domestically produced goods.⁷⁰ This exercise showed that import unit values of non-subject goods decreased sharply from 2014 to 2015, but then increased from 2015 to 2016, and again in the interim 2017 period as compared to the interim 2016 period. In each of those periods, however, they were much lower than the average selling prices of domestically produced goods.⁷¹

67. Confronted by such competition from low-priced non-subject goods, in combination with weak domestic market demand, the domestic industry's consolidated financial performance was generally poor for most of the POR despite the absence of subject goods in the domestic market:

- Domestic production for domestic sales, and net sales volume and value declined from 2014 to 2016, and despite moderate increases in 2017, all three indicators remained well below 2015 levels.⁷² For example, the domestic industry's sales from domestic production decreased by 15% from 2014 to 2015, and by a further 39% in 2016, before increasing by 25% in the 2017 interim period.⁷³
- Market share of sales from domestic production remained flat overall from 2014 to 2016, and declined modestly in the interim 2017 period despite the fact that the size of the total domestic market increased moderately in the interim 2017 period as compared to the interim 2016 period.⁷⁴
- The domestic industry's cost of goods sold (COGS) (\$/tonne) decreased from 2014 to 2016, but then increased in 2017, driven primarily by sharp increases in its costs of direct materials used in production (\$/tonne) in 2016 and 2017.⁷⁵
- The domestic industry made investments that increased total practical plant capacity moderately from 2014 to 2016. Capacity utilization rates for piling pipe production (including for domestic sales and export sales) decreased from 2014 to 2016, with a minimal increase in 2017. The production of other goods on the same equipment remained relatively stable from 2014 to 2016, and fell in 2017. As a result, total production capacity utilization rates declined from 2014 to 2017.⁷⁶

69. Exhibit RR-2017-003-A-03 at 6, Vol. 11A; Exhibit RR-2017-003-A-04 (protected) at 9, Vol. 12.

70. This approach also permitted the Tribunal to ascertain differences in the pricing levels of non-subject imports from different sources, given that the average unit selling prices of U.S. imports and "other countries" appeared to be the same as the non-subject Chinese line pipe prices in the domestic market in most periods of the POR, due to the estimation methodology used in the Investigation Report. See Exhibit RR-2017-003-06 (protected), Tables 11 and 13, Vol. 2.1.

71. Exhibit RR-2017-003-06 (protected), Tables 11 and 13, Vol. 2.1.

72. Exhibit RR-2017-003-05A, Table 5, Vol. 1.1A; Exhibit RR-2017-003-06A (protected), Tables 1, 4, Vol. 2.1.

73. Exhibit RR-2017-003-05, Table 9, Vol. 1.1.

74. Exhibit RR-2017-003-06 (protected), Table 8, 10, Vol. 2.1.

75. Exhibit RR-2017-003-06A (protected), Table 1, Vol. 2.1.

76. Exhibit RR-2017-003-05A, Table 5, Vol. 1.1A; Exhibit RR-2017-003-06A (protected), Table 4, Vol. 2.1.

- The domestic industry's consolidated profitability indicators (i.e. gross margin and net income) improved over the POR, particularly in 2017. During that year, the domestic industry's average unit selling prices of like goods in the domestic market increased to their highest level of the POR.⁷⁷
- Direct and indirect employment numbers, wages and hours worked all decreased significantly from 2014 to 2017, with the most substantial decreases in all of these indicators occurring in 2017.⁷⁸

68. The domestic industry's prospects will continue to improve modestly if the finding is continued. Demand in Western Canada is improving and the "inventory hangover" of Chinese line pipe in the domestic piling pipe market has been decreasing since the Tribunal's finding in *Line Pipe I*.

69. The Tribunal finds that, as the combination of the *Piling Pipe NQ* and *Line Pipe I* findings began to have their intended effects, there were signs of returning price stability in the domestic market in 2017. As mentioned, the domestic sales prices of non-subject piling pipe imports were consistently lower than those of domestically produced like goods throughout the POR, but the price gap between imports and domestically produced like goods decreased significantly in the 2017 interim period as compared to the 2016 interim period. Furthermore, the Tribunal finds that the increase in the selling prices of both imports and like goods in the 2017 interim period is reflective of the impact that increasing domestic and international HRC prices have on both foreign and domestic production costs.

70. The likelihood of future increases in the cost of HRC is difficult to predict. The most recent CRU data show that both the Chinese and USA (Midwest) prices of HRC have been increasing since 2016, with a significant uptick in the first quarter of 2018.⁷⁹ Although the recent increase, in 2017, in average selling prices of the like goods was sufficient to cover the increase in the domestic industry's consolidated COGS (\$/tonne), selling prices did not keep pace with increasing direct material costs.⁸⁰ If HRC costs continue to rise in the near term, it is likely that the domestic industry will need to further increase its domestic selling prices of the like goods or else face a cost-price squeeze.

71. Despite the recent increase in import volumes of non-subject piling pipe from countries other than the U.S., the Tribunal considers it likely that the domestic industry will be able to cover its rising HRC costs through further selling price increases, if the trend towards pricing stability at higher price levels in the domestic market were to continue. Given the expected continuation of modest growth in domestic market demand, the domestic industry would then be well-positioned to grow its domestic sales and market share or, at the very least, maintain its most recent levels of domestic sales and market share. In turn, there would likely be related improvements in its domestic production, capacity utilization rates, employment and profitability indicators.

72. Furthermore, the very recent imposition of the U.S. steel tariff surcharge could adversely affect the domestic industry, possibly resulting in the diversion of volume from offshore sources other than China. However, it is premature to speculate on the likely extent of such impact.

73. Accordingly, the Tribunal is of the view that, if the finding is continued, the domestic industry's overall performance will likely improve modestly as a result of improving demand and greater pricing

77. Exhibit RR-2017-003-05A, Table 5, Vol. 1.1A; Exhibit RR-2017-003-06A (protected), Table 1, Vol. 2.1; Exhibit RR-2017-003-06 (protected), Table 13, Vol. 2.1.

78. Exhibit RR-2017-003-05A, Table 5, Vol. 1.1A; Exhibit RR-2017-003-06A (protected), Table 4, Vol. 2.1.

79. Exhibit RR-2017-003-06A (protected), Schedule 14, Vol. 2.1.

80. *Ibid.*, Table 1.

stability in the domestic market, subject to the as-yet-unknown consequences of the U.S. steel tariff surcharges.

Likely Performance of the Domestic Industry if the Finding Is Rescinded

74. The Tribunal will now consider the likely performance of the domestic industry if the finding is rescinded with a view to assessing whether such performance would be materially worse than the likely performance of the domestic industry if the finding is continued.

Likely Import Volume of Dumped and Subsidized Goods if the Finding Is Rescinded

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

76. The Tribunal's assessment of the likely volumes of dumped and subsidized imports encompasses the likely performance of the foreign industry, the potential for the foreign producers to produce goods in facilities that are currently used to produce other goods, evidence of the imposition of anti-dumping and/or countervailing measures in other jurisdictions, and whether measures adopted by other jurisdictions are likely to cause a diversion of the subject goods to Canada.⁸¹

77. As discussed above, there is evidence on the record of the Chinese steel industry's massive capacity. Although there was limited evidence relating to the Chinese industry for piling pipe in particular, the Tribunal is satisfied that, as in the original inquiry,⁸² there are numerous steel piling pipe producers in China with underutilized capacity to produce subject goods.

78. Moreover, the Chinese industry has enormous capacity to produce subject goods and other similar steel pipe and tube products, in large volumes both in absolute terms and relative to the Canadian piling pipe market. For example, Mr. Rabideau cited a *Steel Statistical Yearbook* report indicating that China produced 69,696 million tonnes of welded steel tubes in 2015 (the last year of available data).⁸³ This volume represents approximately 71% of global welded steel tube production. By way of comparison, the total size of the domestic piling pipe market was 126,610 tonnes in 2015, 97,416 tonnes in 2016 and 94,183 tonnes in the first nine months of 2017.⁸⁴

79. In addition, other evidence demonstrated that there are still numerous large Chinese steel pipe and tube producers with significant ability to export to Canada. While Global Affairs Canada (GAC) import permit data showed a decline in Chinese piling pipe volumes over the POR following the finding, there was also a dramatic increase in imports of other Chinese pipe and tubular goods from 2016 to 2017, and further increases in 2018.⁸⁵ In this regard, Atlas also filed evidence regarding annual production and capacity

81. Paragraphs 37.2(2) (a), (d), (f), (h) and (i) of the *Regulations*.

82. *Piling Pipe NQ* at para. 361.

83. Exhibit RR-2017-003-A-01A at tab 7, Vol. 11; Exhibit RR-2017-003-A-01 at 18, Vol. 11; Exhibit RR-2017-003-A-03 at 10, Vol. 11A.

84. Exhibit RR-2017-003-05, Table 8, Vol. 1.1.

85. Exhibit RR-2017-003-A-01 at 25-26, 33, Vol. 11; Exhibit RR-2017-003-A-01A, tab 3, Vol. 11.

figures for a few “of the dozens of larger-scale Chinese pipe and tube producers” obtained from company websites and the web portal Alibaba.com.⁸⁶

80. This is consistent with the CBSA’s conclusion, in its related investigations, that there is a well-documented pattern of Chinese exports of dumped and subsidized steel pipe and tube products based on the numerous measures in force in Canada and other jurisdictions. As of January 25, 2018, the CBSA was enforcing seven trade measures for various steel pipe and tube products originating in or exported from China. Such export activity is facilitated by the ongoing presence of well-established distribution networks used by Chinese exporters in the Canadian market, as further indicated by Pipe & Piling’s aggressive importing strategy.

81. In addition, the CBSA reported that, since 1999, there have been at least 27 other measures on steel pipe products from China imposed in 12 jurisdictions other than Canada.⁸⁷ The recent imposition of the U.S. steel tariff, in combination with pre-existing U.S. anti-dumping and countervailing measures on certain Chinese piling pipe,⁸⁸ raises the potential for diversion of subject goods from China to Canada that would otherwise be destined for the U.S.

82. The increase in measures being imposed in other jurisdictions, combined with the modest recovery underway in the Canadian energy sector, will likely make Canada a more attractive export destination for the subject goods if the finding is rescinded.

83. Based on the foregoing, the Tribunal finds that, if the finding is rescinded, there will likely be a significant increase in volume of imports of the subject goods.

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

84. The Tribunal must next consider whether the dumping and subsidizing of goods, in the absence of the finding, is likely to significantly undercut the prices of like goods, depress those prices, or suppress them by preventing increases in those prices that would likely have otherwise occurred.⁸⁹ In this regard, the Tribunal distinguishes the price effects of the dumped or subsidized goods from any price effects that would likely result from other factors affecting prices.

85. As indicated above, the average unit selling prices (\$/tonne) of non-subject goods, including Chinese line pipe sold into the piling pipe market, were well below the prices of domestically produced like goods from 2014 to 2015.⁹⁰ The prices of non-subject goods remained lower than those of the like goods in the 2017 interim period, but to a lesser extent than the rest of the POR, as some semblance of pricing stability was beginning to return to the market in 2017.⁹¹

86. Atlas and DFI submitted that the re-entry of dumped and subsidized subject goods will quickly establish a new low-price floor in the Canadian market. In this regard, they argued that the selling prices of

86. Exhibit RR-2017-003-A-01 at 21-22, Vol. 11; Exhibit RR-2017-003-A-01A, tabs 8, 9, Vol. 11.

87. Exhibit RR-2017-003-03A, Vol. 1A at 15-16; The Investigation Report lists five of the most recent reviews continuing trade actions against Chinese carbon steel pipe and tube products in Canada, the U.S., the European Union and Australia (Exhibit RR-2017-003-05, Table 23, Vol. 1.1). See also Exhibit RR-2017-003-A-01 at para. 130, Vol. 11; Exhibit RR-2017-003-A-01A at tab 12, Vol. 11; Exhibit RR-2017-003-B-01 at 6, Vol. 11A.

88. Exhibit RR-2017-003-05, Table 23, Vol. 1.1; Exhibit RR-2017-003-A-01 at paras. 57, 76, Vol. 11.

89. Paragraph 37.2(2)(b) of the *Regulations*.

90. Exhibit RR-2017-003-06 (protected), Table 13, Vol. 2.1.

91. *Ibid.*

non-subject imports are relevant, because without a continuation of the finding, imports of the subject goods will likely be priced at or below the non-subject goods price level in order to regain market share. This price convergence factor between imports would, in turn, likely exert further downward pressure on the selling prices of domestically produced like goods to a level that would be unviable for both Atlas and DFI.⁹²

87. To establish the likelihood of such price convergence, Atlas and DFI referred to GAC import permit data showing the 2018 export values of carbon steel pipe over 4.5" outside diameter from several countries. They highlighted the export values for several non-subject Southeast Asian countries (e.g. India, Indonesia, Pakistan, Taiwan, Vietnam and the Philippines) in the range of \$800 to \$1,100/tonne, ex-mill.⁹³ Atlas argued that these export values, when transposed into delivered import prices, are indicative of the pricing levels that can be expected from the subject goods if the finding is rescinded. In addition, Atlas estimated that the current delivery costs for piling pipe from China and other Southeast Asian ports to delivery points in Alberta (via the ports of Vancouver and Surrey in British Columbia) are in the range of \$140-\$150/tonne.⁹⁴ Accordingly, based on the above estimated delivery costs and the 2018 GAC permit data on export values for the above-mentioned Southeast Asian countries, the estimated delivered import prices would be in the range of \$950 to \$1,250/tonne.

88. The export values from the GAC import permit data are, on their own, of limited probative value because they include a broad mix of products that is not limited to piling pipe covered by the product definition in this review.⁹⁵ Furthermore, those data include a wide range of export values for different countries, from \$564/tonne for Malaysia to \$4,065/tonne for Mexico, with China at the upper end of the price range at \$3,185/tonne. Again, the spread in pricing likely reflects, at least in part, a broad product mix within these data.

89. Nevertheless, there is other evidence that indicates likely similar pricing of the subject goods if the finding is rescinded. In particular, Atlas and DFI provided a few examples of recent solicitations they received from Chinese producers for non-subject goods for less than \$1,100/tonne. For example, Mr. Rabideau reported two offers received in October 2017 for Chinese A53 and A106 standard pipe priced at \$1,035/tonne and \$950/tonne, respectively, which he stated is demonstrative of the likely net delivered prices for the subject goods if the finding expires.⁹⁶ Mr. Rabideau also referred to other confidential market intelligence in relation to a recent shipment of piling pipe from a non-subject country into Canada within a similar price range.⁹⁷

90. Atlas further submitted that despite recent increases in HRC prices, Chinese steel producers and trading companies are currently offering, via the web portal Alibaba.com, to export piling pipe to Canada at

92. Exhibit RR-2017-003-A-01 at para. 116, Vol. 11; Exhibit RR-2017-003-A-04 (protected) at 13, Vol. 12; Exhibit RR-2017-003-B-01 at 12, Vol. 11A; *Ibid.* at 15.

93. Exhibit RR-2017-003-A-01 at paras. 88-89, Vol. 11; Exhibit RR-2017-003-A-01A, tab 3, Vol. 11; Exhibit RR-2017-003-B-03 at 11, Vol. 11.

94. Exhibit RR-2017-003-A-01 at paras. 96-97, Vol. 11; Exhibit RR-2017-003-A-01A, tab 11, Vol. 11.

95. Imports of piling pipe are typically classified under the following tariff codes: 7306.30.00.10, 7306.30.00.20 and 7306.30.00.30. According to Atlas, the most relevant of these tariff codes in relation to the subject goods is 7306.30.00.30, which covers ERW pipes over 4.5" outside diameter (Exhibit RR-2017-003-A-01 at para. 87, Vol. 11).

96. Exhibit RR-2017-003-A-04 (protected) at 10-11, Vol. 12; See also Exhibit RR-2017-003-A-01 at para. 98, Vol. 11; Exhibit RR-2017-003-B-04 (protected), Vol. 12 at 11, 22.

97. Exhibit RR-2017-003-A-04 (protected) at 8, 9, Vol. 12.

ex-mill prices that are below their costs of production.⁹⁸ The Tribunal notes the recent CRU data showing increases in Chinese HRC prices. During the first quarter of 2018, Chinese HRC prices reached levels not attained since 2011 and 2012.⁹⁹ In the Tribunal's view, the prices offered by Chinese trading companies are an indication that dumped and subsidized subject goods will likely be able to re-enter the Canadian market at a low pricing level that is comparable to the original inquiry, notwithstanding the recent spike in Chinese HRC prices. This further corroborates the likely pricing range set out above.

91. Given the price-sensitive commodity nature of piling pipe, if the finding is rescinded, the selling prices of the subject goods will likely converge downward to a level at or below the recent domestic selling prices of non-subject goods in order to regain market share, disrupting the recent trend towards pricing stability in the domestic market.

92. As a result, the Tribunal finds that, if the finding is rescinded, the subject goods will likely result in significant adverse price effects on the domestic industry.

Likely Impact on the Domestic Industry if the Finding Is Rescinded

93. The Tribunal must assess the likely impact of the above volumes and prices on the domestic industry if the finding is rescinded,¹⁰⁰ taking into consideration the likely performance of the domestic industry were the finding continued, as discussed above. In this analysis, the Tribunal will distinguish the likely impact of the dumped or subsidized goods from the likely impact of other factors affecting or likely to affect the domestic industry, as previously discussed.¹⁰¹

94. Atlas and DFI submitted that a resumption of imports of the subject goods at dumped and subsidized prices will result in a direct and materially negative impact on the profitability of the domestic industry. Both companies claimed that this would ultimately cause them to cease their production of like goods in Canada. In such circumstances, DFI submitted that a return to profitability for its piling pipe production will be "impossible" and that it will be forced to close its pipe production facility, reduce employment and refocus its business towards installation projects.

95. According to Atlas, any reduction in domestic selling prices of like goods that is required to compete with imports of the subject goods will result in reduced profit margins and potential net losses. This will be unsustainable if domestic selling prices are forced down below the domestic industry's production costs, which is a serious concern given the substantial increases in HRC costs to the domestic industry in 2017 and early 2018. Atlas further submitted that the resulting negative impact on domestic production and sales will lead to related reductions in employment, capacity utilization and planned future investments.

96. As discussed above, the market downturn in Western Canada and competition from low-priced non-subject goods contributed significantly to the domestic industry's poor performance during the POR. With recent signs of recovery in domestic market demand and pricing stability, as well as the declining sales from the "inventory hangover" of Chinese line pipe, the domestic industry is well-positioned to continue slowly improving its performance in the near term.

98. Exhibit RR-2017-003-A-01 at paras. 92-95, Vol. 11; Exhibit RR-2017-003-A-01A, tabs 8, 9, 13, Vol. 11; Exhibit RR-2017-003-15.03, Vol. 3 at 35, 74-82; Exhibit LE-2017-002-02.01, Vol. 1 at 103.

99. Exhibit RR-2017-003-06 (protected), Schedules 13 and 14, Vol. 2.1.

100. See paragraphs 37.2(2)(e) and (g) of the *Regulations*.

101. See paragraph 37.2(2)(k) of the *Regulations*.

97. Although the domestic producers are likely to face continued competition from imports even if the finding were continued, the Tribunal finds that the situation will be materially worse if the finding is rescinded. In particular, the return of significant volumes of dumped and subsidized subject goods would all but nullify the effects of the recent trend towards pricing stability in the domestic market by exerting downward pressure on prices of domestically produced like goods.

98. The significant increase in the import volumes of the subject goods and the adverse price effects on domestic like goods will likely make the domestic industry materially worse-off compared to if the finding were continued. Such impact would likely be in the form of reduced net income if sales of like goods are made at depressed or suppressed prices in order to maintain sales and ensure throughput and market share. However, the ability of the domestic producers to withstand any further cost-price squeeze on their profit margins, especially in a rising cost environment, will be limited. Alternatively, if they seek to maintain prices, then the negative impact will likely take the form of lost sales and reductions in revenue, production, capacity utilization and market share. Either way, such losses would likely have a negative impact on the domestic industry's profitability,¹⁰² productivity, employment, cash flow and ability to make necessary investments. As indicated by both Atlas and DFI, such injurious effects could even lead to a cessation of domestic production of like goods.

99. On the basis of the foregoing analysis, the Tribunal finds that rescission of the finding would likely cause material injury to the domestic industry.

DETERMINATION

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

Peter Burn
Peter Burn
Presiding Member

Jean Bédard
Jean Bédard, Q.C.
Member

Serge Fréchette
Serge Fréchette
Member

102. The underutilization of production capacity is of particular concern in capital-intensive industries, such as the steel industry, and contributes to poor financial performance by increasing the cost of production per metric tonne. See, for example, *Hot-rolled Steel Sheet and Strip* (20 May 2016), RR-2015-002 (CITT) at para. 110.