Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Dumping and Subsidizing

DETERMINATION AND REASONS

Preliminary Injury Inquiry
No. PI-2020-004

Concrete Reinforcing Bar

Determination issued
Monday, November 23, 2020

Reasons issued
Monday, December 7, 2020

Canada

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

CONCRETE REINFORCING BAR

PRELIMINARY DETERMINATION OF INJURY

The Canadian International Trade Tribunal, pursuant to the provisions of subsection 34(2) of the *Special Import Measures Act*, has conducted a preliminary injury inquiry into whether the evidence discloses a reasonable indication that the dumping of hot-rolled deformed steel concrete reinforcing bar in straight lengths or coils, commonly identified as rebar, in various diameters up to and including 56.4 millimetres, in various finishes, excluding plain round bar and fabricated rebar products, originating in or exported from the People's Democratic Republic of Algeria, the Arab Republic of Egypt, the Republic of Indonesia, the Italian Republic, Malaysia, the Republic of Singapore and the Socialist Republic of Vietnam, has caused injury or retardation or is threatening to cause injury, as these words are defined in the *Special Import Measures Act*. The product definition also excludes "10 mm diameter (10M) rebar produced to meet the requirements of CSA G30 18.09 (or equivalent standards) and coated to meet the requirements of epoxy standard ASTM A775/A 775M 04a (or equivalent standards) in lengths from 1 foot (30.48 cm) up to and including 8 feet (243.84 cm)".

This preliminary injury inquiry follows the notification, on September 22, 2020, that the President of the Canada Border Services Agency had initiated an investigation into the alleged injurious dumping of the above-mentioned goods.

Pursuant to subsection 37.1(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby determines that there is evidence that discloses a reasonable indication that the dumping of the above-mentioned goods has caused or is threatening to cause injury to the domestic industry.

Peter Burn

Peter Burn
Presiding Member

Cheryl Beckett

Cheryl Beckett
Member

Georges Bujold

Georges Bujold
Member

The statement of reasons will be issued within 15 days.

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STATEMENT OF REASONS

INTRODUCTION

[1] On August 4, 2020, AltaSteel Inc. (AltaSteel), ArcelorMittal Long Products Canada, G.P. (AMLPC) and Gerdau Ameristeel Corporation (Gerdau) (collectively, the complainants) filed a complaint with the Canada Border Services Agency (CBSA) alleging that the dumping of certain concrete reinforcing bar, commonly referred to as rebar, originating in or exported from the People's Democratic Republic of Algeria (Algeria), the Arab Republic of Egypt (Egypt), the Republic of Indonesia (Indonesia), the Italian Republic (Italy), Malaysia, the Republic of Singapore (Singapore) and the Socialist Republic of Vietnam (Vietnam) (the subject goods) has caused injury or is threatening to cause injury to the domestic industry.

[2] On September 22, 2020, the CBSA initiated an investigation respecting the dumping of the subject goods pursuant to subsection 31(1) of the *Special Import Measures Act*.[1]

[3] As a result of the CBSA's decision to initiate an investigation, on September 23, 2020, the Canadian International Trade Tribunal began its preliminary injury inquiry, pursuant to subsection 34(2) of *SIMA*, to determine whether the evidence discloses a reasonable indication that the dumping of the subject goods has caused injury or is threatening to cause injury to the domestic industry.[2]

[4] This preliminary injury inquiry follows the Tribunal's finding in *Rebar I*[3] that the dumping of rebar from China, Korea and Turkey, and the subsidizing of rebar from China, were threatening to cause injury to the domestic industry, and the Tribunal's finding in *Rebar II*[4] that the dumping of rebar from Belarus, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei), Hong Kong, Japan, Portugal and Spain had caused injury to the domestic industry. It also follows the Tribunal's recent *Steel Safeguard Inquiry*[5] where it found that the importation of rebar into Canada from all sources (except for a small number of countries that were excluded from the inquiry) had not caused serious injury and was not threatening to cause serious injury to the domestic industry. This led to the removal of the provisional safeguard measures on rebar, which had been in place since October 2018.

[5] The complaint is supported by domestic producers Max Aicher (North America) Limited (MANA) and Ivaco Rolling Mills 2004 L.P. (Ivaco),[6] although, of the two, only MANA participated in this preliminary injury inquiry and filed submissions. The Tribunal also received submissions supporting the complaint from the United Steelworkers (USW), a trade union representing a number of workers employed by the complainants.

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

2 As a domestic industry is already established, the Tribunal need not consider the question of retardation.

3 See *Concrete Reinforcing Bar* (9 January 2015), NQ-2014-001 (CITT) [*Rebar I*]. The Tribunal's finding in *Rebar I* was recently continued following the conduct of an expiry review pursuant to section 76.03 of *SIMA*. See *Concrete Reinforcing Bar* (14 October 2020), RR-2019-003 (CITT) [*Rebar I Review*].

4 See *Concrete Reinforcing Bar* (3 May 2017), NQ-2016-003 (CITT) [*Rebar II*].

5 *Safeguard Inquiry into the Importation of Certain Steel Goods* (3 April 2019), GC-2018-001 (CITT) [*Steel Safeguard Inquiry*]. Subsection 2(1) of the *Canadian International Trade Tribunal Act* defines "serious injury" as a "significant overall impairment in the position of the domestic producers". This has been held by the Tribunal to be more than the injury threshold applicable in the context of injury inquiries under *SIMA*, which is that of "material injury" (see *Steel Safeguard Inquiry* at 26).

6 Exhibit PI-2020-004-02.01 at 181, 183.

[6] The Tribunal received submissions opposing the complaint from the following foreign producers: Al Ezz Dekheila Steel Company – Alexandria (EZDK) of Egypt; Hoa Phat Dung Quat Steel Joint Stock Company and Hoa Phat Group Joint Stock Company (collectively, Hoa Phat) of Vietnam; and NatSteel Holdings Pte Ltd. (NatSteel) of Singapore. The Ministry of Trade and Industry, Egypt (Government of Egypt) and the Ministry of Trade of the Republic of Indonesia (Government of Indonesia) also filed submissions opposing the complaint. The Delegation of the European Union to Canada, Jebsen & Jessen Metals GmbH (formerly Ferrostaal Metals GmbH) and PT. Putra Baja Deli filed notices of participation with the Tribunal but did not make any submissions.

[7] On November 23, 2020, pursuant to subsection 37.1(1) of *SIMA*, the Tribunal determined that there is evidence that discloses a reasonable indication that the dumping of the subject goods has caused injury or is threatening to cause injury to the domestic industry. The reasons for that determination are set out below.

PRODUCT DEFINITION

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

> Hot-rolled deformed steel concrete reinforcing bar in straight lengths or coils, commonly identified as rebar, in various diameters up to and including 56.4 millimeters, in various finishes, excluding plain round bar and fabricated rebar products, originating in or exported from the People's Democratic Republic of Algeria, the Arab Republic of Egypt, the Republic of Indonesia, the Italian Republic, the Federation of Malaysia, the Republic of Singapore and the Socialist Republic of Vietnam.
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> Also excluded is 10 mm diameter (10M) rebar produced to meet the requirements of CSA G30 18.09 (or equivalent standards) that is coated to meet the requirements of epoxy standard ASTM A775/A 775M 04a (or equivalent standards) in lengths from 1 foot (30.48 cm) up to and including 8 feet (243.84 cm).[7]

THE CBSA'S DECISION TO INITIATE THE INVESTIGATION

[9] The CBSA initiated an investigation pursuant to subsection 31(1) of *SIMA* as it was of the opinion that there was evidence that the subject goods had been dumped, as well as evidence that disclosed a reasonable indication that the dumping had caused injury or was threatening to cause injury to the domestic industry.

[10] Using information for its chosen dumping period of investigation (POI) of June 1, 2019, to June 30, 2020, the CBSA estimated the margins of dumping and volumes of dumped goods for each of the subject countries as follows:[8]

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7 Exhibit PI-2020-004-05 at 6.

8 *Ibid.* at 11, 19.

Country	Margin of Dumping (% of export price)	Volume of Dumped Imports (% of total imports)
Algeria	20.2	10.4
Egypt	11.4	4.4
Indonesia	13.0	8.8
Italy	58.8	21.6
Malaysia	14.0	3.4
Singapore	15.9	11.3
Vietnam	16.6	9.3

PRELIMINARY ISSUES

Designation of information as confidential in the complaint

[11] The Government of Egypt submitted that the complainants failed to comply with the requirements of Article 6.5.1 of the World Trade Organization (WTO) Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994[9] as they designated an "excessive" amount of information as confidential in their complaint.

[12] AMLPC and AltaSteel submitted that it is the nature of these proceedings that certain information will be highly commercially sensitive and must therefore be designated as confidential. They added that this was recognized by Parliament and resulted in the inclusion of the confidentiality and undertaking provisions of *SIMA* which allow counsel for parties to access confidential information.

[13] Complaints are filed with the CBSA and thus form part of its administrative record, which is only then transmitted to the Tribunal for purposes of its preliminary injury inquiry. Therefore, any issues that may arise with respect to the designation of information as confidential in the complaint fall within the purview of the CBSA. Accordingly, the Tribunal's preliminary injury inquiry is not the proper forum for addressing such concerns.

Arguments regarding the calculation of normal values, export prices and the selection of the dumping POI

[14] The Government of Egypt claimed that the CBSA failed to comply with various provisions of the WTO Anti-dumping Agreement when it calculated normal values and export prices. Hoa Phat similarly submitted that the CBSA made a number of errors and discriminated against Vietnam in its calculation of normal values.

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9 Online at: https://www.wto.org/english/docs_e/legal_e/19-adp.pdf [Anti-dumping Agreement]. Article 6.5.1 provides as follows: "The authorities shall require interested parties providing confidential information to furnish non-confidential summaries thereof. These summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. In exceptional circumstances, such parties may indicate that such information is not susceptible of summary. In such exceptional circumstances, a statement of reasons why summarization is not possible must be provided."

[15] For its part, the Government of Indonesia submitted that there is no *prima facie* evidence of dumping in the complaint as a number of assumptions regarding normal values were made with no substantiation. It also submitted that the CBSA's selection of a 13-month dumping POI in this case is unusual.

[16] AMLPC, AltaSteel and the USW submitted that the submissions made by the parties opposed relate to issues that are outside the Tribunal's jurisdiction.

[17] Indeed, the calculation of normal values and export prices during the course of an investigation, and the selection of a dumping POI, are matters for which the CBSA has exclusive jurisdiction and thus cannot be addressed or reviewed by the Tribunal in the context of this preliminary injury inquiry.

Request that the investigation be terminated with respect to Egypt

[18] The Government of Egypt noted that, according to the information contained in Table 4[10] of the complaint, Egyptian imports were absent from the Canadian market during the CBSA's dumping POI. It therefore submitted that there could be no evidence of dumping to justify the initiation of the investigation, as is required by Article 5.2 of the WTO Anti-dumping Agreement, and requested that the investigation be terminated with respect to Egypt in accordance with Article 5.8.[11]

[19] AMLPC and AltaSteel replied that Table 4 of the complaint, which shows the percentage of imports during various months/quarters of the dumping POI, contains an error in the June 2019 column, but that the last column correctly shows that subject goods from Egypt represented 4.8 percent of total imports over the dumping POI.[12] They added that the CBSA's own data show that imports from Egypt represented 4.4 percent of total imports over this period.[13]

[20] The CBSA's appreciation of the evidence of dumping contained in the complaint and its decision to initiate an investigation are not subject to review by the Tribunal. Moreover, the decision of whether to terminate an investigation in respect of a country due to negligible import volumes prior to the making of a preliminary determination of dumping rests with the CBSA.[14] Therefore, this is not an issue that can be addressed by the Tribunal at this stage of the proceedings.

[21] In any event, the Tribunal notes that the evidence on the record clearly establishes that there were imports of subject goods from Egypt in June 2019, which was the first month of the CBSA's dumping POI, and that these represented 4.4 percent of total imports of subject goods over the entire dumping POI.[15] This surpasses the negligibility threshold of 3 percent specified in both the Anti-dumping Agreement and *SIMA*.[16]

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10 Exhibit PI-2020-004-03.01 at 44.

11 Article 5.8 provides that ". . . an investigation shall be terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of either dumping or of injury to justify proceeding with the case. There shall be immediate termination in cases where the authorities determine . . . that the volume of dumped imports, actual or potential, or the injury, is negligible. . . The volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular country is found to account for less than 3 percent of imports of the like product . . .".

12 See Exhibit PI-2020-004-02.01 at 46.

13 Exhibit PI-2020-004-05 at 11.

14 See paragraph 35(1)(a) of *SIMA*.

15 Exhibit PI-2020-004-03.06 (protected) at 19, 71, 74; Exhibit PI-2020-004-05 at 11.

16 See the definition of "negligible" at subsection 2(1) of *SIMA*.

LEGISLATIVE FRAMEWORK

[22] The Tribunal's mandate in a preliminary injury inquiry is set out in subsection 34(2) of *SIMA*, which requires the Tribunal to determine ". . . whether the evidence discloses a reasonable indication that the dumping or subsidizing of the [subject] goods has caused injury or retardation or is threatening to cause injury".

Reasonable indication standard

[23] The "reasonable indication" standard that applies in a preliminary injury inquiry is lower than the evidentiary threshold that applies in a final injury inquiry under section 42 of *SIMA*.[17] The evidence in question need not be "conclusive, or probative on a balance of probabilities".[18] Indeed, not all the evidence is available at this stage of the proceedings and what is available will be significantly less detailed and comprehensive than the evidence in a final injury inquiry.

[24] However, the outcome of preliminary injury inquiries must not be taken for granted.[19] Simple assertions are not sufficient.[20] Complaints, as well as the cases of parties opposed, must be supported by positive and sufficient evidence. Such evidence must also be relevant, in that it addresses the necessary requirements in *SIMA* and the relevant factors of the *Special Import Measures Regulations*.[21]

[25] Hoa Phat submitted that the evidentiary bar in preliminary injury inquiries must not be set too low and that complainants should not be given the benefit of the doubt. It added that the Tribunal's record in these inquiries, which largely favours complainants, suggests that the bar is currently set lower than Parliament intended when it amended *SIMA* to require the conduct of preliminary injury inquiries.

[26] In reply, AMLPC and AltaSteel submitted that the lower standard that applies in a preliminary injury inquiry is to assess whether there is sufficient evidence to continue with an investigation, whereas, at the final injury inquiry stage, the Tribunal's role is to determine whether to impose a trade remedy. They contend that the Tribunal should therefore not interpret "reasonable indication of injury" as requiring a higher evidentiary threshold than that which has been applied in the recent past.

[27] The Tribunal is of the view that its interpretation of the evidentiary threshold applied in preliminary injury inquiries is appropriate and need not be raised. As it recently stated in *Heavy Plate*[22] when it disposed of arguments very similar to those of Hoa Phat, the Tribunal's articulation of the standard of evidence required in a preliminary injury inquiry, as set out above, has

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

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

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

20 Article 5 of the WTO Anti-dumping Agreement requires an investigating authority to examine the accuracy and adequacy of the evidence provided in a dumping complaint to determine whether there is sufficient evidence to justify the initiation of an investigation, and to reject a complaint or to terminate an investigation as soon as an investigating authority is satisfied that there is not sufficient evidence of either dumping or of injury to justify proceeding with the case. Article 5 also specifies that unsubstantiated assertions are not to be considered as sufficient evidence.

21 SOR/84-927 [*Regulations*].

22 *Heavy Plate* (27 July 2020), PI-2020-001 (CITT) [*Heavy Plate*] at para. 35.

been carefully crafted to ensure that it conforms to the requirements of *SIMA* and the WTO agreements, and the Tribunal must therefore examine the evidence on the record using that standard, having regard to the specific circumstances of each case.

[28] Moreover, the Tribunal's occasional mention of it giving complainants the benefit of the doubt[23] simply reflects the fact that, at this early stage of an inquiry, the standard of "reasonable indication" of injury or threat of injury does not require the extensive evidence needed to satisfy the higher threshold of reliability and cogency that is needed in the context of a final injury inquiry.[24]

Injury factors and framework issues

[29] In making its preliminary determination, the Tribunal takes into account the injury and threat of injury factors that are prescribed in section 37.1 of the *Regulations,* including the import volumes of the dumped goods, the effects of the dumped goods on the price of like goods, the resulting economic impact of the dumped goods on the state of the domestic industry, and—if injury or threat of injury is found to exist—whether a causal relationship exists between the dumping of the goods and the injury or threat of injury.

[30] However, before examining the allegations of injury and threat of injury, the Tribunal must address a number of framework issues. Specifically, it must identify the domestically produced goods that are "like goods" in relation to the subject goods, determine whether there is more than one class of goods, and identify the domestic industry that produces those like goods. This is required because subsection 2(1) of *SIMA* defines "injury" as "material injury to a domestic industry" and "domestic industry" as ". . . the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods . . .".

[31] Given that the subject goods in this case originate in or are exported from more than one country, the Tribunal must also determine whether it will cumulatively assess the effect of the dumping of the subject goods from all the subject countries (i.e. whether it will conduct a single injury analysis or a separate analysis for each subject country).

LIKE GOODS AND CLASSES OF GOODS

[32] Subsection 2(1) of *SIMA* defines "like goods", in relation to any other goods, as "(a) goods that are identical in all respects to the other goods, or (b) in the absence of any goods described in paragraph (a), goods the uses and other characteristics of which closely resemble those of the other goods".

[33] In determining the like goods and whether there is more than one class of goods, the Tribunal typically considers a number of factors, including the physical characteristics of the goods (such as composition and appearance) and their market characteristics (such as substitutability, pricing, distribution channels, end uses and whether the goods fulfill the same customer needs).

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

24 *Heavy Plate* at para. 36.

[34] In *Rebar I*, the Tribunal found, on the basis of the above factors, that domestically produced rebar of the same description as the subject goods were "like goods" in relation to the subject goods and that there was a single class of goods.[25] The Tribunal arrived at the same conclusion in *Rebar II* and *Rebar I Review*.[26] In both cases, the subject goods were defined in the same way as the present case.

[35] No evidence or argument to the contrary has been presented in the context of this preliminary injury inquiry. Accordingly, the Tribunal will conduct its analysis on the basis that rebar produced in Canada that are of the same description as the subject goods are "like goods" in relation to the subject goods, and that there is one class of goods.

DOMESTIC INDUSTRY

[36] As indicated above, subsection 2(1) of *SIMA* defines "domestic industry" as ". . . the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods . . .".

[37] There are five known domestic producers of rebar: AltaSteel, AMLPC, Gerdau, MANA and Ivaco. These producers therefore account for all known domestic production of like goods and constitute the domestic industry for the purposes of this preliminary injury inquiry. This is consistent with the Tribunal's recent decisions pertaining to rebar.[27]

[38] The Tribunal notes that Ivaco's financial results and production capacity were not included as part of the complaint.[28] However, given that the four other domestic producers' collective production of the like goods accounted for a very high proportion of total domestic production between January 1, 2017, and June 30, 2020,[29] the Tribunal considers that their financial results and production capacity are reasonably representative of the state of the entire domestic industry for the purposes of this preliminary injury inquiry.

CUMULATION

[39] In the context of a final injury inquiry, subsection 42(3) of *SIMA* requires the Tribunal to make an assessment of the cumulative effect of the dumping of goods that are imported into Canada from more than one subject country if it is satisfied that: (1) the margin of dumping in relation to the goods from each of those countries is not insignificant and the volume of the goods imported from each of those countries is not negligible; and (2) such an assessment would be appropriate taking into account the conditions of competition between the goods from any of those countries and the goods from any other of those countries or the domestically produced like goods.

[40] While subsection 42(3) of *SIMA* applies to final injury inquiries, the Tribunal's practice has been to adopt the same framework in preliminary injury inquiries.[30] The Tribunal normally considers

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25 *Rebar I* at paras. 47, 79.
26 *Rebar II* at para. 45; *Rebar I Review* at para. 33.
27 See *Steel Safeguard Inquiry* at 53; *Rebar I Review* at para. 36.
28 Exhibit PI-2020-004-02.01 at 82, 84-85.
29 Exhibit PI-2020-004-03.06 (protected) at 13.
30 *Galvanized Steel Wire* (22 March 2013), PI-2012-005 (CITT) at para. 40; *Corrosion-resistant Steel Sheet* (2 February 2001), PI-2000-005 (CITT) at 4, 5.

that it is exceptional not to cumulate the subject goods in a preliminary injury inquiry when the available evidence appears to justify cumulation.[31]

[41] The Tribunal generally assesses insignificance and negligibility based on the CBSA's estimated margins of dumping and import volumes for its dumping POI. In the present case, the estimated margin of dumping for each country is not insignificant (i.e. it is not less than 2 percent of the export price of the goods) and the estimated import volume for each country is not negligible (i.e. it is not less than 3 percent of the total volume of imports from all countries).[32]

[42] EZDK submitted that, although Egypt's import volumes during the dumping POI were slightly above the negligibility threshold of 3 percent, its average participation over the period of January 1, 2017, to June 30, 2020, fell well below that threshold. It submitted that, in the preliminary injury inquiry for *FISC*,[33] the Tribunal had regard to the full period of review in assessing whether cumulation was warranted and that the same approach should be taken here.

[43] The complainants replied that negligibility is assessed on the basis of the dumping POI selected by the CBSA and not the period of investigation that the Tribunal would generally choose in the context of a final injury inquiry. They added that *FISC* is distinguishable as the volume of imports from the United Arab Emirates (UAE) in that case was negligible during the CBSA's dumping POI as well as in all annual periods reviewed.

[44] The Tribunal notes that, in *FISC*, the evidence indicated that the volume of imports from the UAE represented between 0 and 1 percent of total imports in each of the three annual periods reviewed and 1 percent of total imports over the full period.[34] This is manifestly not the case here. While there were no imports from Egypt in 2017, 2018 and the first half of 2020, the volume of imports from Egypt in 2019 and during the CBSA's dumping POI represented 6.0 and 4.4 percent of total imports, respectively.[35] The Tribunal is of the view that these numbers do not suggest that the circumstances warrant a separate analysis of the effects of subject goods from Egypt in this case.

[45] With respect to the conditions of competition, the Tribunal has previously made its assessment based on factors such as interchangeability, quality, pricing, distribution channels, modes of transportation, timing of arrivals and geographic dispersion.[36]

[46] The Tribunal finds that the evidence available at this stage of the proceedings reasonably indicates similar conditions of competition among the subject goods, and between the subject goods and the like goods. None of the parties opposed presented any evidence to the contrary.

[47] The Tribunal has consistently found that imported and domestically produced rebar are fully interchangeable commodity products that compete with one another in the Canadian market on the

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31 See, for example, *Heavy Plate* at para. 51.

32 Exhibit PI-2020-004-05 at 11, 19. See also the table at paragraph 11 of these reasons. The terms "insignificant" and "negligible" are defined in subsection 2(1) of *SIMA*.

33 *Certain Fabricated Industrial Steel Components* (10 November 2016), PI-2016-003 (CITT) [*FISC*].

34 *FISC* at para. 31.

35 Exhibit PI-2020-004-05 at 11.

36 See, for example, *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (17 August 2001), NQ-2001-001 (CITT) at 16; *Waterproof Footwear* (25 September 2009), NQ-2009-001 (CITT) at footnote 28. The Tribunal has recognized that other factors may be considered and that no single factor may be determinative. See *Laminate Flooring* (16 June 2005), NQ-2004-006 (CITT) at para. 80.

basis of price.[37] The evidence also indicates that offers for the subject goods were being made at similar periods throughout 2019-2020, and that the subject goods compete directly with like goods in the same geographical markets, are shipped to Canada via the same mode of transportation (ocean freight), and are sold through the same channels of distribution as the like goods (i.e. they are sold to rebar fabricators or service centres/distributors).[38]

[48] Therefore, for the purposes of this preliminary injury inquiry, the Tribunal considers it appropriate to conduct a single injury analysis that will assess the cumulative effect of the dumping of rebar into Canada from all seven subject countries.

INJURY ANALYSIS

Import volume of dumped goods

[49] The CBSA conducted its own estimate of import volumes of subject goods, which differed slightly from the volumes estimated by the complainants.[39] According to the CBSA's estimates, in *absolute* terms, imports of subject goods increased by 177 percent from 2017 to 2019. While the CBSA's estimates do not include import volumes for the first half of 2019, they do include such volumes for the period of January 1 to June 30, 2020, which exceeded those reported in full years 2017 and 2018. Moreover, the CBSA's estimates show that, whereas imports of subject goods represented only 16.7 percent of total imports in 2017, by the first half of 2020, they represented 67.3 percent of total imports.[40]

[50] Relative to domestic production and domestic sales of domestic production, the import volumes of subject goods nearly doubled from 2017 to 2019 and then increased by a further 50 percent in the first half of 2020 alone.[41]

[51] While the complainants' data do not differ greatly from the estimates made by the CBSA, the complainants did report data for the period of January 1 to June 30 for 2019 and 2020. Both in *absolute* and *relative* terms, the data reported by the complainants show that the import volumes of subject goods increased in 2018, 2019, and in the first half of 2020 when compared to the same period in 2019.[42] Notably, in absolute terms, imports of subject goods increased by 251 percent in the first half of 2020, when compared to the same period in 2019.

[52] Estimates provided by both the CBSA and the complainants show a similar trend of the increasing presence of subject goods, most particularly following the removal of the provisional safeguard measures on rebar at the end of April 2019 and in the first half of 2020, during which time the total market for rebar decreased somewhat.[43]

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37 *Rebar I* at para. 47; *Rebar II* at para. 68; *Steel Safeguard Inquiry* at 52; *Rebar I Review* at para. 228.

38 Exhibit PI-2020-004-02.01 at 42, 72, 880, 918-922, 1038-1039; Exhibit PI-2020-004-03.01 (protected) at 909-915. See also *Steel Safeguard Inquiry* at 62.

39 Exhibit PI-2020-004-03.06 (protected) at 20; Exhibit PI-2020-004-02.01 at 188, 190.

40 Exhibit PI-2020-004-05 at 11.

41 Exhibit PI-2020-004-03.06 (protected) at 13, 20.

42 Exhibit PI-2020-004-03.01 (protected) at 180, 192; Exhibit PI-2020-004-02.01 at 188, 190.

43 Exhibit PI-2020-004-03.06 (protected) at 20; Exhibit PI-2020-004-02.01 at 188, 190.

[53] Having considered the evidence on record, and in particular the CBSA's estimates of the volumes of imports, the Tribunal finds that there is a reasonable indication of a significant increase in imports of subject goods, both in absolute and relative terms.

Price effects of dumped goods

[54] The complainants alleged that imports of subject goods caused price undercutting, price depression and price suppression. In support of their claims, they relied on available average import pricing, their own domestic selling prices, as well as account-specific injury allegations.

[55] The evidence in the complaint indicates that, on an average annual aggregate basis, the imports of subject goods undercut domestic selling prices in 2018, 2019 and the first half of 2020, but not in 2017.[44] The degree of price undercutting was most pronounced in 2019 and 2020, coinciding with increased import volumes of subject goods during that time.

[56] Further, based on the CBSA's own estimate of import volumes of subject goods and the goods' declared value for duty, the imports of subject goods undercut domestic selling prices in all periods and by a greater margin than that alleged in the complaint.[45] These data also show that, on an average annual basis, imports from each individual subject country undercut domestic selling prices in all periods, except for 2018 when imports from one subject country were priced higher.[46]

[57] EZDK and NatSteel submitted that, given the difference between the average domestic selling prices and the average prices of imports of non-subject goods from the *Rebar I* countries, the domestic industry faced greater price effects from undumped imports and that any injury sustained was therefore not caused by the dumped goods.

[58] AltaSteel and AMLPC replied that imports from the *Rebar I* countries were dumped since the majority of imports during 2019 and the first half of 2020 were from Turkish exporters with outdated normal values. Gerdau submitted that the subject goods are the price leaders in the market as the volume of imports of the subject goods eclipsed the combined volume of imports from the *Rebar I* and *Rebar II* countries by a factor of ten over the dumping POI.

[59] Regardless of whether imports of rebar from the *Rebar I* countries were "dumped" due to allegedly outdated normal values, the fact remains that any price effects that may have resulted from these imports must be distinguished from the price effects of the subject goods. That being said, the evidence in this case reasonably indicates that, while imports from the *Rebar I* countries undercut the subject goods in most periods, their volumes declined significantly in 2019 and 2020 (compared to 2017 and 2018 levels) such that they represented only a small fraction of total imports during this time.[47] The price effects of imports of non-subject goods from the *Rebar I* countries is an issue that

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44 Exhibit PI-2020-004-02.01 at 76, 188, 190.

45 Exhibit PI-2020-004-03.06 (protected) at 43, 71.

46 The Tribunal recognizes that the import prices estimated by the complainants, and those calculated based on the CBSA's estimated import volumes and declared value for duty, are not delivered selling prices. However, this is the best information available at this stage of the proceedings. The Tribunal will collect delivered pricing during the final injury inquiry, should the CBSA make a preliminary determination of dumping.

47 Exhibit PI-2020-004-03.06 (protected) at 20, 71; Exhibit PI-2020-004-02.01 at 188, 190; Exhibit PI-2020-004-05 at 11. The Tribunal notes that the level of undercutting by imports from the *Rebar I* countries varies depending on which prices are used (i.e. those estimated by the complainants or those calculated from the CBSA's data).

would merit further attention in a final injury inquiry, should the CBSA make a preliminary determination of dumping.

[60] The evidence in the complaint also indicates that there was price depression and price suppression. Even though domestic average selling prices increased by 23 percent in 2018 and by a further 4 percent in 2019, they declined by 15 percent in the first half of 2020 when compared to the same period in 2019.[48] A closer look at the evidence provided on a quarterly basis reveals that domestic selling prices actually peaked in the first quarter of 2019 and then declined in each successive quarter until the second quarter of 2020. Domestic selling prices also declined by a greater amount than domestic producers' cost of goods sold over this same period, thereby suggesting price suppression.[49]

[61] The complaint also contains 25 account-specific injury allegations relating to lost sales due to price undercutting by the subject goods and to instances in which the domestic producers had to decrease their prices to retain sales.[50] These allegations are made by the three complainants and cover offers of subject goods from all seven subject countries at various times in 2019 and 2020.

[62] Hoa Phat noted that the offers of rebar from Vietnam covered by the complainants' account-specific injury allegations were made at a time when there were no imports of subject goods from Vietnam or after the goods had been imported.

[63] As submitted by AltaSteel and AMLPC, it is possible to have import offers but see no imports if the domestic industry was able to secure the sale by reducing its price. In any event, in this case, AMLPC and Gerdau adequately explained the circumstances surrounding the two account-specific injury allegations pertaining to offers of rebar from Vietnam.[51] The Tribunal is of the view that, taken together, the numerous account-specific injury allegations contained in the complaint provide a further reasonable indication of price undercutting and price depression caused by the subject goods.

[64] In light of the above, the Tribunal finds that the evidence reasonably indicates that the subject goods significantly undercut, depressed and suppressed the price of domestically produced like goods in the second half of 2019 and the first half of 2020.

Resultant impact on the domestic industry

[65] As part of its injury analysis, the Tribunal must consider the impact of the dumped 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.[52] The Tribunal must also consider whether the evidence discloses a reasonable indication of a causal relationship between the dumping of the goods and the injury on the basis of the volume, price effect and resulting impact on the domestic industry of the dumped goods, and whether any factors other than the dumping have caused injury.[53]

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48 Exhibit PI-2020-004-02.01 at 188, 190-191.

49 Exhibit PI-2020-004-03.01 (protected) at 76, 191.

50 Exhibit PI-2020-004-02.01 at 72; Exhibit PI-2020-004-03.01 (protected) at 72-73.

51 Exhibit PI-2020-004-09.01A (protected) at paras. 14-16; Exhibit PI-2020-004-09.02 (protected) at paras. 61-62; Exhibit PI-2020-004-03.01 (protected), Attachment 50 at para. 48.

52 See paragraph 37.1(1)(c) of the *Regulations*.

53 See subsection 37.1(3) of the *Regulations*.

[66] The complainants submitted that the dumping of the subject goods has caused material injury to the domestic industry in the second half of 2019 through 2020 in the form of lost market share, poor financial results and low capacity utilization.

Market share

[67] Although the market shares estimated by the CBSA and the complainants differ slightly, they both show that the domestic industry's market share increased from 2017 to 2019, and then decreased in the first half of 2020, and that the market share of the imports of subject goods increased from 2017 to the first half of 2020, with the biggest increases occurring in 2019 and 2020.[54] More specifically, the CBSA's estimates show that the domestic industry's market share decreased by approximately 6 percentage points in the first half of 2020, as compared to 2019, and that, conversely, the market share of the imports of subject goods increased by approximately 10 percentage points over the same period.

[68] Similar to the situation with domestic selling prices, the complainants' estimates show that the domestic industry's market share actually peaked in the first quarter of 2019 and subsequently reached a low point in the second quarter of 2020, falling 16 percentage points over that period.[55] In contrast, the market share held by imports of the subject goods increased by 31 percentage points over the same period.

Financial results and other performance indicators

[69] The evidence provided in the complaint shows that the domestic industry's financial performance, in terms of net sales value of domestically produced goods, gross margin and net income, both on an aggregate and per unit basis, all improved between 2017 and 2019 before decreasing in the second half of 2019 and the first half of 2020.[56] On a per unit basis, net sales value, gross margin and net income decreased15 percent, 36 percent and 75 percent, respectively, in the first half of 2020, when compared to the first half of 2019. The same trends were also observed regarding the volume of domestic sales, total production and capacity utilization for rebar.[57]

[70] On the other hand, the number of direct employees and the total number of hours worked increased throughout.[58]

[71] Overall, the Tribunal finds that the evidence available at this stage of the proceedings reasonably indicates that the injury suffered by the domestic industry over this period can be characterized as material.

Causation and other factors

[72] The Tribunal also finds that there is a reasonable indication that a causal relationship exists between the dumping of the subject goods and the injury suffered by the domestic industry by reason of the fact that the significant increase in imports of subject goods, the significant and adverse price effects on the domestically produced like goods, and the domestic industry's loss of market share and

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54 Exhibit PI-2020-004-03.06 (protected) at 21; Exhibit PI-2020-004-02.01 at 79, 188.
55 Exhibit PI-2020-004-02.01 at 81, 190-191.
56 Exhibit PI-2020-004-03.01 (protected) at 190-191.
57 *Ibid.* at 190, 192.
58 *Ibid.* at 193.

decreased performance all occurred within the same timeframe, i.e. in the second half of 2019 and the first half of 2020.

[73] The Government of Egypt, the Government of Indonesia and Hoa Phat submitted that, if the domestic industry has suffered injury, it is attributable to factors other than the dumping, such as significant imports of rebar from the United States and low-priced imports from the *Rebar I* and *Rebar II* countries, as well as the impact of COVID-19 and the related forced isolation on demand for rebar.

[74] Some of these factors (as discussed above with respect to the price effects of imports of non-subject goods from the *Rebar I* countries), and other yet unidentified factors, may well have constituted other causes of injury to the domestic industry. The Tribunal will give further consideration to the issue of other factors and causation during the final injury inquiry, when it has access to a full evidentiary record.

[75] During a final injury inquiry, the Tribunal compiles, through questionnaire responses, detailed information regarding the volumes and prices of subject and non-subject goods as well as conditions in the market during its selected period of investigation. For the purposes of the present preliminary injury inquiry, the Tribunal finds that the evidence sufficiently supports the existence of a reasonable indication of injury on account of the subject goods in and of themselves.

THREAT OF INJURY

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

CONCLUSION

[77] On the basis of the foregoing analysis, the Tribunal determines that there is evidence that discloses a reasonable indication that the dumping of the subject goods has caused or is threatening to cause injury to the domestic industry.

Peter Burn

Peter Burn
Presiding Member

Cheryl Beckett

Cheryl Beckett
Member

Georges Bujold

Georges Bujold
Member