



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

FINDINGS AND REASONS

Inquiry No. NQ-2020-001

Heavy Plate

*Findings issued
Friday, February 5, 2021*

*Reasons issued
Monday, February 22, 2021*

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

HEAVY PLATE

FINDINGS

The Canadian International Trade Tribunal, pursuant to the provisions of section 42 of the *Special Import Measures Act* (*SIMA*), has conducted an inquiry to determine whether the dumping of certain hot-rolled carbon steel plate and high strength low-alloy steel plate, not further manufactured than hot-rolled, heat-treated or not, in cut lengths, in widths greater than 72 inches (+/- 1,829 mm) to 152 inches (+/- 3,860 mm) inclusive, and thicknesses from 0.375 inches (+/- 9.525 mm) up to and including 4.5 inches (+/- 114.3 mm) (with all dimensions being plus or minus allowable tolerances contained in the applicable standards), originating in or exported from the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu (Chinese Taipei), the Federal Republic of Germany (Germany) and the Republic of Turkey (Turkey) (the subject goods), but excluding:

- plate in coil form, and
- plate having a rolled, raised figure at regular intervals on the surface (also known as floor plate),

has caused injury or retardation or is threatening to cause injury.

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

On January 7, 2021, the President of the Canada Border Services Agency (CBSA), pursuant to paragraph 41(1)(a) of *SIMA*, terminated its dumping investigation with respect to the above-mentioned goods exported to Canada from Turkey by Ereğli Demir ve Çelik Fabrikalari T.A.Ş. Pursuant to paragraph 41(1)(b) of *SIMA*, the CBSA made a final determination of dumping in respect of the above-mentioned goods originating in or exported from Chinese Taipei and Germany.

Further to the Tribunal's inquiry, pursuant to subsection 42(4.1) of *SIMA*, the Tribunal finds that the volume of dumped goods originating in or exported from Turkey is negligible. As such, the Tribunal hereby terminates its inquiry regarding the dumping of the above-mentioned goods originating in or exported from Turkey.

Pursuant to subsection 43(1) of *SIMA*, the Tribunal finds that the dumping of the above-mentioned goods, originating in or exported from Chinese Taipei and Germany, has caused material injury to the domestic industry.

Furthermore, the Tribunal hereby excludes the goods described in the appendix to this injury finding.

Randolph W. Heggart
Randolph W. Heggart
Presiding Member

Susan D. Beaubien
Susan D. Beaubien
Member

Serge Fréchette
Serge Fréchette
Member

The statement of reasons will be issued within 15 days.

APPENDIX

PRODUCTS EXCLUDED FROM THE FINDING

1. Hot-rolled carbon steel plate manufactured to the following specifications and grades:

- ASME SA-285/SA-285M or ASTM A-285/A-285M,
- ASME SA-299/SA-299M or ASTM A-299/A-299M,
- ASME SA-515/SA-515M or ASTM A-515/A-515M,
- ASME SA-516/SA-516M or ASTM A-516/A-516M (including, but not limited to, SA/A516 Grade 70),
- ASME SA-537/SA-537M or ASTM A-537/A-537M, or
- ASME SA-841/SA-841M or ASTM A-841/A-841M,

which is normalized (heat treated) and vacuum degassed (including while molten) with a sulphur content less than or equal to 0.003 percent and a phosphorus content less than or equal to 0.017 percent, imported exclusively for use in the manufacture of pressure vessels for the oil and gas sector for use in sour service and hydrogen-induced cracking applications.

2. Hot-rolled carbon steel plate in grade ASME SA-516 Grade 70 or ASTM A-516 Grade 70 normalized (heat treated) with a thickness greater than 3.28 inches.

3. Hot-rolled carbon steel plate produced to the following specifications and grades:

- ASME SA-516/SA-516M or ASTM A-516/A-516M, normalized,
- ASME SA-299/SA-299M or ASTM A-299/A-299M, normalized, and
- ASME SA-537/SA-537M or ASTM A-537/A-537M, normalized,

in the following dimensions:

- 2.5 inches thick, greater than or equal to 151 inches wide and of any length,
- greater than or equal to 3 inches thick, greater than or equal to 121 inches wide and of any length,
- greater than 3.28 inches thick of any width and length.

4. Heavy plate imported by Irving Shipbuilding Inc. for use in the Arctic and Offshore Patrols Ships shipbuilding project.

Place of Hearing:	Via videoconference
Date of Hearing:	January 15, 2021
Tribunal Panel:	Randolph W. Heggart, Presiding Member Susan D. Beaubien, Member Serge Fréchette, Member
Support Staff:	Kalyn Eadie, Lead Counsel Heidi Lee, Counsel Gayatri Shankarraman, Lead Analyst Rebecca Campbell, Analyst Mylène Lanthier, Analyst Grant MacDougall, Analyst Marie-Josée Monette, Data Services Advisor

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SSAB Central Inc.

United Steelworkers

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STATEMENT OF REASONS

INTRODUCTION

[1] The mandate of the Canadian International Trade Tribunal in this inquiry¹ is to determine whether the dumping of certain hot-rolled carbon steel plate and high-strength low-alloy steel plate originating in or exported from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei), the Federal Republic of Germany (Germany), and the Republic of Turkey (Turkey), has caused injury or is threatening to cause injury to the domestic industry.

[2] The Tribunal has determined, for the reasons that follow, that the volume of dumped goods originating in or exported from Turkey is negligible. As such, the Tribunal has terminated its inquiry regarding the dumping of the above-mentioned goods originating in or exported from Turkey.

[3] The Tribunal has determined, for the reasons that follow, that the dumping of the above-mentioned goods from Chinese Taipei and Germany (the subject goods) has caused material injury to the domestic industry.

BACKGROUND

[4] This inquiry stems from a complaint filed with the Canada Border Services Agency (CBSA) on April 6, 2020, by Algoma Steel Inc. (Algoma), and the subsequent decision by the President of the CBSA on May 27, 2020, to initiate an investigation into the alleged dumping of heavy plate originating or exported from Chinese Taipei, Germany, South Korea, Malaysia, and Turkey.

[5] On May 28, 2020, as a result of the CBSA's decision to initiate the investigation, the Tribunal initiated a preliminary injury inquiry pursuant to subsection 34(2) of *SIMA*. On July 27, 2020, the Tribunal determined that there was evidence that disclosed a reasonable indication that the dumping of heavy plate from Chinese Taipei, Germany, South Korea, Malaysia and Turkey had caused injury or was threatening to cause injury to the domestic industry.²

[6] On October 9, 2020, the President of the CBSA made a preliminary determination of dumping concerning heavy plate originating in or exported from Chinese Taipei, Germany and Turkey. On the same date, the President of the CBSA terminated the dumping investigation in respect of heavy plate originating in or exported from South Korea and Malaysia on the grounds that the volumes of dumped imports from those countries were negligible.³ On October 13, 2020, the Tribunal accordingly issued a notice of commencement of inquiry into the alleged injurious effect of the dumping of heavy plate from Chinese Taipei, Germany and Turkey.⁴

[7] The Tribunal's period of inquiry (POI) was from January 1, 2017, to June 30, 2020, and included two interim periods: January 1, 2019, to June 30, 2019 (interim 2019), and January 1, 2020, to June 30, 2020 (interim 2020).

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

² *Heavy Plate* (27 July 2020), PI-2020-001 (CITT) [*Heavy Plate PI*].

³ Exhibit NQ-2020-001-01 at 10.

⁴ The notice was published on the Tribunal's website and in the *Canada Gazette* (see C. Gaz. 2020.I.43).

[8] As part of its inquiry, a number of domestic producers, importers, purchasers and foreign producers of the subject goods were asked to respond to questionnaires from the Tribunal.⁵ The Tribunal received 4 replies to the domestic producers' questionnaire from companies stating that they produce "like goods" in relation to the subject goods, 20 replies to the importers' questionnaire from companies stating that they import goods meeting the product definition, and 18 replies to the purchasers' questionnaire from companies stating that they purchase the subject goods and/or goods meeting the product definition. The Tribunal also received 5 replies to the foreign producers' questionnaire from companies indicating that they produce the subject goods.⁶

[9] Using the questionnaire replies, staff of the Secretariat to the Tribunal prepared public and protected investigation reports, which were issued on November 30, 2020.⁷ The public investigation report was distributed, along with the remainder of the public record, to parties who had filed notices of participation in the inquiry. The protected investigation report containing information designated as confidential was distributed, along with the remainder of the protected record, to counsel who had signed the required declaration and undertaking. Revisions to the investigation reports were issued on December 10, 2020, and again on January 12, 2021, following the CBSA's final determination.⁸

[10] The inquiry schedule appended to the notice of commencement of inquiry indicated that requests for product exclusions were to be filed by December 7, 2020. The Tribunal received 18 requests for product exclusions: 2 from the Alberta Pressure Vessels Manufacturers Association (APVMA), 1 from Irving Shipbuilding Inc. (ISI), 7 from Ilseburger Grobblech GmbH (ILG), and 8 from Salzgitter Mannesmann International (Canada) Inc. (SMIC).

[11] On December 7, 2020, Algoma, the APVMA, ILG, SMIC and Acier Wirth Steel (Wirth) filed with the Tribunal various requests for information (RFIs) directed to Algoma, SSAB Central Inc. (SSAB) and Ereğli Demir ve Çelik Fabrikaları T.A.Ş. (Erdemir). On December 9, 2020, Algoma and SSAB objected to some of the RFIs directed to them. On December 14, 2020, the Tribunal issued directions to the parties, indicating which of the RFIs required responses. The responses were received on December 21, 2020, and placed on the record. On January 8, 2021, the Tribunal issued its own RFIs to domestic producers, importers and foreign producers. The responses were received on January 12, 2021, and placed on the record.

[12] Also on December 7, 2020, Algoma filed a case brief, witness statements and other evidence in support of a finding of injury or threat of injury. SSAB filed evidence as well as a statement in support of Algoma's submissions. The United Steelworkers filed two witness statements in support of a finding of injury or threat of injury.

⁵ At the time the questionnaires were issued, the subject goods included goods from Chinese Taipei, Germany and Turkey.

⁶ Exhibit NQ-2020-001-06B at 9-13.

⁷ Exhibit NQ-2020-001-06; Exhibit NQ-2020-001-07 (protected).

⁸ Exhibit NQ-2020-001-06A; Exhibit NQ-2020-001-06B; Exhibit NQ-2020-001-07A (protected); Exhibit NQ-2020-001-07B (protected).

[13] On December 14, 2020, ILG, SMIC, Wirth, Erdemir, and Marmen Inc. and Marmen Énergie Inc. (together referred to as Marmen)⁹ filed case briefs, witness statements and other evidence opposing a finding of injury or threat of injury.

[14] Algoma filed a reply brief, a reply witness statement and additional evidence on December 23, 2020.

[15] ISI and the APVMA made submissions on exclusions but did not make submissions on the question of injury or threat of injury. Although China Steel Corporation, Aktien-Gesellschaft der Dillinger Hüttenwerke (Dillinger), and the Ministry of Trade of the Republic of Turkey filed notices of participation, they did not file any evidence or arguments, take a position, or otherwise participate in the inquiry.

[16] On December 7, 2020, the Tribunal advised parties that, due to COVID-19 measures, the in-person hearing, previously scheduled for early January 2021, was cancelled. The Tribunal issued a draft outlining a possible alternative hearing procedure and invited parties to comment on that proposal. Comments were received on December 11, 2020.

[17] Having reviewed and taken into account the representations made by the parties, the Tribunal issued directions for the hearing procedures on December 18, 2020. In accordance with those directions, the parties were provided with the opportunity to suggest written questions to be directed to other parties. Parties were also given the opportunity to file objections to the proposed questions and to reply to any objections. Wirth and ILG suggested questions to be put to Algoma, and Algoma suggested questions to be put to Wirth, SMIC and the APVMA. Algoma, the APVMA, SMIC and Wirth objected to some of the questions submitted to them. Algoma, Wirth and ILG filed replies to the objections to the questions they submitted.

[18] Based on these submissions, the Tribunal directed written questions to Algoma, SMIC, Wirth and the APVMA on January 8, 2021. The Tribunal also issued its own questions to Algoma, ISI and Marmen. The Tribunal received written responses from the parties on January 12, 2021.

[19] ILG filed a request to add additional evidence to the Tribunal's record on January 4, 2021, which was accepted on January 7, 2021. Algoma and ILG filed further requests to add additional evidence to the record on January 12, 2021.¹⁰ The additional evidence was accepted onto the record on January 13, 2021.

[20] On January 15, 2021, the Tribunal heard final closing arguments on the issues of injury, threat of injury, and exclusions by public videoconference.

[21] The Tribunal issued its findings on February 5, 2021.

⁹ On December 15, 2020, Marmen filed submissions opposing a finding of injury or threat of injury in respect of the subject goods. See Exhibit NQ-2020-001-N-01 and Exhibit NQ-2020-001-N-02 (protected). On December 21, 2020, Marmen filed a Notice of Participation and provided an explanation for its late filing. The Tribunal granted Marmen party status in this inquiry on December 22, 2020.

¹⁰ While these requests were filed as notices of matters arising, the Tribunal notes that both requests sought in fact to add additional evidence to the record on the grounds that it had not been previously available and were granted on that basis.

Preliminary issues

[22] The Tribunal conducted this inquiry using hearing procedures that would enable parties to fully present their cases, notwithstanding the limitations caused by COVID-19 protective measures.

[23] In particular, the procedure served to provide parties with an opportunity to test other parties' cases, by requesting clarification or explanation of evidence submitted by other parties. As noted above, parties were permitted to object to questions posed to them, and the questioners were then provided an opportunity to reply to the objections.

[24] ILG proposed several questions about Algoma's slab supply, to which Algoma objected. As part of its reply to Algoma's objections, ILG submitted a supplemental witness statement by Mr. Oliver Laubner. Algoma in turn objected to the filing of this witness statement on the grounds that the hearing procedures did not allow for the filing of evidence to justify the relevance of the proposed questions, arguing that if ILG wished to have additional evidence added to the record, it should present a reason why that evidence could not have been filed with its case brief. In reply to Algoma's objection, ILG noted that it would have normally explored this issue through cross-examination of Algoma's witness, Ms. Laura Devoni, and direct examination of Mr. Laubner, and argued that this evidence was properly filed so as to replicate what would have occurred if the Tribunal had held an in-person hearing.

[25] The Tribunal refused the filing of the supplemental witness statement and indicated that it would provide the reasons for its refusal in this statement of reasons.

[26] The hearing procedure for this inquiry did not contemplate the filing of further evidence as part of the objection and reply process. While parties were permitted to file additional evidence as part of their *answers* to the questions, once the Tribunal had decided which questions were to be answered, the question-and-answer process itself was limited to requests for clarification or explanation of evidence already submitted by other parties.

[27] The proper procedural mechanism for ILG would have been to seek leave of the Tribunal for the late filing of additional evidence. ILG did not do so.

[28] The Tribunal's usual practice in injury inquiries under section 42 of *SIMA* is to take a liberal approach with respect to the admissibility of evidence.¹¹ This approach flows from the well-established common law principle that administrative tribunals are masters of their own procedure and are not strictly bound by the rules of evidence and the Tribunal's statutory mandate to conduct its hearings "... as informally and expeditiously as the circumstances and considerations of fairness permit access."¹² Nevertheless, the Tribunal's directions on procedures and the rules of natural justice must be followed.

[29] There is an expectation that parties should put their best foot forward when presenting evidence. However, parties may seek leave for the late filing of additional evidence pursuant to rule 24.1 of the *Canadian International Trade Tribunal Rules (Rules)*. In seeking leave, parties must indicate (i) the reasons why the submission was not filed on time, (ii) the relevance of the submission

¹¹ *Carbon and Alloy Steel Line Pipe* (19 January 2016), NQ-2015-002 (CITT) at para. 27.

¹² *Ibid.* at paras. 24-27 and at footnote 14, relying on *Canadian National Ry. Co. v. Bell Telephone Co. of Canada*, [1939] S.C.R. 308, 1939 CanLII 34 (SCC).

to the matters under investigation, and (iii) why the late filing should be allowed.¹³ The Tribunal may accept late filings in exceptional circumstances if it would be fair and equitable in the circumstances.¹⁴ In doing so, the Tribunal is mindful of the principle that a party should not be permitted to split its case, or to introduce late evidence that is irrelevant or would prejudice the ability of other parties to present their case.

[30] In this case, ILG submitted the supplemental witness statement to support the relevance of its proposed questions regarding Algoma's slab supply. ILG argued that the statement explained the problems in sourcing slabs and delays from order to utilization.

[31] The Tribunal was satisfied that the evidence in Mr. Laubner's supplementary statement was of little relevance to the matters before the Tribunal and would not assist the Tribunal's inquiry. Moreover, the Tribunal was not presented with any reason why this evidence could not have been filed earlier in the proceedings, e.g. with ILG's case briefs. The bulk of the supplementary statement consisted of further assertions and argument regarding the reliability of Algoma's supply of slab and the relevance of that question to the Tribunal's inquiry, an issue that was raised by the opposing parties in their case briefs.

[32] The Tribunal also concluded that, due to its late filing, accepting the evidence onto the record would be prejudicial to Algoma and that the prejudice would not be outweighed by the probative value of the evidence.

[33] Therefore, the Tribunal did not accept the additional evidence in the form of Mr. Laubner's supplementary statement.

RESULTS OF THE CBSA'S INVESTIGATION

[34] On January 7, 2021, pursuant to paragraph 41(1)(a) of *SIMA*, the CBSA terminated the investigation in respect of heavy plate exported from Turkey by Erdemir, as the final margin of dumping calculated for Erdemir was zero.¹⁵

[35] On the same day, pursuant to paragraph 41(1)(b) of *SIMA*, the CBSA made a final determination of dumping concerning certain heavy plate originating in or exported from Chinese Taipei and Germany. The CBSA determined that 100 percent of the imports from Chinese Taipei and Germany had been dumped.¹⁶ The CBSA's period of investigation was from March 1, 2019, to February 29, 2020.¹⁷ The CBSA determined the following margins of dumping:¹⁸

¹³ Canadian International Trade Tribunal Practice Notice – Efficient Management of Cases, Appendix 1 at para. 2.

¹⁴ Subrule 24.1(3) of the *Rules*. The Tribunal notes that these considerations are consistent with the Federal Court of Appeal's jurisprudence on the admissibility of reply evidence. See *Amgen Canada Inc. v. Apotex Inc.*, 2016 FCA 121 (CanLII).

¹⁵ Exhibit NQ-2020-001-04A at 10, 21.

¹⁶ *Ibid.* at 11.

¹⁷ Exhibit NQ-2020-001-01A at 4.

¹⁸ Exhibit NQ-2020-001-04A at 15.

Country of origin or export	Exporter	Weighted average margin of dumping expressed as a percentage of the export price
Chinese Taipei	China Steel Corporation	7.0%
	All other exporters	80.6%
Germany	Dillinger	6.3%
	All other exporters	68.6%

PRODUCT

Product definition

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

Hot-rolled carbon steel plate and high strength low-alloy steel plate, not further manufactured than hot-rolled, heat-treated or not, in cut lengths, in widths greater than 72 inches (+/-1,829 mm) to 152 inches (+/-3,860 mm) inclusive, and thicknesses from 0.375 inches (+/-9.525 mm) up to and including 4.5 inches (+/-114.3 mm) (with all dimensions being plus or minus allowable tolerances contained in the applicable standards), but excluding:

- plate in coil form, and
- plate having a rolled, raised figure at regular intervals on the surface (also known as floor plate)

For greater certainty, the subject goods include steel plate which contains alloys greater than required by recognized industry standards, provided the steel does not meet recognized industry standards for an alloy-grade steel plate.¹⁹

Product information

[37] The CBSA provided the following additional product information:

Additional Product Information

[29] Plate is produced to specific grades and standardizations. These grades and standardizations are used for specific end-uses. Common standardizations include American Society for Mechanical Engineers (ASME), and American Society for Testing and Materials (ASTM). For example, ASTM/ASME A36, A283, A573 or A709 may be used for structural plate, which is used in a variety of construction applications. Plate meeting A515 and A516M/A516, grade 70 is used for the construction of pressure vessels, which hold gasses or liquids at high pressure.

¹⁹ *Ibid.* at 10.

[30] Pressure vessel quality (PVQ) plate may be vacuum degassed to achieve desired characteristics, in particular low sulfur, low carbon, low gaseous levels (H₂, N₂, O₂), improved cleanliness and improved ferro alloy recovery. Such characteristics may be used in sour service applications and applications requiring hydrogen-induced cracking (HIC) resistance low temperature fracture toughness.

[31] Some of these gauges and specifications, as well as specific lengths and widths, command a price premium.

Production Process

[32] While details may vary from mill to mill, the process by which carbon steel plate is produced is essentially the same for all producers world-wide and entails:

- heating slabs before rolling
- descaling
- rolling
- levelling
- cutting to size
- inspection and testing
- shipping

[33] At Algoma, slabs are charged into re-heating furnaces and are progressively brought forward and heated to approximately 2370°F (1300°C) before being discharged then descaled by high pressure water sprays. The first reduction of slab thickness occurs in the breakdown mill where the slab is reduced in gauge depending on the final plate thickness required.

[34] Heavier plate (i.e. 3/8 inches and thicker) goes directly to the 166" plate mill where it is reduced to its final thickness, levelled and then sent to the plate finishing area where it is sized, sides are trimmed, cut to length (either sheared or flame cut), tested and shipped.

[35] For lighter plate, the 166" plate mill acts as a breakdown mill, and the extended slab proceeds to the 106" wide strip mill where it is reduced to its final thickness through this 6-stand operation and then coiled. The coils are sent to the #1 finishing line where they are uncoiled, levelled, cut-to-length, tested, bundled and shipped.

[36] Separately, certain service centres operate cut-to-length lines which cut plate from coil.

Product Use

[37] Heavy plate is used in a number of applications, the most common of which are the production of rail cars, oil and gas storage tanks, heavy machinery, agricultural equipment, bridges, industrial buildings, high-rise office towers, ships and barges, and pressure vessels.²⁰

[Footnotes omitted]

²⁰ Exhibit NQ-2020-001-04B at 8.

LEGAL FRAMEWORK

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

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

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

[41] The Tribunal can then assess whether the dumping of the subject goods has caused material injury to the domestic industry.²¹ Should the Tribunal arrive at a finding of no material injury, it will determine whether there exists a threat of material injury to the domestic industry.²² As a domestic industry is already established, the Tribunal will not need to consider the question of retardation.²³

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

LIKE GOODS AND CLASSES OF GOODS

[43] In order for the Tribunal to determine whether the dumping of the subject goods has caused or is threatening to cause injury to the domestic producers of like goods, it must determine which domestically produced goods, if any, constitute like goods in relation to the subject goods. The Tribunal must also assess whether there is, within the subject goods and the like goods, more than one class of goods.²⁴

[44] Subsection 2(1) of *SIMA* defines “like goods,” in relation to any other goods, as follows:

(a) goods that are identical in all respects to the other goods, or

(b) in the absence of any goods described in paragraph (a), goods the uses and other characteristics of which closely resemble those of the other goods.

²¹ The Tribunal will proceed to determine the effect of the dumping of the subject goods on the domestic industry, for individual countries or for the cumulated countries, as appropriate.

²² Injury and threat of injury are distinct findings; the Tribunal is not required to make a finding relating to threat of injury pursuant to subsection 43(1) of *SIMA* unless it first makes a finding of no injury.

²³ Subsection 2(1) of *SIMA* defines “retardation” as “. . . material retardation of the establishment of a domestic industry.”

²⁴ Should the Tribunal determine that there is more than one class of goods in this inquiry, it must conduct a separate injury analysis and make a decision for each class that it identifies. See *Noury Chemical Corporation and Minerals & Chemicals Ltd. v. Pennwalt of Canada Ltd. and Anti-dumping Tribunal*, [1982] 2 F.C. 283 (F.C.).

[45] In deciding the issue of like goods when goods are not identical in all respects to the other goods, the Tribunal typically considers a number of factors, including the physical characteristics of the goods (such as composition and appearance) and their market characteristics (such as substitutability, pricing, distribution channels, end uses and whether the goods fulfill the same customer needs).²⁵

[46] In addressing the issue of classes of goods, the Tribunal typically examines whether goods potentially included in separate classes of goods constitute “like goods” in relation to each other. If those goods are “like goods” in relation to each other, they will be regarded as comprising a single class of goods.²⁶

[47] In the preliminary injury inquiry, the Tribunal determined that domestically produced heavy plate was like goods to the subject goods and that there was a single class of goods.²⁷ Algoma submitted that the evidence continues to support the conclusion that domestically produced heavy plate is like goods to the subject goods, as they are “interchangeable commodity products that are used in the same applications and are sold through the same distribution channels.”²⁸

[48] Algoma further submitted that there is only one class of goods, though it acknowledged that the product definition encompasses plate with different specifications, including both structural and PVQ plate, with further differentiations based on variables such as required yield strength, chemistry, testing and dimensions. Algoma argued that, despite the differentiations, heavy plate is a commodity good, and that once physical and testing requirements are met, price is the determinative factor in securing a sale.

[49] The parties opposed claimed that Algoma has submitted a product definition which is over-reaching, as it includes products that Algoma does not actually manufacture. Rather than address this as a like goods issue, parties opposed filed exclusion requests regarding such material.

[50] Further, while ILG explicitly stated that it did not wish to argue that certain types of heavy plate it produces constitute a separate class of goods, it also objected to the use of the word “commodity” to describe heavy plate. In ILG’s view, plate is not a commodity product because not all forms of plate are substitutable for one another. Mr. Laubner stated in his witness statement that the different grades have different characteristics and properties and must be certified for end use.²⁹ In reply, Algoma argued that it had not stated that all types of heavy plate are fully interchangeable across the range of grades and specifications covered by the product definition.

[51] The Tribunal uses the term “commodity” to denote that plate is a product that trades on the basis of price, but has consistently recognized that not all types of plate are fully substitutable for one another in terms of grades, dimensions and other specifications. For instance, in considering whether structural and PVQ plate should be considered separate classes of goods in the *Plate VII Inquiry*,³⁰ the Tribunal noted that the different types of plate may not be “. . . perfectly substitutable across the

²⁵ See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) [*Copper Pipe Fittings*] at para. 48.

²⁶ *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) at para. 115 [*Aluminum Extrusions*]; see also *Thermal Insulation Board* (11 April 1997), NQ-96-003 (CITT) at 10.

²⁷ *Heavy Plate PI* at paras. 43-45. The subject goods at that time included goods from Chinese Taipei, Germany, the Republic of Korea, the Federation of Malaysia, and Turkey.

²⁸ *Ibid.* at para. 44.

²⁹ Exhibit NQ-2020-001-H-03 at paras. 30-31.

³⁰ *Hot-rolled Carbon Steel Plate* (20 May 2014), NQ-2013-005 (CITT) [*Plate VII Inquiry*] at para. 48.

full range of potential end-use applications . . .” but that these different types of plate “. . . are variations of plate that fall along a continuum of products that constitute a single class of goods.”³¹

[52] There is no indication that the situation with heavy plate is any different. The domestic industry produces substantially the same range of products as the subject goods.³² While questionnaire respondents indicated that German producers in particular produce plate in a broader range of dimensions and specifications than the domestic industry,³³ the majority of purchasers indicated that subject goods are “usually” interchangeable with domestically produced goods.³⁴ While questionnaire respondents reported the need for the goods to meet their required technical specifications, once the specifications are met the goods are interchangeable.³⁵

[53] Further, domestically produced goods and the subject goods generally fulfil the same customer needs, compete directly with each other and rely on the same channels of distribution.³⁶

[54] The domestic and subject goods producers also charge similar premiums or “extras” for the various grades, dimensions and specifications, and the pricing of these products (dumping aside) is similar when those factors are taken into account.³⁷

[55] Furthermore, the evidence in this inquiry is that heavy plate is a price-sensitive product. The majority of questionnaire respondents indicated that “usually” the lowest-priced product will win the sale.³⁸ Although in this case purchasers indicated that product quality, delivery times, terms and reliability of supply were reasons for not purchasing the lowest-priced product, a majority of questionnaire respondents also indicated that a price reduction of up to 15 percent would cause price to become the primary factor in securing a sale.³⁹ Questionnaire respondents additionally indicated that a 5 to 20 percent reduction in the sale price would cause them to re-allocate an additional 10 percent of purchases to subject goods.⁴⁰ Mr. Rory Brandow, of Algoma, also maintains that price is generally the most important factor when customers are making purchasing decisions.⁴¹

[56] On the basis of the above considerations, the Tribunal finds that the domestic industry produces goods that are like goods in relation to the subject goods, and that there is a single class of goods.

³¹ *Ibid.*

³² The Tribunal has previously found that it is appropriate to address such issues through the product exclusions process, as long as the domestic industry makes substantially the same range of products as the subject goods. *Plate VII Inquiry* at para. 38 and footnote 22.

³³ Exhibit NQ-2020-001-06B, Table 9.

³⁴ *Ibid.*, Table 7.

³⁵ Exhibit NQ-2020-001-12.20A at 7-8; Exhibit NQ-2010-001-12.14A at 8; Exhibit NQ-2020-001-12.15 at 9.

³⁶ Exhibit NQ-2020-001-06B, Table 7; Exhibit NQ-2020-001-A-05 at paras. 5-7.

³⁷ Exhibit NQ-2020-001-A-05 at paras. 9-17; Exhibit NQ-2020-001-A-06 (protected) at Attachment 1; *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate* (6 January 2016), NQ-2015-001 (CITT) [*Plate VIII*] at para. 37; *Plate VII Inquiry* at para. 39; Exhibit NQ-2020-001-07B (protected), Tables 45-48.

³⁸ Exhibit NQ-2020-001-06B, Table 12.

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ Exhibit NQ-2020-001-A-05 at para. 6.

DOMESTIC INDUSTRY

[57] Subsection 2(1) of *SIMA* defines “domestic industry” as follows:

... the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods except that, where a domestic producer is related to an exporter or importer of dumped or subsidized goods, or is an importer of such goods, **domestic industry** may be interpreted as meaning the rest of those domestic producers.

[58] The Tribunal must therefore determine whether there has been injury, or whether there is a threat of injury, to the domestic producers as a whole or those domestic producers whose production represents a major proportion of the total production of like goods.⁴²

[59] The Tribunal’s record includes data for four domestic producers, namely, Algoma, Janco, SSAB and Samuel Son & Co.⁴³

[60] Algoma is the only steel mill in Canada producing heavy plate. The other listed producers are service centres, which purchase steel coils in plate thicknesses and cut these coils into straight lengths of heavy plate. The Tribunal has consistently held that service centres are producers of plate and must be included as part of the domestic industry.⁴⁴

[61] Algoma, SSAB, Janco and Samuel account for the vast majority of domestic production of like goods.⁴⁵ Accordingly, the Tribunal finds that these four producers constitute the domestic industry for the purposes of this inquiry.

CUMULATION

[62] Subsection 42(3) of *SIMA* directs the Tribunal to make an assessment of the cumulative effect of the dumping of the subject goods if it is satisfied that the margin of dumping in relation to the goods from each of those countries is not insignificant, the volume of dumped goods from each subject country is not negligible, and cumulation is appropriate taking into account conditions of competition between the goods of each country and/or between those goods and the like goods.

⁴² The term “major proportion” means an important, serious or significant proportion of total domestic production of like goods and not necessarily a majority: *Japan Electrical Manufacturers Assn. v. Canada (Anti-Dumping Tribunal)*, [1986] F.C.J. No. 652 (F.C.A.); *McCulloch of Canada Limited and McCulloch Corporation v. Anti-Dumping Tribunal*, [1978] 1 F.C. 222 (F.C.A.); Panel Report, *China – Automobiles (U.S.)*, WT/DS440/R, at para. 7.207; Appellate Body Report, *EC – Fasteners (China)*, WT/DS397/AB/R, at paras. 411, 412, 419; Panel Report, *Argentina – Poultry (Brazil)*, WT/DS241/R, at para. 7.341.

⁴³ In its response to the Tribunal’s producer questionnaire, Tidy Steel Fab Ltd. stated that it does not produce goods meeting the product definition (Exhibit NQ-2020-001-09.01). Varsteel LTD. did not provide a complete questionnaire response and its data were not included in the investigation report. The evidence is that Varsteel LTD. represents a very small proportion of domestic production of like goods. Given the overall coverage obtained, despite these limitations, the data compiled from domestic producers provide a representative and accurate picture, in quantitative and qualitative terms, of a major proportion of the domestic industry.

⁴⁴ *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate* (10 November 2020), RR-2019-004 (CITT) at para. 28; *Hot-rolled Carbon Steel Plate* (13 March 2020), RR-2019-001 (CITT) [*Plate VII Review*] at para. 31; *Hot-rolled Carbon Steel Plate* (9 August 2018), RR-2017-004 (CITT) at para. 33; *Plate VIII* at para. 51.

⁴⁵ Exhibit NQ-2020-001-07B (protected), Table 16.

Negligibility and insignificance

[63] The volumes of dumped goods from Chinese Taipei and Germany are not negligible and the margins of dumping are not insignificant.⁴⁶ However, the question of negligible import volumes arises in this inquiry with respect to the dumped goods from Turkey.

[64] Subsection 42(4.1) provides that “[i]f the Tribunal determines that the volume of dumped or subsidized goods from a country is negligible, the Tribunal shall terminate its inquiry in respect of those goods.” The volume of dumped goods is generally considered negligible when it is less than 3 percent of all imports meeting the product definition imported into Canada.⁴⁷

[65] The Tribunal is of the view that, while the CBSA has terminated its dumping investigation with respect to heavy plate exported from Turkey by Erdemir, it nevertheless falls on the Tribunal to terminate its inquiry on a country-wide basis if the volume of imports from Turkey is negligible.

[66] In assessing whether the volume of dumped imports from a country is negligible, the Tribunal typically considers import activity during the CBSA’s period of investigation.⁴⁸ Erdemir represented 100 percent of imports of subject goods from Turkey during that period, and the CBSA therefore determined that the volume of dumped goods from Turkey, as a percentage of the total volume of imported goods meeting the product definition, was zero percent.⁴⁹

[67] The Tribunal therefore determines that the volume of dumped subject goods originating in or exported from Turkey is negligible within the meaning of subsection 2(1) of *SIMA*. Accordingly, the Tribunal terminates its inquiry with respect to the dumping of subject goods originating in or exported from Turkey pursuant to subsection 42(4.1).

Conditions of competition

[68] The Tribunal will now assess whether cumulation of the effect of the dumping of goods from Chinese Taipei and Germany is appropriate taking into account the conditions of competition between the goods of each of those countries and/or between those goods and the like goods.

⁴⁶ Exhibit NQ-2020-001-04A at 21.

⁴⁷ Subsection 2(1) of *SIMA* defines “negligible” as meaning, “in respect of the volume of goods of a country, less than 3% of the total volume of goods that are released into Canada from all countries and that are of the same description as the goods. However, if the total volume of goods of three or more countries — each of whose exports of goods into Canada is less than 3% of the total volume of goods that are released into Canada from all countries and that are of the same description — is more than 7% of the total volume of goods that are released into Canada from all countries and that are of the same description, the volume of goods of any of those countries is not negligible.”

⁴⁸ *Concrete Reinforcing Bar* (9 January 2015), NQ-2014-001 (CITT) at para. 92; *Plate VIII* at para. 84; *Circular Copper Tube* (18 December 2013), NQ-2013-004 (CITT) at footnote 41; *Plate VII Inquiry* at para. 64; *Copper Pipe Fittings* at para. 71. This approach is also consistent with Canada’s notification to the WTO Committee on Anti-Dumping Practices that it would normally make this assessment on the basis of the CBSA’s period of investigation. See Committee on Anti-Dumping Practices, *Notification Concerning the Time-Period for Determination of Negligible Import Volumes Under Article 5.8 of the Agreement - Canada*, G/ADP/N/100/CAN. See also Committee on Anti-Dumping Practices, *Recommendation Concerning the Time-Period to Be Considered in Making a Determination of Negligible Import Volumes for Purposes of Article 5.8 of the Agreement*, G/ADP/10.

⁴⁹ Exhibit NQ-2020-001-04A at 21; Exhibit NQ-2020-001-07B (protected), Table 15.

[69] Factors the Tribunal typically considers in assessing conditions of competition between subject goods and like goods include interchangeability, quality, pricing, distribution channels, modes of transportation, timing of arrivals and geographic dispersion. The Tribunal may also consider other factors in deciding whether the exports of a particular country should be cumulated, and no single factor is determinative.⁵⁰

[70] Algoma submitted that a cumulative assessment of the effect of the dumping from Chinese Taipei and Germany would be appropriate. Algoma submitted that subject goods and like goods are interchangeable, as all heavy plate is produced to common specifications and looks the same. Algoma further submitted that subject goods and domestically produced goods are sold through similar channels of distribution, compete at the same accounts, and when produced to the same specifications, are equal in quality. In addition, Algoma submitted that imports from the subject countries arrive using the same mode of transportation and that there are no material differences in the timing of imports from the subject countries.

[71] As discussed above, when produced to the same technical specifications, heavy plate is fungible in the marketplace and purchasing decisions are made mainly on the basis of price.

[72] Questionnaire respondents indicated that product quality is largely comparable between the like goods and the subject goods, and as between the subject goods from Chinese Taipei and Germany.⁵¹

[73] Furthermore, heavy plate from each of the subject countries is shipped to Canada using the same mode of transportation (ocean freight), and subject goods and like goods are distributed through similar channels.⁵² Subject goods and like goods are both sold to distributors as well as end users,⁵³ and compete at common accounts.⁵⁴ While the domestic industry has an advantage with respect to lead times for delivery, subject goods and like goods are present and competing in the market at the same time.⁵⁵

[74] In light of the factors discussed above, the Tribunal is satisfied that a cumulative assessment of the effect of the dumping from Chinese Taipei and Germany is appropriate.

INJURY ANALYSIS

[75] Subsection 37.1(1) of the *Special Import Measures Regulations*⁵⁶ prescribes that, in determining whether the dumping has caused material injury to the domestic industry, the Tribunal is to consider the volume of the dumped goods, their effect on the price of like goods in the domestic market, and their resulting impact on the state of the domestic industry. Subsection 37.1(3) also directs the Tribunal to consider whether a causal relationship exists between the dumping of the goods and the injury on the basis of the factors listed in subsection 37.1(1), and whether any factors other than the dumping of the goods have caused injury.

⁵⁰ *Corrosion-resistant Steel Sheet* (21 February 2019), NQ-2018-004 (CITT) at para. 45.

⁵¹ Exhibit NQ-2020-001-06B, Tables 8, 9, 11.

⁵² Exhibit NQ-2020-001-23.02 at 9; Exhibit NQ-2020-001-13.11 at 1; Exhibit NQ-2020-001-06B, Table 7.

⁵³ Exhibit NQ-2020-001-06B, Table 5; Exhibit NQ-2020-001-A-05 at para. 6.

⁵⁴ Exhibit NQ-2020-001-18.04B at 10; Exhibit NQ-2020-001-A-05 at paras. 5-6.

⁵⁵ Exhibit NQ-2020-001-07B (protected), Tables 33-36, 45-48.

⁵⁶ SOR/84-927 [*Regulations*].

Context for the injury analysis

[76] Before addressing the individual injury factors, the Tribunal will briefly introduce some of the elements that were influencing the heavy plate market during the POI, as they are relevant to the analysis set out below.

[77] In March 2018, acting pursuant to section 232 of the *U.S. Trade Expansion Act of 1962*, the United States imposed a 25 percent duty on imports of certain steel products, including hot-rolled steel plate, from most countries (section 232 duties).⁵⁷

[78] Although Canada was initially excluded from the application of the section 232 duties, the United States extended them to Canada on May 31, 2018. On July 1, 2018, Canada responded by imposing retaliatory tariffs, i.e. a 25 percent surtax on imports of certain products, including steel plate, from the United States.⁵⁸ On May 17, 2019, the United States and Canada reached an agreement whereby the United States agreed to eliminate all tariffs imposed by the section 232 duties on imports of steel products from Canada, and Canada agreed to eliminate all tariffs imposed in retaliation thereof.⁵⁹

[79] In addition, in October 2018, Canada imposed provisional safeguards on seven classes of steel products, including heavy plate, which covers a subset of plate meeting the product definition in this case. The Tribunal determined that heavy plate was being imported in such increased quantities and under such conditions as to be a principal cause of a threat of serious injury to the domestic industry. The Tribunal recommended a tariff rate quota (TRQ) on all imports of heavy plate, except those from the United States, Mexico, other countries with whom Canada has trade agreements, and countries benefitting from the *General Preferential Tariff*.⁶⁰ The Tribunal's recommendations were implemented as final safeguard measures on May 9, 2019.⁶¹

[80] Finally, the COVID-19 pandemic began to affect domestic and international markets at the end of the Tribunal's POI, in particular in interim 2020.⁶²

Import volume of dumped goods

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

[82] Algoma submitted that the volume of dumped imports increased substantially in 2018 as compared to 2017 and again in 2019 as compared to 2018, both in absolute terms and relative to domestic production and sales from domestic production. Algoma argued that the 2017 imposition of anti-dumping duties on plate from the subject countries in the United States forced subject goods out

⁵⁷ Exhibit NQ-2020-001-A-01 at Attachment 87.

⁵⁸ *Customs Notice 18-08: Surtaxes Imposed on Certain Products Originating in the United States*, online: <<https://www.cbsa-asfc.gc.ca/publications/cn-ad/cn18-08-eng.html>>.

⁵⁹ Online: <<https://www.canada.ca/en/global-affairs/news/2019/05/joint-statement-by-the-united-states-and-canada-on-section-232-duties-on-steel-and-aluminum.html>>

⁶⁰ *Safeguard Inquiry into the Importation of Certain Steel Goods* (3 April 2019), GC-2018-001 (CITT) [*Certain Steel Goods*].

⁶¹ *Order Imposing a Surtax on the Importation of Certain Steel Goods*, SOR/2018-206, C. Gaz. 2018.II.3724.

⁶² Exhibit NQ-2020-001-A-01 at Attachments 4, 5, 94, 95.

of the U.S. market and into the Canadian market, at very low prices. Algoma further noted that imports of subject goods increased in 2019 while imports from some offshore countries decreased.

[83] The absolute volume of imports of subject goods increased by 54 percent in 2018 as compared to 2017 and by 42 percent in 2019 as compared to 2018. Volumes of imports of subject goods decreased by 46 percent in interim 2020 as compared to interim 2019.⁶³ If trends at the end of the POI are broken out and examined, subject import volumes decreased by 9 percent in the second half of 2019 as compared to the first half of 2019, and decreased by 40 percent in the first half of 2020 as compared to the second half of 2019.⁶⁴

[84] Non-subject import volumes decreased by 16 percent in 2018 and by 29 percent in 2019, and increased by 3 percent in interim 2020 as compared to interim 2019. U.S. imports decreased by 36 percent in 2018 and 26 percent in 2019, and increased by 99 percent in interim 2020 as compared to interim 2019. In contrast, imports from Turkey increased by 22 percent in 2018 as compared to 2019 before decreasing by 67 percent in 2019 and by 100 percent in interim 2020 as compared to interim 2019.⁶⁵

[85] Volumes of imports of subject goods as a percentage of sales from domestic production increased in 2018 and in 2019, increasing by a total of 22 percentage points between 2017 and 2019. The ratio decreased by 17 percentage points in interim 2020 in comparison to interim 2019 but remained higher than in 2017. The ratio of imports of subject goods to domestic production saw the same trends.⁶⁶ The total Canadian market decreased by 6 percent in 2018, and by a further 12 percent in 2019. It also decreased by 13 percent in interim 2020 as compared to interim 2019.⁶⁷

[86] The share of imports of subject goods increased significantly between 2017 and 2019, but declined in interim 2020 in comparison to interim 2019.⁶⁸ Similar to the overall market, the absolute volume of total imports decreased throughout the POI, declining by 16 percent in 2018, 20 percent in 2019, and 7 percent from interim 2019 to interim 2020.⁶⁹

[87] As will be discussed further below, domestic prices began to decline rapidly in mid-2019. Mr. Brandow stated that an environment of falling prices makes offshore imports less attractive, as the longer lead times associated with these imports may mean that they have to be sold at a loss, as the market price may have declined significantly between the time they are purchased and the time they arrive. Accordingly, Mr. Brandow stated that when prices began to decline in mid-2019, subject import volumes began to fall as well.⁷⁰ Algoma observed that importers have previously acknowledged this dynamic and that the Tribunal has accepted it in past cases.⁷¹

[88] Ms. Devoni stated that the slight increases in price observed at the end of 2019 and in the first months of 2020 were insufficient in extent and duration to attract significant increases of

⁶³ Exhibit NQ-2020-001-06B, Table 18.

⁶⁴ Numbers were derived using data for full year 2019 and interim 2019 in Exhibit NQ-2020-001-07B (protected), Table 17.

⁶⁵ Exhibit NQ-2020-001-06B, Table 18.

⁶⁶ *Ibid.*, Table 20.

⁶⁷ *Ibid.*, Table 22.

⁶⁸ Exhibit NQ-2020-001-07B (protected), Table 19.

⁶⁹ Exhibit NQ-2020-001-06B, Table 18.

⁷⁰ Exhibit NQ-2020-001-A-05 at para. 56.

⁷¹ *Plate VII Review* at para. 120.

offshore imports. In addition, the COVID-19 pandemic, which had a significant negative impact on global commerce and import activity in general, began before the Eastern seaway opened for navigation, which further contributed to the general lack of offshore imports in interim 2020.⁷² Indeed, the evidence shows that imports from all offshore countries, and not only subject countries, decreased in interim 2020 as compared to interim 2019.

[89] Based on this information, the Tribunal finds that there was a significant increase in the absolute and relative volume of imports of the subject goods in 2018 and 2019. The Tribunal accepts the evidence that import volumes decreased in the second half of 2019 due to the rapidly falling domestic price, and that the pandemic prevented offshore imports from re-entering the market in interim 2020.

Price effect of dumped goods

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

Price undercutting

[91] Algoma submitted that the subject goods undercut domestic prices in 2018 and the first half of 2019 in order to secure the increased volumes discussed above.

[92] The data concerning average selling prices indicate that the subject goods undercut the like goods in 2018, 2019 and interim 2019.⁷³ The data on average selling prices do not show undercutting in interim 2020, when subject goods volumes declined (as compared to interim 2019).

[93] Algoma submitted that import prices, rather than market prices, are the appropriate point of comparison with the domestic selling prices, as imports arrive in large volumes that are more comparable to Algoma's sales volumes, whereas the resale prices will include small volume sales and plate that has undergone minor further processing. The Tribunal notes that, when average domestic producers' selling prices are compared to the import prices of the subject goods, the degree of undercutting (i.e. the price differential) in 2018, 2019 and interim 2019 further increases.⁷⁴

[94] Looking at sales to distributors, significant undercutting occurred in 2018, 2019 and interim 2019 when comparing the domestic producers' selling prices to the subject goods' selling prices.⁷⁵ With respect to sales to end users, undercutting occurred in 2019 and interim 2019, when comparing the domestic producers' selling price to the importers' selling price of subject goods.⁷⁶

[95] The Tribunal also collected data regarding the prices of four benchmark products. The quarterly benchmark product data comparing the domestic selling prices to the subject goods' selling

⁷² Exhibit NQ-2020-001-A-03 at para. 46 and Attachment 5.

⁷³ Exhibit NQ-2020-001-07B (protected), Table 39.

⁷⁴ *Ibid.*, Tables 37, 39.

⁷⁵ *Ibid.*, Table 41.

⁷⁶ *Ibid.*, Table 43.

prices for benchmark products 1 to 3, which provide the most “apples-to-apples” comparison, show 37 instances of competition between the like goods and the subject goods and 16 instances of price undercutting.⁷⁷ The magnitude of the undercutting declines and, in most cases, the undercutting is eliminated towards the end of 2019; however, where undercutting occurred it was significant.⁷⁸

[96] The Tribunal collected data regarding sales of like goods and subject goods to common accounts, which provide examples of head-to-head competition for the same customers. The data show 15 instances of competition between the like goods and the subject goods, at 4 accounts. This competition resulted in 8 instances of price undercutting.⁷⁹ Instances of undercutting were mainly between the third quarter of 2018 and the third quarter of 2019, and the degree of undercutting observed was significant. Similar to the benchmark products, towards the end of 2019, the domestic producers’ sales to common accounts were priced lower than the subject goods.

[97] Finally, Algoma submitted import activity reports showing examples of head-to-head competition on an “apples-to-apples” basis, i.e. where all other factors are equal except price. Of the six examples involving subject goods, five involve imports arriving in 2019 and two involve imports arriving in the second half of 2019. Again, the magnitude of undercutting observed in these import activity reports is significant.

[98] The opposing parties submitted that imports of U.S. goods dominated the Canadian market and caused the injury suffered by the domestic industry. They argued that U.S. prices undercut those of domestic producers in the second half of 2018, in late 2019 and in 2020.

[99] The selling prices of U.S. imports were lower than the prices of sales from domestic production in 2018, 2019 and interim 2019, and were lower than the prices of subject goods in 2017, 2018 and interim 2020.⁸⁰ The selling prices of U.S. imports by importers were also lower than the domestic producers’ selling prices at the end-user trade level in 2018, 2019 and interim 2019 and distributor trade level in 2018 and interim 2019. U.S. import selling prices from importers to distributors were higher than subject goods import prices in every period of the POI with the exception of 2017. U.S. import selling prices from importers to end users were lower than subject goods selling prices in all reported periods except 2019 as a whole.⁸¹

[100] In response, the domestic industry submitted that, historically, U.S. imports are generally priced similarly to domestic goods and do not usually undercut domestic sales. The domestic industry noted that the Tribunal recognized in a recent expiry review concerning plate that there had been a disconnect between U.S. and Canadian prices while the section 232 duties and Canadian countermeasures were in place, but that this was a temporary situation and that offshore sources were expected to become the lowest-priced goods in the market going forward.⁸²

[101] As discussed above, the data indicate that the selling prices of U.S. imports were lower than domestic selling prices during portions of the POI. Whether or not this was a temporary situation caused by the imposition of the section 232 duties and Canadian countermeasures, the impact that

⁷⁷ Exhibit NQ-2020-001-06B, Table 51. Benchmark product 4 is a subset of benchmark product 3, and accordingly all of the sales of benchmark product 4 are captured by the comparisons for benchmark product 3.

⁷⁸ Exhibit NQ-2020-001-07B (protected), Table 52.

⁷⁹ *Ibid.*, Tables 55-58.

⁸⁰ *Ibid.*, Table 39.

⁸¹ *Ibid.*, Tables 41, 43.

⁸² *Plate VII Review* at para. 134.

these imports may have had on the domestic industry should not be attributed to the presence of imports of subject goods. However, the selling prices of U.S. imports were higher than the subject goods' selling price in 2019, which is when undercutting by the subject goods was most pronounced.

[102] The Tribunal also observes that selling prices of Turkish imports were lower than domestic selling prices in 2017, 2018, 2019 and interim 2019, but higher in interim 2020. The same trend is observed for sales to distributors.⁸³

[103] The Tribunal notes that the magnitude of undercutting observed for benchmark products data and sales to common accounts, which provide evidence of direct competition on an "apples-to-apples" basis, was significant, and that this undercutting was occurring at the same time as the subject goods were gaining import and sales volumes, as well as market share. Accordingly, the Tribunal finds that there was significant price undercutting by the subject goods in 2018, 2019 and interim 2019.

[104] The Tribunal also acknowledges that non-subject U.S. and Turkish imports were also present in the market at low prices during the POI, and that the impact that they had on domestic pricing should not be attributed to the subject goods. However, the Tribunal is of the view that the pricing pressure experienced by the domestic industry was attributable to the subject goods in the Canadian market.

Price depression

[105] Algoma submitted that the market price began to rapidly decline in April 2019, after the release of the Tribunal's final safeguard report.⁸⁴ Algoma attributed this price decrease, in particular in the second, third and fourth quarters of 2019, in part to competition with imports of subject goods. Algoma submitted that this argument is supported by the quarterly benchmark data, which show undercutting in the second and third quarters of 2019 for benchmark product 1 and in the second quarter of 2019 for benchmark product 2.

[106] The average selling prices of like goods increased by 28 percent from 2017 to 2018, then remained stable in 2019 before decreasing by 35 percent in interim 2020 in comparison to interim 2019. If trends at the end of the POI are broken out, the average selling prices of like goods decreased by 29 percent in the second half of 2019 in comparison to the first half of 2019.

[107] Comparatively, the increase and decline in average selling prices of the subject goods was less substantial, increasing by 9 percent in 2018 and 2 percent in 2019 before decreasing by 14 percent in interim 2020 in comparison to interim 2019. Import prices of subject goods followed the same trend. If trends at the end of the POI are broken out, the average selling prices of subject goods decreased by 12 percent in the second half of 2019 in comparison to interim 2019.⁸⁵

[108] Similar price trends can be seen when comparing prices of like goods to prices of subject goods at the distributor and end-user trade levels over the course of the POI.⁸⁶

⁸³ Exhibit NQ-2020-001-07B (protected), Tables 39, 41.

⁸⁴ See *Certain Steel Goods*.

⁸⁵ Exhibit NQ-2020-001-07B (protected), Table 39; Exhibit NQ-2020-001-06B, Table 40. Numbers for the second half of 2019 were derived using data for full year 2019 and interim 2019 in Exhibit NQ-2020-001-07B (protected), Table 39.

⁸⁶ Exhibit NQ-2020-001-07B (protected), Tables 41, 43.

[109] The Tribunal's findings on subject import volumes and price undercutting, discussed above, are significant in this context. Domestic prices began to see significant declines in the second half of 2019 and in interim 2020, following a period of significant undercutting and an extended period of increases in volumes of subject goods.

[110] Further, the fact that the domestic producers maintained, and even increased, market share through this period suggests that they adopted a strategy of lowering their prices in response to undercutting in an attempt to preserve their sales volumes, resulting in price depression.

[111] The opposing parties argued that the price increase observed in 2018 was caused by the impact of the section 232 duties and countermeasures and was accordingly artificial and unsupported by underlying demand. They further argued that the decrease in prices seen in the second half of 2019, after the removal of the section 232 duties and Canadian retaliatory tariffs in May 2019, was the result of this lack of demand, and not subject goods.

[112] The opposing parties also argued that prices dropped in the second half of 2019 as a result of U.S. imports re-entering the market following the removal of the Canadian retaliatory tariffs. Mr. Fernando Ferreira, of Wirth, stated that when the retaliatory tariff was removed in May 2019, prices of plate imported by truck or train (i.e. U.S. imports) dropped overnight.⁸⁷ The opposing parties argued that between May and November 2019, domestically produced heavy plate was in competition with low-priced U.S. imports, not subject goods.

[113] Mr. Brandow acknowledged that the price increase in 2018 was caused in part by retaliatory trade actions and was not supported by demand.⁸⁸ He further acknowledged that there was a period of weak demand starting in the second half of 2019 due to trade uncertainty, signs of economic downturn, the departure of Caterpillar Inc. and John Deere in the Eastern Canadian market, and volatility in the oil and gas sector in the Western Canadian market, and that these factors "caught up" with the market and contributed to the reduction in the domestic price in 2019.⁸⁹ The economic impact of the COVID-19 pandemic further suppressed demand in interim 2020. Nevertheless, Algoma's witnesses submitted that the dumping of the subject goods was also a cause of the decrease in its selling price observed in 2019.⁹⁰

[114] Algoma further argued that prices in fact began declining before May 2019, when the section 232 duties and Canadian countermeasures were lifted, and continued to decrease throughout 2019. Algoma noted that this was supported by the evidence of Mr. Jonathan Adkins, of SMIC.

[115] In his witness statement, Mr. Adkins stated that prices began declining in November and December of 2018 due to weak demand in the second half of 2018, and that demand remained soft in most industry sectors from the first quarter to the third quarter of 2019. He stated that the price decline was accelerated by the removal of both U.S. and Canadian duties.⁹¹ Algoma emphasized that these drivers were present prior to the removal of Canadian retaliatory tariffs on U.S. imports.

[116] Although the lifting of U.S. and Canadian duties caused prices to decline further, the Tribunal finds that other drivers were indeed already in place prior to May 2019. Weak demand and

⁸⁷ Exhibit NQ-2020-001-F-01 at para. 17.

⁸⁸ Exhibit NQ-2020-001-A-05 at para. 41.

⁸⁹ *Ibid.* at paras. 26-27, 30-31, 43.

⁹⁰ Exhibit NQ-2020-001-A-03 at para. 50; Exhibit NQ-2020-001-A-05 at paras. 43, 45.

⁹¹ Exhibit NQ-2020-001-G-01 at paras. 38-39.

inventory hangovers, in addition to the increasing volume of imports of subject goods in 2018 and 2019, were already placing downward pressure on Canadian pricing.

[117] While there were undoubtedly other factors at play at the same time, the evidence regarding the increasing volumes of imports of subject goods in 2018 and 2019, and the price undercutting observed in those periods, indicates that the subject goods, in and of themselves, significantly depressed the prices of the like goods in 2019.

Price suppression

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

[119] From 2017 to 2018, the increase in the domestic selling price exceeded the increase in COGS experienced by the domestic industry. In contrast, from 2018 to 2019, the domestic industry selling price remained stable while the COGS continued to increase. This coincides with the increased competition with the subject goods experienced in 2019.

[120] Algoma submitted that there was significant volatility in pricing in 2018 and 2019, and that a comparison of its prices and costs at the beginning and ending of this period provides additional evidence of price suppression. The Tribunal confirms that, when comparing the first quarter of 2018 to the last quarter of 2019, Algoma's prices declined while its COGS increased.⁹²

[121] As discussed in the previous section, factors other than the subject goods were also at play in pushing prices down. However, the period also saw rapidly increasing volumes of imports of subject goods in 2018 and 2019, at undercutting prices. Based on the evidence, the Tribunal finds that the subject goods significantly suppressed the price of the like goods in 2019.

Resultant impact on the domestic industry

[122] Paragraph 37.1(1)(c) of the *Regulations* requires the Tribunal to consider the resulting 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.⁹³ These impacts are to be distinguished from the impact of other factors also having a bearing on the domestic industry.⁹⁴ Paragraph 37.1(3)(a) of the *Regulations* requires the Tribunal to consider whether a causal relationship exists between the dumping of the goods and the injury, retardation or threat of injury, on the basis of the volume, the price effect, and the impact on the domestic industry of the dumped goods.

⁹² Exhibit NQ-2020-001-A-04 (protected) at Attachment 4.

⁹³ Such factors and indices include (i) any actual or potential decline in output, sales, market share, profits, productivity, return on investments or the utilization of industrial capacity, (ii) any actual or potential negative effects on cash flow, inventories, employment, wages, growth or the ability to raise capital, (ii.1) the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods.

⁹⁴ Paragraph 37.1(3)(b) of the *Regulations* directs the Tribunal to consider whether any factors other than dumping of the subject goods have caused injury. The factors which are prescribed in this regard are (i) the volumes and

Sales and market share

[123] Algoma submitted that the market share of imports of subject goods increased from 2017 through interim 2019, and that this increase outpaced the domestic industry's increase in market share over the same period. Algoma submitted that it should have been able to make greater gains when U.S. market share declined significantly, and the fact that it did not was due to competition with low-priced subject goods.

[124] The parties opposed noted that the domestic industry's market share increased over the POI and argued that it is not appropriate to consider that Algoma was injured by missing out on further potential market share gains, especially given the significant market contraction that occurred during the POI. In addition, the parties opposed argued that the contraction in the market itself cannot be ignored as a potential other cause of injury.

[125] The parties opposed also noted that imports of subject goods filled the market share vacated by U.S. imports when the Canadian countermeasures were in place, and that they lost market share when U.S. imports returned. They therefore argued that subject imports could not have caused injury to the domestic industry in terms of market share.

[126] The domestic industry argued that, after the disruption caused by the imposition of the section 232 duties and Canadian countermeasures, U.S. imports regained their historical level of market share, but did not make further market share gains. In addition, they argued that those U.S. imports are being sold at fairly traded market prices.

[127] The total heavy plate market contracted in volume by 6 percent in 2018 as compared to 2017, by 12 percent in 2019 as compared to 2018, and by 13 percent in interim 2020 as compared to interim 2019.⁹⁵ In this context, domestic sales from domestic production increased by 7 percent in 2018 as compared to 2017, but decreased by 5 percent in 2019 as compared to 2018, and decreased again by 5 percent in interim 2020 as compared to interim 2019.⁹⁶

[128] The domestic industry's market share increased steadily through the POI. Market share increased for imports of subject goods from 2017 to 2019 and decreased in interim 2020 as compared to interim 2019. The market share of imports from non-subject countries other than the United States and Turkey followed the same pattern. In contrast, the market share of U.S. imports decreased significantly between 2017 and 2019, but increased to its 2017 level in interim 2020.⁹⁷ The market share of imports from Turkey increased in 2018 but fell in 2019, and again in interim 2020 as compared to interim 2019.⁹⁸

prices of imports of like goods that are not dumped, (ii) a contraction in demand for the goods or like goods, (iii) any change in the pattern of consumption of the goods or like goods, (iv) trade-restrictive practices of, and competition between, foreign and domestic producers, (v) developments in technology, (vi) the export performance and productivity of the domestic industry in respect of like goods, and (vii) any other factors that are relevant in the circumstances.

⁹⁵ Exhibit NQ-2020-001-06B, Table 22.

⁹⁶ *Ibid.*

⁹⁷ Exhibit NQ-2020-001-07B (protected), Table 23.

⁹⁸ *Ibid.*

[129] The Tribunal finds that while the domestic industry's market share increased, it did not increase by the amount that would have been expected, despite the opportunity presented by the loss of market share of U.S. imports, due to the presence of the dumped imports.

Financial performance

[130] The consolidated financial results of the domestic industry for domestic sales show that, after an improvement in 2018, financial performance declined significantly in 2019.⁹⁹ This appears to have been the result of falling sales volumes and net sales values from 2018 to 2019, although there was also an increase in the COGS, as discussed above.

[131] When the data for the first and second halves of 2019 are examined separately, it is clear that strong results in the first half of 2019 were negated in the second half of 2019.¹⁰⁰ This is consistent with Algoma's evidence that prices began to decline in April 2019, and the Tribunal's finding above that the domestic industry apparently chose to lower its prices rather than risk losing sales volumes and market share. There was a slight improvement in interim 2020 as compared to the second half of 2019 but performance in interim 2020 was still worse than in interim 2019.

[132] Lower sales volumes and prices of exports to the United States along with higher costs associated with selling to the U.S. negatively impacted the domestic industry's export performance throughout the POI. There is no evidence that subject goods impacted export sales performance, and the effect of poor export sales performance cannot be attributed to them. However, when considering the contribution of export sales to total producers' net sales as compared to domestic sales¹⁰¹ and overall profitability, the Tribunal finds that the subject goods, in and of themselves, through their price undercutting and depressive and suppressive effect on Canadian heavy plate prices, significantly and negatively impacted the domestic industry's overall profitability in 2019.

Other performance indicators

[133] Domestic production remained stable in 2018 and 2019 and then increased in interim 2020 as compared to interim 2019. Productivity declined slightly from 2017 to 2019. While capacity utilization was steady over the POI, the domestic industry's capacity utilization for like goods is very low.¹⁰²

[134] Representatives from the United Steelworkers stated that dumped imports are causing market instability that is making it difficult to retain skilled workers.¹⁰³ They also stated that the price effects of dumped imports have a direct relationship with employment levels and that the recent decrease in production and attendant layoffs is due to the presence of dumped goods as well as to the effects of

⁹⁹ Exhibit NQ-2020-001-07B (protected), Table 59. Because one domestic producer represents the majority of domestic production, a detailed discussion of the domestic industry's consolidated financial results would nevertheless risk divulging confidential information belonging to that party.

¹⁰⁰ Numbers for the second half of 2019 were derived using data for full year 2019 and interim 2019 in Exhibit NQ-2020-001-07B (protected), Table 59.

¹⁰¹ Exhibit NQ-2020-001-07B (protected), Tables 59, 60.

¹⁰² Exhibit NQ-2020-001-06B, Table 63; Exhibit NQ-2020-001-07B (protected), Table 62.

¹⁰³ Exhibit NQ-2020-001-C-03 at para. 20.

the COVID-19 pandemic.¹⁰⁴ The Tribunal accordingly finds that the dumping of the subject goods is having a direct effect on employment levels.

[135] There is little to no evidence that the increased presence of the subject goods in the Canadian market had negative effects on the domestic industry's cash flow, wages, growth, ability to raise capital, investments or return on investments during the POI.¹⁰⁵

Magnitude of the margin of dumping

[136] As noted above, the margins of dumping determined by the CBSA ranged from 6.3 percent to 80.6 percent and were therefore not insignificant. That said, the Tribunal does not consider that the margins of dumping, expressed as a percentage of the export price, necessarily represent the level of the injurious effect caused by the prices in Canada of the subject goods during the POI. The magnitude of the margins of dumping therefore did not add much to the evidence and analysis of injury.

Causation

[137] The parties opposed argued that any injury suffered by Algoma is attributable to factors other than the dumping of the subject goods. Some of those arguments, in particular those regarding the impact of the section 232 duties and Canadian countermeasures, as well as the volume and pricing impacts of U.S. imports, have been addressed in the discussion above.

COVID-19 pandemic

[138] The Tribunal finds that the injury caused by the subject goods occurred in 2019, prior to the onset of the pandemic. As such, any effects of the COVID-19 pandemic that started manifesting themselves in interim 2020 were over and above the effect of the subject goods during the POI and only added to the already-injured state of the domestic industry.

Intra-industry competition

[139] The opposing parties noted that, in every period of the POI except 2018 and interim 2019, domestic producers imported larger volumes of U.S. goods than importers. In this regard, the opposing parties highlighted that, in *Plate VIII*, the Tribunal emphasized that the domestic industry was importing large volumes of U.S. goods and that this could not be overlooked as a potential cause of self-inflicted injury.¹⁰⁶

[140] According to Mr. James Macphail, of SSAB, his firm sources goods from the United States that it cannot supply from its Toronto facility.¹⁰⁷ Algoma submitted that these imports have therefore not displaced Canadian production.

[141] The Tribunal notes that these imports could in fact be displacing Canadian production. First, SSAB has chosen to source goods from its U.S. affiliates rather than invest in producing them in Canada. Second, the domestic industry could be filling these customers' needs from Canadian

¹⁰⁴ Exhibit NQ-2020-001-C-01 at paras. 11-14.

¹⁰⁵ Exhibit NQ-2020-001-07B (protected), Tables 62, 67; Exhibit NQ-2020-001-06B, Table 63.

¹⁰⁶ *Plate VIII* at para. 146.

¹⁰⁷ Exhibit NQ-2020-001-B-01 at 2.

production instead of SSAB importing these plates from the United States, as SSAB could in theory purchase these goods from Algoma. There is no indication on the record that these imports are of plate falling outside Algoma's production capabilities. In fact, Algoma competes directly with SSAB's U.S. imports, as evidenced by the common accounts data.¹⁰⁸ Further, there is no indication that this is plate that SSAB is importing for further processing, which could make it into something Algoma could not produce.

[142] The Tribunal finds that there is no expectation that members of the domestic industry should purchase from their competitors to fill gaps in their product offering. In other words, SSAB is not required to purchase the heavy plate that it cannot produce from Algoma, rather than importing U.S. goods. The Tribunal acknowledges that these imports are potentially injurious to the domestic industry and that injury should not be attributed to the dumping of the subject goods. However, this is only one other potential cause of injury and does not, on balance, negate the conclusion that the subject goods caused material injury to the domestic industry.

Supply and quality issues

[143] Marmen submitted that Algoma had lost sales to Marmen because Algoma was not able to provide the volumes required by Marmen and due to quality issues with the plates manufactured by Algoma, and not because of price competition with dumped imports. Marmen submitted that while it has a long history of purchasing heavy plate from Algoma, it meets its supply needs by also purchasing German heavy plate.

[144] As evidence, Marmen relied on an offer to buy that Algoma did not fulfill. Marmen subsequently confirmed that Algoma is capable of achieving the technical specifications of the heavy plate that Marmen purchases from German producers but maintained that there were differences in quality and that Algoma's product did not suit Marmen's needs.¹⁰⁹

[145] Marmen also submitted that it is the sole wind tower manufacturer in Canada, and without access to German heavy plate, it would be unable to remain competitive with foreign producers in its own industry.

[146] Algoma submitted that the offer referred to by Marmen was not fulfilled because it was unwilling to commit to the pricing schedule suggested by Marmen, not because it could not supply the amount of steel required.¹¹⁰ Further, Algoma submitted that the impact on Marmen's business is not a factor that the Tribunal may consider in this inquiry. Algoma submitted that the proper avenue for Marmen would be a public interest inquiry pursuant to section 45 of *SIMA*.

[147] Algoma is correct that the Tribunal does not consider impacts on downstream users in the context of an inquiry under section 42 of *SIMA*, and that such issues can be addressed through the public interest process. Further, on balance, the Tribunal accepts that any sales lost to Marmen were not entirely due to quality issues or problems with Algoma's supply; further, Marmen's evidence is that price is also a factor in its purchasing decisions.¹¹¹ Marmen has not provided sufficient reasons

¹⁰⁸ Exhibit NQ-2020-001-07B (protected), Tables 57, 58.

¹⁰⁹ Exhibit NQ-2020-001-12.17 at 8.

¹¹⁰ Exhibit NQ-2020-001-A-15 at 1-2.

¹¹¹ Exhibit NQ-2020-001-N-01 at 2, 3; *Transcript of Public Argument* at 78, 82.

or evidence to counter the evidence that the subject goods have caused material injury to the domestic industry.

[148] Nonetheless, to the extent that Marmen has grounds and supporting evidence to advance, the avenue of recourse provided by section 45 of *SIMA* remains open to it. Alternatively, another avenue that could be open to Marmen is to request an exclusion for certain products through an interim review, should there be evidence in the future regarding the domestic industry's inability to produce a product that meets its requirements.

Conclusion on causation

[149] Dumping need not be the sole contributing factor to injury sustained by the domestic industry:

... in injury inquiries, there are almost always other factors present and [the Tribunal] cannot attribute any injury caused by these other factors to the dumping. Dumping, however, need not be the only or the principal cause of the injury. The statute requires that the injury caused by the dumping be material.¹¹²

[150] The Tribunal must therefore assess whether, despite the losses suffered by the domestic industry that may be attributable to other factors, the dumping of the subject goods has, in and of itself, caused material injury.¹¹³

[151] The Tribunal finds that, while factors other than the dumping of the subject goods have affected the domestic industry's performance over the POI, the subject goods, in and of themselves, have caused material injury to the domestic industry.

Materiality

[152] The Tribunal will now determine whether the effect of imports of the subject goods noted above is "material," as contemplated in the definition of "injury" under section 2 of *SIMA*. *SIMA* does not define the term "material." However, both the extent of injury during the relevant time frame and the timing and duration of the injury are relevant considerations in determining whether any injury caused by the subject goods is "material."¹¹⁴

[153] In this case, the domestic industry experienced injury in 2019, particularly in the second half of 2019, in the form of price undercutting, price depression and price suppression, which negatively impacted its financial performance. Moreover, the injury was most prevalent in the second half of 2019, which falls within the CBSA's POI, when large volumes of dumped imports were entering the

¹¹² *Refrigerators, Dishwashers and Dryers* (1 August 2000), NQ-2000-001 (CITT) at 27.

¹¹³ *Plate VII Inquiry* at para. 180; *Silicon Metal* (19 November 2013), NQ-2013-003 (CITT) at para. 111.

¹¹⁴ The Tribunal suggested, in *Certain Hot-rolled Carbon Steel Plate* (27 October 1997), NQ-97-001 (CITT) at 13, that the concept of materiality could entail both temporal and quantitative dimensions, "[h]owever, the Tribunal is of the view that, to date, the injury suffered by the industry has not been for such a duration or to such an extent as to constitute 'material injury' within the meaning of *SIMA*" [emphasis added]. The Tribunal further notes that while each case depends on its own facts, evidence regarding the recent past is more likely to be relevant to establishing the existence of a current causal link between dumping and injury and to justify the imposition of anti-dumping duties. See, for example, Final Panel Report, *Mexico – Steel Pipes and Tubes (Guatemala)*, WT/DS331/R, at paras. 7.227-7.228; Appellate Body Report, *Mexico – Beef and Rice*, WT/DS295/AB/R, at paras. 165-166.)

domestic market.¹¹⁵ Again, it is apparent from the discussion above that the domestic industry adopted a strategy of lowering its prices to compete with the subject goods, in order to protect its sales volumes and market share in a declining market. As a result, the domestic industry's financial performance deteriorated significantly in the second half of 2019, which had a correspondingly significant impact on its profitability.

[154] In the circumstances, the Tribunal finds that the extent of the injury was material.¹¹⁶ The Tribunal therefore finds that the dumping of the subject goods caused material injury to the domestic industry.

Conclusion

[155] In view of the foregoing, the Tribunal finds that the domestic industry was materially injured by the dumping of the subject goods from Chinese Taipei and Germany. Accordingly, the Tribunal need not address the question of whether the subject goods are threatening to cause injury.

EXCLUSIONS

[156] The Tribunal received 18 requests to exclude products from the finding. Two requests were received from the APVMA, 1 from ISI, 7 from ILG and 8 from SMIC. However, there is significant overlap between the requests, and the 18 requests accordingly relate to 10 products, as described below. For the reasons that follow, the Tribunal has decided to grant exclusions for 4 of the 10 products.

[157] Before addressing these requests, the Tribunal will outline certain general principles and the relevant factors it took into consideration when determining whether to grant the requested product exclusions. The Tribunal will also address some issues that were common to a number of requests.

General principles and relevant factors

[158] SIMA implicitly authorizes the Tribunal to grant exclusions from the scope of a finding.¹¹⁷ Exclusions are an extraordinary remedy that may be granted at the Tribunal's discretion, i.e. when the Tribunal is of the view that the exclusions will not cause injury to the domestic industry.¹¹⁸ The rationale is that, despite the general conclusion that the dumping of the goods has caused injury to the domestic industry, there may be case-specific evidence that imports of particular products captured by the definition of the goods have not caused injury.

¹¹⁵ The CBSA's POI was from March 1, 2019, to February 29, 2020.

¹¹⁶ Although the duration of the injury represents only a portion of the POI, the Tribunal finds that this does not detract from the materiality of the injury suffered by the domestic industry, which was indeed material in a manner consistent with some of its previous findings. The Tribunal has previously confirmed that injury over a period of this duration, and even a shorter period, can be material. (See *Corrosion-resistant Steel Sheet* (16 November 2020), NQ-2019-002 (CITT) at para. 145; *Cold-rolled Steel* (21 December 2018), NQ-2018-002 (CITT) at para. 99; *Sucker Rods* (14 December 2018), NQ-2018-001 (CITT) at para. 151; *Concrete Reinforcing Bar* (3 May 2017), NQ-2016-003 (CITT) [*Concrete Reinforcing Bar*] at paras. 185-188 and footnote 182. Moreover, the injury was most prevalent in the second half of 2019, which falls within the CBSA's POI, when large volumes of dumped imports were entering the domestic market.

¹¹⁷ *Hetex Garn A.G. v. The Anti-dumping Tribunal*, [1978] 2 F.C. 507 (FCA); *Sacilor Acières v. Anti-dumping Tribunal* (1985) 9 C.E.R. 210 (CA); Binational Panel, *Induction Motors Originating In or Exported From the United States of America (Injury)* (11 September 1991), CDA-90-1904-01; Binational Panel, *Certain Cold-Rolled Steel Products Originating or Exported From the United States of America (Injury)* (13 July 1994), CDA-93-1904-09.

¹¹⁸ See, for example, *Aluminum Extrusions* at para. 339; *Stainless Steel Wire* (30 July 2004), NQ-2004-001 (CITT) at para. 96.

[159] In determining whether an exclusion is likely to cause injury to the domestic industry, the Tribunal considers such factors as whether the domestic industry produces, actively supplies or is capable of producing like goods in relation to the subject goods for which the exclusion is requested.¹¹⁹

[160] The Tribunal usually denies exclusion requests if the domestic industry already produces the same products, even if that production is limited.¹²⁰ When the Tribunal considers whether the domestic industry produces substitutable or competing goods, it usually considers a variety of product attributes, e.g. physical characteristics, quality, price, market segment and end use, to gauge the extent of competition between the imported and domestic products.

[161] Where there is no production of domestically produced goods that are identical or substitutable for the products which are the subject of the exclusion request, the Tribunal may consider whether there is evidence of planned domestic production of identical or substitutable products, or evidence indicating that the domestic industry intends to become an active supplier of such products in the near to medium term.¹²¹ The Tribunal has found in previous cases that, should the domestic industry provide evidence of “a firm intention to begin producing a product, an exclusion should not be granted.”¹²² For example, in *Carbon and Alloy Steel Line Pipe*,¹²³ the Tribunal found that the following constituted a firm intention:

Moreover, the Tribunal finds that Mr. Rasmussen provided persuasive evidence that Bri-Steel is prepared to expand its production to seamless line pipe in outside diameters ranging from 8 inches to 12 inches, given that it would only require a “minimal investment” in equipment and that it could be ready to start producing those size ranges within a few months. According to Mr. Rasmussen, the reason for which Bri-Steel has not undertaken this investment to date is that it cannot compete with the dumped and subsidized prices of the subject goods in those size ranges.¹²⁴

[162] In this inquiry, the APVMA, ILG and SMIC all took issue with the fact that Algoma, as the complainant, has allegedly improperly broadened the scope of the product definition by including products it does not make, and for which it consented to exclusions in the exclusions process conducted with respect to the Tribunal’s heavy plate safeguard inquiry.¹²⁵

[163] In reply, Algoma has submitted that it is now capable of producing all of the products for which exclusions have been requested (except where it has consented to the requests).

[164] The Tribunal notes that the test applied in the safeguard exclusions process for determining whether to grant an exclusion was set out explicitly in the *Exclusions Inquiry Order* and is different from the test the Tribunal typically applies in a *SIMA* inquiry. In GC-2018-001-E1, the Tribunal explained as follows:

¹¹⁹ *Certain Fasteners* (6 January 2010), RR-2009-001 (CITT) [*Fasteners*] at para. 245.

¹²⁰ See, for example, *Concrete Reinforcing Bar* (12 January 2000), NQ-99-002 (CITT) at 26, where the Tribunal stated that “there is no requirement in *SIMA* for the industry to supply the totality of the market’s needs.”

¹²¹ *Carbon Steel Screws* (2 September 2020), RR-2019-002 (CITT) at para. 239.

¹²² *Plate VII Inquiry* at para. 222.

¹²³ (29 March 2016), NQ-2015-002 (CITT) [*Carbon and Alloy Steel Line Pipe*].

¹²⁴ *Carbon and Alloy Steel Line Pipe* at para. 209.

¹²⁵ *Certain Steel Goods* (15 July 2019), GC-2018-001-E1 (CITT) [GC-2018-001-E1].

8. Section 4 of the *Exclusions Inquiry Order* states that if “the Tribunal determines that there is no domestic source of supply for the goods to which a request referred to in paragraph (a) applies, or no firm and commercially viable plan to produce those goods domestically, the Tribunal must recommend that those goods be excluded from the [Surtax Order]” [emphasis added].

9. Therefore, if the Tribunal determines that there is no domestic source of supply or firm and commercially viable plan to produce such goods domestically, the Tribunal will, in accordance with the direction provided in the *Exclusions Inquiry Order*, recommend the exclusion of the goods from the application of safeguard measures.

...

18. The *Exclusions Inquiry Order* contemplates that a domestic source of supply could also include goods that meet the requirement that corresponds to “firm and commercially viable plans to produce those goods domestically.” To determine whether specific circumstances meet that requirement, the Tribunal will examine factors such as the following:

- internal corporate approvals, e.g. capital and other commitments;
- production scheduling;
- technical certifications;
- acceptance by customers;
- product testing; and
- marketing efforts.

[165] To summarize, if there was no domestic source of supply, the Tribunal was only mandated to refuse an exclusion request if there was a “firm and commercially viable plan to produce the goods domestically,” as evidenced by the existence of the factors set out in paragraph 18 cited above.

[166] The Tribunal notes that *SIMA* process and the safeguard inquiry have different purposes, as the goods subject to a safeguard order are not dumped, and in *SIMA* context, the focus of the inquiry is whether the exclusion would cause injury to the domestic industry. Ultimately, while the factors considered in the safeguards exclusions inquiry may also be relevant to the inquiry in a *SIMA* case, each case will depend on its own evidence.

[167] In addition, the fact that the Tribunal may have granted exclusions for products that are similar to those covered by the present requests does not, in and of itself, constitute sufficient evidence to justify granting an exclusion request. The Tribunal has stated that past decisions are not binding and create no entitlement to an exclusion. A decision on whether to grant an exclusion is based on all of the evidence and particular circumstances of each case.¹²⁶

[168] When this principle is considered in conjunction with the fact that the standard applied in determining whether to grant exclusions in GC-2018-001-E1 was different from the standard applied in *SIMA* inquiries, the Tribunal considers that the fact that an exclusion was granted in GC-2018-001-E1 is not determinative for the purposes of disposing of the exclusion requests in the current inquiry.

¹²⁶ *Carbon and Alloy Steel Line Pipe* at para. 215.

[169] Further, the Tribunal is mindful of the fact that it has previously found that the onus is upon the requester to demonstrate that imports of the specific goods for which the exclusion is requested are not injurious to the domestic industry.¹²⁷ Thus there is an evidentiary burden on the requester to file evidence in support of its request.¹²⁸ However, there is also an evidentiary burden on the domestic producers to file evidence in order to rebut the evidence filed by the requester.¹²⁹ Ultimately, the Tribunal must determine whether it will exercise its discretion to grant product exclusions on the basis of its assessment of the totality of the evidence on the record.

[170] The Tribunal usually looks unfavourably at a lack of evidence concerning a requester's attempt to reach out to domestic producers to ascertain whether they are able to supply the products for which exclusions are requested. As noted above, ILG and SMIC have relied on the fact that the same or similarly worded exclusion requests were granted in GC-2018-001-E1 as support for many of their requests, and have not provided supporting evidence of new attempts to reach out to the domestic industry to purchase these products.

[171] The APVMA submitted that it has discharged its burden, taking into consideration that the threshold for discharging that burden must be measured in light of the requester's ability to obtain evidence from its own commercial dealings with the domestic industry or from public sources, and that Algoma has not discharged its burden to rebut the APVMA's request for dimensional exclusions. Specifically, the APVMA objected to the fact that Algoma had not clearly stated its dimensional limitations.

[172] The APVMA and ILG further submitted that Algoma should be required to provide evidence that it has sold the products for which exclusions are requested in commercial quantities for the exclusion requests to be denied. The Tribunal notes that this is not consistent with the standard that has been applied in previous *SIMA* cases, as outlined above, where planned production and a firm intention to become an active supplier have been considered sufficient.

[173] Algoma submitted that the parties requesting exclusions have made concerted efforts to find chemistries and dimensions that Algoma has not made in the past or to request, with little or no justification, exclusions granted in other trade remedy cases in order to create prospective holes in the finding. Algoma noted that the Tribunal has previously indicated that it is mindful of whether an exclusion would undermine the finding's remedial effect by encouraging purchasers to switch to a significant extent from the dumped goods that are subject to the finding to dumped goods covered by the exclusion.¹³⁰ It pointed to the fact that exclusions granted for certain specific dimensions of plate make it easy for importers to avoid the application of duties, as demonstrated by the fact that,

¹²⁷ *Fasteners* at para. 243.

¹²⁸ *Aluminum Extrusions* at para. 192. The Tribunal will generally reject product exclusion requests where there is a lack of cogent case-specific evidence concerning the likely non-injurious effect of imports of particular products covered by the definition of the subject good in support of the requesters' claims. Indeed, a failure to provide sufficient information prevents the parties opposing the request from adequately responding and leaves the Tribunal in a position where it lacks evidence to find that imports of particular products for which exclusions are requested are not likely to cause injury to the domestic industry.

¹²⁹ A failure to do so could result in the requested exclusions being granted. In any case, much like its conclusion on the issue of whether the dumping of the subject goods has caused injury to the domestic industry, the Tribunal's decision on exclusion requests must be based on positive evidence, irrespective of the party that filed it.

¹³⁰ *Concrete Reinforcing Bar* at para. 206.

following the imposition of the heavy plate safeguard measures, which cover 80-inch-wide plate and above, importers began importing slightly narrower plates.¹³¹

[174] Algoma further submitted that it is difficult for it to prove its capability to produce a product that it has rarely or never been asked for. According to Algoma, steel producers are not in the practice of producing or marketing goods for which there is no market demand.

[175] Accordingly, Algoma submitted that the Tribunal should also consider whether there is evidence of a current or imminent need for a product in the domestic market in deciding whether to grant a product exclusion. Algoma submitted that, in the product exclusion request forms, SMIC reported no imports of some of the products for which it is seeking exclusions and ILG reported no sales for export to Canada of those same products.

[176] In reply, ILG and SMIC submitted that Algoma is trying to make up the rules for this exclusion process on the fly, and that not having received orders for a certain product should not allow Algoma to object to, and the Tribunal to deny, an exclusion request. They submitted that if the domestic industry cannot produce a certain type of plate, then anti-dumping duties should not be imposed on that type of plate.

[177] The Tribunal did not consider it necessary to take into account the lack of imports or exports of certain products as an indication that the exclusion request is not necessary. The Tribunal considers that the absence of evidence of attempts to source the products from the domestic industry is a more relevant consideration, given that the focus of the exclusions process is on whether the exclusion will cause injury to the domestic industry.

[178] The Tribunal will now address the product exclusion requests pertaining to the subject goods that it received from each of the requesters indicated above.

Analysis of specific product exclusion requests

Exclusions granted on consent

[179] A product exclusion may be granted by the Tribunal with or without the consent of the domestic industry. However, where the domestic industry consents to the exclusion, or does not oppose the request, the Tribunal usually concludes that the granting of the exclusion would not cause injury.

[180] The domestic industry consented to the following exclusions:¹³²

Hot-rolled carbon steel plate manufactured to the following specifications and grades:

- ASME SA-285/SA-285M or ASTM A-285/A-285M,
- ASME SA-299/SA-299M or ASTM A-299/A-299M,
- ASME SA-515/SA-515M or ASTM A-515/A-515M,
- ASME SA-516/SA-516M or ASTM A-516/A-516M (including, but not limited to, SA/A516 Grade 70),

¹³¹ Exhibit NQ-2020-001-A-01 at para. 78; Exhibit NQ-2020-001-A-06 (protected) at paras. 66, 68, 69 and Attachments 2, 3, 11.

¹³² Exhibit NQ-2020-001-24.01 at 72-73.

- ASME SA-537/SA-537M or ASTM A-537/A-537M, or
- ASME SA-841/SA-841M or ASTM A-841/A-841M,

which is normalized (heat treated) and vacuum degassed (including while molten) with a sulphur content less than or equal to 0.003 percent and a phosphorus content less than or equal to 0.017 percent, imported exclusively for use in the manufacture of pressure vessels for the oil and gas sector for use in sour service and hydrogen-induced cracking applications.¹³³

Hot-rolled carbon steel plate in grade ASME SA-516 Grade 70 or ASTM A-516 Grade 70 normalized (heat treated) with a thickness greater than 3.28 inches.

Hot-rolled carbon steel plate produced to the following specifications and grades:

- ASME SA-516/SA-516M or ASTM A-516/A-516M, normalized,
- ASME SA-299/SA-299M or ASTM A-299/A-299M, normalized, and
- ASME SA-537/SA-537M or ASTM A-537/A-537M, normalized, in the following dimensions:
 - 2.5 inches thick, greater than or equal to 151 inches wide and of any length,
 - greater than or equal to 3 inches thick, greater than or equal to 121 inches wide and of any length,
 - greater than 3.28 inches thick of any width and length.¹³⁴

[181] Given that the domestic industry consented to these exclusions, the Tribunal concludes that they will not cause injury. These products are accordingly excluded from the Tribunal's finding.

Request by ISI

[182] ISI requested an exclusion for the following product:

Steel plate meeting the product definition for use in the Arctic and Offshore Patrols Ships ("AOPS") project and the Canadian Surface Combatants ("CSC") project.¹³⁵

[183] ISI submitted that Algoma was not able to meet the stringent specifications with respect to thickness, grade, strength and impact toughness required for the heavy plate for use in the AOPS and CSC projects, which form part of the Government of Canada's National Shipbuilding Strategy. It asserted that it cannot accept substitutable products because the plate will be used in a national defence application requiring strict adherence to these stringent specifications.

[184] ISI further noted that the domestic industry could become capable of producing plate meeting the requirements mandated by the AOPS and CSC projects. However, this would require a significant investment of time and resources. ISI was doubtful Algoma would be prepared to make or

¹³³ This is the request as formulated by ILG and SMIC. The APVMA requested the same exclusion except that it included a minimum phosphorus content of less than or equal to 0.012 percent, which Algoma also consented to. As 0.017 percent is greater than 0.012 percent, the wording of this exclusion encompasses the exclusion requested by the APVMA.

¹³⁴ This is the request as formulated by the APVMA. ILG and SMIC requested, and Algoma consented to, the exclusion of plate greater than or equal to 3.5 inches thick, but since 3.28 inches is smaller than 3.5 inches, the wording of this exclusion encompasses the exclusion requested by ILG and SMIC.

¹³⁵ Exhibit NQ-2020-001-22.02 at 3.

commit to the necessary investments. Even if Algoma made such an investment, there would be no guarantee that the plates would meet ISI's requirements.

[185] Algoma argued that its evidence demonstrated its capability to meet the prescribed specifications.¹³⁶ Algoma further submitted that it had provided steel for other shipbuilding projects, notably the Royal Canadian Navy Joint Support Ships project.

[186] ISI disputed that Algoma's evidence established that Algoma would be able to meet the thickness, width and impact toughness requirements. Further, ISI submitted that Algoma's evidence did not demonstrate that Algoma is able to meet all of the specifications in the same plates, which is a requirement for these projects.¹³⁷

[187] At the Tribunal's hearing on January 15, 2021, ISI and Algoma indicated that they were negotiating partial consent to ISI's exclusion request. On January 18, 2021, ISI and Algoma provided the Tribunal with the following suggested wording:

Heavy Plate imported by Irving Shipbuilding Inc. for use in Ship Five of the Royal Canadian Navy's Arctic and Offshore Patrol Ships.¹³⁸

[188] Both parties nevertheless maintained their original positions, i.e. ISI maintained its request for the exclusion as originally drafted, while Algoma asserted that it was fully capable of providing this material.

[189] Having reviewed the evidence, the Tribunal assigns greater weight to ISI's evidence and finds it to be more cogent on this issue than the evidence presented by Algoma. On balance, the Tribunal concludes that Algoma cannot currently produce plate meeting the specifications for the AOPS shipbuilding project.¹³⁹ The Tribunal also finds that Algoma has not provided any evidence of a firm intention to begin producing plate to those particular specifications.

[190] Further, the Tribunal notes that the requirement to meet the exact specifications developed for these projects is especially critical as these products have national defence applications. The Tribunal finds that, since the domestic industry is currently not qualified to supply the heavy plate for the AOPS project, the exclusion of this material will not result in injury to them.

[191] The request for an exclusion for the heavy plate for use in the CSC project is denied. The confidential evidence submitted to the Tribunal establishes that this request is both premature and speculative.¹⁴⁰ The Tribunal notes that, if circumstances change, the issue of an exclusion can be revisited through a request for an interim review. In addition, there are other mechanisms for relief that may be available to parties, such as a request for a duty remission order under the *Financial Administration Act*.

[192] Accordingly, the Tribunal excludes the following product from its finding:

¹³⁶ Exhibit NQ-2020-001-24.01 at Attachments 12, 13; Exhibit NQ-2020-001-25.01 (protected) at Attachments 11-14.

¹³⁷ Exhibit NQ-2020-001-26.01 at 7-8; Exhibit NQ-2020-001-27.01 at 7-8.

¹³⁸ Exhibit NQ-2020-001-24.01D; Exhibit NQ-2020-001-26.01A.

¹³⁹ Exhibit NQ-2020-001-27.01 (protected) at 7-8.

¹⁴⁰ Exhibit NQ-2020-001-E-02 (protected).

Heavy plate imported by Irving Shipbuilding Inc. for use in the Arctic and Offshore Patrols Ships shipbuilding project.

Requests by the APVMA, ILG and SMIC

[193] The APVMA requested an exclusion for the following products:

Hot-rolled carbon steel plate produced to the following specifications and grades: ASME SA-516/SA-516M or ASTM A-516/A-516M, normalized, ASME SA-299/SA-299M or ASTM A-299/A-299M, normalized, and ASME SA-537/SA-537M or ASTM A-537/A537M, normalized, in the following dimensions:

- 2 inches thick, greater than or equal to 97 inches wide and greater than 473 inches long,
- 2 inches thick, greater than or equal to 121 inches wide and greater than 380 inches long,
- 2 inches thick, greater than or equal to 150 inches wide and greater than 270 inches long,
- 2.25 inches thick, greater than or equal to 97 inches wide and greater than 420 inches long,
- 2.25 inches thick, greater than or equal to 121 inches wide and greater than 340 inches long,
- 2.25 inches thick, greater than or equal to 102 inches wide and greater than 395 inches long,
- 2.25 inches thick, greater than or equal to 151 inches wide and greater than 235 inches long,
- 2.5 inches thick, greater than or equal to 88 inches wide and greater than 412 inches long,
- 2.5 inches thick, greater than or equal to 97 inches wide and greater than 380 inches long,
- 2.5 inches thick, greater than or equal to 121 inches wide and greater than 300 inches long,
- 2.5 inches thick, greater than or equal to 151 inches wide and of any length,
- 2.75 inches thick, greater than or equal to 97 inches wide and greater than 345 inches long,
- 2.75 inches thick, greater than or equal to 121 inches wide and greater than 270 inches long,
- greater than or equal to 3 inches thick, greater than or equal to 97 inches wide and greater than 310 inches long,
- greater than or equal to 3 inches thick, greater than or equal to 121 inches wide and of any length,
- greater than or equal to 3.25 inches thick, greater than or equal to 97 inches wide and greater than 290 inches long, and
- greater than 3.28 inches thick of any width and length.¹⁴¹

[194] ILG and SMIC made substantially the same request, with some variations in the length and thickness dimensions:

Hot-rolled carbon steel plate produced to the following specifications and grades, namely, ASME SA516/SA516M or ASTM A516/A516M, normalized, ASME SA299/SA299M or ASTM A299/A299M, normalized, and ASME SA537/SA537M or ASTM A537/A537M, normalized, in the following dimensions:

¹⁴¹ Exhibit NQ-2020-001-22.01 at 28-29.

- (i) 2 inches thick, greater than or equal to 97 inches wide and greater than 473 inches long,
- (ii) 2 inches thick, greater than or equal to 121 inches wide and greater than 380 inches long,
- (iii) 2 inches thick, greater than or equal to 150 inches wide and greater than 270 inches long,
- (iv) 2.25 inches thick, greater than or equal to 97 inches wide and greater than 420 inches long,
- (v) 2.25 inches thick, greater than or equal to 102 inches wide and greater than 395 inches long,
- (vi) 2.25 inches thick, greater than or equal to 121 inches wide and greater than 330 inches long,
- (vii) 2.25 inches thick, greater than or equal to 151 inches wide and of any length,
- (viii) 2.5 inches thick, greater than or equal to 88 inches wide and greater than 412 inches long,
- (ix) 2.5 inches thick, greater than or equal to 97 inches wide and greater than 380 inches long,
- (x) 2.5 inches thick, greater than or equal to 121 inches wide and greater than 300 inches long,
- (xi) 2.5 inches thick, greater than or equal to 151 inches wide and of any length,
- (xii) 2.75 inches thick, greater than or equal to 97 inches wide and greater than 340 inches long,
- (xiii) 2.75 inches thick, greater than or equal to 121 inches wide and of any length,
- (xiv) 3 inches thick, greater than or equal to 97 inches wide and greater than 250 inches long,
- (xv) 3 inches thick, greater than or equal to 121 inches wide and of any length,
- (xvi) 3.25 inches thick, greater than or equal to 97 inches wide and of any length, or
- (xvii) greater than or equal to 3.5 inches thick of any width and length.¹⁴²

[195] As noted above, Algoma consented to a portion of these requests. Algoma conceded that it cannot currently produce normalized heavy plate that is 2.5 inches thick in widths greater than or equal to 151 inches, 3 inches thick in widths greater than or equal to 121 inches, or thicker than 3.28 inches.¹⁴³

[196] With respect to the remaining dimensions, the APVMA, ILG and SMIC submitted that Algoma consented to the exclusion of these products (or of products having similar dimensions, in the case of the APVMA request) in GC-2018-001-E1. The APVMA provided supporting evidence of requests for material in some of the listed dimensions that had been rejected by Algoma.¹⁴⁴

[197] Algoma claimed that it has been making efforts to expand its dimensional capabilities since the safeguard exclusions process. It said that it is now able to produce and normalize heavy plate in these dimensions if requested, and that it is making additional changes to its production process that will allow it to expand its dimensional capabilities even further.

[198] In her witness statement, Ms. Devoni provided length maximums for the listed thickness and width combinations that exceeded those set out in the exclusion requests.¹⁴⁵ In addition, Algoma

¹⁴² Exhibit NQ-2020-001-22.03 at 2; Exhibit NQ-2020-001-22.04 at 31.

¹⁴³ Exhibit NQ-2020-001-24.01 at 73, 81; Exhibit NQ-2020-001-A-13 at 8.

¹⁴⁴ Exhibit NQ-2020-001-23.01 (protected) at Attachment 11.

¹⁴⁵ Exhibit NQ-2020-001-25.01 (protected) at 28-30; Exhibit NQ-2020-001-25.01B (protected) at 3.

provided some evidence of production and sales of heavy plate in some of the requested dimensions to support these claims.¹⁴⁶

[199] The specifications listed in these requests are all for PVQ plate. Ms. Devoni stated that evidence of Algoma's ability to produce structural plate in these dimensions should be considered as dispositive of its ability to produce PVQ plate in those same dimensions, as its dimensional capabilities are the same for both types of plate.¹⁴⁷ Algoma also submitted an engineering study that it had commissioned regarding the expansion of the cross-sectional capabilities of one of its heat treatment furnaces.¹⁴⁸ This was said to be evidence that Algoma had expanded its capability to normalize plate since the safeguard exclusions process.

[200] In reply, Mr. Ernest Reimer, of the APVMA stated that dimensional capabilities for structural plate should not be considered the same as those for PVQ plate, because the exclusion request is for normalized plate and structural plate is typically as-rolled (not normalized). The APVMA submitted that Algoma has not offered proof that they can actually normalize plates in those dimensions, and that all they have done since the safeguard inquiry is commission an engineering study to explore the possibility of normalizing larger plates in the future.

[201] The Tribunal requested clarification of Ms. Devoni's statement that Algoma's dimensional capabilities regarding structural plate should be considered evidence of its dimensional capabilities for PVQ plate. In response to the Tribunal's question, Algoma submitted that it is capable of normalizing all of the dimensions in the cited exclusion request, which is why Algoma's structural *rolling* capabilities (i.e. its ability to roll the dimensions from slabs) are demonstrative of its capability to produce the cited dimensions of heat treated plate (other than those where Algoma has consented to the exclusion).¹⁴⁹

[202] Algoma represented to the Tribunal that it is in fact currently implementing the findings of the engineering report and has expanded the maximum cross-section of plate that can be normalized in its heat treatment furnace. Algoma claimed that this expansion extends to a level that allows it to produce all of the dimensions listed in the exclusion requests, with the exception of those to which it has consented.¹⁵⁰

[203] Algoma also indicated that it has plans to increase the cross-section of plate that it will normalize using a stepped approach, up to the maximum limits established by the engineering report. This would allow it to expand its dimensional capabilities for PVQ plate beyond the dimensions listed in the exclusion requests.¹⁵¹

[204] Based on this evidence, the Tribunal finds that Algoma is currently able to produce plate meeting the specifications listed in the exclusion requests in dimensions that exceed those listed in the requests. Accordingly, the Tribunal finds that granting these exclusion requests would cause injury to the domestic industry. The exclusion requests, with the exception of those to which Algoma has consented, are denied.

¹⁴⁶ Exhibit NQ-2020-001-25.01 (protected) at Attachments 17, 18.

¹⁴⁷ Exhibit NQ-2020-001-24.01 at 79.

¹⁴⁸ *Ibid.*; Exhibit NQ-2020-001-25.01 (protected) at Attachment 22.

¹⁴⁹ Exhibit NQ-2020-001-A-13 at 6.

¹⁵⁰ *Ibid.* at 7-8.

¹⁵¹ *Ibid.* at 8.

Requests by ILG and SMIC

[205] ILG and SMIC requested exclusions for the following products:

- Hot-rolled carbon steel plate for use in the manufacture of oil and gas line pipe (also known as skelp).¹⁵²
- Hot-rolled carbon steel plate in grades API 5L X70 PSL2 or CSA Grade 483 Category II for use in the manufacture of oil and gas line pipe.¹⁵³
- Hot-rolled carbon steel plate and high-strength low-alloy steel plate not further manufactured than hot-rolled, heat-treated or not, exceeding a maximum weight of 15 MT (15,000 kg or 33,000 pounds) in a single piece.¹⁵⁴

[206] For the following reasons, these exclusion requests are denied.

[207] With respect to the request for the exclusion of plate exceeding a weight of 15 metric tonnes or 33,000 pounds in a single piece, ILG and SMIC asserted that Algoma is unable to produce plates in marketable lengths when thicknesses above 60 mm and widths above 2500 mm are required. ILG and SMIC further submitted that, as limitations for widths, lengths and thicknesses are more complicated to operate, the plate weight offers an easy and verifiable indicator which would also be easy for customs to examine.

[208] Algoma replied with evidence that it has produced and sold heavy plate exceeding 33,000 pounds in a single piece in 2019 and 2020.¹⁵⁵ ILG and SMIC appear to have accepted this evidence as they made no submissions in reply.

[209] The Tribunal accepts that Algoma has produced and sold heavy plate exceeding 33,000 pounds or 15 metric tonnes in a single piece, and accordingly finds that Algoma would be injured if this exclusion were granted.

[210] With respect to the two exclusion requests concerning plate for use in the manufacture of oil and gas line pipe (plate skelp), ILG and SMIC submitted that these products were excluded in GC-2018-001-E1. The Tribunal at that time found that:

68. Salzgitter submitted that “[s]kelp has historically been excluded from all SIMA inquiries on heavy plate.” In addition, Salzgitter submitted that Algoma has not been able to demonstrate recent production and sales of the second product above. Algoma opposed both requests on the basis that it can and does sell these products. *Algoma provided evidence of sales of skelp, as well as a trial performed in 2008, which did not result in any orders. It also provided its published list of plate grades produced, which includes a list of various grades of API line pipe.* In addition, Algoma noted that Salzgitter’s requests themselves contain an end-use requirement for the manufacture of oil and gas line pipe, showing that such end-use requirements for exclusions are feasible.

¹⁵² Exhibit NQ-2020-001-22.03 at 21; Exhibit NQ-2020-001-22.04 at 46.

¹⁵³ Exhibit NQ-2020-001-22.03 at 26; Exhibit NQ-2020-001-22.04 at 51.

¹⁵⁴ Exhibit NQ-2020-001-22.03 at 31; Exhibit NQ-2020-001-22.04 at 11.

¹⁵⁵ Exhibit NQ-2020-001-25.01 (protected) at Attachment 3.

69. In the Tribunal's view, the evidence provided by Algoma was insufficient to show that it does, can, or intends to produce the products requested by Salzgitter. *The invoices purporting to show sales of skelp were for products outside of the size range of heavy plate. Further, a trial performed in 2008 is too distant to be accepted as proof of current capability, let alone firm plans to produce.* Accordingly, the Tribunal recommends that the two exclusions be granted. These requests appear as the sixth and seventh exclusions recommended in the Executive Summary.

[Footnotes omitted, emphasis added]

[211] Algoma represented to the Tribunal that it has evidence beyond what was submitted in the safeguard investigation demonstrating that it can produce this product if asked. Algoma advised that its website states that it can supply API line pipe grades API 5L B, X42, X46, X52, X60, X65, and X70.¹⁵⁶

[212] Further, Algoma stated that, as noted in GC-2018-001-E1, Evraz is currently the only purchaser of heavy plate for use in the production of line pipe in Canada. Ms. Devoni testified that Algoma is able to supply this producer with both types of plate skelp referred to in the exclusion requests, but that it has not been given the opportunity to do so.¹⁵⁷ Algoma submitted further confidential evidence establishing that it has plans to begin supplying plate skelp to line pipe producers.¹⁵⁸

[213] ILG and SMIC have not submitted any evidence to support the allegation that Algoma cannot produce these products. They relied exclusively on the fact that the exclusions were granted in GC-2018-001-E1. As discussed above, the Tribunal does not consider the fact that an exclusion was granted in the safeguard exclusions process as sufficient evidence to support a request for an exclusion in these proceedings.

[214] For the purposes of this proceeding, the Tribunal accordingly accepts Algoma's evidence that it is capable of and has a plan to begin producing the products that are the subjects of these exclusion requests. As such, the Tribunal concludes that granting these requests would cause injury to the domestic industry.

Request by ILG

[215] ILG requested an exclusion for the following product:

High-strength low-alloy structural steel plate in grade ASTM A1066/A1066M, produced by a thermo-mechanical controlled process.¹⁵⁹

[216] ILG submitted that plates produced in this manner are outside of the production program of Algoma and that they were excluded in GC-2018-001-E1. ILG further submitted that it was not aware of any change in Algoma's capabilities since the time the exclusion was granted in GC-2018-001-E1.

¹⁵⁶ Exhibit NQ-2020-001-24.01 at Attachment 10.

¹⁵⁷ *Ibid.* at 76, 77; Exhibit NQ-2020-001-25.01A (protected) at 3.

¹⁵⁸ Exhibit NQ-2020-001-25.01 (protected) at Attachments 6-8, 19-21.

¹⁵⁹ Exhibit NQ-2020-001-22.03 at 17.

[217] In reply, Mr. Kashif Rehman of Algoma stated that grade A1066 is a structural steel specification for grades 50, 60, 65, 70 and 80, to be supplied in a thermo-mechanical controlled process (TMCP) condition, and that Algoma can produce this product.¹⁶⁰ Algoma provided evidence that it has sold TMCP plate for use in shipbuilding,¹⁶¹ and that it can produce structural plate in grades 50W, 60W and 65W, as well as API line pipe grades X60, X65 and X70.¹⁶² Algoma stated that it is not presently capable of producing grade 80 heavy plate, but that this product is under development.¹⁶³

[218] Ms. Devoni and Mr. Rehman both stated that the limiting factor for Algoma with respect to producing this grade in the past has been efficiency.¹⁶⁴ Ms. Devoni's evidence is that, going forward, Algoma has firm plans to produce this product more efficiently.¹⁶⁵

[219] ILG replied that it is not clear that Algoma has made any changes to its production process since the exclusion was granted in GC-2018-001-E1 that would enable it to produce the requested products.

[220] ILG has not submitted any evidence to support its allegation that Algoma cannot produce this product and relied exclusively on the fact that the exclusion was granted in GC-2018-001-E1. The evidence provided by Ms. Devoni and Mr. Rehman that Algoma can now produce this product, and that it is in the process of improving its ability to produce it efficiently, is therefore uncontradicted. The Tribunal is prepared to accept, for the purposes of this proceeding, that Algoma can produce this product and has a plan in place to begin supplying it, and that granting this exclusion would cause injury to the domestic industry. As a result, this exclusion request is denied.

Requests by SMIC

[221] SMIC requested exclusions for the following products:

- Hot rolled steel plate over 1.25" thick certified to meet the specifications as below and with a guaranteed Silicon (Si) content in the range 0.15% min to 0.22% max
 - Quadruple certified meeting ASTM A36 / ASME SA36 / CSAG40.21 Gr.38W / CSAG40.21 Gr.44W or equivalent metric specification
 - Dual certified meeting ASTM A572 Gr.50 / CSA G40.21 Gr.50W or equivalent metric specification
 - Dual certified meeting ASTM A572 Gr.50 / CSA G40.21 Gr.50WT Cat 4 or equivalent metric specification¹⁶⁶
- Hot rolled steel plate certified to meet ASME SA 516-70N normalized and vacuum degassed while Molten with Vanadium (V) and Niobium (Nb) content in the following

¹⁶⁰ Exhibit NQ-2020-001-24.01 at 116.

¹⁶¹ *Ibid.* at Attachment 12; Exhibit NQ-2020-001-25.01 (protected) at Attachment 14.

¹⁶² Exhibit NQ-2020-001-24.01 at Attachment 10; Exhibit NQ-2020-001-A-14 (protected) at Attachment 3.

¹⁶³ Exhibit NQ-2020-001-A-13 at 9.

¹⁶⁴ Exhibit NQ-2020-001-24.01 at 77, 116.

¹⁶⁵ *Ibid.* at 77.

¹⁶⁶ Exhibit NQ-2020-001-22.04 at 2.

combinations / levels for use in sour service applications or prospective sour service applications:

- Nb less than or equal to 0.015% and V less than or equal to 0.015%
- Nb + V content of less than or equal to 0.02%¹⁶⁷

[222] Algoma does not have the equipment to vacuum degas its plates and relies on imported slabs to produce vacuum degassed plates, i.e. all plates with restricted chemistry requirements such as these.¹⁶⁸ Algoma represented to the Tribunal that it is accordingly capable of producing these products, if requested, using imported slabs with the required chemistry.

[223] ILG and SMIC questioned the security and reliability of Algoma's slab supply. However, Algoma's evidence is that it has a reliable slab supply,¹⁶⁹ and ILG and SMIC have not provided any evidence of past problems with Algoma's supply of slab.

[224] With respect to the request for plate with a guaranteed silicon content in the range of 0.15 percent minimum to 0.22 percent maximum, SMIC asserted that Algoma cannot guarantee the required maximum silicon content in plates above 1.25 inches thick, and submitted evidence that Algoma had recently been unable to supply plates with this chemistry.¹⁷⁰ SMIC further stated that its customer does not require this material "as normalized," which is what was offered by Algoma. It claimed that Algoma can only supply according to this specification by providing the material as normalized while other mills are able to meet specifications without normalizing the plate.¹⁷¹

[225] Algoma replied that it had recently received an order for this material from SMIC, as discussed above, and provided evidence confirming that it has the capability to meet the silicon range of 0.15 to 0.22 percent. This fact was communicated to SMIC.¹⁷² Algoma appears to suggest that there was a misinterpretation of the wording of the communication between SMIC and Algoma's representative with respect to the maximum level of silicon that was being offered.

[226] In reply, SMIC reiterated that its customer does not require this material to be normalized, and that Algoma cannot produce the material required by the customer.

[227] On January 12, 2021, Algoma filed additional evidence of a sale of plate in various dimensions meeting the requirement for a silicon content in the range of 0.15 to 0.22 percent.¹⁷³

[228] Based on the evidence submitted by Algoma, the Tribunal accepts, for the purpose of this proceeding, that Algoma can produce plate to the required specifications and that it has sold this material on at least one occasion to a customer. Accordingly, the Tribunal finds that granting this exclusion request would cause injury to the domestic industry.

¹⁶⁷ *Ibid.* at 24.

¹⁶⁸ Exhibit NQ-2020-001-24.01 at 75, 115; Exhibit A-03 at para. 9.

¹⁶⁹ Exhibit NQ-2020-001-A-12 (protected) at paras. 6-7.

¹⁷⁰ Exhibit NQ-2020-001-23.04 (protected) at 9-59; Exhibit NQ-2020-001-23.04A (protected) at 5-14.

¹⁷¹ Exhibit NQ-2020-001-26.02 at 34.

¹⁷² Exhibit NQ-2020-001-25.01 (protected) at Attachments 1, 2.

¹⁷³ Exhibit NQ-2020-001-25.01B (protected) at Attachment 2.

[229] With respect to the request for plate with low niobium and vanadium, SMIC stated that this material was not available from Algoma and provided evidence that this chemistry is required by users in the oil and gas industry.¹⁷⁴

[230] Algoma replied that it had never received a request for this product and that fulfilling such a request would simply be a matter of purchasing sufficient slabs with the required chemistry. Mr. Rehman's evidence is that Algoma could procure the required slabs from its supplier.¹⁷⁵

[231] Consistent with Algoma's evidence that it had never received a request for this product, the Tribunal notes that SMIC did not provide any evidence of attempts to purchase this plate from Algoma, although it stated that the material was not available domestically.

[232] For the purpose of this proceeding, the Tribunal is prepared to accept Algoma's evidence that it can produce this product from imported slab. Accordingly, the Tribunal finds that granting this exclusion request would cause injury to the domestic industry.

[233] The Tribunal observes that its reasons for rejecting many of the exclusion requests are underpinned by reliance on Algoma's representations and expectations concerning its current or near-term capabilities to manufacture product falling within the scope of the exclusion requests, and to do so reliably in accordance with customer specifications. Algoma's evidence in this regard is, to some degree, forward-looking and subject to Algoma's current forecasts and expectations. Should these forecasts and expectations not materialize, this may constitute a change in circumstances that may justify a review of these findings by way of interim review.

CONCLUSION

[234] For the reasons set out above, the Tribunal finds that the dumping of the subject goods has caused injury to the domestic industry.

Randolph W. Heggart
Randolph W. Heggart
Presiding Member

Susan D. Beaubien
Susan D. Beaubien
Member

Serge Fréchette
Serge Fréchette
Member

¹⁷⁴ Exhibit NQ-2020-001-22.04 at 25; Exhibit NQ-2020-001-23.04 (protected) at 69-74.

¹⁷⁵ Exhibit NQ-2020-001-24.01 at 115; Exhibit NQ-2020-001-25.01 (protected) at 191 and Attachment 4.