



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Expiry Review No. RR-2018-001

Carbon Steel Welded Pipe

*Order and reasons issued
Thursday, March 28, 2019*

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IN THE MATTER OF an expiry review, pursuant to subsection 76.03(3) of the *Special Import Measures Act*, of its order made on August 19, 2013, in Expiry Review No. RR-2012-003, continuing, without amendment, its finding made on August 20, 2008, in Inquiry No. NQ-2008-001, concerning:

**CARBON STEEL WELDED PIPE ORIGINATING IN OR EXPORTED
FROM THE PEOPLE'S REPUBLIC OF CHINA**

ORDER

The Canadian International Trade Tribunal, pursuant to subsection 76.03(3) of the *Special Import Measures Act*, has conducted an expiry review of its order made on August 19, 2013, in Expiry Review No. RR-2012-003, continuing, without amendment, its finding made on August 20, 2008, in Inquiry No. NQ-2008-001.

Pursuant to paragraph 76.03(12)(b) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby continues its order in respect of the aforementioned goods.

Jean Bédard

Jean Bédard

Presiding Member

Peter Burn

Peter Burn

Member

Randolph W. Heggart

Randolph W. Heggart

Member

Place of Hearing: Ottawa, Ontario
Dates of Hearing: February 6, 2019
Tribunal Panel: Jean Bédard, Presiding Member
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Randolph W. Heggart, Member
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STATEMENT OF REASONS

INTRODUCTION

[1] This is an expiry review, pursuant to subsection 76.03(3) of the *Special Import Measures Act*,¹ of the order made by the Canadian International Trade Tribunal (the Tribunal) on August 19, 2013, in Expiry Review No. RR-2012-003, continuing, without amendment, its finding made on August 20, 2008, in Inquiry No. NQ-2008-001, concerning the dumping and subsidizing of carbon steel welded pipe originating in or exported from the People's Republic of China (the subject goods).

[2] Under *SIMA*, findings of injury or threat of injury and the associated protection in the form of anti-dumping or countervailing duties expire five years from the date of the finding or, if one or more orders continuing the finding have been made, the date the last order made under paragraph 76.03(12)(b), unless an expiry review has been initiated before that date. The order in Expiry Review No. RR-2012-003 was therefore scheduled to expire on August 19, 2018. The Tribunal initiated its expiry review on May 24, 2018.

[3] The period of review (POR) in this expiry review is three full calendar years, from January 1, 2015, to December 31, 2017, as well as the interim period of January 1 to June 30, 2018. For comparative purposes, information was also collected for the interim period of January 1 to June 30, 2017.

PROCEDURAL BACKGROUND

[4] On May 25, 2018, the Canada Border Services Agency (CBSA) initiated an investigation to determine whether the expiry of the Tribunal's order was likely to result in the continuation or resumption of dumping and/or subsidizing.

[5] On October 19, 2018, the CBSA determined, pursuant to paragraph 76.03(7)(a) of *SIMA*, that the expiry of the order was likely to result in the continuation or resumption of dumping and subsidizing of the subject goods.²

[6] On October 22, 2018, the Tribunal requested domestic producers, importers and foreign producers of carbon steel welded pipe (CSWP) to complete questionnaires. There were no replies to the foreign producers' questionnaires. From the replies to the questionnaires that were received, and other information on the record, public and protected investigation reports were prepared and put on the record on December 13, 2018, with revisions made thereto on January 25, 2019.³

[7] As a result of the Tribunal's undertaking in the preliminary inquiry for *Carbon Steel Welded Pipe*⁴ (*CSWP 2018 PI*) to probe the issue of whether ASTM A500 Grade A round pipe under six inches fell within the scope of the product definition, which is similarly worded as the product definition of the subject goods, the Tribunal questionnaires separately collected data on ASTM A500

1. R.S.C. 1985, c. S-15 [*SIMA*].

2. Exhibit RR-2018-001-03, Vol. 1 at 1.

3. Exhibit RR-2018-001-05C, Vol. 1.1 at 6.

4. *Carbon Steel Welded Pipe* (18 September 2018), PI-2018-004 (CITT) at para. 26.

round pipe in the nominal size range of half inch up to and including six inches. The Tribunal directed staff of the Secretariat to the Tribunal to prepare two investigation reports for this inquiry – one including the ASTM A500 data and one excluding it.

[8] On December 4, 2018, the Tribunal sent a letter to the CBSA requesting clarification as to whether the CBSA applied the product definition in *CSWP 2018 PI* and Expiry Review No. RR-2012-003 as including products single-stencilled to meet the ASTM A500 specification for the purpose of imposing duties under *SIMA*, and, if so, the factors applied by the CBSA in assessing whether such products were so included. The CBSA responded to the letter on December 14, 2018, and that response was placed on the public record. On December 27, 2018, the Tribunal sent a further letter to the CBSA seeking clarification on a particular matter, to which the CBSA responded on January 7, 2019, and that response was also placed on the public record.

[9] On December 20, 2018, the Tribunal received submissions in support of a continuation of the finding from Nova Steel Inc. and Nova Tube Inc. (together, Nova), Atlas Tube Canada ULC (Atlas), DFI Corporation (DFI) and the United Steelworkers (USW). The Tribunal did not receive any submissions opposing the continuation of the order.

[10] On January 17, 2019, Nova requested that the Tribunal conduct the hearing by way of written submissions instead of an oral hearing, which was supported by the other parties. This request was granted by the Tribunal.

[11] On January 24, 2019, the Tribunal invited the parties to file submissions with respect to its intention to place the public transcripts of the testimonies of certain witnesses from the oral hearing in *Carbon Steel Welded Pipe*⁵ (*CSWP 2018 NQ*) on the record.⁶ After receiving submissions from the parties, closing arguments of counsel for USW was also placed on the record.

[12] The Tribunal did not receive any requests for product exclusions.

[13] The Tribunal held its file hearing on February 6, 2019.

PRODUCT

Product Definition

[14] The CBSA defined the subject goods as follows:⁷

Carbon steel welded pipe, commonly identified as standard pipe, in the nominal size range of 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-

5. *Carbon Steel Welded Pipe* (15 February 2010), NQ-2018-003 (CITT).

6. Testimonies of Messrs. Mark Rowlinson and Alain Duhamel of USW, Ms. Pina Santillo of Novamerican Steel, Messrs. Lawrence Cannon, Scott Jones, Alexandre Gravel of Nova, Winston Penny of Bolton and Roy Byrne of Crane Supply Valve Warehouse. See Exhibit RR-2018-001-39, Vol. 7.

7. Exhibit RR-2018-001-03A, Vol. 1 at 5.

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 and excluding (1) carbon steel welded pipe in the nominal pipe size of 1 inch, meeting the requirements of specification ASTM A 53, Grade B, Schedule 10, with a black or galvanized finish, and with plain ends, for use in fire protection applications, (2) carbon steel welded pipe in nominal pipe sizes of ½ inch to 2 inches inclusive, produced using the electric resistance welding process and meeting the requirements of specification ASTM A53, Grade A, for use in the production of carbon steel pipe nipples, and (3) carbon steel welded pipe in nominal pipe sizes of ½ inch to 6 inches inclusive, dual-stencilled to meet the requirements of both specification ASTM A252, Grades 1 to 3, and specification API 5L, with bevelled ends and in random lengths, for use as foundation piles, originating in or exported from the People's Republic of China.

Product Information

[15] The CBSA provided the following additional product information:⁸

[21] CSWP, also commonly referred to as standard pipe, covers a wide range of pipe products generally used in plumbing and heating applications for the low-pressure conveyance of water, steam, natural gas, air, and other liquids and gases. CSWP, or standard pipe, may also be used in air conditioning systems, in sprinkler systems for fire protection, as structural support for fencing, as piling, as well as for a variety of other mechanical and light load-bearing applications.

[22] The size of CSWP is generally specified by two values: a nominal pipe size (NPS) and a schedule. The NPS relates roughly to the inside diameter of the pipe while the schedule relates to the wall thickness. For a given NPS, the wall thickness will increase as the schedule number increases. For example, CSWP with an NPS of 1 inch (NPS 1) and made to ASTM A53, Schedule 40 requirements will have an outside diameter of 1.315 inches and a wall thickness of 0.133 inch while the same pipe meeting the requirements of ASTM A53, Schedule 80 will have an outside diameter of 1.315 inches and a wall thickness of 0.179 inch.

[23] Although CSWP is generally produced to industry standards such as ASTM A53, ASTM A135, ASTM A252, ASTM A589, ASTM A795, ASTM F1083, Commercial Quality and AWWA C200-97, it may also be produced to foreign standards such as BS1387 or to proprietary specifications as is often the case with fencing pipe. While standard pipe may be manufactured to any of the standards mentioned above, the ASTM A53 specification is the most common as it is considered to be the highest quality and is suitable for welding, coiling, bending and flanging.

[24] Standard pipe may be sold with a lacquer finish, or a black finish as it is sometimes referred to in the industry. It may also be sold in a galvanized finish which means it has been treated with zinc. Both types of finish are intended to inhibit rust although the galvanizing

8. Exhibit RR-2018-001-03A, Vol. 1 at 6.

process will deliver a superior result. Galvanized pipe will sell at a premium to black standard pipe because of this, and the fact that zinc costs much more than lacquer.

Product Scope

[16] There were limited submissions made during this expiry review with respect to the inclusion of single-stencilled products made to the specification ASTM A500. Mr. Gravel of Nova indicated in his witness statement that a subset of ASTM A500 round under six inches can be used in standard pipe applications that do not require hydro testing, such as water well casing (in regions other than Quebec and the Maritimes), fencing pipe and piling pipe.⁹ Moreover, Mr. Gravel confirmed that Nova Tube Inc. sells the ASTM A500 specification as “standard pipe”.¹⁰ Mr. Jones of Nova explained in his witness statement that ASTM A500 product exceeds the requirements for some of these applications, such as fencing, but it can be commercially feasible to use it as fencing pipe if the price is low enough.¹¹ Mr. Jones indicated that more and more of this specification is being imported for use in applications that do not require ASTM A53-B pipe, which is hydrostatically tested.¹² Both witnesses established that HSS, which is designed primarily for structural applications, is produced to the ASTM A500 specification.¹³

[17] The Tribunal recently determined in the final injury inquiry for *CSWP 2018 NQ* that the correct interpretation of the product definition excluded products single-stencilled to meet the specification ASTM A500.¹⁴ The Tribunal does not find that any of the submissions made in respect of ASTM A500 products for the purposes of this expiry review warrant a departure from the determination made in respect of the scope of the product definition in *CSWP 2018 NQ* as it relates to ASTM A500 products. As such, the Tribunal finds that the definition of the subject goods does not include single-stencilled ASTM A500 pipe and it will conduct this expiry review on that basis.¹⁵

LEGAL FRAMEWORK

[18] The Tribunal is required, pursuant to subsection 76.03(10) of *SIMA*, to determine whether the expiry of the order issued in Expiry Review No. RR-2012-003 in respect of the subject goods is likely to result in injury or retardation to the domestic industry.¹⁶ Pursuant to subsection 76.03(12) of *SIMA*, if the Tribunal determines that the expiry of the order is unlikely to result in injury, it is

9. Exhibit RR-2018-001-A-03, Vol. 11 at 14-15.

10. Exhibit RR-2018-001-A-03, Vol. 11 at 15. Mr. Jones referred to pipes meeting specification of ASTM A500 as among one of the most common specifications of standard pipe. Exhibit RR-2018-001-A-05, Vol. 11 at 8.

11. Exhibit RR-2018-001-A-05, Vol. 11 at 10.

12. Exhibit RR-2018-001-A-05, Vol. 11 at 10.

13. Exhibit RR-2018-001-A-05, Vol. 11 at 9; Exhibit RR-2018-001-A-03, Vol. 11 at 14.

14. *CSWP 2018 NQ* at paras. 30-39.

15. Having reached this conclusion, the Tribunal will refer to the analysis in the investigation report that excludes data collected on ASTM A500 products.

16. Subsection 2(1) of *SIMA* defines “injury” as “material injury to the domestic industry” and “retardation” as “material retardation of the *establishment* of a domestic industry” [emphasis added]. Given that there is currently an established domestic industry; the issue of whether the expiry finding is likely to result in retardation does not arise in this expiry review.

required to rescind the order. However, if it determines that the expiry of the order is likely to result in injury, the Tribunal is required to continue the order, with or without amendment.

[19] Before proceeding with its analysis of the likelihood of injury, the Tribunal must first determine what constitutes “like goods”. Once that determination has been made, the Tribunal must determine what constitutes the “domestic industry”.

[20] The Tribunal must also determine whether it will make an assessment of the cumulative effect of the dumping and subsidizing of the subject goods (i.e. whether it will cross-cumulate the effect).

LIKE GOODS AND CLASSES OF GOODS

[21] In order for the Tribunal to determine whether the resumed or continued dumping and subsidizing of the subject goods is likely to cause material injury to the domestic producers of like goods, it must determine which domestically produced goods, if any, constitute like goods in relation to the subject goods. The Tribunal must also assess whether there is, within the subject goods and the like goods, more than one class of goods.¹⁷

[22] Subsection 2(1) of *SIMA* defines “like goods”, in relation to any other goods, as follows:

- a. goods that are identical in all respects to the other goods, or
- b. in the absence of any goods described in paragraph (a), goods the uses and other characteristics of which closely resemble those of the other goods.

[23] In deciding the issue of like goods when goods are not identical in all respects to the other goods, the Tribunal typically considers a number of factors, including the physical characteristics of the goods (such as composition and appearance) and their market characteristics (such as substitutability, pricing, distribution channels, end uses and whether the goods fulfill the same customer needs).¹⁸

[24] The Tribunal has previously concluded that domestically produced CSWP are like goods to the subject goods and that there is a single class of goods. This was confirmed in the order under review, *CSWP 2018 NQ* and in proceedings involving CSWP from Chinese Taipei, the Republic of India, the Sultanate of Oman, the Republic of Korea, Thailand and the United Arab Emirates.¹⁹ The supporting parties agree that the facts in respect of CSWP continue to support this conclusion submitting that CSWP produced by the domestic industry is a commodity product that competes directly with the subject goods. Additionally, domestically produced CSWP has the same physical

17. Should the Tribunal determine that there is more than one class of goods in this inquiry, it must conduct a separate injury analysis and make a decision for each class that it identifies. See *Noury Chemical Corporation and Minerals & Chemicals Ltd. v. Pennwalt of Canada Ltd. and Anti-dumping Tribunal*, [1982] 2 F.C. 283 (F.C.).

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

19. *Carbon Steel Welded Pipe* (11 December 2012), NQ-2012-003 (CITT) at para. 63; *Carbon Steel Welded Pipe* (15 October 2018), RR-2017-005 (CITT) at para. 19.

characteristics and end uses,²⁰ and is sold through the same channels of distribution as the subject goods. Nova notes that not all CSWP is interchangeable but that there is downward substitutability of higher-grade CSWP for applications which would take a lower grade.

[25] The Tribunal sees no reason to depart from its previous finding that domestically produced CSWP constitutes like goods to the subject goods.

DOMESTIC INDUSTRY

[26] Subsection 2(1) of *SIMA* defines “domestic industry” as follows:

the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods except that, where a domestic producer is related to an exporter or importer of dumped or subsidized goods, or is an importer of such goods, “domestic industry” may be interpreted as meaning the rest of those domestic producers.

[27] The Tribunal must therefore determine whether there is a likelihood of injury to the domestic producers as a whole or those domestic producers whose production represents a major proportion of the total production of like goods.²¹

[28] There are currently five producers of CSWP in Canada: Atlas, Bolton Steel Tube Co. Ltd. (Bolton),²² DFI, Evraz Inc. NA Canada (Evraz) and Nova.²³ Nova is the largest domestic producer, accounting for the majority of total sales from domestic production throughout the POR.²⁴ It bears noting that the financial data and performance indicators in the investigation report include only

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20. Mr. Jones of Nova noted that CSWP is generally produced to an ASTM or other recognized specification and such products, whether domestic or foreign, are interchangeable in almost any application with those made to the same specification. Exhibit RR-2018-001-A-05, Vol. 11 at 18.
 21. The term “major proportion” means an important, serious or significant proportion of total domestic production of like goods and not necessarily a majority: *Japan Electrical Manufacturers Assn. v. Canada (Anti-Dumping Tribunal)*, [1986] F.C.J. No. 652 (F.C.A.); *McCulloch of Canada Limited and McCulloch Corporation v. Anti-Dumping Tribunal*, [1978] 1 F.C. 222 (F.C.A.); *China – Anti-dumping and countervailing duties on certain automobiles (US)*, (23 May 2014), WTO Docs. WT/DS440/R, Report of the Panel, at para. 7.207; *European Community – Definitive anti-dumping measures on certain iron or steel fasteners (China)*, (15 July 2011), WTO Docs. WT/DS397/AB/R, Report of the Appellate Body, at paras. 411, 412, 419; *Argentina – Definitive Anti-dumping duties on poultry (Brazil)*, (22 April 2003), WTO Docs. WT/DS241/R, Report of the Panel, at para. 7.341.
 22. Although Bolton only reported sales of ASTM A500 product to the Tribunal in its response to the Producers’ Questionnaire, Mr. Penny of Bolton testified at the hearing of *CSWP 2018 NQ* that Bolton produces ASTM A53 galvanized pipe for specified jobs and noted that fence pipe is not always produced to a particular specification. For example, commercial quality steel can be used for fence pipe. As such, despite Bolton’s questionnaire response, the Tribunal is satisfied that Bolton is a domestic producer. See Exhibit RR-2018-001-39, Vol. 7 at 126 and Exhibit RR-2018-003-16.06C (protected), Vol. 4 at 11. Bolton also failed to provide accurate and usable financial data.
 23. The Tribunal determined in *CSWP 2018 NQ* that the work performed at Nova Tube’s St. Patrick facility amounts to domestic production of like goods. See *CSWP 2018 NQ* at paras. 64-69.
 24. Exhibit RR-2017-001-06C (protected), Tables 8, 10, Vol. 2.1.

Atlas, Nova and DFI, which together account for almost all domestic production.²⁵ Evraz did not provide financial information requested in the Tribunal's questionnaire. The Tribunal noted in its decision in *CSWP NQ 2018* that this was due to the nature of Evraz's production of CSWP.²⁶

CROSS-CUMULATION

[29] The Tribunal must also determine whether it will make an assessment of the cumulative effect of the dumping and subsidizing of the subject goods. In Inquiry No. NQ-2008-001, the Tribunal stated that it would not differentiate the effects resulting from the dumping of the subject goods from the effects resulting from the subsidizing of the same goods for the purposes of its analysis. The Tribunal explained that it was not possible to isolate the effects caused by the dumping of goods from those caused by the subsidizing of the same goods because they are so closely intertwined that it was impossible to unravel them so as to allocate specific or discrete portions to the dumping and subsidizing.²⁷ The Tribunal adopted the same approach in Expiry Review No. RR-2012-003.²⁸

[30] The Tribunal was presented with no evidence or argument that warrants departing from this approach in the present expiry review. Therefore, in its analysis below, the Tribunal has cumulatively assessed the likely impact of the continuation or resumption of dumping and subsidizing of the subject goods on the domestic industry should the order be rescinded.

LIKELIHOOD OF INJURY ANALYSIS

[31] An expiry review is forward-looking.²⁹ It follows that evidence from the POR during which an order or a finding was being enforced is relevant insofar as it bears upon the prospective analysis of whether the expiry of the order or finding is likely to result in injury.³⁰

[32] There is no presumption of injury in an expiry review; findings must be based on positive evidence, in compliance with domestic law and consistent with the requirements of the World Trade Organization.³¹ In the context of an expiry review, positive evidence can include evidence based on past facts that tend to support forward-looking conclusions.³²

[33] In making its assessment of likelihood of injury, the Tribunal has consistently taken the view that the focus should be on circumstances that can reasonably be expected to exist in the near to

25. Exhibit RR-2017-001-06C (protected), Table 3, Vol. 2.1.

26. *CSWP NQ 2018* at para. 73.

27. *Carbon Steel Welded Pipe* (20 August 2008), NQ-2008-001 (CITT) at paras. 50-52.

28. *Carbon Steel Welded Pipe* (19 August 2013), RR-2012-003 (CITT) at paras. 29-30.

29. *Certain Dishwashers and Dryers* (procedural order dated 25 April 2005), RR-2004-005 (CITT) at para. 16.

30. *Copper Pipe Fittings* (17 February 2012), RR-2011-001 (CITT) at para. 56. In *Thermoelectric Containers* (9 December 2013), RR-2012-004 (CITT) at para. 14, the Tribunal stated that the analytical context pursuant to which an expiry review must be adjudged often includes the assessment of retrospective evidence supportive of prospective conclusions. See also *Aluminum Extrusions* (17 March 2014), RR-2013-003 (CITT) at para. 21.

31. *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (16 August 2006), RR-2005-002 (CITT) at para. 59.

32. *Thermoelectric Containers* at para. 14; *Aluminum Extrusions* at para. 21.

medium term, which is generally considered to be within 12 to 24 months from the date on which the finding or order would expire.

[34] Nova submits that due to the current volatility in the Canadian and global CSWP markets, a shorter period of 12 to 18 months is appropriate. The Tribunal agrees.³³

[35] Subsection 37.2(2) of the *Special Import Measures Regulation*³⁴ lists factors that the Tribunal may consider in addressing the likelihood of injury in cases where the CBSA has determined that there is a likelihood of continued or resumed dumping. The factors that the Tribunal considers relevant in this expiry review are discussed in detail below.

Changes in Market Conditions

[36] In order to assess the likely volumes and prices of the subject goods and their impact on the domestic industry if the order is rescinded, the Tribunal will first consider changes in international and domestic market conditions.³⁵

Domestic Market Conditions

[37] The Canadian market for CSWP is mature: there is a known customer base and growth opportunities tend to be limited.³⁶ While the demand for CSWP increased during the POR, this is expected to remain relatively stable in the foreseeable future.³⁷

[38] The majority of sales in Canada are made to distributors, many of which are large companies with numerous locations across Canada. Although CSWP comes in a wide range of specifications, the most common is the ASTM A53 specification, which is considered to be the highest quality and is used in plumbing and heating applications. Due to its quality, it generally has the highest cost of production compared to the other types of CSWP.³⁸ Other applications for standard pipe include piling pipe (ASTM A252), water well casing (ASTM A589), fire protection (A795 or A53) and fencing pipe (ASTM F1083 or commercial quality).

[39] CSWP is a commodity product and therefore price is a determinative factor in purchasing decisions.³⁹ Mr. Gravel of Nova testified, for example, that when all else is equal in terms of quality, finish and delivery, price is the most important consideration, meaning that whoever offers the best

33. See also *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (12 August 2016), RR-2015-002 (CITT) at para. 56, where the Tribunal also accepted a 12-to-18-month time frame.

34. S.O.R./84-927 [*Regulations*].

35. See paragraph 37.2(2)(j) of the *Regulations*.

36. See Exhibit RR-2018-001-A-03 at 3. The Tribunal notes DFI's submissions with respect to the impact of economic downturns from the energy sector and its impact on demand for well drilling. Exhibit RR-2018-001-C-04 at 5. However, the Tribunal is of the view that demand for standard pipe relating to the energy sector should be limited as oil and gas pipe made to API specifications are excluded from the product definition.

37. See Exhibit RR-2018-001-A-03, Vol. 11 at 3-4; Exhibit RR-2018-001-39, Vol. 7 at 149. Statistical data for building permits suggest some expansion in the construction sector: Exhibit RR-2018-001-05C, Table 24, Vol. 1.1. Real GDP is forecasted to expand by 2.2 percent in 2018 and 2019: Exhibit RR-2018-001-A-02, Vol. 12 at 440.

38. Exhibit RR-2018-001-A-05, Vol. 11 at 8.

39. Exhibit RR-2018-001-A-03, Vol. 11 at 5, 6.

price tends to win the sale.⁴⁰ Likewise, Mr. Byrne of Crane also testified that, all things being equal in terms of standard and quality, the ultimate consideration for any purchaser is price (or more specifically, the total landed cost).⁴¹ Prices are structured on a “cost plus” model, i.e. a base price, plus additional costs for value-added items, such as coating (e.g. galvanized), end finishing (e.g. roll-grooved or threaded and coupled) and different wall thickness or diameter sizes.⁴² Moreover, prices for CSWP are transparent throughout the market as suppliers maintain their intelligence with respect to pricing trends and offers from foreign and domestic suppliers.⁴³

[40] The domestic market for CSWP increased in volume every year of the POR: specifically, by 5 percent in 2016 and 26 percent in 2017. The 2018 interim period was 6 percent higher than the 2017 interim period.⁴⁴ That said, the majority of the total market was represented by sales of imports, which increased by 10 percent in 2016 and 27 percent in 2017.⁴⁵ Market volumes for imports in the 2018 interim period are 15 percent higher than the same period in 2017. It is also noted that CSWP from Pakistan, the Philippines, Turkey and Vietnam had the highest proportion of the non-subject market share followed by imports from the United States, and lastly imports from other countries. While the subject goods had the smallest share of the market, their presence in the market was nonetheless noteworthy.⁴⁶

[41] With respect to pricing, Nova indicated that non-subject imports, particularly from Pakistan, the Philippines, Turkey and Vietnam, have placed downward price pressures into the Canadian market for CSWP.⁴⁷

[42] Another change on the supply side relates to raw material costs. Nova indicated that rising direct material costs due to significant increases in the price of hot-rolled sheet impacted performance.⁴⁸ According to CRU data, U.S. Midwest prices of hot-rolled coil increased by CDN \$126/tonne in 2017; the 2018 interim period price of HRC was CDN \$231/tonne higher than 2017 interim period prices.⁴⁹ However, recent data shows U.S. Midwest prices declining for the period from July 2018 to January 2019.⁵⁰

International Market Conditions

Global Trade Measures Against Steel-related Products

[43] Nova submitted that the restrictions against the entry of Chinese steel products in various jurisdictions in response to the global steel excess capacity crisis, described further below, will

40. Exhibit RR-2018-001-39, Vol. 7 at 62.

41. Exhibit RR-2018-001-39, Vol. 7 at 152.

42. Exhibit RR-2018-001-A-03, Vol. 11 at 5; Exhibit RR-2018-001-39, Vol. 7 at 62-63.

43. Exhibit RR-2018-001-A-03, Vol. 11 at 5.

44. Exhibit RR-2018-001-06C (protected), Table 8, Vol. 2.1; Exhibit RR-2018-001-05C, Table 9, Vol. 1.1.

45. Exhibit RR-2018-001-06C (protected), Table 8, Vol. 2.1; Exhibit RR-2018-001-05C, Table 9, Vol. 1.1.

46. Exhibit RR-2018-001-06C (protected), Table 10, Vol. 2.1.

47. Exhibit RR-2018-001-39, Vol. 7 at 70-71; Exhibit RR-2018-001-A-05, Vol. 11 at 14.

48. Exhibit RR-2018-001-39, Vol. 7 at 68.

49. Exhibit RR-2018-001-05C, Table 24, Vol. 1.1.

50. Exhibit RR-2018-001-38.01 (protected), Vol. 8 at 1-2.

increase the likelihood that China will look to the Canadian CSWP market to recover lost sales. In this regard, Nova refers to the 25 percent tariff imposed on steel imports in the United States on March 8, 2018 (Section 232 Measures).⁵¹ The risk of diversion is pronounced for subject goods for which the United States has historically been an important export market. However, the Tribunal notes that these measures are in addition to previous countervailing and anti-dumping orders issued in the United States against circular welded carbon quality steel pipe from China, first imposed on June 22, 2008, and which were continued in October 2013.⁵²

[44] On July 1, 2018, in response to the U.S. Section 232 Measures, Canada imposed a 25 percent retaliatory tariff on U.S. steel imports, including CSWP. Despite some optimism that the domestic industry would benefit from the retaliatory tariff by supplying demand previously met by products from the United States, Mr. Jones testified that this was not the case due to the entry of diverted imports into Canada.⁵³

[45] In addition, the European Union initiated a safeguard investigation in March 2018 and implemented trade measures against imports of steel products, including CSWP. Of particular concern to the European Union was the prospect of diversion resulting from the Section 232 Measures in the United States. The European Union's safeguard measures take the form of a tariff rate quota aimed at preserving historical levels of imports, while placing a 25 percent tariff on imports that rise above these levels. The European Commission notified the WTO on January 2, 2019, of its intention to impose definitive safeguard measures against certain steel products, which includes welded pipe.⁵⁴ The Tribunal notes that goods similar to the subject goods have been subject to anti-dumping measures in the European Union since 2008.⁵⁵

[46] In April 2018, Turkey followed suit by also initiating a steel safeguard investigation. The investigation, which covers CSWP among other steel products, is described as a precautionary measure against the impact of Section 232 Measures. The investigation may take anywhere from 9 to 15 months.⁵⁶

[47] Nova submitted that there is a significant diversion risk stemming from the United States and the European Union, both being large markets for CSWP. Based on statistical data generated by the U.S. Department of Commerce, approximately 900,000 tonnes of standard pipe (excluding Canadian exports) was imported into the United States in 2017.⁵⁷ From 2015 to 2017, the average annual volume of imports into the European Union under HS Code 7306.30 amounted to approximately 614,000 tonnes.⁵⁸ From these figures, Nova estimated the general diversion risk caused by trade restrictions in the United States to be 806,219 tonnes (the diversion risk specifically from Chinese exports to be over 60,000 tonnes) and a diversion risk of 47,000 tonnes if the European Union were to impose a 100 percent quota.

51. These measures were implemented pursuant to Section 232 of the *Trade Expansion Act of 1962*.

52. Exhibit RR-2018-001-23.02, Vol. 7 at 1482-1501.

53. Exhibit RR-2018-001-39, Vol. 7 at 67.

54. Exhibit RR-2018-001-37.05, Vol. 1.

55. Exhibit RR-2018-001-12.10, Vol. 1.4 at 98; Exhibit RR-2018-001-23.02, Vol. 7 at 1143.

56. Exhibit RR-2018-001-A-01, Vol. 11, Public Attachment 6 at 330.

57. Exhibit RR-2018-001-A-05, Vol. 11 at 28.

58. Exhibit RR-2018-001-A-05, Vol. 11 at 31.

[48] The Tribunal notes the statistical data for past imports of standard pipe includes products outside the product definition and it is not possible to discern the level of diversion risk relating to imports of products meeting the product definition from both subject and non-subject countries. However, the Tribunal finds that they are nonetheless indicative of an existing diversion risk caused by the recent proliferation of trade measures concerning steel imports, including CSWP. Testimony regarding the impact of Section 232 Measures was also heard during the hearing of *CSWP NQ 2018*.⁵⁹

[49] Domestic producers have continued to export like goods in the United States despite the imposition of the Section 232 Measures. Although the data indicates that levels of exports sales are slightly higher in the 2018 interim period, domestic producers have indicated that they have less access to the U.S. market.⁶⁰

Global excess steel capacity

[50] The trade measures described above can largely be attributed to the structural imbalance prevalent in the market. While global steel demand was forecasted to rise in 2018 and 2019,⁶¹ as noted by Nova, global steel excess capacity remains an issue. As submitted by Nova, based on OECD estimates of crude steel making capacity in 2017, which was reported as 2.25 billion tonnes, excess capacity in this period was 561 million tonnes.⁶² In 2018, global steel capacity was reported to have risen to 2.29 billion tonnes.⁶³ China's overcapacity of steel alone is also noteworthy, reportedly accounting for nearly two-thirds of global excess capacity in 2015.⁶⁴ In 2015, China's overcapacity was reported to be 425 million tons (i.e. 385 million tonnes).⁶⁵

[51] Nova submitted that the abundant supply of low-priced hot-rolled steel (HRS) feedstock threatens the CSWP industry. This threat comes from mills being able to convert HRS into low-priced CSWP on the same equipment as other pipe products and also being incentivized to do so in order to maintain sales and capacity utilization. Nova pointed out that trade remedy findings against HRS would restrict market access for HRS producers making feedstock for CSWP more readily available. The Tribunal notes that Canada currently has findings against HRS from major exporting countries, including China, Chinese Taipei, Brazil, India and the Ukraine.

[52] HRS is also feedstock for producing hollow structural sections (HSS), a product that is imported into Canada from China.⁶⁶ Nova submitted that HSS may be made on the same equipment, using the same production processes as for CSWP and that this interchangeability allows HSS producers to increase their CSWP production. Although Nova has indicated that it produces both HSS and CSWP at its facilities, the Tribunal finds based on the testimonial evidence in *CSWP NQ*

59. Exhibit RR-2018-001-39, Vol. 7 at 10, 66-67.

60. Exhibit RR-2018-001-39, Vol. 7 at 66.

61. Exhibit RR-2018-001-23.02, Vol. 7 at 817.

62. Exhibit RR-2018-001-A-01, Vol. 11 at 344-345.

63. Exhibit RR-2018-001-A-01, Vol. 11 at 380.

64. Exhibit RR-2018-001-23.02, Vol. 7 at 443.

65. Exhibit RR-2018-001-23.02, Vol. 7 at 443.

66. Exhibit RR-2018-001-A-01, Vol. 11, Public Attachment 18 at 538-549.

2018 that the production of HSS and CSWP occurs at different stages and, ultimately, at separate facilities operated by Nova Tube and Nova Steel.⁶⁷ HSS, an unfinished product, is produced at the Baie-d'Urfé and Delta facilities and domestic production of CSWP occurs at the St. Patrick facility.⁶⁸ Accordingly, it appears that whether CSWP may be produced by an HSS producer depends on whether it has the equipment or facilities to undertake the finishing operations to produce CSWP. No submissions were made in respect of Chinese producers capable of producing both HSS and CSWP.

[53] Based on data from Simdex Metal Tube Manufacturers Worldwide Guide, Nova estimated the annual capacity for CSWP in China to be in excess of 12 million tonnes, which in its view is a conservative estimate.⁶⁹ However, the Tribunal is not able to confirm the extent to which Nova's estimates may in fact be overstated by the inclusion of pipe falling outside the product definition. Nevertheless, the estimated amount dwarfs the Canadian CSWP market. Moreover, CSWP production is capital-intensive in nature with high fixed costs which would likely incentivize mills to pursue sales even at low prices to increase capacity utilization.⁷⁰ The potential vulnerability of the domestic industry is apparent.

Likely Performance of the Domestic Industry if the Order Is Continued

[54] The Tribunal will examine the likely performance of the domestic industry were the order to be continued, taking into account that industry's recent performance.⁷¹ For the purposes of this analysis, the Tribunal will consider whether there are any relevant factors other than the dumping and/or subsidizing of the subject goods affecting or likely to affect the domestic industry's performance in the near to medium term, and in this case the next 12 to 18 months.⁷²

[55] Nova submitted that it is presently in a vulnerable financial position. During the hearing for *CSWP NQ 2018*, Mr. Cannon of Nova noted that after marginal profits in 2016, the company has not performed well.⁷³ As explained by Mr. Cannon in his witness statement, Nova suffered financial losses in 2017 and 2018.⁷⁴ One reason noted for its performance was insufficient market pricing due to low-priced competition from imports from Pakistan, Turkey, the Philippines and Vietnam. Poor performance was also attributed to pressures from rising direct material costs, which could not be transferred through to selling prices.⁷⁵ Financial results for Nova were noted as having improved

67. Exhibit RR-2018-001-39, Vol. 7 at 106, 114, 115.

68. *CSWP NQ 2018* at paras. 65-69.

69. Exhibit RR-2018-001-A-01, Vol. 11 at 27, 28; Exhibit RR-2018-001-A-02A (protected), Vol. 12.

70. *Carbon Steel Welded Pipe* (15 October 2018), RR-2017-005 (CITT) at para. 68.

71. See paragraph 37.2(2)(c) of the *Regulations. Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate* (7 January 2014), RR-2013-002 (CITT) at para. 85. In *Thermoelectric Containers*, the Tribunal stated the requirement in an expiry review is that the Tribunal draw logical conclusions from the relevant information before it, and that information will often appropriately include the performance of the domestic and foreign industries during the POR, when anti-dumping and countervailing duties were in place (at para. 14). See also *Aluminum Extrusions* at para. 21.

72. See paragraph 37.2(2)(k) of the *Regulations*.

73. Exhibit RR-2018-001-39, Vol. 7 at 70.

74. Exhibit RR-2018-001-A-07, Vol. 11 at 4.

75. Exhibit RR-2018-001-39, Vol. 7 at 70-71; Exhibit RR-2018-001-A-05, Vol. 11 at 22; Exhibit RR-2018-001-A-07, Vol. 11 at 4.

marginally in the first half of 2018 following the initiation of the inquiry against the aforementioned countries and increases in selling prices of CSWP.⁷⁶

[56] The unit value (dollar-per-tonne) gross margin for domestic sales declined in each year of the POR. Despite a rise in the unit net sale value in 2017 from 2016, there was a notable increase in the unit value of cost of goods sold (COGS) during that same year. However, the unit net sales value and unit gross margin for the 2018 interim period were higher than the 2017 interim period.⁷⁷ Financial performance from export sales has generally been more positive over the POR.⁷⁸

[57] Total production volumes increased by 10 percent in 2016 and 15 percent in 2017, for an overall increase of 26 percent from 2015 to 2017.⁷⁹ Total production decreased 3 percent in interim 2018 as compared to interim 2017.⁸⁰ However, the domestic industry's share of domestic production for domestic consumption decreased from 2015 to 2017.⁸¹ Total production trends can be attributed to increased production for export sales, which rose by 69 percent.⁸² In 2017, production for export sales fell by 4 percent while production for domestic sales increased by 7 percent.⁸³ Production for domestic sales in the 2018 interim period was 2 percent lower than the 2017 interim period. However, total production levels in the 2018 interim period remained steady with slightly higher production levels for export sales compared to the 2017 interim period.⁸⁴

[58] Capacity utilization rates were very low throughout the POR, both in terms of production for domestic sales and production for export sales, but have generally remained steady.⁸⁵

[59] Domestic sales from domestic production decreased by 5 percent in 2016 and increased by 25 percent in 2017, for an overall increase of 18 percent from 2015 to 2017.⁸⁶ This overall increase in domestic sales coincided with a 33 percent increase in the total apparent market.⁸⁷ At the same time, sales of imports increased significantly, by 10 percent in 2016 and then 27 percent in 2017 for an overall increase of 40 percent.⁸⁸ Despite a growing market over the POR, the domestic industry's market share fell 3 percentage points in 2016 and remained at that level through 2017.⁸⁹ Meanwhile, market share of sales from imports increased 3 percentage points in 2016 and remained there through 2017.⁹⁰

76. Exhibit RR-2018-001-A-05, Vol. 11 at 14.

77. Exhibit RR-2018-001-06C (protected), Table 17, Vol. 2.1.

78. Exhibit RR-2018-001-06C (protected), Table 18, Vol. 2.1.

79. Exhibit RR-2018-001-05C, Table 3, Vol. 1.1.

80. Exhibit RR-2018-001-05C, Table 3, Vol. 1.1.

81. Exhibit RR-2018-001-06C (protected), Table 22, Vol. 2.1. This is also true when Evraz's production volumes are included: Exhibit RR-2018-16.02B (protected), Vol. 4 at 13.

82. Exhibit RR-2018-001-05C, Table 21, Vol. 1.1.

83. Exhibit RR-2018-001-05C, Table 21, Vol. 1.1.

84. Exhibit RR-2018-001-05C, Table 21, Vol. 1.1.

85. Exhibit RR-2018-001-06C (protected), Table 20, Vol. 2.1.

86. Exhibit RR-2018-001-06C (protected), Table 8, Vol. 2.1; Exhibit RR-2018-001-05C, Table 9, Vol. 1.1.

87. Exhibit RR-2018-001-05C, Table 8, Vol. 2.1.

88. Exhibit RR-2018-001-06C (protected), Table 8, Vol. 2.1; Exhibit RR-2018-001-05C, Table 9, Vol. 1.1.

89. Exhibit RR-2018-001-06C (protected), Table 10, Vol. 2.1; Exhibit RR-2018-001-05C, Table 11, Vol. 1.1

90. Exhibit RR-2018-001-06C (protected), Table 10, Vol. 2.1; Exhibit RR-2018-001-05C, Table 11, Vol. 1.1.

[60] Direct and indirect employment numbers remained steady throughout the POR; however, the total number of employees in the 2018 interim period was 9 percent higher than the same period in 2017. Total wages in 2016 increased by 7 percent followed by a 5 percent decrease in 2017. Direct and indirect hours worked followed similar trends.⁹¹ Total productivity increased over the POR.⁹²

[61] On the whole, the data suggests that the domestic industry is not faring particularly well. In its recent injury finding in *CSWP NQ 2018*, the Tribunal found that the dumping of CSWP from Pakistan, Vietnam, Turkey and the Philippines had caused material injury to the domestic industry. While the CSWP from those four countries is now subject to the disciplines of dumping duties, the domestic industry will still need time to recover from that injury. Over the next 12 to 18 months, the domestic industry will face the threat of products being diverted from export markets that are now protected by trade measures against steel products, including CSWP. The E.U. safeguard described above will remain in force and the Section 232 Measures in the United States will likely remain in place for at least a part of this time period as well. Given the relative size of the entire Canadian market for CSWP, the threat of import volumes that could be diverted from the United States alone are significant.⁹³ Furthermore, the diversion risk from the United States is likely greater than the European Union given the way that the E.U. safeguard measures are structured (namely, the fact that duties are applicable only when import levels rise beyond historical averages).⁹⁴ This risk will likely be greater with respect to foreign sources which are not currently subject to trade measures in Canada.

[62] With the recent injury finding in *CSWP NQ 2018*, domestic industry may not face significant competition from the subject countries of that inquiry. Mr. Jones of Nova testified that a finding of injury would assist Nova in regaining market share.⁹⁵ However, given the injury sustained by the domestic industry as a result of imports from those countries, recovery will likely not be immediate and the domestic industry may remain vulnerable to low-priced imports from countries that were not the subject of that inquiry. The market share of imports from these other countries is 11 percentage points higher in the 2018 interim period.⁹⁶ The domestic industry will likely have to compete with other sources of low-cost CSWP imports that replace the subject countries in *CSWP NQ 2018* in the Canadian market. For instance, the Tribunal heard testimony during the hearing regarding the emergence of Indonesian CSWP in the market.⁹⁷

[63] Another possible challenge for the domestic industry over the next 12 to 18 months is the cost of raw materials. As discussed above, the domestic industry has experienced increased costs of direct materials (mainly HRC), and its COGS (\$/tonne) increased significantly in 2017.⁹⁸ Recent data of U.S. Midwest prices show a steady decline in HRC prices from July 2018.⁹⁹ However, recent

91. Exhibit RR-2018-001-05C, Table 21, Vol. 1.1; Exhibit RR-2018-001-06C (protected), Table 20, Vol. 2.1.

92. Exhibit RR-2018-001-05C, Table 21, Vol. 1.1; Exhibit RR-2018-001-06C (protected), Table 20, Vol. 2.1.

93. Exhibit RR-2018-001-06C (protected), Table 8, Vol. 2.1.

94. *Carbon Steel Welded Pipe* (15 October 2018), RR-2017-005 (CITT) at para. 87.

95. Exhibit RR-2018-001-39, Vol. 7 at 74.

96. Exhibit RR-2018-001-05C, Table 11, Vol. 1.1; Exhibit RR-2018-001-06C (protected), Table 10, Vol. 2.1.

97. Exhibit RR-2018-001-39, Vol. 7 at 145, 165, 177-178.

98. Exhibit RR-2018-001-06C (protected), Table 17, Vol. 2.1.

99. Exhibit RR-2018-001-38.01 (protected), Vol. 8 at 1-2.

price trends do not eliminate the possibility of further price fluctuations that may adversely impact performance of the domestic industry in the near future.

[64] The domestic industry will likely also need to contend with the inventory of CSWP that was accumulated in the Canadian market through 2018. Mr. Jones of Nova described inventory to be at “extremely high” levels as a result of the surge of imports prior to preliminary duties being imposed on the subject countries in *CSWP NQ 2018* and that sales figures are currently “way off” as a result.¹⁰⁰ That said, no estimates were provided regarding the period of time it would take to dispose of the current inventory in the domestic market.

[65] In summary, there will likely be a number of challenges facing the industry even if the order is continued. However, for the reasons below, the Tribunal finds that the domestic industry’s performance would nonetheless be materially injured if the order is rescinded.

Likely Performance of the Domestic Industry if the Order Is Rescinded

Likely Import Volume of Dumped and Subsidized Goods

[66] Paragraph 37.2(2)(a) of the *Regulations* directs the Tribunal to consider the likely volume of the dumped or subsidized goods if the order is allowed to expire, and, in particular, whether there is likely to be a significant increase in the volume of imports of the dumped or subsidized goods, either in absolute terms or relative to the production or consumption of like goods.

[67] The Tribunal’s assessment of the likely volumes of dumped and subsidized imports encompasses the likely performance of the foreign industry, the potential for the foreign producers to produce goods in facilities that are currently used to produce other goods, evidence of the imposition of anti-dumping and/or countervailing measures in other jurisdictions, and whether measures adopted by other jurisdictions are likely to cause a diversion of the subject goods to Canada.¹⁰¹

[68] The Tribunal finds that the rescission of the order would result in the resumption of large volumes of subject goods being diverted to Canada for the reasons that follow.

[69] First, with trade measures affecting CSWP exports to other major markets, the rescission of the order will make the Canadian market a much more attractive destination for producers of the subject goods.

[70] Second, the excess capacity of CSWP producers in China means they would have a significant incentive to try to export more volumes to Canada.

[71] Third, the continued presence of subject imports throughout the POR¹⁰² despite the imposition of dumping and countervailing duties is indicative of continued interest from Chinese producers in the Canadian market. Although the subject imports were in relatively small volumes,

100. Exhibit RR-2018-001-39, Vol. 7 at 113.

101. Paragraphs 37.2(2)(a), (d), (f), (h) and (i) of the *Regulations*.

102. Exhibit RR-2018-001-05C, Table 8, Vol. 1.1.

their presence reflects that networks for the distribution of subject goods remain established in Canada and this may facilitate rapid re-entry of larger volumes if the order is rescinded.

[72] Fourth, Canada already has relatively higher prices for CSWP compared to other markets.¹⁰³ With the order rescinded, this circumstance will add to the attraction of the Canadian market for producers of the subject goods.

[73] Fifth, the threat to the domestic industry from excess low-priced HRS feedstock, as discussed above, compounds the risk of significantly increased imports of subject goods.

[74] Sixth, the capital intensive, high fixed cost nature of the CSWP industry coupled with the slow growth in China's steel demand¹⁰⁴ would likely continue China's export orientation in the next 12 to 18 months.

[75] All these conditions together make it highly probable that the rescission of the order would result in a significant increase in the import volume of the subject goods in the next 12 to 18 months.

Likely Price Effects of Dumped and Subsidized Goods

[76] The Tribunal must consider whether, if the order or finding is allowed to expire, the dumping or subsidizing of goods is likely to significantly undercut the prices of like goods, depress those prices, or suppress them by preventing increases in those prices that would likely have otherwise occurred.¹⁰⁵ In this regard, the Tribunal distinguishes the price effects of the dumped or subsidized goods from any price effects that would likely result from other factors affecting prices.

[77] The CBSA has established that the expiry of the order is likely to result in the resumption of dumping or subsidizing of subject goods exported to Canada.¹⁰⁶ The low volumes of subject goods during the POR suggest that most producers in China are unable or unwilling to compete at fairly traded prices.

[78] The domestic producers contend that with a flat demand for CSWP and commodity nature of CSWP, pricing is very competitive and the domestic industry is at constant risk of an inability to compete with low-priced imports.¹⁰⁷ Nova argued that if the order is rescinded, pricing in the Canadian market will be driven downwards by low-priced subject goods. Recent ex-works prices of welded pipe in China, which the Tribunal notes likely includes non-subject goods, show that

103. Exhibit RR-2018-001-A-02 (protected), Vol. 12 at 25. The Tribunal notes that while the unit value for sales of like goods presented by Nova includes ASTM A500 CSWP, this statement holds true when ASTM A500 CSWP is excluded: Exhibit RR-2018-001-06C (protected), Table 15, Vol. 2.1.

104. The World Steel Association expects that China's steel demand will remain flat in 2018 and contract by 2 percent in 2019. Exhibit RR-2018-001-23.02, Vol. 7 at 818.

105. Paragraph 37.2(2)(b) of the *Regulations*.

106. Exhibit RR-2018-001-03A, Vol. 1 at 4.

107. Mr. Jones of Nova provides that the price sensitivity of CSWP is reinforced by the significance of HRC in production costs, large buying power of distributors, and the ability to ship and store CSWP easily. Exhibit RR-2018-A-05, Vol. 11 at 18.

Canadian prices are significantly higher.¹⁰⁸ Based on this data, Nova estimated that with a \$200/tonne for ocean freight and unloading and a 5 percent profit margin, Chinese exports would land in Canada at prices more than \$400/tonne below the comparable Canadian price, with some variance depending on the region in Canada that the products are imported to.¹⁰⁹ Mr. Gravel of Nova also included in his witness statement an example of a lower-priced offer of Chinese CSWP from October 2018.¹¹⁰ Prices based on a Chinese web platform in December 2018 for certain CSWP products were also priced notably lower than Canadian prices.¹¹¹

[79] The domestic producers also argue that if the order is rescinded, Chinese products will have to be priced low to compete with the prices being offered by non-subject imports. Mr. Gravel of Nova also included in his witness statement examples of lower-priced offers of imports from Turkey, the Philippines, Vietnam and Pakistan.¹¹² With the Tribunal's finding of injury in *CSWP NQ 2018*, the prominence of this risk in the next 12 to 18 months in respect of imports from Turkey, Vietnam, Pakistan and the Philippines has likely been mitigated. However, the Tribunal notes that low-priced imports from other countries are present in the market. As indicated earlier, it heard testimony regarding Indonesia as a recent source of low-priced imports of CSWP.¹¹³ The Tribunal agrees that the subject goods would likely be sold at prices that compete with non-subject imports and it examined prices of non-subject imports during the POR to assess their likely price effects. In addition to comparing like goods with the selling price of the non-subject goods, the Tribunal also compared the selling prices of like goods with the purchase price of the non-subject imports. The Tribunal included the latter approach in this case to account for instances where domestic producers compete directly with foreign producers for sales to distributors that also import from non-subject countries directly.¹¹⁴

[80] When examining the selling price of imports from non-subject countries, there was no undercutting of prices of like goods, with the exception of 2015 by a very marginal amount.¹¹⁵ Based on the average purchase prices of imports from non-subject countries, there was undercutting of the average selling price of domestically produced like goods in each full year of the POR.¹¹⁶ There was no undercutting identified during the 2018 interim period. That said, in *CSWP NQ 2018*, the Tribunal found that when purchase and selling prices of benchmark products from both subject and non-subject countries¹¹⁷ in that inquiry were examined, there was clear evidence of undercutting.¹¹⁸

108. Nova's Case Brief, Confidential Attachment 19: Steel Orbis 2018 pricing welded tube ex works China. Exhibit RR-2018-001-A-02, Vol. 12 at 582.

109. Nova's Case Brief, Confidential Attachment 19: Steel Orbis 2018 pricing welded tube ex works China; Public Attachment 20: price converted to CAD at \$1.35. Exhibit RR-2018-001-A-02 (protected), Vol. 12 at 582-583.

110. Exhibit RR-2018-001-A-04 (protected), Vol. 12 at 9.

111. Exhibit RR-2018-001-B-01, Vol. 11 at 10, 13-17.

112. Exhibit RR-2018-001-A-04 (protected), Vol. 12 at 9-14.

113. Exhibit RR-2018-001-39, Vol. 7 at 145, 165, 177-178.

114. *Carbon and Alloy Steel Line Pipe* (29 March 2016), NQ-2015-002 (CITT) at para. 121.

115. Exhibit RR-2018-001-06C (protected), Table 15, Vol. 2.1.

116. Exhibit RR-2018-001-06C (protected), Tables 13, 15, Vol. 2.1.

117. Prices for benchmark products from non-subject countries in *CSWP NQ 2018* did not include prices of CSWP imports from China.

[81] Based on the above price analysis, the Tribunal is of the view that if the order is rescinded, in order to capture sales and market share in Canada, subject goods will be priced at or below prices of non-subject imports of countries competing in the market and those prices will likely undercut, depress and suppress prices of like goods.

Likely Impact on the Domestic Industry if the Order or Finding Is Rescinded

[82] The Tribunal will assess the likely impact of the above volumes and prices on the domestic industry if the order is rescinded,¹¹⁹ taking into consideration the likely performance of the domestic industry were the order continued, as discussed above. In this analysis, the Tribunal distinguishes the likely impact of the dumped or subsidized goods from the likely impact of any other factors affecting or likely to affect the domestic industry.¹²⁰

[83] Nova estimated that the entry of subject goods will cause market prices to be driven down a minimum of \$100/tonne and revenue to fall by \$50/tonne, resulting in Nova operating at a loss.¹²¹ Mr. Jones of Nova described this estimate as being conservative and therefore it is possible that the adverse price effects may be even greater.¹²² In the absence of opposing parties, these projections have not been controverted. However, the Tribunal also notes that, based on the data, the domestic industry's financial performance is closely tied to changes in HRC prices, particularly where prices are suppressed by lower-priced CSWP imports. The Tribunal accepts Nova's projections as reasonable estimates of the impact on Nova's pricing and performance by the renewed presence of the subject goods in the Canadian market if the order is rescinded.

[84] In light of the current state of the domestic industry, losses of this magnitude would be consequential. The injury already sustained by the domestic industry in recent years from non-subject imports was recognized in *CSWP NQ 2018*. Domestic producers have faced challenges in maintaining their profitability and this may continue into the next 12 to 18 months, notwithstanding the continuance of the order, particularly given the presence of imports from other non-subject countries. In the Tribunal's view, rescinding the order would deny domestic producers the opportunity to recover from the injury it has thus far sustained. It may also jeopardize additional investments that are contingent on financial performance and risk work reduction among employees or even temporary or permanent layoffs.¹²³

[85] Accordingly, for the above reasons, the Tribunal finds that the resumption of dumping and subsidizing of the subject goods will likely result, in and of itself, in material injury to the domestic industry.

118. *CSWP NQ 2018* at paras. 133-134. See *CSWP NQ 2018* at paras. 120-122 for the Tribunal's reasons for relying more heavily on pricing for benchmark products in its analysis.

119. See paragraphs 37.2(2)(e) and (g) of the *Regulations*.

120. See paragraph 37.2(2)(k) of the *Regulations*.

121. Exhibit RR-2018-001-A-05, Vol. 11 at 17; Exhibit RR-2018-001-A-01, Vol. 11 at 34.

122. Exhibit RR-2018-001-A-05, Vol. 11 at 17.

123. According to Mr. Rowlinson of the USW, the Union estimates that more than 100 of its members are directly or indirectly employed in the manufacture of CSWP in three provinces. Exhibit RR-2018-001-D-05 at 3.

DETERMINATION

[86] The order is continued.

Jean Bédard

Jean Bédard
Presiding Member

Peter Burn

Peter Burn
Member

Randolph W. Heggart

Randolph W. Heggart
Member