



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDERS AND REASONS

Expiry Review No. RR-2020-003

Refined Sugar

*Orders issued
Friday, August 6, 2021*

*Reasons issued
Friday, August 20, 2021*

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IN THE MATTER OF an expiry review, pursuant to subsection 76.03(3) of the *Special Import Measures Act*, of the orders made by the Canadian International Trade Tribunal on October 30, 2015, in Expiry Review No. RR-2014-006, concerning:

**REFINED SUGAR ORIGINATING IN OR EXPORTED FROM THE UNITED
STATES OF AMERICA, DENMARK, THE FEDERAL REPUBLIC OF
GERMANY, THE NETHERLANDS, THE UNITED KINGDOM, AND THE
EUROPEAN UNION**

ORDERS

The Canadian International Trade Tribunal, pursuant to subsection 76.03(3) of the *Special Import Measures Act*, has conducted an expiry review of the orders made on October 30, 2015, in Expiry Review No. RR-2014-006, continuing its orders made on November 1, 2010, in Expiry Review No. RR-2009-003, as amended by its order made on September 28, 2012, in Expiry Review No. RR-2009-003R, continuing its orders made on November 2, 2005, in Expiry Review No. RR-2004-007, continuing, with amendment, its orders made on November 3, 2000, in Review No. RR-99-006, continuing, with amendment, its findings made on November 6, 1995, in Inquiry No. NQ-95-002, the concerning the dumping of refined sugar, refined from sugar cane or sugar beets, in granulated, liquid and powdered form, originating in or exported from the United States of America, Denmark, the Federal Republic of Germany, the Netherlands and the United Kingdom, and the subsidizing of the aforementioned goods originating in or exported from the European Union, excluding the goods listed in Appendix 1 to these orders.

Pursuant to paragraph 76.03(12)(b) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby continues its order in respect of the dumping of the aforementioned goods originating in or exported from Denmark, the Federal Republic of Germany, the Netherlands and the United Kingdom, and the subsidizing of the aforementioned goods originating in or exported from the European Union.

Pursuant to subsection 76.04(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal also hereby continues its order in respect of the dumping of the aforementioned goods originating in or exported from the United States of America.

Randolph W. Heggart

Randolph W. Heggart
Presiding Member

Cheryl Beckett

Cheryl Beckett
Member

Susan D. Beaubien

Susan D. Beaubien
Member

The statement of reasons will be issued within 15 days.

APPENDIX 1 – EXCLUSIONS**GOODS EXCLUDED FROM THE FINDINGS MADE BY THE TRIBUNAL IN INQUIRY NO. NQ-95-002**

1. *Co-crystallized products* - For greater clarity, these products are comprised of sugar syrups or liquid sucrose blends and one or more non-sucrose ingredients combined through a co-crystallization process to form a dry solid structure in granulated or powder form.
2. *Pearl sugar* - For greater clarity, pearl sugar is hard granulated sugar, pellet-formed by subjecting sugar syrup to intense heat. The pellet, which is the size of a pea, is shaped like a football. It is coarser than coarse sugar, i.e. confectioners' sugar.
3. *Bottler's floc-free beet sugar* - Imported by McNeil Consumer Products Company for use in pharmaceutical preparations.
4. *Lyle's Golden Syrup* - Produced by Tate & Lyle PLC.
5. *Lyle's Pouring Syrup* - Produced by Tate & Lyle PLC.
6. *Daddy brand wrapped sugar dominoes in 1-kg boxes* - For greater clarity, these are sugar cubes which are wrapped in illustrated paper wrappings, each of which contains two sugar cubes.
7. *Daddy brand wrapped sugar cubes in 5-kg boxes containing 960 portions* - For greater clarity, each portion contains two sugar cubes which are wrapped in illustrated paper wrappings.
8. *Saint Louis brand pre-cut brown cane sugar lumps in 1-kg boxes* - For greater clarity, these are rough-shaped sugar lumps comprised of brown cane sugar.
9. *Daddy brand shaped white sugar pieces in 500-g boxes* - For greater clarity, these sugar pieces are pre-cut into diamond, heart, spade and club shapes.
10. *Daddy brand brown or blond "Vergeoise" sugar in 500-g cases*.
11. *Comptoir du Sud brand brown and white sugar pieces in 1-kg and 500-g boxes*.
12. *Daddy brand brown coffee sugar in 500-g box packets* - For greater clarity, this is a large granule brown sugar.
13. *Demerara sugar cubes* - Produced by Tate & Lyle PLC.
14. *Amber sugar crystals* - Produced by Tate & Lyle PLC. For greater clarity, these are large sugar crystals in varying shades of brown.
15. Low-colour liquid sucrose with a colour no higher than 10 maximum ICUMSA (International Commission for Uniform Methods of Sugar Analysis) colour units and distiller's grade liquid sucrose imported by Gilbey Canada Inc. for use as ingredients in its production process.

GOODS EXCLUDED BY THE ORDERS MADE BY THE TRIBUNAL IN REVIEW NO. RR-99-006 FROM THE FINDINGS MADE BY THE TRIBUNAL IN INQUIRY NO. NQ-95-002

1. Bottler's floc-free beet sugar imported for use in pharmaceutical preparations where it is established by the importer that floc-free beet sugar from Canadian sources does not meet the applicable product specifications.
2. Golden, pouring and other table syrups imported in retail-ready packaging in containers not exceeding 3 L.
3. Subject to the exception below, specialty wrapped sugar cubes, each individual wrapping containing not more than 3 sugar cubes, imported in retail-ready packages not exceeding 5 kg in weight. This exclusion does not include generic wrapped white sugar cubes (i.e. where the illustration consists of primarily a trade-mark, trade name, company name or other commercial identification as opposed to a unique illustration).

4. Pre-cut specialty shaped sugar pieces, imported in retail-ready packaging, in packages not exceeding 1 kg in weight. For greater clarity, these include diamond-, heart-, spade- and club-shaped sugar but do not include cube- or domino- (i.e. rectangular) shaped sugar.
5. Rough-shaped lumps and pieces, in lumps or pieces weighing between 3 and 10 g on average, imported in retail-ready packaging, in individual packages not exceeding 1 kg in weight.
6. Very large crystal sugar, in crystals exceeding 0.05 g in weight on average, imported in retail-ready packaging, in individual packages not exceeding 1 kg in weight.
7. Specialty sugar cubes and dominoes (i.e. rectangles), made from demerara, brown, yellow or any other non-white sugar, imported in retail-ready packaging, in packages not exceeding 1 kg in weight. For greater clarity, this does not include any sugar cube or domino made from white granulated sugar.
8. Low-colour liquid sucrose with a colour no higher than 10 ICUMSA (International Commission for Uniform Methods of Sugar Analysis) colour units and distiller's grade liquid sucrose imported for use in the production of distilled spirits where it is established by the importer that low-colour liquid sucrose and distiller's grade liquid sucrose from Canadian sources do not meet the applicable product specifications.
9. Organic sugar meeting the requirements of the Canadian General Standards Board standard No. CAN/CGSB-32.310-99 (Organic Agriculture), the U.S. *Federal Organic Foods Production Act of 1990* or any rules adopted under that act, or the European Union EN2092/94 (Organic Regulation), where it is accompanied by a transaction certificate affirming compliance with the standard signed by an ISO Guide 65 accredited certifying authority.

**GOODS EXCLUDED BY THE ORDERS MADE BY THE TRIBUNAL IN REVIEW
NO. RR-2004-007 FROM THE FINDINGS MADE BY THE TRIBUNAL IN INQUIRY
NO. NQ-95-002**

1. Individually wrapped rectangular cane sugar tablets.

**GOODS EXCLUDED BY THE ORDERS MADE BY THE TRIBUNAL IN REVIEW
NO. RR-2014-006 FROM THE FINDINGS MADE BY THE TRIBUNAL IN INQUIRY
NO. NQ-95-002**

1. Specialty-coloured decorative sugar crystals in granulated form combined with carnauba wax and food colouring matter, imported in small retail-ready containers not exceeding 16 oz. for use exclusively as a superficial decoration in baked goods (such as pies, cakes, pastries, muffins, cookies, etc.) and other prepared foods.

Place of Hearing:	Via videoconference
Dates of Hearing:	June 7 to 11, 2021
Tribunal Panel:	Randolph W. Heggart, Presiding Member Cheryl Beckett, Member Susan Beaubien, Member
Support Staff:	Kalyn Eadie, Lead Counsel Zackery Shaver, Counsel Shawn Jeffrey, Lead Analyst Chelsea Lappin, Analyst Joseph Long, Analyst

PARTICIPANTS:**Domestic Producers/Supporting Parties**

Alberta Sugar Beet Growers (ASBG)

Canadian Sugar Institute

Counsel/RepresentativesRichard Dearden
Hunter FoxUmair Azam
Stephanie Desjardins
Daniel Hohnstein
Greg Tereposky
John Landry, Q.C.
Taryn Urquhart**Importers/Exporters/Others**Cosun Beet Company
European Association of Sugar Manufacturers
(CEFS)
Südzucker AG

The Delegation of the European Union to Canada

Counsel/Representatives

Greg Somers

Maud Labat
Gemma Serra Blasco**WITNESSES:**Sandra Marsden
President
Canadian Sugar InstituteJohn Holliday
President and Chief Executive Officer
Lantic Inc. and Rogers Sugar Inc.Martin Todd
Managing Director (CEO) & Director, Sugar
Research
LMC International Ltd.Michael Walton
Chief Operating Officer
Lantic Inc., and
President
The Maple Treat Corporation

Jean-Sebastien Couillard
Vice President, Finance, Chief Financial Officer,
and Corporate Secretary
Lantic Inc.

Patrick Dionne
Vice President, Operations & Supply Chain
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Tara Trussell
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STATEMENT OF REASONS

INTRODUCTION

[1] The Canadian International Trade Tribunal, pursuant to subsection 76.03(3) of the *Special Import Measures Act*,¹ has conducted an expiry review of its orders made on October 30, 2015,² arising from a succession of previous orders³ concerning the dumping of refined sugar, produced from sugar cane or sugar beets, in granulated, liquid and powdered form, originating in or exported from the United States of America, Denmark, the Federal Republic of Germany, the Netherlands and the United Kingdom, and the subsidizing of the aforementioned goods originating in or exported from the European Union (the subject goods).⁴

[2] The Tribunal's mandate in this expiry review is to determine whether the rescission of the orders is likely to result in injury to the domestic industry. If so, the orders may be continued, with or without amendment, for a further five years. In the absence of likely injury to the domestic industry, the orders will be rescinded.

[3] In the present case, the Tribunal has determined that such injury is likely. Therefore, the Tribunal orders the continuation of the orders without amendment. The reasons for its determination are set out below.

PROCEDURAL BACKGROUND

[4] The Tribunal initiated this expiry review on October 2, 2020. It notified the Canada Border Services Agency (CBSA) and sent letters to known domestic producers, importers, foreign producers and exporters requesting that they complete the Tribunal's questionnaires. The Tribunal's period of review (POR) is from January 1, 2018, to December 31, 2020.

[5] On October 3, 2020, the CBSA initiated its investigation to determine whether the expiry of the Tribunal's orders was likely to result in the continuation or resumption of dumping and/or subsidizing of the subject goods.

[6] On March 1, 2021, the CBSA determined, pursuant to paragraph 76.03(7)(a) of *SIMA*, that the expiry of the finding was likely to result in the continuation or resumption of dumping and subsidizing of the subject goods.

[7] Following the CBSA's determination, on March 2, 2021, the Tribunal began its part of the expiry review to determine, pursuant to subsection 76.03(10) of *SIMA*, whether the expiry of the orders was likely to result in injury or retardation.

¹ R.S.C., 1985, c. S-15 [*SIMA*].

² In *Refined Sugar* (30 October 2015), RR-2014-006 (CITT) [Expiry Review No. RR-2014-006].

³ The orders in Expiry Review No. RR-2014-006 continued orders made on November 1, 2010, in Expiry Review No. RR-2009-003, as amended by an order made on September 28, 2012, in Expiry Review No. RR-2009-003R, which continued an order made on November 2, 2005, in Expiry Review No. RR-2004-007, which continued, with amendment, orders made on November 3, 2000, in Review No. RR-99-006, which continued, with amendment, findings made on November 6, 1995, in Inquiry No. NQ-95-002.

⁴ Excluding goods listed in Appendix 1 to the present orders above.

[8] As part of these proceedings, a number of known domestic producers, importers, foreign producers and exporters of the subject goods were asked to respond to questionnaires from the Tribunal. The responses to these questionnaires were used to prepare public and protected investigation reports.

[9] Several interested parties participated in this expiry review, namely the following:

- a) The Canadian Sugar Institute (CSI), an organization comprised of two domestic producers, Redpath Sugar Ltd. (Redpath) and Lantic Inc. (Lantic);
- b) The Alberta Sugar Beet Growers (ASBG);
- c) The European Association of Sugar Manufacturers (CEFS); and
- d) The Delegation of the European Union to Canada (EU Delegation).

[10] The Tribunal held a videoconference hearing, with public and *in camera* testimony, from June 7 to 11, 2021.

[11] The CSI filed written submissions, witness statements and made arguments in support of a continuation of the orders.

[12] At the hearing, the CSI called the following witnesses who gave testimony:

- a) Ms. Sandra L. Marsden, President of the CSI;
- b) Mr. John Holliday, President and CEO of Lantic and Rogers Sugar Inc.;
- c) Mr. Michael Walton, Chief Operating Officer of Lantic;
- d) Mr. Rod Kirwan, Vice President of Sales and Marketing of Lantic;
- e) Mr. Patrick Dionne, Vice President of Operations and Supply Chain of Lantic;
- f) Mr. Jean-Sebastien Couillard, Vice President of Finance, Chief Financial Officer and Corporate Secretary of Lantic;
- g) Mr. Cyril Ryan, Senior Vice President of Redpath and Chair of Redpath's Executive Management Committee;
- h) Ms. Tara Trussell, Vice President of Sales at Redpath;
- i) Mr. Andrew Fabicki, Manager of Financial Accounting and Tax for Redpath; and
- j) Mr. Alan Wood, Head of Global Commodities for the American Sugar Refining Group, which is the parent company of Redpath.

[13] The CSI also called Mr. Martin Todd as an expert witness in the area of the refined sugar and sweetener regional and global markets, including the European Union (EU), United Kingdom (U.K.), United States (U.S.), and Canadian markets, as well as the outlook for the world white and raw sugar

prices, the white premium, and pricing in those markets, and the potential of Canada as a market for U.S., EU, and U.K. exports if the duties are removed. Mr. Todd's qualification as an expert is discussed below.

[14] The ASBG filed written submissions, witness statements and made arguments in support of a continuation of the orders.

[15] At the hearing, the ASBG called the following witnesses who gave testimony:

- a) Kelly Van Ham, Director and Board Member for the ASBG; and
- b) Emmanuel Anum Laate, Agricultural Economist with the Economic Section of the Department of Agriculture and Forestry for the Government of Alberta.

[16] The CEFS filed written submissions, witness statements, and made arguments opposing the continuation of the orders.

[17] The CEFS called the following witnesses who provided testimony to the Tribunal:

- a) Ms. Marie-Christine Ribera, Director-General of the CEFS;
- b) Mr. Paul Mesters, President of the CEFS and CEO of Cosun Beet Company;
- c) Mr. Markus Neundörfer, Treasurer and Vice-Chair of the CEFS and a member of the Executive Committee of Business Unit Sugar with Südzucker AG Germany; and
- d) Mr. Peter Loomans, an independent consultant and formerly the Managing Director of Hottlet Sugar Trading and Director of Non-EU Trade at Südzucker AG Belgium.

[18] The EU Delegation filed written submissions, witness statements, and made arguments opposing the continuation of the orders.

[19] The EU Delegation called the following witnesses who provided testimony to the Tribunal:

- a) Ms. Eva-María Sanchez, Directorate General Trade of the European Commission;
- b) Mr. John Clarke, Directorate General for Agriculture and Rural Development of the European Commission; and
- c) Ms. Silke Boger, Directorate General for Agriculture and Rural Development of the European Commission.

PRODUCT

Product definition

[20] The subject goods are defined as refined sugar, refined from sugar cane or sugar beets, in granulated, liquid, and powdered form. In the original inquiry and subsequent reviews, the Tribunal excluded from the findings and orders a number of specialty and generic sugar products. The previously excluded products are listed in Appendix 1 to these orders.

Product information

[21] Refined sugar is sold as white granulated, liquid and specialty sugars. Granulated sugar comes in a range of grain fractions (e.g. medium, fine and extra fine). Liquid sugar includes invert sugar. Specialty sugars include organic, soft yellow sugar, brown sugar, icing sugar, demerara sugar (among others) and may be sold in granulated, liquid or powdered form.

PRELIMINARY ISSUES

Expert qualification

[22] As noted above, the CSI requested that Mr. Todd be qualified as an expert witness with respect to the refined sugar and sweetener regional and global markets, including those of the EU, U.K., U.S., and Canada; as well as the outlook for the world white and raw sugar prices, the white premium, pricing in these markets, and the potential of Canada as a market for U.S., EU, and U.K. exports, if the duties are removed.⁵

[23] The CEFS objected to the scope of Mr. Todd's proposed area of expertise, specifically to the qualification of Mr. Todd as an expert on the potential of Canada as a market for U.S., EU, and U.K. exports if the duties are removed. It argued that the Tribunal was being asked to qualify Mr. Todd as an expert on a question of mixed fact and law reserved to the Tribunal to determine.

[24] Mr. Todd is an economist. He is the Managing Director (CEO) and Director, Sugar Research at LMC International Ltd. (LMC). Mr. Todd has been conducting sugar market research at LMC for over 30 years and spearheaded LMC's efforts to produce LMC's monthly *EU Sugar Market Monitor* and *World Sugar Price View*, which includes price forecasts three years into the future. Mr. Todd was also nominated as CEO for the Best Agribusiness Market Intelligence – Global 2021, by Capital Finance International.⁶

[25] The role of an expert witness is to provide independent and impartial evidence that will assist the fact finder to reach a conclusion. As stated by the Supreme Court of Canada, an expert witness has a duty to the court to provide opinion evidence that is fair, objective and non-partisan. The role of an expert is not to advocate for the party who retained him or her, but to provide an impartial, independent and unbiased opinion to the trier of fact.⁷

[26] The Tribunal is mindful of the principle that fact-finding cannot be delegated to an expert witness. Although an expert witness may express an opinion, a court or tribunal is free to either agree with or disregard that opinion, either in whole or in part, after duly considering all of the evidence that has been presented.⁸

[27] In this case, the Tribunal concluded that the contested opinion being expressed by Mr. Todd was consequential to his factual evidence, which falls squarely within his area of expertise. Mr. Todd's expertise and impartiality were not contested by any party. As such, the Tribunal admitted Mr. Todd's evidence in its entirety, while remaining cognizant of the boundary between the

⁵ Exhibit RR-2020-003-B-22.A at 7.

⁶ *Ibid.* at 1.

⁷ *White Burgess Langille Inman v. Abbott and Haliburton Co.*, 2015 SCC 23, [2015] 2 S.C.R. 182 [*White Burgess*] at paras. 10, 32.

⁸ *White Burgess* at paras. 17-18.

evidence and opinion expressed by an expert and the ultimate issue which is reserved for the Tribunal alone to decide.

[28] The Tribunal thus qualified Mr. Todd as an expert with respect to the refined sugar and sweetener regional and global markets, including the EU, U.K., U.S. and Canadian markets, as well as the outlook for world white and raw sugar prices, the white premium and pricing in those markets and the potential of Canada as a market for U.S., EU, and U.K. exports if the duties are removed.⁹

Witness appearance at the hearing

[29] One of the witnesses for the CEFS, Mr. Neundörfer, was unable to attend the hearing on the day that was originally scheduled for his testimony. The Tribunal was provided with the explanation that the reason for non-attendance was unforeseen events of a personal nature arising at the last minute. Counsel for the CEFS was initially unable to confirm whether Mr. Neundörfer would be able to provide any testimony at all.¹⁰

[30] These developments caused considerable consternation to the CSI and the ASBG, whose counsel forcefully objected to Mr. Neundörfer's absence. In their view, it was imperative that they be afforded the opportunity to cross-examine the witness having regard to his knowledge concerning the business of Südzucker, one of the largest European producers of sugar.¹¹ The Tribunal granted leave for the CEFS to provide a substitute witness having personal knowledge of the statements made by Mr. Neundörfer regarding Südzucker in the CEFS witness statement.¹²

[31] The following day, Mr. Neundörfer attended the hearing briefly, but his schedule allowed only limited time to be present for cross-examination. As such, the CSI and the ASBG were only able to conduct an abbreviated and truncated cross-examination of Mr. Neundörfer.¹³

[32] Due to Mr. Neundörfer's inability to present himself for full cross-examination, the Tribunal assigned limited weight to his testimony.

Confidential information

[33] The EU Delegation argued that the Tribunal has failed to comply with its obligations under Articles 6.9 and 6.5.1 of the World Trade Organization (WTO) Anti-dumping Agreement and Articles 12.8 and 12.4.1 of the WTO Agreement on Subsidies and Countervailing Measures because it did not disclose essential facts and designated an excessive quantity of information as confidential in the investigation report, in particular with respect to the domestic industry's performance indicators.

[34] The Tribunal requires access to confidential commercial information in order to fulfill its statutory mandate. Domestic legislation and the international agreements both recognize that parties may decline to provide this critical information if it will become accessible to business competitors. If the Tribunal required all information on its record to be made public, it is foreseeable that parties would withhold certain information from the Tribunal. Not only would this hinder the Tribunal's

⁹ *Transcript of Public Hearing* (7 June 2021) at 51.

¹⁰ *Transcript of Public Hearing* (9 June 2021) at 314.

¹¹ *Ibid.* at 314-321.

¹² *Ibid.* at 321-322.

¹³ *Ibid.* at 500.

ability to conduct its expiry review, but, as recognized by the Supreme Court of Canada in *Sierra Club*, it would impact the parties' right to present their cases. In that case, the Court recognized that parties were faced with the dilemma of having to choose between waiving confidentiality in sensitive commercial information or withholding the documents in order to preserve their confidentiality, thus hindering their ability to make full answer and defence and so impact on their right to a fair trial.¹⁴

[35] However, transparency of the decision-making process is also an important principle in the WTO Agreements and in Canadian administrative law. Accordingly, the WTO Agreements and Canada's domestic legislation both provide for a process whereby summaries or non-confidential versions of information are provided. The WTO Appellate Body has recognized that Article 6.5.1 of the WTO Anti-dumping Agreement serves to *balance* the goals of protecting confidentiality while ensuring the transparency of the investigation process.¹⁵ The Tribunal has similarly recognized that its domestic legislation allows it to "obtain maximum voluntary participation from interested parties, ensure transparency and, at the same time, protect confidential information."¹⁶ This statement is consistent with the Court's holding in *Sierra Club*, where the Court found that granting an order preserving the confidentiality of certain documents, and so protecting the litigant's right to a fair trial as discussed above, served to create an equitable balance with the fundamental principle of open and accessible court proceedings in the circumstances of that case.¹⁷

[36] The data presented in the investigation report are largely based on information that is properly designated as confidential by respondents to the Tribunal's questionnaires, which the Tribunal has a statutory obligation to protect. In this case, the domestic industry is comprised of three domestic producers, two of which account for the majority of the production of the domestic like goods. Consequently, it was not possible to reveal aggregated data based on questionnaire responses for most domestic industry performance indicators without compromising the confidentiality of the information of one or more respondents.

[37] To provide further transparency of the impact of the confidential information, the Tribunal included a public summary table of confidential information in the investigation report, which uses arrows to indicate the trends shown by certain data over the course of the POR. This includes the trends in the domestic industry's performance indicators such as production, sales, capacity, gross and net margins, and net refining margin.¹⁸

[38] The Tribunal finds that, given the circumstances of this expiry review, it has applied the relevant provisions of domestic law governing the protection of confidential information in a manner which complies with Canada's international obligations. Furthermore, the Tribunal is satisfied that copious information was publicly available so as to allow parties to know and understand the case being made by parties adverse in interest, and to respond fully.

[39] Finally, pursuant to subsection 45(3) of the *Canadian International Trade Tribunal Act* and subrule 16(1) of the *Canadian International Trade Tribunal Rules*, information that has been designated as confidential may be disclosed to counsel who have provided the required declaration

¹⁴ *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 [*Sierra Club*] at para. 50.

¹⁵ Appellate Body Report, *EC – Fasteners (China)*, WT/DS397/AB/R at para. 542; see also Panel Report, *Mexico – Steel Pipes and Tubes (Guatemala)*, WT/DS331/R at para. 7.380.

¹⁶ *Certain Fabricated Industrial Steel Components* (25 May 2017), NQ-2016-004 (CITT) at para. 25.

¹⁷ *Sierra Club* at paras. 52, 91.

¹⁸ Exhibit RR-2020-003-05A, Table 5.

and undertaking. Thus, it was open to the EU Delegation to obtain access to confidential information by retaining counsel to act on its behalf in these proceedings.

Arguments regarding the existence of countervailable subsidies

[40] In their written submissions, the CEFS and the EU Delegation disputed the CBSA's determinations of likely resumed or continued subsidizing and the continued existence of countervailable subsidy programs. In addition, the EU Delegation witnesses' testimony was primarily directed to argument, not facts, and essentially reargued issues that were decided by the CBSA.

[41] Under subsection 76.03(7) of *SIMA*, the bifurcated expiry review regime mandates the CBSA to make a determination as to whether the expiry of the order is likely to result in the continuation or resumption of dumping and subsidizing. If the CBSA makes this determination, the Tribunal shall, pursuant to subsection 76.03(10), determine whether the expiry of the order or finding is likely to result in injury or retardation. For this purpose, subsection 37.2(1) of the *Special Import Measures Regulations*¹⁹ provides for a non-exhaustive list of factors that the CBSA may consider in rendering its dumping and subsidizing determinations. In the same manner, factors that the Tribunal may consider in making its injury determination are listed under subsection 37.1(2).

[42] In accordance with this statutory framework, the Tribunal does not have jurisdiction to review the CBSA's findings of likely continued or resumed subsidizing or to make its own assessment of whether the programs currently existing in the EU market constitute countervailable subsidies. The appropriate avenue of recourse for a party who wishes to challenge the CBSA's determination is to request judicial review at the Federal Court of Appeal.²⁰ The Tribunal must accept the CBSA's determination that the expiry of the orders is likely to result in the continuation or resumption of subsidizing of refined sugar originating in or exported from the EU.

Treatment of the U.K. post-Brexit

[43] The U.K. withdrew from membership in the EU as of January 31, 2020. However, under the terms of a transitional agreement with the EU, the U.K. remained part of the EU customs union and single market until January 1, 2021. As a member of the EU, the U.K. was accordingly subject to the countervailing duty order during the Tribunal's POR, which is from January 1, 2018, to December 31, 2020.

[44] As further explained below, the Tribunal must undertake a forward-looking analysis when assessing the likelihood of resumed or continued injury should the orders expire. It is evident that the U.K. will not be part of the EU during the 18 to 24 months following the date of expiry of the Tribunal's current orders. Accordingly, the Tribunal must determine how it will treat the U.K. in its assessment of the likelihood of injury from resumed or continued subsidizing.

[45] In addition, the Tribunal notes that the CSI requested that the Tribunal continue its orders as follows:

- a. in respect of the dumping of the subject goods originating in or exported from Denmark, Germany, the Netherlands and the United Kingdom, and the *subsidizing* of the

¹⁹ SOR/84-927 [*Regulations*].

²⁰ In accordance with paragraph 96.1(1)(d.1) of *SIMA*.

aforementioned goods originating in or exported from the European Union *and the United Kingdom* pursuant to paragraph 76.03(12)(b) of the SIMA; and

b. in respect of the dumping of the subject goods originating in or exported from the United States pursuant to subsection 76.04(1) of the SIMA.²¹

[Emphasis added]

[46] As the Tribunal's existing order refers only to the subsidizing of goods originating or exported from the EU, the Tribunal requested that the parties make submissions at the hearing on the question of the Tribunal's legal authority to make an order respecting the subsidizing of goods originating or exported from the U.K., given that the U.K. is no longer part of the EU.

[47] The CSI submitted that the Tribunal's legal authority to make such an order arises, at least implicitly, from the CBSA's determination on likely resumed subsidizing from the EU. Pursuant to subsection 76.03(10) of *SIMA*, the Tribunal must determine whether the expiry of the order in respect of the goods that are *the subject of the CBSA's determination* of likely resumed or continued dumping or subsidizing is likely to result in injury.

[48] In this regard, the CSI referred to previous findings of the Tribunal that it is bound by the CBSA's determinations of the likelihood of resumed dumping (or subsidizing).²²

[49] Although the CBSA's determination does not explicitly refer to subsidizing from the U.K.,²³ the CSI submitted that all references to the EU in the CBSA's determination and reasons must be logically read as references to the EU and the U.K. The CSI based this argument on the following paragraph from the CBSA's reasons:

[3] In the original refined sugar subsidy case and the most recent re-investigation in 2014, the U.K. was under E.U. jurisdiction. The period of review for this expiry review investigation is January 1, 2017, to March 31, 2020. Although the U.K. left the E.U. on January 31, 2020, the country was still a member of the E.U. customs union and single market during the transition period, which ended January 1, 2021. Therefore, it was necessary to regard the U.K. as a member of the E.U. for purposes of this Expiry Review.²⁴

[Footnote omitted]

[50] In the CSI's view, the Tribunal's existing order, which was issued in 2015, applies to all members of the EU as it was constituted at that time, both individually and collectively.

[51] The CSI also argued that U.K. refined sugar producers continue to benefit from substantially the same subsidy programs as EU producers, as the U.K. has continued, at least on a transitional basis, the direct support payments to farmers that were established under the EU Common Agricultural Program (CAP).

²¹ Exhibit RR-2020-003-B-01 at 57.

²² *Certain Corrosion-resistant Steel Sheet Products* (27 July 2004), RR-2003-003 (CITT) at para. 56; *Certain Flat Hot-rolled Carbon and Alloy Steel Sheet Products* (30 June 2004), RR-2003-002 (CITT) at paras. 68-69.

²³ Exhibit RR-2020-003-03 at 5.

²⁴ Exhibit RR-2020-003-03A at 3.

[52] Finally, the CSI stressed that it would be an absurd outcome for a country to no longer be subject to an existing trade remedy order simply by leaving a customs union.

[53] The CEFS submitted that the subsidizing order is against the EU as a “country”, as defined by *SIMA*, and that no amount of subsidy has been determined for the individual member states of the EU. It further noted that new member states that have joined the EU since the Tribunal’s order in 1995 have been subject to the countervailing duty order. By analogy, the CEFS argued that member states leaving the EU should likewise no longer be subject to duties.

[54] The CEFS also provided evidence that, while the U.K. remained part of the EU customs union and single market until January 1, 2021, the EU regulations governing CAP support ceased to apply to the U.K. as of January 31, 2020.²⁵ The U.K. accordingly passed legislation incorporating the EU program on direct support payments, as well as certain other regional support programs, into its domestic law to ensure that farmers would continue to receive funding for 2020.²⁶ The payments for 2020 were made by the U.K. out of its own budget.²⁷

[55] These regulatory changes were followed by the U.K.’s *Agriculture Act 2020*, which will gradually phase out direct support payments over a seven-year period starting January 1, 2021, and replace them with U.K.-specific programs.²⁸ Accordingly, both legislative and financial responsibility for the direct payments were transferred from the EU to the U.K. as of January 31, 2020.

[56] The EU Delegation similarly submitted that U.K. sugar producers are no longer able to benefit from EU funding provided under the CAP as of 2020.

[57] The Tribunal does not accept the CSI’s contention that the CBSA made a finding of resumed or continued subsidizing with respect to the U.K. As noted above, the text of the CBSA’s determination, pursuant to paragraph 76.03(7)(a) of *SIMA*, refers explicitly to the likelihood of resumed or continued subsidizing by the EU only.

[58] The CSI appears to be arguing that paragraph 3 of the CBSA’s reasons should be read as a deeming provision, and all references to the EU in the decision and reasons should be read as referring to the EU and the U.K. However, the Tribunal does not consider that paragraph 3 supports such a reading. Instead, the Tribunal reads paragraph 3 as a statement of fact—it states that the U.K. was a member of the EU during the CBSA’s POR.

[59] The CBSA is required to make a forward-looking analysis when determining whether there is a likelihood of resumed or continued subsidizing. This must also be taken into account in reading the CBSA’s determination and reasons. It does not follow that, because the U.K. was part of the EU during the CBSA’s POR, countervailing duties should be extended to cover the U.K. after the U.K.’s departure from the EU.

[60] In addition, the Tribunal notes that the CBSA’s reasons are otherwise silent on this issue. The CBSA’s reasons only discuss subsidy programs provided by the EU. No evidence appears to have been presented to the CBSA regarding the legislative changes that allowed for the continuation of the

²⁵ Exhibit RR-2020-003-E-07 at 1-29.

²⁶ Payments are made retroactively, e.g. farmers were entitled to make claims for 2019 starting December 1, 2019.

²⁷ Exhibit RR-2020-003-E-07 at 69-124.

²⁸ Exhibit RR-2020-003-B-34; Exhibit RR-2020-003-13.03 at 4203-4268.

direct support payments by the U.K., despite the fact that this transition took place prior to the close of the CBSA's record. The CSI acknowledged during the hearing that the CBSA did not make a finding or refer to any evidence regarding the existence of countervailable subsidy programs provided by the U.K. government to U.K. sugar producers.

[61] The Tribunal is jurisdictionally restricted by the statutory framework of *SIMA*. It cannot expand its injury determination to encompass goods that were not part of the CBSA's determination of likelihood of resumed subsidizing. As such, the Tribunal considers that the element to be considered is the scope of the CBSA's determination, rather than the scope of the Tribunal's existing order and whether it covers the former 28 member states of the EU individually.

[62] As no application for judicial review was filed with respect to the CBSA's determination, it must be taken as final. Accordingly, since the CBSA has not made a determination of likelihood of resumed or continued subsidizing by the U.K. alone, the Tribunal considers that it does not have jurisdiction, in accordance with subsection 76.03(10) of *SIMA*, to amend the existing orders in the manner requested by the CSI.

[63] Furthermore, for the same reason, the Tribunal considers that it is not appropriate to include the U.K. in its assessment of the likelihood of injury resulting from resumed or continued subsidizing.

LEGAL FRAMEWORK

[64] The Tribunal is required, pursuant to subsection 76.03(10) of *SIMA*, to determine whether the expiry of the orders in respect of the subject goods is likely to result in injury or retardation to the domestic industry.²⁹ Pursuant to subsection 76.03(12), if the Tribunal determines that the expiry of the orders is unlikely to result in injury, it is required to rescind them. However, if it determines that the expiry of the orders is likely to result in injury, the Tribunal is required to continue them, with or without amendment.

[65] Before proceeding with its analysis of the likelihood of injury, the Tribunal must first determine what constitutes "like goods". Once that determination has been made, the Tribunal must determine what constitutes the "domestic industry".

[66] The Tribunal must also determine whether it is appropriate to assess the likely effect of the resumed or continued dumping and subsidizing of the subject goods from all subject countries cumulatively, i.e. whether it will conduct a single analysis of the likely effect or a separate analysis for each subject country. In addition, the Tribunal must determine whether it will make an assessment of the cumulative effect of the dumping and subsidizing of the subject goods, i.e. whether it will cross-cumulate the effect.

LIKE GOODS AND CLASSES OF GOODS

[67] In order for the Tribunal to determine whether the resumed or continued dumping and subsidizing of the subject goods is likely to cause material injury to the domestic producers of like

²⁹ Subsection 2(1) of *SIMA* defines "injury" as "material injury to the domestic industry" and "retardation" as "material retardation of the *establishment* of a domestic industry" [emphasis added]. Given that there is currently an established domestic industry, the issue of whether the expiry of the orders is likely to result in retardation does not arise in this expiry review.

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.³⁰

[68] 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.

[69] 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. These include 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.³¹

[70] In its statement of reasons in the original inquiry, the Tribunal stated the following:

Counsel and parties to the inquiry were unanimous in asserting that refined sugar from the subject countries, whether in granulated, liquid or powdered form, is fungible with domestically produced sugar. As such, refined sugar produced by the domestic industry and the subject goods have the same end uses and compete with and, in many applications, can be substituted for one another. Therefore, the Tribunal is of the view that domestically produced refined sugar is like the subject goods.³²

[Footnote omitted]

[71] The Tribunal notes that these conclusions were maintained in Expiry Review No. RR-99-006 and Expiry Review Nos. RR-2004-007 and RR-2009-003, as amended in Expiry Review No. RR-2009-003R, and subsequently maintained in Expiry Review No. RR-2014-006. Further, none of the parties in this expiry review contested that the domestically produced goods are like goods to the subject goods or that there is more than one class of goods.

[72] In addition, the evidence tendered by the parties confirms that the chemical makeup of refined sugar, which is 99.8 percent sucrose, is uniform regardless of the source of sugar or geographic region it comes from.³³

[73] The Tribunal heard evidence that Canada’s domestic industrial users of sugar require sugar to be of a specific grade, consistency, and colour that requires a high level of quality and sophistication in both processing and refining. For the purposes of this expiry review, the capacity of sugar producers in Canada, the U.S., the U.K. and the EU to transform and refine raw sugar into a vendible

³⁰ Should the Tribunal determine that there is more than one class of goods in this expiry review, it must conduct a separate injury analysis and make a decision for each class that it identifies. See *Noury Chemical Corporation and Minerals & Chemicals Ltd. v. Pennwalt of Canada Ltd. and Anti-dumping Tribunal*, [1982] 2 F.C. 283 (FC).

³¹ See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at para. 48.

³² *Refined Sugar* (6 November 1995), NQ-95-002 (CITT) at 13.

³³ *Transcript of Public Hearing* (9 June 2021) at 447-448.

product is equivalent and interchangeable, in terms of producing a high-quality product that would be required by customers in both North America and Europe.

[74] Based on both the physical and market characteristics of the imported and domestically produced goods, the Tribunal finds the domestically produced goods are like goods to the subject goods and that there is only one class of goods.

DOMESTIC INDUSTRY

[75] 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.

[76] The Tribunal must therefore determine whether there is a likelihood of injury to the domestic producers as a whole or those domestic producers whose production represents a major proportion of the total production of like goods.³⁴

[77] According to the evidence before the Tribunal, there are four domestic producers of refined sugar: Redpath Sugar Ltd. (Redpath), Lantic Inc. (Lantic), Sucro Can Canada Inc. (Sucro), and Sucre Solution Inc. (Sucre Solution).³⁵

[78] Redpath and Lantic have been part of the domestic industry since the Tribunal’s original finding in 1995. Redpath and Lantic together produced approximately 1.3 million metric tonnes (MT) of refined sugar per year during the Tribunal’s POR, and account for roughly 93 percent of domestic production of like goods, as estimated by the CSI.³⁶

[79] Sucro was established in 2014, with facilities located in Hamilton, Ontario, and is estimated to have a production capacity of 120,000 MT per year.³⁷ It submitted a partially complete questionnaire response, but did not otherwise participate in the expiry review proceedings.

[80] Sucre Solution, with facilities located in Trois-Rivières, Quebec, was spun off from Sucro and sold to new owners in 2017.³⁸ Sucre Solution did not participate in the expiry review proceedings; however, Sucre Solution is estimated to account for a minor volume of production of the like goods.

³⁴ The term “major proportion” means an important or significant proportion of total domestic production of the like goods and not necessarily a majority of these goods: *Japan Electrical Manufacturers Assn. v. Canada* (Anti-Dumping Tribunal), [1986] F.C.J. No. 652 (FCA); *McCulloch of Canada Limited and McCulloch Corporation v. Anti-Dumping Tribunal*, [1978] 1 F.C. 222 (FCA); Panel Report, *China – Automobiles (U.S.)*, WT/DS440/R at para. 7.207; Appellate Body Report, *EC – Fasteners (China)*, WT/DS397/AB/R at paras. 411, 412, 419; Panel Report, *Argentina – Poultry (Brazil)*, WT/DS241/R at para. 7.341.

³⁵ Exhibit RR-2020-003-13.03 at 34, Exhibit RR-2020-003-B-03 at para. 18.

³⁶ Exhibit RR-2020-003-13.03 at 34, 401.

³⁷ Exhibit RR-2020-003-B-03 at para. 18.

³⁸ Exhibit RR-2020-003-13.03 at 34.

[81] Accordingly, the Tribunal finds that Redpath, Lantic and Sucro account for nearly all known domestic production of the like goods, and that these three producers constitute the domestic industry for the purposes of this expiry review.³⁹

CUMULATION AND CROSS-CUMULATION

[82] Subsection 76.03(11) of *SIMA* provides that “the Tribunal shall make an assessment of the cumulative effect of the dumping or subsidizing of goods . . . that are imported into Canada from more than one country if the Tribunal is satisfied that an assessment of the cumulative effect would be appropriate taking into account the conditions of competition . . .” between the goods imported into Canada from any of the countries and the goods from any other countries or between those goods and the like goods.

[83] In considering the conditions of competition between goods, the Tribunal typically takes into account the following factors, as applicable:

- a) the degree to which the goods from each subject country are interchangeable with the subject goods from the other subject countries or with the like goods;
- b) the presence or absence of sales of imports from different subject countries and of the like goods into the same geographical markets;
- c) the existence of common or similar channels of distribution; and
- d) the differences in the timing of the arrival of imports from a subject country and of those from the other subject countries, and of the availability of like goods supplied by the domestic industry.

[84] In the context of expiry reviews, the Tribunal has stated in the past that the effect of continued or resumed dumping or subsidizing and the assessment of conditions of competition must be looked at prospectively.⁴⁰ Accordingly, when the Tribunal makes a prospective assessment of the conditions of competition in expiry reviews, its examination presupposes that competition will actually exist. In other words, if a finding or an order expires, goods from each subject country will likely be present in the Canadian market at the same time.

[85] The CEFS submitted that the Tribunal should adopt the approach to cross-cumulation articulated in *Concrete Reinforcing Bar*, which provides that, subject to other applicable statutory conditions being met, the Tribunal will cumulate goods from countries subject to a dumping investigation, and will separately cumulate goods from countries subject to a subsidizing

³⁹ The responses provided by Sucro were incomplete, as it was able to provide data only on production, domestic sales from production, imports and sales of imports. As such, and as noted in the investigation report, Sucro’s information could not be included with that of other domestic producers in certain tables of the investigation report. Given the overall coverage obtained, despite these limitations, the data compiled from domestic producers provide a representative and accurate picture, both in quantitative and qualitative terms, of a major proportion of the domestic industry.

⁴⁰ *Hot-rolled Carbon Steel Plate* (9 January 2008), RR-2007-001 (CITT) at para. 48; *Carbon Steel Welded Pipe* (24 July 2001), RR-2000-002 (CITT) at 6-7.

investigation. As well, it will separately analyze the likelihood of injury from goods from countries subject to both types of investigations at the same time.⁴¹

[86] Accordingly, the EU Delegation and the CEFS submitted that the Tribunal should perform separate analyses for: 1) goods that are dumped; 2) goods that are both dumped and subsidized; and 3) goods that are only subsidized—i.e. one analysis for the U.K. and the U.S., one for the EU-3 (Denmark, Germany and the Netherlands), and one for the rest of the EU (the EU-24).

[87] The CSI submitted that it would be appropriate to separately assess: 1) the cumulative effects of the dumping (in the absence of anti-dumping duties) from the U.S., the EU-3 and the U.K.; and 2) the effects of the subsidizing in the absence of the countervailing duties for the EU-27 and the U.K., as was done in the previous review. It further submitted that, even if the effects of the dumped and subsidized goods from the EU-3 and the U.K. were to be assessed separately from the other two groups, the likelihood of injury to the domestic industry would be the same.

[88] In this case, the Tribunal will follow the approach articulated by the majority in *Concrete Reinforcing Bar*. For the sake of clarity, on the basis of the analysis presented above regarding the treatment of the U.K., the Tribunal does not consider it appropriate to include the U.K. in the group of countries subject to both the dumping and subsidizing order.

[89] With respect to the issue of cumulation, the Tribunal has not been presented with any evidence or argument that cumulation within the groupings proposed by the CEFS and the EU Delegation would not be appropriate based on the conditions of competition. Accordingly, the Tribunal will cumulatively examine the effect of goods subject to the dumping order (the U.S. and the U.K.), goods subject to the subsidizing order (the EU-24) and goods subject to the dumping and subsidizing order (Denmark, Germany and the Netherlands).

LIKELIHOOD OF INJURY ANALYSIS

[90] An expiry review is forward-looking.⁴² It follows that evidence from the period during which an order or a finding was being enforced is relevant insofar as it bears upon the prospective analysis of whether the expiry of the order or finding is likely to result in injury.⁴³

[91] There is no presumption of injury in an expiry review; findings must be based on positive evidence, in compliance with domestic law and consistent with the requirements of the WTO.⁴⁴ In the context of an expiry review, positive evidence can include evidence based on past facts that tend to support forward-looking conclusions.⁴⁵

[92] In making its assessment of likelihood of injury, the Tribunal has consistently taken the view that the focus should be on circumstances that can reasonably be expected to exist in the near to

⁴¹ *Concrete Reinforcing Bar* (14 October 2020), RR-2019-003 (CITT) at para. 39.

⁴² *Certain Dishwashers and Dryers* (procedural order dated 25 April 2005), RR-2004-005 (CITT) at para. 16.

⁴³ *Copper Pipe Fittings* (17 February 2012), RR-2011-001 (CITT) at para. 56. In *Thermoelectric Containers* (9 December 2013), RR-2012-004 (CITT) [*Thermoelectric Containers*] at para. 14, the Tribunal stated that the analytical context pursuant to which an expiry review must be adjudged often includes the assessment of retrospective evidence supportive of prospective conclusions. See also *Aluminum Extrusions* (17 March 2014), RR-2013-003 (CITT) [*Aluminum Extrusions*] at para. 21.

⁴⁴ *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (16 August 2006), RR-2005-002 (CITT) at para. 59.

⁴⁵ *Thermoelectric Containers* at para. 14; *Aluminum Extrusions* at para. 21.

medium term. The domestic industry submitted that the Tribunal should focus on the next 18 to 24 months from the date of the Tribunal's orders, i.e. until August 6, 2023. The CSI noted that this covers the majority of the 2022/23 crop year, which would end on September 30, 2023.

[93] The CEFS submitted that projections beyond the 2021/22 marketing year are too remote and subject to too many variables. The pandemic, and its across-the-board impact on the cultivation, production, refining, shipment, transport and consumption of sugar, have caused market volatility that militates for a shorter period of time to assess reasonably foreseeable developments.

[94] Similarly, the EU Delegation contended that the Tribunal should only consider conditions likely to occur until the end of 2022. However, this argument seems to be based on a misunderstanding of the Tribunal's usual practice. It assumes that the 24-month period is calculated from the end of the POR and not from the date of the expiry of the order.

[95] In reply, the CSI submitted that this expiry review is taking place in the context of exceptional factual circumstances, including three consecutive years of extremely poor weather conditions and the beet yellows virus disease outbreak which have led to substantially reduced EU production and exports of refined sugar. The CSI contended that these exceptional circumstances are temporary in nature and, as detailed in the expert report submitted by Mr. Todd (the LMC report), likely to resolve within the Tribunal's 24-month assessment period. In the CSI's view, it is exactly for this reason that the Tribunal's assessment should cover the entire 24-month frame of reference. To focus on the nearer term, before conditions have returned to normal, would, according to the CSI, risk giving undue weight to the current "extraordinary" conditions. In turn, this could consequentially skew the likelihood of injury assessment.

[96] The Tribunal has consistently applied the 18 to 24-month time frame in previous expiry reviews of these orders.⁴⁶ Furthermore, the Tribunal has not found it necessary to adjust the length of the time frame in recent expiry reviews conducted during the pandemic.⁴⁷

[97] In this case, the Tribunal finds it appropriate to focus its analysis on the next 24 months.

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

Changes in market conditions

[99] In order to assess the likely volumes and prices of the subject goods and their impact on the domestic industry if the orders were rescinded, the Tribunal will first consider changes in international and domestic market conditions.⁴⁸

⁴⁶ See Expiry Review No. RR-2014-006 at paras. 59-62; Expiry Review No. RR-2009-003 at para. 104; Expiry Review No. RR-2004-007 at para. 71.

⁴⁷ See *Photovoltaic Modules and Laminates* (25 March 2021), RR-2020-001 (CITT) at para. 51; *Oil Country Tubular Goods* (30 December 2020), RR-2019-006 (CITT) at para. 64; *Oil Country Tubular Goods* (10 December 2020), RR-2019-005 (CITT) at para. 36; *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate* (10 November 2020), RR-2019-004 (CITT) at paras. 33-34.

⁴⁸ See paragraph 37.2(2)(j) of the *Regulations*.

International market conditions

Background

[100] There are two key international benchmark prices for raw and refined sugar that are traded in the world market: (i) raw sugar is represented by the No. 11 futures contract, which is quoted at ICE Futures US, in New York, and (ii) refined sugar is represented by the White Sugar Futures Contract (still commonly referred to as the No. 5 contract), also quoted at ICE Futures US.

[101] The “spread” between the No. 11 and No. 5 futures prices is referred to as the “world white premium”, which represents the market value of the refining process incurred by the refiner. It is used as the benchmark measure of conditions in the global and Canadian sugar markets. A high premium signals that supplies in the white (refined) sugar market are tight and/or that costs of refining raw sugar are high. A low premium reflects large supplies available of white (refined) sugar and/or low refining costs.

[102] Because sugar beets are processed directly into refined sugar, producers of refined beet sugar are not concerned about the cost of raw cane sugar nor the magnitude of the white premium. When exporting, they care only about the No. 5 price. However, the volume of refined beet sugar traded on the world market affects the white premium by causing price decreases or increases in the No. 5 white sugar price—i.e. increased exports of beet sugar would decrease the No. 5 price and would likely also decrease the white premium.

Global market conditions⁴⁹

[103] The LMC report indicates that high world prices of raw sugar in the 2016/17 crop year encouraged farmers to increase plantings of sugar beet and cane, and good weather conditions led to high yields, which caused a record surplus of 12-13 million metric tonnes raw value (MTRV) in the 2017/18 crop year.⁵⁰ The CSI similarly submitted that the 2017/18 season was characterized by a record oversupply linked to increased production and exports, notably from India, the EU and Thailand. The 2018/19 marketing year also had a large surplus with high output continuing in India and Thailand, contributing to the build-up of world stocks.⁵¹

[104] According to the CSI, although 2019/20 and 2020/21 (projected) are deficit years, global stocks remain ample, at a projected 70.2 million MTRV or 38.3 percent of global consumption.⁵² The drop in global production in 2019/2020 mainly resulted from a fall in production in India due to bad weather in key producing states, and in Thailand due to poor cane prices and poor yields following

⁴⁹ A note on terminology: different sources relied on by the parties have presented the data using slightly different units of measurement, namely: metric tonnes; tonnes; metric tonnes, raw value; metric tonnes, white value; and metric tonnes, refined value. The Tribunal considers that metric tonnes, white value and metric tonnes, refined value are equivalent. The Tribunal further notes that the conversion factor between metric tonnes, raw value and metric tonnes, refined value is 1.0695 (1 metric tonne refined value is equal to 1.0695 metric tonnes raw value). See Exhibit RR-2020-003-13.03 at 27-28. Accordingly, although the Tribunal has referred to varying units of measurement in these reasons, in accordance with the underlying source, the Tribunal considers all of these measurements to be functionally equivalent.

⁵⁰ Exhibit RR-2020-003-B-22 at 23-24.

⁵¹ Exhibit RR-2020-003-13.03 at 54, 1155-1161.

⁵² *Ibid.* at 54, 482.

drought. Production in 2020/21 is expected to remain close to the level of 2019/20, with a sustained high level of production in Brazil and increased production in India to offset a second year of lower output in both Thailand and the EU linked to adverse weather and other crop effects.⁵³

[105] The LMC report similarly indicates that poor weather conditions in Thailand, India, and the EU, as well as Brazilian millers' decision to switch production to ethanol due to low sugar prices,⁵⁴ reduced production in 2019/20. In early 2020, the deficit for the 2019/20 crop year was widely predicted to be 8-9 million MTRV. However, the onset of the COVID-19 pandemic dramatically changed the prospects for the market, with expectations of the deficit in 2019/20 being cut to just over one million MTRV. According to the report, this was generally due to lockdowns around the world leading to a reduction in sugar consumption, and more specifically to Brazilian producers being incentivized to switch back to refining sugar, as the lockdown in Brazil and the global collapse in the price of oil reduced fuel prices.⁵⁵

[106] Other factors that have affected global consumption are: recessions in key consuming countries; policies that have led to stagnation in consumption; the introduction of soft drinks taxes; product reformulations; and changes in consumer dietary preferences. This has caused global sugar consumption to slow, although it continued to increase at a rate of 1.2 percent per year in the last decade, driven primarily by population growth.⁵⁶

[107] For 2020/21, the LMC report projects that the world sugar market will register a deficit of approximately 4.5 million MTRV, which reflects a partial recovery in global consumption and a second consecutive year of poor crop harvests in Thailand.⁵⁷ The CEFS witnesses testified that the latest data indicates a deficit of 4.782 million MT in 2020/21, down from a surplus of 0.882 million MT in 2019/20.⁵⁸

[108] Assuming a return to more normalized weather and crop conditions, notably in Thailand and the EU, there is some evidence projecting that the outlook for 2021/22 and beyond is for a return to surplus as higher market prices incentivize increased sugar production.⁵⁹ The LMC report similarly projects that global production will recover in 2021/22 and 2022/23, although it noted that the speed at which this happens will depend partly on the speed of recovery in Thailand.⁶⁰

[109] In response to rising global output and rising sugar stocks, world raw cane sugar prices declined significantly in 2017/18 and 2018/19, and refined sugar prices followed suit. Prices remained low in 2019/20 but began to recover in 2020/21 given the ongoing tightness of the market

⁵³ *Ibid.* at 51-55, 481, 1162-1169.

⁵⁴ Brazil is one of the largest exporters of raw sugar in the world and, as such, its costs of producing raw sugar and the price of its exports plays a key role in determining the world price of raw sugar. Many cane mills in Brazil that produce sugar also produce ethanol. There is some flexibility to alter the output of this production based on the relative returns of these products, which means if the world sugar price drops below a certain level then Brazilian sugar cane millers will switch to ethanol production. See Exhibit RR-2020-003-B-22 at 19-21.

⁵⁵ Exhibit RR-2020-033-B-22 at 18, 22-26, 38.

⁵⁶ Exhibit RR-2020-003-13.03 at 1149-1150.

⁵⁷ Exhibit RR-2020-003-B-22 at 27.

⁵⁸ Exhibit RR-2020-003-E-04 at para. 164; Exhibit RR-2020-003-E-03 (protected), attachment 28.

⁵⁹ Exhibit RR-2020-003-13.03 at para. 80, attachment 33.

⁶⁰ Exhibit RR-2020-003-B-22 at 27-29.

following the deficit years. However, current and future sugar prices are now in a declining trend given the outlook for a return to surplus.⁶¹

[110] Similarly, the white premium in 2020 and early 2021 has remained relatively high and reflects reduced white sugar availability from the EU and Thailand. With improved crop outlooks and increasing destination refining incentivized by the higher white premium, the outlook is for a declining white premium.⁶²

U.S. market conditions

U.S. sugar programs

[111] The U.S. sugar programs are comprised of domestic supply constraints, price supports and limits on duty-free imports outside of those permitted under the Canada-United States-Mexico Agreement (CUSMA). The 2018 U.S. *Farm Bill* continued, with some minor amendments, the sugar program provisions of the 2014 *Farm Bill*, which were in place at the time of the last expiry review. These programs subject the imports of raw cane sugar into the U.S. to tariff-rate quotas (TRQ) and set marketing allotments, which require that a high percentage of U.S. demand for sugar be allocated to U.S. sugar producers and limit the amount of sugar that each individual producer can sell in the U.S. market. These provisions are expected to be in place through the 2023 crop year.⁶³

[112] In Expiry Review No. RR-2014-006, the Tribunal found that the Refined Sugar Re-Export Program (RSRP) provided a material economic incentive for U.S. sugar producers to export sugar to Canada.⁶⁴ The RSRP is a duty-exemption program that allows a U.S. sugar processor to import raw sugar, provided an equivalent amount of refined sugar is exported within a specified period of time. The RSRP is flexible and allows the import and the export of sugar to occur at different locations and at different times. The evidence in this expiry review is that this program continues to operate substantially unchanged from 2015.⁶⁵

U.S. sugar production, consumption and capacity

[113] The U.S. is the sixth-largest sugar producer globally and the third-largest sugar importer in the world. Both sugar cane and beets are grown in the U.S. and refiners also produce refined sugar from imported raw sugar.⁶⁶ There are 13 cane sugar refineries (6 full refineries plus several partial refineries or “melt stations”, which produce liquid sugar from imported sugar) and 21 sugar beet processing factories in the U.S. There is a high degree of vertical integration in the cane sugar refining/sugar cane milling industry and all sugar beet processors are grower-owned cooperatives.⁶⁷ Approximately one third of imports enter the U.S. duty-free from Mexico under CUSMA (Canada is excluded from the U.S.-Mexico bilateral sugar trade provisions).⁶⁸

⁶¹ Exhibit RR-2020-003-13.03 at paras. 81-86.

⁶² *Ibid.* at para. 86.

⁶³ *Ibid.* at paras. 124-155; Exhibit RR-2020-003-B-22 at 93-94.

⁶⁴ Expiry Review No. RR-2014-006 at paras. 87, 91.

⁶⁵ Exhibit RR-2020-003-13.03 at paras. 155, 160-170.

⁶⁶ Exhibit RR-2020-003-B-22 at 92.

⁶⁷ Exhibit RR-2020-003-13.03 at paras. 116-117.

⁶⁸ Exhibit RR-2020-003-B-22 at 92.

[114] U.S. sugar production for 2020/21 is expected to increase compared to 2019/20 based on increased acreage and yield forecasts for the 2020/21 sugar beet and sugar cane crops.⁶⁹ The United States Department of Agriculture (USDA)'s long-term forecasts indicate that domestic sugar production (beet and cane sectors) is projected to increase to meet growing use given population growth, along with imports from Mexico and other free trade agreement partners. Higher crop yields and sugar recovery rates are expected to account for the continued growth in beet and cane sugar production at least to 2026/27.⁷⁰ Ending stocks for 2020/21 are forecast by the USDA to be 1.568 million MT, refined value.⁷¹

[115] Since the 2015 expiry review, there have been a number of restructuring changes, in both the beet and cane sectors of the U.S. sugar industry, which have increased the capacity, marketing, and distribution reach of the industry. Seven U.S. cane sugar refineries and one U.S. sugar beet processing factory have undergone expansion, and others have made significant investments in improving storage or processing capabilities.⁷² As a result of this increased production, the CSI estimates that unutilized capacity of U.S. refineries was 1.245 million MT, refined value, in 2017/18, 1.088 million MT, refined value in 2018/19 and 841,000 MT, refined value in 2020/21.⁷³

EU market conditions

EU sugar program

[116] The historical EU sugar program, which combined production quotas, price supports and import controls, was found inconsistent with WTO obligations concerning domestic support programs under the Agreement on Agriculture in 2006, and has been gradually phased out since then. The final set of reforms, which eliminated the production quotas, took effect on October 1, 2017. The EU took the position that the elimination of the production quotas meant that as of 2017, it was no longer subject to the WTO-mandated maximum export limit of 1.37 million metric tonnes, white value (MTWV) of out-of-quota sugar.⁷⁴

[117] According to the CSI, the EU has continued various measures under the CAP to support the sector, including maintaining substantial import tariff protection (outside of preferential trade agreements) as well as the possibility of providing private storage and crisis measures to allow the European Commission to take action in the event of sharp increases or decreases in market prices. In addition, the CAP provides for direct payments to all farmers (decoupled support) based on the number of hectares under cultivation. Eleven member states also grant specific farm payments to their beet farmers (voluntary coupled support). In addition, the EU operates the POSEI scheme (Programme of options specifically relating to remoteness and insularity), which supports farming in the EU's outermost regions by using production-related payments. The scheme supports access to food, feed and inputs for local communities, and the development of local agricultural production.⁷⁵

⁶⁹ Exhibit RR-2020-003-13.03 at paras. 112-114.

⁷⁰ *Ibid.* at para. 115.

⁷¹ *Ibid.* at para. 183.

⁷² *Ibid.* at paras. 120-122.

⁷³ *Ibid.* at 4283.

⁷⁴ Exhibit RR-2020-003-B-22 at 51.

⁷⁵ Exhibit RR-2020-003-13.03 at para. 200 and at 1433-1438.

[118] The EU also operates an Inward Processing Relief (IPR) program, which is similar to the RSRP in the U.S., in that it is a duty-exemption program that allows an EU sugar processor to import raw sugar, provided an equivalent amount of refined sugar is exported within a specified period of time. Like the RSRP, the IPR program is flexible and allows the import and the export of sugar to occur at different locations and at different times.⁷⁶

– EU production, consumption and capacity

[119] The EU continues to be the world's third-largest sugar producer after Brazil and India and the largest exporter of beet sugar.⁷⁷ The vast majority of sugar produced in the EU is beet sugar, although the EU does import some raw cane sugar for refining. Importantly, as discussed above, this means that EU sugar exports are not sensitive to the white premium, and large quantities of exports of beet sugar from the EU can disrupt the white premium by lowering the No. 5 price.

[120] Total EU (including the U.K.) sugar production increased from 16.8 million MTWV in 2015/16 to 17.5 million MTWV in 2019/20.⁷⁸ There was a significant increase in production (21.3 million MTWV) in the 2017/18 crop year, which according to the CSI was due to farmers increasing the acreage planted with beets in anticipation of the removal of the WTO-mandated limits on EU sugar exports.

[121] The CEFS acknowledged that the industry began an "ill-advised" expansion of beet cultivation area, employment and length of the production campaign, but argued that the increase in production was also due to favourable weather conditions that led to high beet yields.⁷⁹ The LMC report indicates that farmers increased beet acreage in order to take advantage of high world prices at the time, and that favourable weather conditions also contributed to an excellent yield.⁸⁰

[122] In the 2018/19 and 2019/20 crop years, production decreased dramatically as compared with 2017/18 due to outbreaks of the beet yellows virus, as well as unfavourable weather conditions. Production was 17.6 million MTWV in 2018/19 and 17.5 million MTWV in 2019/20.⁸¹ The CEFS witnesses testified that the reduction in production in 2018/2019 and following years was also due to market forces having an effect in the EU sugar sector after the removal of quotas in 2017.⁸² The same conditions (beet yellows virus and weather conditions) have led to a forecast of 14.5 million MTWV in the 2020/21 crop year.⁸³ For 2021/22 and beyond, some projections indicate that the EU sugar beet crop will rebound and produce 16.8 million MT of beet sugar.⁸⁴ The LMC report projects that production in the EU and U.K. will increase to 17.6 and 18.1 million MTWV in 2021/22 and 2022/23, respectively.⁸⁵ The CEFS witnesses project production of 15.45 million MTWV in 2021/22, but state that this is an optimistic figure and the real production is more likely to be below the

⁷⁶ Exhibit RR-2020-003-B-22 at 51.

⁷⁷ *Ibid.*

⁷⁸ Exhibit RR-2020-003-13.03, attachment 82.

⁷⁹ Exhibit RR-2020-03-E-04 at para. 28.

⁸⁰ Exhibit RR-2020-003-B-22 at 55.

⁸¹ Exhibit RR-2020-003-E-04 at 178-179.

⁸² *Ibid.* at para. 30.

⁸³ *Ibid.* at 180. The 900,000 MTWV of production listed for the U.K. was not included.

⁸⁴ Exhibit RR-2020-003-13.03 at 1165.

⁸⁵ Exhibit RR-2020-003-B-22 at 66.

15.45 million MTWV target. They further project a decrease to 14.4 million MTWV in 2022/23, based on lower capacity due to 12 factory closures (see below).⁸⁶

[123] The CSI contended that the level of consumption in the EU market has been steadily declining. Total consumption was 17.977 million MTWV in 2017/18, dropping to 17.379 million MTWV in 2018/19, and dropping further to 16.926 million MTWV in 2019/20. From 2017/18 to 2019/20, this represents a decrease of approximately 1.05 million MTWV.⁸⁷ Consumption is projected to further decline from 2020 levels in 2021 through 2023.⁸⁸

[124] In contrast, the LMC report indicates that consumption was depressed in 2019/20 and has remained so in 2020/21 due to the impact of the COVID-19 pandemic, and that consumption is likely to return to pre-pandemic levels by 2022/23, if not sooner.⁸⁹

[125] The CEFS witnesses estimate that, despite the uncertainties related to consumption due to COVID-19 and also policies to reduce sugar in food and drinks in the EU, consumption should be 14.8 million MTWV in 2021/22, the same level as the previous year (2020/21), which reflects the estimate of the European Commission.⁹⁰

[126] Data provided by the CSI indicate that there are approximately 2.02 million MT of total cane sugar refining capacity in the EU. The average utilization rate of this capacity is estimated to be 59 percent, leaving approximately 1.2 million MT of unutilized cane refining capacity in the EU market.⁹¹

[127] The CEFS witnesses provided evidence that the EU industry has undergone substantial restructuring and consolidation since 2017, with significant decreases in the number of beet growers and factories. In particular, since the removal or reduction of public aid through subsidy programs, 11 beet sugar factories have closed in the EU as follows: 4 factories in France, 2 in Germany, 1 in Poland, 1 in Croatia, 1 in Greece, 1 in Romania and 1 in Italy. These closures are due to industry rationalization and the elimination of unprofitable refining operations (shedding a combined processing capacity of over 1.2 million MT).⁹² Another factory in Croatia has announced its closure in 2021/22.⁹³

[128] According to the CSI, surplus EU production in 2017/18 was approximately 3.3 million MTWV,⁹⁴ which led to exports of 3.1 million MT in that crop year. However, due to the decrease in production seen in 2018/19 and 2019/20, exports fell to 1.6 million MT and 789,589 MT,

⁸⁶ Exhibit RR-2020-003-E-04 at para. 38; Exhibit RR-2020-003-E-03 (protected) at paras. 36-37. The CEFS projections exclude the U.K.

⁸⁷ Exhibit RR-2020-003-13.03 at para. 215 and attachment 82.

⁸⁸ *Ibid.* at 3971 (attachment 84).

⁸⁹ Exhibit RR-2020-003-B-22 at 67.

⁹⁰ Exhibit RR-2020-003-E-04 at para. 39.

⁹¹ Exhibit RR-2020-003-13.03 at 515-519.

⁹² Exhibit RR-2020-003-E-04 at para. 51.

⁹³ *Ibid.* at para. 52 and at 272-273 (attachment 10).

⁹⁴ Exhibit RR-2020-003-13.03 at para. 215.

respectively.⁹⁵ By 2022/23, the LMC report projects exports to increase to 1.7 million MTWV from the EU and U.K. combined, compared to around 1.0 million MTWV in 2020/21 and 2021/22.⁹⁶

U.K. market conditions

[129] According to the LMC report, the EU and U.K. sugar markets post-Brexit will remain functionally integrated, as under the trade agreement concluded between the EU and the U.K., originating sugar (i.e. sugar produced from beets grown in their respective territories) can move between them duty- and quota-free.⁹⁷

[130] Current U.K. refined sugar policies are similar to those that existed in the EU at the time of the U.K.'s withdrawal from the EU. As discussed above, the U.K. has retained direct payments to farmers, although these payments will be gradually phased out between 2021 and 2027. In addition, the U.K. maintains an Inward Processing Program (IPR) like that described above for the EU.⁹⁸

[131] U.K. production of refined sugar in 2019/20 was 1,191,444 MTWV and is forecast to be approximately 900,000 MTWV in 2020/21.⁹⁹ Consumption is expected to remain stable at approximately 1.8 million MT of sugar each year, meaning that the U.K. will import approximately 900,000 MT of refined sugar, 600,000 MT of which is expected to come from the EU. The U.K. also imports raw sugar to refine domestically.¹⁰⁰

[132] British Sugar operates the only beet sugar refineries in the U.K., with a capacity of up to 1.5 million MT. It produced 1.18 million MT in the 2019/20 crop year. In addition, Tate & Lyle operates a cane sugar refinery with a capacity of 1.2 million MT. Capacity utilization at the Tate & Lyle refinery has been low (approximately 500,000 MT) as the cost of importing raw sugar has been too high.¹⁰¹ However, the U.K. has implemented additional duty-free access for raw cane sugar imports, which will likely decrease these costs.

[133] Specifically, a new Autonomous Trade Quota (ATQ) has been created that will allow duty-free imports of raw cane sugar for refining. For 2021, the ATQ is set at 260,000 MT. In addition, the U.K. has increased duty-free access under existing free trade agreements for imports of 140,000 MT of raw sugar for refining and/or refined sugar from third countries.¹⁰² The CSI's evidence is that this will enable Tate & Lyle to produce significantly more refined sugar than it has historically, and that this additional sugar must be either sold in the U.K. market or exported elsewhere in the world, because it cannot be exported to the EU given its non-originating status. It further submitted that this could in turn displace supply that traditionally came into the U.K. from other sources, including the EU, leading to the potential for more EU exports.¹⁰³

⁹⁵ *Ibid.* at 117 (Table 17).

⁹⁶ Exhibit RR-2020-003-B-22 at 69-70.

⁹⁷ *Ibid.* at 85; *Transcript of Public Hearing* (7 June 2021) at 53-54.

⁹⁸ Exhibit RR-2020-003-13.03 at para. 259.

⁹⁹ Exhibit RR-2020-003-E-04 at 143.

¹⁰⁰ Exhibit RR-2020-003-13.03 at 4270 (attachment 99).

¹⁰¹ *Ibid.* at 4274-4276.

¹⁰² *Ibid.* at 498; Exhibit RR-2020-003-B-22 at 84-85.

¹⁰³ Exhibit RR-2020-003-13.03 at 126.

[134] The U.K. has not traditionally exported large volumes of refined sugar to world markets as most of its production was destined for the EU market. For example, in 2019 the U.K. exported 197,000 MT to the EU and 68,000 MT to the rest of the world.¹⁰⁴ However, the CSI projects that in the next 24 months, exports to the EU market are likely to decrease substantially and exports to the world market are likely to increase substantially because of the additional raw sugar access provided under the ATQ and free-trade agreements (FTA).¹⁰⁵

Domestic market conditions

[135] The fundamental characteristics of the Canadian market remain the same as they were in the previous expiry reviews. Canada is an attractive market for sugar exporters because it is a developed and safe market, home to reliable customers in industrial food processing, retail/grocery, and food service market segments. Canada consistently requires over 1 million MT per year of high-quality refined sugar; and it is open (i.e. not protected by high import tariffs in the absence of the orders or a domestic sugar program).¹⁰⁶

[136] The size of the Canadian refined sugar market increased by 4 percent over the POR (3 percent from 2018 to 2019 and 1 percent from 2019 to 2020).¹⁰⁷ The growth in the sugar market is due to several factors, notably population growth and increased industrial demand in the bulk and liquid sugar segments, which reflects an improved trade balance between the U.S. and Canada for sugar-containing products. While the COVID-19 pandemic decreased demand for sugar used in the manufacturing of food and beverage products, this was offset by increased retail demand due to “pantry loading” and the increase in at-home food preparation.¹⁰⁸

[137] According to the CSI’s data, Canada’s refined sugar production has averaged 1.25 million MT over the past twenty years (ranging from 1.16 to 1.37 million MT), and the size of the market was 1.33 million MT in 2020.¹⁰⁹ The market has increased by approximately 163,000 MT (14 percent) since the previous expiry review.¹¹⁰ The CSI estimated, based on public data, that Canadian sugar refineries are operating at 76 percent capacity.¹¹¹

[138] The majority of Canada’s refined sugar continues to be produced at Canada’s three cane refineries at major ports, enabling imports of raw sugar for refining in close proximity to major population centres and food processing.¹¹² Beet sugar production at Lantic’s plant in Taber, Alberta represents on average about 8 percent of Canada’s total refined sugar production.¹¹³

¹⁰⁴ *Ibid.* at 128, 502.

¹⁰⁵ *Ibid.* at 126, 128.

¹⁰⁶ Exhibit RR-2020-003-B-03 at paras. 15, 23.

¹⁰⁷ Exhibit RR-2020-003-05B, Table 13.

¹⁰⁸ Exhibit RR-2020-003-13.03 at 43-45.

¹⁰⁹ *Ibid.* at paras. 27, 50.

¹¹⁰ *Ibid.* at para. 53.

¹¹¹ *Ibid.* at 437.

¹¹² Lantic has refineries in Montreal, Quebec and Vancouver, British Columbia; Redpath has a refinery in Toronto, Ontario. Exhibit RR-2020-003-13.03 at 32, 35.

¹¹³ Exhibit RR-2020-003-13.03 at 33.

Likely import volumes of subject goods

[139] Paragraph 37.2(2)(a) of the *Regulations* directs the Tribunal to consider the likely volume of the dumped or subsidized goods if the order or finding is allowed to expire, and, in particular, whether there is likely to be a significant increase in the volume of imports of the dumped or subsidized goods, either in absolute terms or relative to the production or consumption of like goods.

[140] The Tribunal's assessment of the likely volumes of dumped and subsidized imports encompasses the likely performance of the foreign industry, the potential for the foreign producers to produce goods in facilities that are currently used to produce other goods, evidence of the imposition of anti-dumping and/or countervailing measures in other jurisdictions, and whether measures adopted by other jurisdictions are likely to cause a diversion of the subject goods to Canada.¹¹⁴

Import volumes during the POR

[141] There were minimal imports of refined sugar from both subject countries and non-subject countries into the Canadian market over the POR.¹¹⁵

[142] The Tribunal finds that the volume of imports of the subject goods was low during the POR because of the imposition of anti-dumping and countervailing duties and that the low volume is, therefore, not a reliable predictor of the volumes of refined sugar that would be imported from the EU, the U.K. and the U.S. if the orders were rescinded.

Likely volumes

U.S. and U.K.

[143] Evidence on the record indicates that there are significant stocks of surplus sugar in the U.S. market.¹¹⁶ In addition, LMC estimates that there is approximately 1.0-1.4 million MTRV (935,000-1.3 million MT, refined value) of surplus refining capacity in the U.S.¹¹⁷ The excess U.S. cane refining capacity alone could generate exports that could eclipse most of the Canadian market and capsize the ability of the domestic industry to remain viable.¹¹⁸

[144] These surpluses provide a strong incentive for U.S. sugar producers to export, and under the RSRP U.S. refiners can maximize their capacity utilization by exporting refined sugar to the world market, including Canada.

[145] At this time, U.S. sugar producers have not been able to reduce their unutilized capacity using the RSRP, in part due to relatively low prices in the world market, but also due to a lack of significant commercially viable market opportunities for exports of high-quality sugar under the program.¹¹⁹ The Tribunal finds that should its order against refined sugar from the U.S. be rescinded,

¹¹⁴ Paragraphs 37.2(2)(a), (d), (f), (h) and (i) of the *Regulations*.

¹¹⁵ Exhibit RR-2020-003-05B, Tables 6-7; Exhibit RR-2020-003-06B (protected), Tables 6-8.

¹¹⁶ Exhibit RR-2020-003-13.03 at 1861.

¹¹⁷ Exhibit RR-2020-003-B-22 at 17.

¹¹⁸ *Ibid.* at 108; Exhibit RR-2020-003-13.03 at 95.

¹¹⁹ Exhibit RR-2020-003-B-22 at 17.

U.S. refiners would likely export to Canada to increase their capacity utilization and sell off their stocks.

[146] Canada is a particularly attractive market for U.S. refined sugar exports given its geographical proximity to large sugar processing operations like Michigan Sugar, with cross-border supply and purchasing relationships.¹²⁰

[147] Similarly, the U.K. has a substantial unutilized capacity that provides a strong incentive for U.K. exporters to increase their exports.¹²¹

[148] In addition, supply of the U.K. domestic market has been well balanced in past years, supplied by a combination of the domestic production by British Sugar (beet sugar) and Tate & Lyle (refinery sugar) and imports from the EU.¹²² However, as noted above, in 2020 the U.K. introduced the ATQ and FTA quotas that permit the importation of an additional 400,000 MT of raw sugar for refining, which threatens to upset this supply balance.¹²³ British Sugar opposed the introduction of these quotas stating that there is “no scarcity of sugar available in the UK” and that beet sugar grown in Britain was sufficient to supply “customers across the UK and around the world.”¹²⁴

[149] These quotas permit the sugar refinery, Tate & Lyle, to produce more refined sugar than it has historically. However, this sugar must be sold domestically which will displace existing supply. As such, the Tribunal finds it likely that this refined sugar produced from imported raw sugar under the ATQ and FTA would be offset by additional exports of U.K. refined sugar to alternative markets. This is likely to include Canada, should the order be rescinded.

[150] Indeed, should the order be rescinded, Canada is a particularly attractive market for U.K. sugar producers as there are existing corporate relationships that incentivize exports. British Sugar, the U.K.’s largest producer of refined sugar, has corporate relationships with large Canadian industrial and retail customers, and British Sugar’s parent company has common management with George Weston Limited Group (Canada) and is related to Loblaw’s Companies Limited, large Canadian purchasers of refined sugar.¹²⁵

[151] In addition, Mr. Todd explained the dynamics of beet sugar production. He was a credible and knowledgeable witness. Mr. Todd testified that due to variability and unpredictability of weather and crop production, there is a built-in incentive to over-plant, to ensure that a basic minimum of demand is always met. Most of the time, this creates surplus.¹²⁶ The Tribunal accepts that relatively small amounts of overall surplus generated by U.S. and U.K. producers would have a disproportionately large impact on the domestic industry, simply by reason of scale alone.¹²⁷

¹²⁰ Exhibit RR-2020-003-13.03 at paras. 5, 124; Exhibit RR-2020-003-B22 at 108.

¹²¹ Exhibit RR-2020-003-13.03 at para. 264; Exhibit RR-2020-003-14.03 (protected) at 135.

¹²² Exhibit RR-2020-003-13.03 at 499, 4276; Exhibit RR-2020-003-14.03 (protected) at 135.

¹²³ Exhibit RR-2020-003-13.03 at para. 255; Exhibit RR-2020-003-13.03, Table 18.

¹²⁴ Exhibit RR-2020-003-13.03 at para. 263.

¹²⁵ *Ibid.* at para. 270, attachment 103.

¹²⁶ *Transcript of Public Hearing* (7 June 2021) at 142-143.

¹²⁷ As noted above, the entire Canadian market is approximately 1.3 million MT; therefore, the U.S. surplus refining capacity of roughly 1 million MT, refined value per year is equivalent in size to the entire Canadian market. See Exhibit RR-2020-003-13.03 at 95.

[152] In sum, there is ample and cogent evidence on the record which persuades the Tribunal that production of the subject goods in the U.S. and the U.K. will continue at high levels, and that producers in these regions will be highly motivated to pursue any new market opportunities that become available to absorb sugar surpluses and unutilized capacities. Moreover, the Tribunal finds that, if anti-dumping duties in Canada are no longer in place, Canada will quickly become a highly attractive market for U.K. and U.S. exports of refined sugar.

[153] On the basis of the foregoing, the Tribunal finds that, if the orders are rescinded, there will likely be a significant increase in the absolute and relative volume of imports of the subject goods from the U.S. and the U.K. over the next 24 months.

EU-24

[154] The Tribunal notes that the evidence and argument regarding production, consumption, exports and capacity utilization were presented for the EU as a whole. The CEFS framed its case with reference to the EU-27¹²⁸ while the CSI made its case in terms of the EU and the U.K., rather than for the EU-24.¹²⁹ The Tribunal accepts that if the countervailing duties were removed from the EU-24, but the duties remained in place for Denmark, Germany and the Netherlands, production and exports could be shifted to the EU-24 countries as refined sugar is fungible within the EU market. Producers have production facilities in different EU Member States, and the sugar they produce can be traded between individual EU Member States.¹³⁰

[155] Furthermore, although Denmark, Germany and the Netherlands are important sugar producers within the EU, production, exports and unutilized capacity in the EU-24 over the POR were significant in and of themselves. Total EU-24 production has ranged from 61.5 to 66 percent of EU total over the POR.¹³¹ Exports from the EU-24 represented 73.5 to 80 percent of total EU exports over the same period, and France, Belgium and Poland were the three top exporters of refined sugar from the EU in 2020/21.¹³² Furthermore, all of the unutilized cane sugar refining capacity discussed above in the EU market section is in the EU-24 countries.¹³³ Accordingly, the Tribunal considers that the analysis and argument presented below for the EU as a whole equally applies to the EU-24.

[156] According to CSI, it is likely that high volumes of imports from the EU would enter the Canadian market if the orders were rescinded. This is evidenced by the substantial increase in production and exports in the 2017/18 marketing year, as compared to the previous marketing year when the quotas and export limits were in place. The CSI also submitted that the adverse impacts of unfavourable weather conditions and disease outbreaks on EU sugar beet yields only temporarily reduced refined sugar production in the EU in the 2018/19 and 2019/20 marketing years, and is not indicative of the likely production over the next 24 months.

¹²⁸ That is the current 27 member states of the EU.

¹²⁹ The current 27 member states of the EU excluding Denmark, Germany and the Netherlands.

¹³⁰ Exhibit RR-2020-003-B-12 at paras. 47-51.

¹³¹ Exhibit RR-2020-003-E-04 at 177-180.

¹³² Exhibit RR-2020-003-13.03 at 117; Exhibit RR-2020-003-E-04 at 162.

¹³³ Exhibit RR-2020-003-13.03 at 516.

[157] The CSI forecasts that the exportable surplus in the EU is expected to increase, and the EU is expected to return to being a net exporter. As such, EU sugar producers will be seeking export opportunities for its high-quality EU refined sugar under the IPR program.

[158] A key feature of the EU sugar exports is that they are of a refined quality that is typically demanded by international food and beverage manufacturers. The attractiveness of the EU sugar to such customers is further enhanced by European sugar companies' ability to meet a range of quality and service requirements, including customised quality and packaging, guaranteed consistency of quality, reliable delivery schedules and because their sugar carries quality and traceability certificates. As a result, EU sugar is an attractive product for international purchasers, including those in Canada.¹³⁴

[159] The CEFS asserts that EU production of significant volumes destined for export is unlikely. It argued that 2017/18 should not be used as a basis for projections for future export volumes from the EU, as that was an exceptional year and is clearly an outlier. Most EU sugar is produced to serve domestic demand and, except for 2017/18, there have not been significant surpluses. Moreover, the evidence of the CEFS witnesses was that the EU has been a net importer of refined sugar since 2018/19. Further, the CEFS witnesses have projected decreasing production and stable consumption. This is an indicator that there will likely not be surplus sugar to export to Canada during the next 24 months.¹³⁵

[160] The CEFS also submitted that Canada is not a likely export destination for EU sugar. The CEFS witnesses pointed to the fact that North America is not among its traditional export destinations and that, should it have surplus sugar to export, it would first look to geographically closer markets as the higher freight costs to Canada make the market less attractive.¹³⁶

[161] As discussed below, the Tribunal finds that should the orders be rescinded, high volumes of imports from the EU-24 would enter the Canadian market.

[162] EU sugar producers are export-oriented, incentivized by maximizing throughput and capacity utilization, and have consistently exported high volumes of refined sugar over the POR, seeking open markets like Israel that have similar characteristics to the Canadian market.

[163] The evidence on the record indicates that sugar producers aim to maximize throughput and maintain high capacity utilization, and that by doing so, refiners are able to reduce fixed costs, increase competitiveness, recoup investments and maintain profitability.¹³⁷ Increasing capacity utilization and throughput using export sales, in particular by using the IPR program, is financially beneficial for both cane sugar refiners and beet sugar refiners.¹³⁸ As such, the Tribunal finds that EU sugar producers are likely to seek available export opportunities in open markets to increase capacity utilization and throughput.

[164] As noted above, the CEFS argued that the EU and LMC production forecasts were overestimated, and that there would be little refined sugar available for export in the near to medium

¹³⁴ Exhibit RR-2020-003-B-22 at 52.

¹³⁵ Exhibit RR-2020-003-E-02 at paras. 48, 72; Exhibit RR-2020-003-E-04 at para. 64.

¹³⁶ Exhibit RR-2020-003-E-04 at paras. 204-206.

¹³⁷ Expiry Review No. RR-2014-006 at paras. 54, 89.

¹³⁸ Exhibit RR-2020-003-B-12 at paras. 17-18, 23-24.

term. The Tribunal notes that, despite challenging weather circumstances and production deficits, the evidence is that the EU has continued to export at least 1 million MTWV per crop year.

[165] The export orientation of EU-24 sugar producers is exemplified by the targeting of the Israeli market through discounted prices. Major EU-24 producers' exports (specifically from Belgium, France, and Poland) to Israel nearly doubled from 2016/17 to 2017/18 and captured market share.¹³⁹ Exports to Israel remained comparatively high in 2018/19 as well, but declined in 2019/20 to reflect reduced EU-24 production due to adverse weather conditions and beet yellows virus.¹⁴⁰

[166] There are relatively few markets that are open to imports of high-quality sugar and they are targeted quickly, once the opportunity presents itself, as in the case of Israel. Should the order be rescinded, Canada would become such an open market for imports.

[167] Mr. Todd provided testimony as to the attractiveness of the Canadian market as an export destination for European sugar.¹⁴¹ It also shares many of the same characteristics of the Israeli market, in that it is a developed and safe market, home to reliable customers, consistently requires over 1 million MT of high quality refined sugar annually, and would be open (i.e. not protected by high import tariffs or a domestic sugar program) should the order be rescinded.¹⁴²

[168] Having considered the evidence on record, the Tribunal finds that it is likely that EU-24 producers would be willing to target the Canadian market should the orders be rescinded, as they have with the Israeli and other key export markets.

[169] As noted above, the CEFS witnesses stated that the biggest obstacle for EU exports to Canada would be the logistical and expense issues with freight.¹⁴³ However, there is evidence that logistical issues could be solved, especially having regard to existing logistical pathways used for the export of other EU goods (including sugar excluded from these orders) to Canada.¹⁴⁴

[170] Overall, the Tribunal finds that imports of refined sugar from the EU-24 will likely increase significantly, should the orders be rescinded. While the volumes may be small relative to the overall production of the EU and the size of their surpluses, those volumes are significant relative to Canadian production and market size; in fact, there is evidence indicating that such volumes would be sufficient to capsize the Canadian domestic industry.¹⁴⁵

[171] On the basis of the foregoing, the Tribunal finds that, if the orders are rescinded, there will likely be a significant increase in the absolute and relative volume of imports of the subject goods from the EU over the next 24 months.

¹³⁹ Exhibit RR-2020-003-B-03 at para. 103.

¹⁴⁰ *Ibid.* at paras. 85, 103.

¹⁴¹ Exhibit RR-2020-003-B-17 at para. 16; Exhibit RR-2020-003-B-22 at 65; *Transcript of Public Hearing* (7 June 2021) at 119.

¹⁴² Exhibit RR-2020-003-B-03 at para. 15; Exhibit RR-2020-003-B-20 at para. 29; Exhibit RR-2020-003-B-06 at paras. 11, 71-73; Exhibit RR-2020-003-B-22 at 16 and 52.

¹⁴³ *Transcript of Public Hearing* (10 June 2021) at 525-526, 529.

¹⁴⁴ *Transcript of Public Hearing* (7 June 2021) at 104-105, *Transcript of Public Hearing* (8 June 2021) at 177.

¹⁴⁵ Exhibit RR-2020-003-B-22 at 65; Exhibit RR-2020-003-6B (protected), Table 12.

Denmark, Germany, and the Netherlands

[172] The CSI submitted that rescission of the Tribunal's orders with respect to imports from Denmark, Germany, and the Netherlands would not avoid injury to the domestic industry. Even if the orders are continued with respect to the other EU Member States, the likely volume of exports originating from Denmark, Germany, and the Netherlands and the supply of refined sugar exported from these markets will be backfilled with refined sugar from other EU Member States.

[173] As noted above, the evidence on the record is that EU producers maintain production facilities both within Denmark, Germany and the Netherlands and in other EU member states.¹⁴⁶ The Tribunal finds it likely that either production or exports would be shifted to Denmark, Germany and the Netherlands should the anti-dumping and countervailing duties on these three countries be rescinded.

[174] In addition, refined sugar production in and exports from Denmark, Germany and the Netherlands are significant in and of themselves. Germany and the Netherlands are among the EU's top five producers. Total production in Denmark, Germany and the Netherlands was 6,878,703 MTWV in 2017/18, 5,675,997 MTWV in 2018/19, and 5,785,259 MTWV in 2019/20 and was forecast to be 5,728,353 MTWV in 2020/21.¹⁴⁷

[175] Germany and Denmark were among the EU's top 5 exporters in 2020/21, representing 11 percent and 8 percent of EU exports, or 46,000 MT and 35,000 MT, respectively.¹⁴⁸ Denmark, Germany and the Netherlands together exported 686,352 MT in 2017/18, 313,396 MT in 2018/19 and 204,241 MT in 2019/20.¹⁴⁹

[176] Moreover, given the desire of European sugar producers to become global players, as evidenced by public statements made by Cosun and Südzucker, it is reasonable to expect that surplus production from Germany, Denmark, and the Netherlands will likely end up in opportunity markets, like Canada.¹⁵⁰

[177] While Mr. Mesters (Cosun) and Mr. Neundörfer (Südzucker) provided testimony indicating that their companies did not have an interest in exporting to the Canadian market,¹⁵¹ this is contradicted by evidence showing that both of these producers seek a greater share in export markets. In its press release marking the transfer of ownership of Limako (a trading company), Cosun indicated that: "We want to be free to sail our own course on the world market in accordance with our strategy and vision"¹⁵² Südzucker similarly reported to its shareholders that part of its strategic focus for the sugar division would be to "exploit export opportunities."¹⁵³ In addition, this testimony was contradicted by Mr. Todd's expert evidence,¹⁵⁴ which as noted above was given in

¹⁴⁶ Exhibit RR-2020-003-13.03 at 4664-4665; Exhibit RR-2020-003-13.03A.

¹⁴⁷ Exhibit RR-2020-003-E-04 at 177-180.

¹⁴⁸ *Ibid.* at 162.

¹⁴⁹ Exhibit RR-2020-003-13.03 at 117.

¹⁵⁰ Exhibit RR-2020-003-B-35 at 2; Exhibit RR-2020-003-B-31 at 34.

¹⁵¹ *Transcript of Public Hearing* (9 June 2021) at 344-345, *Transcript of Public Hearing* (10 June 2021) at 493.

¹⁵² Exhibit RR-2020-003-B-35 at 2.

¹⁵³ Exhibit RR-2020-003-B-31 at 34.

¹⁵⁴ Exhibit RR-2020-003-B-22 at 62, 64, 65; *Transcript of Public Hearing* (7 June 2021) at 119-122, 146-147.

recognition of the expert's duty to give impartial evidence to the Tribunal. Accordingly, the Tribunal assigns greater weight to the written evidence and Mr. Todd's testimony on this point.

[178] As a result, the Tribunal finds that, if the orders are rescinded, there will likely be a significant increase in the absolute volume of imports of the subject goods from Denmark, Germany and the Netherlands over the next 18 to 24 months.

Likely price effect of the subject goods

[179] The Tribunal must consider whether, if the orders are allowed to expire, the dumping and/or subsidizing of goods is likely to significantly undercut the prices of like goods, depress those prices, or suppress them by preventing increases in those prices that would likely have otherwise occurred.¹⁵⁵ In this regard, the Tribunal distinguishes the price effect of the dumped and/or subsidized goods from any price effects that would likely result from other factors affecting prices.

[180] The CSI provided evidence that export prices are dependent on the minimum financial threshold for a return on export sales to Canada, and that exporters will then push sales as long as the return is at or above that threshold, driving down prices to their lowest financial thresholds.¹⁵⁶

[181] The evidence indicates that, for cane sugar refiners, export sales are financially beneficial, so long as they cover the marginal variable costs, such as raw cane sugar, energy, and refining materials and have a minimal contribution to fixed costs.¹⁵⁷ For beet sugar refiners, it makes sense financially to sell into export markets at prices that cover raw material and marginal processing costs, but nothing more. Beet sugar can even be exported at below marginal production cost to increase plant throughput, avoid storage costs, and to have near zero inventories when a new crop is harvested and processed.¹⁵⁸

[182] High-quality refined sugar, whether produced from sugar cane or sugar beets, is a fungible, highly substitutable product, where price is the primary competitive factor.¹⁵⁹ Accordingly, the price effects of low-priced refined sugar begin as soon as the pricing enters the Canadian market. Testimony given by Mr. Walton described the cascading effects of low-priced exports entering the Canadian market, that is, where once low-priced offers enter the market purchasers use these offers as leverage to exert pricing pressure in negotiations.¹⁶⁰

Import prices during the POR

[183] During the POR, there were minimal imports of refined sugar from either subject countries or non-subject countries. The prices of the subject goods in the domestic market during the POR do not provide a good basis for estimating what prices will be in the absence of the orders because the nature of those imports is likely not representative of the type of products that would be shipped to

¹⁵⁵ Paragraph 37.2(2)(b) of the *Regulations*.

¹⁵⁶ Exhibit RR-2020-003-B-12 at paras. 14-15.

¹⁵⁷ *Ibid.* at para. 17.

¹⁵⁸ *Ibid.* at para. 18.

¹⁵⁹ Expiry Review No. RR-2014-006 at para. 48; Exhibit RR-2020-003-B-06 at paras. 78-79.

¹⁶⁰ Exhibit RR-2020-003-B-06 at paras. 102, 109; *Transcript of Public Hearing* (8 June 2021) at 174-175.

Canada if the orders were rescinded. The fact that the subject goods imported during the POR were priced much higher than the like goods suggests that they were specialty sugar products.¹⁶¹

[184] Although prices of non-subject imports (whether imported by importers or the domestic producers) were the lowest among imports, they were still higher than the prices of sales from domestic production throughout the POR, which again may be attributable to product mix.¹⁶²

Likely prices

Price undercutting

– U.S. and U.K.

[185] Mr. Couillard of Lantic and Mr. Fabicki of Redpath provided estimates of likely U.S. import prices and the degree to which they would undercut the domestic producers' prices and net refining margins in their witness statements.¹⁶³

[186] With respect to U.S. prices, should the orders be rescinded, Mr. Couillard stated that the lowest prices offered will be for surplus beet sugar, followed by refined and beet sugar that is exported using the U.S. RSRP.¹⁶⁴

[187] Mr. Couillard's estimates were based on the assumption that the beet sugar exports were using the RSRP (as opposed to surplus) and priced in the same manner as refined cane sugar. In addition, he assumed there are no cost savings or other profits generated from trading the re-export credits for both beet and cane sugar, which would generate lower prices.¹⁶⁵

[188] The U.S. net margins in the estimates provided by the Lantic and Redpath witnesses were built on known or derived costs for the refining of sugar from each of the domestic producers respectively, along with market information.¹⁶⁶

[189] Based on this methodology, Mr. Couillard estimated landed values of U.S. beet and cane sugar, which undercut Lantic's prices and net refining margins.¹⁶⁷ Mr. Fabicki of Redpath also estimated, using a similar methodology, that U.S. net margins would substantially undercut Redpath's net margins.¹⁶⁸

[190] In the Tribunal's view, this is an acceptable methodology for estimating likely prices of U.S. subject beet and cane sugar. As such, the Tribunal finds that the prices of U.S. subject goods will likely significantly undercut the like goods if the orders are rescinded.

¹⁶¹ Exhibit RR-2020-003-06B (protected), Table 25.

¹⁶² Exhibit RR-2020-003-06B, Table 27.

¹⁶³ Exhibit RR-2020-003-B-12 and Exhibit RR-2020-003-B-13 (protected); Exhibit RR-2020-003-B-18 and Exhibit RR-2020-003-B-19 (protected).

¹⁶⁴ Exhibit RR-2020-003-B-12 at paras. 29-30.

¹⁶⁵ *Ibid.* at paras. 31, 33.

¹⁶⁶ Exhibit RR-2020-003-B-13 (protected) at Appendix 2A; Exhibit RR-2020-003-B-19 at Appendix 1.

¹⁶⁷ Exhibit RR-2020-003-B-13.A (protected) at 1.

¹⁶⁸ Exhibit RR-2020-003-B-19 (protected) at 17, 19.

[191] With respect to the U.K., Mr. Couillard's evidence was that the methodology used for estimating likely EU prices (set out below) is suitable for estimating likely U.K. prices as they are part of an integrated market for sugar and will trade on the world market at the No. 5 price plus the EU cash premium.¹⁶⁹ Accordingly, both witnesses provided estimations based on the No. 5 prices plus the EU cash premium as a base line, and then adjusted for discounts observed in the Israeli market and adjusted white and cash premiums.¹⁷⁰ The Tribunal finds that it is reasonable to expect that the U.K. exports going forward would continue to track the No. 5 price. As such, the Tribunal finds that the likely prices from the U.K. will follow those observed in the estimation below.

[192] Based on these scenarios, Mr. Couillard states that there would be undercutting of Lantic's pricing and net margins.¹⁷¹ Mr. Fabicki performed the same analyses with Redpath's prices, and they also show undercutting of Redpath's prices and margins.¹⁷² The Tribunal accepts this uncontroverted evidence.

[193] As such, the Tribunal finds that the prices of U.K. and U.S. imports will likely significantly undercut the prices of the like goods if the orders are rescinded.

- EU-24

[194] Mr. Couillard estimated likely prices and net margins for EU imports of refined sugar using the No. 5 price plus the EU cash premium forecasted by the LMC report for crop year 2022/23, by which time he projects that EU production is expected to be at normal levels.¹⁷³ Based on this scenario, Mr. Couillard's evidence was that there would be undercutting of Lantic's pricing and net margins.¹⁷⁴ Mr. Fabicki performed the same analyses with Redpath's prices, and it also shows undercutting of Redpath's prices and margins.¹⁷⁵

[195] Mr. Couillard submitted a second estimation, which used a 12 percent discount of the No. 5 price, which is based on the EU pricing behaviour into the Israeli market.¹⁷⁶ This further increases the degree of undercutting of Lantic's pricing and net margins.¹⁷⁷ Mr. Fabicki performed the same analyses with Redpath's prices, and it also shows undercutting of Redpath's prices and margins.¹⁷⁸

[196] Finally, Mr. Couillard provided an estimation that adopted the 12 percent discount of the No.5 price, as described above, but adjusted the white premium to \$90 and applied a \$40 cash

¹⁶⁹ Exhibit RR-2020-003-B-12 at paras. 48, 50.

¹⁷⁰ Exhibit RR-2020-003-B-13 (protected) at Appendices 4 and 5. Exhibit RR-2020-003-B-19 (protected) at 22-23, 26-27, 29.

¹⁷¹ Exhibit RR-2020-003-B-13 (protected) at 37, 43-45.

¹⁷² Exhibit RR-2020-003-B-19 (protected) at 22-23, 26-27, 29.

¹⁷³ Exhibit RR-2020-003-B-13 (protected) at 44.

¹⁷⁴ *Ibid.* at 37.

¹⁷⁵ Exhibit RR-2020-003-B-19 (protected) at 22-23.

¹⁷⁶ Exhibit RR-2020-003-B-13 (protected) at para. 62; Exhibit RR-2020-003-B-03 at para. 104.

¹⁷⁷ Exhibit RR-2020-003-B-13 (protected) at 43-44.

¹⁷⁸ Exhibit RR-2020-003-B-19 (protected) at 26-27.

premium.¹⁷⁹ This exercise also yielded significant undercutting of Lantic's pricing and net margins.¹⁸⁰ Again Mr. Fabicki's analysis yielded similar undercutting of its prices and margins.¹⁸¹

[197] The CEFS witnesses and the EU Delegation submitted evidence that EU export prices have generally been above the No. 5 export price and movements in their prices have tracked the No. 5 price.¹⁸² Further, the CEFS argued that exports from the EU would only occur at high prices given current global pricing trends. The CEFS witnesses submitted evidence that export prices are higher than domestic EU prices, which it argued indicates that exports are not being made at dumped prices.¹⁸³

[198] In reply, the CSI submitted that there is substantial evidence on the record of EU exporters selling below domestic prices, which were already unprofitable, in order to secure market share in foreign markets, such as Egypt.¹⁸⁴ The CSI contends that the CEFS and the EU Delegation's reliance on average prices is not representative, as higher-priced exports to markets like Switzerland and Norway can mask the lower-priced exports to other markets.

[199] Having considered the arguments and evidence before it, the Tribunal finds that exporters in the EU-24 will likely export to Canada at low prices should the orders be rescinded. Although Mr. Couillard and Mr. Fabicki's estimates were for the EU as a whole, the Tribunal sees no reason to expect that export prices from the EU-24 would not be priced in the same manner. The Tribunal accordingly accepts that these estimates are reasonable.

[200] Furthermore, the evidence demonstrates that EU producers have historically derived profit from their domestic market sales while exporting at low prices that are sufficient only to contribute to variable costs, with a small contribution to fixed costs, in order to capture market share in export markets.¹⁸⁵

[201] The removal of price regulation in the EU in 2017 led to intense price competition within the EU. In order to capture market share, EU producers sold sugar into some regions in Europe at very low prices that caused "the industry to [lose] phenomenally – billions of Euros in a fight for market share."¹⁸⁶ Südzucker characterized this ongoing competition in the EU as "predatory pricing" in its 2020/21 annual reports.¹⁸⁷ At the same time, EU sugar producers continued to sell into export markets at low prices.¹⁸⁸

[202] Following the end of sugar beet quotas, minimum price regulation, and export limitations in 2017, European producers took advantage of the opportunity to better utilize existing capacities to

¹⁷⁹ The original estimate for the white premium was \$80/MT and \$10/MT for the cash premium: Exhibit RR-2020-003-B-12 at paras. 53-54.

¹⁸⁰ Exhibit RR-2020-003-B-13 (protected) at 45.

¹⁸¹ Exhibit RR-2020-003-B-19 (protected) at 29.

¹⁸² Exhibit RR-2020-003-E-03 at 278 at para. 92; Exhibit RR-2020-003-F-01 at 13-14.

¹⁸³ Exhibit RR-2020-003-E-03 at 278 at para. 92.

¹⁸⁴ Exhibit RR-2020-003-B-24 at para. 50; Exhibit RR-2020-003-13.03 at 3192.

¹⁸⁵ Exhibit RR-2020-003-B-20 at para. 8.

¹⁸⁶ *Transcript of Public Hearing* (7 June 2021) at 98.

¹⁸⁷ Exhibit RR-2020-003-B-31 at 34.

¹⁸⁸ Exhibit RR-2020-003-13.03 at 102-103.

increase throughput and dispose of surplus in export markets at low prices. This strategy is exemplified by the approach taken by the EU producers in relation to the Israeli market.

[203] Major European producers, including Südzucker, Tereos, and Nordzucker, competed for long-term supply contracts in the Israeli market by quoting prices below the No. 5 and cash premiums.¹⁸⁹ The evidence shows that even prior to the 2017 removal of production quotas, EU beet sugar producers aggressively solicited purchasers in the Israeli market with discounted prices and pursued long-term supply agreements.¹⁹⁰

[204] The CSI witnesses testified that this aggressive export competition led to the closure of the sole Israeli cane refinery, Sugat Industries Ltd.¹⁹¹ The CEFS's witness Mr. Loomans, provided conflicting evidence regarding the cause of the closure of the Sugat refinery. He claimed not to have witnessed EU producers selling at a discount into the Israeli market.¹⁹² Having weighed the evidence the Tribunal finds the evidence of the CSI witnesses to be more probative. On balance, the evidence establishes that EU producers have exported refined sugar at discounted prices in order to gain market share.

[205] Further, the Tribunal considers that, should the orders be rescinded, it is likely that EU suppliers will adopt a similar pricing strategy in the Canadian market. As discussed previously, there is a strong incentive in this industry to increase export volumes to attractive markets like Canada given the structural incentives for maximizing throughput and capacity utilization. Should the orders be rescinded, EU suppliers seeking to increase exports to Canada will likely have to compete not only with Canadian refiners, but also with U.S. and U.K. suppliers, and among themselves. Having regard to the evidence, the Tribunal finds it reasonable that EU exporters are likely to compete based on price.¹⁹³

[206] In light of the foregoing, the Tribunal finds that prices from the EU-24 will likely significantly undercut the prices of the like goods if the orders are rescinded.

– Denmark, Germany, and the Netherlands

[207] The CSI submitted that the same analysis described above for the EU-24 also applies to Denmark, Germany, and the Netherlands. As Denmark, Germany, and the Netherlands are integrated into the EU market and producers in these countries have production facilities throughout the EU, this would cause them to price in a similar manner. The Tribunal accepts that export prices for Denmark, Germany and the Netherlands would follow the same pattern as prices from the EU-24, should the orders be rescinded.

[208] The CEFS contends that average export prices from Denmark, Germany, and the Netherlands indicate that export prices in 2019 and 2020 are above prevailing average domestic prices.

¹⁸⁹ Exhibit RR-2020-003-B-03 at para. 104 and at 121-122; Exhibit RR-2020-003-B-20 at para. 25; Exhibit RR-2020-003-B-20 at paras. 25-26.

¹⁹⁰ Exhibit RR-2020-003-B-21 at paras. 22-28; Exhibit RR-2020-003-B-28 at paras. 36-39; Exhibit RR-2020-003-B-03 at para. 104.

¹⁹¹ Exhibit RR-2020-003-B-03 at 118-119; Exhibit RR-2020-003-B-24 at 209.

¹⁹² Exhibit RR-2020-003-E-06 at paras. 30-33, *Transcript of Public Hearing* (10 June 2021) at 529-530.

¹⁹³ Exhibit RR-2020-003-6B (protected), Table 14.

[209] Once again, the Tribunal finds that there is cogent evidence demonstrating that exporters in Denmark, Germany, and the Netherlands will adopt an aggressive pricing strategy to take advantage of the new opportunities in the Canadian market should the orders be rescinded.

[210] As such, the Tribunal finds that the prices of refined sugar imports from Denmark, Germany, and the Netherlands will significantly undercut the prices of the like goods if the orders are rescinded.

Price depression

[211] The evidence indicates that, if the orders are rescinded, highly damaging price effects are likely to be felt almost immediately by the domestic industry. Witnesses for the domestic industry testified that, in order to compete with the subject goods, the domestic industry would be forced to cut its prices to save large contracts.¹⁹⁴

[212] The Tribunal therefore concludes that, given the price sensitivity of the Canadian sugar market and the likely significant price undercutting by the subject goods from any of the relevant groups of countries discussed above, the rescission of the order will lead to significant price depression.

Conclusion

[213] In view of the above, the Tribunal finds that the prices of the subject goods will significantly undercut and depress the prices of the like goods if the orders are rescinded.

Likely impact of the subject goods on the domestic industry

[214] The Tribunal will assess the likely impact of the above volumes and prices on the domestic industry if the orders were rescinded,¹⁹⁵ taking into consideration the likely performance of the domestic industry were the orders continued. In this analysis, the Tribunal distinguishes the likely impact of the subject goods from the likely impact of any other factors affecting or likely to affect the domestic industry.¹⁹⁶

Recent performance

Production, sales and exports

[215] According to data in the investigation report, domestic production and domestic sales from domestic production increased during the POR, year over year.¹⁹⁷ If the duties are continued, the Tribunal expects production to remain stable over the near to medium term.

¹⁹⁴ *Transcript of Public Hearing* (7 June 2021) at 158, *Transcript of Public Hearing* (8 June 2021) at 197-198; *Transcript of In Camera Hearing* (8 June 2021) at 7, 47-48.

¹⁹⁵ Paragraphs 37.2(2)(e) and (g) of the *Regulations*.

¹⁹⁶ See paragraph 37.2(2)(k) of the *Regulations*.

¹⁹⁷ Exhibit RR-2020-003-05B, Table 5; Exhibit RR-2020-003-06B (protected), Tables 13 and 43.

[216] The current climate in the major export markets, which are the U.S. and the EU, is unfavourable to the Canadian producers. The U.S. government policy of protection of the domestic U.S. sugar industry creates a ceiling for imports into the U.S., including imports from Canada.¹⁹⁸ Although exports from Canada increased in 2020, the evidence indicates that this was due to temporary circumstances caused by exceptionally low beet sugar availability following severe weather events in the U.S. and Mexico that drastically reduced crop output.¹⁹⁹

[217] In addition, the domestic producers' ability to export to the EU is limited due to current high tariffs for non-originating refined sugar, which includes all sugar refined from cane or raw sugar. Although originating Canadian beet sugar would qualify for duty- and quota-free entry under the Comprehensive Economic Trade Agreement, the Tribunal heard evidence that consumer preference in the EU for non-GMO (genetically modified organism) foods prevents Canadian beet sugar from entering the market in practice, since Canadian sugar beets are grown from genetically modified seeds.²⁰⁰

[218] The Tribunal finds that, with the orders continued, the domestic industry will experience stable production, sales and exports, and may see minor increases if and when impacts from the COVID-19 pandemic subside.

Market share

[219] During the POR, the domestic industry held a significant share of the domestic market.²⁰¹ Imports during this time, whether subject or non-subject, represented a small proportion of the Canadian market.²⁰²

[220] The Tribunal does not expect that imports from either the subject countries or non-subject countries will increase significantly in the near to medium term or that the market share of the domestic industry will change significantly, if the orders are continued.

Profitability

[221] In the previous expiry review, the Tribunal accepted that the key measurement of the domestic industry's performance is the net refining margin. During the POR, the net refining margin saw an overall increase after an initial decline in 2019.²⁰³ The gross margin saw a similar pattern, while the net income before taxes saw decreases in both 2019 and 2020 for the domestic industry.²⁰⁴

[222] The Tribunal is of the opinion that the industry's profitability would likely remain relatively stable in the short to medium term if the orders are continued.

¹⁹⁸ Exhibit RR-2020-003-B-04 at para. 48.

¹⁹⁹ Exhibit RR-2020-003-B-03 at para. 21.

²⁰⁰ Exhibit RR-2020-003-B-04 at para. 47; Exhibit RR-2020-003-A-02 at para. 32; *Transcript of Public Hearing* (8 June 2021) at 296.

²⁰¹ Exhibit RR-2020-003-06B (protected), Table 14.

²⁰² *Ibid.*

²⁰³ *Ibid.*

²⁰⁴ Exhibit RR-2020-003-05B, Table 5.

Capacity utilization

[223] As noted above, the CSI estimated that the domestic industry's capacity utilization rate is 76 percent. The data in the Tribunal's investigation report indicate that the capacity utilization rate of the domestic industry as a whole increased during the POR.²⁰⁵ Since 2015, Lantic has made significant investments in capital projects, thus ensuring that its facilities are highly productive and cost competitive.²⁰⁶

[224] The Tribunal finds that, if the orders are continued, the domestic industry's capacity utilization rate will likely remain at current levels.

Employment

[225] Employment and wages increased steadily during the POR.²⁰⁷ The Tribunal finds it unlikely that there will be any significant change in the domestic industry's employment levels in the near future, if the orders are continued.

Conclusion

[226] During the POR, the domestic industry maintained its level of production and increased its already substantial share of the market, and its financial performance was stable. The Tribunal finds that, if the orders were continued, the performance of the domestic industry over the short to medium term would likely be generally stable, subject to modest growth in profitability, which may be a result of capital investment for improvements in production capacity.

Likely impact on the domestic industry if the orders are rescinded

[227] According to the CSI, although the domestic industry is currently stable, it remains vulnerable and would therefore be highly susceptible to injury from the subject goods in the event that the orders are rescinded. The CSI maintained that, if the orders are rescinded, the domestic producers' very survival is at risk. Mr. Ryan stated that "... the duties offered by a Tribunal are the single most important determinants of viability of Redpath as a business."²⁰⁸ Mr. Holliday of Lantic stated that if the orders were rescinded, either individually or collectively, "... our business would not survive as we know it today."²⁰⁹

[228] Sugar is a commodity product and sales are largely based on price. Therefore, the Tribunal expects that the impact of the rescission of any of the orders on the domestic industry will be swift. The Tribunal heard testimony that buyers in the Canadian market, particularly those that are part of large conglomerates with established networks in the U.S., the U.K. or the EU, would not hesitate to purchase sugar from these sources if anti-dumping and/or countervailing duties were lifted.²¹⁰

²⁰⁵ *Ibid.*

²⁰⁶ Exhibit RR-2020-003-B-04 at paras. 34-35; Exhibit RR-2020-003-B-05 (protected) at paras. 34-35.

²⁰⁷ Exhibit RR-2020-003-05B, Table 5.

²⁰⁸ *Transcript of Public Hearing* (8 June 2021) at 233.

²⁰⁹ Exhibit RR-2020-003-B-04 at para. 14.

²¹⁰ *Transcript of In Camera Hearing* (8 June 2021) at 9-10.

[229] A large proportion of the domestic industry's sales volumes are linked to the industrial market. Sales in this segment are generally less profitable on a per MT basis than those in the resale segment, but they are a critical source of volume and an important margin generator for the domestic industry. Industrial customers tend to be sophisticated and tend to be well informed of any discounts, including by importers, available in the market. This is supported by testimony by Ms. Trussell who states that "... our Canadian customers, know how to import. I have no doubt that if there was high-quality sugar available on the market at a discount to Canadian margins, customers would act immediately."²¹¹

[230] Sales of refined sugar to the resale segment of the market are generally more profitable on a net margin basis for the domestic industry. However, buyers from this market segment are most likely to be part of vertically integrated global supply chains and stand to benefit significantly from the rescission of the orders. Evidence suggests that these customers possess significant leverage and at least some of these customers would be willing to leverage low price offers of subject imports in negotiations with domestic producers, or end existing relationships between themselves and the domestic industry in favour of lower prices on refined sugar.²¹² Accordingly, witnesses for the domestic industry testified that they would have no option but to lower their margins to try to maintain sales and throughput if the orders are rescinded.²¹³

U.S. and U.K.

[231] Mr. Couillard of Lantic and Mr. Fabicki of Redpath used the estimates of likely prices of U.S. imports described above to estimate the impact of resumed imports of dumped goods on their companies' respective performance. Specifically, both Mr. Couillard and Mr. Fabicki provided estimates of lost sales volumes and net margin reductions that would result from competition with U.S. imports at the prices calculated above, and then applied those losses to their 2020 financial results in order to estimate impacts on profitability.²¹⁴

[232] Although these estimates did not include the impact of prices of imports from the U.K., the Tribunal performed its own assessment and determined that the inclusion of prices of imports from the U.K. would only exacerbate the impact estimated by Redpath and Lantic.

[233] The Tribunal finds the estimates of lost sales provided by the two domestic producers credible and, more than likely, conservative. Furthermore, given the capital-intensive nature of the sugar industry, the Tribunal finds that any losses in sales volumes would have a significant negative impact on the domestic producers' per MT manufacturing costs and on their profitability.²¹⁵

[234] Specifically, if the dumping orders are rescinded, the domestic industry will need to compete with the subject goods from the U.S. and the U.K. and, in order to retain sales and market share, the domestic industry will be forced to reduce its refining margins. However, even if the domestic

²¹¹ *Transcript of Public Hearing* (8 June 2021) at 235.

²¹² Exhibit No. RR-2020-003-B-16 at paras. 32-38; Exhibit RR-2020-003-B-17 (protected) at paras. 32-38.

²¹³ Exhibit RR-2020-003-B-04 at paras. 19, 82-83; Exhibit RR-2020-003-B-05 at paras. 19, 82-83; Exhibit RR-2020-003-B-06 at paras. 100-101.

²¹⁴ Exhibit RR-2020-003-B-13 (protected) at paras. 41, 42, 44, Appendix 3; Exhibit RR-2020-003-B-19 (protected) at paras. 11, 20-23, Appendices 1 and 2.

²¹⁵ Exhibit RR-2020-003-B-13 (protected) at para. 11, Appendix 1.

industry decreases its refining margins, there is a strong likelihood that the subject goods will still capture some volumes previously supplied by the domestic industry.

[235] It is notable that the price estimates for imports from the U.S. assumed the highest possible freight costs, with the goods being shipped from the southern states rather than from Michigan. If U.S. refined sugar were to be shipped from Michigan, which could reflect a swap between northern and southern refiners, it would be reasonable to expect prices to be significantly lower, having an even greater impact on domestic producers' net refining margins, volumes of sales and, ultimately, profitability.²¹⁶

[236] It is the Tribunal's view that these calculations were reasonable, indeed conservative, and provided a reliable indication that Lantic and Redpath would suffer significant negative impacts on their net refining margins, reduced sales volumes and substantial reductions in profitability, when faced with competition from the subject goods from the U.S.

[237] Redpath and Lantic assert that such reductions in net refining margins and volumes would have significant impacts on cash flow and return on investments. The CSI also submitted that other indicators would necessarily be adversely affected, including output, capacity utilization, ability to raise capital, market share, productivity, and growth.

[238] According to Lantic and the ASBG, the rescission of the duties, against the U.S. in particular, could have a devastating effect on sugar beet growers and Lantic's Taber, Alberta sugar beet processing plant.

[239] The Tribunal heard testimony that the beet sugar produced in the state of Montana alone could replace the entire production of the Taber plant.²¹⁷ Further, the excess capacity in other border states (i.e. Michigan) also are disproportionately large compared to the Canadian market and a protected U.S. domestic market.²¹⁸

[240] Accordingly, for the above-mentioned reasons, the Tribunal finds that the resumption of dumping of the subject goods from the U.S. and the U.K. will likely result, in and of itself, in material injury to the domestic industry, should the orders be rescinded.

[241] While not employment in the domestic industry and therefore not a factor considered in whether to rescind the orders, according to evidence presented by the ASBG, direct employment associated with sugar beet farming created 793 jobs (35 full-time, 458 temporary), and the total employment impact generated by the sugar beet industry in Alberta was 2,150 jobs.²¹⁹

²¹⁶ Exhibit RR-2020-003-B-19 (protected), Appendix 2.

²¹⁷ *Transcript of Public Hearing* (8 June 2021) at 296.

²¹⁸ Exhibit RR-2020-003-13.03 at paras. 186-187, 189-190.

²¹⁹ Exhibit RR-2020-003-A-03 at paras. 14, 34.

EU-24

[242] Redpath and Lantic provided similar estimates as those described above for the U.S. to estimate the impact that the resumption of imports from the EU would have on their sales volumes and net margins, based on the estimated likely import prices discussed earlier in these reasons.²²⁰

[243] The Tribunal finds that the assumptions made in preparing these estimates are reasonable. Based on these estimates and the Tribunal's own internal analysis, the Tribunal concludes that the domestic industry would experience lower net refining margins, reduced sales volumes and substantial reductions in profitability should the order against the EU-24 be rescinded. The Tribunal also accepts the evidence that these impacts would have negative effects on cash flow and return on investments.

[244] Accordingly, the Tribunal finds that the resumption of subsidizing of the subject goods from the EU-24 will likely result, in and of itself, in material injury to the domestic industry, should the order be rescinded.

Denmark, Germany and the Netherlands

[245] The CSI submitted that the same analysis as discussed above for the EU-24 applies to the countries that are subject to both the dumping and subsidizing order, as the EU operates an integrated market for sugar. However, the witnesses from Lantic and Redpath testified that the removal of the duties against Denmark, Germany and the Netherlands would also, on their own, have a serious impact on the domestic producers' performance.²²¹

[246] The Tribunal performed its own analysis of the effects of the removal of both the anti-dumping and countervailing duties on subject goods from Denmark, Germany and the Netherlands.²²² Based on this analysis, the Tribunal considers that the rescission of the order against Denmark, Germany and the Netherlands would result in significant negative impacts on the domestic industry's sales volumes, net refining margins and profitability.

²²⁰ Exhibit RR-2020-003-B-19 (protected) at paras. 25-27, Appendices 3-7; Exhibit RR-2020-003-B-13 (protected) at paras. 52-58, Appendices 4A, 5. Redpath and Lantic included the U.K. in its assessment of the impact of the removal of the countervailing duties against the EU, under the assumption that countervailing duties would continue to apply to the U.K. The Tribunal nevertheless considers that the estimates of lost sales volumes due to resumption of imports from the EU remain reasonable given that the U.K. represented a relatively small proportion of EU production when it was an EU member. Similarly, the estimates of the impact to the net refining margin remain reasonable given that the Tribunal accepted that both the EU and the U.K. export prices would continue to track the No. 5 price.

²²¹ Exhibit RR-2020-003-B-12 at paras. 49-51; Exhibit RR-2020-003-B-18 at paras. 15-16.

²²² The Tribunal determined that to assess the effects of removing the anti-dumping duties alone would essentially be comparable to the analysis assessing the effects of removing the anti-dumping duties for subject goods imported from the U.S. and the U.K., as the countervailing duties would remain. In addition, if countervailing duties were to be removed, the comparable analysis would be the impact of the subject goods, without the countervailing duties, from the EU-24, as the anti-dumping duties would remain.

[247] The Tribunal finds that the resumption of dumping and subsidizing of the subject goods from Denmark, Germany and the Netherlands will likely result, in and of itself, in material injury to the domestic industry, should the order be rescinded.

CONCLUSION

[248] On the basis of the foregoing analysis, and pursuant to paragraph 76.03(12)(b) of *SIMA*, the Tribunal continues its order in respect of the dumping of the subject goods originating in or exported from Denmark, Germany, the Netherlands and the United Kingdom, and the subsidizing of the aforementioned goods originating in or exported from the European Union.

[249] Pursuant to subsection 76.04(1) of *SIMA*, the Tribunal also continues its order in respect of the dumping of the subject goods originating in or exported from the United States.

Randolph W. Heggart

Randolph W. Heggart
Presiding Member

Cheryl Beckett

Cheryl Beckett
Member

Susan D. Beaubien

Susan D. Beaubien
Member