Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Dumping and Subsidizing

FINDING AND REASONS

Inquiry No. NQ-2020-004

Concrete Reinforcing Bar

Finding issued
Friday, June 4, 2021

Reasons issued
Monday, June 21, 2021

Corrigendum issued
Tuesday, July 27, 2021

Canada

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

CONCRETE REINFORCING BAR

FINDING

The Canadian International Trade Tribunal, pursuant to the provisions of section 42 of the *Special Import Measures Act* (*SIMA*), has conducted an inquiry to determine whether the dumping of hot-rolled deformed steel concrete reinforcing bar in straight lengths or coils, commonly identified as rebar, in various diameters up to and including 56.4 millimetres, in various finishes, excluding plain round bar and fabricated rebar products, originating in or exported from the People's Democratic Republic of Algeria, the Arab Republic of Egypt, the Republic of Indonesia, the Italian Republic, Malaysia, the Republic of Singapore and the Socialist Republic of Vietnam, has caused injury or retardation or is threatening to cause injury, as these words are defined in *SIMA*. The product definition also excludes "10 mm diameter (10M) rebar produced to meet the requirements of CSA G30 18.09 (or equivalent standards) that is coated to meet the requirements of epoxy standard ASTM A775/A 775M 04a (or equivalent standards) in lengths from 1 foot (30.48 cm) up to and including 8 feet (243.84 cm)".

Further to the Tribunal's inquiry, and following the issuance by the President of the Canada Border Services Agency of a final determination dated May 5, 2021, that the above-mentioned goods have been dumped, the Tribunal hereby finds, pursuant to subsection 43(1) of *SIMA*, that the said dumping has caused injury to the domestic industry.

Peter Burn

Peter Burn
Presiding Member

Georges Bujold

Georges Bujold
Member

Frédéric Seppey

Frédéric Seppey
Member

The statement of reasons will be issued within 15 days.

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

CONCRETE REINFORCING BAR

CORRIGENDUM

In the English version of the statement of reasons for the Tribunal's finding in the above matter, the third and fourth sentences of paragraph 102 should read as follows (footnote omitted):

> Indeed, the data for the interim periods show that the domestic industry's market share stood at 60 percent in interim 2019 and fell to 50 percent in Q4 2020, for a total decrease of 10 percentage points over this period. The domestic industry's market share of 50 percent in Q4 2020 was only 5 percentage points above its market share of 45 percent in 2018, a year during which it was faced with low-priced imports from the *Rebar I* countries.

The above correction was made necessary by the discovery of an error with the data in the Tribunal's investigation report for the present inquiry. The error was only discovered after the hearing in Inquiry No. NQ-2020-005 and affected the Tribunal's investigation reports in the present inquiry and that other inquiry as the reports in both inquiries were generated from data obtained from the same set of responses to the Tribunal's Producers, Importers and Purchasers' questionnaires, as well as enforcement data obtained from the Canada Border Services Agency. Further details regarding the error and its impact on the Tribunal's investigation reports are provided in the Tribunal's statement of reasons for its finding in Inquiry No. NQ-2020-005 (see *Concrete Reinforcing Bar* [19 July 2021], NQ-2020-005 [CITT] at footnotes 63 and 85). The Tribunal hereby confirms that the error only affected paragraph 102 of the present statement of reasons and does not alter the Tribunal's finding that the dumping of the subject goods has caused injury to the domestic industry. The correction will be reflected in the French translation.

Peter Burn

Peter Burn
Presiding Member

Georges Bujold

Georges Bujold
Member

Frédéric Seppey

Frédéric Seppey
Member

Place of Hearing:	Via videoconference
Date of Hearing:	May 7, 2021
Tribunal Panel:	Peter Burn, Presiding Member Georges Bujold, Member Frédéric Seppey, Member
Support Staff:	Alain Xatruch, Lead Counsel Jessye Kilburn, Counsel Gayatri Shankarraman, Lead Analyst Grant MacDougall, Analyst Rebecca Campbell, Analyst Rhonda Heintzman, Analyst Marie-Josée Monette, Data Services Advisor Arthur Grenon, Data Services Advisor

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STATEMENT OF REASONS

INTRODUCTION

[1] The mandate of the Canadian International Trade Tribunal in this inquiry conducted pursuant to section 42 of the *Special Import Measures Act*[1] is to determine whether the dumping of certain concrete reinforcing bar, commonly referred to as rebar, originating in or exported from the People's Democratic Republic of Algeria (Algeria), the Arab Republic of Egypt (Egypt), the Republic of Indonesia (Indonesia), the Italian Republic (Italy), Malaysia, the Republic of Singapore (Singapore) and the Socialist Republic of Vietnam (Vietnam) (the subject goods) has caused injury or is threatening to cause injury to the domestic industry.

[2] The Tribunal has determined, for the reasons that follow, that the dumping of the subject goods has caused injury to the domestic industry.

BACKGROUND

[3] This inquiry stems from a complaint filed with the Canada Border Services Agency (CBSA) on August 4, 2020, by AltaSteel Inc. (AltaSteel), ArcelorMittal Long Products Canada, G.P. (AMLPC) and Gerdau Ameristeel Corporation (Gerdau) (collectively, the complainants), and the subsequent decision by the CBSA, on September 22, 2020, to initiate an investigation into the alleged dumping of the subject goods.

[4] On September 23, 2020, as a result of the CBSA's decision to initiate an investigation, the Tribunal initiated a preliminary injury inquiry pursuant to subsection 34(2) of *SIMA*. On November 23, 2020, the Tribunal determined that there was evidence that disclosed a reasonable indication that the dumping of the subject goods had caused or was threatening to cause injury to the domestic industry.[2]

[5] On February 4, 2021, the CBSA made a preliminary determination of dumping in respect of the subject goods.[3] It also considered that the imposition of a provisional duty was necessary to prevent injury.[4] On February 5, 2021, the Tribunal commenced this inquiry.[5]

[6] The Tribunal's period of inquiry (POI) covered three full years from January 1, 2018, to December 31, 2020, and included two interim periods: January 1, 2019, to September 30, 2019 (interim 2019), and January 1, 2020, to September 30, 2020 (interim 2020).[6]

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

2 *Concrete Reinforcing Bar* (23 November 2020), PI-2020-004 (CITT) [*Rebar III PI*].

3 Exhibit NQ-2020-004-01 at 10-11.

4 *Ibid.* at 11.

5 Exhibit NQ-2020-004-03.

6 The Tribunal selected the same POI (i.e. full years 2018, 2019 and 2020) and issued one set of questionnaires to domestic producers, importers and purchasers for both the present inquiry and another inquiry concerning rebar of the same description originating in or exported from the Sultanate of Oman (Oman) and the Russian Federation (Russia) (Inquiry No. NQ-2020-005), which was initiated, pursuant to subsection 42 of *SIMA*, on March 5, 2021. The interim periods were selected to account for the fact that the CBSA initiated the current investigation at the end of the third quarter of 2020 (i.e. on September 22, 2020) and that data collected for the fourth quarter of 2020 may have been skewed as a result.

[7] As part of this inquiry, a number of known domestic producers, importers, purchasers and foreign producers of rebar were asked to respond to questionnaires from the Tribunal. The Tribunal received replies to its questionnaires from 5 domestic producers of goods meeting the product definition, 13 importers of subject goods and/or goods meeting the product definition, as well as 11 purchasers and 4 foreign producers of such goods.

[8] Using the questionnaire responses and other information on the record, staff of the Secretariat to the Tribunal prepared public and protected investigation reports, which were issued on March 26, 2021.[7] A number of revisions were subsequently made to both the public and protected investigation reports and fully revised reports were issued on April 29, 2021. Further revisions were issued on May 4, 2021.

[9] On April 6, 2021, AltaSteel and AMLPC filed with the Tribunal a number of requests for information (RFIs) directed to Al Ezz Dekheila Steel Company – Alexandria (EZDK), NatSteel Holdings Pte Ltd. (NatSteel), Hoa Phat Dung Quat Steel Joint Stock Company and Hoa Phat Group Joint Stock Company (collectively, Hoa Phat), and two importers of subject goods, which were not participants in this inquiry. EZDK, NatSteel and Hoa Phat did not object to the RFIs directed to them and provided the requested information before the Tribunal could issue a decision. On April 14, 2021, after reviewing the RFIs, and taking into account the rationale for them and the information available on the record, the Tribunal decided that the RFIs directed at the two importers need not be answered.

[10] On April 7, 2021, AltaSteel, AMLPC, Gerdau, Max Aicher (North America) Limited (MANA) and the United Steelworkers (USW)[8] filed case briefs, witness statements and other evidence in support of a finding of injury or threat of injury in respect of the subject goods. On April 14, 2021, EZDK, NatSteel and Hoa Phat filed case briefs, a witness statement and other evidence opposing a finding of injury or threat of injury.[9] AltaSteel, AMLPC, Gerdau and MANA filed reply briefs and additional evidence on April 21, 2021.

[11] On April 9, 2021, the Tribunal issued procedures for the conduct of the hearing, which, due to the public health restrictions related to the COVID-19 pandemic, would proceed by way of written submissions, with the exception of the parties' closing arguments, which would be heard by videoconference. The procedures gave parties the opportunity to suggest written questions to be directed to other parties. Parties were also given the opportunity to file objections to the proposed questions and to reply to any objections.

[12] On April 23, 2021, the Tribunal received suggested questions from Hoa Phat directed at AMLPC and Gerdau. While AMLPC objected to the questions, Gerdau did not. Hoa Phat replied to AMLPC's objection. On April 29, 2021, after having reviewed the suggested questions and considered the objections and replies thereto, the Tribunal directed AMLPC and Gerdau to respond to the questions. The Tribunal received written responses on May 4, 2021.

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7 The protected investigation report containing information designated as confidential was distributed, along with the remainder of the protected record, to counsel who had signed the required declaration and undertaking.

8 The USW is an international trade union representing a number of workers directly or indirectly involved in the production of rebar at AltaSteel, AMLPC and Gerdau (see Exhibit NQ-2020-004-E-01 at 1-2).

9 Although the Delegation of the European Union to Canada and the Ministry of Trade of the Republic of Indonesia filed notices of participation, they did not file any submissions during these proceedings.

[13] On May 7, 2021, the Tribunal heard the parties' closing arguments on the issues of injury and threat of injury by public videoconference.

[14] The Tribunal issued its finding on June 4, 2021.

RESULTS OF THE CBSA'S INVESTIGATION

[15] On May 5, 2021, pursuant to paragraph 41(1)(b) of *SIMA*, the CBSA made a final determination of dumping in respect of the subject goods.[10] The CBSA's period of investigation was from June 1, 2019, to June 30, 2020.[11] The following margins of dumping were calculated by the CBSA for each exporter and subject country:[12]

Country and Exporter	**Margin of Dumping** (% of export price)
Algeria	4.8
Spa Tosyali Iron Steel Industry Algerie	4.8
Egypt	23.1
All Exporters	23.1
Indonesia	3.3
PT Putra Baja Deli	3.3
Italy	23.1
All Exporters	23.1
Malaysia	23.1
All Exporters	23.1
Singapore	23.1
All Exporters	23.1
Vietnam	10.5
Hoa Phat Dung Quat Steel Joint Stock Company	10.5

PRODUCT

Product definition

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

> Hot-rolled deformed steel concrete reinforcing bar in straight lengths or coils, commonly identified as rebar, in various diameters up to and including 56.4 millimeters, in various finishes, excluding plain round bar and fabricated rebar products, originating in or exported from Algeria, Egypt, Indonesia, Italy, Malaysia, Singapore and Vietnam.

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10 Exhibit NQ-2020-004-04 at 17-18.
11 Exhibit NQ-2020-004-04B at para. 13.
12 Exhibit NQ-2020-004-04 at 11.

> Also excluded is 10 mm diameter (10M) rebar produced to meet the requirements of CSA G30 18.09 (or equivalent standards) that is coated to meet the requirements of epoxy standard ASTM A775/A 775M 04a (or equivalent standards) in lengths from 1 foot (30.48 cm) up to and including 8 feet (243.84 cm).[13]

Additional information

[17] The CBSA provided the following additional information with respect to the product, its production process and its use:

> [33] For greater clarity, the rebar considered to be subject goods includes all hot-rolled deformed bar, rolled from billet steel, rail steel, axle steel, low alloy-steel and other alloy steel that does not comply with the definition of stainless steel.
>
> [34] Uncoated rebar, sometimes referred to as black rebar, is generally used for projects in non-corrosive environments where anti-corrosion coatings are not required. On the other hand, anti-corrosion coated rebar is used in concrete projects that are subjected to corrosive environments, such as road salt. Examples of anti-corrosion coated rebar are epoxy or hot-dip galvanized rebar. The subject goods include uncoated rebar and rebar that has a coating or finish applied.
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> [35] Fabricated rebar products are generally engineered using Computer Automated Design programs and are made to the customer's unique project requirements. The fabricated rebar products are normally finished with either a protective or corrosion resistant coating. Rebar that is simply cut-to-length is not considered to be a fabricated rebar product excluded from the definition of subject goods.
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> [36] Rebar is produced in Canada in accordance with the National Standard of Canada CAN/CSA-G30.18-09(R2019) - Carbon Steel Bars for Concrete Reinforcement, (the "National Standard") published by the CSA Group and approved by the Standards Council of Canada.
>
> [37] The following are the most common bar designation numbers for the subject goods in Canada, with the corresponding diameter in millimeters in brackets: 10 (11.3), 15 (16.0), 20 (19.5), 25 (25.2), 30 (29.9), 35 (35.7). Rebar sizes are commonly referred to as the bar designation number combined with the letter "M". For example, 10M rebar is rebar with a bar designation number of 10 and a diameter of 11.3 millimeters. Other diameters may also be demanded, and other measurement systems employed. For example, Imperial measure #7 bar (approximately 22 millimeters) is a common designation used in the mine roofing industry.
>
> [38] The National Standard identifies two grades of rebar, namely regular or "R" and weldable or "W". R grades are intended for general applications while W grades are used where welding, bending or ductility is of special concern. Welded rebar was a premium product for the domestic industry, reflecting the higher cost of alloy steel; however, since all imports have been weldable product, Canadian production has shifted to weldable as a standard product. Weldable rebar is substitutable for regular rebar in all applications, though the reverse does not hold.

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13 *Ibid.* at 17.

[39] The National Standard also identifies yield strength levels of 300, 400, 500 and 600. This number refers to the minimum yield strength and is measured in megapascal ("MPa"). The grade and yield strength of rebar is identified by combining yield strength number with grade. Regular rebar with a yield strength of 400 MPa is 400R and 400W is weldable rebar with a yield strength of 400 MPa. Yield strength is measured with an extensometer in accordance with the requirements of section 9 of the National Standard.

[40] The standard lengths for rebar are 6 metres (20 feet), 12 metres (40 feet) and 18 metres (60 feet); although rebar can be cut and sold in other lengths as specified by customers or old in coils.

Production Process

[41] Deformed steel concrete reinforcing bar can be produced in an integrated steel production facility or using ferrous scrap metal as the principal raw material. Scrap metal is melted in an electric arc furnace and is further processed in a ladle arc-refining unit. The molten steel is then continuously cast into rectangular billets of steel that are cut-to-length. An integrated facility would also produce billets from molten steel. The billets are then rolled into various sizes of rebar which are cut to various lengths depending on the customers' requirements.

[42] Deformed rebar is rolled with deformations on the bar which provides gripping power so that concrete adheres to the bar and provides reinforcing value. The deformations must conform to requirements set out in national standards.

Product Use

[43] Rebar is used in a number of applications, the most common of which is construction. Rebar is most commonly used to reinforce concrete and masonry structures. It enhances the compressional and tensional strength of concrete and helps prevent the concrete from cracking during curing or following changes in temperature. Rebar is also known as "reinforcing steel bar".[14]

[Footnotes omitted]

LEGAL FRAMEWORK

[18] The Tribunal is required, pursuant to subsection 42(1) of *SIMA*, to inquire as to whether the dumping of the subject goods has caused injury or retardation[15] or is threatening to cause injury, with "injury" being defined, in subsection 2(1), as ". . . material injury to a domestic industry". In this regard, "domestic industry" is defined in subsection 2(1) by reference to the domestic production of "like goods".

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14 Exhibit NQ-2020-004-04B at 7-9.

15 Subsection 2(1) of *SIMA* defines "retardation" as ". . . material retardation of the establishment of a domestic industry". As a domestic industry is already established, the Tribunal will not need to consider the question of retardation.

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

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

[21] The Tribunal can then assess whether the dumping of the subject goods has caused material injury to the domestic industry.[16] Should the Tribunal arrive at a finding of no material injury, it will determine whether there exists a threat of material injury to the domestic industry.[17]

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

[23] As a preliminary matter, the Tribunal notes that EZDK, NatSteel and Hoa Phat contended that the burden of proof in injury inquiries falls squarely on parties that are in support of a finding of injury or threat of injury and that any doubt must be resolved in favour of no injury. They added that the Tribunal is under no obligation to find injury, even in cases that are unopposed.

[24] No party has an onus *per se* to prove its position in an injury inquiry.[18] For example, domestic producers in this case are under no strict obligation to prove that the dumping of the subject goods has caused injury or threatens to cause injury. The Tribunal conducts its inquiry and makes a finding on the basis of its assessment of all information before it, including that which it seeks and gathers on its own.[19] That being said, the domestic producers are in the best position to provide evidence in support of a finding of injury or threat thereof.[20] By the same token, all parties have a practical and vested interest in putting their best foot forward.

LIKE GOODS AND CLASSES OF GOODS

[25] In order for the Tribunal to determine whether the dumping of the subject goods has caused or is threatening to cause injury to the domestic producers of like goods, it must determine which

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

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

18 *Stelco Inc. v. Canada (Canadian International Trade Tribunal)*, [1995] F.C.J. No. 832 (CA). See also *Aluminum Extrusions* (17 March 2014), RR-2013-003 (CITT) at para. 34 where the Tribunal similarly stated that no party has the onus to prove its position in the context of an expiry review.

19 The Tribunal's findings must be based on positive evidence, as required by Article 3.1 of the World Trade Organization (WTO) Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 [Anti-dumping Agreement] (online at: https://www.wto.org/english/docs_e/legal_e/19-adp.pdf).

20 In reality, without the evidence normally provided by domestic producers, it may be difficult to make a finding of injury or threat of injury. See, for example, *Frozen Self-rising Pizza* (18 August 2004), NQ-2004-003 (CITT) where, a few days before the hearing, the complainant withdrew its case brief and all evidence that it had submitted, which the Tribunal found detracted from the probative value and persuasiveness of the complaint and remaining evidence on the record. The Tribunal found no injury or threat of injury in that case.

domestically produced goods, if any, constitute like goods in relation to the subject goods. The Tribunal must also assess whether there is, within the subject goods and the like goods, more than one class of goods.[21]

[26] 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.

[27] 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).[22]

[28] In addressing the issue of classes of goods, the Tribunal typically examines whether goods potentially included in separate classes of goods constitute "like goods" in relation to each other. If those goods are "like goods" in relation to each other, they will be regarded as comprising a single class of goods.[23]

[29] In previous proceedings concerning rebar, the Tribunal has consistently found, taking into account the above factors, that domestically produced rebar of the same description as the subject imported rebar was "like goods" in relation to the subject imported rebar and that there was a single class of goods.[24] Notably, in *Rebar I*, the Tribunal found that the subject goods and domestically produced rebar were commodity products that competed with one another in the Canadian marketplace on the basis of price and were otherwise fully interchangeable.[25] It also found that uncoated (or black) rebar and coated rebar fell under the same continuum of goods and were, under the right circumstances, sufficiently substitutable for one another to justify the consideration of a single class of goods.[26]

[30] As none of the parties challenged these previous findings on the issues of like goods and classes of goods, either in the preliminary or final injury inquiry, and in the absence of any evidence to the contrary, the Tribunal sees no reason to reach a different conclusion in this inquiry.

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

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

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

24 See *Concrete Reinforcing Bar* (9 January 2015), NQ-2014-001 (CITT) [*Rebar I*] at paras. 47, 79; *Concrete Reinforcing Bar* (3 May 2017), NQ-2016-003 (CITT) [*Rebar II*] at para. 45; *Concrete Reinforcing Bar* (14 October 2020), RR-2019-003 (CITT) [*Rebar I Review*] at para. 33. See also *Safeguard Inquiry into the Importation of Certain Steel Goods* (3 April 2019), GC-2018-001 (CITT) [*Steel Safeguard Inquiry*] at 52-53 where the Tribunal, in a safeguard inquiry conducted pursuant to paragraph 20(2)(a) of the *Canadian International Trade Tribunal Act*, found that domestically produced rebar was "like or directly competitive goods" to the subject imported rebar.

25 *Rebar I* at para. 47.

26 *Ibid.* at para. 74.

[31] The Tribunal will therefore conduct its analysis on the basis that domestically produced rebar of the same description as the subject goods constitutes "like goods" in relation to the subject goods and that there is a single class of goods.

DOMESTIC INDUSTRY

[32] 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.

[33] The Tribunal must therefore determine whether there has been injury, or whether there is a threat of injury, to the domestic producers as a whole or those domestic producers whose production represents a major proportion of the total production of like goods.[27]

[34] During the POI, there were five known domestic producers of rebar: AltaSteel, AMLPC, Gerdau, MANA and Ivaco Rolling Mills 2004 L.P. (Ivaco). As these producers accounted for all known domestic production of like goods over the POI, they constitute the domestic industry for the purposes of this inquiry.

[35] The Tribunal notes that, while it received questionnaire responses from all five domestic producers, Ivaco's response was incomplete as it did not provide its financial results or information pertaining to some of the other performance indicators normally considered by the Tribunal as part of its injury analysis. However, given that the collective production of the like goods by the other four domestic producers accounted for nearly all known domestic production,[28] the Tribunal considers that the performance of these four producers is reasonably representative of the state of the entire domestic industry.

CUMULATION

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

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

28 Exhibit NQ-2020-004-07.H (protected), Table 23.

Insignificance and negligibility

[37] Under subsection 2(1) of *SIMA*, "insignificant" means, in relation to a margin of dumping, a margin that is less than 2 percent of the export price of the goods and "negligible" means a volume that represents less than 3 percent of the total volume of goods meeting the product definition that are released into Canada from all countries.

[38] As seen above, the margins of dumping for each of the subject countries, as reported by the CBSA in its final determination, were greater than 2 percent and therefore not "insignificant".[29]

[39] In assessing whether the volume of dumped goods from a country is negligible, the Tribunal typically considers import volumes during the CBSA's period of investigation,[30] which in this case spanned the 13-month period from June 1, 2019, to June 30, 2020. During this period, the volumes of dumped goods from each of the subject countries, as reported by the CBSA in its final determination, were greater than 3 percent of the total volume of imports meeting the product definition and therefore not "negligible".[31]

Conditions of competition

[40] Having determined that the margins of dumping were not insignificant and that the volumes of dumped goods were not negligible, the Tribunal will now determine whether an assessment of the cumulative effect of the dumping of goods from the seven subject countries is appropriate taking into account the conditions of competition between the goods of each of those countries and/or between those goods and the domestically produced like goods.

[41] Factors the Tribunal typically considers in assessing conditions of competition between subject goods and like goods include interchangeability, quality, pricing, distribution channels, modes of transportation, timing of arrivals and geographic dispersion. The Tribunal may also consider other factors in deciding whether the exports of a particular country should be cumulated, and no single factor is determinative.[32]

[42] AltaSteel and AMLPC submitted that a cumulative assessment is warranted in this case because rebar is a fungible product and the subject goods compete head-to-head with each other and with the domestically produced like goods at common customers across Canada. They also noted that the Tribunal found it appropriate to make a cumulative assessment of the subject goods from all countries in both *Rebar I* and *Rebar II*. They submitted that the factors which support cumulation are the same with respect to the subject countries in the present case. Gerdau made similar submissions in support of a cumulative assessment.

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29 Exhibit NQ-2020-004-04 at 11.

30 See, for example, *Heavy Plate* (5 February 2021), NQ-2020-001 (CITT) [*Heavy Plate*] at para. 66; *Corrosion-resistant Steel Sheet* (16 November 2020), NQ-2019-002 (CITT) at para. 58; *Rebar I* at para. 92. This approach is consistent with Canada's notification to the WTO Committee on Anti-Dumping Practices, which provides that it will normally make this assessment with reference to the volume of dumped imports during the period of data collection for the dumping investigation, i.e. the CBSA's period of investigation. See *Notification Concerning the Time-Period for Determination of Negligible Import Volumes Under Article 5.8 of the Agreement*, G/ADP/N/100/CAN.

31 Exhibit NQ-2020-004-06.H, Table 22.

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

[43] For their part, EZDK, NatSteel and Hoa Phat did not make submissions or present any evidence in support of a decumulated assessment. In fact, during the hearing, they acknowledged that they had not done so and implied that cumulation was appropriate by stating that the law seemed "fairly well established on this".[33]

[44] The Tribunal has repeatedly found that rebar is a commodity product that competes on the basis of price.[34] There is no indication that this has changed as 8 of the 11 respondents to the Tribunal's purchasers' questionnaire stated that the lowest-priced goods always or usually win the sale.[35] Moreover, 10 of the 11 respondents indicated that the lowest net price was a very important factor used in purchasing decisions.[36]

[45] The evidence on the record also confirms the interchangeable nature of the subject goods from each of the seven subject countries with domestically produced like goods, with nearly all respondents to the Tribunal's purchasers' questionnaire indicating that the goods are always or usually interchangeable.[37]

[46] As for the remaining factors typically considered by the Tribunal in assessing conditions of competition, the evidence largely supports cumulation. The subject goods and the domestically produced like goods are both sold directly to distributors and end users (i.e. fabricators),[38] and in the same geographical markets within Canada.[39] The subject goods are also shipped to Canada using the same mode of transportation (ocean freight) and, although there is a certain lag in the timing of their arrival due to shipping times,[40] they were nonetheless present in the market throughout the POI[41] and therefore clearly in competition with the like goods.

[47] In light of the foregoing, the Tribunal is satisfied that an assessment of the cumulative effect of the dumping of the subject goods from all seven subject countries is appropriate in the circumstances.[42]

INJURY ANALYSIS

[48] Subsection 37.1(1) of the *Special Import Measures Regulations*[43] prescribes that, in determining whether the dumping has caused material injury to the domestic industry, the Tribunal is to consider the volume of the dumped goods, their effect on the price of like goods in the domestic market, and their resulting impact on the state of the domestic industry. Subsection 37.1(3) also directs the Tribunal to consider whether a causal relationship exists between the dumping of the

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33 *Transcript of Public Hearing* at 123-124, 136, 158-159.
34 *Rebar I* at para. 47; *Rebar II* at para. 68; *Rebar I Review* at paras. 228, 233.
35 Exhibit NQ-2020-004-06.H, Table 16.
36 *Ibid*., Table 19.
37 *Ibid*., Table 7.
38 *Ibid*., Tables 1, 3.
39 Exhibit NQ-2020-004-07.H (protected), Table 83.
40 Exhibit NQ-2020-004-06.H, Table 7.
41 Exhibit NQ-2020-004-07.H (protected), Table 28.
42 The Tribunal therefore considered volumes and prices of subject imports from all subject countries on a cumulative basis. As such, submissions made by EZDK, NatSteel and Hoa Phat that pertained to the discrete price effects and impact of imports from individual subject countries (i.e. Egypt, Singapore or Vietnam on a decumulated basis) were considered legally irrelevant.
43 SOR/84-927 [*Regulations*].

goods and the injury on the basis of the factors listed in subsection 37.1(1), and whether any factors other than the dumping have caused injury.

[49] Before proceeding with its injury analysis, the Tribunal will first provide some context for that analysis by summarizing important developments that have occurred since the time it made its finding in *Rebar I* and that have shaped the rebar market during the POI.

Context for the injury analysis

[50] Rebar, the most basic of long products, is the quintessential commodity product, with competition occurring primarily on the basis of price. Nevertheless, the Tribunal considers that rebar plays an important role in the economics of long product production, as its production can plausibly be managed to optimize capacity utilization on production lines making a range of more valuable long products. Furthermore, the Tribunal is cognizant that rebar sales may enhance overall profitability provided it is sold at a price that covers variable costs and makes a contribution to fixed costs.

[51] This case (*Rebar III*) is best understood as part of a longer story of rebar "source switching" by importers in the Canadian market within the broader context of border barriers against steel imports in a variety of leading steel markets.

[52] In January 2015, the Tribunal found, in *Rebar I*, that the dumping of rebar from China, Korea and Turkey (the *Rebar I* countries), as well as the subsidizing of rebar from China, were threatening to cause injury to the domestic industry. This finding remains in place, having been continued by the Tribunal in October 2020 following the conduct of an expiry review.[44]

[53] In May 2017, the Tribunal found, in *Rebar II*, that the dumping of rebar from Belarus, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei), Hong Kong, Japan, Portugal and Spain (the *Rebar II* countries) had caused injury to the domestic industry. This finding will expire in May 2022, unless the Tribunal initiates an expiry review before then.

[54] In March 2018, acting pursuant to Section 232 of the *U.S. Trade Expansion Act of 1962*, the United States imposed tariff surcharges of 25 percent on imports of steel products, including rebar, from most countries (Section 232 measures). Although Canada was initially excluded from the application of the Section 232 measures, the United States extended them to Canada on May 31, 2018. On July 1, 2018, Canada responded by imposing retaliatory tariffs, i.e. a 25 percent surtax on imports of certain products, including rebar, from the United States.[45] On May 17, 2019, the United States and Canada reached an agreement whereby the United States agreed to eliminate all tariffs imposed pursuant to the Section 232 measures on imports of steel products from Canada, and Canada agreed to eliminate all retaliatory tariffs.[46]

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44 See *Rebar I Review*.

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

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

[55] In October 2018, the Government of Canada imposed provisional safeguard measures on seven classes of steel products, including rebar, from nearly all sources.[47] In the context of the subsequent safeguard inquiry, the Tribunal found, in April 2019, that the importation of rebar into Canada from all sources (except for a small number of countries that were excluded from the inquiry) had not caused serious injury and was not threatening to cause serious injury to domestic producers of like or directly competitive goods.[48] This led to the removal of the provisional safeguard measures on rebar.

[56] In the *Steel Safeguard Inquiry*, the Tribunal found that the significant increase in the importation of rebar into Canada in the first half of 2018 was largely attributable to Turkish rebar, which began reappearing in the Canadian market in the first half of 2017.[49] The Tribunal was of the view that the increase in imports of Turkish rebar resulted primarily from the rapid and sustained depreciation of Turkey's currency, the lira, which allowed exporters that had been issued normal values expressed in their own currency to lower the price at which they could export rebar to Canada without incurring anti-dumping duties.[50] In December 2018, the CBSA addressed this problem by updating the normal values applicable to certain rebar exported to Canada by two Turkish exporters and by expressing them in U.S. dollars instead of Turkish lira.[51] Imports from the *Rebar I* countries (which include Turkey) decreased dramatically in 2019.[52]

[57] On December 4, 2020, less than two weeks after the Tribunal issued its preliminary determination of injury in the present case, the CBSA, on its own initiative, initiated an investigation into the potentially injurious dumping of rebar from Oman and Russia (*Rebar IV*). On January 25, 2021, the Tribunal issued its preliminary determination, finding that there was evidence that disclosed a reasonable indication that the dumping was threatening to cause injury to the domestic industry.[53] On March 4, 2021, the CBSA made a preliminary determination of dumping with respect to these goods. The CBSA made a final determination of dumping on June 2, 2021.[54]

[58] Finally, the COVID-19 pandemic affected domestic and international markets for rebar. Major end-user markets for steel products plummeted in March and April 2020 and began recovering in May and June 2020, but regional variation in recovery is wide, and steel consumption may need years to recover, according to some forecasts.[55]

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47 *Order Imposing a Surtax on the Importation of Certain Steel Goods*, SOR/2018-206, online: <https://laws-lois.justice.gc.ca/eng/regulations/SOR-2018-206/FullText.html>. The Tribunal notes that, while stainless steel rebar was not excluded from the product definition in the *Steel Safeguard Inquiry*, it was excluded from the product definition in *Rebar I*, *Rebar II* and the present inquiry. See *Steel Safeguard Inquiry* at 51.

48 See *Steel Safeguard Inquiry*. Subsection 2(1) of the *Canadian International Trade Tribunal Act* defines "serious injury" as a "significant overall impairment in the position of the domestic producers". This has been held by the Tribunal to be more than the injury threshold applicable in the context of injury inquiries under *SIMA*, which is that of "material injury" (see *Steel Safeguard Inquiry* at 26).

49 *Steel Safeguard Inquiry* at 57.

50 *Ibid.*

51 *Ibid.* at 64-65.

52 Exhibit NQ-2020-004-07.H (protected), Table 24.

53 *Concrete Reinforcing Bar* (25 January 2021), PI-2020-005 (CITT).

54 Online: <https://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/rb42020/rb42020-nf-eng.html>.

55 See, for example, Exhibit NQ-2020-004-A-01 at 265.

Import volume of dumped goods

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

[60] In absolute terms, the volume of subject imports increased by 160 percent in 2019 as compared to 2018 and by 27 percent in 2020 as compared to 2019.[56] The volume of subject imports also increased by 85 percent in interim 2020, when compared to interim 2019.

[61] Although these figures clearly show that the largest increase in the volume of subject imports occurred in 2019, the data in the Tribunal's investigation report show that more than half of all subject imports in 2019 entered the country in the fourth quarter alone.[57] This suggests that importers and exporters of subject goods seized the market opportunity caused by the virtual cessation of imports from the *Rebar I* countries in 2019,[58] following the update of normal values for two Turkish exporters by the CBSA in December 2018, and by the removal of the provisional safeguard measures by the government of Canada in the second quarter of 2019 (Q2 2019).

[62] Indeed, the share of total imports held by the subject goods increased by 39 percentage points from 2018 to 2019, whereas the share held by all non-subject imports from importers decreased by 34 percentage points over this period, largely the result of the precipitous drop in imports of rebar from the *Rebar I* countries.[59] The share of total imports held by the subject goods continued to increase in 2020, managing a gain of 6 percentage points, which was mirrored by a decrease of 6 percentage points in the share of total imports held by all non-subject imports from importers.

[63] Relative to domestic production, the volume of subject imports increased by 22 percentage points in 2019 and by a further 12 percentage points in 2020, for a total increase of 34 percentage points over the POI.[60] Relative to domestic sales of domestic production, the volume of subject imports followed a similar trend, increasing by 22 percentage points in 2019 and by a further 14 percentage points in 2020, for a total increase of 36 percentage points over the POI. The total Canadian market remained relatively stable over this period, decreasing by 2 percent in 2019, before rising by 5 percent in 2020.[61]

[64] On the basis of the foregoing, the Tribunal finds that, over the POI, there was a significant increase in the volume of subject imports, both in absolute and relative terms.

Price effect of dumped goods

[65] Paragraph 37.1(1)(b) of the *Regulations* directs the Tribunal to consider the effect of the dumped goods on the price of like goods and, in particular, whether the dumped goods have significantly undercut or depressed the price of like goods, or suppressed the price of like goods by

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56 Exhibit NQ-2020-004-06.H, Table 25.

57 Exhibit NQ-2020-004-07.H (protected), Table 24. This can readily be observed by subtracting the total volume of subject imports for interim 2019 from the total volume of subject imports for 2019 as a whole, which yields the volume of imports for the fourth quarter.

58 Exhibit NQ-2020-004-07.H (protected), Table 24.

59 *Ibid.*, Table 26.

60 Exhibit NQ-2020-004-06.H, Table 27.

61 *Ibid.*, Table 29.

preventing the price increases for those like goods that would otherwise likely have occurred. In this regard, the Tribunal distinguishes the price effect of the dumped goods from any price effects that have resulted from other factors affecting prices.

[66] As stated above, the Tribunal has consistently found that imported rebar and domestically produced rebar are fully interchangeable commodity products that compete with one another in the Canadian market on the basis of price. Price is therefore a key consideration affecting purchasing decisions. This is consistent with the evidence gathered by the Tribunal in the present inquiry.[62]

Price undercutting

[67] Before the Tribunal can assess whether the subject goods undercut the price of domestically produced like goods over the POI, it must determine whether it is still appropriate to account for a domestic price premium, previously found by the Tribunal to be enjoyed by domestic producers.[63]

[68] In *Rebar I*, the Tribunal found that domestic producers enjoyed a $25 to $40 per tonne domestic price premium and proceeded to deduct a representative $30 per tonne from the average annual price per tonne of sales from domestic production in order to account for the premium.[64] The Tribunal also accounted for this domestic price premium in *Rebar II* and the *Steel Safeguard Inquiry*, where, in the case of the latter, it also considered evidence that, in some cases, the premium is even less, at $0 to $10 per tonne.[65]

[69] The complainants submitted that, in their experience, the domestic price premium is generally in the range of $15 to $40 per tonne for customers willing to pay a premium but that, in many instances, there is no premium as customers expect domestic producers to match the import price.[66] The investigation report shows that 6 of the 11 respondents to the Tribunal's purchasers' questionnaire indicated that they were not willing to pay a domestic price premium.[67] For those that reported that they were, the average of the premiums they were willing to pay was $83 per tonne.[68] However, when considering all 11 respondents, the average premium drops to $33 per tonne. The Tribunal is satisfied that continuing to deduct a representative $30 per tonne from domestic selling prices in order to account for the premium is both appropriate and reasonable in the circumstances.

[70] The data concerning average selling prices indicate that, at the aggregate level, the subject goods were priced higher than the domestically produced like goods in 2018, but then undercut domestic selling prices by amounts exceeding the domestic price premium in both 2019 and 2020.[69] The data also show that imports from the *Rebar I* countries undercut the prices of domestically

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62 *Ibid.*, Tables 16, 19.

63 A "domestic premium" is generally the amount that customers may be willing to pay for domestically produced goods compared to offshore goods.

64 *Rebar I* at paras. 139-141.

65 *Rebar II* at paras. 98, 108, 114; *Steel Safeguard Inquiry* at 62.

66 See, for example, Exhibit NQ-2020-004-C-04 at para. 33; Exhibit NQ-2020-004-D-05 at para. 29.

67 See Exhibit NQ-2020-004-06.H, Table 8.

68 The Tribunal notes that, although five respondents indicated they were willing to pay a premium, only four provided a dollar amount. Gerdau submitted that the magnitude of the premium reported by these respondents suggests that they may have been referring to the level of undercutting of import pricing as compared to domestic pricing. The Tribunal considers that this is certainly plausible given its consistent prior findings of a domestic price premium in the range of $25 to $40 per tonne.

69 Exhibit NQ-2020-004-07.H (protected), Table 45.

produced like goods in all periods and undercut the prices of subject goods in 2018 and 2019. Similarly, imports from the *Rebar II* countries undercut the prices of domestically produced like goods in 2018 and 2019, and undercut the prices of subject goods in 2018 (their prices were identical in 2019).

[71] EZDK and NatSteel argued that low-priced imports from these non-subject countries had a greater effect on domestic prices than the subject goods. The Tribunal does not believe this to be the case. Save for the *Rebar I* countries in 2018, the market share held by imports from the *Rebar I* and *Rebar II* countries was minimal to non-existent throughout the POI and, as a result, several orders of magnitude smaller than the share held by the subject goods.[70] This means that, in 2020, the subject goods were the price leaders in the market and, although imports from the *Rebar I* countries were priced slightly below the subject goods in 2019, they had practically no market share, thereby likely minimizing their effect on domestically produced like goods as compared to the effects attributable to the subject goods.

[72] For sales to both distributors and end users, the data show similar price trends and differentials as those described above, with the subject goods undercutting the prices of domestically produced like goods by amounts exceeding the domestic price premium at both trade levels in 2019 and at the distributor level in 2020 (prices were identical at the end-user level).[71] While imports from the *Rebar I* and *Rebar II* countries did undercut prices of like goods and subject goods in certain instances, just as above, their effect on the like goods was likely minimal given their very low sales volumes, and hence market share, at these trade levels in 2019 and 2020.[72]

[73] The Tribunal also collected quarterly data on six benchmark products purchased and/or sold in 2019 and 2020 (i.e. the last eight quarters of the POI). These data, which cover a significant proportion of the total reported sales from domestic production and from imports over this period,[73] support the existence of widespread price undercutting by the subject goods. Indeed, in 38 of the 39 instances where quarterly comparisons were possible between sales of subject goods and sales from domestic production, the subject goods undercut the prices of domestically produced like goods and, in 31 of these 38 instances, the level of price undercutting was greater than the recognized domestic price premium of $30 per tonne.[74]

[74] Sales of imports from the *Rebar I* and *Rebar II* countries also generally undercut the prices of domestically produced like goods, but this occurred, for the most part, prior to the second quarter of 2020 (Q2 2020).[75] In 16 of the 30 instances where there were sales of both subject goods and imports from the *Rebar I* and/or *Rebar II* countries, the subject goods were the price leaders. Sales of imports from the *Rebar II* countries were lower-priced in three instances in the first quarter of 2019 (Q1 2019) and those from the *Rebar I* countries were lower-priced in 11 instances from the fourth quarter of 2019 (Q4 2019) to the first quarter of 2020 (Q1 2020). Nevertheless, the subject goods were the uncontested price leaders for all benchmark products for which they had sales in the third quarter of 2019 (Q3 2019) and Q2 2020 to the fourth quarter of 2020 (Q4 2020), with only one

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70 *Ibid.*, Table 30.

71 *Ibid.*, Tables 47, 49.

72 *Ibid.*, Tables 34, 38.

73 *Ibid.*, Table 41.

74 *Ibid.*, Tables 57-58. As benchmark pricing data were collected for six products over eight quarters, a total of 48 quarterly comparisons could have been possible.

75 Exhibit NQ-2020-004-07.H (protected), Tables 57-58. The Tribunal notes that there were no reported sales of benchmark products from the *Rebar II* countries after Q3 2019.

exception. Moreover, as the volumes of sales of subject goods were significantly greater than those of imports from the *Rebar I* countries in Q4 2019 and Q1 2020,[76] the subject goods can reasonably be regarded as having had a greater impact on sales of domestically produced like goods.

[75] As for sales to common accounts, the limited data on the record, which only allowed for 25 quarterly comparisons to be made,[77] combined with the fact that no distinction was made for the types of products being sold, made these comparisons less compelling. Still, in over 75 percent of the instances where quarterly comparisons were possible, the subject goods undercut the prices of domestically produced like goods and, in all but one of those instances, the level of price undercutting was greater than the domestic price premium. In addition, in the three instances where there were sales of both subject goods and imports from the *Rebar I* countries, the subject goods were lower-priced.[78]

[76] Finally, the complainants provided a total of 50 detailed examples of head-to-head competition between imports from the seven subject countries and the domestically produced like goods in 2019 and 2020.[79] They claimed that these examples show average price undercutting well in excess of the domestic price premium, which ultimately led to the loss of sales to the subject goods or reductions in prices to retain sales.

[77] EZDK, NatSteel and Hoa Phat submitted that none of the complainants' lost sales allegations with respect to subject imports from Egypt, Singapore and Vietnam reflect the actual sale prices for those transactions. They submitted that the Tribunal should therefore review and consider the accuracy of allegations relating to all other subject countries.

[78] AltaSteel and AMLPC noted that, in *Rebar I Review*, the Tribunal accepted the account-specific evidence relating to 15 instances of undercutting by imports from the subject countries (non-subject imports in the context of that expiry review) in 2019 and 2020.[80] They added that the Tribunal has also previously taken the view that, even if some injury allegations are inaccurate or incorrect in some respect, it can still find that a sufficiently large number of injury allegations are credible and carry enough weight to merit consideration. The complainants also refuted the claims that there were inaccuracies with their presumed pricing.[81]

[79] The Tribunal is of the view that, on balance, the complainants' account-specific injury allegations are credible and merit consideration in the context of the present inquiry. The Tribunal recognizes that allegations such as these are necessarily the result of commercial intelligence gathering by domestic producers who do not always have access to primary sources of information.

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76 Exhibit NQ-2020-004-07.H (protected), Schedules 1-6.

77 *Ibid.*, Tables 67-75. EZDK, NatSteel and Hoa Phat claimed that there was little evidence of injury caused by imports from Egypt, Singapore and Vietnam at the common accounts. While there were very few instances of competition between subject goods from these countries and the domestically produced like goods at common accounts, the Tribunal notes that it already found that a cumulative assessment was appropriate in this inquiry. As such, imports from all seven subject countries must be considered together.

78 There were no instances where there were sales of both subject goods and imports from the *Rebar II* countries.

79 These examples are found in the witness statements filed by the complainants and summarized at Exhibit NQ-2020-004-A-02 (protected) at para. 103 (Table 8); Exhibit NQ-2020-004-D-02 (protected) at para. 51 (Table 8).

80 *Rebar I Review* at para. 231.

81 See Exhibit NQ-2020-004-A-10 (protected) at paras. 106-112; Exhibit NQ-2020-004-D-10 (protected) at paras. 26, 28-29, 32, 35.

Thus, it would be unreasonable to expect absolute precision. But more importantly, in this case, the allegations are consistent with the price undercutting already amply demonstrated by the pricing data in the Tribunal's investigation report.

[80] The Tribunal therefore concludes that the subject goods significantly undercut the prices of domestically produced like goods, particularly during the second half of 2019 and in 2020, which corresponds to the period during which there was a significant increase in the volume of subject imports.

Price depression

[81] The average selling prices of domestically produced like goods increased by 4 percent in 2019, before decreasing by 14 percent in 2020, for a total decline of 11 percent over the POI.[82] The Tribunal notes that, although the prices of like goods increased in 2019, the data for interim 2019 help to show that prices had already fallen significantly by Q4 2019.[83] By the Tribunal's own calculations, the prices of like goods in Q4 2019 were 10 percent lower than average selling prices for interim 2019 and 4 percent lower than average selling prices for 2018.[84]

[82] According to AltaSteel and AMLPC, the domestic industry's net sales values actually began to fall in Q2 2019 following the removal of the provisional safeguard measures and continued to decline in each successive quarter until the end of the POI.[85] In the preliminary injury inquiry, the Tribunal found, on the basis of the same evidence as that presented by AltaSteel and AMLPC in the present inquiry, that domestic selling prices had actually peaked in Q1 2019 and then declined in each successive quarter until Q2 2020.[86]

[83] The pricing data in the Tribunal's investigation report confirm this consistent downward trend as average domestic selling prices for all six benchmark products decreased in each successive quarter in 2019 and 2020 (save for one benchmark product where the price remained the same from Q1 2019 to Q2 2019).[87] Notably, from Q2 2019 to Q4 2020, average domestic selling prices for benchmark products fell by an average of 20 percent. Domestic prices for sales to common accounts also generally decreased from one quarter to the next throughout 2019 and 2020.[88]

[84] EZDK and NatSteel submitted that, for some common accounts, the deterioration in price is a result exclusively of intra-industry competition as there are no subject imports or other low-priced imports.

[85] The complainants submitted that price deterioration for accounts which show no sales of subject goods does not mean that there was no competition from these goods. They submitted that there is likely competition between the domestic industry and the subject goods that is simply not

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82 Exhibit NQ-2020-004-07.H (protected), Table 45; Exhibit NQ-2020-004-06.H, Table 46. For sales to distributors and to end users, the percent changes in domestic selling prices are almost identical to the changes in prices observed at the aggregate level. See Exhibit NQ-2020-004-06.H, Tables 48, 50.

83 Exhibit NQ-2020-004-06.H, Table 45.

84 *Ibid.*, Tables 28, 45. Using the information in these two tables of the investigation report, the Tribunal calculated that the price of like goods in Q4 2019 was $850 per tonne.

85 Exhibit NQ-2020-004-A-01 at 38 (Table 9), 122-123.

86 *Rebar III PI* at para. 60.

87 Exhibit NQ-2020-004-07.I (protected), Tables 51-54; Exhibit NQ-2020-004-07.H (protected), Tables 55-56.

88 Exhibit NQ-2020-004-07.H (protected), Tables 67-75.

captured in the investigation report. AltaSteel and AMLPC also noted that, in some cases, purchasers do not purchase offshore imports, but compete with other fabricators that do, which results in domestic producers being required to reduce their prices.

[86] The Tribunal is of the view that decreases in domestic prices for sales to some common accounts are not necessarily the result of intra-industry competition. As noted by the complainants, there is likely competition that is not captured in the investigation report, especially given that data regarding sales to common accounts were not provided by all questionnaire respondents. Moreover, the evidence on the record does suggest that purchasers that do not typically purchase offshore rebar frequently request price concessions from domestic producers in order to be competitive with other rebar fabricators that do purchase imported rebar.[89] In any event, as discussed above, average selling prices of domestically produced like goods, both at the aggregate level and for benchmark products, show a decreasing trend during the POI.

[87] The Tribunal notes that, while the domestic industry's cost of goods sold (COGS) decreased significantly on a per-unit basis in 2020 due to a reduction in the cost of direct materials,[90] the decrease of 14 percent in average selling prices of domestically produced like goods witnessed that year was greater still. A witness for Gerdau also confirmed that its "metallic margin" or "metal spread", which is the difference between raw material costs and actual selling prices, fell significantly from Q3 2019 to Q4 2020.[91] Thus, the evidence indicates that the decrease in prices was not fully attributable to changes in the domestic industry's costs, thereby suggesting that the subject goods exerted downward pressure on the price of like goods.

[88] The Tribunal therefore concludes that the subject goods significantly depressed the prices of the like goods in the second half of 2019 and in 2020.

Price suppression

[89] In order to assess whether the subject goods have suppressed the prices of domestically produced like goods, the Tribunal typically compares the domestic industry's average unit COGS or costs of goods manufactured (COGM) with its average unit selling values in the domestic market to determine whether the domestic industry has been able to increase selling prices in line with increases in costs.[92]

[90] Following this approach, the pricing data in the investigation report do not suggest that there was any price suppression during the POI. Both COGS and COGM decreased on a per-unit basis in 2019 and 2020,[93] indicating that there was never an increase in costs which needed to be met with an increase in the price of domestically produced like goods.

[91] The complainants argued that the domestic industry experienced price suppression because a decrease in its net sales prices that was greater than the decrease in COGS created a price-cost squeeze in 2020. However, without an actual increase in COGS, the Tribunal typically considers evidence of a price-cost squeeze as price depression rather than price suppression and may otherwise take it into account in assessing impacts on profitability.

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89 See Exhibit NQ-2020-004-A-08 (protected) at paras. 21, 36, 44-45.
90 Exhibit NQ-2020-004-07.H (protected), Table 76.
91 Exhibit NQ-2020-004-D-04 (protected) at paras. 25, 33.
92 *Heavy Plate* at para. 118.
93 Exhibit NQ-2020-004-07.H (protected), Table 76.

[92] At the hearing, Altasteel and AMLPC argued that "classic" price suppression, which entails an inability to increase prices in the face of upward cost pressure, was distinct from an alternate price suppression occurring here, where higher prices would be expected given a "precarious" level of net income.[94]

[93] While paragraph 37.1(1)(b) of the *Regulations* does describe price suppression as the prevention of price increases that "would otherwise likely have occurred", the Tribunal was not presented with any evidence as to what level of net income the domestic industry should be earning above and beyond the level it was earning in 2019 prior to the advent of the price depression found above.

[94] The Tribunal therefore concludes that the subject goods did not significantly suppress the prices of the like goods over the POI.

Conclusion

[95] The Tribunal finds that the subject goods significantly undercut and depressed the prices of domestically produced like goods in the second half of 2019 and in 2020.

Resulting impact on the domestic industry

[96] Paragraph 37.1(1)(c) of the *Regulations* requires the Tribunal to consider the resulting impact of the dumped goods on the state of the domestic industry and, in particular, all relevant economic factors and indices that have a bearing on the state of the domestic industry.[95] These impacts are to be distinguished from the impact of other factors also having a bearing on the domestic industry.[96] Paragraph 37.1(3)(a) of the *Regulations* requires the Tribunal to consider whether a causal relationship exists between the dumping of the goods and the injury, retardation or threat of injury, on the basis of the volume, the price effect, and the impact on the domestic industry of the subject goods.

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94 *Transcript of Public Hearing* at 37-38.

95 Such factors and indices include (i) any actual or potential decline in output, sales, market share, profits, productivity, return on investments or the utilization of industrial capacity, (ii) any actual or potential negative effects on cash flow, inventories, employment, wages, growth or the ability to raise capital, (ii.1) the magnitude of the margin of dumping in respect of the dumped goods, and (iii) in the case of agricultural goods, including any goods that are agricultural goods or commodities by virtue of an Act of Parliament or of the legislature of a province, that are subsidized, any increased burden on a government support programme.

96 Paragraph 37.1(3)(b) of the *Regulations* directs the Tribunal to consider whether any factors other than dumping of the subject goods have caused injury. The factors which are prescribed in this regard are (i) the volumes and prices of imports of like goods that are not dumped, (ii) a contraction in demand for the goods or like goods, (iii) any change in the pattern of consumption of the goods or like goods, (iv) trade-restrictive practices of, and competition between, foreign and domestic producers, (v) developments in technology, (vi) the export performance and productivity of the domestic industry in respect of like goods, and (vii) any other factors that are relevant in the circumstances.

Timing of injury

[97] EZDK and NatSteel argued that, while the domestic industry prefers to view market changes by selecting 2019 as the baseline for comparison, which reflects a domestic industry surge over 2018 in its share of a declining market size, the Tribunal has a well-established practice of properly examining the full POI and overall trends, rather than arbitrarily selecting some periods over others.

[98] In response, AltaSteel and AMLPC argued that it is not necessary for the Tribunal to find that injury occurred over the entire POI, and that it is appropriate for the Tribunal to look at quarterly data in order to better assess recent trends, which can be masked in overall annual results. For its part, Gerdau submitted that recent Tribunal findings demonstrate that it has routinely undertaken a probing examination of injury over relevant periods of the POI as required, in line with market developments.[97] It added that, in *Rebar II*, the Tribunal noted that the domestic industry was experiencing a clear example of "source switching" and found that the injury arose during the latter part of the POI.[98]

[99] Considering the factual context of this inquiry, the Tribunal finds it appropriate to use, to the extent possible as permitted by the evidence on the record, the first half of 2019 as a baseline for assessing injury, as the complainants have suggested. In 2018, the volumes of imports from the *Rebar I* countries (which include Turkey) were relatively high and their selling prices in the market were well below those of the domestically produced like goods and the subject goods,[99] despite a finding in place against these countries. This situation was only corrected in December 2018, as mentioned above, when the CBSA began to express normal values for two Turkish exporters in U.S. dollars as opposed to Turkish lira.[100] Sales of imports from the *Rebar I* countries decreased by 99 percent from 2018 to 2019.[101]

[100] The improvement in the state of the domestic industry from 2018 to 2019, which will be further examined below, therefore correlated with the retreat of Turkish imports. It also correlated with the imposition of provisional safeguard measures in the fourth quarter of 2018. These measures were repealed in Q2 2019, after which the subject goods began appearing in greater number in the Canadian market. As such, the first half of 2019 was the earliest period in the POI during which the market was not being influenced by significant quantities of low-priced rebar imports. The market in early 2019 therefore represents a return to the norm for the domestic industry.

Sales and market share

[101] The total rebar market contracted in volume by 2 percent in 2019, before expanding by 5 percent in 2020, for a total increase of 3 percent over the POI.[102] The domestic industry fared better than the market in 2019, as domestic sales from domestic production increased by 24 percent, but then underperformed relative to the market in 2020 as domestic sales declined by 4 percent, for an overall increase of 19 percent over the POI. As such, the domestic industry was not able to participate in the market growth in 2020.

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97 *Cold-rolled Steel* (21 December 2018), NQ-2018-002 (CITT) [*Cold-rolled Steel*] at para. 99; *Sucker Rods* (14 December 2018), NQ-2018-001 (CITT) at para. 151.

98 *Rebar II* at paras. 10, 82-83.

99 Exhibit NQ-2020-004-07.H (protected), Tables 24, 45.

100 *Steel Safeguard Inquiry* at 64-65.

101 Exhibit NQ-2020-004-06.H, Table 29.

102 *Ibid.*, Tables 28-29.

[102] The domestic industry's market share followed a similar pattern, increasing by 12 percentage points in 2019, before decreasing by 5 percentage points in 2020, for a total increase of 7 percentage points over the POI.[103] However, as observed with domestic prices, the domestic industry's market share began to trend downwards before the end of 2019. Indeed, the data for the interim periods show that the domestic industry's market share stood at 60 percent in interim 2019 and fell to 47 percent in Q4 2020, for a total decrease of 13 percentage points over this period.[104] The domestic industry's market share of 47 percent in Q4 2020 was only 2 percentage points above its market share of 45 percent in 2018, a year during which it was faced with low-priced imports from the *Rebar I* countries.

[103] The market share held by the subject goods increased by 15 percentage points in 2019 and by another 6 percentage points in 2020, for a total gain of 21 percentage points over the POI.[105] Conversely, and consistent with the apparent source switching taking place during the POI, the market share held by imports from the *Rebar I* countries decreased by 25 percentage points in 2019, before increasing by 2 percentage points in 2020, for a total loss of 24 percentage points over the POI.[106] Consequently, based on the above figures, it can be posited that the market share lost by the *Rebar I* countries in 2019 was captured by both the subject goods and the domestic industry and that the market share lost by the domestic industry in 2020 was captured by the subject goods.[107]

[104] In light of the foregoing, the Tribunal finds that the evidence demonstrates that the domestic industry lost sales to the subject goods in 2020 as well as market share beginning in the second half of 2019 and continuing into 2020.

Financial performance

[105] The domestic industry's financial performance, as it relates to domestic sales, improved in 2019 as its per-unit gross margin increased substantially due to an increase in selling prices and a relatively small decrease in COGS.[108] When combined with a large increase in sales volume, this led to an even greater increase in total gross margin for that year.

[106] In 2020, the domestic industry's gross margins deteriorated on a per-unit basis as its selling prices decreased by a greater amount than its COGS. A modest decrease in its sales volume also contributed to a reduction in total gross margin for that year. The loss of market share also deprived the domestic industry of the opportunity to increase its profitability in 2020. In sum, 2020 was the exact opposite of 2019 and, for all intents and purposes, the domestic industry's financial

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103 *Ibid.*, Tables 28, 30-31.

104 *Ibid.*, Tables 28, 30. Using the information in Table 28 of the investigation report, the Tribunal was able to calculate the domestic industry's market share in Q4 2020.

105 Exhibit NQ-2020-004-07.H (protected), Tables 28, 30-31.

106 The percentage point changes do not add up due to rounding. The share of the market held by imports from the *Rebar II* countries remained low and relatively consistent throughout the POI.

107 The Tribunal notes that the data for the interim periods show that the market share held by the *Rebar IV* countries increased from 1 percent in interim 2020 to 7 percent in Q4 2020 (see Exhibit NQ-2020-004-07.H (protected), Tables 28, 30). This suggests that the domestic industry may have lost some market share to imports from the *Rebar IV* countries in Q4 2020. Nevertheless, in the Tribunal's view, the still very significant presence of the subject goods in this quarter, and at prices that still led the market, supports the conclusion that they caused injury throughout 2020.

108 Exhibit NQ-2020-004-07.H (protected), Table 76.

performance was similar to that in 2018 when it was faced with low-priced imports from the *Rebar I* countries.

[107] As discussed above, the domestic industry's selling prices began to decline in Q2 2019 and continued on a downward trend until the end of the POI. This means that the domestic industry's per-unit gross margins likely started to deteriorate sometime in 2019. In fact, the evidence on the record bears this out as the domestic industry's per-unit gross margin for interim 2019 was greater than it was for 2019 as whole, thereby indicating that its gross margins had at least begun to deteriorate in Q4 2019.[109] Moreover, the domestic industry's own consolidated income statement, presented on a quarterly basis, clearly indicates that per-unit gross margins started to decrease in Q3 2019.[110]

[108] The domestic industry's export sales performance was generally below that of its domestic sales performance.[111] While its per-unit gross margins on export sales followed the same trend as those for domestic sales, its total gross margins increased throughout the POI due to significant increases in sales volumes. However, both per-unit and total gross margins were lower than those for domestic sales.

Other performance indicators

[109] The domestic industry's production volumes for domestic sales increased by 21 percent in 2019, before decreasing by 5 percent in 2020.[112] This increase and this decline are essentially of the same magnitude as those seen above for the domestic industry's domestic sales from domestic production.

[110] The domestic industry fared slightly better in terms of total production as production for export sales increased throughout the POI, resulting in total production volumes increasing by 23 percent in 2019 and then essentially remaining flat in 2020.

[111] Capacity utilization rates for domestic sales increased from 17 percent in 2018 to 21 percent in 2019, before slipping back to 20 percent in 2020.[113] However, as practical plant capacity decreased throughout the POI, capacity utilization rates for 2019 and 2020 were one percentage point higher than they would otherwise have been if plant capacity had remained at the 2018 level.

[112] As for indicators related to direct employment, the domestic industry's number of employees, hours worked and wages paid either increased or remained flat in 2019 and 2020.[114] There is evidence on the record that some domestic producers received COVID-related wage subsidies in 2020. This, together with the fact that total domestic production remained flat in 2020, provides a likely explanation as to why employment-related factors did not decline in 2020.

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109 *Ibid.*

110 Exhibit NQ-2020-004-A-02 (protected) at 214. The domestic industry's consolidated income statement also indicates that per-unit gross margins increased from Q3 2020 to Q4 2020 as a result of a decrease in COGS. However, they remained significantly below their peak attained in Q2 2019.

111 Exhibit NQ-2020-004-07.H (protected), Table 77.

112 Exhibit NQ-2020-004-06.H, Table 80.

113 *Ibid.*, Table 79.

114 *Ibid.*, Table 80; Exhibit NQ-2020-004-07.H (protected), Table 80.

[113] The domestic industry's inventories of rebar increased significantly throughout the POI, both in terms of volume and value, although the increase in value was not as large given that the unit value of the inventories decreased in 2019 and 2020.[115]

[114] Consistent with the domestic industry's financial results and some of its other performance indicators, investments increased in 2019, before decreasing in 2020.[116] This suggests that some investments were postponed or delayed in 2020 at the same time as subject imports took a larger share of the market and domestic selling prices declined.

[115] Finally, while domestic producers claimed that the increased presence of the subject goods in the Canadian market had negative effects on their cash flow, growth, ability to raise capital or return on investments during the POI,[117] very little evidence was provided with respect to these factors.[118]

Conclusion

[116] On the basis of the factors above, the Tribunal finds that the domestic industry suffered injury, beginning in the second half of 2019 and into 2020, in the form of a reduction in gross margins as well as lost sales and market share, which, in turn, had a negative impact on domestic production, profitability, capacity utilization, inventories and investments.

Other factors and causation

[117] As stated earlier, paragraph 37.1(3)(a) of the *Regulations* requires the Tribunal to consider whether a causal relationship exists between the dumping of the goods and the injury, on the basis of the volume, the price effect, and the impact on the domestic industry of the subject goods. In order to do so, the Tribunal must distinguish the impacts of the subject goods from the impact of other factors also having a bearing on the state of the domestic industry.[119] In other words, the Tribunal must determine whether the subject goods, *in and of themselves*, caused injury to the domestic industry.

[118] EZDK, NatSteel and Hoa Phat raised several factors other than the dumping of the subject goods, which they argue have caused any injury the domestic industry might have experienced.

[119] EZDK, NatSteel and Hoa Phat also cited various WTO decisions and several provisions of the Anti-dumping Agreement, in order to argue that the Tribunal must apply a high standard in its evaluation of evidence and causation. AMLPC and AltaSteel argued that these references to international law sources are an attempt to ask the Tribunal to apply a higher standard of injury and causation than set out in domestic legislation.

[120] However, at the hearing, counsel for EZDK and NatSteel submitted that "the reason [for] bringing up the anti dumping agreement here is not to indicate that it militates for a different interpretation from what we're used to".[120] The Tribunal takes EZDK and NatSteel to be emphasizing the importance of a rigorous causation analysis, rather than arguing for a higher

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115 Exhibit NQ-2020-004-06.H, Table 80.
116 Exhibit NQ-2020-004-07.H (protected), Table 79.
117 *Ibid.*, Table 84.
118 Gerdau did provide some evidence with respect to these factors. See Exhibit NQ-2020-004-10.02 (protected) at 74-77.
119 See paragraph 37.1(3)(b) of the *Regulations.*
120 *Transcript of Public Hearing* at 102.

standard than the Tribunal usually applies. In any inquiry, it goes without saying that the Tribunal's assessment of the evidence and of causation must be objective and rigorous, and that the Tribunal will consider any evidence on the record indicating that factors other than dumping may have caused injury. The Tribunal does not consider the parties' arguments on international law to be determinative in the context of this inquiry, and in the interests of judicial economy, the Tribunal will not address them further. However, in what follows, the Tribunal will, as per its usual practice, address the factors other than dumping raised by parties in order to assess whether the subject goods, *in and of themselves*, caused injury to the domestic industry.

COVID-19 and impact on demand

[121] Hoa Phat argued that domestic producers cannot attribute to the subject goods the adverse impact of declining demand, particularly in light of the effects of the COVID-19 pandemic. EZDK and NatSteel argued that any downturn the domestic industry experienced in 2020 when compared to 2019 was a "stumble in the market" attributable to COVID-19.[121]

[122] The complainants submitted that the COVID-19 pandemic did not affect rebar demand in Canada, as the Canadian rebar market increased in 2020. Additionally, AltaSteel and AMLPC submitted that the subject goods began to injure the domestic industry prior to COVID-19 and continued during the uncertainty of the pandemic.

[123] The Tribunal finds that the pandemic does not appear to have negatively affected rebar demand in Canada, as the market actually *increased* by 5 percent in 2020.[122] Therefore, if the pandemic had any impact at all on the Canadian rebar market in 2020, it was relatively minor and arguably of little significance in the context of the present inquiry. As explained above, the injury to the domestic industry began in the second half of 2019, prior to the pandemic. This is similar to the situation that arose in *Heavy Plate*, where the Tribunal found as follows:

> . . . the injury caused by the subject goods occurred in 2019, prior to the onset of the pandemic. As such, any effects of the COVID-19 pandemic that started manifesting themselves in interim 2020 were over and above the effect of the subject goods during the POI and only added to the already-injured state of the domestic industry.[123]

[124] As such, while the pandemic is certainly an important contextual factor to be taken into account, it was not, in the Tribunal's opinion, a cause of the decrease in the domestic industry's performance.

North American rebar market

[125] Hoa Phat submitted that North American rebar prices are artificially high due to extensive protection, including the Section 232 measures, Canada's retaliatory surtax on imports from the United States, and Canada's provisional safeguards. It submitted that these measures, and the trade uncertainty that accompanied them, were factors other than the dumping which affected the domestic industry. According to Hao Phat, these measures skewed the market because U.S. exports to Canada

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121 *Ibid.* at 140.
122 Exhibit NQ-2020-004-06.H, Table 29.
123 *Heavy Plate* at para. 138.

and Canadian exports to the United States declined, and prices rose to very high levels until the Canadian retaliatory surtax was removed.

[126] In response, the complainants submitted that Hoa Phat simply raised this potential cause of injury with no assessment of the context or attempt to quantify the alleged impact on the domestic industry.

[127] In the Tribunal's view, the impact, if any, of the Section 232 measures in the Canadian market would arguably be to increase the supply of offshore rebar (as a result of diversion) and to lower prices. Moreover, as noted above, both Canada's retaliatory surtax on imports from the United States and Canada's provisional safeguard measures were eliminated in Q2 2019 and thus were in force for only a short period of time. In any event, the retaliatory surtax had the effect of reducing the volumes of imports from the United States, which were consistently sold at higher prices than both the subject goods and the domestically produced like goods throughout the POI.[124] As for the provisional safeguard measures, they only imposed quantitative restrictions on imports (i.e. prices were not affected).

[128] There is no other evidence that market factors in North America as a whole caused injury to the domestic industry. Hoa Phat has raised these factors with no attempt to quantify their alleged impact or to explain precisely how they could have caused injury to the domestic industry. The Tribunal therefore finds that these factors are not responsible for the injury suffered by the domestic industry.

Low-priced imports from the *Rebar I* and *Rebar II* countries

[129] EZDK and NatSteel argued that low-priced imports from the *Rebar I* and *Rebar II* countries had a greater effect on domestic prices than the subject goods and were therefore a cause of injury. They submitted that, even though the volumes from these countries were smaller than volumes of subject goods, the Tribunal has previously found that even one shipment of low-priced imports can negatively affect and devastate prices in the Canadian market.[125]

[130] As mentioned above, although the evidence in this final inquiry shows that imports from the *Rebar I* and *Rebar II* countries undercut the prices of both domestically produced like goods and subject goods in certain instances in 2018 and 2019, sales from imports from these countries collectively represented a vastly smaller percentage of the market than the subject goods in 2019 and 2020.[126] Additionally, the subject goods were the price leaders in the market by 2020,[127] which is when the majority of the injury took place.

[131] In *Steel Sheet*, the Tribunal found that, given the relative size, as well as the fragility of the Canadian market, even seemingly small import offers could negatively affect market pricing.[128] While there is no doubt that such offers may negatively affect pricing, this would mostly occur in circumstances where there were no other low-priced imports in the market. In other words, such an offer would be the catalyst that sets in motion a chain of events that would cause prices to cascade

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124 Exhibit NQ-2020-004-07.H (protected), Tables 24, 45, 51-56.

125 *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (15 August 2011), RR-2010-001 (CITT) [*Steel Sheet*] at para. 258.

126 Exhibit NQ-2020-004-07.H (protected), Table 30.

127 *Ibid.*, Table 45.

128 *Steel Sheet* at para. 258.

downward. This was manifestly not the case here as prices started to decline during a period in which imports from the *Rebar I* and *Rebar II* countries had practically disappeared from the market, and subject goods already had a firmly established presence and were undercutting domestic prices.

Export performance of the domestic industry

[132] EZDK and NatSteel argued that the domestic industry's poor export performance implies that factors other than the dumping are the cause of its difficulties.

[133] As noted above, although the domestic industry's export sales performance was generally below that of its domestic sales performance, its total gross margins increased throughout the POI as a result of significant increases in export sales volumes.[129] In any event, the domestic industry's export sales represent a relatively small percentage of its total sales and do not materially impact its overall financial performance.[130] As such, the Tribunal finds that the domestic industry's export performance does not displace the impact of the subject goods.

Supply shortages

[134] Hoa Phat submitted that domestic producers are planning to increase capacity, which supports purchasers' concerns about current supply shortages in the domestic market.

[135] The complainants submitted that the domestic industry has enough capacity to supply the Canadian rebar market without the presence of subject goods. Gerdau noted that the domestic industry's excess capacity in 2020 was significantly greater than the volume of subject imports. Additionally, AltaSteel and AMLPC submitted that, regardless, the Tribunal has repeatedly held that the domestic industry is not required to supply the entire market.[131]

[136] The Tribunal notes that several purchasers of rebar, who responded to the purchasers' questionnaire, expressed concerns about availability of domestic supply.[132] However, the investigation report clearly shows that domestic producers, taken as a whole, have had sufficient excess capacity over the POI.[133] The Tribunal is not persuaded that there is an overall supply shortage of domestic rebar that would have caused injury to the domestic industry.

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129 Exhibit NQ-2020-004-07.H (protected), Tables 76-77. The Tribunal's investigation report segregates the domestic industry's financial results for domestic sales from its results for export sales. This allowed the Tribunal, in its injury analysis, to assess the impact of the subject goods on the situation of the domestic industry as it pertains solely to its activities in the Canadian market. Materiality is however typically addressed against the domestic industry's production of like goods as a whole. See, for example, *Disposable Adult Incontinence Briefs* (5 July 2007), NQ-2006-004 (CITT) at para. 58; *Copper Rod* (28 March 2007), NQ-2006-003 (CITT) at para. 50; *Flat Hot-Rolled Carbon and Alloy Steel Sheet and Strip* (17 August 2001), NQ-2001-001 (CITT) at 13.

130 Exhibit NQ-2020-004-07.H (protected), Table 79.

131 *Oil Country Tubular Goods* (17 April 2015), NQ-2014-002 (CITT) at para. 296; *Certain Fasteners* (21 January 2005), NQ-2004-005 (CITT) at para 216; *Rebar I* at para. 287.

132 See, for example, Exhibit NQ-2020-004-18.01 at 8; Exhibit NQ-2020-004-18.08 at 11; Exhibit NQ-2020-004-18.12 at 3.

133 Exhibit NQ-2020-004-07.H (protected), Table 79.

Conclusion

[137] In light of the foregoing, the Tribunal concludes that the evidence, as a whole, establishes that none of the factors raised by parties opposed to a finding of injury are sufficient to attribute injury to causes other than the dumping of the subject goods. Accordingly, the Tribunal finds that the dumping of the subject goods, in and of itself, caused injury to the domestic industry beginning in the second half of 2019 and into 2020, a period that coincided with an increase in subject imports and reduced domestic selling prices.

Materiality

[138] The Tribunal will now determine whether the effects of imports of the subject goods noted above are "material", as contemplated in the definition of "injury" under section 2 of *SIMA*. While *SIMA* does not define the term "material", the Tribunal has in the past considered this to mean something more than *de minimis* but not necessarily serious injury.[134] Ultimately, the Tribunal determines the materiality of any injury on a case-by-case basis, having regard to the extent (i.e. severity), timing and duration of the injury.[135]

[139] In cases where the duration of the injury has represented only a portion of the POI, the Tribunal has previously considered whether the injury was most prevalent during a period that fell within the CBSA's period of investigation and that coincided with large volumes of subject goods entering the market.[136] In the present case, the evidence indicates that the domestic industry suffered injury mainly in the form of reduced profitability, lost sales and a decline in market share in the second half of 2019 and in 2020—a period that coincided with a significant increase in subject imports and largely overlapped with the CBSA's period of investigation.

[140] The Tribunal is therefore satisfied that the extent, timing and duration of the injury in this case are such that it can be considered material. As the Tribunal has concluded that the dumping of the subject goods caused injury to the domestic industry, it need not address the question as to whether the subject goods are threatening to cause injury.

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

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

136 *Rebar II* at paras. 185-186; *Cold-rolled Steel* at para. 99. See also *Carbon and Alloy Steel Line Pipe* (4 January 2018), NQ-2017-002 (CITT) at footnote 15 where the Tribunal stated that, while each case depends on its own facts, evidence regarding the recent past is more likely to be relevant to establishing the existence of a current causal link between dumping and injury and to justify the imposition of anti-dumping duties.

CONCLUSION

[141] The Tribunal hereby finds, pursuant to subsection 43(1) of *SIMA*, that the dumping of the subject goods has caused injury to the domestic industry.

Peter Burn

Peter Burn
Presiding Member

Georges Bujold

Georges Bujold
Member

Frédéric Seppey

Frédéric Seppey
Member