



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Dumping and Subsidizing

## FINDING AND REASONS

Inquiry No. NQ-2018-004

Corrosion-resistant Steel Sheet

*Finding issued  
Thursday, February 21, 2019*

*Reasons issued  
Friday, March 8, 2019*

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

## CORROSION-RESISTANT STEEL SHEET

### 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 corrosion-resistant flat-rolled steel sheet products of carbon steel, including products alloyed with the following elements:

- Boron (B) not more than 0.01%,
- Niobium (Nb) not more than 0.100%,
- Titanium (Ti) not more than 0.08%, or
- Vanadium (V) not more than 0.300%,

in coils or cut lengths, in thicknesses up to 0.168 in. (4.267 mm) and widths up to 72 in. (1,828.8 mm) with all dimensions being plus or minus allowable tolerances contained in the applicable standards, chemically passivated, originating in or exported from the People's Republic of China, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei), the Republic of India and the Republic of Korea, and excluding:

- unpassivated corrosion-resistant steel sheet products;
- corrosion-resistant steel sheet products for use in the manufacture of passenger automobiles, buses, trucks, ambulances or hearses or chassis therefor, or parts thereof, or accessories or parts thereof;
- steel products for use in the manufacture of aeronautic products;
- steel sheet that is coated or plated with tin, lead, nickel, copper, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel");
- stainless flat-rolled steel products;
- corrosion-resistant steel sheet products that have been pre-painted or coated with organic (non-metallic) coatings, including lacquers or varnishes;
- galvanized armouring tape, which is narrow flat steel tape of 3 in. or less, that has been coated by a final operation with zinc by either the hot-dip galvanizing or the electrogalvanizing process so that all surfaces, including the edges, are coated;
- and tool steel;

has caused injury or is threatening to cause injury to the domestic industry, and to determine such other matters as the Tribunal is required to determine under that section.

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 22, 2019, that the above-mentioned goods 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 People's Republic of China, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei), the Republic of India and the Republic of Korea has not caused injury but is threatening to cause injury to the domestic industry.

Georges Bujold

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Georges Bujold  
Presiding Member

Randolph W. Heggart

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Randolph W. Heggart  
Member

Cheryl Beckett

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Cheryl Beckett  
Member

The statement of reasons will be issued within 15 days.

Place of Hearing: Ottawa, Ontario  
Dates of Hearing: January 22, 23 and 24, 2019  
Tribunal Panel: Georges Bujold, Presiding Member  
Randolph W. Heggart, Member  
Cheryl Beckett, Member  
Support Staff: Laura Little, Lead Counsel  
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POSCO

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## STATEMENT OF REASONS

### INTRODUCTION

[1] The mandate of the Canadian International Trade Tribunal in this inquiry<sup>1</sup> is to determine whether the dumping of corrosion-resistant flat-rolled steel sheet products of carbon steel (COR) originating in or exported from the People's Republic of China (China), the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei), the Republic of India (India) and the Republic of Korea (Korea) (individually, in groupings or collectively referred to as the subject goods) has caused injury 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 not caused injury, but is threatening to cause injury to the domestic industry.

### BACKGROUND

[3] This inquiry stems from a complaint filed with the Canada Border Services Agency (CBSA) on June 5, 2018, by ArcelorMittal Dofasco G.P. (AMD) and the subsequent decision by the President of the CBSA on July 26, 2018, to initiate an investigation into the alleged injurious dumping.

[4] The CBSA's investigation triggered the initiation of a preliminary injury inquiry by the Tribunal on July 27, 2018. The Tribunal issued its preliminary determination on September 24, 2018, that the evidence disclosed a reasonable indication that the dumping of the subject goods had caused or was threatening to cause injury to the domestic industry.

[5] On October 24, 2018, the CBSA made a preliminary determination of dumping, resulting in the imposition of provisional anti-dumping duties on the subject goods. On October 25, 2018, the Tribunal commenced this inquiry.<sup>2</sup>

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

[7] The Tribunal received submissions from AMD and one other domestic producer of COR, Stelco Inc. (Stelco), arguing that the subject goods have caused injury or are threatening to cause injury to the domestic industry.

[8] The United Steelworkers of Canada (USW), a union whose members include employees of Stelco, filed a case brief in support of the domestic industry, arguing that the subject goods have caused injury or are threatening to cause injury to the domestic industry.

[9] The Tribunal received submissions from POSCO and POSCO Coated & Color Steel Co., Ltd. (collectively POSCO), Korean producers of COR, opposing a finding of injury or threat of injury in respect of the subject goods originating in or exported from Korea or, alternatively, from the subject

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

2. C. Gaz. 2018.I.3801.



countries collectively. The Tribunal also received submissions from JSW Steel Coated Products (JSW), an Indian producer of COR, opposing a finding of injury or threat of injury in respect of the subject goods originating in or exported from India.

[10] In addition, the Tribunal received submissions from Knightsbridge International Corp (Knightsbridge), an importer of COR, opposing a finding of injury or threat of injury and, in the event that the Tribunal makes such a finding, requesting that certain products be excluded from its scope.

[11] The Tribunal held a hearing in Ottawa, Ontario, on January 22, 23 and 24, 2019. It included public and *in camera* sessions. The Tribunal heard testimony from witnesses of the supporting parties, from Knightsbridge, and from two service centres that purchase COR in the Canadian market: Taylor Steel Inc. (Taylor Steel) and Samuel, Son & Co., Limited (Samuel).<sup>3</sup>

## RESULTS OF THE CBSA'S INVESTIGATION

[12] The CBSA's period of investigation (the CBSA's POI) for its dumping investigation covered April 1, 2017, to March 31, 2018. On January 22, 2019, the CBSA made final determinations of dumping, as follows:<sup>4</sup>

Country of Origin or Export	Exporter	Margin of Dumping*
The People's Republic of China	Beijing Shougang Cold Rolling Co. Ltd. / Shougang Holding Trade (Hong Kong)	3.6%
	Bengang Steel Plates Co. Ltd. / Benxi Iron & Steel (Group) International Economic and Trading Co. Ltd.	18.4%
	BX Steel POSCO Cold Rolled Sheet Co. Ltd. / Benxi Iron & Steel (Group) International Economic and Trading Co. Ltd.	14.2%
	Jiangyin ZongCheng Steel Co. Ltd.	21.1%
	Jingtang United Iron & Steel Co. Ltd. / Shougang Holding Trade (Hong Kong)	8.5%
	Yieh Phui (China) Technomaterial Co. Ltd.	15.6%
	All Other Exporters	53.3%
	<b>Total Margin of Dumping</b>	<b>38.5%</b>

3. The witness for Taylor Steel was presented by AMD. The witness for Samuel was summoned by subpoena to appear as a Tribunal witness at the hearing on January 23, 2019.

4. Exhibit NQ-2018-004-04, Vol. 1 at 12, 18.

The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei)	Prosperity Tieh Enterprise Co. Ltd.	11.0%
	Sheng Yu Steel Co. Ltd.	4.8%
	Yieh Phui Enterprise Co. Ltd.	3.2%
	All Other Exporters	33.2%
	<b>Total Margin of Dumping</b>	<b>9.0%</b>
The Republic of India	All Exporters	40.0%
	<b>Total Margin of Dumping</b>	<b>40.0%</b>
The Republic of Korea	Dongbu Steel Co. Ltd.	9.0%
	All Other Exporters	40.0%
	<b>Total Margin of Dumping</b>	<b>12.0%</b>

\*Expressed as a percentage of export price

## PRODUCT

### Product Definition

[13] The subject goods are defined as follows:

Corrosion-resistant flat-rolled steel sheet products of carbon steel, including products alloyed with the following elements:

- Boron (B) not more than 0.01%,
- Niobium (Nb) not more than 0.100%,
- Titanium (Ti) not more than 0.08%, or
- Vanadium (V) not more than 0.300%,

in coils or cut lengths, in thicknesses up to 0.168 in. (4.267 mm) and widths up to 72 in. (1,828.8 mm) with all dimensions being plus or minus allowable tolerances contained in the applicable standards, chemically passivated, originating in or exported from the People's Republic of China, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei), the Republic of India and the Republic of Korea, and excluding:

- unpassivated corrosion-resistant steel sheet products;
- corrosion-resistant steel sheet products for use in the manufacture of passenger automobiles, buses, trucks, ambulances or hearses or chassis therefor, or parts thereof, or accessories or parts thereof;

- steel products for use in the manufacture of aeronautic products;
- steel sheet that is coated or plated with tin, lead, nickel, copper, chromium, chromium oxides, both tin and lead (“terne plate”), or both chromium and chromium oxides (“tin-free steel”);
- stainless flat-rolled steel products;
- corrosion-resistant steel sheet products that have been pre-painted or coated with organic (non-metallic) coatings, including lacquers or varnishes;
- galvanized armouring tape, which is narrow flat steel tape of 3 in. or less, that has been coated by a final operation with zinc by either the hot-dip galvanizing or the electrogalvanizing process so that all surfaces, including the edges, are coated; and
- tool steel.

### Product Information

[14] The CBSA provided the following additional product information:<sup>5</sup>

[27] The product definition includes corrosion-resistant steel sheet where the substrate is coated or plated with a corrosion-resistant material such as zinc, aluminum, and other alloys. The coating may be applied by a variety of processes including hot-dip galvanizing or electro-galvanizing.

[28] The product definition includes corrosion-resistant steel sheet which has been chemically passivated by coating with standard or acrylic chromate and non-chromate solutions.

[29] Passivation refers to a material becoming “passive”, that is, less affected or corroded by the environment of future use. Passivation involves creation of an outer layer of shield material that is applied as a micro-coating, created by chemical reaction with the base material, or allowed to build from spontaneous oxidation in the air. As a technique, passivation is the use of a light coat of a protective material, to create a shell against corrosion. The most common method of passivation for steel products is the application of a standard chromate based or acrylic chromate and non-chromate coatings. Passivation treatments provide protection against oxidation during handling, transportation, and storage, and they also add lubricity during the forming or stamping of the part.

[30] Corrosion-resistant steel sheet is usually produced from cold-rolled carbon steel sheet (“CRS”) and sometimes from hot-rolled carbon steel sheet (“HRS”). However, additions of certain elements, such as titanium, vanadium, niobium or boron, during the steel-making process enable the steel to be classified as alloy steel. Therefore, corrosion-resistant steel produced from either carbon steel or alloy steel is included in the definition of the subject goods.

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5. Exhibit NQ-2018-004-04A, Vol. 1 at 7-9.

[31] The subject goods (and like goods produced by the domestic industry) are manufactured to meet certain American Society for Testing and Materials (ASTM), Society of Automotive Engineering (SAE) or equivalent specifications, including, but not limited to:

ASTM A653/653M

ASTM A792/A792M

SAE J403

SAE J1392

SAE J2329

SAE J1562

[32] The product definition excludes corrosion-resistant steel for use in automobiles and automobile parts, hereafter referred to as “automotive”. Automotive end users include original equipment manufacturers (“OEMs”) and auto part producers. Such excluded goods normally fall under Customs Tariff item 9959.00.00.

[33] The product definition excludes corrosion-resistant steel sheet products that have been pre-painted or coated with organic (non-metallic) coatings. In Canada, the commonly used term for steel that has been coated with paint at the mill is “pre-painted” or “pre-coated” steel. Outside Canada, it is common for the term “organic coated” to be used to describe pre-painted steel. “Organic coated” may also refer to permanently applied plastic coatings or films. Common paint types for pre-painted and other organic coating products are silicon modified polyester, polyester, polyurethane, acrylic, epoxy, epoxy phenolic, polyvinylchloride and polyvinylidene difluoride.

[34] The product definition includes “seconds”. Seconds are goods that do not meet some aspect of the original specification. This could include dimensions, grade, or coating. It could also include a coil that has been damaged. Seconds are sold at a discount. Seconds may meet ASTM, SAE or other specifications or may be re-certified to meet a standard. For example, a coil that is damaged along the edge may be a “second”. However, if the damaged edge is slit and the damage is removed, the coil could be classified as a primary coil produced to the new width. Seconds are graded and sold on a scale of five.

## LEGAL FRAMEWORK

[15] 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 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”.

[16] Accordingly, the Tribunal must first determine what constitutes “like goods”. Once that determination has been made, the Tribunal must determine what constitutes the “domestic industry” for purposes of its injury analysis.

[17] Given that the subject goods originate in or are exported from more than one country, the Tribunal must also determine whether the conditions are met for 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).

[18] The Tribunal can then assess whether the dumping of the subject goods has caused material injury to the domestic industry.<sup>6</sup> Should the Tribunal arrive at a finding of no material injury, it will determine whether there exists a threat of material injury to the domestic industry.<sup>7</sup> As a domestic industry is already established, the Tribunal will not need to consider the question of retardation.<sup>8</sup>

[19] 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

[20] 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.<sup>9</sup>

[21] 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.

[22] 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).<sup>10</sup>

[23] 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

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6. 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.

7. 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.

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

9. 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.).

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

those goods are “like goods” in relation to each other, they will be regarded as comprising a single class of goods.<sup>11</sup>

[24] In its preliminary injury inquiry, the Tribunal found that domestically produced COR and the subject goods of the same description were like goods.<sup>12</sup> The evidence on the record continues to support this conclusion.

[25] No party disputed that domestically produced COR, as described in the product definition, is “like goods” in relation to the subject goods. In addition, as further discussed in the cumulation analysis, the responses to the Tribunal’s Purchasers’ Questionnaire and the testimony of witnesses for the domestic producers and purchasers of COR at the hearing indicate that COR is considered a commodity, and that domestically produced COR and the subject goods are generally interchangeable and comparable in terms of quality, availability of specifications to meet customers’ requirements, have similar end uses and distribution channels, and compete directly.<sup>13</sup>

[26] On the issue of classes of goods, the opposing parties argued that there is more than one class of goods.<sup>14</sup> POSCO and JSW submitted that the product definition for COR comprises a “complex basket of goods that are not identical or interchangeable with each other”, and that there are a “number of categories or classes of goods that comprise” the subject goods.<sup>15</sup> POSCO specifically identified two products only (AMD’s Galvalume® COR and electrogalvanized COR) as being distinguishable from other COR products.<sup>16</sup>

[27] Similarly, Knightsbridge claimed that Galvalume® 55% Alu-Zinc COR for use in specific applications and galvanized COR for general use constitute two separate classes of goods. It submitted that these products are not interchangeable due to Galvalume® having a significant yield advantage and higher performance overall, a different production process, a life span of 40 to 60 years (compared to 15 to 20 years for galvanized COR), and lower import volumes.<sup>17</sup>

[28] In deciding issues of classes of goods, the Tribunal typically considers the physical characteristics of the goods allegedly constituting a separate class of goods (i.e. appearance, composition and specifications) and their market characteristics (i.e. substitutability, pricing, distribution channels, end uses and whether the goods fulfil the same customer needs) to determine if they have sufficient distinctive characteristics to warrant the subdivision of the subject and like goods

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11. *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.
  12. *Corrosion-resistant Steel Sheet* (9 October 2018), PI-2018-005 (CITT) [*COR PI*] at para. 17.
  13. Exhibit NQ-2018-004-06, Tables 8-12, Vol. 1.1; Exhibit NQ-2018-004-A-03, Vol. 11 at 4, 8; Exhibit NQ-2018-004-A-07, Vol. 11 at 3-4, 12; Exhibit NQ-2018-004-A-09, Vol. 11 at 4-5; Exhibit NQ-2018-004-A-13, Vol. 11 at 3-4; Exhibit NQ-2018-004-B-05, Vol. 11 at 7-10; *Transcript of Public Hearing* at 43-44, 75-76, 106-108, 137, 223, 262-264, 294.
  14. In the preliminary injury inquiry, no parties were in favour of separate classes of goods: *COR PI* at para. 16.
  15. Exhibit NQ-2018-004-D-01, Vol. 11 at 9; Exhibit NQ-2018-004-H-01, Vol. 11 at 7.
  16. Exhibit NQ-2018-004-D-01, Vol. 11 at 7-9.
  17. Exhibit NQ-2018-004-24.01, Vol. 1.3 at 4; Exhibit NQ-2018-004-G-01, Vol. 11 at 4; *Transcript of Public Hearing* at 367.

into multiple classes. While the Tribunal may emphasize certain factors, it must take the totality of the characteristics into account.<sup>18</sup> No single factor is determinative.

[29] The fact that the subject goods include various product specifications serving different end uses does not preclude the Tribunal from finding a single class of goods. Goods can belong to the same class even if they come in numerous varieties, including different grades and specifications for end use, which may not be fully substitutable for each other.<sup>19</sup> The Tribunal typically does not subdivide goods into separate classes of goods based on narrow distinctions<sup>20</sup> or mere customers' preference for a specific type of product.<sup>21</sup>

[30] With respect to Galvalume®, the witnesses for AMD and Stelco testified that it is substitutable with galvanized COR. According to Mr. Butler, although Galvalume® may be preferred for certain construction applications, galvanized COR and Galvalume® can be used interchangeably.<sup>22</sup> Mr. Connor also testified that the corrosion resistance and capability of galvanized COR and Galvalume®, in a plain application, are relatively equal.<sup>23</sup> Mr. Anderson testified that customers can use galvanized COR as a substitute product to Galvalume®.<sup>24</sup> The Tribunal is, therefore, satisfied that the two types of COR products have similar physical characteristics and are generally interchangeable, even if this is not necessarily the case in all applications. In addition, the Tribunal finds that a lower volume of imported Galvalume® compared to the import volumes of galvanized COR for general applications does not in itself provide a basis for finding that they constitute a separate class of goods.

[31] There is insufficient evidence to conclude that other types of COR products referred to by POSCO (including electrogalvanized COR) should be considered separate classes of goods for the purposes of the Tribunal's injury analysis. In fact, the evidence available shows the opposite.<sup>25</sup> For example, Mr. Butler testified that COR with different specifications can be interchangeable or

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18. *Sarco Canada Ltd. v. Anti-Dumping Tribunal*, [1979] 1 F.C. 247 (F.C.).

19. *Steel Piling Pipe* (3 July 2012), PI-2012-002 (CITT) at paras. 75-77; *Carbon Steel Welded Pipe* (11 December 2012), NQ-2012-003 (CITT) at paras. 26-27, 62; *Pup Joints* (10 April 2012), NQ-2011-001 (CITT) at para. 90; *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate* (2 February 2010) NQ-2009-003 (CITT) at paras. 62-66.

20. In *Oil Country Tubular Goods* (23 March 2010), NQ-2009-004 (CITT) at paras. 75-77, for example, the Tribunal determined that subject coupling stock constituted a separate class of goods from the other subject goods (casing and tubing) because it was subject to different specifications, had a different end use (with further processing required), higher prices and was not substitutable for the subject casing and tubing. In *Circular Copper Tube* (18 December 2013), NQ-2013-004 (CITT) at paras. 12-20, 48-59, the Tribunal found a single class of goods despite the fact that circular copper tube is made to numerous standards and grades for a wide range of uses. A similar finding was made in *Carbon and Alloy Steel Line Pipe* (29 March 2016), NQ-2015-001 (CITT) at paras. 43-48.

21. In *Sucker Rods* (31 December 2018), NQ-2018-001 (CITT) at para. 35, the Tribunal stated that a customer preference for a specific type of product does not necessarily mean that other products are not substitutable.

22. *Transcript of Public Hearing* at 73, 75; see also Exhibit NQ-2018-004-A-13, Vol. 11 at 3.

23. *Transcript of Public Hearing* at 75-76.

24. *Transcript of Public Hearing* at 213.

25. *Transcript of Public Hearing* at 213.

substitutable in many applications.<sup>26</sup> In addition, AMD produces a hot-dipped corrosion-resistant steel called “Extragal” that directly competes with electrogalvanized steel.<sup>27</sup>

[32] Accordingly, the Tribunal finds that domestically produced COR and the subject goods, defined in the same manner, constitute like goods, and will conduct its injury analysis on the basis of one class of goods.

## DOMESTIC INDUSTRY

[33] 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.

[34] 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.<sup>28</sup>

[35] AMD and Stelco are the main domestic producers of like goods. They account for virtually all of the known production of like goods.<sup>29</sup> A third company, Continuous Colour Coated Limited (CCCL), was identified in the complaint as a small domestic producer.<sup>30</sup> It is unclear from CCCL’s response to the Producers’ Questionnaire to what extent its “tolling” activities constitute domestic production of like goods.<sup>31</sup> The information received from CCCL indicates that even if its activities did constitute domestic production, it would only represent a very small portion of the total domestic production by AMD and Stelco.<sup>32</sup> Therefore, the Tribunal did not deem it necessary to treat CCCL as a domestic producer in this inquiry.

[36] POSCO submitted that service centres form part of the domestic industry. However, POSCO has not provided any evidence to support its position. In any event, as noted by AMD and Stelco, the

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26. Exhibit NQ-2018-004-A-13, Vol. 11 at 3-4; *Transcript of Public Hearing* at 75-76.

27. Exhibit NQ-2018-004-A-13, Vol. 11 at 3.

28. The term “major proportion” means an important, serious or significant proportion of total domestic production of like goods and not necessarily a majority: *Japan Electrical Manufacturers Assn. v. Canada (Anti-Dumping Tribunal)*, [1986] F.C.J. No. 652 (F.C.A.); *McCulloch of Canada Limited and McCulloch Corporation v. Anti-Dumping Tribunal*, [1978] 1 F.C. 222 (F.C.A.); *China – Anti-dumping and countervailing duties on certain automobiles (US)*, (23 May 2014), WTO Docs. WT/DS440/R, Report of the Panel, at para. 7.207; *European Communities – Definitive anti-dumping measures on certain iron or steel fasteners (China)*, (15 July 2011), WTO Docs. WT/DS397/AB/R, Report of the Appellate Body, at paras. 411, 412, 419; *Argentina – Definitive Anti-dumping duties on poultry (Brazil)*, (22 April 2003), WTO Docs. WT/DS241/R, Report of the Panel, at para. 7.341.

29. Exhibit NQ-2018-004-07 (protected), Table 19, Vol. 2.1.

30. CCCL was formerly known as Material Sciences Corp., as referred to by the CBSA in its reasons for initiation, its reasons for the final determination of dumping (Exhibit PI-2018-005-05, Vol. 1F at 84; Exhibit NQ-2018-004-04A, Vol. 1 at 5) and by the Tribunal in the *COR PI* at para. 18.

31. Exhibit NQ-2018-004-06, Vol. 1.1 at 21.

32. Exhibit NQ-2018-004-12.03A (protected), Vol. 4 at 7; Exhibit NQ-2018-004-07C (protected), Table 56, Vol. 2.1.



Tribunal has previously found that service centres' activities of unrolling and cutting or slitting steel sheet products do not constitute domestic production.<sup>33</sup>

[37] In light of the above, the Tribunal finds that AMD and Stelco account for a major proportion of total domestic production (if not all), and therefore constitute the domestic industry for the purposes of the injury analysis.

## CUMULATION

[38] Subsection 42(3) of *SIMA* directs the Tribunal to make an assessment of the cumulative effect of the dumping of the subject goods that are imported into Canada from more than one country if the Tribunal is satisfied that (a) each of the subject countries has a margin of dumping that is not insignificant and the volumes of dumped goods from each subject country is not negligible, and (b) 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.

[39] AMD and Stelco submitted that the above criteria are met in respect of all four of the subject countries and, therefore, cumulation is mandatory in this case.<sup>34</sup> POSCO and JSW submitted that Korea and India, respectively, should be decumulated.

[40] 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 Imports

[41] 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 CBSA's final determination for the margin of dumping for each of the four subject countries is, as described above, not insignificant.<sup>35</sup>

[42] Subsection 2(1) of *SIMA* defines "negligible", in relevant part,<sup>36</sup> 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 subject and non-subject goods that meet the product definition as the subject goods and that are released into Canada from all countries.

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33. *Cold-rolled Steel* (24 July 2018), PI-2018-002 (CITT) at paras. 44-47. At para. 45: "In the Tribunal's view, such further processing by service centres does not involve a substantial transformation of the product into a new and materially different product; it is akin to finishing. Accordingly, the Tribunal does not consider service centres to be domestic producers of CRS." See also *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (12 August 2016), RR-2015-002 (CITT) at paras. 43-44.

34. *Transcript of Public Hearing* at 424.

35. Exhibit NQ-2018-004-04, Appendix F, Vol. 1 at 18.

36. 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].

[43] The volumes of imports of subject goods from China, Chinese Taipei, India and Korea were above negligible thresholds during the CBSA's POI.<sup>37</sup>

[44] Given that each of the four subject countries has an estimated margin of dumping that is not insignificant and a non-negligible volume, the Tribunal finds that the first part of the test set out in subsection 42(3) of *SIMA* is met.

### Conditions of Competition

[45] With respect to the second part of the test set out in subsection 42(3) of *SIMA*, the Tribunal must be satisfied that it would be appropriate to conduct a cumulative analysis taking into account the conditions of competition between the subject goods of each country or between those goods and the like goods. The Tribunal must be satisfied that the particular circumstances are such that the subject goods compete with each other and/or with the domestically produced like goods to secure COR sales in the Canadian market.<sup>38</sup> Historically, the Tribunal has held that relevant factors relating to the conditions of competition can include interchangeability, quality, pricing, distribution channels, modes of transportation, timing of arrivals, and geographic dispersion.<sup>39</sup> The Tribunal has previously stated that it recognizes there may be other factors it can consider in deciding whether the exports of a particular country should be cumulated, and that no single factor may be determinative.<sup>40</sup>

[46] However, in this case the Tribunal finds that there is no meaningful distinction in the conditions of competition between the goods of each subject country or between them and the like goods in the Canadian market. As such, the evidence relating to the above-noted relevant factors clearly supports a decision to cumulate and no other factors examined during the inquiry lead to a different conclusion.

[47] With respect to the conditions of competition, POSCO submitted that the Tribunal must not limit its assessment to the domestic market and raised a number of arguments that go beyond the factors that the Tribunal typically considers, namely, that (i) Korea is a market economy whereas China is a non-market economy; (ii) Canada and Korea have a free trade agreement according to which Korean COR enters Canada under the Korean duty rate (KRT) and requires a Certificate of Origin, which does not apply to the other subject countries; (iii) Korean COR has been granted an exclusion from the U.S. Section 232 tariffs on steel imports that were imposed in 2018, while COR from other subject countries has not; and (iv) the Tribunal's data allows for a separate analysis of the effects of Korean imports because the effects (or lack thereof) can be isolated.<sup>41</sup> The Tribunal is not persuaded that these elements are relevant to the cumulation analysis and finds that they do not support decumulating Korea for the following reasons.

[48] As stated in *Cold-rolled Steel*, the Tribunal will not consider the general market conditions of the subject countries in its cumulation analysis, nor will it consider a free trade agreement between Canada and an exporting country as relevant, without evidence that they have impacted the

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37. Exhibit NQ-2018-004-04, Appendix F, Vol. 1.

38. The Tribunal has generally followed this approach in past cases dealing with cumulation. For example, *Cold-rolled steel* (7 January 2019), NQ-2018-002 (CITT) [*Cold-rolled Steel*] at para. 39.

39. 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.

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

41. Exhibit NQ-2018-004-D-01, Vol. 11 at 17, 19-23.

conditions of competition between the imported subject goods, or between the imported subject goods and the domestically produced like goods, in Canada.<sup>42</sup> No such evidence has been presented in this case.

[49] With respect to POSCO's arguments concerning the U.S. Section 232 measures, the Tribunal also reaches a similar conclusion to its finding in *Cold-rolled Steel*, namely that "the imposition of quotas instead of tariffs with respect to Korean steel exports to the United States did not change the conditions of competition between the subject goods."<sup>43</sup> The United States already had antidumping and countervailing duties in place on COR products from all four of the subject countries, which were imposed in 2016.<sup>44</sup> The Section 232 measures were imposed in addition to these duties, they did not replace them.<sup>45</sup> Further, although Korea may be presently exempt from the U.S. Section 232 order, it is nevertheless subject to a quantitative restriction on Korean steel exports to the U.S. market. The quotas imposed on Korean COR limit their access to the U.S. market, meaning that they are "not isolated from the concerns of the domestic industry regarding import competition from the subject goods."<sup>46</sup> Although POSCO attempted to evolve the arguments it raised in *Cold-rolled Steel* with regard to cumulation, the Tribunal finds no substantive difference in the arguments made by POSCO in this case.<sup>47</sup>

[50] The Tribunal is also not persuaded that Korea should be decumulated on the basis that the effects of Korean COR can be isolated. Here, POSCO attempts to incorporate the principles of a cross-cumulation analysis into the conditions of competition analysis. However, as stated in *Cold-rolled Steel*, "[w]hether or not certain data in respect of imports from Korea may be isolated is not relevant to the conditions of competition test."<sup>48</sup> In other words, it is not a matter of being unable to isolate the data from the different subject countries. Indeed, the Investigation Report allows for such analysis to be conducted in the event that the Tribunal finds it appropriate to conduct a separate injury analysis for one or more of the subject countries.

[51] POSCO also made arguments that could relate to the conditions of competition that are typically considered as part of the Tribunal's analysis, namely, that (i) there is no evidence that Korean subject goods were diverted to Canada following the imposition of trade measures on Korean COR in the United States in 2016; (ii) distribution channels for Korean subject goods differ from other subject goods; (iii) Korean COR is sold to different Canadian purchasers (i.e. no end users imported Korean COR); and (iv) Korean subject goods and like goods are not fungible, given that there are (according to POSCO) a number of classes of COR products that are dissimilar from each

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42. *Cold-rolled Steel* at para. 42.

43. *Cold-rolled Steel* at para. 43.

44. Exhibit NQ-2018-004-A-05, Vol. 11, at 88-94. *Certain Corrosion-Resistant Steel Products From China, India, Italy, Korea, and Taiwan*; Determinations, 81 FR 47177 (July 20 2016); *Certain Corrosion-Resistant Steel Products From India, Italy, the People's Republic of China, the Republic of Korea and Taiwan: Amended Final Affirmative Antidumping Determination for India and Taiwan, and Antidumping Duty Orders*, 81 FR 48390 (July 25, 2016). Those measures cover the same HS codes as the subject goods in the present case.

45. Exhibit NQ-2018-004-A-07, Vol. 11 at 14, 19.

46. *Cold-rolled Steel* at para. 43.

47. *Transcript of Public Hearing* at 419-422.

48. *Cold-rolled Steel* at note 34.

other, and because a large share of the domestic producers' sales of like goods include "seconds" at discounted prices (whereas imports are mostly primes).<sup>49</sup>

[52] The Tribunal finds that there are highly similar conditions of competition between the subject goods from Korea, the other subject goods and the domestically produced like goods in the Canadian market. Several domestic producers and purchasers indicated that the subject goods are generally interchangeable with each other and with like goods.<sup>50</sup> In addition, purchasers indicated that product quality is comparable between domestic like goods and the subject goods.<sup>51</sup> As the domestic producers have indicated, the existence of COR "seconds"<sup>52</sup> does not necessarily mean that the product is of inferior quality, only that one or more attributes of the product failed to meet the original customer specification.<sup>53</sup> As stated by Mr. Butler of AMD, "[s]econds are coils that do not meet the intended product specifications" and "[t]hey are typically sold to distributors that can further process and salvage material to sell them as a prime-type equivalent product."<sup>54</sup> Mr. Lachapelle confirmed that service centres will typically "reprocess those coils, call out the defects, and basically get them suitable to a prime customer."<sup>55</sup> The volume of COR "seconds" in the domestic market is within normal industry standards and has no impact on the conditions of competition with the subject goods.<sup>56</sup>

[53] The evidence indicates that COR is a commodity product and, as such, is price sensitive.<sup>57</sup> Although witnesses for the domestic producers and purchasers stated that customers may accept to pay higher prices for domestic like goods due to certain advantages (e.g. significantly better lead times for delivery, terms of credit, delivery arrangements and availability of inventories), the evidence indicates that this domestic price premium does not appear to distinguish conditions of competition between like goods and subject goods, which still compete largely on price.<sup>58</sup> This is evident from the domestic producers' specific examples of offers and confirmed sales of lower-priced subject goods.<sup>59</sup> Further, the Tribunal notes that purchasers ranked Korea as comparable to the other subject countries for non-price factors.<sup>60</sup>

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49. Exhibit NQ-2018-004-D-01, Vol. 11 at 10, 18-19, 23-25.

50. Exhibit NQ-2018-004-06, Tables 7, 8, 17, Vol. 1.1; Exhibit NQ-2018-004-A-07, Vol. 11 at 12; Exhibit NQ-2018-004-A-13, Vol. 11 at 3-4; *Transcript of Public Hearing* at 43-44, 75.

51. Exhibit NQ-2018-004-06, Tables 9, 10, Vol. 1.1; *Transcript of Public Hearing* at 263-264.

52. See paragraph 14, citing paragraph 34 of the CBSA's reasons concerning its final determination of dumping. In addition, AMD and Stelco define "seconds" in a manner that is consistent with the CBSA's description: Exhibit NQ-2018-004-RI-01, Vol. 9 at 2-3; Exhibit NQ-2018-004-RI-02, Vol. 9 at 3-4.

53. Exhibit NQ-2018-004-RI-01, Vol. 9 at 2-3; Exhibit NQ-2018-004-RI-02, Vol. 9 at 2-3. Stelco submitted that its own relatively high production volume of seconds is reflective of non-subject automotive COR deemed to be secondary material that is ultimately sold as non-automotive COR (i.e. like goods).

54. *Transcript of Public Hearing* at 17.

55. *Transcript of Public Hearing* at 94.

56. Exhibit NQ-2018-004-07 (protected), Schedule 1, Vol. 2.1; *Transcript of Public Hearing* at 195-196, 271.

57. Exhibit NQ-2018-004-06, Table 11, Vol. 1.1; Exhibit NQ-2018-004-A-03, Vol. 11 at 8; Exhibit NQ-2018-004-A-07, Vol. 11 at 4, 12; *Transcript of Public Hearing* at 262-263.

58. Exhibit NQ-2018-004-06, Tables 9-11, Vol. 1.1; *Transcript of Public Hearing* at 215; *Transcript of In Camera Hearing* at 45-46, 51, 105-106.

59. Exhibit NQ-2018-004-B-05, Vol. 11 at 7-10; Exhibit NQ-2018-004-A-02, Vol. 12 at 41-44; Exhibit NQ-2018-004-A-04, Vol. 12 at 74; Exhibit NQ-2018-004-B-06, Vol. 12 at 7-10.

60. Exhibit NQ-2018-004-06, Table 10, Vol. 1.1.

[54] The Tribunal finds that there are similar channels of distribution for COR from each subject country, both to Canada and, as between the subject goods and domestically produced like goods, within Canada; this is consistent with the evidence on the record.<sup>61</sup> Despite POSCO's argument that the purchasers and distribution channels for Korean subject goods are distinct from those from China, the responses to the Importers' Questionnaire show four distributors imported from both sources during the POI.<sup>62</sup> In addition, Mr. Dunstall testified that the subject goods from the four subject countries are offered through traders that bring "opportunities" to purchasers.<sup>63</sup> He did not distinguish Korean subject goods from other subject goods in terms of the manner in which they are marketed and sold in Canada.

[55] POSCO's submissions also appear inconsistent with the statements provided by witnesses: Mr. Connor of AMD stated that subject goods have established distribution channels in Canada, which makes the domestic producers vulnerable to surges in low-priced COR.<sup>64</sup> He further indicated that international steel traders, who are usually wholly owned subsidiaries of foreign steel mills or affiliates of international steel trading companies, provide subject countries with ongoing access to the Canadian market.<sup>65</sup> In addition, Mr. Lachapelle of Taylor Steel stated that "[s]ervice centres provide established distribution networks for COR across Canada" and "[a]s a result of consolidation, service centres are large volume purchasers" of domestic and offshore COR, which they sell to "various industries".<sup>66</sup>

[56] POSCO also argued that there are differences in the channels of distribution on the basis of the particular trade levels to which Korean COR was sold in the domestic market, noting that almost all of the imports from Korea were sold to distribution/service centres as opposed to end users.<sup>67</sup> However, no explanation was given as to how exporting to only a particular trade level impacts the conditions of competition; especially when subject goods from other sources and domestic goods are sold at that same trade level. Nevertheless, the Tribunal finds that this view is unsupported given the evidence of direct competition between the subject goods and like goods in the domestic market for sales to both distributors/service centres and end users.<sup>68</sup>

[57] With regard to modes of transportation, Mr. Butler of AMD indicated that COR is shipped to Canada from all four subject countries by vessel and are generally quoted on a loaded truck or "FOB port" basis.<sup>69</sup> Mr. Lachapelle also testified that the "FOB points" are traditionally Sorel, Oshawa, Hamilton, and terminals in British Columbia.<sup>70</sup> Average delivery times for the subject countries are

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61. Seven out of eleven purchasers responded that domestic like goods and imported subject goods are sold through the same channels of distribution; see Exhibit NQ-2018-004-06, Table 8, Vol. 1.1.

62. Exhibit NQ-2018-004-06, Table 4, Vol. 1.1.

63. *Transcript of Public Hearing* at 265-266.

64. Exhibit NQ-2018-004-A-07, Vol. 11 at 22.

65. Exhibit NQ-2018-004-A-07, Vol. 11 at 22.

66. Exhibit NQ-2018-004-A-09, Vol. 11 at 4.

67. Exhibit NQ-2018-004-D-01, Vol. 11 at 18; Exhibit NQ-2018-004-06, Tables 4, 12, Vol. 1.1; Exhibit NQ-2018-004-07 (protected), Tables 30, 23, Vol. 2.1.

68. Exhibit NQ-2018-004-06, Table 6, Vol. 1.1; Exhibit NQ-2018-004-07 (protected), Tables 30, 23, Vol. 2.1; Exhibit NQ-2018-004-B-05, Vol. 11 at 7-10.

69. Exhibit NQ-2018-004-A-03, Vol. 11 at 10; *Transcript of Public Hearing* at 46. While Mr. Dunstall testified that the subject goods can be shipped in a container or stowed in the bottom of a vessel, the fact remains that they all arrive in Canada by vessel at generally the same ports of entry; *Transcript of Public Hearing* at 282-283.

70. *Transcript of Public Hearing* at 92.

similar (particularly for China and Korea) and tend to be almost double that of the domestic producers.<sup>71</sup>

[58] With respect to JSW's submissions regarding India, the Tribunal is not persuaded that the differences in volumes of subject goods from India relative to imports of other subject countries are linked to distinctions, or India-specific factors, in the relevant conditions of competition discussed above.<sup>72</sup> As for the argument that subject goods from India are higher-end (light gauges compared to the basic commodity-type COR), the fact remains that they are marketed and sold in the same manner as other subject goods (i.e. through similar distribution channels) and compete on price with the like goods.<sup>73</sup>

[59] Although there is an apparent absence of imports of subject goods from India in Interim 2018, there is evidence that Indian subject goods were sold in the domestic market during Interim 2018.<sup>74</sup> In prior cases where the different timing of imports was raised by the parties, the Tribunal found that decumulation was not justified where the timing of imports was not fundamentally different between the subject countries.<sup>75</sup> The Indian goods were present concurrently with other subject goods during the other periods examined (i.e. 2015 to 2017) and the variance in their volumes over the POI does not establish that there are differences in the conditions of competition between subject goods from India and other subject goods.

[60] Finally, regarding geographic dispersion, in each period the domestic producers and importers made sales in all regions of Canada except Nunavut, Yukon and the Northwest Territories.<sup>76</sup> The domestic sales of like goods were most heavily concentrated in Ontario and Quebec, followed by Manitoba and Saskatchewan. However, the witnesses for the domestic producers testified that they sell COR across the country, from east to west.<sup>77</sup> Similarly, Mr. Lachapelle of Taylor Steel testified that the company supplies COR from the east coast to Alberta, with some sales in British Columbia.<sup>78</sup> While importers sold more subject goods in Ontario and Quebec than anywhere else in Canada, their sales were less concentrated there compared to the domestic producers, and Alberta and British Columbia accounted for a greater share of importers' sales.<sup>79</sup>

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71. Exhibit NQ-2018-004-06, Table 8, Vol. 1.1.

72. Exhibit NQ-2018-004-07 (protected), Vol. 2.1, Table 13. For example, in *Copper Pipe Fittings* at paras. 77-79, the Tribunal did not consider differences in import volume trends to warrant decumulation given that the subject goods from all sources competed against each other on the basis of price.

73. *Transcript of Public Hearing* at 19-20, 80, 90-91, 287-288; *Transcript of In Camera Hearing* at 99-102, 107-109.

74. Exhibit NQ-2018-004-06, Table 6, Vol. 1.1; Exhibit NQ-2018-004-07 (protected), Tables 6, 18, 47, 59, Schedule 10, Vol. 2.1; Exhibit NQ-2018-004-07D, Table 14, Vol. 2.1; Exhibit NQ-2018-004-05, Vol. 1 at 78; Exhibit NQ-2018-004-20.07, Vol. 5.2 at 9; Exhibit NQ-2018-004-20.14, Vol. 5.2 at 9; *Transcript of Public Hearing* at 308-309.

75. *Hot-rolled Carbon Steel Plate* (12 July 2000), NQ-99-004 (CITT) at 22; *Certain Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (4 September 2001), NQ-2001-001 (CITT) at 16; *Laminate Flooring* (30 June 2005), NQ-2004-006 (CITT) at para. 82; *Certain Steel Fuel Tanks* (15 September 2004), NQ-2004-002 (CITT) at para. 56; *Concrete Reinforcing Bar* (26 January 2015), NQ-2014-001 (CITT) at para. 109; *Concrete Reinforcing Bar* (30 June 2017), NQ-2016-003 (CITT) at paras. 72-74.

76. Exhibit NQ-2018-004-07, Table 61, Vol. 2.1.

77. *Transcript of Public Hearing* at 20, 167.

78. *Transcript of Public Hearing* at 91.

79. Exhibit NQ-2018-004-07, Table 61, Vol. 2.1.

[61] For these reasons, 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 there are no factors to warrant the decumulation of subject goods from Korea and India in the injury analysis. The Tribunal will, therefore, proceed to assess injury based on the cumulative effects of the dumped subject goods from China, Chinese Taipei, India and Korea.

## INJURY ANALYSIS

[62] Subsection 37.1(1) of the *Special Import Measures Regulations*<sup>80</sup> 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.

[63] The domestic producers submitted that increasing imports of dumped subject goods during the POI undercut, depressed and suppressed the domestic selling prices of like goods, which has caused the domestic industry to suffer material injury in the form of lost sales and revenue, and reduced market share, production and capacity utilization rates.

[64] POSCO submitted that there was no injury caused by COR imports from Korea or, in the event that the Tribunal finds it appropriate to conduct a cumulative assessment, from all of the subject countries. POSCO also referred to the Tribunal's negative injury finding in *Corrosion II*,<sup>81</sup> arguing the present case has similar circumstances in that (1) the Canadian demand for non-automotive corrosion-resistant steel sheet products was particularly strong and had increased, (2) Canadian market demand for COR grew, (3) the Canadian industry had an extremely high capacity utilization and there was no additional domestic capacity available to supply the increased demand, (4) the sale of like goods showed a very healthy performance, and (5) employment in the industry had increased.<sup>82</sup> JSW submitted that there is no positive evidence of injury caused by the subject goods from India.

[65] POSCO and JSW submitted that the domestic industry's financial performance is positive, having improved during the POI. They alleged that any injury or threat of injury to the domestic industry is attributable to various factors other than the dumped goods, including the domestic producers' prioritizing their export sales at the expense of their domestic sales, their inability to adequately serve the Canadian market, product quality problems, and intra-industry competition.

[66] Knightsbridge submitted that the exporters from the subject countries with which it is doing business are responsible exporters that did not and will not cause injury to the domestic industry. However, the Tribunal's mandate is not to assess whether goods from particular exporters have caused injury or threaten to cause injury. The Tribunal must analyse the impact on the domestic

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80. SOR/84-927 [*Regulations*].

81. *Corrosion-resistant Steel Sheet* (18 July 2001), NQ-2000-008 (CITT) [*Corrosion II*].

82. *Corrosion II* at 11-12.

industry of the *dumped* goods as a whole,<sup>83</sup> particularly in view of the determination that an assessment of the cumulative effect of the dumping of the subject goods from each of the subject countries is appropriate in the present case. Knightsbridge's other arguments opposing a finding of injury (or threat of injury) were, in the Tribunal's view, largely relevant to either its requests for product exclusions (with respect to products it imports from two specific exporters of the subject goods) or matters that fall outside the scope of this inquiry.<sup>84</sup> Accordingly, those arguments will be addressed in the Tribunal's analysis of the exclusion requests, following its assessment of injury and threat of injury.

### Import Volume of Dumped Goods

[67] 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.

[68] The evidence indicates that the domestic industry faced competition from increasing volumes of subject goods from 2015 to 2017, mainly driven by Chinese COR imports. The absolute total volume of imports of the subject goods increased by 36 percent from 2015 to 2016 and a further 47 percent from 2016 to 2017.<sup>85</sup> Likewise, relative to domestic consumption, the import volume of the subject goods increased by 7 percentage points in 2016 and by 20 percentage points in 2017.<sup>86</sup> Relative to domestic production, the import volume increased by 5 percentage points in 2016 and by 13 percentage points in 2017.<sup>87</sup> Overall, these rates of increase are significant.

[69] While there was a modest 3 percent decrease in the import volume of subject goods in absolute terms in Interim 2018 relative to Interim 2017,<sup>88</sup> the volume remained at an elevated level and the small decrease is attributable to rumors circulating in the marketplace in Interim 2018 that these proceedings would commence.<sup>89</sup> It is plausible that these rumours caused purchasers to turn to sources other than the subject countries to avoid potential exposure to *SIMA* duties.

[70] There is also evidence that the imposition by the United States, in 2016, of trade remedy measures on COR from the subject countries contributed to the increased import volumes of subject goods into Canada, particularly from China.<sup>90</sup> This evidence indicates that the imposition of measures on COR by other countries is susceptible to cause diversion of the subject goods into the

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83. Subsection 42(1) of *SIMA* provides that the Tribunal "shall make inquiry with respect to . . . (a) in the case of any goods to which the preliminary determination applies, *as to whether the dumping or subsidizing of the goods (i) has caused injury or retardation or is threatening to cause injury . . .*" [emphasis added].

84. Knightsbridge made arguments regarding the impact of the potential imposition of duties on end users and consumers of the subject goods, particularly those located in Western Canada. See, for example, *Transcript of Public Hearing* at 376. These are issues that can only be addressed in a public interest inquiry after, and only if, the Tribunal makes a finding of injury or threat of injury. The Tribunal has the power to initiate a public interest inquiry if it determines that the circumstances warrant such an inquiry.

85. Exhibit NQ-2018-004-07D (protected), Table 13, Vol. 2.1; Exhibit NQ-2018-004-06D, Table 14, Vol. 1.1.

86. Exhibit NQ-2018-004-07D (protected), Table 16, Vol. 2.1; Exhibit NQ-2018-004-06D, Table 16, Vol. 1.1.

87. Exhibit NQ-2018-004-07D (protected), Table 16, Vol. 2.1; Exhibit NQ-2018-004-06D, Table 16, Vol. 1.1.

88. Exhibit NQ-2018-004-06D, Table 14, Vol. 1.1.

89. Exhibit NQ-2018-004-A-05, Vol. 11 at 25; *Transcript of Public Hearing* at 89-90, 291.

90. Exhibit NQ-2018-004-A-05, Vol. 11 at 26-27; *Transcript of Public Hearing* at 27, 33, 35, 173-175; Exhibit NQ-2018-004-07D (protected), Table 14, Vol. 2.1.



Canadian market. This issue will be addressed in more detail in the Tribunal's threat of injury analysis.

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

### **Price Effects of Dumped Goods**

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

[73] The record contains pricing information on total sales in the domestic market, sales by trade levels (distributors and end users, sales of seven benchmark products and sales to common accounts).<sup>91</sup> As stated above, COR is a commodity product and, as such, price is an important factor in purchasing decisions. Purchases of COR are largely made on the basis of spot market prices, although some customers (typically end users) purchase on a contract basis.<sup>92</sup> In both cases, the domestic producers negotiate with customers (including distributors and end users) using a "base price" per product, to which additional charges may be applied for "extras", such as particular widths and thicknesses, strength, processing, testing and surface requirements.<sup>93</sup>

[74] AMD and Stelco submitted that they compete with foreign producers at the import price level for sales to end users that purchase mill quantities, and for sales to distributors/service centres that resell the COR in the domestic market.<sup>94</sup> They argued that the Tribunal's pricing analysis should compare average selling prices for domestically produced prime COR to import prices of the subject goods (as opposed to resale prices of subject goods by distributors).<sup>95</sup> In addition, they argued that more weight should be placed on benchmark pricing and examples of direct competition than average selling prices. For its part, POSCO questioned the reliability of making comparisons using the average selling price data, particularly given the fact that it includes both primes and, in the case of domestically produced COR, seconds.

[75] The Tribunal finds that the approach suggested by AMD and Stelco is supported by the evidence on the pricing practices in the Canadian market. Several witnesses testified that comparing the import unit value of the subject goods to domestic selling prices of like goods is a better

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91. The Tribunal also collected pricing data from purchasers for 2017, and from foreign producers for export sales.

92. *Transcript of Public Hearing* at 39-43, 52-53, 186.

93. Exhibit NQ-2018-004-11.01, Vol. 3 at 8; Exhibit NQ-2018-004-11.02, Vol. 3 at 9; *Transcript of Public Hearing* at 49.

94. This includes domestic sales of automotive COR deemed to be secondary material into the non-automotive COR market, as there is no secondary automotive COR market. *Transcript of Public Hearing* at 196.

95. The evidence indicates that only primes are exported to Canada from the subject countries. There were no reported imports of seconds from any of the subject countries during the POI. At the hearing, witnesses for the domestic producers and purchasers of COR confirmed that the subject goods imported into Canada consist of primes only. See *Transcript of Public Hearing* at 17, 117.

reflection of the point at which direct competition actually occurs in the domestic market.<sup>96</sup> There is also evidence of general knowledge of COR prices and trends in the domestic market, even though price lists are not used and transactions may take different forms. As one witness for a service centre indicated, “most of my competition . . . have [sic] a general idea within a very small margin of error in terms of what the offshore numbers are and what’s being offered out there.”<sup>97</sup>

[76] The analysis that follows will consider the totality of the evidence on the record, including average prices, which is standard practice in steel cases involving commodity products.<sup>98</sup> The fact that the data on average selling prices includes a mix of COR products with different grades, thicknesses, gauges, surface treatments, etc., is not uncommon. In this case, the average domestic selling prices of domestically produced like goods includes COR seconds, which are priced differently than primes.<sup>99</sup> In order to account for such product mix issues, the Tribunal will also focus its analysis on the benchmark products data (which includes only primes),<sup>100</sup> a comparison of the average selling prices for domestically produced prime COR to import prices of the subject goods, particularly at the distributor trade level, and the specific injury allegations provided by the domestic producers. This approach provides for a more “apples-to-apples” comparison of the price competition between subject and like goods in the domestic market. Nevertheless, the importance of the secondary COR market segment should not be overstated given its relatively small share of domestic production and sales,<sup>101</sup> which in turn had a minimal impact on average prices.

### Price Undercutting

[77] The consolidated data on average selling prices indicates that the selling prices of the like goods were undercut by the subject goods, to a modest degree, in every period of the POI, other than 2015.<sup>102</sup> The degree of price undercutting was greater and prevalent throughout the POI when comparing domestic selling prices of domestically produced prime COR to both the import unit values of imports by distributors, and import selling prices of subject goods by distributors and end users.<sup>103</sup> The degree of undercutting exceeded the domestic price premium for COR, which is in the range of \$50/MT,<sup>104</sup> in 2017 and Interim 2018 only.

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96. *Transcript of Public Hearing* at 81, 170-171, 221-223, 232-233, 288.

97. *Transcript of Public Hearing* at 124-125.

98. *Cold-rolled Steel* (21 December 2018), NQ-2018-002 (CITT) at para. 62.

99. According to Mr. Anderson, the pricing of seconds may vary: “[T]hose that are most attractive would likely be 90 percent of the prime price . . . [A]t the opposite end, you are dealing with a scrap-plus kind of pricing structure . . .” Witnesses also testified that the pricing of primes and seconds is disconnected. *Transcript of Public Hearing* at 226-227, 270-271.

100. Exhibit NQ-2018-004-RI-01, Vol. 9 at 3; Exhibit NQ-2018-004-RI-02A (protected), Vol. 10 at 6.

101. Seconds accounted for a non-negligible portion of domestic production and sales (typically to service centres) during the POI. This includes domestic sales of automotive COR deemed to be secondary material into the non-automotive COR market, as there is no secondary automotive COR market. Exhibit NQ-2018-004-07 (protected), Schedule 1, Vol. 2.1; Exhibit NQ-2018-004-12.01 (protected), Vol. 4 at 10-11; Exhibit NQ-2018-004-12.02 (protected), Vol. 4 at 11; *Transcript of Public Hearing* at 196. In addition, Mr. Dunstall testified that seconds accounted for a “very small” share of COR products purchased in the Canadian market. *Transcript of Public Hearing* at 271.

102. Exhibit NQ-2018-004-07D (protected), Table 28, Vol. 2.1.

103. Exhibit NQ-2018-004-07 (protected), Table 30, Vol. 2.1; Exhibit NQ-2018-004-07D (protected), Tables 26, 28, 32, Vol. 2.1.

104. Exhibit NQ-2018-004-A-03, Vol. 11 at 8-9; *Transcript of Public Hearing* at 30-31, 33, 36, 74-75, 215-216.

[78] As discussed above, the average selling prices may obscure the true extent of price undercutting because they include a mix of COR products. However, price undercutting is also apparent in the benchmark product data, which involves a comparison of prime COR selling prices. For five out of seven benchmark products, the subject goods were lower-priced than the like goods (with a differential exceeding \$50/MT) in the majority of periods.<sup>105</sup> For benchmark product No. 1, the selling prices of like goods were lower for all points of comparison, and for benchmark product No. 7 the selling prices of like goods were lower for six of the seven comparisons.<sup>106</sup>

[79] POSCO submitted that the Tribunal should apply a time lag to its pricing analysis of the benchmark product data, arguing that there is a delay of three to five months from order to delivery for subject goods.<sup>107</sup> The domestic producers submitted that it is inappropriate to lag benchmark pricing as it is based on delivered pricing in a particular quarter (as opposed to circumstances where price offers in the market are being compared to selling prices).<sup>108</sup> The Tribunal finds that even if a one quarter time lag is applied, it does not materially change the overall picture of price undercutting.<sup>109</sup> In fact, while this analysis results in a slight reduction in the number of instances of price undercutting exposed by the benchmark pricing data, it is insufficient to convince the Tribunal that the degree of undercutting was insignificant during the POI.

[80] There were also numerous points of comparison for sales to common accounts.<sup>110</sup> For two of those accounts, the domestic producer had the lowest price in competition with the subject goods and the level of undercutting exceeded the domestic price premium. Conversely, the subject goods were lower-priced in most, if not all, of the time periods where points of comparison were available for certain other common accounts.

[81] In addition, AMD has provided several specific allegations of lost sales where its offered price was undercut by the subject goods, at a level exceeding the domestic price premium.<sup>111</sup> Stelco also provided market intelligence showing subject goods offered and sold into the domestic market at prices below Stelco's own prices for like goods in the same period.<sup>112</sup> At the hearing, several witnesses testified that the average selling prices of subject goods were, generally, between \$150/MT and \$250/MT below the average selling prices of like goods during the POI.<sup>113</sup> This evidence indicates that the price undercutting was significant, even when taking the domestic price premium into account.

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105. Exhibit NQ-2018-004-07 (protected), Tables 35-39, Vol. 2.1.

106. Exhibit NQ-2018-004-07 (protected), Tables 34, 40, Vol. 2.1.

107. Exhibit NQ-2018-004-D-02 (protected), Vol. 12 at 33-36.

108. Exhibit NQ-2018-004-A-11, Vol. 11 at 18-19.

109. POSCO's use of a one quarter lag is in line with the Purchasers' Questionnaire responses, which indicate that the average delivery time for subject goods is 120 days. See Exhibit NQ-2018-004-06, Table 8, Vol. 1.1.

110. Exhibit NQ-2018-004-07 (protected), Tables 47-52, Vol. 2.1.

111. Exhibit NQ-2018-004-A-04 (protected), Vol. 12 at 11-19, 75-152, 222-232, 261-267, 274-282.

112. Exhibit NQ-2018-004-B-06 (protected), Vol. 12 at 7-11.

113. *Transcript of Public Hearing* at 31, 33, 36, 79-80, 287. Mr. Dunstall also testified that he has seen price differences of up to \$350/MT to \$400/MT (see *Transcript of Public Hearing* at 287).

[82] Although POSCO called into question the evidence presented by the domestic producers relating to sales lost to Korean producers,<sup>114</sup> on balance the preponderant evidence still indicates that prices of like goods were undercut by the pricing of the subject goods, including Korean goods.

[83] On the basis of this evidence, the Tribunal finds that the subject goods have undercut the price of the like goods during the POI and, in instances for which a direct comparison of data is possible, the degree of undercutting was significant.

#### Price Depression

[84] The average selling prices of like goods and subject goods both increased overall from 2015 to 2017, and in Interim 2018 compared to Interim 2017.<sup>115</sup> This suggests that the price undercutting discussed above, while it appears to have resulted in lost sales for the domestic producers, did not translate into price depression.

[85] The allegation of price depression is primarily based on AMD's account-specific claims of having to lower its prices in order to win a sale.<sup>116</sup> In particular, Mr. Butler has provided as many as 11 specific examples of sales where AMD lowered its price in direct competition with subject goods throughout the POI.<sup>117</sup> The domestic producers further submitted that "lost sales also contribute to overall price depression."<sup>118</sup>

[86] On balance, the evidence of price depression is limited in scope and does not indicate that the subject goods have significantly depressed the price of the like goods during the POI. While there was a small decrease in average selling prices from 2015 to 2016, there was subsequently a significant increase of average domestic selling prices during the rest of the POI. Moreover, certain account-specific allegations of AMD were disputed by POSCO. It is not clear that all of them relate exclusively to subject countries or subject goods.<sup>119</sup> For this reason, the Tribunal gives more weight to the pricing data in the Investigation Report than to the domestic producers' account-specific claims on this issue.

[87] Therefore, the Tribunal is unable to find that the subject goods have significantly depressed the price of the like goods.

#### Price Suppression

[88] To determine whether the selling price of the subject goods has suppressed the selling price of like goods, the Tribunal typically compares the domestic industry's average unit cost of goods sold (COGS) or cost of goods manufactured (COGM) with its average unit selling values in the domestic market. In the present case, any increases in the unit costs of production and sales were

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114. *Transcript of In Camera Hearing* at 15-20, 24-28, 32-34, 69.

115. Exhibit NQ-2018-004-06D, Table 28, Vol. 1.1; Exhibit NQ-2018-004-07D (protected), Table 28, Vol. 2.1.

116. Exhibit NQ-2018-004-A-01, Vol. 11 at 43-44.

117. Exhibit NQ-2018-004-A-04 (protected), Vol. 12 at 11-12, 14-16, 18-19.

118. Exhibit NQ-2018-004-A-01, Vol. 11 at 48.

119. The Tribunal notes that there are references to non-subject countries or to automotive COR products in certain documents filed by AMD in support of its allegation. Exhibit NQ-2018-004-A-04 (protected), Vol. 12 at 233, 244; *Transcript of In Camera Hearing* at 15-17, 19-22.

covered by an equivalent or greater increase in domestic selling prices.<sup>120</sup> As such, the evidence that the Tribunal generally takes into account on this issue does not indicate that the subject goods have suppressed the prices of the like goods during the POI.

[89] In this case, the price suppression allegation is based entirely on the spread between AMD's domestic average selling prices of COR and the U.S. Midwest price of COR, as reported by CRU, in 2016 and 2017. In 2015, AMD's price was "very similar to" and "generally tracked" the U.S. Midwest price, which is an indicator that generally reflects spot prices for non-automotive COR.<sup>121</sup> The domestic producers submit that following the U.S. imposition of anti-dumping (AD) and countervailing duty (CVD) measures on COR from the subject countries in 2016, a "significant divergence occurred between Canadian and U.S. pricing" whereby "[t]he Canadian price trended with the U.S. Midwest price, however, there was a significant spread" as the United States returned to fair market pricing in 2016 and 2017. Meanwhile, "the Canadian market price remained depressed because of low-priced imports."<sup>122</sup> In 2018, they submit that the Section 232 measures in the United States have "inflated U.S. pricing beyond what could be expected in the Canadian market."<sup>123</sup> In other words, price suppression is not alleged in Interim 2018. The issue is, therefore, whether the domestic selling prices of like goods would have increased and perhaps converged more closely with the U.S. Midwest price in 2016 and 2017, but for the dumping.

[90] There is evidence that appears to support the Canada-U.S. price divergence as an indicator of price suppression in this case, as all witnesses questioned on the matter agreed that the U.S. Midwest price of COR, as reported by CRU, is a valid benchmark to assess what pricing should be in the Canadian market. However, in this case, contrary to the situation in the *Cold-rolled Steel* case,<sup>124</sup> the dislocation between the domestic selling prices of like goods and the U.S. Midwest price as an indicator that import volumes of the subject goods prevented price increases for the like goods that would otherwise have occurred is not supported by corroborating evidence. There is no clear evidence that the domestic producers attempted unsuccessfully to raise their prices such that it would converge with U.S. pricing in the relevant period.

[91] To the contrary, there are respondents to the Tribunal's questionnaires who indicated that for certain COR products, it is the domestic producers who were the price leaders in the Canadian market.<sup>125</sup> This is also shown in some of the pricing data on benchmark products<sup>126</sup> and common accounts.<sup>127</sup> On balance, the Tribunal finds that there is insufficient evidence to conclude that the

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120. Exhibit NQ-2018-004-07 (protected), Table 53, Vol. 2.1.

121. Exhibit NQ-2018-004-A-01, Vol. 11 at 44-45; Exhibit NQ-2018-004-A-03, Vol. 11 at 7; Exhibit NQ-2018-004-A-05, Vol. 11 at 26-28; Exhibit NQ-2018-004-A-06 (protected), Vol. 12 at 28; Exhibit NQ-2018-004-A-07, Vol. 11 at 16.

122. Exhibit NQ-2018-004-A-01, Vol. 11 at 46; Exhibit NQ-2018-004-A-05, Vol. 11 at 29.

123. Exhibit NQ-2018-004-A-01, Vol. 11 at 46; Exhibit NQ-2018-004-A-05, Vol. 11 at 26-28, 88-90; Exhibit NQ-2018-004-A-06 (protected), Vol. 12 at 28.

124. *Cold-rolled Steel* at para. 85.

125. Exhibit NQ-2018-004-21.14 (protected), Vol. 6 at 5; Exhibit NQ-2018-004-21.07A (protected), Vol. 6.2 at 5; Exhibit NQ-2018-004-21.17 (protected), Vol. 6.2 at 23; Exhibit NQ-2018-004-21.04 (protected), Vol. 6.2 at 5; Exhibit NQ-2018-004-21.07 (protected), Vol. 6.2 at 5; Exhibit NQ-2018-004-21.12 (protected), Vol. 6.2 at 5.

126. For two of the seven benchmark products, the selling prices of the domestically produced like goods were lower than the selling prices of the subject goods for close to all points of comparison. See Exhibit NQ-2018-004-07 (protected), Tables 34, 40, Vol. 2.1.

127. Exhibit NQ-2018-004-07 (protected), Tables 47, 50, 51, Vol. 2.1.

price differential between the U.S. Midwest price and the average domestic selling prices of like goods indicates that the increasing import volumes of dumped goods prevented price increases for the like goods that would otherwise likely have occurred.

[92] Therefore, the Tribunal is unable to find that the subject goods have significantly suppressed the price of the like goods.

### **Resultant Impact on the Domestic Industry**

[93] Having found that there has been a significant increase in the volume of the dumped goods and that the prices of the dumped goods have significantly undercut the prices of the like goods, paragraph 37.1(1)(c) of the *Regulations* requires the Tribunal to consider the resulting impact 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.<sup>128</sup> These impacts are to be distinguished from the impact of other factors also having a bearing on the domestic industry.<sup>129</sup> Paragraph 37.1(3)(a) of the *Regulations* requires the Tribunal to consider whether a causal relationship exists between the dumping or subsidizing of the goods and the injury, retardation or threat of injury, on the basis of the volume, the price effect, and the impact on the domestic industry of the dumped or subsidized goods.

[94] A number of indicators denote that the subject goods had an adverse impact on the state of the domestic industry during the POI. Total domestic sales of like goods decreased in 2017, while sales of imports and the total apparent market size both increased over the same period (with a larger rise in sales of subject versus non-subject goods).<sup>130</sup> In Interim 2018 compared to Interim 2017, sales of like goods decreased absolutely and relative to both sales of subject goods and the total market (which remained flat).<sup>131</sup> By comparison, export sales of domestically produced COR increased between 2015 and 2017.<sup>132</sup> AMD and Stelco have also provided several specific examples of sales lost due to price undercutting by the subject goods during the POI.<sup>133</sup> As a consequence, aggregate domestic sales of like goods lost market share in each period at the expense of subject goods and non-subject goods<sup>134</sup> (both of which increased in every period, with the exception of a small drop in

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

129. 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.

130. Exhibit NQ-2018-004-07D (protected), Table 17, Vol. 2.1.

131. Exhibit NQ-2018-004-07D (protected), Table 17, Vol. 2.1.

132. Exhibit NQ-2018-004-07C (protected), Table 56, Vol. 2.1.

133. Exhibit NQ-2018-004-A-02 (protected), Vol. 12 at 41-42; Exhibit NQ-2018-004-A-04 (protected), Vol. 12 at 11-19, 75-152, 222-232, 261-267, 274-282; Exhibit NQ-2018-004-B-05, Vol. 11 at 6-9.

134. Sales of non-subject imports accounted for a larger proportion of total import sales than subject goods.

the market share of subject goods in Interim 2018).<sup>135</sup> Shares of domestic sales to distributors particularly suffered, as the domestic producers lost significant market share from 2015 to 2017, while China alone gained an equivalent share over the same period.<sup>136</sup> Conversely, in Interim 2018, the domestic producers appeared to gain back some lost market share in sales to distributors at China's expense.

[95] The decrease in sales and market share translated into reduced domestic output and capacity utilization. Although the volume of total domestic production for domestic sale increased in 2016, it then declined for the remainder of the POI.<sup>137</sup> AMD's practical plant capacity dropped from 2015 to 2016, which may partly explain the overall increase in the consolidated capacity utilization rate over the same period.<sup>138</sup> POSCO argued that the domestic industry could not meet domestic demand.<sup>139</sup> While the domestic industry does produce a significant amount of other goods on the same equipment as COR,<sup>140</sup> the domestic producers likely have sufficient disposable capacity to meet the domestic market's demand for COR<sup>141</sup> and their capacity utilization rate for all goods on the same equipment declined from 2016 to 2017, and from Interim 2017 to Interim 2018.<sup>142</sup> In each of these periods, the excess capacity appears greater than the volume of subject imports in the same period.<sup>143</sup> By comparison, the capacity utilization rate for domestic sales of COR remained steady in each period, with the exception of 2016, where it slightly rose. The higher rate of utilization in 2016 appears to have resulted from increased production for domestic sales (which peaked in 2016), more so than the decline in practical plant capacity.

[96] Other indicators do not, however, show the same adverse impact. The consolidated financial results of the domestic industry indicate steady and significant improvements in financial performance for domestic sales, at both the gross margin and net income levels. These improvements appear to have resulted from an overall increase in total and unit net sales value and decreasing production costs (with the exception of 2016, when unit net sales value and COGS fell).<sup>144</sup> The domestic industry also experienced stronger financial results in relation to export sales and total company performance.<sup>145</sup> Also, at the end user level, which accounted for a higher proportion of domestic sales during the POI, the domestic producers' market share was steadier.<sup>146</sup>

[97] Moreover, the increased presence of the subject goods did not prevent domestic producers from remaining profitable and making significant and increasing investments during the POI.<sup>147</sup>

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135. Exhibit NQ-2018-004-07 (protected), Table 19, Vol. 2.1.

136. Exhibit NQ-2018-004-07 (protected), Table 22, Vol. 2.1.

137. Exhibit NQ-2018-004-07D (protected), Table 17, Vol. 2.1.

138. Exhibit NQ-2018-004-06B, Table 57, Vol. 1.1.

139. Exhibit NQ-2018-004-D-02 (protected), Vol. 12 at 41.

140. Exhibit NQ-2018-004-07C (protected), Table 56, Vol. 2.1.

141. *Transcript of Public Hearing* at 123.

142. Exhibit NQ-2018-004-07C (protected), Table 56, Schedules 19 and 25, Vol. 2.1.

143. This is based on the domestic industry's total capacity utilization rate (including other goods produced on the same equipment) and applying the excess rate to total plant capacity, and comparing the resulting volume to the volume of subject imports. Exhibit NQ-2018-004-07D (protected), Table 13, Vol. 2.1; Exhibit NQ-2018-004-07C, Table 56, Vol. 2.1.

144. Exhibit NQ-2018-004-07 (protected), Table 53, Vol. 2.1.

145. Exhibit NQ-2018-004-07 (protected), Tables 54, 55, Vol. 2.1.

146. Exhibit NQ-2018-004-07 (protected), Table 25, Vol. 2.1.

147. Exhibit NQ-2018-004-07C (protected), Table 56, Vol. 2.1.

Although the domestic producers submitted that short-term circumstances in the market “cushioned” the price effects of the subject goods in 2016 and 2017, the Tribunal finds that there is insufficient evidence to support these claims. Indeed, throughout the POI, AMD exceeded the net income threshold it needs to meet in order to attract investment from its parent company.<sup>148</sup> In fact, Mr. Connor of AMD testified that it invested about \$1.5 billion in its operations and assets over the last three years.<sup>149</sup>

[98] With regard to profitability, the domestic producers identify Q2 and Q3 2017 as the point at which the domestic industry’s profitability indicators started to decline in response to price competition from the subject goods.<sup>150</sup> The Tribunal is of the view that there is limited evidentiary support for this claim.<sup>151</sup> The domestic producers also argued that profitability improved in Interim 2018 due in part to the knowledge or expectation in the domestic market that this case would be filed in Q1 2018, but also because the U.S. Section 232 measures and recent uncertainty in the U.S. market “somewhat buoyed” the Canadian prices.<sup>152</sup> Indeed, according to the domestic producers, the U.S. Section 232 measures appear to have initially caused prices to increase in Interim 2018, particularly through June 2018. This appears to have contributed to the positive recent results of the domestic industry.<sup>153</sup> However, Mr. Connor of AMD testified that Canadian prices for COR peaked in July 2018, and have since been coming down.<sup>154</sup>

[99] Similarly, the domestic industry has also not experienced significant negative effects with regard to employment, where the number of employees, the hours worked and wages remained relatively flat.<sup>155</sup> Any negative results in employment appear to relate to more than the subject COR business.<sup>156</sup> There is also little evidence that the increased presence of the subject goods in the Canadian market had negative effects on the domestic industry’s cash flow, employee wages or ability to raise capital during the POI. In fact, Stelco managed to proceed with a successful initial public offering during the POI.<sup>157</sup>

[100] In view of the foregoing, the Tribunal finds that, on the whole, the negative effects of the subject goods on the state of the domestic industry have been limited in terms of extent and duration. While certain performance indicators indicate that the subject goods started to have an adverse impact on the state of the domestic industry, particularly at the end of the POI, the domestic producers were not impacted in a material way by the presence of the subject goods in the market during the better part of the POI.

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148. Exhibit NQ-2018-004-A-02 (protected), Vol. 12 at 77; *Transcript of In Camera Hearing* at 1-3; Exhibit NQ-2018-004-07 (protected), Schedule 18, Vol. 2.1.

149. *Transcript of Public Hearing* at 22. The domestic producers did not argue that the subject goods impacted investments during the POI.

150. Exhibit NQ-2018-004-A-01, Vol. 11 at 49.

151. Exhibit NQ-2018-004-A-08 (protected), Vol. 12 at 20, 22-23, 35. However, the data available from AMD and Stelco do not allow the Tribunal to isolate the performance of each quarter of 2017.

152. Exhibit NQ-2018-004-A-01, Vol. 11 at 50.

153. Exhibit NQ-2018-004-A-01, Vol. 11 at 50.

154. *Transcript of Public Hearing* at 30.

155. Exhibit NQ-2018-004-07C, Table 56, Vol. 2.1.

156. *Transcript of Public Hearing* at 149-153; *Transcript of In Camera Hearing* at 6-7.

157. *Transcript of Public Hearing* at 166.



[101] Furthermore, while the account-specific injury allegations and witness testimony demonstrate that domestic producers are feeling some pressure from the subject goods in the form of some price depression and undercutting, they have nevertheless managed to limit losses during the POI, as evidenced by their financial performance.

[102] The Tribunal therefore finds that the adverse impact of the subject goods has not been of such an extent and duration that it can be considered as “material” as contemplated by the definition of “injury” under section 2 of *SIMA*.

### **THREAT OF INJURY ANALYSIS**

[103] Having found that the dumping of the subject goods has not caused material injury to the domestic industry, the Tribunal must now consider whether they are threatening to cause material injury.

[104] The Tribunal is guided in its consideration of threat of injury by subsection 37.1(2) of the *Regulations*, which prescribes factors to be taken into account for the purposes of its threat of injury analysis.<sup>158</sup> Also of relevance is subsection 2(1.5) of *SIMA*, which indicates that a threat of injury finding cannot be made unless the circumstances in which the dumping of the goods would cause injury are clearly foreseen and imminent.

[105] The Tribunal is also mindful of Article 3.7 of the WTO *Anti-dumping Agreement*, which sets out the framework of obligations implemented in subsection 2(1.5) of *SIMA*:

A determination of threat of injury shall be *based on facts and not merely on allegation, conjecture or remote possibility*. The *change in circumstances* which would create a situation in which the dumping would cause injury *must be clearly foreseen and imminent*.

[Emphasis added]

[106] As the Tribunal has previously indicated,<sup>159</sup> the fundamental requirement that threat of injury findings must be based on facts and not on “allegation, conjecture or remote possibility” aims to

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158. Subsection 37.1(2) of the *Regulations* reads as follows: “For the purposes of determining whether the dumping or subsidizing of any goods is threatening to cause injury, the following factors are prescribed: (a) the nature of the subsidy in question and the effects it is likely to have on trade; (b) whether there has been a significant rate of increase of dumped or subsidized goods imported into Canada, which rate of increase indicates a likelihood of substantially increased imports into Canada of the dumped or subsidized goods; (c) whether there is sufficient freely disposable capacity, or an imminent, substantial increase in the capacity of an exporter, that indicates a likelihood of a substantial increase of dumped or subsidized goods, taking into account the availability of other export markets to absorb any increase; (d) the potential for product shifting where production facilities that can be used to produce the goods are currently being used to produce other goods; (e) whether the goods are entering the domestic market at prices that are likely to have a significant depressing or suppressing effect on the price of like goods and are likely to increase demand for further imports of the goods; (f) inventories of the goods; (g) the actual and potential negative effects on existing development and production efforts, including efforts to produce a derivative or more advanced version of like goods; (g.1) the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods; (g.2) evidence of the imposition of anti-dumping or countervailing measures by the authorities of a country other than Canada in respect of goods of the same description or in respect of similar goods; and (h) any other factors that are relevant in the circumstances.”

159. *Polyethylene Terephthalate Resin* (16 March 2018), NQ-2017-003 (CITT) [*PET Resin*] at para. 167.

mitigate the risk that such findings may be grounded in speculation about possible future events, rather than objective facts directing such a conclusion. The WTO Appellate Body recognized the inherent difficulty in a threat of injury finding of having to predict future events; it is nevertheless required by WTO law that “a ‘proper establishment’ of facts in a determination of threat of material injury must be based on events that, although they have not yet occurred, must be ‘clearly foreseen and imminent’ . . . .”<sup>160</sup> Therefore, for the Tribunal to find that the subject goods threaten to cause injury to the domestic industry, there must be positive evidence that bears out this substantive standard.

[107] Further, subsection 37.1(3) of the *Regulations* directs the Tribunal to consider whether a causal relationship exists between the dumping of the goods and the threat of injury on the basis of the factors listed in subsection 37.1(2), and whether any factors other than the dumping are threatening to cause injury.

[108] In light of the above, the Tribunal is of the view that a finding of threat of injury requires the same rigorous analysis of these factors, supported by cogent and convincing evidence, as does a finding of injury. There must also be a high probability of a change, compared to the circumstances that existed during the POI (when no injury was found) to a situation in which the subject goods threaten to cause material injury in the very near future, in the absence of measures.<sup>161</sup>

[109] Threat of injury was an important underlying theme of the domestic producers’ arguments and evidence. They submitted that the Canadian and global steel markets, including for subject COR, are in an unprecedented situation, with massive global steel overcapacity, the proliferation of trade remedy actions, Section 232 measures in the United States and the reactive retaliatory measures imposed in Canada, the European Union and other jurisdictions around the world.<sup>162</sup> These extraordinary circumstances are, in the domestic producers’ submission, the by-product of the state-sponsored expansion of the Chinese steel industry that has caused the excess capacity crisis, resulting in a situation of high excess capacity, high volume of exports and low pricing in China and other countries with export-oriented steel industries, such as Korea, Chinese Taipei and India. They further asserted that the rapid proliferation of trade defensive measures in 2018 and 2019 has resulted in an unmanageable situation, with fewer open markets to absorb the huge volume of COR exports, in which the Canadian COR market is exposed and vulnerable to unfair trade and injury.<sup>163</sup>

[110] It is in this context that the domestic producers argued that the dumping of the subject goods poses an imminent and foreseeable threat of injury in the next 12 to 18 months in the absence of protection. POSCO argued that the Tribunal should limit its threat of injury analysis to the next 6 to 12 months. In assessing threat of injury, the Tribunal finds that a time frame of 12 months is appropriate in the present inquiry, given the emphasis placed on the alleged threat of diversion from the United States and European Union markets, in particular, as a result of recent trade measures in

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160. *Mexico – Anti-Dumping Investigation of High-Fructose Corn Syrup (HFCS) from the United States (Article 21.5 – US)* (22 October 2001), WT/DS132/AB/RW (Appellate Body) at para. 85.

161. *PET Resin* at paras. 170-172 (“There is no requirement that a relevant change in circumstances be a single or specific event; rather, it may result from a series of events or developments in the situation of an industry and/or the dumped or subsidized imports, leading to the conclusion that the injury which has not yet materialized can be predicted to occur imminently”). See also WTO Panel Report, *US-Softwood Lumber VI*, WT/DS277/R, adopted 26 April 2004, at para. 7.60.

162. Exhibit NQ-2018-004-A-01, Vol. 11 at 5, 52-53

163. *Transcript of Public Hearing* at 324-325.

those jurisdictions on COR from the subject countries. In addition, the delivery times for subject goods imported into Canada are generally within three to six months.<sup>164</sup>

### Likelihood of Increased Dumped Goods

[111] According to the evidence, there is merit to the claim that the global steel industry is in an unprecedented state of turmoil and uncertainty, due to the global excess capacity crisis<sup>165</sup> that has, in turn, triggered trade actions by governments around the world to protect their steel industries, including measures against COR from the subject countries.<sup>166</sup> According to CRU, the global COR industry had significant excess capacity in 2018,<sup>167</sup> and although it is forecast to decrease modestly in 2019, it remains substantial.<sup>168</sup> There is simply not enough global demand to absorb the global supply of COR. Indeed, softening demand for steel, and sheet products in particular, is forecast in 2019 due to “continuing economic rebalancing efforts and toughening environmental regulations” in China.<sup>169</sup>

[112] It is well established that, in capital-intensive commodity product industries where there are high fixed costs, there is an incentive to maintain a high level of production and capacity utilization in order to achieve economies of scale and reduce average costs.<sup>170</sup> It is generally recognized that this production imperative is operative in the steel industry. In this connection, as long as prices are above the marginal cost of production, a firm may lower its average costs by producing more product. In the face of weak demand or oversupply, a firm may try to export its production beyond the level that clears the domestic market. The evidence discussed below indicates that this production imperative and incentive to export exists in the COR sector generally, and in the subject countries specifically.

[113] The oversupply of COR worldwide is driven by China. Notably, CRU forecasts an increase in China’s annual excess capacity for COR in 2018, in comparison to 2017, with modest decreases in domestic consumption and production (while capacity remains flat). Excess capacity is projected to be stable in 2019 and 2020, relative to 2018, as a minimal increase in demand will correspond with a minimal increase in capacity (while POSCO argued that steel production capacity is being reduced in

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164. Responses to the Purchasers’ Questionnaire indicated delivery times in the range of 90 to 150 days (for importers of record) and 84 to 195 days (for purchases from distributors). Exhibit NQ-2018-004-06, Table 8, Vol. 1.1.

165. According to the OECD Steel Committee, crude steelmaking capacity in 2017 was 2.25 billion MT and excess capacity was 561 million MT. Despite a modest recovery in 2017 compared to the industry lows experienced in 2015, the sustainability of such recovery is uncertain and the market is expected to remain sluggish. It estimates that global steelmaking capacity in 2018 will have risen to 2.29 billion MT. Demand in this period was 1.593 MT. While global demand is forecast to rise in 2018 and 2019, there will still remain significant excess capacity in these periods based on steelmaking capacity in 2017. Exhibit NQ-2018-004-A-01, Vol. 11 at 85-86, 98, 218-221; Exhibit NQ-2018-004-A-05, Vol. 11 at 55, 63; Exhibit NQ-2018-004-A-06 (protected), Vol. 12 at 91.

166. *Transcript of Public Hearing* at 12-13, 133, 177-178.

167. China’s crude steelmaking capacity alone increased by roughly 5 million MT in 2018. Exhibit NQ-2018-004-A-01, Vol. 11 at 86; Exhibit NQ-2018-004-B-03, Vol. 11 at 24.

168. The domestic producers relied on CRU Steel Sheet Market historical data and forecast. Although the data include automotive and non-automotive COR, both products are made on the same equipment and the Tribunal considers this information the best available evidence of projections relating to global COR production, capacity and consumption. Exhibit NQ-2018-004-A-01, Vol. 11 at 86-87; Exhibit NQ-2018-004-A-06 (protected), Vol. 12 at 68, 70, 74.

169. Exhibit NQ-2018-004-A-05, Vol. 11 at 16, 75.

170. See, for example, *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (12 August 2016), RR-2015-002 (CIIT) at paras. 65, 68.

China, this does not appear to be so for COR capacity, particularly in the next year).<sup>171</sup> In addition, although China's annual COR export volume has decreased since 2016, it remained massive in 2018.<sup>172</sup>

[114] The global excess capacity situation is also reflected at the domestic level in Chinese Taipei and Korea, albeit to a lesser extent than in China.<sup>173</sup> This evidence in relation to Chinese Taipei was undisputed. In terms of Korea, POSCO submitted, on the basis of the supporting parties' own evidence, that the outlook for the Korean market demand is positive and crude steelmaking capacity has been reduced since 2014.<sup>174</sup> While POSCO acknowledged Korea has excess COR production capacity, it argued that a significant volume of domestic production is destined for consumption in Korea's automotive industry.<sup>175</sup> Nevertheless, the CRU data show that Korean exports of COR have been significant and increased annually between 2015 and 2017, and remained at a high volume in 2018.<sup>176</sup> JSW argued that India does not have any significant excess capacity, with high capacity utilization in the most recent period and forecast in the near term.<sup>177</sup> Indeed, CRU forecasts that India will continue to have high capacity utilization rates for COR in 2019 and 2020.<sup>178</sup>

[115] The collective excess capacity of the subject countries decreased modestly between 2015 and 2017, and is projected to further decline in 2018 through 2020.<sup>179</sup> Nevertheless, the current level of overall excess capacity in the subject countries, and that which is expected in the near term, is significant in absolute terms and relative to the domestic market. According to a CRU forecast, the subject countries' consolidated excess capacity equates to over 14 times the size of the Canadian COR market.<sup>180</sup> In addition, the proliferation of recent trade measures in other jurisdictions means that several major markets are closed to subject goods, or subject goods face significant restrictions.

[116] The most notable of the recent trade measures affecting COR exports are the U.S. Section 232 measures. On March 8, 2018, President Trump issued a Proclamation pursuant to Section 232 of the *Trade Expansion Act of 1962*, imposing a tariff of 25 percent on "steel articles" imported from all countries, effective on March 23, 2018.<sup>181</sup> The "steel articles" are defined at the six-digit HS code level and include COR. A temporary exemption from the Section 232 measures for certain countries, including Canada and the European Union, was removed on May 31, 2018.<sup>182</sup>

[117] POSCO submitted that there is no positive evidence that U.S. Section 232 measures pose an "imminent" threat of diversion to Canada because significant volumes of steel products are still

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171. Exhibit NQ-2018-004-A-06 (protected), Vol. 12 at 14, 67, 69.

172. Exhibit NQ-2018-004-A-06 (protected), Vol. 12 at 14, 95.

173. Exhibit NQ-2018-004-A-02 (protected), Vol. 12 at 90-94; Exhibit NQ-2018-004-A-06 (protected), Vol. 12 at 17-20, 67-76.

174. Exhibit NQ-2018-004-A-05, Vol. 11 at 18; Exhibit NQ-2018-004-C-05, Vol. 11 at 87-88.

175. Exhibit NQ-2018-004-D-01, Vol. 11 at 68.

176. Exhibit NQ-2018-004-A-02 (protected), Vol. 12 at 91.

177. *Transcript of Public Hearing* at 362.

178. Exhibit NQ-2018-004-A-06 (protected), Vol. 12 at 21, 69, 73.

179. Exhibit NQ-2018-004-A-06 (protected), Vol. 12 at 22.

180. Exhibit NQ-2018-004-07D (protected), Table 17, Vol. 2.1. Although CRU data includes automotive and non-automotive COR, these products are manufactured on the same equipment and, therefore, the Tribunal considers it appropriate to compare the forecast of excess capacity to the size of the domestic non-automotive COR market.

181. Exhibit NQ-2018-004-A-05, Vol. 11 at 82, 110-113.

182. Exhibit NQ-2018-004-A-05, Vol. 11 at 121-124.

entering the United States, subject to the tariff. In addition, it argued that there is a reduced threat of diversion of Korean COR from the United States due to Korea's exemption from the U.S. Section 232 measures.<sup>183</sup> Even if there may be some merit to the claim that the volumes of subject goods from Korea destined for Canada will be limited, the Tribunal is not persuaded that these elements raised by POSCO are sufficient to conclude that diversion from the U.S. market into Canada will not occur, for the reasons that follow.<sup>184</sup>

[118] AMD described the U.S. Section 232 measures as “a second wave of import diversion from the U.S. into Canada”, the first being the AD and CVD measures on COR imposed by the United States in 2016.<sup>185</sup> According to Mr. Wegiel, however, the U.S. measures in 2016 were only prohibitive in the case of China, which received a combined AD and CVD rate in the range of 249 to 451 percent. As a result, there was a massive decrease in Chinese exports of COR to the United States from 2015 to 2018.<sup>186</sup> However, the other three subject countries obtained much lower combined rates (i.e. 10 percent for Chinese Taipei, between 9 and 49 percent for Korea and between 6 and 8 percent for India) and the decrease in their respective import volumes into the United States was far less pronounced than the decrease in Chinese COR imports (and those volumes remained substantial). The Tribunal accepts the evidence that the first wave of diversionary effect from the U.S. market in 2016 and 2017 was mainly with respect to China. This is supported by the evidence of a sharp increase in import volumes of Chinese COR into Canada in the same period, i.e. from 2015 to 2017, whereas imports from the other three subject countries either increased modestly (India) or declined (Chinese Taipei and Korea).<sup>187</sup>

[119] The Tribunal finds that the U.S. imposition of Section 232 measures on top of pre-existing AD/CVD measures on COR from the subject countries significantly increases the diversionary threat from the United States with respect to Chinese Taipei, India and Korea. Although Korea is subject to a quota, and not the 25 percent import tariff surcharge under the Section 232 measures, the level of recent Korean imports into the U.S. market suggests that a non-negligible volume will still need to be diverted elsewhere.<sup>188</sup> In this respect, the Tribunal accepts the domestic producers estimate that “there is approximately 350,000 MT of exports that have historically been destined for and absorbed by the U.S. market now affected by Section 232 measures.”<sup>189</sup> The Tribunal finds that this is a significant volume relative to the domestic market, especially given its proximity to the U.S. market, where those imports would have otherwise been destined.

[120] In addition to the U.S. Section 232 measures, the European Union has also imposed safeguard measures on steel products (including COR from the subject countries). Following the imposition of provisional measures in July 2018, the European Union announced the imposition of

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183. On May 1, 2018, the U.S. Administration issued a Presidential Proclamation replacing the 25 percent tariff on Korea with an absolute quota on Steel Mill Articles from Korea equivalent to 70 percent of the average annual steel export volume to the U.S. from 2015 to 2017. See Exhibit NQ-2018-004-A-05, Vol. 11 at 31, 125-140.

184. POSCO further argued that Canada views the U.S. Section 232 tariffs as illegal. In the Tribunal's view, this question has no relevance in relation to its injury and threat of injury analysis. The fact remains that the tariffs are in place and there is no evidence that they will be removed in the near future.

185. Exhibit NQ-2018-004-A-05, Vol. 11 at 24.

186. Exhibit NQ-2018-004-A-05, Vol. 11 at 24; *Transcript of Public Hearing* at 332.

187. Exhibit NQ-2018-004-07D (protected), Tables 13, 14, Vol. 2.1.

188. Exhibit NQ-2018-004-A-05, Vol. 11 at 27; *Transcript of Public Hearing* at 334.

189. *Transcript of Public Hearing* at 334.

definitive measures in January 2019.<sup>190</sup> Those measures are in the form of a tariff rate quota (TRQ) that will restrict the volume imports into the European Union at normal tariff rates at volumes based on the average import volume into that market in the period of 2015 to 2017, plus 5 percent.<sup>191</sup> The domestic producers submitted that from July 1, 2019, through June 30, 2020, the TRQ will restrict the volume of COR imports to a little less than 4.3 million MT, which is almost 800,000 MT lower than 2017 import volumes of COR.<sup>192</sup> They also referred to evidence that the subject countries accounted for between 70 and 80 percent of total EU COR imports in 2017 and 2018.<sup>193</sup> From this evidence, the Tribunal infers that the EU safeguard measures will also have a trade-restrictive impact on exports of the subject goods to that major export market in 2019 and 2020.<sup>194</sup> While it is not clear that the entire volume of 800,000 MT that could be potentially diverted from the EU market as a result of the new safeguard measures is entirely comprised of COR matching the product definition in the present inquiry, it is manifest that the EU market will not be able to absorb the same volumes of such products from the subject countries in the next 12 months. In addition, the EU market will be unable to absorb any exports diverted from the U.S. market. In short, the Tribunal finds that the imposition of the EU safeguard measures is likely to result in the diversion of COR from the subject countries, which, historically, was destined for that market.

[121] The recent trade measures in the United States and European Union are additional to 22 other trade remedy measures in place in different jurisdictions around the world that affect COR from the subject countries. While some of those measures were imposed prior to 2016, others are more recent, including Mexico's imposition of anti-dumping duties on coated flat steel products from China and Chinese Taipei in June 2017, and Australia's imposition of anti-dumping duties on zinc coated (galvanized) steel from India in August 2017.<sup>195</sup>

[122] The Tribunal finds, however, that the U.S. Section 232 measures, in particular, represent a material change in circumstances that has significantly heightened the risk of further diversion of subject goods into Canada beyond the diversionary effects that existed during the POI. These circumstances, which began towards the end of the Interim 2018 period (i.e. in March 2018) have contributed to a domino effect, whereby producers in the subject countries must increasingly turn to other markets in which to sell their goods.

[123] The potential for increased diversion of subject goods from other markets is further compounded by the fact that significant and rising volumes of Chinese COR were exported to Korea and India from 2015 to 2017.<sup>196</sup> According to Mr. Wegiel's evidence, the import competition from China has placed additional pressure on those subject countries to export their COR. For example, China exported 1,351,000 MT of COR to Korea in 2017, during which period Korea had significant

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190. Exhibit NQ-2018-004-A-11, Vol. 11 at 33, 43.

191. European Commission Implementing Regulation (EU) 2019/159 of 31 January 2019 imposing definitive safeguard measures against imports of certain steel products, *Official Journal of the European Union* L31/27, online: <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0159&from=EN>>. See also *Transcript of Public Hearing* at 335.

192. *Transcript of Public Hearing* at 335; Exhibit NQ-2018-004-A-11, Vol. 11 at 43.

193. Exhibit NQ-2018-004-A-01, Vol. 11 at 60, 160; *Transcript of Public Hearing* at 335.

194. Exhibit NQ-2018-004-07 (protected), Table 63, Vol. 2.1.

195. Exhibit NQ-2018-004-A-02 (protected), Vol. 12 at 65.

196. Exhibit NQ-2018-004-A-06 (protected), Vol. 12 at 14, 96; Exhibit NQ-2018-004-A-05, Vol. 11 at 15.

excess COR production capacity.<sup>197</sup> That same year, Korean COR exports equated to several times the size of the Canadian COR market.<sup>198</sup>

[124] The domino effect of the various trade measures on COR worldwide, and their impact on the Canadian market, are difficult to predict with certainty. Nevertheless, the evidence shows that Canada is an attractive market for offshore COR steel given that domestic selling prices are high relative to global market prices.<sup>199</sup> As discussed further below, CRU forecasts that COR prices in the Canadian market will be much higher than in other international markets over the next 12 months.<sup>200</sup> In 2019 and 2020, Canadian demand for COR is expected to remain stable.<sup>201</sup> All four subject countries also have established relationships with the main distributor purchasers of COR in Canada, often through traders, as discussed above.

[125] Moreover, exporters from the subject countries, especially China, have demonstrated a propensity to dump COR in Canada<sup>202</sup> and in foreign markets, as evidenced by the number of trade measures in place in other jurisdictions. Indeed, the volume of significantly dumped imports of COR entering the unprotected Canadian market increased by 36 percent in 2016 and 47 percent in 2017. The volume of subject goods relative to domestic production and sales thereof also increased significantly in 2016 and 2017. While there was a decrease in subject import volumes in the most recent period, Interim 2018, the Tribunal is of the view that this was likely due to the fact that industry participants anticipated the filing of these proceedings. Overall, the rate of increase of imports of the subject goods was significant during the POI, particularly in 2017.

[126] In light of the above, the Tribunal finds that, in the absence of duties, the preponderant evidence supports the conclusion of a clearly foreseen and imminent likelihood of a substantial increase in imports of the subject goods into Canada.

### Likely Price Effects

[127] As discussed in the analysis of past injury, the subject goods have been offered and sold in the domestic market at prices that significantly undercut the selling prices of domestically produced like goods. The Tribunal finds it likely that such adverse price effects would continue in the absence of duties. In this regard, Mr. Dunstall testified that, in that event, exporters from the subject countries would resume offering and selling COR in Canada at prices similar to those that he noticed during the POI, that is, ranging from 150\$ to 300\$ per tonne below the domestic industry's prices.<sup>203</sup> Mr. Lachapelle, who, like Mr. Dunstall, gave evidence on behalf of a purchaser of COR products, made

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197. Exhibit NQ-2018-004-A-05, Vol. 11 at 15.

198. Exhibit NQ-2018-004-A-06 (protected), Vol. 12 at 17; Exhibit NQ-2018-004-A-05, Vol. 11 at 96.

199. There is evidence that the pricing of COR in India tends to be higher relative to the Canadian market: Exhibit NQ-2018-004-07D (protected), Tables 26, 28, Vol. 2.1. However, this evidence does not mean that Canada would not be an attractive market for Indian exporters since it is reasonable to infer that in a situation where they are forced to seek alternative export markets, they would look to markets where the domestic prices are high relative to global prices.

200. Exhibit NQ-2018-004-A-06 (protected), Vol. 12 at 71.

201. Exhibit NQ-2018-004-A-03, Vol. 11 at 4; Exhibit NQ-2018-004-B-05, Vol. 11 at 5; *Transcript of Public Hearing* at 89, 123, 180, 290.

202. The Tribunal finds that the magnitude of the margins of dumping for each of the subject countries individually (see paragraph 12) and collectively (approximately 20 percent) are significant.

203. *Transcript of Public Hearing* at 293.

very similar statements when examined on the likely presence and pricing of the subject goods in the absence of duties.<sup>204</sup>

[128] In addition to the witness testimony that Canadian market demand for COR will be stable in 2019 and into 2020, the broader economic context is one of modest growth projected for the Canadian economy over the next year.<sup>205</sup> Nevertheless, the Governor of the Bank of Canada has recognized that the outlook for the economy is tied to the “ongoing trade tensions between the United States and other countries, particularly China.”<sup>206</sup> Given the evidence that domestic market demand is likely to remain flat over the next year, the Tribunal infers that there are limited business opportunities to be shared among the various participants in the market and pricing will continue to be very competitive, especially if a significant volume of low-price subject goods are diverted from the United States and other markets. These market conditions increase the vulnerability of the domestic producers to competition against dumped imports.

[129] Witnesses for AMD and Stelco testified that they expect that the subject goods would re-enter the Canadian market with pricing that undercuts the Canadian industry at similar levels as during the POI (i.e. in the range of \$250/MT) if final duties are not imposed.<sup>207</sup> Although domestic prices of like goods were increasing, witnesses for both a domestic producer and a purchaser indicated that prices appear to have peaked in July or August 2018, and are expected to decline in 2019.<sup>208</sup> The witnesses also testified that they are beginning to see, in the Canadian market, competition from new sources of low-priced imports from Turkey and Vietnam, which will put additional downward pressure on the pricing of subject goods.<sup>209</sup>

[130] Mr. Connor’s witness statement included a forecast of AMD’s pricing, which is expected to decline in the next two years even with the imposition of AD duties, based on various assumptions with respect to market conditions, including primarily raw material costs and the U.S. Section 232 tariffs – both of which AMD expects to lower by 2020.<sup>210</sup> In the absence of a finding of injury or threat, however, the projected decline in AMD’s prices is much sharper, given its estimate that it would need to decrease its average selling price by a minimum of \$100/MT in order to compete with the dumped goods in the domestic market.<sup>211</sup>

[131] In addition, Mr. Wegiel’s witness statement provided an estimate of 2019 import unit values of Chinese COR using CRU forecast data on China’s domestic pricing of COR (automotive and non-automotive), with an adjustment for delivery to Canada and the domestic premium. In comparison to AMD’s projected pricing for like goods in 2019 (in the absence of duties), the forecast Chinese pricing is significantly lower than AMD’s forecasted price.<sup>212</sup>

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204. *Transcript of Public Hearing* at 97; *Transcript of In Camera Hearing* at 44-46.

205. According to various sources on the record, which are dated in late 2018, GDP growth in 2019 is projected to be 2 percent.

206. Exhibit NQ-2018-004-A-01, Vol. 11 at 201.

207. *Transcript of Public Hearing* at 35-36, 182, 198-199.

208. *Transcript of Public Hearing* at 83, 289-290.

209. *Transcript of Public Hearing* at 36, 97-98, 108, 177.

210. Exhibit NQ-2018-004-A-08 (protected), Vol. 12 at 28, 37.

211. Exhibit NQ-2018-004-A-03, Vol. 11 at 21; Exhibit NQ-2018-004-A-01, Vol. 11 at 77.

212. Exhibit NQ-2018-004-A-06 (protected), Vol. 12 at 13, 93.



[132] Further, the domestic producers filed evidence that the Chinese government increased its VAT rebates on COR on November 1, 2018, from 13 percent to 16 percent. Given that the total VAT rate for steel products was reduced from 17 percent to 16 percent in May 2018, the VAT is, in effect, no longer applicable to COR exports. Assuming that this reduction is passed on to customers, CRU estimates that this could equate to a noticeable reduction in Chinese COR pricing.<sup>213</sup>

[133] Even if AMD's pricing forecast relies on numerous assumptions and is not determinative, the Tribunal finds that the forecast appears credible and is indicative of the likely price effects of the subject goods. It complements the evidence discussed above on this issue. In summary, given the significant level of price undercutting during the POI, which is expected to continue if not worsen in the near future unless duties are imposed, the Tribunal finds that the domestic producers will be faced with the choice to either decrease their prices or lose sales to compete with the subject goods in the next 12 months if *SIMA* duties are not imposed. Therefore, the subject goods are likely to have significant adverse effects on the prices of like goods.

### Likely Performance of the Domestic Industry

[134] After having reviewed the totality of the evidence, the Tribunal finds that increasing imports, while not yet injurious, are on the verge of causing material injury unless protective action is taken.<sup>214</sup> Although the domestic producers have not yet suffered material injury, the Tribunal considers that they cannot keep losing sales and market share and that eventually, within the next 12 months, the accumulated price effects will have an imminent and material impact on the financial performance of the domestic industry. Domestic prices, the domestic producers' financial performance and market share, although not materially injured during the POI, have been affected to a point where further decreases will render the situation critical and likely to compromise the domestic producers' ability to invest and remain profitable.

[135] The conclusion that the subject goods are likely to have a significant negative impact on the domestic industry is further supported by the domestic producers' own projections of their respective likely performance in the absence of *SIMA* duties. AMD's forecast is based on decreasing its domestic selling prices by \$100/MT in order to compete with the subject goods, which would result in a considerable decline in its profitability indicators if duties are not imposed.<sup>215</sup> This forecast assumes that AMD's domestic sales volume of like goods would remain the same. In terms of projected investments, the domestic industry's consolidated investments are projected to increase in 2019 and 2020.<sup>216</sup> AMD is planning to increase investment in its COR production facilities in 2019 and 2020, but much of that investment is contingent on its financial performance. AMD expects that a negative finding would decrease its revenue and profitability, which could place those investments in jeopardy. The negative impact on AMD's ability to operate profitably and attract investment would, in turn, affect its overall business and return on investment.<sup>217</sup>

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213. Exhibit NQ-2018-004-A-01, Vol. 11 at 89; Exhibit NQ-2018-004-B-04 (protected), Vol. 12 at 20-27.

214. Witnesses for the domestic producers testified that the imposition of provisional duties has made them more competitive against the subject goods (*Transcript of Public Hearing* at 35, 168).

215. Exhibit NQ-2018-004-A-02 (protected), Vol. 12 at 77-79; Exhibit NQ-2018-004-07 (protected), Schedule 16, Vol. 2.1.

216. Exhibit NQ-2018-004-07C (protected), Table 56, Vol. 2.1.

217. Exhibit NQ-2018-004-A-02 (protected), Vol. 12 at 79-81; Exhibit NQ-2018-004-A-08 (protected), Vol. 12 at 28-29; *Transcript of Public Hearing* at 14, 25-27, 37.

[136] Stelco similarly projects losses in terms of sales and profitability with a negative finding.<sup>218</sup> Mr. Harris indicated that the subject goods would result in a net loss for Stelco, which would put investments, and the employment benefits associated with them, in jeopardy. In addition, Mr. Harris testified that the galvanizing lines themselves could be in jeopardy, putting an additional 400 USW jobs at risk.<sup>219</sup>

[137] POSCO questioned the reliability of the financial projections provided by the domestic producers, and some of the assumptions on which the pricing forecasts were based.<sup>220</sup> The Tribunal finds, however, that the assumptions underlying these forecasts appear to be reasonable and conservative. In its view, the forecasts are generally indicative of a likelihood of material negative impact on the domestic industry's performance that is consistent with the Tribunal's findings based on its own assessment of the likely impact of the volumes and price effects that are anticipated in the near term, in the absence of duties, discussed above. In that sense, even if the forecasts are not in and of themselves conclusive, they corroborate other evidence on the record regarding the likely performance of the domestic industry if duties are not imposed.

[138] In addition, POSCO referred to recent announcements made by Stelco to its shareholders regarding positive company-wide financial performance results, and the fact that AMD is hiring.<sup>221</sup> Although the Tribunal took into account Stelco's company-wide financial results (which were relied on by POSCO),<sup>222</sup> this evidence did not negate its finding regarding the domestic industry's likely performance in relation to the specific goods covered by the product definition, which are the focus of this inquiry.

[139] On the basis of the foregoing, the Tribunal finds that there is a clearly foreseen and imminent threat of material injury caused by the subject goods within the next 12 months.

### **Factors Other Than the Dumping**

[140] Paragraph 37.1(3)(b) of the *Regulations* directs the Tribunal to consider whether any factors other than dumping of the subject goods are threatening to cause injury.

[141] The opposing parties submitted that any threat of injury is related to non-dumping factors, including the possible shutdown of production facilities at both AMD and Stelco in 2020, the expectation that there will be insufficient cold-rolled steel available for internal use in COR production due to expected increase in domestic sales of cold-rolled steel following the recent injury finding in NQ-2018-002, the limited disposable production capacity of the domestic producers, product quality issues and intra-industry competition.

[142] According to AMD, it has been working with the Ministry of the Environment, Conservation and Parks since 2014 to ensure that planned repairs relating to government-mandated environmental upgrades are completed within a reasonable time period, with an agreed upon deadline for

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218. Exhibit NQ-2018-004-A-02 (protected), Vol. 12 at 83.

219. *Transcript of Public Hearing* at 183; Exhibit NQ-2018-004-B-04 (protected), Vol. 12 at 7; Exhibit NQ-2018-004-C-03, Vol. 11 at 7; Exhibit NQ-2018-004-C-05, Vol. 11 at 8.

220. *Transcript of Public Hearing* at 67, 198-201, 413.

221. Exhibit NQ-2018-004-D-02, Vol. 12 at 66-67, 74-75; *Transcript of Public Hearing* at 415-416.

222. Exhibit NQ-2018-004-D-02, Vol. 12 at 66-67, 74-75; *Transcript of Public Hearing* at 415-416.

completion that is currently set at December 31, 2019.<sup>223</sup> Such planned repairs do not, in its submission, suggest that AMD is imminently facing a “shutdown”. Similarly, other planned maintenance and upgrades at AMD and Stelco will, in their submission, have no impact on COR output.<sup>224</sup>

[143] With respect to the availability of cold-rolled steel and the disposable production capacity of the domestic producers, the Tribunal notes that there is little to no evidence to support POSCO’s claims. In fact, AMD forecasts excess COR and cold-rolled steel production capacity in their current five-year plan.<sup>225</sup>

[144] Although POSCO and Knightsbridge argued that domestically produced like goods had quality issues and were generally of lesser quality than offshore material, Ms. Mielke also testified that Canadian products are very suitable.<sup>226</sup> The Tribunal notes that it cannot give much weight to the customer letters filed by Knightsbridge in support of its position given the absence of limited disclosure and the fact that most of the quality allegations therein concern products other than COR.<sup>227</sup> In this case, the sworn testimony of the witnesses has more probative value, and the bulk of that testimony was to the effect that similar or identical good quality domestic products are available in the western market. With regard to quality issues of AMD’s Galvalume® specifically, the testimony of the domestic producers’ witnesses as well as the Tribunal’s witness shows that any quality issues were limited and related to the start-up of the line, and are thus in the past.<sup>228</sup>

[145] During the hearing, the domestic producers confirmed that intra-industry competition exists, but on a fair basis, where prices differ only marginally and other factors are determinative.<sup>229</sup> Conversely, both the domestic producers and the service centres confirmed that they generally do not compete against each other.<sup>230</sup> The Tribunal finds no reason to doubt the domestic producers’ submissions; the opposing parties have not submitted evidence to challenge that competition between the domestic producers is anything but a normal part of the market, or that this competition was injurious to the domestic producers.

[146] Based on the above considerations, the Tribunal finds that these other factors raised by the opposing parties do not negate its conclusion that the dumping of the subject goods are threatening to cause injury to the domestic industry.

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223. Exhibit NQ-2018-004-A-14, Vol. 11 at 4; Exhibit NQ-2018-004-A-11, Vol. 11 at 31.

224. Exhibit NQ-2018-004-B-10 (protected), Vol. 12 at 3-4; Exhibit NQ-2018-004-A-14, Vol. 11 at 3.

225. Exhibit NQ-2018-004-A-11, Vol. 11 at 32-33.

226. Exhibit NQ-2018-004-D-01, Vol. 11 at 51-53; Exhibit NQ-2018-004-G-01, Vol. 11 at 4, 6, 8; *Transcript of Public Hearing* at 240-241.

227. Exhibit NQ-2018-004-G-02 (protected), Vol. 12 at 13-17; Exhibit NQ-2018-004-A-12 (protected), Vol. 12 at 25; *Transcript of Public Hearing* at 235-237, 345, 371.

228. Exhibit NQ-2018-004-G-01, Vol. 11 at 7; *Transcript of Public Hearing* at 77-78, 104, 127-128, 289; *Transcript of In Camera Hearing* at 103-104.

229. *Transcript of Public Hearing* at 69, 81-82, 212, 223-224; see also Exhibit NQ-2018-004-A-11, Vol. 11 at 29-30.

230. Exhibit NQ-2018-004-A-11, Vol. 11 at 30; *Transcript of Public Hearing* at 69, 80-81, 92-93, 126-127, 212-213, 268, 284.

## EXCLUSIONS

[147] The Tribunal received three requests to exclude products from its finding. Knightsbridge requested product exclusions for (1) 0.014"-0.021" thickness × 40"-44" width, (2) 0.030"-0.033" thickness × 25"-30" width, and (3) 0.009"-0.010" thickness. In addition, Knightsbridge submitted two product exclusion requests after the hearing. POSCO submitted a general request in order to preserve its right to request product exclusions for any subject goods not produced in Canada.

[148] *SIMA* implicitly authorizes the Tribunal to grant exclusions from the scope of a finding.<sup>231</sup> Exclusions are an extraordinary remedy that may be granted at the Tribunal's discretion, i.e. when the Tribunal is of the view that such exclusions will not cause injury to the domestic industry.<sup>232</sup> The rationale is that, despite the general conclusion that the dumping of the goods is threatening to cause injury to the domestic industry, there may be case-specific evidence that imports of particular products captured by the definition of the goods are not threatening to cause injury.

[149] In determining whether an exclusion is likely to cause injury to the domestic industry, the Tribunal considers such factors as whether the domestic industry produces, actively supplies or is capable of producing identical, substitutable, or competing products in relation to the subject goods for which the exclusion is requested.<sup>233</sup>

[150] The onus is upon the requester to demonstrate that imports of the specific goods for which the exclusion is requested are not threatening to be injurious to the domestic industry.<sup>234</sup> Thus there is an evidentiary burden on the requester to file evidence in support of its request.<sup>235</sup> However, there is also an evidentiary burden on the domestic producers to file evidence in order to rebut the evidence filed by the requester.<sup>236</sup>

[151] Ultimately, the Tribunal must determine whether it will exercise its discretion to grant product exclusions on the basis of its assessment of the totality of the evidence on the record.

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

232. See, for example, *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) at para. 339; *Stainless Steel Wire* (30 July 2004), NQ-2004-001 (CITT) at para. 96.

233. *Certain Fasteners* (6 January 2010), RR-2009-001 (CITT) at para. 245 [*Fasteners*].

234. *Fasteners* at para. 243.

235. *Aluminum Extrusions* (17 March 2014), RR-2013-003 (CITT) at para. 192. The Tribunal will generally reject product exclusion requests where there is a lack of cogent case-specific evidence concerning the likely non-injurious effect of imports of particular products covered by the definition of the subject good in support of the requesters' claims. Indeed, a failure to provide sufficient information prevents the parties opposing the request from adequately responding and leaves the Tribunal in a position where it lacks evidence to find that imports of particular products for which exclusions are requested are not likely to cause injury to the domestic industry.

236. A failure to do so could result in the requested exclusions being granted. In any case, much like its conclusion on the issue of whether the dumping of the subject goods is threatening to cause injury to the domestic industry, the Tribunal's decision on exclusion requests must be based on positive evidence, irrespective of the party that filed it.

[152] With these principles in mind, the Tribunal will now address the product exclusion requests pertaining to the subject goods that it received from each of the requesters indicated above.

### **Knightsbridge**

[153] Knightsbridge originally requested exclusions for the following products:

- ASTM A792 AZ50 Grade 50/80 55% Alu-Zinc Coated Steel Sheets in Coils – 0.014"-0.021" thickness × 40-44"; and
- ASTM A653/A792 G90/AZ50/AZ55 Grade 37 Galvanized/55% Alu-Zinc Coated Steel Sheets in Coils – 0.030"-0.033" thickness × 25-30".

[154] With respect to these two requests, there is evidence that AMD manufactures similar, if not identical, products that are of excellent quality.<sup>237</sup> Ms. Mielke indicated that she has had customer complaints regarding the quality of domestic products.<sup>238</sup> However, Knightsbridge submitted no other evidence than the customer letters referred to above, which cannot be given much weight. On the contrary, the responses received to the Purchasers' Questionnaires show that the domestic like goods are generally of comparable quality to the subject goods, and the service centres' witnesses also testified to the effect that the domestic producers' COR products are of good quality and rank among the top.<sup>239</sup>

[155] There is also insufficient evidence for the Tribunal to conclude that the domestic producers are unable or unwilling to service customers in the western markets as alleged by Ms. Mielke.<sup>240</sup> On balance, the Tribunal accepts the testimony of the domestic industry's witnesses regarding its presence and interest in that region. Indeed, a non-negligible percentage of the domestic industry's sales is distributed among western provinces.<sup>241</sup> Mr. Butler stated that AMD has customers in the western market,<sup>242</sup> and Mr. Connor testified that AMD has full capacity to supply that market.<sup>243</sup> Similarly, Mr. Anderson stated that Stelco supplies customers in Western Canada directly and indirectly through third parties.<sup>244</sup> Mr. Harris also testified that Western Canada is an important market for Stelco, and that it does business in that region regularly.<sup>245</sup> In addition, the domestic industry's products are available in the West through downstream industries. For example, Mr. Lachapelle of Taylor Steel, which purchases domestic COR, testified that it sells to the western market.<sup>246</sup>

[156] In summary, it has not been established that the domestic industry is unable to produce goods that directly compete with the products for which exclusions were requested and, therefore, the

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237. *Transcript of Public Hearing* at 73-74, 77-78; *Transcript of In Camera Hearing* at 103-104.

238. *Transcript of Public Hearing* at 250-253.

239. Exhibit NQ-2018-004-06, Tables 9, 10, Vol. 1.1; *Transcript of Public Hearing* at 128, 264.

240. Exhibit NQ-2018-004-G-03, Vol. 11 at 1.

241. Exhibit NQ-2018-004-07 (protected), Table 61, Vol. 2.1.

242. Exhibit NQ-2018-004-A-03, Vol. 11 at 22; *Transcript of Public Hearing* at 20.

243. *Transcript of Public Hearing* at 78-79; see also Exhibit NQ-2018-004-A-11, Vol. 11 at 25.

244. *Transcript of Public Hearing* at 167-168.

245. *Transcript of Public Hearing* at 214.

246. *Transcript of Public Hearing* at 119-120.

availability of such products at lower costs, since they benefit from dumping, is likely to cause injury to the domestic industry. The Tribunal therefore denies these requests.<sup>247</sup>

[157] With regard to Knightsbridge's request to exclude 0.009"-0.010" gauge COR, the Tribunal notes that this product exclusion request was filed after the published deadline, that it was not filed in accordance with the exclusion request process, and that the product exclusion form was not filled out. Rather, Knightsbridge submitted this product exclusion request as an argument in its case brief.<sup>248</sup> Accordingly, the Tribunal finds that this request cannot be considered and is, therefore, denied.

[158] Finally, Knightsbridge requested the exclusion of two additional products in a January 31, 2019, e-mail to the Tribunal.<sup>249</sup> Again, the Tribunal notes that the deadline to file requests for product exclusions had passed and that the record had at that time been closed. It was incumbent on Knightsbridge to file all requests for product exclusions within the published inquiry schedule. As indicated in the Tribunal's letter of February 4, 2019, this request is denied.

## POSCO

[159] POSCO submitted a general product exclusion request in order to maintain its right to request product exclusions pending the submission of answers to requests for information. To justify its request, POSCO referred to a statement in AMD's Importers' Questionnaire stating that it was importing corrosion-resistant steel "where a customer requires the processing of steel from a specific US producer or where a particular grade is only available from imports."<sup>250</sup>

[160] Upon AMD's submission of a revised questionnaire, the request was no longer applicable as the statement relied upon by POSCO was then revised to remove the reference to importation in case of domestic unavailability.<sup>251</sup> According to AMD, all of its imports of COR which fall within the product definition are grades and specifications that AMD can and does produce.<sup>252</sup> It is thus not necessary for the Tribunal to address this request.

## CONCLUSION

[161] For the reasons set out above, the Tribunal finds that the dumping of the subject goods has not caused injury, but threatens to cause injury to the domestic industry.

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247. Although Knightsbridge requested the exclusion of specific products from the Tribunal's finding, it also indicated that it imports those goods from two exporters who did not and will not cause injury to the domestic industry. See Exhibit NQ-2018-004-G-02 (protected), Vol. 12 at 3. In past cases, the Tribunal has refused to grant exclusions for specific foreign producers or exporters on the basis that this would allow them a "licence to dump" in the future. See, for example, *Carbon Steel Welded Pipe* at paras. 181-184. In the Tribunal's view, the same considerations would preclude it from granting exclusions for the specific exporters of the subject goods in question.

248. Exhibit NQ-2018-004-G-01, Vol. 11 at 3.

249. E-mail from Knightsbridge to the Tribunal dated January 31 and February 1, 2019. Related correspondence (public and protected versions). See also letter from the Registrar to Knightsbridge and copying counsel and parties of record dated February 4, 2019 (public).

250. Exhibit NQ-2018-004-24.02, Vol. 1.3; Exhibit NQ-2018-004-14.14, Vol. 5 at 4.

251. Exhibit NQ-2018-004-14.14B, Vol. 5 at 1.

252. Exhibit NQ-2018-004-26.02, Vol. 1.3 at 3.

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