



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

FINDING AND REASONS

Inquiry No. NQ-2018-001

Sucker Rods

*Finding issued
Friday, December 14, 2018*

*Reasons issued
Monday, December 31, 2018*

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

SUCKER RODS

FINDING

The Canadian International Trade Tribunal, pursuant to the provisions of section 42 of the *Special Import Measures Act*, has conducted an inquiry to determine whether the dumping and subsidizing of sucker rods, including pony rods, with or without couplings attached and with or without guides attached, manufactured to American Petroleum Institute (API) 11B specifications, equivalent standards or proprietary standards, including in a finished or semi-finished state, made of solid steel, including carbon, alloy and special grades of steel, of 2.5 inches (63.5 mm) or less in diameter of rod body, with stated measurements subject to permissible tolerances, originating in or exported from the People's Republic of China, have caused injury or are threatening to cause injury to the domestic industry.

Further to the Canadian International Trade Tribunal's inquiry, and following the issuance by the President of the Canada Border Services Agency of a final determination dated November 14, 2018, that the above-mentioned goods have been dumped and subsidized, the Canadian International Trade Tribunal hereby finds, pursuant to subsection 43(1) of the *Special Import Measures Act*, that the dumping and subsidizing of the above-mentioned goods originating in or exported from the People's Republic of China have caused injury to the domestic industry.

Serge Fréchette
Serge Fréchette
Presiding Member

Georges Bujold
Georges Bujold
Member

Caterina Ardito-Toffolo
Caterina Ardito-Toffolo
Member

The statement of reasons will be issued within 15 days.

Place of Hearing: Ottawa, Ontario
Dates of Hearing: November 13, 14 and 15, 2018

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STATEMENT OF REASONS

INTRODUCTION

1. The mandate of the Canadian International Trade Tribunal (the Tribunal) in this inquiry¹ is to determine whether the dumping and subsidizing of certain sucker rods originating in or exported from the People's Republic of China (China) (the subject goods) have caused or are threatening to cause injury to the domestic industry.

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

BACKGROUND

3. This inquiry stems from a complaint filed by Alberta Oil Tool (AOT), a division of Apergy Canada ULC (formerly a division of Dover Canada ULC), and the initiation of investigations on May 18, 2018, by the CBSA into the alleged dumping and subsidizing of the subject goods.

4. On May 22, 2018, as a result of the CBSA's decision to initiate the investigations, the Tribunal initiated a preliminary injury inquiry, pursuant to subsection 34(2) of *SIMA*, to determine whether there was a reasonable indication that the dumping and subsidizing of the subject goods have caused injury or are threatening to cause injury to the domestic industry. On July 17, 2018, the Tribunal determined that there was evidence that disclosed a reasonable indication that the dumping and subsidizing of the subject goods have caused injury or were threatening to cause injury to the domestic industry.

5. On August 16, 2018, the CBSA made preliminary determinations of dumping and subsidizing, resulting in the imposition of provisional duties on the subject goods and the commencement of this inquiry. On August 17, 2018, the Tribunal issued a notice of commencement of inquiry. The Tribunal's period of inquiry (POI) covers three full years, from January 1, 2015, to December 31, 2017, and the interim period of January 1, 2018, to June 30, 2018.

6. The opposing parties are Zibo Hongyang Weatherford Oilfield Equipment Co. (Zibo), Weatherford Canada Ltd. (Weatherford) and Imex Canada Inc. (Imex).

7. On August 17, 2018, the Tribunal issued questionnaires to the domestic producer, and certain importers, purchasers and foreign producers of sucker rods. Using the questionnaire replies and import data from the CBSA, staff of the Secretariat to the Tribunal prepared public and protected versions of the investigation report, which were issued on October 9, 2018. The public investigation report was distributed, along with the remainder of the public record, to parties who had filed notices of participation in the inquiry. A protected investigation report containing information designated as confidential was distributed, along with the remainder of the protected record, to counsel who had signed the required declaration and undertaking.

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

8. The case schedule indicated that requests for product exclusions must be filed by October 15, 2018. The Tribunal received a request for a product exclusion from Weatherford on that date. The Tribunal also received two requests for product exclusions from Imex on October 18, 2018. The Tribunal decided to accept the late filing of Imex's requests on October 19, 2018, and adjusted the relevant deadlines accordingly.

9. On October 16 and October 23, 2018, the parties filed case briefs, witness statements and other evidence. On October 30, 2018, AOT filed a reply submission and reply witness statements.

10. On October 15, 2018, Weatherford submitted to the Tribunal various requests for information (RFI) directed at AOT. As AOT objected to certain RFIs, the Tribunal issued directions to the parties on October 23, 2018, indicating which RFIs required responses. AOT responded to the RFIs on October 29, 2018.

11. Revisions to the public and protected versions of the investigation report were issued on November 13, 2018.

12. The Tribunal held a hearing in Ottawa, Ontario, from November 13 to 15, 2018. It included public and *in camera* sessions. All of the parties presented witnesses. The Tribunal called Mr. Dave McHattie and Mr. Fernando Labaronne of Tenaris Global Services (Canada) Inc. (Tenaris) as Tribunal witnesses.

13. The Tribunal issued its finding on December 14, 2018.

RESULTS OF THE CBSA'S INVESTIGATIONS

14. On November 14, 2018, the CBSA made final determinations of dumping and subsidizing. The CBSA determined that 100 percent of the subject goods imported into Canada had been dumped and subsidized.² The CBSA's period of investigation for its dumping and subsidy investigations covered January 1, 2017, to March 31, 2018. The CBSA determined the following margins of dumping and amounts of subsidy:³

Exporters	Margin of dumping expressed as a percentage of export price	Amount of subsidy expressed as a percentage of export price
Shandong Nine-Ring Petroleum Machinery Co., Ltd.	149.9%	21.0%
Shandong Shouguang Kunlong Petroleum Machinery Co., Ltd.	141.1%	24.4%
Zibo Hongyang Weatherford Oilfield Equipment Co., Ltd.	100.4%	2.8%
All other exporters	149.9%	68.1%

2. Exhibit NQ-2018-001-04, Vol. 1 at 19.

3. *Ibid.*

PRODUCT

Product definition

15. The CBSA defined the subject goods as follows:⁴

sucker rods, including pony rods, with or without couplings attached and with or without guides attached, manufactured to American Petroleum Institute (API) 11B specifications, equivalent standards or proprietary standards, including in a finished or semi-finished state, made of solid steel, including carbon, alloy and special grades of steel, of 2.5 inches (63.5 mm) or less in diameter of rod body, with stated measurements subject to permissible tolerances, originating in or exported from the People's Republic of China.

Product information

16. The CBSA provided the following additional product information at the time of initiation:⁵

[13] Sucker rods are used in oil and gas extraction. In an oil or gas well, the rod string connects the above-ground drive to the down well pump(s). They are usually produced to 25 feet in length but can be longer.

[14] Pony rods are shorter lengths of sucker rods used to obtain the proper length of rod string when a full sucker rod would make the string too long. Pony rods are connected to each other, or to sucker rods, with couplings. They are usually produced in lengths of 1, 2, 4, 6, 8, 10 or 12 feet. Pony rods are usually made in the same diameters as sucker rods in the rod string.

[15] Sucker rods are "semi-finished" at any point following the forming of the ends of the material input (i.e. solid bar) into the essential sucker rod shape (e.g. forging) which typically creates the pin shoulder, wrench square and transition/upset of the sucker rod.

[16] The diameter of the sucker rod always refers to the outer diameter of the rod body, rather than any part of the forged end.

[17] Special grades of steel referred to in the product definition includes steel grades which may not meet standard industry specifications including proprietary grades.

For greater clarity, the product definition does not cover:

- Polished rods, which are above ground connections to the rod strings;
- Sinker bars, which are used to add weight to the rod string;
- Fiberglass sucker rods (Fiber reinforced plastic);
- Hollow sucker rods; and
- Continuous sucker rods.⁶

4. *Ibid.* at 8.

5. CBSA Initiation of Investigations – Statement of Reasons (1 June 2018) at paras. 13-17, online at: <https://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/sr2018/sr2018-in-eng.html>.

6. Continuous (coiled) sucker rods have an entire rod string in one piece with only two connections; one at the top and one at the bottom. These rods are available in either round or elliptical configurations. Continuous rod eliminates all the couplings along the entire wellbore except for the top connection to the polished rod and the bottom connection to the pump itself; CBSA Initiation of Investigations – Statement of Reasons (1 June 2018) at para. 22, online at: <https://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/sr2018/sr2018-in-eng.html>.

LEGAL FRAMEWORK

17. The Tribunal is required, pursuant to subsection 42(1) of *SIMA*, to inquire as to whether the dumping and subsidizing of the subject goods have caused injury or retardation or are threatening to cause injury, with “injury” being defined, in subsection 2(1), as “. . . material injury to a domestic industry”. In this regard, “domestic industry” is defined in subsection 2(1) by reference to the domestic production of “like goods”.⁷

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

19. Given that the CBSA has determined that the subject goods have been dumped and subsidized, the Tribunal must also determine whether it is appropriate to 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) in this inquiry.

20. The Tribunal can then assess whether the dumping and subsidizing of the subject goods have caused material injury to the domestic industry. Should the Tribunal arrive at a finding of no material injury, it will determine whether there exists a threat of material injury to the domestic industry.⁸

21. In conducting its analysis, the Tribunal will also examine other factors that might have had an impact on the domestic industry to ensure that any injury or threat of injury caused by such factors is not attributed to the effects of the dumping and subsidizing.

LIKE GOODS AND CLASSES OF GOODS

22. In order for the Tribunal to determine whether the dumping and subsidizing of the subject goods have caused or are threatening to cause injury to the domestic producer(s) 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.⁹

23. 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.

24. 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

7. Subsection 2(1) of *SIMA* defines “retardation” as “. . . material retardation of the establishment of a domestic industry”. As a domestic industry is already established, the Tribunal will not need to consider the question of retardation in this inquiry.

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

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

(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).¹⁰

25. At the preliminary injury inquiry stage, the Tribunal considered AOT's submission that the subject goods and the domestically produced sucker rods had a high degree of substitutability, served the same purpose of connecting the above-ground drive to the down-hole pump, were subject to API 11B or comparable specifications, consisted of the same materials, were produced on the same equipment using essentially the same processes, and were sold through the same channels of distribution to the same oil and gas end-users. On the basis of those submissions, the Tribunal found that domestically produced sucker rods, defined in the same manner as the subject goods, constituted like goods in relation to the subject goods and were a single class of goods.¹¹

26. The parties opposed to a finding of injury or threat of injury did not dispute that domestically produced sucker rods constituted like goods to the subject goods and were a single class of goods. However, as part of the current inquiry, the parties opposed each filed product exclusion requests for certain sucker rods manufactured using a quench and tempered (QT) method instead of a normalized and tempered (NT) method.¹² These product exclusion requests will be addressed later on in this statement of reasons. However, arguments by the parties opposed (and by Weatherford in particular) regarding the substitutability of QT and NT sucker rods touch upon issues of "likeness" and therefore cannot be ignored by the Tribunal at this stage of its analysis. As such, the Tribunal will address certain issues raised in the context of the product exclusion requests insofar as they relate to the question of like goods.

27. Weatherford submitted that QT sucker rods are produced using different manufacturing processes, have unique metallurgical properties, have important physical characteristics such as greater yield strength, higher torque limits and greater longevity in corrosive environments, are preferred by some customers, and are more suitable for certain applications. Essentially, Weatherford argued that as a result of these differences QT and NT sucker rods are not substitutable as they do not perform to the same level in certain applications. Weatherford also stressed that QT sucker rods are not manufactured by AOT.

28. AOT submitted that sucker rods produced in Canada, which are manufactured using a NT method, are like goods to the subject goods, in particular the QT sucker rods. AOT submitted that both it and the Chinese producers manufacture goods for oil and gas operations to the API 11B specification using similar manufacturing processes. AOT also submitted that NT and QT products are sold to the same end-users, for the same uses, being to connect the above-ground drive to the down-hole pump. AOT further submitted that there is full or, in the alternative, partial substitutability between different sucker rods covered by the product definition, whether manufactured using the QT or NT method.

29. The Tribunal accepts that there may be minor differences between QT and NT sucker rods in terms of their physical and market characteristics. The Tribunal has previously found that goods meeting different grades and standards, and that are used in different applications on the basis of their varying specifications, can nevertheless have similar physical and market characteristics and therefore may closely resemble one

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

11. *Sucker Rods* (17 July 2018), PI-2018-001 (CITT) at paras. 17-20.

12. Exhibit NQ-2018-001-24.01, Vol. 1.3; Exhibit NQ-2018-001-25.01 (protected), Vol. 2.3; Exhibit NQ-2018-001-24.02, Vol. 1.3; Exhibit NQ-2018-001-25.02 (protected), Vol. 2.3.

another.¹³ For the following reasons, the Tribunal is satisfied that, overall, the evidence clearly supports a determination that NT and QT sucker rods have similar physical and market characteristics and are substitutable products.

30. As to production methods, the parties agreed that the main difference between the QT and the NT methods of production is the type of heat treatment that is applied to the grade of steel in order to achieve the requisite tensile strength for the API specification.¹⁴ QT rods are cooled by quenching the rods in water, whereas NT rods are cooled via an air-cooling process.¹⁵ These processes require different equipment and a different configuration of manufacturing facilities.¹⁶ However, the Tribunal recalls its statement in a previous inquiry that the focus of its examination should be on the products themselves, not the manufacturing processes.¹⁷ In other words, differences in manufacturing processes are only relevant insofar as they result in differences that impact the physical or market characteristics of a good.

31. In terms of physical characteristics, the Tribunal considered the technical specifications, composition and appearance of QT and NT sucker rods. Both types of sucker rods are made using various grades of steel and both are made to meet the specification required for use in oil and gas extraction, namely API 11B. In that regard, the Tribunal notes the testimony of Mr. Labaronne of Tenaris that “. . . quench and tempered, normalized and tempered is more like manufacturer options, and both are to achieve the same -- similar and interchangeable product within the norm.”¹⁸ The parties themselves have acknowledged that there is some flexibility within the API 11B specification – e.g. for some requirements the specification may refer to minimums and for others it may refer to a range within which the goods must fall.¹⁹ None of the witnesses mentioned any notable differences in appearance.

32. In terms of market characteristics, the evidence indicates that the domestic like goods and the subject goods are used for the same purpose (oil and gas extraction) and sold to the same end-users (oil well producers).²⁰ QT and NT sucker rods are also sold through similar channels of distribution.²¹ However, in terms of distribution and sales, there are differences in the business models used by AOT and importers of the subject goods. AOT sells exclusively to distributors whereas some importers sell to distributors, others sell directly to end-users, and some sell to both.²² Nonetheless, the Tribunal finds that there is a distribution component to each business model. Weatherford, for example, takes on a distribution function by providing services to end-users that would not otherwise be offered if the end-users chose to import directly from a foreign producer.²³

13. See *Carbon and Alloy Steel Line Pipe* (27 October 2015), PI-2015-002 (CITT) at para. 62; *Carbon Steel Welded Pipe* (11 December 2012), NQ-2012-003 (CITT) at paras. 26-27, 62. This discussion occurred in the context of an analogous analysis of classes of goods.

14. Exhibit NQ-2018-001-24.01, Vol. 1.3 at 10; Exhibit NQ-2018-001-12.01 (protected), Vol. 4 at 56.

15. Exhibit NQ-2018-001-24.01, Vol. 1.3 at 5.

16. *Transcript of Public Hearing* at 96-97; Exhibit NQ-2018-001-B-05, Vol. 13 at para. 26.

17. *Copper Pipe Fittings* at para. 53, citing *United States—Safeguard Measure on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia* (2001), WTO Docs. WT/DS177/AB/R, WT/DS178/AB/R, Report of the Appellate Body, at para. 94, which concerned the analogous “like or directly competitive product” requirement in the context of a safeguards inquiry.

18. *Transcript of Public Hearing* at 62.

19. *Ibid.* at 78-79; Exhibit NQ-2018-001-26.01, Vol. 1.3 at 16.

20. *Transcript of Public Hearing* at 12; Exhibit NQ-2018-001-25.01 (protected), Vol. 2.3 at 7.

21. Exhibit NQ-2018-001-06, Table 5, Vol. 1.1; Exhibit NQ-2018-001-A-03, Vol. 11 at para. 35.

22. Exhibit NQ-2018-001-06A, Table 1, Vol. 1.1.

23. *Transcript of Public Hearing* at 120.

33. A question remains as to the substitutability of QT and NT sucker rods. The evidence indicates that, overall, there is a high degree of substitutability between the subject goods and AOT's sucker rods. In terms of meeting technical specifications, four of seven respondents to the Tribunal's Purchasers' Questionnaire on Market Characteristics indicated that Canadian production is comparable to subject imports, and two out of seven indicated that Canadian production is better.²⁴ In addition, a majority of respondents indicated that the subject goods and the domestically produced sucker rods are always or frequently interchangeable and zero respondents indicated that they were never interchangeable.²⁵

34. However, the Tribunal is also confronted with contradictory evidence as to whether NT sucker rods are fully interchangeable with QT sucker rods. Mr. Frederick of Weatherford testified that QT and NT sucker rods are different products and that "... the biggest difference, and especially for our customers, is the torque values and tensile strengths on the product... in some cases they don't need to go to a larger diameter sucker rod...".²⁶ In addition, Mr. Quinn of Imex testified that customers may opt for QT sucker rods if they are looking for extra torque or some extra strength and fatigue resistance for more challenging, deeper wells.²⁷ However, on cross-examination, Mr. Frederick acknowledged that when Weatherford rods and AOT rods are compared, there is little difference in the maximum tensile strengths and only a small range of difference in minimum tensile strengths.²⁸

35. In addition, AOT and Weatherford each filed evidence or provided testimony to demonstrate the comparable or superior torque performance, metallurgical composition, and corrosion resistance of their respective products.²⁹ The Tribunal finds that the evidence regarding these differences is not dispositive of the question of the substitutability between QT and NT sucker rods. Even accepting that there may be certain advantages to using one type of sucker rod versus another in some cases, such as corrosive environments, the evidence strongly suggests that the choice between QT and NT sucker rods comes down to customer preference—some customers appear to prefer QT sucker rods for use in certain applications.³⁰ However, a customer preference for QT sucker rods for certain specific applications does not necessarily mean that NT rods are not substitutable for QT rods.

36. Mr. Frederick admitted on cross-examination that when it comes to suitability for a particular application, it is really a question of degree as opposed to one type of sucker rod being unusable in a particular type of well (although he also stated that NT rods may not perform as well).³¹ In response to a question from the Tribunal, Mr. Pliska of AOT also indicated that there are no applications within the Canadian market for which AOT's sucker rods cannot be used.³² He made similar statements in his witness statement.³³ Mr. Labaronne also confirmed that "[t]he products who comply with the API, they perform similar in the environment -- in the well, and how you achieve your mechanical properties following the API is your decision, if you use a quench and tempered or a normalized and tempered procedure. Both are

24. Exhibit NQ-2018-001-06, Table 6, Vol. 1.1.

25. *Ibid.*, Table 5.

26. *Transcript of Public Hearing* at 91.

27. *Ibid.* at 142-143.

28. Exhibit NQ-2018-001-B-05, Vol. 13 at 22; *Transcript of Public Hearing* at 112.

29. Exhibit NQ-2018-001-26.01, Vol. 1.3 at 12 and 14-16; Exhibit NQ-2018-001-27.01 (protected), Vol. 2.3 at 12, 14-16; Exhibit NQ-2018-001-25.01 (protected), Vol. 2.3 at 8-10; Exhibit NQ-2018-001-24.01, Vol. 1.3 at 11-13; *Transcript of Public Hearing* at 91.

30. *Transcript of in Camera Hearing* at 55-56; *Transcript of Public Hearing* at 108, 142-143; Exhibit NQ-2018-001-29.01 (protected), Vol. 2.3 at 8-11.

31. *Transcript of Public Hearing* at 105.

32. *Ibid.* at 38.

33. Exhibit NQ-2018-001-A-15, Vol. 11 at paras. 11-12.

the same and similar commodity products.”³⁴ His colleague, Mr. McHattie added that “. . . the product is interchangeable.”³⁵ The Tribunal also heard evidence that some customers have switched from QT to NT sucker rods.³⁶ These statements strongly confirm that NT sucker rods are substitutable for QT sucker rods, even in more demanding applications. In any event, the Tribunal has previously found that goods can be “like” to one another even if they are not fully substitutable in all applications.³⁷

37. Regarding price, despite competing views from witnesses during public and *in camera* testimony about the role of price in the decision to purchase QT sucker rods,³⁸ the Tribunal finds that any shift in demand towards QT sucker rods is also driven largely by price, as opposed to a specific customer need. In that regard, the Tribunal heard that because of the recent downturn in the oil and gas sector, end-users have been increasingly willing to forego higher grade, longer-life products in exchange for immediate cost savings. In particular, Mr. Pliska testified that “. . . there has been a shift towards the lower-grade cheaper steel, cheaper products because of the financial hard times that oil companies have been in from ‘15 on. So that’s seen a shift in our product mix from the higher grades that customers could say, ‘Well, yeah, this might last years, instead I’ll go with seven, and as long as there is a significant price decrease.’”³⁹ In addition, the evidence is that QT sucker rods compete directly with NT sucker rods as opposed to being a premium product which commands a higher price.⁴⁰

38. In other words, there is clearly downward substitutability of QT sucker rods for NT sucker rods (that is, there is no technical barrier to using QT sucker rods in applications that would call for NT sucker rods). The Tribunal cannot ignore the fact that such substitutability is possible and would be made more plausible by the presence in the market of cheap, dumped and/or subsidized QT sucker rods. Moreover, the Tribunal has previously found that the possibility of downward substitutability militates against separating subject and like goods into multiple classes.⁴¹

39. In light of the foregoing, the Tribunal is convinced that QT and NT sucker rods are substitutable for all relevant end uses, including in highly corrosive environments, despite the fact that some customers may prefer one type or grade of sucker rod over another. As such, the Tribunal finds that the domestically produced sucker rods of the same description as the subject goods are “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 follows:

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

34. *Transcript of Public Hearing* at 62-63.

35. *Ibid.* at 63.

36. *Transcript of In Camera Hearing* at 95.

37. *Carbon and Alloy Steel Line Pipe* (29 March 2016), NQ-2015-002 (CITT) [*Line Pipe I*] at para. 48. This discussion occurred in the context of an analogous analysis of classes of goods.

38. *Transcript of In Camera Hearing* at 55-56; *Transcript of Public Hearing* at 30, 32, 64.

39. *Ibid.* at 35-36. See also *Transcript of Public Hearing* at 20.

40. Exhibit NQ-2018-001-07 (protected), Tables 35, 39, Vol. 2.1; Exhibit NQ-2018-001-27.01 (protected), Vol. 2.3 at 11; *Transcript of Public Hearing* at 9.

41. *Concrete Reinforcing Bar* (9 January 2015), NQ-2014-001 (CITT) at paras. 64-67.

41. The Tribunal must therefore determine whether there has been injury, or whether there is a threat of injury, to the domestic producers as a whole or those domestic producers whose production represents a major proportion of the total production of like goods.⁴²

42. The evidence indicates that AOT is the only domestic producer of sucker rods. AOT therefore represents the domestic industry.

CROSS-CUMULATION

43. There are no legislative provisions that directly address the issue of cross-cumulation of the effects of both dumping and subsidizing.⁴³ However, as noted in previous cases,⁴⁴ the effects of dumping and subsidizing of the same goods from a particular country are manifested in a single set of injurious price effects, and it is not possible to isolate the effects caused by the dumping from the effects caused by the subsidizing. In reality, the effects are so closely intertwined as to render it impossible to allocate discrete portions to the dumping and the subsidizing respectively.

44. Given the above, the Tribunal's usual practice is to make a cumulative assessment of the injurious effects of goods that are both dumped and subsidized. In this proceeding, no party submitted that the dumping and subsidizing of the subject goods should be considered separately. Therefore, the Tribunal will make a cross-cumulative assessment of the effects of the dumping and subsidizing of the subject goods.

INJURY ANALYSIS

45. Subsection 37.1(1) of the *Regulations* prescribes that, in determining whether the dumping and subsidizing have caused material injury to the domestic industry, the Tribunal is to consider the volume of the dumped and subsidized goods, their effect on the price of like goods in the domestic market, and their resulting impact on the state of the domestic industry. Subsection 37.1(3) also directs the Tribunal to consider whether a causal relationship exists between the dumping and subsidizing of the goods and the injury on the basis of the factors listed in subsection 37.1(1), and whether any factors other than the dumping and subsidizing of the goods have caused injury.

42. 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, 419, 430; *Argentina – Definitive Anti-dumping duties on poultry (Brazil)* (22 April 2003), WTO Docs. WT/DS241/R, Report of the Panel at paras. 7.341-7.344.

43. However, see *Canada – Anti-Dumping Measures on Imports of Certain Carbon Steel Welded Pipe from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu* (21 December 2016), WTO Docs. WT/DS482/R and Add. 1, Report of the Panel at para. 7. See also *Japan – Countervailing Duties on Dynamic Random Access Memories from Korea* (28 November 2007), WTO Docs. WT/DS336/AB/R and Corr. 1, Report of the Appellate Body at paras. 264, 268.

44. See, for example, *Certain Fabricated Industrial Steel Components* (25 May 2017), NQ-2016-004 (CITT) at paras. 72-73; *Copper Rod* (28 March 2007), NQ-2006-003 (CITT) at para. 48; *Seamless Carbon or Alloy Steel Oil and Gas Well Casing* (10 March 2008), NQ-2007-001 (CITT) at para. 76; *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) [*Aluminum Extrusions*] at para. 147.

Overview of the Canadian sucker rod market

46. Sucker rods are commodity products used for oil and gas extraction.⁴⁵ Their purpose is to connect the above-ground drive to the down-hole pump. Sucker rods are used in the drilling of new wells, as well as the maintenance of existing wells.⁴⁶ As such, demand for sucker rods, as well as price, is directly tied to the health of the oil industry.⁴⁷ If oil production drops so does the demand for sucker rods.

47. The price of oil plummeted in 2014 and 2015.⁴⁸ Since then market prices have partially recovered, although Canadian oil prices have not recovered as much as foreign or U.S. prices.⁴⁹ This drop in oil prices and slower recovery has had an impact on the demand for sucker rods in the Canadian market. Mr. McHattie of Tenaris testified that drilling activity in Canada increased at the end of 2016 and into 2017, but was still below 2014 levels.⁵⁰ Overall, the evidence indicates that while the apparent market for sucker rods expanded between 2015 and 2017, it appears to be flat or slightly declining towards the end of the POI.⁵¹

48. The Tribunal finds that these market factors provide important context for the Tribunal's injury and causation analysis. In particular, these factors suggest that 2015 was not a good year for the Canadian sucker rod market. Given that demand for sucker rods increased in 2016 and 2017 as the market was recovering from the previous downturn, it is understandable that the domestic industry's production, sales and revenues increased over the POI relative to 2015. However, in itself, this growth does not indicate that there was no injury to the domestic industry over the POI. The impact of the subject goods on the performance of the domestic industry must rather be assessed in light of these fluctuations in the market conditions.

Import volume of dumped and subsidized goods

49. Paragraph 37.1(1)(a) of the *Regulations* directs the Tribunal to consider the volume of the dumped and subsidized goods and, in particular, whether there has been a significant increase in the volume, either in absolute terms or relative to the production or consumption of the like goods.

50. AOT submitted that there was an increase in the volume of subject imports over the POI, in both absolute and relative terms. The parties opposed did not dispute this fact.

51. The absolute volume of subject imports decreased by seven percent in 2016 before increasing by 279 percent in 2017 to reach its highest point in the POI.⁵² The net increase from 2015 to 2017 was 251 percent, which is significant in absolute terms.⁵³ The volume of imports in interim 2018 was down by seven percent as compared to interim 2017.⁵⁴

45. *Transcript of Public Hearing* at 12, 64.

46. *Ibid.* at 70. Maintenance of the wells includes the replacement of sucker rods as required through wear and tear and to extend the life of the wells.

47. Exhibit NQ-2018-001-06, Table 8, Vol. 1.1; Exhibit NQ-2018-001-A-03, Vol. 11 at para. 78.

48. *Ibid.* at paras. 39, 80; *Transcript of Public Hearing* at 63.

49. Exhibit NQ-2018-001-A-03, Vol. 11 at paras. 81, 83; Exhibit NQ-2018-001-06, Table 57, Vol. 1.1; Exhibit NQ-2018-001-A-09, Vol. 11 at 267-268.

50. *Transcript of Public Hearing* at 60, 79.

51. Exhibit NQ-2018-001-07B (protected), Table 14, Vol. 2.1; Exhibit NQ-2018-001-06B, Table 15, Vol. 1.1.

52. *Ibid.*, Table 11; Exhibit NQ-2018-001-07B (protected), Table 10, Vol. 2.1.

53. Exhibit NQ-2018-001-06B, Table 11, Vol. 1.1; Exhibit NQ-2018-001-07B (protected), Table 10, Vol. 2.1.

54. Exhibit NQ-2018-001-06B, Table 11, Vol. 1.1.

52. When the volume of subject imports is examined relative to total domestic production and sales from domestic production, the volumes are flat or declining in 2016 followed by significant increases in 2017. Relative imports also increased in interim 2018 as compared to interim 2017.⁵⁵ Overall, the relative volume of imports of subject goods increased over the POI, particularly in 2017.

53. Therefore the Tribunal finds that there was a significant increase in the volume of the subject goods.

Price effects of dumped and subsidized goods

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

Submissions of parties

55. AOT alleged that the Canadian sucker rod market is very price sensitive, particularly following the downturn in the oil and gas industry in 2015 and 2016. AOT claims that this sensitivity is reflected in procurement practices, aggressive price competition between suppliers looking to win over end-users and the increased interest in lower-cost options. In this context, AOT argued that the price differential between its product and the subject imports is enough to give subject imports an important competitive advantage. To highlight this, AOT referred to several account-specific allegations where its prices were being significantly undercut by the prices of subject imports.

56. AOT further submitted that it has experienced significant cost increases for its primary raw material, special bar quality (SBQ) steel bar, which it has been unable to recover through price increases. AOT claimed that the negative market reaction to its modest price increase in 2017 shows how subject imports are suppressing price increases for domestically produced like goods that would otherwise have occurred.

57. Weatherford argued that AOT overstates the impact of price on sucker rod purchasing decisions, and that AOT's claims are not borne out in the responses to the Purchasers' Questionnaire on Market Characteristics. In Weatherford's view, while price plays some part in the decision-making process, it is not determinative and must be read in the context of the superior quality purchasers attribute to domestic rod. As such, Weatherford claimed that differentials in price are to be expected, given that purchasers indicated to the Tribunal that domestically produced sucker rods have higher product quality, after-sales service and warranties, and the ability to provide proprietary specifications.

58. Weatherford also argued that each of the specific allegations made by AOT against Weatherford were incorrect, likely because AOT has been taken in by business puffery during commercial negotiations. It further submitted that the inaccuracies in AOT's specific allegations against Weatherford cast serious doubt on the merits of the remaining account-specific allegations. Instead, Weatherford pointed to aggressive pricing of sucker rods coming from third countries to suggest that these rod imports are driving price in the Canadian market and undercutting the price of suppliers.

55. *Ibid.*, Table 13; Exhibit NQ-2018-001-07B (protected), Table 13, Vol. 2.1.

Tribunal's analysis

59. In assessing whether the subject goods have undercut, depressed or suppressed the prices of the domestically produced like goods, the Tribunal will begin by considering the specific arguments of the parties and the evidence related to two key issues: (1) the importance of price in purchasing decisions; and (2) price transparency in the market. It will then turn to an analysis of the price effects of the subject goods at different trade levels and evidence related to allegations of undercutting, depression and suppression.

– Importance of price in purchasing decisions

60. The investigation report outlines the importance of price in sucker rod purchasing decisions. For example, the lowest net price was ranked as “very important” by five out of nine participants and “somewhat important” by the remaining four participants.⁵⁶ Further, while four out of nine participants indicated that price would never be the primary factor in a purchasing decision, six indicated that the lowest-priced goods would “usually” win the sale and the remaining three indicated that they would “sometimes” win the sale.⁵⁷ Meanwhile, there were other qualitative factors that ranked higher as factors in purchasing decisions, such as “product quality”, “meeting technical specifications”, “reliability of supply”, “delivery time and terms” and “after-sales service or warranties”.⁵⁸

61. Purchasers indicated that the subject goods and the domestically produced like goods are comparable on a number of qualitative factors, although domestically produced like goods have an advantage in relation to “product quality”, “reliability of supply” and “after-sales service or warranties”. However, when it comes to price, purchasers indicated clearly that the subject goods had the advantage over the like goods.⁵⁹

62. Testimony during the hearing confirmed these responses. Mr. Pliska of AOT testified that, though product quality matters, there is a threshold at which consumers are not willing to pay for quality and practicality, especially given the state of the market.⁶⁰ Furthermore, Mr. McHattie of Tenaris stated that, with the price of oil declining recently, there is an increasing trend towards customers that want to reduce costs, and thereby the price of products being purchased, although he considered that no one in the Canadian oil and gas industry would be willing to sacrifice quality.⁶¹

63. In light of the above, the Tribunal finds that, once certain preconditions are met and qualitative factors are comparable, price becomes the determining factor in purchasing decisions.

– Price transparency in the market

64. In general, there seems to be considerable price transparency in the marketplace, with purchasers and suppliers alike broadly aware of pricing trends. In his witness statement, Mr. Pliska of AOT states that most sucker rod sales in Canada are made through distributors; however, when a particular project is contemplated, the end-user, distributor and manufacturer will all be involved in the discussion and proposal.

56. Exhibit NQ-2018-001-06, Table 9, Vol. 1.1.

57. *Ibid.*, Table 7.

58. *Ibid.*, Table 9.

59. *Ibid.*, Table 6.

60. *Transcript of Public Hearing* at 20; see also *Transcript of Public Hearing* at 50.

61. *Ibid.* at 61.

For this reason, Mr. Pliska considers that AOT has a significant degree of visibility into end-user demands and understands which projects the company is winning and losing, to whom and for what reason.⁶²

65. Weatherford argued that there are strategic issues associated with relying on a middleman to obtain information regarding end-user pricing thresholds, expectations and product satisfaction. For example, when asked why Weatherford elects to sell directly to end-users, Mr. Reed testified that “[a]ny time you’ve got somebody between us and the customer, it gets complicated.”⁶³ However, testimony from Mr. Labaronne of Tenaris confirms that his company obtains market intelligence from its distributors.⁶⁴ In the Tribunal’s view, there is sufficient evidence to conclude that it must be a reasonably accepted practice for AOT and importer-distributors to obtain, and rely on, intelligence gathered by their distributors.

66. Responses to the Purchasers’ Questionnaire on Market Characteristics give further credence to the degree of price transparency in the market. For example, several respondents indicated that it is common for prices to be negotiated through a Request for Quotation process or negotiated with an established supplier based on market intelligence on prices.⁶⁵

67. Accordingly, the Tribunal finds that there is a high degree of price transparency in the market, such that when sucker rods are imported at low prices, those prices will likely permeate the domestic market as a whole.

– Price effects analysis at different trade levels

68. AOT submitted that the Tribunal should assess price undercutting by comparing AOT’s selling price of like goods to distributors with the selling price of foreign exporters to importer-distributors. According to AOT, this approach recognizes that, as a producer of sucker rods, AOT competes with other producers of sucker rods (including the Chinese producers). AOT also submitted that reported data on the sale of imports, such as benchmark pricing, blends sales to distributors with sales to end-users. As AOT does not sell directly to end-users, it maintained that comparing its selling prices to the prices of subject goods that include sales to end-users would understate the price difference because it would ignore the additional costs associated with distribution activities.

69. Conversely, Weatherford submitted that the appropriate point of comparison with sales of domestic like goods is the sale of imports by importer-distributors. Given that Weatherford imports from an affiliate in China, it claimed that the “true price” of the subject goods it imports is the onward sales price, as there is no other way for those goods to enter into the market.

70. The Tribunal typically begins its assessment of price effects on the premise that domestic producers compete with importers at the first level of sale in the domestic market, i.e. the first sale by an importer-distributor to another distributor or to an end-user.⁶⁶

71. Notwithstanding, the Tribunal considers that, in the present case, AOT either competes directly with foreign producers for sales to the same importer-distributors, given that distributors have the choice to either import from overseas producers (including Chinese producers) or to purchase from the domestic industry, or it competes indirectly with those foreign producers through their respective distributors situated at the same

62. Exhibit NQ-2018-001-A-03, Vol. 11 at paras. 35-37.

63. *Transcript of Public Hearing* at 85.

64. *Ibid.* at 71.

65. Exhibit NQ-2018-001-06, Table 9, Vol. 1.1.

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

trade level.⁶⁷ While pricing demands from end-users may affect the price at which the domestic industry can sell like goods to its distributors, ultimately the sale to the distributor remains the first level of sale for AOT where any such impacts are felt. In the Tribunal's view, AOT's first sale in the domestic market, in this case solely to distributors, is the appropriate level at which to assess pricing impacts on the domestic industry.

72. Accordingly, the Tribunal agrees with AOT that it is reasonable to compare the net delivered purchase value of imports by distributors with the domestic industry's selling price of like goods to distributors (hereinafter the "AOT approach") when assessing the impact of the subject goods on the domestic industry's sales to distributors. Moreover, based on the CBSA's finding that export prices between Weatherford and its affiliate Zibo were "reliable" for the purposes of its dumping and subsidy investigations,⁶⁸ it is appropriate to use the net delivered purchase value of imports when comparing prices, notwithstanding the arrangement existing between those parties.⁶⁹

73. For the reasons discussed above, the Tribunal will compare the selling prices of domestically produced like goods to both the purchase price and selling price of the subject goods. In other words, it will consider both the AOT approach and the traditional approach.⁷⁰

– Price undercutting

74. Under the AOT approach, when the domestic producers' selling price is compared to the purchase price of imports, the average price of the subject goods significantly undercut the average price of the domestically produced like goods in each period of the POI. Similarly, the average price of imports from other countries (excluding the U.S.) also undercut the like goods, but this was limited to the 2017 and interim 2018 periods. When comparing the level of undercutting identified for the subject goods and the imports from other countries in 2017 and interim 2018, the level of undercutting attributed to the subject goods was almost double that of imports from other countries.⁷¹

75. The trends identified under the traditional approach at both the aggregate and distributor levels were almost identical to those under the AOT approach;⁷² however, the extent of the undercutting shown for both the subject goods and imports from other countries was less severe than under the AOT approach.⁷³ Nonetheless, the undercutting by the subject goods was significant.

67. This is consistent with the Tribunal's position in *Carbon and Alloy Steel Line Pipe* (4 January 2018), NQ-2017-002 (CITT) at para. 38.

68. Exhibit NQ-2018-001-04B, Vol. 1 at 27-28.

69. While the CBSA did not make a similar finding of reliability in relation to Exceed (Canada) Oilfield Equipment Inc., the Tribunal notes that this importer is an emerging player that entered the market in the latter part of the POI, and is thereby considered to have had a minimal impact on average import pricing during the relevant period: Exhibit NQ-2018-001-04B, Vol. 1 at 25; Exhibit NQ-2018-001-14.01, Vol. 5 at 4; Exhibit NQ-2018-001-15.01B (protected), Vol. 6 at 2.

70. This is consistent with the Tribunal's approach in *Line Pipe I*.

71. Exhibit NQ-2018-001-07B (protected), Table 27, Vol. 2.1; *ibid.*, Table 29.

72. With the exception that the selling price of imports from other countries undercut the price of like goods in every period.

73. Exhibit NQ-2018-001-07B (protected), Table 29, Vol. 2.1; Exhibit NQ-2018-001-07 (protected), Table 31, Vol. 2.1.

76. For sales of benchmark products⁷⁴ under the AOT approach, the average price of the subject goods significantly undercut the average price of the domestically produced like goods in all of the 26 instances where both were sold in the apparent market. The percentage of undercutting ranged from 26 to 51 percent. When considering other countries (excluding the U.S.), the purchase price of those imports undercut the price of like goods in all of the 22 instances where both were sold in the apparent market, but to a lesser degree. The percentage of undercutting ranged from 17 to 33 percent.⁷⁵

77. Under the traditional approach for benchmark products, there were some instances where the subject goods were higher-priced than the domestically produced like goods. Notwithstanding, the subject goods still undercut the price of the like goods in 22 of 28 instances where both were sold in the apparent market. The percentage of undercutting ranged from less than one percent to 16 percent. When considering other countries (excluding the U.S.), the selling price of imports undercut the price of like goods in 31 of 32 instances where both were sold in the apparent market. The percentage of undercutting ranged from six to 22 percent.⁷⁶

78. Even though importers in this case were not required to provide benchmark sales data for each level of trade, the range of undercutting identified under the traditional approach for the subject goods would likely be higher if it was based solely on the selling value of the subject goods to distributors. As sales to end-users are typically made at higher prices than sales to distributors, it is logical to conclude that the selling value to distributors would be lower than selling values that blend sales to distributors and sales to end-users.⁷⁷ Given the volume of sales of imports from other countries (excluding the U.S.) made to end-users during the POI,⁷⁸ this observation would not alter the level of undercutting already identified above for those imports.

79. AOT provided further information regarding specific lost sales allegations to demonstrate price undercutting that occurred in relation to particular transactions. However, given the clear evidence of significant price undercutting already presented in the investigation report, the Tribunal does not consider that an evaluation of these anecdotal claims is necessary in the circumstances.

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

– Price depression

81. AOT did not explicitly allege that it experienced price depression, although it did provide examples in its account-specific allegations of instances where it had to depress prices in order to secure sales. Indeed, AOT acknowledged that, by and large, it did not attempt to compete on price with the subject goods to maintain its market share.

82. The average selling price of domestically produced like goods decreased in 2016 and then increased slightly in 2017, resulting in an overall decrease of two percent between 2015 and 2017. This coincided with

74. The benchmark products represent a reasonable share of sales in the market. Exhibit NQ-2018-001-07 (protected), Table 41, Vol. 2.1.

75. *Ibid.*, Tables 35-40.

76. *Ibid.*, Tables 43-44.

77. *Ibid.*, Table 31; Exhibit NQ-2018-001-07B (protected), Table 33, Vol. 2.1.

78. *Ibid.*, Table 22.

a nine percent decline in the average price of the subject goods at both the aggregate and distributor levels from 2015 to 2017.⁷⁹

83. Between interim periods 2017 and 2018, the average selling price of domestically produced like goods decreased slightly, compared to average prices of the subject goods that increased significantly at the aggregate and distributor levels by 17 and 14 percent respectively.⁸⁰

84. For sales of benchmark products, the average selling price of the like goods increased over the eight quarter period examined for almost all products, consistent with AOT's strategy to push through a price increase in the latter part of 2017. At the same time, the price of the subject goods decreased over the period examined for almost all products.

85. Specifically, for Benchmark Products No. 1 and No. 2, the prices of like goods remained steady across all quarters until small price increases commenced in Q4 2017. There was an overall increase of two percent across the period for each of the two products. The subject goods did not enter the market until Q2 2017, after which time the prices of those goods decreased in each quarter until an increase in Q2 2018. There was an overall decrease of eight percent across the period for Benchmark Product No. 1, and an overall increase of one percent for Benchmark Product No. 2.⁸¹

86. For Benchmark Product No. 3, the quarterly prices of like goods fluctuated until mid-2017, remained steady in the last half of 2017 and increased in the first half of 2018. There was an overall increase of six percent across the period. The prices of the subject goods also fluctuated across the quarters, although to a greater degree than the like goods. There was an overall decrease of seven percent across the period.⁸²

87. For Benchmark Product No. 4, the quarterly prices of like goods remained steady across all quarters until small price increases commenced in Q1 2018. There was an overall increase of four percent across the period. The price of the subject goods fluctuated across the quarters, particularly in the latter part of 2017 and early 2018. There was an overall decrease of nine percent across the period.⁸³

88. For Benchmark Product No. 5, the quarterly prices of subject goods fluctuated across the period, with an overall decrease of one percent. There were no sales of like goods for this benchmark product.⁸⁴

89. For Benchmark Product No. 6, the quarterly prices of like goods remained steady across all quarters until a small price increase in Q1 2018. There was an overall increase of three percent across the period. The subject goods did not enter the market until the final quarter of 2017, after which time prices decreased slightly each quarter. There was an overall decrease of two percent across the period.⁸⁵

90. In light of the foregoing, significant price depression has not occurred during the POI.

79. Exhibit NQ-2018-001-07 (protected), Table 31, Vol. 2.1; Exhibit NQ-2018-001-07B (protected), Table 29, Vol. 2.1; Exhibit NQ-2018-001-06, Table 32, Vol. 1.1; Exhibit NQ-2018-001-06B, Table 30, Vol. 1.1.

80. Exhibit NQ-2018-001-07 (protected), Table 31, Vol. 2.1; Exhibit NQ-2018-001-07B (protected), Table 29, Vol. 2.1; Exhibit NQ-2018-001-06, Table 32, Vol. 1.1; Exhibit NQ-2018-001-06B, Table 30, Vol. 1.1.

81. Exhibit NQ-2018-001-07 (protected), Tables 35 and 36, Vol. 2.1.

82. *Ibid.*, Table 37.

83. *Ibid.*, Table 38.

84. *Ibid.*, Table 39.

85. *Ibid.*, Table 40.

– Price suppression

91. In order to assess whether the price of the subject goods has suppressed the price of like goods, the Tribunal typically compares the domestic industry's average unit cost of goods sold (COGS) or manufactured with its average unit selling values in the domestic market to determine whether the domestic industry has been able to increase selling prices in line with increases in costs. However, the Tribunal may also examine more generally whether the subject goods have significantly "suppressed the price of like goods by preventing the price increases for those like goods that would otherwise likely have occurred".⁸⁶

92. AOT's annual cost of goods manufactured (COGM) and COGS (on a dollar-per-piece basis) increased from 2015 to 2017, while its unit value declined over the same period.⁸⁷ Between interim periods 2017 and 2018, AOT's COGS decreased very slightly, although its COGM increased, while the unit value declined again.

93. To underline this, AOT submitted information pertaining to its actual quarterly SBQ steel costs for sucker rods, broken down by steel grade, starting from Q2 2016. This information demonstrated that, when considered on a per-pound basis, AOT's raw material costs increased significantly over the period.⁸⁸ AOT argued that this provided a clearer picture of its costing pressures, given the large cost differences that exist between rods of different diameter and steel grade.⁸⁹

94. Weatherford submitted that AOT's rising input costs stem from AOT's decision to source its SBQ steel from a high cost jurisdiction (the U.S.), which it is not required to do. Weatherford referred the Tribunal to its decision in *Certain Silicon Metal*⁹⁰ as support for its argument that, when the domestic industry is consuming an overpriced input that could have been sourced at a lower cost, then the damage to its bottom line should not be attributed to the subject goods. The Tribunal considers that the circumstances in the present case are distinguishable from those in *Silicon Metal II*. For example, in *Silicon Metal II* the domestic industry was purchasing a high-cost input (a high purity coal) from an affiliated company because this was the purchasing strategy adopted by the domestic industry's parent company. The evidence in that case also indicated that these purchases were being made at a time when the price of coal was on the decline around the world, and the domestic industry had admitted that it could have chosen to pursue different options and/or sources for coal, but did not. For these reasons, the Tribunal concluded in that case that these decisions by the parent company were a source of injury to the domestic industry.⁹¹

86. Subparagraph 37.1(1)(b)(iii) of the *Regulations*. See for instance, *Certain Hot-rolled Carbon Steel Plate and High-strength Low-alloy Plate* (17 May 1994), NQ-93-004 (CITT) at pp. 20-21; *Polyiso Insulation Board* (6 May 2010), NQ-2009-005 (CITT) at para. 71. A finding that dumped goods prevented price increases for the like goods that would otherwise likely have occurred must be based, *inter alia*, on an objective examination of positive evidence of what the prices of the like goods would have been in the absence of dumping. *Russia – Anti-dumping Duties on Light Commercial Vehicles from Germany and Italy* (27 January 2017), WTO Docs WT-DS479/R, Report of the Panel at paras. 7.57-7.61; *China – Countervailing and Anti-dumping Duties on Grain Oriented Flat-rolled Electrical Steel from the United States* (18 October 2012), WTO Docs. WT/DS414/AB/R, Report of the Appellate Body at paras. 130, 141, 152.

87. Exhibit NQ-2018-001-07 (protected), Table 45, Vol. 2.1; Exhibit NQ-2018-001-07B (protected), Table 29, Vol. 2.1.

88. Exhibit NQ-2018-001-A-17 (protected), Vol. 12 at 3.

89. *Ibid.* at 1; Exhibit NQ-2018-001-A-08 (protected), Vol. 12 at 2.

90. (2 November 2017), NQ-2017-001 (CITT) [*Silicon Metal II*] at para. 142.

91. *Silicon Metal II* at paras. 139-143.

95. The situation is different in this case. Weatherford has not disputed AOT's evidence that AOT's SBQ costs and global benchmark pricing for SBQ increased significantly since mid-2016, nor did it claim that AOT was paying for a higher quality material than it required. Further, Mr. Rempel of AOT provided testimony outlining the different options that his company explored in recent times to stem rising input costs, including searching out different sources of supply.⁹² Therefore, the Tribunal finds that AOT's sourcing decisions were not a cause of injury to the domestic industry in this case.

96. In response to the growth in input costs, AOT notified its customers in August 2017 of a proposed four percent price increase, to be effective October 15, 2017.⁹³ Companies should normally be able to pass on any cost increases of this magnitude to their customers (or at least a portion thereof). However, that was not AOT's experience. AOT provided evidence of feedback from distributors suggesting that certain end-users would likely source another rod for their pumping applications as a result of any price increase, requesting delays to the timing of the increase, asking if the increase was a joke, and generally advising against increasing a price that was already higher than the competition in the market.⁹⁴

97. On the basis of the foregoing, the Tribunal finds that the high volumes of subject goods entering the domestic market, particularly in 2017, which significantly undercut the price of the domestically produced like goods, prevented the domestic industry from raising its prices to offset increasing COGM and COGS in 2017, as well as interim 2018.

– Summary

98. In light of the significant and increasing volume of the subject goods during the POI (particularly in 2017), and the prevalence of price transparency in the domestic market, the Tribunal finds that the low-priced subject goods were clearly a driver of significant and adverse price effects on the domestically produced like goods.

99. Therefore, the Tribunal finds that the subject goods significantly undercut and suppressed the price of domestically produced like goods over the POI.

Resultant impact on the domestic industry

100. Paragraph 37.1(1)(c) of the *Regulations* requires the Tribunal to consider the resulting 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.⁹⁵ These impacts are to be distinguished from the impact of other factors also having a bearing on the domestic industry.⁹⁶ Paragraph 37.1(3)(a) of the *Regulations* requires the Tribunal to consider whether a causal relationship

92. *Transcript of In Camera Hearing* at 38.

93. Exhibit NQ-2018-001-A-03, Vol. 11 at para. 55.

94. Exhibit NQ-2018-001-A-10 (protected), Vol. 12 at 100-106.

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

96. Paragraph 37.1(3)(b) of the *Regulations* directs the Tribunal to consider whether any factors other than dumping or subsidizing of the subject goods have caused injury. The factors which are prescribed in this regard are (i) the volumes and prices of imports of like goods that are not dumped or subsidized, (ii) a contraction in demand for the goods or like goods, (iii) any change in the pattern of consumption of the goods or like goods, (iv) trade-restrictive practices of, and competition between, foreign and domestic producers, (v) developments in technology, (vi) the export performance and productivity of the domestic industry in respect of like goods, and (vii) any other factors that are relevant in the circumstances.

exists between the dumping or subsidizing of the goods and the injury, retardation or threat of injury, on the basis of the volume, the price effect, and the impact on the domestic industry of the dumped or subsidized goods.

Submissions of parties

101. AOT submitted that throughout 2017 and interim 2018 the low-priced subject goods captured significant sales volumes that AOT would have otherwise captured and have prevented it from raising prices to cover cost increases, reducing production, market share, revenues and profits. AOT also referred to several account-specific allegations where it claimed to have lost sales and experienced price erosion due to the subject goods, resulting in lost volume and revenues.

102. Weatherford submitted that the indicia of injury to AOT are few and weak. It further submitted that any injury was the result of factors other than the dumped and subsidized goods, including the following: AOT's business model of selling through distributors; the lack of domestic production of QT sucker rods; the influx of low-priced sucker rods from non-subject countries; and the increasing role of refurbished sucker rods in the Canadian market. Weatherford also cautioned against giving much weight to AOT's declines in interim 2018 because it represents a relatively minor time period within the scope of the broader economic picture.

103. Imex submitted that the relatively small volume of subject goods that it imported over the POI was not a cause of injury to AOT and do not threaten to injure AOT. Imex also submitted that its imports do not compete directly with AOT. Finally, Imex submitted that any losses experienced by AOT were caused by the downturn in the oil and gas industry in 2015 and 2016 (which continues to this day), and not the subject goods.

Tribunal's analysis

– Production

104. AOT's total production of sucker rods declined by seven percent in 2016 and increased by 12 percent in 2017 for an overall increase of five percent from 2015 to 2017.⁹⁷ Total production decreased by 20 percent in interim 2018 as compared to interim 2017.⁹⁸

105. In 2016, AOT's production for domestic sales increased by three percent and imports of the subject goods decreased by seven percent.⁹⁹ However, in 2017, when the overall size (volume) of the market increased by 48 percent, imports of the subject goods increased by 279 percent, while domestic production increased by only 38 percent. Imports from other countries increased by 555 percent in 2017 but remained well below the imports of subject goods in terms of absolute volumes.¹⁰⁰

97. Exhibit NQ-2018-001-07 (protected), Table 48, Vol. 2.1; Exhibit NQ-2018-001-06, Table 49, Vol. 1.1.

98. Exhibit NQ-2018-001-07 (protected), Table 48, Vol. 2.1; Exhibit NQ-2018-001-06, Table 49, Vol. 1.1.

99. Exhibit NQ-2018-001-07 (protected), Table 48, Vol. 2.1; Exhibit NQ-2018-001-06, Table 49, Vol. 1.1; Exhibit NQ-2018-001-07B (protected), Table 10, Vol. 2.1; Exhibit NQ-2018-001-06B, Table 11, Vol. 1.1.

100. Exhibit NQ-2018-001-07 (protected), Table 48, Vol. 2.1; Exhibit NQ-2018-001-06, Table 49, Vol. 1.1; Exhibit NQ-2018-001-07B (protected), Tables 10, 14, Vol. 2.1; Exhibit NQ-2018-001-06B, Tables 11, 15, Vol. 1.1.

106. AOT's production for domestic sales then dropped by 31 percent in interim 2018 as compared to interim 2017, while imports of the subject goods dropped by only seven percent and imports from other countries dropped by nine percent.¹⁰¹ The overall market contracted slightly in that period.¹⁰²

107. Domestic production for export sales declined in each full year of the POI but was up slightly in interim 2018 as compared to interim 2017.¹⁰³ Production for domestic sales accounted for a higher volume of total sales throughout the POI.¹⁰⁴

108. On the basis of the foregoing, the Tribunal finds that the growth in domestic production in 2017 would have likely been higher had it not been for the significant increase in imports of the subject goods at prices which significantly undercut AOT's prices. The Tribunal also finds that the imports of the subject goods contributed to the extent of AOT's drop in production in interim 2018.

109. For these reasons, the Tribunal finds that the domestic industry's production was negatively impacted by the subject goods over the POI.

– Sales and market share

110. Domestic sales from domestic production increased by 10 percent in 2016 and by 38 percent in 2017. In interim 2018 domestic sales from domestic production decreased by 31 percent when compared to interim 2017.¹⁰⁵ According to AOT, this drop in sales volume in interim 2018 followed a four percent price increase that AOT implemented between 2017 and June 2018 in an attempt to recover increased raw material costs.¹⁰⁶

111. The trend in domestic sales aligned with the overall trend in the market, which grew by one percent in 2016 and by 48 percent in 2017 to reach its largest point of the POI. In interim 2018 the market contracted by two percent.¹⁰⁷ In comparison, the volume of sales of subject goods decreased by two percent in 2016 and increased by 146 percent in 2017 and again by 90 percent in interim 2018 as compared to interim 2017.¹⁰⁸

112. AOT's market share increased by three percentage points in 2016. Despite an increase in domestic sales in 2017, AOT's market share declined by three percentage points in 2017 and a further 12 percentage points in interim 2018 as compared to interim 2017.¹⁰⁹ The subject goods followed a different trend, losing one percentage point of market share in 2016 but gaining 11 percentage points of market share in 2017 and a further 24 percentage points of market share in interim 2018 as compared to interim 2017.¹¹⁰

101. Exhibit NQ-2018-001-07 (protected), Table 48, Vol. 2.1; Exhibit NQ-2018-001-06, Table 49, Vol. 1.1; Exhibit NQ-2018-001-07B (protected), Table 10, Vol. 2.1; Exhibit NQ-2018-001-06B, Table 11, Vol. 1.1.

102. Exhibit NQ-2018-001-07B (protected), Table 14, Vol. 2.1; Exhibit NQ-2018-001-06B, Table 15, Vol. 1.1.

103. Exhibit NQ-2018-001-07 (protected), Table 48, Vol. 2.1; Exhibit NQ-2018-001-06, Table 49, Vol. 1.1.

104. Exhibit NQ-2018-001-07 (protected), Table 48, Vol. 2.1.

105. Exhibit NQ-2018-001-07B (protected), Table 14, Vol. 2.1; Exhibit NQ-2018-001-06B, Table 15, Vol. 1.1.

106. Exhibit NQ-2018-001-A-03, Vol. 11 at paras. 54-55.

107. Exhibit NQ-2018-001-07B (protected), Table 14, Vol. 2.1; Exhibit NQ-2018-001-06B, Table 15, Vol. 1.1.

108. Exhibit NQ-2018-001-07B (protected), Table 14, Vol. 2.1; Exhibit NQ-2018-001-06B, Table 15, Vol. 1.1.

109. *Ibid.*, Table 17, Vol. 1.1; Exhibit NQ-2018-001-07B (protected), Table 16, Vol. 2.1. Any differences between Tables 16 and 17 are due to rounding.

110. Exhibit NQ-2018-001-06B, Table 17, Vol. 1.1; Exhibit NQ-2018-001-07B (protected), Table 16, Vol. 2.1.

113. The market share of non-subject countries decreased by three percentage points in 2016 and eight percentage points in 2017 and a further 12 percentage points in interim 2018 as compared to interim 2017.¹¹¹ This was primarily driven by a decline in imports from the U.S. The market share of U.S. imports dropped by five percentage points in 2016, 14 percentage points in 2017 and a further 14 percentage points in interim 2018 as compared to interim 2017, whereas the market share of imports from other countries increased by two percentage points in 2016, six percentage points in 2017 and by three percentage points in interim 2018 as compared to interim 2017.¹¹² However, as noted above, the subject goods still represented the greatest volume of imports in the market in absolute terms in 2017 and interim 2018.

114. The evidence indicates that in 2017 the subject goods and, to a lesser extent, imports from other countries, captured sales and market share at the expense of domestic production and U.S. imports. In addition, the Tribunal finds that AOT would have likely achieved higher sales volumes and improved market share in 2017 were it not for the large volumes of subject goods in the market at prices which undercut AOT's prices. The Tribunal also finds that in interim 2018 the subject goods captured significant sales and market share, in good part from AOT, but also from U.S. imports. In particular, the Tribunal notes that the subject goods have captured an additional third of the Canadian market in the last 18 months of the POI, which the Tribunal finds is a material gain.¹¹³

115. AOT has also put forward a number of specific allegations of sales lost to the subject goods. However, as discussed above and given the evidentiary data in the investigation report in respect of lost sales and market share attributable to the subject goods, the Tribunal does not consider that an evaluation of these anecdotal claims is necessary in the circumstances.

116. For these reasons, the Tribunal finds that the domestic industry lost sales and market share to the subject goods over the POI.

– Profitability

117. On a per piece basis, AOT's net sales value decreased in 2016, increased in 2017 and then decreased again in interim 2018 as compared to interim 2017. AOT's gross margin declined in each full year of the POI and in interim 2018. Net income improved in 2016, decreased in 2017 and dropped considerably in interim 2018 as compared to interim 2017.¹¹⁴

118. AOT's increasing COGM in 2017 and interim 2018, and significant drop in sales volume in interim 2018, contributed to its declining gross margins and net income.¹¹⁵ These declines were driven by the significant price suppression caused by the subject goods over the POI (especially in 2017), as well as AOT's significant lost sales volume as a result of its attempt to pass along a portion of these cost increases. These declines also coincided with significant growth in the overall market as compared to 2015 and a significant increase in the volume of subject imports and sales of subject goods, and, to a lesser extent, imports from other countries (excluding the U.S.).¹¹⁶

111. Exhibit NQ-2018-001-06B, Table 17, Vol. 1.1.

112. *Ibid.*

113. Exhibit NQ-2018-001-07B (protected), Table 16, Vol. 2.1.

114. Exhibit NQ-2018-001-07 (protected), Table 45, Vol. 2.1.

115. *Ibid.*

116. Exhibit NQ-2018-001-07B (protected), Tables 10, 14, Vol. 2.1; Exhibit NQ-2018-001-07 (protected), Table 45, Vol. 2.1.

119. AOT's export sales generally fared better than its domestic sales, with improvements in net sales value, gross margin, and net income in 2016 and 2017. However, results in interim 2018 declined as compared to interim 2017, and this decline was greater than the decline experienced by AOT's domestic sales. These results appear to be largely attributable to one particular account and do not appear to be related to the state of the Canadian, or even the North American, market over the POI. Mr. Pliska of AOT testified that "[i]n 2016 and '17, we saw a large amount of exports to Venezuela and due to the geopolitical risk and other factors in Venezuela, that hasn't repeated in '18 and we don't foresee it to repeat in the near future."¹¹⁷

120. This evidence shows that the domestic industry's profitability suffered as a result of the low-priced subject goods entering the market in significant volumes over the POI.

– Capacity utilization

121. AOT's capacity utilization rate fluctuated over the POI, as a result of changes in total production.¹¹⁸ AOT's capacity utilization rate was at its lowest in interim 2018.

122. As was the case with AOT's domestic production, the Tribunal finds that AOT's capacity utilization rate was affected by the significant increase in the volume of subject imports and low-priced sales of subject goods, and, to a lesser extent, imports from other countries.

– Employment, hours worked, wages and productivity

123. These factors were not addressed in any detail by the parties. AOT's direct employment decreased by 15 percent in 2016 and increased by 2 percent in 2017. The number of direct employment hours worked increased by one percent in 2016 and 11 percent in 2017. Wages followed a similar trend to employment hours. All three measures declined in interim 2018 as compared to interim 2017.¹¹⁹

124. The trends in total production and direct employment were similar in that they both decreased in 2016 and increased in 2017. Direct employment declined at a faster rate than total production in 2016 and increased at a slower rate in 2017, resulting in increased productivity on a pieces-per-employee basis.¹²⁰ Hours worked increased in each full year of the POI, and declined in interim 2018 at a slower rate than total production, resulting in decreased productivity on a pieces-per-hour-worked basis in 2016 and interim 2018.¹²¹

125. The Tribunal finds it likely that the subject goods contributed to the declines in interim 2018. However, aside from wages, AOT gave little indication over the course of this inquiry that the subject goods played a significant role in its declines in employment levels and productivity (pieces per hour worked).¹²² As such, this evidence did not factor heavily into the Tribunal's analysis.

117. *Transcript of Public Hearing* at 9; *Transcript on In Camera Hearing* at 43-44; Exhibit NQ-2018-001-12.01C (protected), Vol. 4 at 26. The Tribunal takes note of the particular product being exported and the confidential prices at which these exports were sold.

118. Exhibit NQ-2018-001-07 (protected), Table 48, Vol. 2.1.

119. *Ibid.*; Exhibit NQ-2018-001-06, Table 49, Vol. 1.1.

120. Data for this productivity indicator is not available for interim 2018.

121. Exhibit NQ-2018-001-07 (protected), Table 48, Vol. 2.1; Exhibit NQ-2018-001-06, Table 49, Vol. 1.1.

122. Exhibit NQ-2018-001-12.01B (protected), Vol. 4 at 10.

– Inventories

126. This factor was also not the object of much discussion. AOT's volume of inventories fluctuated over the POI, increasing in 2016, remaining flat in 2017 and declined slightly in interim 2018 as compared to interim 2017, while remaining above 2015 levels.¹²³

– Investments, innovation and cash flow

127. AOT submitted that the subject goods could impact the level of investment that AOT's parent company (Apergy) is willing to make in it. Mr. Barrett noted in his witness statement that if AOT is suffering from low margins, it "will be much less likely to receive the investment necessary to keep it operating at peak efficiency. Apergy has numerous other facilities, and if those facilities are producing higher margins, they are much more likely to get investment from Apergy's finite pool of capital."¹²⁴ AOT is projecting investments in 2018 and in 2019 that would be higher than the investments made over the POI.¹²⁵ AOT also indicated that the subject goods have had a negative effect on its return on investments, growth, ability to raise capital, and cash flow.¹²⁶ This evidence was not a determining element in the Tribunal's analysis.

– Magnitude of the margin of dumping and amount of subsidy

128. The margins of dumping determined by the CBSA are sizeable, ranging from 100.4 to 149.9 percent of the export price. The amounts of subsidy determined by the CBSA are in the range of 2.8 to 68.1 percent of the export price. Some of these amounts are also sizeable (and none were insignificant, as defined in *SIMA*). This said, the Tribunal does not consider the margins of dumping or amounts of subsidy, expressed as a percentage of the export price, to necessarily represent the level of the injurious effects caused by the prices in Canada of the subject goods during the POI. However, in this case the magnitude of the margins of dumping and amounts of subsidy complement the evidence and analysis of the previous sections.

Summary

129. It is uncontested that AOT improved its production, capacity utilization and sales volumes in 2017. However, there was a dramatic shift in the opposite direction for these performance indicators in interim 2018. It is also clear that in a market that grew significantly between 2015 and 2017 (and contracted slightly in interim 2018), AOT lost a significant amount of market share in the latter part of the POI.

130. The Tribunal finds that even if some of AOT's performance indicators improved in 2017, AOT would have performed materially better in that year and in the first half of 2018 had it not been for the downward pricing pressure from the subject goods, which gained considerable market share at the expense, in good part, of AOT. It is also significant that AOT lost a considerable amount of sales and revenues as a consequence of its attempts to increase prices in order to recover increased input costs.

123. Exhibit NQ-2018-001-07 (protected), Table 48, Vol. 2.1; Exhibit NQ-2018-001-06, Table 49, Vol. 1.1.

124. Exhibit NQ-2018-001-A-05, Vol. 11 at para. 5.

125. Exhibit NQ-2018-001-07 (protected), Table 54, Vol. 2.1.

126. *Ibid.*, Table 55.

Factors other than the subject goods

AOT's business model

131. Weatherford submitted that by selling to distributors, AOT is voluntarily foregoing the higher margins associated with sales to end-users and has thus suffered from self-injury. Imex echoed these sentiments in its case brief. It also submitted that AOT has, at times, been unwilling to sell to certain customers.

132. AOT submitted that its strategy is to sell sucker rods through distributors so that it can avail itself of the value added services provided by distributors in their dealings with the end-users. It submitted that selling through distributors allows it to free up working capital, avoid the costs of carrying inventory as well as the costs associated with logistics and sales, and allows its sucker rods to be offered as part of a broader package of energy-related products, including products which AOT does not make,¹²⁷ to customers across Canada.

133. At the hearing, Mr. Pliska of AOT confirmed that it relies on distributors to provide quotations, complete the transactions and provide the day-to-day support to end-users.¹²⁸ On cross-examination he also confirmed that “[w]hat the distributors do does add value, not limited to having stock in a vast -- geographically vast market like Canada. So holding the inventory, the transportation of the product, the day-to-day support on a service side, those are all things that would cost AOT if we were to do them ourselves and wouldn't come for free”.¹²⁹ He also testified that promoting the benefits and reputation of AOT sucker rods to end-users is done through AOT's sales force, who are contacted by potential end-users or by distributors to discuss particular product specifications or customer needs.¹³⁰ Mr. Frederick of Weatherford also acknowledged that Weatherford's customers obtain value from the services of Weatherford Canada, rather than by purchasing directly from a manufacturer in China.¹³¹

134. Tenaris, an importer of sucker rods from third-country sources,¹³² confirmed that it operates under a model similar to AOT's in the Canadian market, that is, it sells its imports of sucker rods through distributors as opposed to directly to end-users. At the hearing, Mr. Labaronne of Tenaris testified that replicating an entire distribution network only for sucker rods, whether for the completion or maintenance of wells, would “not be viable on the margin side”.¹³³

135. There is no cogent evidence that AOT's model of selling to distributors has contributed to the significant price suppression it experienced over the POI, or its lost sales and market share.¹³⁴ The Tribunal is also not convinced that a change in AOT's business model would have improved its margins, which is what Weatherford argued. In addition to the value added by distributors, there is a cost associated with these services – costs which AOT does not incur. Weatherford presented no evidence as to what these costs would

127. *Transcript of Public Hearing* at 17.

128. *Ibid.* at 15-16; *Transcript of In Camera Hearing* at 41.

129. *Transcript of Public Hearing* at 20.

130. *Ibid.* at 15, 17.

131. *Ibid.* at 120.

132. Exhibit NQ-2018-001-06A, Table 1, Vol. 1.1.

133. *Transcript of Public Hearing* at 72.

134. On balance, the evidence is also insufficient to accept Weatherford's argument that the fact that AOT does not offer bundled product and service solutions to customers contributed to the injury. Similarly, the Tribunal is not convinced that AOT is not perceived as a supplier of innovative products in the market and that this contributed to its lost sales and market share, as was argued by Weatherford.

be for AOT. However, the Tribunal accepts that, in principle, distributors are able to spread these costs over the myriad of products they sell and, as such, are able to perform these functions in a more cost efficient manner. Thus, there is no evidence to support a conclusion that the entire margin earned by distributors could have been earned by AOT had it adopted a different business model.¹³⁵

136. On the basis of the foregoing, the Tribunal finds that the evidence on the record does not support the business model of selling through distributors as a cause of injury to AOT.

Non-production of QT rods

137. Weatherford submitted that QT sucker rods have a distinct role in the market, being well-suited for use in certain applications. Weatherford submitted that any loss of market share by AOT to QT sucker rods is the result of self-inflicted injury. In other words, because AOT does not produce QT sucker rods it has effectively shut itself out of this segment of the Canadian market.

138. AOT replied that there is no distinct Canadian demand for QT sucker rods and that the NT sucker rods which it produces are fully substitutable for QT sucker rods. In support of this argument, AOT pointed out that when asked whether countries other than Canada offer grades, types or specifications of sucker rods that Canadian producers cannot supply, only one purchaser mentioned QT sucker rods.

139. As noted above in the section addressing like goods, the Tribunal finds that QT and NT sucker rods share similar physical and market characteristics and are largely interchangeable within the API-11B specification. The Tribunal also finds that any demand for QT sucker rods is driven largely by customer preference and price as opposed to a specific requirement for QT sucker rods. These findings weigh against a conclusion that QT sucker rods are a type of specialty product with a distinct role in the Canadian market.

140. The evidence on the record also indicates that the majority of sales in the Canadian market over the POI were of NT sucker rods.¹³⁶ Mr. Frederick of Weatherford confirmed that the market for QT sucker rods is much smaller than the market for NT sucker rods.¹³⁷ The Tribunal also considered the confidential evidence of Weatherford's own proportion of sales of QT and NT sucker rods.¹³⁸

141. The Tribunal also notes that, according to the evidence, the subject goods are the only source of QT sucker rods in the Canadian market.¹³⁹ AOT does not produce QT sucker rods. Tenaris also mainly sells NT sucker rods.¹⁴⁰ In fact, there does not appear to be any production of QT sucker rods in North America.¹⁴¹ In that regard, the Tribunal finds it reasonable to infer that if the demand for QT sucker rods was increasing or end-users were requesting large volumes of QT rods (as opposed to simply low-priced sucker rods), other important suppliers (such as Tenaris) would offer QT sucker rods in the Canadian market. Indeed, Mr. Pliska indicated at the hearing and in his witness statement that AOT would begin producing QT rods if there was meaningful demand.¹⁴²

135. Exhibit NQ-2018-001-A-14 (protected), Vol. 12 at para. 7.

136. Exhibit NQ-2018-001-07B (protected), Table 14, Vol. 2.1; *Transcript of In Camera Hearing* at 100, 110.

137. *Transcript of In Camera Hearing* at 57.

138. *Ibid.*; Exhibit NQ-2018-001-15.06 (protected), Vol. 6 at 6, 26; Exhibit NQ-2018-001-25.01 (protected), Vol. 2.3 at 1.

139. *Transcript of In Camera Hearing* at 100, 110.

140. *Transcript of Public Hearing* at 79.

141. Exhibit NQ-2018-001-20.08, Vol. 5.2 at 7.

142. *Transcript of Public Hearing* at 32-33; Exhibit NQ-2018-001-A-15, Vol. 11 at para. 13.

142. The evidence suggests that the availability of QT sucker rods at dumped and subsidized prices might have contributed to any customer preference for QT sucker rods over the POI. In other words, the Tribunal is not convinced that end-users would have specifically requested QT sucker rods had they been offered at undumped and unsubsidized prices, especially in view of the preponderant evidence that NT and QT sucker rods are substitutable for most, if not all, applications.

143. For these reasons the Tribunal finds that, on balance, the evidence does not support the non-production of QT sucker rods as a cause of injury to AOT.

Use of refurbished sucker rods

144. As noted above, the decline in oil prices in the fourth quarter of 2014 had a major impact on the demand for sucker rods in 2015 and 2016. Although demand improved in 2017, the market has still not fully recovered.¹⁴³ This has led companies to implement a number of cost-cutting measures. The Tribunal heard from Mr. Pliska of AOT that because of the financial hard times that oil companies have seen since 2015, "... there has been a shift towards the lower-grade cheaper steel, cheaper products because of the financial hard times that oil companies have been in from '15 on."¹⁴⁴

145. Mr. Labaronne of Tenaris explained that one of the ways in which companies are minimizing costs is by refurbishing and reusing sucker rods that have to be pulled because of a problem in the well.¹⁴⁵ This is achieved by pulling out sucker rods from an existing well and having a third party service provider refurbish the rod, inspect it to ensure compliance with the applicable specifications, and certify its reuse in the same well or another of the company's wells.

146. These refurbished sucker rods are typically used in shallow wells and in less corrosive environments.¹⁴⁶ Companies may reuse sucker rods to save money while extending the life of a well, but doing so also carries an increased risk of failure, which could be even more costly in the long term.¹⁴⁷ Neither AOT, nor Tenaris, nor Weatherford sell refurbished sucker rods in the Canadian market.¹⁴⁸

147. According to witness testimony, the use of refurbished sucker rods in the Canadian market has been in the range of 15 to 30 percent for the last three years and is expected to remain the same moving forward.¹⁴⁹ However, the traditional sucker rod market has grown since 2015, particularly in 2017, which suggests that refurbished sucker rods have not captured significant market share from traditional sucker rods.¹⁵⁰ Even if the Tribunal were to accept that the trend towards refurbished sucker rods had a dampening effect on the 2017 growth in the domestic sucker rod market, there is no evidence as to how this would have impacted AOT since the above evidence suggests that AOT would not compete for sales directly with refurbished sucker rods. Refurbishing sucker rods is an option that is primarily available to companies (that own the sucker rods) after used sucker rods have been prematurely pulled from a well, if they can successfully undergo the refurbishment process.

148. The Tribunal therefore finds that the evidence on the record does not support the use of refurbished sucker rods as a cause of injury to AOT.

143. *Transcript of Public Hearing* at 60, 79; Exhibit NQ-2018-001-07B (protected), Table 14, Vol. 2.1.

144. *Transcript of Public Hearing* at 35.

145. *Ibid.* at 65-66.

146. *Ibid.* at 69, 73.

147. *Ibid.* at 68.

148. *Ibid.* at 47, 73; Exhibit NQ-2018-001-B-05, Vol. 13 at para. 18; *Transcript of In Camera Hearing* at 58.

149. *Transcript of Public Hearing* at 52, 69-70, 124.

150. The Tribunal also finds that there is insufficient evidence that continuous sucker rods have captured significant market share from traditional sucker rods. See *Transcript of Public Hearing* at 37-38, 137.

Summary

149. Having considered the impacts of the dumped and subsidized goods on AOT, and distinguishing these impacts from the impact of other known factors also having a bearing on the domestic industry in the above analysis, the Tribunal is satisfied that the subject goods, through their significant and increasing volumes and significant price undercutting, have, in and of themselves, caused material injury to the domestic industry in 2017 and interim 2018, in the form of price suppression; lost sales and market share; reduced production volumes and profitability; and reduced capacity utilization.

150. In this case, the injury to the domestic industry manifested itself primarily in 2017 and interim 2018, a period in which there was a significant volume of low-priced subject goods entering the Canadian market. The Tribunal finds that the extent of the injury is significant. In particular, the Tribunal finds that the significant loss of market share by the sole domestic producer in 2017 and interim 2018, and in the context of an improved total apparent market (as compared to 2015), can only be characterized as material.

151. While it is true that this time frame represents only a portion of the POI, the Tribunal finds that this does not detract from the materiality of the injury suffered by the domestic industry. In fact, the extent of the aforementioned injurious effects of the subject goods on the state of the domestic industry at the end of the POI was, in itself, sufficiently severe to constitute material injury. In this regard, the Tribunal notes that *SIMA* does not require that the adverse impact of the subject goods be uniform throughout the POI in order to conclude that the domestic industry has suffered material injury. The Tribunal also notes the timing of the injury, which overlaps with the CBSA's dumping and subsidizing period of investigation. In other words, the injury is present during the period when imports of subject goods were found to be dumped and subsidized by significant margins and during the period in which the subject goods entered the Canadian market in very large volumes.

152. This conclusion is consistent with previous findings of the Tribunal.¹⁵¹

EXCLUSIONS

153. The Tribunal received three requests to exclude products from the Tribunal's finding. Weatherford requested a product exclusion for sucker rods manufactured using a QT method. Imex requested product exclusions for: (1) Grade 4130 QT rods; and (2) high-strength and ultra-long life superior frequency processed rods.

154. *SIMA* implicitly authorizes the Tribunal to grant exclusions from the scope of a finding.¹⁵² Exclusions are an extraordinary remedy that may be granted at the Tribunal's discretion, i.e. when the

151. For example, in *Large Diameter Line Pipe* (20 October 2016), NQ-2016-001 (CITT), the domestic industry conceded that it had not suffered injury in the first year of the POI. Nevertheless, the Tribunal found the injury in the third year to be material in terms of its lost sales and market share, reduced production and declining gross margins. Similarly, in *Stainless Steel Sinks* (24 May 2012), NQ-2011-002 (CITT), the impact on the domestic producers' financial performance did not manifest itself until the third year of the POI, which was also when the subject goods started entering the market in significant volumes. The Tribunal also found material injury in that case.

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

Tribunal is of the view that such exclusions will not cause injury to the domestic industry.¹⁵³ The rationale is that, despite the general conclusion that the dumping and subsidizing of the subject goods has caused injury to the domestic industry, there may be case-specific evidence that imports of particular products captured by the definition of the goods have not caused injury.

155. In determining whether an exclusion is likely to cause injury to the domestic industry, the Tribunal considers such factors as whether the domestic industry produces, actively supplies or is capable of producing identical, substitutable, or competing products in relation to the subject goods for which the exclusion is requested.¹⁵⁴

156. The onus is upon the requester to demonstrate that imports of the specific goods for which the exclusion is requested are not injurious to the domestic industry.¹⁵⁵ Thus there is an evidentiary burden on the requester to file evidence in support of its request.¹⁵⁶ However, there is also an evidentiary burden on the domestic producers to file evidence in order to rebut the evidence filed by the requester.¹⁵⁷

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

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

Weatherford

159. Weatherford requested an exclusion for the following product:

Sucker rods, including pony rods, with or without couplings attached manufactured to American Petroleum Institute (API) 11B specifications, equivalent standards or proprietary standards, including in a finished or semi-finished state, made of solid steel, including carbon, alloy and special grades of steel, of 2.5 inches or less in diameter of rod body, with stated measurements subject to permissible tolerances, manufactured using a quench and tempered method.

160. The arguments presented by Weatherford were discussed in detail in the section of these reasons addressing like goods. In summary, Weatherford submitted that QT sucker rods are superior in a number of ways, making them more suitable for certain applications and, as a result, that they are preferred by some customers for some applications. Weatherford argued that, as a result of these differences, QT and NT

153. See, for example, *Aluminum Extrusions* at para. 339; *Stainless Steel Wire* (30 July 2004), NQ-2004-001 (CITT) at para. 96.

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

155. *Ibid.* at para. 243.

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

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

sucker rods are not substitutable as they do not perform to the same level in certain applications. Weatherford also stressed that AOT does not manufacture QT sucker rods.

161. AOT's response to this product exclusion request was also discussed above. AOT acknowledged that it does not currently produce, nor is it capable of producing, QT sucker rods at this time. However, it submitted that its NT sucker rods are fully substitutable for QT sucker rods. In the alternative, it submitted that QT sucker rods are downwardly substitutable for NT sucker rods and that granting the product exclusion request would therefore be injurious to AOT.

162. It is not disputed that AOT does not make an identical product. However, as part of its like goods analysis, the Tribunal considered the substitutability of QT sucker rods and domestically produced like goods and concluded that AOT produces a substitutable product. The Tribunal found that QT sucker rods and domestically produced like goods compete directly with each other and are substitutable in most, if not all, applications, notwithstanding that some end-users may have a preference for using QT rods, either because of their low cost or for use in certain applications.¹⁵⁸ Thus, the Tribunal is of the view that, if Weatherford's request were granted, imports of QT sucker rods from China would likely be injurious to the domestic industry.

163. The Tribunal, therefore, denies this request.

Imex

164. Imex requested an exclusion for the following product:

Grade 4130 AISI Rods Fully Finished Quench and Tempered x 25ft Long and Plus Includes Pony Rods.

165. Imex submitted that the grade and QT nature of the sucker rods covered by this product exclusion request are not manufactured in Canada.

166. For its part, AOT acknowledged that it does not produce an identical product but submitted that its products are substitutable for the products for which an exclusion is requested and that granting this request would cause AOT injury.¹⁵⁹ AOT submitted that its domestically produced products, especially its D alloy 78 sucker rod, compete directly with 4130 sucker rods. AOT further submitted that it could produce 4130 rods if required.¹⁶⁰ Finally, AOT submitted that its NT sucker rods are fully interchangeable with QT rods.

167. The Tribunal's reasons for denying Weatherford's product exclusion request are also dispositive of this request. The Tribunal, therefore, denies this request.

168. Imex also requested an exclusion for the following product:

High Strength and Ultra Long Life Super Sonic Frequency Processed Sucker Rods

169. Imex submitted that this request covers relatively new technology that is not offered by any manufacturer in Canada. It submitted that sucker rods that have been heat-treated using the "Supersonic Frequency Processed" (SFP) method have improved overall performance and extended life and cyclic

158. See paragraphs 29-39 of these reasons.

159. Exhibit NQ-2018-001-26.02, Vol. 1.3 at 4.

160. *Ibid.* at 6-7.

ability in oil well pumping applications. Imex submitted that it has not yet imported subject goods meeting this description.

170. AOT opposed this product exclusion request and submitted that granting it would cause AOT injury in the form of lost sales. AOT submitted that it is not familiar with this technology and noted that Imex did not provide sufficient information quantifying the allegedly superior characteristics of SFP sucker rods, to allow AOT to submit a meaningful response. However, AOT submitted that it can produce sucker rods with sufficiently high yield strengths to meet the needs of most, if not all, wells in Canada. Moreover, it submitted that there is a significant degree of substitutability between different grades of sucker rods, and none of Imex's evidence suggests that these rods could not be used in the same applications as AOT's sucker rods are used.

171. Imex did not file a reply.

172. The Tribunal denies this request. The Tribunal finds that Imex has not provided sufficient compelling evidence to establish that sucker rods produced using the SFP method would not cause injury to the domestic industry. The available evidence suggests that SFP sucker rods are akin to QT sucker rods. As such, for the reasons stated above in respect of QT sucker rods, the Tribunal finds that the domestic industry produces a substitutable product and that its sales of that product would be injured by SFP sucker rods.

CONCLUSION

173. For the reasons set out above, the Tribunal finds that the dumping and subsidizing of the subject goods have caused injury to the domestic industry. Accordingly, the Tribunal need not consider the question of whether the subject goods are threatening to cause injury.

Serge Fréchette
Serge Fréchette
Presiding Member

Georges Bujold
Georges Bujold
Member

Caterina Ardito-Toffolo
Caterina Ardito-Toffolo
Member