Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Dumping and Subsidizing

DETERMINATION AND REASONS

Preliminary Injury Inquiry
No. PI-2020-001

Heavy Plate

Determination issued
Monday, July 27, 2020

Reasons issued
Tuesday, August 11, 2020

Canada

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

HEAVY PLATE

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 of certain hot-rolled carbon steel plate and high-strength low-alloy steel plate not further manufactured than hot-rolled, heat-treated or not, in cut lengths, in widths greater than 72 inches (+/- 1,829 mm) to 152 inches (+/- 3,860 mm) inclusive, and thicknesses from 0.375 inches (+/- 9.525 mm) up to and including 4.5 inches (+/- 114.3 mm) (with all dimensions being plus or minus allowable tolerances contained in the applicable standards), originating in or exported from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei), the Federal Republic of Germany, the Republic of Korea, the Federation of Malaysia and the Republic of Turkey (the subject goods), but excluding:

- plate in coil form,
- plate having a rolled, raised figure at regular intervals on the surface (also known as floor plate), and
- plate originating in or exported from the Republic of Korea which is covered by the Tribunal's Finding in NQ-2013-005,

has caused injury or retardation or is threatening to cause injury, as these words are defined in *SIMA*. For greater certainty, the subject goods include steel plate which contains alloys greater than required by recognized industry standards, provided the steel does not meet recognized industry standards for an alloy grade steel plate.

This preliminary injury inquiry follows the notification, on May 27, 2020, that the President of the Canada Border Services Agency had initiated an investigation into the alleged injurious dumping 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 of the above-mentioned goods has caused or is threatening to cause injury to the domestic industry.

Randolph W. Heggart
Randolph W. Heggart
Presiding Member

Susan D. Beaubien
Susan D. Beaubien
Member

Serge Fréchette
Serge Fréchette
Member

Tribunal Panel:	Randolph W. Heggart, Presiding Member Susan D. Beaubien, Member Serge Fréchette, Member
Support Staff:	Kalyn Eadie, Lead Counsel Heidi Lee, Counsel Gayatri Shankarraman, Lead Analyst Rebecca Campbell, Analyst Mylène Lanthier, Analyst

PARTICIPANTS:

Domestic Producers	**Counsel/Representatives**
Algoma Steel Inc.	Benjamin P. Bedard Drew Tyler Linden Dales Shannel J. Rajan Lydia Blois Greg Landry Meagan Vestby Nasrudin Mumin Annie Arko
SSAB Central Inc.	Alison G. FitzGerald Erika Woolgar
Importers/Exporters/Other	**Counsel/Representatives**
Acier Wirth Steel China Steel Corporation Ilsenburger Grobblech GmbH Salzgitter Mannesmann Grobblech GmbH Salzgitter Mannesmann International (Canada) Inc.	Peter Clark Barry Desormeaux
POSCO	Jesse Goldman Jacob Mantle Julia Webster Sam Levy
Alberta Pressure Vessel Manufacturers' Association	Victoria Bazan
United Steelworkers	Craig Logie
Marmen Inc. et Marmen Énergie Inc.	Maxime Gagnier
ASTCO Canada	Andy Choi
Hyundai Steel Company	Joong-Won Lee
Erdemir	Bugrahan Eldelekli Fatih Citak Arda Onkok

Ministry of Trade of the Republic of Turkey	Aysegul Sahinoglu Yerdes
Ministry of International Trade and Industry Malaysia	Ahmad Zaidi Bin Mohd Ilias Sujata Muniandy
JK JI Seng Sdn Bhd	Bee Chooi Tan
JI Kang Dimensi Sdn Bhd	Lai Yin Yeong

Please address all communications to:

The Registrar
Secretariat to the Canadian International Trade Tribunal
333 Laurier Avenue West
15th Floor
Ottawa, Ontario K1A 0G7

Telephone: 613-993-3595
Fax: 613-990-2439
E-mail: citt-tcce@tribunal.gc.ca

STATEMENT OF REASONS

INTRODUCTION

[1] On April 6, 2020, Algoma Steel Inc. filed a complaint with the Canada Border Services Agency (CBSA) alleging that the dumping of certain hot-rolled carbon steel plate and high-strength low-alloy steel plate originating in or exported from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei), the Federal Republic of Germany (Germany), the Republic of Korea (South Korea), the Federation of Malaysia (Malaysia), and the Republic of Turkey (Turkey) (the subject goods) have caused injury or are threatening to cause injury to the domestic industry.[1]

[2] On May 27, 2020, the CBSA initiated an investigation respecting the dumping of the subject goods pursuant to subsection 31(1) of the *Special Import Measures Act*.[2] The CBSA estimated that the subject goods were dumped by the following margins of dumping: 24.9 percent for Chinse Taipei, 23.3 percent for Germany, 17.2 percent for Malaysia, 16.9 percent for South Korea, and 44.5 percent for Turkey, each expressed as a percentage of export price.[3]

[3] On May 28, 2020, the Canadian International Trade Tribunal began its preliminary injury inquiry pursuant to subsection 34(2) of *SIMA.*

[4] The complaint is supported by SSAB Central Inc. (SSAB) and Janco Steel Ltd. (Janco).

[5] The Tribunal received submissions opposing the complaint from three importers: Acier Wirth Steel (Wirth), Marmen Inc. et Marmen Énergie Inc. (Marmen), and Salzgitter Mannesmann International (Canada) Inc. (Salzgitter).

[6] The Tribunal also received submissions opposing the complaint from four foreign producers: China Steel Corporation (CSC), Erdemir, Ilsenburger Grobblech GmbH (ILG), and POSCO.[4] Algoma and SSAB filed reply submissions in support of the complaint.

[7] On July 27, 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

[8] The CBSA defined the subject goods as follows:

> Hot-rolled carbon steel plate and high-strength low-alloy steel plate not further manufactured than hot rolled, heat treated or not, in cut lengths, in widths greater than 72 inches (+/- 1829 mm) to 152 inches (+/- 3,860 mm) inclusive, and thicknesses from 0.375 inches (+/- 9.525 mm) up

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1 As a domestic industry is already established, the Tribunal need not consider the question of retardation.
2 R.S.C., 1985, c. S-15 [*SIMA*].
3 Exhibit PI-2020-001-05, Vol. 1 at 17.
4 The following parties filed notices of participation but did not make any submissions: Salzgitter Mannesmann Grobblech GmbH, the Alberta Pressure Vessel Manufacturers' Association, the United Steelworkers, ASTCO Canada Inc., Hyundai Steel Company, the Ministry of Trade of the Republic of Turkey, the Ministry of International Trade and Industry Malaysia, JK JI Seng Sdn Bhd, and JI Keng Dimensi Sdn Bhd.

to and including 4.5 inches (+/- 114.3 mm) (with all dimensions being plus or minus allowable tolerances contained in the applicable standards), but excluding:

- plate in coil form,
- plate having a rolled, raised figure at regular intervals on the surface (also known as floor plate), and
- plate originating in or exported from the Republic of Korea which is covered by the Tribunal's Finding in NQ-2013-005.

For greater certainty, the subject goods include steel plate which contains alloys greater than required by recognized industry standards, provided the steel does not meet recognized industry standards for an alloy grade steel plate.[5]

PRELIMINARY ISSUES

Request for a hearing

[9] In its submissions, ILG requested that the Tribunal hold a hearing as part of this preliminary injury inquiry.

[10] ILG acknowledged that it is exceptional for the Tribunal to hold a hearing during a preliminary inquiry, but submitted that one was held in *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate* because the Tribunal identified issues that needed to be addressed through the issuance of questionnaires and the examination of witnesses.[6] ILG submitted that a hearing was similarly required in this case in order to test the evidence in the complaint and explore the issues of the increasing domestic market share, together with the effects of volume and pricing of imports from the United States.

[11] Algoma opposed the request for a hearing. It submitted that the Tribunal only holds hearings at the preliminary inquiry stage in exceptional cases where cross-examination on an issue is fundamental to the Tribunal's ability to make a decision.

[12] Algoma submitted that there are no such exceptional circumstances in this case and that ILG has identified no particular document or issue that necessitates cross-examination or further submissions. Algoma submitted that a public hearing is not justified merely because a complaint does not contain the level of detail of the Tribunal's record in a section 42 inquiry, or because a complainant was not reasonably able to collect information from third parties.

[13] On July 10, 2020, the Tribunal issued a letter to the parties denying ILG's request, and advising that the reasons for that interlocutory decision would be included in this statement of reasons.[7]

[14] ILG's request for a hearing was largely based on its claim that it needed to "test" the evidence in the complaint. As will be explained below, the evidentiary threshold that applies in the context of the current proceedings is lower than that of a full injury inquiry and complaints will be

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5 Exhibit PI-2020-001-05, Vol. 1 at 7.
6 *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate* (27 August 2003), PI-2003-002 (CITT) at 2.
7 Exhibit PI-2020-001-10, Vol. 1.

read more generously. Therefore, such an objective is beyond the scope of a preliminary injury inquiry.

[15] Further, with respect to the issue (highlighted by ILG) of the apparent increase in the domestic industry's market share, this is canvassed in the parties' submissions. The evidence on this performance indicator will be weighed as part of the Tribunal's assessment of whether the evidence rises to the level of a reasonable indication of injury or threat.

[16] Additional grounds raised by ILG as the basis for requesting a hearing are matters that can be probed to their full extent in the context of a final injury inquiry, where they can be assessed based on a full evidentiary record (including, in particular, an investigation report prepared following extensive data collection concerning heavy plate imports and the heavy plate Canadian market).

Arguments regarding the volume of imports from South Korea

[17] POSCO argued that the complaint does not contain sufficient evidence for the Tribunal to determine that there is a reasonable indication of injury because the CBSA wrongly determined that import volumes from South Korea were properly documented, and wrongly decided to initiate the investigation. In particular, POSCO argued that the complainant should have taken steps to ensure that the imports subject to NQ-2013-005 were removed from the subject import volume estimates in the complaint, and that the CBSA should have ensured the complainants took those steps before declaring the complaint properly documented.

[18] POSCO also submitted that although the CBSA calculated its own import volumes based on customs data available to it (including adjustments to exclude goods not part of the product definition),[8] the CBSA did not contact importers to corroborate its calculations.[9] POSCO submitted that the CBSA's estimates of import volumes cannot be considered accurate for this reason. POSCO also noted that the CBSA did not provide an estimate of the import volumes or perform an assessment of negligibility for the chosen dumping period of investigation (POI) of March 1, 2019, to February 29, 2020.

[19] POSCO therefore requested the Tribunal to find that there is no reasonable indication of injury and terminate the inquiry with respect to South Korea.

[20] In the alternative, POSCO requested that the Tribunal order the CBSA to immediately calculate the import volumes for South Korea over the dumping POI and to terminate the investigation against South Korea in accordance with paragraph 35(1)(a) of *SIMA* if that volume is below the negligibility threshold.

[21] In reply to these arguments, Algoma submitted that the Tribunal does not have jurisdiction to review the CBSA's decision that the complaint was properly documented, or to review the CBSA's decision to initiate the investigation. Similarly, Algoma submitted that the Tribunal does not have the authority to review the CBSA's decision to terminate an investigation under paragraph 35(1)(a), and so cannot order the CBSA to act under that provision.

[22] Algoma also asserted that the complaint was properly documented with respect to import volumes, as it contained the best information available to it. More particularly, the information that

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8 Exhibit PI-2020-001-05, Vol. 1 at paras. 47-48.

9 Exhibit PI-2020-001-05, Vol. 1 at para. 54.

would have enabled Algoma to remove imports from South Korea that are subject to NQ-2013-005 from its estimates is not publicly available. According to Algoma, the CBSA is under no obligation to contact importers to corroborate its import data. The fact that the CBSA did not do so does not make the CBSA's import data so unreliable that it cannot form the basis for a finding of reasonable indication of injury. Finally, Algoma submitted that POSCO did not explain why the CBSA's decision to assess negligibility based on 2019 information, as opposed to its chosen dumping POI would lead to a conclusion that the evidence discloses no reasonable indication of injury.

[23] The Tribunal's mandate in a preliminary injury inquiry is to perform an independent assessment of whether the evidence discloses a reasonable indication of injury. The Tribunal does not review the CBSA's decisions to declare a complaint properly documented or to initiate an investigation.

[24] The Tribunal does not agree that the evidence on import volumes is so inaccurate that it requires the Tribunal to find that there is no reasonable indication of injury with respect to South Korea.

[25] A preliminary injury inquiry, as described further below, is necessarily based on information that may not be complete or fully tested. With respect to the volume data on the record, the Tribunal accepts the complainant's statement that it based its estimates on the best information that was available to it and that the volume of imports from South Korea (subject to NQ-2013-005) is not publicly available information.

[26] The Tribunal's practice is to rely on the CBSA's estimates of import volumes (where those are available) precisely because it recognizes that the CBSA has access to confidential customs data, which is typically more accurate than data that the complainants can provide.

[27] Furthermore, the Tribunal does not consider that the CBSA's decision not to contact importers for corroboration of the estimates derived from the CBSA's own customs data makes the import volume data so unreliable that the Tribunal should conclude that there is no evidentiary basis to find a reasonable indication of injury. As noted above, the CBSA took several steps, which are described in the confidential complaint analysis, to ensure that its import volume estimates were as accurate as possible.

[28] Finally, the reasonable indication of injury analysis does not end with the volume of imports, but involves a consideration of multiple factors. The Tribunal's analysis of the reasonable indication of injury (or threat of injury), having regard to all relevant factors, is provided below.

[29] With respect to POSCO's alternative argument, there is nothing in *SIMA* or the *Canadian International Trade Tribunal Act* that gives the Tribunal the authority to order the President of the CBSA to perform his statutory duty under paragraph 35(1)(a). The authority to terminate an investigation due to negligible imports remains the jurisdiction of the CBSA until there is a preliminary determination of dumping. That determination has not yet been made.

LEGISLATIVE FRAMEWORK

Reasonable indication

[30] 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 of the [subject] goods has caused injury or retardation or is threatening to cause injury."[10]

[31] 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".[11] The reasonable indication standard is lower than the standard that applies in a final injury inquiry under section 42 of *SIMA*.[12]

[32] However, the outcome of preliminary injury inquiries must not be taken for granted.[13] Simple assertions are not sufficient.[14] 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 persuasively, having regard to the stage of the inquiry.[15]

[33] ILG submitted that the evidentiary bar has been set too low in preliminary inquiries, as evidenced by the fact that the Tribunal very rarely finds that there is no reasonable indication of injury. It contends that complainants should not be "given the benefit of the doubt".

[34] In reply, Algoma submitted that ILG seems to expect that complainants should meet the evidentiary standard applicable in the final injury inquiry.

[35] The evidentiary bar for preliminary injury inquiries has been set by Parliament, in section 37.1 of *SIMA*. The Tribunal's articulation of the standard of evidence required in a preliminary injury inquiry, as set out above, has been carefully crafted to ensure that it conforms to the requirements of *SIMA* and the WTO Agreements. The Tribunal must examine the evidence on the record using that standard, having regard to the specific circumstances of each case.

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10 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."

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

12 *Grain Corn* (10 October 2000), PI-2000-001 (CITT) at 4-5.

13 *Concrete Reinforcing Bar* (12 August 2014), PI-2014-001 (CITT) at para. 19.

14 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*] requires an investigating authority to examine the accuracy and adequacy of the evidence provided in a dumping 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 or injury. Article 5 of the *Anti-dumping Agreement* also specifies that simple assertions that are not substantiated with relevant evidence cannot be considered sufficient to meet the requirements of the article.

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

[36] ILG has argued that complainants should not be given the "benefit of the doubt". Although the Tribunal has occasionally used this expression to describe the reasonable indication standard,[16] this simply reflects the fact that, at this early stage of an inquiry, the standard of "reasonable indication" of injury or threat of injury does not require the extensive evidence needed to satisfy the higher threshold of reliability and cogency that is needed in the context of a final injury inquiry.

LIKE GOODS AND CLASSES OF GOODS

[37] In order to assess whether the evidence discloses a reasonable indication that the dumping of the subject goods has caused or is threatening to cause injury to the domestic producers of like goods, the Tribunal must first define the scope of the like goods in relation to the subject goods. It may also consider whether the subject goods constitute one or more classes of goods.

[38] 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.

[39] In determining the like goods and whether there is more than one class of 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).

[40] Algoma submitted that domestically produced plate is like goods to the subject goods and that there is a single class of goods. It submitted that like and subject goods are fully interchangeable, commodity products that compete with one another in the Canadian marketplace.

[41] ILG submitted that plate is not a commodity product because not all forms of plate are substitutable for one another. According to ILG, different types of plate have different properties and characteristics and are meant for specific end uses. However, ILG also stated that it did not wish to raise like goods or classes of goods issues.

[42] In reply, Algoma submitted that ILG did not provide any details or evidence regarding which types of plate may constitute a separate class of goods.

[43] The Tribunal has consistently found that domestically produced steel plate is interchangeable with imported plate in terms of its physical and market characteristics, and that it is a commodity product competing largely on the basis of price in the Canadian marketplace.[17]

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16 *Corrosion-resistant Steel Sheet* (7 January 2020), PI-2019-002 (CITT) at para. 12; *Sucker Rods* (29 November 2019), PI-2019-001 (CITT) at para. 13; *Nitisinone Capsules* (20 November 2018), PI-2018-006 (CITT) at para. 22.

17 See, e.g., *Hot-rolled Carbon Steel Plate* (13 March 2020), RR-2019-001 (CITT) [RR-2019-001] at paras. 26-27, 126; *Hot-rolled Carbon Steel Plate* (9 August 2018), RR-2017-004 (CITT) [RR-2017-004] at paras. 28-29; *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate* (6 January 2016), NQ-2015-001 (CITT) [NQ-2015-001] at paras. 33-38, 40-45; *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate* (30 January 2015), RR-2014-002 (CITT) [RR-2014-002] at paras. 24-25.

[44] The evidence presented in the complaint supports the same conclusion with respect to heavy plate: domestic and imported plate are interchangeable commodity products that are used in the same applications and are sold through the same distribution channels.[18]

[45] Accordingly, the Tribunal will conduct its analysis on the basis that domestically produced heavy plate that is 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

[46] 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.

[47] The Tribunal must therefore determine whether the evidence discloses a reasonable indication of injury or a threat of injury to the domestic producers as a whole, or those domestic producers whose production represents a major proportion of the total production of like goods.[19]

[48] The complaint identified six domestic producers of like goods, namely, Algoma, Janco, SSAB, Samuel Son & Co., Tidy Steel-Fab Ltd. and Varsteel Ltd. According to the complaint, Algoma is the only steel mill in Canada producing heavy plate. The other listed producers are service centres, which purchase steel coils in plate thicknesses and cut these coils into straight lengths of heavy plate. The Tribunal has consistently held that service centres are producers of plate and must be included in the domestic industry.[20]

[49] The record of this preliminary injury inquiry includes domestic production data for Algoma as well as estimates of domestic production for SSAB and Janco. The domestic sales and financial data in the complaint are for Algoma only. The evidence is that Algoma's production represents a major proportion of the total production of like goods.[21] Therefore, for the purposes of this preliminary injury inquiry, the Tribunal will assess injury with respect to Algoma's performance. The Tribunal will explore the role of the other producers in the context of the final injury inquiry.

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18 Exhibit PI-2020-001-02.01, Vol. 1 at 2685, 2686, 2689.

19 The term "major proportion" means an important, serious or significant proportion of total domestic production of like goods and not necessarily a majority: *Japan Electrical Manufacturers Assn. v. Canada (Anti-Dumping Tribunal)*, [1986] F.C.J. No. 652 (F.C.A); *McCulloch of Canada Limited and McCulloch Corporation v. Anti-Dumping Tribunal*, [1978] 1 F.C. 222 (F.C.A.); *China – Anti-dumping and countervailing duties on certain automobiles (US)*, (23 May 2014), WTO Docs. WT/DS440/R, Report of the Panel, at para. 7.207; *European Community – Definitive anti-dumping measures on certain iron or steel fasteners (China)*, (15 July 2011), WTO Docs. WT/DS397/AB/R, Report of the Appellate Body, at para. 411, 419, 430; *Argentina – Definitive Anti-dumping duties on poultry (Brazil)*, (22 April 2003), WTO Docs. WT/DS241/R, Report of the Panel, at para. 7.341-7.344.

20 See RR-2019-001 at para. 31; RR-2017-004 at para. 33; NQ-2015-001 at para. 51; RR-2014-002 at para. 30.

21 Exhibit PI-2020-001-03.01 (protected), Vol. 2 at 3237-8.

CUMULATION

[50] 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 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 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.

[51] While subsection 42(3) of *SIMA* applies to final injury inquiries, the Tribunal's practice has been to adopt the same framework in preliminary injury inquiries.[22] 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.

[52] The Tribunal generally assesses negligibility based on the CBSA's volume estimates for its dumping POI. As discussed above, the CBSA did not provide a negligibility estimate for its chosen dumping POI, but it did note in its reasons that South Korea's import volume was 2.9 percent of total imports in 2019, which is just below the negligibility threshold of 3 percent of total imports as set out in subsection 2(1) of *SIMA*.[23]

[53] Algoma submitted that the CBSA's preliminary estimate that 2019 heavy plate imports from South Korea constitute 2.9 percent of total imports is not a good reason to decumulate South Korean imports. No party has requested decumulation on this basis. POSCO made extensive submissions regarding South Korean import volumes, but its submissions do not mention cumulation.

[54] Algoma further contended that the issue of negligibility rests solely with the CBSA at this stage of the proceedings. As such, it would be an error for the Tribunal to decumulate South Korean imports, with the possible consequential result of the Tribunal terminating the proceeding against South Korea, based solely on the issue of negligibility.

[55] The Tribunal considered a similar situation in the preliminary injury inquiry for *Certain Fabricated Industrial Steel Components*. In that case, the majority of the panel considered evidence that import volumes may be below the negligibility threshold could justify additional scrutiny of

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22 *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.

23 The definition in subsection 2(1) provides, in its entirety, as follows: "*negligible* means, in respect of the volume of goods of a country, less than 3% of the total volume of goods that are released into Canada from all countries and that are of the same description as the goods. However, if the total volume of goods of three or more countries — each of whose exports of goods into Canada is less than 3% of the total volume of goods that are released into Canada from all countries and that are of the same description — is more than 7% of the total volume of goods that are released into Canada from all countries and that are of the same description, the volume of goods of any of those countries is not negligible; (*négligeable*)"

whether the evidence disclosed a reasonable indication of injury caused by imports of that country. This additional scrutiny could be accomplished by performing a decumulated assessment.[24]

[56] The Tribunal went on to assess whether the import volumes for the UAE, the UK and Spain were negligible. The Tribunal decided not to cumulate the UAE as its estimated import volumes were well below the 3 percent threshold throughout the POI. However, the Tribunal chose to cumulate the UK and Spain because their volume estimates were not below the threshold for the entire POI.

[57] The import trends for South Korea in this case are similar to those for the UK and Spain in *FISC*. South Korean import volumes for 2017 and 2018 were above the 3 percent threshold (3.8 percent in 2017 and 8.8 percent in 2018).[25] Further, the Tribunal notes that the 2.9 percent figure for 2019 is very close to the threshold.

[58] Finally, the Tribunal notes that the CBSA will provide updated estimates at or before its preliminary determination of dumping, in accordance with its statutory mandate under paragraph 35(1)(a). In light of all of these factors, the Tribunal considers that it is prudent to proceed on a cumulated basis and not to apply the additional scrutiny of a decumulated analysis for South Korea.

[59] With respect to the other conditions for cumulation, none of the dumping margins are negligible. There is no indication that the conditions of competition between the subject goods or between subject and like goods would make cumulation inappropriate. Although several parties opposed argued that there is no reasonable indication that imports from individual sources have caused injury, they did not argue that the conditions of competition would make a separate analysis of imports from those sources necessary.

[60] On the basis of the foregoing, the Tribunal finds that the available evidence supports cumulation and will conduct an assessment of the cumulative effect of the subject goods from all sources for the purposes of this preliminary injury inquiry.

INJURY ANALYSIS

[61] Algoma submitted that the evidence demonstrates a reasonable indication of material injury to the domestic industry in the form of price undercutting and price depression.

[62] Algoma pointed out that low-priced imports from the subject countries have made substantial inroads into the Canadian market, depressing Canadian market prices, with steadily increasing volumes, leading to loss of market share. The domestic industry has lost revenue, which has impacted its financial performance. In addition, it has seen a reduction in capacity utilization, which threatens employment levels.

Import volume of dumped goods

[63] Assessed in both absolute terms and relative to domestic production and sales of domestic production, the volume of imports of subject goods increased in 2018 as compared to 2017. It then

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[24] *Certain Fabricated Industrial Steel Components* (10 November 2016), PI-2016-003 (CITT) at paras. 29-30.
[25] Exhibit PI-2020-001-05, Vol. 1 at 11.

decreased in 2019 to below 2017 levels. The share of total imports of the subject goods increased from 26 percent in 2017 to 40 percent in 2018 and then decreased to 38 percent in 2019.[26]

[64] The Tribunal notes that imports from non-subject countries also decreased substantially over the POI as did the size of the Canadian market overall.[27] Algoma suggested that the decrease in imports in 2019 is due to the imposition of the final heavy plate safeguard measures in February of that year.

[65] ILG claimed that the heavy plate quotas are not being filled, which suggests that the safeguard measures are not the cause of the decline in imports. Salzgitter and Wirth both submitted that imports could not compete with the low prices being offered by Algoma as of mid-2019 and were accordingly driven out of the market.

[66] The Tribunal finds that the increase in volumes of subject imports in 2018, as well as the fact that the subject goods largely maintained their share of total imports in the context of an overall decrease in imports and contraction of the market in 2019, are sufficient grounds to find that there is a reasonable indication of a significant increase in subject import volumes. However, the Tribunal will further explore the 2019 market dynamics in the final injury inquiry.

Price effects of dumped goods

[67] Algoma submitted that the subject goods have significantly undercut the prices of domestically produced like goods, resulting in price depression and lost sales. The complaint included average pricing data for the domestic industry as well as prices for subject imports and U.S. imports derived from Statistics Canada data.

[68] The evidence in the complaint indicates that, on an average annual aggregate basis, the subject imports undercut domestic selling prices in every year of the POI. The CBSA's analysis of import pricing, based on its own volume and value data, showed a similar trend to the complainant's analysis.[28]

[69] Algoma alleged that the subject imports are the low-priced import leaders as they were priced significantly lower than U.S. imports, which are generally priced similarly to domestic goods.

[70] CSC and ILG argued that prices of subject goods from Chinese Taipei and Germany, respectively, were close to the prices of U.S. imports and therefore only marginally lower than Algoma's prices.

[71] With respect to Chinese Taipei, this allegation is not borne out by the evidence on the record. With respect to Germany, German prices were closer to U.S. prices in 2018 and 2019 but still undercut domestic selling prices in both years.[29]

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26 Exhibit PI-2020-001-03.08 (protected), Vol. 2 at 14, 29.
27 Exhibit PI-2020-001-03.08 (protected), Vol. 2 at 14-15.
28 Exhibit PI-2020-001-03.01 (protected), Vol. 2 at 43-46, 3270; Exhibit PI-2020-001-03.08 (protected), Vol. 2 at 32.
29 Exhibit PI-2020-001-02.01, Vol. 1 at 2711; Exhibit PI-2020-001-03.01 (protected), Vol. 2 at 43-46, 3270.

[72] Algoma also submitted a series of confidential Import Activity Reports (IAR) detailing instances where it had either lost a sale or been forced to reduce its price in order to secure a sale. Algoma's IARs also contained general market intelligence regarding imports,[30] which Algoma has linked to volumes and prices in Statistics Canada import data, and alleged that these shipments were imported at prices that undercut its prices at the time. Algoma also suggested that market players become aware of these prices through their own market intelligence and that this leads to further price undercutting and price depression.

[73] Parties opposed raised concerns regarding the reliability of the IARs. While such evidence will need to be more fully tested in the context of a final injury inquiry, the Tribunal finds that, for the purposes of the preliminary injury inquiry, it is sufficient to meet the reasonable indication standard.

[74] In light of the above, the Tribunal finds that the evidence reasonably indicates that the dumping of the subject goods at the very least has significantly undercut the price of like goods.

Resultant impact of the dumped goods on the state of the domestic industry

[75] As part of its analysis under paragraph 37.1(1)(c) of the *Regulations*, the Tribunal considers the impact of the dumped goods on the state of the domestic industry and, in particular, all relevant economics factors and indices that have a bearing on the state of the domestic industry.[31] These impacts are to be distinguished from the impact of any other factors affecting the domestic industry.[32] Paragraph 37.1(3)(a) of the *Regulations* requires the Tribunal to consider whether a causal relationship exists between the dumping of the goods and the injury on the basis of the volume, the price effect, and the impact on the domestic industry of the dumped goods.

Market share

[76] According to Algoma, importers of subject goods increased their market share aggressively in 2017 and 2018 by undercutting the prices of U.S. imports, thus acquiring share previously held by importers of U.S. like goods. Despite the safeguard measures on heavy plate, the importers of subject goods were able to maintain this market share in 2019.

[77] Given the market conditions prevailing at the time, Algoma submitted that it should have been able to make greater gains. The fact that this did not occur is attributable to competition with low-priced subject goods.

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30 Exhibit PI-2020-001-02.01, Vol. 1 at 53-57; Exhibit PI-2020-001-03.01 (protected), Vol. 2 at 56-60, 73-86.

31 Such factors and indices include (i) any actual or potential decline in output, sales, market share, profits, productivity, return on investments or the utilization of industrial capacity, (ii) any actual or potential negative effects on cash flow, inventories, employment, wages, growth or the ability to raise capital, and (ii.1) the magnitude of the margin of dumping in respect of the dumped goods.

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

[78] The parties opposed noted that the domestic industry's market share increased over the POI. They argued that loss of further potential market share gains should not be considered as being injurious to Algoma.

[79] In reply, Algoma submitted that the *Regulations* prescribe that "the actual or potential decline in market share" is a relevant factor. Accordingly, it contended that the inability to increase market share in the face of shifting market dynamics because of unfairly priced imports is a relevant consideration.

[80] The evidence is that the domestic industry increased market share over the POI. Importers of subject goods appear to have captured some of the market share lost by non-subject imports in 2018 and to have maintained some of that gain in 2019; however, the domestic industry increased its market share in 2019 while importers of subject goods lost market share. As noted above, these changes took place in the context of an apparent market contraction as the total size of the Canadian market appears to have decreased significantly over the POI, with over half of the decrease occurring between 2018 and 2019.[33] The Tribunal will need to explore this effect further in the context of the full inquiry.

Financial performance and other economic indicators

[81] Algoma alleged that its financial results suffered from the influx of subject goods. Algoma acknowledged that there was a North American price spike in 2018, which led to good results in the second half of 2018 and first half of 2019. However, it submitted that this price spike was not supported by underlying demand but was rather caused by the temporary combined effect of the U.S. section 232 measures and the Canadian retaliatory tariffs. Algoma claimed that the imports of low-priced subject goods caused prices to fall sharply in the second half of 2019 and that its financial results were accordingly affected in these last two quarters of the year.

[82] Despite the heavy plate safeguard measure, Algoma contends that it has been unable to increase its capacity utilization rate for heavy plate production due to competition with subject goods imports. Moreover, Algoma asserts that low-priced subject goods have had an adverse impact on employment.

[83] Having reviewed the evidence submitted by Algoma on the confidential and public record in light of the relevant factors, the Tribunal finds that the evidence provides reasonable support for Algoma's allegations, for the purpose of this preliminary injury inquiry.

[84] The evidence discloses that there was an increase in imports of subject goods in 2018, and that subject imports remained in the market in 2019 despite a significant decrease in the size of the market. These subject goods were imported at prices that appear to have undercut domestic prices.[34] The continued importation of low-priced subject goods in 2019 appears to be a cause of the decline in performance reported by the domestic industry in 2019.

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33 Exhibit PI-2020-001-03.08 (protected), Vol. 2 at 15.

34 Since the data on performance indicators pertains to a single company, the Tribunal cannot discuss the evidence in detail due to the risk of disclosing confidential information.

[85] Bearing in mind the lower evidentiary threshold applicable at the preliminary inquiry stage, the Tribunal finds that the evidence on record provides a reasonable indication that the dumping of the subject goods has caused material injury to the domestic industry.

Other factors and causation

[86] The parties opposed argued that if the domestic industry has suffered injury, it is attributable to factors other than the dumping, namely:

- Competition with U.S. imports, which represent a high proportion of imports into Canada;
- The impact of the U.S. section 232 duties, Canadian retaliatory tariffs, the safeguard measures on heavy plate, and other trade measures taken around the world on plate prices in Canada;
- Contraction in the size of the Canadian market in 2019;
- Generally poor conditions in the global plate market in 2019;
- The impact of the Covid-19 pandemic on the Canadian and global economies and plate markets.

[87] Some of these factors (which, incidentally, would also have affected the subject goods) may likely have been other causes of injury to the domestic industry. However, the Tribunal has consistently stated that it will give further consideration to the issue of other factors and causation during the final injury inquiry, when it has access to a full evidentiary record.[35] The Tribunal compiles detailed information regarding the volumes and prices of subject and non-subject imports as well as conditions in the market during its POI through questionnaire responses. For the purposes of the preliminary injury inquiry, the evidence sufficiently supports the existence of a reasonable indication of injury on account of the subject goods by themselves.

[88] The Tribunal wishes to highlight in this case that there are questions regarding domestic and international market dynamics in 2019 and their potential impact on the domestic industry's financial performance. These issues will need to be carefully explored in the final injury inquiry.

[89] With respect to Covid-19, the Tribunal notes that this complaint was filed in April 2020 and contains data through the end of 2019, before the Covid-19 pandemic began to have an impact on economic conditions. However, the Tribunal will give consideration to the impact of the pandemic in the final injury inquiry, as the Tribunal will collect data through the first half of 2020.

[90] For the foregoing reasons, the Tribunal finds that the evidence on the record discloses a reasonable indication that the dumping of the subject goods has caused material injury to the domestic industry.

[91] As there is a reasonable indication that the dumping of the subject goods has caused injury, the Tribunal will exercise judicial economy and not consider whether there is a reasonable indication that the dumping of the subject goods is threatening to cause injury.

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35 See, most recently, *Corrosion-resistant Steel Sheet* (7 January 2020), PI-2019-002 (CITT) at para. 52.

CONCLUSION

[92] The Tribunal finds that the evidence discloses a reasonable indication that the dumping of the subject goods has caused or is threatening to cause injury to the domestic industry.

Randolph W. Heggart

Randolph W. Heggart
Presiding Member

Susan D. Beaubien

Susan D. Beaubien
Member

Serge Fréchette

Serge Fréchette
Member