Canadian International Trade Tribunal

Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Dumping and Subsidizing

DETERMINATION AND REASONS

Preliminary Injury Inquiry
No. PI-2018-004

Carbon Steel Welded Pipe

Determination issued
Tuesday, September 18, 2018

Reasons issued
Wednesday, October 3, 2018

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IN THE MATTER OF a preliminary injury inquiry, pursuant to subsection 34(2) of the *Special Import Measures Act*, respecting:

CARBON STEEL WELDED PIPE

PRELIMINARY DETERMINATION OF INJURY

The Canadian International Trade Tribunal, pursuant to the provisions of subsection 34(2) of the *Special Import Measures Act*, has conducted a preliminary injury inquiry into whether the evidence discloses a reasonable indication that the alleged injurious dumping of carbon steel welded pipe, commonly identified as standard pipe, in the nominal size range from ½ inch up to and including 6 inches (12.7 mm to 168.3 mm in outside diameter) inclusive, in various forms and finishes, usually supplied to meet ASTM A53, ASTM A135, ASTM A252, ASTM A589, ASTM A795, ASTM F1083 or Commercial Quality, or AWWA C200-97 or equivalent specifications, including water well casing, piling pipe, sprinkler pipe and fencing pipe, but excluding oil and gas line pipe made to API specifications exclusively, originating in or exported from the Islamic Republic of Pakistan, the Republic of the Philippines, the Republic of Turkey and the Socialist Republic of Vietnam, has caused injury or retardation or is threatening to cause injury to the domestic industry.

This preliminary injury inquiry follows the notification, on July 20, 2018, that the President of the Canada Border Services Agency had initiated an investigation into the alleged injurious dumping of the above-mentioned goods.

Pursuant to subsection 37.1(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby determines that there is evidence that discloses a reasonable indication that the dumping of the above-mentioned goods has caused or is threatening to cause injury to the domestic industry.

Jean Bédard
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Jean Bédard
Presiding Member

Rose Ritcey
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Rose Ritcey
Member

Randolph W. Heggart

Randolph W. Heggart
Member

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STATEMENT OF REASONS

INTRODUCTION

[1] On May 31, 2018, Novamerican Steel Inc. filed a complaint with the Canada Border Services Agency (CBSA) on behalf of its subsidiaries Nova Tube Inc. and Nova Steel Inc. (collectively, Nova) alleging that the dumping of certain carbon steel welded pipe originating in or exported from the Islamic Republic of Pakistan (Pakistan), the Republic of the Philippines (the Philippines), the Republic of Turkey (Turkey) and the Socialist Republic of Vietnam (Vietnam) (the subject goods) has caused injury and is threatening to cause injury to the domestic industry.[1]

[2] On July 20, 2018, the President of the CBSA initiated an investigation into the dumping of the subject goods, pursuant to subsection 31(1) of *Special Import Measures Act*.[2] For the period of April 1, 2017, to March 31, 2018, the CBSA estimated that the subject goods were dumped by the following margins of dumping: 43.6 percent for Pakistan, 37.0 percent for the Philippines, 6.3 percent for Turkey and 14.3 percent for Vietnam, expressed as a percentage of the export price.[3]

[3] On July 23, 2018, the Canadian International Trade Tribunal (the Tribunal) began its preliminary injury inquiry pursuant to subsection 37.1(1) of *SIMA*.

[4] The complaint included letters of support from Atlas Tube Canada ULC (Atlas), Bolton Steel Tube Co, Ltd. (Bolton), DFI Corporation (DFI), Evraz Inc. NA Canada (Evraz), Quali-T-Tube Inc. (Quali-T), Tenaris Canada (Tenaris) and Welded Tube of Canada (Welded Tube).[4] The Tribunal received submissions opposing a preliminary finding of injury from Hoa Phat Steel Pipe Company Limited, Binh Duong Hoa Phat Steel Pipe Company Limited, Hoa Phat Long An Steel Pipe Company Limited, Hoa Phat Steel Pipe Company Limited (collectively, Hoa Phat), Howell Pipe & Supply (Howell), International Industries Inc. (IIL) and the National Tariff Commission, Government of Pakistan (GOP). The Tribunal received supporting submissions from Atlas and the United Steelworkers and reply submissions from Nova.

[5] On September 18, 2018, the Tribunal determined that there was evidence disclosing a reasonable indication that the subject goods have caused injury or are threatening to cause injury to the domestic industry, for the reasons that follow.

PRODUCT DEFINITION[5]

[6] For the purposes of the CBSA's investigation and this preliminary injury inquiry, the subject goods are defined as follows:

> carbon steel welded pipe, commonly identified as standard pipe, in the nominal size range from ½ inch up to and including 6 inches (12.7 mm to 168.3 mm in outside diameter) inclusive, in various forms and finishes, usually supplied to meet ASTM A53, ASTM A135, ASTM A252, ASTM A589, ASTM A795, ASTM F1083 or Commercial Quality, or AWWA

1. As a domestic industry is already established, the Tribunal need not consider the question of retardation.
2. R.S.C., 1985, c. S-15 [*SIMA*].
3. Exhibit PI-2018-004-05, Vol. 1J at para. 79.
4. Exhibit PI-2018-004-02.01, attachment 4, Vol. 1.
5. Exhibit PI-2018-004-05, Vol. 1J at para. 15.

C200-97 or equivalent specifications, including water well casing, piling pipe, sprinkler pipe and fencing pipe, but excluding oil and gas line pipe made to API specifications exclusively, originating in or exported from Pakistan, the Philippines, Turkey and Vietnam.

LEGISLATIVE FRAMEWORK

Reasonable Indication

[7] The Tribunal's mandate in a preliminary injury inquiry is set out in subsection 34(2) of *SIMA*, which requires the Tribunal to determine ". . . whether the evidence discloses a reasonable indication that the dumping or subsidizing of the [subject] goods has caused injury or retardation or is threatening to cause injury."

[8] The term "reasonable indication" is not defined in *SIMA*, but is understood to mean that the evidence need not be ". . . conclusive, or probative on a balance of probabilities . . . ."[6]

[9] The reasonable indication standard is lower than the standard that applies in a final injury inquiry under section 42 of *SIMA*.[7]

[10] The Tribunal expects that the evidence at the preliminary phase of proceedings will be significantly less detailed and comprehensive than the evidence in a final injury inquiry. Not all the evidence is available at the preliminary phase, and there is no oral hearing to fully probe what is available. As a result, the evidence cannot be tested to the same extent as it would be during a final injury inquiry.

[11] The standard of evidence at this stage of the inquiry is lower than at the final stage and complaints will be read generously. However, the outcome of preliminary inquiries must not be taken for granted.[8] Simple assertions are not sufficient.[9] Complaints, as well as the cases of parties opposed, must be supported by positive evidence that is both relevant and sufficient, in that it addresses the necessary requirements in *SIMA* and the relevant factors of the *Special Import Measures Regulations*[10] and does so in a manner that is sufficiently convincing at this stage of the inquiry.

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6. *Ronald A. Chisholm Ltd. v. Deputy M.N.R.C.E.* (1986), 11 CER 309 (FCTD).
7. *Grain Corn* (10 October 2000), PI-2000-001 (CITT) at 7.
8. *Reinforcing Bar* (12 August 2014), PI-2014-001 (CITT) at paras. 18-19.
9. Article 5 of the World Trade Organization (WTO) *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* [the *Anti-dumping Agreement*] and Article 11 of the WTO *Agreement on Subsidies and Countervailing Measures* [the *SCM Agreement*] require an investigating authority to examine the accuracy and adequacy of the evidence provided in a dumping and subsidizing complaint to determine whether there is sufficient evidence to justify the initiation of an investigation, and to reject a complaint or to terminate an investigation as soon as an investigating authority is satisfied that there is not sufficient evidence of dumping and subsidizing or injury. Article 5 of the *Anti-dumping Agreement* and Article 11 of the *SCM Agreement* also specify that simple assertions that are not substantiated with relevant evidence cannot be considered sufficient to meet the requirements of the articles.
10. S.O.R./84-927 [*Regulations*].

Injury and Threat of Injury Factors

[12] In making its preliminary determination of injury, the Tribunal takes into account the factors prescribed in section 37.1 of the *Regulations*, including the import volumes of the dumped goods, the effect of the dumped goods on the price of like goods, the resulting impact of the dumped goods on the domestic industry and, if injury or threat of injury[11] is found to exist, whether a causal relationship exists between the dumping of the goods and the injury or threat of injury.

PRELIMINARY ISSUES

[13] The Tribunal must determine several issues relating to the framework of the injury or threat of injury analysis. Subsection 2(1) of *SIMA* defines "injury" as "material injury to a domestic industry". Accordingly, the Tribunal must identify the domestically produced goods that are "like goods" in relation to the subject goods, whether there is more than one class of like goods, as well as the domestic industry that produces those like goods.

[14] The Tribunal must also determine whether it would be appropriate to make an assessment of the cumulative effects of the subject goods from all of the subject countries taken together (cumulation).

[15] Before addressing the above framework issues, the Tribunal will first address two preliminary issues raised in this preliminary injury inquiry, namely, the sufficiency of the public summaries of confidential information and the scope of the product definition.

Treatment of Confidential Information

[16] The GOP submitted that the public summaries of the confidential information in the complaint and the CBSA's statement of reasons do not permit a reasonable understanding of the substance of the confidential information.

[17] In reply, Nova submitted that the CBSA is responsible for determining whether a complaint meets the legal requirements for the initiation of an investigation and that the CBSA determined that the complaint had indeed met those requirements. In its view, the Tribunal's preliminary injury inquiry is not the proper forum for parties to challenge the CBSA's decision in this respect. Further, Nova submitted that it filed a robust public complaint and provided public summaries of confidential documents where necessary. Finally, Nova submitted that, due to the nature of *SIMA* proceedings, certain relevant information will necessarily relate to commercially sensitive information, which must be designated as confidential, and that *SIMA* includes confidentiality and undertaking provisions to address this.

[18] The GOP's submission refers to information on the CBSA's administrative record, which was transmitted to the Tribunal for the purposes of its preliminary injury inquiry. As the Tribunal has

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11. In its consideration of whether there is a reasonable indication that the dumping of the subject goods is threatening to cause injury, the Tribunal is guided 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.

previously indicated, the Tribunal's preliminary injury inquiry is not the proper forum for addressing those concerns.[12]

[19] In the event that this proceeds to a final injury inquiry, the Tribunal will place as much information on the public record as possible. The Tribunal also requires parties to provide public summaries of confidential information. However, the Tribunal also notes that under the *Canadian International Trade Tribunal Act* and the *Canadian International Trade Tribunal Rules*, confidential information may be disclosed in its entirety to counsel who have provided a declaration and undertaking.[13] Providing access to confidential information in this way allows the Tribunal to obtain maximum voluntary participation from interested parties, ensure transparency and, at the same time, protect confidential information.

Product Definition Scope

[20] Hoa Phat asked the Tribunal to clarify that ASTM A500 Grade A round pipe under 6 inches used for fencing purposes is *not* covered by the product definition.[14] Hoa Phat submitted that ASTM A500 is a standard specification for hollow structural sections (HSS), not carbon steel welded pipe (CSWP) as defined by the CBSA in this case, and therefore is not a subject good. Hoa Phat also submitted that the product definition does not include all products used for fencing.

[21] To distinguish CSWP and HSS, Hoa Phat referred to differences in the production processes.[15] It also noted that the complaint distinguishes between CSWP and HSS, noting that adjustments were made to the complainant's estimate of import volumes to exclude at least some HSS, and also noting that the complaint acknowledges that a major difference between the two products is the grade of hot-rolled steel that is used as feedstock and the need to hydro-test A53 (a type of standard pipe) and not HSS.[16] Hoa Phat also submitted that ASTM A500 round pipe under six inches from Turkey is already subject to the Tribunal's *Structural Tubing* (HSS) finding in NQ-2003-001, as continued in RR-2008-001 and RR-2013-001.

[22] In reply, Nova submitted that ASTM A500 round pipe under six inches used as fence pipe has the same characteristics as other CSWP meeting the product definition, including physical characteristics, end-use applications, interchangeability, competition, price and marketing. It emphasized that fencing was a listed end use in NQ-2008-001[17] and NQ-2012-003,[18] and noted that in *CSWP I* the Tribunal denied product exclusions for fencing pipe on the basis that the domestic industry produced pipe that was directly competitive with, and substitutable for, the subject goods.[19]

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12 *Concrete Reinforcing Bar* (19 October 2016), PI-2016-002 (CITT) at para. 12.
13. The filing and disclosure of confidential information is governed by sections 45 and 46 of the *Canadian International Trade Tribunal Act*, R.S.C., 1985, c. 47 (4th Supp.), and rule 16 of the *Canadian International Trade Tribunal Rules*, S.O.R./91-499.
14. Exhibit PI-2018-004-07.02 (protected), Vol. 4 at Annex 1.
15. *Ibid.* at paras. 16-19.
16. PI-2018-004-02.01, Vol. 1 at para. 63.
17. *Carbon Steel Welded Pipe* (20 August 2008), NQ-2008-001 (CITT) [*CSWP I*].
18. *Carbon Steel Welded Pipe* (11 December 2012), NQ-2012-003 (CITT) [*CSWP II*].
19. *CSWP I* at paras. 128 and 131.

[23] Nova also submitted that any references to filtering out HSS products in the complaint did not refer to ASTM A500 round pipe under 6 inches and that the HSS finding does not include ASTM A500 round pipe for fencing pipe applications.

[24] On many occasions, the Tribunal has held that it must conduct its inquiries on the basis of the product definition provided by the CBSA, which has the sole jurisdiction to define the subject goods.[20] This means that the Tribunal cannot, on its own initiative, modify or redefine the definition of the subject goods. However, to the extent that the product definition is unclear, the Tribunal has jurisdiction to interpret, without redefining, it.[21]

[25] In the present case, the product definition lacks clarity. As the ASTM A500 specification is not expressly included in the list of specifications in the product definition, it is not immediately clear that ASTM A500 pipe (otherwise meeting the terms of the product definition) *is* within the scope of the definition. On the other hand, as there is no express exclusion for ASTM A500 pipe, and because the inclusion of the word "usually" before the list of specifications suggests a non-exhaustive list, it is also not immediately clear that ASTM A500 pipe (otherwise meeting the terms of the product definition) *is not* within the scope of the definition.

[26] That being said, the Tribunal finds that there is insufficient evidence on the record at this time to resolve this question. More information is required to assess whether, or the extent to which, ASTM A500 pipe (otherwise meeting the terms of the product definition) falls within the category of pipe that is "commonly identified as standard pipe" or "fencing pipe" and, if so, whether there is any overlap between the product definition in this case and the Tribunal's *Structural Tubing* finding. The Tribunal will probe this matter further if these proceedings move to the final inquiry stage.

[27] In any event, the data provided by the CBSA for the purposes of analyzing the volume of imports of the subject goods are reasonably limited to data on goods that are produced and exported to Canada as CSWP. The CBSA appears to have made a number of adjustments to the import data, including an adjustment to eliminate non-subject goods.[22] On that basis, the Tribunal finds that the import volume data is adequate for the purposes of this preliminary stage.

Like Goods and Classes of Goods

[28] Subsection 2(1) of *SIMA* defines "like goods", in relation to any other goods, as "(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."

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20. See *Carbon and Alloy Steel Line Pipe* (27 October 2015), PI-2015-002 (CITT) at paras. 28-29; *Canada (Deputy Minister of National Revenue, Customs and Excise – M.N.R.) v. General Electric Canada Inc.*, [1994] F.C.J. No. 847 (FCA) at para. 9 [*GE Canada*]; *Mitsui and Co. v. Buchanan*, [1972] F.C. 944 [*Mitsui*]; *Sarco Canada Limited v. Anti-dumping Tribunal*, [1979] 1 F.C. 247 [*Sarco*]; *Japan Electrical Manufacturers Association v. Anti-dumping Tribunal*, [1982] 2 F.C. 816 [*Japan Electrical*].
21. *Certain Fabricated Industrial Steel Components* (25 May 2017), NQ-2016-004 (CITT) at para. 36; *Carbon and Alloy Steel Line Pipe* (Procedural Order of 22 January 2016), NQ-2015-002 (CITT) at para. 24; *GE Canada*; *Mitsui*; *Sarco*; *Japan Electrical*.
22. PI-2018-004-03.02 (protected), Vol. 2C at 45.

[29] In the complaint, Nova submitted, and the CBSA agreed,[23] that domestically produced CSWP are like goods because they compete directly with, has the same end uses as, and can be substituted for, the subject goods. Nova also submitted that there is a single class of goods.

[30] In *CSWP I* (China) and *CSWP II* (Chinese Taipei, India, Oman, Korea, Thailand, Turkey and the United Arab Emirates), the Tribunal held that domestically produced CSWP are like goods to the subject goods as both goods shared physical and market characteristics, can generally be substituted for each other and compete directly in the Canadian market.[24] None of the parties have disputed those conclusions in these proceedings and the Tribunal sees no reason to depart from them. As such, the Tribunal finds that domestically produced CSWP constitute like goods to the subject goods.

[31] Two of the opposing parties argued that the subject and like goods comprise multiple classes of goods.

[32] IIL submitted that CSWP for fencing applications should be treated as a separate class of goods from CSWP for transmission applications. It pointed to a number of physical differences: transmission pipe may be black or galvanized whereas fencing pipe is exclusively galvanized; transmission pipe is end-treated (threaded or grooved) whereas fencing pipe is not; transmission pipe is produced to specific product specifications whereas fencing pipe is produced to lower performance standards for general commercial applications. It also pointed to differences in market characteristics (pricing): galvanized CSWP commands a higher price than black CSWP and galvanized pipe for transmission applications is more expensive than galvanized pipe for fencing applications.

[33] Hoa Phat submitted that black CSWP and galvanized CSWP have different end uses and do not compete with each other. In addition, Hoa Phat submitted that galvanized CSWP commands much higher prices.

[34] When considering whether to subdivide like goods into separate classes the Tribunal typically considers a number of factors, including the physical characteristics of the goods (such as composition and appearance), their market characteristics (such as substitutability, pricing, distribution channels and end uses) and whether the goods fulfill the same customer needs.

[35] The Tribunal has found CSWP to be a single class of goods in a number of previous decisions.[25] The Tribunal is not persuaded that there is a compelling reason to subdivide CSWP into different classes of goods in this case. The Tribunal has previously stated that "goods can belong to the same class of goods even if they come in numerous varieties, including different grades and specifications for end use, which may not be fully substitutable for each other."[26] It is not disputed that there are differences within the universe of CSWP. However, the complaint indicates, and previous CSWP findings show, that CSWP as defined in the product definition share a number of similar characteristics, such as form, metallurgical content and end finishes.[27] CSWP is also distributed through the same channels, either first to distributors or directly to end users. Regarding market conditions, the complaint indicates that, while not perfectly interchangeable, there is

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23. Exhibit PI-2018-004-05, Vol. 1J at para. 34.
24. *CSWP I* at paras. 38-45; *CSWP II* at paras. 58-63.
25. *CSWP I* at paras. 38-45; *CSWP II* at paras. 58-63; *Carbon Steel Welded Pipe* (19 August 2013), RR-2012-003 (CITT) at paras. 20-24.
26. *Carbon and Alloy Steel Line Pipe* (27 October 2015), PI-2015-002 (CITT) at para. 62.
27. Exhibit PI-2018-004-02.01, Vol. 1 at para. 51.

substitutability between products as well as downward substitutability of the higher grade CSWP for lower grade applications, such as fencing.[28]

[36] Moreover, the Tribunal has stated that “price and interchangeability are separate but related considerations and a different price premium between products does not necessarily lead to a conclusion that the products in question are not substitutable.”[29] This weighs against Hoa Phat’s argument that galvanized CSWP should be a separate class of goods on the basis of price.

[37] For the above reasons, the Tribunal finds that domestically produced CSWP constitutes a single class of goods.

Domestic Industry

[38] Subsection 2(1) of *SIMA* defines “domestic industry” as “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.”

[39] Nova identified itself as the largest domestic producer of CSWP and it identified Bolton and Quali-T as the other, active, producers of CSWP since 2014.[30] Nova also indicated that Atlas, DFI, Evraz, Tenaris, and Welded Tube engage in the incidental production of small volumes of like goods.

[40] The record of this preliminary injury inquiry includes domestic sales data for Nova and Bolton as well as estimates of domestic sales for the other domestic producers. The production and financial data in the complaint are for Nova only. Nova’s size and relative importance in the market has previously been established and was not disputed by the parties opposed.[31] Therefore, for the purposes of this preliminary injury inquiry the Tribunal determines that Nova’s production amounts to a major proportion of the total domestic production and finds accordingly. The Tribunal will explore the role of the other producers in the context of any final injury inquiry.

Cumulation

[41] In the context of a final injury inquiry, subsection 42(3) of *SIMA* requires the Tribunal to make an assessment of the cumulative effect of the dumping of goods that are imported into Canada from more than one subject country if the Tribunal is satisfied that certain conditions are met. Specifically, the Tribunal must be satisfied that:

1. the margin of dumping or the amount of subsidy in relation to the goods from each of the countries is not insignificant and the volume of goods imported into Canada from any of those countries is not negligible, and

2. an assessment of the cumulative effect of the subject goods would be appropriate taking into account the conditions of competition between the goods from any of the subject countries, the other dumped or subsidized goods, and like goods.

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28. *Ibid.* at para. 54.
29. *Steel Grating* (19 April 2011), NQ-2010-002 (CITT) at para. 109.
30. Exhibit PI-2018-004-03.01 (protected), Vol. 2 at para. 32.
31. *Carbon Steel Welded Pipe* (13 July 2012), PI-2012-003 (CITT) at para. 29.

[42] While subsection 42(3) of *SIMA* deals with final injury inquiries, in practice the Tribunal normally applies the same framework in its preliminary injury inquiry.[32]

[43] As the CBSA has estimated that the margin of dumping for each of the subject countries are not insignificant, and that the estimated volumes of dumped goods for each subject country are not negligible, the Tribunal finds that the first condition has been met.[33]

[44] With respect to the conditions of competition, the evidence and submissions on the record at this stage indicate that CSWP is a commodity product that is generally produced to an ASTM or other recognized specification.[34] Accordingly, the subject goods are largely interchangeable amongst themselves and with the like goods. In addition, the complaint included a number of account-specific allegations and supporting evidence that provides a reasonable indication that the subject goods from all sources are in direct competition with, and in the same geographic markets as, the domestically produced like goods.[35]

[45] On the basis of the foregoing, the Tribunal finds it appropriate to conduct an assessment of the cumulative effect of the subject goods from all sources for the purposes of this preliminary injury inquiry.

INJURY ANALYSIS

Import Volume of Subject Goods

[46] For the purposes of its analysis, the Tribunal considered Nova's estimates of import volumes and the import data compiled by the CBSA for the years 2015, 2016 and 2017, as well as Nova's estimates for Q1 2018.

[47] IIL submitted that the volume estimates in the complaint and the volume data relied upon by the CBSA are unreliable because of the 2017 amalgamation of HS codes relevant to CSWP to include non-subject goods such as HSS and mechanical tubing. It submitted that while Nova made adjustments in the complaint to account for this, those adjustments related only to the volume of U.S. imports. Nova replied that the CBSA based its analysis of imports on actual import documentation and the commercial intelligence provided in the complaint.

[48] The Tribunal acknowledges that discrepancies can arise where import data is estimated using HS codes that include a broader set of goods than the subject goods. However, as noted above, in the context of a preliminary injury inquiry, and noting that IIL did not suggest any alternative, the Tribunal can only rely on the estimates of volumes included in the complaint or provided by the CBSA. In this case, the CBSA derived its estimates from actual import documentation (FIRM data) as well as Nova's market intelligence.[36] In addition, the CBSA's case analysis indicates that it made

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32. *Galvanized Steel Wire* (22 March 2013), PI-2012-005 (CITT) at para. 40; *Corrosion-resistant Steel Sheet* (2 February 2001), PI-2000-005 (CITT) at 4, 5.
33. Exhibit PI-2018-004-05, Vol. 1J at paras. 44, 79.
34. Exhibit PI-2018-004-02.01, Vol. 1 at paras. 53, 60; *CSWP I* at para. 63; *CSWP II* at paras. 62, 99, 183.
35. Exhibit PI-2018-004-03.01 (protected), Vol. 2, attachment 8.
36. Exhibit PI-2018-004-05, Vol. 1J at para. 42.

a number of adjustments to the import data for the subject goods as well as third country imports.[37] For these reasons, the import volume data is adequate for the purposes of this preliminary stage.

[49] Nova estimated the total volume of imports of CSWP from all countries using Statistics Canada data. It estimated that, from 2015 to 2017, there was a significant increase, year over year, in the volume of imports of subject goods, both in absolute terms and relative to domestic production of like goods.[38]

[50] The CBSA's estimates indicate that the volume of subject imports increased significantly from 2015 to 2016 and remained essentially flat in 2017, for an overall increase of 32 percent.[39]

[51] Relying on the CBSA's estimates, the Tribunal found that imports of subject goods relative to domestic production increased between 2015 and 2016, and dipped slightly in 2017. The volume of imports relative to domestic sales of domestic production (domestic consumption), using Nova's estimates of total domestic sales, increased each year between 2015 and 2017.[40]

[52] On the basis of the foregoing, the Tribunal finds that there is a reasonable indication of a significant increase in the absolute and relative volume of imports of the subject goods over the period of inquiry.

Effect on Prices of Like Goods

[53] Nova alleged that the prices of the subject goods undercut the prices of the domestically produced like goods, which forced Nova to reduce prices and lose sales. Nova relied on publicly available average import pricing, its own average domestic selling prices, and numerous specific injury allegations in support of these claims.

[54] The data on average import prices provided in the complaint indicates that the prices of the subject goods consistently undercut Nova's prices from 2015 to 2017 and in Q1 2018.[41] The average import prices calculated by the CBSA reveal a similar trend.[42] The degree of undercutting was significant, most notably in 2016.

[55] Many of Nova's specific injury allegations included notes and correspondence with specific details indicating that, on multiple occasions, a bid offering subject goods had undercut the bid offering domestic like goods by a significant margin.[43] The examples provided span the period from 2015 to 2018, and a number of the allegations appear to correspond with a period of increased volumes of imports of the subject goods. There will be an opportunity to test these allegations in the context of a final injury inquiry. However, for the purposes of the preliminary injury inquiry, the Tribunal finds that they are sufficient.

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37. Exhibit PI-2018-004-03.02 (protected), Vol. 2C at 13-15 and 45.
38. Exhibit PI-2018-004-03.01 (protected), Vol. 2A at 130-132 and 139.3.
39. Exhibit PI-2018-004-03.02 (protected), Vol. 2C at 13.
40. *Ibid.*; Exhibit PI-2018-004-03.01 (protected), Vol. 2 at 130-132; Exhibit PI-2018-004-03.01 (protected), Vol. 2A at 139.3.
41. Exhibit PI-2018-004-03.01 (protected), Vol. 2 at 130-132.
42. Exhibit PI-2018-004-05, Vol. 1J at para. 95; Exhibit PI-2018-004-03.02 (protected), Vol. 2C at 26-27.
43. Exhibit PI-2018-004-03.01 (protected), Vol. 2A, attachment 8.

[56] Nova's average selling price for domestic sales declined in 2016 but increased in 2017 to a level about that in 2015.[44] Nova also alleged that, in several instances, it had to reduce its prices to win a sale faced with competition from the subject goods.[45] Nova also claimed that imports from the subject countries often include "extras" such as surface or end finishes at little to no extra charge, which have exacerbated the price undercutting in the market and have forced it to discount value-added items.[46] The data will be further analyzed during the final injury inquiry to assess this potential price effect of the subject goods.

[57] With respect to price suppression, the evidence indicates that Nova has not been able to increase selling prices in step with increases in the cost of hot-rolled coil, a major direct material cost. Further, Nova's financial statements suggest that it experienced price suppression in 2017, when the cost of goods sold (COGS) increased substantially but the corresponding increase in selling prices was not evident to the same extent.[47] This apparent price suppression coincides with the sustained volumes of imports of the subject goods in 2017.

[58] Bearing in mind the lower standard applicable at the preliminary injury inquiry stage, the Tribunal finds that this evidence reasonably indicates significant price undercutting and price suppression caused by the subject goods.

Resultant Impact on the Domestic Industry

[59] As part of its analysis under paragraph 37.1(1)(c) of the *Regulations*, the Tribunal must consider the impact of the dumped goods on the state of the domestic industry and, in particular, all relevant economic factors and indices that have a bearing on the state of the domestic industry.

[60] Nova submitted that it has been injured by the subject goods through lost sales and reduced profit margins, production, capacity utilization and employment levels.

[61] In a preliminary injury inquiry, the Tribunal must determine whether the evidence discloses a reasonable indication of a causal link between the dumping of the subject goods and the injury experienced on the basis of the resultant impact of the volume and price effects of the dumped goods on the domestic industry. The standard is whether there is a reasonable indication that the dumping of the subject goods has, in and of itself, caused injury.

[62] Nova's results suggest an overall deterioration in the performance of the domestic industry. Although total production and total sales increased between 2015 and 2017, both indicators dropped in Q1 2018 as compared to Q1 2017. Capacity utilization improved in 2016, remained steady in 2017 and then decreased in Q1 2018 to the same level as in 2015. Employment was essentially flat throughout the period of inquiry.[48]

[63] Nova's volume of domestic sales of domestic production decreased in 2016 and increased in 2017, for a slight overall improvement from 2015 to 2017. However, the volume of domestic sales of domestic production decreased in Q1 2018 as compared to Q1 2017. Net sales values experienced a

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44. Exhibit PI-2018-004-03.01 (protected), Vol. 2 at 130-131.
45. Exhibit PI-2018-004-03.01 (protected), Vol. 2A, attachment 8.
46. *Ibid.*, attachment 8 at para. 5.
47. Exhibit PI-2018-004-03.01 (protected), Vol. 2A at 139.1.
48. *Ibid.* at 139.1, 139.3 and 140.

more significant drop in 2016, followed by a significant increase in 2017, and a slight improvement in Q1 2018 as compared to Q1 2017.[49]

[64] Nova's profitability deteriorated steadily from 2015 to 2017. Despite some improvement in other performance indicators in 2017, Nova's gross margin and net income for domestic sales reached their lowest point in that year. This appears to be related to Nova's inability to increase prices in line with increasing COGS in 2017, as discussed above. This also coincides with both the relative improvement in total apparent market demand for CSWP in 2017 and with a high volume of imports of the subject goods in that same year, suggesting a causal link between the subject goods and Nova's declining profitability.[50] On a percent basis, Nova's financial performance improved in Q1 2018 compared to Q1 2017, but remained far below the results achieved in 2015.[51]

[65] In addition, according to the CBSA's case analysis, the domestic industry's market share remained steady in 2016 and declined in 2017. In contrast, the market share of the subject goods expanded significantly in 2016 before dropping slightly in 2017, though it remained above the 2015 level. The market share of other imports appears to have increased significantly in 2017.[52] Nova's evidence in respect to specific sales lost to subject goods supports a reasonable indication that the domestic industry lost sales and market share due to the subject goods in 2015, 2016, 2017 and Q1 2018.[53]

[66] On the basis of the foregoing, the Tribunal finds that the evidence discloses a reasonable indication that the domestic industry experienced injury and that the increasing presence of the dumped subject goods was the cause of this injury.

[67] As a result of the above finding, the Tribunal will exercise judicial economy and will not consider whether there is a reasonable indication that the dumping of the subject goods is threatening to cause injury.

CONCLUSION

[68] On the basis of the foregoing analysis, the Tribunal finds that the requirement of subsection 37.1(1) of *SIMA* has been met, in that there is evidence that discloses a reasonable indication that the dumping of the subject goods has caused injury or is threatening to cause injury to the domestic industry.

[69] Therefore, should the CBSA make a preliminary determination that the subject goods are dumped, the Tribunal shall, pursuant to section 42 of *SIMA*, inquire into whether the dumping has caused or is threatening to cause injury.

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49. Exhibit PI-2018-004-03.01 (protected), Vol. 2A at 139.1.
50. Exhibit PI-2018-004-03.01 (protected), Vol. 2 at 130-131; Exhibit PI-2018-004-03.01 (protected), Vol. 2A at 139.1.
51. Exhibit PI-2018-004-03.01 (protected), Vol. 2A at 139.1.
52. Exhibit PI-2018-004-03.02 (protected), Vol. 2C at 15.
53. Exhibit PI-2018-004-03.01 (protected), Vol. 2A, attachment 8.

Jean Bédard

Jean Bédard
Presiding Member

Rose Ritcey

Rose Ritcey
Member

Randolph W. Heggart

Randolph W. Heggart
Member