



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Expiry Review No. RR-2020-001

Photovoltaic Modules and
Laminates

*Order and reasons issued
Thursday, March 25, 2021*

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IN THE MATTER OF an expiry review, pursuant to subsection 76.03(3) of the *Special Import Measures Act*, of the finding made by the Canadian International Trade Tribunal on July 3, 2015, in Inquiry No. NQ-2014-003, concerning:

**PHOTOVOLTAIC MODULES AND LAMINATES ORIGINATING IN OR
EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA**

ORDER

The Canadian International Trade Tribunal, pursuant to subsection 76.03(3) of the *Special Import Measures Act*, has conducted an expiry review of the finding made on July 3, 2015, in Inquiry No. NQ-2014-003, concerning the dumping and subsidizing of photovoltaic modules and laminates consisting of crystalline silicon photovoltaic cells, including laminates shipped or packaged with other components of photovoltaic modules, and thin-film photovoltaic products produced from amorphous silicon (a-Si), cadmium telluride (CdTe), or copper indium gallium selenide (CIGS), originating in or exported from the People's Republic of China, excluding modules, laminates or thin-film products with a power output not exceeding 100 W, and also excluding modules, laminates or thin-film products incorporated into electrical goods where the function of the electrical goods is other than power generation and these electrical goods consume the electricity generated by the photovoltaic product. In accordance with the Tribunal's finding in Inquiry No. NQ-2014-003, the product definition also excludes 195 W monocrystalline photovoltaic modules made of 72 monocrystalline cells, each cell being no more than 5 inches in width and height.

Pursuant to paragraph 76.03(12)(b) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby continues its finding in respect of the aforementioned goods.

Peter Burn

Peter Burn
Presiding Member

Georges Bujold

Georges Bujold
Member

Randolph W. Heggart

Randolph W. Heggart
Member

Place of Hearing: File Hearing
Date of Hearing: January 29, 2021
Tribunal Panel: Peter Burn, Presiding Member
Randolph W. Heggart, Member
Georges Bujold, Member

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STATEMENT OF REASONS

INTRODUCTION

[1] The Canadian International Trade Tribunal, pursuant to subsection 76.03(3) of the *Special Import Measures Act*,¹ has conducted an expiry review of the finding made on July 3, 2015, in Inquiry No. NQ-2014-003, concerning the dumping and subsidizing of certain photovoltaic modules and laminates originating in or exported from the People's Republic of China (China) (the subject goods).

[2] Under *SIMA*, findings of injury or threat of injury and the associated protection in the form of anti-dumping or countervailing duties expire five years from the date of the finding, unless the Tribunal initiates an expiry review before that date. The finding in Inquiry No. NQ-2014-003 was scheduled to expire on July 2, 2020.

[3] The Tribunal's mandate in this expiry review is to determine whether the expiry of the finding is likely to result in injury to the domestic industry and then, accordingly, to make an order either continuing or rescinding the finding, with or without amendment.

PROCEDURAL BACKGROUND

[4] The Tribunal issued its notice of expiry review on May 21, 2020. The notice triggered the initiation of an investigation by the Canada Border Services Agency (CBSA) on May 22, 2020, to determine whether the expiry of the Tribunal's finding was likely to result in the continuation or resumption of dumping or subsidizing of the subject goods.

[5] On October 16, 2020, the CBSA determined, pursuant to paragraph 76.03(7)(a) of *SIMA*, that the expiry of the finding was likely to result in the continuation or resumption of dumping and subsidizing of the subject goods.²

[6] On October 19, 2020, following the CBSA's determinations of dumping and subsidizing, the Tribunal began its expiry review to determine, pursuant to subsection 76.03(10) of *SIMA*, whether the expiry of the finding was likely to result in injury to the domestic industry. The same day, a number of known domestic producers and importers of photovoltaic modules and laminates (PV modules) meeting the product definition and known foreign producers of the subject goods were asked to respond to Tribunal questionnaires.

[7] The period of review (POR) in this expiry review covered three full calendar years from January 1, 2017, to December 31, 2019, as well as the interim periods of January 1, 2019, to September 30, 2019 (interim 2019) and January 1, 2020, to September 30, 2020 (interim 2020).

[8] The Tribunal received four replies to the domestic producers' questionnaire from companies stating that they produced PV modules meeting the product definition during the POR. However, due to the incomplete response to the questionnaire from Stace Solar Solutions Inc. (Stace), no data from Stace was included in the investigation report.³ The Tribunal received 12 replies to the importers' questionnaire from companies stating that they imported goods meeting the product definition. Finally, the Tribunal did not receive any responses to the questionnaires from foreign producers.

¹ *Special Import Measures Act*, R.S.C., 1985, c. S-15 [*SIMA*].

² Exhibit RR-2020-001-03 at 5.

³ Exhibit RR-2020-001-05B at 8.

[9] Using the questionnaire responses and other information on the record, staff prepared public and protected versions of the investigation report, which were placed on the record on December 10, 2020. Revised investigations reports were placed on the record on January 7, 2021. The revisions addressed certain changes made by firms to their responses to the questionnaires. Additionally, in light of the submissions of the parties supporting the continuation of the finding with respect to whether Canadian Solar Solutions Inc. (CSSI) should be excluded from the domestic industry, the Tribunal determined it would be appropriate to create two versions of the revised investigation reports; one version presented the data showing CSSI as a domestic producer forming part of the domestic industry and the other version excluded CSSI from the domestic industry.

[10] On December 17, 2020, the domestic producers Heliene Inc. (Heliene) and Silfab Solar Inc. (Silfab) filed written submissions and witness statements in support for the continuation of the finding. The Tribunal did not receive any submissions opposing the continuation of the finding.

[11] The Tribunal received one request for the exclusion of certain products from any order continuing the finding from the Canadian Renewable Energy Association (CanREA). Heliene and Silfab opposed the request. CanREA replied to Heliene and Silfab's submissions.

[12] On December 11, 2020, the Tribunal advised the parties that, due to the COVID-19 situation, the in-person hearing that was previously scheduled had been cancelled. The Tribunal invited the parties to provide comments on draft procedures for the conduct of the file hearing, as well as for hearing closing arguments by videoconference. Only Heliene and Silfab provided comments on the Tribunal's proposed hearing options.

[13] On January 5, 2021, the Tribunal issued the revised notice of expiry review which included the new file hearing schedule.

[14] On January 8, 2021, following the issuance of the revised investigation reports, Heliene and Silfab requested amendments to the file hearing schedule. CanREA provided comments on the proposed changes on January 12, 2021. On January 13, 2021, the Tribunal granted Heliene and Silfab's request for filing supplemental submissions, noting that it would give any new evidence submitted only the weight it deserved, and permitted CanREA to reply with respect to submissions concerning the product exclusion request.

[15] On January 19, 2021, the Tribunal issued questions to the parties in accordance with the file hearing procedures. Answers were submitted by Heliene, Silfab and CanREA.

[16] The Tribunal held a file hearing, pursuant to rule 25.1 of the *Canadian International Trade Tribunal Rules*, on January 29, 2021.

PRODUCT

Product definition

[17] The subject goods are defined as follows:

photovoltaic modules and laminates consisting of crystalline silicon photovoltaic cells, including laminates shipped or packaged with other components of photovoltaic modules, and thin-film photovoltaic products produced from amorphous silicon (a-Si), cadmium

telluride (CdTe), or copper indium gallium selenide (CIGS), originating in or exported from the People's Republic of China, excluding modules, laminates or thin-film products with a power output not exceeding 100 W, and also excluding modules, laminates or thin-film products incorporated into electrical goods where the function of the electrical goods is other than power generation and these electrical goods consume the electricity generated by the photovoltaic product.⁴

[18] In accordance with the Tribunal's finding in Inquiry No. NQ-2014-003, the product definition also excludes 195 W monocrystalline photovoltaic modules made of 72 monocrystalline cells, each cell being no more than 5 inches in width and height.

Product information⁵

[19] The final assembled product sold to end users is referred to as a solar module. A laminate refers to the consolidation of various raw materials, including strung-together solar cells, a cover glass and an encapsulant (such as ethylene vinyl acetate) which are encapsulated (i.e. consolidated) into a more solid and durable product and most often made into a solar module by affixing to it additional solar module components, such as a frame and/or a junction box. The subject goods include both modules and laminates, whether or not the laminate is attached to an electrical junction box or a protective frame or other components, or whether or not the laminate is packaged with any such products or components.

[20] For further clarity, a laminate included in a package of goods or shipped alongside other products serving to create a module (e.g. aluminum extrusions for the frame, and/or an electrical junction box, and/or batteries for electrical storage) falls within the definition of the subject goods.

[21] The production of the subject goods is measured in watts (W) or megawatts (MW). One megawatt is equivalent to one million watts. Canadian production is also measured in W or MW. Watts are synonymous with peak-watts, which are defined as the direct current (DC) watts output under specified laboratory settings.

[22] As noted above, the definition of the subject goods excludes both modules, laminates or thin-film products with a power output not exceeding 100 W, and modules, laminates or thin-film products incorporated into electrical goods where the function of the electrical goods is other than power generation and where these electrical goods consume the electricity generated by the photovoltaic product.

[23] These exclusions serve to exclude small portable modules, as well as consumer products and small appliances which use solar modules. For example, items ranging from solar garden lights to calculators to parking meters, as well as portable modules used as camping equipment, would be excluded from the product definition by virtue of power output or by virtue of the fact that these goods consume the electricity generated by the product.

⁴ *Photovoltaic Modules and Laminates* (3 July 2015), NQ-2014-003 (CITT) [*Solar Modules*] at para. 14.

⁵ See *Solar Modules* at paras. 15-19.

LEGAL FRAMEWORK

[24] The Tribunal is required, pursuant to subsection 76.03(10) of *SIMA*, to determine whether the expiry of the finding in respect of the subject goods is likely to result in injury or retardation for the domestic industry.⁶ Pursuant to subsection 76.03(12), if the Tribunal determines that the expiry of the finding is unlikely to result in injury, it is required to rescind it. However, if it determines that the expiry of the finding is likely to result in injury, the Tribunal is required to continue it, with or without amendment.

[25] Before proceeding with its analysis of the likelihood of injury, the Tribunal must first determine what domestically produced goods are “like goods” in relation to the subject goods and whether there is more than one class of goods.⁷ Once those determinations have been made, the Tribunal must determine what constitutes the “domestic industry.”

[26] The Tribunal must also determine whether it will make an assessment of the cumulative effects of the dumping and subsidizing of the subject goods, i.e. whether it will cross-cumulate the effects.

LIKE GOODS AND CLASSES OF GOODS

[27] 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.

[28] 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.⁸ These same factors are also considered in deciding whether there is more than class of goods.⁹

[29] In *Solar Modules*, the Tribunal found that domestically produced PV modules meeting the product definition constituted like goods in relation to the subject goods and that the subject goods

⁶ Subsection 2(1) of *SIMA* defines “injury” as “material injury to the domestic industry” and “retardation” as “material retardation of the *establishment* of a domestic industry” [emphasis added]. Given that there is currently an established domestic industry, the issue of whether the expiry of the finding is likely to result in retardation does not arise in this expiry review.

⁷ Should the Tribunal determine that there is more than one class of goods in this expiry review, 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 (FC).

⁸ See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at para. 48.

⁹ In order to decide whether there is more than one class of goods, the Tribunal must determine whether goods potentially included in separate classes of goods (or that have previously been included in separate classes of goods) constitute “like goods” in relation to each other. If they do, they will be regarded as comprising a single class of goods. See, for example, *Certain Fasteners* (7 January 2005), NQ-2004-005 (CITT) at para. 70.

and like goods constituted a single class of goods.¹⁰ The Tribunal relied on its findings in the preliminary injury inquiry which acknowledged the following:

... despite a price premium for crystalline photovoltaic modules and laminates as compared to thin-film photovoltaic modules and laminates, differing levels of efficiency, varying physical characteristics and the fact that the two products were not perfectly substitutable, the goods fell at various points along a continuum of like goods that serve the same general end use and are distributed through the same channels and, therefore, should be considered a single class of goods.¹¹

[30] No submissions have been made in this expiry review concerning the Tribunal's previous findings on like goods and classes of goods, and there is no evidence indicating changes in the underlying facts that led to the above conclusions in *Solar Modules*. Accordingly, the Tribunal concludes that there is no basis to depart from its previous findings on these issues and for the purposes of this expiry review, the domestically produced PV modules meeting the product definition are "like goods" in relation to the subject goods and there is only one class of goods.

DOMESTIC INDUSTRY

[31] 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.

[32] The Tribunal must therefore determine whether there is a likelihood 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.¹² However, the Tribunal may decide to exclude a domestic producer from the domestic industry if that producer would contribute to, or benefit from, the potentially injurious continued or resumed dumping and subsidizing, either directly as an importer or indirectly through related companies.¹³

[33] Subsection 2(1.2) of *SIMA* sets out the applicable test for determining whether a domestic producer is related to an exporter or importer of dumped or subsidized goods:

¹⁰ *Solar Modules* at para. 41.

¹¹ *Ibid.* at para. 40.

¹² The term "major proportion" means an important or significant proportion of total domestic production of the like goods and not necessarily a majority of these goods: *Japan Electrical Manufacturers Assn. v. Canada (Anti-Dumping Tribunal)*, [1986] F.C.J. No. 652 (FCA); *McCulloch of Canada Limited and McCulloch Corporation v. Anti-Dumping Tribunal*, [1978] 1 F.C. 222 (FCA); Panel Report, *China – Automobiles (US)*, WT/DS440/R at para. 7.207; Appellate Body Report, *EC – Fasteners (China)*, WT/DS397/AB/R at paras. 411, 412, 419; Panel Report, *Argentina – Poultry (Brazil)*, WT/DS241/R at para. 7.341.

¹³ *Carbon and Alloy Steel Line Pipe* (29 March 2016), NQ-2015-002 (CITT) [*Line Pipe*] at para. 70; *Solar Modules* at para. 56; *Carbon Steel Screws* (2 September 2020), RR-2019-002 (CITT) [*Carbon Steel Screws*] at para. 31.

For the purposes of the definition *domestic industry* in subsection (1), a domestic producer is related to an exporter or an importer of dumped or subsidized goods where

(a) the producer either directly or indirectly controls, or is controlled by, the exporter or importer,

(b) the producer and the exporter or the importer, as the case may be, are directly or indirectly controlled by a third person, or

(c) the producer and the exporter or the importer, as the case may be, directly or indirectly control a third person,

and there are grounds to believe that the producer behaves differently towards the exporter or importer than does a non-related producer.

[34] Subsection 2(1.3) of *SIMA* provides that a person is deemed to control another “. . . where the first person is legally or operationally in a position to exercise restraint or direction over the other person.”

[35] The Tribunal may also consider whether the producer is first and foremost a conduit for the importation of the subject goods. In previous cases, the Tribunal has considered both structural and behavioural factors to assist in making a decision on whether to exclude a domestic producer from the scope of the domestic industry. Whereas structural factors are concerned with the characteristics of the market and the producer’s place in that market (expressed by various ratios of imports of subject goods, domestic production and sales of both), behavioural factors focus on the behaviour of the producer, including whether the producer imports the subject goods as a defensive or aggressive measure and whether it imports the subject goods to fill a specific market niche or to compete broadly with the like goods produced by other domestic producers.¹⁴

[36] The evidence indicates that, during the POR, there were four known domestic producers of PV modules meeting the product definition. These were Heliene, Silfab, Stace, and CSSI.¹⁵

[37] Heliene and Silfab submitted that CSSI should be excluded from the domestic industry arguing that its interests remain as they were in *Solar Modules*, i.e. primarily those of an importer and secondarily as a domestic producer of solar modules.

¹⁴ *Carbon Steel Screws* at para. 36; *Line Pipe* at para. 72; *Solar Modules* at para. 59. The fact that a producer has a relationship with an exporter/importer or has import-related activities is not by itself determinative. *Hot-rolled Carbon Steel Plate* (6 January 2016), NQ-2015-001 (CITT) [*Plate VIII*] at para. 58. See also *Plate VIII* at footnote 44 where the Tribunal refers to the panel report in *EC-Fasteners (China)* which found that there is nothing in the *WTO Agreement on Implementation of Article VI of GATT 1994* that limits the discretion of investigating authorities to exclude, or not, related or importing domestic producers (see WT/DS397/R at para. 7.244).

¹⁵ In *Solar Modules* at para. 55, the Tribunal determined that there were six domestic producers, including Heliene and Silfab. Four of the six domestic producers in *Solar Modules* were not considered part of the domestic industry in this expiry review. More specifically, Eclipsall Manufacturing Corp. was not surveyed by the Tribunal (its production equipment was sold to Stace); Solgate Inc. was not surveyed (it was no longer in operation); EnerDynamic Hybrid Technologies Inc. did not respond to the Tribunal’s questionnaire; and Celestica Inc. confirmed in its questionnaire response that it was no longer producing like goods. See Exhibit RR-2020-001-16.28 at 5, Exhibit RR-2020-001-A-01 at paras. 42-44.

[38] In *Solar Modules*, the Tribunal excluded CSSI from the domestic industry for the purposes of its injury analysis after determining that CSSI was “related” to an exporter of the subject goods within the meaning of subsection 2(1.2) of *SIMA*, as a wholly owned subsidiary of Canadian Solar Inc. (CSI), a Canadian corporation which produced solar modules in China through subsidiaries and in Canada through CSSI. The evidence in *Solar Modules* showed that the bulk of CSI’s production resided in China and that it exercised control, directly or indirectly, over CSSI and its subsidiaries in China, in line with its global business strategy of “positioning the company as a vertically integrated, total solar energy solutions service provider.”¹⁶

[39] While CSSI’s imports of subject goods during the period of inquiry in *Solar Modules* were modest, the Tribunal found that such volumes were a reflection of the import restrictions created by the local content requirement for contracts issued under the Feed-in-Tariff (FIT) Program. Notably, CSSI’s imports of subject goods spiked in the first quarter of 2015 (prior to the imposition of provisional duties); the Tribunal found these trends attributable to the removal of the FIT Program’s local content requirement and trade measures in the United States. CSSI’s behaviour indicated to the Tribunal that, in the absence of trade measures, CSSI would continue to be a conduit for the subject goods, especially given CSI’s business model as a total solutions provider.¹⁷

[40] The Tribunal finds that there is little evidence to suggest that the factual basis for the Tribunal’s finding in *Solar Modules* has changed.

[41] The evidence on the record indicates that CSSI remains the Canadian subsidiary of CSI, a significant producer of PV modules with reportedly 9.5 gigawatts (GW) of PV modules capacity in China.¹⁸ In responding to the Tribunal’s notice of expiry of finding (File No. LE-2020-001), CSI confirmed that it had significant manufacturing, design, research and development investments in China.¹⁹ The evidence on the record supports the view that CSSI is related to exporters of the subject goods and that its importing behaviour is aligned with CSI’s business model.²⁰

[42] During the POR, CSSI remained an importer of subject goods. CSSI’s imports and sales of subject goods relative to its domestic production were very small.²¹ Although these ratios were lower than they were in *Solar Modules*, the Tribunal takes into account that they reflect the presence of *SIMA* duties on the subject goods during the POR.

[43] CSSI was also a significant importer of non-subject PV modules. Considering the impact of *SIMA* duties on the subject goods and the other circumstances described above, in the Tribunal’s view, CSSI’s significant and overall increase in imports of non-subject PV modules during the POR is relevant to assessing its importing behaviour.²² The evidence on the record clearly indicates that CSSI actively imported significant volumes of non-subject PV modules for sale into the domestic

¹⁶ *Solar Modules* at paras. 61, 63-64.

¹⁷ *Ibid.* at paras. 68-73.

¹⁸ Exhibit RR-2020-001-A-01 at 527.

¹⁹ Exhibit LE-2020-001-02.01 at 3.

²⁰ Exhibit RR-2020-001-42.01(protected) at 1; Exhibit RR-2020-001-24.03A (protected) at 855-858, 1049.

²¹ Exhibit RR-2020-001-17.38 (protected) at 7; Exhibit RR-2020-001-14.04 (protected) at 7, 8.

²² Exhibit RR-2020-001-17.38 (protected) at 13, 16, 19, 22. Heliene and Silfab also calculated these ratios. Exhibit RR-2020-001-A-02 (protected), Table 1 at para. 31.

market over the POR. Those imports and sales volumes dwarfed its total domestic production volume and related sales during the POR.²³

[44] Considering the foregoing, the Tribunal concludes that CSSI should not be considered part of the domestic industry for the purposes of its likelihood of injury analysis in this expiry review.

Composition of the domestic industry

[45] With the exclusion of CSSI from the domestic industry, there remain three known domestic producers of like goods, namely, Heliene, Silfab, and Stace. As noted above, Stace's questionnaire response could not be used in the investigation report. In these circumstances, Stace could not form part of the domestic industry.

[46] The evidence before the Tribunal clearly indicates that Heliene and Silfab accounted for a major proportion of estimated total domestic production of like goods.²⁴ As such, the Tribunal finds that Heliene and Silfab account for a major proportion of the total domestic production the like goods, and thus constitute the "domestic industry" for the purposes of this expiry review.

CROSS-CUMULATION

[47] The Tribunal must also determine whether it will make an assessment of the cumulative effect of the dumping and subsidizing of the subject goods. There are no legislative provisions that directly address the issue of cross-cumulation of the effects of both dumping and subsidizing. However, as noted in previous cases, the effects of dumping and subsidizing of the same goods from a particular country are manifested in a single set of injurious price effects and it is not possible to isolate the effects caused by the dumping from the effects caused by the subsidizing. In reality, when the dumped and subsidized goods originate from a single country, the effects are so closely intertwined as to render it impossible to allocate discrete portions of injury to the dumping and the subsidizing respectively.²⁵

[48] Given that this expiry review is in respect of dumped and subsidized goods from a single country, the likely effect of the resumed or continued dumping and subsidizing of the subject goods will likewise be manifested in a single set of prices. Therefore, in its analysis below, the Tribunal has

²³ A similar analysis of imports of non-subject goods of a producer-importer was conducted in *Steel Piling Pipe* (4 July 2018) RR-2017-003 (CITT) [*Steel Piling Pipe*] at para. 38.

²⁴ Using information on the record concerning Stace's estimated annual production capacity and the replies to the producers' questionnaire, the Tribunal estimated Heliene and Silfab's proportion of total domestic production. The estimated data clearly indicated that Heliene and Silfab accounted for the majority of total domestic production, even in the unlikely scenario that Stace's production would be equal to its nominal capacity. The more realistic scenario is that, like any domestic producer, Stace's actual production is lower than its capacity. Consequently, Heliene and Silfab's proportion of total domestic production increases when Stace's estimated production volumes are calculated using Heliene and Silfab's capacity utilization rate as a reasonable proxy to estimate its actual production. Exhibit RR-2020-001-13.01 at 3; Exhibit RR-2020-001-06B (protected), Table 9, Schedules 6, 13. As CSSI was excluded from the domestic industry, its domestic production was not taken into account (i.e. it did not form part of the denominator).

²⁵ See, for example, *Steel Piling Pipe* at para. 42; *Certain Fabricated Industrial Steel Components* (25 May 2017), NQ-2016-004 (CITT) at paras. 72-73; *Silicon Metal* (2 November 2017), NQ-2017-001 (CITT) at para. 59; *Pup Joints* (7 April 2017), RR-2016-001 (CITT) at paras. 30-31; *Welded Large Diameter Carbon and Alloy Steel Line Pipe* (20 October 2016), NQ-2016-001 (CITT) at para. 84; *Line Pipe* at paras. 84-85; *Aluminum Extrusions* (17 March 2014), RR-2013-003 (CITT) [*Aluminum Extrusions*] at paras. 56-57.

cumulatively assessed the likely impact of the continued or resumed dumping and subsidizing of the subject goods on the domestic industry.

LIKELIHOOD OF INJURY ANALYSIS

[49] An expiry review is forward-looking.²⁶ It follows that evidence from the period during which an order or a finding was being enforced is relevant insofar as it bears upon the prospective analysis of whether the expiry of the order or finding is likely to result in injury.²⁷

[50] There is no presumption of injury in an expiry review; findings must be based on positive evidence, in compliance with domestic law and in accordance with the requirements of the applicable WTO agreements.²⁸ In the context of an expiry review, positive evidence can include evidence based on past facts that tend to support forward-looking conclusions.²⁹

[51] In making its assessment of likelihood of injury, the Tribunal has consistently taken the view that the focus should be on circumstances that can reasonably be expected to exist in the near to medium term, which is generally considered to be a period that can extend up to 24 months from the date on which the order or finding would be rescinded.³⁰ In this case, the Tribunal was not presented with any argument that it should consider a different period. As submitted by Heliene and Silfab, the Tribunal will therefore focus its analysis on the next 12 to 24 months.

[52] Subsection 37.2(2) of the *Special Import Measures Regulations*³¹ lists factors that the Tribunal may consider in addressing the likelihood of injury in cases where the CBSA has determined that there is a likelihood of continued or resumed dumping or subsidizing. The factors that the Tribunal considers relevant in this expiry review are discussed in detail below.

Changes in market conditions

[53] In order to assess the likely volumes and prices of the subject goods and their impact on the domestic industry if the finding was rescinded, the Tribunal will first consider changes in international and domestic market conditions.³² These changes provide important general context for the Tribunal's analysis.

International market conditions

[54] While growth in the global demand for PV modules is forecasted to be positive for the next 24 months, there are indications that this is softening.

²⁶ *Certain Dishwashers and Dryers* (25 April 2005), RR-2004-005 (CITT) at para. 16.

²⁷ *Copper Pipe Fittings* (17 February 2012), RR-2011-001 (CITT) at para. 56. In *Thermoelectric Containers* (9 December 2013), RR-2012-004 (CITT) [*Thermoelectric Containers*] at para. 14, the Tribunal stated that the analytical context pursuant to which an expiry review must be adjudged often includes the assessment of retrospective evidence supportive of prospective conclusions. See also *Aluminum Extrusions* at para. 21.

²⁸ *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (16 August 2006), RR-2005-002 (CITT) at para. 59.

²⁹ *Thermoelectric Containers* at para. 14; *Aluminum Extrusions* at para. 21.

³⁰ *Carbon Steel Screws* at para. 133.

³¹ S.O.R./84-927 [*Regulations*].

³² See paragraph 37.2(2)(j) of the *Regulations*.

[55] Current solar cell technologies have a long life span with a guaranteed energy output for at least 30 years.³³ As such, once products are purchased and installed, replacement is not required for a significant amount of time. These product characteristics create significant competition for new installation business, which as the evidence indicates, has come under further pressure due to destabilization of the global economy.

[56] The COVID-19 pandemic as well as declining oil prices have pushed the economy into a recession. In October 2020, the International Monetary Fund forecasted a 4.4 percent contraction of the global economy in 2020 and a 5.2 percent growth in 2021, which is only 0.6 percentage points above 2019 levels.³⁴ Based on assumptions regarding the curtailment of the virus outbreaks, the Organisation for Economic Co-operation and Development (OECD) also forecasted a gradual economic recovery over the next two years, with global Gross Domestic Product (GDP) returning to pre-pandemic levels at the end of 2021. The OECD December 2020 projection for global GDP growth was approximately 4.25 percent in 2021 and a further 3.75 percent in 2022. However, the OECD also noted that in many countries, output was projected to remain approximately 5 percent below pre-crisis expectations in 2022 and that even countries and regions that have effective systems for responding to the virus may still be impacted by the “overall weakness of global demand.”³⁵

[57] In this context, the International Energy Agency (IEA) forecasted a 5 percent decline in overall global energy demand in 2020, but strong growth in demand for renewable sources of energy. The IEA projected almost 7 percent growth for renewables used for electricity generation in 2020.³⁶ Global PV installations grew steadily from 103 GW in 2017, and increasing to 115 GW in 2019.³⁷ In 2020, global PV capacity additions were expected to reach between 107 GW and 120 GW in 2020. The forecasts for 2021 and 2022 are relatively stable at 117 GW and 120 GW, respectively, for each year.³⁸

[58] However, the pandemic has introduced challenges to the renewable energy market, such as new constraints on financing, reprioritization of government spending and delays in construction projects.³⁹ In terms of the solar market, Bloomberg New Energy Finance reported for 2020 that 32 GW of photovoltaic bidding projects around the world were postponed and an additional 14 GW were at risk of postponement.⁴⁰ According to the IEA, the rate at which global production capacity has outpaced annual installations has increased significantly from 2017 to 2020.⁴¹

³³ Exhibit RR-2020-001-A-01 at 300.

³⁴ *Ibid.* at 318.

³⁵ *Ibid.* at 326.

³⁶ *Ibid.* at 213.

³⁷ *Ibid.* at 159-160, 199.

³⁸ Forecasts for 2020 appear to have fluctuated due to the impact of Covid-19 on market models. Exhibit RR-2020-001-A-01 at 216, 217, 309.

³⁹ Exhibit RR-2020-001-A-01 at 213, 215, 340.

⁴⁰ *Ibid.* at 349.

⁴¹ *Ibid.* at 159, 290.

[59] As the largest market for installed capacity (205 GW cumulative installed capacity in 2019, which represented 27 percent of global installed capacity),⁴² China's demand for PV modules has declined year over year from 53 GW in 2017 to 30 GW in 2019, with an uptick in 2020 to 40 to 43 GW.⁴³ These trends in China were attributed to several factors.

[60] Recent market uncertainty in China has been attributed to governmental policy changes. While the Government of China continues to support renewable energy,⁴⁴ starting in 2018, the government began reducing subsidies and incentives to better control costs and growth, moving towards a competitive auction-based framework.⁴⁵ In 2020, it was reported that the annual subsidy budget was reduced by 50 percent.⁴⁶ With this transition, the IEA reported that PV market growth has slowed, notably with respect to commercial PV applications, and that there remains uncertainty with respect to capacity additions through 2022.⁴⁷

[61] Other factors limiting demand include the adequacy of China's grid connection in some provinces and curtailment issues.⁴⁸ China has consequently shown preference for more decentralized development as opposed to large utility scale power plants.⁴⁹ In addition, new environmental policies have affected demand. As an example, Heliene and Silfab noted that in Ulanqab, a solar project was terminated to protect surrounding grasslands, compromising 1.5 GW of capacity.⁵⁰

[62] Despite these indications of softening demand, the global PV modules market has experienced and will likely continue to experience high production levels and excess capacity. According to the IEA, global production of PV modules increased year over year. In 2017, global production was at 105 GW, growing to 140 GW in 2019. During this period, the rate of capacity growth outpaced production levels resulting in a 4-percentage-point drop in capacity utilization rate for this period. Production capacity grew from 155 GW in 2017 to 219 GW in 2019; the resulting excess capacity was between 50 GW and 79 GW.⁵¹

⁴² Exhibit RR-2020-001-A-01 at 126. Installed capacity describes the maximum wattage that an installed system is designed to output. It is a metric to determine consumption/demand of solar panels as opposed to production abilities.

⁴³ Exhibit RR-2020-001-A-01, at 55, 308, 446.

⁴⁴ For instance, China's 14th Five-Year Plan (2021-2025) will incorporate past targets for non-fossil energy to provide 20 percent of primary energy production by 2030. Exhibit RR-2020-001-A-01 at 209, 342.

⁴⁵ Exhibit RR-2020-001-A-01 at 219, 234, 308. Holding solar auctions is an approach to renewable energy procurement, wherein developers have an opportunity to be awarded a solar project contract by submitting a non-negotiable lowest-priced bid that meets the minimum criteria. Auctions are associated with risk that projects may be delayed or not completed (e.g. developers underbid their prices to win a contract but cannot develop at those prices). Exhibit RR-2020-001-A-01 at 331, 335.

⁴⁶ Exhibit RR-2020-001-A-01 at 219.

⁴⁷ *Ibid.* at 219, 220, 234.

⁴⁸ Curtailment refers to electricity from wind or solar that could have been produced but which the grid would not accept. Exhibit RR-2020-A-01 at 207; Exhibit RR-2020-001-A-02 (protected) at 683.

⁴⁹ Exhibit RR-2020-001-A-01 at 148.

⁵⁰ *Ibid.* at 453.

⁵¹ *Ibid.* at 160.

[63] Decreasing production costs have also contributed to the oversupply of PV modules. Increased production, capacity, efficiency and stockpiling of component materials, such as polysilicon, crystalline silicon (c-Si) wafers and solar cells, have lowered costs for manufacturing PV modules.⁵² Heliene and Silfab submitted that, as many PV plants are vertically integrated,⁵³ production and capacity increases in input materials directly affect production and capacity of PV modules and cells. The IEA indicated that, with China being the largest producer and consumer of PV cells and modules, the Chinese government's decision to control the development of PV projects in 2018 significantly impacted global PV supply and demand, leading to an oversupply and price reduction across the PV value chain.⁵⁴ Another factor increasing supply has been the efficiencies gained through improvements in technology, such as higher output solar cells and half-cut cell technology. This has allowed manufacturers to increase output with less input material, at reduced costs.⁵⁵

[64] Finally, overproduction has resulted in declining global prices of PV modules. Since January 2020, prices in all module classes have declined 5.9 percent to 20.5 percent.⁵⁶ Meanwhile, it has been noted that to keep prices stable, manufacturers of PV modules have increased the power output of their modules using larger cells, half-cut cells and multi-busbar technologies.⁵⁷

[65] The above evidence indicates that COVID-19 and other factors have impacted demand for PV modules globally. That said, overall, the evidence shows little indication that these developments will result in any reductions in global production levels and excess capacity in the near to medium term.

Domestic market conditions

[66] The investigation report indicates that the total apparent market for PV modules increased by 99 percent in 2018 and then decreased by 55 percent in 2019, with interim 2020 being 48 percent higher than interim 2019. Sales from domestic production declined year over year from 2017 to 2019, with some recovery seen in interim 2020.⁵⁸ Domestic producers have also engaged in extensive import activity.⁵⁹ However, the majority of these imports were not sold in the domestic market and domestic producers' sales from imports generally declined over the POR, with the exception of interim 2020.⁶⁰ Almost all sales of the domestic industry in the Canadian market over the POR were from domestic production.⁶¹

[67] Importers held the majority of the share of the apparent market, with this share increasing significantly in each year of the POR. Between 2017 and 2019, importers' share of the market increased by 38 percentage points; this share was only slightly lower in interim 2020 than in interim 2019. Conversely, the domestic industry's market share decreased by 25 percentage points between

⁵² *Ibid.* at 29, 30, 153-156, 238-240, 290.

⁵³ *Ibid.* at 292; Exhibit RR-2020-001-A-02 (protected) at 328.

⁵⁴ Exhibit RR-2020-001-A-01 at 172, 236, 243.

⁵⁵ In 2019, two thirds of newly installed PV module manufacturing lines had adopted the half-cut solar cell technology. Exhibit RR-2020-001-A-01 at 158.

⁵⁶ Exhibit RR-2020-001-A-01 at 171, 353.

⁵⁷ *Ibid.* at 356.

⁵⁸ Exhibit RR-2020-001-06B (protected), Tables 9, 10.

⁵⁹ *Ibid.*, Table 5.

⁶⁰ *Ibid.*, Tables 5, 9, 10.

⁶¹ *Ibid.*, Table 9.

2017 and 2019, with its share in interim 2020 being the same as it was in interim 2019.⁶² The market share held by imports of subject goods throughout the POR were small.⁶³ Similar trends were seen at the trade levels in sales to distributors and end users.⁶⁴ The domestic industry held minimal market share of sales to retailers for a portion of the POR. Importers held the majority percent share of sales to retailers throughout the POR.⁶⁵

[68] Similar to the global situation, weak oil prices and COVID-19 containment measures pushed the Canadian economy into a recession in 2020, with economic activity not expected to return to pre-pandemic levels until 2022. Toronto Dominion forecasts for the economy in September 2020 saw an estimated 5.6 percent contraction in 2020, with annual growth rate projected to be 4.1 percent in 2021 and 3.2 percent in 2022.⁶⁶

[69] Heliene and Silfab submitted that the Canadian market has been challenged, in part, by the reduction and removal of Ontario's FIT Program, which terminated in 2016.⁶⁷ However, demand has been growing, and with new government policies and programs, solar energy could account for up to 20 percent of electricity supply in Canada over the next 20 years.⁶⁸ In the shorter term, the domestic industry submitted that the solar market is projected to increase by 20 to 25 percent in the next few years (to between 450 MW and 660 MW in the next two years).⁶⁹

[70] In December 2016, the Pan-Canadian Framework on Clean Growth and Climate Change was established between the provinces and the federal government to invest in renewable energy. This has led to initiatives such as the Climate Action Incentive Fund (\$218 million)⁷⁰ and the Low Carbon Economy Fund⁷¹ (\$40 million over 2018-2020). Natural Resource Canada also initiated the Clean Energy for Rural and Remote Communities six-year program, which provides up to \$220 million to reduce reliance on diesel fuel for heat and power.⁷² In October 2020, the Canada Infrastructure Bank was established in response to COVID-19, and \$2.5 billion has been allocated to support renewable energy projects.⁷³ In November 2020, the federal government proposed to provide \$2.6 billion in energy retrofits over the next seven years.⁷⁴ Moreover, the *Canadian Net-Zero Emissions Accountability Act* (Bill C-12), which outlines Canada's commitment to net-zero greenhouse gas emissions by 2050, was introduced.⁷⁵

⁶² *Ibid.*, Table 11.

⁶³ *Ibid.*

⁶⁴ Exhibit RR-2020-001-06B (protected), Tables 14, 17.

⁶⁵ *Ibid.*, Table 20.

⁶⁶ RBC's September 2020 forecasts for GDP were 6.0 percent in 2020 and 4.9 percent in 2021. Exhibit RR-2020-001-A-01 at 814, 820.

⁶⁷ Exhibit RR-2020-001-A-01 at 204.

⁶⁸ Exhibit RR-2020-001-37.01 at 4.

⁶⁹ Exhibit RR-2020-001-B-03 (protected) at para. 21.

⁷⁰ Exhibit RR-2020-001-A-01 at 824.

⁷¹ *Ibid.* at 829.

⁷² This initiative has funded \$24 million to six solar projects. Exhibit RR-2020-001-A-01 at 850-853, 860-869, 873, 877-880.

⁷³ Exhibit RR-2020-001-A-01 at 888.

⁷⁴ *Ibid.* at 893.

⁷⁵ *Ibid.* at 822; Exhibit RR-2020-001-A-03 at 20-22.

[71] While the termination of the FIT Program and procurements of large renewable projects has softened demand in Ontario,⁷⁶ new policies that will encourage solar developments have been introduced in many provinces. For instance, in October 2020, funding for all four Indigenous Energy Support Programs by the Independent Electricity System Operator of Ontario was announced.⁷⁷ Alberta allocated \$80 million for the new Industrial Energy Efficiency, Carbon Capture Utilization and Storage Grant Program.⁷⁸ Similar programs can also be seen in Quebec, British Columbia and Prince Edward Island.⁷⁹ Additionally, there are various incentive programs offered throughout Canada which provide rebates for residential and commercial solar energy systems.⁸⁰

[72] The solar panel market is shifting from Ontario to western Canada with 83 percent of the country's combined utility-scale wind and solar capacity to be built in Alberta over the next five years.⁸¹ According to Norwegian consultancy Rystad Energy,⁸² Alberta's current solar capacity of 0.1 GW is expected to grow to 1.8 GW by 2025, making it the leader in utility-scale wind and solar capacity in Canada.⁸³ In the next couple of years, several key projects are slated for construction, which will affect demand for PV modules significantly. In Alberta alone, projects both under construction and proposed are set to add approximate 710 MW of added solar capacity.⁸⁴ Solar projects are also proposed in provinces other than Alberta.⁸⁵

[73] From the evidence described above, the Tribunal finds that, while there are indications that demand for PV modules in Canada will likely increase in the near to medium term, market conditions remain challenging. In particular, recent trends suggest that imports would capture the lion's share of any increase in the total apparent market for PV modules.

Likely import volume of the subject goods

[74] Paragraph 37.2(2)(a) of the *Regulations* directs the Tribunal to consider the likely volume of the dumped or subsidized goods if the finding is allowed to expire, and, in particular, whether there is likely to be a significant increase in the volume of imports of the dumped or subsidized goods, either

⁷⁶ As of 2018, more than 98 percent of Canada's 3,040 MW solar power generation capacity was in Ontario. Globally, Ontario is one of the top 20 solar electricity markets based on solar installation capacity. Exhibit RR-2020-001-37.01 at 4, 7.

⁷⁷ Exhibit RR-2020-001-A-01 at 895, 896.

⁷⁸ *Ibid.* at 898, 899.

⁷⁹ *Ibid.* at 900-909.

⁸⁰ Exhibit RR-2020-001-37.04.

⁸¹ This would not include smaller renewable development such as residential rooftop solar. Exhibit RR-2020-001-37.06 at 2.

⁸² Exhibit RR-2020-001-A-01 at 327.

⁸³ Exhibit RR-2020-001-37.06 at 2.

⁸⁴ Travers Solar Project (400-MW project in 2020/21 in Vulcan County); Exhibit RR-2020-001-37.13. Claresholm Project (130-MW project in 2020); Exhibit RR-2020-001-37.12. Strathmore Solar Farm Project (40.5 MW in 2020/2021); Exhibit RR-2020-001-37.09. Airport City Solar Farm Project (254-hectare solar farm project); Exhibit RR-2020-001-37.06 at 4. RenuWell Project (pilot project to convert oil-well sites in Taber, Alberta, into small-scale solar arrays in 2021); Exhibit RR-2020-001-37.05.

⁸⁵ The Canadian Solar Industries Association projects 178 MW of solar generating capacity in Nova Scotia by 2030 (representing 1.8 percent of the province's electricity generation). Planned municipal solar gardens will also add approximately 6MW of solar to the grid. The provincial government also agreed to provide 100 GWh of renewable electricity from new projects to federal government owned facilities. Exhibit RR-2020-001-37.03 at 9, 10. In Saskatchewan, SaskPower and the First Nations Power Authority have agreed support future first nations solar projects with a total generating capacity of 20 MW. Exhibit RR-2020-001-37.03 at 8.

in absolute terms or relative to the production or consumption of like goods. This assessment encompasses the likely performance of the foreign industry, the potential for the foreign producers to produce goods in facilities that are currently used to produce other goods, evidence of the imposition of anti-dumping and/or countervailing measures in other jurisdictions, and whether measures adopted by other jurisdictions are likely to cause a diversion of the subject goods to Canada.⁸⁶

[75] Heliene and Silfab submitted that given the international market conditions for PV modules, particularly those in China, imports of subject goods are likely to increase in significant volumes should the finding be rescinded. In their submissions, Heliene and Silfab addressed several factors contributing to China's intensifying export orientation, namely, China's increasing production of PV modules and worsening excess capacity, reduced access to other export markets and trade remedies against the subject goods in other jurisdictions. Heliene and Silfab also argued that Canada would likely be a destination for the subject goods, as Canada is an attractive market for which Chinese producers have a demonstrated interest.

[76] China remains the largest global producer of solar modules, accounting for 70 percent of total global production in 2019.⁸⁷ The top five Chinese manufacturers accounted for 65 to 70 percent of total shipments for the industry in China in 2020.⁸⁸ While further consolidation of the market is expected for producers in China to remain competitive, plans for further expansion are reported, including 50 solar PV firms investing RMB 300 billion (US\$43 billion) into building more than 660 GW of production capacity by 2023, including 261 GW of PV modules.⁸⁹

[77] Production of PV modules in China increased significantly over the POR, from 75 GW in 2017, to 99 GW in 2019 and 59 GW in the first six months of 2020. China's capacity has similarly increased. In 2017, China's production capacity was 105 GW. This capacity increased to 150 GW in 2019 and a further 18.7 GW in the first three quarters of 2020. With high production and softening domestic demand, as described above, excess capacity in China has increased year over year from 30 GW in 2017 to 51 GW in 2019.⁹⁰ This evidence, along with other reports submitted by Heliene and Silfab, indicates that COVID-19 has had a minimal impact on production in China.⁹¹

[78] Despite the onset of COVID-19, export volumes of PV modules from China remained stable during first quarter closures of 2020. Exports then surged in March 2020, and remained high in the first half of 2020.⁹² To recover from losses experienced in 2020, China has implemented various measures to boost trade.⁹³ It was reported that China's "export-led growth model" saw "roughly two thirds of domestically manufactured modules are installed abroad."⁹⁴ China's top module

⁸⁶ Paragraphs 37.2(2)(a), (d), (f), (h) and (i) of the *Regulations*.

⁸⁷ Exhibit RR-2020-001-A-01 at 157.

⁸⁸ *Ibid.* at 439.

⁸⁹ *Ibid.* at 452. JinkoSolar, JA Solar, Trina Solar, First Solar, LONGi Group, Risen Energy, Canadian Solar and GCL System Integration Technology have all announced a string of major capacity expansions in China in 2020 and projected further expansion through 2021.

⁹⁰ Exhibit RR-2020-001-A-01, at 55, 157, 243, 456, 470, 609.

⁹¹ JinkoSolar (the largest producer in China) reported no material adverse impact on operations caused by COVID-19. Some factories were reported to have closed in February and March only. Exhibit RR-2020-001-A-01 at 290, 427, 431.

⁹² Exhibit RR-2020-001-A-01 at 632, 633, 636.

⁹³ Exhibit RR-2020-001-A-02 (protected) at 476-479.

⁹⁴ Exhibit RR-2020-001-A-01 at 453. Global shipments of solar modules are expected to increase to 134.8 GW in 2020. Exhibit RR-2020-001-A-01 at 468.

producers JinkoSolar, JA Solar, Canadian Solar, Trina Solar, and LONGi Solar experienced strong export performance in 2020.⁹⁵

[79] While Chinese producers remain export oriented, major export markets, such as Europe, Japan and India, show signs of softening demand. In this regard, Heliene and Silfab submitted evidence of significant contractions in these economies as a result of the pandemic⁹⁶ and highlighted market conditions that could impact demand for the subject goods. For instance, Covid-19 exacerbated policy uncertainty and construction delays are expected to impact European utility-scale projects. Although capacity additions are expected to rebound in 2021, distributed PV (the backbone of growth in Europe's solar markets, is expected to slow). Full recovery is not expected in 2021 as small investors reprioritize investment decisions.⁹⁷ In India, to meet renewable energy targets, the government has implemented policies to increase domestic production with local content requirements for solar auctions. Covid-19 lockdowns have also caused delays for PV in India.⁹⁸ The IEA reported that due to the phasing out of feed-in tariff programs and undersubscribed auctions, Japan's PV market was expected to contract by 9 percent in 2020 from levels in 2019.⁹⁹

[80] Furthermore, trade measures in other jurisdictions, as described below, will also likely limit China's access to export markets and cause Chinese producers to seek open markets, such as Canada, should the finding be rescinded.

[81] The United States has a number of trade measures currently in force respecting solar panels meeting the product definition in this review. Safeguard measures pursuant to Section 201 of the U.S. *Trade Act of 1974* (Section 201 measures) on c-Si modules were implemented in 2018, and are set to expire in February 2022. In October 2020, President Trump issued Proclamation 10101 ending the exclusion of bifacial solar modules from the safeguard measures and increasing the duty rate in the fourth year of the measures. In addition, there are *ad valorem* duties under Section 301 of the U.S. *Trade Act of 1974* on products from China, including the subject goods and solar cells.¹⁰⁰ As of March 1, 2019, the USITC continued its 2012 orders imposing antidumping and countervailing measures on photovoltaic modules using Chinese solar cells. Further, on January 2, 2020, the USITC initiated its five-year review of the 2015 order against Chinese and Taiwanese c-Si solar cells and modules.¹⁰¹

[82] In Turkey, certain PV modules manufacturers in China have been subject to a 27 percent dumping rate since 2017; other producers are subject to a duty of \$25/square metre.¹⁰² In April 2020, the Turkish government imposed new regulations requiring import duties to be calculated by kilogram as opposed to by square metres, with the new rate being \$25/kg. It has been reported that

⁹⁵ JinkoSolar exported 5GW in the first half of 2020, a 54 percent year-over-year increase. JA Solar, Canadian Solar and Trina Solar each exported 3.4 GW in the first half of 2020. JA Solar's annual profit was expected to be 85 percent higher due to increased shipments. Trina Solar's net profit increase in the first half of 2020 was attributed to increased overseas sales; LONGi's reported record module shipments and profit in the first half of 2020. Exhibit RR-2020-001-A-01 at 508, 638, 642, 659, 662-663, 666.

⁹⁶ Exhibit RR-2020-001-A-01 at 317, 319, 676.

⁹⁷ *Ibid.* at 288.

⁹⁸ In 2020, PV installations in India were down by 42 percent from 2019. Exhibit RR-2020-001-A-01 at 714-716, 454, 694, 695, 697.

⁹⁹ Exhibit RR-2020-002-A-01 at 222, 727.

¹⁰⁰ *Ibid.* at 278, 282, 283, 738, 742.

¹⁰¹ *Ibid.* at 728-730.

¹⁰² *Ibid.* at 762, 764.

these measures are aimed at addressing the fact that higher-efficiency models are heavier and will therefore favour Turkish producers.¹⁰³

[83] India imposed safeguard tariffs on PV cells and modules in 2018, and these measures may be expanded beyond the two-year term. Duties imposed on imports are slated to increase to 40 percent in 2021 from 20 to 25 percent duties imposed as of August 2020.¹⁰⁴

[84] In light of the challenges Chinese producers face in other export markets, as well as the pressures caused by increasing production and capacity in China, the Tribunal finds it likely that subject goods would be exported to Canada in increased volumes should the finding be rescinded. This is particularly so given relatively higher Canadian market prices. According to the IEA, 2019 prices for solar panels in China, Italy, Korea, and Malaysia ranged from 0.20 to 0.51 USD/Watt. In the United States, module prices were 0.4 USD/Watt while in Canada prices were 0.47 USD/Watt.¹⁰⁵

[85] Furthermore, Chinese producers have demonstrated a continued interest in exporting subject goods to the Canadian market. During the POR, there remained a small but consistent volume of subject goods in the Canadian market.¹⁰⁶ Although imports of subject goods relative to total domestic production were insignificant over the POR, imports of subject goods relative to sales from domestic production were more significant, and this ratio increased substantially year over year. However, this ratio declined between interim 2019 and interim 2020.¹⁰⁷ The fact that exporters in China maintained customer-supplier relationships with importers over the POR increases the likelihood of higher levels of imports of subject goods if the finding is not continued.¹⁰⁸

[86] Additionally, demand for subject goods in the Canadian market is also made evident by two recent requests for remission orders with respect to *SIMA* duties imposed on certain types of PV modules from China, which meet the product definition. Both of these requests were equal to or exceeded the entire anticipated market for 2020.¹⁰⁹

[87] In sum, the Tribunal finds that producers of subject goods have considerable available production capacity and remain export-oriented; further, they have demonstrated a continued interest in the Canadian market, while facing softening demand and import measures in their major export destinations. As a result, Canada remains an attractive market for Chinese producers/exporters of subject goods.

[88] In light of the foregoing, the Tribunal finds that the rescission of the finding would likely result in a significant increase in the volume of imports of subject goods, in absolute and relative terms, in the next 24 months.

¹⁰³ *Ibid.* at 765-769.

¹⁰⁴ *Ibid.* at 662, 712.

¹⁰⁵ *Ibid.* at 172.

¹⁰⁶ Exhibit No. RR-2020-001-06B (protected), Tables 5, 9.

¹⁰⁷ *Ibid.*, Table 8.

¹⁰⁸ *Ibid.*, Table 3.

¹⁰⁹ Exhibit RR-2020-001-B-03 at 10; Exhibit RR-2020-001-B-04 (protected) at 10, 58, 103; Exhibit RR-2020-001-A-03 at 12, 13; Exhibit RR-2020-001-A-04 (protected) at 12, 13, 30, 80; Exhibit RR-2020-001-06B (protected), Table 9.

Likely price effects of the subject goods

[89] The Tribunal must consider whether, if the finding is allowed to expire, the dumping and subsidizing of the subject goods are likely to significantly undercut the prices of like goods, depress those prices, or suppress them by preventing increases in those prices that would likely have otherwise occurred.¹¹⁰ In this regard, the Tribunal distinguishes the price effect of the subject goods from any price effects that would likely result from other factors affecting prices.

[90] In *Solar Modules*, the supporting parties argued that PV modules were commodity products and therefore price was the principal factor in making purchasing decisions. The Tribunal agreed, based on the evidence at the time, that purchasers would very often choose the lowest-price product and that the subject goods had the low-price advantage compared to the like goods.¹¹¹

[91] In this expiry review, there is nothing on the evidentiary record that would indicate the commodity and price-sensitive nature of PV modules meeting the product definition has changed.¹¹²

[92] With respect to the likely price effects of the subject goods, Heliene and Silfab argued that as the prices of Chinese PV modules are the lowest in the world, if the finding was rescinded, the subject goods would dominate the Canadian market and cause injury to the domestic industry. The domestic producers argued that over the POR, low-priced imports of non-subject goods resulted in lost sales and pricing pressure for the like goods. Should the finding be rescinded, the producers submit that Chinese producers will have to re-enter the market at lower prices than the import prices of non-subject goods to gain market share.

[93] Based on the evidence described below, the Tribunal finds that if the finding was rescinded, the subject goods would re-enter the Canadian market at prices that would significantly undercut and depress domestic prices.

[94] At an aggregate level, selling prices of subject goods did not undercut selling prices of like goods. However, in interim 2020, import unit values of subject goods undercut selling prices of like goods.¹¹³

[95] The potential for undercutting should the finding be rescinded is exemplified by Bloomberg's November 2020 reporting of pricing of Chinese PV modules.¹¹⁴ This reported pricing has been continuously declining at margins which Heliene and Silfab described as not being sustainable for any producer. According to the IEA, in 2019, Chinese solar modules were priced at 0.24 USD/Watt

¹¹⁰ Paragraph 37.2(2)(b) of the *Regulations*.

¹¹¹ *Solar Modules* at paras. 179, 181.

¹¹² Heliene and Silfab submitted that import prices are the most accurate point of comparison given the level at which competition occurs. Although in *Solar Modules*, the Tribunal only compared unit selling prices, the Tribunal agrees that, in light of the evidence in this expiry review, consideration of import prices would provide a more comprehensive analysis, as there are distributor importers. In such cases, the Tribunal has previously examined the price effect of subject goods on prices of like goods using both market selling and import prices of the subject goods. *Carbon Steel Welded Pipe* (February 15, 2019) NQ-2018-003 (CITT) at para. 128; *Line Pipe* at para. 121.

¹¹³ Exhibit RR-2020-001-A-06B, Tables 21, 23.

¹¹⁴ Exhibit RR-2020-001-A-02 (protected) at 412.

while the Canadian price was 0.47 USD/Watt, representing approximately a 50 percent pricing disparity.¹¹⁵

[96] To demonstrate the potential for undercutting, Silfab submitted an account specific allegation of an offer of subject goods made in 2020 at prices lower than Bloomberg's reported pricing for this period. Silfab secured the sale due to the finding.¹¹⁶ Additionally, there were purchases of subject goods at prices below the prices of like goods in each of 2017, 2018 and 2019, as reported by importers in their responses to the Tribunal's questionnaires.¹¹⁷ The Tribunal reviewed the relevant responses and agrees that subject goods were purchased at prices that undercut the like goods.

[97] The evidence on the record also indicates that during the POR, the average duties collected were consistently of a significant percentage of the value for duty paid.¹¹⁸ These figures, and the evidence concerning the limited volume of subject goods imported during the POR,¹¹⁹ suggest that, as argued by the domestic producers, subject goods cannot make significant inroads in the Canadian market without significantly lowering their prices.

[98] Should the finding be rescinded, the producers submit that Chinese producers will have to re-enter the market at lower prices than the prices of non-subject goods to gain market share. In terms of the lowest selling prices in the Canadian market, prices of non-subject goods undercut prices of like goods in each period of the POR.¹²⁰ Additionally, for the period between 2018 and 2020, Silfab provided four lost sale allegations and one allegation of an instance where it was forced to reduce its prices to secure the sale in response to a lower-priced offer of non-subject goods.¹²¹

[99] The Tribunal finds that the undercutting from imports of non-subject goods described above had a substantial price-depressive effect on the prices of like goods over the POR. Although selling prices of like goods increased in 2018, they decreased at a more significant rate in 2019, resulting in an overall decrease. A further decrease can be seen in interim 2020.¹²² Selling prices of the subject goods decreased in 2018 and increased in 2019 for an overall net decrease from 2017. This was followed by an increase in pricing in interim 2020. Selling prices of imports of non-subject goods also declined in 2018 and 2019 respectively, with a small price increase in interim 2020.¹²³

[100] The Tribunal finds that, if the finding is rescinded and the domestic industry faced with increased volumes of subject goods at undercutting prices, the domestic producers will be forced to significantly reduce prices *further* to maintain sales. In sum, as discussed above, without the finding in place, the subject goods are likely to be sold at even lower prices to gain market share in the Canadian market. Given the commodity nature of solar modules, this will undoubtedly result in a decline in the price of the like goods.

[101] The Tribunal is also mindful of other factors which will also exert downward pressure on prices, including for instance, lowering production costs brought about by improvements in

¹¹⁵ Exhibit RR-2020-001-A-01 at 172.

¹¹⁶ Exhibit RR-2020-001-B-04 (protected) at para. 33.

¹¹⁷ Exhibit RR-2020-001-A-02 (protected) at para. 218.

¹¹⁸ Exhibit RR-2020-001-31C at 1, 2.

¹¹⁹ Exhibit RR-2020-001-06B (protected), Table 5.

¹²⁰ *Ibid.*, Table 23.

¹²¹ Exhibit RR-2020-001-B-04 (protected) at paras. 41-45.

¹²² Exhibit RR-2020-001-06B (protected), Tables 23, 24.

¹²³ *Ibid.*

technology in manufacturing solar modules and their component materials. The domestic industry will need to continue to adapt to remain competitive and achieve sales. However, in this context, the pressure exerted by the subject goods in the absence of anti-dumping and countervailing duties would be an even greater factor threatening the ability of the domestic industry to maintain its prices or remain competitive.

[102] Given the commodity nature of PV modules, it is clear that to increase sales to Canada, the subject goods would have to compete at or below prevailing market prices. Particularly, in view of the previously discussed current and foreseeable global market conditions with respect to current demand for PV modules and excess capacity, it stands to reason that, if the finding is rescinded, the subject goods will compete on price to increase export volumes and gain market share at the expense of the like goods and of the non-subject goods in the Canadian market. Further price undercutting would likely result from the subject goods competing among themselves and with non-subject goods. Put another way, a rescission of the finding would likely lead to a downward pricing spiral and race towards the lowest possible price, causing significant depression of the prices of like goods.

Conclusion

[103] In sum, the Tribunal finds that the resumed or continued dumping and subsidizing of the subject goods are likely to cause significant adverse price effects, namely, price undercutting and price depression, over the next 24 months, if the finding is rescinded.

Likely impact of the subject goods on the domestic industry

[104] The Tribunal will assess the likely impact of the above volumes and prices on the domestic industry, taking into consideration the recent performance of the domestic industry.¹²⁴ In this analysis, the Tribunal distinguishes the likely impact of the subject goods from the likely impact of any other factors affecting or likely to affect the domestic industry.¹²⁵

Recent performance of the domestic industry

[105] The domestic industry's performance generally declined over the POR. Net sales value decreased in 2018 but increased in 2019. This was followed by a small decrease in interim 2020. Similar trends were seen with respect to the cost of goods sold. Overall profitability deteriorated from 2017 to 2019, with some more positive gains achieved in interim 2020.¹²⁶

[106] Domestic sales of domestic production decreased significantly from 2017 to 2019, with a small increase seen in interim 2020.¹²⁷ Production volumes for domestic sales showed similar trends.¹²⁸ In 2017, the domestic industry started with a minority share of the domestic market. This share fell in 2018 and decreased further in 2019, although to a lesser degree. There was a nominal gain in interim 2020. The domestic industry's losses in market share were attributable to the sharp rise in imports of non-subject goods, which held the majority of the market throughout the POR, with market share increasing by 29 percentage points in 2018, and a further 9 percentage points in 2019. A

¹²⁴ Paragraphs 37.2(2)(c), (e) and (g) of the *Regulations*.

¹²⁵ See paragraph 37.2(2)(k) of the *Regulations*.

¹²⁶ Exhibit RR-2020-001-06B (protected), Table 35.

¹²⁷ *Ibid.*, Table 32.

¹²⁸ *Ibid.*, Tables 36, 37.

small decrease in market share was seen in interim 2020 with a 3-percentage-point decline. The subject goods' market share remained nominal and flat throughout the POR.¹²⁹

[107] A significant portion of the domestic industry's production was exported, with export sales as a proportion of total production generally increasing over the POR. However, export sales decreased in interim 2020 as compared to interim 2019.¹³⁰ According to Mr. Pochtaruk of Heliene, export sales to the United States were a defensive strategy against lower-priced offshore imports. However, with the challenges of the Section 201 measures and declining export sales in 2020, Heliene's operations in Canada are focused on the domestic market. To serve the U.S. market, Heliene has recently constructed a facility in the United States.¹³¹ In the same vein, Mr. Maccario, of Silfab, indicated in his witness statement that Silfab's focus is the Canadian market rather than export sales. This is particularly the case following the economic crisis resulting from COVID-19, U.S. export tariffs, and the emphasis on "U.S.-made solar PV modules" in President-elect Biden's clean energy and environment plan.¹³²

[108] Other key performance indicators were stagnant. The domestic industry's level of unused capacity seemed relatively significant, with increases in the capacity utilization rate seen only in respect of production for export sales, with the exception of interim 2020. Productivity also declined throughout the POR. However, positive trends were seen in employee numbers and wages during the POR. There were investments in each year of the POR, although levels decreased in 2019. Inventory levels generally increased over the POR while unit value declined.¹³³

[109] With the anticipated demand in Canada, both domestic producers have imminent plans for growth. The domestic industry maintained that investments throughout the POR and investments in 2021 are projected to increase.¹³⁴ Details of these investments, including for 2022 were provided in Mr. Pochtaruk's statement of evidence, in which he also noted that Heliene's new investments will enable it to offer the newest products in the market with improved costs and power efficiency.¹³⁵ Similarly, Mr. Maccario noted that Silfab has invested in its Ontario operations to upgrade equipment, achieve lower costs and enhance product relevance.¹³⁶

[110] From the evidence above, while it is likely that the domestic industry will benefit in the near to medium term from governmental policy changes that favour increasing installations of PV modules in Canada, the domestic industry remains in a precarious financial position. As further discussed below, if the finding is rescinded, recent negative trends experienced by the domestic industry are likely to be exacerbated. Indeed, without an order continuing the finding, it is highly likely that the domestic industry's financial position will materially worsen as a result of the resumed or continued dumping and subsidizing of the subject goods.

¹²⁹ *Ibid.*, Table 11.

¹³⁰ *Ibid.*, Tables 36, 37, 38.

¹³¹ Exhibit RR-2020-001-A-03 at paras. 9-11; Exhibit RR-2020-001-A-04 (protected) at paras. 9-11.

¹³² *Ibid.*

¹³³ Exhibit RR-2020-001-06B (protected), Tables 36, 37.

¹³⁴ *Ibid.*

¹³⁵ Exhibit RR-2020-001-A-03 at paras. 52, 53; Exhibit RR-2020-001-A-04 (protected) at paras. 52, 53.

¹³⁶ Exhibit RR-2020-001-B-03 at paras. 56, 57; Exhibit RR-2020-001-B-04 (protected) at paras. 56, 57.

Likely impact on the domestic industry if the finding is rescinded

[111] Heliene and Silfab submitted that they are in a strong position to respond to the anticipated market growth in Canada for 2021 and 2022. However, if the finding is rescinded, they would sustain injury that would force them to shut down their operations in Canada. Their position in this regard stems from their vulnerability to further price reductions, lower production levels and lost sales, particularly where the domestic industry is unable to rely on export sales for maintaining operations. The domestic industry argued that it is relying on new investments to enhance its ability to compete and improve financial performance. This is critical in an industry where there are constant product and technological developments and where growth in the market is imminently anticipated. Further losses in sales caused by the subject goods would prohibit the domestic industry from remaining operable and justifying investments.

[112] The Tribunal finds that the domestic industry's position of likely significant injury caused by resumed dumping and subsidizing of the subject goods in the next 24 months is supported by credible evidence. As the Tribunal has determined, if the finding is rescinded, there will likely be a substantial increase in import volumes of the subject goods, which will significantly undercut and depress the domestic producers' sales prices. For the following reasons, this will have serious negative impacts on the domestic industry's profitability.

[113] To illustrate the effects on performance without the finding, Heliene and Silfab reproduced their financial results for 2019 and interim 2020 showing the effects of a theoretical price decline. Interim 2020 results were used to also forecast financial performance in 2021. According to the domestic producers' calculations, the price decline would result in considerable losses which would preclude continued operations in Canada.¹³⁷

[114] The Tribunal also performed its own analysis using a more conservative assumption of likely price depression based on the range of current undercutting by imports of non-subject goods observed in 2019 and 2020 as reported in individual questionnaire responses (these represented the lowest non-subject prices in the market).¹³⁸ The Tribunal found this to be an appropriate range as subject goods will likely need to compete with imports of non-subject goods to gain market share. Accordingly, the Tribunal assessed the effect of the subject goods based on a 20 percent reduction in the prices of the like goods. Applying this price reduction on the domestic industry's consolidated financial results for 2019, the Tribunal found that in both scenarios, the domestic industry would experience material adverse impact on its performance in terms of its gross margin and net income levels.

[115] Considering this evidence, the Tribunal finds that without an order continuing the finding, the domestic industry's financial position will make sustained operations in Canada doubtful. To the extent that the domestic industry resists price declines in a price-sensitive environment, it is likely to lose significant sales volume to the subject goods, and experience further decreased profitability, output, capacity utilization and employment levels.

[116] These adverse effects would in turn likely impede the domestic industry's ability to maintain base-level capital expenditures and jeopardize recent and planned investments. Given the importance in the solar industry to upgrade its equipment to ensure it can offer relevant product lines with

¹³⁷ Exhibit RR-2020-001-A-01 at paras. 277-279; Exhibit RR-2020-001-A-02 (protected) at paras. 277-279.

¹³⁸ See Exhibit RR-2020-001-A-02 at para. 224.

improved costs and power efficiency, the Tribunal finds that the inability to raise capital would be particularly injurious to the domestic industry. The evidence indicates that the Canadian solar market is poised to see increased demand and market growth from recent commitments by government stakeholders for greater use of renewable energy. Without the finding in place, it is difficult to see how the domestic industry could participate in any market recovery. If the finding is rescinded, the presence of the subject goods at dumped and subsidized prices is likely to undermine the domestic industry's ability to supply new utility-scale solar projects to be offered in Canada over the next few years.

[117] Based on the foregoing, the Tribunal finds that the rescission of the finding will likely result in material injury to the domestic industry over the next 24 months.

Factors other than the subject goods

[118] Pursuant to paragraph 37.2(2)(k) of the *Regulations*, the Tribunal may consider certain other factors that are relevant in the circumstances.¹³⁹ Given the lack of any submissions opposing the continuation of the finding, the Tribunal, on its own initiative, considered whether there were some factors unrelated to the dumping and subsidizing of the subject goods that could adversely affect the domestic industry in the next 24 months. The Tribunal ensured not to attribute the effects of such factors to an eventual rescission of the finding.

[119] An issue raised by the domestic industry has been the challenges it will be facing with respect to its export sales, which the evidence has shown played a significant role in the domestic industry's viability over the POR. There is, however, insufficient evidence to determine the extent to which export sales may change in the next 24 months or how this may impact the domestic industry's overall performance. The domestic industry may experience negative effects from a lower volume of exports. That said, injury caused by the subject goods to the domestic industry's domestic sales volumes and prices will likely occur regardless. In fact, should the domestic industry be unable to sustain recent levels of export sales, its financial position will only be made more vulnerable, and the impact of resumed dumping and subsidizing in Canada, only more significant.

[120] The evidence clearly indicates that the domestic industry faced significant competition from imports of non-subject goods. These imports were present in the domestic market in significant volumes and increased at a substantial rate over the POR.¹⁴⁰

[121] However, should the finding be rescinded, the Tribunal has already found that the subject goods would enter the Canadian market in large volumes at prices equal to or lower than the imports of non-subject goods. Accordingly, the Tribunal is unable to find that imports of non-subject goods will eliminate the adverse effects of the subject goods, which will likely increase their market share at the detriment of imports of non-subject goods if the finding is not continued.

[122] Having accounted for the above factors and ensured not to attribute their effects to the subject goods, the Tribunal finds that the resumption of dumping and subsidizing of the subject goods will likely result, in and of itself, in material injury to the domestic industry.

¹³⁹ Paragraph 37.2(2)(k) refers to "any other factor pertaining to the current or likely behaviour or state of the domestic or international economy, market for goods or industry as a whole or in relation to individual producers, exporters, brokers or traders."

¹⁴⁰ Exhibit No. RR-2020-001-06B (protected), Tables 6, 9, 10, 11.

CONCLUSION

[123] On the basis of the foregoing analysis, and pursuant to paragraph 76.03(12)(b) of *SIMA*, the Tribunal hereby continues its finding in respect of the subject goods.

EXCLUSIONS

[124] As noted previously, the Tribunal received one request from CanREA¹⁴¹ to exclude products from any order continuing the finding. CanREA requested the following products be excluded from the Tribunal's order (the Requested Products):

bifacial PV modules consisting of either 72 monocrystalline silicon photovoltaic cells or 144 monocrystalline silicon photovoltaic half-cells, with a power output exceeding 515 Watts and module efficiency exceeding 20.5% . . .¹⁴²

[125] CanREA submitted that the Requested Products are essential to utility-scale solar energy projects, i.e. solar farms, which seek to minimize the levelized cost of electricity.¹⁴³

[126] Heliene and Silfab opposed the exclusion of the Requested Products on the basis that granting it would cause injury to the domestic industry. There were extensive submissions made by both CanREA and the domestic industry, including responses by the parties to questions posed by the Tribunal.

[127] For the reasons below, the Tribunal has decided not to grant the exclusion.

General principles

[128] *SIMA* implicitly authorizes the Tribunal to grant exclusions from the scope of an order or finding as part of its mandate in an expiry review.¹⁴⁴ Exclusions are an extraordinary remedy that may be granted at the Tribunal's discretion, i.e. when the Tribunal is of the view that such exclusions will not cause injury to the domestic industry.¹⁴⁵ In the context of an expiry review, the rationale is that, despite the general conclusion that all goods covered by an order are likely to cause injury to the domestic industry, there may be case-specific evidence that imports of particular products captured by the definition of the goods are not likely to cause injury.

¹⁴¹ CanREA is a non-profit national trade association representing approximately 300 member companies and organizations across Canada's wind energy, solar energy and energy storage industries. It was established on July 1, 2020, as a result of the merger of the Canadian Wind Energy Association and the Canadian Solar Industries Association. Exhibit RR-2020-001-32.01A at para. 1.

¹⁴² Exhibit RR-2020-001-32.01A at para. 8.

¹⁴³ Levelized cost of electricity represents the average revenue per unit of electricity generated that would be required to recover the costs of building and operating a generating plant during an assumed financial and operational life span (i.e. the average cost per unit of output). Exhibit RR-2020-001-32.01A at para. 9.

¹⁴⁴ *Hetex Garn A.G. v. The Anti-dumping Tribunal*, [1978] 2 F.C. 507 (FCA); *Sacilor Aciéries 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; *Hot-rolled Carbon Steel Plate* (13 March 2020), RR-2019-001 (CIIT) at paras. 189-190.

¹⁴⁵ See, for example, *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CIIT) at para. 339.

[129] The onus is upon the requester to demonstrate that imports of the specific goods for which the exclusion is requested are not likely to be injurious to the domestic industry.¹⁴⁶ However, there is also an evidentiary burden on the domestic industry to file sufficient evidence in order to rebut the evidence filed by the requester.¹⁴⁷

[130] 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.¹⁴⁸

[131] In determining whether an exclusion is likely to cause injury to the domestic industry, the Tribunal typically considers such factors as whether the domestic industry produces the identical products for which exclusions are requested, whether it produces substitutable or competing products, whether it is an “active supplier” of identical or substitutable products and whether it has the capability of producing such products.¹⁴⁹

[132] With respect to the domestic industry’s capability of producing the products that are the subject of the exclusion request, the Tribunal has stated that it expects the relevance of this factor to be more limited in an expiry review. Essentially, as the review takes place after anti-dumping or countervailing measures have been in place for five years, it is presumed that the domestic industry was not prevented from producing a product because of injury due to the dumping and subsidizing.¹⁵⁰

[133] However, there could be situations where the domestic industry’s capability of producing such products remains a pertinent factor in an expiry review. For example, there could be an emerging demand for a specific type of product that is not currently produced by the domestic industry. Where a *new product* is introduced into the market, there may also be 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. In such circumstances, there may be a sufficient basis to deny the requested exclusions in an expiry review, despite the absence of current production of products identical or similar to the products for which exclusions are requested.¹⁵¹

[134] As discussed below, the Requested Products are the subject of an exclusion request due to the introduction of a new higher-power PV module to the market for which there is an emerging demand, notably in utility-scale solar energy projects. Moreover, the Tribunal cannot ignore that the efficiencies and technological advancements of PV modules are in constant evolution. In the context of this industry, domestic producers cannot therefore be expected to currently produce or be active suppliers of all products that have been recently developed, even if *SIMA* duties have been in place for five years. For this reason, their capability to produce such products is a factor that should be given significant weight in the assessment of the product exclusion request in this case.

¹⁴⁶ *Certain Fasteners* (6 January 2010), RR-2009-001 (CITT) [*Fasteners 2009 Review*] at para. 243.

¹⁴⁷ *Certain Fasteners* (5 January 2015), RR-2014-001 (CITT) at para. 198. A failure to do so may result in the requested exclusion being granted. Much like its conclusion on the issue of whether the expiry of the finding in respect of the subject goods is likely to result in 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.

¹⁴⁸ *Aluminum Extrusions* at para. 195.

¹⁴⁹ *Certain Stainless Steel Wire* (30 July 2004), NQ-2004-001 (CITT) at para. 96; *Fasteners 2009 Review* at para. 245; *Aluminum Extrusions* at para. 188.

¹⁵⁰ *Fasteners 2009 Review* at paras. 247-248.

¹⁵¹ *Carbon Steel Screws* at para. 239.

[135] Put another way, this case presents a scenario under which the domestic industry may conceivably be injured by the granting of exclusions covering products for which there has not been any domestic production of identical or substitutable products during this time. This is clearly not a situation where it would be appropriate to have the protection afforded by *SIMA* made entirely dependent on whether the domestic industry already produces and sells products that are identical to, or substitutable for, the products for which exclusions are requested.

[136] In particular, the Tribunal must be mindful that granting an exclusion for recently developed technologically advanced products could essentially prevent the domestic producers from fulfilling an emerging demand for such products in the market and thereby cause injury. Ultimately, the Tribunal must be guided by the overarching principle that exclusions should not undermine the remedial effect of its order or finding. As such, in the circumstances of this review, especially considering the nature of the products at issue, credible evidence of planned production of products substitutable for the Requested Products would appear sufficient to deny the request.

[137] The evidence on the record confirms that the Requested Products are not currently produced in Canada but are available from Chinese producers.¹⁵² The parties each confirmed that to meet the higher output and efficiency requirements of the Requested Products, within the cell-number limit (i.e. 72 cells or 144 half-cells), a minimum M10 (182 mm²)- or M12 (210 mm²)-sized cell is required.¹⁵³ The evidence indicates that these sizes of solar cells were not previously available to the domestic producers.¹⁵⁴ However, as discussed below, during this review, the domestic producers were able to source the inputs. In addition to the larger solar cells, the following technologies are required: *multi busbars* (minimum 9 or 10) and *half-cell/split-cell technology*.¹⁵⁵ Higher efficiency with, for instance, 9 busbars can also be achieved through *gallium doping* and *reduced cell-to-cell gaps*,¹⁵⁶ however, on balance, the evidence suggests that these are not mandatory for producing the Requested Products.¹⁵⁷

[138] With this context in mind, the Tribunal assessed the evidence of the domestic industry's planned production of the Requested Products.

Relevant injury factors

[139] Both domestic producers submitted that they currently have capacity to produce products that are substitutable for the Requested Products. Mr. Maccario submitted that, if requested, Silfab could produce substitutable products, also noting that it presently sells modules with up to 20.8 percent efficiency.¹⁵⁸ Mr. Pochtaruk indicated that in the first and second quarters of 2021, Heliene would be

¹⁵² Exhibit RR-2020-001-33.01B at para. 7; Exhibit RR-2020-001-35.01A at 11-16, 20, 25-34, 40-41.

¹⁵³ Exhibit RR-2020-001-40 at 3; Exhibit RR-2020-001-41 at 2; Exhibit RR-2020-001-39 at 2, 3. Heliene and Silfab indicated that the 182 mm² is an M8 solar cell, but is also referred to as "M10" in the industry.

¹⁵⁴ Exhibit RR-2020-001-33.01B at para. 7.

¹⁵⁵ Exhibit RR-2020-001-40 at 3. According to CanREA, more busbars permit greater electron capture and current for the same area. Half-cell technology allows the cell to run cooler and therefore more efficiently. Exhibit RR-2020-001-41 at 2.

¹⁵⁶ For full description of these technologies, see Exhibit RR-2020-001-32.01B at para. 30.

¹⁵⁷ Exhibit RR-2020-001-39 at 4; Exhibit RR-2020-001-40 at 3. CanREA submitted that there are other ways to improve module efficiency other than cell size, referencing a document by the U.S. Department of Energy that discussed factors impacting efficiency, i.e. wavelength, temperature and reflection. Exhibit RR-2020-001-35.01A at 44-45.

¹⁵⁸ Exhibit RR-2020-001-34.02A (protected) at para. 14; Exhibit RR-2020-001-33.02B at para. 14.

producing 144M M6 bifacial modules with 450 watts (and bifacial power gain of 495 to 540 watts) and efficiency of 20.43 percent. Its monofacial modules will have a 20.92 percent efficiency with 460 watts.¹⁵⁹

[140] In the present case, the products that are the subject of the exclusion request have never been purchased or used in Canada. In such circumstances, substitutability between these products and the alleged comparable domestic products that could be produced in Canada must be assessed primarily by comparing their physical characteristics. Indeed, the Tribunal cannot compare market characteristics (such as pricing) of the allegedly substitutable domestic goods directly with those of the Requested Products. That said, given CanREA's position that the product specifications of the Requested Products are essential to end users (i.e. bifacial, power output, efficiency and number of cells),¹⁶⁰ the Tribunal is of the view that it can nonetheless assess substitutability based on product characteristics.

[141] In this respect, the Tribunal does not find that the products described by the domestic producers meet the specifications of the Requested Products in terms of power output, efficiency and number of cells. The proposed modules are also not made from the larger M10 solar cells.

[142] The Tribunal therefore finds that the domestic industry's products described above would not be directly substitutable for the Requested Products. Rather, they appear to be alternative products that could be made available to purchasers either in the absence of the Requested Products being available in the market or if purchasers seek modules with specifications that are different than the Requested Products, e.g. where the purchaser does not require 515-watt modules.¹⁶¹

[143] However, the above conclusion does not mean that granting an exclusion for the Requested Products would not be injurious to the domestic industry. Given the novelty of the products at issue and the fact that they have yet to be used in Canada, as discussed above, the Tribunal must also consider whether granting the requested exclusion would prevent the domestic producers from producing identical or similar products. In this regard, the Tribunal finds that there is sufficient evidence that the domestic industry will likely produce identical or substitutable products in the near to medium term.

[144] First, the domestic industry has deployed or will deploy in the near future the equipment necessary for manufacturing products substitutable for the Requested Products. For instance, Heliene confirmed that it has deployed half-cell/split-cell technology, technology reducing cell-to-cell gaps (since 2018) and gallium doping.¹⁶² Heliene also indicated that it has purchased equipment that will be in operation by the third quarter of 2021 which is compatible for up to M12 solar cells (full and half cells) using 9 to 15 busbars. The capacity addition represented a significant investment in its

¹⁵⁹ Heliene also noted that in the first quarter of 2021, it would start producing modules using 166-mm² cells (sliced into halves). Exhibit RR-2020-001-33.01B at paras. 6, 8.

¹⁶⁰ Exhibit RR-2020-001-32.01B at paras. 19-22, 25-29.

¹⁶¹ In this regard, the domestic industry submitted that the specifications for PV modules required by solar farms can vary depending on different factors such as the geographic location of the site, requirements of the developer or financing institution, as well as costs for installation (which may be higher for larger modules), design and insurance. The bifacial gain achievable with a product can also be a factor in the purchasing decision. Exhibit RR-2020-001-39 at 2, 4, 5; Exhibit RR-2020-001-40 at 1-2. CanREA confirmed that there were higher costs associated with higher-output/efficiency modules that could be offset by resulting cost savings elsewhere (such as lower land costs). Exhibit RR-2020-001-41 at 1.

¹⁶² Exhibit RR-2020-001-39 at 4; Exhibit RR-2020-001-39A (protected) at 4.

production facilities.¹⁶³ Silfab also provided evidence of its deployment of the necessary technology and procurement of equipment that will enable it to manufacture the Requested Products.¹⁶⁴

[145] Second, the domestic industry provided evidence of its ability to procure M10 solar cells immediately from offshore sources.¹⁶⁵ In this regard, CanREA argued that, as the domestic industry had not previously sought to establish its supply chain and only made inquiries during this review, the intention of the domestic industry to produce the Requested Products is not genuine. The Tribunal is not persuaded by this argument. This is an industry in which technological developments occur quickly. As noted by Mr. Maccario, “[s]olar cells that are available today were not available last year or even a few months ago.”¹⁶⁶

[146] Furthermore, the evidence on the record supports the view that the required solar cells have only recently become commercially available. According to one publication, production of M10 wafers used in PV modules was expected to begin in the fourth quarter of 2020 and become widely available in the first half of 2021.¹⁶⁷ Furthermore, there is no evidence on the record of purchase orders, project specifications or any other documentation demonstrating that there is a past or immediate demand for the Requested Products in the Canadian market. Accordingly, the Tribunal finds it reasonable that the domestic industry has only recently begun to confirm its suppliers for the larger solar cells.

[147] CanREA also made several arguments questioning whether the domestic producers would be active suppliers of the Requested Products. In this regard, CanREA’s position is essentially that the domestic industry’s production will not be sufficient to meet the demand for the Requested Products in the Canadian market.

[148] The Tribunal has previously stated that insignificant levels of production by the domestic industry are not sufficient for it to be regarded as an active supplier. The absence of sufficient production (i.e. production that is more than a one-off occurrence) would normally indicate that the granting of an exclusion would not result in injury to the domestic industry.¹⁶⁸ However, this factor is difficult to apply in the current context where present and future market demand for the Requested Products remains unclear. Furthermore, the Tribunal is attempting to assess the domestic industry’s likely future production capabilities, not its previous levels of production.

[149] In any event, the Tribunal is not convinced that the domestic producers’ production is likely to be insignificant. As discussed below, having regard to the novel nature of the Requested Products and the prospective market for them in Canada, the Tribunal finds that CanREA’s submissions are contradicted by the preponderant evidence on the record and are speculative or premature. Furthermore, the Tribunal has stated that there is no requirement that the domestic industry be able to

¹⁶³ Exhibit RR-2020-001-39 at 6, 7; Exhibit RR-2020-001-34.01A (protected) at 4, 16-40.

¹⁶⁴ Exhibit RR-2020-001-34.02A (protected) at 6, 31, 32; Exhibit RR-2020-001-40 at 5; Exhibit RR-2020-001-40A (protected) at 5, 12-52.

¹⁶⁵ Exhibit RR-2020-001-33.05 at para. 7; Exhibit RR-2020-001-34.05 (protected) at 4, 6-10.

¹⁶⁶ Exhibit RR-2020-001-33.02B at para. 8-9, 11-12. Mr. Maccario’s witness statement includes a table showing the rate of these technological advancements. See also Exhibit RR-2020-001-33.01B at para. 8.

¹⁶⁷ Exhibit RR-2020-001-37.08 at 3.

¹⁶⁸ *Carbon Steel Screws* at para. 235.

supply the entire Canadian market. The key question is whether granting the exclusion will cause injury to the domestic industry.¹⁶⁹

[150] CanREA submitted that the domestic industry lacks relevant experience in supplying modules for solar farms, as it has been predominately focused on mono-facial and lower-power bifacial PV modules, primarily supplying the rooftop and solar carport markets, and is focused on its export sales.¹⁷⁰ CanREA also took issue with Silfab's alleged lack of experience with unsubsidized utility-scale solar farms.

[151] Based on the evidence on the record, the Tribunal does not agree. The evidence indicates that a significant proportion of Heliene's sales over the POR were from solar farms.¹⁷¹ Silfab also confirmed that it produced modules for solar farms in the United States during the POR and had project experience in Canada in 2013-2014, when the domestic solar farm market was more robust.¹⁷² Silfab's quarterly sales to solar farms during this period were significant.¹⁷³ Although Silfab's more recent sales have mostly been to residential customers,¹⁷⁴ the Tribunal does not find that this precludes it from positioning itself for growth in the utility-scale solar industry.

[152] Similarly, the Tribunal does not find that significant export sales over the POR preclude the domestic industry from planning to supply products identical to the Requested Products or similar products in the Canadian market. The importance of the domestic industry's domestic sales in the near to medium term has already been addressed in the Tribunal's analysis of the likelihood of injury if the finding is rescinded. Also discussed in the Tribunal's likelihood of injury analysis is the role that the government will play in supporting renewable energy projects in Canada. In this landscape, the Tribunal does not find the producers' previous experience supplying unsubsidized projects to be particularly relevant to its capacity to produce the new PV modules.

[153] CanREA also submitted that the domestic producers' capacity to produce the higher power modules would be constrained by the limited supply of the larger solar cells, as wholesalers would prioritize supplying larger and more influential manufacturers. However, there is no evidence that the domestic producers face challenges in procuring the necessary components. CanREA's submissions are also inconsistent with evidence of increasing global solar cell production.¹⁷⁵

[154] Another issue raised by CanREA was the bankability of the domestic producers. As noted in *Solar Modules*, bankability refers to whether end users can obtain third party financing approval if the solar modules are produced by the domestic producers.¹⁷⁶ In other words, if the domestic

¹⁶⁹ *Oil Country Tubular Goods* (2 April 2015), NQ-2014-002 (CITT) at paras. 296, 297.

¹⁷⁰ Mr. Nicholas Gall, of CanREA, cited a 2017 Export Development Canada case study in which Silfab's Executive Advisor noted that 98 percent of its company's Canadian production was exported. Exhibit RR-2020-001-35.01A at para. 27.

¹⁷¹ Exhibit RR-2020-001-33.01B at para. 16; Exhibit RR-2020-001-34.01A (protected) at para. 16; Exhibit RR-2020-001; Exhibit RR-2020-001-39 at 7; Exhibit RR-2020-001-39A (protected) at 7.

¹⁷² Exhibit RR-2020-001-40 at 6; Exhibit RR-2020-001-40A (protected) at 6; Exhibit RR-2020-001-33.02B at para. 20; Exhibit RR-2020-001-34.02A (protected) at para. 20.

¹⁷³ Exhibit RR-2020-001-40 at 6; Exhibit RR-2020-001-40A (protected) at 6.

¹⁷⁴ Exhibit RR-2020-001-33.02B (protected) at para. 23.

¹⁷⁵ For instance, the IEA reported a 14 percent increase in production levels in 2019 from 2018, and cell manufacturers were expected to add nearly 100 GW of capacity globally by the end of 2020. Exhibit RR-2020-001-A-01 at 156, 292.

¹⁷⁶ *Solar Modules* at para. 211.

producers are not bankable, it is more unlikely that developers will seek to be supplied by them. While the domestic producers provided evidence of their bankability,¹⁷⁷ CanREA contested its credibility and argued that the most indicative sign of bankability is the number of projects executed by the producer. On this basis, CanREA submitted that Heliene and Silfab do not have strong bankability.

[155] The Requested Products are new and seemingly untested products in the Canadian market. In this regard, the domestic industry submitted that they have not gained wide acceptance in North America. For instance, the products have not been certified by the California Energy Commission, which according to the domestic industry is a mandatory requirement for modules used in North America.¹⁷⁸ North American developers are described as being cautious, awaiting more field data before switching to the increased module size.¹⁷⁹ Although CanREA submitted that developers worldwide are actively procuring the higher power modules,¹⁸⁰ the evidence remains uncontroverted that the Requested Products are new for the Canadian market.

[156] As such, the Tribunal is of the view that purchasing decisions will not be based solely on the domestic producers' bankability, but that the new modules' quality and performance will be an important factor. This view appears to be consistent with information cited by CanREA from the International Finance Corporation's Project Developer's Guide, which indicated that lists of bankable module manufacturers can quickly become dated as new products and quality procedures are introduced.¹⁸¹ Based on the foregoing, the Tribunal is not persuaded that the domestic producers' bankability will prevent them from supplying the Requested Products.

[157] CanREA also submitted that the domestic industry's position is essentially that of retardation and that it has not established a reasonable indication of retardation. The Tribunal does not agree. The retardation analysis would not apply in the context of this expiry review given that, as noted above, there is an established domestic industry.¹⁸² Rather, the issue is whether granting the exclusion would cause injury by undermining the domestic industry's ability and intent to produce products that are identical to, or substitutable for, the products for which exclusions are requested. In short, where there is evidence of a firm intention to begin producing such products, an exclusion should not be granted.

[158] In sum, the Tribunal finds that the domestic industry will likely, in the near to medium term, be capable of producing goods that would compete with the Requested Products and there is sufficient evidence that it is actively planning for production. Given the domestic industry's desire to focus on the Canadian market and improve sales volumes, the Tribunal has been persuaded that the domestic industry intends to be an active supplier of products identical or similar to the Requested Products. The Tribunal also finds that the domestic industry will not be able to become a supplier of

¹⁷⁷ Heliene referred to its Bloomberg Tier 1 listing recognition and Silfab referred to its scoring by PVEL. Exhibit RR-2020-001-33.05 at para. 8; Exhibit RR-2020-001-34.01A (protected) at 14, 15; Exhibit RR-2020-001-33.06 at para. 19.

¹⁷⁸ Exhibit RR-2020-001-33.06 at paras. 9-11. Silfab noted that this would exclude small sales if local certifications had been achieved. Exhibit RR-2020-001-40 at footnote 7.

¹⁷⁹ Exhibit RR-2020-001-33.05 at para. 9.

¹⁸⁰ Exhibit RR-2020-001-35.01B at 11, 17.

¹⁸¹ See Exhibit RR-2020-001-35.01B, footnote 2 at 16. Bloomberg notes similar considerations. See Exhibit RR-2020-001-34.05 (protected) at 11.

¹⁸² See footnote 6. *Xanthates* (3 March 2008) RR-2007-002 (CITT) at footnote 7; *Wood Slats* (15 July 2009) RR-2008-003 (CITT) at footnote 10.

such products if it is forced to compete with the Requested Products at dumped and subsidized prices. Granting the exclusion would therefore likely cause imminent future injury to the domestic industry in respect of any market share that domestic producers would be able to secure with their production.

[159] Consequently, the exclusion request is denied.

Peter Burn

Peter Burn
Presiding Member

Georges Bujold

Georges Bujold
Member

Randolph W. Heggart

Randolph W. Heggart
Member