



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

FINDINGS AND REASONS

Inquiry No. NQ-2019-002

Corrosion-resistant Steel Sheet

*Findings issued
Monday, November 16, 2020*

*Reasons issued
Tuesday, December 1, 2020*

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IN THE MATTER OF an inquiry, pursuant to section 42 of the *Special Import Measures Act*, respecting:

CORROSION-RESISTANT STEEL SHEET

FINDINGS

The Canadian International Trade Tribunal, pursuant to the provisions of section 42 of the *Special Import Measures Act (SIMA)*, has conducted an inquiry to determine whether 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 (Turkey), the United Arab Emirates (UAE), and the Socialist Republic of Vietnam (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*.

On October 16, 2020, the President of the Canada Border Services Agency made final determinations that the above-mentioned goods originating in or exported from Turkey (excluding those goods exported by Borçelik Çelik Sanayi Ticaret A.Ş.), the UAE (excluding those goods exported by Al Ghurair Iron & Steel LLC) and Vietnam have been dumped and that the above-mentioned goods, originating in or exported from Turkey (excluding those goods exported by Atakaş Çelik Sanayi ve Ticaret A.Ş., Borçelik Çelik Sanayi Ticaret A.Ş. and Tatmetal Çelik Sanayi Ve Ticaret A.Ş.), have been subsidized.

Further to the Tribunal’s inquiry, pursuant to subsection 42(4.1) of *SIMA*, the Tribunal finds that the volume of dumped goods, originating in or exported from the UAE, and the volume of subsidized goods, originating in or exported from the UAE and Vietnam, are negligible. As such, the Tribunal hereby terminates its inquiry regarding the dumping of the above-mentioned goods originating in or exported from the UAE and the subsidizing of the above-mentioned goods originating in or exported from the UAE and Vietnam.

Pursuant to subsection 43(1) of *SIMA*, the Tribunal finds that the dumping of the above-mentioned goods, originating in or exported from Turkey (excluding those goods exported by Borçelik Çelik Sanayi Ticaret A.Ş) and Vietnam, and the subsidizing of the above-mentioned goods, originating in or exported from Turkey (excluding those goods exported by Atakaş Çelik Sanayi ve Ticaret A.Ş, Borçelik Çelik Sanayi Ticaret A.Ş and Tatmetal Çelik Sanayi Ve Ticaret A.Ş.), have caused injury to the domestic industry.

Cheryl Beckett

Cheryl Beckett

Presiding Member

Jean Bédard

Jean Bédard

Member

Randolph W. Heggart

Randolph W. Heggart

Member

The statement of reasons will be issued within 15 days.

Place of Hearing: Via videoconference
Dates of Hearing: October 23, 2020
Tribunal Panel: Cheryl Beckett, Presiding Member
Jean Bédard, Member
Randolph W. Heggart, Member
Support Staff: Helen Byon, Lead Counsel
Sarah Perlman, Counsel
Heidi Lee, Counsel
Gayatri Shankarraman, Lead Analyst
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PARTICIPANTS:**Domestic Producers/Supporting Parties**

ArcelorMittal Dofasco G.P.

Stelco Inc.

United Steelworkers

Importers/Exporters/Others

Al Ghurair Iron & Steel LLC

China Steel and Nippon Steel Vietnam Joint Stock
Company

Duferco Steel Inc.

Ereğli Demir Ve Çelik Fabrikalari T.A.Ş.

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STATEMENT OF REASONS

INTRODUCTION

[1] The mandate of the Canadian International Trade Tribunal in this inquiry¹ is to determine whether the dumping or subsidizing of corrosion-resistant flat-rolled steel sheet products of carbon steel (COR) originating in or exported from the Republic of Turkey (Turkey), the United Arab Emirates (UAE), and the Socialist Republic of Vietnam (Vietnam) (individually, in groupings or collectively referred to as the subject goods) has caused injury or is threatening to cause injury to the domestic industry.

[2] The Tribunal has determined, for the reasons that follow, that the volumes of dumped goods originating in or exported from the UAE and the volumes of subsidized goods originating in or exported from the UAE and Vietnam are negligible. As such, the Tribunal has terminated its inquiry regarding the dumping of the above-mentioned goods originating in or exported from the UAE and the subsidizing of the above-mentioned goods originating in or exported from the UAE and Vietnam.

[3] The Tribunal has determined, for the reasons that follow, that the dumping of the subject goods from Turkey and Vietnam and the subsidizing of the subject goods from Turkey have caused injury.

BACKGROUND

[4] This inquiry arises from a complaint filed with the Canada Border Services Agency (CBSA) on September 20, 2019, by ArcelorMittal Dofasco G.P. (AMD), and the subsequent decision by the CBSA, on November 8, 2019, to initiate investigations into the alleged injurious dumping and subsidizing of the subject goods.

[5] On November 12, 2019, the Tribunal began its preliminary injury inquiry pursuant to subsection 34(2) of *SIMA*, to determine whether there was a reasonable indication that the dumping and subsidizing of the subject goods had caused injury or were threatening to cause injury. On January 7, 2020, the Tribunal determined that there was evidence that disclosed a reasonable indication that the dumping and subsidizing of the subject goods had caused or were threatening to cause injury to the domestic industry.²

[6] On March 20, 2020, the CBSA made a preliminary determination of dumping and subsidizing of the subject goods from all three countries.³ The CBSA's final determination was scheduled to be issued by June 18, 2020.

[7] Following the CBSA's determination, the Tribunal initiated this final injury inquiry on March 23, 2020.⁴ The Tribunal's period of inquiry (POI) covered the three full years from January 1, 2017, to December 31, 2019.

¹ The inquiry is conducted pursuant to section 42 of the *Special Import Measures Act*, R.S.C., 1985, c. S-15 [*SIMA*].

² *Corrosion-resistant Steel Sheet* (7 January 2020), PI-2019-002 (CITT) [*COR PI 2020*].

³ Exhibit NQ-2019-002-01.

⁴ Exhibit NQ-2019-002-03.

[8] A number of domestic producers, importers, purchasers and foreign producers of the subject goods were asked to respond to questionnaires from the Tribunal. The Tribunal received 2 replies to the domestic producers' questionnaire from companies stating that they produce "like goods" in relation to the subject goods; 11 replies to the importers' questionnaire from companies stating that they import goods meeting the product definition; and 14 replies to the purchasers' questionnaire from companies stating that they purchase the subject goods and/or goods meeting the product definition. The Tribunal also received 2 replies to the foreign producers' questionnaire from companies indicating that they produce the subject goods in Turkey and Vietnam.

[9] The inquiry was conducted during the COVID-19 pandemic,⁵ which resulted in some companies being unable to provide a response, or only being able to provide partial responses or estimates of the requested information. To ensure the best possible data were collected, the staff of the Canadian International Trade Tribunal Secretariat of the Administrative Tribunals Support Service of Canada assisted questionnaire respondents by providing guidance on completing questionnaires and, upon request, offered extensions to applicable deadlines for submitting responses to the Tribunal. Although these protocols are standard for any *SIMA* proceedings, the COVID-19 pandemic meant that a relatively high number of questionnaire respondents required assistance and were offered extensions.

[10] Using the questionnaire responses and other information on the record, staff prepared public and protected versions of the Investigation Report, which were placed on the record on May 11, 2020. Revised versions of the report were issued on May 14, and 25, 2020.

[11] The Tribunal received submissions from AMD and Stelco Inc. (Stelco) arguing that the subject goods have caused or are threatening to cause injury to the domestic industry. AMD filed witness statements from Ms. Vasudha Seth, Mr. Henry Wegiel, Mr. Paul Osborne of AMD and from Mr. Robert Lachapelle of Taylor Steel Inc. (Taylor Steel). Stelco filed witness statements from Mr. Trevor Harris, Mr. Gregory Anderson of Stelco and Mr. Beric Sykes of Nova Steel Inc. (Nova Steel). The Tribunal also received witness statements from Mr. Gary Howe, Mr. John Balloch and Mr. Mark Rowlinson of the United Steelworkers (USW) supporting the continued imposition of duties on the subject goods under *SIMA*.

[12] The Tribunal received submissions opposing a finding of injury or threat of injury in respect of the subject goods from China Steel and Nippon Steel Vietnam Joint Stock Company (CSVC) and the Ministry of Economy of the United Arab Emirates (UAE MOE).

[13] Four parties to these proceedings did not file any submissions, i.e. Duferco Steel (Duferco), an importer; the Ministry of Trade of the Republic of Turkey; Ereğli Demir Ve Çelik Fabrikalari T.A.Ş. (Erdemir), a foreign producer; and Al Ghurair Iron & Steel LLC (Al Ghurair), a foreign producer.⁶

⁵ On March 11, 2020, the World Health Organization declared the global outbreak of a COVID-19 pandemic. See <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

⁶ On October 20, 2020, Al Ghurair requested leave to participate in the inquiry for the purpose of making brief oral submissions during closing arguments. Noting that no party objected, the Tribunal granted the request.

[14] On May 19, 2020, AMD and Stelco filed requests for information (RFI) with the Tribunal, which were directed to CSVC and Duferco. On May 25, 2020, after reviewing the RFIs and taking into account the rationale for them as well as objections filed, the Tribunal issued directions regarding the RFIs to CSVC and Duferco.⁷ A reply from CSVC and Duferco was received on June 1, 2020.⁸

[15] Due to the COVID-19 pandemic, the Tribunal advised the parties on May 11, 2020, that the hearing previously scheduled to begin on June 15, 2020, would proceed by way of written submissions (i.e. a file hearing). The parties were asked to provide comments on the draft procedures for the file hearing. The Tribunal received comments from AMD, Stelco, CSVC, and Duferco.

[16] On May 21, 2020, the Tribunal issued its final procedures for the file hearing to the parties.⁹ Pursuant to these procedures, following the filing of supporting parties' reply submissions, the parties were permitted to suggest questions directed to parties to be asked in writing by the Tribunal.¹⁰ These questions were to be limited to requests for clarification or explanations regarding evidence that had been submitted previously by a party and had to be directly relevant to the Tribunal's consideration of the matter at issue in the inquiry. The Tribunal did not receive any such suggested questions but issued its own questions to AMD, Stelco, Nova Steel and Taylor Steel on June 15, 2015.¹¹

[17] Once the Tribunal operationalized its videoconferencing system for the conduct of hearings, it further revised its schedule to allow closing arguments to be heard by way of videoconference on June 25, 2020.

[18] On June 18, 2020, the Tribunal became aware of the CBSA's revised schedule for its dumping and subsidizing investigations. On that date, the CBSA indicated on its Web site that revisions to the schedule of its investigations were made in order to alleviate pressures brought on by the COVID-19 pandemic on interested parties.¹² The revised schedule indicated, among other things, that the CBSA's final determinations, or termination, with respect to its dumping and subsidizing investigations would be issued on October 16, 2020.

[19] The Tribunal issued a letter to the parties on June 18, 2020, informing them of its intention to suspend its proceedings in respect of the inquiry further to the CBSA's revised schedule.¹³ The Tribunal indicated to the parties that remaining deadlines, such as for the hearing of closing arguments, would be cancelled and rescheduled.

⁷ Exhibit NQ-2019-002-RFI-01; Exhibit NQ-2019-002-RFI-01A (protected).

⁸ Exhibit NQ-2019-002-RI-04; Exhibit NQ-2019-002-RI-04A (protected).

⁹ On May 25, 2020, the Tribunal issued a Revised Notice of Commencement of Inquiry addressing the new file hearing procedures. See Exhibit NQ-2019-002-03A.

¹⁰ The Tribunal also informed the parties of the possibility of using videoconferencing for closing arguments.

¹¹ Exhibit NQ-2019-002-24.

¹² Online: <https://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/cor22019/cor22019-ext2-eng.html>. The Tribunal was notified by the CBSA on Friday, June 19, 2020. See Exhibit NQ-2019-002-01B. The Tribunal also placed printouts of the CBSA's schedule from its Web site, as modified on June 18, 2020, on its record for this inquiry for reference. See Exhibit NQ-2019-002-25A.

¹³ Exhibit NQ-2019-002-25.

[20] The Tribunal proposed procedures for parties to file additional submissions and evidence.¹⁴ This was important, in particular to ensure that any arguments in relation to “threat of injury” be properly aligned with the forward-looking nature of the Tribunal’s analysis and to take into account developments regarding changes in the marketplace, such as those caused by the COVID-19 pandemic, in the intervening period, i.e. the period from the original date of the Tribunal’s injury determination to its new date (30 days following the expected issuance date of the CBSA’s final determinations).¹⁵ The fact that the Tribunal was compelled to extend its inquiry risked affecting the factual foundation for that analysis. Simply put, the Tribunal could not continue on its initial inquiry schedule without having to proceed with a further evidentiary gathering stage. AMD, Stelco and the USW provided the Tribunal with comments on the proposed procedures and in particular with respect to how the Tribunal should sequence the new proposed filings for additional written submissions and evidence to ensure fair and efficient proceedings.¹⁶

[21] The Tribunal updated the parties on its proposed procedures on July 3, 2020. To ensure that the Tribunal was able to maintain its practice of issuing its final injury determination within 30 days of receiving the CBSA’s final determinations, written submissions were scheduled to be filed by October 16, 2020, which was the new date for the CBSA’s final determinations. The Tribunal also held a case management conference with the parties on July 10, 2020.¹⁷

[22] With this input from the parties, the Tribunal issued a Revised Notice of Commencement of Inquiry, dated July 13, 2020, establishing the revised procedures and schedule for the remainder of the proceedings.¹⁸ Closing arguments were rescheduled to be heard by videoconference on October 23, 2020, and the Tribunal’s findings were set to be issued by November 16, 2020.

[23] During the extended proceedings, the Tribunal received supplemental briefs from AMD and Stelco. Supplemental witness statements were received from Ms. Seth, Mr. Wegiel, and Mr. Osborne of AMD; Mr. Lachapelle of Taylor Steel; and Mr. Anderson and Mr. Harris of Stelco. Supplemental witness statements, on behalf of USW by Mr. Howe and Mr. Balloch were also received. A supplemental case brief was then filed by CSVC, which was followed by a reply brief from AMD and a supplemental reply witness statement from Ms. Seth. The Tribunal also requested other additional information from the parties to ensure that it had the best possible data. On July 31, 2020, the Tribunal issued an additional RFI directed to AMD and Stelco concerning each firm’s direct material costs and market prices for substrates, i.e. hot-rolled coil and cold-rolled coil.¹⁹ AMD and Stelco were also asked to provide financial information for the second quarter of 2020. Finally, in the interest of seeking more information on how more recent global events were impacting the market and industry, importers and purchasers that had previously responded to the Tribunal’s questionnaires were asked to update certain forecasting information contained in their questionnaire responses as well as provide any new information regarding import volumes, purchase prices and any other factors having an impact on the firm’s business for the period from January 1, to July 31, 2020, and for the period from August 1, 2020, to the date of their reply.

¹⁴ Tribunal letter of June 24, 2020, Exhibit NQ-2019-002-26; Revised Notice of Commencement of Inquiry dated June 25, 2020, Exhibit NQ-2019-002-03B.

¹⁵ Exhibit NQ-2019-002-30 at para. 16.

¹⁶ Exhibit NQ-2019-002-27; Exhibit NQ-2019-002-28.

¹⁷ Exhibit NQ-2019-002-29.

¹⁸ Exhibit NQ-2019-002-03C.

¹⁹ Tribunal RFI, Exhibit NQ-2019-002-RFI-02; Responses, Exhibit NQ-2019-002-RI-01, Exhibit NQ-2019-002-RI-02.

[24] A supplement to the Investigation Report on primes and seconds was issued on August 27, 2020.²⁰ A further revision to the Investigation Report was also issued on October 19, 2020, following the CBSA's final determination.²¹

[25] On September 28, 2020, the Tribunal sent a copy of the Order and Reasons in *Carbon Steel Screws*²² to the parties and invited them to update their previous submissions on cumulation.²³

[26] The Tribunal heard closing arguments by videoconference on October 23, 2020, from Al Ghurair, AMD, Stelco, USW and CSVC as scheduled. Al Ghurair's submissions were limited to the issue of the negligibility of the volumes of subject imports from the UAE and the applicability of subsection 42(4.1) of the *CITT Act* in respect of those goods.

Tribunal's order and reasons relating to the extended inquiry

[27] The Tribunal consigned its procedural decisions and schedule revisions for the inquiry to a formal order and provided reasons for extending its inquiry, which were issued on July 31, 2020.²⁴

[28] On September 30, 2020, the Minister of Finance issued an *Order Respecting Time Limits Under the Special Import Measures Act* (the *Time Limits Order*) pursuant to subsections 7(1) and (5) of the *Time Limits and Other Periods Act (COVID 19)*²⁵ which came into force on July 27, 2020. The *Time Limits Order* extended, among other things, the time limit established by subsection 43(1) of *SIMA*, in the case of an investigation initiated under subsection 31(1) of *SIMA* on or before April 1, 2020. Accordingly, the deadline for a final determination pursuant to subsection 43(1) in this case was effectively extended to December 31, 2020.

RESULTS OF THE CBSA'S INVESTIGATION

[29] On October 16, 2020, the CBSA made a final determination of dumping in respect of the subject goods from all three countries.²⁶ The CBSA determined that 100 percent of the subject goods imported into Canada from Vietnam had been dumped.²⁷ The CBSA terminated the dumping investigation for Borçelik Çelik Sanayi Ticaret A.Ş. (Borçelik) from Turkey and Al Ghurair Iron and Steel LLC from the UAE.²⁸ The CBSA's period of investigation for its dumping investigation was July 1, 2018, to June 30, 2019. The CBSA determined the following margins of dumping:²⁹

²⁰ Exhibit NQ-2019-002-06D; Exhibit NQ-2019-002-07C (protected).

²¹ Exhibit NQ-2019-002-06F; Exhibit NQ-2019-002-07D (protected).

²² *Carbon Steel Screws* (2 September 2020), RR-2019-002 (CITT) [*Carbon Steel Screws*].

²³ Exhibit NQ-2019-002-31. On October 14, 2020, the Tribunal also circulated to the parties the Order and Reasons in *Concrete Reinforcing Bar* (14 October 2020), RR-2019-003 (CITT) [*Rebar*]. Exhibit NQ-2019-002-32.

²⁴ Exhibit NQ-2019-002-30.

²⁵ S.C. 2020, c. 11, s. 11.

²⁶ Exhibit NQ-2019-002-04; Exhibit NQ-2019-002-05 (protected).

²⁷ Exhibit NQ-2019-002-05C (protected) at 1.

²⁸ *Ibid.*; Exhibit NQ-2019-002-04 at 11.

²⁹ Exhibit NQ-2019-002-04 at 22.

Exporters	Margin of dumping expressed as a percentage of export price
Turkey	
Atakaş Çelik Sanayi ve Ticaret A.Ş	26.1%
Borçelik Çelik Sanayi Ticaret A.Ş	0.0%
Tatmetal Çelik Sanayi Ve Ticaret A.Ş.	9.7%
All Other Exporters – Turkey	26.1%
Total – Turkey	18.4%
United Arab Emirates	
AI Ghurair Iron and Steel LLC	0.0%
United Iron and Steel Company LLC	11.2%
All Other Exporters – United Arab Emirates	41.5%
Total – United Arab Emirates	0.6%
Vietnam	
China Steel and Nippon Steel Vietnam Joint Stock Company	4.7%
Hoa Sen Group Joint Stock Company	11.0%
Nam Kim Steel Joint Stock Company	2.3%
Southern Steel Sheet Co., Ltd.	71.1%
Ton Dong A Corporation	16.2%
All Other Exporters – Vietnam	71.1%
Total – Vietnam	9.2%³⁰

[30] On October 16, 2020, the CBSA made a final determination of subsidizing in respect of the subject goods from Turkey and terminated its subsidy investigations for Atakaş Çelik Sanayi ve Ticaret A.Ş (Atakas), Borçelik, and Tatmetal Çelik Sanayi Ve Ticaret A.Ş. (Tatmetal) from Turkey and all the exporters from the UAE and Vietnam. This effectively terminated the CBSA's investigations with respect to

³⁰ Exhibit NQ-2010-002-04D at 1.

subsidizing of subject goods from the UAE and Vietnam; the CBSA made no final determination of subsidizing in respect of subject goods from those countries.³¹ The CBSA's period of investigation for its subsidy investigation was July 1, 2018, to June 30, 2019. The CBSA determined the following amounts of subsidy:³²

Exporters	Amount of subsidy expressed as a percentage of export price
Turkey	
Atakaş Çelik Sanayi ve Ticaret A.Ş	0.4%
Borçelik Çelik Sanayi Ticaret A.Ş	0.6%
Tatmetal Çelik Sanayi Ve Ticaret A.Ş.	0.5%
All Other Exporters – Turkey	3.6%
Total – Turkey	1.6%
United Arab Emirates	
AI Ghurair Iron and Steel LLC	0.0%
United Iron and Steel Company LLC	0.0%
All Other Exporters – United Arab Emirates	0.0%
Total – United Arab Emirates	0.0%
Vietnam	
China Steel and Nippon Steel Vietnam Joint Stock Company	0.0%
Hoa Sen Group Joint Stock Company	0.0%
Nam Kim Steel Joint Stock Company	0.0%
Southern Steel Sheet Co., Ltd.	0.1%
Ton Dong A Corporation	0.0%
All Other Exporters – Vietnam	0.2%
Total – Vietnam	0.0% ³³

³¹ Exhibit NQ-2019-002-04 at 11.

³² *Ibid.* at 22.

³³ Exhibit NQ-2019-002-04D at 2.

PRODUCT

Product definition

[31] The CBSA defined the subject goods as follows:³⁴

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 the 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.

Additional product information

[32] The CBSA provided the following additional product information:³⁵

[36] The product definition includes corrosion-resistant steel sheet where the substrate is coated with a corrosion-resistant material such as zinc, aluminum, and other alloys. The coating may be applied by a variety of processes including hot-dip galvanizing or electro-galvanizing.

³⁴ Exhibit NQ-2019-002-04 at 10-11.

³⁵ Exhibit NQ-2019-002-04E at paras. 36-43.

[37] The product definition includes galvanized steel. Galvanized steel is produced by passing the steel through an annealing furnace after it completes the hot-dip galvanizing process and while the zinc is still liquid. This causes the iron and zinc layers to diffuse into each other, creating a zinc-alloy layer at the surface.

[38] Passivation refers to a material becoming “passive”, that is, less affected or corroded by the environment of future use. Passivation involves creation of an outer layer of shield material that is applied as a micro-coating, created by chemical reaction with the base material, or allowed to build from spontaneous oxidation in the air. As a technique, passivation is the use of a light coat of a protective material, to create a shell against corrosion.

[39] Corrosion-resistant steel with anti-fingerprint coatings (whether as part of a passivation treatment or separate) are also included within the product definition.

[40] Corrosion-resistant steel sheet is usually produced from cold-rolled carbon steel sheet (CRS) and sometimes from hot-rolled carbon steel sheet (HRS). However, additions of certain elements such as titanium, vanadium, niobium or boron, during the steel-making process enable the steel to be classified as alloy steel. Therefore, corrosion-resistant steel produced from either carbon steel or alloy steel is included in the definition of the subject goods.

[41] The subject goods (and like goods produced by the domestic industry) are manufactured to meet certain American Society for Testing and Materials (ASTM), Society of Automotive Engineering (SAE) or equivalent specifications, including, but not limited to:

- ASTM A653/653M
- ASTM A792/A792M
- SAE J403
- SAE J1392
- SAE J2329
- SAE J1562

[42] The product definition includes “seconds”. Seconds are goods that do not meet some aspect of the original specification. This could include dimensions, grade, or coating. It could also include a coil that has been damaged. Seconds are sold at a discount. Seconds may meet ASTM, SAE or other specifications or may be re-certified to meet a standard. For example, a coil that is damaged along the edge may be a “second”. However, if the damaged edge is slit and the damage is removed the coil could be classified as a primary coil produced to the new width. Seconds are graded and sold on a scale of five.

[43] For greater clarity, the product definition does not cover:

Corrosion-resistant steel for use in automobiles and automobile parts, hereafter referred to as “Automotive”. Automotive end users include Original Equipment Manufacturers (“OEMs”) and auto part producers. Such excluded goods may fall under Customs Tariff item 9959.00.00.

Pre-painted steel and steel permanently coated in plastic. Pre-painted steel is steel on which paint has been applied by coil coating at the manufacturing facility. The paint may be applied to one or both sides. The paint may be applied as a liquid, paste, powder, varnish or lacquer. Paints may include, but are not limited to, primers, finishing coats, polyesters polymers, plastisol paints, polyurethanes, polyvinylidene fluorides, and epoxy. Steel permanently coated in plastic is steel to which plastics, including films or laminates, are permanently attached.

[Footnotes omitted]

LEGAL FRAMEWORK

[33] The Tribunal is required, pursuant to subsection 42(1) of *SIMA*, to inquire as to whether the dumping or subsidizing of the subject goods have caused injury or are threatening to cause injury, with “injury” being defined, in subsection 2(1), as “. . . material injury to a domestic industry”. In this regard, “domestic industry” is defined in subsection 2(1) by reference to the domestic production of “like goods”.

[34] Accordingly, the Tribunal must first determine what constitutes “like goods”. Once that determination has been made, the Tribunal must determine what constitutes the “domestic industry” for the purposes of its injury analysis.

[35] Given that the subject goods are originating or exported from more than one country, the Tribunal must also determine if the prerequisite conditions are met in order to make a cumulative assessment of the effects of those subject goods from all the subject countries on the domestic industry (i.e. whether it will conduct a single injury analysis or a separate analysis for each subject country).

[36] The Tribunal can then assess whether the subject goods have caused material injury to the domestic industry.³⁶ Should the Tribunal arrive at a finding of no material injury, it will determine whether there exists a threat of material injury to the domestic industry.³⁷ As a domestic industry is already established, the Tribunal will not need to consider the question of retardation.³⁸

[37] In conducting its analysis, the Tribunal will also examine other factors that might have had an impact on the domestic industry to ensure that any injury or threat of injury caused by such factors is not attributed to the effects of the subject goods.

LIKE GOODS AND CLASSES OF GOODS

[38] In order for the Tribunal to determine whether the dumping or subsidizing of the subject goods have caused or are threatening to cause 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

³⁶ The Tribunal will proceed to determine the effects of the dumping and subsidizing of the subject goods on the domestic industry, for individual countries or for the cumulated countries, as appropriate.

³⁷ Injury and threat of injury are distinct findings; the Tribunal is not required to make a finding relating to threat of injury pursuant to subsection 43(1) of *SIMA* unless it first makes a finding of no injury.

³⁸ Subsection 2(1) of *SIMA* defines “retardation” as “. . . material retardation of the establishment of a domestic industry”.

goods. The Tribunal must also assess whether there is, within the subject goods and the like goods, more than one class of goods.³⁹

Like goods

[39] 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.

[40] 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).⁴⁰

[41] In *COR PI 2020* and *COR NQ 2019*,⁴¹ the latter which concerned subject goods defined in a very similar manner to the goods in this case, the Tribunal found that domestically produced COR and subject goods of the same description were like goods and that there was a single class of goods.⁴² There were no arguments or evidence in this inquiry to justify reaching a different conclusion. The responses to the Tribunal’s purchasers’ questionnaire indicate that the subject goods and domestically produced COR of the same description as the subject goods are generally interchangeable and comparable in terms of quality, availability of specifications to meet customers’ requirements, have similar end uses and distribution channels, and compete directly.⁴³

[42] CSVC submitted that the scope of like goods should be expanded beyond the description of the subject goods to include COR for automotive end uses, which is excluded from the definition of the subject goods. CSVC argued that COR for automotive end uses were excluded from the product definition of the subject goods because they are sold on a contract basis. CSVC argued that COR for automotive uses should not be excluded as they are made to some of the same specifications as the subject goods; data from third party sources normally include automotive COR; and substantial import volumes from the United States would be excluded thereby artificially increasing the share of subject imports.⁴⁴ CSVC also relied on the definition of “like product” in Article 2.6 of the WTO Anti-dumping Agreement, which does not distinguish between goods sold on contract and goods sold on spot or shorter-term contracts. In reply, AMD and Stelco argued that Article 2.6 of the Anti-dumping Agreement

³⁹ Should the Tribunal determine that there is more than one class of goods in this inquiry, it must conduct a separate injury analysis and make a decision for each class that it identifies. See *Noury Chemical Corporation and Minerals & Chemicals Ltd. v. Pennwalt of Canada Ltd. and Anti-dumping Tribunal*, [1982] 2 F.C. 283 (F.C.).

⁴⁰ See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at para. 48.

⁴¹ *Corrosion-resistant Steel Sheet* (21 February 2019), NQ-2018-004 (CITT) [*COR NQ 2019*].

⁴² *COR PI 2020* at paras. 17-20; *COR NQ 2019* at paras. 25-32.

⁴³ Exhibit NQ-2019-002-06F, Tables 7-10.

⁴⁴ Exhibit NQ-2019-002-E-01A at paras. 21-27.

defines like goods in relation to the goods under consideration (i.e. subject goods), and since the subject goods exclude automotive COR, automotive COR cannot be like goods.⁴⁵

[43] The Tribunal rejected a similar argument to that of CSVC in *COR PI 2020* and arrives at the same conclusion here.

[44] CSVC has essentially taken issue with the definition of the subject goods. As stated in prior cases, the Tribunal cannot revise the scope of the subject goods, which is in the sole jurisdiction of the CBSA.⁴⁶ The Tribunal must therefore conduct its inquiry on this basis.

[45] Further, the Tribunal's case law, based on relevant WTO decisions, indicates that like goods should be co-extensive with the subject goods.⁴⁷ As such, the Tribunal must ascertain the scope of the subject goods before determining the scope of the like goods in relation to the subject goods.⁴⁸

[46] In this case, the product definition expressly excludes COR for automotive end uses. This specified end use differentiates the excluded goods from other products included in the definition of the subject goods, which, as noted in Mr. Osborne's witness statement, are mainly used in construction and manufacturing.⁴⁹

[47] Accordingly, the Tribunal finds that domestically produced COR for use in automotive end uses are not like goods to the subject goods. CSVC did not submit evidence in support of its position or address how evidence already on the record might support expanding the scope of the like goods beyond that of the subject goods. The Tribunal also notes CSVC's submission that COR for automotive use is sold on "just-in-time" delivery, which essentially precludes imports of automotive COR from offshore sources.⁵⁰ If anything, such factors would support the view that domestically produced COR for use in automotive applications have different market characteristics from the subject goods.

[48] Accordingly, the Tribunal finds no basis to expand the scope of the like goods beyond that corresponding to the description of the subject goods. The Tribunal has not been persuaded that a departure from its findings in *COR NQ 2019* with respect to like goods is warranted.

Classes of goods

[49] In addressing the issue of classes of goods, the Tribunal typically examines whether goods potentially included in separate classes of goods constitute "like goods" in relation to each other. If

⁴⁵ CSVC also referred to Article 3.5 of the Anti-dumping Agreement, but it is the Tribunal's view that reference to this provision by CSVC was intended to inform its submissions in respect of injury. The Tribunal therefore did not consider it necessary to explore AMD and Stelco's replies on this point.

⁴⁶ See e.g. *Cold-rolled Steel* (24 July 2018), PI-2018-002 (CITT) at para. 29.

⁴⁷ *COR PI 2020* at para. 19; *Unitized Wall Modules*, (27 November 2013), NQ-2013-002 (CITT) at para. 34; *Certain Fabricated Industrial Steel Components* (25 May 2017), NQ-2016-004 (CITT) [*FISC*] 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.

⁴⁸ *FISC* at paras. 45-48.

⁴⁹ Exhibit NQ-2019-002-A-07 at paras. 10-11. See also description of product use for COR falling within the product definition in the CBSA's Statement of Reasons. Exhibit NQ-2019-002-04E at para. 47.

⁵⁰ Exhibit NQ-2019-002-E-01A at para. 24.

those goods are “like goods” in relation to each other, they will be regarded as comprising a single class of goods.⁵¹

[50] Considering the reasons above and noting that no party has disputed that there is a single class of goods, the Tribunal maintains its view that domestically produced COR and the subject goods, defined in the same manner, constitute like goods, and will conduct its injury analysis on the basis of one class of goods.

DOMESTIC INDUSTRY

[51] 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.

[52] The Tribunal must therefore determine whether there has been injury, or whether there is 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.⁵²

[53] It is uncontroverted that AMD and Stelco account for the vast majority of domestic production and constitute the domestic industry. The Tribunal therefore has no reason to depart from its findings in *COR NQ 2019*,⁵³ which were affirmed in *COR PI 2020*,⁵⁴ and similarly finds that AMD and Stelco constitute the domestic industry for the purposes of this inquiry.

NEGLIGIBILITY, CUMULATION AND CROSS-CUMULATION

[54] Subsection 42(3) of *SIMA* directs the Tribunal to make an assessment of the cumulative effect of the dumping or subsidizing of the subject goods if it is satisfied that the margin of dumping or the amount of subsidy in relation to the goods from each of those countries is not insignificant, the volume of dumped or subsidized goods from each subject country is not negligible, and cumulation is appropriate taking into account conditions of competition between the goods of each country or between them and the like goods. Additionally, subsection 42(4.1) of *SIMA* provides that, if the volume of dumped or subsidized subject goods from a country is negligible, the Tribunal must terminate its inquiry in respect of those goods.

⁵¹ *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) at para. 115; see also *Polyisocyanurate Thermal Insulation Board* (11 April 1997), NQ-96-003 (CITT) at 10.

⁵² 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.); Panel Report, *China – Automobiles (US)*, WT/DS440/R, at para. 7.207; Appellate Body Report, *EC – Fasteners (China)*, WT/DS397/AB/R, at paras. 411, 412, 419; Panel Report, *Argentina – Poultry (Brazil)*, WT/DS241/R, at para. 7.341.

⁵³ At paras. 35-37.

⁵⁴ At paras. 21-22.

Negligibility and insignificance

[55] Subsection 2(1) of *SIMA* establishes the threshold for “negligible” as “. . . 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.”⁵⁵

[56] The question of negligible import volumes arises in this inquiry with respect to the dumped and subsidized subject goods from the UAE and the subsidized goods from Vietnam. The Tribunal is of the view that while the CBSA has terminated its subsidy investigations with respect to the subsidized goods from all exporters of the UAE and Vietnam, it nevertheless falls on the Tribunal to terminate its inquiry on a country-wide basis.

Subject goods from the UAE

[57] With respect to the UAE, in its final determination, the CBSA terminated its dumping investigation in respect of subject goods originating in or exported from the UAE by Al Ghurair as it received an insignificant⁵⁶ margin of dumping. Additionally, the CBSA determined the amounts of subsidy for subject goods from the UAE, exported by Al Ghurair and United Iron and Steel Company LLC (UISC), to be 0.0 percent. Accordingly, the CBSA terminated its subsidy investigation in respect of both exporters from the UAE.⁵⁷

[58] In assessing whether the volume of dumped imports from a country is negligible, the Tribunal typically considers import activity during the CBSA’s period of investigation.⁵⁸ During this period, the import volume of dumped goods from the UAE as a percentage of total imports was less than 3 percent.⁵⁹ The Tribunal therefore determines that the volume of dumped subject goods originating in or exported from the UAE is negligible within the meaning of subsection 2(1) of *SIMA*. Accordingly, the Tribunal terminates its inquiry with respect to the dumping of subject goods originating in or exported from the UAE pursuant to subsection 42(4.1) of *SIMA*.

⁵⁵ The definition of “negligible” in subsection 2(1) also states as follows: “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”. This is not applicable in the present inquiry as the volume of imports from each of Turkey and Vietnam exceeded 3 percent.

⁵⁶ The definition of “insignificant” in subsection 2(1) states as follows: “(a) in relation to a margin of dumping, a margin of dumping that is less than two per cent of the export price of the goods, and (b) in relation to an amount of subsidy, an amount of subsidy that is less than one per cent of the export price of the goods”.

⁵⁷ Exhibit NQ-2019-002-04 at 11.

⁵⁸ *Concrete Reinforcing Bar* (9 January 2015), NQ-2014-001 (CITT) at para. 92; *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate* (6 January 2016), NQ-2015-001 (CITT) [*Plate VIII*] at para. 84; *Circular Copper Tube* (18 December 2013), NQ-2013-004 (CITT) at footnote 41; *Hot-rolled Carbon Steel Plate* (20 May 2014), NQ-2013-005 (CITT) at para. 64; *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at para. 71. This approach is also consistent with Canada’s notification to the WTO Committee on Anti-Dumping Practices that it would normally make this assessment on the basis of the CBSA’s period of investigation. See Committee on Anti-Dumping Practices, *Notification Concerning the Time-Period for Determination of Negligible Import Volumes Under Article 5.8 of the Agreement*, G/ADP/N/100/CAN. See also Committee on Anti-Dumping Practices, *Recommendation Concerning the Time-Period to Be Considered in Making a Determination of Negligible Import Volumes for Purposes of Article 5.8 of the Agreement*, G/ADP/10.

⁵⁹ Exhibit NQ-2019-002-07D (protected), Table 13.

[59] Furthermore, as a result of the CBSA's termination of the subsidy investigation in respect of subject goods exported by Al Ghurair and UISC, the volume of subsidized subject goods from the UAE is nil. Accordingly, pursuant to subsection 42(4.1) of *SIMA*, the Tribunal terminates its inquiry regarding *subsidized* subject goods originating in or exported from the UAE.

Subject goods from Vietnam

[60] With respect to Vietnam, in its final determination, the CBSA terminated its subsidy investigation in respect of subject goods originating in or exported from Vietnam by all exporters as there was either no subsidizing or the amounts of subsidy were insignificant. As a result of the CBSA's termination of the subsidy investigation for all exporters from Vietnam, the volumes of subsidized subject goods from Vietnam are nil.

[61] Accordingly, pursuant to subsection 42(4.1) of *SIMA*, the Tribunal terminates its inquiry regarding subsidized subject goods originating in or exported from Vietnam.

[62] In its injury analysis, the Tribunal will consider the *dumped* goods from Vietnam as the volume for these goods is not negligible.

Subject goods from Turkey

[63] Similarly, the volumes of both dumped and subsidized goods from Turkey are not negligible. Therefore, in its injury analysis, the Tribunal will consider the dumped and subsidized goods from Turkey.

Cumulation and cross-cumulation

[64] As a result of the CBSA's final determination described above, a threshold issue that must be determined by the Tribunal is whether, pursuant to subsection 42(3) of *SIMA*, it will cumulate the effects of the dumped and subsidized goods from Turkey with those of the dumped goods from Vietnam, or conduct a separate injury analysis of the subject goods from each of the two countries. The parties' submissions on cumulation are canvassed below, including comments on two recently issued decisions of the Tribunal which addressed cumulation, namely the expiry reviews in *Carbon Steel Screws* and *Rebar*.

Parties' positions

[65] Stelco argued that the Tribunal's practice of not cross-cumulating the effects of goods from a country that have been dumped and subsidized with the effects of goods from another country that have been only dumped or only subsidized should be abandoned. The Tribunal's approach stemmed from its consideration of the Appellate Body finding in *US – Carbon Steel (India)*,⁶⁰ which was enunciated at length in the Tribunal's expiry review decision in *Carbon Steel Welded Pipe*.⁶¹ Stelco submitted that it is appropriate to conduct a cumulative injury analysis in this case (i.e. the effects of

⁶⁰ Appellate Body Report, *US – Carbon Steel (India)*, WT/DS436/AB/R [*US – Carbon Steel (India)*].

⁶¹ *Carbon Steel Welded Pipe* (15 October 2018), RR-2017-005 (CITT) at paras. 23-55. The Tribunal has followed the same overall approach in a number of injury inquiries. See *FISC* at paras. 65-70; *Silicon Metal* (2 November 2017), NQ-2017-001 (CITT) [*Silicon Metal*] at paras. 51-55; *Polyethylene Terephthalate Resin* (16 March 2018), NQ-2017-003 (CITT) at paras. 33-37. Prior to the issuance of *US – Carbon Steel (India)*, the Tribunal noted that *SIMA* is silent on the issue of cross-cumulation, but interpreted subsection 42(3) to implicitly allow a cumulative assessment of the effects of any dumping and subsidizing. *Circular Copper Tube* (2 January 2014), NQ-2013-004 (CITT) at paras. 63, 73. See also *Plate VIII* at para. 75.

the dumped goods from Vietnam should be cumulated with those of the dumped and subsidized goods from Turkey). AMD and USW supported these submissions. In support of its position, Stelco argued that:

- *US – Carbon Steel (India)* is an “outlier” decision and is not binding on the Tribunal.⁶²
- The modern principle of statutory interpretation requires a mandatory assessment of the cumulative effect of the dumping or subsidizing where the margin of dumping is not insignificant and the conditions of competition warrant cumulation.⁶³ According to Stelco, the presumption of compliance with Canada’s international obligations is rebutted in this case. This interpretation is based on the wording of subsection 42(3), specifically the use of “shall” in describing the Tribunal’s authority; a conjunctive reading of “or” where the goods subject to the inquiry are both dumped and subsidized; and the view that the word “appropriate” appearing in subsection 42(3) of *SIMA* does not permit decumulation based on factors other than conditions of competition.⁶⁴
- Subsection 42(3) reflects Parliament’s intent to act in a manner inconsistent with the WTO provisions.⁶⁵ Stelco referred to the separate opinion in *Rebar* in which Member Bujold held that Parliament did not intend to prohibit cross-cumulation.⁶⁶
- Dumped and subsidized goods are not distinguishable from one another in the Canadian market and do not have different conditions of competition. The impact of the subject goods might not be adequately accounted for in a country-specific or separate analysis of a subset of dumped goods.
- Decumulation for reasons extraneous to *SIMA* undermines the object and purpose of the Act and diminishes the protection afforded by *SIMA*.⁶⁷

[66] Stelco submitted in its reply brief that, in the alternative, if the Tribunal decided to conduct a separate injury analysis to remain consistent with the WTO Agreement on Subsidies and Countervailing Measures (ASCM), it should not decumulate the effects of concurrently dumped imports but rather conduct a separate analysis of the effects of the subsidized goods.⁶⁸ It argued that the decumulation of the effects of dumped imports on the sole basis that some of those imports were also subsidized is “untenable” under *SIMA*.⁶⁹ Stelco submitted that this alternative approach would not prevent a finding in respect of the effects of cumulated dumped imports from all subject countries.

⁶² *Transcript of Public Hearing* at 28, 46-47.

⁶³ Stelco relied on the discussion of principles of statutory interpretation articulated in *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54 at para. 10; *Canada v. Vavilov* 2019 SCC 65; and *R v. Hape* [2007] 2 SCR 292, 2007 SCC 26 (CanLII) at para. 53. See Exhibit NQ-2019-002-B-01 at paras. 57-65, 72-74; and *Transcript of Public Hearing* at 31-34, 40. Stelco also referred to the separate opinion in *Carbon Steel Screws*, which discussed the Federal Court of Appeal decision in *Entertainment Software Assoc. v. Society Composers*, [2020] FCJ No. 671, 2020 FCA 100. See Exhibit NQ-2019-002-B-14 at paras. 14-16; and *Transcript of Public Hearing* at 43-45, 51-54.

⁶⁴ *Transcript of Public Hearing* at 32-33, 43-45, 51-54. Stelco also noted that the Tribunal conducts a single inquiry pursuant to section 42 of *SIMA* and renders a single determination under section 43, whereas the *US – Carbon Steel (India)* decision was made in the context of the WTO agreements, which treat dumping and subsidizing injury inquiries as separate proceedings.

⁶⁵ *Transcript of Public Hearing* at 36, 37.

⁶⁶ *Ibid.* at 37-39; *Rebar* at paras. 171-174.

⁶⁷ *Transcript of Public Hearing* at 52-53, 55.

⁶⁸ Exhibit NQ-2019-002-A-11 at paras. 17-18, 26.

⁶⁹ *Ibid.* at para. 15.

[67] CSVC submitted that the Tribunal should maintain its approach that ensures consistency with international obligations as interpreted in *US – Carbon Steel (India)* and that the Tribunal should follow the approach of the majority in *Carbon Steel Screws*.⁷⁰ CSVC submitted that, contrary to Stelco’s submission, Parliamentary intent cannot be inferred from the fact that *SIMA* was not amended following the *US – Carbon Steel (India)* decision.⁷¹ The UAE MOE submitted that the Tribunal has appropriately applied the decision in *US – Carbon Steel (India)* in accordance with Canada’s international obligations by refusing to cumulate the effects of imports from countries solely dumping with those of countries both dumping and subsidizing.⁷²

Analysis

[68] The Tribunal is of the view that subsection 42(3) of *SIMA* is clear and unambiguous only to the extent that it mandates cumulation of the effects of dumped goods from more than one country if the preconditions of that provision are met, including that the margin of dumping in relation to the goods from each subject country is not insignificant, the volumes are not negligible, and the conditions of competition warrant it. However, the Tribunal does not agree with the domestic producers’ position that subsection 42(3) is clear and unambiguous in mandating the cumulation or cross-cumulation of the effects of dumped goods with those of goods that are subsidized.

[69] The phrase “dumping or subsidizing” in subsection 42(3) of *SIMA* is not limited to a conjunctive reading but may be read disjunctively so as to permit the separate analysis of the effects of the dumped goods from those of the goods that are subsidized. For the reasons articulated by the majority in *Rebar*,⁷³ the Tribunal remains unconvinced of Stelco’s submissions that cumulation and cross-cumulation of the effects of dumped goods with those of subsidized goods is mandated under *SIMA* in a manner contrary to international obligations. One interpretation that takes into account that part of the provision, which is clear and unambiguous and would also be consistent with Canada’s international obligations under the ASCM,⁷⁴ would require the Tribunal to conduct separate analyses of the effects of dumped goods from those of subsidized goods. This was an approach acknowledged by the Tribunal previously (in *Rebar*⁷⁵ and *Plate VIII*⁷⁶) and by the domestic industry in this case, as noted above. The Tribunal remains of the view that, in choosing between possible interpretations

⁷⁰ *Transcript of Public Hearing* at 98.

⁷¹ Exhibit NQ-2019-002-E-01A at paras. 47-48.

⁷² Exhibit NQ-2019-002-H-01 at 2-4. The UAE MOE also noted the Tribunal’s confirmation that it is permissible to cumulatively assess the effects of dumping and subsidizing of the same goods from a single country. The UAE MOE relied on *Silicon Metal* at para. 52, which considered the Panel Report in *Canada – CSWP (Taiwan, Penghu, Kinmen and Matsu)*, WT/DS482/R [*Canada – CSWP (Taiwan)*].

⁷³ See *Rebar* at paras. 42-85.

⁷⁴ As also noted in *Rebar*, the WTO Appellate Body in *US – Carbon Steel (India)* stated that “. . . Article 15 is not silent on the question of cumulation of the effects of subsidized imports with the effects of non-subsidized imports. As we have explained above, Article 15.3 provides that investigating authorities may, if the conditions set out in the last clause of Article 15.3 are fulfilled, cumulatively assess the effects of imports that are simultaneously subject to countervailing duty investigations. It follows that a cumulative assessment pursuant to Article 15.3 must not encompass the effects of non-subsidized imports.” See *Rebar* at paras. 66-71.

⁷⁵ At para. 88.

⁷⁶ At paras. 88-91, 221.

permitted by the text, *SIMA* should be interpreted in a manner consistent with international obligations.⁷⁷

[70] Further to the CBSA's final determination, this inquiry concerns dumped goods from two countries. The Tribunal interprets section 42(3) of *SIMA* to mandate cumulation of the effects of dumped goods from Turkey and those of dumped goods from Vietnam, subject to assessment of the other applicable conditions. In this regard, as set out above, the volume of dumped goods from each subject country is not negligible. The margins of dumping are not insignificant. COR is a fungible commodity product and, as described below, producers compete head to head with the subject goods for market share.⁷⁸ On balance, the Tribunal finds that the conditions of competition⁷⁹ between the subject goods from Turkey and the subject goods from Vietnam, as well as between the subject goods and domestic like goods, largely overlap in the Canadian market because the goods are interchangeable,⁸⁰ have comparable product quality⁸¹ and are sold through similar channels of distribution. In this regard, both subject goods and like goods are sold to service centres and end-users.⁸² Finally, the amount of subsidy having been found by the CBSA in relation to some goods from Turkey is not insignificant, albeit relatively modest.⁸³

[71] For these reasons, the Tribunal finds it is compelled in this case to cumulate the effects of the dumped goods from the two countries.

[72] However, a separate analysis with respect to the subsidized goods that remain subject to this inquiry would not be practically feasible in this case, having regard to the arguments and evidence on

⁷⁷ As further set out in the majority reasons in *Rebar* at para. 47 et al.

⁷⁸ The majority of firms reported that the lowest-priced goods "usually" win the contract or sale. Exhibit NQ-2019-002-06F, Table 11.

⁷⁹ With respect to the conditions of competition for the purposes of subsection 42(3) of *SIMA*, the Tribunal must be satisfied that the subject goods compete with each other and/or with the domestically produced like goods. The Tribunal has held that relevant factors for assessing this could include interchangeability, quality, pricing, distribution channels, modes of transportation, timing of arrivals, and geographic dispersion. See, for example, *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (17 August 2001), NQ-2001-001 (CITT) at 16; and *Waterproof Footwear* (25 September 2009), NQ-2009-001 (CITT) at footnote 28. The Tribunal has also recognized that there may be other factors that it can consider in deciding whether the effects of subject goods from a particular country should be cumulated, and that no single factor is determinative. See *Laminate Flooring* (16 June 2005), NQ-2004-006 (CITT) at para. 80.

⁸⁰ The questionnaire responses indicate that the majority of respondents found that the subject goods from Turkey and Vietnam to be either "always" or "usually" interchangeable with the like goods. Exhibit NQ-2019-002-6F, Table 7.

⁸¹ Exhibit NQ-2019-002-06F, Tables 8, 10.

⁸² *Ibid.*, Table 5.

⁸³ During closing arguments, CSVC submitted that with respect to cross-cumulation, Turkey is a developing country with a *de minimis* country-wide amount of subsidy. For the purposes of subsection 42(4) of *SIMA* and Articles 27.10 and 27.12 of the *ASCM*, the Tribunal follows the same administrative practice as the CBSA, which is to refer to the OECD's Development Assistance Committee List of Official Development Assistance Recipients (DAC List), available at <http://www.oecd.org/dac/stats/daclist.htm>. The CBSA recognized Vietnam as a developing country for the purposes of *SIMA*, as it is listed on the DAC List as a "least developed country", "other low income country" or "lower middle income country or territory". See Exhibit NQ-2019-002-04E at paras. 64, 265. Consistent with the CBSA investigation, the Tribunal does not consider Turkey to be a developing country as it is not included as a "least developed country", "other low income country" or "lower middle income country or territory" on the DAC List.

the record of this case, which do not address the manner in which the effect of the subsidized goods should be isolated from the effects of the dumped goods. The Tribunal could consider this approach in the future.

[73] Considering the above practical limits, to ensure compliance with Article 15.3 of the *ASCM* as interpreted by the WTO Appellate Body in *US – Carbon Steel (India)*,⁸⁴ the Tribunal also assessed the effects of the subject goods from each country separately. The information on the record permits these additional analyses. As set out below, the Tribunal finds that the subject goods from each country have, in and of themselves, caused injury to the domestic industry.

INJURY ANALYSIS

[74] Pursuant to subsection 37.1(1) of the *Regulations*,⁸⁵ in determining whether the dumping and subsidizing have caused material injury to the domestic industry, the Tribunal is to consider the volume of the dumped and subsidized goods, their effect on the price of like goods in the domestic market, and their resulting impact on the state of the domestic industry. Subsection 37.1(3) also directs the Tribunal to consider whether a causal relationship exists between the dumping and subsidizing of the goods and the injury on the basis of the factors listed in subsection 37.1(1), and whether any factors other than the dumping and subsidizing of the goods have caused injury.

Parties' positions

[75] This case is the second injury inquiry in relation to COR. In *COR NQ 2019*, the Tribunal found that the dumped goods from China, Chinese Taipei, India and Korea (COR I countries) did not cause injury but were threatening to cause injury to the domestic industry. AMD and Stelco submitted that immediately after provisional duties were imposed on the dumped goods from the COR I countries, in October 2018, immediate source switching occurred and the subject goods quickly took their place in the domestic market.⁸⁶ According to the domestic producers, subject countries began exporting large volumes of subject goods in 2018 and 2019, by leveraging low prices to capture market share.

[76] The domestic producers argued that material injury was present whether, for the purposes of its injury analysis, the Tribunal cumulates the effects of the subject goods from both Turkey and Vietnam or assesses the effects of the subject goods from each country separately.⁸⁷ Furthermore, the removal of import volumes from Borçelik and from the UAE in the analysis did not change the overall trends or the injurious impact that the subject goods had on the domestic industry. It was noted that imports from Borçelik and the UAE represented a minority of total imports, and in

⁸⁴ The Tribunal is also cognizant of the WTO Panel finding in *Canada – CSWP (Taiwan)* 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.

⁸⁵ SOR/84-927.

⁸⁶ The Tribunal notes that provisional duties on imports from the COR countries were imposed on October 24, 2018, pursuant to the CBSA's preliminary determination. The Tribunal's determination in *COR NQ 2019* was issued on February 21, 2019.

⁸⁷ *Transcript of Public Hearing* at 59, 70.

particular, that exporters from the UAE participated in a niche segment of the market involving light-gauge materials which are higher-value products.⁸⁸

[77] The domestic producers submitted that the increasing volumes of subject goods in late 2018 and 2019 caused the domestic industry to suffer material injury, notably in 2019 and early 2020. AMD submitted that in 2019, Canadian market pricing declined substantially, domestic prices were undercut by subject goods in each quarter of 2019, and domestic producers were unable to offset increasing production costs. The domestic industry, profitable in 2018, suffered significant losses in 2019 which continued into the first quarter of 2020.

[78] For its part, CSVC raised several potential causes other than the subject goods for the domestic industry's declining performance, including the impact of Section 232 of the *Trade Expansion Act of 1962* (Section 232 tariffs) imposed on steel imports into the United States, Canada's retaliatory import surtax, the effects of the COVID-19 pandemic, global price trends for COR in international and North American markets, and imports from non-subject countries, in particular the United States.

Preliminary matters

Other country import volumes in the Investigation Report

[79] The domestic industry took issue with the fact that the volume of non-subject imports from "Other Countries" for 2019 in the Tribunal's Investigation Report was higher than the volume of non-subject imports shown in the CBSA enforcement data for *COR NQ 2019*, as well as import data from Statistics Canada and Global Affairs Canada. They argued that this discrepancy was based on inaccurate information provided in the responses to the importers' questionnaire, which in their view skewed the estimate for non-responsive importers.⁸⁹ The domestic industry requested that, in the circumstances, the Tribunal rely on the Statistics Canada data for the "Other Countries" import volumes and unit values.

[80] The estimated volumes for "Other Countries" in the Investigation Report are based on the Tribunal's methodology and will likely differ from data from other sources. In this case, they are higher than the import data submitted by the domestic industry. However, the Tribunal sought clarification from certain questionnaire respondents and received either a questionnaire revision or a confirmation of the data previously received. For its part, the Tribunal applied its well-established methodology to estimate imports and sales from non-subject countries using import data provided in the responses to the Tribunal's questionnaires and estimations based on CBSA import data for non-surveyed and non-responding importers.⁹⁰ One of the goals of the questionnaires and the estimations is to capture imports and sales of goods meeting the product definition, which in this case, resulted in higher volumes than those shown in other sources of import data.

[81] The Tribunal considers the data in its Investigation Report to be the best evidence on the record concerning the relative volume and market share of non-subject imports. More importantly, the Tribunal is satisfied that the data in the Investigation Report provides a reasonable and

⁸⁸ *Ibid.* at 13-15.

⁸⁹ Exhibit NQ-2019-002-22; Exhibit NQ-2019-002-023 (protected).

⁹⁰ Exhibit NQ-2019-002-06F at 14.

proportionate picture of the Canadian market in terms of the relative market share of subject goods, imports from non-subject countries, like goods, and the manner in which competition between subject and like goods evolved over the period of investigation.

Evidence supporting account-specific allegations of injury

[82] CVSC submitted that the several account-specific examples of injury submitted by AMD were supported by insufficient documentary evidence. In reply, the domestic industry highlighted information in the supporting documentation that CVSC had identified as missing (e.g. names of customers), provided further context for the information that was submitted (e.g. the manner in which AMD was able to confirm source countries) and provided reasons for missing information (e.g. customers were unwilling to identify mills). Mr. Osborne of AMD indicated that, in some cases, customers are willing to provide information, but not documentation, adding that, in those cases, AMD's import competition report was the best and only record of the information provided by the customer. Moreover, he explained that the account-specific evidence is "merely a sampling of instances in which [subject goods] caused injury by depressing domestic prices" considering the regularity with which customers do not share import offers with domestic producers (due to a trade remedy case or belief that the domestic industry could not compete with the low priced offers) or divulge supporting documentation.⁹¹ Bearing in mind the foregoing, the Tribunal will consider the account-specific injury allegations on record along with other evidence.

[83] For the reasons set out above in the discussion on cumulation, the Tribunal will first conduct an analysis of the subject goods from Turkey and Vietnam together.⁹²

INJURY ANALYSIS OF THE SUBJECT GOODS FROM TURKEY AND VIETNAM (CUMULATED)

Import volume of the subject goods

[84] Paragraph 37.1(1)(a) of the *Regulations* directs the Tribunal to consider the volume of the subject goods and, in particular, whether there has been a significant increase in the volume, either in absolute terms or relative to the production or consumption of the like goods.

⁹¹ Exhibit NQ-2019-002-A-13 at para. 5.

⁹² The Tribunal issued a revised Investigation Report on October 19, 2020 (Exhibit NQ-2019-002-07D (protected) and Exhibit NQ-2019-002-06F), reflecting the results of the final determination of the CBSA. The revised Investigation Report contained separate line entries for each subject country (Turkey, Vietnam and UAE), a cumulated total for subject goods from all three countries and a cumulated total for non-subject goods. Due to the termination of the Tribunal's inquiry with respect to the dumped goods from the UAE, those goods must instead be considered as non-subject goods for the purposes of the Tribunal's injury analysis. As a result, *total* volumes of subject and non-subject imports were re-calculated based on the data set out in the volume tables in the revised Investigation Report (i.e. in order to remove the data for UAE goods previously included in the "subject imports" grouping, and place them into the "non-subject imports" grouping). Cumulated average unit values and market shares of subject and non-subject imports were also re-calculated based on the recalculated import volumes. Individual country data for Turkey and Vietnam referenced in this analysis is fully reflected in the revised Investigation Report dated October 19, 2020.

[85] The volume of the subject goods increased year over year by 904 percent in 2018 before increasing a further 199 percent in 2019.⁹³ This represented an increase of 9 percentage points in 2018 and 34 percentage points in 2019 in the share of imports held by the subject goods, an increase that occurred at the expense of imports from “Other Countries” – the category that includes the COR I countries.

[86] This represented an increase of 42 percentage points in the share of imports held by the subject goods over the entire POI, an increase that occurred at the expense of imports from the “Other Countries” category.⁹⁴

[87] Relative to domestic production, the volume of subject goods increased by 5 percentage points in 2018 and a further 13 percentage points in 2019. Relative to domestic sales from domestic production, the volume of subject goods increased by 7 percentage points in 2018 and a further 16 percentage points in 2019.⁹⁵

[88] The Tribunal finds that there has been a significant increase in the absolute and relative volume of imports of the subject goods.

Price effects of the subject goods

[89] Paragraph 37.1(1)(b) of the *Regulations* directs the Tribunal to consider the effects of the subject goods on the price of like goods and, in particular, whether the subject goods have significantly undercut or depressed the price of like goods, or suppressed the price of like goods by preventing the price increases for those like goods that would otherwise likely have occurred. In this regard, the Tribunal distinguishes the price effects of the subject goods from any price effects that have resulted from other factors affecting prices.

Approach to analysing prices

[90] According to Mr. Osborne of AMD, the Canadian market for COR in general is a mature market, which means that there is a known customer base and that growth opportunities tend to be limited.⁹⁶ As noted above, COR is a fungible commodity product and, as such, its price is an important factor in purchasing decisions.⁹⁷ The evidence of Ms. Seth of AMD was that each transaction is price sensitive, such that low-priced imports have a great impact on market sales of COR.⁹⁸ Most sales occur at spot market prices, although some customers purchase on a contract basis. Domestic producers negotiate with customers (including distributors and end users) using a “base price” per product, to which additional charges may be applied for “extras”, such as particular widths and thicknesses, grade, coatings and other processing extras.⁹⁹

⁹³ Calculated from Exhibit NQ-2019-002-07D (protected), Table 15.

⁹⁴ *Ibid.*

⁹⁵ *Ibid.*, Tables 14, 15, 19.

⁹⁶ Exhibit NQ-2019-002A-07 at para. 12.

⁹⁷ The majority of firms reported that the lowest-priced goods “usually” win the contract or sale. Exhibit NQ-2019-002-06F, Table 11. See also *COR NQ 2019* at para. 53.

⁹⁸ Exhibit NQ-2019-002-A-03 at paras. 22-24.

⁹⁹ Exhibit NQ-2019-002-A-07 at paras. 22, 23.

[91] The evidence on the record indicates that the domestic industry enjoys a price premium over imports, i.e. the price reduction at which purchasers of COR would consider offshore sources. According to Mr. Osborne's witness statement, the domestic price premium, which reflects the risks associated with purchasing offshore imports, is estimated at approximately \$50 per metric tonne.¹⁰⁰ Other evidence on the record shows that this premium can vary.¹⁰¹ As stated by AMD, the premium can vary with each customer depending on their level of risk tolerance as well as market conditions at the time of purchase. In this regard, Mr. Sykes of Nova Steel explained that their competitors are willing to go offshore for price differentials of less than \$80 per metric tonne (which is the price differential at which Nova Steel would consider purchasing offshore COR).¹⁰² While the domestic premium may vary, the Tribunal finds Mr. Osborne's estimation to be reasonable and will assess the significance of any price undercutting on the basis of a domestic price premium of \$50 per metric tonne. However, the Tribunal acknowledges that the premium for buying domestic may in some cases be greater.

[92] As was the case in *COR NQ 2019*,¹⁰³ the domestic producers submitted that prices of like goods should be compared to the average import prices for the goods rather than the prices at which distributors and service centres re-sell the goods in the market. In this regard, Mr. Osborne of AMD explained that producers sell mill quantities to end users and to distributors or service centres in Canada, and those distributors or service centres then resell the like goods to end users, generally doing so on a just-in-time basis, and in quantities less than mill quantities.¹⁰⁴ Import prices therefore better reflect the point at which direct competition with foreign producers occurs. The domestic producers also submitted that average prices of prime COR sold by the domestic industry should be given more weight as imports generally do not include seconds. Moreover, greater weight should be given to benchmark pricing, which compares domestic and import prices on an "apples-to-apples" basis and accounts for variables related to product mix such as grade, coding weight, dimensions and other variables that can have a significant impact on the price for any given sale of COR.¹⁰⁵

[93] The approach suggested by the domestic industry is generally supported by the evidence on the pricing practices in the Canadian market.¹⁰⁶ The Tribunal considers it appropriate to analyze the totality of the evidence on the record, including average prices, which is standard practice in steel cases, including cases with commodity products and product mix issues. In assessing undercutting, the Tribunal will compare average selling prices of like goods with average selling prices of imports as well as purchase prices of importers-distributors and service centres. Moreover, the Tribunal will give more weight to the price effects that can be seen from comparing prices of benchmark products, sales to common accounts, and average and benchmark pricing for prime COR only. Placing the focus on prime COR pricing is appropriate given that the evidence supports that seconds are largely excluded from imports.¹⁰⁷

¹⁰⁰ These risks include longer lead times between order and delivery as well as the need to take larger quantities into inventory. Exhibit NQ-2019-002-A-07 at para. 28; Exhibit NQ-2019-002-A-15 at para. 11.

¹⁰¹ Exhibit NQ-2019-002-A-09 at paras. 10, 11; Exhibit NQ-2019-002-A-10 (protected) at paras. 10, 11; Exhibit NQ-2019-002-B-07 at para. 21.

¹⁰² Exhibit NQ-2019-002-B-13 at 3, 4.

¹⁰³ *COR NQ 2019* at paras. 74-76.

¹⁰⁴ Exhibit NQ-2019-002-A-07 at para. 11; Exhibit NQ-2019-002-A-03 at para. 26.

¹⁰⁵ *Transcript of Public Hearing* at 62, 63.

¹⁰⁶ In this case all 10 importers identified themselves as distributors. Exhibit NQ-2019-002-06F, Table 3.

¹⁰⁷ In 2019, over 90 percent of purchases were of prime COR. Exhibit-NQ-2019-002-07D (protected), Table 6.

Price undercutting

[94] As set out above, the Tribunal examined pricing data from multiple angles. This examination confirms that, having regard to the totality of the evidence, price undercutting by the subject goods, by significant margins, took place during the POI, particularly in 2018 and 2019.

[95] Data on average selling prices indicates that the selling prices of the like goods were undercut by the subject goods in every period of the POI.¹⁰⁸ This includes, in particular, 2018 and 2019, which the Tribunal considers to be the most significant periods of reference during the POI, as they saw a significant increase in import and sales volumes of the subject goods (in 2017, the volume of sales of subject goods remained minimal).

[96] Undercutting is also seen in every period of the POI when comparing domestic sales prices to subject goods selling prices to distributors. However, with respect to sales to end users, undercutting is only seen in 2018 when comparing the domestic sales price to the selling price of subject imports.¹⁰⁹ On the other hand, non-subject imports did not undercut domestic sales prices at either the aggregate market level or at either the end-user or distributor trade levels.¹¹⁰

[97] When average selling prices of like goods are compared to the import prices of the subject goods, the degree of undercutting (i.e. the price differential) in 2018 and 2019 further increases. This data does not show undercutting in 2017, a period in which, as noted, import volumes of subject goods were minimal. The undercutting in 2019 exceeded the domestic premium significantly.¹¹¹

[98] Data for sales to common accounts in 2018 and 2019 show 21 instances of competition between the like goods and the subject goods, at four accounts. This competition resulted in 14 instances of price undercutting, with 11 of the 14 instances being in excess of the domestic premium.¹¹²

[99] In addition, AMD and Stelco have provided several account-specific allegations of lost sales where its offered price was undercut by the subject goods. AMD submitted evidence of four instances of lost sales to Vietnam in the second half of 2019.¹¹³ Stelco had two lost sales by imports from Turkey and Vietnam in the second half of 2018.¹¹⁴ In all instances of undercutting, the price differential significantly exceeded the domestic price premium. In addition, Mr. Lachapelle of Taylor Steel and Mr. Sykes of Nova Steel also provided specific examples where either Taylor Steel or Nova Steel purchased COR from the subject countries or received offers at prices significantly lower than the

¹⁰⁸ Calculated from Exhibit NQ-2019-002-07D (protected), Tables 19, 30.

¹⁰⁹ *Ibid.*, Tables 22, 25, 32, 34.

¹¹⁰ *Ibid.*, Table 19, 22, 25, 30, 32, 34.

¹¹¹ *Ibid.*, Tables 15, 19, 28, 30.

¹¹² *Ibid.*, Tables 41, 42, 43, 45. The Tribunal notes that unit values for subject imports from Vietnam for Top Accounts #2 and #3 were omitted in Exhibit NQ-2019-002-07D (protected), Tables 42, 43. Accordingly, unit values for Top Accounts for subject imports from Vietnam as they pertain to Top Accounts #2 and #3 were considered from Exhibit NQ-2019-07B (protected), Tables 42, 43.

¹¹³ Exhibit NQ-2019-002-A-08 (protected), Table 1 at 13, 14. The Tribunal notes that one of the allegations of lost sales identified in AMD's Aid to Argument (protected) at 128 involved imports that do not form part of the subject goods. See Exhibit NQ-2019-002-A-08 (protected) at para. 49.

¹¹⁴ Exhibit NQ-2019-002-B-06 (protected) at paras. 33-34, 44.

purchase price of the like goods.¹¹⁵ It was also noted by Mr. Lachapelle that these offers increased considerably following the initiation of the investigation against imports from the COR I countries.¹¹⁶ According to Mr. Lachapelle, domestic producers “. . . were required to compete with pricing that was several hundred dollars per [metric tonne] below Canadian producer pricing”.¹¹⁷

[100] The quarterly benchmark product data for 2018 and 2019, which provide the most “apples-to-apples” comparison, show 23 instances of competition between the like goods and the subject goods with 18 instances of price undercutting, with 14 of those instances being in excess of the domestic premium. The Tribunal notes that for benchmark products 2 and 3, the magnitude of the undercutting declines and, in some cases, the undercutting is eliminated towards the end of 2019.¹¹⁸ In the Tribunal’s view, the reduction of the magnitude of undercutting seen in late 2019 is indicative of the substantial price reductions that were made by the domestic industry in order to maintain sales.

[101] The Tribunal further looked at the prices of prime COR for both the like goods and subject goods. Considered on this basis, the magnitude of price undercutting increases further. The benchmark data show 23 instances of competition, with 18 instances of price undercutting, 16 of which are instances where the level of undercutting is in excess of the domestic premium.¹¹⁹

[102] CSVC submitted that the Tribunal should consider the average margin of dumping when accounting for the price differential between the prices of like goods and the prices of subject imports from Vietnam. However, the focus of the Tribunal’s analysis is on the effect of the dumped or subsidized imports themselves, including their prices in the Canadian market, rather than the effects of the dumping or subsidization *per se*.¹²⁰

[103] On the basis of this evidence, the Tribunal finds that the prices of the subject goods significantly undercut the price of the like goods during the POI.

Price depression

[104] The domestic industry submitted that the extensive price undercutting exerted strong pressure on Stelco and AMD to lower their prices through 2019, even in an environment of rising costs. The Tribunal finds that this is demonstrated by the evidence on the record.

[105] The average selling prices of like goods and subject goods both increased from 2017 to 2018, but then decreased in 2019. In the case of the like goods, average selling prices increased by 12 percent in 2018 then fell by 7 percent in 2019. Comparatively, the increase in average selling

¹¹⁵ Exhibit NQ-2019-002-A-10 (protected) at paras. 13, 16, 18-26, 29-32, 34-41; Exhibit NQ-2019-002-B-07 at paras. 14, 16; Exhibit NQ-2019-002-B-08 (protected) at para. 13.

¹¹⁶ Exhibit NQ-2019-002-A-09 at paras. 12. Mr. Sykes also noted a rise in import offers. See Exhibit NQ-2019-002-B-07 at para. 9.

¹¹⁷ Exhibit NQ-2019-002-A-09 at para. 27.

¹¹⁸ Calculated from Exhibit NQ-2019-002-07D (protected), Tables 55-60. The Tribunal notes that unit values for subject imports from Turkey, as they pertain to Benchmark Product No. 4, were omitted in Exhibit NQ-2019-002-07D (protected), Table 58. Accordingly, unit values for subject imports from Turkey, as they pertain to Benchmark Product No. 4, were considered from Exhibit NQ-2019-07C (protected), Tables 19, 22, 23, 24.

¹¹⁹ Exhibit NQ-2019-002-6D, Table 24; Exhibit NQ-2019-002-7C (protected), Table 22.

¹²⁰ *Dry Wheat Pasta* (26 July 2018), NQ-2017-005 (CITT) at para. 129; affirmed in *AGT Food and Ingredients v. Canadian Pasta Manufacturers Association*, 2019 FCA 229 at paras. 4-8.

prices of subject goods was more substantial in 2018, increasing by 36 percent then decreasing by 8 percent in 2019.¹²¹ Import prices of subject goods decreased by 2 percent in 2018 and by a further 16 percent in 2019.¹²²

[106] Similar price trends can be seen when comparing prices of like goods to prices of subject goods in the distributors and end-users trade levels over the course of the POI. However, from 2018 to 2019, the like goods saw price declines equal to or greater than those seen at the aggregate level in each trade level while the subject goods saw a decline less than that experienced at the aggregate level for sales at the distributor level and an increase in price at the end user level.¹²³

[107] The domestic industry also provided several examples of account-specific claims of having to lower its prices in order to win a sale. In particular, Mr. Osborne provided as many as 17 specific examples of sales where AMD lowered its price in direct competition with subject goods throughout the POI.¹²⁴ Stelco had 2 instances of direct price competition which resulted in price reductions to secure the sale.¹²⁵

[108] When examined in light of the rapidly increasing volumes of subject imports in 2018 and 2019, and the significant price undercutting observed in those periods, the evidence suggests that the subject goods significantly depressed the prices of the like goods in 2019.

- Inventory overhang

[109] The build-up of inventory was also raised as a factor contributing to price depression in 2019. Mr. Lachapelle of Taylor Steel noted that this overhang of inventory from purchases made late in the fourth quarter of 2018 through the first quarter of 2019 put a downward pressure on domestic prices.¹²⁶ Mr. Sykes of Nova Steel described inventory levels in late 2018 to early 2019, which were larger than usual, and had the effect of reducing purchases during 2019 as Nova Steel worked down its inventory.¹²⁷ As explained by AMD, the inventory overhang in the domestic market created market uncertainty and affected many customer negotiations. Customers purchased low-priced imported products to average down the value of their existing inventories and, at times, imports were sold off the dock on speculation.¹²⁸ Moreover, COR from inventories were sold in the market months after they were imported, lessening the demand for COR generally in the second half of 2019. Accordingly, the Tribunal finds that the inventory overhang also contributed to the overall price depression affecting like goods.

¹²¹ Calculated from Exhibit NQ-2019-002-07D (protected), Tables 19, 30; Exhibit NQ-2019-002-06F, Table 31.

¹²² Calculated from Exhibit NQ-2019-002-07D (protected), Tables 15, 28.

¹²³ *Ibid.*, Tables 22, 25, 32, 34.

¹²⁴ Exhibit NQ-2019-002-A-08 (protected), Table 1 at 13-14. The supporting document for one allegation shows an import offer with an unknown date. Exhibit NQ-2019-002-A-08 (protected) at para. 72 and at 118.

¹²⁵ Exhibit NQ-2019-002-B-06 (protected) at paras. 39, 44.

¹²⁶ Exhibit NQ-2019-002-A-09 at para. 42.

¹²⁷ Exhibit NQ-2019-002-B-13 at 4, 5.

¹²⁸ Exhibit NQ-2019-002-A-15 at para. 44.

- Global COR prices

[110] The price effects of the dumped and subsidized goods must also be considered within the broader context of falling global prices of flat-rolled sheet. In this regard, CSVC submitted that the state of the domestic industry is attributable to global declining prices for COR starting in late 2018 and continuing through 2019, as seen in Metal Bulletin pricing data for hot-dipped galvanized (HDG) products in various international markets.¹²⁹ Mr. Anderson of Stelco also provided North American pricing for flat-rolled steel products reported by American Metal Market, which showed similar declining trends.¹³⁰

[111] The domestic industry's response on this point was two-fold. It argued that distortions in the domestic COR market did not occur as a result of general market trends, but rather due to the presence of the subject goods. Alternatively, it submitted that even if global market trends had impacted Canadian prices, prices would not have fallen to the extent they did or had the impact that they did, if not for the subject goods. The domestic industry noted the increased offering of the subject goods to Canadian customers at low prices.

[112] In the Tribunal's view, global COR pricing trends have likely impacted Canadian prices insofar as they influenced pricing of COR from offshore sources.¹³¹ However, there is no evidence on the record that would indicate persuasively that the extent of the depressive and suppressive effects on Canadian prices, as these are addressed below, can be explained by these general pricing trends. In comparing prices of the subject goods to prices of non-subject imports from "Other Countries" further below, the evidence is clear that the subject goods were the price leaders in both 2018 and 2019. This affirms the conclusion that the pricing pressures faced by the domestic industry were attributable to the prices of subject goods as opposed to more general market prices seen in other international markets.

[113] For the reasons described above, the evidence illustrates that the volume and prices of subject goods from Turkey and Vietnam that entered the market shortly after the initiation of *COR NQ 2019* had injurious effects on the domestic industry. On balance, the evidence demonstrates that it was necessary for domestic producers, in order to maintain sales volumes, to lower prices of like goods to compete head to head with the subject goods in the latter part of the POI, and the Tribunal finds accordingly.

[114] Considering the above, the Tribunal finds that the prices of like goods were significantly depressed by the increasing volumes of lower-priced subject goods in 2019.

Price suppression

[115] In order to assess whether the subject goods have suppressed the price of like goods, the Tribunal typically compares the domestic industry's average unit cost of goods manufactured (COGM) or cost of goods sold (COGS) with its average unit selling values in the domestic market to determine whether the domestic industry has been able to increase selling prices in line with

¹²⁹ Exhibit NQ-2019-002-E-02 (protected) at 58-65.

¹³⁰ Exhibit NQ-2018-002-B-06 (protected) at 7.

¹³¹ CSVC noted that its domestic prices for COR are in line with prices of HDG products in many regional markets, including North Europe, South Europe and India, as reported by Metal Bulletin. Exhibit NQ-2019-002-E-01A at para. 41.

increases in costs. However, the Tribunal may also 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”.¹³² Submissions were made by CSVC with respect to the impact, if any, of global COR price trends. These are addressed further below.

[116] In the present case, the domestic selling price increased from 2017 to 2018 and then declined in 2019 while both COGS and COGM increased throughout the POI.¹³³

[117] From 2017 to 2018, the increase in the domestic selling price exceeded the increase in COGM experienced by the domestic industry. In contrast, from 2018 to 2019, the domestic industry experienced a steep decline in the domestic selling price while the COGM continued to increase.¹³⁴ This price suppression experienced by the domestic industry coincides with the increased competition with the subject goods experienced in 2019.

[118] With respect to the domestic industry’s production costs, CSVC indicated that prices for HRC and CRC, both substrates used in the production COR, declined in both the international and North American markets.¹³⁵ Insofar as this raised any question as to whether price trends seen in 2018 and 2019 for COR substrates should have been reflected in production costs of the domestic industry, Stelco submitted that there is no direct correlation between producers’ raw material costs to produce COR and the spot market price for HRC or CRC.¹³⁶ Market prices of HRC or CRC would impact producers who implement a re-roller model of production, i.e. COR produced from outsourced HRC and CRC. In this regard, the fact that both AMD and Stelco are “integrated producers” is particularly relevant.¹³⁷ Both producers purchase raw input materials such as coal, iron ore, scrap and zinc, to produce internally substrate that is used for, among other things, COR production.¹³⁸ As explained by AMD, the major components of the domestic industry’s direct material costs to produce COR are the raw materials, and the increased costs during the POI were driven by higher iron ore and coal prices.¹³⁹ AMD also provided evidence that its production costs of HRC and CRC are generally lower than offshore prices.¹⁴⁰ The domestic industry also noted that, for

¹³² Subparagraph 37.1(1)(b)(iii) of the *Regulations*. See, for instance, *Certain Hot-rolled Carbon Steel Plate and High-strength Low-alloy Plate* (17 May 1994), NQ-93-004 (CITT) at 17-18; *Polyiso Insulation Board* (6 May 2010), NQ-2009-005 (CITT) at para. 71. 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. Report of the Panel, *Russia – Light Commercial Vehicles (Germany and Italy)*, WTO Docs WT-DS479/R, at paras. 7.57-7.61; Report of the Appellate Body, *China – Flat-rolled Electrical Steel (US)*, WTO Docs. WT/DS414/AB/R, at paras. 130, 141, 152.

¹³³ Exhibit NQ-2019-002-07D (protected), Tables 30, 64; Exhibit NQ-2019-002-06F, Table 31.

¹³⁴ Exhibit NQ-2019-002-07D (protected), Tables 30, 64.

¹³⁵ Exhibit NQ-2019-002-E-02A (protected) at 66, 70, 72, 75.

¹³⁶ Exhibit NQ-2019-002-RI-02A at 1.

¹³⁷ Exhibit NQ-2019-002-A-15 paras. 17, 26; Exhibit NQ-2019-002-B-11 at para. 18; Exhibit NQ-2019-002-B-12 (protected) at para. 18.

¹³⁸ Exhibit NQ-2019-002-A-15 at paras. 26, 28. AMD also noted that it purchases slabs from ArcelorMittal Long Products Canada in Contrecoeur, Quebec. Exhibit NQ-2019-002-RI-01 at 1, 2.

¹³⁹ Exhibit NQ-2019-002-RI-01 at 1.

¹⁴⁰ *Ibid.* at 1, 2; Exhibit NQ-2019-002-RI-01A (protected) at 1, 2. Stelco also provided evidence of price differentials between its direct material costs over the POI and CRC market prices in North America and import prices (Global Affairs Canada’s Steel Import Monitoring Program). Stelco indicated that it does not produce COR directly from HRC. Exhibit NQ-2019-002-RI-02 at 1, 2; Exhibit NQ-2019-002-RI-02A (protected) at 1, 2.

integrated producers, any major shift with regard to the outsourcing of substrate would create inefficiencies and have a significant impact on the business model of the domestic industry as a whole. Based on the evidence on the record, the Tribunal finds it reasonable that the domestic industry's average production costs during the POI would not reflect market price trends for substrate.¹⁴¹

[119] Based on the evidence, the Tribunal finds that the subject goods have significantly suppressed the price of the like goods.

Resultant impact on the domestic industry by the subject goods

[120] Paragraph 37.1(1)(c) of the *Regulations* requires the Tribunal to consider the resulting impact of the subject goods on the state of the domestic industry and, in particular, all relevant economic factors and indices that have a bearing on the state of the domestic industry.¹⁴² These impacts are to be distinguished from the impact of other factors also having a bearing on the domestic industry.¹⁴³ Paragraph 37.1(3)(a) of the *Regulations* requires the Tribunal to consider whether a causal relationship exists between the dumping or subsidizing of the goods and the injury, retardation or threat of injury, on the basis of the volume, the price effect, and the impact on the domestic industry of the subject good.

Non-subject imports

[121] Before turning to the impact of the subject goods on the domestic industry, it is necessary for the Tribunal to put the presence of the subject goods into context in relation to non-subject imports in the domestic market, which represent a larger portion of overall total import volumes and market share than the subject goods.¹⁴⁴ At the outset, it bears noting that volumes of non-subject imports increased by 41 percent in 2018 but decreased by 58 percent in 2019.¹⁴⁵ U.S. import volumes and market share were insignificant over the POI and prices of U.S. imports were higher than average selling prices of like goods in each period of the POI.¹⁴⁶ With respect to imports from

¹⁴¹ Exhibit NQ-2019-002-07D (protected), Schedules 5, 10.

¹⁴² 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, (ii.1) the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods, and (iii) in the case of agricultural goods, including any goods that are agricultural goods or commodities by virtue of an Act of Parliament or of the legislature of a province, that are subsidized, any increased burden on a government support programme".

¹⁴³ Paragraph 37.1(3)(b) of the *Regulations* directs the Tribunal to consider whether any factors other than dumping or subsidizing 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 or subsidized, (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".

¹⁴⁴ Calculated from Exhibit NQ-2019-002-07D (protected), Table 19.

¹⁴⁵ *Ibid.*, Table 15.

¹⁴⁶ *Ibid.*, Tables 15, 17, 28, 30.

“Other Countries”, import volumes increased by 39 percent in 2018 but decreased significantly in 2019 by 62 percent.¹⁴⁷

[122] In terms of price undercutting, when comparing average import prices, the subject goods undercut the prices of non-subject goods in 2019. A comparison of average selling prices shows that the subject goods were the price leaders in each year of the POI.¹⁴⁸ Based on this evidence, as well as the data on market share trends discussed below, the Tribunal is of the view that the pricing pressures faced by the domestic industry were more acutely attributable to the lower-priced subject goods in the Canadian market.

Sales and market share

[123] The total COR market expanded in volume by 17 percent in 2018 compared to 2017 and fell by 13 percent in 2019, for an overall contraction of 4 percent over the POI.¹⁴⁹ In this context, total domestic sales of like goods remained relatively stable throughout the POI, falling 1 percent in 2018 with no further changes in 2019.¹⁵⁰ While maintaining its sales volumes, the domestic industry’s market share fell by 10 percentage points in 2018 and increased by 9 percentage points in 2019, for an overall decrease of 1 percentage point over the POI. This increase in 2019 coincided with the reduction in market share of non-subject goods, including those from COR I countries. Despite this increase in 2019, it is clear from the data, as described below, that the subject goods gained a greater share of the market and had a more significant rate of increase in sales volumes as compared to like goods. AMD and Stelco also provided several specific examples of sales lost due to price undercutting by the subject goods during the POI, as described above.¹⁵¹

[124] The market shares of both subject and non-subject imports increased in 2018. However, sales of subject goods increased by 568 percent in 2018 whereas sales of non-subject imports increased by 44 percent. In 2019, the trends in respect of subject and non-subject imports diverged, with subject goods increasing a further 381 percent in sales volumes while sales volumes of non-subject imports dropped 60 percent.¹⁵² Similar trends are seen in changes in market share. In 2018, the subject goods’ market share increased by 2 percentage points while that of non-subject goods increased 7 percentage points. In 2019, subject goods’ market share increased by 14 percentage points while the market share of non-subject imports fell 22 percentage points to the lowest level seen during the POI.¹⁵³ These trends indicate that the subject goods replaced much of the share of the market previously held by non-subject imports, including those from the COR I countries. In addition, these trends support the view that the low prices of the subject goods had a more material depressive and suppressive effect on the prices of like goods as compared to the non-subject imports in 2019.

[125] Similar trends were also seen in sales of subject goods to distributors. The share of sales volumes of subject imports to distributors increased by 18 percentage points over the POI which corresponded with an overall 13 percentage point decline in the domestic industry’s market share in

¹⁴⁷ *Ibid.*, Table 15.

¹⁴⁸ *Ibid.*, Tables 15, 19, 28, 30.

¹⁴⁹ Exhibit NQ-2019-002-06F, Table 20.

¹⁵⁰ *Ibid.* By comparison, the *domestic industry*’s export performance declined steadily over the POI. See Exhibit NQ-2019-002-07D (protected), Table 65.

¹⁵¹ Exhibit NQ-2019-002-A-08 (protected), Table 1 at 13, 14; Exhibit NQ-2019-002-B-06 (protected) at 264.

¹⁵² Calculated from Exhibit NQ-2019-002-07D (protected), Tables 15, 19.

¹⁵³ *Ibid.*, Table 19.

the same period.¹⁵⁴ Volumes of subject imports sold to end users increased by 8 percentage points over the POI while the domestic industry's market share increased by only 1 percentage point.¹⁵⁵

[126] Based on the above evidence, and in addition to the evidence of significant price undercutting, price depression and suppression from the subject goods, the domestic producers were only able to maintain their sales volumes realized at the end of the POI by lowering prices to compete with these goods. No increases in their overall market share over the POI were possible. As discussed below, this caused the domestic industry's profitability to suffer significantly.

Profitability

[127] The consolidated financial results of the domestic industry for domestic sales show that, after achieving positive results in 2018, these gains were lost in 2019, when the domestic industry saw a significant decline at both the gross margin and net income levels. This appears to have been the result of falling net sales values and rising production costs for domestic sales from 2018 to 2019.¹⁵⁶ As production costs for domestic sales rose, domestic producers were unable to increase prices due to the pricing pressure from the surge of lower-priced subject imports and were forced to reduce prices or lose sales.

[128] The domestic industry's export sales diminished throughout the POI, compounding the effects on the overall profitability of the domestic industry. There is no evidence that subject goods impacted exports sales performance, and the effect of declining export sales performance cannot be attributed to them. However, when considering the contribution of export sales to total producers' net sales as compared to domestic sales¹⁵⁷ and overall profitability, the Tribunal finds that the subject goods, in and of themselves, through their price depressive and suppressive effects on Canadian COR prices, significantly and negatively impacted the domestic industry's overall profitability in 2019.

[129] Post-POI evidence on the record that emerged from the extended inquiry in this case tends to further support this conclusion. Ms. Seth's supplemental witness statement, which showed the change in pricing of like goods after the provisional duties were imposed on the subject goods provides compelling evidence of the subject goods' impact on the domestic industry in 2019.¹⁵⁸

Other performance indicators

[130] The domestic industry's output stayed relatively steady over the POI, declining only slightly from 2017 to 2019. Practical plant capacity increased over the POI, but the capacity utilization rate

¹⁵⁴ *Ibid.*, Table 22.

¹⁵⁵ *Ibid.*, Table 25.

¹⁵⁶ *Ibid.*, Table 64. These trends are also seen in the domestic industry's consolidated quarterly financial information, beginning in the fourth quarter of 2018 and continuing through the first quarter of 2020, and becoming more significant in the second quarter of 2019 through to the first quarter of 2020. Exhibit NQ-2019-002-B-02 (protected) at 79. *Transcripts of Public Hearing* at 67, 68.

¹⁵⁷ Exhibit NQ-2019-002-07D (protected), Table 66.

¹⁵⁸ In her supplemental witness statement, Ms. Seth indicated that imports of subject goods dropped to 5 metric tonnes in the second quarter of 2020. At the same time, AMD saw price improvements in its selling price for COR. Exhibit NQ-2019-002-A-21 at para. 4; Exhibit NQ-2019-002-A-22 (protected) at para. 4; *Transcript of Public Hearing* at 25. CSVC submitted that import levels of the subject goods dropped following the initiation of this case, as importers avoided importing during the investigation. *Transcripts of Public Hearing* at 102.

declined, though this drop appears largely attributable to decreasing export sales. Capacity utilization for domestic sales stayed steady, declining only minimally from 2017 to 2019. Inventory volumes also declined overall over the POI, though their unit value showed an upward tick in 2018 before ending up at the lowest level in 2019. Productivity rates remained fairly stable, showing a minimal downward shift over the POI.¹⁵⁹

[131] There is little to no evidence that the increased presence of the subject goods in the Canadian market had negative effects on the domestic industry's cash flow, employment, wages, growth, ability to raise capital, investments or return on investments during the POI.¹⁶⁰ While the Tribunal received extensive submissions on behalf of the USW, these were for the most part concerned with the impact a finding of no injury or threat of injury by the Tribunal would have on union members as opposed to the impact of the subject goods over the POI.

Magnitude of the margin of dumping and amount of subsidy

[132] As noted above, the margins of dumping determined by the CBSA ranged from 2.3 percent to 71.1 percent and were therefore not insignificant (excluding Borçelik, for which the investigation was terminated). The amount of subsidy for all other exporters in Turkey (other than Atakas, Borçelik and Tatmetal) was 3.6 percent and was therefore not insignificant. This said, the Tribunal does not consider the margins of dumping and amount of subsidy, expressed as a percentage of the export price, to necessarily represent the level of the injurious effects caused by the prices in Canada of the subject goods during the POI. The magnitude of the margins of dumping and amount of subsidy therefore did not add much to the evidence and analysis of the previous sections.

Other factors

[133] Paragraph 37.1(3)(b) of the *Regulations* directs the Tribunal to consider whether any factors other than the subject goods have caused injury. In the price effects analysis above, the Tribunal considered other factors such as the inventory overhang in the market as well as declining global market prices for COR and COR substrate. Additional other factors raised by CSVC are addressed below.

- COVID-19

[134] CSVC submitted that COVID-19 was a factor in the domestic industry's performance and that any injury to it caused by COVID-19 cannot be attributed to the subject goods. The domestic industry submitted that the negative financial performance seen in the second quarter of 2019 to the first quarter of 2020 was not due to COVID-19, but caused by the subject goods.¹⁶¹ Ms. Seth of AMD noted in her witness statement that the impact of the pandemic began to be felt in March 2020.¹⁶² Moreover, the domestic industry explained that, because of the lead time between the date of

¹⁵⁹ Exhibit NQ-2019-002-07D (protected), Tables 67, 68; Exhibit NQ-2019-002-06F at Table 68.

¹⁶⁰ Exhibit NQ-2019-002-07D (protected), Tables 67, 68; Exhibit NQ-2019-002-06F at Table 68; Exhibit NQ-2019-002-10.01 (protected) at 21; Exhibit NQ-2019-002-10.02 (protected) at 25.

¹⁶¹ *Transcripts of Public Hearing* at 22, 117, 118.

¹⁶² Exhibit NQ-2019-002-A-03 at para. 6.

sale and the date steel is shipped and paid for, the impact of COVID-19 would not be reflected in the financial results until the third quarter of 2020.¹⁶³

[135] With respect to the impact of COVID-19, which became a global pandemic in early 2020, the Tribunal notes that the POI took place entirely before the beginning of the economic downturn caused by the pandemic and finds that the downturn did not impact the financial results of the domestic industry during the POI. Furthermore, as discussed above, sales volumes of like goods were generally stable or flat during the POI.

- U.S. Section 232 tariffs

[136] In March 2018, the United States imposed a 25 percent tariff, pursuant to the Section 232 tariffs, on COR imports from most countries. In the case of exports from Turkey, a 50 percent tariff applied in 2018 and part of 2019. The Section 232 tariffs as well as other trade remedies and safeguards in other jurisdictions were raised by CSVC as a cause of injury to the domestic industry.

[137] As noted by Ms. Seth and Mr. Wegiel of AMD, the Section 232 tariffs (along with higher Canadian COR prices) contributed to Canada being an attractive market first for the COR I countries, and then for producers in the subject countries.¹⁶⁴ The diversion of subject goods as a result of the Section 232 tariffs is supported by the import volumes described in Mr. Wegiel's witness statement, which show substantial decreases in U.S. COR imports from Turkey and Vietnam from 2018 to 2019.¹⁶⁵ In the case of Vietnam, the anti-circumvention finding against Vietnamese COR using HRS or CRS originating in China likely also contributed to this reduction.¹⁶⁶ Mr. Sykes of Nova Steel also indicated in his witness statement that increases in Section 232 tariffs on steel from Turkey preceded the numerous lower-priced offers Nova received from Turkey and Vietnam.¹⁶⁷

[138] In the Tribunal's view, the impact of the Section 232 tariffs on the price of COR from Vietnam and Turkey exported to the United States likely contributed to the diversion of COR imports to Canada. Moreover, the Section 232 tariffs also impacted the domestic industry's own ability to export to the United States as they were also subject to the same tariffs until May 2019.¹⁶⁸ These developments had an impact on sales strategies; Stelco noted that it made a decision to focus on the Canadian market while these tariffs were in place. The tariffs also may have contributed to the build-up of inventory in 2018 that was noted by Mr. Anderson of Stelco and Mr. Lachapelle of Taylor Steel.¹⁶⁹

[139] While there have been various implications resulting from the Section 232 tariffs on market dynamics in Canada, the Tribunal does not find that the tariffs, in and of themselves, were the cause

¹⁶³ *Ibid.* at para. 47.

¹⁶⁴ *Ibid.* at para. 36; Exhibit NQ-2019-002-A-05 at para. 45.

¹⁶⁵ Exhibit NQ-2019-002-A-05, Table 4 at para. 47.

¹⁶⁶ United States Department of Commerce International Trade Administration, *Certain Corrosion-Resistant Steel Products From the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty and Countervailing Duty Orders*, A-570-026, C-570-027, 83 FR 23895, 23 May 2018. Exhibit NQ-2019-002-A-05 at 160.

¹⁶⁷ Exhibit NQ-2019-002-B-07 at para. 10.

¹⁶⁸ Exhibit NQ-2019-002-A-05 at 96.

¹⁶⁹ Exhibit NQ-2019-002-B-05 at para. 10; Exhibit NQ-2019-002-A-09 at para. 42.

of the domestic industry's change in performance during the POI. The evidence on the record demonstrates persuasively that the subject goods significantly increased in volume over the POI and that their low prices had adverse effects on domestic prices.

- Retaliatory import surtax

[140] CSVC submitted that in considering the performance of the domestic industry, the removal of the retaliatory import surtax in Canada and its impact on imports from the United States into Canada should be considered.¹⁷⁰ While CSVC did not provide any evidence that would indicate that U.S. imports adversely impacted the domestic industry, AMD and Stelco nevertheless affirmed that their adverse financial performances in 2019 are not attributable to a surge of imports from the United States.

[141] The Tribunal agrees that U.S. imports likely did not contribute in any material way to the performance of the domestic industry in 2019. As noted above, U.S. COR imports had a relatively small and steady share of the domestic market over the POI. Import volumes from the United States decreased by 13 percent from 2018 (the year the retaliatory import surtax was imposed) to 2019 (the year the retaliatory import surtax was removed).¹⁷¹ Additionally, U.S. import prices were higher than average selling prices of like goods in each period of the POI.¹⁷²

- Intra-industry

[142] CSVC submitted that competition between Stelco and AMD may have been a factor causing injury. As no evidence was submitted in this regard, the Tribunal is not able to assess this as another factor.

Materiality

[143] The Tribunal will now determine whether the effects of imports of the subject goods noted above are "material", as contemplated in the definition of "injury" under section 2 of *SIMA*. *SIMA* does not define the term "material". However, both the extent of injury during the relevant time frame and the timing and duration of the injury are relevant considerations in determining whether any injury caused by the subject goods is "material".¹⁷³

[144] The domestic industry submitted that the trend of declining results and the depths that those results reached is indicative of material injury. Injury started as soon as the subject goods began arriving in Canada and became material in the second quarter of 2019 through the first quarter of 2020.

¹⁷⁰ Section 232 tariffs were removed from Canadian steel exports in May 2019. *United States Customs and Border Protection, Section 232 Trade Remedies on Aluminum and Steel Active Section 232 Product Exclusions in ACE*, Exhibit NQ-2019-002-A-05 at para. 45 and at 96.

¹⁷¹ Exhibit NQ-2019-002-6F, Table 16.

¹⁷² Exhibit NQ-2019-002-07D (protected), Table 30.

¹⁷³ The Tribunal suggested, in *Certain Hot-rolled Carbon Steel Plate* (27 October 1997), NQ-97-001 (CITT) at 13, that the concept of materiality could entail both temporal and quantitative dimensions, stating: "the Tribunal is of the view that, to date, the injury suffered by the industry has not been *for such a duration* or *to such an extent* as to constitute 'material injury' within the meaning of *SIMA*" [emphasis added].

[145] The Tribunal has previously confirmed that injury over a period of this duration, and even a shorter period, can in fact be material.¹⁷⁴

[146] In view of the foregoing, the Tribunal finds that, on the whole, the negative effects of the subject goods on the state of the domestic industry, seen through the significant price undercutting, price depression and price suppression, have been material in terms of extent and duration. At the end of the POI, the domestic industry was only able to maintain its sales volumes by lowering its prices to compete with the subject goods. As a result, the domestic industry's profitability suffered significantly in 2019. The timing of the injury in this case is also significant given the overlap with the CBSA's period of investigation; in other words, the injury is prevalent during the period when imports of subject goods were being dumped and subsidized in large volumes. Overall, the Tribunal finds that the domestic producers were impacted in a material way by the presence of the subject goods in the market during the POI.

[147] The Tribunal therefore finds that the adverse impact of the subject goods has been of such an extent that it can be considered material injury.

[148] For the reasons set out in the discussion on cumulation above, the Tribunal will also conduct a separate analysis of the subject goods from Turkey and Vietnam individually.

INJURY ANALYSIS OF THE SUBJECT GOODS FROM TURKEY AND VIETNAM INDIVIDUALLY

Import volume of the subject goods from Turkey

[149] The evidence indicates that source switching from non-subject imports from "Other Countries" to the subject goods from Turkey occurred in 2018 and 2019.

[150] Subject goods from Turkey appeared in the market in significant volumes starting in 2018, and further increased by 15 percent in 2019.¹⁷⁵ This represented a 16-percentage-point increase in the share of subject imports from Turkey relative to all imports over the POI.¹⁷⁶ As such, the increase was at the expense of imports from "Other Countries".

[151] When import volumes of the subject goods from Turkey are examined relative to domestic production and domestic sales from domestic production, the foothold achieved by the imports of subject goods from Turkey in the market is apparent. Relative to both domestic production and domestic sales from domestic production, the volume of subject goods from Turkey increased by 1 percentage point from 2018 to 2019.¹⁷⁷

[152] Therefore, the Tribunal finds that there has been a significant increase in the absolute and relative volume of imports of the subject goods from Turkey.

¹⁷⁴ *Cold-rolled Steel* (21 December 2018), NQ-2018-002 (CITT) at para. 99; *Sucker Rods* (14 December 2018), NQ-2018-001 (CITT) at para. 151; *Concrete Reinforcing Bar* (3 May 2017), NQ-2016-003 (CITT) at paras. 185-188 and footnote 182.

¹⁷⁵ Exhibit NQ-2019-002-07D (protected), Table 15; Exhibit NQ-2019-002-06F, Table 16.

¹⁷⁶ Exhibit NQ-2019-002-07D (protected), Table 17.

¹⁷⁷ *Ibid.*, Table 18.

Import volume of the subject goods from Vietnam

[153] The evidence indicates that source switching from non-subject imports from “Other Countries” to the subject goods from Vietnam occurred in 2019.

[154] The volume of the subject goods from Vietnam decreased by 35 percent in 2018 before increasing by more than 1,000 percent in 2019.¹⁷⁸ This resulted in a 26-percentage-point increase in the share of subject goods from Vietnam relative to all imports over the POI, all of which were at the expense of “Other Countries” that included the COR I countries.¹⁷⁹

[155] When import volumes of the subject goods from Vietnam are examined relative to domestic production and domestic sales from domestic production, the foothold achieved by the imports from Vietnam in the market is apparent. Relative to domestic production, the volume of subject goods from Vietnam decreased slightly in 2018, but then increased by 11 percentage points in 2019. Relative to domestic sales from domestic production, the volume of subject goods from Vietnam decreased slightly in 2018 and then increased by 15 percentage points in 2019.¹⁸⁰

[156] Therefore, the Tribunal finds that there has been a significant increase in the absolute and relative volume of imports of the subject goods from Vietnam.

Price effects of the subject goods from Turkey

Price undercutting

[157] The market data indicate that the average selling prices of the like goods were not undercut by the prices of the subject goods from Turkey.¹⁸¹ However, when comparing the average selling price of the like goods to the import price of the subject goods from Turkey there was undercutting in 2018 and 2019, i.e. in every period where the goods were in the market.¹⁸²

[158] In terms of the trade levels, the selling price and import price of the subject goods from Turkey did not undercut the price of the like goods sold to distributors.¹⁸³ However, at the end-user trade level, both the selling price and import price of the subject goods from Turkey undercut the selling price of the like goods in both 2018 and 2019.¹⁸⁴ When comparing the prices of goods sold to end users in the market, the undercutting by the subject goods from Turkey exceeded the domestic price premium in 2018, but not in 2019.¹⁸⁵ However, when the comparison is made between the import price of subject goods from Turkey and the domestic price of goods sold to end users, the amount of undercutting exceeded the domestic price premium in both 2018 and 2019.¹⁸⁶

¹⁷⁸ Exhibit NQ-2019-002-06F, Table 16.

¹⁷⁹ Exhibit NQ-2019-002-07D (protected), Table 17.

¹⁸⁰ *Ibid.*, Tables 14, 15, 19.

¹⁸¹ *Ibid.*, Table 30.

¹⁸² *Ibid.*, Tables 28, 30.

¹⁸³ *Ibid.*, Tables 28, 32.

¹⁸⁴ *Ibid.*, Tables 28, 34.

¹⁸⁵ *Ibid.*, Table 34.

¹⁸⁶ *Ibid.*, Tables 28, 34.

[159] Common accounts for 2018 and 2019 show six instances of competition in two accounts between the like goods and the subject goods from Turkey. This competition resulted in three instances of price undercutting, with all of them being in excess of the domestic price premium.¹⁸⁷

[160] Stelco's allegations of lost sales included evidence of a sale lost to subject goods from Turkey in the second half of 2018, which showed significant undercutting by these imports.¹⁸⁸

[161] The benchmark data for 2018 and 2019, which provide the most "apples-to-apples" comparisons, show 19 instances of competition with 16 instances of price undercutting, 12 of which show undercutting in excess of the domestic price premium. The undercutting is noted in many instances to be several hundred dollars over the domestic price premium.¹⁸⁹

[162] The Tribunal further looked at the price of prime COR for both the like goods and subject goods and found that the magnitude of price undercutting only increases. The benchmark data show 19 instances of competition, including 16 instances of price undercutting, 14 of which were in excess of the domestic price premium.¹⁹⁰

[163] Overall, the Tribunal finds that the prices of subject goods from Turkey significantly undercut the price of the like goods during the POI.

Price depression

[164] As subject goods from Turkey were absent in the market in 2017, the price depression analysis focuses on 2018 and 2019.

[165] As mentioned already in the cumulative analysis, from 2018 to 2019, the price of the like goods decreased by 7 percent. Meanwhile, the selling price of the subject goods from Turkey decreased by 9 percent in the same time period.¹⁹¹ Import prices of subject goods from Turkey decreased by 7 percent during the same period, the same rate as Canadian market prices.¹⁹²

[166] Slightly different trends are seen at the trade levels. Looking at sales to distributors, the selling price of the like goods and the selling price of the subject goods from Turkey both decreased more than the Canadian distributor aggregate level, i.e. by 6 and 8 percent respectively compared to 5 percent.¹⁹³ As for sales to end users, the selling price of the like goods decreased by 8 percent,

¹⁸⁷ *Ibid.*, Tables 42, 45.

¹⁸⁸ Exhibit NQ-2019-002-B-06 (protected) at 264.

¹⁸⁹ Exhibit NQ-2019-002-07D (protected), Tables 55-60. The Tribunal notes that unit values for subject imports from Turkey, as they pertain to Benchmark Product No. 4, were omitted in Exhibit NQ-2019-002-07D (protected), Table 58. Accordingly, unit values for subject imports from Turkey, as they pertain to Benchmark Product No. 4, were considered from Exhibit NQ-2019-07C (protected), Tables 19, 22, 23, 24.

¹⁹⁰ Exhibit NQ-2019-002-6D, Table 24; Exhibit NQ-2019-002-7C (protected), Table 22.

¹⁹¹ Exhibit NQ-2019-002-06F, Table 31.

¹⁹² *Ibid.*, Table 29.

¹⁹³ *Ibid.*, Table 33.

which matched the Canadian end-user aggregate level, while the selling price of the subject goods from Turkey decreased by 4 percent.¹⁹⁴

[167] The evidence indicates the presence of significant price depression, particularly given that the declines seen in the prices of the like goods occurred as the subject goods from Turkey significantly increased in volume, at low and undercutting prices, in 2018 and 2019.

[168] A cause-and-effect relationship between subject goods from Turkey and the declining prices of like goods is further supported by the domestic producers' account-specific claims of price depression. Mr. Osborne's witness statement provided eight examples where, faced with significantly lower-priced imports of subject goods from Turkey, AMD lowered its prices in order to win the sale.¹⁹⁵

[169] Based on the above, the Tribunal finds significant price depression in 2019 caused by the subject goods from Turkey. The evidence demonstrates that to maintain sales volumes, domestic producers reduced their prices to compete with the increasing volumes of lower-priced subject goods from Turkey in the market.

Price suppression

[170] As described above in the cumulated pricing section, the domestic selling price increased in 2018 and then declined in 2019 while both the COGS and the COGM increased throughout the POI.¹⁹⁶ The Tribunal finds that the price suppression experienced by the domestic industry is attributable to the presence of significant volumes of lower-priced subject goods from Turkey in 2019, which placed a downward pressure on prices of like goods despite rising production costs. As such, the Tribunal finds that the subject goods from Turkey have significantly suppressed the prices of the like goods.

Price effects of the subject goods from Vietnam

Price undercutting

[171] The consolidated data on average selling prices indicate that the like goods were undercut by the prices of the subject goods from Vietnam in every period of the POI.¹⁹⁷ Undercutting is also seen in every period of the POI when comparing selling prices to distributors.¹⁹⁸ With respect to sales to end users, the subject goods from Vietnam competed with the like goods in 2018 and 2019, and undercut like goods in 2018.¹⁹⁹

¹⁹⁴ *Ibid.*, Table 35.

¹⁹⁵ Exhibit NQ-2019-002-A-08 (protected), Table 1 at 13-14. One supporting document for an allegation shows an import offer with an unknown date. Exhibit NQ-2019-002-A-08 (protected) at para. 72 and at 118.

¹⁹⁶ Exhibit NQ-2019-002-07D (protected), Tables 30, 64; Exhibit NQ-2019-002-06F, Table 31.

¹⁹⁷ Exhibit NQ-2019-002-07D (protected), Table 30.

¹⁹⁸ *Ibid.*, Table 32.

¹⁹⁹ *Ibid.*, Table 34.

[172] When average selling prices of like goods are compared to the import prices of the subject goods from Vietnam, the degree of undercutting is further increased in 2018 and 2019.²⁰⁰ The amount of undercutting in both 2018 and 2019 exceeded the domestic price premium significantly.²⁰¹

[173] When comparing the selling price of the like goods to the selling price of subject goods from Vietnam at the distributor trade level, there is price undercutting in all periods. The price undercutting in 2018 exceeds the domestic price premium. A comparison of the selling prices of like goods to the import price of subject goods from Vietnam indicates price undercutting that exceeds the domestic price premium in both 2018 and 2019.²⁰² In contrast, at the end-user trade level, there is undercutting only in 2018 whether comparing the selling price of the like goods to the selling price of subject goods from Vietnam or the import price of subject goods from Vietnam. That said, the undercutting that is present exceeds the domestic price premium at both the selling-price level and the import-price level.²⁰³

[174] In its examination of common accounts for 2018 and 2019, the Tribunal notes that there were 15 instances of competition at 4 accounts between the like goods and the subject goods from Vietnam. This competition resulted in 11 instances of price undercutting; in 8 of the 11 instances, the undercutting exceeded the domestic price premium.²⁰⁴

[175] With respect to account-specific allegations of lost sales due to undercutting, AMD submitted evidence of four lost sales to Vietnam in the second half of 2019.²⁰⁵ Stelco had one lost sale caused by undercutting prices of imports from Vietnam in the second half of 2018.²⁰⁶ All instances of undercutting significantly exceeded the domestic price premium.

[176] The benchmark data for 2018 and 2019, which provide the most “apples-to-apples” comparisons, show four instances of competition with two instances of price undercutting, both instances being significantly in excess of the domestic price premium.²⁰⁷

[177] The Tribunal further looked at the price of prime COR for both the like goods and subject goods and found that the magnitude of price undercutting further increased. The data show four instances of competition, including two instances of undercutting in excess of the domestic price premium.²⁰⁸

²⁰⁰ There was no undercutting in 2017; however, import volumes of subject goods were minimal in this period so are less representative of price trends in this case.

²⁰¹ Exhibit NQ-2019-002-07D (protected), Tables 28, 30.

²⁰² *Ibid.*, Tables 28, 32.

²⁰³ *Ibid.*, Tables 28, 34.

²⁰⁴ *Ibid.*, Tables 41, 45. The Tribunal notes that unit values for subject imports from Vietnam for Top Accounts #2 and #3 were omitted in Exhibit NQ-2019-002-07D (protected), Tables 42 and 43. Accordingly, unit values for Top Accounts for subject imports from Vietnam as it pertains to Top Accounts #2 and #3 were considered from Exhibit NQ-2019-002-07B (protected), Tables 42, 43.

²⁰⁵ The Tribunal notes that one of the allegations of lost sales identified in AMD’s Aid to Argument (protected) at 128 involved imports that do not form part of the subject goods. Exhibit NQ-2019-002-A-08 (protected), Table 1 at 13, 14.

²⁰⁶ Exhibit NQ-2019-002-B-06 (protected) at 264.

²⁰⁷ Exhibit NQ-2019-002-6F, Table 63; Exhibit NQ-2019-002-07D (protected), Table 61.

²⁰⁸ Exhibit NQ-2019-002-6D, Table 24; Exhibit NQ-2019-002-7C (protected), Table 22.

[178] On the basis of this evidence, the Tribunal finds that the prices of subject goods from Vietnam have significantly undercut the price of the like goods during the POI.

Price depression

[179] The average selling prices of like goods increased by 12 percent in 2018, but then decreased by 7 percent in 2019. The subject goods from Vietnam followed a somewhat contrasting trend, with the average selling prices of the subject goods from Vietnam decreasing by 4 percent in 2018, and increasing by 28 percent in 2019.²⁰⁹ The same trends are seen for imports of subject goods from Vietnam and sales prices at both the distributor and end-user trade levels.²¹⁰ However, these percent change trends for subject goods from Vietnam must be considered in light of their very low price point throughout the entire POI.

[180] Indeed, the declining prices of the like goods, examined in light of the significant levels of price undercutting by increasing volumes of subject goods from Vietnam in the market, indicate that the prices of subject goods from Vietnam have also significantly depressed the prices of the like goods.

[181] This is further evidenced by the domestic industry's account-specific examples of instances where it was forced to lower its prices in order to win a sale. In particular, Mr. Osborne provided as many as ten specific examples of sales where AMD lowered its price in direct competition with subject goods from Vietnam in 2018 and 2019.²¹¹ Stelco provided evidence of two sales made after reducing prices as a direct result of lower-priced offers of subject goods from Vietnam.²¹²

[182] The Tribunal finds significant price depression in 2019 caused by the subject goods from Vietnam. The evidence demonstrates that to maintain sales volumes, domestic producers reduced their prices to compete with the increasing volumes of lower-priced subject goods from Vietnam in the market.

Price suppression

[183] As described above in the cumulated pricing section, the domestic selling price increased in 2018 and then declined in 2019 while both the COGS and the COGM increased throughout the POI.²¹³ The Tribunal finds that the price suppression experienced by the domestic industry is also attributable to the presence of significant volumes of lower-priced subject goods from Vietnam in 2019, which placed a downward pressure on prices of like goods despite rising production costs. As such, the Tribunal finds that the subject goods from Vietnam have caused significant price suppression.

²⁰⁹ Exhibit NQ-2019-002-06F, Table 31.

²¹⁰ *Ibid.*, Tables 29, 33, 35.

²¹¹ Exhibit NQ-2019-002-A-08 (protected), Table 1 at 13-14.

²¹² Exhibit NQ-2019-002-B-06 (protected) at paras. 39, 44.

²¹³ Exhibit NQ-2019-002-07D (protected), Tables 30, 64; Exhibit NQ-2019-002-06F, Table 31.

Resultant impact on the domestic industry of the subject goods from Turkey

[184] For the reasons below, the Tribunal finds that the subject goods from Turkey, in and of themselves, had a significant adverse impact on the domestic industry's performance in this period.

[185] The domestic industry's performance over the POI was described earlier in the cumulative analysis. As set out above, while other indicators show that it was able to maintain a relatively steady to somewhat declining performance, the domestic industry suffered deep declines in terms of its profits in 2019.

[186] After entering the market in 2018, subject goods from Turkey increased their sales volumes by 116 percent in 2019. This growth corresponded to a 4-percentage-point increase in market share for subject goods from Turkey from 2018 to 2019. Significantly increasing trends were also evident in sales to distributors and end-users. From 2018 to 2019, sales to distributors of subject goods from Turkey increased by 761 percent.²¹⁴ With respect to sales to end-users, sales of subject goods from Turkey increased by over 1,000 percent from 2018 to 2019.²¹⁵

[187] As noted above, the domestic industry provided evidence of sales lost to imports of the subject goods from Turkey as well as examples of instances where, faced with low-priced competing offers from subject goods from Turkey, producers had to lower their prices in order to maintain a sale.

[188] As discussed in the cumulative analysis, the domestic industry essentially maintained sales volumes over the POI, and somewhat improved market share at the end of the POI, as the overall market contracted and the volume and market share of non-subject imports declined. The Tribunal finds that the rapid increase in the sales and market share of subject goods from Turkey starting in 2018 and following into 2019 contributed to preventing the domestic industry from improving its sales volume and regaining more market share in 2019.

[189] Furthermore, with consideration of the evidence described above, in addition to the evidence of significant price undercutting, price depression and price suppression from subject goods from Turkey, it is clear that the domestic industry was only able to maintain its sales volumes realized at the end of the POI by lowering prices to compete with these goods. As seen in the consolidated financial data, the domestic industry's profitability suffered significantly in 2019.

[190] The Tribunal finds that the subject goods from Turkey have, in and of themselves, through their volume and price effects, significantly and negatively affected the domestic industry's performance. These injurious effects of the subject goods from Turkey are distinguishable from those of the subject goods from Vietnam discussed in the next section. Further, the Tribunal finds that the impact of the subject goods from Turkey was of a magnitude sufficient to amount to material injury.

Resultant impact on the domestic industry of the subject goods from Vietnam

[191] For the reasons below, the Tribunal also finds that the subject goods from Vietnam had a material adverse impact on the domestic industry's performance.

²¹⁴ Exhibit NQ-2019-002-06F, Table 23.

²¹⁵ *Ibid.*, Table 26.

[192] Subject goods from Vietnam decreased in sales volumes by 34 percent in 2018, and then increased by over 1,000 percent in 2019. This fluctuation was reflected in the market share of imports from Vietnam, which increased by 9 percentage points in 2019 after a small dip in 2018.²¹⁶ Similar trends were also seen in sales to distributors. Sales to distributors of subject goods from Vietnam declined 16 percent in 2018, before increasing over 1,000 percent in 2019.²¹⁷ Meanwhile, sales to end-users of imports from Vietnam, which were nil in 2017, grew steadily over the POI, resulting in an increase of 714 percent from 2018 to 2019.²¹⁸

[193] As noted above, the domestic industry also provided evidence of lost sales and examples of instances where producers lowered prices in order to win a sale when faced with competition from low-priced subject goods from Vietnam. In addition, the domestic industry submitted that, in some cases, the offered import prices were so low that domestic producers were not advised of the offer.

[194] As in the case of the subject goods from Turkey, the Tribunal finds that the rapid increase in the sales and market share of subject goods from Vietnam in 2019 similarly contributed to preventing the domestic industry from improving its sales volume and regaining more market share in this period.

[195] Further, considering the evidence described above, as well as the evidence on undercutting, price depression and price suppression, it is clear that the domestic industry was only able to maintain sales volumes by lowering its prices in the face of competition from the subject goods from Vietnam. The domestic industry's profitability suffered significantly in 2019, as seen in the consolidated financial data. In this regard, while the domestic industry was also negatively pressured by the effects of the subject goods from Turkey, the subject goods from Vietnam have, through their own volume and price effects, equally contributed to this declining performance.

[196] The Tribunal concludes that the subject goods from Vietnam have, in and of themselves, through their volume and price effects, significantly and negatively affected the domestic industry's performance. Further, the Tribunal finds that the impact of the subject goods from Vietnam was of a magnitude sufficient to amount to material injury.

Other factors and conclusion on the individual country analysis

[197] As noted in the cumulative analysis of the subject goods, there are other factors which contributed to the state of the domestic industry. However, for the reasons described previously, the domestic industry's performance was materially worse due to the increasing presence of the lower-priced subject goods in the market, whether the source was Vietnam or Turkey. In other words, the subject goods from each of the source countries, in and of themselves, caused material injury to the domestic industry through their gains in sales volumes and market share, which was achieved through significant price undercutting which depressed and suppressed the prices of like goods in 2019.

²¹⁶ Exhibit NQ-2019-002-07D (protected), Table 21.

²¹⁷ Exhibit NQ-2019-002-06F, Table 23.

²¹⁸ *Ibid.*, Table 26.

CONCLUSION

[198] The Tribunal finds, pursuant to subsection 43(1) of *SIMA*, that the dumping of the subject goods, originating in or exported from Turkey (excluding those goods exported by Borçelik) and Vietnam, and the subsidizing of the above-mentioned goods, originating in or exported from Turkey (excluding those goods exported by Atakaş, Borçelik and Tatmetal), have caused injury to the domestic industry.

Cheryl Beckett

Cheryl Beckett
Presiding Member

Jean Bédard

Jean Bédard
Member

Randolph W. Heggart

Randolph W. Heggart
Member