



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Dumping and Subsidizing

## DETERMINATION AND REASONS

Preliminary Injury Inquiry  
No. PI-2020-005

Concrete Reinforcing Bar

*Determination issued  
Monday, January 25, 2021*

*Reasons issued  
Monday, February 15, 2021*

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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 Sultanate of Oman and the Russian Federation, 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 December 4, 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 at a later date.

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Cheryl Beckett, Member  
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## STATEMENT OF REASONS

### INTRODUCTION

[1] On December 4, 2020, pursuant to subsection 31(1) of the *Special Import Measures Act*,<sup>1</sup> the President of the Canada Border Services Agency (CBSA), on its own initiative, initiated an investigation into the potentially injurious dumping of certain concrete reinforcing bar, commonly referred to as rebar, originating in or exported from the Sultanate of Oman (Oman) and the Russian Federation (Russia) (the subject goods).

[2] As a result of the CBSA's decision to initiate an investigation, on December 7, 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.<sup>2</sup>

[3] This preliminary injury inquiry closely follows the Tribunal's preliminary determination in *Rebar III*<sup>3</sup> that there was evidence that disclosed a reasonable indication that the dumping of rebar from Algeria, Egypt, Indonesia, Italy, Malaysia, Singapore and Vietnam had caused injury or was threatening to cause injury to the domestic industry. Further to the CBSA's extension of the preliminary phase of its investigation into the alleged injurious dumping of rebar from these countries, the decision to issue a preliminary determination of dumping or to terminate the investigation with respect to some or all of the goods was scheduled to be made by the CBSA on or before February 4, 2021.<sup>4</sup>

[4] Prior to *Rebar III*, the Tribunal had found in *Rebar I*<sup>5</sup> 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. It had also found in *Rebar II*<sup>6</sup> 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. More recently, in the *Steel Safeguard Inquiry*,<sup>7</sup> the Tribunal 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.<sup>8</sup> This led to

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<sup>1</sup> R.S.C., 1985, c. S-15 [*SIMA*].

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

<sup>3</sup> *Concrete Reinforcing Bar* (23 November 2020), PI-2020-004 (CITT) [*Rebar III*].

<sup>4</sup> See <https://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/rb32020/rb32020-nx-eng.html>. On February 4, 2021, following the Tribunal's issuance of the present preliminary determination of injury, the CBSA did make a preliminary determination of dumping in respect of rebar from Algeria, Egypt, Indonesia, Italy, Malaysia, Singapore and Vietnam (see <https://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/rb32020/rb32020-np-eng.html>).

<sup>5</sup> 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*].

<sup>6</sup> See *Concrete Reinforcing Bar* (3 May 2017), NQ-2016-003 (CITT) [*Rebar II*].

<sup>7</sup> *Safeguard Inquiry into the Importation of Certain Steel Goods* (3 April 2019), GC-2018-001 (CITT) [*Steel Safeguard Inquiry*].

<sup>8</sup> 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 removal of the provisional safeguard measures on rebar, which had been in place since October 2018.

[5] The Tribunal received submissions supporting a preliminary determination of injury from domestic producers AltaSteel Inc. (AltaSteel), ArcelorMittal Long Products Canada, G.P. (AMLPC), Gerdau Ameristeel Corporation (Gerdau) and Max Aicher (North America) Limited (MANA). Although Ivaco Rolling Mills 2004 L.P. (Ivaco)—also a domestic producer—consented to its information being placed on the record,<sup>9</sup> it did not file submissions or otherwise participate in these proceedings. The Tribunal also received submissions supporting a preliminary determination of injury from the United Steelworkers (USW), a trade union representing a number of workers employed by AltaSteel, AMLPC, Gerdau and Ivaco.

[6] The Tribunal received submissions opposing a preliminary determination of injury from NLMK Group (Novolipetsk Steel) (NLMK) of Russia as well as from the Ministry of Economic Development of the Russian Federation (MED).<sup>10</sup>

[7] On January 25, 2021, pursuant to subsection 37.1(1) of *SIMA*, the Tribunal determined that there was evidence that disclosed 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:<sup>11</sup>

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 Sultanate of Oman and the Russian Federation.

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).

## THE CBSA'S DECISION TO INITIATE THE INVESTIGATION

[9] The CBSA, on its own initiative, 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

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the injury threshold applicable in the context of injury inquiries under *SIMA*, which is that of “material injury” (see *Steel Safeguard Inquiry* at 26).

<sup>9</sup> Exhibit PI-2020-005-02.01 at 9; Exhibit PI-2020-005-05.01 at 1.

<sup>10</sup> The Russian Trade Mission in Canada (Embassy of Russia) was also a party in these proceedings, but it simply filed the submissions that had already been filed by the MED.

<sup>11</sup> Exhibit PI-2020-005-02.07 at 1.

well as evidence that disclosed a reasonable indication that the dumping had caused injury or was threatening to cause injury to the domestic industry.<sup>12</sup>

[10] The Tribunal notes that the initiation of the dumping investigation in this case followed the submission of an information package to the CBSA by AltaSteel, AMLPC, Gerdau and MANA on December 1, 2020.<sup>13</sup> The information package contained statements of evidence and other documentary evidence, as well as a request that the CBSA review the information and initiate a dumping investigation on its own initiative. The impetus for the request was the alleged importation of large volumes of low-priced imports of rebar from Oman and Russia soon after the initiation of the *Rebar III* investigation, which the domestic producers claimed represented a clear case of “source switching” by importers in an attempt to avoid anti-dumping duties and continue offering offshore rebar at low prices.<sup>14</sup>

[11] Using information for its chosen dumping period of investigation (POI) of June 1, 2020, to November 30, 2020, the CBSA estimated the margins of dumping and volumes of dumped goods for each of the two subject countries as follows:<sup>15</sup>

Country	Margin of Dumping (% of export price)	Volume of Dumped Imports (% of total imports)
Oman	7.2	8.0
Russia	42.5	5.9

## PRELIMINARY ISSUES

### The CBSA’s selection of the dumping POI and calculation of normal values

[12] The MED submitted that, while the CBSA usually selects a 12-month dumping POI, in the present case, it selected, without justification, a 6-month POI. It claimed that this shortened POI was deliberately chosen by the CBSA in order to overstate the volume and share of subject imports from Russia. The MED also took issue with the CBSA’s calculation of normal values.

[13] As the Tribunal stated in *Rebar III*, the calculation of normal values during the course of an investigation, and the selection of a dumping POI, are matters for which the CBSA has exclusive jurisdiction and therefore they cannot be addressed or reviewed by the Tribunal in the context of this preliminary injury inquiry.<sup>16</sup>

<sup>12</sup> While the CBSA typically initiates investigations following the receipt of a written complaint respecting the dumping or subsidizing of goods, subsection 31(1) of *SIMA* allows for the CBSA to also initiate an investigation on its own initiative.

<sup>13</sup> Exhibit PI-2020-005-02.06. AltaSteel, AMLPC and Gerdau also consented to the CBSA’s use of the complaint they filed in *Rebar III* for the purposes of assessing whether a dumping investigation should be initiated in respect of rebar from Oman and Russia (see Exhibit PI-2020-005-02.01).

<sup>14</sup> Exhibit PI-2020-005-02.06 at 2-3.

<sup>15</sup> Exhibit PI-2020-005-07 at 8, 11.

<sup>16</sup> *Rebar III* at para. 17.

**Request that the inquiry be terminated with respect to Russia**

[14] NLMK claimed that the volume of rebar imported from Russia during the dumping POI was negligible as it represented less than 3 percent of total imports. It therefore requested that the Tribunal terminate its inquiry in respect of those goods pursuant to subsection 42(4.1) of *SIMA*.

[15] Subsection 42(4.1) of *SIMA*, which requires that the Tribunal terminate its inquiry if it determines that the volume of dumped goods from a country is negligible, is only applicable in the context of final injury inquiries conducted pursuant to section 42. 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.<sup>17</sup> Accordingly, this is not an issue that can be addressed by the Tribunal at this stage of the proceedings.

[16] In any event, as estimated by the CBSA at the initiation of its investigation, the volume of rebar imported from Russia during the dumping POI represented 5.9 percent of total imports of rebar meeting the product definition during this period.<sup>18</sup> This is above the negligibility threshold of 3 percent specified in *SIMA*.<sup>19</sup>

**Other issues raised by the parties opposed**

[17] NLMK submitted that an increase in the price of rebar resulting from the imposition of anti-dumping duties will attenuate the positive effects of government support schemes and have a disproportionate effect on the Canadian construction sector. It added that higher rebar prices would also make homes less affordable, especially in current times when household income has been affected by the COVID-19 pandemic. It also submitted that this is the fourth inquiry on rebar in the last six years, and the second in the last three months, and that this has created a closed and overregulated market, which reduces competition.

[18] The MED similarly submitted that the overregulation of the rebar market in Canada undermines fair competition and creates conditions that favour abuse of dominance.

[19] As the Tribunal has previously stated, its mandate in a preliminary injury inquiry does not allow it to take into consideration arguments or evidence relating to the impact of a potential imposition of duties on end users, downstream industries or competition in the market generally.<sup>20</sup> Such considerations can only be addressed in the context of a public interest inquiry conducted pursuant to section 45 of *SIMA*, which may only take place *after* the Tribunal has made a finding of injury or threat of injury following its final injury inquiry conducted pursuant to section 42.

**LEGISLATIVE FRAMEWORK**

[20] 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

<sup>17</sup> See paragraph 35(1)(a) of *SIMA*.

<sup>18</sup> Exhibit PI-2020-005-07 at 8. The Tribunal notes that the import data upon which NLMK relies do not appear to cover the month of November 2020, which falls within the dumping POI (see Exhibit PI-2020-005-08.01 at 11-15). The evidence on the record indicates that the volume of rebar imported from Russia in November 2020 was significant. See Exhibit PI-2020-005-03.02 (protected) at 24.

<sup>19</sup> See the definition of "negligible" at subsection 2(1) of *SIMA*.

<sup>20</sup> See *Sucker Rods* (1 August 2018), PI-2018-001 (CITT) at para. 8.

indication that the dumping or subsidizing of the [subject] goods has caused injury or retardation or is threatening to cause injury.”

### Reasonable indication standard

[21] The term “reasonable indication” is not defined in *SIMA*, but it is understood to mean that the evidence need not be “conclusive, or probative on a balance of probabilities”.<sup>21</sup> The reasonable indication standard that applies in a preliminary injury inquiry is also lower than the evidentiary threshold that applies in a final injury inquiry under section 42 of *SIMA*.<sup>22</sup> 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.

[22] However, the outcome of preliminary injury inquiries must not be taken for granted.<sup>23</sup> The Tribunal must be satisfied that there is positive and sufficient evidence on the record to support a preliminary determination of injury or threat of injury. This evidence must address the necessary requirements in *SIMA* and the relevant factors of the *Special Import Measures Regulations*.<sup>24</sup>

### Injury factors and framework issues

[23] In making its preliminary injury 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.

[24] However, before examining whether there is evidence 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 . . .”.

[25] 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 of the two subject countries).

### LIKE GOODS AND CLASSES OF GOODS

[26] 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

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<sup>21</sup> *Ronald A. Chisholm Ltd. v. Deputy M.N.R.C.E.* (1986), 11 CER 309 (FCTD).

<sup>22</sup> *Grain Corn* (10 October 2000), PI-2000-001 (CITT) at 5.

<sup>23</sup> *Concrete Reinforcing Bar* (12 August 2014), PI-2014-001 (CITT) at para. 19.

<sup>24</sup> SOR/84-927 [*Regulations*].

paragraph (a), goods the uses and other characteristics of which closely resemble those of the other goods.”

[27] 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).

[28] 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.<sup>25</sup> The Tribunal arrived at the same conclusion in *Rebar II*, *Rebar I Review* and *Rebar III*.<sup>26</sup> In all cases, the subject goods were defined in the same way as the present case.

[29] The parties have presented no evidence or argument to the contrary in the context of this preliminary injury inquiry. Accordingly, the Tribunal will conduct its analysis on the basis that rebar produced in Canada that is of the same description as the subject goods is “like goods” in relation to the subject goods, and that there is one class of goods.

## DOMESTIC INDUSTRY

[30] 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 . . .”.

[31] 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 in *Rebar I Review* and *Rebar III*.<sup>27</sup>

[32] Ivaco’s financial results and some information pertaining to other performance indicators for the entire period being examined are not on the record.<sup>28</sup> However, given that the 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,<sup>29</sup> the Tribunal considers that their financial results and other performance indicators are reasonably representative of the state of the entire domestic industry for the purposes of this preliminary injury inquiry.

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<sup>25</sup> *Rebar I* at paras. 47, 79.

<sup>26</sup> *Rebar II* at para. 45; *Rebar I Review* at para. 33; *Rebar III* at para. 35.

<sup>27</sup> *Rebar I Review* at para. 36; *Rebar III* at para. 37.

<sup>28</sup> Some of Ivaco’s information pertaining to other performance indicators is on the record by virtue of being included in the complaint filed by AltaSteel, AMLPC and Gerdau in *Rebar III*, which was placed on the record of these proceedings (see Exhibit PI-2020-005-02.02). However, this information was not updated to cover the third quarter of 2020 for Ivaco.

<sup>29</sup> Exhibit PI-2020-005-03.01 (protected) at 158, 170.

## CUMULATION

[33] 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.

[34] The Tribunal's practice has been to adopt the same framework in preliminary injury inquiries.<sup>30</sup> The Tribunal normally considers that it is exceptional not to cumulate the subject goods in a preliminary injury inquiry when the available evidence appears to justify cumulation.<sup>31</sup>

[35] 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 margins of dumping for Oman and Russia are not insignificant (i.e. they are not less than 2 percent of the export price of the goods) and the estimated import volumes for each of the two countries are not negligible (i.e. they are not less than 3 percent of the total volume of imports from all countries).<sup>32</sup>

[36] 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.<sup>33</sup>

[37] None of the parties presented any evidence indicating that the conditions of competition between the subject goods or between the subject and like goods would make cumulation inappropriate in this case. In fact, the Tribunal has consistently held that imported and domestically produced rebar are fully interchangeable commodity products that compete with one another in the Canadian market on the basis of price.<sup>34</sup> The evidence on the record also indicates that offers from the subject countries were being made at similar periods in the latter half of 2020, that the subject goods are shipped to Canada via the same mode of transportation, are sold through the same channels of distribution as the like goods, and compete with the like goods in the same geographical markets across Canada.<sup>35</sup>

[38] In light of the foregoing, the Tribunal considers it appropriate, for the purposes of this preliminary injury inquiry, to conduct a single injury analysis that will assess the cumulative effect of the dumping of rebar into Canada from Oman and Russia.

<sup>30</sup> *Galvanized Steel Wire* (22 March 2013), PI-2012-005 (CITT) at para. 40; *Corrosion-resistant Steel Sheet* (2 February 2001), PI-2000-005 (CITT) at 4, 5.

<sup>31</sup> See, for example, *Heavy Plate* (27 July 2020), PI-2020-001 (CITT) at para. 51.

<sup>32</sup> Exhibit PI-2020-005-07 at 8, 11. See also the table at paragraph 11 of these reasons. The terms "insignificant" and "negligible" are defined in subsection 2(1) of *SIMA*.

<sup>33</sup> 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.

<sup>34</sup> *Rebar I* at para. 47; *Rebar II* at para. 68; *Steel Safeguard Inquiry* at 52; *Rebar I Review* at para. 228.

<sup>35</sup> Exhibit PI-2020-005-02.02 at 17-18; Exhibit PI-2020-005-02.06 at 27-28; Exhibit PI-2020-005-08.04A at 4-5.

## INJURY ANALYSIS

### Appropriateness of quarterly comparisons

[39] AltaSteel and AMLPC submitted that, in the present case, the Tribunal should look at the most recent data on a quarterly basis for a number of reasons. First, they noted that imports from Oman and Russia occurred only in the third quarter of 2020 (Q3) and the fourth quarter of 2020 (Q4). Second, they submitted that quarterly periods are appropriate in this case as they provide a more accurate representation of the recent market trends, which can otherwise be masked in overall annual results. Third, they noted that, in *Rebar II* and *Cold-rolled Steel*, the Tribunal analyzed the domestic industry's performance on a quarterly basis.<sup>36</sup>

[40] The Tribunal is of the view that quarterly comparisons can be appropriate, and even necessary, in specific circumstances such as those present in this preliminary injury inquiry where the evidence indicates that subject goods were absent from the Canadian market from 2017 to the beginning of the dumping POI in June 2020.<sup>37</sup> The Tribunal agrees that, in circumstances such as these, recent trends would be masked if yearly comparisons were effectuated. However, caution must be exercised in order to ensure that quarterly trends are not simply reflective of normal market behaviour attributable to factors such as the timing and seasonality of shipments.<sup>38</sup>

[41] In their complaint filed in *Rebar III*, AltaSteel, AMLPC and Gerdau provided domestic industry annual data for 2017 to 2019, interim data for the first half of 2020, and quarterly data for the first quarter of 2019 (Q1) to the second quarter of 2020 (Q2).<sup>39</sup> That complaint has been placed on the record for this preliminary injury inquiry.<sup>40</sup> On December 17, 2020, AltaSteel, AMLPC, Gerdau and MANA provided the Tribunal with updated data covering Q3 2020 and partial data for Q4 2020 (either up to December 12, 2020, or projected to the end of the quarter).<sup>41</sup> Other than for AMLPC, which provided its forecasted financial results for Q4 2020,<sup>42</sup> the remainder of the domestic industry's financial results for this period were not available. The data pertaining to import volumes and prices of subject goods matched the CBSA's own estimates, which were derived from actual import documentation.<sup>43</sup>

<sup>36</sup> *Rebar II* at para. 185; *Cold-rolled Steel* (24 July 2018), PI-2018-002 (CITT) at para. 86.

<sup>37</sup> Exhibit PI-2020-005-07 at 7-8.

<sup>38</sup> See *Concrete Reinforcing Bar* (19 October 2016), PI-2016-002 (CITT) at para. 60, where the Tribunal stated that it was important to keep in mind the timing and seasonality of shipments, especially those entering Eastern Canada or Central Canada via the St. Lawrence Seaway, when relying on first quarter import volumes to generate full-year projections of import activity. This is not a concern in the present case as the data on the record are for subject goods imported prior to the close of shipping.

<sup>39</sup> The complaint did not include Ivaco's financial results and only included some of its information pertaining to other performance indicators.

<sup>40</sup> Exhibit PI-2020-005-02.01; Exhibit PI-2020-005-02.02; Exhibit PI-2020-005-03.01 (protected).

<sup>41</sup> Exhibit PI-2020-005-05.01; Exhibit PI-2020-005-05.02; Exhibit PI-2020-005-05.03; Exhibit PI-2020-005-06.01 (protected); Exhibit PI-2020-005-06.02 (protected); Exhibit PI-2020-005-06.03 (protected). Import volumes and prices were for rebar imported into Canada as of December 12, 2020. Domestic sales of domestic production (including sales by Ivaco) were projected to the end of the year.

<sup>42</sup> Exhibit PI-2020-005-06.01 (protected) at 8.

<sup>43</sup> Exhibit PI-2020-005-03.02 (protected) at 5-7, 11-12, 24-28.

### Import volume of dumped goods

[42] The evidence on the record indicates that the subject goods first appeared in the Canadian market in June 2020, when an extremely small and inconsequential shipment of rebar was imported from Russia.<sup>44</sup> In absolute terms, imports of subject goods increased significantly in Q3 2020, representing 8 percent of total imports during that period, and then increased by 228 percent in Q4 2020, accounting for 18 percent of total imports.<sup>45</sup> Over the CBSA's dumping POI, imports of subject goods accounted for nearly 14 percent of total imports.<sup>46</sup>

[43] Relative to domestic sales of domestic production, the import volumes of subject goods increased from 0 percent in Q2 2020 to 5 percent in Q3 2020 and then more than tripled to 17 percent in Q4 2020.<sup>47</sup> As domestic production data were not available on a quarterly basis for 2020, and was not available at all for Q4 2020, no trends could be established for subject imports relative to domestic production.

[44] The MED submitted that, since there were essentially no imports of subject goods from Russia in June 2020 and all other imports from Russia were in November 2020, there is no basis upon which to make any conclusions on imports trends. It added that the imports simply indicate the start of a Russian presence in the Canadian market in 2020. NLMK similarly submitted that the basis for a "significant increase" in this case was the complete lack of imports prior to June 2020 and that, with such an approach, all new imports would be prohibited.

[45] The Tribunal notes that, given its decision to conduct a cumulative injury analysis, import trends were assessed in respect of imports of subject goods from Oman and Russia together. Although there were no imports of subject goods from Russia in Q3 2020, imports from Oman were significant.<sup>48</sup> Moreover, the Tribunal is cognizant of the fact that, while small initial import volumes can yield large percentage increases in the next reporting period, it is clear that, in the present case, imports of subject goods in Q3 2020 and Q4 2020 were significant in absolute terms, as the share of these imports represented 8 and 18 percent of total imports during these periods.

[46] Having considered the evidence on the record, the Tribunal finds that there is a reasonable indication of a significant increase in imports of subject goods in Q3 2020 and Q4 2020, both in absolute and relative terms.

### Price effects of dumped goods

[47] The evidence on the record indicates that the subject goods undercut domestic average selling prices in Q3 2020 and Q4 2020 by 18 and 17 percent, respectively.<sup>49</sup> Imports of subject goods also undercut average import prices from the *Rebar III* countries in these two quarters.<sup>50</sup> In Q4 2020,

<sup>44</sup> *Ibid.* at 24-28; Exhibit PI-2020-005-05.01 at 6; Exhibit PI-2020-005-07 at 7-8. As mentioned previously, the subject goods were absent from the Canadian market from 2017 to June 2020.

<sup>45</sup> Exhibit PI-2020-005-05.01 at 6.

<sup>46</sup> Exhibit PI-2020-005-07 at 8.

<sup>47</sup> Exhibit PI-2020-005-05.01 at 6.

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*; Exhibit PI-2020-005-06.01 (protected) at 6. The domestic selling price for Q4 2020 is the average of the selling prices of AltaSteel, AMLPC and Gerdau. The domestic selling price for Q3 2020 is the domestic industry average.

<sup>50</sup> Exhibit PI-2020-005-05.01 at 6.

imports of subject goods from Russia were priced lower than imports of rebar from any single *Rebar III* country at any time in 2020.

[48] The evidence also indicates that there was price depression in the second half of 2020. Domestic average selling prices declined by 4 percent from Q2 2020 to Q3 2020 and by a further 3 percent from Q3 2020 to Q4 2020.<sup>51</sup> Of note, the domestic average selling price for Q4 2020 was lower than domestic average annual selling prices for 2018 and 2019, as well as domestic average quarterly selling prices for all other quarters in 2019 and 2020.<sup>52</sup> Moreover, the decline in the domestic average selling price in Q3 2020 was greater than the decline in the cost of goods sold during the same period.<sup>53</sup>

[49] AltaSteel, AMLPC and Gerdau also provided 14 examples of price undercutting by the subject goods which they claim resulted either in a lost sale or a price reduction at multiple customer accounts in the second half of 2020.<sup>54</sup>

[50] In light of the above, the Tribunal finds that the evidence reasonably indicates that the subject goods significantly undercut the price of domestically produced like goods in Q3 2020 and Q4 2020, and that these prices were depressed during this period.

### **Resultant impact on the domestic industry**

[51] 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.<sup>55</sup>

[52] The evidence on the record indicates that the domestic industry's market share increased by 13 percentage points between Q2 2020 and Q3 2020, and is projected to decrease by 8 percentage points in Q4 2020, for a net projected gain of 5 percentage points.<sup>56</sup> The market share held by the subject goods increased by 3 percentage points between Q2 2020 and Q3 2020, and is projected to increase by a further 6 percentage points in Q4 2020, for a total projected gain of 9 percentage points. Over this same period, the market share held by imports from the *Rebar III* countries decreased by 16 percentage points between Q2 2020 and Q3 2020, and is projected to increase by 9 percentage points in Q4 2020, for a total projected decline of 7 percentage points.

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<sup>51</sup> *Ibid.*; Exhibit PI-2020-005-06.01 (protected) at 6.

<sup>52</sup> Exhibit PI-2020-005-05.01 at 3, 5-6; Exhibit PI-2020-005-06.01 (protected) at 6. As previously indicated, the domestic selling price for Q4 2020 is the average of the selling prices of AltaSteel, AMLPC and Gerdau, whereas domestic selling prices for all other periods are the domestic industry average.

<sup>53</sup> Exhibit PI-2020-005-06.01 (protected) at 13. The data used for this comparison were that of AltaSteel, AMLPC, Gerdau and MANA. As the domestic industry's financial results were not yet available for Q4 2020, it was not possible to make the same comparison for that period.

<sup>54</sup> Exhibit PI-2020-005-03.03 (protected) at 5-7, 33-34, 106-108; Exhibit PI-2020-005-09.04 (protected) at 30-31; Exhibit PI-2020-005-09.05 (protected) at 25-26.

<sup>55</sup> See paragraph 37.1(1)(c) of the *Regulations*.

<sup>56</sup> Exhibit PI-2020-005-05.01 at 6.

[53] Although domestic sales from domestic production were projected to decline by 5 percent for full year 2020 when compared to 2019, domestic sales did increase from Q2 2020 to Q4 2020—and by a greater percentage than the market increased over this same period.<sup>57</sup>

[54] As total production and capacity utilization data for the domestic industry were only available up to Q3 2020 and on a consolidated basis for the Q1 2020 to Q3 2020 period, no quarterly comparisons could be done. Nonetheless, the Tribunal notes that total domestic production of rebar and the capacity utilization rate for domestic sales decreased somewhat in the Q1 2020 to Q3 2020 period, as compared to the same period in the previous year.<sup>58</sup>

[55] Turning to the domestic industry's financial performance, the evidence indicates that gross margin and net income, when expressed as a percentage of net sales, decreased by 3 and 1 percentage points, respectively, from Q2 2020 to Q3 2020.<sup>59</sup> As noted above, AMLPC was the only domestic producer to provide its forecasted financial results for Q4 2020, which forecast suggests further declines in gross margin and net income.<sup>60</sup>

[56] In terms of employment, the evidence indicates that, on a consolidated basis, the number of direct employees for AMLPC, Gerdau and MANA increased from Q2 2020 to Q3 2020.<sup>61</sup> No employment data were provided for Q4 2020.

[57] Overall, the Tribunal finds that the limited evidence available at this stage of the proceedings indicates that the domestic industry was injured to a certain degree during the period in which the subject goods arrived on the market, notably in the form of lost market share in Q4 2020 and reduced profitability in Q3 2020. However, as will be discussed below, the Tribunal finds no reasonable indication that the injury that may be attributable to the dumping of the subject goods can be characterized as material.

### Causality and materiality

[58] The Tribunal must also consider whether the evidence discloses a reasonable indication of a causal relationship between the dumping of the subject goods and the injury.<sup>62</sup> The standard is whether there is a reasonable indication that the dumping of the subject goods has, *in and of itself*,<sup>63</sup> caused injury.

[59] While subsection 2(1) of *SIMA* defines “injury” as “material injury to a domestic industry,” the term “material” itself is not defined. In the past, the Tribunal has considered this to mean something more than *de minimis* but not necessarily serious injury.<sup>64</sup> Ultimately, the Tribunal

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<sup>57</sup> *Ibid.* at 3, 6.

<sup>58</sup> Exhibit PI-2020-005-06.01 (protected) at 14.

<sup>59</sup> *Ibid.* at 13.

<sup>60</sup> *Ibid.* at 8.

<sup>61</sup> Exhibit PI-2020-005-03.01 (protected) at 162, 177, 180; Exhibit PI-2020-005-06.01 (protected) at 10; Exhibit PI-2020-005-06.02 (protected) at 6; Exhibit PI-2020-005-06.03 (protected) at 4.

<sup>62</sup> See subsection 37.1(3) of the *Regulations*.

<sup>63</sup> *Gypsum Board* (5 August 2016), PI-2016-001 (CITT) at para. 44; *Galvanized Steel Wire* (22 March 2013), PI-2012-005 (CITT) at para. 75; *Circular Copper Tube* (22 July 2013), PI-2013-002 (CITT) at para. 82.

<sup>64</sup> *ABS Resin* (15 October 1986), CIT-3-86; *Unitized Wall Modules* (12 November 2013), NQ-2013-002 (CITT) at para. 58.

determines the materiality of any injury on a case-by-case basis, having regard to the extent (i.e. severity), timing and duration of the injury.<sup>65</sup>

[60] In the present case, the presence in the Canadian market of rebar from the *Rebar III* countries is another factor that merits consideration. Indeed, imports of rebar from these countries remained present in large numbers during the relevant timeframe.<sup>66</sup> Notwithstanding the fact that the market share held by imports from the *Rebar III* countries decreased somewhat between Q2 2020 and Q4 2020, they remained by far the largest source of imports, outnumbering imports of subject goods by a factor of six in Q3 2020 and by a factor of three in Q4 2020.<sup>67</sup> Moreover, even if the subject goods undercut average selling prices of imports from the *Rebar III* countries in these two quarters, there were still significant volumes of imports from individual *Rebar III* countries that were at or below the prices of subject goods.<sup>68</sup>

[61] As such, it is clear that the injury suffered by the domestic industry in Q3 2020 and Q4 2020 cannot reasonably be entirely attributed to the dumping of the subject goods. In any event, even if the Tribunal were to assume that this injury was largely attributable to the subject goods, it would still conclude that it fell short of being considered material.

[62] There is insufficient evidence on the record with respect to the domestic industry's performance in Q4 2020, the period during which the large majority of the subject goods were imported.<sup>69</sup> As for the evidence that is available, while it does show that the domestic industry lost market share in Q4 2020 and suffered reduced profitability in Q3 2020, it also shows increased market share and direct employment in Q3 2020. Overall, the Tribunal is of the view that, to date, the injury experienced by the domestic industry has not been for such a duration or to such an extent to reach a level than can be considered material within the meaning of *SIMA*.

[63] Accordingly, the Tribunal finds that the evidence does not disclose a reasonable indication that the dumping of the subject goods has caused injury to the domestic industry.

## THREAT OF INJURY ANALYSIS

[64] The Tribunal must now consider whether the evidence discloses a reasonable indication that the dumping of the subject goods is threatening to cause injury to the domestic industry, taking into account the factors prescribed in subsection 37.1(2) of the *Regulations*. The Tribunal must also have regard to the factors prescribed in subsection 37.1(3) in order to assess whether the requisite causal relationship exists between the dumping of the subject goods and any threat of injury.

[65] Relevant in the Tribunal's threat of injury analysis is subsection 2(1.5) of *SIMA*, which indicates that a threat of injury finding cannot be made unless the circumstances in which the dumping of the goods would cause injury are clearly foreseen and imminent. Although this

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<sup>65</sup> *Rebar II* at para. 184. See also *Certain Hot-rolled Carbon Steel Plate* (27 October 1997), NQ-97-001 (CITT) at 13, where the Tribunal suggested that the concept of materiality could entail both temporal and quantitative dimensions.

<sup>66</sup> Provisional duties became payable on imports of rebar from the *Rebar III* countries on February 4, 2021, when the CBSA made a preliminary determination of dumping in respect of these goods.

<sup>67</sup> Exhibit PI-2020-005-05.01 at 6.

<sup>68</sup> *Ibid.* For example, in Q3 2020, imports from Italy were priced lower than imports from Oman and, in Q4 2020, imports from Algeria were priced lower than imports from Russia.

<sup>69</sup> *Ibid.* Imports of subject goods were three times greater in Q4 2020 than they were in Q3 2020.

requirement applies to findings made in final injury inquiries, the Tribunal considers that, in the context of a preliminary injury inquiry, the evidence must at least disclose a reasonable indication that the aforementioned circumstances are clearly foreseen and imminent.

[66] As set out below, the Tribunal finds that there is ample evidence on the record which reasonably indicates that the dumping of the subject goods poses an imminent and foreseeable threat of injury.

### **Likely substantial increase in import volume of dumped goods**

[67] As discussed above, the subject goods first appeared in the Canadian market in June 2020 with imports increasing significantly in Q3 2020 before more than tripling in Q4 2020, at which point they accounted for 18 percent of total imports and 9 percent of the market.<sup>70</sup> This significant rate of increase in imports of subject goods reasonably indicates a likelihood of substantially increased imports in the near to medium term (i.e. in the next 6 to 12 months). Indeed, there is evidence that further large shipments of Russian rebar were expected to arrive in Canada in the first half of 2021.<sup>71</sup>

[68] There is also evidence of significant excess capacity with respect to the production of rebar, both globally and in the subject countries, which, together with demand that is expected to remain weak over the next 12 to 24 months, increases the likelihood that producers in the subject countries will export larger volumes of dumped goods to Canada. CRU data indicate that global rebar production will increase in 2021 and 2022, with excess capacity forecasted to remain at approximately 200 million MT.<sup>72</sup> With respect to Oman and Russia, the data indicate that, for 2021 and 2022, excess capacity for rebar is expected to remain at levels that are significantly larger than the size of the entire Canadian market.<sup>73</sup>

[69] Economic and market conditions in both Oman and Russia suggest that producers, driven by their production imperative, will continue to look to other markets such as Canada as demand for rebar in their own markets or region is not expected to return to pre-pandemic levels until 2022.<sup>74</sup> Oman is projected to experience a 0.5 percent contraction in GDP and a 5.8 percent contraction in construction industry output in 2021.<sup>75</sup> As for Russia, its GDP is expected to only partially recover from the 4.1 percent contraction that was projected for 2020.<sup>76</sup>

[70] NLMK submitted that rebar prices in Russia have increased by 40 percent in recent months due to pent-up demand and that Russian officials are considering imposing export duties to contain the increase. It added that exporting rebar to Canada in these circumstances would defy economic logic. However, as noted by AltaSteel and AMLPC, the articles cited by NLMK suggest that the higher prices were the result of other factors, including export market growth and a labour shortage, rather than increased domestic market demand.<sup>77</sup>

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<sup>70</sup> Exhibit PI-2020-005-05.01 at 6.

<sup>71</sup> Exhibit PI-2020-005-03.03 (protected) at 107; Exhibit PI-2020-005-02.06 at 82-83.

<sup>72</sup> Exhibit PI-2020-005-03.03 (protected) at 51; Exhibit PI-2020-005-09.05 (protected) at 193.

<sup>73</sup> Exhibit PI-2020-005-03.03 (protected) at 50-51, 55, 58.

<sup>74</sup> Exhibit PI-2020-005-09.05 (protected) at 301; Exhibit PI-2020-005-03.03 (protected) at 47.

<sup>75</sup> Exhibit PI-2020-005-08.05 at 151, 195-197.

<sup>76</sup> *Ibid.* at 143.

<sup>77</sup> Exhibit PI-2020-005-08.01 at 6; Exhibit PI-2020-005-10.03 at 13; Exhibit PI-2020-005-11.03 (protected) at 50.

[71] The evidence indicates that many large Omani and Russian rebar producers have a demonstrated export focus,<sup>78</sup> which, together with the excess capacity discussed above, also increases the likelihood that Canada will continue to be a destination of choice for the subject goods in the near to medium term. The most recently available data for Oman show that, between 2015 and 2018, country exports of products falling under the same HS codes as rebar increased exponentially.<sup>79</sup> For Russia, the most recently available data show that exports of these products increased every year from 2015 to 2019.<sup>80</sup>

[72] The Tribunal also finds that there is a reasonable indication that the Canadian market will be attractive to exporters in the subject countries due to projected increases in demand for rebar and higher pricing relative to other international markets. Notably, the Canadian economy is expected to recover to pre-pandemic levels by the end of 2021 and the value of construction starts is projected to rebound from \$60 billion in 2020 to \$80 billion in 2021, both of which will drive demand for rebar.<sup>81</sup> In terms of pricing, U.S. Midwest prices for rebar, which can be considered a reasonable proxy for Canadian pricing, are expected to remain higher than in other regions through 2024.<sup>82</sup>

[73] Finally, current trade measures by other countries against the subject goods support the allegation of risk of diversion of rebar imports to the Canadian market. These measures include: the U.S. restrictions on steel imports imposed pursuant to section 232 of the *U.S. Trade Expansion Act of 1962*; safeguard measures imposed by the European Union, Morocco and Vietnam; and anti-dumping duties imposed by Ukraine against Russian rebar.<sup>83</sup>

[74] Having regard to all of the foregoing, the Tribunal finds that the evidence reasonably indicates a likelihood of substantially increased imports of subject goods into Canada in the near to medium term.

### **Likely price effects of dumped goods**

[75] As noted above, the evidence indicates that the subject goods undercut domestic average selling prices in Q3 2020 and Q4 2020 and that there was price depression in this period.

[76] Looking forward, CRU data indicate that Commonwealth of Independent States (CIS) rebar prices are expected to increase only modestly over the next four years and that, while United Arab Emirates (UAE) prices are projected to rise, they will remain below 2018 levels through 2024.<sup>84</sup> These prices are also expected to remain significantly lower than U.S. Midwest prices over this period. Moreover, whether or not definitive anti-dumping duties are eventually imposed on imports of rebar from the *Rebar III* countries, the subject goods would likely continue to significantly undercut domestic prices and other prices in the market in order to gain market share. The foregoing discloses a reasonable indication that the price of subject goods is likely to remain low in the near future.

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<sup>78</sup> See, for example, Exhibit PI-2020-005-08.05 at 95, 267-268, 307, 332, 341, 360.

<sup>79</sup> Exhibit PI-2020-005-02.06 at 69.

<sup>80</sup> *Ibid.* at 72.

<sup>81</sup> Exhibit PI-2020-005-08.04 at 921; Exhibit PI-2020-005-08.05 at 163, 169.

<sup>82</sup> Exhibit PI-2020-005-03.03 (protected) at 52.

<sup>83</sup> Exhibit PI-2020-005-08.04, Attachments 35-39; Exhibit PI-2020-005-08.05, Attachments 54-60.

<sup>84</sup> Exhibit PI-2020-005-03.03 (protected) at 52. The Tribunal notes that CIS includes Russia and the UAE, which is adjacent to Oman, is a reasonable proxy for Omani prices.

[77] On this basis, the Tribunal finds that there is a reasonable indication that the continued presence of low-priced subject goods in the domestic market is likely to increase demand for further imports of the subject goods, which can reasonably be expected to undercut the prices of the like goods, and have a significant depressing, and possibly suppressing, effect on the prices of like goods in the near to medium term.

### **Likely impact on the domestic industry**

[78] In its injury analysis above, the Tribunal found that the injury suffered by the domestic industry in Q3 2020 and Q4 2020 could not entirely be attributed to the dumping of subject goods and that, if it could, that injury was not for such a duration or to such an extent that it could be considered material.

[79] Given its findings of a reasonable indication of a likely substantial increase in imports of subject goods and associated significant price effects in the near to medium term, the Tribunal is of the view that the already vulnerable domestic industry will, as a result, likely experience further lost sales and decreased profitability, effectively accelerating the trends observed in Q3 2020 and Q4 2020. Over the next 6 to 12 months, such continued injury can reasonably be expected to become material within the meaning of *SIMA*.

[80] For the above reasons, the Tribunal finds that, taken as a whole, the evidence placed before it by AltaSteel, AMLPC, Gerdau and MANA is sufficient to conclude that there is a reasonable indication that the dumping of the subject goods is threatening to cause injury to the domestic industry.

### **CONCLUSION**

[81] 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.

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Peter Burn  
Peter Burn  
Presiding Member

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Cheryl Beckett  
Cheryl Beckett  
Member

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Georges Bujold  
Georges Bujold  
Member