



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

FINDING AND REASONS

Inquiry No. NQ-2018-002

Cold-rolled Steel

*Finding issued
Friday, December 21, 2018*

*Reasons issued
Monday, January 7, 2019*

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IN THE MATTER OF an inquiry, pursuant to section 42 of the *Special Import Measures Act*, respecting:

COLD-ROLLED STEEL

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 and subsidizing of cold-reduced flat-rolled sheet products of carbon steel (alloy and non-alloy), in coils or cut lengths, in thicknesses up to 0.142 inches (3.61mm) and widths up to 73 inches (1854mm) inclusive, originating in or exported from the People's Republic of China, the Republic of Korea, and the Socialist Republic of Vietnam, and excluding: a) organic coated (including pre-paint and laminate) and metallic coated steel; b) steel products for use in the manufacture of passenger automobiles, buses, trucks, ambulances or hearses or chassis therefor, or parts thereof, or accessories or parts thereof; c) steel products for use in the manufacture of aeronautic products; d) perforated steel; e) stainless steel; f) silicon-electrical steel; and g) tool steel, have caused injury or are threatening to cause injury to the domestic industry.

Further to the Canadian International Trade Tribunal's inquiry, and following the issuance by the President of the Canada Border Services Agency of a final determination dated October 31, 2018, that the above-mentioned goods have been dumped and subsidized, the Canadian International Trade Tribunal hereby finds, pursuant to subsection 43(1) of the *Special Import Measures Act*, that the dumping and subsidizing of the above-mentioned goods originating in or exported from the People's Republic of China, the Republic of Korea and the Socialist Republic of Vietnam have caused injury to the domestic industry.

Jean Bédard

Jean Bédard

Presiding Member

Randolph W. Heggart

Randolph W. Heggart

Member

Caterina Ardito-Toffolo

Caterina Ardito-Toffolo
Member

The statement of reasons will be issued within 15 days.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	November 19, 20 and 21, 2018
Tribunal Panel:	Jean Bédard, Presiding Member Randolph W. Heggart, Member Caterina Ardito-Toffolo, Member
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Essar Steel Algoma Inc.
Stelco Inc.

Importers/Exporters/Others

POSCO

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STATEMENT OF REASONS

INTRODUCTION

[1] The mandate of the Canadian International Trade Tribunal in this inquiry¹ is to determine whether the dumping and subsidizing of cold-reduced flat-rolled sheet products of carbon steel (CRS) originating in or exported from the People's Republic of China (China), the Republic of Korea (Korea) and the Socialist Republic of Vietnam (Vietnam) (individually, in groupings or collectively referred to as the subject goods) have caused injury or are threatening to cause injury to the domestic industry.

[2] The Tribunal has determined, for the reasons that follow, that the dumping and subsidizing of the subject goods have caused injury to the domestic industry.

BACKGROUND

[3] This inquiry stems from a complaint filed with the Canada Border Services Agency (CBSA) on April 5, 2018, by ArcelorMittal Dofasco G.P. (AMD) and the subsequent decision by the CBSA on May 25, 2018, to initiate investigations into the alleged injurious dumping and subsidizing.

[4] The CBSA's investigations triggered the initiation of a preliminary injury inquiry by the Tribunal on May 28, 2018. The Tribunal issued its preliminary determination on July 24, 2018, that the evidence disclosed a reasonable indication that the dumping and subsidizing of the subject goods had caused or were threatening to cause injury to the domestic industry.

[5] On August 23, 2018, the CBSA made a preliminary determination of dumping and subsidizing, resulting in the imposition of provisional anti-dumping and countervailing duties on the subject goods. On August 24, 2018, the Tribunal commenced this inquiry.²

[6] The Tribunal collected information from domestic producers, importers, purchasers and foreign producers of CRS. The Tribunal's period of inquiry (POI) was from January 1, 2015, to June 30, 2018, and included two interim periods: January 1, 2017, to June 30, 2017 (interim 2017), and January 1, 2018, to June 30, 2018 (interim 2018).

[7] The Tribunal received submissions from AMD and two other domestic producers of CRS—Essar Steel Algoma Inc. (ESA) and Stelco Inc. (Stelco)—arguing that the subject goods have caused injury or are threatening to cause injury to the domestic industry.

[8] The Tribunal received submissions from POSCO, a Korean producer of CRS, opposing a finding of injury or threat of injury in respect of the subject goods originating in or exported from Korea only.

[9] The Tribunal held a hearing in Ottawa, Ontario, on November 19, 20 and 21, 2018. It included public and *in camera* sessions. The Tribunal heard testimony from witnesses of the

1. The inquiry is conducted pursuant to section 42 of the *Special Import Measures Act*, R.S.C., 1985, c. S-15 [SIMA].

2. C.Gaz.2018.I.3127.

supporting parties and witnesses from three purchasers of CRS: Taylor Steel Inc. (Taylor Steel), Nova Steel Inc. (Nova Steel) and Samuel, Son & Co., Limited (Samuel).³

RESULTS OF THE CBSA'S INVESTIGATIONS

[10] The CBSA's period of investigation (the CBSA's POI) for both its dumping and subsidizing investigations covered April 1, 2017, to March 31, 2018. On October 31, 2018, the CBSA made final determinations of dumping and subsidizing, as follows:⁴

Country of Origin or Export	Margin of Dumping Expressed as a Percentage of Export Price	Amount of Subsidy Expressed as a Percentage of Export Price
China All Exporters	91.9%	11.6%
Korea All Exporters	53.0%	11.3%
Vietnam All Exporters	99.2%	6.5%

PRODUCT

Product definition

[11] The subject goods are defined as follows:

Cold-reduced flat-rolled sheet products of carbon steel (alloy and non-alloy), in coils or cut lengths, in thicknesses up to 0.142 inches (3.61mm) and widths up to 73 inches (1854mm) inclusive, originating in or exported from the People's Republic of China, the Republic of Korea, and the Socialist Republic of Vietnam, and excluding:

- a) organic coated (including pre-paint and laminate) and metallic coated steel;
- b) steel products for use in the manufacture of passenger automobiles, buses, trucks, ambulances or hearses or chassis therefor, or parts thereof, or accessories or parts thereof;
- c) steel products for use in the manufacture of aeronautic products;
- d) perforated steel;
- e) stainless steel;
- f) silicon-electrical steel; and

3. The witness for Taylor Steel was presented by AMD. The witnesses for Samuel and Nova Steel were summoned by subpoena to appear as Tribunal witnesses at the hearing on November 20, 2018.

4. Exhibit NQ-2018-002-04, Vol. 1 at 13-14.

g) tool steel.

Product information

[12] The CBSA provided the following product information:⁵

[29] For greater certainty, where the nominal and actual measurements vary, a product is considered to be subject goods if either the actual or nominal measurement (being plus or minus allowable tolerances in the applicable standards), meets the definition set forth above.

[30] The product definition covers both annealed and “full-hard” (unannealed) CRS as well as rectangular and non-rectangular cross-section products.

[31] The maximum widths and thicknesses that apply to non-rectangular CRS are the same as those that apply to rectangular CRS, i.e., thicknesses up to 0.142 inches (3.61 mm) and widths up to 73 inches (1854 mm) inclusive.

[32] The product definition includes carbon steel, whether alloyed or non-alloyed. Alloying elements may include boron, titanium, manganese, silicon, copper, aluminum chromium, cobalt, lead, nickel, tungsten, molybdenum, niobium, vanadium, and zirconium.

[33] The product definition includes cold-rolled steels generally described as interstitial free (IF) steels, high-strength-low-alloy (HSLA) steels, motor lamination steels and advanced high-strength steels (AHSS). IF steel is a common term for a low carbon steel with low levels of elements like titanium or niobium. HSLA steels contain low levels of elements like copper, titanium, chromium, niobium, vanadium and/or molybdenum. Motor lamination steels contain low levels of elements like silicon and aluminium, but are commercially and metallurgically distinct from silicon-electrical steel. AHSS is a term used to describe steel with high tensile strength.

[34] CRS includes “black plate”, which is an industry term used to describe light gauge, low carbon, cold-reduced steel intended for use in the production of tin mill products or for use in its untinned state. It is supplied either dry or oiled. CRS for use in the production of tin mill products is included in the product definition (as it is black plate), but the finished product, tin plate, is excluded from the product definition.

[35] CRS is manufactured to meet certain Canadian Standards Association (CSA) and/or ASTM specifications, or equivalent specifications. ASTM specifications for cold-rolled steel meeting the product definition include, but are not limited to A568/A568A, A606/A606M, A424, A1008/A1008M, A726, A625/A625M, and A650/A650M. CRS that does not meet a specification is generally referred to as “non-prime” or “seconds”. Both prime and non-prime CRS for non-automotive uses are included in the product definition.

[36] The product definition excludes CRS with organic and metallic coatings. Coating methods include spraying, laminating, plating and hot-dip treatments.

5. Exhibit NQ-2018-002-04A, Vol. 1 at 7-9.

[37] The product definition excludes cold-rolled steel for use in automobiles and automobile parts, hereafter referred to as “automotive”. Automotive producers include Original Equipment Manufacturers (OEMs) and part producers.

[38] The product definition excludes perforated cold-rolled steel. Perforated steel is steel sheet that has a pattern of punched or stamped holes throughout the length and width of the steel sheet.

[39] The product definition excludes stainless cold-rolled steel. The *Customs Tariff* currently defines stainless steel as steel containing no more than 1.2% carbon and 10.5% or more of chromium by weight. This is the same definition that will apply to the subject goods definition. Stainless steel may also include other alloying elements. Stainless steel is commercially and metallurgically distinct from carbon steel, including alloyed carbon steel. Alloyed carbon steel (or alloy carbon steel) is included in the product definition.

[40] The product definition excludes silicon-electrical steel. Silicon-electrical steels include both grain-oriented electrical steel (commonly known as GOES) and non-oriented electrical steel (NOES). At present, the notes to Chapter 72 of Canada’s *Customs Tariff* schedule defines silicon-electrical steel as:

Alloy steels containing by weight at least 0.6% but not more than 6% of silicon and not more than 0.08% of carbon. They may also contain by weight not more than 1% of aluminum but no other element in a proportion that would give the steel the characteristics of another alloy steel.

[41] The above definition of silicon-electrical steel will apply to the subject goods definition.

[42] The product definition excludes tool steel. Tool steel is a variety of steel with distinct characteristics, such as hardness, that make it suitable for hand tools and dies. Tool steel will meet CSA or ATSM [*sic*] standards, such as ASTM 681 or ASTM 686. The *Custom Tariff* has specific tariff classification numbers for cold-rolled tool steel, such as 7225.50.00.11 and 7225.50.00.21.

[43] More specifically, tool steel is defined as steel which contains the following combinations of elements in the quantity by weight respectively indicated: (i) more than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

[44] CRS falling within the product definition is commonly used in the production and manufacture of other goods, including household appliances, drums, tubing, furniture and strapping.

LEGAL FRAMEWORK

[13] 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 retardation⁶ or are threatening to cause injury, with “injury” being defined, in subsection 2(1), as “. . . material injury to a domestic industry”. In this regard, “domestic industry” is defined in subsection 2(1) by reference to the domestic production of “like goods”.

[14] Accordingly, 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 purposes of its injury analysis.

[15] Given that the CBSA has determined that the subject goods have been dumped and subsidized, 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 inquiry.

[16] In addition, since the subject goods originate in or are exported from more than one country, the Tribunal must determine whether the conditions are met for a cumulative assessment of the effect on the domestic industry of the dumping and subsidizing of the subject goods from all the subject countries (i.e. whether it will conduct a single injury analysis or a separate analysis for one or more of the subject countries).

[17] In conducting its analysis, the Tribunal will also examine other factors that might have had an impact on the domestic industry to ensure that any injury or threat of injury caused by such factors is not attributed to the effects of the dumping and subsidizing.

LIKE GOODS AND CLASSES OF GOODS

[18] In order for the Tribunal to determine whether the dumping and subsidizing of the subject goods have caused or are threatening to cause 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.⁷

[19] 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.

6. Subsection 2(1) of *SIMA* defines “retardation” as “material retardation of the establishment of a domestic industry”. As a domestic industry is already established, the Tribunal will not need to consider the question of retardation.

7. 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 (F.C.).

[20] In deciding the issue of like goods when goods are not identical in all respects to the other goods, the Tribunal typically considers a number of factors, including the physical characteristics of the goods (such as composition and appearance) and their market characteristics (such as substitutability, pricing, distribution channels, end uses and whether the goods fulfill the same customer needs).⁸ In addressing the issue of classes of goods, the Tribunal typically examines whether goods potentially included in separate classes of goods constitute “like goods” in relation to each other. If those goods are “like goods” in relation to each other, they will be regarded as comprising a single class of goods.⁹

[21] In its preliminary injury inquiry, the Tribunal found that domestically produced CRS of the same description as the subject goods constitutes like goods in relation to the subject goods. It also found that there was one class of goods.¹⁰

[22] The Tribunal did not receive any submissions challenging its preliminary findings. As such, the Tribunal sees no reason to depart from them given the undisputed evidence that the physical characteristics of domestically produced CRS resemble those of the subject goods. In addition, as discussed further below in relation to the cumulation analysis, the evidence shows that the subject goods and domestically produced CRS are substitutable, generally competing against one another in the Canadian market, and have the same end uses and similar distribution channels.

[23] The Tribunal therefore finds that domestically produced CRS constitutes like goods in relation to the subject goods and will conduct its injury analysis on the basis of one class of goods.

DOMESTIC INDUSTRY

[24] 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.

[25] The Tribunal must therefore determine whether there has been injury, or whether there is a threat 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.¹¹

8. See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at para. 48.

9. *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) at para. 115; see also *Thermal Insulation Board* (11 April 1997), NQ-96-003 (CITT) at 10.

10. *Cold-rolled Steel Sheet* (24 July 2018), PI-2018-002 (CITT) at para. 39.

11. 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 (F.C.A.); *McCulloch of Canada Limited and McCulloch Corporation v. Anti-Dumping Tribunal*, [1978] 1 F.C. 222 (F.C.A.); *China – Anti-dumping and countervailing duties on certain automobiles (US)*, (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 (China)* (15 July 2011), WTO Docs. WT/DS397/AB/R, Report of the Appellate Body at paras. 411, 412, 419; *Argentina – Definitive*

[26] AMD, ESA and Stelco submitted that they are the only domestic producers of CRS and, therefore, should be considered the “domestic industry” for the purposes of the injury analysis.

[27] In light of the above, the Tribunal finds that AMD, ESA and Stelco constitute the domestic industry.

CUMULATION

[28] Subsection 42(3) of *SIMA* directs the Tribunal to make an assessment of the cumulative effect of the dumping and subsidizing of the subject goods if it is satisfied that the margin of dumping or the amount of subsidy in relation to the goods from each of those countries is not insignificant, the volumes of dumped and subsidized goods from each subject country is not negligible, and cumulation is appropriate, taking into account conditions of competition between the goods of each country or between them and the like goods. Additionally, subsection 42(4.1) of *SIMA* directs that, if the volume of dumped or subsidized subject goods from a country is negligible, the Tribunal must terminate its inquiry in respect of those goods.

[29] AMD, ESA and Stelco submitted that it is appropriate to conduct a cumulative injury analysis in this case. However, POSCO submitted that the subject imports from Korea should not be assessed on a cumulative basis with the subject imports from the other subject countries.

[30] For the reasons that follow, the Tribunal is satisfied that it is appropriate to undertake an assessment of the cumulative effect of the dumping and subsidizing of all of the subject goods, including those from Korea.

Margin of dumping and amount of subsidy

[31] Pursuant to subsection 2(1) of *SIMA*, a margin of dumping and an amount of subsidy that is, respectively, less than two percent and less than one percent of the export price of the goods are “insignificant”. The CBSA’s final determinations for the margin of dumping and the amount of subsidy for each of the subject countries are, as described above, not insignificant.

Volume of imports

[32] Subsection 2(1) of *SIMA* defines “negligible”, in relevant part,¹² to mean a volume of subject goods from each of the subject countries that is less than three percent of the total volume of imports

Anti-dumping duties on poultry (Brazil) (22 April 2003), WTO Docs. WT/DS241/R, Report of the Panel at para. 7.341.

12. Subsection 2(1) of *SIMA* defines “negligible” as meaning, “. . . in respect of the volume of goods of a country, less than 3% of the total volume of goods that are released into Canada from all countries and that are of the same description as the goods. However, if the total volume of goods of three or more countries — each of whose exports of goods into Canada is less than 3% of the total volume of goods that are released into Canada from all countries and that are of the same description — is more than 7% of the total volume of goods that are released into Canada from all countries and that are of the same description, the volume of goods of any of those countries is not negligible” [emphasis added].

of subject and non-subject goods that meet the product definition as the subject goods and that are released into Canada from all countries.¹³

[33] The Tribunal's negligibility assessment is typically based on import activity during the CBSA's POI. However, in this case, POSCO has requested that the Tribunal not rely on the CBSA's data on import volumes during its POI, but rather to focus its analysis on the import volumes for the second half of 2017 and the first half of 2018, arguing that this is generally more in line with the period that is the focus of the domestic industry's injury arguments.¹⁴ The suggested period would therefore include the three months following the end of the CBSA's POI, which covered April 1, 2017, to March 31, 2018. POSCO also requested that the Tribunal remove, for the purposes of its negligibility analysis, non-subject goods (i.e. automotive CRS) and temporary imports of subject goods (i.e. imports that were processed in Canada and re-exported) that were allegedly included in the CBSA's data.

[34] POSCO argued that temporary imports should be excluded from the Tribunal's calculation of import volumes on the basis that, in respect of the goods, the term "release" as defined in subsection 2(1) of *SIMA* should be interpreted to mean "released for consumption or use in Canada" such that re-exported goods would not be considered to have been released.¹⁵ The domestic producers contended that POSCO's interpretation is inconsistent with the legislative framework.¹⁶ First, it cannot be reconciled with the point in time at which anti-dumping and countervailing duties may be levied under *SIMA*.¹⁷ Second, CRS products imported from the subject countries, even if later re-exported, compete with domestically produced like goods.¹⁸

[35] The Tribunal is of the view that the issue with respect to temporary imports is moot given that there is no evidence that any subject goods identified in the Investigation Report were re-exported during the POI.¹⁹

[36] Further, POSCO's claim that the CBSA's import volumes included certain non-subject goods is unsubstantiated by the evidence.²⁰

13. Subsection 2(1) of *SIMA* defines "release" as meaning "(a) in respect of goods, to authorize the removal of the goods from a customs office, sufferance warehouse, bonded warehouse or duty free shop for use in Canada, and (b) in respect of goods to which paragraph 32(2)(b) of the *Customs Act* applies, to receive the goods at the place of business of the importer, owner or consignee".

14. *Transcript of Public Hearing* at 333-334.

15. Exhibit NQ-2018-002-D-01, Vol. 13 at 13.

16. *Transcript of Public Hearing* at 290-292.

17. See subsection 3(1) of *SIMA*, which refers to the levying, collection and payment of anti-dumping and countervailing duties "before the release of the goods". The domestic producers also referred to the duty relief provisions in subsection 89(1) of the *Customs Tariff* to illustrate that the subsequent exportation of imported goods does not negate the fact that they have been "released". See *Transcript of Public Hearing* at 367.

18. *Transcript of Public Hearing* at 291-292.

19. See clarification in Exhibit NQ-2018-002-06B, Vol. 1.1 at 15; Exhibit NQ-2018-002-07B (protected), Vol. 2.1 at 15. It was also confirmed that re-exported goods cited at Exhibit NQ-2018-002-15.16 (protected), Vol. 6 at 25, originated from non-subject countries. See also *Transcript of In Camera Hearing* at 127, 145-146.

20. In the statement of reasons concerning its final determinations, issued on November 15, 2018, the CBSA stated that, "[a]s part of the investigations, the CBSA reviewed import documentation for goods which were produced by POSCO, as well as a number of other producers from both subject and non-subject countries. Where the

[37] The Tribunal sees no reason to depart from its usual approach of relying on volume data collected for the CBSA's POI in assessing negligibility. As the Tribunal has stated previously, this approach allows for a comparison of the volume of subject goods of a country to the total volume of subject and non-subject imports of all countries, during a period for which the dumping and subsidizing has occurred.²¹ It is also consistent with Canada's notification to the WTO Committee on Anti-Dumping Practices, which indicated that its normal practice would be to carry out the negligibility assessment by reference to the CBSA's POI.²² The Tribunal may consider whether the use of a period other than the CBSA's POI is warranted.²³ However, the Tribunal is not satisfied that the circumstances of this inquiry warrant reference to a different time frame. There is no reason to deviate from the Tribunal's normal practice of assessing negligibility on the basis of the CBSA's POI, and the period suggested by POSCO does not line up with either of the alternative methodologies that could be used to assess negligibility.²⁴

[38] The volumes of imports of subject goods from China, Korea and Vietnam were above negligible thresholds during the CBSA's POI.²⁵ Accordingly, the Tribunal finds that the first part of the test set out in subsection 42(3) of *SIMA* has been met.

Conditions of competition

[39] With respect to the second part of the test set out in subsection 42(3) of *SIMA*, the Tribunal must be satisfied that the subject goods compete with each other and/or with the domestically produced like goods. Historically, the Tribunal has held that relevant factors relating to the conditions of competition can include interchangeability, quality, pricing, distribution channels, modes of transportation, timing of arrivals, and geographic dispersion.²⁶ As the Tribunal has

import documentation indicated that the goods were non-subject, the CBSA excluded those goods from the calculation of import volumes." See Exhibit NQ-2018-002-04A, Vol. 1 at 13.

21. *Concrete Reinforcing Bar* (18 May 2017), NQ-2016-003 (CITT) at para. 60.

22. See *Canada, Notification Concerning the Time-Period for Determination of Negligible Import Volumes Under Article 5.8 of the Agreement* (28 January 2003), WTO Docs. G/ADP/N/100/CAN, WTO Committee on Anti-Dumping Practices, which notes that "three alternative methodologies were identified by the Committee in its recommendation", and that "should the methodology chosen by a Member not be utilized in any investigation, the Committee recommends that one of the two other methodologies be utilized, and that an explanation be made in the public notice or separate public report of that investigation." Canada's chosen methodology is to use the "period of data collection for the dumping investigation" or, as the case may be, the subsidizing investigation.

23. See *Recommendation Concerning the Time-Period to Be Considered in Making a Determination of Negligible Import Volumes for the Purposes of Article 5.8 of the Agreement* (29 November 2002), WTO Docs. G/ADP/10, WTO Committee on Anti-Dumping Practices, which sets out two alternative periods, i.e. other than the dumping investigation period, that could be used to assess negligibility: "[t]he most recent 12 consecutive months prior to the initiation of the investigation for which data are available; or the most recent 12 consecutive months prior to the date on which the application was filed, for which data are available, provided that the lapse of time between the filing of the application and the initiation of the investigation is no longer than 90 days."

24. POSCO's proposed period consisted of the second half of 2017 and the first half of 2018, which does not fit with either of the alternative methodologies recommended by the WTO Committee on Anti-Dumping Practices, as per note 25. Even if POSCO had proposed a period based on one of those alternative methodologies, neither methodology would have been possible in this case due to the unavailability of data covering the relevant periods.

25. Exhibit NQ-2018-002-07B (protected), Tables 52 and 53, Vol. 2.1.

26. See, for example, *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (17 August 2001), NQ-2001-001 (CITT) at 16 and *Waterproof Footwear* (25 September 2009), NQ-2009-001 (CITT) at note 28.

previously stated, it recognizes that there may be other factors that it can consider in deciding whether the exports of a particular country should be cumulated, and that no single factor may be determinative.²⁷

[40] As a preliminary matter, the Tribunal will first address POSCO's arguments with respect to the manner in which conditions of competition should be assessed under subsection 42(3) of *SIMA*. POSCO has argued that, in order to be consistent with Article 3.3 of the World Trade Organization (WTO) *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*,²⁸ the Tribunal must not limit its assessment of the conditions of competition to the domestic market.²⁹ According to POSCO, conditions of competition should be assessed "between the [subject] goods as they come to Canada to be imported".³⁰ To support its position that Korean imports should be decumulated, POSCO submitted that the conditions of competition between the subject countries are different given that Korea is a market economy (noting that the provisions of section 20 of *SIMA* were applied in the CBSA's dumping and subsidizing investigations with respect to China and Vietnam only),³¹ has a binding free trade agreement with Canada, and is exempt from the U.S. Section 232 tariffs on steel products.³²

[41] In the Tribunal's view, consistent with Article 3.3 of the *Anti-dumping Agreement*, subparagraph 42(3)(b)(i) of *SIMA* is concerned with the conditions of competition *between subject goods that are imported into Canada*.³³ Insofar as POSCO has failed to illustrate how the aforementioned factors affect the conditions of competition between the subject goods imported into Canada, and as explained further below, the Tribunal is of the view that such factors are not relevant to the analysis under paragraph 42(3)(b) in this inquiry.³⁴

[42] The Tribunal is not persuaded that the application of the framework pursuant to section 20 of *SIMA* to some, but not all, subject countries implies that the general market conditions in the subject country should be considered in the cumulation analysis, absent evidence that they have impacted conditions of competition between the imported subject goods (or the imported subject goods and

27. *Laminate Flooring* (16 June 2005), NQ-2004-006 (CITT) at para. 80.

28. https://www.wto.org/english/docs_e/legal_e/19-adp_01_e.htm [*Anti-dumping Agreement*].

29. *Transcript of Public Hearing* at 337.

30. *Ibid.* at 338.

31. Exhibit NQ-2018-002-04A, Vol. 1 at paras. 81-88.

32. Exhibit NQ-2018-002-D-01, Vol. 13 at paras. 64-78.

33. Paragraph 42(3)(b) of *SIMA* provides that 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.

34. POSCO further submitted that subject goods from Korea should be decumulated on the basis that the effects of Korean CRS can be isolated (*Transcript of Public Hearing* at 345). To this end, POSCO has described various ways that the data in respect of imported Korean CRS may be isolated, citing past Tribunal findings in respect of cross-cumulation. The Tribunal notes that it has previously stated that it is not possible to isolate the injurious price effects caused by the dumping and subsidizing of the same goods from a particular country. See, for example, *Polyethylene Terephthalate Resin* (16 March 2018), NQ-2017-003 (CITT) [*PET Resin*] at para. 43. That said, the Tribunal finds that POSCO has improperly attempted to incorporate the underlying principles of the cross-cumulation analysis (i.e. cumulatively assessing the effects of dumped and subsidized goods from a particular country) into the conditions of competition analysis under paragraph 42(3)(b) of *SIMA*. Whether or not certain data in respect of imports from Korea may be isolated is not relevant to the conditions of competition test.

domestically produced like goods) in Canada. Similarly, the Tribunal is not persuaded of the relevance of a free trade agreement between Canada and an exporting country, and any implementing regulations domestically, absent evidence that they have impacted the conditions of competition between the subject goods imported into Canada.

[43] With respect to POSCO's arguments concerning Section 232 measures, the Tribunal finds that the imposition of quotas instead of tariffs with respect to Korean steel exports to the U.S. did not change the conditions of competition between the subject goods. Section 232 measures were additional to, but did not replace, existing U.S. antidumping and countervailing duties on CRS products from China and Korea.³⁵ Further, Korean exports of steel to the U.S. market are limited as a result of the new quota.³⁶ In the Tribunal's view, Korean products are therefore not isolated from the concerns of the domestic industry regarding import competition from the subject goods.³⁷

[44] Turning to the factors that the Tribunal generally considers in relation to the conditions of competition, the Tribunal is of the view that they do not support the decumulation of subject goods from Korea in the injury analysis.

[45] Several domestic producers and purchasers of CRS indicated that the subject goods from each of the subject countries are interchangeable with each other and with domestically produced like goods, and that they are generally comparable with respect to product quality, meeting technical specifications and range of product line.³⁸

[46] POSCO argued that factors other than price influence purchasing decisions of CRS products and that this was reflected in responses to the Tribunal's questionnaires.³⁹ Witnesses for the domestic producers also stated that customers may accept to pay higher prices for domestic products because of the risks and longer lead times associated with importing (this is reflected in the domestic price premium).⁴⁰ However, the Tribunal finds that the evidence indicates that CRS is a commodity product which generally competes on the basis of price.⁴¹ This is evident from the domestic producers' specific examples of offers and confirmed sales of lower-priced subject goods.⁴² Further, the Tribunal is persuaded by the testimony of purchasers of CRS, confirming the importance of price in a marketplace where service and product quality standards are met.⁴³

35. Vietnamese CRS produced from Chinese substrate was also made subject to U.S. anti-dumping and countervailing duties effective November 2016. Exhibit NQ-2018-002-A-03, Vol. 11 at 13; Exhibit NQ-2018-002-A-07, Vol. 11 at 28-29, 36-37, 116, 125, 134; *Transcript of Public Hearing* at 30-31.

36. Exhibit NQ-2018-002-A-07, Vol. 11 at 37.

37. POSCO also argued that the conditions of competition are different in respect of the differences in treatment of Korean exports under safeguard measures in the European Union. For reasons similar to what the Tribunal has stated in respect to the Section 232 measures, the Tribunal is not persuaded that EU trade remedies significantly affected the conditions of competition between the subject goods imported into Canada during the POI.

38. Exhibit NQ-2018-002-06B, Tables 8 and 9, Vol. 1.1; Exhibit NQ-2018-002-A-03, Vol. 11 at 11; *Transcript of Public Hearing* at 226-228.

39. Exhibit NQ-2018-002-06B, Table 10, Vol. 1.1.

40. See, for example, Exhibit NQ-2018-002-A-06 (protected), Vol. 12 at 8; *Transcript of Public Hearing* at 136-137.

41. Exhibit NQ-2018-002-A-03, Vol. 11 at 11 and 14-15; Exhibit NQ-2018-002-B-03, Vol. 11 at 3-4; Exhibit NQ-2018-002-B-05, Vol. 11 at 4.

42. See notes 91, 92 and 101.

43. *Transcript of Public Hearing* at 94, 185, 244, 271-272.

[47] The Tribunal finds that there are similar channels of distribution for CRS from each subject country, both to Canada and, as between the subject goods and domestically produced like goods, within Canada; this is consistent with the evidence on the record.⁴⁴ In terms of the manner in which the subject goods from each of the subject countries come into Canada, they are generally offered to Canadian purchasers through traders/brokers,⁴⁵ through the same entry points⁴⁶ and arrive by vessel.⁴⁷ POSCO has argued differences in distribution channels based on the fact that there are different traders selling CRS for each of the subject countries.⁴⁸ However, the fact that traders are different or that the goods may arrive in Canada on different vessels depending on their origin would, in the Tribunal's view, be consistent with the fact that the subject goods are competing for sales in the Canadian market.⁴⁹ Moreover, the evidence confirms that subject goods from each of the subject countries were offered to Canadian purchasers.⁵⁰

[48] POSCO also argued that there are differences in the channels of distribution on the basis of the particular trade levels to which Korean CRS was sold in the domestic market, noting that almost all of the imports from Korea were sold to distributors/service centres as opposed to end-users.⁵¹ The Tribunal finds that this view is unsupported given the evidence of direct competition between the subject goods and like goods in the domestic market for sales to both distributors/service centres and end-users.⁵² Some distributors/service centre witnesses indicated having received offers of Korean CRS during the POI.⁵³ The Tribunal also heard evidence of a new phenomenon whereby offshore traders are selling subject goods directly to end-users, bypassing the service centres.⁵⁴

[49] Lastly, the Tribunal finds that the data confirms that subject goods from Korea were imported into Canada in each year of the POI, as were subject goods from China.⁵⁵ Although volumes of Korean CRS imports were much lower than those from China throughout the POI, and declined in 2016 while imports from China increased,⁵⁶ the Tribunal does not find that such variances are sufficient to demonstrate differences in the conditions of competition between the subject goods. Although Vietnamese CRS was not imported in each year of the POI, this in and of itself does not warrant decumulation. The subject goods from Vietnam were imported concurrently with the subject

44. Nine out of eleven purchasers responded that domestic like goods and imported subject goods are sold through the same channels of distribution (Exhibit NQ-2018-002-06B, Table 8, Vol. 1.1). See also Exhibit NQ-2018-002-B-05, Vol. 11 at 4.

45. Exhibit NQ-2018-002-A-03, Vol. 11 at 19; Exhibit NQ-2018-002-B-05, Vol. 11 at 3, 7, 8; *Transcript of Public Hearing* at 80, 223, 261.

46. *Ibid.* at 82. Mr. Lachapelle referred to common entry points for all three subject countries, i.e. Vancouver, B.C., Sorel, Quebec, and Hamilton, Ontario.

47. Exhibit NQ-2018-002-A-05, Vol. 11 at 5.

48. *Transcript of Public Hearing* at 342-343.

49. The evidence indicates that traders are subsidiaries of, or affiliated with, offshore mills. Exhibit NQ-2018-002-A-03, Vol. 11 at 19; *Transcript of Public Hearing* at 80, 261.

50. Exhibit NQ-2018-002-A-06 (protected), Vol. 12 at 11-16; Exhibit NQ-2018-002-B-06 (protected), Vol. 12 at 6-11; Exhibit NQ-2018-002-C-04 (protected), Vol. 12 at 6-8; *Transcript of Public Hearing* at 82, 226-227, 250.

51. Exhibit NQ-2018-002-07B (protected), Tables 12, 19 and 22, Vol. 2.1.

52. *Ibid.*, Tables 19 and 22; Exhibit NQ-2018-002-B-06 (protected), Vol. 12 at 3-4; *Transcript of Public Hearing* at 104, 254-263.

53. *Ibid.* at 84, 250.

54. *Ibid.* at 254-258.

55. Exhibit NQ-2018-002-07B (protected), Table 12, Vol. 2.1.

56. Exhibit NQ-2018-002-06B, Table 13, Vol. 1.1.

goods from Korea and China in 2017.⁵⁷ Furthermore, and most significantly in the Tribunal's view, subject goods from each subject country were sold in the Canadian market during the same periods as each other and the like goods, particularly in 2017 and interim 2018.⁵⁸

[50] In sum, the Tribunal is satisfied that the conditions of competition between the subject goods themselves and between the subject goods and domestically produced like goods are similar, and that they do not warrant the decumulation of subject goods from Korea in the injury analysis. The Tribunal will proceed to assess injury based on the cumulative effects of the dumped and subsidized subject goods from each of Korea, China and Vietnam.

CROSS-CUMULATION

[51] This inquiry involves subject goods from three countries (China, Korea and Vietnam) that are both dumped and subsidized. 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,⁵⁹ 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, the effects are so closely intertwined as to render it impossible to allocate discrete portions to the dumping and the subsidizing respectively. In terms of the treatment of the dumped goods from each of the subject countries versus the subsidized goods from each of those sources, as these practices concern the same goods, the Tribunal finds that it is not necessary or practicable to disentangle their effects.⁶⁰

[52] Therefore, the Tribunal will make a cumulative assessment of the effects of the dumping and subsidizing of the subject goods.

INJURY ANALYSIS

[53] Subsection 37.1(1) of the *Special Import Measures Regulations*⁶¹ prescribes that, in determining whether the dumping and subsidizing have caused material injury to the domestic industry, the Tribunal is 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) also 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 the factors listed in subsection 37.1(1), and whether any factors other than the dumping and subsidizing of the goods have caused injury.

[54] POSCO submitted that there was no injury caused by the subject goods from Korea and, given that its arguments in this regard were based on a decumulated injury analysis, it made no comment on the injury analysis in relation to the subject goods from China and Vietnam. In light of

57. Exhibit NQ-2018-002-07B (protected), Table 12, Vol. 2.1.

58. *Ibid.*, Table 16.

59. See, for example, *PET Resin* at para. 43.

60. The Tribunal considers that the WTO Panel Report in *Canada – Anti-Dumping Measures on Imports of Certain Carbon Steel Welded Pipe from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu* (21 December 2016), WTO Docs. WT/DS482/R, at paras. 7.99-7.103, confirms that such an approach is permissible.

61. SOR/84-927 [Regulations].

the Tribunal's decision to assess the cumulative effect of the dumping and subsidizing of the subject goods from all three countries, POSCO's arguments on injury were only relevant insofar as Korean subject goods were concerned. The Tribunal received no opposing arguments in respect of the injurious effects of Chinese or Vietnamese subject goods discussed below.

Import volume of dumped and subsidized goods

[55] 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.

[56] The absolute volume of imports of the subject goods increased by 38 percent from 2015 to 2016 and a further 22 percent from 2016 to 2017.⁶² Likewise, relative to domestic consumption, the import volume of the subject goods increased by 15 percentage points in 2016 and by 21 percentage points in 2017.⁶³ Relative to domestic production, they increased more modestly, by five percentage points in 2016 and by four percentage points in 2017.⁶⁴ Overall, however, these rates of increase are significant.

[57] In interim 2018 relative to interim 2017, the absolute volume decreased by 65 percent⁶⁵ and the volume relative to domestic consumption decreased by 38 percentage points. Relative to domestic production, it decreased by 17 percentage points.⁶⁶ However, the evidence indicates that this occurred due to word of these proceedings spreading and suppliers turning to other sources to reduce their potential liability to *SIMA* duties.

[58] The domestic producers argued that a major contributing factor of the increasing volumes of subject goods entering the domestic market was the U.S. imposition of trade remedy measures on Chinese and Korean CRS imports in 2016,⁶⁷ which caused a diversion of subject goods from those sources into the Canadian market in 2016 and 2017. Mr. Wegiel of AMD indicated that the 2016 U.S. duties "effectively blocked Chinese CRS from the U.S. market".⁶⁸ The Tribunal finds that such diversion played a role in the increasing volumes of subject goods imported into Canada, as per the testimony of several witnesses for the domestic producers and purchasers of CRS.⁶⁹

[59] Therefore, the Tribunal finds that there has been a significant increase in the absolute and relative volume of imports of the subject goods.

62. Exhibit NQ-2018-002-07B (protected), Table 12, Vol. 2.1; Exhibit NQ-2018-002-06B, Table 13, Vol. 1.1.

63. Exhibit NQ-2018-002-07B (protected), Table 15, Vol. 2.1; Exhibit NQ-2018-002-06B, Table 15, Vol. 1.1.

64. *Ibid.*

65. *Ibid.*, Table 15.

66. *Ibid.*, Table 15.

67. Since 2016, the U.S. has applied anti-dumping duties of 266 percent and countervailing duties of 256 percent on CRS from China, and anti-dumping duties of up to 34 percent and countervailing duties of up to 58 percent on CRS from Korea. Those measures cover the same HS codes as the present inquiry. See Exhibit NQ-2018-002-A-07, Vol. 11 at 28, 125-126, 134-135.

68. Exhibit NQ-2018-002-A-07, Vol. 11 at 29.

69. *Transcript of the Public Hearing* at 25-26, 30-31, 33, 109-110, 179, 204-205, 241.

Price effects of dumped and subsidized goods

[60] Paragraph 37.1(1)(b) of the *Regulations* directs the Tribunal to consider the effects of the dumped and subsidized goods on the price of like goods and, in particular, whether the dumped and subsidized goods have significantly undercut or depressed the price of like goods, or suppressed the price of like goods by preventing the price increases for those like goods that would otherwise likely have occurred. In this regard, the Tribunal distinguishes the price effects of the dumped or subsidized goods from any price effects that have resulted from other factors affecting prices.

[61] As indicated above, pricing information was collected from domestic producers and importers, including total sales in the domestic apparent market, sales by trade level (distributor and end-user), sales to common accounts and sales of three benchmark products.⁷⁰ The data on average selling prices includes annealed CRS and full-hard (unannealed) CRS, as well as CRS products of different grades, thickness, etc. In addition, domestic sales from domestic production included relatively small volumes of downgraded CRS (or “seconds”).⁷¹

[62] The Tribunal’s analysis of price effects considered the average prices, the prices of benchmark products, and transaction- and account-specific allegations. In terms of average prices, POSCO argued that the range of product sizes, grades and specifications covered by the product definition prevents a meaningful analysis of price effects. The Tribunal is satisfied that it is appropriate to consider average prices as part of its price effects analysis. This is not uncommon in cases involving steel commodity products. In the present case, when assessing the level of price undercutting shown in the average price data, the Tribunal took into account the fact that lower-value CRS, such as seconds or full hard (unannealed) CRS, represents a small share of total domestic sales of like goods and, therefore, did not have a significant impact on average prices.⁷²

[63] In terms of the benchmark products, quarterly data was collected for three categories of annealed and temper rolled CRS: commercial quality (Benchmark Product No. 1),⁷³ drawing steel (Benchmark Product No. 2)⁷⁴ and structural steel (Benchmark Product No. 3).⁷⁵ During the POI, domestic sales of Benchmark Product No. 1 like goods and subject goods represented, respectively, a substantial share of total sales from domestic production and total sales of imports, whereas the lack of data for Benchmark Products No. 2 and 3 did not allow for a meaningful comparison between the

70. The Tribunal also collected pricing data from purchasers limited to 2017, and from foreign producers for export sales only.

71. Exhibit NQ-2018-002-07B (protected), Table 63, Vol. 12; Exhibit NQ-2018-002-06B, Table 63, Vol. 1.1; *Transcript of Public Hearing* at 195; *Transcript of In Camera Hearing* at 111-112, 141-143.

72. *Transcript of Public Hearing* at 149, 169.

73. Exhibit NQ-2018-002-06B at 13, Vol. 1.1. Benchmark Product No. 1 is defined as “Cold-rolled carbon steel sheet, in coils, commercial quality, types A, B or C, annealed and temper rolled, widths (36” – 72” inclusive), thicknesses (0.028” up to but excluding 0.097”), not painted.”

74. *Ibid.* Benchmark Product No. 2 is defined as “Cold-rolled carbon steel sheet, in coils, drawing steel, types A or B (e.g., ASTM A-1008 / A-1008M), annealed and temper rolled, with widths ranging from 36 inches up to and including 72 inches, and with thicknesses ranging from 0.028 inches up to but excluding 0.097 inches, not painted.”

75. *Ibid.* Benchmark Product No. 3 is defined as “Cold-rolled carbon steel sheet, in coils, structural steel (e.g., ASTM A-1008 / A-1008M), annealed and temper rolled, with widths ranging from 36 inches up to and including 72 inches, and with thicknesses ranging from 0.028 inches up to but excluding 0.097 inches, not painted.”

subject goods and like goods.⁷⁶ Therefore, the Tribunal finds that that Benchmark Product No. 1 provided a good proxy for the overall market, especially in terms of the pricing of annealed CRS.

[64] As indicated above, price is an important determining factor in purchasing decisions of CRS. In general, sales of both subject goods and like goods in the domestic market involve the negotiation of a base price by product type, which tends to be based on spot prices.⁷⁷ Purchases are also made under term contracts, which tend to vary in duration, fixed versus adjustable prices and other conditions.⁷⁸ Although the domestic producers may offer multiple products to customers in a single quote, the pricing of each product is negotiated separately; in other words, they do not offer discounts for bundled or tied sales.⁷⁹ Additional charges may be applied for “extras” (for which price lists are used), such as particular widths and thicknesses, strength, processing, testing and surface requirements.⁸⁰ There is also a domestic price premium for like goods that ranges between \$40/MT to \$70/MT.⁸¹

[65] Mr. Butler of AMD described the base price as the “price for commercial grade CRS (generally quoted on a ‘FOB mill’ basis)” and he explained that “extras” may add \$20/MT to \$60/MT (or more) to AMD’s base price.⁸² Base prices are periodically revised (twice a month, on average, at AMD) on the basis of market intelligence in relation to factors such as market supply and demand, raw material costs, imports, exchange rates, and movements in price indices, such as CRU and American Metal Market.⁸³

[66] POSCO argued that there were significant and frequent fluctuations in CRS pricing in the domestic market during the POI, such that it would not be useful for the Tribunal to compare the selling prices of the subject goods and like goods on an annual basis (as they are presented in the Investigation Report). POSCO further submitted that pricing comparisons are made difficult by the timing of orders and the variety of forms that a transaction may take, such as spot transactions and term contracts.

[67] The evidence shows, however, that there is general knowledge of CRS prices and price trends in the domestic market, even though price lists are not used for base prices and transactions may take different forms. The witnesses for domestic producers and service centres alike indicated that their selling practices involve regular sales calls and price negotiations with customers (who will tell the domestic producers if they are competitive on price with import offers received), and the use of market intelligence to gauge the prices of competing subject goods.⁸⁴ As stated by Mr. Dunstall of Samuel, “there is a market price for cold-rolled”.⁸⁵ Accordingly, the Tribunal considers pricing of CRS in the domestic market to be reasonably transparent. Furthermore, the Tribunal is satisfied that

76. Exhibit NQ-2018-002-07B (protected), Table 36 and Schedules 1, 2 and 3, Vol. 2.1.

77. Exhibit NQ-2018-002-A-03, Vol. 11 at 3; Exhibit NQ-2018-002-A-05, Vol. 11 at 4; Exhibit NQ-2018-002-RI-03, Vol. 9 at 1; *Transcript of Public Hearing* at 69-70, 263.

78. Exhibit NQ-2018-002-06B, Table 11, Vol. 1.1; *Transcript of Public Hearing* at 69-70, 248.

79. *Ibid.* at 57, 92, 120, 141, 188.

80. Exhibit NQ-2018-002-11.01, Vol. 3 at 9; Exhibit NQ-2018-002-11.02, Vol. 3 at 10; *Transcript of Public Hearing* at 96-97.

81. Exhibit NQ-2018-002-A-05, Vol. 11 at 8; *Transcript of Public Hearing* at 35, 69, 95, 136, 185-186.

82. Exhibit NQ-2018-002-A-05, Vol. 11 at 6.

83. Exhibit NQ-2018-002-RI-01, Vol. 9 at 2; Exhibit NQ-2018-002-RI-03, Vol. 9 at 1.

84. *Transcript of Public Hearing* at 26, 71, 89-90, 104, 110-111, 150, 244.

85. *Ibid.* at 189.

the U.S. Midwest spot price index for CRS, as reported by CRU (hereinafter referred to as the “U.S. Midwest price”), generally provides a useful indicator of pricing trends in the domestic market, notwithstanding the increased spread between the U.S. Midwest and domestic price of CRS since 2016, as discussed further below.

[68] It is within this context of CRS pricing practices in the domestic market that the Tribunal will now assess whether the subject goods undercut the price of like goods and caused price depression and price suppression, as argued by the domestic producers.

Price undercutting

[69] The consolidated data on average selling prices indicates that the selling prices of the like goods were undercut by the subject goods throughout the POI, including interim 2018.⁸⁶ The degree of price undercutting was significant.

[70] This occurred at each trade level. The average pricing data for sales to distributors show significant price undercutting in every period of the POI.⁸⁷ Significant price undercutting also took place in the end-user segment in 2016, 2017 and interim 2018.⁸⁸

[71] Where points of comparison among sales to common accounts were available, 14 out of 16 instances indicated that the prices of subject goods undercut the prices of like goods.⁸⁹

[72] The Benchmark Product No. 1 data shows significant price undercutting in every quarter from the third quarter of 2016 to the second quarter of 2018.⁹⁰

[73] In addition, the domestic producers have provided several specific examples of price undercutting that resulted in lost sales to subject goods.⁹¹ They also provided market intelligence showing subject goods offered and sold into the domestic market at prices below the domestic producers’ prices for like goods in the same period.⁹² At the hearing, several witnesses testified that the average selling prices of subject goods were, generally, between \$150/MT and \$200/MT below

86. Exhibit NQ-2018-002-07B (protected), Table 27, Vol. 2.1.

87. *Ibid.*, Table 29.

88. *Ibid.*, Table 31.

89. *Ibid.*, Tables 40-45.

90. *Ibid.*, Tables 33, 37. The Tribunal notes that the results are very similar when a time lag is applied to the subject goods’ prices for Benchmark Product No. 1 in order to account for differences between the timing of orders and deliveries of the subject goods compared to domestically produced like goods. The average delivery time for subject goods ranges from 113 (for Vietnam) to 137 days (for China and Korea), as compared to 59 days for like goods shipped from the domestic producers. See Exhibit NQ-2018-002-06B, Table 8, Vol. 1.2. When a time lag of two quarters is applied to the subject goods, there is significant price undercutting in all six quarters for which points of comparison are possible for Benchmark Product No. 1.

91. Exhibit NQ-2018-002-12.01 (protected), Vol. 4 at 199-210; Exhibit NQ-2018-002-12.03 (protected), Vol. 4 at 24; Exhibit NQ-2018-002-A-06 (protected), Vol. 12 at 26; Exhibit NQ-2018-002-B-06 (protected), Vol. 12 at 29, 30, 41, 86, 89, 93, 97.

92. Exhibit NQ-2018-002-12.01 (protected), Vol. 4 at 199-210; Exhibit NQ-2018-002-12.03 (protected), Vol. 4 at 24; Exhibit NQ-2018-002-A-06 (protected), Vol. 12 at 26; Exhibit NQ-2018-002-B-06 (protected), Vol. 12 at 6-12; Exhibit NQ-2018-002-C-04 (protected), Vol. 12 at 6-8.

the average selling prices of like goods during the POI.⁹³ This means that the price undercutting was significant even when taking the domestic price premium into account.

[74] Therefore, the Tribunal finds that subject goods have significantly undercut the price of like goods.

Price depression

[75] The average selling price of like goods increased by three percent between 2015 and 2016, and by a further 20 percent in 2017.⁹⁴ However, when comparing the first half of 2017, i.e. interim 2017, to the second half of 2017, there was a modest decrease in the domestic selling prices of like goods.⁹⁵ There was also a marginal decrease in the selling price of like goods in interim 2018 relative to interim 2017.⁹⁶

[76] Between 2015 and 2017, the average selling price of like goods to distributors and end-users both increased by 23 percent.⁹⁷ Similar to the total average selling prices, there was a decrease in the selling prices of like goods to distributors from the first half to the second half of 2017, and in interim 2018 relative to interim 2017.⁹⁸ Conversely, the selling prices of like goods to end-users increased both in the second half of 2017 and interim 2018, as compared to interim 2017.⁹⁹

[77] Overall, the data on common accounts show fluctuations in domestic selling prices of like goods during the POI with a considerable price decrease in the second half of 2017 before signs of recovery in interim 2018.¹⁰⁰

[78] AMD and ESA provided several account-specific examples where they faced competition from subject goods and, as a result, had to reduce their prices in order to win the sale.¹⁰¹ Several of those instances occurred in the second half of 2017. This supports the depression of average selling prices during the same period, which the Tribunal considers to be significant.

[79] Therefore, the subject goods have significantly depressed the price of like goods.

Price suppression

[80] To determine whether the selling prices of the subject goods have suppressed the selling prices of like goods, the Tribunal typically compares the domestic industry's average unit cost of goods sold (COGS) or cost of goods manufactured (COGM) with its average unit selling values in the domestic market. The Tribunal may also consider other indicators of price suppression given that

93. *Transcript of Public Hearing* at 26-27, 81, 150.

94. Exhibit NQ-2018-002-06B, Table 28, Vol. 1.1.

95. Exhibit NQ-2018-002-07B (protected), Tables 27, 46, Vol. 2.1.

96. *Ibid.*

97. Exhibit NQ-2018-002-06B, Tables 30, 32, Vol. 1.1.

98. Exhibit NQ-2018-002-07B (protected), Table 29, Vol. 2.1.

99. *Ibid.*, Table 31.

100. Exhibit NQ-2018-002-07B (protected), Tables 33, 40, 42, 43, 44, 45, Vol. 2.1.

101. Exhibit NQ-2018-002-12.01 (protected), Vol. 4 at 199-210; Exhibit NQ-2018-002-A-06 (protected), Vol. 12 at 11-16; Exhibit NQ-2018-002-A-05, Vol. 11 at 11-16; Exhibit NQ-2018-002-B-05, Vol. 11 at 8-11; Exhibit NQ-2018-002-B-06 (protected), Vol. 12 at 8-11.

this term is described, in subparagraph 37.1(1)(a)(iii) of the *Regulations*, as the prevention (by subject goods) of price increases for the like goods “that would otherwise likely have occurred”.¹⁰²

[81] The domestic producers submitted that the subject goods caused price suppression on the basis of a cost-price squeeze that occurred from the third quarter of 2017 and into the first half of 2018.

[82] The consolidated domestic industry’s unit COGM (\$/MT) decreased from 2015 to 2016 and increased in 2017; that increase was exceeded by the increase in the domestic selling prices of like goods for full year 2017. However, when comparing the first half of 2017, i.e. interim 2017, to the second half of 2017, the domestic selling prices of like goods decreased and unit COGM increased. In interim 2018, there was a further increase in unit COGM (to its highest point of the entire POI), which exceeded the modest increase in domestic selling prices of like goods compared to the second half of 2017. In interim 2018, domestic prices of like goods were marginally lower than in interim 2017, despite the increase in COGM.¹⁰³

[83] The evidence shows that the increases in COGM were driven by increases in direct material costs,¹⁰⁴ as well as factory overhead.¹⁰⁵ The domestic industry’s consolidated unit COGS (\$/MT) followed a similar trend. On this basis, the Tribunal finds that the increases in the domestic selling prices of like goods were significantly suppressed in the face of rising costs of production and sales in the second half of 2017 and interim 2018.

[84] The U.S. Midwest price trend during the POI provides a further indication of price increases that would have otherwise likely occurred for like goods sold in the domestic market but for the subject goods. The Canadian market price and the U.S. Midwest price have historically tracked each other within \$40/MT to \$50/MT (converted into Canadian dollars).¹⁰⁶ Although the U.S. Midwest price includes automotive and non-automotive CRS, the evidence shows that it generally reflects non-automotive CRS prices.¹⁰⁷ However, this pattern was disrupted following the imposition of U.S. trade remedy measures on dumped and subsidized Chinese and Korean CRS in mid-2016, which

102. A finding that dumped or subsidized goods prevented price increases for the like goods that would otherwise likely have occurred must be based on an objective examination of positive evidence of what the prices of the like goods would have been in the absence of dumping or subsidizing. See *China – Countervailing and Anti-dumping Duties on Grain Oriented Flat-rolled Electrical Steel from the United States* (18 October 2012), WTO Docs. WT/DS414/AB/R, Report of the Appellate Body at paras. 129, 130, 141, 152; see also *Russia – Anti-dumping Duties on Light Commercial Vehicles from Germany and Italy* (27 January 2017), WTO Docs. WT/DS479/R, Report of the Panel at paras. 7.57, 7.61.

103. Exhibit NQ-2018-002-07B (protected), Tables 27 and 46, Vol. 2.1.

104. The Tribunal notes that it does not have the data for what prices of like goods would have been if input prices were consistent. However, the domestic producers’ financial statements reflect the fluctuation of direct material costs.

105. Exhibit NQ-2018-002-07B (protected), Tables 46 and 47, Vol. 2.1; Exhibit NQ-2018-002-14.16A, Vol. 5 at 7; *Transcript of In Camera Hearing* at 41-42.

106. The domestic producers’ witnesses indicated that the pricing is generally the same in the north-eastern U.S. and central Canada regions, due to the integration of the North American CRS market. Similarly, witnesses for purchasers testified that the U.S. Midwest price is generally a fair indicator of domestic and U.S. price trends for CRS, although there can be some discrepancies. Exhibit NQ-2018-002-A-07, Vol. 11 at 27; Exhibit NQ-2018-002-B-05, Vol. 12 at 5-6; *Transcript of Public Hearing* at 180-181, 244.

107. The U.S. Midwest price is a spot price, which is generally not used in connection with CRS for automotive. See Exhibit NQ-2018-002-A-05, Vol. 11 at 6; Exhibit NQ-2018-002-A-07, Vol. 11 at 28.

effectively closed the U.S. market to those imports. In 2016 and 2017, the Canadian market price did not keep pace with the increases in the U.S. Midwest price, resulting in a growing spread of approximately \$100/MT to \$150/MT.¹⁰⁸

[85] The domestic producers made a comparison of the U.S. Midwest price to both AMD's average selling prices of like goods during the POI¹⁰⁹ (as the largest producer in the domestic industry) and to the domestic industry's average selling prices during the POI.¹¹⁰ Both datasets indicated that, in 2015, the average selling prices of like goods in comparison to the U.S. Midwest price had a price differential of less than three percent. That price gap increased noticeably in mid-2016, following the imposition of the U.S. trade measures. Although the average domestic selling prices of like goods continued to increase and follow similar price fluctuations (with the exception of the third quarter of 2016) as the U.S. Midwest price during 2016 and 2017, there was indeed a much higher price differential in those periods than in 2015. In the interim 2018 period, there was a further increase in the price differential between the U.S. Midwest price and the average domestic selling prices of like goods. On the whole, the Tribunal finds that the evidence of a dislocation between the domestic selling prices of like goods and the U.S. Midwest price indicates that the increasing import volumes of dumped and subsidized goods (including those diverted from the U.S. market from mid-2016 onwards) prevented price increases for the like goods that would otherwise likely have occurred.

[86] The evidence of price suppression is also supported by a MEPS International Steel Review. It shows that, in 2018, there was a greater spread between domestic and U.S. market pricing for CRS as compared to (1) the price spreads on other flat-rolled steel products for which there were no U.S. anti-dumping or countervailing measures, and (2) the price spreads on products which have existing findings in place in both Canada and the U.S., such as hot-rolled plate.¹¹¹ The domestic-U.S. price differential for CRS, shown in the MEPS data, is in line with the spread between the domestic industry's average domestic selling prices and its average export sales unit values in interim 2018.¹¹²

[87] Therefore, the subject goods have significantly suppressed the price of like goods.

Resultant impact on the domestic industry

[88] 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.¹¹³

108. Exhibit NQ-2018-002-A-03, Vol. 11 at 15; Exhibit NQ-2018-002-A-07, Vol. 11 at 32; *Transcript of Public Hearing* at 29-33, 284.

109. Exhibit NQ-2018-002-A-08 (protected), Vol. 12 at 32.

110. *Ibid.*; Exhibit NQ-2018-002-B-04 (protected), Vol. 12 at 7; Exhibit NQ-2018-002-07B (protected), Table 49, Vol. 2.1; *Transcript of Public Hearing* at 309.

111. Exhibit NQ-2018-002-A-02 (protected), Vol. 12 at 54-55, 155.

112. Exhibit NQ-2018-002-07B (protected), Tables 27, 46, 47, Vol. 2.1.

113. 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

These impacts are to be distinguished from the impact of other factors also having a bearing on the domestic industry.¹¹⁴ Paragraph 37.1(3)(a) of the *Regulations* requires the Tribunal to consider whether a causal relationship exists between the 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.

[89] There were a number of indicators with respect to the performance of the domestic industry that appeared positive or stable for much of the POI. The consolidated financial performance indicators improved from 2015 to 2017. The domestic industry increased total investments as a whole¹¹⁵ and at the individual firm level.¹¹⁶ There is no indication that the domestic industry's ability to attract investment was negatively affected during the POI, and in the case of at least one domestic producer (Stelco) it has received new investment.¹¹⁷ Moreover, the domestic industry has not experienced significant negative effects with respect to its cash flow, growth, inventory, productivity, capacity utilization, number of employees, hours worked, or wages.¹¹⁸

[90] However, the increasing volumes of subject goods at significantly dumped and subsidized prices¹¹⁹ that undercut prices of like goods have adversely affected the domestic industry in terms of sales and market share. As discussed above, the diversion of dumped and subsidized Chinese and Korean CRS from the U.S. market into Canada, beginning in mid-2016 and continuing through 2017, was shown to have contributed to the increasing volumes of subject goods and their price effects on like goods, which were no longer tracking the U.S. Midwest price for CRS.

[91] Despite an overall contraction in the total market of four percent,¹²⁰ the sales volumes of the subject goods increased substantially in 2016 and 2017 (by 38 percent and 20 percent,

Parliament or of the legislature of a province, that are subsidized, any increased burden on a government support programme.

114. 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.

115. Exhibit NQ-2018-002-07B (protected), Tables 49 and 50, Vol. 2.1.

116. Exhibit NQ-2018-002-12.03A, Vol. 4 at 18-19; Exhibit NQ-2018-002-12.02, Vol. 4 at 18; Exhibit NQ-2018-002-12.01, Vol. 4 at 17.

117. For instance, in December 2016, Bedrock Industries, B.V. acquired all outstanding shares of Stelco, following its exit from creditor protection under the *Companies' Creditors Arrangement Act (CCAA)*, such shares being later acquired by Stelco Holdings Inc. after the completion of an initial public offering on November 10, 2017. A secondary offering was completed in April 2018. See Exhibit NQ-2018-002-11.02, Vol. 3 at 80, 200. The Tribunal notes that AMD indicated that its ability to attract *future* investment in its CRS operations was at risk (given that it effectively competes with other subsidiaries for capital investment from its parent entity), but there was no indication that its ability to attract such investment was negatively affected during the POI: Exhibit NQ-2018-002-A-02 (protected), Vol. 12 at 64; Exhibit NQ-2018-002-A-03, Vol. 11 at 6, 22.

118. Exhibit NQ-2018-002-07B (protected), Table 49, Vol. 2.1.

119. Exhibit NQ-2018-002-04, Vol. 1 at 13-14.

120. Exhibit NQ-2018-002-06B, Table 17, Vol. 1.1. Also of note is that sales volumes of non-subject imports declined by 45 percent in 2016 and then remained generally flat thereafter in 2017. In interim 2018, sales of non-subject goods declined by 39 percent.

respectively).¹²¹ This is consistent with the increasing import volumes of the subject goods discussed above. Meanwhile, sales of domestically produced like goods decreased throughout this period, especially in 2017. This loss seems largely attributable to the subject goods as the import volume of CRS from non-subject countries was also decreasing during this period. Over the same three-year period, the subject goods accounted for a growing share of total imports, which increased despite a decline in the share of non-subject imports.¹²² The absolute volume of subject goods decreased in interim 2018 relative to interim 2017 (by 65 percent), as did the volume of non-subject and total imports (by 39 percent and 58 percent, respectively).¹²³

[92] AMD and ESA provided specific allegations of sales lost to the subject goods,¹²⁴ which illustrate the realization of injurious effects in the marketplace, particularly in 2016 and 2017.¹²⁵ The causal relationship was further established where the domestic producers linked their lost sales and their commercial intelligence regarding offers of low-priced subject goods made in the Canadian market during the POI, to the information provided by foreign producers and importers in response to the Tribunal's questionnaires.¹²⁶ The trends reversed in interim 2018 due to, as described by several of the witnesses, knowledge in the marketplace of this trade case and the new trade remedies arising in the U.S. with respect to steel imports.¹²⁷

[93] The subject goods have also affected domestic output. Total production of like goods by domestic producers was steady, with a three percent increase in 2016 followed by a one percent decrease in 2017. There was a one percent gain in total production in the first half of 2018. However, a strong export performance masked the impact of the subject goods on overall production levels. Production for export sales steadily increased over the POI, with a 44 percent increase in 2016 and further 22 percent rise in 2017. Production for domestic sales fell by six percent in 2016 and by an additional 13 percent in 2017.¹²⁸

[94] The impact of the subject goods on prices, output, sales and market share hurt the domestic industry's consolidated financial performance towards the end of the POI. The consolidated financial results of the domestic industry for domestic sales and export sales indicate significant improvements from 2015 to 2017, at both the gross margin and net income levels.¹²⁹ These improvements at the net

121. Exhibit NQ-2018-002-06B, Table 17, Vol. 1.1.

122. Exhibit NQ-2018-002-07B (protected), Table 14, Vol. 2.1.

123. Exhibit NQ-2018-002-06B, Table 13, Vol. 1.1.

124. Although Stelco provided market intelligence regarding low-priced offers of subject goods during the POI, it did not have any examples of lost sales because it only produced full hard CRS, having idled its batch annealing capabilities in 2008, and faced minimal competition from subject goods in the full hard segment. Exhibit NQ-2018-002-11.02, Vol. 3 at 8; *Transcript of Public Hearing* at 149, 157-158, 166-167.

125. For example, Exhibit NQ-2018-002-A-06 (protected), Vol. 12 at 11-20; Exhibit NQ-2018-002-B-06 (protected), Vol. 12 at 6-12.

126. Exhibit NQ-2018-002-A-02 (protected), Vol. 12 at 45-51.

127. Exhibit NQ-2018-002-B-05, Vol. 11 at 5; Exhibit NQ-2018-002-A-01, Vol. 11 at 6; *Transcript of Public Hearing* at 33, 60, 110-111, 143, 206, 265. The witness from Algoma also referred to the leftover inventory from 2017 as contributing to the downward trend in 2018, *Ibid.* at 111.

128. Exhibit NQ-2018-002-06B, Vol. 1.1, Table 50; Exhibit NQ-2018-002-07B, Vol. 2.1 (protected), Table 50.

129. *Ibid.*, Tables 46 and 47.

income level can be seen notwithstanding higher financial expenses for ESA, associated with its restructuring proceedings under the *Canadian Creditors Arrangement Act*.¹³⁰

[95] The primary driver of these improving results for the domestic industry at the beginning of the POI (i.e. in 2015 and 2016) was the increase in the total and unit net sales value, due to rising selling prices and decreasing total production costs.¹³¹ In terms of domestic sales, however, the Tribunal finds that these results were constrained by the increasing sales volumes of subject goods at dumped and subsidized prices. Then, in 2017, the negative effects of the subject goods on domestic sales of like goods became fully apparent.¹³² Specifically, the consolidated financial domestic producers' performance data for domestic sales, and in particular unit net sales value and unit COGM, indicate that the domestic industry reached a point, in the second half of 2017, where it was unable to increase its domestic selling prices in step with rising production costs.¹³³ The financial results for domestic sales for the second half of 2017 were also impacted by the sales volume of subject goods in the same period, which was much higher than in the first half of 2017 and on par with the full-year sales volume in 2015.¹³⁴

[96] While there is some indication that the domestic industry's consolidated financial performance indicators for domestic sales began to stabilize in interim 2018,¹³⁵ the Tribunal is satisfied that this can be explained by the decrease in the sales volume of subject goods due to, as mentioned above, knowledge in the Canadian market with respect to this trade case.

Materiality

[97] The Tribunal will now determine whether the effects of imports of the subject goods noted above are "material", as contemplated in the definition of "injury" under section 2 of *SIMA*. *SIMA* does not define the term "material". However, both the extent of injury during the relevant time frame and the timing and duration of the injury are relevant considerations in determining whether any injury caused by the subject goods is "material".¹³⁶

[98] In this case, the domestic industry experienced injury in 2016 and 2017, in the form of declining production and sales volumes of domestically produced like goods and loss of market share, which restricted the domestic industry from realizing increases in profitability that would have otherwise been available. The negative impact of the significant volumes of subject goods on the domestic industry's financial performance is clearly evident during the second half of 2017, when the selling price of like goods decreased in the face of rising production costs. These price suppressive effects continued in interim 2018, during which period the domestic industry's financial performance

130. *Ibid.*, Schedule 13; *Transcript of In Camera Hearing* at 91-92.

131. Exhibit NQ-2018-002-07B (protected), Tables 46 and 49, Vol. 2.1.

132. *Ibid.*, Table 46, Schedules 10 and 13; Exhibit NQ-2018-002-A-02, Vol. 12 (protected) at 60; Exhibit NQ-2018-002-A-04, Vol. 12 (protected) at 30.

133. Exhibit NQ-2018-002-07B (protected), Table 46, Vol. 2.1.

134. *Ibid.*, Table 16.

135. *Ibid.*, Table 46. Financial performance trends from export sales remained consistent through interim 2018.

136. The Tribunal suggested, in *Certain Hot-rolled Carbon Steel Plate* (27 October 1997), NQ-97-001 (CITT) at 13, that the concept of materiality could entail both temporal and quantitative dimensions, "[h]owever, the Tribunal is of the view that, to date, the injury suffered by the industry has not been for such a duration or to such an extent as to constitute 'material injury' within the meaning of SIMA".

was given some relief from the imposition of provisional duties and the cooling of imports due to advance knowledge of these proceedings in the domestic market.

[99] Although the duration of the injury represents only a portion of the POI, the Tribunal finds that this does not detract from the materiality of the injury suffered by the domestic industry, which was indeed material in a manner consistent with some of its previous findings.¹³⁷ In particular, the injury was most prevalent in the second half of 2017, which falls within the CBSA's POI, when large volumes of significantly dumped and subsidized imports were entering the domestic market.¹³⁸

[100] Therefore, the Tribunal finds that the dumping and subsidizing of the subject goods have caused material injury to the domestic industry.

Other factors

[101] The Tribunal has taken into account the effects of factors other than the subject goods as raised by POSCO.

Domestic industry's export sales

[102] POSCO submitted that the domestic industry prioritized its export sales at the expense of its domestic sales, contributing to inadequate available supplies for domestic customers. The evidence confirms that a large share of domestic production of like goods was exported by the domestic industry, and these figures increased during the POI.¹³⁹ The domestic industry also experienced healthier financial performance indicators for export sales as compared to domestic sales.¹⁴⁰ As discussed above, however, the Tribunal is satisfied that the domestic industry had sufficient disposable capacity for increased production of like goods, had they been able to compete for more sales at non-dumped and non-subsidized prices.

[103] In the Tribunal's view, facing lost market share in Canada, it was reasonable for the domestic industry to rely to some extent on exports to maintain levels of production and capacity utilization rates,¹⁴¹ and insofar that this occurred during the POI, it does not amount to a cause of injury. During the POI, CRU prices increased at a faster rate, and remained higher, than domestic prices from mid-2016 through early 2018. To the extent that domestic producers secured export sales based on those higher values in the U.S. market, the financial performance indicators would reflect same. The Tribunal also heard testimony from domestic producers which confirmed their commitment to servicing domestic customers even while participating in the U.S. market.¹⁴² Considering the

137. *Sucker Rods* (14 December 2018), NQ-2018-001 (CITT) at para. 151; *Concrete Reinforcing Bar* (3 May 2017), NQ-2016-003 (CITT) at paras. 185-188 and footnote 182.

138. In this regard, the Tribunal notes that *SIMA* does not require that the adverse impact of the subject goods be uniform throughout the POI in order to conclude that the domestic industry has suffered material injury.

139. Exhibit NQ-2018-002-07B (protected), Tables 49, 51, Vol. 2.1; Exhibit NQ-2018-002-06B (protected), Table 50, Vol. 1.1.

140. Exhibit NQ-2018-002-07B (protected), Tables 46, 47, Vol. 2.1.

141. As stated by Mr. Connor of AMD: "CRS is a value-added product . . . Due to the capital-intensive nature of the steel industry, CRS allows us to maximize capacity utilization in order to reduce per unit fix costs." Exhibit NQ-2018-002-A-03, Vol. 11 at 8. See also *Transcript of Public Hearing* at 27.

142. *Ibid.* at 140-141; *Transcript of In Camera Hearing* at 97-98.

foregoing, the Tribunal does not find that the effect of the domestic industry's export performance was a cause of the injury to its domestic production and sales of like goods.¹⁴³

Ability to satisfy domestic market demand

[104] POSCO alleged that the domestic industry was unable to satisfy domestic market demand for CRS. However, the Tribunal finds that this allegation was not supported by the evidence.¹⁴⁴ Mr. Dunstall of Samuel confirmed that while there was a reduction of CRS supply in Canada prior to January 1, 2015,¹⁴⁵ at no time during the POI were the domestic mills unable to meet an urgent order.¹⁴⁶ AMD also commented that AMD USA may supply CRS directly to a Canadian customer in cases where the product is outside of AMD's "dimensional capability" or when AMD requires spot emergency purchases to meet contract obligations.¹⁴⁷ Instances of non-subject U.S. imports by AMD to address short-term delivery issues during the POI were limited.¹⁴⁸

[105] With respect to ESA, POSCO argued that due to its limited production process for surface critical or very high-end use goods, ESA could not meet the quality requirements of its customers or supply the range of products requested by customers. During the hearing, the witnesses for ESA explained that their limitations in producing surface critical products did not generally impact their ability to sell to service centres.¹⁴⁹ The Tribunal is satisfied that ESA did not have issues meeting market demand for its own product line.

[106] There were no raw material shortages that would affect the domestic industry's ability to supply the market; the impacts of the short supply of iron ore in 2015 impacted only plate production, not CRS.¹⁵⁰ The domestic industry also did not put any customers on allocation during the POI.¹⁵¹

[107] In addition, as discussed above, the Tribunal is satisfied that the domestic industry had unused production capacity throughout the POI. Furthermore, the impact on domestic production and sales volumes of planned maintenance and upgrades of production equipment at ESA and Stelco, respectively, appears to have been negligible.¹⁵²

143. The Tribunal's view of the domestic industry's export performance in the injury analysis is consistent with the decision in *Iodinated Contrast Media* (1 May 2000), NQ-99-003 (CITT) at 19-20.

144. *Transcript of In Camera Hearing* at 89-90.

145. *Transcript of Public Hearing* at 212-213.

146. *Ibid.* at 221-222.

147. *Ibid.* at 43-44; Exhibit NQ-2018-003-14.09, Vol. 5 at 7.

148. Exhibit NQ-2018-002-15.09 (protected), Vol. 6, at 19; *Transcript of In Camera Hearing Made Public after the Conclusion of the Hearing* at 5-6.

149. *Transcript of Public Hearing* at 121-123.

150. *Ibid.* at 128-130.

151. Exhibit NQ-2018-002-A-11, Vol. 11 at 20-21; Exhibit NQ-2018-002-RI-01, Vol. 9 at 2; Exhibit NQ-2018-002-RI-02, Vol. 9 at 2; Exhibit NQ-2018-002-RI-03, Vol. 9 at 3-4; *Transcript of Public Hearing* at 222 and 273.

152. Exhibit NQ-2018-002-A-12 (protected), Vol. 12 at 22-23; Exhibit NQ-2018-002-RI-03A (protected), Vol. 10 at 3.

[108] Considering the foregoing, the Tribunal finds no indication that the domestic industry faced production issues which hindered its ability to satisfy market demand such that it was necessary for customers to seek supplies from the subject countries.

Intra-industry competition and competition against service centres

[109] POSCO alleged that any injury suffered by the domestic producers was due to competition with each other or between distributors/service centres.

[110] During the hearing, the domestic producers confirmed that intra-industry competition exists, but that it did not impact financial performance negatively as they compete against each other at “fair” market prices.¹⁵³ Testimony from domestic producers and purchasers confirmed that competition for sales between the domestic producers would be in the range of \$10/MT to \$20/MT as compared to selling prices of subject goods that are \$150/MT or \$200/MT below selling prices of like goods.¹⁵⁴

[111] In regard to competition between the domestic producers and service centres, based on testimony provided during the hearing, competition with service centres for end-user sales appears to have been minimal. According to testimony on behalf of AMD and the purchaser Nova Steel, the end-user trade level is carved out in a manner that there would be little overlap between the sales of domestic producers to end-users and those of the service centres.¹⁵⁵ For instance, end-users interested in coils of steel would look to domestic mills whereas service centres would cater to businesses that require further processing of the steel, e.g. cutting the coils into smaller sizes for smaller applications. Moreover, ESA described its sales to end-users as being limited to customers which are pipe and tube producers (i.e. “light manufacturing applications”) and, as a result, it is not generally in competition with service centres for those sales.¹⁵⁶

[112] Based on the above considerations, the Tribunal finds that intra-industry competition and competition with service centres is not a cause of injury for the domestic industry as there is fair competition between the domestic producers, and competition with service centre customers is rare.

U.S. Section 232 measures

[113] POSCO submitted that the imposition of U.S. Section 232 measures in 2018 was a factor that negatively affected the domestic industry. The Tribunal notes that, as discussed above, there have been trade remedy measures in place in the U.S. since 2016 with respect to subject goods from Korea and China. POSCO did not demonstrate how the U.S. Section 232 measures changed anything to the market conditions in the United States for the subject goods from those two countries and how it could have negatively affected the domestic industry in this case. For the reasons above, the Tribunal does not find that those factors either did not contribute or, at the very least, did not negate the injury experienced by the domestic industry during the POI.

153. *Transcript of Public Hearing* at 48-49.

154. *Ibid.* at 73, 137, 258.

155. *Ibid.* at 49-51, 248.

156. *Ibid.* at 117-118.

CONCLUSION

[114] The Tribunal finds that the dumping and subsidizing of the subject goods have caused injury to the domestic industry. Accordingly, the Tribunal need not consider the question of whether the subject goods are threatening to cause injury.

Jean Bédard

Jean Bédard

Presiding Member

Randolph W. Heggart

Randolph W. Heggart

Member

Caterina Ardito-Toffolo

Caterina Ardito-Toffolo

Member