



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

FINDING AND REASONS

Inquiry No. NQ-2018-003

Carbon Steel Welded Pipe

*Finding issued
Friday, February 15, 2019*

*Reasons issued
Monday, March 4, 2019*

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

CARBON STEEL WELDED PIPE

FINDING

The Canadian International Trade Tribunal, pursuant to the provisions of section 42 of the *Special Import Measures Act*, has conducted an inquiry to determine whether the dumping of carbon steel welded pipe, commonly identified as standard pipe, in the nominal size range from ½ inch up to and including 6 inches (12.7 mm to 168.3 mm in outside diameter) inclusive, in various forms and finishes, usually supplied to meet ASTM A53, ASTM A135, ASTM A252, ASTM A589, ASTM A795, ASTM F1083 or Commercial Quality, or AWWA C200-97 or equivalent specifications, including water well casing, piling pipe, sprinkler pipe and fencing pipe, but excluding oil and gas line pipe made to API specifications exclusively, originating in or exported from the Islamic Republic of Pakistan, the Republic of the Philippines, the Republic of Turkey and the Socialist Republic of Vietnam, has caused injury or retardation or is 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 January 16, 2019, that the above-mentioned goods from the Islamic Republic of Pakistan, the Republic of the Philippines, the Republic of Turkey (excluding those goods exported by Erbosan Erciyas Boru Sanayii ve Ticaret A.S.) and the Socialist Republic of Vietnam have been dumped, the Canadian International Trade Tribunal hereby finds, pursuant to subsection 43(1) of the *Special Import Measures Act*, that the dumping of the above-mentioned goods originating in or exported from the Islamic Republic of Pakistan, the Republic of the Philippines, the Republic of Turkey (excluding those goods exported by Erbosan Erciyas Boru Sanayii ve Ticaret A.S.) and the Socialist Republic of Vietnam has caused injury to the domestic industry.

Jean Bédard

Jean Bédard

Presiding Member

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Randolph W. Heggart

Randolph W. Heggart
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The statement of reasons will be issued within 15 days.

Place of Hearing: Ottawa, Ontario
Dates of Hearing: January 14, 16, 18 and 19, 2019
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STATEMENT OF REASONS

INTRODUCTION

[1] The mandate of the Canadian International Trade Tribunal (the Tribunal) in this inquiry¹ is to determine whether the dumping of certain carbon steel welded pipe (CSWP) originating in or exported from the Islamic Republic of Pakistan (Pakistan), the Republic of the Philippines (the Philippines), the Republic of Turkey (Turkey) and the Socialist Republic of Vietnam (Vietnam) (the subject goods) has caused or is threatening to cause injury to the domestic industry.

[2] The Tribunal has determined, for the reasons that follow, that the dumping of the subject goods has caused material injury to the domestic industry. Therefore, the Canada Border Services Agency (CBSA) will impose definitive anti-dumping duties on imports of the subject goods.

BACKGROUND

[3] This inquiry stems from a complaint filed by Novamerican Steel Inc., on behalf of its subsidiaries Nova Tube Inc. and Nova Steel Inc. (collectively, Nova) on May 31, 2018, and the initiation of an investigation on July 20, 2018, by the CBSA into the alleged dumping of the subject goods.

[4] On July 23, 2018, as a result of the CBSA's decision to initiate the investigation, the Tribunal initiated a preliminary injury inquiry, pursuant to subsection 34(2) of *SIMA*, to determine whether there was a reasonable indication that the dumping of the subject goods had caused injury or was threatening to cause injury to the domestic industry. On September 18, 2018, the Tribunal determined that there was evidence that disclosed a reasonable indication that the dumping of the subject goods had caused injury or was threatening to cause injury to the domestic industry.

[5] On October 18, 2018, the CBSA made a preliminary determination of dumping, resulting in the imposition of provisional duties on the subject goods and the commencement of this inquiry. On October 19, 2018, the Tribunal issued a notice of commencement of inquiry. The Tribunal's period of inquiry (POI) covers three full years, from January 1, 2015, to December 31, 2017, and the interim period of January 1, 2018, to June 30, 2018.

[6] The supporting parties are Nova, Atlas Tube Canada ULC (Atlas), DFI Corporation (DFI), and the United Steelworkers (USW).

[7] The opposing parties are International Industries Limited (IIL), Canada Wire and Metal Inc. (Canada Wire), Borusan Mannesmann Boru (BMB), Hoa Phat Steel Pipe Company Limited, Binh Duong Hoa Phat Steel Pipe Company Limited, Hoa Phat Long An Steel Pipe Company Limited, Hoa Phat Steel Pipe Company Limited (collectively, Hoa Phat), Howell Pipe & Supply (Howell), the National Tariff Commission of the Ministry of Commerce of the Government of Pakistan (GOP), and the Ministry of Trade of the Government of Turkey (GOT).

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

[8] On October 19, 2018, the Tribunal posted questionnaires on its Web site and requested the domestic producers, and certain importers, purchasers and foreign producers of CSWP to complete them. Using the questionnaire replies and import data from the CBSA, staff of the Secretariat to the Tribunal prepared public and protected investigation reports, which were issued on December 7, 2018. The public investigation reports were distributed, along with the remainder of the public record, to parties who had filed notices of participation in the inquiry. The protected investigation reports containing information designated as confidential were distributed, along with the remainder of the protected record, to counsel who had signed the required declaration and undertaking.

[9] The case schedule indicated that requests for product exclusions were to be filed by December 13, 2018, by noon. No requests for product exclusions were received.

[10] On December 14, 2018, the supporting parties filed case briefs and other evidence. Atlas, Nova and USW also filed witness statements. On December 27, 2018, IIL, BMB, Hoa Phat, and the GOT filed case briefs, and IIL, BMB, and Hoa Phat filed witness statements and other evidence. On January 7, 2019, the supporting parties filed reply submissions and Nova filed reply witness statements.

[11] On December 15, 2018, IIL filed various requests for information (RFIs) directed at Nova and Evraz Inc. NA Canada (Evraz). The Tribunal issued directions to Nova on December 21, 2018, indicating which RFIs required responses. The Tribunal issued RFIs to Evraz. Evraz filed its response on January 3, 2019, and, after requesting a brief extension of time, Nova filed its response on January 4, 2019.

[12] Revisions to the public and protected versions of the investigation reports were issued on January 4, 2019. Additional revisions to the public and protected versions of the investigation reports were issued on January 17, 2019, following the CBSA's termination of its dumping investigation with respect to CSWP exported by Erbosan Erciyas Boru Sanayii ve Ticaret A.S. (Erbosan) from Turkey. The revised reports reflect the fact that imports of subject goods from Erbosan of Turkey had an insignificant margin of dumping, and should be treated as non-dumped goods for the purposes of the Tribunal's injury or threat of injury analysis.

[13] The Tribunal held a hearing in Ottawa, Ontario, on January 14, 16, 18, and 19, 2019. It included public and *in camera* sessions. Nova, USW, and IIL presented witnesses. The Tribunal called Mr. Roy Byrne of Crane Supply as a Tribunal witness.

[14] The Tribunal issued its finding on February 15, 2019.

RESULTS OF THE CBSA'S INVESTIGATION

[15] On January 16, 2019, the CBSA made a final determination of dumping. The CBSA determined that 100 percent of the subject goods imported into Canada from Pakistan, the Philippines and Vietnam had been dumped and that a lesser quantity of subject goods imported into Canada from

Turkey had been dumped.² The CBSA's period of investigation for its dumping investigation was July 1, 2017, to June 30, 2018. The CBSA determined the following margins of dumping:³

Exporters	Margin of dumping expressed as a percentage of export price
Pakistan	
All Exporters	66.8%
Total – Pakistan	66.8%
Philippines	
HLD Clark Steel Pipe Co., Inc.	18.1%
All Other Exporters	66.8%
Total – Philippines	18.8%
Turkey	
Borusan	3.3%
Cayirova Boru ve Sanayi Ticaret A.S.	8.8%
Erbosan	0.6%
All Other Exporters	45.8%
Total – Turkey	2.7%
Vietnam	
Hoa Phat	4.9%
SeAH Steel Vina Corporation	3.0%
State Pipe and Supply Inc.	26.1%

2. Exhibit NQ-2018-003-04, Vol. 1 at 18; as noted in paragraph 12 of these reasons, the non-dumped volumes from Erbosan were removed.

3. Exhibit NQ-2018-003-04, Vol. 1 at 18-19.

All Other Exporters	54.2%
Total – Vietnam	4.4%

PRODUCT

Product definition

[16] The CBSA defined the subject goods as follows:⁴

carbon steel welded pipe, commonly identified as standard pipe, in the nominal size range from ½ inch up to and including 6 inches (12.7 mm to 168.3 mm in outside diameter) inclusive, in various forms and finishes, usually supplied to meet ASTM A53, ASTM A135, ASTM A252, ASTM A589, ASTM A795, ASTM F1083 or Commercial Quality, or AWWA C200-97 or equivalent specifications, including water well casing, piling pipe, sprinkler pipe and fencing pipe, but excluding oil and gas line pipe made to API specifications exclusively, originating in or exported from the Islamic Republic of Pakistan, the Republic of the Philippines, the Republic of Turkey and the Socialist Republic of Vietnam.

Product information

[17] The CBSA provided the following additional product information in its statement of reasons for the preliminary determination:⁵

[25] Steel pipe is generally classified into the following groups according to its end uses: CSWP (or standard pipe), pressure pipe, line pipe, structural pipe, mechanical pipe and oil country tubular goods (“OCTG”). The products within the scope of this definition are commonly referred to within the industry as “CSWP”.

[26] CSWP is generally produced to various industry standards such as American Society for Testing and Materials (ASTM) A53, ASTM A135, ASTM A252, ASTM A589, ASTM A795, ASTM F1083, Commercial Quality and American Water Works Association (AWWA) Standard C200-97. CSWP may also be produced to proprietary specifications rather than to an industry standard, as is often the case with fence tubing or to foreign specifications. For example, imported CSWP may be produced to British Standard (“BS”) 1387 or BS EN 10255.

...

[36] CSWP applications include the low-pressure conveyance of water, steam, natural gas, air and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems and other related uses. CSWP may also be used for light load-

4. Exhibit NQ-2018-003-01, Vol. 1 at 10.

5. Exhibit NQ-2018-003-01A, Vol. 1; CBSA Preliminary Determinations – Statement of Reasons (2 November 2018) at paras. 25, 26 and 36, online at: <https://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/cswp32018/cswp32018-pd-eng.html>.

bearing and mechanical applications such as for fence tubing, and as an intermediate product for protection of electrical wiring, such as conduit shells.

Product scope

[18] During the preliminary injury inquiry, Hoa Phat asked the Tribunal to confirm that ASTM A500 Grade A round pipe under six inches used for fencing purposes does not fall within the scope of the product definition in this case.⁶ At that time, the Tribunal indicated that “[m]ore information [was] required to assess whether, or the extent to which, ASTM A500 pipe (otherwise meeting the terms of the product definition) falls within the category of pipe that is ‘commonly identified as standard pipe’ or ‘fencing pipe’”.⁷ The Tribunal also indicated that it would probe this matter further in the event of a final injury inquiry.

[19] In order to do so, the questionnaires separated data on single-stencilled ASTM A500 round pipe in the nominal size range of half inch up to an including six inches, and the Tribunal directed staff of the Secretariat to the Tribunal to prepare two investigation reports for this inquiry – one including the ASTM A500 data and one excluding it.

[20] On December 4, 2018, the Tribunal sent a letter to the CBSA requesting clarification as to whether the CBSA applied the product definition in PI-2018-004 as including products meeting the ASTM A500 specification only for the purpose of imposing duties under *SIMA*, and, if so, the factors applied by the CBSA in assessing whether such products were so included. The CBSA responded to the letter on December 14, 2018, and that response was placed on the public record. On December 27, 2018, the Tribunal sent a further letter to the CBSA seeking clarification on a particular matter, to which the CBSA responded on January 7, 2019. That response was placed on the confidential record and later moved to the public record.

[21] The Tribunal also received submissions and heard argument on whether the scope of the product definition includes products produced to the ASTM A500 standard.

[22] For the following reasons, the Tribunal finds that it does not.

Submissions of parties

[23] Nova and Atlas submitted that the product definition is broad in scope and that a plain reading of the definition includes ASTM A500 round product in the nominal size range of half inch up to an including six inches.

[24] Nova submitted that, in some instances, product that is produced to the ASTM A500 standard that is round and in the nominal size range of half inch up to an including six inches *and* is used in one of the specified applications in the product definition is standard pipe falling within the scope of the product definition. According to Nova, ASTM A500 product may undergo certain finishing operations designed to alter it into a standard pipe product, such as by galvanizing it and cutting it to length (in the case of fencing pipe), or coating it and bevelling the ends (in the case of water well

6. NQ-2018-003-G-02 (protected) at Annex 2.

7. *Carbon Steel Welded Pipe* (18 September 2018), PI-2018-004 (CITT) [*CSWP 2018 PI*] at para. 26.

casing). Nova further submitted that the product definition includes a non-exhaustive list of product specifications, and that the absence of ASTM A500 from the list of product specifications does not mean that it is not covered by the product definition. Nova further submitted that the product definition specifies the particular end uses in which the products are used, including fencing pipe and water well casing.

[25] Atlas submitted that the product definition refers to products “commonly” identified as standard pipe and “usually” supplied to meet a number of ASTM specifications, “including” a number of end uses, such as fencing, piling and other end uses. It further submitted that nothing in the product definition restricts the subject goods to the ASTM specifications listed in the product definition.

[26] Hoa Phat, BMB and IIL argued that ASTM A500 products are not covered by the product definition.

[27] Hoa Phat submitted that ASTM A500 is a standard specification for hollow structural sections (HSS); it is not CSWP given the differences in the production processes. It further submitted that applying the product definition only to ASTM A500 for a particular end use (such as fencing) is problematic from an enforcement perspective, particularly as the listed HS codes do not distinguish between products on the basis of end use. Finally, Hoa Phat pointed to an article about the differences between ASTM A53 pipe and ASTM 500 structural sections and noted that ASTM A500 product is fit for structural purposes.

[28] BMB submitted that neither the product definition nor the CBSA’s additional product information in this case mention ASTM A500. BMB noted that the Turkish exporters did not include any information about domestic sales, export sales, or costs of ASTM A500 when reporting to the CBSA. BMB further submitted that if ASTM A500 falls within the scope of the product definition, then there are a number of additional domestic producers that are missing from the domestic industry. Finally, BMB submitted that there is no end use component to the product definition.

[29] IIL shared the view that ASTM A500 is not covered by the product definition.

Tribunal’s analysis

[30] It is well established that the Tribunal must conduct its injury inquiry in accordance with the definition of the subject goods provided by the CBSA.⁸ Where the Tribunal has difficulty in ascertaining the exact scope of the goods, or where the Tribunal finds that there is an ambiguity in the product definition of the subject goods provided by the CBSA, it may interpret or seek

8. The Federal Court of Appeal, in *Canada (Deputy Minister of National Revenue, Customs and Excise – M.N.R.) v. General Electric Canada Inc.*, [1994] F.C.J. No. 847 (FCA) at para. 9, stated that “[i]t is well established that the Appellant has the sole jurisdiction to define the ‘goods’ for the injury inquiry to be undertaken by the CITT.” *Mitsui and Co. v. Buchanan*, [1972] F.C. 944; *Sarco Canada Limited v. Anti-dumping Tribunal*, [1979] 1 F.C. 247; *Japan Electrical Manufacturers Association v. Anti-dumping Tribunal*, [1982] 2 F.C. 816.

clarification of the meaning of certain words in the definition, as long as it does not amount to a redefinition of the subject goods.⁹

[31] The product definition in this case is broad. It covers CSWP “commonly identified as standard pipe”, in the nominal size range from half inch up to and including six inches. The product definition lists a number of technical specifications that CSWP is “usually supplied to meet”, and indicates that equivalent specifications are also included. Finally, the product definition provides a non-exhaustive list of pipe covered by the product definition, including water well casing, piling pipe and fencing pipe. The only explicit exclusion in the product definition is oil and gas line pipe made to API specifications exclusively.

[32] The Tribunal acknowledges that the inclusion of the words “usually supplied to meet” qualifying the list of technical specifications denotes a non-exhaustive list, thus suggesting that specifications other than those listed in the product definition (such as ASTM A500) could fall within the scope of the product definition. However, the Tribunal finds that the word “usually”, when read contextually, is constrained by the phrase “commonly identified as standard pipe” (in French “*aussi appelés tuyaux normalisés*”) found in the product definition, such that only specifications commonly identified as, or called, standard pipe fall within the scope of the product definition.¹⁰

[33] The evidence in this case does not establish that ASTM A500 is a specification commonly associated with standard pipe. There is evidence that ASTM A500 product can be, and has been, used on occasion in standard pipe applications that do not require hydro testing, such as water well casing (in regions other than Quebec and the Maritimes) and fencing.¹¹ However, the evidence also establishes that ASTM A500 is generally used in HSS applications for building support and construction and that over the POI its use in standard pipe applications in Canada was rare.¹² Moreover, Mr. Jones of Nova explained in his witness statement that ASTM A500 product exceeds the requirements for some of these applications, such as fencing, but it can be commercially feasible to use it as fencing pipe if the price is low enough. In the Tribunal’s view, this does not establish that ASTM A500 products are commonly identified as, or called, standard pipe.

[34] The Tribunal is also not persuaded that the inclusion of “*water well casing, piling pipe, sprinkler pipe and fencing pipe*” gives rise to an end use component to the product definition, as was argued by Nova. The Tribunal notes that the CBSA’s additional product information refers to CSWP or standard pipe as a subset of the broader category of steel pipe, which further supports the

9. *Certain Fabricated Industrial Steel Components* (25 May 2017), NQ-2016-004 (CITT) at para. 36; *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) at paras. 57-58; *DeVilbiss (Canada) Ltd. v. Canada (Anti-dumping Tribunal)*, [1983] 1 F.C. 706; *Pup Joints* (10 April 2012), NQ-2011-001 (CITT) at para. 69; *Bicycles and Frames*, procedural order (3 July 1997), RR-97-003 (CITT).

10. The Tribunal has interpreted this phrase narrowly in the past; see *Piling Pipe* (30 November 2012), NQ-2012-002 (CITT) at para. 127.

11. Exhibit NQ-2018-003-A-03, Vol. 11 at paras. 93-97; Exhibit NQ-2018-003-A-05, Vol. 11 at paras. 34-36; *Transcript of Public Hearing* at 65-66.

12. Exhibit NQ-2018-003-A-03, Vol. 11 at para. 93; Exhibit NQ-2018-003-12.04 (protected), Vol. 4 at 12; *Transcript of Public Hearing* at 184-185, 234; *Transcript of In Camera Hearing* at 107. The Tribunal notes that Mr. Raza’s public testimony that ASTM A500 is only for square and rectangular tubing is contradicted by the ASTM A500 specification; see Exhibit NQ-2018-003-A-18, Vol. 12 at 1.

Tribunal's view that there is an discernible group of pipe known as CSWP or standard pipe.¹³ Other pipe listed by the CBSA includes pressure pipe, line pipe, structural pipe, mechanical pipe, and oil country tubular goods. The CBSA goes on to describe a certain number of applications for which CSWP or standard pipe may be used.¹⁴ The Tribunal finds that, when read in conjunction with the CBSA's additional product information, the references in the product definition to water well casing, piling pipe, sprinkler pipe and fencing pipe refer to examples of applications for which CSWP or standard pipe *may* be used as opposed to an end use provision capturing all welded pipe made of carbon steel used in such applications.

[35] In other words, the fact that other welded pipe of carbon steel (i.e. not standard pipe) can be used in these, or similar, applications does not, in the Tribunal's view, bring that pipe under the umbrella of the product definition in this case. As noted by the Tribunal in *Piling Pipe*, "the concept of substitutability should not be brought into subjectivity considerations unless the language of the definition requires it explicitly or by necessary implication."¹⁵ The product definition in this case does not contain explicit end use language, such as "used as" or "for use in . . . applications". Nor, as described above and below, is there a necessarily implied end use provision.

[36] Interpreting the product definition as including a non-exhaustive list of end uses combined with the non-exhaustive list of technical specifications could lead to a situation where steel pipe that is not commonly identified as, or called, standard pipe would be brought within the scope of the product definition on the basis of possible usage as, for example, fencing pipe or water well casing. This would broaden the scope of the product definition considerably, given the number of products that could be downwardly substitutable for these end uses. It could also lead to enforcement difficulties. For example, a distributor would not necessarily know the final end use of the pipe it is importing.

[37] The Tribunal finds that clearer language would need to be included in the product definition to support such an expansive interpretation. Moreover, the Tribunal heard that two key applications for CSWP are plumbing and heating, yet these uses are absent from this list. It is difficult to reconcile that a product definition intended to establish an end use component would omit two of the primary end uses for CSWP.¹⁶ The Tribunal finds that the better interpretation of the product definition is that water well casing, piling pipe, sprinkler pipe and fencing pipe make up a non-exhaustive illustrative list of applications for which standard pipe is often used, not a list of end uses that would extend the scope of the product definition in such a way as to cover any and all substitutable products.¹⁷

13. CBSA SOR at para. 25.

14. CBSA SOR at para. 36.

15. *Piling Pipe* at para. 136.

16. *Transcript of Public Hearing* at 65-66, 370-371; Exhibit NQ-2018-003-07E (protected), Table 34, Vol. 2.1; Exhibit NQ-2018-003-A-06, Vol. 12 at 8.

17. Nova also submitted that in *Carbon Steel Welded Pipe* (20 August 2008), NQ-2008-001 (CITT) [*CSWP NQ 2008*] the Tribunal denied a product exclusion request for certain fencing pipe on the basis of substitutability. However, the fencing pipe in question was made to BS1387, which is the British Standard for fencing pipe, and the equivalency of the standard was not in dispute. See *CSWP NQ 2008* at paras. 128, 131 and para. 17 of these reasons.

[38] The Tribunal acknowledges the CBSA's response of December 14, 2018, wherein it states that the product definition could cover "products meeting the ASTM A500 specification only . . . if the products in question otherwise meet the relevant product definition" and that "the CBSA would only apply these definitions to round products used for light load-bearing and mechanical applications such as for fence tubing."¹⁸ However, the Tribunal notes that it was not presented with any evidence that duties have been collected in connection with the two previous orders meeting essentially the same product definition. In addition, while these statements from the CBSA provide insight as to how it may administer a positive CSWP finding made by the Tribunal, they are not binding on the Tribunal. For the reasons stated above, the Tribunal is of the view that the correct interpretation of the product definition is that it does not include ASTM A500 and it finds accordingly.¹⁹

[39] As a result, the Tribunal will conduct its injury analysis on the basis that the definition of the subject goods does not include single-stencilled ASTM A500.²⁰

[40] In the event that questions remain with respect to the subjectivity of a specific future importation, the Tribunal finds that they are best dealt with through the subjectivity or scope proceedings provided for in *SIMA*.²¹

LEGAL FRAMEWORK

[41] The Tribunal is required, pursuant to subsection 42(1) of *SIMA*, to inquire as to whether the dumping of the subject goods has caused injury or retardation or is 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".

[42] 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 the purposes of its injury analysis.

[43] Given that the subject goods are originating in or exported from more than one country, the Tribunal must also determine if the prerequisite conditions are met in order to make a cumulative assessment of the effect of the dumping of the subject goods from all the subject countries on the domestic industry (i.e. whether it will conduct a single injury analysis or a separate analysis for each subject country or particular groups of subject countries).

[44] The Tribunal can then assess whether the dumping of the subject goods has caused material injury to the domestic industry.²² Should the Tribunal arrive at a finding of no material injury, it will

18. Exhibit NQ-2018-003-27, Vol. 1 at 2.

19. Exhibit NQ-2018-003-29, Vol. 1; see also Exhibit NQ-2018-003-G-02 (protected), Vol. 14 at 25-26.

20. Having reached this conclusion, the Tribunal finds it unnecessary to address the question of overlap with the product definition in *Structural Tubing*, NQ-2003-001 (as continued in RR-2008-001 and RR-2013-001), in relation to ASTM A500 product from Turkey.

21. Sections 56-67 of *SIMA* and sections 57.11 to 57.21 of the *Special Import Measures Regulations*, SOR/84-927 [*Regulations*].

determine whether there exists a threat of material injury to the domestic industry.²³ As a domestic industry is already established, the Tribunal will not need to consider the question of retardation.²⁴

[45] 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.

LIKE GOODS AND CLASSES OF GOODS

[46] In order for the Tribunal to determine whether the dumping of the subject goods has caused or is 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.²⁵

[47] 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.

[48] 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).²⁶ 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.²⁷

[49] In its preliminary injury inquiry, the Tribunal found that domestically produced CSWP of the same description as the subject goods constituted like goods in relation to the subject goods.²⁸ The Tribunal recalled that in prior proceedings involving CSWP from China, and Chinese Taipei, India,

22. The Tribunal will proceed to determine the effect of the dumping of the subject goods on the domestic industry, for individual countries or for the cumulated countries, as appropriate.

23. Injury and threat of injury are distinct findings; the Tribunal is not required to make a finding relating to threat of injury pursuant to subsection 43(1) of *SIMA* unless it first makes a finding of no injury.

24. Subsection 2(1) of *SIMA* defines “retardation” as “material retardation of the establishment of a domestic industry”.

25. 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.).

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

27. *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.

28. *CSWP PI 2018* at paras. 28-30.

Oman, Korea, Thailand and the United Arab Emirates, it concluded that domestically produced CSWP are like goods to the subject goods, as both goods shared physical and market characteristics, can generally be substituted for each other and compete directly in the Canadian market.²⁹

[50] During this inquiry a question arose as to whether or not Evraz's downgraded line pipe meeting the ASTM A252 standard constituted like goods to the subject goods. Nova submitted that Evraz does not produce CSWP "on purpose"; rather it sells "downgraded" pipe that does not meet line pipe or OCTG specifications in order to recover costs. Nova further submitted that the CSWP sold by Evraz requires further fabrication work, such as end finishing or cutting to length, before it can be used in piling pipe applications and it therefore has not undergone the requisite finishing operations to be considered CSWP.

[51] IIL pointed to Evraz's statement that the production and sales it reported to the Tribunal is covered by the scope of the product definition, and is stencilled as ASTM 252. IIL further submitted that Evraz's ASTM A252 customers are pipe and tube companies, not scrap dealers. BMB submitted that Evraz's production of downgraded pipe constitutes domestic production of like goods because Evraz is selling a pipe that is fully formed. As will be discussed further below in these reasons, BMB contrasted this with the work done by Nova Tube Inc. (Nova Tube), which BMB characterized as "finishing operations and nothing more". Hoa Phat agreed with IIL and BMB that Evraz's production of downgraded ASTM A252 is like goods.

[52] In the Tribunal's view, there is no doubt that Evraz's production of downgraded ASTM A252 is production of like goods. Evraz completed a certified Producers' Questionnaire for its downgraded pipe and characterized this pipe as ASTM A252 in its questionnaire response.³⁰ In addition, in the cover letter for Evraz's response to the Producers' Questionnaire dated November 13, 2018, counsel for Evraz confirmed that this downgraded pipe meets the ASTM A252 standard and is single-stencilled as such.³¹ Mr. Smith of Evraz provided additional information to the Tribunal in a letter dated December 13, 2018, attached to Nova's case brief, wherein he acknowledged that the ASTM A252 pipe that Evraz sells requires additional fabrication work to be used in piling applications and may not be suitable for all piling applications.³²

[53] In the Tribunal's view, CSWP between half inch and six inches meeting the ASTM A252 specification falls clearly within the scope of the product definition in this case. As such, the Tribunal sees no basis for excluding Evraz's certified ASTM A252 pipe from the scope of like goods, despite the fact that this pipe may have been produced from downgraded line pipe and OCTG, and may require additional fabrication work before being used in piling applications. In the Tribunal's view, the fact that Evraz does not produce ASTM A53 or galvanized pipe, and does not compete with Nova in those market segments, is irrelevant to the question of whether its ASTM A252 product is like goods.

29. *CSWP NQ 2008* at paras. 38-45; *Carbon Steel Welded Pipe* (11 December 2012), NQ-2012-003 (CITT) [*CSWP NQ 2012*] at paras. 58-63.

30. Exhibit NQ-2018-003-11.02, Vol. 3 at 1, 6, 9; Exhibit NQ-2018-003-12.02 (protected), Vol. 4 at 1, 12, 14.

31. Exhibit NQ-2018-003-11.02, Vol. 3 at 9.

32. Exhibit NQ-2018-003-A-02 (protected), Vol. 12, Attachment 11.

[54] For these reasons, the Tribunal finds that domestically produced CSWP, including production by Evraz, constitutes like goods to the subject goods.

[55] In its preliminary injury inquiry, the Tribunal also found that domestically produced CSWP constitutes a single class of goods. In doing so, the Tribunal stated as follows:³³

The Tribunal has found CSWP to be a single class of goods in a number of previous decisions. The Tribunal is not persuaded that there is a compelling reason to subdivide CSWP into different classes of goods in this case. The Tribunal has previously stated that “goods can belong to the same class of goods even if they come in numerous varieties, including different grades and specifications for end use, which may not be fully substitutable for each other.” It is not disputed that there are differences within the universe of CSWP. However, the complaint indicates, and previous CSWP findings show, that CSWP as defined in the product definition share a number of similar characteristics, such as form, metallurgical content and end finishes. CSWP is also distributed through the same channels, either first to distributors or directly to end users. Regarding market conditions, the complaint indicates that, while not perfectly interchangeable, there is substitutability between products as well as downward substitutability of the higher grade CSWP for lower grade applications, such as fencing.

[Footnotes omitted]

[56] The Tribunal did not receive any submissions challenging these preliminary findings. As such, the Tribunal sees no reason to depart from its conclusion that domestically produced CSWP constitutes like goods in relation to the subject goods and that there is a single class of goods. The Tribunal’s analysis will proceed on that basis.

DOMESTIC INDUSTRY

[57] 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.

[58] 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.³⁴

33. *CSWP PI 2018* at para. 35. The Tribunal reaffirmed this view in *Carbon Steel Welded Pipe* (15 October 2018), RR-2017-005 [*CSWP RR 2018*] at para. 19.

34. 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-*

Submissions of parties

[59] BMB questioned whether Nova Tube was, in and of itself, a producer of like goods on the basis of the structure of Novamerican's operations. BMB acknowledged that the Nova group of companies produce CSWP, but submitted that the financial information reported by Nova in the Producers' Questionnaire relates only to Nova Tube and therefore relates only to the finishing operations, not the production of like goods. BMB further submitted that the Tribunal does not have any information about the manufacturing costs that make up the cost of producing CSWP.

[60] In support of its position, BMB referred to the Tribunal's decision in *Oil Country Tubular Goods*, wherein it concluded that companies that finish green tubes or pipe shells were not domestic producers because these operations did not result in the creation of a distinct OCTG product that is different from a green tube.³⁵ BMB also referred to the Tribunal's decision in *Carbon and Alloy Steel Line Pipe* wherein the Tribunal concluded that Bri-Steel's manufacturing operations in Canada constituted domestic production, and were not solely finishing operations. In that case, the Tribunal found that the complex thermal heat expansion at a relatively early stage of production, resulting in a material change in the product, amounted to the creation of a new and significantly different product.³⁶

[61] Nova submitted that the financial data it provided is relevant to the production and sale of like goods. The data from Nova Tube and Nova Steel Inc. (Nova Steel) reflects Novamerican's CSWP business. Nova also submitted that Nova Tube's role in producing CSWP is substantial, noting that 75 percent of the cost of transforming blank pipe into CSWP is performed by Nova Tube at its St. Patrick facility.

[62] Nova further submitted that Nova Steel's costs were included in Nova Tube's questionnaire response. It noted that some of the schedules related specifically to Nova Steel and that Nova Steel transfers products to Nova Tube at their cost of production (i.e. without profit). Nova Tube is responsible for selling the CSWP and is the profit centre for Nova's CSWP operations.

[63] Lastly, Nova submitted that the Tribunal recognized Nova Tube as a domestic producer of like goods in *CSWP NQ 2012*, and recognized its predecessor company, ArcelorMittal, as a domestic producer of like goods in *CSWP NQ 2008*.

Tribunal's analysis

[64] It is not disputed that the Nova group of companies, when considered as a whole, are domestic producers of CSWP. The question raised by BMB is whether Nova Tube, in and of itself,

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, 419, 430; *Argentina – Definitive Anti-dumping duties on poultry (Brazil)* (22 April 2003), WTO Docs. WT/DS241/R, Report of the Panel, at paras. 7.341-7.344.

35. *Oil Country Tubular Goods* (2 April 2015), NQ-2014-002 (CITT) at para. 51.

36. *Carbon and Alloy Steel Line Pipe* (29 March 2016), NQ-2015-002 (CITT) [*Line Pipe I*] at paras. 66-67.

constitutes a domestic producer, and, if not, whether the Tribunal has the necessary data to assess Nova's performance over the POI.

[65] Mr. Jones gave an overview of Nova's business operations in his witness statement and at the hearing. He explained that the hot-rolled coil (HRC) arrives at Nova Steel where it is slit and then sent to either the Delta facility, which makes two and half inch to six inch "blanks", or the Baie-d'Urfé facility, which makes the half inch to two and a half inch "blanks".³⁷ The pipe that will eventually be sold as standard pipe is then transferred, at cost, to Nova Tube's St. Patrick facility, where it is straightened, end finished, tested, painted, stencilled, and packaged.³⁸ This pipe may also be galvanized, cut, roll-grooved or threaded at the St. Patrick facility, depending on customer needs.³⁹ Mr. Jones elaborated during public and *in camera* testimony that, in his view, the "blanks" or pipe shells are transformed into standard pipe at Nova Tube Inc.'s St. Patrick facility, noting that HSS is really just an unfinished product.⁴⁰ It is not disputed that in addition to the operations at the St. Patrick facility, Nova Tube is responsible for the marketing, distribution, and sales of CSWP.⁴¹

[66] Mr. Jones stated in his witness statement that "[t]he Delta and Baie D'Urfé facilities perform tolling operations and transfer unfinished pipe shells to Nova Tube's Saint Patrick facility We have organized these business units to take advantage of efficiencies" and that "Nova Tube maintains ownership of the product throughout the production process and handles all testing, finishing and marketing operations."⁴² Similar statements were made by Mr. Jones and Mr. Cannon at the hearing.⁴³

[67] The Tribunal has previously found that providing discrete production services to domestic producers on a fee-for-service or tolling basis while producers retain ownership of the goods is not domestic production of like goods.⁴⁴ Adopting this approach, and based on the above description of the operations, the work performed by the Delta and Baie D'Urfé facilities would appear to be tolling operations, a conclusion which is in line with the Tribunal's decision to treat Nova Tube as the domestic producer in this case.

[68] In his testimony at the public hearing, Mr. Jones indicated that the goods are transferred through at cost but said that this was part of the toll processing and added that there was a certain charge for the toll processing.⁴⁵ This statement was, however, undermined by an answer given during *in camera* testimony.⁴⁶ As such, the Tribunal cannot conclude with certainty that the arrangement between the Nova entities is truly tolling.

37. Exhibit NQ-2018-003-A-05, Vol. 11 at paras. 5-6; *Transcript of Public Hearing* at 63.

38. *Transcript of Public Hearing* at 116-117.

39. Exhibit NQ-2018-003-A-05, Vol. 11 at para. 7; *Transcript of Public Hearing* at 108.

40. *Transcript of Public Hearing* at 123-124; *Transcript of In Camera Hearing* at 68.

41. Exhibit NQ-2018-003-A-05, Vol. 11 at paras. 7-8.

42. Exhibit NQ-2018-003-A-05, Vol. 11 at paras. 19, 22.

43. *Transcript of Public Hearing* at 106, 108; *Transcript of In Camera Hearing* at 32.

44. *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) at para. 141.

45. Exhibit NQ-2018-003-A-05, Vol. 11 at para. 22; *Transcript of Public Hearing* at 108.

46. *Transcript of In Camera Hearing* at 68.

[69] Nonetheless, the Tribunal is satisfied that the work performed at Nova Tube's St. Patrick facility amounts to domestic production of like goods. It is at this facility where the blank pipes are turned into CSWP. Until these operations are completed, in particular testing and stencilling, the blanks or shells may yet become or be sold as some other type of tubular product, such as the HSS that are marketed and sold by Nova Steel. In addition, the Tribunal heard that in terms of the cost of transforming HRC into CSWP, a significant portion of those costs relate to the work performed at the St. Patrick facility.⁴⁷

[70] The Tribunal is also satisfied that it has the necessary data to assess Nova Tube's performance over the POI. First, the Tribunal notes that the financial statements that the Tribunal requested and that appear in the investigation report are for the sale of like goods, not production. Second, the income statement provided by Nova Tube includes the full cost of producing like goods as it captures the work performed by the other Nova entities as direct material costs.⁴⁸ Third, the Tribunal is satisfied that Nova Tube has not omitted any profits earned by the other Nova facilities as the evidence indicates that these facilities operate as cost centres, and that the blank pipe is transferred at cost between the different Nova facilities.⁴⁹

[71] For all of the above reasons, whether there is a true tolling operation or there is an at-cost pass-through of raw materials, the Tribunal's finding that Nova Tube is a domestic producer of like goods would not change.

[72] The Tribunal's conclusion that Nova Tube is a domestic producer of like goods is consistent with the Tribunal's conclusion in *CSWP NQ 2012*, where it considered a similar question:

[T]he Tribunal accepts that Nova Tube is an entity that is integrated into the Novamerican group of companies and is responsible for the production of certain CSWP, as well as for the sale and marketing of all CSWP.

Nova Steel makes all of the hot-rolled coil purchases for both Nova Steel and Nova Tube. Nova Steel slits the hot-rolled coil and ships it to either Nova Steel's Baie D'Urfé facility or Nova Tube's Delta facility for processing. The CSWP blanks then go to Nova Tube's Saint-Patrick facility, in Montréal, for final finishing.

Essentially, Novamerican's corporate structure is a legacy carry-over from its acquisition of entities that were previously owned by ArcelorMittal. Considering the manner in which ArcelorMittal organized its production in *CSWP 2008*, and the fact that, at that time, Arcelor/Mittal [*sic*] was recognized as a domestic producer of CSWP, the Tribunal is further satisfied that Nova Tube is part of the domestic industry.⁵⁰

[73] The evidence therefore shows that there are currently five producers of CSWP in Canada: Atlas, Bolton, DFI, Evraz and Nova Tube. Nova Tube is the largest domestic producer, accounting

47. *Transcript of In Camera Hearing* at 31-34.

48. *Transcript of Public Hearing* at 108; *Transcript of In Camera Hearing* at 41; Exhibit NQ-2018-003-12.04 (protected), Vol. 4 at 25.

49. *Transcript of Public Hearing* at 108; *Transcript of In Camera Hearing* at 32.

50. *CSWP NQ 2012* at paras. 66-68.

for the majority of total sales from domestic production over the POI.⁵¹ It bears noting that the financial data and performance indicators in the investigation report include only Atlas, Nova Tube and DFI, which together account for almost all domestic production.⁵² Bolton did not fully complete its questionnaire response and therefore its data could not be used in the investigation report.⁵³ In addition, Evraz was not able to provide the financial information requested in the Tribunal's questionnaire due to the nature of Evraz's production of CSWP.⁵⁴ Nonetheless, the Tribunal is satisfied that Atlas, DFI and Nova Tube accounted for a major proportion of total domestic production over the POI. Consequently, the Tribunal finds that these three producers constitute the domestic industry for the purpose of the Tribunal's injury analysis.

CUMULATION

[74] Subsection 42(3) of *SIMA* directs the Tribunal to make an assessment of the cumulative effect of the dumping of the subject goods if it is satisfied that the margin of dumping in relation to the goods from each of those countries is not insignificant, the volume of dumped goods from each subject country is not negligible,⁵⁵ 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 subject goods from a country is negligible, the Tribunal must terminate its inquiry in respect of those goods.

Submissions of parties

[75] IIL submitted that the impact of the subject imports from Pakistan should be assessed separately from the other countries because these imports do not compete directly with the domestically produced like goods or with other subject imports. IIL submitted that it is the only exporter from Pakistan and that the vast majority of IIL's (and therefore Pakistan's) exports of subject goods are galvanized fencing pipe sold to a distributor in Western Canada. IIL further submitted that its intent was never to disrupt the Canadian market but that it began exporting to Canada because of an unmet need in the Canadian market for quality, competitively priced galvanized fence pipe, particularly in British Columbia and Alberta. In its view, Nova Tube has not had (and presently does not have) a meaningful presence in the Western Canadian fencing market.

51. Exhibit NQ-2018-003-07E (protected), Table 21, Vol. 2.1.

52. Exhibit NQ-2018-003-07E (protected), Table 16, Vol. 2.1.

53. Although Bolton only reported sales of ASTM A500 product to the Tribunal in its response to the Producers' Questionnaire, Mr. Penny of Bolton testified at the hearing that Bolton produces ASTM A53 galvanized pipe for specified jobs and noted that fence pipe is not always produced to a particular specification, for example, commercial quality steel can be used for fence pipe. As such, despite Bolton's questionnaire response, the Tribunal is satisfied that Bolton is a domestic producer. See *Transcript of Public Hearing* at 153 and Exhibit NQ-2018-003-12.06C (protected), Vol. 4 at 11-12. Bolton also failed to provide accurate and usable financial data.

54. Exhibit NQ-2018-003-RI-02A (protected), Vol. 10 at 2.

55. Subsection 2(1) of *SIMA* defines "negligible" as meaning, "in respect of the volume of dumped 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."

IIL also noted the high cost of shipping CSWP from Quebec and Ontario to British Columbia and Alberta and that few of Nova's injury allegations related to subject goods from Pakistan.

[76] Hoa Phat submitted that its imports should not be assessed cumulatively with the other subject countries or with the other imports from Vietnam. It submitted that it did not sell to any of the same distributors as Nova Tube, that it exported only small volumes of powder-coated fence pipe, and that it sold at healthy prices.

[77] Nova and Atlas submitted that a cumulative assessment is warranted in this case. Nova submitted that the same conditions of competition exist amongst the subject goods, and between the subject goods and the like goods. It submitted that the subject goods and domestically produced like goods are interchangeable and that the subject goods compete against each other and the domestic industry throughout Canada. Nova submitted that it competes against the subject goods in Ontario and Quebec and that it is also active in Western Canada. Nova also submitted that distributors have distribution networks and locations across Canada, which allows them to distribute subject goods and domestically produced like goods across the country. Finally Nova submitted that the modes of transportation are similar, with the subject goods arriving by ocean freight and being further transported by rail or truck.

[78] Atlas submitted that the commodity nature of the subject goods, their interchangeability and their direct competition with domestically made pipe warrants a cumulative assessment of the subject goods. Atlas further submitted that it is the injury or threat of injury caused by the cumulative effect of these imports in the aggregate that is at issue in this case.

Tribunal's analysis

[79] For the reasons that follow, the Tribunal is satisfied that it is appropriate to undertake an assessment of the cumulative effect of the dumping of all of the subject goods.

Margin of dumping and volume of dumped goods

[80] Pursuant to subsection 2(1) of *SIMA*, a margin of dumping that is less than 2 percent of the export price of the goods is "insignificant". The Tribunal is satisfied that the margin of dumping for each of the subject countries is not insignificant, as the CBSA determined the country margins to each be greater than 2 percent of the export price.⁵⁶

[81] Subsection 2(1) of *SIMA* defines "negligible", in relevant part,⁵⁷ to mean a volume of subject goods from each of the subject countries that is less than 3 percent of the total volume of imports of

56. Exhibit NQ-2018-003-04, Vol. 1 at 18.

57. 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].

subject and non-subject goods that meet the product definition and that are released into Canada from all countries.⁵⁸ The Tribunal is satisfied that the volumes of imports of subject goods from Pakistan, the Philippines, Turkey and Vietnam were above negligible thresholds during the CBSA's POI.⁵⁹

[82] 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

[83] 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. The Tribunal has held that relevant factors for assessing this could include interchangeability, quality, pricing, distribution channels, modes of transportation, timing of arrivals, and geographic dispersion.⁶⁰ The Tribunal has also recognized 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 is determinative.⁶¹

[84] After considering the totality of the evidence and submissions on this issue, the Tribunal is satisfied that similar conditions of competition exist amongst the subject goods, and between the subject goods and the like goods.

[85] Most purchasers of CSWP indicated that the subject goods from the Philippines, Turkey and Vietnam are always or frequently interchangeable with domestically produced like goods, with goods from Pakistan being either frequently or sometimes interchangeable.⁶² Purchasers also indicated that the subject goods from all countries and the domestically produced like goods are generally comparable with respect to product quality, meeting technical specifications, the availability of proprietary specifications, finish, ability to return products, and ability to negotiate prices.⁶³

[86] The Tribunal has acknowledged on many occasions that CSWP is a commodity product and, as such, is price-sensitive.⁶⁴ The evidence on the record confirms the importance of price, particularly where service and product quality standards are met. In that regard, eight of nine purchasers that

58. 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."

59. Exhibit NQ-2018-003-06E, Table 65, Vol. 1.1; Exhibit NQ-2018-003-07E (protected), Table 65, Vol. 2.1. As noted above, the Tribunal revised its investigation report following the CBSA's final determination in light of the fact that the dumping investigation against CSWP exported by Erbosan of Turkey was terminated (Exhibit NQ-2018-003-04, Vol. 1 at 1).

60. 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.

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

62. Exhibit NQ-2018-003-06E, Table 8, Vol. 1.1.

63. Exhibit NQ-2018-003-06E, Tables 9-12, Vol. 1.1.

64. Most recently in *Carbon Steel Welded Pipe* (15 October 2018), RR-2017-005 (CITT) at para. 26. See also *Carbon Steel Welded Pipe* (20 August 2008), NQ-2008-001 (CITT) at para. 63.

indicated that the lowest-priced goods usually win the contract or sale, with delivery time and terms, product quality, and long-term supply relationships being the top three reasons for not selecting the lowest-priced product.⁶⁵ Witness testimony from Mr. Gravel of Nova and Mr. Byrne of Crane confirmed that where product quality and other contractual terms are met, price becomes the most important factor in purchasing decisions.⁶⁶

[87] The delivery times for subject imports from all countries purchased from distributors are similar.⁶⁷ While there may be some seasonal influence on purchases of CSWP, attributable to the fact that purchases of CSWP are tied to construction activity,⁶⁸ there is no cogent evidence establishing that this seasonal influence affects the timing of imports of subject goods to any significant degree, nor does it point to any meaningful differences in the conditions of competition between the subject goods and the domestically produced like goods.

[88] The Tribunal also finds that there are similar channels of distribution for CSWP from each subject country and as for the subject goods and domestically produced like goods. Although the responses from purchasers suggest that the subject goods and the domestically produced like goods may not always be sold through similar distribution channels,⁶⁹ most domestic producers sell to distributors with some sales to end users, and most importers are also distributors that sell to distributors and/or end users.⁷⁰ Data in the investigation report also shows that the majority of sales by the questionnaire respondents were made through distributors, as opposed to directly to end users.⁷¹

[89] The above evidence, in particular the fungible and commodity nature of CSWP, strongly suggests that a cumulative assessment of the effects of the dumping of the subject goods from the four subject countries would be appropriate in this case. However, as noted above, IIL argued that the subject goods from Pakistan should be decumulated, largely because of the absence of sales of fencing pipe by domestic producers in Western Canada.

[90] There were imports from all four subject countries throughout the POI.⁷² Mr. Rabideau of Atlas stated in his witness statement that Turkish steel pipe, including piling pipe, mostly lands in Eastern Canada whereas Asian-sourced pipe from Pakistan, Philippines and Vietnam enters Canada through ports in the Vancouver area.⁷³ However, as discussed below, this may not always be the case. In addition, the arrival port of the goods does not necessarily indicate the region in which they are sold. Purchasers of CSWP are master distributors and distributors with locations all across the country, with the ability to distribute domestically produced like goods and imports nationally.⁷⁴

65. Exhibit NQ-2018-003-06E, Table 13, Vol. 1.1.

66. *Transcript of Public Hearing* at 71, 227.

67. Exhibit NQ-2018-003-06E, Table 8, Vol. 1.1.

68. Exhibit NQ-2018-003-06E, Table 15, Vol. 1.1; *Transcript of Public Hearing* at 154, 155, 228.

69. Exhibit NQ-2018-003-06E, Table 8, Vol. 1.1.

70. Exhibit NQ-2018-003-06E, Tables 1, 2, Vol. 1.1.

71. Exhibit NQ-2018-002-07E (protected), Tables 25, 29, 33, Vol. 2.1; *Transcript of Public Hearing* at 68, 235.

72. Exhibit NQ-2018-003-07E (protected), Table 17, Vol. 2.1.

73. Exhibit NQ-2018-003-B-03, Vol. 11 at para. 10.

74. Exhibit NQ-2018-003-A-03, Vol. 11 at paras. 8-12, 25; Exhibit NQ-2018-003-A-04 (protected), Vol. 12 at paras. 8-12; *Transcript of Public Hearing* at 222.

Over the course of the POI, domestic producers and importers sold CSWP, to a variable degree, in the same regions throughout Canada. The largest share of sales by both domestic producers and importers was to Quebec and Ontario. Sales to Alberta and British Columbia accounted for the second largest share of sales.⁷⁵ While this data does not break down import sales by origin or specification, it does suggest that all imports of CSWP and the domestically produced like goods are distributed throughout Canada.

[91] There is evidence of sales of subject goods from all four subject countries in Western Canada, demonstrating that the subject goods compete against each other in that region.⁷⁶ Mr. Gravel also testified that Nova markets and sells standard pipe “coast-to-coast across the country”, adding that Western Canada “is a challenging market, mainly because of the cheap import prices that we get from the subject countries here.”⁷⁷

[92] Regarding fencing pipe, Mr. Gravel confirmed that Nova sold some fencing pipe in Western Canada over the POI.⁷⁸ He also stated in his witness statement that “purchasers are aware that Nova is keen on these business opportunities particularly in the fencing market due to my constant contact; however, due to the significant pricing differences, Nova is often not even given the chance to bid.”⁷⁹ The Tribunal is not persuaded that Nova’s limited sales in Western Canada is sufficient in and of itself to establish differences in the conditions of competition such that a cumulative assessment is not appropriate, particularly in light of the Tribunal’s finding that there is a single class of goods in this case. As noted above, the subject goods compete against each other in Western Canada. For example, subject goods from Pakistan and Vietnam were purchased by the same distributor located in Western Canada over the POI.⁸⁰ In addition, the Tribunal cannot be sure that the subject imports from Pakistan, being primarily ASTM A53 Grade A product, would not compete in other market segments.⁸¹ In that regard, imports of low-priced fencing pipe could have spillover price effects on other subject and like goods sold in Western Canada and beyond.

[93] Although the instances of direct competition between domestically produced fencing pipe and subject fencing pipe from Pakistan in Western Canada may have been fewer than the competition between other subject and like CSWP products, the Tribunal is satisfied that there is competition between the subject countries, and between the subject countries and the like goods for other CSWP products, and that Nova is actively pursuing fencing sales in that region.

75. Exhibit NQ-2018-003-07E (protected), Table 66, Vol. 2.1.

76. Exhibit NQ-2018-003-E-05, Vol. 13 at para. 35; Exhibit NQ-2018-003-15.14F (protected), Vol. 6 at 10, 16, 64; Exhibit NQ-2018-003-15.23 (protected), Vol. 6 at 10, 16, 64; Exhibit NQ-2018-003-20.04A, Vol. 5.2 at 1, 2, 6; *Transcript of Public Hearing* at 69-70, 187-188, 220, 222, 237; Exhibit NQ-2018-003-A-04 (protected), Vol. 12 at paras. 34, 53, 62, 88.

77. *Transcript of Public Hearing* at 68-69; see also *Transcript of In Camera Hearing* at 119; Exhibit NQ-2018-003-12.04 (protected), Vol. 4 at 17.

78. *Transcript of Public Hearing* at 70; *Transcript of In Camera Hearing* at 16; Exhibit NQ-2018-003-A-12 (protected), Vol. 12 at paras. 5, 7.

79. Exhibit NQ-2018-003-A-11, Vol. 11 at para. 6; Exhibit NQ-2018-003-A-04 (protected), Vol. 12 at paras. 66-68.

80. Exhibit NQ-2018-003-14.14, Vol. 6 at 6.

81. *Transcript of Public Hearing* at 156.

[94] Moreover, there is evidence of competition between the subject goods, and between the subject goods and the like goods, in Central Canada.⁸² Mr. Gravel states in his witness statement that goods from Pakistan may appear in Eastern Canada through distributors.⁸³ Further, there is evidence that at least one purchaser in Ontario bought both domestically produced like goods and subject goods from Pakistan over the POI.⁸⁴

[95] Regarding Hoa Phat's argument that its exports should be decumulated, the Tribunal notes that the Tribunal's assessment is focused on the conditions of competition that exist in the Canadian market with respect to the subject goods from each of the subject *countries*.⁸⁵ This is not an assessment done on a per-exporter basis.

[96] In summary, 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 Pakistan or Hoa Phat in this case. The Tribunal will therefore proceed to assess injury based on the cumulative effects of the dumped subject goods from Pakistan, the Philippines, Turkey and Vietnam.

INJURY ANALYSIS

[97] Subsection 37.1(1) of the *Regulations* prescribes that, in determining whether the dumping has caused material injury to the domestic industry, the Tribunal is to consider the volume of the dumped 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 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 of the goods have caused injury.

Overview of the Canadian CSWP market

[98] This is the Tribunal's third inquiry into CSWP since 2008. In August 2008, the Tribunal issued a finding against certain dumped and subsidized CSWP from China. The Tribunal ordered the continuation of that finding in August 2013, and initiated a second expiry review in May 2018.⁸⁶ In December 2012, the Tribunal issued a finding that the dumping of certain CSWP from Chinese Taipei, the Republic of India (India), the Sultanate of Oman, the Republic of Korea, the Kingdom of

82. Exhibit NQ-2018-003-A-04 (protected), Vol. 12 at paras. 33, 38, 46, 47; *Transcript of Public Hearing* at 69, 237-238; Exhibit NQ-2018-003-20.07, Vol. 5.2 at 1, 7; Exhibit NQ-2018-003-18.06 (protected), Vol. 6.1 at 2.

83. Exhibit NQ-2018-003-A-11, Vol. 11 at para. 8.

84. Exhibit NQ-2018-003-20.03, Vol. 5.2 at 1, 6.

85. The Tribunal has previously expressed this view. See *Concrete Reinforcing Bar* (3 May 2017), NQ-2016-003 (CITT) at para. 76.

86. In addition, in November 2012, the Tribunal issued a finding that the dumping and subsidizing of certain steel piling pipe from China threatened the domestic industry with injury. The Tribunal ordered the continuation of the piling pipe finding in July 2018. At the preliminary injury inquiry stage (PI-2012-002) the Tribunal concluded that piling pipe in sizes 3½ inches up to and including six inches, in various forms and finishes, usually supplied to meet ASTM A252 or equivalent specifications, was subject to the finding in *CSWP NQ 2008* and the Tribunal therefore terminated the piling pipe inquiry into that subset of CSWP.

Thailand and the United Arab Emirates, and the subsidizing of certain CSWP from India, threatened the domestic industry with injury. The Tribunal ordered the continuation of that finding in October 2018.

[99] The Canadian market for CSWP is mature: there is a known customer base and growth opportunities tend to be limited. While demand increased during the POI, it is expected to remain relatively stable in the foreseeable future.⁸⁷ The majority of sales in Canada are made to distributors, many of which are large companies with numerous locations across Canada.⁸⁸ These companies supply a complete range of pipe, fittings and valves to plumbing and heating contractors, and maintain stocks of these standard items in close proximity to the consuming markets. National distributors often coordinate their procurement activities and will buy large volumes of CSWP and then distribute those volumes to their locations across Canada.⁸⁹

[100] The CSWP subject to this inquiry comes in a wide range of specifications. The most common is the ASTM A53 specification, which is considered to be the highest quality and is used in plumbing and heating applications. Other applications for standard pipe include piling pipe (ASTM A252), water well casing (ASTM A589), fire protection (A795 or A53) and fencing pipe (ASTM F1083 or commercial quality).

Importance of price in purchasing decisions

[101] As discussed above, CSWP is a commodity product, and price is a determinative factor in purchasing decisions. The lowest-priced goods usually win the sale subject to the requisite technical specifications and quality. Mr. Gravel of Nova testified, for example, that when all else is equal in terms of quality, finish and delivery, price is the most important consideration, meaning that whoever offers the best price tends to win the sale.⁹⁰ Likewise, Mr. Byrne of Crane also testified that, all things being equal in terms of standard and quality, the ultimate consideration for any purchaser is price (or more specifically, the total landed cost).⁹¹

[102] Purchasers indicated that the subject goods and the domestically produced like goods are comparable for a number of qualitative factors. Domestically produced like goods generally have an advantage in relation to “delivery times and terms”. However, when it comes to price, purchasers indicated clearly that the subject goods had the advantage over the like goods.⁹²

Price transparency in the market

87. *Transcript of Public Hearing* at 70-71, 141-142, 186, 224; Exhibit NQ-2018-003-07E (protected), Table 71, Vol. 2.1.

88. *Transcript of Public Hearing* at 222; Exhibit NQ-2018-003-14.11, Vol. 5 at 4; Exhibit NQ-2018-003-15.14 (protected), Vol. 6 at 64; Exhibit NQ-2018-003-A-03, Vol. 11 at paras. 8-12, 25.

89. *Transcript of Public Hearing* at 222.

90. *Transcript of Public Hearing* at 71.

91. *Transcript of Public Hearing* at 227.

92. Exhibit NQ-2018-003-06E, Tables 8-12, Vol. 1.1.

[103] The prices of CSWP are generally quoted using a base price, plus additional costs for value-added items (or “extras”), such as coating (e.g. galvanized), end finishing (e.g. roll-grooved or threaded and coupled) and different wall thickness or diameter sizes.⁹³

[104] For the most part, prices are known throughout Canada’s CSWP market. In other words, the market is a transparent one, with suppliers broadly aware of pricing trends and offers from foreign and domestic suppliers. Accordingly, when CSWP is imported into Canada at low prices, prices typically permeate the domestic market as a whole.

[105] When commenting on the degree of price transparency in the market, Mr. Raza of Brampton testified that “I wouldn’t be having a job if I didn’t have that kind of market intelligence [from customers].”⁹⁴ Mr. Abbas of IIL confirmed that Mr. Raza’s role is to “feed [IIL] what is happening, who is buying what quantities, what are the price trends; it is going up, going down, what is happening in the market, et cetera, et cetera.”⁹⁵

[106] Mr. Gravel of Nova noted in his witness statement that when he reaches out to potential customers on behalf of Nova, he has “frequent discussions with customers about pricing and import offers.”⁹⁶ He added: “I am personally involved in sales planning and strategy, including gathering, analyzing and responding to commercial intelligence gathered from customers.”⁹⁷ As such, he explained that Nova is well aware of import prices in the Canadian market, and has to respond by adjusting its prices in order to remain competitive.

[107] It is with this context in mind that the Tribunal will undertake its injury analysis.

Import volume of dumped goods

[108] 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.

[109] Nova submitted that there has been a significant increase in the volume of subject imports, in both absolute terms and relative to sales from domestic production. The Tribunal notes that this increase started from an already high volume, as subject imports already had a substantial presence in the market in 2015.⁹⁸ Conversely, BMB requested that the Tribunal consider the most recent data in the POI, which shows that the volume of subject imports is declining.

[110] Evidence before the Tribunal indicates that the absolute volume of subject imports increased 78 percent in 2016 to reach its highest point in the POI, before decreasing by 5 percent in 2017.⁹⁹ The

93. Exhibit NQ-2018-003-A-03, Vol. 11 at paras. 14-20; *Transcript of In Camera Hearing* at 123-124; *Transcript of Public Hearing* at 189.

94. *Transcript of Public Hearing* at 179.

95. *Transcript of Public Hearing* at 190-191.

96. Exhibit NQ-2018-003-A-03, Vol. 11 at para. 2.

97. Exhibit NQ-2018-003-A-03, Vol. 11 at para. 2.

98. Exhibit NQ-2018-003-07E (protected), Tables 21, 23, Vol. 2.1.

99. Exhibit NQ-2018-003-07E (protected), Table 17, Vol. 2.1; Exhibit NQ-2018-003-06E, Table 18, Vol. 1.1.

net increase from 2015 to 2017 was 69 percent, which is significant in absolute terms.¹⁰⁰ The volume of subject imports in interim 2018 was down 9 percent as compared to interim 2017.¹⁰¹ The evidence indicates that this likely occurred as some suppliers turned to other sources to reduce their potential liability to *SIMA* duties as this inquiry got underway.¹⁰² Despite this recent decrease, the volume of subject imports at the end of the POI remained significantly higher than at the beginning.¹⁰³

[111] The import volume of subject imports increased relative to the domestic production of like goods and the consumption of like goods in 2016, then decreased in 2017. Relative volumes in 2017 were, however, well above those in 2015. The ratio for domestic production decreased in interim 2018 compared to interim 2017, while the ratio for the consumption of like goods increased slightly between those periods.¹⁰⁴

[112] Therefore, even though there was some variation over the POI, the Tribunal finds that there has been a significant increase in the absolute import volume of the subject goods and relative to domestic consumption and domestic production of like goods.

Price effects of dumped goods

[113] Paragraph 37.1(1)(b) of the *Regulations* directs the Tribunal to consider the effects of the dumped goods on the price of like goods and, in particular, whether the dumped 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 goods from any price effects that have resulted from other factors affecting prices.

Submissions of parties

[114] Nova submitted that the subject countries have captured market share by offering CSWP at prices that increasingly undercut domestic pricing. In addition, Nova claimed that this undercutting has required it to drop prices by significant amounts in order to sell its goods. To highlight this, Nova referred to several account-specific allegations where its prices were being significantly undercut by the price of subject imports. Nova also argued that subject imports often included “extras” in terms of surface or end finish at minimal or no extra charge to Canadian customers. Nova further claimed that the subject imports have significantly depressed and suppressed the price of like goods. Nova’s submissions were supported by Atlas and DFI.

[115] In regard to pricing trends, Nova urged the Tribunal to focus its analysis primarily on data collected for seven benchmark products¹⁰⁵ and the account-specific sales as opposed to average market unit values, given that both subject and like goods include a range of products for which there is substantial variation in cost and price, depending on the specific product. Nova further noted that the

100. Exhibit NQ-2018-003-07E (protected), Table 17, Vol. 2.1.

101. Exhibit NQ-2018-003-06E, Tables 18, 22, Vol. 1.1.

102. *Transcript of Public Hearing* at 232; *Transcript of In Camera Hearing* at 124-125.

103. This is the case for both full year 2017 and annualized 2018.

104. Exhibit NQ-2018-003-06E, Table 20, Vol. 1.1; Exhibit NQ-2018-003-07E (protected), Table 20, Vol. 2.1.

105. The Tribunal collected data on seven benchmark products in this case, as will be explained more fully below.

benchmark and account-specific prices are presented on a more detailed quarterly basis, as opposed to annual basis. Furthermore, Nova also submitted that the average market unit prices for Vietnam include a significant proportion of higher-priced product, as one of the relevant importers solely imported galvanized pipe during the POI.

[116] IIL argued that the domestic industry has not been materially injured and that any injury suffered by the domestic industry was the result of other factors, not the subject goods. IIL submitted that there is no evidence of price undercutting in the average selling prices. IIL further submitted that the two account-specific allegations relevant to IIL do not provide evidence of price undercutting because Nova never attempted to participate in either of those transactions. In terms of the alleged price depression, IIL submitted that Nova's comparison of domestic industry sale prices to the U.S. benchmark does not take into account important supply and demand differences between the two countries, including market responses in the United States to the anticipated and actual imposition of Section 232 tariffs. IIL also argued that the alleged "cost-price squeeze" claimed by Nova has been decreasing since 2017, given that Nova's selling price increases have outpaced its direct material costs and cost of goods sold (COGS).

[117] BMB submitted that there is no causal relationship between the alleged price suppression and subject imports in 2017, noting that the domestic industry chose to lower its prices even as import prices (both subject and non-subject) increased and the market expanded.

[118] Like Nova, BMB submitted that average pricing data does not provide a meaningful basis for comparison in this case because it covers a range of products with wide pricing differences. However, it further argued that this is also the case for trade level and account specific price data. Further, BMB submitted that the benchmark data in this case provides limited guidance because none of the benchmark products distinguish between end finish (i.e. plain, or threaded and coupled).

Tribunal's analysis

– The utility of using average market unit values

[119] As noted above, Nova and BMB argued that average prices are not the best metric for assessing price undercutting in this inquiry. The Tribunal agrees. The subject goods and like goods consist of a mix of products with different grades, coatings, wall thicknesses, etc., which vary in price depending on the different "adders" (e.g. galvanized finish) that are applied to the base price.¹⁰⁶

[120] In *CSWP NQ 2008* the Tribunal stated that "product mix, i.e. the product range and the sizes and types of the goods, may be a factor in comparing the average selling prices of the like goods with those of the subject goods. Differences in product mix may mask the true price differential between comparable products."¹⁰⁷ Furthermore, the Tribunal also observed in *CSWP NQ 2012* that certain product mix differences between the subject and like goods could result in higher average prices, which might obscure the degree of price effects by the subject goods.¹⁰⁸ As a result, the Tribunal in

106. *Transcript of Public Hearing* at 71-72.

107. *CSWP NQ 2008* at paras. 69-73.

108. *CSWP NQ 2012* at paras. 104-106.

both those cases considered that the benchmark product information provided the most reliable or analogous basis on which to make pricing comparisons.

[121] In this case, the subject imports contained a greater proportion of CSWP made to the ASTM A53 specification, and a greater proportion of galvanized, as opposed to black, CSWP compared to the domestically produced like goods. Given that ASTM A53 is a higher specification that generally commands a higher price, and that galvanized CSWP also commands a premium over black CSWP,¹⁰⁹ average prices of the subject goods appear to be weighted towards more expensive products compared to the like goods. In addition, as noted above, the domestically produced like goods include a portion of downgraded product, or “seconds”, that command a lower average selling price, and there is no evidence that downgraded products are present among the subject goods. Given this product mix, the degree to which subject goods impacted the prices of domestic goods could be masked by these average figures.

[122] As such, the Tribunal has relied more heavily on the data relating to benchmark products in its analysis. It collected data on seven benchmark products; they cover various specifications (i.e. ASTM A53, commercial quality), finish (i.e. black, galvanized) and size (i.e. one to four inches, six inches) of like and subject goods.¹¹⁰ Taken together, these products represent a reasonable share of sales from domestic production and imports, particularly subject imports, though meaningful comparisons cannot be made between the like and subject goods for all of the benchmark products.¹¹¹ In particular, Benchmark Products No. 1, 2, 4 and 7 constitute more than two thirds of the sales of domestic production, imports, and sales of imports in 2017.¹¹²

– Purchase price vs. selling price

[123] As noted above, Nova also submitted that neither the average market selling prices, nor the average selling prices of the benchmark products estimated for Vietnam are properly comparable to Nova’s selling prices, given those prices include an importer that is also a customer of Nova. In Nova’s view, it competes with the foreign producer when that importer chooses to import the subject goods instead of purchasing from Nova.

[124] Further to this, Atlas and DFI both submitted that the Tribunal should compare import purchase values to domestic selling values for all importers. In Atlas’s view, it is the import purchase value that competes with the domestic producers’ prices.

[125] No submissions were received on this issue from opposing parties.

109. Exhibit NQ-2018-003-07E (protected), Table 34, Vol. 2.1; *Transcript of Public Hearing* at 65-67, 74, 130; Exhibit NQ-2018-003-A-05, Vol. 11 at para. 29.

110. In regard to BMB’s submission on the scope of the benchmark products, particularly in respect to end finish, the Tribunal notes that staff of the Secretariat to the Tribunal undertook consultations at the start of this inquiry, which indicated that parties considered the inclusion of all end finishes under the relevant definitions to be preferable.

111. Exhibit NQ-2018-003-06E, Table 50, Vol. 1.1.

112. Exhibit NQ-2018-003-07E (protected), Table 50, Vol. 2.1.

[126] The Tribunal typically begins its assessment of price effects on the premise that domestic producers compete with importers at the first level of sale in the domestic market, i.e. the first sale by an importer-distributor to another distributor or to an end user.¹¹³ However, the Tribunal has previously found that when domestic producers compete directly with foreign producers for sales to distributors that also import the subject goods directly, it is reasonable to use the purchase prices of those importer-distributors over the selling prices of those importer-distributors in its assessment of price undercutting.¹¹⁴

[127] In this case, six of nine importers identified themselves as distributors.¹¹⁵ In addition, a significant share of the domestic industry's sales were made to distributors.¹¹⁶ As these distributors can choose to either import CSWP from foreign producers or to purchase from the domestic industry, the Tribunal finds it reasonable to consider that the purchase prices of importer-distributors accurately reflect the level of competition against which the domestic industry must compete, at least with respect to a substantial portion of the market.¹¹⁷

[128] In light of the above, in its price undercutting analysis, the Tribunal compared the selling prices of domestically produced like goods to both the purchase price and the selling price of the subject goods.¹¹⁸

– Price undercutting

[129] The average purchase price of subject imports undercut the average selling price of the domestically produced like goods in each full year of the POI, although that undercutting was, at 3 percent, not significant in 2017. There was no undercutting identified during interim 2018. The comparison to non-subject imports was similar.¹¹⁹

[130] The results differ when the selling price of subject imports is examined. The average price of the subject goods was significantly higher than the average price of the domestically produced like goods in each period of the POI. While the average price of non-subject imports was found to have undercut the like goods, this was limited to 2015 and 2016 only. Further, the undercutting identified during 2015 was not considered to be significant.¹²⁰

113. *Line Pipe I* at para. 120.

114. *Line Pipe I* at para. 121; *Carbon and Alloy Steel Line Pipe* (4 January 2018), NQ-2017-002 (CITT) at para. 38.

115. Exhibit NQ-2018-003-06E, Table 2, Vol. 1.1.

116. Exhibit NQ-2018-003-07E (protected), Table 33, Vol. 2.1; *Transcript of Public Hearing* at 235.

117. In this case, there is evidence that domestic producers compete directly with the purchase prices of foreign exporters with respect to an important purchaser of CSWP. See Exhibit NQ-2018-003-14.23, Vol. 5 at 5-6; *Transcript of Public Hearing* at 219. Another importer-distributor indicated that the domestic producers were not cost-competitive. See Exhibit NQ-2018-003-14.11, Vol. 5 at 5.

118. This is consistent with the Tribunal's approach in *Line Pipe I* and *Sucker Rods* (15 December 2018), NQ-2018-001 (CITT).

119. Exhibit NQ-2018-003-07E (protected), Tables 35, 37, Vol. 2.1.

120. Exhibit NQ-2018-003-07E (protected), Table 37, Vol. 2.1.

[131] In terms of sales to distributors, the average price of the subject goods undercut the price of the like goods in 2016 only.¹²¹ For sales to end users, the average price of the subject goods undercut the price of the like goods in 2017 only, although not by a significant amount.¹²²

[132] For common accounts, sales of subject goods undercut the selling prices of like goods in all four instances where both were sold to those accounts.¹²³

[133] When the average purchase price of the benchmark subject goods is examined, the subject goods undercut the price of the like goods in all 28 instances where they were both sold in the apparent market. The percentage of undercutting ranged from 9 to 44 percent. When considering non-subject imports, the average purchase price of those imports undercut the price of like goods in 31 of the 32 instances where both were sold in the apparent market. The percentage of undercutting ranged from 1 to 29 percent.¹²⁴

[134] When the average selling price of the benchmark subject goods is examined, there were some instances where the subject goods were higher-priced than the domestically produced like goods.¹²⁵ Nevertheless, the subject goods still undercut the price of the like goods in 21 of the 28 instances where both were sold in the apparent market. The percentage of undercutting ranged from less than 1 to 35 percent, with significant undercutting across the POI for four of the six¹²⁶ products. When considering non-subject imports, the average selling price of those goods undercut the price of like goods in 25 of the 32 instances where both were sold in the apparent market. The percentage of undercutting ranged from 2 to 22 percent.¹²⁷

[135] In regard to Nova's claim that imports from the subject countries often have "extras" in terms of surface or end finish at minimal or no extra charge to Canadian customers, the Tribunal does not consider that it has sufficient evidence to validate this claim, noting that Mr. Abbas of IIL testified that "[t]he prices are basically based on the HRC prices that we get . . . and then our conversion cost and certain profit margin that we would like to have . . ." ¹²⁸ Mr. Byrne of Crane also testified *in camera* on this issue.¹²⁹

[136] Mr. Gravel of Nova spoke to specific lost sales allegations in his witness statement, to demonstrate price undercutting that occurred in relation to particular transactions. Notwithstanding that IIL disputed two of those allegations, the Tribunal finds that there are a number of instances

121. Exhibit NQ-2018-003-07E (protected), Table 39, Vol. 2.1.

122. Exhibit NQ-2018-003-07E (protected), Table 41, Vol. 2.1.

123. Exhibit NQ-2018-003-07E (protected), Tables 56-58, Vol. 2.1.

124. Exhibit NQ-2018-003-07E (protected), Tables 43-49, Vol. 2.1.

125. The Tribunal notes that Evraz did not provide benchmark data.

126. While there were seven benchmark products, this does not include Benchmark Product No. 6, which related to ASTM A500.

127. Exhibit NQ-2018-003-07E (protected), Tables 53-54, Vol. 2.1; Exhibit NQ-2018-003-06E, Table 55, Vol. 1.1.

128. *Transcript of Public Hearing* at 189.

129. *Transcript of In Camera Hearing* at 123-124.

where the domestic producers lost sales to lower-priced subject goods, which corroborates the evidence of price undercutting presented in the investigation report.¹³⁰

[137] On the basis of the above, the Tribunal finds that there was significant price undercutting by the subject goods over the entire POI.

– **Price depression**

[138] The average selling price of domestically produced like goods decreased in 2016 and then increased slightly in 2017, resulting in an overall decrease of 6 percent between 2015 and 2017. This coincided with a 2 percent decline in the average price of the subject goods.¹³¹ Between interim periods 2017 and 2018, both the average selling price of domestically produced like goods and the subject goods increased by 15 percent.¹³²

[139] For sales to distributors, the average selling price of domestically produced like goods decreased in both 2016 and 2017, resulting in an overall decrease of 9 percent between 2015 and 2017. This coincided with a 1 percent increase in the average price of the subject goods.¹³³ Between interim periods 2017 and 2018, both the average selling price of domestically produced like goods and the subject goods increased by 15 and 11 percent respectively.¹³⁴

[140] For sales to end users, the average selling price of domestically produced like goods decreased in 2016 and then increased in 2017, resulting in an overall increase of 7 percent between 2015 and 2017. This coincided with a 23 percent decrease in the average price of the subject goods.¹³⁵ Between interim periods 2017 and 2018, both the average selling price of domestically produced like goods and the subject goods increased by 9 and 33 percent respectively.¹³⁶

[141] There was only one common account for which comparisons between the subject and like goods could be made. For this account, the quarterly prices of the like goods fluctuated across the quarters, with overall increase in the range of 11 percent. Prices of the subject goods also fluctuated, with overall increases in the range of 12 percent.¹³⁷

[142] For sales of benchmark products, the pricing data showed that the selling prices of the subject and like goods fluctuated, sometimes quite significantly, across the quarters. Overall, prices of the like goods increased over the period examined for all five benchmark products sold by the domestic industry in the range of less than 1 to 31 percent. Conversely, prices of the subject goods decreased

130. Exhibit NQ-2018-003-A-04 (protected), Vol. 12 at paras. 33, 35, 38-39, 42-43, 46, 50, 55-56, 60, 63, 70, 72, 84, 86.

131. Exhibit NQ-2018-003-06E, Table 38, Vol. 1.1; Exhibit NQ-2018-003-07E (protected), Table 37, Vol. 2.1.

132. Exhibit NQ-2018-003-06E, Table 38, Vol. 1.1.

133. Exhibit NQ-2018-003-07E (protected), Table 39, Vol. 2.1

134. Exhibit NQ-2018-003-06E, Table 40, Vol. 1.1.

135. Exhibit NQ-2018-003-07E (protected), Table 41, Vol. 2.1.

136. Exhibit NQ-2018-003-06E, Table 42, Vol. 1.1.

137. Exhibit NQ-2018-003-07E (protected), Table 58, Vol. 2.1.

over the period examined in the case of three benchmark products sold in the range of 1 to 4 percent, while two products increased by 15 and 29 percent respectively.¹³⁸

[143] Nova provided examples in its account-specific allegations of instances where it had to lower its prices in order to secure sales. This was supported by Mr. Gravel's evidence and testimony.¹³⁹

[144] Nova also claimed that growing differences between the U.S. Midwest spot price and Canadian CSWP pricing (which have historically tracked closely together) is further evidence that price depression continuously increased during the POI. IIL countered that this analysis fails to account for important supply and demand differences between the U.S. and Canadian markets. The Tribunal has previously relied on U.S. Midwest spot prices in its analysis of price effects.¹⁴⁰ However, the relevance and reliability of those spot prices were not the subject of much discussion in these proceedings, and the Tribunal is not in a position to confirm that this data offers a reliable or useful comparison in this case. Accordingly, the Tribunal has not considered this data in making its decision.¹⁴¹

[145] The Tribunal finds that there is insufficient evidence to conclude that significant price depression occurred over the POI. Some price depression was evident in the average pricing and at the distributor level between 2015 and 2017. However, the Tribunal considers that price increases across the benchmark products and common accounts preclude a finding of significant price depression in this case.

– Price Suppression

[146] In order to assess whether the price of the subject goods has suppressed the price of like goods, the Tribunal typically compares the domestic industry's average unit cost of goods manufactured (COGM) or COGS with its average unit selling values in the domestic market to determine whether the domestic industry has been able to increase selling prices in line with increases in costs. However, the Tribunal may also examine more generally whether the subject goods have significantly "suppressed the price of like goods by preventing the price increases for those like goods that would otherwise likely have occurred."¹⁴²

138. Exhibit NQ-2018-003-07E (protected), Tables 43-49, Vol. 2.1.

139. Exhibit NQ-2018-003-A-04 (protected), Vol. 12.

140. *Cold-rolled Steel* (21 December 2018), NQ-2018-002 (CITT) at para. 67.

141. The Tribunal notes that it has, in recent decisions, considered the price divergence between U.S. spot prices and Canadian prices in the context of assessing whether the dumping has significantly "suppressed the price of like goods by preventing the price increases for those like goods that would otherwise likely have occurred." See *Cold-rolled Steel* at para. 84 and *Corrosion-resistant Steel Sheet* (24 September 2018) PI-2018-005 (CITT) at para. 38.

142. Subparagraph 37.1(1)(b)(iii) of the *Regulations*. See, for instance, *Certain Hot-rolled Carbon Steel Plate and High-strength Low-alloy Plate* (17 May 1994), NQ-93-004 (CITT) at 17-18; *Polyiso Insulation Board* (6 May 2010), NQ-2009-005 (CITT) at para. 71. A finding that dumped goods prevented price increases for the like goods that would otherwise likely have occurred must be based, *inter alia*, on an objective examination of positive evidence of what the prices of the like goods would have been in the absence of dumping. *Russia – Anti-dumping Duties on Light Commercial Vehicles from Germany and Italy* (27 January 2017), WTO Docs WT-DS479/R,

[147] The domestic industry's annual COGM and COGS (on a dollar-per-tonne basis) increased from 2015 to 2017, while its unit selling value also increased over the same period but to a lesser degree. Between interim periods 2017 and 2018, the domestic industry's COGM and COGS increased and the unit value increased to a greater degree.¹⁴³

[148] While selling prices increased more than COGM and COGS during interim 2018, this does not preclude a finding that suppression was evident in 2017. As such, the domestic industry was prevented from raising its prices to offset increasing COGM and COGS in that year, which is something that companies should normally be able to do in a stable market.

[149] In response to Nova's claim that CSWP prices in Canada did not increase at the same rate as increases in the cost of HRC, IIL submitted that Nova elected to use North American HRC, which in recent years has been the most expensive in the world. BMB made a similar submission. IIL acknowledged that while Nova is fully entitled to make that choice, it cannot then blame subject imports when its resulting products are not cost-competitive. According to IIL, not being cost-competitive is not price suppression.

[150] In response, Nova argued there is no indication that it would have access to the HRC prices available to IIL and BMB, and that the theoretically available prices submitted by those parties for unspecified grades do not take into account freight and other cost or risk factors. Nova also submitted that there are currently measures in force in Canada against HRC from major export sources. Finally, according to Nova, there are numerous factors (in addition to price) that determine the overall cost of HRC, including lead times, delivery and logistical costs, and increased risk associated with purchasing offshore product.

[151] Testimony from Mr. Jones confirmed that Nova constantly monitors its HRC prices in the market. Moreover, because it is the largest purchaser of HRC in Canada, Nova has sufficient buying power to negotiate the best possible purchase price.¹⁴⁴ Mr. Jones also testified that Nova imported HRC from Turkey in 2016, but with respect to latter offers, concluded that while Turkish HRC may have been priced lower, the overall cost to Nova would be higher once other costs and qualitative factors were taken into account.¹⁴⁵ He explained that it is difficult to make large purchasing decisions when there is delayed delivery in a volatile market, meaning the price may not be as advantageous by the time the HRC arrives. He also explained that Nova has developed some special grades with its domestic suppliers of HRC in Canada that help Nova roll the pipe faster and make better quality pipe, with any problems capable of being addressed by the supplier the following day.¹⁴⁶

[152] *SIMA* does not require a domestic producer to forego domestic inputs, and the Tribunal has recently found that a domestic industry's decision to purchase North American inputs was not a cause of injury, in part because those inputs were purchased in arm's length transactions and the

Report of the Panel at paras. 7.57-7.61; *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. 130, 141, 152.

143. Exhibit NQ-2018-003-07E (protected), Table 59, Vol. 2.1.

144. *Transcript of Public Hearing* at 77-78; see also the Protected Aid to Argument filed by Nova, Vol. 18 at 39.

145. *Transcript of Public Hearing* at 77-78, 105.

146. *Transcript of Public Hearing* at 78.

prices paid for those inputs were, although higher than in other parts of the world, still in line with global trends.¹⁴⁷ Furthermore, the Tribunal accepts that there are certain business advantages to sourcing raw materials locally, or in a geographically close market. Finally, there are measures in place in Canada on HRC from a number of countries, which would have an impact on the price at which imports of certain HRC would be available in Canada.¹⁴⁸ The Tribunal also notes that prices of HRC in other regions also increased in 2017 and that by interim 2018 the difference in the HRC prices paid by Nova and the average of prices in other regions were not as great as compared to earlier years.¹⁴⁹ Therefore, the Tribunal finds that the domestic industry's HRC sourcing decisions were not a cause of injury in this case.

[153] On the basis of the foregoing, the Tribunal finds that the high volumes of subject goods in the domestic market in 2016 and 2017, which significantly undercut the price of the domestically produced like goods, prevented the domestic industry from raising its prices to offset increasing COGM and COGS in 2017.

– Summary

[154] The Tribunal finds that the subject goods significantly undercut and suppressed the price of domestically produced like goods over the POI.

Resultant impact on the domestic industry

[155] Paragraph 37.1(1)(c) of the *Regulations* provides a non-exhaustive list of factors that the Tribunal may consider, including the resulting impact of the dumped 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.¹⁵⁰ These impacts are to be distinguished from the impact of other factors also having a bearing on the domestic industry.¹⁵¹ Paragraph 37.1(3)(a) of the *Regulations* requires the Tribunal to consider whether a causal relationship exists between the dumping of the

147. *Sucker Rods* (14 December 2018) NQ-2018-001 (CITT) at paras. 94-95. This situation can be distinguished from the Tribunal's finding in *Silicon Metal* (2 November 2017), NQ-2017-001 (CITT) at paras. 139-143.

148. See *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (12 August 2016), RR-2015-002 (CITT) involving the dumping of, *inter alia*, certain HRC originating in or exported from Brazil, China, Chinese Taipei, India and Ukraine and the subsidizing of, *inter alia*, certain HRC originating in or exported from India.

149. Exhibit NQ-2018-003-E-06 (protected), Vol. 14 at para. 30; Exhibit NQ-2018-003-A-16 (protected), Vol. 12 at 1; Exhibit NQ-2018-003-F-04 (protected), Vol. 14 at para. 2; Exhibit NQ-2018-003-06E, Table 71, Vol. 1.1; Exhibit NQ-2018-003-31.01 (protected), Vol. 8 at 8.

150. 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.

151. 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.

goods and the injury, retardation or threat of injury, on the basis of the volume, the price effects, and the impact on the domestic industry of the dumped goods.

Submissions of parties

[156] Nova submitted that the subject goods have caused the domestic industry to suffer material injury in the form of reduced production and lower capacity utilization rates, lost sales and market share, deteriorating financial results, and the hindering of new investment projects. In particular, Nova argued that there was a direct correlation between the increasing volume of subject imports and Nova's declining market share and financial performance. Nova further argued that some recovery began in the interim 2018 period as the market became aware of this inquiry.

[157] The USW submitted that the increasing volumes of subject goods during the POI caused the domestic industry to suffer losses in sales and production volumes and that these losses led to reductions in employment, hours worked, wages and pension benefits, and had negative consequences for its members.

[158] Atlas supported Nova's position that a finding of injury or threat of injury should be made in this case. DFI also supported Nova's submissions, noting that large volumes of the subject goods captured significant market share thereby causing injury to the domestic industry, particularly in the forms of lower production volumes and profitability.

[159] IIL submitted that for nearly all of the relevant injury factors, the domestic industry suffered no deleterious effects. IIL further submitted that to the extent that the domestic industry was injured, any injury was the result of other factors, as opposed to the subject goods. Hoa Phat submitted that, when examined carefully, the domestic industry's evidence and the information in the investigation report does not establish persuasive, positive evidence of injury caused by subject imports. BMB submitted that the evidence before the Tribunal does not support a finding that subject imports have caused material injury to the domestic industry as a whole.

Tribunal's analysis

[160] Domestic sales from domestic production decreased by 5 percent in 2016 and increased by 25 percent in 2017, for an overall increase of 18 percent from 2015 to 2017. This overall increase in domestic sales coincided with a 33 percent increase in the total apparent market. At the same time, sales of subject imports increased significantly (by 78 percent) in 2016 and then declined by 5 percent in 2017 for an overall increase of 69 percent. Sales of non-subject imports declined in 2016 and increased in 2017 for an overall increase of 19 percent, with imports from countries other than the United States being the primary driver of the increase in 2017.¹⁵²

[161] Domestic sales from domestic production fell by 10 percent in interim 2018 as compared to interim 2017. Sales of subject goods also fell by 9 percent between these two periods whereas sales of non-subject imports grew substantially, again driven primarily by countries other than the United

152. Exhibit NQ-2018-003-07E (protected), Table 21, Vol. 2.1; Exhibit NQ-2018-003-06E, Table 22, Vol. 1.1. The Tribunal also notes the explanation provided in RI-02A (protected) at 1-2 regarding 2017 and interim 2018. Imports from countries other than the United States include Erbosan's volumes from Turkey.

States. The total apparent market grew 6 percent during that time.¹⁵³ Knowledge of this trade case may have contributed to the decline in subject imports in interim 2018, as was described by Mr. Byrne of Crane.¹⁵⁴

[162] Reported sales to distributors increased 34 percent from 2015 to 2017. Sales from domestic production to distributors increased 1 percent from 2015 to 2016 and increased 23 percent in 2017, for an overall increase of 25 percent from 2015 to 2017. Sales from domestic production to distributors dropped 14 percent in interim 2018 as compared to interim 2017. Sales of subject goods to distributors increased in each year for an overall increase of 60 percent, whereas sales of non-subject imports from countries other than the United States decreased in 2016 before increasing in 2017 and increasing between the two interim periods. As noted above, the majority of sales by the questionnaire respondents were made to distributors, as opposed to directly to end users.¹⁵⁵

[163] Sales from domestic production to end users dropped by 30 percent in 2016 and increased by 36 percent in 2017 for an overall decrease of 5 percent from 2015 to 2017. Sales to end users increased 14 percent in interim 2018 as compared to interim 2017. Sales of subject goods to end users were substantial in 2016 but were otherwise very low. Sales of non-subject imports from countries other than the United States were very low in 2015 and 2016 before increasing considerably in 2017 and between the two interim periods.¹⁵⁶

[164] The domestic industry lost market share over the POI. The share of the apparent market attributable to sales from domestic production fell by 3 percentage points in 2016 and held in 2017. It fell 6 percentage points in interim 2018 as compared to interim 2017 but remained steady as compared to full year 2017.¹⁵⁷

[165] At the same time, the market share of the subject goods increased by 19 percentage points in 2016 and decreased by 12 percentage points in 2017, remaining significantly above 2015 levels. The market share of the non-subject imports from countries other than the United States decreased by 7 percentage points in 2016 and increased by 11 percentage points in 2017. The United States lost market share from 2015 to 2017. Between the two interim periods, the market share of the subject goods decreased 5 percentage points (while still remaining above 2015 levels), while the market share of non-subject goods from countries other than the United States increased to their highest point in the POI, becoming par with the subject imports.¹⁵⁸ As noted above, knowledge in the market of this trade case may have contributed to the increase in non-subject imports from countries other than the United States.

[166] An examination of sales to distributors also reveals that the domestic industry lost market share over the POI, though the trends are somewhat different. The domestic industry gained 1

153. Exhibit NQ-2018-003-07E (protected), Table 21, Vol. 2.1; Exhibit NQ-2018-003-06E, Table 22, Vol. 1.1.

154. *Transcript of Public Hearing at 232-233; Transcript of In Camera Hearing at 124-125, 127-128.*

155. Exhibit NQ-2018-003-07E (protected), Tables 25, 29, 33, Vol. 2.1; Exhibit NQ-2018-003-06E, Table 26, Vol. 1.1.

156. Exhibit NQ-2018-003-07E (protected), Table 29, Vol. 2.1; Exhibit NQ-2018-003-06E, Table 30, Vol. 1.1.

157. Exhibit NQ-2018-003-07E (protected), Table 23, Vol. 2.1; Exhibit NQ-2018-003-06E, Table 24, Vol. 1.1. The Tribunal notes that when Evraz's sales of downgraded pipe are excluded, the domestic industry also lost market share in 2017 and between the two interim periods.

158. Exhibit NQ-2018-003-07E (protected), Table 23, Vol. 2.1; Exhibit NQ-2018-003-06E, Table 24, Vol. 1.1.

percentage point of market share in 2016 and then lost 4 percentage points in 2017. Its share of those sales remained flat in interim 2018 as compared to interim 2017.¹⁵⁹ The subject goods gained 3 percentage points in 2016 and another 2 percentage points in 2017. The share of the subject goods decreased 6 percentage points in interim 2018 as compared to interim 2017. The non-subject imports from countries other than the United States also increased their share in this segment over the POI, but retained a smaller share than the subject goods.¹⁶⁰ Again, sales to distributors represented the most significant market segment and is also the segment where sales of the subject goods are most heavily concentrated.¹⁶¹

[167] The domestic industry's lost sales volumes and reduced market share are confirmed by witness statements and testimony. Mr. Gravel and Mr. Cannon of Nova both indicated that Nova had lost sales because of the significant increase in the volume of subject goods at prices which are lower than Nova's from 2015 to 2017.¹⁶² In some market segments, such as fencing, Mr. Gravel stated that he is often not given the opportunity to bid due to the significant pricing differences between Nova and the subject goods.¹⁶³ *In camera*, Mr. Jones of Nova discussed changes in the purchasing behavior of distributors that purchase a blend of domestically produced like goods and subject goods.¹⁶⁴ The Tribunal also heard *in camera* testimony about a significant purchase of subject goods by Crane in 2016 and how that may have affected the domestic industry's sales volumes in that year.¹⁶⁵

[168] Taken together, the Tribunal finds that the evidence indicates that in 2016 the subject goods captured sales and gained market share at the expense of the domestic industry. In addition, the continued presence of large volumes of low-priced subject goods in 2017 and interim 2018 prevented the domestic industry from sufficiently growing its sales to recover the market share it lost to subject goods, even as the market grew.¹⁶⁶ The non-subject imports from countries other than the United States likely also contributed to the domestic industry's inability to recover in 2017 and interim 2018, albeit to a lesser extent. As such, the Tribunal finds that the domestic industry likely would have achieved higher sales volumes and improved market share were it not for the large volumes of subject goods in the market and the significant undercutting that was present over the POI.

[169] The Tribunal also finds that the subject goods affected the domestic industry's production volumes. The domestic industry's total production volumes increased by 10 percent in 2016 and another 15 percent in 2017, for an overall increase of 26 percent from 2015 to 2017.¹⁶⁷ Total production decreased 3 percent in interim 2018 as compared to interim 2017.¹⁶⁸ However, the domestic industry's share of domestic production for domestic consumption decreased from 2015 to

159. Exhibit NQ-2018-003-07E (protected), Table 27, Vol. 2.1; Exhibit NQ-2018-003-06E, Table 28, Vol. 1.1.

160. Exhibit NQ-2018-003-07E (protected), Table 27, Vol. 2.1; Exhibit NQ-2018-003-06E, Table 28, Vol. 1.1.

161. Exhibit NQ-2018-003-07E (protected), Table 33, Vol. 2.1; *Transcript of Public Hearing* at 119, 136, 172.

162. Exhibit NQ-2018-003-A-04 (protected). Vol. 12 at paras. 33, 35, 38-39, 42-43, 46, 50, 55-56, 60, 63, 70, 72; *Transcript of Public Hearing* at 74-75, 79-80.

163. NQ-2018-003-A-11, Vol. 11 at para. 6.

164. *Transcript of In Camera Hearing* at 52-54.

165. *Transcript of In Camera Hearing* at 129, Exhibit NQ-2018-003-A-04 (protected) Vol. 12 at para. 55.

166. Exhibit NQ-2018-003-07E (protected), Tables 21-23, Vol. 2.1; Exhibit NQ-2018-003-06E, Table 22, Vol. 1.1.

167. Exhibit NQ-2018-003-07E (protected), Table 16, Vol. 2.1; Exhibit NQ-2018-003-06E, Table 16, Vol. 1.1. The Tribunal also notes the explanation provided in RI-02A (protected) at 1-2 regarding 2017 and interim 2018.

168. Exhibit NQ-2018-003-07E (protected), Table 16, Vol. 2.1; Exhibit NQ-2018-003-06E, Table 16, Vol. 1.1.

2017.¹⁶⁹ In addition, despite Evraz's sales of seconds in the Canadian market, prime production for domestic sales decreased 6 percent from 2015 to 2017.¹⁷⁰ This drop coincided with a 69 percent increase in the volume of subject imports and a 64 percent increase in the volume of non-subject imports from countries other than the United States from 2015 to 2017.¹⁷¹ As such, much of this loss in output is attributable to the subject goods.

[170] The domestic industry's production for domestic sales dropped a further 2 percent in interim 2018 as compared to interim 2017, but this does not seem to have been linked to the subject imports, which decreased by 9 percent at this time as suppliers sought other sources to avoid *SIMA* duties. Non-subject imports from countries other than the United States increased by 76 percent in interim 2018. Likewise, productivity on a tonnes-per-employee basis increased from 2015 to 2017. Productivity on a tonnes-per-hour-worked basis was essentially steady from 2015 to 2017.¹⁷² Moreover, the data show that the domestic industry's volume of inventories decreased over the POI and there were no inventories reported in responses to the importers' questionnaire.¹⁷³ Similarly, the domestic industry made investments over the POI. The value of those investments decreased in 2016, increased in 2017 and was projected to increase in 2018 to above 2015 levels.¹⁷⁴ In his witness statement and at the hearing, Mr. Jones explained that since the finding in *CSWP 2012 NQ*, Nova invested profits back into the company. These investments included renovating a building and installing a new line.¹⁷⁵

[171] Nevertheless, in addition to the impact on output prior to interim 2018, the impact of the subject goods can also be seen in the domestic industry's capacity utilization rates.¹⁷⁶ These rates were very low throughout the POI, both in terms of production for domestic sales and production for export sales. The capacity utilization would have likely been higher had it not been for the reduced output caused by the subject goods from 2015 to 2017.

[172] Direct and indirect employment numbers remained relatively steady from 2015 to 2017, and increased in interim 2018 compared to interim 2017. Hours worked and wages paid, both direct and indirect, increased in 2016, decreased in 2017 and increased between the two interim periods.¹⁷⁷

[173] That said, more recently, subject goods have begun to have a negative impact on workers in the domestic industry. Mr. Duhamel and Mr. Rowlinson explained that for the first time in its history,

169. Exhibit NQ-2018-003-07E (protected), Tables 16, 64, Vol. 2.1. This is also true when Evraz's production volumes are included.

170. Exhibit NQ-2018-003-07E (protected), Table 62, Vol. 2.1; Exhibit NQ-2018-003-06E, Table 63, Vol. 1.1.

171. Exhibit NQ-2018-003-07E (protected), Tables 17, 21, Vol. 2.1; Exhibit NQ-2018-003-06E, Tables 18, 22, Vol. 1.1.

172. Exhibit NQ-2018-003-07E (protected), Table 62, Vol. 2.1; Exhibit NQ-2018-003-06E, Table 63, Vol. 1.1.

173. Exhibit NQ-2018-003-07E (protected) at 76 and Table 62, Vol. 2.1.

174. Exhibit NQ-2018-003-07E (protected), Table 62, Vol. 2.1. The domestic industry also indicated that the subject goods have had a negative effect on return on investments, growth, ability to raise capital, and cash flow. See Exhibit NQ-2018-003-07E (protected), Table 67, Vol. 2.1. This evidence was not a determining element in the Tribunal's analysis.

175. *Transcript of Public Hearing* at 84-85; Exhibit NQ-2018-003-A-05, Vol. 11 at para. 11.

176. Exhibit NQ-2018-003-07E (protected), Table 62, Vol. 2.1.

177. Exhibit NQ-2018-003-07E (protected), Table 62, Vol. 2.1.

Nova raised the possibility of layoffs with union members.¹⁷⁸ To date, Nova has deliberately chosen to retain its workforce, because according to Mr. Jones “when you have people there, interested in working in the plant, and who are well-trained, you do whatever it takes to hang on to them”¹⁷⁹ Nevertheless, Nova has taken steps that have impacted its employees in ways aside from layoffs. Discussions have taken place between USW and Nova about job-sharing arrangements,¹⁸⁰ voluntary layoffs, and temporary transfers to other Nova facilities. There has also been an impact on the most recent round of collective bargaining. While the Tribunal acknowledges that these events mostly occurred outside of the POI, this testimony highlights the negative impacts that the subject goods have had and could continue to have in the absence of a finding.

[174] The domestic industry’s financial results for domestic sales show that its performance has deteriorated since 2015. On a per-tonne basis, the domestic industry’s net sales value for sales from domestic production decreased in 2016 and increased in 2017. At the same time, the domestic industry’s gross margins and net income declined significantly in each full year of the POI.¹⁸¹ Mr. Cannon of Nova, for example, indicated that the period since 2015 has been a challenge. He highlighted Nova’s marginal profitability in 2016 and explained that the company has not performed well since.¹⁸² The domestic industry’s export sales performance showed more favorable results.¹⁸³

[175] The large volumes of subject goods present in the market in 2016 and 2017 undoubtedly contributed to the declines in the domestic industry’s gross margins and net income in 2016, declines which were exacerbated by increases in the cost of HRC in 2017 (as evidenced by the corresponding increases in direct materials used). The Tribunal finds that the significant price undercutting and price suppression by the subject goods were material drivers of these declines. These declines also coincided with significant growth in the overall market as compared to 2015 and a significant increase in the volume of subject imports and sales of subject goods, and to a lesser extent, imports from countries other than the United States from 2015 to 2017.

[176] The domestic industry began to see some recovery in interim 2018 as compared to interim 2017. Net sales value increased and gross margins improved, as did net income to a lesser degree.¹⁸⁴ Overall, however, the domestic industry remained in a weak financial position. These marginal improvements coincided with a decline in the volume of subject imports and sales of subject goods, due, at least in part, to the anticipation of this case in the Canadian market.

[177] On the basis of the foregoing, the Tribunal finds that the subject goods have caused the domestic industry material injury, principally in the form of reduced sales, market share, output and profitability.

178. Exhibit NQ-2018-003-D-03, Vol. 11 at paras. 10-14.

179. *Transcript of Public Hearing* at 125.

180. Whereby Nova would restrict their employees to two or three days of work per week, and the employees would collect EI benefits for the other days.

181. Exhibit NQ-2018-003-07E (protected), Table 59, Vol. 2.1.

182. *Transcript of Public Hearing* at 79.

183. Exhibit NQ-2018-002-07E (protected), Table 60, Vol. 2.1.

184. Exhibit NQ-2018-003-07E (protected), Table 59, Vol. 2.1.

– **Magnitude of the margin of dumping**

[178] As noted above, the margins of dumping determined by the CBSA (other than for Erbosan for which the investigation was terminated) ranged from 3 to 66.8 percent and were therefore not insignificant. Some of these amounts are sizeable. In the context of this case, the magnitude of the margin of dumping did not add much to the above analysis of injury.

Other factors

Intra-industry competition

[179] IIL argued that intra-industry competition, in particular the price undercutting by Evraz's sales of "downgraded" pipe, was a relevant "non-dumping" factor that contributed to any injury experienced by the domestic industry over the POI.

[180] As discussed above, the evidence shows that over the POI Evraz sold "downgraded" OCTG and API line pipe as ASTM A252 piling pipe. Although this pipe met the ASTM A252 specification, and is therefore domestically produced like goods, it is not prime production.¹⁸⁵ The evidence also shows that while the price of the pipe sold by Evraz to distributors is low, this pipe requires additional fabrication work before it can be used in piling applications and may not be suitable for all such applications.¹⁸⁶ As such, the Tribunal accepts that the prices at which Evraz's pipe are eventually sold to end users would likely reflect more than simply a distributor mark-up. There is some evidence of a domestic producer losing a small volume of sales to Evraz.¹⁸⁷ However, in 2016, when the industry experienced a significant drop in market share and its sharpest decline in gross margins, Evraz's role in the Canadian CSWP market was small. The Tribunal therefore finds, on balance, that any injury caused by Evraz's sales of downgraded pipe over the POI was minimal at best.¹⁸⁸

Chinese pipe

[181] IIL submitted that CSWP from China was a cause of injury to the domestic industry over the POI. Mr. Padidar of Canada Wire described that exporters of pipe from China will disguise galvanized welded pipe as seamless pipe in order to circumvent the measures in place against CSWP from China. He stated that this pipe is sold at low prices for fencing applications in Western Canada.¹⁸⁹ Mr. Raza of Brampton Pipe confirmed seeing seamless Chinese pipe in the Canadian market for fencing applications. However, he also indicated that this pipe was not a major source of concern over the POI.¹⁹⁰ Mr. Gravel also confirmed seeing this pipe in the market, but stated that the

185. Exhibit NQ-2018-003-RI02A (protected), Vol. 10 at 1-2; Exhibit NQ-2018-003-A-02 (protected), Vol. 12, Attachment 11.

186. Exhibit NQ-2018-003-07E (protected), Table 37, Vol. 2.1; Exhibit NQ-2018-003-A-02 (protected), Vol. 12, Attachment 11.

187. IIL Protected Aid to Argument, Vol. 18 at 25.

188. *Transcript of Public Hearing* at 67, 118, 192-193, 203.

189. Exhibit NQ-2018-003-N-01, Vol. 13 at paras. 4-7.

190. *Transcript of Public Hearing* at 193-194.

subject goods were a much bigger problem for Nova.¹⁹¹ As such, the Tribunal finds that any impact to the domestic industry from these goods was minor.

Lack of domestic producers in Western Canada

[182] Mr. Abbas of IIL stated that it began exporting to Canada approximately six years ago, after receiving inquiries for galvanized fencing pipe in Western Canada.¹⁹² Mr. Raza also stated that IIL established Brampton Tube, in part, because of unmet demand in that market.¹⁹³

[183] As discussed above in the context of the Tribunal's cumulation analysis, the evidence indicates that over the POI the domestic industry was fully involved in the entire Canadian market. Although Western Canada may have been largely served by imports during this time, any lack of participation by the domestic industry was driven primarily by the low prices at which these imports were available in Western Canada, as opposed to a lack of interest on the part of the domestic industry. For these reasons, the Tribunal does not consider this was a cause of injury to the domestic industry over the POI.

Summary

[184] Intra-industry competition and the presence of non-subject imports from countries other than the United States (potentially including, small volumes of Chinese pipe) had some impact on the domestic industry's performance throughout the POI. The Tribunal finds, however, that the domestic industry would have performed materially better were it not for the large volumes of low-priced subject goods, which, beginning in 2016, gained sales and market share at the expense of the domestic industry and, through their significant price undercutting, were the cause of significant price suppression in 2017. This, in turn, had a significant negative impact on the domestic industry's profitability. The Tribunal also finds it significant that the domestic industry's greatest declines in profitability occurred when the volume of subject goods in the market were at their highest.¹⁹⁴

CONCLUSION

[185] For the reasons set out above, the Tribunal finds that the dumping of the subject goods has 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

191. *Transcript of Public Hearing* at 75.

192. *Transcript of Public Hearing* at 148-149.

193. Exhibit NQ-2018-003-E-03, Vol. 13 at para. 2.

194. Exhibit NQ-2018-003-07E (protected), Tables 17, 59, Vol. 2.1; Nova Protected Aid to Argument, Vol. 18 at 31.

Jean Bédard
Presiding Member

Ann Penner
Ann Penner
Member

Randolph W. Heggart
Randolph W. Heggart
Member