Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Dumping and Subsidizing

DETERMINATION AND REASONS

Preliminary Injury Inquiry
No. PI-2018-002

Cold-rolled Steel

Determination issued
Tuesday, July 24, 2018

Reasons issued
Wednesday, August 8, 2018

Canada

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

COLD-ROLLED STEEL

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

This preliminary injury inquiry follows the notification, on May 25, 2018, that the President of the Canada Border Services Agency had initiated investigations into the alleged injurious dumping and subsidizing 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 and subsidizing of the above-mentioned goods have caused or are threatening to cause injury to the domestic industry.

Jean Bédard

Jean Bédard
Presiding Member

Rose Ritcey

Rose Ritcey
Member

Ann Penner

Ann Penner
Member

The statement of reasons will be issued within 15 days.

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STATEMENT OF REASONS

INTRODUCTION

[1] On April 5, 2018, ArcelorMittal Dofasco G.P. (AMD) filed a complaint with the Canada Border Services Agency (CBSA) alleging that the dumping and subsidizing of certain cold-rolled steel in coils or cut lengths (CRS) originating in or exported from the People's Republic of China (China), the Republic of Korea (Korea) and the Socialist Republic of Vietnam (Vietnam) (the subject goods) have caused injury or are threatening to cause injury to the domestic industry.[1]

[2] On May 25, 2018, the President of the CBSA initiated investigations respecting the dumping and subsidizing of the subject goods, pursuant to subsection 31(1) of *Special Import Measures Act*.[2]

[3] On May 28, 2018, the Canadian International Trade Tribunal (the Tribunal) began its preliminary injury inquiry pursuant to subsection 37.1(1) of *SIMA*.

[4] The complaint is supported by Essar Steel Algoma Inc. (ESA), Stelco Inc. (Stelco) and the United Steelworkers. The Tribunal received submissions opposing the complaint from the Trade Remedies Authority of Vietnam – Ministry of Industry and Trade (Government of Vietnam), Salzgitter Mannesmann International (Canada) Inc. (Salzgitter), an importer and distributor of steel products, and POSCO, a Korean manufacturer of CRS. The Tribunal also received a request for a regional exclusion from Amalgamated Trading Inc., a non-party importer of CRS.

[5] On July 24, 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[3]

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

> Cold-reduced flat-rolled sheet products of carbon steel (alloy and non-alloy), in coils or cut lengths, in thicknesses up to 0.142 inches (3.61 mm) and widths up to 73 inches (1854 mm) inclusive, originating in or exported from the People's Republic of China, the Republic of Korea, and the Socialist Republic of Vietnam, and excluding:
>
> a) organic coated (including pre-paint and laminate) and metallic coated steel;
>
> b) steel products for use in the manufacture of passenger automobiles, buses, trucks, ambulances or hearses or chassis therefor, or parts thereof, or accessories or parts thereof;·
>
> c) steel products for use in the manufacture of aeronautic products;
>
> d) perforated steel;

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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-2018-002-05, Vol. 1V at 78.

e) stainless steel;

f) silicon-electrical steel; and

g) tool steel.

CBSA'S DECISION TO INITIATE INVESTIGATIONS

[7] For the period of January 1, 2017, to December 31, 2017, the CBSA estimated that the subject goods were dumped by the following margins of dumping: 25.0 percent for China, 14.8 percent for Korea and 61.0 percent for Vietnam, expressed as a percentage of the export price. For the same period, the CBSA estimated that the subject goods were subsidized by the following amounts: 10.2 percent for China, 12.9 percent for Korea and 30.4 percent for Vietnam, expressed as a percentage of the export price.[4]

PROCEDURAL MATTER: OBJECTIONS TO REPLY EVIDENCE

[8] Salzgitter and POSCO objected, on July 5 and 6, 2018, respectively, to the reply submissions of AMD, ESA and Stelco for including new allegations and evidence that were not found in the complaint.

[9] In particular, Salzgitter objected to the references in AMD's reply submission to two past Tribunal decisions related to cold-rolled steel products[5] (which were not mentioned in the complaint), in support of the exclusion of steel products for use in automotive manufacturing from the product definition.[6] Salzgitter further argued that AMD's reply submission ignores a third past cold-rolled steel products case[7] involving a broader product scope and that it improperly attempts to differentiate automotive and non-automotive steel on the basis of physical characteristics, which were not addressed in the complaint. As a result, Salzgitter requested that the Tribunal strike such "new" evidence from the record.

[10] For its part, POSCO objected to the filing of new price depression allegations in respect of Korea.[8] It submitted that the Tribunal's mandate is to determine if the complaint discloses a reasonable indication of injury and that it should not consider new evidence that was not included in the complaint. POSCO further argued that the inability of parties in opposition to test the new evidence, which was not tested by the CBSA, goes against fundamental principles of due process and procedural fairness. As a result, it submitted that the Tribunal should not give any weight to the new allegations in question.

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4. Exhibit PI-2018-002-05, Vol. 1V at 89, 99.
5. *Certain Cold-rolled Steel Sheet Products* (9 October 2001), NQ-2001-002 (CITT); *Cold-rolled Steel Sheet Products* (27 August 1999), NQ-99-001 (CITT).
6. Exhibit PI-2018-002-11, Vol. 1V.
7. *Certain Cold-Rolled Steel Sheet Products* (29 July 1993), NQ-92-009 (CITT).
8. Exhibit PI-2018-002-12, Vol. 1V. For example, POSCO noted paragraph 10 of the statement of evidence of W. Butler of AMD and Confidential Attachment 3 of AMD's reply submission. See Exhibit PI-2018-002-09.01A, Vol. 3; Exhibit PI-2018-002-10.01 (protected), Vol. 4.

[11] AMD and ESA filed a joint response to the objections on July 6, 2018.[9] They submitted that the new evidence in their respective reply briefs were strictly in response to issues raised in the submissions of parties opposing the complaint and which were not reasonably foreseeable or available at the time the complaint was filed. In the alternative, they submitted that the evidence in the complaint *alone* establishes a reasonable indication of past injury and/or threat of injury as required by subsection 34(2) of *SIMA*.

[12] On July 10, 2018, the Tribunal denied both requests, for the following reasons.

[13] While the Tribunal agrees that reply submissions are to be restricted to responding to the arguments and evidence filed by parties opposed to the complaint, it finds that the reply submissions of AMD and ESA did just that. In its view, AMD and ESA properly exercised their right of reply, including the right to adduce new evidence in response to arguments made by the opposing parties.

[14] With respect to AMD's citation of past Tribunal decisions, it did so in response to Salzgitter's submissions opposing the exclusion of CRS for use in automotive manufacturing from the product definition, as discussed further below. When a complaint is filed with the CBSA there is no requirement for it to contain an explanation or justification for the wording and/or scope of the product definition, or to cite prior cases involving the same or similar goods. Further, the Tribunal can take judicial notice of past decisions regardless of whether they are filed by a party or not.

[15] The domestic producers filed new evidence in support of a price depression allegation with respect to subject goods from Korea that post-dated the filing of the complaint. The Tribunal is satisfied that this evidence was adduced in direct response to POSCO's arguments regarding the lack of account-specific allegations relating to Korean imports.

[16] In addition, as further discussed below, the *somewhat probing examination* to be conducted by the Tribunal at the preliminary stage does not require that the evidence – whether it is filed with the complaint or in the parties' submissions – be tested to the same extent and in the same manner as it would be in a full injury inquiry. Given the short time frame of the preliminary inquiry and its nature, it would be impossible to do otherwise. The Tribunal, however, expects that this new evidence will be fully tested in the context of a final injury inquiry.

[17] Therefore, the Tribunal does not consider there to be any violation of due process or procedural fairness arising from the filing of the new allegations by the domestic producers in their reply submissions. Furthermore, the Tribunal notes that POSCO did not request to make a further reply to those allegations.

[18] In light of the above, the Tribunal finds no basis on which to strike the requested evidence from the record or give such evidence lesser weight in the reasonable indication of injury or threat of injury analysis.

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9. Exhibit PI-2018-002-13, Vol. 1V.

LEGISLATIVE FRAMEWORK

Reasonable Indication Standard

[19] The Tribunal's mandate in a preliminary injury inquiry is set out in subsection 34(2) of *SIMA*. It 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."[10]

[20] The "reasonable indication" standard that applies in a preliminary injury inquiry is lower than the evidentiary threshold that applies in a final injury inquiry under section 42 of *SIMA*.[11] The term "reasonable indication" is not defined in *SIMA*, but is understood to mean that the evidence in question need not be "conclusive, or probative on a balance of probabilities".[12]

[21] The Tribunal has previously been satisfied that the threshold for the "reasonable indication" standard was met where:[13]

- the alleged injury or threat of injury is substantiated by evidence that is sufficient in the sense that it is "relevant, accurate and adequate"; and

- in light of the evidence, the allegations stand up to a "somewhat probing examination", even if the theory of the case might not seem convincing or compelling.

[22] The evidence in a preliminary injury inquiry 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. Accordingly, the evidence will not be tested to the same extent. At this early stage, the Tribunal will give complainants the benefit of the doubt, where necessary.

[23] However, the outcome of a preliminary injury inquiry must not be taken for granted.[14] Simple assertions are not sufficient.[15] Complaints, as well as the cases of parties opposed, must be supported

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10. For injury inquiries under section 42 of *SIMA* that involve a single subject country, the Tribunal's practice is to make a cumulative assessment of the injurious effects of goods that are both dumped and subsidized (cross-cumulation). The Tribunal therefore considers that it would be inconsistent not to cross-cumulate the subject goods in a preliminary injury inquiry and has consequently assessed the cumulative effects of the dumping and subsidizing of the subject goods on the domestic industry.
11. *Grain Corn* (10 October 2000), PI-2000-001 (CITT) at 7.
12. *Ronald A. Chisholm Ltd. v. Deputy M.N.R.C.E.* (1986), 11 CER 309 (FCTD).
13. *Concrete Reinforcing Bar* (12 August 2014), PI-2014-001 (CITT) [*Reinforcing Bar*] at para. 15; *Silicon Metal* (21 June 2013), PI-2013-001 (CITT) at para. 16; *Unitized Wall Modules* (3 May 2013), PI-2012-006 (CITT) at para. 24; *Liquid Dielectric Transformers* (22 June 2012), PI-2012-001 (CITT) at para. 86.
14. *Reinforcing Bar* at paras. 18-19.
15. Article 5 of the World Trade Organization (WTO) *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* requires an investigating authority to examine the accuracy and adequacy of the evidence provided in a dumping 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 or injury. Article 5 also specifies that simple assertions that are not substantiated with relevant evidence cannot be considered sufficient to meet the requirements of the article.

by positive and sufficient evidence. Such evidence must also be relevant, in that it addresses the necessary requirements in *SIMA* and the relevant factors of the *Special Import Measures Regulations*.[16]

Injury and Threat of Injury Factors

[24] 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 and subsidized goods, the effect of the dumped and subsidized goods on the price of like goods, the resulting economic impact of the dumped and subsidized goods on the domestic industry and, if injury or threat of injury[17] is found to exist, whether a causal relationship exists between the dumping and subsidizing of the goods and the injury or threat of injury.

PRELIMINARY ISSUES

[25] 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.

[26] Given that the CBSA has determined that the subject goods originating or exported from China, Korea and Vietnam have been both dumped and subsidized, the Tribunal, in considering the issue of injury, 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) and of the dumping and subsidizing of the subject goods taken together (cross-cumulation).

[27] Before addressing the above framework issues, the Tribunal will first address two other issues raised in submissions from the parties opposed, namely, the scope of the product definition and a request for the exclusion of a regional market from the injury inquiry.

Product Definition Scope

[28] Salzgitter submitted that CRS for use in automotive manufacturing should not be excluded from the product definition of the subject goods,[18] for various reasons.[19]

[29] On many occasions, the Tribunal has held that it cannot revise the production definition. It must conduct its preliminary injury inquiry on the basis of the product definition provided by the CBSA, which has the sole jurisdiction to define the subject goods.[20]

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16. S.O.R./84-927 [*Regulations*].
17. In its consideration of whether there is a reasonable indication that the dumping and subsidizing 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.
18. As noted above, the product definition excludes "b) steel products for use in the manufacture of passenger automobiles, buses, trucks, ambulances or hearses or chassis therefor, or parts thereof, or accessories or parts thereof".
19. Exhibit PI-2018-002-07.03, Vol. 3 at paras. 26-35.

Request for a Regional Exclusion

[30] Amalgamated Trading filed a request to exclude Western Canada from the Tribunal's injury inquiry. It alleged that none of the domestic producers serve that market and, as such, they could not be injured by imports of CRS into Western Canada. No evidence was included to support the claim of separate eastern and western markets for CRS in Canada.

[31] The domestic producers submitted that there is no separate regional market for CRS in Canada. Regardless of the fact that there are no producers of CRS in Western Canada, the domestic producers provided evidence of their sales presence and recent transactions with customers in Central and Western Canada.[21]

[32] The notice of preliminary injury inquiry states that the Tribunal does not consider product exclusion requests at this stage. The Tribunal considers it appropriate to apply this approach to regional exclusion requests as well.[22] Accordingly, such requests are to be dealt with in the context of a final injury inquiry and in compliance with the applicable rules and requirements.[23]

Like Goods and Classes of Goods

[33] 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."

[34] AMD submitted that domestically produced CRS, as described in the product definition, is like goods in relation to the subject goods and that there is a single class of goods. No other submissions regarding like goods were made.[24]

[35] In terms of classes of goods, POSCO questioned whether "drawing steel" should be subject goods or a separate class of goods, citing an import competition report that was filed with the complaint.[25]

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20. *Carbon and Alloy Steel Line Pipe* (Procedural Order of 22 January 2016), NQ-2015-002 (CITT) at para. 24; *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; *Mitsui and Co. v. Buchanan*, [1972] F.C. 944; *Sarco Canada Limited v. Anti-dumping Tribunal*, [1979] 1 F.C. 247; *Japan Electrical Manufacturers Association v. Anti-dumping Tribunal*, [1982] 2 F.C. 816.
21. Exhibit PI-2018-002-10.01 (protected), Vol. 4 at para. 119 and Table 2; Exhibit PI-2018-002-10.01A (protected), Vol. 4 at paras. 12-18; Exhibit PI-2018-002-10.03 (protected), Vol. 4 at paras. 17-18 and Attachment 2.
22. In addressing a request for the exclusion of a regional market, the Tribunal would apply the same principles that govern requests for product exclusions pursuant to subsection 43(1) of *SIMA*. An exclusion from a finding of injury or threat of injury is an extraordinary remedy that may be granted only if the Tribunal is of the view that it will not cause or threaten to cause injury to the domestic industry. See *Concrete Reinforcing Bar* (9 January 2015), NQ-2014-001 (CITT) at paras. 269-271.
23. This is distinguished from circumstances where a complaint may be filed on the basis of a regional market pursuant to subsection 43(1) of *SIMA*, in which case the Tribunal would then need to consider whether a regional market exists for the purposes of making a preliminary determination of injury or threat of injury. See *Gypsum Board* (5 August 2016), PI-2016-001 (CITT) at paras. 1, 20-24.
24. Although Salzgitter made arguments regarding the scope of the product definition of the subject goods, as discussed above, it did not make any submissions regarding the scope of like goods.

[36] In reply, AMD referred to the fact that the import competition report in question indicates a small price premium for drawing steel. It submitted, however, that such a price premium is not, in and of itself, a sufficient basis for creating a separate class of goods, given that it is a relatively small premium relative to the base price of commercial quality CRS. Further, AMD argued that such "price extras" are a common feature of CRS. Other types of "price extras" that can be added to the base price for CRS products include special widths and thicknesses, grades, finishes and packaging.[26]

[37] The complaint indicates that drawing steel is subject goods.[27] The Tribunal has not been presented with any argument or evidence that would suggest otherwise.

[38] Having considered the typical factors for deciding issues of classes of goods,[28] the Tribunal is not convinced that the price premium on drawing steel is of sufficient magnitude to justify a finding of multiple classes of goods.[29] As the Tribunal has found in the past, a difference in price between products does not necessarily lead to a conclusion that the products in question are not substitutable.[30] Furthermore, while drawing steel might be used in certain applications where there are forming (or drawing) requirements to manufacture a particular part,[31] the Tribunal does not accept that this warrants a separate class of goods, especially given that there is no indication on the record that drawing steel and other CRS products are not substitutable. Therefore, the Tribunal finds that the evidence does not sufficiently demonstrate that drawing steel should constitute a separate class of goods.

[39] Accordingly, the Tribunal will analyze the allegations of injury and threat of injury on the basis that domestically produced CRS, as described in the product definition, is "like goods" in relation to the subject goods and that there is a single class of goods.

Domestic Industry

[40] 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".

[41] The complaint identifies AMD, ESA and Stelco as the only domestic producers of CRS.

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25. Exhibit PI-2018-002-03.01 (protected), Vol. 2A at 344-349.
26. Exhibit PI-2018-002-09.01, Vol. 3 at para. 85; Exhibit PI-2018-002-03.01 (protected), Vol. 2A at 159-165.
27. The term "drawing steel" is mentioned in the specification for ASTM A424, which the complaint states is a specification for CRS that meets the product definition of the subject goods: Exhibit PI-2018-002-02.01, Vol. 2 at para. 29; Exhibit PI-2018-002-03.01 (protected), Vol. 2A at 3.
28. The Tribunal typically considers a number of factors in deciding the issues of like goods and classes of goods, 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). See *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at para. 48.
29. The Tribunal has previously found, in *Steel Grating* (19 April 2011), NQ-2010-002 (CITT) at paras. 107-112, that an 8 to 10 percent price premium for painting and a 30 to 35 percent price premium for galvanization was not necessarily a determining factor to justify separate classes of goods. See also *Concrete Reinforcing Bar* (9 January 2015), NQ-2014-001 (CITT) at para. 71. In the present case, the price premium is significantly lower.
30. *Steel Grating* (19 April 2011), NQ-2010-002 (CITT) at para. 109.
31. Exhibit PI-2018-002-09.01, Vol. 3 at para. 84.

[42] POSCO submitted that the Tribunal should consider whether service centres and other facilities that cut CRS coil into cut-to-length CRS sheet should be part of the domestic industry, similar to the steel plate industry in which service centres have been considered domestic producers.[32]

[43] AMD, ESA, Stelco and the United Steelworkers argued that service centres and other facilities that buy coil CRS and cut it to length are not domestic producers of CRS and, therefore, should not be part of the domestic industry. They submitted that the CRS coil purchased by the service centres from domestic or foreign producers is already "finished" CRS that meets the product definition. Further processing operations – such as pickling, oiling, slitting, cutting to length and blanking – do not transform CRS into another finished product; the coil is already like goods or subject goods, so the service centres do not transform the CRS into like goods or subject goods. In their view, this is a fundamental distinction from the steel plate cases, in which coil that is not part of the product definition is transformed into a subject good when it is unrolled and cut to length.

[44] In prior cases involving hot- or cold-rolled steel sheet, the Tribunal has not considered service centres to be domestic producers.[33] In the most recent of those cases, which dealt with hot-rolled steel sheet and strip, the Tribunal concluded that when service centres unrolled and/or cut coil, their activities were "akin to finishing" and, as such, did not constitute production of like goods because there was no "substantial transformation of the nature of the product."[34] The Tribunal sees no basis to depart from that approach in the present case.

[45] Similar to hot-rolled steel sheet, CRS obtains its essential metallurgical characteristics through the mill production processes and, particularly, when it is formed into a coil.[35] As described in the complaint, hot-rolled sheet forms the substrate for CRS, which is passed through a cold-rolling mill to further reduce the thickness and transform it into "full hard". The "full hard" CRS may be sold "as is" or go through further internal processes, such as transforming it into corrosion-resistant steel, prepaint steel or tin plate, or annealing and tempering processes to increase the ductility and improve the shape, surface and performance.[36] Service centres do not perform any of these steps; they simply buy coil CRS and perform value-added services, such as unrolling and slitting (into narrower widths) or cutting (shorter lengths). 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.

[46] In reaching this conclusion, the Tribunal focused on the question of whether the process by which the service centres unroll and slit or cut CRS coil constitutes "production". The fact that CRS coil is already a subject good before it is cut to length is not a relevant consideration. The scope of the product definition is not determinative of what constitutes production versus finishing. In cases where the product definition covers a broad range of goods, it is entirely possible to have a domestic

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32. *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate* (6 January 2016), NQ-2015-001 (CITT) at paras. 38.
33. *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (12 August 2016), RR-2015-002 (CITT) at paras. 43-44. See *Certain Cold-rolled Steel Sheet Products* (9 October 2001), NQ-2001-002 (CITT); *Cold-rolled Steel Sheet Products* (27 August 1999), NQ-99-001 (CITT) and the related rescission order in RR-2003-004.
34. *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (12 August 2016), RR-2015-002 (CITT) at paras. 43-44.
35. Exhibit PI-2018-002-09.01A, Vol. 3 at para. 4.
36. Exhibit PI-2018-002-02.01, Vol. 1 at 26-27; Exhibit PI-2018-002-09.01, Vol. 3 at para. 92.

producer using a subject good as an input for the production of a new product that is also covered by the product definition (and is, thus, like goods).[37]

[47] Supporting parties also pointed to the steel plate line of cases in which the product definitions do not cover coil as a basis for concluding that services centres should not be considered producers in this case. However, as explained above, the Tribunal does not consider the scope of the subject goods definition as a determinative basis for concluding which firms perform production activities and, therefore, constitute domestic producers. Further, it notes that in the plate cases, the domestic mills have consistently recognized the service centres as domestic producers.[38] Conversely, in prior steel sheet cases, the service centres have consistently been considered purchasers and, occasionally, importers.[39]

[48] In light of the above, the Tribunal is satisfied that AMD, ESA and Stelco constitute the domestic industry. Accordingly, it will assess whether there is a reasonable indication of injury or threat of injury with respect to these three domestic producers as a whole.

Cumulation

[49] 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 or subsidizing 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:[40]

> (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

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37. For example, in *Carbon and Alloy Steel Line Pipe* (29 March 2016), NQ-2015-002 (CITT), the product definition included both unfinished and finished line pipe. The Tribunal determined that an importer of unfinished subject goods ("mother tubes") was also a domestic producer of like goods because its operations involved a substantial transformation of mother tubes into finished line pipe. In particular, the process involved "a material change of the size (i.e. length, wall thickness and outer diameter) of the original product which occurs by heating and expanding it into a pipe that is then straightened, cut, descaled and tested", which the Tribunal found went "beyond finishing operations and amount[ed] to the actual creation of a new and significantly different product" (para. 67).
38. See, for example, *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate* (6 January 2016), NQ-2015-001 (CITT) [*Plate 8*] at 48, 55; *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate* (2 February 2010), NQ-2009-003 (CITT) [*Plate 7*] at para. 27. Up until *Plate 8*, the Tribunal often lacked information from the service centres (i.e. they did not respond to questionnaires) and so the Tribunal usually conducted its injury analysis based on a major proportion of the domestic industry (e.g. *Plate 7* at paras. 53-54). In *Plate 8*, however, the Tribunal obtained information on the totality of domestic production, including from the service centres, and it rejected the requests of the domestic mills to exclude the service centres from the domestic industry for the purposes of the injury analysis (paras. 48, 55).
39. *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (12 August 2016), RR-2015-002 (CITT); *Certain Cold-rolled Steel Sheet Products* (9 October 2001), NQ-2001-002 (CITT); *Cold-rolled Steel Sheet Products* (27 August 1999), NQ-99-001 (CITT) and the related rescission order in RR-2003-004; *Certain Cold-rolled Steel Sheet Products* (29 July 1993), NQ-92-009 (CITT).
40. *Galvanized Steel Wire* (22 March 2013), PI-2012-005 (CITT) at para. 39.

> (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.

[50] While subsection 42(3) of *SIMA* deals with final injury inquiries, the Tribunal normally considers that it is exceptional not to cumulate the subject goods in a preliminary injury inquiry when the available evidence appears to justify cumulation.[41]

[51] POSCO and the Government of Vietnam submitted that Korea and Vietnam, respectively, should be decumulated for the purposes of the injury analysis.

Margins of Dumping, Amount of Subsidy and Volumes of Dumped and Subsidized Imports

[52] The CBSA's estimated margins of dumping and amounts of subsidy for all the subject countries are not insignificant and its estimated volumes of dumped and subsidized imports are not negligible.[42]

[53] POSCO alleged that the CBSA's estimated volume of subject goods includes non-subject goods, namely, automotive CRS from Korea. It submitted that the Tribunal should conduct its own review of Facility for Information Retrieval Management (FIRM) import data to remove any imports of non-subject automotive CRS from Korea, which (in POSCO's submission) would result in only a negligible volume of subject goods from that country. In this regard, POSCO filed evidence that of the four Korean producers of CRS, two did not export subject goods to Canada during the period of inquiry and the other two exported only small volumes.[43] However, as noted by AMD, there could be brokers (either located in Korea or elsewhere) that also export subject goods from Korea, in addition to the exports of the Korean producers themselves.[44]

[54] The Tribunal is satisfied that the CBSA, in determining the estimated volume of subject goods exported from Korea into Canada, made a number of adjustments relating to the removal of non-subject goods, including automotive products, from its import statistics.[45] As a result, for the purposes of the preliminary injury inquiry, the Tribunal will base its negligibility analysis on the estimated import volumes from the CBSA. This can be fully addressed in the event of a final inquiry[46], if there is a still at that stage a concern regarding the possible inclusion of non-subject goods in the import volumes of the subject goods.

[55] In light of the above, the Tribunal therefore finds that the first condition is met.

Conditions of Competition

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41. *Corrosion-resistant Steel Sheet* (2 February 2001), PI-2000-005 (CITT) at 4, 5.
42. Exhibit PI-2018-002-05, Vol. 1V at 89, 99.
43. Exhibit PI-2018-002-08.01 (protected), Vol. 4 at 3.
44. Exhibit PI-2018-002-09.01, Vol. 3 at paras. 104-108.
45. Exhibit PI-2018-002-05, Vol. 1V at 83; Exhibit PI-2018-002-03.02 (protected), Vol. 2B at 13, 53.
46. A final inquiry will be held if the CBSA makes a preliminary determination that the subject goods are dumped or subsidized.

[56] A decision to decumulate on the basis of conditions of competition must turn on positive evidence of sufficiently differing conditions of competition among the subject goods, or between subject goods and like goods. This is essentially a question of fact for the Tribunal's consideration. In making this decision, the Tribunal has previously taken into consideration such factors as whether the goods are interchangeable, whether they are present in the same geographic market at the same time and whether they are distributed through the same channels or using the same means of transportation.[47]

[57] Evidence filed with the complaint indicates that CRS is a commodity product that is generally produced to an ASTM or other recognized specification.[48] Accordingly, products made to the same specification by different manufacturers – whether a domestic producer or a foreign producer – are interchangeable.[49] In addition, the domestic producers provided customer account-specific allegations and supporting evidence that reasonably indicate direct competition in the same geographical market between subject goods from all of the subject countries and domestically produced like goods.[50] There is also evidence that subject goods from all sources are shipped to Canada by vessel,[51] and are sold through the same channels of distribution to similar customers (service centres or end users) as like goods.[52]

[58] POSCO argued that the following factors warrant decumulating Korea from the injury analysis of subject goods from China and Vietnam:[53]

- Korea is exempt from the United States' Section 232 tariff surcharge on steel imports that applies to other countries, including China and Vietnam;
- Korea is a market economy, unlike China and Vietnam (non-market economies);
- Lower magnitude of the margin of dumping and the amount of subsidy for Korea than those of China and Vietnam;
- Subject goods from Korea are imported by a small number of importers and are mostly presold to specific end users that differ from customers of the domestic industry;
- The volume of Korean imports is different from China and Vietnam, with a substantial decrease in import volumes of Korean goods since 2015; and
- Different prices of Korean imports compared to Chinese imports.

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47. *Reinforcing Bar* (12 August 2014), PI-2014-001 (CITT) at para. 47; *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (17 August 2001), NQ-2001-001 (CITT) at 16.
48. Exhibit PI-2018-002-02.01, Vol. 1 at 31; *ibid*., Vol. 1D at 49; see also *Cold-rolled Steel Sheet Products* (27 August 1999), NQ-99-001 (CITT) at 23.
49. Exhibit PI-2018-002-02.01, Vol. 1D at 49-50.
50. Exhibit PI-2018-002-03.01, Vol. 2A (protected) at 75-92, 106-115, 137-138; Exhibit PI-2018-002-10.03 (protected), Vol. 4 at paras. 8-10 and Attachment 1.
51. Exhibit PI-2018-002-02.01, Vol. 1A at 39, 56-57.
52. *Ibid*., Vol. 1 at 27, 31; *ibid*., Vol. 1A at 46-47.
53. Exhibit PI-2018-002-08.01 (protected), Vol. 4 at 9-11.

[59] POSCO's first two factors relate to market conditions in the exporting country and other jurisdictions, and do not relate to the relevant cumulation factors under subsection 42(3) of *SIMA*, which tend to be focused on conditions of competition in the *domestic* market.[54] Similarly, where each of the subject countries has been determined to have a margin of dumping and amount of subsidy that are not insignificant, as in the present case, the Tribunal does not consider differences in the magnitudes of their respective margins to be a relevant factor for decumulation.

[60] While there may be some differences in the magnitude and trends of import volumes from each of the subject countries over the last three years, they were all imported and were being sold in the Canadian market during the same time periods.[55] Furthermore, POSCO did not provide any positive evidence to demonstrate that subject goods from Korea are sold in the domestic market through different channels of distribution to different customers than other subject goods or domestically produced like goods, or that they are non-fungible. As mentioned above, the domestic producers' customer account-specific allegations and supporting evidence indicate otherwise.

[61] The Government of Vietnam submitted that Vietnam should be decumulated "[d]ue to differen[ces] in competition conditions and minor import share in comparison with [China and Korea]".[56] In particular, it submitted that "[Vietnamese] producers do not target the Canadian market and their sales are very intermittent." However, the Government of Vietnam did not provide any positive evidence to support those allegations.

[62] In terms of import share, the CBSA's estimated import share for Vietnamese goods was non-negligible in 2017 (at 9.5 percent) and higher than Korea's estimated import share of 7.1 percent in the same year.[57] Furthermore, AMD referred to evidence of large volumes of Vietnamese imports in 2017, as well as commercial intelligence indicating that such imports were diverted to Canada after the initiation of an anticircumvention investigation involving Vietnamese CRS in the United States.[58]

[63] On the whole, there is positive evidence to demonstrate that the conditions of competition among the subject goods and between the subject goods and the like goods are similar. The Tribunal therefore finds that a cumulative assessment of the injurious effects of all the dumped and subsidized goods is warranted.

Cross-cumulation

[64] This investigation involves subject goods from multiple countries that are both dumped and subsidized. Where subject goods from multiple countries are both dumped and subsidized during a preliminary inquiry, the Tribunal considers that it is not necessary or practicable to disentangle their effects. The WTO panel report in *Canada – Welded Pipe* strongly indicates that such an approach is

54. Furthermore, 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. Exhibit PI-2018-002-09.01, Vol. 3 at para. 34; Exhibit PI-2018-002-07.01, Vol. 3, Tab 3.
55. Exhibit PI-2018-002-02.01, Vol. 1A at 26, 28-34; Exhibit PI-2018-002-03.01 (protected), Vol. 2A at 63.
56. Exhibit PI-2018-002-07.02, Vol. 3 at 4.
57. Exhibit PI-2018-002-05, Vol. 1V at 83.
58. Exhibit PI-2018-002-09.01, Vol. 3 at para. 54; Exhibit PI-2018-002-02.01, Vol. 1A at 26; Exhibit PI-2018-002-03.01 (protected), Vol. 2A at 200-203, 225.

correct.[59] The Tribunal will therefore assess the impact of the dumped and subsidized goods on the domestic industry cumulatively in this preliminary inquiry.

INJURY ANALYSIS

Import Volume of Subject Goods

[65] For the purposes of its analysis, the Tribunal considered both AMD's estimates of import volumes using Statistics Canada data[60] and the CBSA's estimates of import volumes using its own FIRM data for the period from January 1, 2015, to December 31, 2017.[61]

[66] Although there are discrepancies between the two sets of data, they indicate a similar trend. In particular, from 2015 to 2017, imports from China and Vietnam increased significantly and imports from Korea decreased. Collectively, however, there was a significant increase in the import volume of the subject goods in absolute terms. According to the CBSA's estimates, total imports of the subject goods increased by 36.4 percent from 2015 to the end of 2017 (although absolute volumes of subject goods were highest in 2016).[62] During this same time period (i.e. 2015 to 2017), imports of goods from non-subject countries decreased by 26.0 percent and the total apparent Canadian market decreased by 6.6 percent.

[67] Both sets of data further indicate a significant increase in the import volume of the subject goods relative to the production and consumption of like goods in the domestic market, as both of the latter indicators decreased, year over year, from 2015 to 2017.[63]

[68] On the basis of the above, the Tribunal finds that the evidence discloses a reasonable indication that there has been a significant increase in the absolute or relative volume of imports of the subject goods.

Effect on Prices of Like Goods

[69] AMD submitted that the subject goods have undercut the prices of domestically produced like goods, resulting in price depression and/or lost sales. According to AMD, in many cases purchasers expected that the subject goods would be priced so far below the domestic producer pricing that AMD was not even given the chance to quote on purchases. In addition, AMD alleged that low-price competition from the subject goods suppressed prices by preventing increases in prices of domestically produced like goods that would otherwise have occurred.

[70] The Government of Vietnam and POSCO[64] argued that the price depression allegations are limited and lacking in evidentiary support. The Government of Vietnam also questioned AMD's

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59. *Canada – Anti-dumping Measure on Imports of Certain Carbon Steel Welded Pipe from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu* (21 December 2016), WTO Doc. WT/DS482/R, Report of the Panel [*Canada – Welded Pipe*] at paras. 7.99-7.103.
60. Exhibit PI-2018-002-03.01 (protected), Vol. 2A at 63.
61. Exhibit PI-2018-002-05, Vol 1V at 83, 100; Exhibit PI-2018-002-03.02 (protected), Vol. 2B at 13-14, 53.
62. Exhibit PI-2018-002-05, Vol 1V at 100. An examination of AMD's data is somewhat different in that it shows year-over-year increases in the absolute import volume of the subject goods from 2015 to 2017: Exhibit PI-2018-002-03.01 (protected), Vol. 2A at 63.
63. *Ibid.* at 59, 63; Exhibit PI-2018-002-03.02 (protected), Vol. 2B at 13-14.
64. POSCO's arguments were limited to allegations relating to subject goods from Korea.

reliance on U.S. Midwest spot prices for CRS as a basis for comparison to Canadian CRS prices, in support of its price suppression claim, as will be discussed below.

Price Undercutting and Price Depression

[71] The complaint included average pricing data for the domestic industry. The evidence shows that the average selling price of like goods increased, year over year, from 2015 to 2017.[65] The aggregated average import unit value of the subject goods also increased from 2015 to 2017 (with a decrease in 2016, year over year), but was consistently much lower than the price of like goods.[66] The degree of price undercutting was significant in each of the three years, and was most notable in 2016.

[72] In support of its allegations, AMD relied on the statements of evidence of Mr. W. Butler of AMD, Ms. L. Devoni of Algoma and Mr. G. Anderson of Stelco; they document a number of specific examples of price undercutting that resulted in lost sales and/or instances where the domestic producers were forced to depress their prices in order to compete with the low prices of the subject goods, as well as commercial intelligence on offers of subject goods priced well below the like goods.[67]

[73] In the Tribunal's view, these customer-specific allegations are insufficient to establish a reasonable indication of *significant* price depression given the increase in the *average* prices of like goods. The Tribunal will want to examine fully the causal link between these customer-specific allegations and average prices in the event of a final inquiry.

Price Suppression

[74] In assessing whether the price of the subject goods has suppressed the price of like goods, the Tribunal typically compares the domestic industry's average unit cost of goods sold (COGS) or cost of goods manufactured (COGM) with its average unit selling values in the domestic market to determine whether the domestic industry has been able to increase selling prices in step with increases in the cost of production. However, the Tribunal may also examine more generally whether the subject goods have significantly "suppressed the price of like goods by preventing the price increases for those like goods *that would otherwise likely have occurred*" [emphasis added].[68] A finding that dumped or subsidized goods prevented price increases for the like goods that would

65. Exhibit PI-2018-002-03.01 (protected), Vol. 2A at 63.
66. In 2015, the import unit values for subject goods from Vietnam and Korea were, respectively, higher than the average selling price of like goods. In 2016, the import unit values for subject goods from Vietnam were again higher than the selling price of like goods. Nevertheless, the aggregate import unit values from all three subject countries undercut the like goods in both 2015 and 2016. In 2017, the import unit values from the subject countries, both collectively and individually, undercut the price of like goods.
67. Exhibit PI-2018-002-03.01 (protected), Vol. 2 at 58-80; *ibid*., Vol. 2A at 75-92, 106-115, 137-138; Exhibit PI-2018-002-10.01 (protected), Vol. 4, Attachment 3.
68. Subparagraph 37.1(1)(b)(iii) of the *Regulations*. See, for instance, *Carbon and Alloy Steel Line Pipe* (4 January 2018), NQ-2017-002 (CITT) at para. 55; *Certain Hot-rolled Carbon Steel Plate and High-strength Low-alloy Plate* (17 May 1994), NQ-93-004 (CITT) at 20-21; *Polyiso Insulation Board* (6 May 2010), NQ-2009-005 (CITT) at para. 71.

otherwise likely have occurred must be based on an objective examination of positive evidence of what the prices of the like goods would have been in the absence of dumping or subsidizing.[69]

[75] Evidence regarding annual data on domestic selling prices and costs of production does not support AMD's allegation of price suppression. Average unit selling prices ($/MT) of like goods increased annually from 2015 to 2017,[70] whereas the domestic industry's consolidated unit COGM and COGS ($/MT) both decreased from 2015 to 2016, and then increased in 2017, to values that were only marginally higher than the 2015 levels.[71] A significant increase in unit selling prices in 2017, as compared to 2016, was more than sufficient to cover the small increase in costs over the same period (as shown by a healthy increase in the consolidated gross margin that year).

[76] AMD submitted that the domestic industry experienced price suppression in the most recent period. Specifically, selling prices of like goods decreased while costs increased during the last half of 2017 and the first quarter of 2018.[72] Having examined the quarterly data on the record, the Tribunal agrees there is some indication that the domestic industry began to experience a cost-price squeeze in the second half 2017.[73] Nevertheless, in the Tribunal's view, this trend is insufficient to establish a reasonable indication of *significant* price suppression. In the event of a final inquiry, the Tribunal intends to fully examine the trends in the later part of 2017 and early 2018.

[77] As another alleged indicator of price suppression, AMD submitted that the increase in domestic market prices did not keep pace with North American pricing for CRS. In particular, it referred to CRU data on the U.S. Midwest spot price for CRS, which increased by 38 percent from 2015 to 2017 (a greater increase than the increase in the domestic selling prices of like goods).[74] AMD argued that, given the integration of the North American market for CRS, the domestic market price should have tracked pricing trends and movements in the United States. Yet, average prices of like goods fell below the U.S. Midwest spot price starting in 2016, following the imposition of U.S. anti-dumping and countervailing duty measures on CRS from China and Korea. AMD argued that the U.S. trade measures effectively "neutralized" the injurious effects of the dumping and subsidizing in that market, allowing a return to pricing stability, whereas the Canadian market continued to experience price distortions arising from increasing volumes of dumped and subsidized imports in 2016 and 2017. AMD claimed that this market price discrepancy demonstrates that imports of low-priced subject goods into the Canadian market prevented increases in the price of like goods that would have otherwise occurred, which it submits constitutes price suppression.

[78] The Government of Vietnam submitted that a price differential between the domestic and the U.S. markets for CRS is a "normal economic phenomenon due to different market conditions", such as the U.S. government's policies to protect the U.S. steel industry. It also noted that the domestic selling prices of like goods increased from 2015 to 2017.

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69. *Russia – Anti-dumping Duties on Light Commercial Vehicles from Germany and Italy* (27 January 2017), WTO Doc. WT-DS479/R, Report of the Panel at paras. 7.57-7.61; *China – Countervailing and Anti-dumping Duties on Grain Oriented Flat-rolled Electrical Steel from the United States* (18 October 2012), WTO Doc. WT/DS414/AB/R, Report of the Appellate Body at paras. 130, 141, 152.
70. Exhibit PI-2018-002-03.01 (protected), Vol. 2A at 63.
71. *Ibid.* at 59.
72. Exhibit PI-2018-002-10.01 (protected), Vol. 4 at paras. 148-149.
73. Exhibit PI-2018-002-03.01 (protected), Vol. 2A at 59, 119.
74. Exhibit PI-2018-002-10.01 (protected), Vol. 4 at 49; Exhibit PI-2018-002-03.01 (protected), Vol. 2A at 63, 359.

[79] The Tribunal is not persuaded by AMD's assertion that the U.S. Midwest spot price for CRS is necessarily indicative of price increases that would have otherwise likely occurred for like goods sold in the domestic market "but for" the low-price competition from dumped and subsidized goods. In particular, the fact that CRU data include both subject and non-subject goods (e.g. automotive) in unknown proportions raises a question as to the usefulness of such data as a basis for comparison to domestic CRS prices.[75] As a result, at this point, the Tribunal finds the CRU data are insufficient to establish a reasonable indication of significant price suppression. The Tribunal expects that this relationship will be explored in more detail in the context of a final injury inquiry.

Conclusion Regarding Price Effects

[80] The Tribunal finds that the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods resulted in significant price undercutting, which, as discussed below, has led to injurious effects on the domestic industry's performance. However, there is insufficient evidence to reasonably indicate that the subject goods have caused *significant* price depression or price suppression.

Resultant Impact on the Domestic Industry

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

[82] AMD submitted that the dumping and subsidizing of the subject goods has caused injury to it in the form of increasing losses of domestic sales and market share to the subject goods since 2015, which have in turn led to reduced domestic production of like goods and a lower overall plant capacity utilization rate. The complaint included the domestic industry's financial results for 2015 to 2017, as well as AMD's financial results through the first quarter of 2018.[76] According to AMD, the recent cost-price squeeze has resulted in a drop in the domestic industry's profitability in the second half of 2017 as compared to the first half of the year (with a continued decline in AMD's profitability indicators in the first quarter of 2018).

[83] The domestic industry's consolidated performance indicators show a steady decline in the domestic production of like goods and domestic sales thereof from 2015 to 2017, year over year.[77]

[84] In terms of market share, the data provided in the complaint and the CBSA differ but the trends are the same: both indicate that, from 2015 to 2017, the subject goods gained significant market share and that it did so primarily at the expense of domestically produced like goods.[78] The market share of imports from non-subject countries declined minimally during the same period.

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75. The CRU data on the U.S. Midwest spot price for CRS includes both automotive and non-automotive CRS. Although AMD submitted that the CRU price is a base price that is "mainly non-automotive CRS", there is little supporting evidence of this claim. Exhibit PI-2018-002-09.01, Vol. 3 at para. 80.
76. Exhibit PI-2018-002-03.01 (protected), Vol. 2A at 59, 119.
77. *Ibid.* at 59.
78. *Ibid.* at 63*;* Exhibit PI-2018-002-03.02 (protected), Vol. 2B at 13-14.

[85] The domestic industry's consolidated financial results indicate substantial improvements in terms of both gross margin and net income.[79] The primary drivers of those improved results were a significant increase in total and unit net sales values in conjunction with an overall drop in total costs from 2015 to 2017. As discussed above, however, there was a minimal increase in unit COGM and COGS ($/MT) over the same period.

[86] While profitability increased overall in 2017, as compared to 2016, both the unit gross margin and net income ($/MT) peaked in the second quarter of 2017, followed by consecutive decreases in the third and fourth quarters due to the uptick in unit costs in those periods. The financial results in the most recent period are reasonably indicative that the strain of steadily decreasing domestic production and domestic sales of like goods is beginning to impact the domestic industry's profitability.

[87] The domestic industry's total plant capacity increased modestly from 2015 to 2017, but its capacity utilization rate declined (although it remained high).[80] According to AMD, its own high rate of capacity utilization is largely due to the fact that like goods are produced on the same equipment as other lower value-added products; however, it submitted that it has significant disposable capacity to increase production of like goods for domestic sale, as they are higher value-added products and citing other reasons that are confidential in nature.[81]

[88] The evidence further indicates that the number of direct employees involved in the domestic production of like goods fell from 2015 to 2017, resulting in fewer hours worked.[82] Wages remained flat over the same period.

[89] As stated above, the domestic producers provided a number of customer-specific allegations to demonstrate lost sales to imports of the subject goods, as well as examples of how they were forced to lower their prices in order to maintain sales or accounts in competition with the subject goods.[83] Given that the domestic industry experienced decreases in the volume of sales and market share, the Tribunal finds that the customer-specific allegations of lost sales reasonably indicates a causal relationship between the alleged dumping and subsidizing and the alleged injury to the domestic industry. The Tribunal will want to probe this evidence in more detail in the context of a final injury inquiry.

[90] On balance, the Tribunal finds that the evidence on the record discloses a reasonable indication that the dumping and subsidizing of the subject goods has caused material injury to the domestic industry.

[91] The parties opposed alleged that other non-dumping/non-subsidizing factors may have had an impact on the domestic industry, namely, that the domestic producers are unable to satisfy domestic demand for CRS (due to a lack of available capacity) and intra-industry competition from the service centres that sell cut-to-length CRS. Parties opposed did not, however, provide sufficient positive evidence to establish those claims at this preliminary stage.

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79. Exhibit PI-2018-002-03.01 (protected), Vol. 2A at 59.
80. Exhibit PI-2018-002-03.01 (protected), Vol. 2A at 61.
81. *Ibid.* at 121; Exhibit PI-2018-002-10.01 (protected), Vol. 4 at paras. 162-164.
82. Exhibit PI-2018-002-03.01 (protected), Vol. 2A at 62. Note: The employment data provided with the complaint did not include Stelco.
83. See paragraph 72.

[92] In the event of a final injury inquiry, the Tribunal will be particularly mindful of the various factors affecting the state of the domestic industry in order to fully establish the existence of a causal link between the dumping and subsidizing of the subject goods and material injury to the domestic industry.[84] At this stage, however, the record comprises sufficient relevant evidence disclosing a reasonable indication that increasing volumes of low-priced subject goods have, in and of themselves, caused material injury, particularly in 2017.

[93] For the foregoing reasons, the Tribunal finds that the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused material injury to the domestic industry.

[94] As there is a reasonable indication that the dumping and subsidizing of the subject goods have caused injury, the Tribunal will exercise judicial economy and not consider whether there is a reasonable indication that the dumping and subsidizing of the subject goods are threatening to cause injury.

CONCLUSION

[95] 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 and subsidizing of the subject goods have caused injury or are threatening to cause injury to the domestic industry.

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

Jean Bédard

Jean Bédard
Presiding Member

Rose Ritcey

Rose Ritcey
Member

84. The Tribunal does not consider that the service centres are a source of "intra-industry competition" as they are not domestic producers of CRS. However, in the context of the final injury inquiry the Tribunal will examine the structure of the domestic market and all the competitive forces at play.

Ann Penner

Ann Penner
Member