



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Dumping and Subsidizing

## DETERMINATION AND REASONS

Preliminary Injury Inquiry  
No. PI-2019-002

Corrosion-resistant Steel Sheet

*Determination issued  
Tuesday, January 7, 2020*

*Reasons issued  
Wednesday, January 22, 2020*

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IN THE MATTER OF a preliminary injury inquiry, pursuant to subsection 34(2) of the *Special Import Measures Act*, respecting:

## **CORROSION-RESISTANT STEEL SHEET**

### **PRELIMINARY DETERMINATION OF INJURY**

The Canadian International Trade Tribunal, pursuant to the provisions of subsection 34(2) of the *Special Import Measures Act* (*SIMA*), has conducted a preliminary injury inquiry into whether the evidence discloses a reasonable indication that the dumping and subsidizing of corrosion-resistant flat-rolled steel sheet products of carbon steel, including products alloyed with the following elements:

- Boron (B) not more than 0.01%,
- Niobium (Nb) not more than 0.100%,
- Titanium (Ti) not more than 0.08%, or
- Vanadium (V) not more than 0.300%

in coils or cut lengths, in thicknesses up to 0.168 in. (4.267 mm) and widths up to 72 inch (1,828.8 mm) with all dimensions being plus or minus allowable tolerances contained in the applicable standards, with or without passivation and/or anti-fingerprint treatments, originating in or exported from the Republic of Turkey, the United Arab Emirates, and Socialist Republic of Vietnam, and excluding:

- corrosion-resistant steel sheet products for use in the manufacture of passenger automobiles, buses, trucks, ambulances or hearses or chassis therefor, or parts thereof, or accessories or parts thereof;
- steel products for use in the manufacture of aeronautic products;
- steel sheet that is coated or plated with tin, lead, nickel, copper, chromium, chromium oxides, both tin and lead (“terne plate”), or both chromium and chromium oxides (“tin-free steel”);
- stainless flat-rolled steel products;
- corrosion-resistant steel sheet products that have been pre-painted, including with lacquers or varnishes, or permanently coated in plastic;
- galvanized armouring tape, which is narrow flat steel tape of 3 in. or less, that has been coated by a final operation with zinc by either the hot-dip galvanizing or the electrogalvanizing process so that all surfaces, including the edges, are coated;
- perforated steel,
- and tool steel

have caused injury or retardation or are threatening to cause injury, as these words are defined in *SIMA*.

This preliminary injury inquiry follows the notification, on November 8, 2019, that the President of the Canada Border Services Agency had initiated an investigation into the alleged injurious dumping and subsidizing of the above-mentioned goods.

Pursuant to subsection 37.1(1) of *SIMA*, the Canadian International Trade Tribunal hereby determines that there is evidence that discloses a reasonable indication that the dumping and subsidizing of the above-mentioned goods have caused or are threatening to cause injury to the domestic industry.

Peter Burn

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Peter Burn  
Presiding Member

Jean Bédard

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Jean Bédard  
Member

Susan Beaubien

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Susan Beaubien  
Member

The statement of reasons will be issued within 15 days.

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## STATEMENT OF REASONS

### INTRODUCTION

[1] On September 20, 2019, ArcelorMittal Dofasco G.P. (AMD) filed a complaint with the Canada Border Services Agency (CBSA) alleging that the dumping and subsidizing of certain corrosion-resistant steel sheet (COR) originating in or exported from the Republic of Turkey (Turkey), the United Arab Emirates (UAE) and the Socialist Republic of Vietnam (Vietnam) (the subject goods) have caused injury or are threatening to cause injury to the domestic industry.<sup>1</sup>

[2] On November 8, 2019, the CBSA initiated investigations respecting the dumping and subsidizing of the subject goods pursuant to subsection 31(1) of the *Special Import Measures Act*.<sup>2</sup>

[3] On November 12, 2019, the Canadian International Trade Tribunal (the Tribunal) began its preliminary injury inquiry pursuant to subsection 34(2) of *SIMA*.

[4] AMD's complaint and this inquiry follow closely after the Tribunal's Inquiry No. NQ-2018-004 (*CORI*),<sup>3</sup> which resulted in the Tribunal finding that dumped and subsidized imports of certain COR from the People's Republic of China, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei), the Republic of Korea, and the Republic of India, defined in a manner similar to the goods subject to the present preliminary inquiry,<sup>4</sup> threatened to cause injury to the domestic industry.

[5] The complaint is supported by Stelco Inc. (Stelco). The Tribunal received submissions opposing the complaint from two importers: Salzgitter Mannesmann International (Canada) Inc. (Salzgitter) and Steel Canada Limited (SCL). A Turkish producer, Tosyali Toyo, also opposed the complaint. AMD and Stelco filed a joint reply to the opposing parties' submissions.

[6] On January 7, 2020, the Tribunal determined that there was evidence disclosing a reasonable indication that the subject goods have caused injury or are threatening to cause injury to the domestic industry. The reasons for that determination are set out below.

### PRODUCT DEFINITION

[7] For the purposes of the CBSA's investigation and this preliminary injury inquiry, the subject goods are defined as follows:

“Corrosion-resistant flat-rolled steel sheet products of carbon steel including products alloyed with the following elements:

- Boron (B) not more than 0.01%,
- Niobium (Nb) not more than 0.100%,
- Titanium (Ti) not more than 0.08%, or
- Vanadium (V) not more than 0.300%

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<sup>1</sup> As a domestic industry is already established, the Tribunal need not consider the question of retardation.

<sup>2</sup> R.S.C., 1985, c. S-15 [*SIMA*].

<sup>3</sup> *Corrosion-resistant Steel Sheet* (21 February 2019), NQ-2018-004 (CITT).

<sup>4</sup> The description of excluded products in this preliminary injury inquiry differs in certain respects from the description of excluded products in *CORI*.

in coils or cut lengths, in thicknesses up to 0.168 in. (4.267 mm) and widths up to 72 inch (1,828.8 mm) with all dimensions being plus or minus allowable tolerances contained in the applicable standards, with or without passivation and/or anti-fingerprint treatments, originating in or exported from the Republic of Turkey, the United Arab Emirates, and Socialist Republic of Vietnam, and excluding:

- corrosion-resistant steel sheet products for use in the manufacture of passenger automobiles, buses, trucks, ambulances or hearses or chassis therefor, or parts thereof, or accessories or parts thereof;
- steel products for use in the manufacture of aeronautic products;
- steel sheet that is coated or plated with tin, lead, nickel, copper, chromium, chromium oxides, both tin and lead (“terne plate”), or both chromium and chromium oxides (“tin free steel”);
- stainless flat-rolled steel products;
- corrosion-resistant steel sheet products that have been pre-painted, including with lacquers or varnishes, or permanently coated in plastic;
- galvanized armouring tape, which is narrow flat steel tape of 3 in. or less, that has been coated by a final operation with zinc by either the hot-dip galvanizing or the electrogalvanizing process so that all surfaces, including the edges, are coated;
- perforated steel,
- and tool steel.”<sup>5</sup>

## CBSA’S DECISION TO INITIATE THE INVESTIGATION

[8] For the period of July 1, 2018, to June 30, 2019, the CBSA estimated that the subject goods were dumped by the following margins of dumping: 7 percent for Turkey, 22 percent for the UAE, and 20 percent for Vietnam, each expressed as a percentage of export price.<sup>6</sup> The CBSA estimated amounts of subsidy, as a percentage of export price, as 21.3 percent for Turkey, 12.1 percent for the UAE, and 4.7 percent for Vietnam.<sup>7</sup>

## LEGISLATIVE FRAMEWORK

[9] The Tribunal’s mandate in a preliminary injury inquiry is set out in subsection 34(2) of *SIMA*, which requires the Tribunal to determine “whether the evidence discloses a reasonable indication that the dumping or subsidizing of the [subject] goods has caused injury or retardation or is threatening to cause injury.”<sup>8</sup>

[10] The term “reasonable indication” is not defined in *SIMA*, but is understood to mean that the evidence need not be “conclusive, or probative on a balance of probabilities”.<sup>9</sup> The reasonable indication standard is lower than the standard that applies in a final injury inquiry under section 42 of *SIMA*.<sup>10</sup>

<sup>5</sup> Exhibit PI-2019-002-05, Vol. 1 at para. 17.

<sup>6</sup> Exhibit PI-2019-002-05, Vol. 1 at para. 67.

<sup>7</sup> *Ibid.* at para. 130.

<sup>8</sup> The provision in subsection 34(2) of *SIMA* reads in its entirety as follows: “The Tribunal shall, without delay after receipt under subparagraph (1)(a)(i) of a notice of an initiation of an investigation, make a preliminary inquiry (which need not include an oral hearing) into whether the evidence discloses a reasonable indication that the dumping or subsidizing of the goods has caused injury or retardation or is threatening to cause injury.”

<sup>9</sup> *Ronald A. Chisholm Ltd. v. Deputy M.N.R.C.E.* (1986), 11 CER 309 (FCTD).

<sup>10</sup> *Grain Corn* (10 October 2000), PI-2000-001 (CITT) at 7.

[11] The evidence at the preliminary phase of proceedings will be significantly less detailed and comprehensive than the evidence in a final injury inquiry. Not all the evidence is available at the preliminary phase, and there is no oral hearing to fully probe what is available. As a result, the evidence cannot be tested to the same extent as it would during a final injury inquiry.

[12] The standard of evidence at this stage of the inquiry is lower than at the final stage and as such, complaints will be read generously. The Tribunal typically gives the complainants the benefit of the doubt.<sup>11</sup>

[13] However, the outcome of preliminary injury inquiries must not be taken for granted.<sup>12</sup> Simple assertions are not sufficient.<sup>13</sup> Complaints, as well as the cases of parties opposed, must be supported by positive and sufficient evidence. Such evidence must also be relevant, in that it addresses the necessary requirements in *SIMA* and the relevant factors of the *Special Import Measures Regulations* and does so in a manner that is sufficiently convincing at this stage of the inquiry.<sup>14</sup>

[14] In making its preliminary determination of injury, the Tribunal takes into account the factors prescribed in paragraphs 37.1(1)(a) and (b) of the *Regulations*, including the import volumes of the dumped or subsidized goods and the effect of the dumped or subsidized goods on the price of like goods.

[15] In order to determine whether there is a reasonable indication of injury, retardation or threat of injury pursuant to subsection 34(2), the Tribunal must identify the domestically produced goods that are “like goods” in relation to the subject goods, as well as the domestic industry that produces those like goods.

[16] Subsection 2(1) of *SIMA* defines “injury” as “material injury to a domestic industry” and “domestic industry” as “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 . . . .” Subsection 2(1) of *SIMA* further defines “like goods”, in relation to any other goods, as “(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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<sup>11</sup> *Sucker Rods* (17 July 2018), PI-2018-001 (CITT) at para. 13; *Certain Fabricated Industrial Steel Components* (10 November 2016), PI 2016-003 (CITT) at para. 13.

<sup>12</sup> *Concrete Reinforcing Bar* (12 August 2014), PI-2014-001 (CITT) [*Reinforcing Bar*] at para. 19.

<sup>13</sup> Article 5 of the World Trade Organization (WTO) *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* [the *Anti-dumping Agreement*] and Article 11 of the WTO *Agreement on Subsidies and Countervailing Measures* [the *SCM Agreement*] require an investigating authority to examine the accuracy and adequacy of the evidence provided in a dumping and subsidizing complaint to determine whether there is sufficient evidence to justify the initiation of an investigation, and to reject a complaint or to terminate an investigation as soon as an investigating authority is satisfied that there is not sufficient evidence of dumping and subsidizing or injury. Article 5 of the *Anti-dumping Agreement* and Article 11 of the *SCM Agreement* also specify that simple assertions that are not substantiated with relevant evidence cannot be considered sufficient to meet the requirements of the articles.

<sup>14</sup> S.O.R./84-927 [*Regulations*].



## LIKE GOODS AND CLASSES OF GOODS

[17] In *CORI*, the Tribunal found that domestically produced COR and the subject goods, which are defined in a similar manner, constituted like goods and that there was a single class of goods.<sup>15</sup>

[18] Salzgitter submitted that the analysis of like goods should include COR for automotive uses, despite its exclusion in the product definition for the subject goods. AMD submitted that like goods include COR, as described in the product definition, and do not include goods excluded from the product definition. In this regard, AMD noted the Tribunal's decision in *Unitized Wall Modules*, in which the Tribunal held that "like goods" must be coextensive with the "product under consideration", that is the subject goods as defined in the product definition.<sup>16</sup> As such, it submitted that the like goods do not include COR for automotive uses. AMD also highlighted that no evidence was submitted by Salzgitter to further support its position. In addition, Mr. Paul Osborne of AMD submitted that to AMD's knowledge, no imports from the subject countries are used for automotive end-purposes.<sup>17</sup>

[19] Having considered the arguments and evidence presented by the parties, the Tribunal is not persuaded that there are adequate grounds to distinguish the Tribunal's previous decision in *CORI* concerning the definition and characterization of like goods. Nor is there good reason to depart from the principle articulated in previous decisions that like goods must be co-extensive with the scope of the subject goods as defined by the CBSA in the product definition.<sup>18</sup>

[20] Accordingly, the Tribunal will conduct its analysis on the basis that domestically produced COR in Canada that are of the same description as the subject goods are "like goods" in relation to the subject goods, and that there is a single class of goods.

## DOMESTIC INDUSTRY

[21] The complaint identifies AMD and Stelco as the two major domestic producers of COR. This is consistent with the finding of the Tribunal in *CORI*.<sup>19</sup> AMD also identified Continuous Colour Coated Limited (CCCL) as a domestic producer of COR. It is not known how much of CCCL's production falls within the product definition.<sup>20</sup> In *CORI*, the Tribunal did not find it necessary to treat CCCL as a domestic producer. This conclusion was based on the fact that, even if CCCL's activities constituted domestic production, it would only represent a very small portion of the total production of like goods, relative to the production of AMD and Stelco.<sup>21</sup> There is no reason to depart from this finding with respect to CCCL in this case.

<sup>15</sup> *CORI* at paras. 24, 32. In deciding the issues of like goods, the Tribunal considers 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. *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at para. 48.

<sup>16</sup> *Unitized Wall Modules* (27 November 2013), NQ-2013-002 (CITT) at para. 34.

<sup>17</sup> Exhibit PI-2019-002-02.01A, Vol. 1 at 219.

<sup>18</sup> See *Certain Fabricated Industrial Steel Components* (25 May 2017), NQ-2016-004 (CITT) at paras. 46-48; *Steel Piling Pipe* (4 July 2018), RR-2017-003 (CITT) at paras. 30-33; *Gypsum Board* (20 August 2018), PI-2018-003 (CITT) at paras. 32-34.

<sup>19</sup> *CORI* at para. 35.

<sup>20</sup> Exhibit PI-2019-002-02.01A, Vol. 1 at 21 (para. 35).

<sup>21</sup> *CORI* at para. 35.

[22] Moreover, consistent with its finding in *CORI*, the Tribunal maintains for the purposes of this preliminary injury inquiry that service centres which further process COR (e.g. unrolling and cutting or slitting steel sheet products) do not constitute domestic production.<sup>22</sup>

## CUMULATION

[23] In the context of a final injury inquiry, subsection 42(3) of *SIMA* requires the Tribunal to make an assessment of the cumulative effect of the dumping or subsidizing of goods that are imported into Canada from more than one subject country if the Tribunal is satisfied that the following conditions are met:

- (a) the margin of dumping or the amount of subsidy in relation to the goods from each of the countries is not insignificant and the volume of goods imported into Canada from any of those countries is not negligible; and
- (b) an assessment of the cumulative effect of the subject goods would be appropriate taking into account the conditions of competition between the goods from any of the subject countries, the other dumped goods, and like goods.

[24] While subsection 42(3) of *SIMA* deals with final injury inquiries, the Tribunal normally applies the same framework in preliminary injury inquiries.<sup>23</sup> The Tribunal normally considers that it is exceptional not to cumulate the subject goods in a preliminary injury inquiry when the available evidence appears to justify cumulation.<sup>24</sup>

[25] AMD submitted that the above conditions for a cumulative assessment of injury are met. For the reasons that follow, the Tribunal agrees.

[26] The CBSA has estimated that the margin of dumping and amount of subsidy for each of the subject countries is not insignificant and the estimated volumes of dumped goods for each subject country are not negligible.<sup>25</sup> As a result, the Tribunal finds that the first condition under subsection 42(3) of *SIMA* has been met.

[27] In assessing the conditions of competition, the Tribunal has previously taken into consideration such factors as whether the goods from each country (in relation to each other and in relation to the like goods) are interchangeable, whether they are present in the same geographic market at the same time and whether they are distributed through the same channels or using the same means of transportation.<sup>26</sup>

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<sup>22</sup> *CORI* at para. 36. See also *Cold-rolled Steel* (24 July 2018), PI-2018-002 (CITT) at paras. 44-47; *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (12 August 2016), RR-2015-002 (CITT) at paras. 43-44.

<sup>23</sup> *Galvanized Steel Wire* (22 March 2013), PI-2012-005 (CITT) at para. 40; *Corrosion-resistant Steel Sheet* (2 February 2001), PI-2000-005 (CITT) at 4, 5.

<sup>24</sup> *Corrosion-resistant Steel* (24 September 2018), PI-2018-005 (CITT) at para. 21.

<sup>25</sup> Exhibit PI-2019-002-05, Vol. 1 at paras. 43, 67, 130.

<sup>26</sup> A decision to decumulate on the basis of conditions of competition must turn on positive evidence of sufficiently differing conditions of competition among the subject goods, or between subject goods and like goods. This is essentially a question of fact for the Tribunal's consideration. See, for example, *Reinforcing Bar* at para. 47; *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (17 August 2001), NQ-2001-001 (CITT) at 16.

[28] The Tribunal finds that the evidence pertaining to conditions of competition supports a cumulative analysis of the subject goods.

[29] COR is interchangeable, irrespective of country of origin, due to the fact that it is generally produced to an ASTM or other recognized specification. As noted in the witness statement of Ms. Vasudha Seth of AMD, products made to a particular specification by any producer, whether domestic or foreign, are interchangeable, in virtually any given application, with those made to the same specification by another manufacturer.<sup>27</sup>

[30] The evidence also indicates that COR is a commodity product that competes largely on price and through the same channels of distribution. Mr. Osborne of AMD noted in his witness statement that offshore import offers have a significant impact on spot sale transactions, which account for most of AMD's sales to service centres and end users.<sup>28</sup> According to Mr. Osborne, in cases where offers are made to several service centres, information about the available offshore product moves through the market quickly and becomes a major influence in price negotiations.

[31] Mr. Gregory Anderson of Stelco also indicated that import offers are made to multiple customers at once, especially where the offer is made through traders.<sup>29</sup> This is further supported by evidence from both AMD and Stelco of customer-specific allegations of price depression and lost sales caused by certain subject import offers.<sup>30</sup>

[32] AMD's and Stelco's customer account-specific allegations indicate that subject goods from Turkey and Vietnam and the like goods are sold to similar customers (e.g. service centres and end users) through the same channels of distribution. The evidence also indicates direct competition between subject goods from Turkey and Vietnam and with like goods in the same geographical markets.<sup>31</sup>

[33] According to Mr. Osborne of AMD, COR from all subject countries are shipped to Canada by ocean vessel.<sup>32</sup> Estimated shipping costs from each of the subject countries are similar, the difference in costs being within the range of approximately \$30 per tonne.<sup>33</sup> Delivery time for an order of COR from the subject countries is generally between three to five months.

[34] On the whole, the Tribunal is satisfied there is evidence on the record that reasonably indicates similar conditions of competition among the subject goods, and between the subject goods and the like goods. Moreover, the Tribunal notes that all of the subject countries are subject to both dumping and subsidizing investigations and, as such, can be cumulated.<sup>34</sup> The Tribunal therefore

<sup>27</sup> Exhibit PI-2019-002-02.01A, Vol. 1 at 398 (para. 11).

<sup>28</sup> Exhibit PI-2019-002-02.01A, Vol. 1 at 223 (paras. 25, 26).

<sup>29</sup> Exhibit PI-2019-002-02.01A, Vol. 1 at 345 (para. 21).

<sup>30</sup> Exhibit PI-2019-002-03.01A, Vol. 2 (protected) at 285-288, 541-543. The Tribunal notes that no customer-specific allegations were made in respect of imports from the UAE.

<sup>31</sup> Exhibit PI-2019-002-03.01A, Vol. 2 (protected) at 400, 401.

<sup>32</sup> Exhibit PI-2019-002-02.01A, Vol. 1 at 225 (para. 33).

<sup>33</sup> Exhibit PI-2019-002-02.01A, Vol. 1 at 225 (para. 35).

<sup>34</sup> This is consistent with past decisions where the Tribunal found that WTO reports permit the cumulative assessment of the effects of dumping and subsidizing of goods where multiple countries have been found to be both dumping and subsidizing. See *Silicon Metal* (2 November 2017), NQ-2017-001 (CITT) at para. 53 for a discussion of the WTO panel and Appellate Body reports in *United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India* (8 December 2014), WTO Doc. WT/DS436/AB/R, and *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 Doc. WT/DS482/R [*Canada – Welded Pipe*].

considers it appropriate to conduct an assessment of the cumulative effect of the subject goods from all sources for the purposes of this preliminary injury inquiry.

[35] In the event of a final injury inquiry, however, the Tribunal intends to carefully examine the evidence pertaining to the conditions of competition as they relate to the subject goods from each country, in particular from the UAE.

### **Cross-cumulation**

[36] Where subject goods from the same source are both dumped and subsidized, the Tribunal considers that it is not necessary or practicable to disentangle the effects of subsidizing from the effects of dumping of the same goods.<sup>35</sup> The Tribunal will therefore assess the impact of the dumping and subsidizing of the goods cumulatively in this preliminary inquiry.

## **INJURY ANALYSIS**

### **Import Volume of Subject Goods**

[37] The CBSA estimated that imports of the subject goods increased substantially from 2016 through to the first half of 2019. It estimated that the total volume of subject imports increased by 1,319% from 2016 to 2018 and by 1,497% in the first half of 2019 when compared to H1 2018.<sup>36</sup> Relative to domestic production, the subject goods increased by 8 percentage points from 2016 to 2018 and 30 percentage points from H1 2018 to H1 2019. Relative to domestic sales of domestic production, the subject goods show a similar trend, increasing by 12 percentage points from 2016 to 2018 and 40 percentage points from H1 2018 to H1 2019.<sup>37</sup>

[38] AMD submitted that the increase in import volumes was caused by importers switching to subject goods following the imposition of preliminary duties on imports from the subject countries in *CORI*, which came into effect on October 24, 2018. This is consistent with the CBSA's analysis, which notes that import volumes increased significantly in Q4 2018.<sup>38</sup>

[39] The Tribunal finds that the CBSA's estimates of imports reasonably indicate a significant increase, both in absolute terms, and relative to the domestic production and consumption of domestically produced like goods.<sup>39</sup>

### **Effects on Prices of Like Goods**

[40] The evidence indicates that the subject goods undercut the domestic industry's average selling prices in 2018 and H1 2019.<sup>40</sup> The overall undercutting by subject goods in H1 2019 is greater than the estimated general "domestic price premium" for COR, which Mr. Osborne of AMD indicated was approximately \$50 per tonne.<sup>41</sup>

<sup>35</sup> The WTO panel report in *Canada – Welded Pipe* strongly indicates that such an approach is appropriate. *Canada – Welded Pipe* at paras. 7.99-7.103.

<sup>36</sup> Exhibit PI-2019-002-05, Vol. 1 at para. 135.

<sup>37</sup> Exhibit PI-2019-002-03.01A, Vol. 2 (protected) at 408-419; Exhibit PI-2019-002-03.02, Vol. 2 at 14.

<sup>38</sup> Exhibit PI-2019-002-05, Vol. 1 at para. 135; Exhibit PI-2019-002-03.02, Vol. 2 (protected) at 41.

<sup>39</sup> Exhibit PI-2019-002-03.02, Vol. 2 (protected) at 41.

<sup>40</sup> Exhibit PI-2019-002-03.01A, Vol. 2 (protected) at 408-419.

<sup>41</sup> According to the witness statement of Mr. Osborne of AMD, the domestic price premium is the amount at which offshore imports are discounted from Canadian market pricing due to risks associated with offshore imports, such as longer lead times (which entails price risk) and higher inventory costs. See Exhibit PI-2019-002-02.01A, Vol. 1 at 224 (para. 29).

[41] Both AMD and Stelco provided several account-specific examples of price depression in both H2 2018 and H1 2019.<sup>42</sup> This is consistent with the period in which there was price undercutting as described above.

[42] While overall price depression was not reflected in the average unit sales values for the domestic industry, which increased from 2016 to 2018, the evidence does indicate price depression occurring in H1 2019. Although average unit values in H1 2019 were higher than in H1 2018, the average unit value for full year 2018 was higher than H1 2018 and H1 2019.<sup>43</sup> This indicates that prices increased in H2 2018 and subsequently decreased in H1 2019, the period in which volumes of subject goods increased significantly.<sup>44</sup>

[43] There is no evidence of price suppression from 2016 to 2018.<sup>45</sup> However, on a per-tonne basis, domestic selling prices did not increase in step with the rise the cost of goods sold in H1 2019 compared to H1 2018.<sup>46</sup> While this could suggest the occurrence of some price suppression in the interim 2019 period, no submissions were made by the domestic industry explaining trends relating to costs relative to domestic selling prices. In the circumstances, there is an insufficient basis for the Tribunal to find a reasonable indication of significant price suppression.<sup>47</sup>

[44] In light of the above, the Tribunal finds that the evidence reasonably indicates that the subject goods have significantly undercut and depressed the prices of the like goods.

### **Resultant Impact on the Domestic Industry**

[45] As part of its analysis under paragraph 37.1(1)(c) of the *Regulations*, the Tribunal must consider the impact of the dumped goods on the state of the domestic industry. In particular, all relevant economic factors and indices that have a bearing on the state of the domestic industry must be taken into account.

[46] In a preliminary injury inquiry, the Tribunal must determine whether the evidence discloses a reasonable indication of a causal link between the dumping and subsidizing of the subject goods and the injury on the basis of the resultant impact of the volume and price effects of the dumped and subsidized goods on the domestic industry. The standard is whether there is a reasonable indication that the dumping and subsidizing of the subject goods has, *in and of itself*,<sup>48</sup> caused injury.

<sup>42</sup> Exhibit PI-2019-002-03.01A, Vol. 2 (protected) at 285-288, 541-543.

<sup>43</sup> Exhibit PI-2019-002-03.01A, Vol. 2 (protected) at 408-419.

<sup>44</sup> Exhibit PI-2019-002-05, Vol. 1 at para. 135; Exhibit PI-2019-002-03.01A (protected) at 408-419.

<sup>45</sup> Exhibit PI-2019-002-03.01A, Vol. 2 (protected) at 408-419.

<sup>46</sup> Exhibit PI-2019-002-03.01A, Vol. 2 (protected) at 408-419.

<sup>47</sup> In assessing price suppression, the Tribunal has tended to compare the domestic industry's average unit cost of goods sold or manufactured with its average unit selling values in the domestic market to determine whether the domestic industry has been able to increase selling prices in step with increases in the cost of production. However, the Tribunal may examine more generally whether the subject goods have significantly "suppressed the price of like goods by preventing the price increases for those like goods *that would otherwise likely have occurred*" [emphasis added]. A finding that dumped goods prevented price increases for the like goods that would otherwise likely have occurred must be based, *inter alia*, on an objective examination of positive evidence of what the prices of the like goods would have been in the absence of dumping. *Carbon and Alloy Steel Line Pipe* (4 January 2018), NQ-2017-002 (CITT) at para. 55 [*Line Pipe*].

<sup>48</sup> *Gypsum Board* (5 August 2016), PI-2016-001 (CITT) at para. 44; *Galvanized Steel Wire* (22 March 2013), PI-2012-005 (CITT) at para. 75; *Circular Copper Tube* (22 July 2013), PI-2013-002 (CITT) at para. 82.

[47] The performance indicators show a reasonable indication of injury. The market share of like goods declined from 2016 to 2018 by 6 percentage points; market share in H1 2019 was 3 percentage points lower than the same period in 2018. Meanwhile, the market share of subject goods has increased 7 percentage points between 2016 and 2018 with a notable increase in H1 2019, which showed a 25 percentage point increase in market share from H1 2018.<sup>49</sup>

[48] Financial performance by the domestic industry, in terms of gross margin and net income, declined in H1 2019 compared to H1 2018, notwithstanding the imposition of preliminary duties on COR1 imports.<sup>50</sup> As noted above, in H1 2019, there was an increase in import volumes of subject goods as well as price undercutting and depression. Sales volume of like goods by the domestic industry also declined during this period.<sup>51</sup> AMD and Stelco's account-specific allegations of price undercutting, price depression and lost sales caused by offers of the subject goods in H2 2018 and H1 2019 also indicate a link between the subject goods and the domestic industry's declining performance.<sup>52</sup>

[49] The domestic industry's capacity utilization rate has steadily declined from 2016 through to H1 2019. Salzgitter submits that the domestic industry's capacity utilization rates do not account for increased exports. However, no evidence was submitted to support this position.

[50] Having reviewed the evidence on the confidential and public record, in light of the relevant factors, the Tribunal finds that it reasonably supports the domestic industry's allegations for the purpose of this preliminary injury inquiry. Bearing in mind the lower standard applicable at the stage of the preliminary inquiry, the evidence provides a reasonable indication that the dumping and subsidizing of the subject goods have caused, and are causing, material injury to the domestic industry, particularly starting at the end of the period of investigation (POI).

[51] The Tribunal's finding in this regard, which represents only a certain portion of the POI, is consistent with its previous decisions.<sup>53</sup>

[52] During the final injury inquiry, the Tribunal will be particularly mindful of the various factors and market dynamics that may be affecting the state of the domestic industry in order to fully establish the existence of a causal link between the subject goods and the material injury to the domestic industry.

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<sup>49</sup> Exhibit PI-2019-002-03.02, Vol. 2 (protected) at 14; Exhibit PI-2019-002-05, Vol. 1 at para. 138.

<sup>50</sup> Exhibit PI-2019-002-03.01A (protected) at 408-419.

<sup>51</sup> *Ibid.*

<sup>52</sup> Exhibit PI-2019-002-03.01A, Vol. 2 (protected) at 285-288, 541-543.

<sup>53</sup> See *Cold-rolled Steel* (21 December 2018), NQ-2018-002 (CITT) at para. 94; *Concrete Reinforcing Bar* (3 May 2017), NQ-2016-003 (CITT) at para. 185. The Tribunal notes that while each case depends on its own facts, evidence regarding the recent past is more likely to be relevant to establishing the existence of a current causal link between dumping and injury and to justify the imposition of anti-dumping duties. See, for example, *Mexico – Anti-Dumping Duties on Steel Pipes and Tubes From Guatemala* (8 June 2007), WTO Doc. WT/DS331/R, Final Report of the Panel at paras. 7.227-7.228; *Mexico – Definitive Anti-Dumping Measures on Beef and Rice* (29 November 2005), WTO Doc. WT/DS295/AB/R, Report of the Appellate Body at paras. 165-166. See *Line Pipe* at footnote 15.

## THREAT OF INJURY ANALYSIS

[53] The Tribunal will consider whether there is also a reasonable indication that the dumping or subsidizing of the subject goods are threatening to cause material injury. The Tribunal is guided in its consideration of this question by subsection 37.1(2) of the *Regulations*, which prescribes factors to be taken into account for the purposes of its threat of injury analysis.

[54] The Tribunal finds that the evidence regarding prescribed factors also reasonably indicates that the subject goods pose an imminent and foreseeable threat of injury.

[55] AMD submits that the Tribunal, in assessing threat of injury, should consider the time frame of 12 to 24 months.

[56] In *CORI*, the Tribunal found that a time frame of 12 months was appropriate having regard to the alleged threat of diversion arising from trade measures on COR imposed by the United States and the European Union and the estimated delivery times for importation of the subject goods into Canada (within three to six months).

[57] There is no evidence to suggest that the factors dispositive of this issue in *CORI* have changed or are no longer applicable. As such, the Tribunal finds that a similar time frame of 12 months should be used here.

[58] For the reasons below, the Tribunal finds evidence reasonably indicating the likelihood of a substantial increase in imports of the subject goods into Canada.

[59] As indicated by the import data discussed above, there has been a significant increase in the volume of subject goods, particularly in H1 2019 following the positive finding of the Tribunal in *CORI*. As noted above, subject goods increased by 1,497% in H1 2019 when compared to volumes in H1 2018.<sup>54</sup>

[60] There is also evidence that production capacity in each of the subject countries is expected to increase. CRU data<sup>55</sup> indicates that Turkish COR capacity and production will increase through 2021.<sup>56</sup> Production capacity is also anticipated to increase in the UAE, with the construction of new facilities for hot-dipped galvanized steel capacity as announced by the Dana Group, a multinational firm based in Dubai, as well as the United Iron & Steel Co.<sup>57</sup> CRU data also indicates increased production in Vietnam through 2021.<sup>58</sup>

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<sup>54</sup> Exhibit PI-2019-002-05, Vol. 1 at para. 135.

<sup>55</sup> The Tribunal notes that CRU data includes products that fall outside of the product definition of the subject goods, i.e. automotive COR. However, the Tribunal has previously found that CRU Steel Sheet Market historical data and forecast is nevertheless indicative of COR trends relating to global production, capacity and consumption. See *CORI* at footnote 168. The Tribunal has not been persuaded that it should take a different approach in this preliminary injury inquiry.

<sup>56</sup> Exhibit PI-2019-002-03.01A, Vol. 2 (protected), Table 19 at 89, 378, 436.

<sup>57</sup> Exhibit PI-2019-002-03.01A, Vol. 2 (protected) at 94, 1582, 1583; Exhibit PI-2019-002-02.01A, Vol. 1 at 94, 1280-1283.

<sup>58</sup> Exhibit PI-2019-002-03.01A, Vol. 2 (protected) at 436.

[61] The evidence indicates that producers in the subject countries are export-oriented.<sup>59</sup> With increased production as described above, and continuing excess global capacity which is projected to remain above 100 million tonnes until 2021,<sup>60</sup> it is reasonable to conclude that this export orientation is likely to continue, particularly in Turkey and the UAE, where excess capacity is reported.<sup>61</sup>

[62] The Tribunal agrees with the domestic industry that current trade measures against the subject goods support the allegation of diversion risk of COR imports to the Canadian market. These include the trade measures in the United States on steel imports under the *Trade Expansion Act of 1962* (Section 232 Measures); safeguard measures imposed by the European Union on steel imports (to expire on July 16, 2021); and anti-circumvention measures involving COR being imported into the United States.<sup>62</sup>

[63] Moreover, trade remedies against inputs for COR, i.e. hot-rolled sheet and cold-rolled steel, and other downstream flat-rolled products, such as hot-rolled plate, pipe and tube products, may encourage producers to shift production to COR.<sup>63</sup>

[64] Having regard to all of the foregoing, the Tribunal finds the evidence reasonably indicates that there is a likelihood of a substantial increase in imports of the subject goods into Canada.

[65] Finally, the evidence discussed above indicates that in H2 2018 and H1 2019, subject goods undercut prices of like goods causing price depression for the domestic industry. In the Tribunal's view, these trends are likely to increase demand for further imports of the subject goods, which will likely have a significant depressing and possibly suppressing effect on the prices of like goods. This is further supported by the magnitude of the margins of dumping and subsidization estimated by the CBSA.

[66] The domestic industry's vulnerability to further injury in the next 12 months is apparent when considering forecasts that gross consumption of galvanized sheet in Canada will decrease in 2020 with only modest increases through 2021.<sup>64</sup>

[67] For the above reasons, the Tribunal finds that the evidence overall discloses a reasonable indication that the dumping and subsidizing of the subject goods are threatening to cause injury.

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<sup>59</sup> Exhibit PI-2019-002-02.01A, Vol. 1 at 84, 90, 94, 576, 578, 1245, 1266; Exhibit PI-2019-002-03.01A, Vol. 2 (protected) at 1583.

<sup>60</sup> Exhibit PI-2019-002-03.01A, Vol. 2 (protected), Table 15 at 78, 380, 437.

<sup>61</sup> Exhibit PI-2019-002-03.01A, Vol. 2 (protected), Table 16 at 79, 378, 437. The Tribunal notes that CRU does not report gross production for the UAE and that data for "Other Middle-East" was used as a proxy for the UAE in calculating excess capacity.

<sup>62</sup> Exhibit PI-2019-002-02.01A, Vol. 1 at 402, 1354. The Tribunal notes that the U.S. Department of Commerce (DOC) has recently made determinations that COR produced in Vietnam using hot-rolled steel (HRS) or cold-rolled steel (CRS) flat products manufactured in other countries were circumventing antidumping and countervailing duty orders in respect of COR. See Exhibit PI-2019-002-02.01A, Vol. 1 at 1305-1308, 1315-1318, 1320-1323. Additionally, the Tribunal notes that on August 12, 2019, the DOC recommended the initiation of anti-circumvention inquiries concerning imports of COR from, among other countries, the UAE, using HRS and CRS flat products manufactured from China. See Exhibit PI-2019-002-02.01A, Vol. 1 at 1324-1343.

<sup>63</sup> Exhibit PI-2019-002-02.01A, Vol. 1, Table 27 at 110, 111, 1319, 1365, 1366.

<sup>64</sup> Exhibit PI-2019-002-03.01A, Vol. 2 (protected), Table 21 at 96, 97, 434.



**CONCLUSION**

[68] The Tribunal finds that the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused or are threatening to cause injury to the domestic industry.

Peter Burn  
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Peter Burn  
Presiding Member

Jean Bédard  
\_\_\_\_\_  
Jean Bédard  
Member

Susan Beaubien  
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Susan Beaubien  
Member