Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Dumping and Subsidizing

FINDINGS AND REASONS

Inquiry No. NQ-2020-005

Concrete Reinforcing Bar

Finding issued
Friday, July 2, 2021

Reasons issued
Monday, July 19, 2021

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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 Sultanate of Oman and the Russian Federation, 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 June 2, 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 not caused injury but is threatening to cause injury to the domestic industry.

Georges Bujold
Georges Bujold
Presiding Member

Peter Burn
Peter Burn
Member

Frédéric Seppey
Frédéric Seppey
Member

The statement of reasons will be issued within 15 days.

Place of Hearing:	Via videoconference
Date of Hearing:	June 4, 2021
Tribunal Panel:	Georges Bujold, Presiding Member Peter Burn, Member Frédéric Seppey, Member
Support Staff:	Helen Byon, Lead Counsel Michael Carfagnini, Counsel Gayatri Shankarraman, Lead Analyst Rebecca Campbell, Analyst Rhonda Heintzman, Analyst Grant MacDougall, 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 Sultanate of Oman (Oman) and the Russian Federation (Russia) (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 not caused injury but is threatening to cause injury to the domestic industry.

BACKGROUND

[3] On December 4, 2020, pursuant to subsection 31(1) of *SIMA*, the President of the Canada Border Services Agency (CBSA), on its own initiative, initiated an investigation into the potentially injurious dumping of certain concrete reinforcing bar, commonly referred to as rebar, originating in or exported from Oman and Russia.[2]

[4] On December 7, 2020, as a result of the CBSA's decision to initiate an investigation, the Tribunal began its preliminary injury inquiry, pursuant to subsection 34(2) of *SIMA.* On January 25, 2021, 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.[3]

[5] On March 4, 2021, the CBSA made a preliminary determination of dumping in respect of the subject goods.[4] It also considered that the imposition of a provisional duty was necessary to prevent injury.[5] On March 5, 2021, the Tribunal commenced this inquiry.[6]

[6] The Tribunal issued one set of questionnaires on February 5, 2021, during the inquiry for *Rebar 3 NQ*,[7] to which a number of known domestic producers, importers and purchasers were asked to respond. The Tribunal's intention was to use the questionnaire responses in both the inquiry for *Rebar 3 NQ* and the present injury inquiry since the product definition and the period of inquiry (POI) were the same. The Tribunal also issued questionnaires for foreign producers in Oman and Russia following the Tribunals notice of commencement for the present injury inquiry. The Tribunal received replies to its questionnaires from 5 domestic producers of goods meeting the product definition, 13 importers of subject goods and/or non-subject goods meeting the product definition, as well as 11 purchasers and 1 foreign producer of such goods.

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

2 Exhibit NQ-2020-005-04.A at para. 3.

3 *Concrete Reinforcing Bar* (25 January 2021), PI-2020-005 (CITT) [*Rebar 4 PI*]. This decision closely followed the Tribunal's preliminary injury determination in *Concrete Reinforcing Bar* (23 November 2020), PI-2020-004 (CITT) [*Rebar 3 PI*].

4 Exhibit NQ-2020-005-01 at 16-17.

5 *Ibid*. at 11, 16.

6 Exhibit NQ-2020-005-03.

7 *Concrete Reinforcing Bar* (4 June 2021), NQ-2020-004 (CITT) [*Rebar 3 NQ*].

[7] 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 April 23, 2021.[8]

[8] The Tribunal's initial POI, as reflected in the investigation reports, was the three full years from January 1, 2018, to December 31, 2020.[9] On April 27, 2021, AltaSteel Inc. (AltaSteel) and ArcelorMittal Long Products Canada G.P. (AMLPC) requested that the Tribunal revise the investigation reports to include the interim periods for 2019 and 2020: January 1, 2019, to September 30, 2019 (interim 2019), and January 1, 2020 to September 30, 2020 (interim 2020). AltaSteel and AMLPC submitted that the annual data for 2020 masked the trends that occurred in late 2020 and the relevant data were already on the Tribunal's record.[10] The Tribunal granted the request and issued revised public and protected versions of the investigation report on April 29, 2021, showing the data for interim 2019 and interim 2020 as well as other revisions. Further revisions were issued on May 5, 2021.

[9] On May 3, 2021, AltaSteel and AMLPC filed with the Tribunal a number of requests for information (RFIs) directed to two importers of the subject goods, neither of which were participants in this inquiry. On May 10, 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 May 3, 2021, AltaSteel, AMLPC, Gerdau Ameristeel Corporation (Gerdau), Max Aicher (North America) Limited (MANA) (collectively, the Domestic Producers) and the United Steelworkers (USW)[11] 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 May 9, 2021, NLMK Group (Novolipetsk Steel) (NLMK) filed its case brief opposing a finding of injury or threat of injury.[12] AltaSteel, AMLPC, Gerdau, MANA and USW filed reply briefs on May 18, 2021.

[11] On April 27, 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 parties were given 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 May 19, 2021, the Tribunal received suggested questions from NLMK directed at AMLPC, Gerdau and MANA, as well as from USW directed to NLMK. No objections were made by the parties. On May 26, 2021, after having reviewed the suggested questions in light of the

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8 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.

9 Exhibit NQ-2020-005-06.

10 Exhibit NQ-2020-005-23 at 1.

11 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. Exhibit NQ-2020-005-E-01 at 1, 2.

12 The Ministry of Economic Development of the Russian Federation filed a notice of participation but did not file any submissions during these proceedings. The Russian Trade Mission in Canada (Embassy of Russia) also filed a notice of participation. The Tribunal did not accept the submissions filed by the Embassy of Russia on May 31, 2021. Submissions of the opposing parties were required to be filed by no later than May 11, 2021 at noon, E.T., in accordance with the inquiry schedule attached to the Notice of Commencement of Inquiry.

procedures for the conduct of the Tribunal's hearing, which also referred to the criteria under subrule 61.1(7) of the *Canadian international Trade Tribunal Rules*, the Tribunal issued its directions with respect to the questions. Only AMLPC was required to provide answers to some of the questions posed by NLMK. The Tribunal received written responses from AMLPC on May 31, 2021.

[13] On June 4, 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 July 2, 2021.

RESULTS OF THE CBSA'S INVESTIGATION

[15] On June 2, 2021, pursuant to paragraph 41(1)(b) of *SIMA*, the CBSA made a final determination of dumping in respect of the subject goods.[13] The CBSA's period of investigation was from June 1, 2020, to November 30, 2020.[14] The following margins of dumping were calculated by the CBSA for each exporter and subject country:[15]

Country and Exporter	**Margin of Dumping** (% of export price)
Oman	8.0
All Exporters	8.0
Russia	45.0
All Exporters	45.0

PRODUCT

Product Definition

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

> Hot-rolled deformed steel concrete reinforcing bar in straight lengths or coils, commonly identified as rebar, in various diameters up to and including 56.4 millimeters, in various finishes, excluding plain round bar and fabricated rebar products, originating in or exported from the Sultanate of Oman and the Russian Federation.
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> Also excluded is 10 mm diameter (10M) rebar produced to meet the requirements of CSA G30 18.09 (or equivalent standards) that is coated to meet the requirements of epoxy standard ASTM A775/A 775M 04a (or equivalent standards) in lengths from 1 foot (30.48 cm) up to and including 8 feet (243.84 cm).

13 Exhibit NQ-2020-005-04 at 16-17.
14 Exhibit NQ-2020-005-04.A at para. 11.
15 Exhibit NQ-2020-005-04 at 10.
16 Exhibit NQ-2020-005-04.A at para. 20.

Additional Information

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

> [21] 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.
>
> [22] 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.
>
> [23] 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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> [24] 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,11 (the "National Standard") published by the CSA Group and approved by the Standards Council of Canada.
>
> [25] 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.
>
> [26] 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. Weldable rebar is substitutable for regular rebar in all applications, though the reverse does not hold.
>
> [27] 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

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17 *Ibid.* at paras. 21-31.

> 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.
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> [28] 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 sold in coils.
>
> **Production Process**
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> [29] 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.
>
> [30] 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**
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> [31] 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".
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> [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[18] 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."

[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

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18 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.

both 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 have caused material injury to the domestic industry.[19] 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.[20]

[22] In conducting its analysis, the Tribunal will also examine other factors that might have been affecting 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.

LIKE GOODS AND CLASSES OF GOODS

[23] In order for the Tribunal to determine whether the dumping of the subject goods has caused or is threatening to cause injury to the domestic producers of like goods, it must determine which domestically produced goods, if any, constitute like goods in relation to the subject goods. The Tribunal must also assess whether there is, within the subject goods and the like goods, more than one class of goods.[21]

[24] 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.

[25] 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]

[26] 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]

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19 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.

20 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.

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) [*Copper Pipe Fittings*] at para. 48.

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

[27] 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 were "like goods" in relation to the subject imported rebar and that there was a single class of goods.[24] Notably, in *Rebar 1*, 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]

[28] In its preliminary determination, the Tribunal found that rebar produced in Canada that is of the same description as the subject goods is "like goods" in relation to the subject goods, and that there is one class of goods.[27] The parties have presented no evidence or arguments suggesting that the Tribunal should conduct its analysis on a different basis in this inquiry.

[29] 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

[30] 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.

[31] 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.[28]

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24 See *Concrete Reinforcing Bar* (9 January 2015), NQ-2014-001 (CITT) [*Rebar 1*] at paras. 47, 79; *Concrete Reinforcing Bar* (3 May 2017), NQ-2016-003 (CITT) [*Rebar 2*] at para. 45; *Concrete Reinforcing Bar* (14 October 2020), RR-2019-003 (CITT) [*Rebar 1 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 1* at para. 47.

26 *Ibid.* at para. 74.

27 *Rebar 4 PI* at para. 29.

28 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.

[32] 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.

[33] While Ivaco provided an incomplete response to the Tribunal's questionnaire, the collective production of the like goods by the other four domestic producers accounted for nearly all known domestic production.[29] The Tribunal will therefore assess the impact of the subject goods on the performance of these four producers, as it is representative of the state of the entire domestic industry.

CUMULATION

[34] 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,[30] and (2) such an assessment would be appropriate taking into account the conditions of competition between the goods from any of those countries or between them and the domestically produced like goods.

[35] For the reasons below, the Tribunal is satisfied that an assessment of the cumulative effect of the dumping of the subject goods from the two subject countries is appropriate in the circumstances.

Insignificance and negligibility

[36] 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.

[37] 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".

[38] 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,[31] which in this case is the six-month period from June 1, 2020, to November 30, 2020. During this period, the volumes of

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29 Exhibit NQ-2020-005-07.A (protected), Table 18.

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

31 *Rebar 1* at para. 92; *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate* (6 January 2016), NQ-2015-001 (CITT) at para. 84; *Circular Copper Tube* (18 December 2013), NQ-2013-004 (CITT) at footnote 41; *Hot-rolled Carbon Steel Plate* (20 May 2014), NQ-2013-005 (CITT) at para. 64; *Copper Pipe Fittings* at para. 71.

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".[32]

[39] NLMK submitted that the volume of subject goods from Russia was negligible during the Tribunal's POI with reference to volumes reported in Statistics Canada's Canadian International Merchandise Trade database.

[40] The Tribunal has not been persuaded that it should consider a different period for its assessment of negligibility in this inquiry. The Tribunal's approach in this regard is consistent with Canada's notification to the World Trade Organization (WTO) Committee on Anti-Dumping Practices, which provides that it will normally make this assessment with reference to the volume of imports during the period of data collection for the dumping investigation, i.e. the CBSA's period of investigation.[33] The Tribunal also notes that in its position paper to the WTO, Canada stated that key factors for selecting the period of investigation for the dumping of goods includes the most recent information available as well as consideration of the period during which the complainants allege that injurious dumping is occurring.[34] In fact, as noted by the CBSA in its statement of reasons for initiating the investigation, the six-month period selected in this case coincides with the potentially injurious surge in imports of subject goods into Canada and is consistent with the minimum six-month requirement recommended by the WTO Committee on Anti-Dumping Practices.[35]

[41] In view of this, despite the fact that a longer period for the dumping investigation is generally preferable, the Tribunal finds that the six-month period chosen by the CBSA is adequate to assess negligibility in the circumstances of this inquiry.

Conditions of competition

[42] 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 two 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.

[43] 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

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32 Exhibit NQ-2020-005-06.A, Table 17; Exhibit NQ-2020-005-07.A (protected), Table 17.

33 See Committee on Anti-Dumping Practices, *Notification Concerning the Time-Period for Determination of Negligible Import Volumes Under Article 5.8 of the Agreement*, G/ADP/N/100/CAN (28 January 2003). Canada's notification also took note of the committee's recommendation that, should the methodology chosen not be utilized in any investigation, one of the other two options be used, and an explanation be made in the public notice or public report of that investigation. See also Committee on Anti-Dumping Practices, *Recommendation Concerning the Time-Period to Be Considered in Making a Determination of Negligible Import Volumes for Purposes of Article 5.8 of the Agreement*, G/ADP/10 (29 November 2002).

34 Committee on Anti-Dumping Practices, . . . *Topic 2* - The Period of Data Collection* . . ., G/ADP/AHG/W/30 (15 October 1997) at 8.

35 Exhibit PI-2020-005-07 at para. 25; Exhibit NQ-2020-005-20 (single copy).

consider other factors in deciding whether the exports of a particular country should be cumulated, and no single factor is determinative.[36]

[44] At the preliminary injury inquiry stage, the Tribunal found that the evidence on the record indicated that offers from the subject countries were being made at similar periods in the latter half of 2020, that the subject goods were shipped to Canada using the same mode of transportation, were sold through the same channels of distribution as the like goods, and competed with the like goods in the same geographical markets in Canada.[37] Accordingly, the Tribunal found that it was appropriate, for the purposes of the preliminary injury inquiry, to analyze the cumulative effect of the dumping of rebar into Canada from Oman and Russia. The parties opposed did not challenge this finding in the present injury inquiry.

[45] The Domestic Producers submitted that preponderant evidence on the relevant conditions of competition in the present case justifies cumulation for the following reasons: rebar is a fully interchangeable commodity product (produced to common grades, sizes and specifications) that competes primarily on the basis of price;[38] offers from the subject countries were being made at similar periods in the latter half of 2020; the subject goods are shipped to Canada via the same mode of transportation (ocean vessel) and are sold to end-user fabricators and distributors through similar channels of distribution; and domestically produced rebar and imported rebar are sold to common customers across Canada.

[46] The Tribunal finds that, overall, the evidence largely supports the position that the conditions of competition between the subject goods, and between the subject goods and the like goods, are similar and, therefore, warrant an assessment of the cumulative effect of the subject goods.

[47] The Tribunal has repeatedly found that rebar is a commodity product that competes on the basis of price.[39] 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.[40] Moreover, 10 of the 11 respondents indicated that the lowest net price was a "very important" factor used in purchasing decisions.[41]

[48] Moreover, the evidence on the record indicates that both distributors and end users purchase the subject goods and domestically produced like goods and that these products are "always" or "usually" interchangeable.[42] The subject goods and the domestically produced like goods are also sold in the same geographical markets.[43]

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36 *Corrosion-resistant Steel Sheet* (21 February 2019), NQ-2018-004 (CITT) at para. 45.
37 *Rebar 4 PI* at para. 37.
38 Exhibit NQ-2020-005-A-05 at para. 12; Exhibit NQ-2020-005-B-07 at paras. 6-7.
39 *Rebar 1* at para. 47; *Rebar 2* at para. 68; *Rebar 1 Review* at paras. 228, 233.
40 Exhibit NQ-2020-005-06.A, Table 11.
41 *Ibid*., Table 14.
42 Exhibit NQ-2020-005-06.A, Tables 5, 7.
43 Exhibit NQ-2020-005-07.A (protected), Table 78.

[49] Although delivery times for the subject goods were noted by purchasers as being longer on average,[44] AMLPC and AltaSteel submitted that there is no material difference in the timing of imports from either of the subject countries or the timing of sales in Canada. The Tribunal agrees as the subject goods from both Russia and Oman entered Canada in the second half of 2020[45] and the median delivery times were similar, i.e. 75 days for Omani rebar, and 90 days for Russian rebar.[46] Also, the subject goods were shipped to Canada using the same mode of transportation.

[50] The Tribunal also notes that some purchasers indicated in their questionnaire response that domestic and imported rebar are *not* sold through the same channels of distribution.[47] Gerdau submitted that this may be because domestically produced rebar is purchased directly from mills, while imported rebar is purchased through brokers, as stated in at least one response.[48] Gerdau submitted that, notwithstanding this additional step of purchasing via brokers, domestic and imported rebar compete in the same geographical markets across Canada to supply distributors and end-user fabricators, who in turn supply rebar to large construction projects.[49]

[51] On balance, the Tribunal finds that the subject goods are sold through similar, though not identical, channels of distribution as the like goods and compete with the like goods in the same geographical markets in Canada.

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

INJURY ANALYSIS

[53] Subsection 37.1(1) of the *Special Import Measures Regulations*[50] prescribes that, in determining whether the dumping has caused material injury to the domestic industry, the Tribunal is to consider the volume of the dumped goods, their effect on the price of like goods in the domestic market, and their resulting impact on the state of the domestic industry. Subsection 37.1(3) also directs the Tribunal to consider whether a causal relationship exists between the dumping of the goods and the injury on the basis of the factors listed in subsection 37.1(1), and whether any factors other than the dumping of the goods have caused injury.

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44 *Ibid.*, Table 7; Exhibit NQ-2020-005-18.03A at 13; Exhibit NQ-2020-005-18.09A at 13; Exhibit NQ-2020-005-18.12 at 13; Exhibit NQ-2020-005-18.13A at 13; Exhibit NQ-2020-005-18.02A at 13.

45 Exhibit NQ-2020-005-07.A (protected), Table 23. The total volume of subject imports reported for 2020 is representative of the volume of all subject benchmark products imported in the third and fourth quarters of 2020. Exhibit NQ-2020-005-07.A (protected), Tables 19, 21; Exhibit NQ-2020-005-07.A (protected), Schedules 1-6.

46 Exhibit NQ-2020-005-A-01 at 96; Exhibit NQ-2020-005-06.A, Table 7.

47 Exhibit NQ-2020-005-06.A, Table 8. See for example Exhibit NQ-2020-005-18.06A at 9; Exhibit NQ-2020-005-18.02A at 8; Exhibit NQ-2020-005-18.08 at 9.

48 Exhibit NQ-2020-005-18.11A at 8.

49 Exhibit NQ-2020-005-B-01 at para. 24; Exhibit NQ-2020-005-B-07 at paras. 9-10. See also Exhibit NQ-2020-005-B-02 (protected) at paras. 66-70.

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

Context for and overview of the injury analysis

[54] This is the fourth inquiry into the potentially injurious dumping of rebar. As a result of prior inquiries or reviews, definitive *SIMA* duties are currently in place against rebar from 16 countries.[51]

[55] In fact, this case is the result of the continuation of a long-standing pattern of source switching by importers of rebar in the Canadian market. These importers are sophisticated market players that are willing and able to quickly secure alternative sources of low-priced rebar once *SIMA* measures are put in place against rebar from other countries.

[56] For instance, as noted in the statement of evidence of Mr. Philippe Boulanger of AMLPC, a small number of importers account for the vast majority of offshore rebar imports, namely Acierco KSE Inc., Intermetal Rebar LLC, Jebsen & Jebsen Metals (formerly Ferrostaal Metals) and LMS Limited Partnership (LMS). These brokers are knowledgeable about the Canadian market and have accounted for the majority of rebar imports in past cases concerning imports of rebar.[52] The Tribunal agrees that a relatively small number of importers account for the vast majority of imports and in the present case, LMS and Ferrostaal Metals were the only reporting importers of subject goods during the POI.[53] The Tribunal also notes that the ability of at least one importer to swiftly switch its sourcing of rebar to the subject countries is well documented in the evidence on the record.[54]

[57] As discussed further below, non-subject imports 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 (the *Rebar 3* countries) were imported in large volumes in 2019 and 2020. However, as non-subject imports from the *Rebar 3* countries faced restricted access to the Canadian market with the initiation, in September 2020, of the investigation into the dumping of rebar from the *Rebar 3* countries and the imposition of provisional duties as a result, the subject goods began entering the Canadian market in increasing volumes in the second half of 2020. In and around this time, importers began turning to Russia and Oman as sources for the supply of rebar.

[58] However, by taking the extraordinary step of self-initiating an investigation into the dumping of the subject goods in December 2020, the CBSA appears to have curtailed the importation of the subject goods at dumped prices. In this regard, the Tribunal notes that according to Statistics Canada import data provided by the Domestic Producers in the first quarter of 2021 showed no imports from

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51 In *Rebar 1*, the Tribunal found that the dumping of rebar from China, Korea and Turkey (the *Rebar 1* countries), and the subsidizing of rebar from China, were threatening to cause injury to the domestic industry. Finding continued in *Rebar 1 Review*. In *Rebar 2*, the Tribunal found that the dumping of rebar from Belarus, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei), Hong Kong, Japan, Portugal and Spain had caused injury to the domestic industry. More recently, in *Steel Safeguard Inquiry*, the Tribunal found that the importation of rebar into Canada from all sources (except for a small number of countries that were excluded from the inquiry) had not caused serious injury and was not threatening to cause serious injury to the domestic industry. As a result, provisional safeguard measures on rebar, which had been in place since October 2018, were removed. In *Rebar 3 NQ*, the Tribunal found that the dumping of rebar from the *Rebar* 3 countries had caused injury to the domestic industry.

52 Exhibit NQ-2020-005-A-05 at para. 19.

53 Exhibit NQ-2020-005-12.14A at 1, 14; Exhibit NQ-2020-005-12.22 at 1, 3; Exhibit NQ-2020-005-12.18B at 1, 10; Exhibit NQ-2020-005-12.17B at 1, 11; Exhibit NQ-2020-005-12.20B at 1, 11.

54 Exhibit NQ-2020-005-B-08 (protected) at para. 35.

the *Rebar 3* countries. However, 20,192 tonnes of rebar were imported from Oman during this period.[55] But for this action, the evidence indicates that the subject goods would likely have continued to make inroads into the Canadian market, resulting in lost sales for the domestic producers and placing further downward pressure on pricing.

[59] The Tribunal has recently found that imports of rebar from the *Rebar 3* countries caused the domestic industry's selling prices, sales, and financial results to decline throughout 2019 and 2020, thereby materially injuring the domestic industry in the second half of 2019 and into 2020.[56] In the present inquiry, the Domestic Producers submitted that the domestic industry suffered injury during the second half of 2020 and into the first quarter of 2021. The subject goods entered the market in larger volumes in the third and fourth quarters of 2020 and by the first quarter of 2021, the subject goods represented 28 percent of total imports.[57] It is submitted that as these volumes were priced lower than domestically produced like goods, they caused lost sales as well as undercutting of Canadian producer pricing, which in turn caused both price depression and suppression over the three quarter periods.

[60] Consequently, in this inquiry, the Tribunal must determine whether the subject goods contributed to the domestic industry's injury and if so, whether any injury attributable to the subject goods, in and of themselves, is material. Any injury attributable to the subject goods must therefore be distinguishable from any injury caused by other factors, in particular, the non-subject imports from the *Rebar 3* countries. As discussed below, while the Tribunal finds that the subject goods contributed to the injury sustained by the domestic industry in the second half of 2020, the injury that can be attributed to the subject goods, in and of themselves, over a period of less than six months, was not for a duration and to an extent sufficient for the Tribunal to conclude that it was material within the meaning of *SIMA*.

[61] That said, in the absence of a finding, the Tribunal finds that the source switching trend will likely continue and accelerate. In other words, the subject goods will likely be imported in large volumes at prices that will depress and suppress the price of the like goods. This would cause a further, and material, deterioration of the domestic industry's performance. Accordingly, the dumping of the subject goods poses an imminent and clearly foreseeable threat of injury.

Preliminary issue: quarterly comparisons and relevance of the first quarter of 2021

[62] As in the preliminary injury inquiry, during this inquiry, NLMK objected to the quarterly comparisons submitted by the Domestic Producers to demonstrate injury. The Tribunal rejected this argument at the preliminary injury inquiry stage and for the reasons below maintains this position.[58]

[63] The Tribunal remains of the view that quarterly comparisons can be appropriate, and even necessary, in specific circumstances such as those present in this case where the evidence indicates that subject goods were absent from the Canadian market from 2018 to the beginning of the dumping

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55 Exhibit NQ-2020-005-A-01 at 96; Exhibit NQ-2020-005-A-07 at 9, 30. Based on the two- to three-month lag between sales of the subject goods and delivery, the Tribunal finds that these volumes of imports seen in the first quarter of 2021, were likely as a result of sales that occurred prior to the initiation of the CBSA's investigation into the dumping of the subject goods. Exhibit NQ-2020-005-06.A, Table 7; Exhibit NQ-2020-005-A-05 at para. 14; Exhibit NQ-2020-005-A-07 at para. 16; Exhibit NQ-2020-005-B-07 at para. 14.

56 *Rebar 3 NQ*.

57 Exhibit NQ-2020-005-A-01 at 96.

58 *Rebar 4 PI* at para. 40.

period of investigation in June 2020. The Tribunal agrees with the Domestic Producers that, in circumstances such as these, recent trends may be masked if quarterly comparisons are not taken into account. Accordingly, in addition to aggregate annual data, relevant quarterly data will also be considered.

[64] The Tribunal further notes that it has previously analyzed the domestic industry's performance on a quarterly basis, where appropriate.[59] Additionally, there is no evidence indicating that the recent trends in import and sales reflect "normal" market behaviour attributable to factors such as the timing and seasonality of shipments.[60] In this context, the Tribunal can and should look at the most recent data on a quarterly basis.

[65] The Domestic Producers claim that the subject goods caused injury from the third quarter of 2020 through the first quarter of 2021. In fact, the evidence submitted with respect to the first quarter of 2021 formed a central component of their case for injury caused by the subject goods. However, the first quarter of 2021 is outside of the POI. While the Tribunal may consider post-POI evidence in its analysis, it finds that its conclusion with respect to past injury should be limited to a period within its POI, as was the case in *COR 2*,[61] the precedent cited by Gerdau as authority for the consideration of post-POI data. Indeed, the most reliable positive evidence to assess injury pertains to the situation within the POI.

[66] As such, the data for the first quarter of 2021 relied upon by the Domestic Producers cannot be given the same weight as it is based strictly on tariff codes, may include non-subject goods, and does not reflect landed prices of imports. The Tribunal finds that such data can nevertheless provide confirmation of continuation or acceleration of trends observed during the POI. As such, data for the first quarter of 2021 are more relevant for assessing threat of injury, an analysis that is focused on future or post-POI events.

Import volume of dumped goods

[67] 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.

[68] The Domestic Producers submit that there was source switching from *Rebar 3* countries to the subject goods starting in the third quarter of 2020 through to the first quarter of 2021 due to the initiation of the investigation into the dumping of imports from *Rebar 3* countries starting in the third quarter of 2020 through to the first quarter of 2021. Based on data from the Tribunal's investigation report, the Tribunal agrees that importers began turning to the subject goods as an alternative to non-subject imports from the *Rebar 3* countries.

[69] In absolute terms, data in the Tribunal's investigation report show that the subject goods were absent from the domestic market in 2018 and 2019 but arrived in 2020, notably in the third and

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59 In *Rebar 2* at para. 185, the Tribunal found injury occurring in the last quarter of 2015 as well as the interim 2016 period. See also *Cold-rolled Steel* (24 July 2018), PI-2018-002 (CITT) at paras. 76, 86; *Corrosion-resistant Steel Sheet* (1 December 2020), NQ-2019-002 (CITT) [*COR 2*] at footnote 156.

60 In *Rebar 4 PI* at para. 40, the Tribunal noted that caution should be exercised as certain trends in imports and sales may be seasonal and therefore reflect "normal" market behaviour.

61 *COR 2* at paras. 128, 129, 146. In this case, the Tribunal considered post-POI evidence on the record that emerged from its extended inquiry and found that it supported its conclusion of material injury over the POI.

fourth quarters, which coincides with the CBSA's dumping POI. More precisely, subject imports increased 190 percent between the third and fourth quarters of 2020.[62] The data in the investigation report show that nearly three quarters of all subject imports in 2020 entered the country in the fourth quarter of 2020 alone.

[70] When comparing the share of subject imports relative to total imports in interim 2020 to the fourth quarter of 2020, it increased 13 percentage points. The increasing share of subject goods in the second half of 2020 coincided with a decreasing share of imports from *Rebar 3* countries. Between interim 2020 and the fourth quarter of 2020, the share of imports from the *Rebar 3* countries relative to total imports fell 5 percentage points.[63]

[71] When comparing the market data for interim 2020 to those of the fourth quarter of 2020, the subject imports increased their share of the market by 6 percentage points. However, there was no concurrent decrease in the share of the market held by the *Rebar 3* countries between interim 2020 to the fourth quarter of 2020. In fact, the Tribunal notes that the market share of imports among the *Rebar 3* countries, held steady between interim 2020 and the fourth quarter of 2020, when the market share of subject imports increased.[64]

[72] Considering the foregoing data, it is apparent that in the third and fourth quarters of 2020, importers began turning to the subject goods as an alternative to non-subject imports from the *Rebar 3* countries. However, despite the increase in volume of subject goods during the second half of 2020, their share remained small relative to imports from *Rebar 3* countries. In fact, *Rebar 3* countries remained by far the largest source of offshore imports, significantly outnumbering the subject goods in the third and fourth quarters of 2020.[65]

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62 The total volume of subject imports reported for 2020 is representative of the volume of all subject benchmark products imported in the third and fourth quarters of 2020. Exhibit NQ-2020-005-07.A (protected), Tables 19, 23. Exhibit NQ-2020-005-07.A (protected), Schedules 1-6. The Tribunal notes that the volume of subject goods reported by the CBSA during the dumping investigation (June 1, 2020, to November 30, 2020) exceeds the total volume reported in the Tribunal's investigation report for full year 2020. Nevertheless, the Tribunal did not deviate from its standard methodology pertaining to the estimation of import volumes using replies to CITT questionnaires and CBSA import data.

63 This can readily be observed by subtracting the total volume of subject imports for interim 2020 from the total volume of subject imports for 2020 as a whole, which yields the volume of imports for the fourth quarter. The Tribunal notes that import data for *Rebar 1* countries for interim 2019 and interim 2020 were inadvertently omitted in Exhibit NQ-2020-005-07.A (protected), Tables 19-21, 23-26 (the same data were also omitted from the investigation reports in *Rebar 3 NQ*). The Tribunal only discovered this omission after the hearing in the present inquiry. The data for the *Rebar 1* countries for interim 2019 and interim 2020 are properly reflected at Exhibit NQ-2020-005-07.A (protected), Table 15. The percentage point changes for share of imports were calculated based on revised values of total import volumes for the interim periods in Table 19, taking into account the *Rebar 1* interim data in Table 15. Similarly, percentage point changes with respect to market share for the domestic producers and importers, were calculated based on revised total market volumes for the interim periods in Table 23. The Tribunal also notes that the omission of the *Rebar 1* interim data impacted percent changes for the following: import volumes for interim 2020 (Table 20); import shares for interim 2019 and 2020 (Table 21); percent changes of sales of imports and total market for 2020 (Table 24); market shares for interim 2019 and 2020 (Table 25); and percentage point change for sales of domestic producers and imports for interim 2020 (Table 26). The Tribunal notes that the omission of the data for the *Rebar 1* countries for interim 2019 and interim 2020 had a relatively minor impact on the data in the investigation report.

64 *Ibid.*

65 Exhibit NQ-2020-005-07.A (protected), Schedules 1-6.

[73] Relative to domestic production and domestic sales of domestic production, the investigation report shows a similar trend, with the volume of subject goods accounting for a notably higher ratio in the fourth quarter of 2020 when compared to the volume in interim or full year 2020.[66]

[74] Import permit data published by the Department of Global Affairs (GAC) for the first quarter of 2021 submitted by the Domestic Producers, show 20,192 tonnes of subject imports (exclusively from Oman), representing 28 percent of total imports for this quarter. There were no imports from *Rebar 3* countries during the period.[67] It was also stated that volumes of subject imports in the first quarter of 2021 would likely have been higher if not for the initiation by the CBSA of its investigation into the dumping of the subject goods, which resulted in the cancellation of offers and orders from Russia and Oman.[68] With the lag in the timing between the sale transaction and the arrival of goods in Canada, i.e. approximately 60 to 90 days until the shipment arrives in Canada,[69] the Tribunal agrees that if orders were cancelled in the fourth quarter of 2020, any reduction in import volumes would be seen in the first quarter of 2021.

[75] However, these data relate to a period outside the POI and the Tribunal is unable to confirm whether any products that do not meet the product definition were included.[70] That said, the Tribunal finds that the data further indicate the potential for continued increases in imports of subject goods.

[76] On the basis of the foregoing, the Tribunal finds that, over the POI, and more specifically in the second half of 2020, there has been a significant increase in the volume of subject imports, both in absolute and relative terms.

Price effect of dumped goods

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

[78] The Domestic Producers submitted that prices of domestically produced rebar began eroding in 2019 and into 2020, and the subject goods caused further price erosion in the third quarter of 2020 to the fourth quarter of 2020 and the first quarter of 2021.

[79] AltaSteel submitted that, in fair market conditions, pricing should normally align with U.S. domestic pricing. For instance, in comparison to American Metal Market's FOB mill pricing for

66 *Ibid.*, Tables 18, 19, 22.
67 Exhibit NQ-2020-005-A-01 at 96.
68 Exhibit NQ-2020-005-A-05 at para. 32; Exhibit NQ-2020-005-B-05 at para. 37; Exhibit NQ-2020-005-B-07 at para. 56; Exhibit NQ-2020-005-B-08 (protected) at para. 56.
69 Exhibit NQ-2020-005-06.A, Table 7; Exhibit NQ-2020-005-A-05 at para. 14; Exhibit NQ-2020-005-A-07 at para. 16; Exhibit NQ-2020-005-B-07 at para. 14.
70 The Tribunal has made similar comments with respect to these data in previous cases. *Oil Country Tubular Goods* (2 April 2015), NQ-2014-002 (CITT) [*Oil Country Tubular Goods*] at para. 217; *COR 2* at para. 81. In *Steel Safeguard Inquiry* at 54-55, the Tribunal found it could rely on Statistics Canada import data to confirm the trend in subject goods seen in the interim 2018 period continued into the third and fourth quarters of 2018 (both quarters were outside the POI).

the period from June 2020 to the first quarter of 2021, AltaSteel argued that its pricing has not increased in step with U.S. FOB mill pricing with the pricing gap continuing to increase in the first quarter of 2021.[71]

Approach to analysing prices

[80] As described above, the Tribunal has previously found that imported and domestically produced rebar are commodity products that are fully interchangeable, regardless of the source, and consequently compete based on price.[72] The Tribunal finds, based on the evidence on the record, that price continues to be the key consideration affecting purchasing decisions with respect to rebar.[73]

[81] 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.[74]

[82] In *Rebar 1*, 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.[75] The Tribunal also accounted for this domestic price premium in *Rebar 2* 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. In *Rebar 3 NQ*, the Tribunal was satisfied that continuing to deduct a representative $30 per tonne from domestic selling prices in order to account for the premium was both appropriate and reasonable in the circumstances.[76]

[83] For the present inquiry, AMLPC submitted that, in its 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.[77] Similar arguments were made by AltaSteel and Gerdau.[78] 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. For those that were, the average of the premiums they reported as being willing to pay was $83 per tonne.[79] However, when considering all 11 respondents, the average premium drops to $33 per tonne. Additionally, AMLPC and AltaSteel submitted that responses with respect to domestic premiums correlated to the size of the customer,

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71 Exhibit-NQ-2020-005-C-04 (protected) at para. 67.

72 *Rebar 1* at paras. 100, 280; *Rebar 2* at para. 68; *Steel Safeguard Inquiry* at 62; *Rebar 1 Review* at paras. 233, 228; *Rebar 3 PI* at para. 47.

73 Exhibit NQ-2020-005-06.A, Tables 11, 14. Ten out of 11 purchasers agreed that the "lowest net price" was "very important" and 8 out of 11 purchasers confirmed that the lowest-priced goods "always" or "usually" win the sale.

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

75 *Rebar 1* at paras. 139-141.

76 *Rebar 2* at paras. 98, 108, 114; *Steel Safeguard Inquiry* at 62; *Rebar 3* at para. 69.

77 Exhibit NQ-2020-005-A-07 at paras. 10, 11.

78 Exhibit NQ-2020-005-C-03 at para. 32; Exhibit NQ-2020-005-B-08 (protected) at para. 31.

79 See Exhibit NQ-2020-005-06.A, Table 8. 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.

and the majority of respondents that indicated that there is a high domestic premium associated it with government procurement.[80] Moreover, in some cases, customers expect domestic producers to match import prices (notably in western Canada).[81]

[84] Gerdau submitted that prices were already depressed by imports from the *Rebar 3* countries and therefore, by the time the subject goods entered the market, prices of like goods had already reached a point of convergence with import prices. According to Gerdau, in this context, there was little ability for the domestic industry to secure a domestic premium. As well, while it can be expected that the margins of undercutting would be smaller, they would still be significant in the context of this inquiry given how much they had fallen.

[85] On balance, the Tribunal finds that based on the evidence on the record, the domestic producers generally continue to enjoy a domestic price premium of roughly $30 per tonne, which must be accounted for in its analysis of the price effect of the subject goods. Even if there is some evidence that certain customers now expect domestic producers to match the import prices, when considering all responses to the purchasers' questionnaire, the evidence suggests that there is an average domestic price premium of roughly $30 per tonne. This is consistent with the Tribunal's conclusion on this issue in previous rebar cases. Furthermore, as discussed below, taking into account this average price premium, the Tribunal finds that the evidence does not indicate significant price undercutting by the subject goods during the POI.

Price undercutting

[86] At the aggregate level, taking into consideration the domestic price premium, the prices of the subject goods did not significantly undercut the selling prices of the like goods in 2020. Comparing prices of like goods and of the subject goods in the interim 2020 and the fourth quarter of 2020 periods shows no undercutting, even without accounting for the domestic price premium.[82] Moreover, the undercutting is the same when comparing market selling prices of like goods with import prices of the subject goods. In the absence of any significant undercutting, importantly, the Tribunal notes that the subject goods were always priced above the prices of imports from the *Rebar 3* countries in 2020, including in the fourth quarter of 2020 specifically. Throughout 2020, the price leader was the non-subject imports from the *Rebar 3* countries.

[87] The Domestic Producers have submitted that the subject goods were the lowest priced imports in the second half of 2020 and the first quarter of 2021. However, this is based on import data from Statistics Canada and GAC for those periods, which the Tribunal notes do not reflect a net delivered selling price.[83]

[88] Looking at pricing at the trade level, the volume of subject goods sold to distributors was minimal.[84] As such, the Tribunal finds the analysis of sales prices to end users to be more relevant to assessing the price effects of the subject goods. The Tribunal notes nevertheless that at the distributor trade level, the subject goods undercut domestically produced like goods in 2020 by an amount

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80 Exhibit NQ-2020-005-A-01 at paras. 34-36; Exhibit NQ-2020-005-A-02 (protected) at para. 36.

81 Exhibit NQ-2020-005-A-07 at para. 11; Exhibit NQ-2020-005-C-03 at para. 32.

82 Exhibit NQ-2020-005-07.A (protected), Tables 40, 23. Unit value data for the fourth quarter of 2020 were derived using data from Tables 23 and 40 of the investigation report.

83 Exhibit NQ-2020-005-A-01 at 96, 97.

84 Exhibit NQ-2020-005-07.A (protected), Tables 27, 42. There were no sales of imports from Oman to distributors during the POI. All sales of subject goods to distributors in 2020 occurred in the fourth quarter only.

exceeding the domestic premium. However, when analyzing the fourth quarter of 2020, the period in which all subject goods were sold to distributors, the same cannot be said. Non-subject imports from the *Rebar 1* countries were the price leaders in 2020 and sales of imports from *Rebar 3* countries were the price leaders in the fourth quarter of 2020.[85]

[89] At the end-user trade level, the selling prices of the subject goods undercut prices of the domestically produced like goods in 2020.[86] The level of price undercutting was minimal taking the domestic premium into account. The Tribunal notes that the subject goods were the price leader in 2020.

[90] 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 cover a significant proportion of the total reported sales from domestic production and from imports over this period.[87] On an aggregate basis, the subject goods undercut domestic selling prices in 2 of 11 instances.[88] Only in one instance did the selling price of subject goods undercut domestic selling prices by an amount greater than the domestic premium.

[91] While there was undercutting by the subject goods in two instances (the third and fourth quarters of 2020), the price leaders in both of those quarters were the imports from the *Rebar 3* countries, which undercut the domestically produced like goods by amounts exceeding the domestic premium during all 11 periods when the subject goods were present.

[92] Furthermore, with respect to non-subject imports, sales of imported benchmark products from the *Rebar 3* countries undercut domestically produced like goods in 38 of 39 instances, 31 of which were by an amount exceeding the domestic price premium.[89] As found in *Rebar 3 NQ*, the benchmark data show that undercutting by the *Rebar 3* countries was significant, and the subject goods in the present inquiry did not undercut the price of the like goods to anywhere near the same extent.

[93] Gerdau submitted that with the quarterly lag between the time when the subject goods are sold and when they arrive in Canada, competition between the subject goods and the like goods takes place 60 to 90 days

85 Similar to the omission mentioned at footnote 63, the Tribunal notes that unit values of imports and sales of imports from *Rebar 1* countries for interim 2019 and interim 2020 were omitted, as they pertain to Exhibit NQ-2020-005-07.A (protected), Tables 38-41. These tables do not show the pricing and resulting percent change of *Rebar 1* countries during the interim periods. Accordingly, unit values for imports and sales of imports from *Rebar 1* countries were revised taking into account data referenced in Exhibit NQ-2020-005-07.A (protected), Table 15. The Tribunal's pricing methodology for the *Rebar 1* countries data used enforcement volume provided by the CBSA in Exhibit NQ-2020-005-07.A (protected) at 21 and pricing data from questionnaire responses (imports from *Rebar 1* countries) to derive the value of imports and sales during the POI. The Tribunal notes that the omission of the *Rebar 1* interim data impacted the import unit values for *Rebar 1* for interim 2019 and interim 2020 as well as the following: total non-subject imports and total imports for interim 2020 (Table 38); percent change for *Rebar 1* for interim 2020 (Table 39); market unit values for *Rebar 1* for interim 2019 and interim 2020 as well as the total non-subject imports, total sales from imports and total market for interim 2020 (Table 40); and the percent change for *Rebar 1* for interim 2020 (Table 41). The Tribunal notes that the omission of the data for the *Rebar 1* countries for interim 2019 and interim 2020 had a relatively minor impact on the data in the investigation report.

86 Exhibit NQ-2020-005-07.A (protected), Table 44.

87 *Ibid.*, Tables 23, 36, Schedules 1-6.

88 Exhibit NQ-2020-005-07.B (protected), Tables 57, 58.

89 *Ibid.*, Tables 57, 58.

before the imports arrive in Canada. When accounting for this quarterly lag, Gerdau submitted that the instances and magnitude of undercutting are increased. In the Tribunal's analysis, after accounting for the quarterly lag, it finds that the instances and magnitude of price undercutting by the subject goods do increase; there is one more instance, for a total of three instances of undercutting, however, in only one of the three instances, the undercutting exceeds the domestic premium.

[94] Gerdau also argued that the Tribunal should "go behind" the average data to isolate more specific head-to-head competition between the subject imports from each of Russia and Oman separately by looking at the benchmark product data and by looking at common accounts data.[90]

[95] There was only one common account that offered a comparison between the selling prices of the subject goods and those of domestically produced like goods. While the data are limited to one quarter for comparison (the fourth quarter of 2020), the degree of undercutting by prices of the subject goods did exceed the domestic premium.[91] AMLPC and AltaSteel also noted that LMS, the only importer of Omani rebar did not sell imported rebar in the domestic market, as they are considered an end-user fabricator.[92] As such there was no price comparison of common accounts for Omani imports.

[96] The Domestic Producers also provided several specific allegations of lost sales due to undercutting by the subject goods in the second half of 2020. The undercutting ranged from less than, to well in excess of, the domestic price premium, which ultimately led to price reductions in order to win sales.

[97] AMLPC had four allegations of lost sales and price undercutting concerning head-to-head competition with the subject goods from both Oman and Russia. The timing of the allegations spans from the second quarter of 2020 through October 2020.[93]

[98] AltaSteel alleged that it faced head-to-head competition with the subject goods on five different occasions amounting to lost sales revenue and volumes caused by undercutting from the subject goods. The Tribunal notes that in providing evidence with respect to its price injury allegations, AltaSteel described the degree of undercutting using a "baseline price" or fair market price that was adjusted for the scrap costs at the time of each offer in 2020.[94] In assessing the degree to which AltaSteel's prices were undercut, the Tribunal focused on AltaSteel's actual offered price and not its purported fair market price of undercutting. The Tribunal is of the view that the analysis of any impact on AltaSteel's ability to sell its products at prices that reflect increases in scrap prices can be assessed in examining any price suppression caused by the subject goods below.

[99] Gerdau submitted four account-specific allegations of lost sales at the expense of subject goods from Russia. Using selling prices of Russian imports in the IR, Gerdau estimated the undercutting by Russian rebar to be well in excess of the domestic premium. Gerdau also alleged that

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90 *Transcript of Public Hearing* at 79.

91 Exhibit NQ-2020-005-07.A (protected), Table 70. As noted above, LMS and Ferrostaal Metals were the only importers of subject goods during the POI.

92 Exhibit NQ-2020-005-12.22A at 1.

93 Exhibit NQ-2020-005-A-07 at paras. 19-38; Exhibit NQ-2020-005-A-08 (protected) at paras. 19-38 (Table 3).

94 Exhibit NQ-2020-005-C-03 at paras. 42-48, 70, 74; Exhibit NQ-2020-005-C-04 (protected) at paras. 42-48, 70, 74.

in respect of three accounts, its prices were undercut by Omani rebar to amounts well in excess of the domestic premium.[95]

[100] Without reference to any specific accounts, MANA alleged lost sales at the expense of the non-subject goods from the Rebar 3 countries and the subject goods as well as little to no shipments to key customers in certain regions of the market.[96]

[101] AltaSteel and AMLPC noted that subject goods were imported by two importers, LMS and Ferrostaal Metals, and that Omani rebar was imported into western Canada and Russian rebar into eastern Canada. AltaSteel and AMLPC submitted that the price effects should be analyzed on a regional basis by comparing the prices of AltaSteel, which sells exclusively into western Canada, to Omani prices and eastern producer prices (ALMPC, Gerdau, Ivaco, MANA) to Russian prices. Based on the proposed analysis, AltaSteel and AMLPC submitted that the undercutting is greater.[97] Moreover, the regional analysis increased the instances of undercutting for benchmark products.[98]

[102] The regional analysis proposed by AltaSteel and AMLPC and certain specific injury allegations made by the Domestic Producers tend to support the view that the price undercutting by the subject goods was somewhat greater than that revealed by the review of the traditional and reliable indicators discussed above. However, it remains limited compared to the extensive price undercutting by the non-subject imports from the *Rebar 3* countries. Furthermore, the Tribunal notes that producers in eastern Canada did in fact sell to western regions of Canada and, therefore, limiting the pricing analysis in western Canada to pricing from AltaSteel only would not be fully representative of the domestic industry's presence and competition with subject goods in western Canada.[99]

[103] On balance, there is evidence that the subject goods were imported at low prices during the third and fourth quarters of 2020. However, taking into account the subject goods' smaller share of the total imports, the larger volume and generally lower price of non-subject imports during this period, and the domestic price premium, the Tribunal is unable to find that the subject goods significantly undercut the price of the like goods during the POI. There is little doubt that non-subject imports had a greater impact on prices of domestically produced like goods.

<u>Price depression</u>

[104] 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. Between interim 2019 and interim 2020, the price declined by 15 percent.[100] Based on the

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95 Exhibit NQ-2020-005-B-01 at paras. 62-64; Exhibit NQ-2020-005-B-02 (protected) at paras. 62-64.
96 Exhibit NQ-2020-005-D-05 at paras. 31-32; Exhibit NQ-2020-005-D-06 (protected) at paras. 31-32.
97 In this regard, Mr. Boulanger noted that pricing in western Canada is typically higher than in eastern Canada. Exhibit NQ-2020-005-A-05 at para. 27.
98 Exhibit NQ-2020-005-A-02 (protected) at para. 118 (Table 7).
99 Exhibit NQ-2020-005-10.05 (protected) at 12; Exhibit NQ-2020-005-10.01 (protected) at 12; Exhibit NQ-2020-005-10.02A (protected) at 10; Exhibit NQ-2020-005-10.03 (protected) at 8; Exhibit NQ-2020-005-10.04E (protected) at 10.
100 Exhibit NQ-2020-005-06.A, Tables 40, 41, 43, 45. 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 market level.

Domestic Producers' quarterly financial statements, the Tribunal notes that the domestic industry's selling prices began to decline starting in the second quarter of 2019.[101]

[105] With respect to the period in which the subject goods were present in the market, the data in the investigation report indicate that the prices of domestically produced like goods decreased by 5 percent between interim 2020 and the fourth quarter of 2020. Similar trends are observed when looking at prices at the distributor and end-user trade levels during the POI.[102] Furthermore, this is consistent with the Domestic Producers' quarterly pricing data for the third and fourth quarters of 2020.[103]

[106] The Tribunal's investigation report shows a consistent downward trend as average domestic selling prices for all six benchmark products decreased in each successive quarter in the second half of 2020 when the subject goods were present.[104]

[107] Certain of the Domestic Producers also submitted allegations of price reductions. AMLPC alleged price reductions for sales to three accounts due to import offers of Russian rebar between July and September 2020.[105] AltaSteel also had four instances of price reductions in order to win the sale.[106] To demonstrate price depression, Gerdau submitted that its sale prices for several of its accounts from the third quarter of 2020 to the first quarter of 2021 were reduced.[107]

[108] The Tribunal is not convinced that the price decreases described above can be entirely or even significantly attributed to the subject goods. In fact, while their prices probably contributed to the depression of the price of like goods in the second half of 2020, as the Tribunal determined in *Rebar 3 NQ*, it is the non-subject imports from the *Rebar 3* countries, which were present in the market in greater volumes and at lower prices during the relevant period, that significantly depressed the prices of the like goods in both the second half of 2019 and throughout 2020.

Price suppression

[109] 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 cost of goods sold (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.[108]

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101 Exhibit NQ-2020-005-A-02 (protected) at 99.

102 Exhibit NQ-2020-005-06.A, Tables 43, 45. Unit value data for the fourth quarter of 2020 were derived using data from Tables 23 and 40 of the investigation report. The corresponding change was calculated using interim 2020 pricing and the derived value for the fourth quarter of 2020.

103 Exhibit NQ-2020-005-A-01 at 96.

104 Exhibit NQ-2020-005-07.B (protected), Tables 46-49; Exhibit NQ-2020-005-07.A (protected), Tables 50, 51.

105 Exhibit NQ-2020-005-A-08 (protected) at paras. 1 (Table 1), 38 (Table 3).

106 Exhibit NQ-2020-005-C-04 (protected) at paras. 43-45, 48. The price reduction is the difference between the originally offered price and reduced price.

107 Exhibit NQ-2020-005-B-02 (protected) at para. 72 (Table 14).

108 *Heavy Plate* (5 February 2021), NQ-2020-001 (CITT) [*Heavy Plate*] at para. 118.

[110] Data in the investigation report show that both COGS and COGM decreased on a per-unit basis in 2019 and 2020[109] 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.

[111] AltaSteel, AMLPC and Gerdau submitted that the subject goods suppressed the domestic industry's prices when considering the data between the second quarter of 2020 to the first quarter of 2021 and created a price-cost squeeze from the fourth quarter of 2020 to the first quarter of 2021 for certain producers, i.e. COGS per unit increased at a faster rate than did per unit net sales value. AMLPC also provided an account-specific example where it was unable to secure price increases in the fourth quarter of 2020 (for delivery in the first quarter of 2021) that were in step with increases in the price of raw materials.[110] Moreover, Gerdau submitted that it attempted to increase prices between December 2, 2020 and March 10, 2021, but was unsuccessful.[111]

[112] Gerdau attributed the rise in costs from the third quarter of 2020 to the first quarter of 2021 to the increase in cost of scrap noting that during this period, its "metal spread," i.e. the difference between its own raw material costs and actual selling prices declined. Gerdau submitted that the domestic industry was forced to maintain or lower its prices in response to dumped subject import pricing despite high raw material costs.[112]

[113] While the Tribunal finds that the evidence on the record indicates a cost-price squeeze going into the first quarter of 2021, the fact remains that this is a recent development which factors in the analysis data for a period that is outside of the POI. As such, the Tribunal is not convinced that this evidence is indicative of significant price suppression relevant for the Tribunal's determination on injury.

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

Conclusion

[115] In summary, the Tribunal finds, after having distinguished their effect from that of non-subject imports, that the evidence does not indicate that the subject goods, in and of themselves, had significant adverse price effects on the price of the like goods during the POI, including in the third and fourth quarters of 2020.

Resulting impact on the domestic industry

[116] 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.[113] These impacts are to

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109 Exhibit NQ-2020-005-07.A (protected), Table 71.
110 Exhibit NQ-2020-005-A-01 at 45-46; Exhibit NQ-2020-005-A-02 (protected) at 45-46; Exhibit NQ-2020-005-A-07 at paras. 27, 30-32, 34, 35; Exhibit NQ-2020-005-A-08 (protected) at paras. 27, 30-32, 34-35.
111 Exhibit NQ-2020-005-B-07 at para. 41; Exhibit NQ-2020-005-B-08 (protected) at para. 41.
112 Exhibit NQ-2020-005-B-01 at para. 77; Exhibit NQ-2020-005-B-02 (protected) at para. 77.
113 Such factors and indices include (i) any actual or potential decline in output, sales, market share, profits, productivity, return on investments or the utilization of industrial capacity, (ii) any actual or potential negative effects on cash flow, inventories, employment, wages, growth or the ability to raise capital, (ii.1) the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods, and (iii) in the case of

be distinguished from the impact of other factors also having a bearing on the domestic industry.[114] Paragraph 37.1(3)(a) of the *Regulations* requires the Tribunal to consider whether a causal relationship exists between the dumping of the goods and the injury, retardation or threat of injury, on the basis of the volume, the price effect, and the impact on the domestic industry of the dumped goods.

[117] As subject goods were only present in the market in 2020, in assessing the domestic industry's performance indicators, the Tribunal will focus mainly on such indicators for 2020, with reference to 2019 where relevant.

Sales and market share

[118] Domestic sales from domestic production followed a similar trajectory to production for domestic sales, increasing by 24 percent in 2019 and then declining by 4 percent in 2020. The market did the opposite, declining by 2 percent in 2019 before increasing by 5 percent in 2020. However, when considering the POI as a whole, the domestic industry's production and domestic sales both increased, and by a greater percentage than the increase in the market.[115]

[119] The total rebar market contracted in volume by 2 percent in 2019, before expanding by 5 percent in 2020.[116] In 2020, the domestic industry underperformed relative to the market, as domestic sales from domestic production declined by 4 percent while sales from imports increased by 17 percent. As such, the domestic industry was not able to participate in the market growth in 2020.

[120] In 2019 and 2020, the domestic industry retained a majority share of market sales with 57 and 52 percent, respectively. However, its market share fell by 5 percentage points from 2019 to 2020. Between interim 2020 and the fourth quarter of 2020, the domestic industry's market share declined 2 percentage points, from 52 percent to 50 percent.[117]

[121] The subject goods entered the market in the second half of 2020 and managed to capture and increase their market share, particularly in the fourth quarter. When comparing interim 2020 to the fourth quarter of 2020, the subject goods increased their market share by 6 percentage points.[118]

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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.

114 Paragraph 37.1(3)(b) of the *Regulations* directs the Tribunal to consider whether any factors other than dumping or subsidizing 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 or subsidized, (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 factor that is relevant in the circumstances.

115 Total market increased by 3 percent over the POI. Exhibit NQ-2020-005-06.A, Tables 74-75; ExhibitNQ-2020-005-06.A, Tables 23-24.

116 Exhibit NQ-2020-005-06.A, Tables 23-24.

117 *Ibid.*, Table 25; Exhibit NQ-2020-005-07.A, (protected) Table 25. See footnote 63 for an explanation concerning the omitted data for *Rebar 1* countries and the impact on market share data for interim 2019 and interim 2020.

118 See footnote 63 for an explanation concerning the omitted data for *Rebar 1* countries and the impact on market share data for interim 2019 and interim 2020.

Despite this increase, the most significant share of sales from imports in 2020 remained with the non-subject imports, the market share of *Rebar 3* countries remaining relatively steady from interim 2020 to the fourth quarter of 2020.[119]

[122] At the end-user trade level, where most of the sales of rebar occurred, the domestic industry's share of sales increased 3 percentage points from 2019 to 2020.[120] In 2020, the subject goods captured a small share of sales to end users. However, between interim 2020 and the fourth quarter of 2020, both the share of sales of the subject goods and the domestic industry's sales from domestic production saw increases of 7 and 4 percent respectively. The Tribunal notes that, between interim 2020 and the fourth quarter of 2020, the share of sales at this trade level held by *Rebar 3* countries decreased by 9 percentage points.[121]

[123] At the distributor trade level, while the share of sales by the domestic industry declined by 2 percentage points between interim 2020 and the fourth quarter of 2020, the share of sales by the subject goods increased.[122] Comparatively, the share of sales held by the *Rebar 3* countries increased at a larger rate in the fourth quarter of 2020 when compared to interim 2020.[123]

[124] The domestic industry also submitted market data for the first quarter of 2021 compiled from Statistics Canada import data. These data indicate that the domestic industry saw an increase of 24 percentage points in market share while the subject goods saw an increase of 12 percentage points in market share. The Tribunal has previously indicated that these data are limited as they are based strictly on tariff codes, which may include non-subject goods, and do not reflect landed prices of imports.[124] However, the Tribunal finds that this evidence suggests the acceleration of source switching from other offshore sources of rebar to the subject goods.

[125] In sum, in the Tribunal's view, the evidence indicates that most of the injury suffered by the domestic industry is attributable to the non-subject imports. This conclusion is supported by the fact that while there was an increase in the market share held by the subject goods, the domestic industry's market share did not significantly decrease between interim 2020 and the fourth quarter of 2020. Moreover, notably, imports from the *Rebar 3* countries were prominently present in the market, with no significant market share loss in the fourth quarter of 2020. This is consistent with the Tribunal's finding in *Rebar 3 NQ.*[125] In light of this evidence, the Tribunal finds that any adverse impact on the domestic industry's sales and market share that can be attributable to the subject goods, in and of themselves, in the second half of 2020 cannot be characterized as material.

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119 See footnote 63, for an explanation concerning the omitted data for *Rebar 1* countries and the impact on market share data for interim 2019 and interim 2020. Accounting for the omitted *Rebar 1* data show that the market share of *Rebar 3* countries between interim 2020 and the fourth quarter of 2020 remained relatively steady and did not decline to the extent shown in Exhibit NQ-2020-005-07.A (protected), Tables 25-26.

120 Exhibit NQ-2020-005-06.A, Table 34.

121 Exhibit NQ-2020-005-07.A (protected), Table 33.

122 *Ibid.*, Table 30.

123 *Ibid.*

124 *Oil Country Tubular Goods* at para. 217; *COR 2* at para. 81. In *Steel Safeguard Inquiry* at 54-55, the Tribunal found it could rely on Statistics Canada import data to confirm the trend in subject goods seen in the interim 2018 period continued into the third and fourth quarters of 2018 (both quarters were outside the POI).

125 *Rebar 3 NQ* at paras. 60-64.

Financial performance

[126] Although performance in 2020 is relevant to when the subject goods were present in the domestic market, it must be examined in context. Here, the domestic industry's performance in 2019 indicates that any adverse impact was due to non-subject imports which occurred prior to the presence of the subject goods in the domestic market. As discussed above, the domestic industry's selling prices began to decline in the second quarter of 2019 and continued on a downward trend until the end of the POI. As a result, the domestic industry's per-unit gross margins likely started to deteriorate sometime in 2019. As the domestic industry's per-unit gross margin for interim 2019 was greater than it was for 2019 as whole, the evidence indicates that its gross margins had at least begun to deteriorate in the fourth quarter of 2019.[126] 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 the third quarter of 2019.[127]

[127] 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.[128] A modest decrease in its sales volume also contributed to a reduction in total gross margin for that year and deprived the domestic industry of the opportunity to increase its profitability in 2020.

[128] Looking at the fourth quarter of 2020, the period in which there was the greatest volume of subject goods in the market, as compared to interim 2020, while prices of like goods decreased, as discussed above, the domestic industry's financial performance saw improvement both in per unit gross margins and net income.[129] The Tribunal notes that the same trends can be seen in the domestic industry's quarterly financial data.[130] These trends appear to be attributable to falling COGS and COGM in the fourth quarter of 2020. Additionally, as discussed above, the initiation of the investigation against *Rebar 4* countries led to the cancellation of orders for subject goods. This resulted in some instances of increased sales of domestic rebar.[131]

[129] The domestic industry's quarterly financial data also indicated significant declines in per unit net income and gross margins in the first quarter of 2021. This appears largely attributable to a significant rise in COGM and COGS in this period.[132]

[130] The domestic industry's export sales performance was generally below that of its domestic sales performance.[133] While its per-unit gross margins on export sales followed the same trend as those on domestic sales, with the exception of interim 2019, the per-unit gross margins were lower than those of domestic sales.

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126 Exhibit NQ-2020-005-07.A (protected), Table 71.

127 Exhibit NQ-2020-005-A-02 (protected) at 99. The domestic industry's consolidated income statement also indicates that per-unit gross margins increased from the third to the fourth quarter of 2020 as a result of a decrease in COGS. However, they remained significantly below their peak attained in the second quarter of 2019.

128 Exhibit NQ-2020-005-07.A (protected), Table 71.

129 *Ibid.*

130 Exhibit NQ-2020-005-A-02 (protected) at 99.

131 Exhibit NQ-2020-005-A-05 at para. 52; Exhibit NQ-2020-005-B-02 (protected) at para. 88.

132 Exhibit NQ-2020-005A-02 (protected) at 99.

133 Exhibit NQ-2020-005-07.A (protected), Tables 71-73.

Other performance indicators

[131] The domestic industry's total production volume increased in 2019 by 23 percent but remained essentially flat in 2020. However, when considering production for domestic sales only, there was a 21 percent increase in 2019 followed by a 5 percent decrease in 2020. Production for export sales, which represented a much smaller proportion of total domestic production, increased throughout the POI.[134]

[132] Capacity utilization rates for production destined for domestic sales increased modestly during the POI, by 4 percentage points in 2019 to 21 percent, before slipping back to 20 percent in 2020.[135]

[133] As for indicators related to direct employment, the domestic industry's number of employees and hours worked either increased or remained flat in 2019 and 2020.[136] The Tribunal also noted that employment levels for 2020 may have been affected by COVID-related wage subsidies.[137] 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.

[134] 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.[138]

[135] Consistent with the domestic industry's financial results and some of its other performance indicators, investments increased in 2019, before decreasing in 2020.[139] Both AltaSteel and Gerdau submitted that the subject goods impacted their ability to make significant investments in 2020 due to the increasing imports of the subject goods. The Tribunal finds that while the subject goods may have had some impact on investments, considering that they were only in the market in the second half of 2020 and at much lower volumes than non-subject imports, the Tribunal is of the view that trends in investment were likely more affected by the impact of non-subject imports from the *Rebar 3* countries.

[136] Finally, there are indications that the increased presence of the subject goods in the Canadian market may have adversely affected the domestic industry's cash flow, growth, ability to raise capital or return on investments during the POI.[140] However, the Tribunal is not persuaded that the subject goods had a significant impact on these indicators based on the evidence on the record.[141]

[137] As noted above, the margins of dumping determined by the CBSA ranged from 8 percent to 45 percent and were therefore not insignificant. This said, the Tribunal does not consider the margins of dumping to necessarily represent the level of the injurious effects caused by the prices in Canada of the subject goods during the POI. The magnitude of the margins of dumping therefore did not add much to the evidence and analysis of the previous sections.

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134 Exhibit NQ-2020-005-06.A, Tables 74-75; Exhibit NQ-2020-005-07.A (protected), Tables 74-75.
135 Exhibit NQ-2020-005-06.A, Table 74.
136 *Ibid.*, Tables 74-75; Exhibit NQ-2020-005-7.A (protected), Tables 74-75.
137 Exhibit NQ-2020-005-A-03 at para. 17.
138 Exhibit NQ-2020-005-06.A, Tables 74-75; Exhibit NQ-2020-005-07.A (protected), Tables 74-75.
139 *Ibid.*
140 Exhibit NQ-2020-005-07.A (protected), Table 79.
141 See also Exhibit NQ-2020-005-10.02 (protected) at 74-77.

[138] In light of the foregoing, while the Domestic Producers allege that the domestic industry was injured by the subject goods in the second half of 2020, this is not readily apparent. The evidence indicates that the negative trends began prior to the appearance of the subject goods. The domestic industry's performance began to decline in the second quarter of 2019 (when subject goods were not present in the market), declined further in interim 2020, but *improved* in the fourth quarter of 2020. Even considering that imports from *Rebar 3* countries decreased somewhat between interim 2020 and the fourth quarter of 2020, their continued prevalence during this period suggests that it is these imports that, in the main, adversely affected the domestic industry's financial performance in the second half of 2020.

[139] The decline of certain performance indicators in the first quarter of 2021 occurred outside the POI and is, as such, more relevant to the assessment of threat of injury.

<u>Conclusion</u>

[140] 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. However, as these downward trends began prior to the entry of the subject goods in the Canadian market and continued until measures were imposed against non-subject imports from the *Rebar 3* countries, the preponderant evidence indicates that this injury was primarily caused by the dumping of these non-subject imports. As discussed below, while the subject goods may have contributed, to an extent, to this injury towards the latter part of 2020, overall, the evidence does not indicate that this adverse impact was of a duration and degree sufficient to amount to material injury.

Causation and materiality

[141] In *Rebar 3 NQ*, the Tribunal found that the dumping of the non-subject goods from the *Rebar 3* countries, in and of itself, caused injury to the domestic industry beginning in the second half of 2019 and into 2020.

[142] In the present case, the Domestic Producers have argued that the subject goods caused injury during the period from the third quarter of 2020 to the first quarter of 2021. For reasons noted above, the Tribunal is of the view that any alleged injury in the first quarter of 2021 is relevant to the threat analysis given that it is outside the POI.

[143] The Domestic Producers have argued that although there was injury caused by the non-subject imports from the *Rebar* 3 countries in the third and fourth quarters of 2020, the subject goods exacerbated that injury. This is supported by "example-by-example" specific evidence that permits a finding of past injury.[142]

[144] With respect to the third and fourth quarters of 2020, while it is legally possible for the Tribunal to find that the subject goods *also*, in and of themselves, caused injury during a subset of the alleged period of injury (i.e. in the second half of 2020), such a conclusion is not supported by the evidence in this inquiry. In the Tribunal's opinion, the injury suffered by the domestic industry during this shorter period is largely attributable to non-subject goods. There is insufficient evidence

142 *Transcript of Public Hearing* at 36, 37.

to find that the subject goods had a significant adverse effect on the performance of the domestic industry in the relevant period.

[145] Even if there was a rise in the share of subject goods in the fourth quarter of 2020 in terms of total imports (and a concurrent drop in *Rebar 3* imports), the data show that the lion's share of sales remains with the *Rebar* 3 countries. Moreover, the Tribunal found in *Rebar 3 NQ*, that the evidence in that case indicated 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 imports of non-subject goods from the *Rebar* 3 countries and largely overlapped with the CBSA's period of investigation in that case. The evidence relating to the second half of 2020 and the volume and prices of the subject goods during that period in the present inquiry does not alter this conclusion.

[146] Given the evidence in respect of the POI in this case, as well as the evidence relating more specifically to the period in which the subject goods were present, i.e. the second half of 2020, the Tribunal is unable to find that a causal relationship exists between the dumping of the goods and the injury claimed by the domestic industry. In such circumstances, the Tribunal is unable to conclude, based on positive evidence, that the dumping of the subject goods caused injury to the domestic industry in and of itself.

[147] Put another way, after having distinguished the impact of the subject goods from the impact of the non-subject imports, which is a major other factor that had a fundamental bearing on the state of the domestic industry during the relevant period, any injury that can be attributed to the subject goods cannot be said to be material within the meaning of *SIMA*.[143]

[148] In this regard, the evidence on the adverse effects of the subject goods on the performance of the domestic industry indicates that these effects were limited, both in terms of duration (only two quarters within the three-year POI) and extent relative to non-subject imports. While the entry of the subject goods as an alternative source of low-priced imported rebar in the Canadian market during this period was not trivial, the Tribunal finds that their impact on the market share (volume effects) and profitability (price effects) of the domestic industry during the POI was not to a degree sufficient to reach the "material injury" threshold.

THREAT OF INJURY ANALYSIS

[149] Having found that the dumping of the subject goods has not caused material injury to the domestic industry, the Tribunal must now consider whether it is threatening to cause material injury.

[150] The Tribunal is guided in its consideration of this question by subsection 37.1(2) of the *Regulations*, which sets out factors that may be taken into account for the purposes of its threat of

143 *SIMA* does not define the term "material." However, both the extent of injury during the relevant time frame and the timing and duration of the injury are relevant considerations in determining whether any injury caused by the subject goods is "material." The Tribunal suggested, in *Certain Hot-rolled Carbon Steel Plate* (27 October 1997), NQ-97-001 (CITT) at 13, that the concept of materiality could entail both temporal and quantitative dimensions, "[h]owever, the Tribunal is of the view that, to date, the injury suffered by the industry has not been *for such a duration* or *to such an extent* as to constitute 'material injury' within the meaning of SIMA" [emphasis added].

injury analysis.[144] Further, subsection 37.1(3) of the *Regulations* directs the Tribunal to consider whether a causal relationship exists between the dumping of the goods and the threat of injury on the basis of the factors listed in subsection 37.1(2), and whether any factors other than the dumping of the goods are threatening to cause injury.

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

[152] The Tribunal is also mindful of Article 3.7 of the WTO Anti-dumping Agreement, which sets out the framework of obligations implemented in subsection 2(1.5) of *SIMA*:

> A determination of a threat of material injury shall be *based on facts and not merely on allegation, conjecture or remote possibility*. The *change in circumstances* which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent.
>
> [Emphasis added]

[153] As the Tribunal has previously indicated,[145] the fundamental requirement that threat of injury findings must be based on facts and not on "allegation, conjecture or remote possibility" aims to mitigate the risk that such findings may be grounded in speculation about possible future events rather than objective facts directing such a conclusion. The Tribunal has also indicated that there must be a high probability of a change in circumstances compared to those that existed during the POI, such that the subject goods would threaten to cause material injury in the very near future in the absence of measures.[146]

[154] In the present case, the Tribunal has already found that the injury suffered by the domestic industry during a subset of the POI (i.e. the second half of 2020), was largely attributable to non-subject goods. The Tribunal also found that any injury that could be attributable to the subject goods during the POI was not of a duration and to an extent sufficient to be considered material within the meaning of *SIMA*. The key question for the Tribunal's threat of injury analysis is whether

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144 Subsection 37.1(2) of the *Regulations* reads as follows: "The following factors may be considered in determining whether the dumping or subsidizing of goods is threatening to cause injury: **(a)** the nature of the subsidy in question and the effects it is likely to have on trade; **(b)** whether there has been a significant rate of increase of dumped or subsidized goods imported into Canada, which rate of increase indicates a likelihood of substantially increased imports into Canada of the dumped or subsidized goods; **(c)** whether there is sufficient freely disposable capacity, or an imminent, substantial increase in the capacity of an exporter, that indicates a likelihood of a substantial increase of dumped or subsidized goods, taking into account the availability of other export markets to absorb any increase; **(d)** the potential for product shifting where production facilities that can be used to produce the goods are currently being used to produce other goods; **(e)** whether the goods are entering the domestic market at prices that are likely to have a significant depressing or suppressing effect on the price of like goods and are likely to increase demand for further imports of the goods; **(f)** inventories of the goods; **(g)** the actual and potential negative effects on existing development and production efforts, including efforts to produce a derivative or more advanced version of like goods; **(g.1)** the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods; **(g.2)** evidence of the imposition of anti-dumping or countervailing measures by the authorities of a country other than Canada in respect of goods of the same description or in respect of similar goods; and **(h)** any other factor that is relevant in the circumstances."

145 *Polyethylene Terephthalate Resin* (16 March 2018), NQ-2017-003 (CITT) at para. 167.

146 *Ibid.* at paras. 170-171.

the situation in the future will remain the same or similar to the period for which no injury was found. Absent a change in the circumstances that led to the Tribunal's finding that the subject good did not, in and of themselves, cause injury, there can be no basis upon which the Tribunal could make a finding that the dumping of the subject goods is threatening to cause injury.

[155] The Tribunal must therefore determine whether there is a high probability of a change in circumstances that will lead to a situation in which the dumping of the subject goods would, in the very near future, cause material injury to the domestic industry. In the context of this case, it bears repeating that by self-initiating an investigation into the dumping of the subject goods, the CBSA appears to have curtailed the importers' source switching from the *Rebar 3* countries to the subject goods that started in mid-2020, thereby limiting their adverse impact, to date, on the domestic industry. The likely resumption and possible acceleration of the source switching trend benefitting the subject goods, which had begun prior to the initiation of the dumping investigation in the absence of *SIMA* duties, constitute a highly probable change in circumstances that the Tribunal cannot ignore.

[156] The Tribunal finds the evidence of source switching from non-subject imports from the *Rebar 3* countries to the subject goods upon the initiation of the investigation into the dumping of such imports in September 2020 to be compelling. In this regard, the Tribunal notes that there is evidence on the record of importers being opportunistic, intentionally taking advantage of market opportunities resulting from the *Rebar 3* investigation and actively looking for the lowest priced imports, including the subject goods.[147] Indeed, the present case reflects a continuation of a pattern of source switching by importers who have historically turned to new low-priced sources of rebar once *SIMA* measures are imposed on rebar from other sources. The immediate source switching confirms that importers are determined to secure alternative low-priced supplies of rebar. The evidence indicating that importers have and will continue to aggressively switch their sourcing to whatever low-price leader is available on the global market strongly supports a determination of threat of injury.

[157] This source switching activity will be facilitated by foreign producers and exporters in the subject countries that possess large unused capacity, are export-oriented, and will likely be looking to export markets in the face of uncertain conditions in their domestic markets. As such, the subject goods will likely come to Canada at prices that would significantly undercut the price of like goods, forcing the domestic industry to either lower prices to maintain sales – resulting in price depression and suppression – or lose sales. In either case, the domestic industry, which is already in a vulnerable position as a result of the impact of the non-subject imports from the *Rebar 3* countries, will likely suffer negative effects on production, sales and profitability. This will also put at risk employment and important investment plans.

[158] Based on the evidence on the record, the circumstances in which the dumping of the subject goods would cause injury to the domestic industry are thus "clearly foreseen and imminent" in accordance with the requirement set out in subsection 2(1.5) of *SIMA*. In other words, there is a high probability of a change in circumstances that will lead to a situation in which the dumping of the subject goods would, in the very near future, cause material injury to the domestic industry. A review of the evidence on the factors listed in subsection 37.1(2) of the *Regulations* supports this conclusion.

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147 Exhibit NQ-2020-005-B-08 (protected) at para. 35 and at 25, 30.

Time frame for the threat analysis

[159] In assessing whether a threat of injury exists, the Tribunal typically considers a time frame of 12 to 18 months, and no more than 24 months, beyond the date of its finding, depending on the unique circumstances of each case.

[160] In this case, Gerdau suggested that the threat of injury would be foreseeable and imminent over the next 12 to 18 months[148], while AltaSteel and AMLPC submitted that the dumping of subject goods threaten to cause material injury to the domestic industry over the next 12 to 24 months in absence of a finding.[149]

[161] The Tribunal sees no reason to depart from its typical time frame in this case. It will therefore look at the next 12 to 18 months in its analysis of threat of injury.

Likelihood of increased dumped goods

[162] Paragraphs 37.1(2)(b) and (c) of the *Regulations* require the Tribunal to consider the rate of increase of dumped goods imported into Canada and the disposable capacity of the producers of those goods in its determination of whether there is a likelihood of substantially increased imports of the subject goods. In making its determination, the Tribunal also considers demand forecasts, the potential for product shifting, inventories of the subject goods and the likely effects on trade and the imposition of anti-dumping or countervailing duties against the subject goods by other countries.[150]

[163] As discussed above, the subject goods entered the market in the third quarter of 2020 and significantly increased their presence in the fourth quarter of 2020 and the first quarter of 2021.[151] In terms of absolute volumes, the subject imports increased from interim 2020 to the fourth quarter of 2020 by 190 percent.[152] According to Statistics Canada import data for the first quarter of 2021, a further 20,192 tonnes of rebar from subject countries entered the domestic market.[153] The rate at which imports of subject goods increased from the third quarter of 2020 to the first quarter of 2021, indicates that exporters have the capacity to rapidly increase volumes of rebar destined for Canada if the market conditions warrant and if there is demand for the dumped goods.[154]

[164] Additionally, over this short time period, there is an indication that a small number of importers (namely Ferrostaal Metals and LMS[155]) have the ability to noticeably affect the

148 Exhibit NQ-2020-005-B-01 at para. 115.
149 Exhibit NQ-2020-005-A-01 at para. 167.
150 Paragraphs 37.1(2)(d), (f), (g.2) and (h) of the *Regulations*.
151 Exhibit NQ-2020-005-A-01 at 96.
152 Exhibit NQ-2020-005-07.A (protected), Table 19.
153 Exhibit NQ-2020-005-A-02 (protected) at 96; Exhibit NQ-2020-005-B-03 at 6.
154 Exhibit NQ-2020-005-A-01 at 96; Exhibit NQ-2020-005-A-07 at 9, 30. Based on the two- to three-month lag between sales of the subject goods and delivery, the Tribunal finds that these volumes of imports seen in the first quarter of 2021, were likely as a result of sales that occurred prior to the initiation of the CBSA's investigation into the dumping of the subject goods. Exhibit NQ-2020-005-A-01 at paras. 6, 95, 143. In terms of volumes of the subject goods for the first quarter of 2021 being lower than in the previous quarter, AMLPC and AltaSteel submitted that this was not a sign of a decreasing trend, but rather a reflection of seasonality in the construction industry as well as the closure of the St. Lawrence Seaway due to freezing. See *Transcript of Public Hearing* at 45, 46.
155 Exhibit NQ-2020-005-12.14A at 1, 14; Exhibit NQ-2020-005-12.22 at 1, 3.

composition of import sources in a short period of time, highlighted by the change in import share of the subject goods and imports from the *Rebar 3* countries, particularly in the fourth quarter of 2020.

[165] The Tribunal finds that importation of subject goods from the third quarter of 2020 through the first quarter of 2021 is indicative of a likelihood of substantially increased imports of the subject goods in the near term. In making this conclusion, the Tribunal also considers the evidence discussed above that most purchasers usually source the lowest-priced rebar imports available.[156]

[166] Furthermore, as discussed below, the evidence regarding market conditions globally, in the subject countries, as well as Canadian market conditions, further support the conclusion of the likelihood of substantial increases in imports of the subject goods in the next 12 to 18 months in the absence of a finding.

[167] Importantly, the evidence of significant excess capacity for rebar must be considered in light of the production imperative that exists in the rebar industry and the export-oriented nature of foreign producers of rebar who are compelled to produce at high levels to maintain throughput despite oversupply. In this regard, the Tribunal has previously stated as follows:

> It is also well established that, in commodity product industries where there are high fixed costs, there is an incentive to maintain a high level of production and capacity utilization in order to achieve economies of scale and reduce average costs. It is generally recognized that this production imperative is operative in the steel industry. In this connection, as long as prices are above the marginal cost of production, a firm may lower its average costs by producing more product. In the face of weak demand or oversupply, a firm may try to export its production beyond the level that clears the domestic market.
>
> There is evidence that this production imperative and incentive to export, as long as the export price covers variable costs and makes a contribution to fixed costs, exists in the rebar sector. . . . [157]

[168] As discussed below, the Tribunal is of the view that the market dynamics it observed previously with respect to rebar production are also applicable to the subject countries in the present inquiry.

<u>Global market conditions</u>

[169] The evidence on the record shows that over the next 12 to 18 months, there will be a continued trend of depressed global economic activity and uncertainty around recovery timelines. With increasing production levels and significant excess capacity for rebar globally, rebar producers from the subject countries will be forced to seek all available export sales opportunities.

[170] According to the World Bank, global market conditions will remain depressed as a result of COVID-19, with growth rates remaining below pre-pandemic projections through 2022.[158] The International Monetary Fund (IMF) predicts world output to grow by 6.0 percent in 2021 and 4.4 percent in 2022, but notes that "there is high uncertainty around the outlook." In key export markets, such as Europe, the IMF's April 2021 outlook indicates that activity is expected to remain

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156 Exhibit NQ-2020-005-06.A, Tables 5, 11.
157 *Rebar 1* at paras. 225-226.
158 Exhibit NQ-2020-005-D-01 at para. 47; Exhibit NQ-2020-005-D-03 at 17-19.

below end-of-2019 levels into 2022.[159] GlobalData reports that, with the exception of 2021, the construction sector is expected to remain below COVID-19 baseline levels until at least 2023. The OECD Steel Committee noted that a return to pre-pandemic levels of steel consumption will take an "extended period," with non-residential construction being hit hardest.[160]

[171] In this context, the Tribunal notes that global rebar excess capacity will remain high in the foreseeable future. According to CRU data showing levels of global rebar production, demand and capacity, production and demand will continue to increase in 2021 and 2022. However, excess capacity will remain over 193 to 202 million tonnes in 2021 and 2022.[161] The Domestic Producers submitted that with these global market conditions, exporters in the subject countries will be looking to export rebar to Canada. The Tribunal agrees that there will continue to be a "push" to export globally given the high levels of excess capacity, which as discussed further below, are also reflected in the subject countries.

[172] For its part, NLMK submitted that trends in key export markets will make it less likely that rebar overflow will go to Canada, which NLMK additionally notes has lower logistical costs. NLMK referred to higher pricing in key export markets, such as Europe, resulting from planned stimulus spending and rising international prices.[162] Furthermore, it noted that tender prices were projected to increase in the United Kingdom and in the European Union in 2021 and 2022, with government-led construction investments in various sectors (e.g. residential, infrastructure, health care). In the Middle East, NLMK noted construction recovery in the United Arab Emirates (UAE) and in Saudi Arabia, with increasing construction costs between 1 and 1.5 percent over the next 12 months.[163] Recovery in India's construction sector was also noted.[164]

[173] While the Tribunal finds that there are certainly indications of recovery in various export markets, as described by NLMK, there remains uncertainty as to how this recovery will offset the oversupplied global rebar market, as described above. In this regard, Gerdau noted an expected 20 percent decline in construction spending in the Middle East/North Africa region from September 2020 through May 2021.[165] Projections for growth in the UAE's construction sector in 2021, noted to be 3 percent, are considered in light of the significant 4.8 percent contraction that occurred in 2020.[166] With respect to India, Gerdau submitted evidence that the surge in COVID-19 infections in early 2021 has undermined previous projections of recovery for the Indian construction sector in 2021 and that even the previous predictions of 13 percent growth in 2021 would barely offset the 12.4 percent contraction in 2020.[167]

[174] In terms of the United States as an export market, NLMK submitted evidence with respect to the United States' eight-year planned infrastructure spending, which includes $200 billion into road

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159 Exhibit NQ-2020-005-B-03 at 39, 71, 84. In terms of world real per capita output, the IMF projects 4.9 percent growth in 2021 and 3.4 percent growth in 2022.
160 Exhibit NQ-2020-005-B-04 (protected) at 540; Exhibit NQ-2020-005-A-01 at 125, 126.
161 Exhibit NQ-2020-005-A-01 at paras. 178-179; Exhibit NQ-2020-005-A-02 (protected) at para. 178 (Table 18) and at 132-135, 139-142.
162 Exhibit NQ-2020-005-F-01 at 6. The Tribunal notes that prices referenced by NLMK appear to reflect prices for "HRC," i.e. hot-rolled coil.
163 Exhibit NQ-2020-005-F-02 at 59-60.
164 *Ibid.* at 54-57.
165 *Ibid.* at 60.
166 Exhibit NQ-2020-005-B-11 at 38-39.
167 *Ibid.* at 42.

and rail projects that would raise demand for long steel products.[168] NLMK also submitted that restrictions to accessing the U.S. market would ease as a result of the General Approved Exclusions for section 232 tariffs.[169]

[175] However, in this regard, AMLPC, AltaSteel and Gerdau noted that the list of general approved exclusions for the section 232 tariffs does not include the rebar products which Russia shipped to Canada during the Tribunal's POI, which were imported under Harmonized System (HS) codes 7213.10.00.00 and 7214.20.00.00.[170] The other HS codes under which rebar is also usually imported into Canada, i.e. 7215.90.00.90 and 7227.90.00.90, were also not covered under the exclusions for the section 232 tariffs.[171] Considering the foregoing, the Tribunal does not believe that the potential evolution of the market access conditions in the U.S. would significantly lessen the attractiveness of the Canadian market for foreign producers with excess capacity.

[176] NLMK also argued that with increased global rebar prices, there is less incentive to export to Canada, and as discussed further below, the domestic industry is not at risk of injury. To demonstrate such price increases, NLMK referred to global price growth seen over the last nine months[172] and also submitted that significant growth in steel producers' stock prices is evidence that markets expect demand and prices for steel to remain strong.[173] NLMK also noted increased prices for Turkish rebar, due to strong domestic demand, and Chinese rebar, since the elimination of the tax rebate on steel exports.[174]

[177] The Tribunal is not persuaded that the increased pricing is necessarily indicative of favourable global market conditions as argued by NLMK, that would mitigate the risk of dumped exports to Canada. The Tribunal agrees that pricing of rebar increased in various rebar markets globally. Depending on the region, CRU pricing shows increases during 2020 with a peak in early 2021. However, in the next 12 to 18 months, i.e. 2021 and 2022, pricing is forecasted to decrease.[175] These trends appear to support the view, as submitted by Gerdau, that some of the increased and projected increase in demand may be due in part to a "pent-up demand" from the temporary idling of steel production during the pandemic.[176] More importantly, the rise in prices appear to be primarily driven by increasing scrap costs.[177] Furthermore, as discussed further below, U.S. Midwest prices for rebar, a proxy for Canadian rebar prices, have generally been higher than in other regions and are projected to remain higher in the near term. These prices make Canada an attractive export market for offshore rebar.

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168 Exhibit NQ-2020-005-F-02 at 61-62.
169 Pursuant to section 232 of the U.S. *Trade Expansion Act of 1962*, the United States imposed a 25 percent duty on imports of certain steel products from most countries in March 2018. Exhibit NQ-2020-005-A-01 at 285-290.
170 Exhibit NQ-2020-005-A-09 at 46-50; Exhibit NQ-2020-005-A-01 at 96, 97.
171 Exhibit NQ-2020-005-06.A at 4; Exhibit NQ-2020-005-B-09 at para. 23.
172 Exhibit NQ-2020-005-F-01 at 5.
173 Exhibit NQ-2020-005-F-02 at 88.
174 *Ibid.* at 52-53.
175 Exhibit NQ-2020-005-A-02 (protected) at 136.
176 Exhibit NQ-2020-005-B-12 (protected) at 90, 92-93.
177 Exhibit NQ-2020-005-B-05 at paras. 22-24; Exhibit NQ-2020-005-B-07 at paras. 39-42; Exhibit NQ-2020-005-B-12 (protected) at 97.

− Market conditions in Russia

[178] With respect to domestic market conditions, NLMK submitted that there is strong demand in Russia for rebar that will continue in the long term. This demand is driven largely by national infrastructure project plans, large scale renovation processes across the country, low mortgage rates, and post-COVID construction.

[179] In response to the strong domestic demand, which NLMK submitted in some instances resulted in a lack of supply, NLMK notes that the Russian government is proposing export control laws that would include steel products such as rebar.[178] However, the Tribunal notes that, as submitted by AMLPC and AltaSteel, the proposed Russian law lists only one HS code for rebar (7213.91.10.00),[179] but that rebar is also imported into Canada under other HS codes (i.e. 7213.10.00.00, 7214.20.00.00, 7215.90.00.90 and 7227.90.00.90)[180] and that none of the Russian rebar imported into Canada during the POI was imported under the code listed in the Russian draft law.[181] As such, the Tribunal is not convinced that the proposed export controls, even if implemented, will significantly limit potential exports of Russian rebar to Canada.

[180] NLMK also argues that significant price increases in domestic rebar in Russia will also make it less likely for it to export to Canada, which is outside Russia's main export market, i.e. western Europe.[182] In this regard, NLMK refers to antitrust investigations initiated by the Russian government.[183] However, the Tribunal is unable to draw inferences on pricing based solely on the fact that antitrust investigations are underway in Russia. Moreover, there is insufficient evidence on the record with respect to such proceedings.

[181] The Tribunal is not persuaded by NLMK's submissions with respect to market conditions in Russia. While there are certainly indications of growth in Russia, overall, the evidence indicates there is uncertainty as to the scale of any increased demand in Russia and how this increase would mitigate the concerns with respect to the country's significant excess capacity.

[182] The Russian economy is projected to experience slow growth over the near term. After contracting by 3.6 percent in 2020 due to COVID-19 and collapsing oil prices, the Russian economy is expected to grow by 3 percent in 2021 and 3.9 percent in 2022.[184] While it has been reported that Russian steel demand has been recovering due to the easing of restrictions and increasing construction activities, as noted by NLMK,[185] the Tribunal has taken into account the evidence of the Domestic Producers which shows the potential for such growth to slow, due in part to the cancellation or postponement of Russia's national projects program, which included construction projects starting in 2024 and ending in 2030.[186] S&P Global Platts reported that the decision to delay

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178 Exhibit NQ-2020-005-F-01 at 5-6; Exhibit NQ-2020-005-F-02 at 2-49.
179 Exhibit NQ-2020-005-A-09 at 21.
180 Exhibit NQ-2020-005-01.A at para. 27; Exhibit NQ-2020-005-06.A at 4.
181 Exhibit NQ-2020-005-A-09 at 23-26.
182 The Tribunal notes that over the POI, NLMK exported to Lithuania, Belarus, Poland, Finland, Kyrgyzstan, Tajikistan, and Turkmenistan. Exhibit NQ-2020-005-15.01 at 7.
183 Exhibit NQ-2020-005-F-01 at 5; Exhibit NQ-2020-005-B-12 at 3-4.
184 Exhibit NQ-2020-005-B-03 at 663. In Exhibit NQ-2020-005-A-03 at para. 44 (Table 5), real gross domestic product (GDP) growth for Russia is noted as 2.7 percent in 2021 and 2.6 percent in 2022.
185 Exhibit NQ-2020-005-A-01 at 206-208.
186 *Ibid.* at 223-225.

infrastructure projects is seen to be as a result of a need for "'budget optimization triggered by the coronavirus pandemic, a major rise in emergency funding needs and a collapse in the budget's oil and gas revenues.'"[187] The Tribunal also takes note of currency volatility. The ruble reportedly depreciated by over 16 percent in 2020, making Russian rebar exports less expensive on the world market.[188]

[183] With respect to trends in domestic demand and supply, the Tribunal is of the view that CRU data are a reliable source. In this regard, the Tribunal notes that no other data were submitted by NLMK with respect to overall production and demand trends for the domestic market.

[184] According to the CRU data that pertain to Russia, the Tribunal notes a decline in 2021 with respect to production and demand. While these indicators are expected to increase in 2022,[189] excess rebar capacity will remain above 4.2 million tonnes, or roughly three times the entire Canadian rebar market, through 2022.[190] After a drop in 2021, capacity utilization rates are expected to increase in 2022, remaining flat thereafter.[191] These data are further supported by the evidence of planned capacity expansion by Russian producers.[192]

[185] For its part, NLMK submitted that it did not sell any rebar to Canada in 2021 and that it does not intend to export to Canada in the near future given market conditions in Russia. In this regard, the Tribunal notes that NLMK did not export to Canada over the POI and in its questionnaire response, indicated that it had no plans to expand its rebar production.[193]

[186] While the Tribunal does not dispute that NLMK may not materially contribute to the threat of injury posed by the subject goods, it is unable to conclude, based on NLMK's specific circumstances, that the likelihood of dumped imports from Russia is diminished. Based on CRU production data and NLMK's questionnaire response with respect to its own production levels, NLMK's production represents only a portion of total production in Russia.[194] As such, while NLMK may not itself intend to export significant volumes to Canada, the Tribunal must consider the potential for dumped rebar with consideration of all production activity in Russia. As discussed below, the evidence on the record indicates that other Russian producers will likely continue to be export-oriented.

[187] NLMK's submissions concerning increasing rebar prices in Russia is limited to the first quarter of 2021. In the absence of any other source of forecast pricing, the Tribunal accepts CRU's forecasting for rebar export prices from the Commonwealth of Independent States (CIS) as a proxy for Russian prices. These data indicate a decline in prices in the near term. More specifically, quarterly data show that after peaking in the first quarter of 2021, Russian (i.e. CIS) prices begin to

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187 *Ibid.* at 224.
188 *Ibid.* at para. 199 and at 197-198.
189 Exhibit NQ-2020-005-A-02 (protected) at 132, 134.
190 Exhibit NQ-2020-005-A-01 at para. 202 (Table 21); Exhibit NQ-2020-005-A-02 (protected) at para. 202 (Table 21) and at 132-135, 142; Exhibit NQ-2020-005-06.A, Table 23.
191 Exhibit NQ-2020-005-A-01 at para. 204; Exhibit NQ-2020-005-A-02 (protected) at para. 202 (Table 21) and at 132-135, 142.
192 For instance, capacity increases for Evraz, Severstal and Magnitogorsk Iron and Steel Works (MMK) were described by AMLPC. See Exhibit NQ-2020-005-A-01 at para. 204 and at 209; Exhibit NQ-2020-005-A-02 (protected) at para. 204 and at 236-237.
193 Exhibit NQ-2020-005-15.01 at 4, 7.
194 Exhibit NQ-2020-005-A-09 at para. 18; Exhibit NQ-2020-005-A-02 (protected) at 134; Exhibit NQ-2020-005-16.01 (protected) at 4.

decline for each quarter starting in the second quarter of 2021 through the fourth quarter of 2021. After a marginal increase in the first quarter of 2022, prices are forecasted to remain flat.[195] The impact of excessive supply on Russian rebar prices has also been documented by American Metal Market.[196] As discussed above with respect to global pricing trends, as Canadian rebar pricing is in general higher than in other regional markets, the Tribunal finds that while Russian rebar prices may have increased, Canada will remain an attractive export market for Russian producers.

[188] The evidence also indicates that Russian producers are export-oriented. S&P Global Platts reported that in the second quarter of 2020, the average share of steel production for export markets for Russian steel producers, namely NLMK, Evraz, MMK and Severstal Russian Steel (each being a producer of rebar[197]) exceeded 50 percent.[198] According to MMK's investor presentation, 15 to 20 percent of its products are sold in export markets. While MMK cited lower sales margins compared to the domestic market, MMK noted that it has the flexibility to redirect up to 1.0 million tonnes of metal products to export destinations.[199] Moreover, there is evidence that Evraz's strategy in response to fallen demand in Russia is to increase export sales.[200] According to Fastmarkets, increases in Russian rebar prices (notably at the end of 2020) were caused by shortages of rebar and strong export sales.[201] AMLPC and AltaSteel also provided evidence from UN Comtrade and MetalExpert showing that over the past four years, the percentage share of exports in proportion to total rebar production has increased.[202]

[189] The Tribunal finds that the evidence on the record indicates that producers in Russia are export-oriented and accepts the Domestic Producers' evidence and arguments that, in current market conditions, Russian producers will look increasingly to export markets to maintain capacity utilization rates.

– Market conditions in Oman

[190] The evidence indicates that economic growth in Oman over the near term will be constrained. The IMF forecasts that Oman's real GDP will recover only by 1.8 percent in 2021 after contracting by 6.4 percent in 2020 due to the pandemic and weak oil prices. Growth in 2022, however, is projected to be 7.4 percent.[203]

[191] Recovery in the construction sector is expected to be slow. Due to rising public debt, it is reported that public sector spending cuts will be a priority in the near term.[204] GlobalData estimated a 10.3 percent contraction for the construction sector in Oman in 2020 due to the pandemic, low oil

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195 Exhibit NQ-2020-005-A-02 (protected) at 136.
196 Exhibit NQ-2020-005-A-01 at 210; Exhibit NQ-2020-005-A-02 (protected) at 231.
197 Exhibit NQ-2020-005-15.01 at 1; Exhibit NQ-2020-005-B-03 at 1362, 1363, 1392, 1396.
198 Exhibit NQ-2020-005-B-03 at 1196.
199 See Exhibit NQ-2020-005-B-03 at 1330; Exhibit NQ-2020-005-06.A, Table 80. NLMK's export sales to other countries increased in 2020 after declining the prior year.
200 Exhibit NQ-2020-005-A-01 at para. 213 and at 239.
201 Exhibit NQ-2020-005-D-03.A at 120; Exhibit NQ-2020-005-D-04.A (protected) at 120.
202 Exhibit NQ-2020-005-A-01 at para. 208 (Table 22) and at 227; Exhibit NQ-2020-005-A-02 (protected) at para. 208 (Table 22) and at 258.
203 Exhibit NQ-2020-005-B-03 at 69; Exhibit NQ-2020-005-D-03.A at 21-22; Exhibit NQ-2020-005-A-03 at para. 44. Table 5 shows Oman GDP growth to be 0.5 percent in 2021 and 7.9 percent in 2022.
204 Exhibit NQ-2020-005-A-01 at para. 182 and at 152-153.

prices, and credit rating downgrades. It estimated further declines as construction output is expected to fall by 5.8 percent in 2021.[205]

[192] Nevertheless, despite these economic conditions, the evidence on the record indicates that Oman will be undergoing national economic diversification reforms aimed at diversifying revenue away from oil. This may support further steel production investment.[206] For instance, the evidence on the record indicates that a new plant of Raysut Steel Industries LLC is currently under construction which will add 360,000 tons per year of rebar production capacity once complete.[207] Due to a weak domestic market, the supporting parties submitted that this added production will target overseas markets. According to UN Comtrade data, Omani rebar exports have steadily increased from 2016 to 2019; in 2019, 742,000 tonnes of rebar were exported.[208]

[193] Looking at CRU data provided by AMLPC and AltaSteel, domestic production and demand for rebar in Oman are projected to increase in 2021 and 2022; with demand surpassing the levels seen in 2018. Although excess rebar capacity in Oman is projected to decrease during this period, it will nevertheless remain over 3.3 million tonnes, which is over 2.5 times the size of the entire Canadian market, and utilization rates are forecasted to steadily increase but remain low.[209]

[194] ALMPC and AltaSteel also submitted that higher prices in early 2021 are expected to decline in the medium term. In the absence of pricing data specific to Omani rebar, AMLPC and AltaSteel provided rebar pricing in the UAE as a proxy for Omani prices. The evidence they submitted in this regard for the Middle East/Africa region indicates that price rises in 2021 were likely temporary and will decline in 2022. Quarterly data show that after peaking in the first quarter of 2021, Omani (i.e. UAE) prices begin to decline in the second quarter of 2021 through the third quarter of 2021 before beginning to increase again in the fourth quarter of 2021 to the second quarter of 2022. A further decline in pricing is seen again in the third and fourth quarters of 2022.[210]

[195] The Tribunal finds that the evidence on the record indicates that producers in Oman are export-oriented and accepts the Domestic Producers’ evidence and arguments that, in current market conditions, these producers will look increasingly to export markets to maintain capacity utilization rates.

− Trade remedies in other jurisdictions

[196] Restrictions in accessing key export markets due to trade measures in place in other jurisdictions against the importation of the subject goods will make any open market attractive for foreign producers and exporters of the subject goods, in particular, Canada, which has relatively higher prices.

[197] In this regard, the Tribunal notes that the section 232 tariffs imposed by the United States on certain steel products, including rebar[211] have had a significant impact in causing the decline of rebar

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205 Exhibit NQ-2020-005-A-01 at para. 182 and at 135, 137-138; Exhibit NQ-2020-005-B-03 at 1444.
206 Exhibit NQ-2020-005-A-01 at 138-139.
207 Exhibit NQ-2020-005-B-01 at para. 146; Exhibit NQ-2020-005-B-03 at 1452-1453.
208 Exhibit NQ-2020-005-A-01 at 176-177.
209 *Ibid.* at para. 184 (Table 19); Exhibit NQ-2020-005-A-02 (protected) at para. 184 (Table 19) and at 132-135, 141, 155.
210 Exhibit NQ-2020-005-A-02 (protected) at 136, 196.
211 Exhibit NQ-2020-005-B-03 at 1564-1571.

imports into the United States. The evidence indicates that imports to the United States under HS Codes 7213.10 and 7214.20, declined from over 1.35 million tonnes in 2017 to under 1 million tonnes in 2019.[212] In 2020, the year in which the subject goods entered the Canadian market, rebar exports from the subject countries to the United States dropped by 86 percent from 51,199 tonnes in 2019 to 7,316 tonnes in 2020.[213] Although this evidence also indicates that rebar from the subject countries varied over time, the Tribunal accepts the general premise that restricted access to the U.S. market will compel producers in the subject countries to look elsewhere to absorb both current and expected additional rebar supply.

[198] Trade restrictions on rebar exports from the subject countries are also present in the European Union.[214] However, the Tribunal notes that the European Commission is conducting an investigation into whether these restrictions should be maintained beyond June 2021.[215]

[199] Other countries have also imposed or extended safeguard measures against the subject countries, including Vietnam (against both Russia and Oman) through 2023,[216] Morocco (against Russia) until 2022,[217] and Egypt (against Russia) until October 2022.[218] Additionally, Ukraine imposed anti-dumping duties on rebar from Russia from February 2018.[219]

[200] Overall, while some of the trade measures in other jurisdictions covering the subject goods may expire within the time frame for its analysis of threat of injury, the Tribunal cannot ignore the fact that these measures are in place and that many of them, including in the United States, appear likely to remain in place for the foreseeable future. As such, the Tribunal finds that the evidence indicates that trade measures in other jurisdictions, against Russian rebar in particular, make any open market, including Canada, attractive for producers and exporters of the subject goods.

Market Conditions in Canada

[201] The evidence indicates that market conditions in Canada will likely make it an attractive destination for rebar exports over the next 12-18 months. AMLPC and AltaSteel submitted that demand for rebar is strengthening as the economy, commodity prices and housing investment continue to recover following contractions due to the COVID-19 pandemic.

[202] The Tribunal finds that the evidence on the record supports this conclusion.[220] This is also consistent with data in the investigation report, which show a 5 percent expansion in the domestic market for rebar in 2020.[221] Several questionnaire responses also noted that importers expect demand for rebar to continue to increase over the next 12 months, but to soften thereafter.[222]

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212 Exhibit NQ-2020-005-A-01 at 304.
213 Exhibit NQ-2020-005-A-03 at para. 79 and at 76.
214 Exhibit NQ-2020-005-A-01 at 249-275; Exhibit NQ-2020-005-B-03 at 1577-1578.
215 Exhibit NQ-2020-005-B-03 at 1580-1581.
216 *Ibid.* at 1582-1585.
217 Exhibit NQ-2020-005-A-01 at 282-283.
218 *Ibid.* at 299-303.
219 Exhibit NQ-2020-005-06.A, Table 81.
220 Exhibit NQ-2020-005-B-03 at 1458-1463, 1486-90, 1494, 1505, 1509-1521, 1555; Exhibit NQ-2020-005-A-01 at 98, 314-315, 321-322.
221 Exhibit NQ-2020-005-06.A, Table 24.
222 Exhibit NQ-2020-005-12.14A at 13; Exhibit NQ-2020-005-12.20B at 10.

[203] According to CRU data provided by AMLPC and AltaSteel, domestic consumption is forecasted to grow in 2021 followed by a slight contraction in 2022.[223]

[204] AMLPC and AltaSteel also submitted U.S. Midwest rebar pricing. The Tribunal accepts this evidence as an appropriate general proxy for Canadian rebar prices.[224] Based on theses prices, it is forecasted that Canadian rebar prices will remain relatively high compared to those in other markets. On average for the years 2021 and 2022, the U.S. Midwest price is forecasted to be 12 to 39 percent higher than in other markets. This holds true when comparing average U.S. Midwest prices for 2021 and 2022 with the CIS and the UAE prices, with U.S. Midwest prices being on average 39 percent and 27 percent higher than the CIS and UAE prices respectively.[225]

[205] The Tribunal also accepts AMLPC and AltaSteel's submissions that recent domestic price increases are being driven largely by increasing costs of raw materials (scrap),[226] the evidence for which the Tribunal acknowledged above. In any case, as outlined above, the Tribunal finds that the evidence indicates that any price increases are expected to ease in 2022 (as seen in trends for U.S. Midwest pricing), which is included in the time frame for the Tribunal's analysis of threat of injury.[227]

[206] Based on the above, the Tribunal agrees that Canada will be an attractive destination for Russian and Omani exports of rebar.

Likelihood of significant price effects

[207] While the Tribunal did not find significant adverse price effects of the subject goods during the POI, the same cannot be said for the next 12 to 18 months, a period in which the Tribunal has found that significant volumes of rebar from the subject countries are likely.

[208] AMLPC and AltaSteel submitted that if the Tribunal does not make a finding against the subject goods, the domestic industry can expect its prices to be reduced by at least $60 per tonne, which would negatively impact its financial performance in late 2021 and through 2022. The Tribunal accepts AMLPC and AltaSteel's estimate that the price of the like goods will drop by $60 per tonne if a finding is not put in place. The Tribunal finds this estimate is reasonable based on the evidence on the record, which includes AMLPC's price reductions in 2020, alleged undercutting by the subject goods as well as the landed pricing of the subject goods in Canada and forecast pricing of the subject goods discussed above.[228]

[209] While the Tribunal found that the undercutting during the POI was not significant, based on the forecasted price decrease in domestic prices, the Tribunal is of the view that there will be greater undercutting in the near term. Using UAE rebar prices as a proxy for Oman and CIS rebar prices as a proxy for Russia, forecasts of subject good pricing for the third and fourth quarters of 2021 support the domestic industry's position that domestic prices will be significantly undercut. In this regard, AMLPC provided price comparisons between forecasted subject good pricing for the third and

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223 Exhibit NQ-2020-005-A-02 (protected) at para. 235 and at 132.
224 Exhibit NQ-2020-005-A-05 at para. 28, footnote 10.
225 Exhibit NQ-2020-005-A-02 (protected) at para. 76 (Table 27) and at 136-137.
226 Exhibit NQ-2020-005-A-10 (protected) at para. 26.
227 Exhibit NQ-2020-005-A-02 (protected) at 136.
228 Exhibit NQ-2020-005-A-05 at para. 56; Exhibit NQ-2020-005-A-06 (protected) at para. 56.

fourth quarters of 2021 compared with AMLPC's delivered price (i.e. inclusive of inland freight).[229] This evidence indicates that the subject goods' will have a significant price depressing effect on the like goods in the near term.

[210] NLMK argued that based on current market conditions, it is impossible that domestic producers can be facing price depression. NLMK submitted that higher rebar prices in Canada have generated high profits for the global rebar manufacturing industry, including Canadian producers. In this regard, NLMK referred to a report posted by CBC News which indicated that prices for steel in Canada had doubled in the past six months, from US$700 to US$1,300 per tonne. Another source (Journal of Commerce by ConstructConnect) showed rebar prices increasing from $500 to $900 per tonne in the first quarter of 2021.[230]

[211] Moreover, NLMK submitted that due to market overregulation, domestic producers have manipulated the market, limiting consumer access to import sources and causing rebar prices to further increase as compared to other steel products. NLMK also submitted that Canadian construction associations have noted that, as steel prices increase, mills are taking longer to produce, and that the Tribunal should be concerned with the additional burden being placed on consumers to pay additional duties in a period of high rebar prices.

[212] The Tribunal is not persuaded by these arguments. As indicated in the Domestic Producers' quarterly financial statements, the domestic industry's net selling price was $747 per tonne in the third quarter of 2020, $723 per tonne in the fourth quarter of 2020 and $756 per tonne in the first quarter of 2021. Prices therefore fell in the fourth quarter of 2020 and increased by only $33 per tonne or 5 percent in the first quarter of 2021.[231] Moreover, the evidence shows that the domestic producers did not materially benefit from this price increase given higher scrap prices. As detailed by the Domestic Producers, there was a significant price-cost squeeze from the fourth quarter of 2020 to the first quarter of 2021 (due to scrap prices increasing at a higher rate than selling prices).[232]

[213] Moreover, the Tribunal agrees with AMLPC and AltaSteel that NLMK's assertions with respect to the price increase seen in the first quarter of 2021 are overstated. As noted by the Domestic Producers, based on Statistics Canada data, Canadian rebar prices increased from $721 to $781 per tonne, a $60 per tonne increase (i.e. 8 percent) much smaller in scope than the trends described by NLMK.[233] While certain producers individually may have higher prices on average, the Tribunal gives more weight to the evidence reflecting the domestic industry as a whole. In any event, any price increases in Canada are projected to ease in the first quarter of 2022, which is included in

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229 AMLPC and AltaSteel also submitted that as ocean freight rates for Asia decrease, as they have in recent months, the undercutting will be even greater. Exhibit NQ-2020-005-A-03 at paras. 82, 86; Exhibit NQ-2020-005-A-04 (protected), at paras. 82 (Table 12), 86.

230 Exhibit NQ-2020-005-F-01 at 7-8; Exhibit NQ-2020-005-F-02 at 95, 99-100; *Transcript of Public Hearing* at 138.

231 Exhibit NQ-2020-005-A-01 at 96.

232 Exhibit NQ-2020-005-A-09 at para. 24; Exhibit NQ-2020-005-A-10 (protected) at para. 24; Exhibit NQ-2020-005-A-01, at paras. 143-145; Exhibit NQ-2020-005-A-02 (protected) at paras. 143-145. See Exhibit NQ-2020-005-B-06 (protected) at para. 22 (Table 2) for Gerdau's metal spread for the first quarter of 2021. Higher prices of scrap are consistent with pricing published by Metal Bulletin, Exhibit NQ-2020-005-B-12 (protected) at 97.

233 Exhibit NQ-2020-005-A-09 at para. 25.

the timeframe for the Tribunal's threat analysis. Also, based on the evidence on the record, the domestic industry has the capacity to supply customers in Canada.[234]

[214] With respect to NLMK's claims concerning broader effects of *SIMA* duties on consumers of rebar, in this regard, the Tribunal has previously indicated that this is not a factor that the Tribunal may consider in this injury inquiry. Indeed, such issues may be raised during the course of a public interest inquiry pursuant to section 45 of *SIMA*.[235]

[215] In summary, the Tribunal finds that the domestic producers will be faced with the choice to either decrease their prices or lose sales to compete with the subject goods in the next 12 months in the absence of a finding. Recent cost increases and evidence of price suppression caused by the subject goods from the fourth quarter of 2020 to the first quarter of 2021, as discussed above, indicate that the subject goods are also likely to prevent the domestic industry from increasing selling prices in line with increases in costs in the absence of a finding. Particularly as importers of rebar have shown that they are quickly able to switch to lower-price sources raising the demand for dumped goods in Canada. This evidence highlights the need for the domestic industry to be able pass cost increases on to customers in the near term.

[216] Considering the above, the Tribunal is of the view that the subject goods are likely to have significant adverse effects on the prices of like goods.

Likely impact on the domestic industry

[217] The Tribunal found above that that increasing imports of subject goods, starting in the second half of 2020, were not yet injurious. However, the Tribunal is of the view that, in the next 12 to 18 months, the continued dumping of the subject goods as seen in the third quarter of 2020 to the first quarter of 2021, will likely cause material injury to the domestic industry unless *SIMA* measures are put in place. The Tribunal finds that the increased imports of the subject goods and their significant price depressing and suppressing effects are also likely to result in a significant adverse impact on the domestic industry.

[218] The conclusion that the subject goods are likely to have a significant adverse impact on the domestic industry in the next 12 to 18 months is further supported by AMLPC's projected likely performance in the absence of *SIMA* duties. Specifically, AMLPC provided its forecast for domestic rebar sales in 2021 and 2022 showing a decrease of its domestic selling prices by $60 per tonne, which, as discussed above, the Tribunal finds a reasonable estimate of the subject goods' impact on domestic pricing. It was also noted that the likely impact in 2021 would be affected by the fact that if provisional duties were removed in July, following the Tribunal's decision in this case, given the lag between sales and delivery, the subject goods would re-enter the market only in the fourth quarter of 2021. The Tribunal finds that AMLPC's evidence is reasonable and shows a significant decline between 2021 and 2022 with no finding in place, both at the gross margin and net income levels, caused by the $60 per tonne price decrease.[236] At these margins, the ability to attract investment capital would be affected.

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234 Exhibit NQ-2020-005-28.A (protected) at 2; Exhibit NQ-2020-005-28 at 2, 6.

235 See *Heavy Plate* at paras. 146, 147.

236 Exhibit NQ-2020-005-A-06 (protected) at paras. 57 (Table 3), 58. To isolate price effects in AMLPC's financial forecast, there were no changes made to volume of sales. Also, prices were not shown on a regional basis.

[219] AltaSteel indicated that its substantial plan for investments in 2021 and 2022 to expand capacity is at risk without a finding. ALMPC planned investments include significantly increasing rebar production at the Contrecoeur facility.[237]

[220] Gerdau also provided confidential evidence with respect to its previous and planned investments over 2021 and 2022. It submitted that, in the absence of a finding, Gerdau's recent and planned investments would be jeopardized.[238]

[221] On balance, the Tribunal finds that the Domestic Producers' claims that investments and employment would be at risk without a finding are supported by credible evidence.

[222] The evidence above with respect to additional domestic production capacity dispels any notion that there will by any supply issues for purchasers in Canada in the near term. AMLPC also indicated that it has the capacity to further increase rebar production should it be able to compete on a fairly traded basis.[239]

[223] The Domestic Producers' evidence on the likely adverse impact of the subject goods on investment and employment is corroborated by the USW's evidence. In this regard, the USW also noted concerns regarding the weakening demand for rebar at Contrecoeur and the impact this could have on the facilities continued operation.[240]

[224] In this regard, the Tribunal notes the statement of Mr. Paul Perreault of USW regarding layoff protections that currently exist under the collective agreement which expires on July 31, 2021.[241] USW submitted that these protections are threatened, as over the next 12 to 18 months, it will be negotiating the collective agreement, and the continued influx of dumped rebar could be leveraged to remove anti-layoff provisions. Without such protection, USW submitted that employees could face layoffs. Additionally, there was evidence of additional crewing levels for certain domestic producers as the domestic industry has benefited from SIMA duties imposed following past cases. For instance, Mr. John Catto of USW discussed in his statement crewing practices at AltaSteel and the addition of a fourth crew at the mill after *Rebar 2*.[242] Similarly, full crewing levels were reached at Gerdau in October 2018.[243] Based on the evidence, including production levels that must be maintained to fully utilize crews, the Tribunal is of the view that dumped rebar threatens these new jobs. A critical risk noted by Mr. Catto is the potential for skilled workers not returning to the mill given the uncertainty and volatility of the industry. In this regard, Gerdau has had challenges retaining skilled employees.[244]

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237 Exhibit NQ-2020-005-C-03 at paras. 88-92; Exhibit NQ-2020-005-C-04 (protected) at paras. 88-92; Exhibit NQ-2020-005-A-05 at paras. 77-86; Exhibit NQ-2020-005-A-06 (protected) at paras. 77-86; Exhibit NQ-2020-005-07.A (protected), Schedules 56-60.
238 Exhibit NQ-2020-005-B-05 at paras. 29-37; Exhibit NQ-2020-005-B-06 (protected) at paras. 29-38.
239 Exhibit NQ-2020-005-28 at 2, 6. The domestic industry's excess capacity in 2020 was well over 1 million tonnes.
240 Exhibit NQ-2020-005-E-03 at paras. 21-23, 29; Exhibit NQ-2020-005-E-04 (protected) at paras. 21-23, 29.
241 Exhibit NQ-2020-005-E-05 at para. 29.
242 Exhibit NQ-2020-005-E-02 at para. 24.
243 Exhibit NQ-2020-005-B-05 at paras. 36, 37.
244 Exhibit NQ-2020-005-E-02 at paras. 38, 40.

[225] On the basis of the foregoing analysis, the Tribunal finds that that there is a clearly foreseen and imminent threat of material injury caused by the subject goods within the next 12 to 18 months.

CONCLUSION

[226] On the basis of the foregoing analysis, the Tribunal finds that the dumping of the subject goods originating in or exported from Russia and Oman has not caused injury but is threatening to cause injury to the domestic industry.

Georges Bujold

Georges Bujold
Presiding Member

Peter Burn

Peter Burn
Member

Frédéric Seppey

Frédéric Seppey
Member