Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Expiry Review No. RR-2018-006

Structural Tubing

Order and reasons issued
Wednesday, October 16, 2019

Canada

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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 order made by the Canadian International Trade Tribunal on December 20, 2013, in Expiry Review No. RR-2013-001, concerning:

STRUCTURAL TUBING ORIGINATING IN OR EXPORTED FROM THE REPUBLIC OF KOREA AND THE REPUBLIC OF TURKEY

ORDER

The Canadian International Trade Tribunal, pursuant to subsection 76.03(3) of the *Special Import Measures Act*, has conducted an expiry review of its order made on December 20, 2013, in Expiry Review No. RR-2013-001, continuing, in part, its order made on December 22, 2008, in Expiry Review No. RR-2008-001, continuing its finding made on December 23, 2003, in Inquiry No. NQ-2003-001, concerning the dumping of structural tubing known as hollow structural sections made of carbon and alloy steel, welded, in sizes up to and including 16.0 inches (406.4 mm) in outside diameter for round products and up to and including 48.0 inches (1,219.2 mm) in periphery for rectangular and square products, commonly but not exclusively made to ASTM A500, ASTM A513, CSA G.40.21-87-50W and comparable specifications, originating in or exported from the Republic of Korea and the Republic of Turkey.

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

Jean Bédard
Jean Bédard
Presiding Member

Susan D. Beaubien
Susan D. Beaubien
Member

Serge Fréchette
Serge Fréchette
Member

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	August 6, 7 and 8, 2019
Tribunal Panel:	Jean Bédard, Presiding Member Serge Fréchette, Member Susan D. Beaubien, Member
Support Staff:	Kalyn Eadie, Lead Counsel Gayatri Shankarraman, Lead Analyst Rebecca Campbell, Analyst Mylène Lanthier, Analyst

PARTICIPANTS:

Domestic Producers	**Counsel/Representatives**
Welded Tube of Canada Atlas Tube Canada ULC	Lawrence L. Herman
Nova Steel Inc. / Nova Tube Inc.	Paul Conlin Shannel Rajan Manon Carpentier Shannon McSheffrey

Importers/Exporters/Others	**Counsel/Representatives**
United Steelworkers	Craig Logie Christopher Somerville Jacob Millar
Government of Turkey	Aysegul Sahinoglu Yerdes

WITNESSES:

R.S. (Butch) Mandel Welded Tube of Canada President and CEO	Andrew Weston Welded Tube of Canada Corp. Vice President Sales, Industrial Tube Division
George Rabideau Atlas Tube Canada ULC Canadian Sales Manager	David Halcrow Russel Metals Inc. Vice President, Purchasing
Alexandre Gravel Nova Tube Inc. General Manager of Structural Tube and Pipe, Canada	Mark Rowlinson United Steelworkers Assistant to the Canadian National Director
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STATEMENT OF REASONS

INTRODUCTION

1. The Canadian International Trade Tribunal has conducted an expiry review[1] of its order made on December 20, 2013, in Expiry Review No. RR-2013-001.[2] That order provided a remedy for injury arising from the dumping of certain structural tubing known as hollow structural sections (HSS), originating in or exported from the Republic of Korea (Korea) and the Republic of Turkey (Turkey) (the subject goods).[3]

2. The Tribunal's mandate in this expiry review is to determine whether the expiry of the order is likely to result in injury to the domestic industry. If so, the order may be continued, with or without amendment, for a further five years. In the absence of likely injury to the domestic industry, the order will be rescinded.

3. In the present case, the Tribunal has determined that such injury is likely. Therefore, the Tribunal orders the continuation of the order without amendment. The reasons for its determination are set out below.

PROCEDURAL BACKGROUND

4. According to *SIMA*, findings of injury or threat of injury and the associated protection in the form of anti-dumping or countervailing duties expire five years from the date of the finding. If one or more orders continuing the finding have been made, the order will expire five years from the date of the last order made under paragraph 76.03(12)(b). In either case, a finding or order will not expire if an expiry review has been initiated before the expiry date.

5. On December 10, 2018, the Tribunal issued a notice that an expiry review would be initiated. This triggered the initiation of an investigation by the Canada Border Services Agency (CBSA) to determine whether the expiry of the Tribunal's order was likely to result in the continuation or resumption of dumping. On May 9, 2019, the CBSA determined, pursuant to paragraph 76.03(7)(a) of *SIMA*, that the expiry of the order was likely to result in the continuation or resumption of dumping of the subject goods.[4]

6. On May 10, 2018, the Tribunal initiated the investigation phase of its expiry review to determine whether the continuation or resumption of dumping of the subject goods is likely to result in injury to the domestic industry.

7. The period of review (POR) in this expiry review is three full calendar years, from January 1, 2016, to December 31, 2018, as well as the interim period of January 1 to March 31, 2019. For comparative purposes, information was also collected for the interim period of January 1 to March 31, 2018. The Tribunal requested that domestic producers, importers and foreign producers of HSS complete questionnaires. The Tribunal received six responses to the domestic producers' questionnaire and four responses to the importers' questionnaire.[5] There were no replies to the foreign producers' questionnaire.

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1. The expiry review is conducted pursuant to subsection 76.03(3) of the *Special Import Measures Act*, R.S.C., 1985, c. S-15 [*SIMA*].
2. That order continued, in part, the Tribunal's order made on December 22, 2008, in Expiry Review No. RR-2008-001, continuing its finding made on December 23, 2003, in Inquiry No. NQ-2003-001.
3. The full product definition is set out in para. 14.
4. Exhibit RR-2018-006-03, Vol. 1 at 5.
5. The Tribunal received replies from 20 companies indicating that they did not import goods meeting the product definition over the POR: Exhibit RR-2018-006-05A, Vol. 1 at 8.

From the replies to the questionnaires that were received, and other information on the record, public and protected investigation reports were prepared and put on the record on July 2, 2019. Revised versions were issued on July 19, 2019. In addition, prior to the hearing, the Tribunal sent requests for information to specific firms and received public and protected replies that were placed on the record.[6]

8. Atlas Tube Canada ULC (Atlas), Welded Tube of Canada Corporation (Welded Tube), Nova Steel Inc. and Nova Tube Inc. (together, Nova) and the United Steelworkers (USW) (collectively, the supporting parties) all supported the continuation of the order and filed submissions in support. No parties filed submissions opposing the continuation of the order.[7]

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

10. The Tribunal held a hearing, with both public and *in camera* testimony, in Ottawa, Ontario, from August 6 to 8, 2019. Atlas, Welded Tube, Nova and the USW all provided witnesses and were represented by counsel at the hearing.

11. Mr. David Halcrow of Russel Metals also appeared as a witness in support of the domestic industry.

12. Mr. Marc McArthur of Aciers Transbec, and Mr. Garry Kupchinski, Mr. Kevin Graham and Mr. Trevor Oar of Bourgault Industries Ltd., all appeared as witnesses for the Tribunal.

13. During the hearing, a witness for Welded Tube indicated that some errors were discovered in the company's response to the Tribunal's domestic producers' questionnaire.[8] Revisions to the questionnaire were received by the Tribunal on August 22, 2019,[9] and revisions to the public and protected investigation reports were prepared and put on the record on August 23, 2019.[10] After the hearing, the Tribunal sent additional requests for information to specific firms and received public and protected replies that were placed on the record.[11] In addition, the Tribunal placed three additional documents on the public record in connection with questions that were raised by the Tribunal during the closing arguments at the hearing,[12] and sought additional submissions regarding those documents. The additional submissions were received on August 23, 2019, and placed on the record.[13]

PRODUCT

Product definition

14. The CBSA defined the subject goods as follows:

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6. The Tribunal's requests are contained in Exhibits RR-2018-006-RFI-01 and RFI-02; the parties' responses are contained in Exhibits RR-2018-006-RI-01, RI-01A, RI-01B, RI-01C, RI-01D, RI-02, RI-02A, RI-02B, RI-02C, RI-02D, RI-03, RI-03A, RI-03B, RI-03C, RI-03D and RI-03E.
7. The Ministry of Trade of Turkey filed a notice of participation but did not file any submissions or appear at the hearing.
8. *Transcript of In Camera Hearing*, Vol. 1, 6 August 2019, at 3.
9. Exhibit RR-2018-006-15.03B, Vol. 3; Exhibit RR-2018-006-16.03 (protected), Vol. 4.
10. Exhibit RR-2018-006-05B, Vol. 1.1; Exhibit RR-2018-006-06B (protected), Vol. 2.1.
11. The Tribunal's requests are contained in Exhibit RR-2018-006-RFI-03; the parties' responses are contained in Exhibits RR-2018-006-RI-01E, RI-01F, RI-02E, RI-03F and RI-03G.
12. Exhibits RR-2018-006-33.02, 33.03 and 33.04, Vol. 1.
13. Exhibits RR-2018-006-42, Vol. 1; RR-2018-006-43, Vol. 1, RR-2018-006-44 (protected), Vol. 2.

> Structural tubing known as hollow structural sections made of carbon and alloy steel, welded, in sizes up to and including 16.0 inches (406.4mm) in outside diameter (O.D.) for round products and up to and including 48.0 inches (1,219.2mm) in periphery for rectangular and square products, commonly but not exclusively made to ASTM A500, ASTM A513, CSA G.40.21-87-50W and comparable specifications, originating in or exported from the Republic of Korea and the Republic of Turkey.[14]

Product information

15. The CBSA provided the following additional product information:

> [22] HSS is designed for above ground, load-bearing structural purposes. HSS is used in general construction for structural elements in buildings and bridges, as protective structures on heavy equipment and for other purposes such as highway railings and barriers and outdoor lighting. The goods may also be used in light, load-bearing structural applications, such as for agricultural implements, trailers and racking and storage systems.
>
> [23] HSS is not used for such things as automotive tubing for exhaust systems, bumpers and the like, which are typically made from tubing produced to specialized automotive specifications. HSS is also not designed for conveying liquids or gases.
>
> [24] HSS that has been galvanized (i.e. coated in zinc) or coated in other metals is not subject to this expiry review investigation.[15]

LEGAL FRAMEWORK

16. 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".

17. The Tribunal must also determine whether it is appropriate to assess the likely effect of the resumed or continued dumping of the subject goods from all subject countries cumulatively (i.e. whether it will conduct a single analysis of the likely effect or a separate analysis for each subject country).

LIKE GOODS AND CLASSES OF GOODS

18. In order for the Tribunal to determine whether the resumed or continued dumping 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.[16]

19. 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.

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14. Exhibit RR-2018-006-03A, Vol. 1 at 6.
15. *Ibid.*
16. 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.).

20. 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. These include 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).[17]

21. The Tribunal has previously concluded that domestically produced HSS constitutes like goods to the subject goods and that there is a single class of goods.[18] The supporting parties continue to support this conclusion. They submitted that HSS produced by the domestic industry is a commodity product that competes directly with the subject goods. Additionally, domestically produced HSS has the same physical characteristics and end uses, and is sold through the same channels of distribution as the subject goods.[19]

22. The Tribunal sees no reason to depart from its previous finding that domestically produced HSS constitutes like goods to the subject goods.

DOMESTIC INDUSTRY

23. 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.

24. The Tribunal must therefore determine whether there is a likelihood of injury to the domestic producers as a whole or to those domestic producers whose production represents a major proportion of the total production of like goods.[20]

25. During the POR, there were nine known producers of HSS in Canada: Atlas, Welded Tube, Nova, Bull Moose Tube, Atlantic Tube and Steel Inc., Acier Fati Steel Inc., International Tubular Products, Lahman Manufacturing, and Quali-T-Tube. Inc.

26. The Tribunal received complete responses to the domestic producers' questionnaire from Atlas, Welded Tube, Nova, and Atlantic Tube and Steel Inc. and partial responses to the domestic producers' questionnaire (all information except for financial data) from Bull Moose Tube and Acier Fati Steel. International Tubular Products, Lahman Manufacturing and Quali-T-Tube did not provide any information to the Tribunal.

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17. See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at para. 48.
18. *Structural Tubing* (20 December 2013), RR-2013-001 (CITT) [RR-2013-001] at paras. 22-23.
19. Exhibit RR-2018-006-A-03 at para. 16-17, Vol. 11; Exhibit RR-2016-006-A-05 at paras. 24, 29, Vol. 11; Exhibit RR-2018-006-C-02 at paras. 10-11, 14, Vol. 11.
20. 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.

27. Atlas is the largest domestic producer of like goods. Its production alone represents a significant proportion of domestic production and sales from domestic production.[21] Together, Atlas, Welded Tube, Nova, and Atlantic Tube and Steel Inc. account for a major proportion of the total domestic production of like goods and constitute the domestic industry for the purposes of this expiry review.[22]

CUMULATION

28. 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 . . .". The relevant conditions of competition are those that exist 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.

29. In considering the conditions of competition between goods, the Tribunal typically takes into account several factors. These include (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.

30. In the context of expiry reviews, the Tribunal has stated that the effect of continued or resumed dumping and the assessment of conditions of competition must be looked at prospectively. Accordingly, when the Tribunal makes a prospective assessment of the conditions of competition in expiry reviews, its examination presupposes that competition will actually exist in the near to medium term. In other words, if the order is rescinded, goods from competing producers will likely be present in the same market at the same time.

31. In the previous expiry review, the likely effect of resumed dumping and renewed shipments from Korea and Turkey was assessed on a cumulative basis.[23] Atlas and Welded Tube submitted that cumulation is also appropriate in this review.

32. The Tribunal was presented with no evidence that would lead it to conclude that, if the order is rescinded, the conditions of competition would change in the next 12 to 18 months. The evidence supports the conclusion that the subject goods are likely to re-enter the market through established channels of distribution if the order is rescinded. In that scenario, the subject goods will compete with each other and with the like goods.[24] Accordingly, the Tribunal considers it appropriate to assess the likely effects of continued or resumed dumping from Korea and Turkey on a cumulative basis.

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21. Exhibit RR-2018-006-A-03 at para. 2, Vol. 11; Exhibit RR-2018-006-A-04 (protected) at para. 8, Vol. 12; Exhibit RR-2018-006-05A at Table 29, Vol. 1.1; Exhibit RR-2018-006-06A (protected) at Schedule 18, Vol. 2.1.
22. Exhibit RR-2018-006-05A at Table 29, Vol. 1.1; Exhibit RR-2018-006-06A (protected) at Schedules 15, 18, 24 and 27, Vol. 2.1.
23. Goods from South Africa were considered separately, as the Tribunal was not convinced that it was likely that goods from South Africa would re-enter the Canadian market. The Tribunal ultimately rescinded its order against South Africa; see RR-2013-001 at paras. 39-41, 157.
24. Exhibit RR-2016-006-A-05 at paras. 24, 29, 54, Vol. 11; *Transcript of Public Hearing*, Vol. 1, 6 August 2019, at 30, 65, 97, 98; Vol. 2, 7 August 2019, at 184-185.

LIKELIHOOD OF INJURY ANALYSIS

33. An expiry review is forward-looking.[25] 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.[26]

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 World Trade Organization.[27] In the context of an expiry review, positive evidence can include evidence based on past facts that tend to support forward-looking conclusions.[28]

35. Subsection 37.2(2) of the *Special Import Measures Regulations*[29] lists factors that the Tribunal may consider in addressing the likelihood of injury in cases where the CBSA has determined that there is a likelihood of continued or resumed dumping. The factors that the Tribunal considers relevant in this expiry review are discussed in detail below.

36. 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, which is generally considered to be within 12 to 24 months. Atlas and Welded Tube asserted that a 12- to 18-month period was used in the last expiry review and submitted that to consider anything further than that time frame would be speculative.

37. In past cases, the Tribunal has cited volatility in the global and domestic markets as a reason for limiting its examination to the 12- to 18-month period.[30] For example, in recent reviews involving carbon steel welded pipe (CSWP), the Tribunal selected the shorter 12- to 18-month period due to the volatility in the Canadian and global CSWP markets.[31] This is particularly relevant as CSWP is produced on the same machinery as HSS, and many of the market players are the same.[32]

38. The evidence in this review is that the steel market continues to experience volatility due to escalating trade tensions and uncertainty as between the U.S. and China, trade-restrictive measures taken against steel imports in several jurisdictions, and the overall global economic slowdown.[33] In these circumstances, the Tribunal finds it appropriate to limit its examination to the circumstances that will likely occur in the next 12 to 18 months.

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25. *Certain Dishwashers and Dryers* (procedural order dated 25 April 2005), RR-2004-005 (CITT) at para. 16.
26. *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) at para. 21 [*Aluminum Extrusions*].
27. *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (16 August 2006), RR-2005-002 (CITT) at para. 59.
28. *Thermoelectric Containers* at para. 14; *Aluminum Extrusions* at para. 21.
29. SOR/84-927 [*Regulations*].
30. See *Structural Tubing* (22 December 2008), RR-2008-001 (CITT) at para. 48.
31. *Carbon Steel Welded Pipe* (28 March 2019), RR-2018-001 (CITT) at para. 34; *Carbon Steel Welded Pipe* (15 October 2018), RR-2017-005 (CITT) at para. 59.
32. *Transcript of Public Hearing*, Vol. 1, 6 August 2019, at 92, 96; Vol. 2, 7 August 2019, at 137.
33. Exhibit RR-2018-006-A-03 at paras. 40, 57, Vol. 11; Exhibit RR-2018-006-A-05 at para. 8, Vol. 11.

Changes in market conditions

39. In order to assess the likely volumes and prices of the subject goods and their impact on the domestic industry if the order were rescinded, the Tribunal will first consider changes in international and domestic market conditions.[34]

International market conditions

40. In general, the global economic situation now appears to be weakening. According to the Organization for Economic Cooperation and Development (OECD), real GDP growth projections have been revised downwards, and global trade is slowing amid rising trade policy uncertainty.[35] In particular, the global steel industry faces a period of unusually high instability due to the recent developments set out in further detail below.

– Global excess steel capacity

41. In several recent decisions, the Tribunal has recognized the existence of global steel overcapacity and its continued detrimental impact on global steel trade.[36] According to the OECD, after decreasing in 2016 and 2017, global steel capacity remained stable at an estimated 2.24 billion metric tonnes as of December 2018.[37] Although steel demand grew by an estimated 2.1 percent in 2018, capacity remains well above both production and demand.[38] Global steel demand is forecast to rise again in 2019 and 2020, but the uncertainty caused by trade tensions and the proliferation of trade protective measures may moderate that growth.[39]

42. Nova submitted that the global steel excess capacity crisis has had a particular impact on the HSS market and prices, namely, that it has caused an oversupply of low-priced hot-rolled steel coil (HRC), the input product for HSS. Consequently, domestic producers who pay fairly traded prices for HRC face competition from foreign HSS producers who have access to low-priced HRC, which they use to produce lower-priced HSS.[40]

43. Atlas and Welded Tube echoed these submissions and also referred to "the China factor". They submitted that China is already the largest contributor to the global overcapacity crisis, and that there are reports of a modest slowdown in its economy, while projections indicate that steel demand will stagnate or show negative growth, especially in the construction, automotive and energy sectors.[41] In their submission, this will lead to Chinese HSS producers seeking additional export markets for their goods, resulting in a decrease in world prices as well as Canadian prices. According to Atlas, China is also a major market for

34. See paragraph 37.2(2)(j) of the *Regulations*.
35. Exhibit RR-2018-006-A-01, Tab 9, Vol. 11.
36. *Safeguard Inquiry into the Importation of Certain Steel Goods* (3 April 2019), GC-2018-001 (CITT) at 12; *Carbon Steel Welded Pipe* (28 March 2019), RR-2018-001 (CITT) at para. 50; *Seamless Carbon or Alloy Steel Oil and Gas Well Casing* (28 November 2018), RR-2017-006 (CITT) at para. 53.
37. Exhibit RR-2018-006-C-01, Attachment 5 at 346, 370, Vol. 11.
38. Exhibit RR-2018-006-A-01, Tab 8 at 176-77, Vol. 11; Exhibit RR-2018-006-C-01, Attachment 5 at 346, 357-58, 360, 370, Vol. 11.
39. Exhibit RR-2018-006-A-01, Tab 8 at 176, Vol. 11.
40. In Canada, there are anti-dumping and countervailing orders in effect against HRC from major exporting countries including China, Brazil, India and Ukraine.
41. Exhibit RR-2018-006-C-01, Attachment 5 at 347-48, 373, Vol. 11.

Korean steel exports. As such, any economic slowdown in China will specifically create an additional need for Korea to find other export markets for its HSS.[42]

– Proliferation of global trade measures against steel products

44. On March 8, 2018, the U.S. imposed a 25 percent tariff on steel imports, including HSS, pursuant to section 232 of the *Trade Expansion Act of 1962* (the section 232 measures), marking a significant change in international market conditions for steel products. The 25 percent tariff currently applies to Turkey, although until May 16, 2019, Turkish imports were subject to a 50 percent tariff. Due to a negotiated agreement concluded in the spring of 2018, Korea is exempt from the section 232 measures on steel, but its steel imports are subject to a quota set at 70 percent of imports during the period of 2015 to 2017.[43]

45. Due in part to concerns about the possible diversion resulting from the U.S. tariff, the European Union imposed definitive safeguard measures on imports of 26 steel products, including HSS, on January 31, 2019. These measures take the form of tariff rate quotas (TRQs), aimed at preserving historical levels of imports, while placing a tariff on imports that rise above these levels.[44]

46. Canada and Mexico were initially excluded from the section 232 measures. However, on May 31, 2018, the U.S. extended coverage to include Canada and Mexico, and imposed a 25 percent tariff on imports of certain steel products.[45] On July 1, 2018, Canada responded by imposing a countermeasure, i.e. a 25 percent surtax on imports of steel products covering $5.59 billion in imports from the U.S., including HSS.[46]

47. Subsequently, on October 25, 2018, Canada imposed provisional safeguard measures on imports of seven classes of steel products – these did not include HSS but, importantly, did include HRC. The safeguard measures did not include imports from the U.S. as these were already covered by the countermeasure.[47] On April 26, 2019, Canada imposed final safeguard measures, in the form of TRQs, on imports of two of the seven classes: heavy plate and stainless steel wire.[48]

48. On May 17, 2019, the U.S. and Canada announced that they had reached a negotiated agreement to eliminate the section 232 measures and the Canadian countermeasures, which were terminated as of May 19, 2019.[49] The negotiated agreement provides that measures may be reimposed if imports of steel "surge meaningfully beyond historic volumes of trade over a period of time, with consideration of market share".[50]

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42. Exhibit RR-2018-006-A-03 at para. 26, Vol. 11; Exhibit RR-2018-006-C-01, Attachment 10 at 452, Vol. 11.
43. *Ibid.*, Attachment 4; Exhibit RR-2018-006-A-01, Tab 6 at 162-63, Vol. 11; Exhibit RR-2018-006-A-01, Tab 6 at 164-65, Vol. 11.
44. Exhibit RR-2018-006-C-01, Attachment 4, Vol. 11.
45. *Ibid.*, Attachment 3, Vol. 11.
46. *United States Surtax Order (Steel and Aluminum)*, P.C. 2018-961, C. Gaz. 2018.II.2951.
47. *Order Imposing a Surtax on the Importation of Certain Steel Goods*, SOR/2018-206, C. Gaz. 2018.II.3724.
48. *Order Amending the Order Imposing a Surtax on the Importation of Certain Steel Goods (Final Safeguards)*, P.C. 2019-474, C. Gaz. 2019.II.1893.
49. Exhibit RR-2018-006-A-01, Tab 12, Vol. 11; Exhibit RR-2018-006-C-01, Attachment 3, Vol. 11; *Order Repealing the United States Surtax Order (Steel and Aluminum)*, P.C. 2019-522, C. Gaz. 2019.II.2051.
50. Exhibit RR-2018-006-A-01, Tab 12, Vol. 11.

Domestic market conditions

49. Despite the imposition and removal of the section 232 measures and the Canadian countermeasures, conditions in the Canadian HSS market were stable during the POR, and are expected to remain stable given projections for steady growth in capital and non-residential construction spending over the next 12 to 18 months. However, global uncertainty and trade tensions remain a downside risk for commodity prices.

50. Atlas and Welded Tube submitted that the Canadian market has grown modestly during the POR, due to a combination of low interest rates and demand in the construction sector, mostly concentrated in central Canada. The witnesses testified that the Canadian HSS market was generally strong during the POR, although market growth in Western Canada has suffered recently due to the collapse in oil prices, as well as downturns in the agricultural sector. In Eastern Canada, the size of the market has remained stable.[51]

51. Looking forward, Atlas and Welded Tube submitted that projections for capital and infrastructure spending remain positive for the remainder of 2019 and 2020. Specifically, according to Statistics Canada, capital expenditures on non-residential construction and machinery and equipment are expected to rise by 2.5 percent in 2019, following increases of 4.3 percent in 2017 and 2.5 percent in 2018.[52] A recovery in housing markets and a resumption of export activity were also projected for the second quarter of 2019.

52. Nova submitted that the construction sector is reaching a plateau, and commodity prices are expected to remain vulnerable to developments on the trade front in the foreseeable future. However, the witnesses for the domestic industry testified that they expect demand for HSS in the Canadian market to remain stable.[53]

53. According to the data in the Tribunal's investigation report, the total domestic market for HSS was approximately 442,672 metric tonnes in 2016, 435,634 metric tonnes in 2017 and 467,680 metric tonnes in 2018.[54]

54. As highlighted in Atlas and Welded Tube's submissions, the CBSA's estimates for the volume of non-subject countries imports and total market for 2017 and 2018 were significantly higher than those presented in the Tribunal's investigation report.[55] As discussed in the investigation report,[56] it is likely that this is due to the change in Harmonized System (HS) codes that took place in 2017, when the statistical suffixes specific to HSS were removed. As a result, as of January 1, 2017, there was a significant increase in the volume of goods falling outside the product definition being captured in import data for non-subject countries as provided by the CBSA, since it is no longer possible to easily differentiate imports of HSS from imports of other types of steel products.

55. At the hearing, the supporting parties' witnesses all confirmed that the total domestic market volume is approximately 500,000 metric tonnes.[57] This aligns with the numbers presented in the Tribunal's investigation report. The Tribunal will therefore rely on the numbers presented in the investigation report for the analysis that follows.

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51. *Transcript of Public Hearing*, Vol. 1, 6 August 2019, at 14, 39, 94, 106; Vol. 2, 7 August 2019, at 153.
52. Exhibit RR-2018-006-A-01, Tab 3 at 1, Vol. 11.
53. *Transcript of Public Hearing*, Vol. 1, 6 August 2019, at 14, 109.
54. Exhibit RR-2018-006-05A, Table 8, Vol. 1.1.
55. Exhibit RR-2018-006-03A, Vol. 1 at 9.
56. Exhibit RR-2018-006-05A, Vol. 1.1 at 5-6.
57. *Transcript of Public Hearing*, Vol. 1, 6 August 2019, at 38, 54, 63, 103.

56. The total market decreased by 2 percent in 2017 as compared to 2016, but increased by 7 percent in 2018 as compared to 2017 and increased by 8 percent in the first quarter of 2019 compared to the first quarter of 2018. Domestic sales from domestic production followed a similar trend, decreasing by 1 percent in 2017 and then increasing by 8 percent in 2018 and 11 percent in the first quarter of 2019, as compared to the first quarter of 2018.[58]

57. In terms of percent share, the domestic industry held a commanding market share throughout the POR; the bulk of the remainder was held by non-subject imports from the U.S., although their market share declined slightly in 2017 as compared to 2016 and again in the first quarter of 2019 as compared to the first quarter of 2018.[59]

58. The supporting parties submitted that, as exporters are restricted from the EU and U.S. markets, they must seek other markets for their steel products. The CBSA's enforcement data show minimal imports of subject goods,[60] suggesting that Korean and Turkish exporters have not yet turned to Canada as a market for their surplus HSS. Similarly, with respect to non-subject countries other than the U.S., the investigation report shows that absolute volumes remain small and that market share is negligible.[61]

59. Import restrictions between the U.S. and Canada have had a significant impact on trade flows for HSS. Although imports of HSS from the U.S. decreased throughout the POR, it is notable that they decreased significantly (by 51 percent) in the first quarter of 2019, when the countermeasures were in effect, as compared to the first quarter of 2018, when they were not.[62] At the hearing, some witnesses testified that they received increased offers of U.S. HSS after the Canadian countermeasures were removed.[63]

Likely import volume of dumped goods

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

61. The Tribunal's assessment of the likely volumes of dumped imports encompasses several factors, namely: the likely performance of the foreign industry, the potential for the foreign producers to produce goods in facilities that are currently used to produce other goods, evidence of the imposition of anti-dumping and/or countervailing measures in other jurisdictions, and whether measures adopted by other jurisdictions are likely to cause a diversion of the subject goods to Canada.[64]

62. The supporting parties submitted that the Tribunal has continuously found HSS to be a commodity product. Accordingly, imports compete with each other and with domestically produced goods, essentially on the basis of price.

58. Exhibit RR-2018-006-05A, Table 9, Vol. 1.1.
59. Exhibit RR-2018-006-06A (protected), Table 10, Vol. 2.1.
60. *Ibid.*, Table 4.
61. Exhibit RR-2018-006-06A (protected), Table 5, Vol. 2.1; *Ibid.*, Table 7.
62. Exhibit RR-2018-006-05A, Table 6, Vol. 1.1.
63. *Transcript of Public Hearing*, Vol. 2, 7 August 2019, at 159.
64. Paragraphs 37.2(2)(a), (d), (f), (h) and (i) of the *Regulations*.

63. The supporting parties also submitted that Korean and Turkish steel producers are export-oriented, with a strong interest in the Canadian market. They point to the proliferation of trade measures against pipe and tube products from the subject countries as evidence of a risk of diversion to the Canadian market.

64. The supporting parties further contend that conditions in the Korean and Turkish economies in general, and their steel industries in particular, are weak. These conditions will further incentivize producers to seek export markets for their products. Further, the fact that HSS is produced on common equipment with CSWP exponentially increases the production potential and likely export volumes, as foreign producers can easily shift production to HSS if duties are removed.

65. For the reasons set out below, the Tribunal finds that it is highly likely that the rescission of the order would result in a significant increase in the import volume of the subject goods in the next 12 to 18 months. Turkish and Korean steel producers are export-oriented, and steel production has continually outpaced demand in both countries. This situation is unlikely to change based on economic forecasts for those economies. Further, the imposition of quotas and other trade-restrictive measures against Korean and Turkish HSS exacerbate the risk that exporters in those countries will resume shipments of large volumes of HSS to Canada, as they must seek new export markets for their excess supply. Further, the recent findings against CSWP imports from Korea and Turkey demonstrate that exporters in those countries have a recent history of dumping and that, despite the fact that the CBSA's enforcement data show minimal volumes of imports of subject goods, they have maintained access to distribution channels in the Canadian market.

Likely performance of the foreign industry

– Turkey

66. The Turkish economy is still recovering from a currency crisis that took place in August 2018, which led to a contraction in steel demand. The recovery is expected to continue in 2019 with some stabilization in 2020.[65] According to the OECD, real GDP growth (year-on-year) was positive throughout the POR but is projected to decline by 1.8 percent in 2019 before rebounding in 2020.[66]

67. Canada is an important export market for Turkish steel, accounting for 3 percent of Turkey's export volume in 2018. Turkey was the world's eighth-largest steel exporter in 2017 and exported nearly 50 percent of its production. In 2018, Turkish steel exports increased by 22 percent, its steel trade surplus increased to 9.5 million metric tonnes, and exports as a share of production increased to 53 percent as compared to 2017. Turkey's pipe and tube exports accounted for 2 million metric tonnes in 2018.[67]

– Korea

68. A slowdown in the Korean auto and shipbuilding industries in 2018 led to a decrease in steel consumption.[68] Steel demand in 2019 is expected to rebound by 1.1 percent, after contracting by 4.1 percent in 2018, with all its major steel using sectors struggling.[69] A further mild recovery is expected in 2020.[70]

65. Exhibit RR-2018-006-A-01, Tab 8 at 178, Vol. 11.
66. *Ibid.*, Tab 9 at 187.
67. Exhibit RR-2018-006-C-01, Attachment 9 at 442-43, Vol. 11.
68. *Ibid.*, Attachment 5 at 359.
69. *Ibid.*, Attachment 5 at 376.
70. Exhibit RR-2018-006-A-01, Tab 8 at 178, Vol. 11.

69. Korea was the world's fourth-largest steel exporter in 2017. In 2018, Korea exported 29.8 million metric tonnes of steel, representing approximately 41 percent of its total production, and had a trade surplus of 15 million metric tonnes.[71]

70. Pipe and tube products accounted for 7 percent of Korea's exports in 2018, totalling 2 million metric tonnes. The United States accounted for the largest share of Korea's pipe and tube exports at 45 percent while Canada received the second-largest share at 10 percent (199 thousand metric tonnes).[72]

71. In summary, the above demonstrates that the subject countries are significant exporters of steel, and of pipe and tube products in particular. Steel production has consistently outpaced demand in both countries. Current forecasts project only mild increases in domestic steel demand, which suggests that Korean and Turkish exporters will continue to export large quantities of steel in the near to medium term.

– Potential for product shifting and diversion

72. As noted above, the supporting parties claimed that there is a significant diversion risk stemming from the trade measures imposed by the U.S. and the EU, both being significant markets for HSS. Nova provided estimates for the volumes of HSS that could be diverted from those markets into Canada in the range of hundreds of thousands of metric tonnes.

73. In addition to these measures, the supporting parties submitted that Korean and Turkish pipe and tube exports are subject to anti-dumping and countervailing measures in Canada and in other jurisdictions. These measures further restrict market access for Korean and Turkish exports. In turn, this increases the likelihood that they would target the Canadian market if the order were rescinded. The supporting parties submit that the existence of these measures also demonstrates a propensity to dump on the part of Korean and Turkish HSS producers.

74. Nova also submitted that the recent findings against CSWP imports from Korea and Turkey in particular demonstrate that exporters in those countries maintain access to distribution channels in the Canadian market. Nova further submitted that, in light of the fact that CSWP imports from Korea and Turkey are subject to anti-dumping findings in Canada, it is likely that Korean and Turkish CSWP exporters would shift to HSS production and export this HSS to the Canadian market in order to maintain capacity utilization, should the order be rescinded.

75. Nova's diversion estimates are sourced from statistical data related to a six-digit HS code, which includes products that do not fall within the scope of the product definition. Considering this, the diversion risk that Nova claims is likely to be over-stated. Nevertheless, significant volumes of HSS are potentially being diverted from the U.S. and the EU markets by these measures. If the order is rescinded, it is likely that Korean and Turkish exporters would seek to sell HSS in the Canadian market, as it would be one of the few markets without trade remedy protection.[73]

76. The Tribunal agrees that this is made more likely by the fact that there are Canadian findings against Korean and Turkish CSWP. These exporters could easily switch production to HSS should the order under review in this case be rescinded.

71. Exhibit RR-2018-006-C-01, Attachment 10 at 450-51, Vol. 11.
72. *Ibid.*, Attachment 10 at 450-53.
73. Exhibit RR-2018-006-05A, Table 2, Vol. 1.1.

77. Further, the evidence confirms that Turkish and Korean exporters continue to make offers for CSWP and have therefore maintained contact with their distribution channels in Canada.[74]

– Absolute and relative volumes

78. Atlas and Welded Tube submitted that import permit data show high volumes of HSS and other steel products being imported into Canada from Korea and Turkey. In 2018, the total volume was 75,694 tonnes. In the first 6 months of 2019, the combined volume equalled 33,810 tonnes. This demonstrates that Korean and Turkish exporters maintain a continued interest in the Canadian market.

79. Atlas and Welded Tube acknowledged that the CBSA's enforcement data show minimal volumes of imports of subject HSS over the POR and that the import permit data includes goods outside the scope of the product definition in this case. However, they contend that such activity still demonstrates significant market participation by both Korea and Turkey.

80. Atlas and Welded Tube further submitted that in the previous expiry review, the Tribunal had estimated likely volumes in the range of 9,600 metric tonnes per year, if the order were to expire. They noted that the current volumes, as reflected in the import permit data, far exceed the estimate arrived at by the Tribunal during the previous expiry review. In their supplementary submissions, Atlas and Welded Tube noted that 9,600 metric tonnes represents approximately 2 percent of the domestic market. Given the evidence that a small volume of low-priced imports can cause a disruptive impact (as further elaborated below), they argued that a resumption of dumped imports at this level would have a significant negative impact on the Canadian market.

81. The Tribunal agrees that this data provides further evidence that Korean and Turkish exporters remain interested in the Canadian market; that they have established distribution channels in Canada; and that they have the potential to export significant volumes both in absolute terms and relative to the overall size of the Canadian market.

– Conclusion on the likely volumes

82. Taking all of the above into consideration, the Tribunal finds that there will likely be a significant increase in the volume of subject goods imported from Korea and Turkey, if the order is rescinded.

Likely price effects of dumped goods

83. The Tribunal must consider whether, if the order is allowed to expire, the dumping of the 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.[75] In this regard, the Tribunal distinguishes the price effects of the dumped goods from any price effects that would likely result from other factors affecting prices.

74. Exhibit RR-2018-006-C-02 at paras. 21, 22, Vol. 11; Exhibit RR-2018-006-C-03 (protected), Attachment 1, Vol. 12; *ibid.*, Attachment 2; *Transcript of Public Hearing*, Vol. 1, 6 August 2019, at 96-97; Vol. 2, 7 August 2019, at 184.

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

Recent pricing trends

84. The Canadian market price for HSS increased steadily during the POR. The market price in the first quarter of 2019 was $1,437 per metric tonne, which represents a 10 percent increase as compared to the first quarter of 2018. Unit values of domestic sales from domestic production also increased throughout the POR, as did the unit values of sales from imports.[76]

85. The witnesses for the supporting parties testified that, at the time of the hearing (i.e. the third quarter of 2019), the market price for HSS was significantly lower than the market price for the first quarter of 2019.[77] Mr. Halcrow testified that the Canadian market price was approximately $1,200 to $1,370 per metric tonne.[78]

86. The witnesses for Aciers Transbec and Bourgault Industries confirmed that prices have decreased since the removal of the section 232 tariffs and Canadian countermeasures in May 2019.[79] However, the witnesses from Bourgault Industries testified that they had seen a 9 percent increase in prices since August 1, 2019.[80] Mr. Halcrow of Russel Metals testified that domestic producers were trying to increase prices.[81]

Price effects analysis

87. The supporting parties submitted that low-priced non-subject imports (from non-U.S. sources) are driving down the market price of HSS. If permitted to re-enter the Canadian market, the subject goods would have to meet or beat these prices in order to regain market share, further driving down the price of HSS and causing price depression. The supporting parties further argued that price suppression is likely to occur, as the domestic industry will not be able to increase its prices to offset anticipated increases in HRC costs if they have to compete with dumped import prices.

88. The supporting parties have provided evidence of import offers for HSS from non-subject countries and of other pipe products from the subject countries at prices below the Canadian market price.[82] Based on these import offers, the supporting parties projected that the subject goods would likely re-enter the market at or below $1,000 to $1,300 per metric tonne, if the order is rescinded. This expected price is substantially lower than the market price of $1,437 observed at the end of the POR.

89. At the hearing, Nova argued that the subject goods would re-enter the Canadian market at a price 15 percent below the then-current market price of $1,200 to $1,370 per metric tonne, based on the import offer pricing they had observed, as well as testimony from one witness who said he had received offers of offshore goods at that price level.[83]

76. Exhibit RR-2018-006-05A, Table 21, Vol. 1.1; Exhibit RR-2018-006-06A (protected), Table 21, Vol. 2.1.
77. *Transcript of Public Hearing*, Vol. 1, 6 August 2019, at 23-24, 71.
78. *Ibid.* at 70.
79. *Transcript of Public Hearing*, Vol. 2, 7 August 2019, at 153, 199.
80. *Ibid.* at 216-17.
81. *Transcript of Public Hearing*, Vol. 1, 6 August 2019, at 70, 81.
82. Exhibit RR-2018-006-A-04 (protected) at 16-28, Vol. 12; Exhibit RR-2018-006-A-06 (protected) at 15-28; Exhibit RR-2018-006-C-03 (protected) at 9-15, Vol. 12.
83. *Transcript of Public Hearing*, Vol. 2, 7 August 2019, at 183.

90. Nova also submitted recent prices of Turkish and Korean HSS imports into the U.S.,[84] converted to Canadian dollars. They contended that these prices, which were significantly lower than the current Canadian market price,[85] would be the expected prices for any subject goods.

91. The supporting parties submitted that even small volumes at low prices can materially affect the market price. The Tribunal heard testimony that 5,000 to 10,000 metric tonnes of low-priced imports will swamp the marketplace at the port of landing and cause a substantial decrease in prices. According to the supporting parties, even a shipment of 500 metric tonnes at a low price can shift the market price downwards.[86]

92. Further, the supporting parties also argued that the mere presence of these low-priced offers influences the market, as potential purchasers become aware of these offers and use them as leverage in their price negotiations. This premise was confirmed by the Tribunal's witness, Mr. McArthur.[87] From the perspective of the domestic producers, Mr. Mandel provided a confidential report detailing instances where Welded Tube had been forced to lower its prices in response to import offers,[88] and submitted that the same would occur with imports of subject goods.

93. The Tribunal heard evidence that domestic producers enjoy a price advantage or premium over offshore sources attributable to factors such as shorter lead times, higher quality and reliability of supply. The witnesses from Bourgault Industries testified that they would start to consider purchasing imports if the price was 20 percent lower than the domestic price.[89] Mr. Halcrow submitted that distributors do not generally consider purchasing offshore imports until they are priced at a minimum $100 per metric tonne lower than the domestic producers' prices.[90] However, Mr. Halcrow predicted that the prices offered by Korean and Turkish exporters would be lower than the domestic producers' price by more than the price premium, should the order be rescinded.[91]

94. Having regard to this evidence and the evidence, discussed above, of the existence of significant excess capacity and export orientation in the subject countries, coupled with the limited available market for exports of subject goods and other steel products, the Tribunal finds that, in order to increase their volume of imports in Canada and market share, the subject goods would indeed have to be priced below the current prices, including the domestic price premium.

95. With respect to price suppression, the Tribunal heard that the cost of HSS is largely dependent on the cost of HRC. Specifically, Mr. Mandel of Welded Tube testified that HRC costs represent approximately 80 percent of the cost of HSS.[92] Accordingly, if HRC costs rise substantially, HSS producers must raise their prices as well in order to maintain profitability.

96. Atlas and Welded Tube submitted that North American hot-rolled steel prices increased rapidly in the first three quarters of 2018 before receding in late 2018 and during the first quarter of 2019. Despite this

84. Exhibit RR-2018-006-C-04 at 3, Vol. 11.
85. *Transcript of Public Hearing*, Vol. 3, 8 August 2019, at 256.
86. *Transcript of Public Hearing*, Vol. 1, 6 August 2019, at 19, 66; *Transcript of Public Hearing*, Vol. 2, 7 August 2019, at 145, 175, 176.
87. *Ibid.* at 176-77.
88. Exhibit RR-2018-006-A-06 (protected) at 15, Vol. 12.
89. *Transcript of Public Hearing*, Vol. 2, 7 August 2019, at 203-5.
90. *Transcript of Public Hearing*, Vol. 1, 6 August 2019, at 80-81, 87.
91. *Ibid.* at 88-89.
92. *Ibid.* at 36.

decrease, Atlas and Welded Tube submitted that the HRC price in the second quarter of 2019 was approximately $886 per metric tonne, which was still well above prices throughout 2015-2017.[93]

97. As of July 2019, the North American price was $830 per metric tonne (excluding delivery costs).[94] Witnesses for the domestic industry testified that the domestic HRC mills had announced three price increases within the last six weeks.[95]

98. Mr. McArthur confirmed that the domestic HRC producers were trying to increase HRC prices at the time of the hearing, although he noted that the market may reject the attempted price increase.[96] With respect to the next 12 to 18 months, Atlas and Welded Tube submitted that the HRC price is projected to remain at around $820 per metric tonne (excluding delivery costs) into 2020.[97]

99. The increase in HRC costs is reflected in the domestic industry's financial results. Direct materials costs increased substantially from full year 2016 to 2018, and started to decline in the first quarter of 2019. This caused an increase in the cost of goods manufactured (COGM) and cost of goods sold (COGS). The COGS increased faster than the net sales value in 2017 as compared to 2016 and especially in the first quarter of 2019 as compared to the first quarter of 2018.[98]

100. The Tribunal finds that if subject goods re-enter the market, they will do so at prices substantially below the Canadian market price, thus forcing domestic prices to decline, as the domestic producers would have no choice but to lower their prices in order to compete. As a result, the Tribunal concludes that the subject goods would likely significantly depress the prices of the like goods if the order is rescinded.

101. Although it is difficult to predict future trends in HRC pricing with a high degree of certainty given the current unsettled environment, the Tribunal accepts that the evidence before it indicates that it is more likely than not that HRC prices will increase over the near to medium term and remain higher than prices in 2016 and 2017.[99] Further, the evidence is that the domestic HSS producers are currently trying to increase their prices in response to increasing HRC prices. The Tribunal finds it likely that, if subject goods were to re-enter the market at this juncture with price depressing effects, as indicated above, they would prevent the domestic producers from realizing these price increases. Accordingly, the Tribunal also finds that, if the

93. Exhibit RR-2018-006-A-01 at para. 112, Vol. 11; Exhibit RR-2018-006-A-06 (protected) at para. 22.
94. Exhibit RR-2018-006-A-11 at para. 7 and Attachment 1, Vol. 11.
95. *Transcript of Public Hearing*, Vol. 1, 6 August 2019, at 35-36.
96. *Transcript of Public Hearing*, Vol. 2, 7 August 2019, at 171.
97. Exhibit RR-2018-006-B-11 at para. 13 and Attachment 1, Vol. 11.
98. Exhibit RR-2018-006-06B (protected), Table 27, Vol. 2.1
99. Mr. Gravel of Nova testified that the U.S. and Canadian prices for HRC were out of sync while the section 232 measures and Canadian countermeasures were in place, with the U.S. price being higher: *Transcript of Public Hearing*, Vol. 1, 6 August 2019, at 122-123. Mr. McArthur of Aciers Transbec similarly testified that the Canadian price for HRC during the same period was low, as Canadian HRC suppliers were not able to sell to the U.S. market and, as a result, there was a saturation of the product in the Canadian market: *Transcript of Public Hearing*, Vol. 2, 7 August 2019, at 171. As a result, the Tribunal considers that the U.S. Midwest price may not be a reliable benchmark for Canadian prices during the time the section 232 duties and the Canadian countermeasures were in place or for the period immediately after they were removed, and that it is appropriate to compare current and future HRC prices with the prices in 2016 and 2017, when the market situation was more stable. However, Mr. Gravel testified that, at the time of the hearing, the prices were starting to approach one another again as Canadian prices were rising: *Transcript of Public Hearing*, Vol. 1, 6 August 2019, at 123. The Tribunal therefore considers that the U.S. Midwest price is a reliable indicator for Canadian HRC prices going forward.

order is rescinded, it is likely that the dumping of the subject goods would cause price suppression for the domestic industry, by preventing price increases that otherwise would likely have occurred.

Likely impact on the domestic industry

102. The Tribunal will assess the likely impact of the above volumes and prices on the domestic industry should the order be rescinded.[100] In this analysis, the Tribunal distinguishes the likely impact of the dumped goods from the likely impact of any other factors affecting or likely to affect the domestic industry.[101]

Recent performance

103. On a consolidated basis, the domestic industry's financial performance was positive over the POR. Domestic sales from domestic production decreased slightly in 2017 as compared to 2016, but increased by 8 percent in 2018 as compared to 2017, and by 11 percent in the first quarter of 2019 as compared to the same period in 2018.[102] The domestic industry held a commanding share of the domestic market throughout the POR.[103] Increases in COGS had a marked impact on the domestic industry's margins and revenue in the first quarter of 2019 as compared to the same period in 2018.[104] There was some recovery in the second quarter of 2018.[105]

104. The domestic industry's performance with respect to export sales was also positive over the POR. However, net income on export sales declined substantially in the first quarter of 2019 as compared to the same period in 2018.[106] As the domestic industry's principal export market is the U.S., this is more than likely due to the imposition of the section 232 measures.

105. The domestic industry's financial expenses increased substantially in the first quarter of 2019 as compared to the first quarter of 2018. This contributed to the significant decrease in net income during 2019.[107] This being said, financial expenses in the first quarter of 2018 appear to have been unusually low.[108]

106. Plant capacity and capacity utilization remained relatively stable, although capacity utilization decreased from a high of 53 percent in the first quarter of 2018 to 48 percent in the first quarter of 2019. Direct employment and hours worked have also remained relatively stable, again showing a slight decrease in the first quarter of 2019. The domestic producers also made substantial investments during the POR, especially in 2018.[109]

100. See paragraphs 37.2(2)(e) and (g) of the *Regulations*.
101. See paragraph 37.2(2)(k) of the *Regulations*.
102. Exhibit RR-2018-006-05A, Table 9, Vol. 1.1.
103. Exhibit RR-2018-006-06A (protected), Table 10, Vol. 2.1.
104. Exhibit RR-2018-006-06B (protected), Table 27, Vol. 2.1.
105. Exhibit RR-2018-006-RI-01D (protected), Vol 10; Exhibit RR-2018-006-RI-02D (protected), Vol. 10; Exhibit RR-2018-006-RI-03E (protected), Vol. 10.
106. Exhibit RR-2018-006-06B (protected), Table 28, Vol. 2.1.
107. *Ibid.*, Table 27.
108. The reason for this is provided in the confidential record of this review.
109. Exhibit RR-2018-006-06A (protected), Table 29, Vol. 2.1.

Likely impact on the domestic industry if the order is rescinded

107. Atlas and Welded Tube submitted that a 10 percent reduction in the market selling price would have a materially damaging effect on company revenues, margins and net income. As noted above, the domestic industry projected that the selling prices of subject imports would be in the range of $1,000 to $1,300 per metric tonne, which was at least 10 percent lower than the market price at the end of the POR.

108. Mr. Manfre, who represents the USW at Welded Tube's Concord, Ontario, plant, stated that a resumption of imports of dumped goods and corresponding lost revenues would result in reductions in employment.[110]

109. Nova argued that the subject goods would re-enter the Canadian market at a price 15 percent below the Canadian market price and that this would cause its prices to drop as well as lost sales, which would lead to a decline in profitability. Consequently, Nova's planned investments in capital expenditures would be imperiled.

110. As the above analysis indicates, if the order were rescinded, the subject goods would likely return to the domestic market in significant volumes and at prices that are likely to significantly depress and suppress the prices of the like goods. The Tribunal also accepts the domestic industry's evidence as providing a reasonable estimate of the impact of the renewed presence of the subject goods on the domestic industry's prices, and the resultant impacts on its profitability, if the order were rescinded.

111. The evidence on the domestic industry's recent performance suggests that producers have recently seen a decline in profitability. If pricing levels drop as a result of the subject goods re-entering the Canadian market, the Tribunal finds that the domestic producers' financial situation will worsen significantly. In turn, and with rising raw material costs putting pressure on margins, the Tribunal is of the view that domestic producers will likely be forced to reduce production and will be unable to justify investments that are contingent on financial performance and market outlook.

Factors other than dumping

112. Pursuant to paragraph 37.2(2)(k) of the *Regulations*, the Tribunal may consider any other factors that are relevant in the circumstances. Accordingly, the Tribunal reviewed certain factors unrelated to dumping that could adversely affect the domestic industry.

113. The cost of input materials is a key concern in this respect. As discussed above, the domestic industry projected that the cost of HRC will continue to rise in the near to medium term. In and of itself, this factor will have a significant impact on profitability. Furthermore, the domestic producers gave evidence that they purchase HRC primarily from domestic sources, but that the North American price for HRC is higher than the world price. They also gave evidence that lower-priced options are available on the world market and argued that the subject countries have a competitive advantage because they are able to source lower-priced HRC from China and other sources.[111] Although the Tribunal acknowledged that its existing order on HRC from China, Brazil, India and Ukraine may render those sources less competitive for Canadian HSS producers, the Tribunal nevertheless questioned whether the domestic industry would consider sourcing HRC from other sources outside North America as a means to reduce its costs.

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110. Exhibit RR-2018-006-D-01 at paras. 33-35, Vol. 11.
111. Exhibit RR-2018-006-C-01 at paras. 19, 28; Exhibit RR-2018-006-RI-01A (protected), Vol. 10; Exhibit RR-2018-006-RI-02A (protected), Vol. 10; RR-2018-006-RI-03A (protected), Vol. 10; *Transcript of Public Hearing*, Vol. 1, 6 August 2019, at 21; *ibid.*, at 36-37.

114. The domestic producers replied that they consider all sources of supply before making a purchasing decision. However, the HRC purchased in Canada has so far been competitively priced when full ownership costs (including costs associated with shipping, handling and carrying the steel in inventory) are factored into the analysis. They further submitted that purchasing domestically has certain advantages in terms of lead times, quality and service, and that there are concomitant risks associated with offshore purchases, notably the risk that the price will decline during the two- to three-month lead time it takes for the steel to be manufactured and shipped to Canada. In such a scenario, the purchaser would likely be left with expensive inventory. The domestic producers further submitted that they are attempting to make improvements in internal operational efficiency in order to mitigate these rising costs. Nevertheless, they indicated that they would consider making changes to their acquisition strategy should domestic HRC no longer be competitive.[112]

115. The Tribunal is satisfied that the domestic producers' HRC acquisition strategy is economically rational. Their evidence is that they prefer to purchase domestically because they are able to obtain HRC at competitive prices, in particular when the total cost of ownership is taken into account. Even though they indicated that loyalty to their Canadian suppliers is an important consideration, it is not without limits.

116. Another area that the Tribunal explored with the domestic industry was whether it could increase export sales to improve its financial situation, particularly since the section 232 measures have been removed against Canada and the U.S. market is once again open to it. The domestic industry's witnesses testified that they were reluctant to resume export sales to the U.S. because of the threat of re-introduction of the section 232 measures if there is a surge in imports above historical levels. Accordingly, they are monitoring their export volumes. In addition, the Tribunal heard evidence that there is decreased demand for steel made outside of the U.S. due to "made in the USA" requirements for infrastructure projects.[113] It also heard evidence that the U.S. market is not strong and that U.S. HSS producers are making increased offers of HSS into Canada.[114]

117. Despite these concerns, the domestic producers stated that they aim to maintain their historical export volumes to the U.S.[115] The approach that will be ultimately adopted by the domestic industry in regaining historical levels of exports to the U.S. could have an impact on its short to medium term performance. However, the Tribunal considers that insufficient time has passed since the removal of the section 232 measures to definitively conclude whether the domestic producers will be able to resume or increase their export volumes to the U.S.

118. The Tribunal also heard evidence at the hearing that Atlas had planned to invest in a new mill in the U.S.[116] The Tribunal therefore questioned whether this decision would have a negative impact on Canadian production and sales. Atlas submitted that it had made significant investments in its Canadian operations during the POR, and pointed to evidence on the record of future plans for further significant investments.[117]

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112. Exhibit RR-2018-006-RI-01E, Vol. 9; Exhibit RR-2018-006-RI-02E, Vol. 9; Exhibit RR-2018-006-RI-03F, Vol. 9.
113. *Transcript of Public Hearing*, Vol. 1, 6 August 2019, at 40-42.
114. *Transcript of Public Hearing*, Vol. 2, 7 August 2019, at 159.
115. Exhibit RR-2018-006-RI-01E at 3, Vol. 9; Exhibit RR-2018-006-RI-02E at 2, Vol. 9; Exhibit RR-2018-006-RI-03F at 4, Vol. 9.
116. *Transcript of In Camera Hearing*, Vol. 1, 6 August 2019, at 17-18; Exhibit RR-2018-006-33.02, Vol. 1; Exhibit RR-2018-006-33.03, Vol. 1.
117. Exhibit RR-2018-006-42 at paras. 7-11, Vol. 1.

It also submitted that the mill in the U.S. was to make size ranges of HSS not produced in Canada, and that the Canadian plant will remain a significant source of supply.[118]

119. The Tribunal accepts that the products that will be produced at the new U.S. mill appear to be larger than the sizes of tubing capable of being produced in Canada. Accordingly, construction of this mill does not appear to create any obvious direct impact on Canadian sales and production. Also, the Tribunal notes that the new mill is not scheduled to begin operations until September 2021,[119] which is outside the relevant 12- to 18-month period.

120. Finally, the Tribunal notes that much of the supporting parties' argument was focused on the fact that competition from non-subject imports is already driving down the domestic market price. Further, the U.S. and EU trade measures also cover non-subject HSS that may be diverted to the Canadian market if shut out of the U.S. and EU markets. Nevertheless, the significant capacity and the export orientation of the producers of the subject goods indicate that the domestic industry's situation is likely to be materially worse if the order is rescinded.

121. On the basis of the foregoing, the Tribunal finds that the rescission of the order would, in and of itself, likely cause material injury to the domestic industry.

Additional comments

122. At the conclusion of the argument phase of the hearing, the Panel posed several questions to counsel. In the course of the exchanges that took place, counsel made comments and presented arguments that the Panel wishes to address. This is being done with a view of providing maximum transparency and guidance to parties that will be involved in future expiry reviews.

123. The first question put to counsel could be considered as being philosophical in nature. Essentially, the Panel enquired whether the number of years that have elapsed since the original finding was a relevant factor for the Panel to consider. If so, what implications arise, in the context of an expiry review, from the fact that trade remedy protection has been in place for a protracted period of time? This question was raised specifically in the light of the fact that this review is the third one since the original finding. Moreover, since the original finding, the domestic industry has considerably improved its performance in the Canadian market.[120]

124. The other questions raised by the Panel were more specific. Certain factual elements were put in evidence during the course of the hearing, and the Panel was concerned that they might not have been sufficiently addressed by counsel and the parties. These questions pertained to input costs, export performance and the construction of a new plant by Atlas, as detailed in the discussion of "other factors" in the preceding paragraphs.[121]

Time elapsed since the original finding

125. In addressing the Tribunal's question, counsel indicated, each in their own words, that the language of Article 11.1 of the *Anti-dumping Agreement* (*ADA*) indicates that the anti-dumping duties should remain

118. *Ibid.* at paras. 3-5.
119. Exhibit RR-2018-006-33.02, Vol. 1 at 1-2.
120. *Transcript of Public Hearing*, Vol. 3, 8 August 2019 at 272-273.
121. *Ibid.* at 281-283.

in place only as long as necessary.[122] They also indicated that the term "necessary" should be understood to mean essential in order to prevent the continuation or resumption of dumping that would cause material injury to the domestic industry over the next 12 to 24 months. Counsel shared their collective view that the number of times an order has been reviewed is not relevant to the application of the legal test.[123]

126. The Tribunal agrees with this general position. It correctly reflects the manner in which Articles 11.1 and 11.3 of the *ADA* have been interpreted by WTO dispute resolution panels and the WTO Appellate Body.[124] It is also consistent with the position taken by this Tribunal in previous cases.[125]

127. Article 11.1 states that the anti-dumping duty "shall remain in force ***only as long*** and to the extent ***necessary*** to counteract dumping which is ***causing injury***" [emphasis added]. As was pointed out by the Appellate Body, the continuation of an anti-dumping duty "is an 'exception' to the otherwise-mandated expiry of the duty after five years".[126] It is also an exception to the general policy rationale underpinning trade treaties, namely that free trade should be facilitated.

128. As such, continuation of anti-dumping duties is not automatic. Every time a finding is being considered for renewal, there must be sufficient and probative evidence demonstrating the existence of conditions that satisfy the requisite legal test.

129. In commenting on the relevancy of the domestic industry's performance in the context of the analysis applicable to an expiry review, counsel indicated that the state of the domestic industry at a particular point in time is not relevant. The key issue is whether there would be injury, regardless of whatever position the industry is in.[127] Counsel contended that, unlike in the WTO *Safeguard Agreement*, there is no linkage in the *ADA* or under *SIMA* between the duration of the anti-dumping duty protection and the time required for the industry to get back on its feet.[128] Essentially, counsel argued that the Tribunal must take the industry as it is and assess whether the likely injury would be material by looking at the most recent financial information.[129]

130. In the Tribunal's view, counsel seem to argue that the Tribunal's role is limited to performing a forward-looking "checklist" quantitative analysis to assess the potential situation of the domestic industry over the next 12 to 24 months. The Tribunal takes a different view concerning the relevancy of the domestic industry's performance over time, i.e. *the period* that has elapsed since the imposition of anti-dumping

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122. Article 11.1 of the *ADA* provides as follows: An anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury.
123. *Transcript of Public Hearing*, Vol. 3, 8 August 2019 at 273-281.
124. For example, in *EC – Pipe or Tube Fittings (Brazil)*, WTO Docs. WT/DS216/R at para. 7.113, the panel found the following: "Article 11.1 does not set out an independent or additional obligation" for investigating authorities, but provides "the basis for the review procedures contained in Article 11.2 (and 11.3) by stating a general and overarching principle, the modalities of which are set forth in paragraph 2 (and 3) of that Article." In *US – Corrosion-Resistant Steel Sunset Review (Japan)*, WTO Docs. WT/DS244/AB/R at para. 113, the Appellate Body found that the fact that Article 11.3 applies "notwithstanding the provisions of Articles 11.1 and 11.2 . . . confirms that the mandatory rule in Article 11.3 applies in addition to, and irrespective of, the obligations set out in the first two paragraphs of Article 11."
125. See, for example, *Bicycles* (7 December 2012), RR-2011-002 (CITT) at paras. 148-150, and *Potatoes* (10 September 2010), RR-2009-002 (CITT) at paras. 212-214.
126. *US – Oil Country Tubular Goods Sunset Reviews (Argentina)*, WTO Docs. WT/DS268/AB/R at para. 178.
127. *Transcript of Public Hearing*, Vol. 3, 8 August 2019 at 274, 280.
128. *Ibid.* at 277.
129. *Ibid.* at 278.

duties, beginning with the date of the *original finding*, when assessing whether or not an anti-dumping duty order should be continued under *SIMA*, as it remains "necessary" in accordance with Article 11.1 of the *ADA*.[130]

131. In responding to the Tribunal's question, counsel focused on the impact that the domestic industry's performance would have on the materiality of the injury. In that respect, the Tribunal agrees that the materiality analysis is mainly driven by the most recent financial information and its impact on the forward-looking analysis.

132. However, counsel did not meaningfully address the impact of the domestic industry's performance on the causality analysis. For example, could the absence of any initiative by the domestic industry to improve its competitiveness become over time an "other factor" that the Tribunal should take into account in its causality analysis?[131] In other words, are the actions or inaction of the domestic industry addressing its competitive situation over time becoming more relevant in situations where the Tribunal is considering continuation of the finding for an additional five years following a number of previous continuations? Taken cumulatively, this means that free trade will have been limited for a protracted period. The Tribunal is of the view that, depending on the circumstances of a case, this could be a valid element to be taken into account in the causality analysis.

133. These considerations raise the issue as to whether the Tribunal should consider certain non-quantitative aspects of the domestic industry's performance over the period where the order has been in place, when assessing whether the order should be continued.

134. The use of trade remedies is important to allow domestic producers to fairly compete in the Canadian marketplace. However, the imposition of trade remedies is only justified where the existence of injury attributable to dumped imports is established (in the case of an expiry review, injury that would likely result from the rescission of the order or finding).

135. Investments in new technology, production lines, or other investments that would improve efficiencies and competitiveness are also important. Innovation also provides a pathway for domestic producers to compete more effectively with foreign suppliers. These represent a few examples of actions that are likely to increase the competitive condition of any industry. On the contrary, the absence of such actions would reduce the ability of an industry to face foreign competition and could have an influence on its financial performance in the short and medium term. The availability and feasibility of these additional competitive strategies is, of course, dependent on the state of the technology in any given industry as well as on the state of the economy and should be addressed on an *ad hoc* basis.

136. The Tribunal is of the view that it would not properly assess the existence of a causal relationship between the likely dumping of the subject imports and the likely material injury to the domestic industry if it failed to consider the potential impact of actions (or inactions) of the domestic industry on its future performance. This is particularly true when the domestic industry has benefited from a long period of anti-

130. The Tribunal recently addressed the relevance of the performance of the domestic industry during the period covered during the initial investigation in *Thermoelectric Containers* (5 September 2019), RR-2018-004 (CITT) at paras. 36-38.

131. The list of "other factors" that the Tribunal may consider in assessing causation is set out in paragraph 37.2(2)(k) of the *Regulations* and provides as follows: "any other factor pertaining to the current or likely behaviour or state of the domestic or international economy, market for goods or industry as a whole or in relation to individual producers, exporters, brokers or traders."

dumping protection. In that sense, the Tribunal believes that an assessment of these other factors is relevant to a proper causal relationship analysis in an expiry review.

137. Parties that seek the initiation of a review must submit positive information that justifies the need for such a review. At that stage, they must satisfy the Tribunal that the review is warranted.[132] Although there is no similar burden that is imposed on the parties during the review itself, it stands to reason that, practically speaking, the duty to satisfy the Tribunal borne by the parties that seek the continuation of the order does not stop when the Tribunal has decided to initiate a review.

138. At the inquiry, those parties also bear the onus of convincing the Tribunal that the requisite conditions are met and that the duties are "necessary". This includes providing evidence or an explanation of the economic strategies and initiatives otherwise taken by the parties to further their competitive positions during the period of time where the industry has benefited from trade remedy protection, including by way of the examples mentioned above. If such strategies are not feasible, the parties should assist the Tribunal in understanding why such strategies and/or initiatives are not available.

139. In view of the fact that anti-dumping duties are intended to be an exceptional economic remedy, parties seeking a continuation of the order must put their best foot forward by submitting the best evidence available to them and by carefully addressing all factors that are relevant to the issues of materiality of injury and causality that the Tribunal is required to determine.

Factual elements revealed in testimony and the duty of the Tribunal in pursuing the issues raised by those factual elements

140. During the oral evidence phase of the hearing, witnesses for the domestic industry made comments about certain facts already on the record and introduced other, new facts having implications that came as somewhat of a surprise to the Tribunal. As indicated above, the Tribunal, during argument, indicated that it believed that these new factual elements could be relevant to its deliberation and may not have been sufficiently addressed by the parties. Therefore, it asked counsel to comment about the significance and implications of these additional facts.

141. In response, counsel indicated that despite the Tribunal's discomfort about the situation, the Tribunal was confined to considering only the evidence that was on the record, unless witnesses were recalled or other equivalent procedural steps were taken.[133] Counsel advocated a cautious approach and expressed concern that the Tribunal was seeking to have counsel address evidence that extended beyond the record.[134] With respect to the new facts which emerged during witness testimony and their relevance to the issues that the Tribunal must consider and decide, counsel suggested that the absence of opposing parties made the implications of these new facts less relevant, if not irrelevant. They further suggested that the absence of opposing parties imposed a limitation on the Tribunal's authority to consider these facts and weigh their implications. It was suggested that the Tribunal should not assume a role that would be better left to opposing parties if they were present. A concern was expressed that this might be perceived as impugning the impartiality of the Tribunal.[135]

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132. In accordance with subsection 76.03(4) of *SIMA*, section 37.2 of the *Regulations* and rule 73.2 of the *Canadian International Trade Tribunal Rules.*
133. *Transcript of Public Hearing*, Vol. 3, 8 August 2019 at 283-284, 290.
134. *Ibid.* at 295.
135. *Transcript of Public Hearing*, Vol. 2, 8 August 2019 at 283, 292-293.

142. At the outset, the Tribunal wishes to reassure counsel that it is fully aware that it must limit itself to considering only the evidence that is on the record. Furthermore, it is also fully aware that counsel cannot provide evidence supplementing the testimony of their witnesses. Parties can remain at ease; the Tribunal is well versed in the fundamental principles of law as they apply to the exercise of its jurisdiction.

143. What the Tribunal attempted to do by asking its questions was to alert counsel as to the Tribunal's concern that certain facts (and their implications) that were raised in testimony were relevant and that they might not have been adequately addressed. To put it bluntly, these issues were actually ignored in argument until the Panel raised them. The Tribunal endeavoured to give counsel the opportunity to comment on this situation while being fully aware that there were procedural steps that could be taken to pursue these issues if the Tribunal believed this to be necessary.

144. The Tribunal agrees with most of the comments made by counsel in response to its questions. However, there remains one major point of apparent disagreement between counsel and the Tribunal. The absence of parties opposing the continuation of the order (including the potential raising of the issues identified by the Tribunal) does not, in any manner, limit the role of the Tribunal in pursuing such issues. This is particularly the case where the Tribunal views these issues as being relevant to the exercise of its jurisdiction.

145. In this context, it is worth reviewing a few basic concepts that guide the Tribunal in the conduct of an expiry review under *SIMA*. Those concepts arise from Canada's international trade obligations under the WTO Agreements. They equally exist on their own under Canadian law.

146. First and foremost, findings of the Tribunal must be based on positive evidence.[136] The positive evidence standard imposed under Article 3.1 of the *ADA* also applies to the conduct of an expiry review.[137]

147. An investigating authority is required to evaluate *all* relevant factors. In order to do so, it must have sufficient information pertaining to those factors. There are no inherent limitations on the actions of the authority in seeking such information,[138] subject to considerations of procedural fairness.

148. The concept of positive evidence relates to the quality of the evidence that the investigating authority may rely upon in making a determination. According to the Appellate Body, the positive evidence must be of an affirmative, objective and verifiable character, and must be credible.[139]

149. Article 11 of the *ADA* envisions a process that is both investigatory and adjudicatory in nature and it assigns an active role to the authority rather than a passive one.[140] In this context, the Tribunal conducts a

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136. Article 3.1 of the *ADA* provides that "[a] determination of injury for purposes of Article VI of GATT 1994 shall be based on positive evidence and involve an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products, and (b) the consequent impact of these imports on domestic producers of such products."
137. *US – Oil Country Tubular Goods Sunset Reviews* at para. 284. The Appellate Body has also found that, although investigating authorities are not required to apply the methodological requirements of Article 3 in reviews conducted pursuant to Article 11.3, if they do so they should conduct those analyses consistently with the principles set out in Article 3. See *US – Oil Country Tubular Goods Sunset Reviews* at paras. 277-285; *US – Corrosion Resistant Steel Sunset Review* at para. 123.
138. *EU – Footwear (China)*, WTO Docs. WT/DS405/R at para 7.427 (unappealed panel report). For transparency purposes, the Tribunal wishes to note that Member Fréchette was a panelist in this dispute.
139. *US – Hot-Rolled Steel (Japan)*, WTO Docs. WT/DS184/AB/R at para. 192.
140. *US – Corrosion Resistant Steel Sunset Review* at para. 111.

quasi-judicial inquiry of which the hearing is an important phase, but not the only one. The conduct of the quasi-judicial inquiry must comply with the rules of natural justice and procedural fairness. When conducting a trade remedy investigation, however, the Tribunal is not limited to acting like a court would do during a trial. Unlike a purely adversarial proceeding where a court or tribunal may grant relief that is unopposed, the Tribunal cannot take the lack of opposition as being dispositive or determinative of the decisions that it must take. As such, it is irrelevant as to whether the continuation of the order is opposed (or not).

150. The concept of causation is fundamental to the analysis of the likelihood of injury in an expiry review.[141] Thus, once the Tribunal determines that there are relevant factual elements that need to be clarified in order to be able to assess their potential impact on its decision, it must pursue its investigation to the extent possible taking into account the statutory deadlines that are applicable. When possible, the Tribunal should not hesitate to use its authority to ascertain the facts to the fullest extent possible in order to have the best available evidence on the record while reaching its conclusion and making its decision. An investigating authority must have a sufficient factual basis to allow it to draw reasoned and adequate conclusions concerning the likelihood of the continuation or resumption of dumping of subject imports and the injury that would be caused by such dumping.[142]

151. In earlier decisions, the Panel had already identified the price of acquisition of HRC by the domestic industry[143] and the export performance of a domestic industry[144] as issues that were relevant to its causation analysis. These issues were particularly relevant to the identification of non-attribution factors. Furthermore, as described above, during the hearing the Tribunal became aware of a major investment made by an affiliate of a domestic producer in production facilities outside the country. The Tribunal felt that comments made by witnesses during the hearing raised issues that needed to be pursued in respect of those subjects.

152. As indicated previously in these reasons, the Tribunal did use its authority to ask additional questions to the parties on two of those three issues in the form of additional RFIs. Responses to those questions allowed the Tribunal to satisfy itself that it had the proper factual basis for the completion of its likelihood of injury analysis. In connection with the third issue, i.e. the investment made by an affiliate of a domestic producer, the Tribunal found public documents issued by the affiliate in question, placed them on the record and sought comments from counsel. These further investigations enable the Tribunal to satisfy itself that the new facility would only become operational subsequent to the 12- to 18-month period that was relevant to the forward-looking analysis. As such, the issue did not warrant any further consideration.

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141. See *US – Anti-dumping Measures on Oil Country Tubular Goods (Mexico)*, WTO Docs. WT/DS282/AB/R at paras. 117-118. The Tribunal has previously stated that it recognizes that the Appellate Body has found that it is not necessary to conduct a causation analysis in an expiry review, but that it is not proscribed by the *ADA* either, and that under *SIMA*, the causation analysis is mandatory: see *Copper Pipe Fittings* (17 February 2012), RR-2011-001 (CITT) at paras. 58-63. As noted above, where an investigating authority chooses to apply the methodologies of an injury inquiry in an expiry review, it must do so consistently with the disciplines of Article 3 of the *ADA*. Accordingly, a causation analysis conducted as part of an expiry review should be done in conformity with Article 3.5 of the *ADA*.
142. *US – Corrosion Resistant Steel Sunset Review* at para. 114.
143. See most recently *Carbon Steel Welded Pipe* (28 March 2019), RR-2018-001 (CITT) at para. 42, and *Carbon Steel Welded Pipe* (15 February 2019), NQ-2018-003 (CITT) at paras. 152-153; although it pertains to a different input product, see also *Sucker Rods* (14 December 2018), NQ-2018-001 (CITT) at paras. 94-95.
144. *Silicon Metal* (22 August 2019), RR-2018-003 (CITT) at para. 104; *Cold-rolled Steel* (21 December 2018), NQ-2018-002 (CITT) at para. 103.

153. The absence of opposing parties changes nothing about the Tribunal's obligations and the manner in which it must exercise its investigatory role. The Tribunal must ensure that it has the factual basis that will allow it to reach sound reasons and adequate conclusions. As long as the actions of the Tribunal are aimed at establishing the factual basis upon which it will reach its decision at the conclusion of its quasi-judicial inquiry and respect the rules of natural justice and procedural fairness in the context of an inquiry, the independence of the Tribunal remains intact both for the purpose of the *ADA* and under Canadian law.

DETERMINATION

154. Therefore, pursuant to paragraph 76.03(12)(b) of *SIMA*, the Tribunal continues its order in respect of the subject goods.

Jean Bédard
Jean Bédard
Presiding Member

Susan D. Beaubien
Susan D. Beaubien
Member

Serge Fréchette
Serge Fréchette
Member