



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Expiry Review No. RR-2017-005

Carbon Steel Welded Pipe

*Order and reasons issued
Monday, October 15, 2018*

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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 finding made by the Canadian International Trade Tribunal on December 11, 2012, in Inquiry No. NQ-2012-003, concerning:

**CARBON STEEL WELDED PIPE ORIGINATING IN OR EXPORTED FROM
CHINESE TAIPEI, THE REPUBLIC OF INDIA, THE SULTANATE OF OMAN,
THE REPUBLIC OF KOREA, THAILAND AND THE UNITED ARAB
EMIRATES**

ORDER

The Canadian International Trade Tribunal, pursuant to subsection 76.03(3) of the *Special Import Measures Act*, has conducted an expiry review of the finding made on December 11, 2012, in Inquiry No. NQ-2012-003.

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

Serge Fréchette
Serge Fréchette
Presiding Member

Jean Bédard
Jean Bédard
Member

Randolph W. Heggart
Randolph W. Heggart
Member

Place of Hearing: Ottawa, Ontario
Dates of Hearing: August 7 and 8, 2018

Tribunal Panel: Serge Fréchette, Presiding Member
Jean Bédard, Member
Randolph W. Heggart, Member

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STATEMENT OF REASONS

INTRODUCTION

1. This is an expiry review, pursuant to subsection 76.03(3) of the *Special Import Measures Act*,¹ of a finding of threat of injury made by the Canadian International Trade Tribunal (the Tribunal) on December 11, 2012, in Inquiry No. NQ-2012-003, concerning the dumping of carbon steel welded pipe, commonly identified as standard pipe, in the nominal size range from 1/2 inch up to and including 6 inches (12.7 mm to 168.3 mm in outside diameter) inclusive, in various forms and finishes, usually supplied to meet ASTM A53, ASTM A135, ASTM A252, ASTM A589, ASTM A795, ASTM F1083 or Commercial Quality, or AWWA C200-97 or equivalent specifications, including water well casing, piling pipe, sprinkler pipe and fencing pipe, but excluding oil and gas line pipe made to API specifications exclusively, and excluding 1 mm thick carbon steel tubing (SPCC-1, 25.6 mm in outside diameter), double coated (first coated with acrylonitrile butadiene styrene, then with polyvinyl chloride), and non-galvanized, ASTM A53, Grade B, Schedule 80 pipe, with an inside diameter of 1 1/4 inches to 1 1/2 inches, in 22-ft. lengths, with the inside weld scarfed, originating in or exported from the Republic of Korea, and produced with AISI C1022M steel with a carbon content of 0.18 percent to 0.23 percent and a manganese content of 0.80 percent to 1.00 percent, originating in or exported from Chinese Taipei (excluding goods exported from Chinese Taipei by Chung Hung Steel Corporation and Shin Yang Steel Co. Ltd), the Republic of India, the Sultanate of Oman, the Republic of Korea, Thailand and the United Arab Emirates (excluding goods exported from the United Arab Emirates by Conares Metal Supply Ltd.), and the subsidizing of the aforementioned goods originating in or exported from the Republic of India (the subject goods).

2. Under *SIMA*, findings of injury or threat of injury and the associated protection in the form of anti-dumping or countervailing duties expire five years from the date of the last order or finding, unless an expiry review has been initiated before that date. The finding made on December 11, 2012, was therefore scheduled to expire on December 10, 2017. The Tribunal initiated its expiry review on December 8, 2017.

3. On May 7, 2018, the Canada Border Services Agency (CBSA) determined that there was a likelihood of resumed or continued dumping and subsidizing of the subject goods.

4. On May 8, 2018, the Tribunal requested that domestic producers, importers and foreign producers of carbon steel welded pipe (CSWP) complete questionnaires. From the replies to the questionnaires, and other information on the record, public and protected investigation reports were prepared and put on the record. The period of review (POR) in this expiry review is from January 1, 2015, to March 31, 2018.

5. On July 6, 2018, the Tribunal received submissions in support of a continuation of the finding from Nova Steel Inc. and Nova Tube Inc. (together, Nova), Atlas Tube ULC (Atlas), Bolton Steel Tube Co. Ltd. (Bolton) and the United Steelworkers. On July 13, 2018, the Tribunal received submissions opposing the continuation of the finding from Al Jazeera Steel Products Co. SOAG (Al Jazeera).

6. Based on arguments contained in Nova's brief regarding the scope of the subject and like goods, the Tribunal prepared an Investigation Report Supplement, which was placed on the record on August 7, 2018.

7. The Tribunal held a hearing, with public and *in-camera* sessions, in Ottawa on August 7 and 8, 2018, where it heard oral submissions from parties' counsel and received testimony from several witnesses for the domestic industry.

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

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

PRODUCT

Product Information

9. CSWP is generally intended for the low-pressure conveyance of steam, water, natural gas, air and other liquids, and gases in applications such as plumbing and heating, air conditioning and sprinkler systems for fire protection. CSWP is also used as piling and as structural support for fencing, as well as for other mechanical and light load-bearing applications.

10. The most common grades of CSWP are ASTM A53, ASTM A135, ASTM A252, ASTM A589, ASTM A795, ASTM F1083, Commercial Quality and AWWA C200-97 or equivalent specifications. CSWP may also be produced to proprietary or foreign specifications, as is often the case with fencing pipe. For example, imported CSWP may be produced to British Standard 1387.

11. CSWP is usually classified under tariff item No. 7306.30.00,² although there are some products falling under this tariff item that are not considered as CSWP and some sizes of CSWP that are not covered by the finding under review. At the hearing, the Tribunal heard that sometimes products used in automotive applications are imported under this tariff item, but they are not usually considered to be standard pipe.³

LEGAL FRAMEWORK

12. The Tribunal is required, pursuant to subsection 76.03(10) of *SIMA*, to determine whether the expiry of the finding in respect of the subject goods is likely to result in injury or retardation to the domestic industry.⁴

13. The Tribunal is also required, pursuant to subsection 76.03(12) of *SIMA*, to make an order either rescinding the finding in Inquiry No. NQ-2012-003, if it determines that its expiry is unlikely to result in injury, or continuing the finding, with or without amendment, if it determines that the expiry of the finding is likely to result in injury.

14. 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”.

15. The Tribunal must also determine whether it will make an assessment of the cumulative effect of the dumping and subsidizing of the subject goods (i.e. whether it will cross-cumulate the effect). The Tribunal must also determine whether it is appropriate to assess the likely effect of the resumed or continued dumping and subsidizing 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 any particular subject country or countries).

2. Exhibit RR-2017-005-12.14, Vol. 1.4 at 186.

3. *Transcript of Public Hearing* at 14.

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

LIKE GOODS AND CLASSES OF GOODS

16. In order for the Tribunal to determine whether the resumed or continued dumping and subsidizing of the subject goods is likely to cause material injury to the domestic producers of like goods, it must determine which domestically produced goods, if any, constitute like goods in relation to the subject goods. The Tribunal must also assess whether there is, within the subject goods and the like goods, more than one class of goods.⁵

17. 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.

18. In deciding the issue of like goods when goods are not identical in all respects to the other goods, the Tribunal typically considers a number of factors, including the physical characteristics of the goods (such as composition and appearance) and their market characteristics (such as substitutability, pricing, distribution channels, end uses and whether the goods fulfill the same customer needs).⁶

19. In the finding under review, and in proceedings involving CSWP from the People’s Republic of China (China), the Tribunal concluded that domestically produced CSWP are like goods to the subject goods and that there was a single class of goods. Supporting and opposing parties agree that the facts in respect of CSWP (e.g. physical characteristics, methods of production, channels of distribution, end uses, etc.) continue to support this conclusion.

DOMESTIC INDUSTRY

20. 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.

21. The Tribunal must therefore determine whether there is a likelihood of injury to the domestic producers as a whole or those domestic producers whose production represents a major proportion of the total production of like goods.⁷

5. 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 (FC).

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

7. 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 (FCA); *McCulloch of Canada Limited and McCulloch Corporation v. Anti-Dumping Tribunal*, [1978] 1 F.C. 222 (FCA); *China – Anti-dumping and Countervailing Duties on Certain Automobiles from the United States* (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 from 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 from Brazil* (22 April 2003), WTO Docs. WT/DS241/R, Report of the Panel at paras. 7.341-7.344.

22. There are currently four producers of CSWP in Canada: Atlas, Bolton, DFI and Nova. Of these, Nova is the largest, accounting for the vast majority of total domestic sales from domestic production throughout the POR.⁸ Nova and Bolton together represent almost the entirety of total domestic production during the POR. It bears noting, however, that Bolton's financial data was not incorporated into the investigation report because the information Bolton provided was not sufficiently precise. Nonetheless, the Tribunal is satisfied that the financial information provided by Nova, given the major proportion of total domestic production for which it is responsible, is sufficiently representative of the domestic industry.

CUMULATION

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

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

25. This expiry review involves subject goods from six countries (Chinese Taipei, Korea, Thailand, Oman, the United Arab Emirates [UAE] and India) that were found to be dumped in the CBSA's original investigation. On May 7, 2018, the CBSA determined that the expiry of the finding was likely to result in the continuation or resumption of dumping of goods from these six countries into Canada. Subject goods from one of these countries, India, were also found to be subsidized in the CBSA's original investigation. On May 7, 2018, the CBSA found that the expiry of the finding was likely to result in the continuation or resumption of subsidizing of the subject goods from India. In the original inquiry, the Tribunal considered the goods from all six of these countries cumulatively in its injury analysis, ultimately finding that they threatened to cause material injury to the domestic industry.⁹

26. As was the case in the injury inquiry, the conditions of competition continue to support a cumulative analysis that examines the impact of subject goods from all six countries. In particular, there is no question that CSWP is a commodity product.¹⁰ Canada is considered a mature market for CSWP, characterized by a limited number of distribution channels and a limited number of known purchasers.¹¹ While the Tribunal heard testimony to the effect that CSWP from the Middle East (namely, UAE and Oman) tends to arrive on Canada's east coast, and that CSWP from Asia tends to arrive on Canada's west coast, based on the evidence before it, the Tribunal finds that this geographic distinction makes little real difference in how the goods are sold or distributed across Canada.¹² In particular, the evidence shows that

8. Exhibit RR-2017-005-06 (protected), Vol. 2.1, Table 8; Exhibit RR-2017-005-06B (protected), Vol. 2.1, Table 4.

9. *Carbon Steel Welded Pipe* (11 December 2012), NQ-2012-003 (CITT) at paras. 77, 172.

10. Exhibit RR-2017-005-F-01, Vol. 11F at para. 21; Exhibit RR-2017-005-A-09, Vol. 11F at para. 8; Exhibit RR-2017-005-A-05, Vol. 11F at para. 48; *Transcript of Public Hearing* at 19.

11. Exhibit RR-2017-005-A-05, Vol. 11F at para. 51.

12. *Transcript of Public Hearing* at 44-45.

CSWP is generally purchased by large distributors with operations from coast to coast.¹³ As described by Mr. Gravel of Nova, the pricing for such a sale consists of a base price, which is standard for all locations being supplied by that distributor, plus an amount for freight, which will vary depending on the location to which the CSWP is being delivered.¹⁴ In other words, geography is not a limiting factor for the like or the subject goods. Taken together, these facts suggest that the Tribunal could employ a cumulative approach in its analysis of the subject goods; however, for the reasons discussed in detail below, the Tribunal is of the view that the most appropriate approach, taking into account Canada's international obligations, World Trade Organization (WTO) jurisprudence and the language in the *SIMA*, is to conduct a separate analysis with respect to the subject goods from India.

27. The Tribunal is also cognizant of the WTO Panel and Appellate Body reports in *U.S. – Carbon Steel (India)* on the issue of cumulation.¹⁵ In particular, the Tribunal notes the Appellate Body's finding that "being subject to simultaneous countervailing duty investigations is a necessary precondition for a cumulative assessment to be undertaken consistently with Article 15.3 of the [WTO *SCM Agreement*]."¹⁶ The Tribunal is also cognizant of the more recent WTO Panel finding in *Canada – Welded Pipe*¹⁷ and considers this decision to be confirmation that it is permissible to cumulatively assess the effects of dumping and subsidizing of the same goods from a single country.

28. The Tribunal's approach to cumulation, and any cross-cumulation that arises or could arise as a consequence of a cumulation decision, in inquiries has evolved since the time of the finding in *U.S. Carbon Steel – India*. Recently, in *Polyethylene Terephthalate Resin*, imports from China and India were both subject to an anti-dumping and a countervailing duty investigation, whereas imports from Oman and Pakistan were subject only to an anti-dumping investigation.¹⁸ In reference to *U.S. Carbon Steel – India* and *Canada – Welded Pipe*, the Tribunal commented as follows:

The Tribunal is of the view that, read together, the above WTO reports permit the cumulative assessment of the effects of dumping and subsidizing of goods from a single country but do not permit a cumulative assessment of the effects of goods from a country that have been dumped and subsidized with the effects of goods from another country that are only dumped or only subsidized.

13. Exhibit RR-2017-005-A-05, Vol. 11F, at para. 60-61; *Transcript of Public Hearing* at 19.

14. *Transcript of Public Hearing* at 17.

15. *United States – Countervailing Measures on Certain Hot-rolled Carbon Steel Flat Products from India* (17 July 2014), WTO Docs. WT/DS436/AB/R, Appellate Body Report [*U.S. – Carbon Steel (India)*]. In this dispute, India challenged the imposition of countervailing duties by the United States on imports of certain steel products from India, arguing that the U.S. International Trade Commission had acted inconsistently with Article 15.3 of the *WTO Agreement on Subsidies and Countervailing Measures [SCM Agreement]* by cumulating the effects of imports from five countries subject to countervailing duties (including India) with imports from six other countries that were subject to anti-dumping investigations only (India's imports were both subsidized and dumped). India argued that, under the terms of Article 15.3 of the *SCM Agreement*, its imports should not have been cumulated with goods that were subject to a dumping investigation only.

16. *U.S. – Carbon Steel (India)* at para. 4.589. The WTO Appellate Body agreed with the WTO Panel that Article 15.3 of the *SCM Agreement* "refers to imports 'simultaneously subject to countervailing duty investigations'", such that the authorization to cumulatively assess the effects of "such imports" requires that the imports be "subject to countervailing duty investigations". Conversely, "the effects of imports other than such subsidized imports must not be incorporated in a cumulative assessment pursuant to Article 15.3." *U.S. – Carbon Steel (India)* at para. 4.579.

17. *Canada – Anti-Dumping Measures on Imports of Certain Carbon Steel Welded Pipe from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu* (21 December 2016), WTO Docs. WT/DS482/R, Panel Report [*Canada – Welded Pipe*].

18. (16 March 2018), NQ-2017-003 (CITT) [*PT Resin*].

By necessary extension, the WTO reports also make it impermissible to cumulate the effects of goods that are dumped from a country with the effects of goods that are subsidized from another country.¹⁹

29. In arriving at this conclusion, the Tribunal considered the well-established principle of statutory interpretation that Canadian legislation will be presumed, and thus be construed, to conform with international law obligations unless the wording of the statute clearly compels a different result.²⁰ While subsection 42(3) of *SIMA* compels the Tribunal to cumulate (“shall cumulate”), the Tribunal concluded that this subsection, construed in accordance with Canada’s international legal obligations as interpreted by the WTO in the above-mentioned decisions, does so only in circumstances that would not, at the same time, risk contravening provisions on the *Agreement on Subsidies and Countervailing Measures*²¹ (*SCM Agreement*) or the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (*ADA*).²²

30. In other words, in an inquiry where goods are dumped, and assuming the other conditions of subsection 42(3) are met, they can be cumulated with other goods that are dumped. Likewise, in an inquiry where goods are subsidized, and provided that the conditions of subsection 42(3) are met, they can be cumulated with goods that are also subsidized. However, in an inquiry when there is a group of goods that are both dumped and subsidized, those goods cannot be considered cumulatively with goods that are subsidized-only because doing so results in an analysis purporting to support the imposition of a countervailing duty but tainted by the effects of goods that, while unfairly traded, are not likewise subsidized. The same problem arises in the event that dumped-only goods are considered cumulatively with goods that are both dumped and subsidized.

31. The solution then was for the Tribunal to perform two separate analyses in *PT Resin*—one involving subject goods that were dumped-only, and a second involving subject goods that were both dumped and subsidized. By separating the goods in this way, the Tribunal could continue to cumulate, as *SIMA* directs, but avoids the mischief that the WTO suggests ought to be avoided by authorities in deciding whether measures are necessary to counter subsidized or dumped goods.

32. The Tribunal acknowledges that the *U.S. Carbon Steel – India* decision involved an original investigation, and not what Canada refers to as an expiry review (and which some other jurisdictions refer to as a “sunset review”). Indeed, this is the first case in some time requiring the Tribunal to consider whether and how it should apply that finding in the context of an expiry review. To date, the Tribunal has taken varying approaches in respect of expiry reviews, as illustrated in the contrast between *Copper Pipe Fittings*²³ and *Flat Hot-Rolled Carbon and Alloy Steel Sheet and Strip*;²⁴ thus, it will take this opportunity to provide some much-needed clarification.

33. Nova submitted that the provisions of the *SCM Agreement* at issue in *U.S. Carbon Steel – India* do not apply to expiry reviews. In particular, Nova performed a textual analysis of Article 15.3, which reads as follows:

19. *Ibid.* at para. 36.

20. *Ibid.* at para. 37, citing *R. v. Hape*, [2007] 2 SCR 292, 2007 SCC 26 (CanLII) at para. 53; See also *National Corn Growers Assn. v. Canada (Import Tribunal)*, [1990] 2 SCR 1324 [*National Corn Growers*].

21. Online at: https://www.wto.org/english/docs_e/legal_e/24-scm.pdf.

22. Online at: https://www.wto.org/english/docs_e/legal_e/19-adp_01_e.htm.

23. (28 November 2016), RR-2015-003 (CITT).

24. (12 August 2016), RR-2015-002 (CITT).

15.3 Where imports of a product from more than one country are simultaneously subject to countervailing duty investigations, the investigating authorities may cumulatively assess the effects of such imports only if they determine that (a) the amount of subsidization established in relation to the imports from each country is more than *de minimis* as defined in paragraph 9 of Article 11 and the volume of imports from each country is not negligible and (b) a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic product.

34. Nova suggested that this article's references to an investigation and to "an amount of subsidization" indicate that it is intended to apply only to original investigations, or injury inquiries as they are called in Canada. This, Nova argued, flows from the fact that the CBSA does not establish the amount of subsidization, nor does it make a *de minimis* determination based on the volume of imports, in expiry reviews.

35. In addition, Nova pointed to Article 21 of the *SCM Agreement*, which contains obligations applicable to expiry reviews. Specifically, Nova referred the Tribunal to Article 21.4 of the *SCM Agreement*, which reads as follows:

21.4. The provisions of Article 12 regarding evidence and procedure shall apply to any review carried out under this Article. Any such review shall be carried out expeditiously and shall normally be concluded within 12 months of the date of the initiation of the review.

36. On this basis, Nova argued that only the provisions of Article 12, which address issues surrounding the collection and use of evidence and other procedural matters, apply to both inquiries and expiry reviews. In other words, based on the absence of reference to Article 15, the Tribunal is not obligated to cumulate in expiry reviews.

37. In addition, Nova referenced a passage of the Panel's report in *U.S. Carbon Steel – India*²⁵ dealing with India's argument that the U.S. provisions requiring cumulation in sunset reviews were inconsistent with the obligations in Article 15 of the *SCM Agreement*. On this issue, the Panel adopted the arguments of the U.S. that Article 15 does not impose obligations in sunset reviews. The Panel referenced the following paragraph from the Appellate Body's report in *U.S. – Oil Country Tubular Goods Sunset Reviews*, which dealt with a similar argument made under the equivalent provisions of the *ADA*:

Given the absence of textual cross-references, and given the different nature and purpose of these two determinations, we are of the view that, for the "review" of a determination of injury that has already been established in accordance with Article 3, Article 11.3 does not require that injury again be determined in accordance with Article 3. We therefore conclude that investigating authorities are not mandated to follow the provisions of Article 3 when making a likelihood-of-injury determination.²⁶

38. Nova noted that the language used by the Appellate Body in this passage refers to a determination of injury that has been made "in accordance with Article 3", the *ADA*'s equivalent of Article 15 of the *SCM Agreement*. Nova submitted that the underlying determination of injury in the expiry review before the Tribunal was made in accordance with Article 15 notwithstanding that it was a single analysis in which all countries were cumulated, because the determination was made prior to the release of *U.S. Carbon Steel –*

25. *U.S. Carbon Steel – India* at para. 7.389.

26. *United States – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina* (12 April 2007), WTO Docs. WT/DS268/AB/R, Appellate Body Report [*U.S. – OCTG Sunset Reviews*] at para. 280.

India and because that WTO decision only strictly applies to the parties in that dispute, namely the United States and India. Moreover, it pointed out that the injury determination underlying this expiry review was the first and only finding of the Tribunal to have gone to the WTO and, thus, has been vetted by the WTO, although it concedes that the Tribunal's cumulation determination was not in issue in that dispute.

39. For the reasons above, Nova argued that the Tribunal need only conduct one analysis—in particular, an analysis that cumulates all of the subject countries, in order to assess whether there is a likelihood of injury from the subject goods. In the alternative, however, Nova argued that the Tribunal could (but need not, given that this is an expiry review and not an inquiry) conduct a second analysis involving only subject goods from India.

40. Al Jazeera suggested that Nova's reading of Article 15.3 was overly narrow and restrictive. Notwithstanding the lack of a positive obligation in the *SCM Agreement* requiring cumulation, Al Jazeera submitted that the Tribunal retains discretion to determine whether and to what extent to cumulate, and, in particular, maintains the discretion to decide that the dumping and subsidizing country ought not to be cumulated with the countries that are dumping only. Pointing again to paragraph 7.389 in *U.S. Carbon Steel – India*, Al Jazeera emphasized the Appellate Body's comments that “investigating authorities are not *mandated* to follow the provisions of Article 3 when making a likelihood of injury determination” [emphasis in original]. In effect, Al Jazeera suggested that while the Tribunal is not mandated to follow the provisions that apply to investigations in the expiry review context, nor is it prohibited from doing so. Moreover, Al Jazeera suggested that to conduct a single cumulated analysis of all countries perpetuates the erroneous result that *U.S. Carbon Steel – India* was intended to prohibit.

41. In deciding how to conduct the injury analysis in this expiry review, the Tribunal finds it helpful to consider what, if any, obligations in this scenario arise from its commitments under the *SCM Agreement*. In doing so, the Tribunal is mindful of Article 31(1) of the *Vienna Convention on the Law of Treaties*,²⁷ which states as follows:

A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose.

42. This provision favours an approach that is consistent with the modern contextual approach to statutory interpretation, which holds that the words of an enactment must be read in their entire context and in their grammatical and ordinary sense harmoniously with the sections of the act, the object of the act and the intention of Parliament.²⁸

43. The *SCM Agreement* is somewhat atypical in the sense that it does not contain an explicit statement of its object and purpose, nor does it contain a preamble or recitals from which the Tribunal might be able to extrapolate its object and purpose. That said, the WTO has on several occasions reflected on the object and purpose of the *SCM Agreement*, as described below.

44. In *Canada – Aircraft*, the WTO Panel suggested that the object and purpose of the *SCM Agreement* could be characterized “as the establishment of multilateral disciplines ‘on the premise that some forms of

27. (1969) 1155 U.N.T.S. 331, in force 27 January 1980.

28. *Re: Complaint Filed by Georgian College of Applied Arts and Technology* (3 November 2003), PR-2001-067R (CITT) at 4. See also *Enterprise Marissa Inc. v. Department of Public Works and Government Services* (13 June 2011), PR-2010-086 (CITT) at 52-53; *Enterasys Networks of Canada Ltd. v. Department of Public Works and Government Services* (21 June 2010), PR-2009-080 to PR-2009-087, PR-2009-092 to PR-2009-102, PR-2009-104 to PR-2009-128 (CITT) at 108-109.

government intervention distort international trade, [or] have the potential to distort [international trade]’.”²⁹ Similarly, in *Brazil – Aircraft*, the Panel stated that “the object and purpose of the SCM Agreement is to impose multilateral disciplines on subsidies which distort international trade.”³⁰ Moreover, in *U.S. – Export Restraints*, the Panel stated that “[t]he object and purpose of the Agreement is clearly to discipline subsidies that distort trade”³¹

45. In addition, in *U.S. – Carbon Steel from Germany*, the Appellate Body made some observations on the object and purpose of the *SCM Agreement* as follows:

We thus believe that the Panel properly identified, as among the objectives of the SCM Agreement, the establishment of a framework of rights and obligations relating to countervailing duties, and the creation of a set of rules which WTO members must respect in the use of such duties. Part V³² of the Agreement is aimed at striking a balance between the right to impose countervailing duties to offset subsidization that is causing injury, and the obligations that Members must respect in order to do so.³³

46. While the Tribunal is mindful of the Panel’s comments in *Canada – Aircraft*,³⁴ and is thus cautious not to place undue weight on arguments or jurisprudence regarding the objects and purposes of the *SCM Agreement*, it seems clear and should be uncontroversial to conclude, along the same lines as the above statements from the WTO, that the *SCM Agreement* is intended to impose disciplines on governments providing certain types of subsidies while at the same time providing ground-rules for governments seeking to impose or maintain trade remedies to counteract the injurious impacts of said subsidies. The Tribunal is of the view that this remains an accurate statement of the *SCM Agreement*’s objectives, regardless of whether considered in the context of an original inquiry or an expiry review.

47. On the basis of the above, it would be overly broad to conclude that this agreement and the provisions in this agreement are intended to remedy all manifestations of unfair trade—indeed, for unfair trade that falls under the dumping rubric, a separately constituted treaty (the *ADA*) exists for this purpose.

48. Looking at the specific provisions of the *SCM Agreement*, in particular Articles 15.2 and 21.4, the Tribunal agrees with Nova that the *SCM Agreement* does not require it to analyze the likelihood of injury from goods that are dumped—only separately from the likelihood of injury from goods that are both dumped and subsidized. Accordingly, the Tribunal is satisfied that a failure to do so in the context of an expiry review would not contravene provisions of the *SCM Agreement*. However, the Tribunal is of the view that the absence of a prohibition against cumulation under these circumstances does not necessarily lead to the conclusion that cumulation under these circumstances is appropriate.

29. *Canada – Measures Affecting the Export of Civilian Aircraft* (14 April 1999), WTO Docs. WT/DS70/R, Panel Report [*Canada – Aircraft*] at para. 9.119.

30. *Brazil – Export Financing Programme for Aircraft* (14 April 1999), WTO Docs. WT/DS46/R, Panel Report at para. 7.26.

31. *United States – Measures Treating Export Restraints as Subsidies* (29 June 2001), WTO Docs. WT/DS194/R, Panel Report at para. 8.457.

32. The Tribunal notes that Part V applies to, *inter alia*, original investigations and expiry reviews.

33. *United States – Countervailing Duties on Corrosion-Resistant Carbon Steel Flat Products from Germany* (28 November 2002), WTO Docs. WT/DS213/AB/R, Appellate Body Report at paras. 73-74.

34. *Canada – Aircraft* at para. 9.900. The Panel cautioned that it considered it “unwise to attach undue importance to arguments concerning the object and purpose of the SCM Agreement.”

49. In *U.S. – OCTG Sunset Reviews*,³⁵ the Appellate Body said that investigating authorities do not have *carte blanche* to make cumulative assessments during expiry reviews; the decision to resort to cumulation in an expiry review must be supported by positive evidence and a sufficient factual basis.³⁶ Arguably, a likelihood of injury determination based on the cumulative assessment of goods from countries that are not simultaneously subject to the same type of investigation would be a determination that is not supported by positive evidence or a sufficient factual basis because the causes of injury have been conflated. In other words, and as it applies to this expiry review, the evidence related to Indian subject goods could potentially be considered positive evidence supporting the continuation of countervailing duties against India, but the evidence that relates to non-subsidized goods (that is, evidence related to the five dumping-only countries) cannot be characterized as positive evidence supporting the continuation of countervailing duties, notwithstanding that such evidence may very well be considered positive evidence in support of the continuation of the anti-dumping duties.

50. Administrative decision-makers are bound to domestic legislation, when necessary, interpreted with reference to treaty obligations.³⁷ As was recognized by Gonthier J. in *National Corn Growers*, sometimes an ambiguity in domestic legislation is not apparent until one examines the obligations set out in the international agreements that the domestic legislation is intended to implement.³⁸ Whether in injury inquiries or expiry reviews, the language of *SIMA* does not contain any prohibition on cumulating in circumstances where one group of goods is dumped and another is dumped and subsidized. It is only when this provision of *SIMA* is interpreted with reference to the obligations in the *SCM Agreement* and the jurisprudence of the WTO that the issue with respect to how cumulation is addressed in *SIMA* becomes apparent.

51. If the Tribunal were to interpret subsection 76.03(11) of *SIMA* with reference to Canada's international obligations under the *SCM Agreement* and conclude that it should cumulate all subject countries since the *SCM Agreement* does not prohibit cumulation in expiry reviews, such an approach would lead to an absurd interpretation of two almost identical provisions under *SIMA*. In particular, subsection 42(3) reads as follows:

(3) In making or resuming its inquiry under subsection (1), *the Tribunal shall make an assessment of the cumulative effect of the dumping or subsidizing of goods to which the preliminary determination applies that are imported into Canada from more than one country if the Tribunal is satisfied that*

(a) the margin of dumping or the amount of subsidy in relation to the goods from each of those countries is not insignificant and the volume of the goods from each of those countries is not negligible; and

(b) *an assessment of the cumulative effect would be appropriate taking into account the conditions of competition between goods to which the preliminary determination applies that are imported into Canada from any of those countries and*

(i) goods to which the preliminary determination applies that are imported into Canada from any other of those countries, or

(ii) like goods of domestic producers.

[Emphasis added]

35. *U.S. – OCTG Sunset Reviews* at para. 302.

36. *Ibid.*

37. *National Corn Growers* at 1371-1372.

38. At p. 1371 of *National Corn Growers*, Gonthier J. comments as follows: “. . . [I]t is reasonable to make reference to an international agreement at the very outset of an inquiry to determine if there is any ambiguity, even latent, in the domestic legislation.”

52. For sake of comparison, subsection 76.03(11) of *SIMA* states the following:

(11) For the purpose of subsection (10), *the Tribunal shall make an assessment of the cumulative effect of the dumping or subsidizing of goods to which the determination of the President described in subsection (9) applies that are imported into Canada from more than one country if the Tribunal is satisfied that an assessment of the cumulative effect would be appropriate taking into account the conditions of competition between goods to which the order or finding applies that are imported into Canada from any of those countries and*

(a) goods to which the order or finding applies that are imported into Canada from any other of those countries; or

(b) like goods of domestic producers.

[Emphasis added]

53. It bears noting that the provision of *SIMA* that mandates cumulation in expiry reviews is, in all material respects, identical to the language used in injury inquiries. Thus, to adopt the interpretation advocated by the domestic industry leads to the result that two very similar provisions of *SIMA*, namely subsections 42(3) and 76.03(11), are interpreted and applied differently. Such an interpretation cannot be sustained.

54. For the above reasons, the Tribunal will conduct two separate analyses: one assessing the likelihood of injury from the subject goods of Chinese Taipei, Korea, Thailand, Oman and the UAE, and a separate analysis considering the likelihood of injury from Indian subject goods.

55. With regard to cross-cumulation, given the WTO Panel's finding in *Canada – Welded Pipe*, the Tribunal finds it appropriate to cross-cumulate the Indian subject goods. As indicated above and as reflected in *PT Resin*, the Tribunal reads *Canada – Welded Pipe* as allowing a (cross-) cumulative assessment of the effects of dumping and subsidizing of the same goods from a single country.

LIKELIHOOD OF INJURY ANALYSIS

56. An expiry review is forward-looking.³⁹ 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.⁴⁰

57. 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 WTO.⁴¹ In the context of an expiry review, positive evidence can include evidence based on past facts that tend to support forward-looking conclusions.⁴²

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

40. *Copper Pipe Fittings* (17 February 2012), RR-2011-001 (CITT) at para. 56. In *Thermoelectric Containers* (9 December 2013), RR-2012-004 (CITT) at para. 14 [*Thermoelectric Containers*], 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*].

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

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

58. 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 from the date on which the finding or order would expire.

59. Nova submitted that looking at a shorter time period, namely 12 to 18 months following the date the finding would expire, is appropriate in this case given the current volatility in the Canadian and global CSWP markets. The Tribunal agrees.

60. Subsection 37.2(2) of the *Special Import Measures Regulations*⁴³ 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 and/or subsidizing. The factors that the Tribunal considers relevant in this expiry review are discussed in detail below.

Changes in Market Conditions

61. In order to assess the likely volumes and prices of the subject goods and their impact on the domestic industry if the finding were rescinded, the Tribunal will first consider changes in international and domestic market conditions.⁴⁴

International Market Conditions

62. The global market for steel generally, and for CSWP in particular, is unstable because of several recent developments. In addition, several of the international market conditions that were present in the original inquiry still exist.

– Tariffs by the U.S. and International Reactions Thereto

63. On March 8, 2018, the U.S. imposed a 25 percent tariff on steel imports,⁴⁵ marking a significant change in international market conditions for steel products, including CSWP. With the imposition of this tariff comes the prospect of a diversion of steel to non-U.S. markets, including Canada. The risk of diversion is pronounced for subject goods for which the U.S. has historically been an important export market, although some of the exporting countries are already subject to anti-dumping or countervailing duties in the U.S. The 25 percent tariff applies to CSWP from all subject countries, except Korea, for which the U.S. has instead imposed a quota. Based on the data for June and July 2018, as compared to June and July 2017, it appears that the tariff has effectively reduced the volume of standard pipe imports into the U.S.⁴⁶

64. On July 1, 2018, in response to the U.S. tariff, Canada imposed a 25 percent retaliatory tariff on U.S. steel imports, including CSWP.

65. In addition, noting the trade measures adopted by third countries (including the U.S. tariff) and the increased presence of steel imports in its markets, in March 2018, the European Union (EU) initiated a safeguard investigation concerning imports of steel products, including CSWP.⁴⁷ Of particular concern to

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

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

45. These measures were implemented pursuant to section 232 of the *Trade Expansion Act* of 1962 and are therefore sometimes referred to by the parties as the “232 measures”.

46. Exhibit RR-2017-005-A-12 at 1, Vol. 11F.

47. Exhibit RR-2017-005-A-01, Public Attachment 5 at p. 144, Vol. 11.

the EU is the prospect of diversion resulting from the U.S. tariff. As of July 2018, the EU imposes provisional safeguard measures on CSWP. The measures take the form of tariff rate quotas, aimed at preserving historical levels of imports, while placing a tariff on imports that rise above these levels.

66. In April 2018, Turkey followed suit by also initiating a steel safeguard investigation. The investigation, which covers CSWP among other steel products, is described as a precautionary measure against the impact of the U.S. tariff.

– Global Steel Demand

67. Although Nova has characterized global steel demand as weak, documentary evidence suggests that there has been recent moderate growth.⁴⁸ That said, as discussed below, there remain structural problems and a significant amount of uncertainty within the industry.

– Global Overcapacity and Capacity Increases

68. In large part, the impetus for these above measures is the structural imbalance prevalent in the market, which has existed for some time. The capital-intensive nature of CSWP production and high fixed costs provides an incentive for mills to pursue sales even at low prices in order to increase capacity utilization.⁴⁹ While some producers have reduced capacity, others continue to add capacity.⁵⁰ As a result, production of steel continues to increase, significantly outweighing demand.⁵¹

Domestic Market Conditions

69. According to Nova, the demand for CSWP in Canada tends to be steady from year to year, averaging around 200,000 MT.⁵² Nova also described the market as mature,⁵³ with a known customer base and limited growth opportunities.⁵⁴

70. Nova's estimate differs somewhat from the size of the market found during the Tribunal's inquiry, although Nova and the Tribunal's estimates tend to converge in 2017. According to the Tribunal's estimates, the total apparent market volume appeared to increase in every year of the POR: specifically, by 10 percent in 2016, 28 percent in 2017, and by 68 percent in the 2018 interim period as compared to the 2017 interim period.⁵⁵ When imports that appeared to have been for automotive applications were removed from the data, the same increasing trend remains, although the size of the market is somewhat smaller.⁵⁶

48. *Ibid.*, Attachment 9 at pp. 208-209, Vol. 11; Exhibit RR-2017-005-A-01, Attachment 27 at p. 355, Vol. 11A.

49. *Carbon Steel Welded Pipe* (19 April 2013), RR-2012-003 (CITT) at para. 42.

50. Exhibit RR-2017-005-A-01, Attachment 9 at pp. 153-154, Vol. 11.

51. *Ibid.*

52. *Ibid.* at paras. 36, 51; *Transcript of Public Hearing* at 15.

53. Exhibit RR-2017-005-A-05 at para. 36, Vol. 11F.

54. Exhibit RR-2017-005-A-04 at para. 4, Vol. 11F.

55. Exhibit RR-2017-005-06 (protected), Table 9, Vol. 2.1.

56. Exhibit RR-2017-005-06B (protected), Table 4, Vol. 2.1. Nova's arguments suggested that standard pipe is not generally used in automotive applications. The Tribunal, however, noted that certain questionnaire respondents engaged in automotive manufacturing and, having presumably read the product description, claimed to have imported goods falling within the scope of this review. In order to examine what effect the data in question would have, the Tribunal produced an investigation report supplement removing the data provided by these respondents.

71. On the supply side, the most significant change in the domestic market is the entry of new sources of CSWP imports, in particular from Pakistan, the Philippines, Turkey and Vietnam. Imports from these four sources grew by 60 percent in 2016 and a further 31 percent in 2017.⁵⁷ The volume of imports from these sources in the 2018 interim period was 107 percent higher than in the 2017 interim period. This trend is mirrored by an overall increase in imports over the POR, namely by 14 percent in 2016, 36 percent in 2017 and 88 percent in the 2018 interim period.⁵⁸ On July 20, 2018, the CBSA launched an investigation regarding the dumping of CSWP from Pakistan, the Philippines, Turkey and Vietnam.

72. Non-subject imports gained market share over the POR, growing by 3 percentage points in 2016 and a further two percentage points in 2017.⁵⁹ Imports from the aforementioned four countries are largely responsible for this growth, whereas U.S. goods lost market share during the POR.⁶⁰ The U.S. was a significant source of imports throughout the POR, although the four above-mentioned countries rose above the volume of CSWP imported from the U.S. in 2016 and stayed above it in 2017. When the data related to automotive applications is removed, lower volumes of subject goods were imported from the U.S., although it still remains a significant source of imports.⁶¹

73. Subject goods have continued to enter the Canadian market following the finding, but not to any substantial degree notwithstanding large percentage increases from certain sources of the subject goods year over year. In particular, subject imports from Thailand increased by 22 percent in 2016 and 867 percent in 2017.⁶² Subject imports from India increased over the POR, by 178 percent in 2016 and by more than a thousand percent in 2017.⁶³ However, subject imports accounted for only a tiny percentage of the total market in all years of the POR.⁶⁴ In fact, subject goods from the UAE, Chinese Taipei and Oman were virtually absent from the Canadian market during the POR.

74. With regard to pricing, Nova indicates that non-subject imports from Pakistan, the Philippines, Turkey and Vietnam have introduced new pricing pressures into the Canadian market for CSWP. From the data collected, the unit values of imports from these countries tend to be some of the lowest prices on the market.⁶⁵

75. Another change on the supply side relates to raw material costs. Nova indicated that the direct material costs of hot-rolled coil (HRC) significantly increased during the POR. The price of HRC increased by 17 percent in 2016 and then again by 17 percent in 2017, in Canadian dollar terms and based on the U.S. Midwest price.⁶⁶ A comparison of the interim periods suggests that HRC was 14 percent more expensive in January-March 2018 than it was in the same period of 2017.⁶⁷ The pricing pressures outlined above make recovering these increased HRC costs more difficult, particularly given that HRC is such a significant cost component of CSWP.⁶⁸

57. Exhibit RR-2017-005-05, Table 5, Vol. 1.1.

58. *Ibid.*

59. *Ibid.*, Table 11.

60. Exhibit RR-2017-005-06 (protected), Table 10, Vol. 2.1.

61. Exhibit RR-2017-005-06B (protected), Table 1, Vol. 2.1.

62. Exhibit RR-2017-005-05, Table 9, Vol. 1.1; Exhibit RR-2017-005-05B, Table 5, Vol. 1.1.

63. *Ibid.*

64. Exhibit RR-2017-005-06 (protected), Table 10, Vol. 2.1; Exhibit RR-2017-005-06B (protected), Table 10, Vol. 2.1.

65. Exhibit RR-2017-005-06 (protected), Tables 12, 14, Vol. 2.1.

66. Exhibit RR-2017-005-05, Table 26, Vol. 1.1.

67. *Ibid.*

68. Exhibit RR-2017-005-A-01 at para. 45, Vol. 11; Exhibit RR-2017-005-A-05 at para. 50, Vol. 11F.

Likely Performance of the Domestic Industry if the Finding is Continued

76. The Tribunal will examine the likely performance of the domestic industry were the finding to be continued, taking into account that industry's recent performance.⁶⁹ For the purposes of this analysis, the Tribunal will consider whether there are any relevant factors other than the dumping and/or subsidizing of the subject goods affecting or likely to affect the domestic industry's performance in the near to medium term, namely during the next 12 to 18 months.⁷⁰

77. Nova submits that it and Bolton, the two largest domestic producers of CSWP, have experienced weak financial performance over the past several years. During the POR, Nova was profitable only in 2015.⁷¹ The domestic producers claim that this is largely due to pricing pressures exerted by, and sales volumes lost to, new sources of low-priced non-subject goods.

78. The total volume of domestic production of CSWP increased by 10 percent in 2016 as compared to 2015, and then remained steady in 2017. However, this increase was driven primarily by production for export sales, which increased by 61 percent in 2016 before falling by 10 percent in 2017.⁷²

79. Domestic production for domestic sales generally declined over the POR, both in absolute terms and as a percentage of total production.⁷³ Capacity utilization rates remained very low throughout the POR, both in terms of production for domestic sales and production for export sales.⁷⁴

80. Gross margins declined in every year of the POR. The most significant gross margin decline was apparent in interim 2017, during which time the cost of goods sold (COGS) was actually greater than the net sales value.⁷⁵

81. The domestic industry consistently lost market share over the POR, falling by 3 percentage points in 2016 and by a further 4 percentage points in 2017. Data for the 2018 interim period reveals that the domestic industry's market share fell 9 percentage points as compared to the same period in 2017.⁷⁶

82. Direct hours worked, direct wages paid, and total productivity increased⁷⁷, but direct and indirect employment, indirect wages paid, and indirect hours worked decreased slightly.⁷⁸

83. On the whole, the data suggests that the domestic industry is not faring particularly well, notwithstanding the very limited participation of the subject goods in the Canadian market. There is little indication that the domestic industry's performance will improve even if the finding is continued.

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

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

71. *Transcript of Public Hearing* at 26.

72. Exhibit RR-2017-005-05A, Table 20, Vol. 1.1.

73. Exhibit RR-2017-005-06 (protected), Table 21, Vol. 2.1.

74. Exhibit RR-2017-005-06A (protected), Table 19, Vol. 2.1.

75. Exhibit RR-2017-005-06 (protected), Table 16, Vol. 2.1.

76. Exhibit RR-2017-005-05, Table 11, Vol. 1.1.

77. Exhibit RR-2017-005-06A, (protected), Table 19, Vol. 2.1.

78. *Ibid.*

84. On the contrary, in the next 12 to 18 months, certain factors will continue to impose some significant new challenges on the domestic industry, not the least of which is the tariff imposed by the U.S. Mr. Jones of Nova characterized the tariff's likely impact on Nova's export business as "anywhere from hurtful to devastating".⁷⁹ Although Nova was able to ship some CSWP to the U.S. in June and July, paying the full tariff or in some cases splitting the tariff with its customer,⁸⁰ Mr. Jones expects Nova's exports to the U.S. to shrink from 30,000-40,000 MT per year to "basically zero".⁸¹ Likewise, Bolton's evidence is that it has already been effectively shut out of the U.S. market as a result of the tariff.⁸²

85. It has been suggested that the dampening of U.S. exports to Canada, as a result of Canada's retaliatory measures, might open up new opportunities for domestic producers to serve the Canadian market by attracting sales that were previously supplied by U.S. imports. However, Mr. Jones testified that Nova expects the overall impact of the tariffs to be negative. While he estimated that the annual volume of CSWP shipped from the U.S. is generally in the range of 20,000 MT, and that Nova would likely pick up fifty to seventy-five percent of this volume previously supplied by the U.S., these gains are not sufficient to offset the losses Nova expects on the volume of its export sales to the U.S.⁸³

86. In addition to likely exporting significantly less, the domestic industry will likely face more import competition from subject and non-subject goods diverted from the U.S. Over 1,000,000 MT of CSWP were imported into the U.S. in 2017, from all sources combined.⁸⁴ The volume of CSWP exported to the U.S. from Vietnam (88,711 MT), Turkey (71,837 MT) and Mexico (49,639 MT), none of which are currently subject to a CSWP finding in Canada, is greater than the total size of the Canadian CSWP market.⁸⁵

87. The domestic industry also faces the possibility of CSWP being diverted from the EU in the next 12 to 18 months or for however long the EU provisional safeguard measures remain in effect; however, given how the provisional safeguard measures are structured (namely, the fact that duties are applicable only when import levels rise beyond historical averages), the Tribunal is of the view that this circumstance poses less of a risk to domestic producers than the imports diverted from the U.S.

88. Another significant challenge for the domestic industry over the next 12 to 18 months, unrelated to the subject imports, is the cost of raw materials, which is discussed in further detail below.

89. Notwithstanding these likely difficulties that will exist regardless of whether the finding is continued or not, for the reasons discussed below, the domestic industry's performance would be materially worse were the finding rescinded.

79. *Transcript of Public Hearing* at 24.

80. *Ibid.* at 29.

81. *Ibid.* at 24-25.

82. *Ibid.* at 67.

83. *Ibid.* at 16, 25.

84. Exhibit RR-2017-005-A-05, Attachment 2 at p. 22, Vol. 11F. The Tribunal notes that these estimates seem quite high, particularly in comparison to the volume of known exports to the U.S. by Canadian producers of CSWP, which are found on the Tribunal's record at Exhibit RR-2017-005-06A, Table 19, Vol. 2.1. Nonetheless, even if the figures are somewhat overstated, the Tribunal remains of the view that the potential for diversion is significant.

85. Exhibit RR-2017-005-A-05, Attachment 2, Vol. 11F.

Likely Import Volume if the Finding is Rescinded

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

91. The Tribunal's assessment of the likely volumes of dumped and subsidized imports encompasses the likely performance of the foreign industry, the potential for the foreign producers to produce goods in facilities that are currently used to produce other goods, evidence of the imposition of anti-dumping and/or countervailing measures in other jurisdictions, and whether measures adopted by other jurisdictions are likely to cause a diversion of the subject goods to Canada.⁸⁶ For the reasons discussed previously, the Tribunal will conduct its examination in this section and in the section on price effects separately, starting with dumped-only imports from five countries and concluding with dumped and subsidized imports from India.

Likely Import Volumes from Chinese Taipei, Thailand, Korea, UAE and Oman

92. The domestic industry argues that producers from the five dumping-only subject countries remain interested in the Canadian market and, due to their production capacity and export-orientation, particularly when considered alongside the conditions in the markets in which their goods compete, they will likely resume dumping in significant volumes if the finding is rescinded.

93. Producers in the five dumping-only subject countries have significant CSWP production capacity, based on the data provided in the Simdex Metal Tube Manufacturer's Worldwide Guide.⁸⁷ The subject country with by far the largest CSWP production capacity is Korea, which is estimated to have almost 4 million MT of CSWP capacity. The UAE's CSWP capacity is estimated at just under 2 million MT per year whereas Thailand's is slightly more than 1 million MT annually. The CSWP production capacity in Chinese Taipei is estimated at around 764,000 MT per year.⁸⁸ Based on Al Jazeera's annual reports, Oman's tube mill capacity, on which equipment it also produces pipe, is 300,000 MT annually.⁸⁹

94. Certain producers whose capacity data are included in the above estimates are excluded from the finding; however, even in the absence of those producers' capacity figures, the resulting capacity is significant in comparison to the size of the Canadian market.

95. Nova has described producers in the five dumping-only countries as being export-oriented with respect to both crude steel and steel products. In particular, Chinese Taipei exports more than half of its total steel production,⁹⁰ and there are a number of major pipe producers for whom pipe exports comprise an important part of their corporate strategy.⁹¹ With respect to Korea, approximately 10 percent of its steel exports in 2017, or about 3 million MT, were of pipe and tube.⁹² Reports indicate that the steel industry in

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

87. Exhibit RR-2017-005-A-02 (protected), Attachment 60, Vol. 12C; Attachment 75, Vol. 12D; Attachments 113, 114, Vol. 12E; Attachments 132-134, Vol. 12F; Exhibit RR-2017-005-04 (protected) at para. 200, Vol. 2.

88. Exhibit RR-2017-005-A-02 (protected), Attachment 60, Vol. 12C; Exhibit RR-2017-005-A-01, Attachment 109, Vol. 11D.

89. Exhibit RR-2017-005-A-01, Attachments 97-98, Vol. 11D.

90. Exhibit RR-2017-005-A-01, Attachment 59, Vol. 11C.

91. *Ibid.*, Attachments 65-68.

92. *Ibid.*, Attachment 74.

Korea has undertaken efforts to increase its steel exports, which seem to have garnered some success as exports of steel pipe are reported to have risen by 72.2 percent between January and August 2017 as compared to the same period of the previous year.⁹³ A number of subject country producers have publicly stated their global ambitions,⁹⁴ bolstered in part by strong export sales notwithstanding the imposition of trade measures in many markets.

96. The behaviour of producers in the five dumping-only subject countries is such that they will likely view Canada as an attractive export destination in the event that the finding is rescinded, notwithstanding the likelihood that other countries (particularly those most affected by the U.S. tariff, such as Vietnam, Turkey and Mexico) will likewise pursue Canada as a new target market. There are a shrinking number of markets in which CSWP from the five dumping-only subject countries can compete unhindered by anti-dumping or countervailing measures.⁹⁵ Further, the imposition of the U.S. tariff places additional pressure on CSWP producers from the five dumping-only subject countries to pursue other export markets, particularly because the U.S. has typically been among the most important export markets for all five of these countries.⁹⁶ The safeguard measures in the EU and Turkey can be expected to have a similar impact, pushing subject goods to pursue markets where they are unhindered by duties or volume restrictions.

97. The Tribunal is also satisfied that producers from Chinese Taipei, Thailand, and the UAE have a substantial capacity to produce related products, namely hollowed structural sections (HSS).⁹⁷ Imports of HSS, which is usually produced on the same equipment as CSWP and from a similar raw material,⁹⁸ have increased significantly over the POR and, for the most part, are entering Canada at low prices.⁹⁹ If the finding against the dumping-only subject countries is rescinded, these producers will likely shift back to CSWP production from HSS.

98. Based on the foregoing, there will likely be a significant increase in the volume of subject goods imported from Chinese Taipei, Thailand, Korea, UAE and Oman if the finding is rescinded.

Likely Import Volumes from India

99. The domestic industry argues that significant volumes of Indian subject goods are likely to enter Canada in the event that the Tribunal rescinds its finding against Indian CSWP because of the high production capacity, significant levels of production and the general export orientation of Indian CSWP producers. Moreover, the imposition of the U.S. tariff and EU safeguard measures increases the likelihood that Indian CSWP will be diverted to Canada in the event that the finding is rescinded.

100. Notwithstanding the application of anti-dumping and countervailing duties to Indian CSWP, India has remained involved in the Canadian market during the POR, and increased its market share a small amount between 2016 and 2017.¹⁰⁰ Measures remain in place in the U.S. on Indian CSWP even after four sunset reviews; however, Indian subject goods have maintained a presence in that market as well,

93. *Ibid.*, Attachment 80.

94. Exhibit RR-2017-005-A-01, Attachments 65-66, 82-87, Vol. 11C; Attachments 97-98, 104, 114, Vol. 11D; Attachments 133, 138, Vol. 11E.

95. Exhibit RR-2017-005-A-01, Table 19, Vol. 11.

96. Exhibit RR-2017-005-A-01, Attachments 59, 74, Vol. 11C; Attachment 109, Vol. 11D; Attachments 116, 136, Vol. 11E.

97. Exhibit RR-2017-005-A-01, Tables 19, 22, Vol. 11; Attachments 149-151, Vol. 11E.

98. *Transcript of Public Hearing* at 21, 36-37.

99. Exhibit RR-2017-005-A-01, Attachment 149, Vol. 11E; *Transcript of Public Hearing* at 20.

100. Exhibit RR-2017-005-06 (protected), Table 8, 10, Vol. 2.1; Exhibit RR-2017-005-05, Table 11, Vol. 1.1.

notwithstanding duties.¹⁰¹ This suggests that Indian exporters have an on-going interest in the Canadian market.

101. India is estimated to have approximately 4 million MT of CSWP capacity.¹⁰² This amount of CSWP production capacity is substantial, both in absolute terms and relative to the production and consumption of like goods in Canada.

102. On the export side, pipe and tube are estimated to account for 9 percent of India's steel exports, or 1.43 million MT¹⁰³ and excerpts from several Indian producers' corporate strategies and websites highlight the importance of export markets for CSWP and other steel products.¹⁰⁴ Data from the World Steel Association also shows that exports of tubular products from India increased in 2015 and 2016.¹⁰⁵ On this basis, the Tribunal finds that Indian producers of CSWP are export-oriented.

103. Given their export orientation, Indian producers are likely to feel the effect of the U.S. tariff and EU safeguard measures and will be motivated to find alternative markets to absorb the volumes of CSWP typically exported to these markets.¹⁰⁶ The quantity of Indian CSWP looking for a new market is likely to be significant, considering that the U.S. was one of India's largest trading partners for pipe and tube, and received 31 percent of India's pipe and tube exports in 2017.¹⁰⁷ As discussed above with respect to the five dumping-only countries, Indian CSWP is not likely to be deterred from entering the Canadian market by the presence of non-subject countries impacted by the U.S. tariff, or the EU or Turkish safeguard measures.

104. The Tribunal is also satisfied that Indian producers have a substantial capacity to produce, and do indeed produce substantial quantities of related products, namely HSS.¹⁰⁸ Imports of HSS, which is usually produced on the same equipment as CSWP and from a similar raw material,¹⁰⁹ have increased significantly over the POR, and are currently entering Canada at low prices.¹¹⁰ The Tribunal is satisfied that if the finding against India is rescinded, there will likely be a shift to CSWP production from HSS.

105. Based on the foregoing, the Tribunal finds that there will likely be a significant increase in the volume of subject goods imported from India if the finding is rescinded.

Likely Price Effects if the Finding is Rescinded

106. The Tribunal must consider whether, if the finding is rescinded, the dumping or subsidizing of goods is likely to significantly undercut the prices of like goods, depress those prices, or suppress them by preventing increases in those prices that would likely have otherwise occurred.¹¹¹ In this regard, the Tribunal distinguishes the price effects of the dumped or subsidized goods from any price effects that would likely result from other factors affecting prices.

101. Exhibit RR-2017-005-A-01, Attachment 37, Vol. 11A.

102. Exhibit RR-2017-005-A-02 (protected), Attachment 32, Vol. 12A.

103. Exhibit RR-2017-005-A-01, Attachment 21, Vol. 11A.

104. Exhibit RR-2017-005-A-01, Attachment 41, Vol. 11B and Attachments 42-49, Vol. 11C; Exhibit RR-2017-005-21.01 at p. 32, Vol. 5.1.

105. Exhibit RR-2017-005-35.03 at p. 19, Vol. 1A.

106. Exhibit RR-2017-005-22.01 (protected) at p. 12, Vol. 6.1.

107. Exhibit RR-2017-005-A-01, Attachment 21 at p. 324, Vol. 11A.

108. Exhibit RR-2017-005-A-01, Table 21, Vol. 11.

109. *Transcript of Public Hearing* at 21, 36-37.

110. Exhibit RR-2017-005-A-01, Attachment 149, Vol. 11E; *Transcript of Public Hearing* at 20.

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

Likely Prices of Subject Goods from Chinese Taipei, Thailand, Korea, UAE and Oman

107. If the finding is rescinded, subject goods from Chinese Taipei, Thailand, Korea, UAE and Oman are likely to significantly undercut and suppress the prices of like goods.

108. The virtual absence of subject goods from the five dumping-only countries over the course of the POR suggests that producers from these countries (with the exception of those that have been excluded from the finding) are unable or unwilling to compete at normal values. Moreover, to compete with the increasing competition from goods that could potentially be diverted into Canada as a result of U.S. and EU measures and with the like goods, exporters of these subject goods will need to offer low prices. Nova has provided a series of recent lost sales allegations, which suggest that the CSWP prices being offered by Pakistan, the Philippines, Turkey and Vietnam are, in many instances, significantly lower than the prices offered by the domestic industry.¹¹² Similarly, during the POR, the non-subject goods from Pakistan, the Philippines, Turkey and Vietnam were almost always priced lower than the subject goods from India or from the five dumping-only subject countries.¹¹³ Not only will the subject goods need to meet these prices, but based on the commodity nature of CSWP, in order to secure sales they will actually need to enter the Canadian market at prices lower than those currently on offer.

109. In addition, the export pricing provided in Al Jazeera's foreign producer questionnaire response,¹¹⁴ which is consistently lower than Canadian domestic producers' pricing,¹¹⁵ is also indicative of the prices that subject goods from Oman would enter the Canadian market.

110. The Tribunal also finds that the subject goods would likely prevent the domestic producers from raising their prices to cover increased costs. As indicated above, the price of HRC increased over the POR. This has had an impact on domestic producers' COGS.¹¹⁶ In particular, on a \$/tonne basis, COGS declined slightly in 2016, but then increased in 2017. The cost of goods manufactured (COGM) or, more specifically, the unit value of direct materials used, also increased every year during the POR on \$/tonne basis.¹¹⁷ While the likelihood of future increases in the cost of HRC is difficult to predict,¹¹⁸ the most recent CRU data shows that the U.S. (Midwest) price of HRC has consistently increased in each year of the POR, rising from \$532/t (in 2015) to \$854/t (in the 2018 interim period), for an overall increase of about 40 percent between 2015 and 2018.¹¹⁹ To the extent that prices remain at their current low levels and subject goods from the aforementioned five countries gravitate towards those levels, domestic producers are not likely to be able to pass along these increased costs to customers.

111. While it may be the case that the price of like goods will be suppressed even if the finding is continued due to the presence of non-subject goods (namely from Pakistan, the Philippines, Vietnam and Turkey), if the finding is rescinded, the Tribunal is satisfied that the subject goods will drive prices even lower, undercutting the price of domestic goods, placing even greater limitations on domestic producers' ability to raise prices to cover increased costs.

112. Exhibit RR-2017-005-A-08 (protected) at paras. 25-46, Vol. 12G.

113. Exhibit RR-2017-005-06 (protected), Table 14, Vol. 2.1; Exhibit RR-2017-005-06B (protected), Table 8, Vol. 2.1.

114. Exhibit RR-2017-005-22.03B (protected) at p. 31, Vol. 6.1. See also Exhibit RR-2017-005-06 (protected), Table 25, Vol. 2.1.

115. Exhibit RR-2017-005-06 (protected), Table 14, Vol. 2.1.

116. *Transcript of Public Hearing* at 34.

117. Exhibit RR-2017-005-06 (protected), Table 16, Vol. 2.1.

118. *Transcript of Public Hearing* at 33.

119. Exhibit RR-2017-005-05, Table 26, Vol. 1.1.

Likely Prices of Subject Goods from India

112. While there is evidence that prices of some Indian subject goods may be higher than other subject goods in this expiry review, the evidence originates from the exports of a single Indian producer and relates to a niche product, and, thus, the Tribunal does not consider it to be representative of the likely prices of Indian CSWP imports into Canada upon rescission of the finding.¹²⁰

113. Given the commodity nature of CSWP, in order to regain sales and market share in Canada, subject goods from India would need to be sold at or below prevailing market prices. Given the low levels of pricing on the market now, and expected to persist into the near future, if the finding were rescinded, the pricing of subject goods from India is likely to undercut the pricing of like goods.

114. Moreover, for the same reasons stated above with respect to the dumping-only countries, domestic producers will be unable to pass any additional costs associated with HRC along to their customers in the form of price increases because of the presence of low prices on the market, which would include low prices of subject goods from India in the event the finding against India were rescinded.

115. Accordingly, the Tribunal finds that, if the finding against India is rescinded, the subject goods from India will likely result in significant adverse price effects on the domestic industry similar to those mentioned above in connection with the five dumping-only countries.

Likely Impact on the Domestic Industry if the Finding is Rescinded

116. The Tribunal will assess the likely impact of the above volumes and prices on the domestic industry if the finding is rescinded,¹²¹ taking into consideration the likely performance of the domestic industry were the finding continued, as discussed above. In this analysis, the Tribunal distinguishes the likely impact of the dumped or subsidized goods from the likely impact of any other factors affecting or likely to affect the domestic industry.¹²²

117. As discussed below, the anticipated impacts of the subject goods on the domestic industry, regardless whether the source is India or the five dumping-only subject countries, is the same.

118. Nova submits that if the finding is rescinded, all subject goods will enter Canada in significant volumes at prices below its own, sending CSWP prices in Canada into a downward spiral. Prices in the market are already quite low, according to Nova, on account of imports from the aforementioned non-subject countries. Nova expects that, to the extent that subject goods re-enter the Canadian market, they will need to be offered for sale at or below those prevailing prices in order to secure sales. This intensified price competition will force Nova to drop its selling price by a minimum of \$50/MT, but possibly more, in order to retain sales.¹²³ Nova claims that this estimate, which is based on Nova's market intelligence and takes into account comparable offers on the Canadian market, is conservative, and that in fact there is a likelihood that pricing will drop by a much greater degree.

119. As the above analysis indicates, if the finding were rescinded, the subject goods from the five dumping-only countries and from India would likely return to the domestic market in significant volumes and at prices that are likely to significantly undercut and suppress the prices of the like goods. The Tribunal

120. Exhibit RR-2017-005-22.01 (protected) at p. 6, 9, Vol. 6.1.

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

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

123. *Transcript of Public Hearing* at 22-24, 38, 42.

also accepts Nova's evidence as providing a reasonable estimate of the impact of the renewed presence of the subject goods on Nova's pricing in the event that the finding is rescinded. Lower pricing will undoubtedly have an impact on domestic producers' margins.

120. The evidence on the domestic industry's recent performance suggests that producers have already been struggling to secure sales and maintain 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. As such, 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. Indeed, Bolton has indicated that it would be forced out of business if the subject goods were to return to the market at dumped and subsidized prices.¹²⁴

121. Therefore, while the domestic industry will likely face significant challenges related to high HRC costs and the trade-restrictive measures of the U.S. if the finding is continued, the reintroduction of dumped and subsidized subject goods into the market would make it all but impossible for domestic producers to weather these challenges and could very well lead to the collapse of the domestic industry.

122. On the basis of the foregoing, the Tribunal finds that the rescission of the finding would likely cause material injury to the domestic industry.

DETERMINATION

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

Serge Fréchette
Serge Fréchette
Presiding Member

Jean Bédard
Jean Bédard
Member

Randolph W. Heggart
Randolph W. Heggart
Member

124. Exhibit RR-2017-005-F-01 at para. 13, Vol. 11F.