



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDERS AND REASONS

Expiry Review No. RR-2018-005

Circular Copper Tube

*Order and reasons issued
Wednesday, September 25, 2019*

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IN THE MATTER OF an expiry review, pursuant to subsection 76.03(3) of the *Special Import Measures Act*, of the findings made by the Canadian International Trade Tribunal on December 18, 2013, in Inquiry No. NQ-2013-004, concerning:

CIRCULAR COPPER TUBE

ORDERS

The Canadian International Trade Tribunal, pursuant to subsection 76.03(3) of the *Special Import Measures Act*, has conducted an expiry review of its findings made on December 18, 2013, in Inquiry No. NQ-2013-004.

Pursuant to paragraph 76.03(12)(b) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby continues its findings in respect of the dumping of circular copper tube with an outer diameter of 0.2 inch to 4.25 inches (0.502 centimetre to 10.795 centimetres) excluding industrial and coated or insulated copper tube, originating in or exported from the Federative Republic of Brazil, the Hellenic Republic, the People's Republic of China and the Republic of Korea, and the subsidizing of those goods originating in or exported from the People's Republic of China.

Pursuant to paragraph 76.03(12)(b) and subsection 76.04(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby continues its finding in respect of the dumping of the aforementioned goods originating in or exported from the United Mexican States.

Randolph W. Heggart

Randolph W. Heggart
Presiding Member

Jean Bédard

Jean Bédard
Member

Georges Bujold

Georges Bujold
Member

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	July 15, 2019
Tribunal Panel:	Randolph W. Heggart, Presiding Member Jean Bédard, Member Georges Bujold, Member
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STATEMENT OF REASONS

INTRODUCTION

1. This is an expiry review, pursuant to subsection 76.03(3) of the *Special Import Measures Act*,¹ of findings made by the Canadian International Trade Tribunal on December 18, 2013, in Inquiry No. NQ-2013-004,² concerning the dumping of circular copper tube originating in or exported from the Federative Republic of Brazil (Brazil), the Hellenic Republic (Greece), the People's Republic of China (China), the Republic of Korea (Korea) and the United Mexican States (Mexico), and the subsidizing of those goods originating in or exported from the People's Republic of China (the subject goods).

2. The period of review (POR) in this expiry review is three full calendar years, from January 1, 2016, to December 31, 2018.

PROCEDURAL BACKGROUND

3. On April 18, 2019, the Canada Border Services Agency (CBSA) determined, pursuant to paragraph 76.03(7)(a) of *SIMA*, that the expiry of the findings was likely to result in the continuation or resumption of dumping and subsidizing of the subject goods.³

4. On April 23, 2019, the Tribunal requested that the domestic producer, importers and foreign producers of copper tube complete questionnaires. The Tribunal received a response to the Domestic Producers' Questionnaire and 11 responses to the Importers' Questionnaire. There was only one reply to the Foreign Producers' Questionnaire, from Elvahalcor S.A. of Greece.

5. From the replies to the questionnaires that were received, and other information on the record, public and protected investigation reports were prepared and placed on the record on June 11, 2019.⁴

6. On June 18, 2019, the Tribunal received submissions supporting a continuation of the findings from Great Lakes Copper Ltd. (GLC). The Tribunal did not receive any submissions opposing the continuation of the findings.

7. The Tribunal did not receive any requests for product exclusions.

8. On July 5, 2019, GLC informed the Tribunal that GLC did not oppose that the hearing be conducted by way of written submissions instead of in person. As such, the Tribunal held a file hearing on July 15, 2019.

9. The evidence submitted in the file hearing included confidential information as is usually the case with proceedings under *SIMA*. The statutory provisions governing the designation of confidential information in the Tribunal's proceedings are found in sections 45 to 49 of the *Canadian International Trade Tribunal Act*.⁵ The investigation report (IR) and these reasons have been prepared following rigorous internal procedures to ensure that there is no breach of confidentiality. The Tribunal members and its support staff are under a statutory obligation not to disclose confidential information which the Tribunal

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

2. *Circular Copper Tube* (18 December 2013), NQ-2013-004 (CITT) [*Copper Tube*].

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

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

5. R.S.C., 1985, c. 47 (4th Supp.) [*CITT Act*].

receives as part of any of its mandates. As part of these procedures, the Tribunal reviewed its investigation report and reasons to ensure that the confidential information is not directly or indirectly revealed. One of the more obvious considerations that the Tribunal takes into consideration is the number of respondents (i.e. domestic producers and importers) whose data is presented in a statistical table. However, the Tribunal must also consider whether there is dominance – a situation where a single or small number of firms account for a very large portion of any data field such that confidential information could be revealed by means of reverse engineering.

10. In the current expiry review, the domestic industry consists of only one company. The Tribunal received a non-confidential summary of the domestic producer's case brief, witness statement and supporting documentation. Nevertheless, a large quantity of information has been designated as confidential as it was largely not possible to make the domestic industry's data public without revealing commercially sensitive information.

11. As well, the investigation report (which compiles and summarizes the evidence on which these reasons are based) presents import data in detail. For example, domestic producer imports are presented separately from non-subject country imports, as is the case with subject country imports; this further restricts the import data which could be made public without inadvertently revealing importer-specific information.

12. The Tribunal's governing legislation does provide for the disclosure of all of the confidential information to independent counsel for the parties that have made the required declaration and undertaking to protect the information. Any violation of the terms of their declaration and undertaking is a serious offence.

13. All of the above procedures were adhered to in this review. Where possible and appropriate in these reasons, indices or percentage changes are provided to give a comparative indication of the relevant information or trends therein.

PRODUCT

14. The subject goods are defined as follows: circular copper tube with an outer diameter of 0.2 inch to 4.25 inches (0.502 centimetre to 10.795 centimetres) excluding industrial and coated or insulated copper tube (copper tube).

Product information

15. The Tribunal's investigation report provides the following additional product information:

Circular copper tube sold in Canada is manufactured to a variety of standards and grades. There are numerous widely accepted applications of circular copper tube. "Industrial" as well as "coated or insulated" circular copper tube is excluded from the subject goods' definition. Widely accepted applications of circular copper tube include plumbing, air conditioning/refrigeration (ACR) and medical gas applications. Circular copper tube is produced in straight lengths and in coils, in diameters that correspond with the requirements of each of those uses.⁶

LEGAL FRAMEWORK

16. The Tribunal is required, pursuant to subsection 76.03(10) of *SIMA*, to determine whether the expiry of the findings issued in Inquiry No. NQ-2013-004 in respect of the subject goods is likely to result in

6. Exhibit RR-2018-005-05, Vol. 1.1 at 8.

injury or retardation to the domestic industry.⁷ Pursuant to subsection 76.03(12) of *SIMA*, if the Tribunal determines that the expiry of the findings is unlikely to result in injury, it is required to rescind the findings. However, if it determines that the expiry of the findings is likely to result in injury, the Tribunal is required to continue the findings, with or without amendment.

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

18. The Tribunal must also determine whether it will make an assessment of the cumulative effects of the dumping of the subject goods from the various subject countries. The Tribunal must also determine whether it will make an assessment of the cumulative effects of the dumping and subsidizing of the subject goods originating in or exported from China, i.e. whether it will cross-cumulate the effects for the Chinese subject goods.

LIKE GOODS AND CLASSES OF GOODS

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

20. 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;

21. In deciding the issue of like goods when goods are not identical in all respects to the other goods, the Tribunal typically considers a number of factors, including the physical characteristics of the goods (such as composition and appearance) and their market characteristics (such as substitutability, pricing, distribution channels, end uses and whether the goods fulfill the same customer needs).⁸

22. The Tribunal has previously concluded that domestically produced copper tube is like goods to the subject goods and that there is a single class of goods. Domestically produced copper tube has the same physical characteristics and end uses, and is sold through the same channels of distribution as the subject goods.⁹

23. Having received no evidence to the contrary, the Tribunal sees no reason to depart from its previous finding that domestically produced copper tube constitutes like goods to the subject goods and that there is a single class of goods.

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

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

9. Exhibit RR-2018-005-A-03, Vol. 11 at paras. 22-26.

DOMESTIC INDUSTRY

24. 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.

25. The Tribunal must therefore determine whether there is a likelihood of injury to the domestic producers as a whole or those domestic producers whose production represents a major proportion of the total production of like goods.¹⁰

26. Since GLC is the only producer of like goods in Canada, the likelihood of injury to its production will be examined in this review.

CUMULATION AND CROSS-CUMULATION

27. Subsection 76.03(11) of *SIMA* provides that the Tribunal shall make an assessment of the cumulative effect of the dumping or subsidizing of goods “that are imported into Canada from more than one country if the Tribunal is satisfied that an assessment of the cumulative effect would be appropriate taking into account the conditions of competition” between the goods imported into Canada from any of the countries and the goods from any other countries or between those goods and the like goods.

28. In considering the conditions of competition between goods, the Tribunal typically takes into account the following factors, as applicable: the degree to which the goods from each subject country are interchangeable with the subject goods from the other subject countries or with the like goods; the presence or absence of sales of imports from different subject countries and of the like goods into the same geographical markets; the existence of common or similar channels of distribution; and differences in the timing of the arrival of imports from a subject country and of those from the other subject countries, and of the availability of like goods supplied by the domestic industry.

29. The evidence in this review did not disclose any differences in the conditions of competition between the subject goods from any country or between the subject goods and the like goods.¹¹

30. However, since the subject goods from Brazil, Greece, Korea and Mexico are dumped, whereas subject goods from China are dumped and subsidized, their effects cannot be cumulated. Numerous Tribunal decisions since 2013 have endorsed such a methodology, which was recently thoroughly

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

11. Exhibit RR-2018-005-A-03, Vol. 11 at para. 22.

articulated in *Carbon Steel Welded Pipe*.¹² Therefore, and given the above conclusions on conditions of competition, this methodology mandates that a) goods from the dumping countries (Brazil, Greece, Korea and Mexico) should be cumulated and b) the effects of dumped and subsidized subject goods from China must be analyzed separately.

31. The Tribunal must also determine whether it will make an assessment of the cumulative effect of the dumping and subsidizing of the subject goods. In Inquiry No. NQ-2007-001, the Tribunal stated that it would not differentiate any effect resulting from the dumping of the subject goods from any effect resulting from the subsidizing of the same goods for the purposes of its analysis, as it continued to hold the view that it was not possible to isolate the effects caused by the dumping of goods from those caused by the subsidizing of the same goods because they are so closely intertwined that it was impossible to unravel them so as to allocate specific or discrete portions to the dumping and subsidizing.¹³ The Tribunal adopted the same approach in Expiry Review No. RR-2012-003.¹⁴

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

LIKELIHOOD OF INJURY ANALYSIS

33. An expiry review is forward-looking.¹⁵ It follows that evidence from the POR during which an order or a finding was being enforced is relevant insofar as it bears upon the prospective analysis of whether the expiry of the order or finding is likely to result in injury.¹⁶ The Tribunal will therefore examine the domestic industry's recent performance in order to assess the likely performance of the domestic industry were the findings continued; this analysis would then allow the Tribunal to properly compare such performance to a situation where the findings were rescinded.¹⁷ In *Thermoelectric Containers*, the Tribunal stated that an aid to the proper contextualization of the information from the POR can include the performance of the domestic and foreign industries during the initial inquiry's period of investigation (POI), when final anti-dumping and countervailing duties had yet to be applied.¹⁸

34. There is no presumption of injury in an expiry review. Findings must be based on positive evidence, in compliance with domestic law and consistent with the requirements of the *Agreement Establishing the*

12. *Carbon Steel Welded Pipe* (15 October 2018), RR-2017-005 (CITT) at paras. 23-55.

13. *Seamless Carbon or Alloy Steel Oil and Gas Well Casing* (10 March 2008), NQ-2007-001 (CITT) at paras. 76-77.

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

15. *Certain Dishwashers and Dryers* (25 April 2005); RR-2004-005 (CITT) at para. 16.

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

17. See paragraph 37.2(2)(c) of the *Regulations*. *Hot-Rolled Carbon Steel Plate and High-Strength Low-Alloy Steel Plate* (7 January 2014), RR-2013-002 (CITT) at para. 85.

18. *Thermoelectric Containers* at para. 14; see also *Aluminum Extrusions* at para. 21.

World Trade Organization.¹⁹ In the context of an expiry review, positive evidence can include evidence based on past facts that tend to support forward-looking conclusions.

35. In making its assessment of likelihood of injury, the Tribunal has consistently taken the view that the focus should be on circumstances that can reasonably be expected to exist in the near to medium term. GLC focused on future events over the 12 to 18 months following the date of the order in this review, i.e. until the end of 2020. The Tribunal did the same in a recent expiry review, which cited the current volatility of metal markets.²⁰

36. The copper tube market is a commodity market driven entirely by the price of raw materials and which follows copper prices according to COMEX or LME pricing.²¹ According to COMEX, copper prices have fluctuated greatly over the POR, without any indication where the pricing will go in the near future.²² As such, copper pricing is very volatile and difficult to predict. The price of copper tube in the market changes daily, incorporating fluctuations in the price of copper and exchange rates.²³ The outlook for the copper tube market remains similarly volatile, as will be discussed further below.

37. Accordingly, the Tribunal's analysis in this review will focus on the above-mentioned 12- to 18-month period.

38. Subsection 37.2(2) of the *Special Import Measures Regulations*²⁴ lists factors that the Tribunal may consider in addressing the likelihood of injury in cases where the CBSA has determined that there is a likelihood of continued or resumed dumping or subsidizing. The factors that the Tribunal considers relevant in this expiry review are discussed in detail below.

Changes in market conditions since the original inquiry

39. In order to assess the likely volumes and prices of the subject goods and their impact on the domestic industry if the findings were rescinded, the Tribunal will first consider changes in international and domestic market conditions since its original inquiry.²⁵

International market conditions

40. GLC submits that demand in international markets is in decline or not growing at the high rates previously experienced in the POI. Moreover, GLC has identified Vietnam, Thailand and Serbia as large, emerging non-subject sources of copper tube, which increases the vulnerability of the domestic industry to dumping or subsidization of subject goods. The International Monetary Fund forecasts also suggest a softening in key international markets including those of the subject countries.²⁶

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

20. *Carbon Steel Welded Pipe* (15 October 2018), RR-2017-005 (CITT) at para. 59.

21. *Copper Tube* at paras. 82-84; Exhibit RR-2018-005-03.01A (protected), Vol. 2 at 13.

22. Exhibit RR-2018-005-35.03, Vol. 1 at 320.

23. *Ibid.*

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

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

26. Exhibit RR-2018-005-A-03, Vol. 11 at 13.

41. The record contains evidence that Fabrika Bakarnih Cevi (FBC) is a large Serbian copper tube manufacturer, and according to its website, about 90 percent of its products are supplied to the markets of “Canada . . . and other countries”.²⁷

42. Nine manufacturers of copper tube were identified as located in Vietnam, including Hailiang and Ruby Copper – both of which are Chinese subsidiaries.²⁸ According to its website, Ruby Copper’s second factory opened in August 2018, which has added 88 million pounds to its current output, and is “ready for a big leap in global expansion”.²⁹

43. The Tribunal views the above as evidence of emerging non-subject sources of copper tube which export into the Canadian market. These developments indicate that Canada is an attractive market for exporters from many countries and suggest that exporters of the subject goods are likely to remain interested in the Canadian market in the next 12 to 18 months.

Domestic market conditions

44. In its reasons for the findings issued in December 2013, the Tribunal described the Canadian market for copper tube as stable or slightly diminishing during the POI; copper tube was said to be a “commodity” product in Canada.³⁰ There is no evidence as to a change in these conditions.

45. GLC argues that the Canadian market is contracting, which, in concert with the re-entry of subject goods, would lead to pricing pressure and displacement of market share. GLC also forecasts a softening/plateauing in copper tube demand in Canada. Its assertion is supported by the forecasts that investment in construction (residential and non-residential) will shrink.

46. Historically, copper tube demand has been tied to construction investment and activity.³¹ During the POR, growth in residential construction activity appears to have plateaued, as both housing starts and investments softened by 2018.³² According to forecasting data, this softening is expected to continue into 2019, which likely will impact copper tube demand.³³ Moreover, as alternative products to copper tube (such as PEX piping) become common in construction, the demand for copper tube is likely to be affected although the extent of these effects is unclear.³⁴

47. According to forecasting data from BMO, the growth rate in residential construction increased during 2016 and 2017, but slowed in 2018. Further, annual housing starts decreased in 2018 from 2017.³⁵ Yet there does not seem to be a parallel trend in the estimated market reported in the IR, which indicates that the copper tube market contracted by 3 percent in 2017 but increased by 6 percent in 2018.³⁶ While forecasted construction activity is not a conclusive indicator of copper tube demand, 2019 is forecasted to

27. Exhibit RR-2018-005-35.02, Vol. 11 at 7.

28. Exhibit RR-2018-005-35.01, Vol. 11 at 6-7.

29. *Ibid.* at 8.

30. *Copper Tube* at paras. 45, 84, 168 and 171.

31. Exhibit RR-2018-005-A-04 (protected), Vol. 12 at 23; Exhibit RR-2018-005-03A, Vol. 1 at 12.

32. Exhibit RR-2018-005-A-03, Vol. 11 at 23.

33. Exhibit RR-2018-005-A-04 (protected), Vol. 12 at 23.

34. Exhibit RR-2018-005-16.01 (protected), Vol. 4 at 2; *Copper Tube* at para. 171.

35. Exhibit RR-2018-005-A-03, Vol. 11 at 23.

36. Exhibit RR-2018-001-05, Vol. 1.1 at Table 10.

have a shrinking construction growth rate and fewer housing starts. In 2020, investment in residential construction is slated to improve, and housing starts are anticipated to remain steady.³⁷

48. Consequently, while there is no clear indication as to what the copper tube market will look like in the next 12 to 18 months, it is reasonable to conclude that the market will not experience any substantial growth and will most likely remain fairly level. On that basis, the Tribunal finds that the demand for copper tube is unlikely to strengthen in the near future, which increases the domestic industry's vulnerability to the resumed or continued dumping and subsidizing of the subject goods.

Likely performance of the domestic industry if the findings are continued

49. As stated above, the Tribunal will examine the likely performance of the domestic industry were the findings continued, taking into account that industry's recent performance.³⁸ For the purposes of this analysis, the Tribunal will consider whether there are any relevant factors other than the dumping and/or subsidizing of the subject goods affecting or likely to affect the domestic industry's performance in the near to medium term.³⁹

50. The vast majority of information on the performance of the domestic producer is properly designated as confidential. However, the domestic industry's results in the POR can be described as "sustainable" although they have recently declined in respect of a number of indicia such as the mark-up, which is referred to as "spread".⁴⁰

51. The domestic industry concedes, and the Tribunal's data confirms, that it is facing and will continue to face pricing pressures from non-subject countries even with the findings in place. GLC's evidence is that pricing information "travels quickly" and customers are fast in demanding lower pricing.⁴¹

52. Considering these market conditions, the recent performance of the domestic industry shows that it would likely continue to perform in an acceptable range if the findings are continued. Other than the previously mentioned potential impact of emerging non-subject sources of copper tube on the Canadian market, the record evidence does not indicate that there are any relevant factors other than the dumping and/or subsidizing of the subject goods that are likely to adversely affect the domestic industry's performance in the next 12 to 18 months.

Likely import volume of dumped and subsidized goods if the findings are rescinded

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

54. The Tribunal's assessment of the likely volumes of dumped and subsidized imports encompasses the likely performance of the foreign industry, the potential for the foreign producers to produce goods in

37. Exhibit RR-2018-005-A-03, Vol. 11 at 23.

38. See paragraph 37.2(2)(c) of the *Regulations*. *Hot-Rolled Carbon Steel Plate and High-Strength Low-Alloy Steel Plate* (7 January 2014), RR-2013-002 (CITT) at para. 85.

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

40. Exhibit RR-2018-005-A-03, Vol. 11 at paras. 61, 66. "Spread" is essentially the amount in the price of copper tube which is *over and above* the cost of copper, i.e. the price charged for manufacturing copper into copper tube.

41. *Ibid.* at para. 58.

facilities that are currently used to produce other goods, evidence of the imposition of anti-dumping and/or countervailing measures in other jurisdictions, and whether measures adopted by other jurisdictions are likely to cause a diversion of the subject goods to Canada.⁴²

55. The Tribunal finds that the rescission of the findings would result in the resumption of large volumes of subject goods being diverted to Canada for the reasons that follow, which apply, unless indicated otherwise, to both the goods from the subject dumping countries (Brazil, Greece, Korea and Mexico) and to the subject goods from China, which are both dumped and subsidized.

56. First, with trade measures affecting copper tube exports to other major markets, the rescission of the findings will make the Canadian market a much more attractive destination for producers of the subject goods.⁴³

57. Second, the excess capacity of copper tube producers in the subject countries means that they would have a significant incentive to try to export more volumes to Canada. In addition to excess capacity, it has been noted that, in some circumstances, there has been a deterioration of subject country domestic markets,⁴⁴ leading to an increase in inventories.⁴⁵ China has a reported overcapacity of copper tube of approximately 400 million pounds, which in and of itself greatly exceeds the Canadian market.⁴⁶ Additionally, the CBSA has cited evidence that there is a significant capacity to produce subject goods in Brazil, Greece, Korea and Mexico.⁴⁷

58. Third, the continued presence of subject imports throughout the POR, despite the imposition of dumping and countervailing duties, is indicative of continued interest from foreign producers, from subject countries, in the Canadian market.⁴⁸ Although the subject imports were imported in relatively small volumes, their presence reflects that distribution networks of subject goods remain established in Canada. This will facilitate rapid re-entry of larger volumes if the findings are rescinded. Furthermore, the continued export of copper tube, not covered under the product definition, from exporters in subject countries supports this conclusion.⁴⁹

59. Fourth, with slowing growth in the subject countries⁵⁰ and investment in Canadian residential and non-residential construction forecasted to remain stable, Canada is an attractive export market.⁵¹ Moreover, despite the domestic supply of like goods over the POR, there is an ongoing demand for imported copper tube.⁵²

60. All these conditions together make it likely that the rescission of the findings would result in a significant increase in the import volume of the subject goods in the next 12 to 18 months.

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

43. Exhibit RR-2018-005-03A, Vol. 1, at paras. 108, 123, 138, 146 and 156.

44. *Ibid.* at paras. 102-104, 116-119, 129-131, and 152-153.

45. *Ibid.* at 15; Exhibit RR-2018-005-03A, Vol. 1 at para. 144.

46. *Ibid.*

47. *Ibid.* at paras. 107, 143, 151.

48. Exhibit R R-2018-005-06 (protected), Vol. 2.1 at Table 5.

49. Exhibit RR-2018-005-03A, Vol. 1 at paras. 112, 142 and 150.

50. *Ibid.* at paras. 102-104, 116-119, 129-131, and 152-153.

51. Exhibit RR-2018-005-A-03, Vol. 11 at page 23.

52. Exhibit RR-2018-001-05, Vol. 1.1 at Tables 3 and 6.

Likely price effects of dumped and subsidized goods if the findings are rescinded

61. The Tribunal must consider whether, if the findings are rescinded, the dumping or subsidizing of goods is likely to significantly undercut the prices of like goods, depress those prices, or suppress them by preventing increases in those prices that would likely have otherwise occurred.⁵³ In this regard, the Tribunal distinguishes the price effects of the dumped or subsidized goods from any price effects that would likely result from other factors affecting prices. The following reasons apply, unless indicated otherwise, to both the “dumping only” subject countries and China.

62. The CBSA has found that the expiry of the findings is likely to result in the resumption of dumping and dumping and/or subsidizing of subject goods exported to Canada.⁵⁴ The low volumes of subject goods during the POR suggest that most producers in the subject countries are unable and unwilling to compete at fairly traded prices.

63. The domestic producer asserts that with a flat demand for copper tube, and the commodity nature of copper, pricing is very competitive and is very sensitive to small pricing changes in the market.⁵⁵ While analysis seems to indicate that copper cost increases are passed through to the customer, thus alleviating some price-suppressive effects of a rise in copper prices, other cost increases remain a serious issue in the presence of price undercutting.⁵⁶

64. The domestic industry contends that it currently struggles to compete with non-subject countries. In particular, GLC alleges that it has already faced intense pricing pressure from increasingly low-priced imports from non-subject countries, such as Serbia and Vietnam.⁵⁷ It further contends that it would be unable to compete with low-priced imports from subject countries.⁵⁸ GLC argues that should the findings be rescinded, pricing in the Canadian market will be driven further down by low-priced subject imports seeking to gain market share from existing low-priced imports from non-subject countries.⁵⁹

65. The Tribunal’s data confirms that, since the original findings and the imposition of measures, the domestic industry has gained market share with the departure of the subject goods.⁶⁰ However, the Tribunal has also observed that non-subject imports also gained market share, in particular imports from other countries which had not been present in the market prior to the original findings. These other countries’ low-priced offerings competed against the like goods throughout the POR.⁶¹

66. The Tribunal agrees that the subject goods would likely be sold at prices that compete with non-subject imports. Thus, it examined prices of non-subject imports during the POR to assess the likely price effects of subject goods. In addition to comparing like goods with the selling price of the non-subject goods, the Tribunal also compared the selling prices of like goods with the purchase price of the non-subject imports. The Tribunal included the latter approach in this case to account for instances where domestic

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

54. Exhibit RR-2018-005-03, Vol. 1 at 1.

55. Exhibit RR-2018-005-23.01, Vol. 7 at para. 4; *Copper Tube* at paras. 45, 84; Exhibit RR-2018-005-A-01, Vol. 11 at paras. 12-13, 27; Exhibit RR-2018-005-05, Vol. 1.1 at Table 9.

56. Exhibit RR-2018-005-A-01, Vol. 11 at para. 23; Exhibit RR-2018-005-05 (protected), Vol. 2.1 at Table 16.

57. Exhibit RR-2018-005-03, Vol. 1 at paras. 67-68, 96; Exhibit RR-2018-005-A-03, Vol. 11 at paras. 36, 53.

58. Exhibit RR-2018-005-A-01, Vol. 11 at paras. 25, 28.

59. *Ibid.* at para. 25.

60. Exhibit RR-2018-005-05, Vol. 1.1 at Tables 5 and 6; Exhibit RR-2018-005-10, Vol. 1.3 at Table 65.

61. Exhibit RR-2018-005-05 (protected), Vol. 2.1 at Table 14.

producers compete directly with foreign producers for sales to distributors that import from non-subject countries directly.⁶²

67. The Tribunal observed that customers of like and subject goods have since switched their import sources to the current non-subject price leaders.⁶³ This pricing of non-subject goods, at the import purchase level, undercuts the prices of like goods.⁶⁴

68. Since import pricing from non-subject countries is less than the domestic price, GLC has already had to reduce its pricing or discount heavily to maintain sales to its key clients.⁶⁵ Mr. Mitchell of GLC also included in his witness statement examples of lower-priced offers of imports from other countries, and how GLC has had to adjust its own prices to compete with these imports, in particular those from Serbia and Vietnam.⁶⁶

69. GLC alleges that subject imports would have to be priced low enough to compete with the prices being offered by non-subject countries in order to regain market share. Indeed, the Tribunal determined in 2010 that purchasers routinely purchase on the basis of price, and that 5 to 10 percent in pricing differential was sufficient to outweigh all other purchasing factors. GLC suggests that this percentage could be as low as 2 to 5 percent.⁶⁷

70. Given that the subject goods would need to undercut the current non-subject price leaders in order to gain market share, there is a likelihood of price suppression and depression as GLC endeavours to keep its key clients in the market. Mr. Mitchell submitted that GLC has already adopted a position of sacrificing its spread, or margin, in order to maintain its sales.⁶⁸ He also posits that this strategy would become unsustainable for GLC should its prices be further suppressed and depressed by the re-entry of subject imports seeking to reclaim market share.

71. The Tribunal examined import pricing for Brazil, Greece, Korea and Mexico separately from Chinese subject pricing. During the original inquiry, subject imports from Brazil, Greece, Korea and Mexico were competitively priced with like goods. Over the POI there were a number of instances of price undercutting.⁶⁹ During the POR these imports all but disappeared from the Canadian market, and those that remained were priced above the like goods.

72. Brazilian, Greek, Korean and Mexican exporters of copper tube have continued to export non-subject copper tube to Canada during the POR. According to data collected by the Tribunal, this non-subject copper tube (mainly coated and industrial copper tube) is competitively priced with the domestic industry's

62. *Carbon Steel Welded Pipe* at para. 79.

63. Exhibit RR-2018-005-03, Vol. 1 at para. 80; Exhibit RR-2018-005-05 (protected), Vol. 2.1 at Table 3; Exhibit RR-2018-001-A-03, Vol. 11 at para. 23.

64. Exhibit RR-2018-005-06 (protected), Vol. 2.1 at Tables 12 and 14.

65. Exhibit RR-2018-005-A-03, Vol. 11 at para. 23; Exhibit LE-2018-005-03.01A (protected), Vol. 2 at paras. 53-54 and Tables 4 and 5.

66. Exhibit RR-2018-005-A-03, Vol. 11 at para. 23; Exhibit LE-2018-005-03.01 (protected), Vol. 2 at 120-144.

67. *Copper Tube* at para. 83; Exhibit NQ-2013-004-07, Vol. 1.1 at Tables 17 and 41.

68. Exhibit RR-2018-005-A-01, Vol. 11 at paras. 55, 57.

69. Exhibit NQ-2013-004-07, Vol. 1.1 at Table 69.

pricing.⁷⁰ These exporters have maintained business relations with key customers of subject copper tube over the POR.⁷¹

73. Based on the evidence on the record, should the findings be rescinded, the above subject countries would likely undercut current import pricing from non-subject countries, notably Vietnam and Serbia, in order to gain market share.⁷²

74. Further to the general pricing analysis above, the Tribunal also examined import pricing for the Chinese subject goods separately from the other subject countries.

75. During the original inquiry, subject imports from China were among the lowest priced copper tube in the Canadian market.⁷³ Given that there were minimal imports of Chinese subject goods during the POR and that they were priced higher than the domestic like goods, the Tribunal finds it likely that Chinese producers of subject goods are unable or unwilling to participate in the Canadian market with normal values.⁷⁴ Moreover, Chinese exporters of non-subject copper tube continue to export to Canada at low pricing. Therefore, Chinese exporters have maintained business relationships with importers of copper tube in Canada.⁷⁵

76. GLC and the CBSA suggest that Hailiang's decision to open up factories in Vietnam following the original finding demonstrates the Chinese exporters' continued practice of exporting low-priced copper tube to Canada.⁷⁶ As observed over the POR, non-subject countries like Vietnam have become the price leaders in the Canadian market since the findings.⁷⁷

77. Based on the evidence on the record, should the findings be rescinded, Chinese subject goods would also likely undercut current import pricing from non-subject countries to gain market share.

78. The relative price parity as currently exists in the Canadian market is already having a price-suppressive effect on the prices of the like goods. Based on the above pricing analysis, the Tribunal is of the view that if the findings are rescinded, in order to capture sales and market share in Canada, subject goods from China as well as those from Brazil, Greece, Korea and Mexico, will be priced at or below the low prices of non-subject imports already competing in the Canadian market. This import pricing would be low enough that it would, at the very least, prevent any price increases by the domestic industry and would most likely result in price depression.

79. Accordingly, the prices of the subject goods will likely significantly undercut, depress and suppress prices of like goods. The likely adverse impact of these price effects is discussed below.

70. Exhibit RR-2018-005-22.02 (protected), Vol. 6.1 at 5; Exhibit RR-2018-005-19.16 (protected), Vol. 6.1 at 17; Exhibit RR-2018-005-22.01 (protected), Vol. 6.1 at 1; Exhibit RR-2018-005-16.01 (protected), Vol. 4 at 9 and 13.

71. Exhibit RR-2018-005-03, Vol. 1 at paras. 147, 150, 155.

72. Exhibit RR-2018-005-06 (protected), Vol. 2.1 at Table 12.

73. Exhibit NQ-2013-004-07, Vol. 1.1, Table 69.

74. Exhibit RR-2018-005-03, Vol. 1 at 111.

75. *Ibid.* at 112.

76. *Ibid.* at paras. 68, 112; Exhibit RR-2018-005-A-01, Vol. 11 at para. 18; Exhibit RR-2018-005-23.01, Vol. 7 at para. 18.

77. Exhibit RR-2018-005-06 (protected), Vol. 2.1, Table 12; Exhibit RR-2018-005-25.01 (protected), Vol. 6; Exhibit RR-2018-005-A-01, Vol. 11 at para. 63; Exhibit RR-2018-005-03, Vol. 1 at para. 121.

Likely impact on the domestic industry if the findings are rescinded

80. The Tribunal will assess the likely impact of the above volumes and prices on the domestic industry if the findings are rescinded,⁷⁸ taking into consideration the likely performance of the domestic industry were the findings continued, as discussed above. In this analysis, the Tribunal distinguishes the likely impact of the dumped or subsidized goods from the likely impact of any other factors affecting or likely to affect the domestic industry.⁷⁹

81. GLC argues that the likely significant volumes and lower prices of subject goods, if the findings are rescinded, are expected to cause material injury in the near future. As stated above, the bulk of the data on GLC's financial results is properly confidential. While the Tribunal considered the whole record in arriving at its decision, its reasons herein rely largely on GLC's public submissions.⁸⁰

82. GLC's evidence predicts a decrease of 25 percent in its "spread" and reductions in its market share, including losses at its key customer accounts.

83. The Tribunal has conducted its own impact analysis of price decreases based on the pricing of non-subject copper tube and of copper tube exported from subject countries to markets such as the United States. The Tribunal's analysis confirms the above scenarios of the domestic industry.

84. The Tribunal finds that, should GLC decrease its overall pricing by 15 percent (or even by a more conservative 10 percent) in order to stay competitive with non-subject or subject imports and maintain the same sales volumes, GLC would suffer material injury. Such pricing would directly result in lowered profitability and consequent negative impacts on employment and investment.

85. The Tribunal conducted a separate analysis of the loss of market share, based on volumes of sales from imports experienced in the POI and the POR. Comparing the existing volumes of non-subject goods sold in the POR and the volumes of subject goods sold in the POI, it is inevitable that, if the findings were rescinded, the domestic industry would lose sales volumes to returning subject goods.⁸¹ This analysis also confirms that even very small amounts of lost market share would similarly be materially injurious to GLC. As the industry is highly dependent on a high throughput, i.e. high capacity utilization to cover its fixed costs,⁸² the Tribunal finds that such a loss of market share would result in a lowered production volume and, in turn, a lowered profitability, and consequent negative impacts on employment and investment.

86. The Tribunal is convinced that a combination of the volume and price effects described above, or each of these effects occurring separately, would likely result in material injury should the findings be rescinded.

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

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

80. As is apparent from its investigation report, the Tribunal does not provide index or trend information with respect to financial results, as even comparative financial information is in itself confidential: Exhibit RR-2018-005-06 (protected), Vol. 2.1 at Tables 16-19.

81. *Ibid.* at Table 9; Exhibit RR-2018-005-11 (protected), Vol. 2.3 at Table 63.

82. Exhibit RR-2018-005-A-03, Vol. 11 at paras. 53, 64.

DETERMINATION

87. For all of the reasons stated above, the Tribunal continues its findings in respect of the dumping of circular copper tube with an outer diameter of 0.2 inch to 4.25 inches (0.502 centimetre to 10.795 centimetres) excluding industrial and coated or insulated copper tube, originating in or exported from Brazil, Greece, China and Korea, and the subsidizing of those goods originating in or exported from China.

88. The Tribunal also continues its finding in respect of the dumping of the aforementioned goods originating in or exported from Mexico.

Randolph W. Heggart
Randolph W. Heggart
Presiding Member

Jean Bédard
Jean Bédard
Member

Georges Bujold
Georges Bujold
Member