



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

DETERMINATION AND REASONS

Preliminary Injury Inquiry
No. PI-2021-003

Oil Country Tubular Goods

*Determination issued
Monday, August 30, 2021*

*Reasons issued
Monday, September 13, 2021*

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IN THE MATTER OF a preliminary injury inquiry, pursuant to subsection 34(2) of the *Special Import Measures Act*, respecting:

OIL COUNTRY TUBULAR GOODS

PRELIMINARY DETERMINATION OF INJURY

The Canadian International Trade Tribunal, pursuant to the provisions of subsection 34(2) of the *Special Import Measures Act* (*SIMA*), has conducted a preliminary injury inquiry into whether there is evidence that discloses a reasonable indication that the dumping of oil country tubular goods, which are casing, tubing and green tubes made of carbon or alloy steel, welded or seamless, heat treated or not heat treated, regardless of end finish, having an outside diameter from 2 3/8 inches to 13 3/8 inches (60.3 mm to 339.7 mm), meeting or supplied to meet American Petroleum Institute specification 5CT or equivalent and/or enhanced proprietary standards, in all grades, excluding drill pipe, pup joints, couplings, coupling stock and stainless steel casing, tubing or green tubes containing 10.5 percent or more by weight of chromium, originating in or exported from the United Mexican States (the subject goods), has caused injury or retardation or is threatening to cause injury, as these words are defined in *SIMA*.

This preliminary injury inquiry follows the notification, on June 30, 2021, that the President of the Canada Border Services Agency had initiated an investigation into the alleged injurious dumping of the subject goods.

Pursuant to subsection 37.1(1) of *SIMA*, the Tribunal hereby determines there is evidence that discloses a reasonable indication that the dumping of the subject goods has caused injury to the domestic industry.

Peter Burn

Peter Burn
Presiding Member

Serge Fréchette

Serge Fréchette
Member

Frédéric Seppey

Frédéric Seppey
Member

The statement of reasons will be issued within 15 days.

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STATEMENT OF REASONS

INTRODUCTION

[1] On May 10, 2021, Evraz Inc. NA Canada (Evraz) and Welded Tube of Canada Corporation (WTC) filed a complaint with the Canada Border Services Agency (CBSA) alleging that the dumping of certain oil country tubular goods (OCTG) originating in or exported from the United Mexican States (Mexico) (the subject goods) have caused injury or are threatening to cause injury to the domestic industry.

[2] On June 30, 2021, the CBSA initiated an investigation respecting the dumping of the subject goods pursuant to subsection 31(1) of the *Special Import Measures Act*.¹

[3] As a result of the CBSA's decision to initiate an investigation, on July 2, 2021, the Canadian International Trade Tribunal began its preliminary injury inquiry pursuant to subsection 34(2) of *SIMA*, to determine whether the evidence discloses a reasonable indication that the dumping of the subject goods has caused injury or is threatening to cause injury to the domestic industry.²

[4] This preliminary injury inquiry follows the Tribunal's finding in *Seamless Casing*³ that the dumping and subsidizing of seamless carbon or alloy steel oil and gas well casing from the People's Republic of China was threatening to cause injury to the domestic industry, and in *OCTG I*⁴ that the dumping and subsidizing of OCTG from the People's Republic of China had caused injury to the domestic industry. It also follows the Tribunal's finding in *OCTG II*⁵ that the dumping of OCTG from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, the Republic of India, the Republic of Indonesia, the Republic of the Philippines, the Republic of Korea, the Kingdom of Thailand, the Republic of Turkey, Ukraine and the Socialist Republic of Vietnam had not caused injury but was threatening to cause injury to the domestic industry.

[5] The complaint is opposed by the Embassy of the United Mexican States (the Mexican Embassy), as well as by Tenaris Canada, which is comprised of Algoma Tubes Inc. (Algoma), Prudential Steel ULC (Prudential), Tenaris Global Services (Canada) Inc. (TGSC) and Hydril Canadian Company LP (Hydril).

¹ R.S.C., 1985, c. S-15 [*SIMA*].

² As a domestic industry is already established, the Tribunal need not consider the question of retardation.

³ See *Seamless Carbon or Alloy Steel Oil and Gas Well Casing* (10 March 2008), NQ-2007-001 (CITT) [*Seamless Casing*]. The Tribunal's finding in *Seamless Casing* was most recently continued following the conduct of an expiry review pursuant to section 76.03 of *SIMA* in *Seamless Carbon or Alloy Steel Oil and Gas Well Casing* (28 November 2018), RR-2017-006 (CITT) [*Seamless Casing RR*].

⁴ See *Oil Country Tubular Goods* (23 March 2010), NQ-2009-004 (CITT) [*OCTG I*]. The Tribunal's finding in *OCTG I* was most recently continued following the conduct of an expiry review pursuant to section 76.03 of *SIMA* in *Oil Country Tubular Goods* (10 December 2020), RR-2019-005 (CITT) [*OCTG I RR*].

⁵ See *Oil Country Tubular Goods* (2 April 2015), NQ-2014-002 (CITT) [*OCTG II*]. The Tribunal's finding in *OCTG II* was recently continued following the conduct of an expiry review pursuant to section 76.03 of *SIMA* in *Oil Country Tubular Goods* (30 December 2020), RR-2019-006 (CITT) [*OCTG II RR*], with the exception of the Philippines.

[6] The Tribunal received submissions supporting a preliminary determination of injury from the United Steelworkers (USW), a trade union representing a number of workers employed by Evraz, WTC, Algoma and Prudential.⁶

[7] On August 30, 2021, pursuant to subsection 37.1(1) of *SIMA*, the Tribunal determined that there was evidence that disclosed a reasonable indication that the dumping of the subject goods has caused injury to the domestic industry. The reasons for that determination are set out below.

PRODUCT DEFINITION

[8] The CBSA defined the subject goods as follows:⁷

Oil country tubular goods, which are casing, tubing and green tubes made of carbon or alloy steel, welded or seamless, heat treated or not heat treated, regardless of end finish, having an outside diameter from 2 3/8 inches to 13 3/8 inches (60.3 mm to 339.7 mm), meeting or supplied to meet American Petroleum Institute specification 5CT or equivalent and/or enhanced proprietary standards, in all grades, excluding drill pipe, pup joints, couplings, coupling stock and stainless steel casing, tubing or green tubes containing 10.5 percent or more by weight of chromium, originating in or exported from the United Mexican States.

THE CBSA'S DECISION TO INITIATE THE INVESTIGATION

[9] The CBSA initiated an investigation pursuant to subsection 31(1) of *SIMA* as it was of the opinion that there was evidence that the subject goods had been dumped, and that there is a reasonable indication that the dumping had caused injury or was threatening to cause injury to the domestic industry.

[10] For the period of April 1, 2020, to March 31, 2021, the CBSA estimated that the subject goods were dumped by a margin of 22.1 percent, expressed as a percentage of the estimated export price.⁸

LEGISLATIVE FRAMEWORK

[11] The Tribunal's mandate in a preliminary injury inquiry is set out in subsection 34(2) of *SIMA*, which requires the Tribunal to determine "... whether the evidence discloses a reasonable indication that the dumping or subsidizing of the [subject] goods has caused injury or retardation or is threatening to cause injury."

Reasonable indication

[12] The term "reasonable indication" is not defined in *SIMA*, but is understood to mean that the evidence need not be "conclusive, or probative on a balance of probabilities."⁹ The Tribunal has

⁶ Although Tenaris Canada permanently closed its Prudential mill in Calgary, Alberta, the Prudential workers remain USW members in good standing until Prudential settles its pension liabilities; Exhibit PI-2021-003-11.02 at para. 8.

⁷ Exhibit PI-2021-003-05 at para. 15.

⁸ *Ibid.* at paras. 81-82.

⁹ *Ronald A. Chisholm Ltd. v. Deputy M.N.R.C.E.* (1986), 11 CER 309 (FCTD).

repeatedly stated that the reasonable indication standard is lower than the standard that applies in a final injury inquiry under section 42 of *SIMA*.¹⁰

[13] The evidence at the preliminary phase of proceedings will be significantly less detailed and comprehensive than the evidence in a final injury inquiry. Not all the evidence is available at the preliminary phase, and the evidence cannot be tested to the same extent as it would during a final injury inquiry.

[14] However, the Tribunal has also cautioned that the outcome of preliminary injury inquiries must not be taken for granted¹¹ and that simple assertions are not sufficient.¹² Complaints, as well as the cases of parties opposed, must be supported by positive and sufficient evidence, which must also be relevant, in that it addresses the necessary requirements in *SIMA* and the relevant factors prescribed in section 37.1 of the *Special Import Measures Regulations (Regulations)*.

Injury factors and framework issues

[15] In making its preliminary determination of injury, the Tribunal takes into account the injury and threat of injury factors that are prescribed in section 37.1 of the *Regulations*, including the import volumes of the dumped goods and the effects of the dumped goods on the price of like goods, the resulting economic impact of the dumped goods on the state of the domestic industry, and – if injury or threat of injury is found to exist – whether a causal relationship exists between the dumping of the goods and the injury or threat of injury.

[16] However, before examining whether there is evidence of injury and threat of injury, the Tribunal must address a number of framework issues. Specifically, it must identify the domestically produced goods that are “like goods” in relation to the subject goods, determine whether there is more than one class of goods, and identify the domestic industry that produces those like goods. This is required because subsection 2(1) of *SIMA* defines “injury” as “material injury to a domestic industry.”

LIKE GOODS AND CLASSES OF GOODS

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

¹⁰ *Sucker Rods I* (17 July 2018), PI-2018-001 (CITT) at para. 13; *Certain Fabricated Industrial Steel Components* (10 November 2016), PI-2016-003 (CITT) at para. 13.

¹¹ *Concrete Reinforcing Bar* (12 August 2014), PI-2014-001 (CITT) at paras. 18-19.

¹² Article 5 of the World Trade Organization Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 requires an investigating authority to examine the accuracy and adequacy of the evidence provided in a dumping complaint to determine whether there is sufficient evidence to justify the initiation of an investigation, and to reject a complaint or to terminate an investigation as soon as an investigating authority is satisfied that there is not sufficient evidence of dumping or injury. Article 5 also specifies that simple assertions that are not substantiated with relevant evidence cannot be considered sufficient to meet the requirements of the article.

[18] In determining the like goods and whether there is more than one class of goods, the Tribunal typically considers a number of factors, including the physical characteristics of the goods (such as composition and appearance) and their market characteristics (such as substitutability, pricing, distribution channels, end uses and whether the goods fulfill the same customer needs).

[19] As noted in the complaint, in *OCTG I* and *OCTG II*, which concerned similarly defined goods, and in the Tribunal's recent review of the findings in these past cases, the Tribunal consistently determined that domestically produced OCTG are like goods to the subject goods and that there is a single class of goods. Namely, the Tribunal has previously found that welded (also referred to as electric resistance welded [ERW]) and seamless OCTG, as well as OCTG of different grades, are not separate classes of goods.¹³

[20] In this preliminary injury inquiry, the complainants noted that welded and seamless OCTG have similar characteristics and generally compete with one another in the domestic market.¹⁴ Additionally, OCTG casing and tubing are made to the same API specifications or to other proprietary equivalent domestic producers as a whole of the like goods or those domestic producers' specifications, and are both used down well. Casing and tubing are produced on the same equipment and have the same channels of distribution.

[21] The opposing parties have presented no evidence or argument to the contrary in the context of this preliminary injury inquiry.

[22] Accordingly, the Tribunal will conduct its analysis on the basis that OCTG produced in Canada that are of the same description as the subject goods are "like goods" in relation to the subject goods, and that there is one class of goods.

DOMESTIC INDUSTRY

[23] 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.

[24] In this preliminary injury inquiry, the Tribunal must therefore determine whether the evidence discloses a reasonable indication of injury, or threat of injury, to the domestic producers as a whole or to those domestic producers whose production represents a major proportion of the total production of like goods. The term "major proportion" is not defined in *SIMA*. However, it has been

¹³ *OCTG I* at para. 83; *Oil Country Tubular Goods* (2 March 2015), RR-2014-003 (CITT) at paras. 29-33; *OCTG I RR* at paras. 22-27; *OCTG II* at paras. 32-34, 42-44; *OCTG II RR* at paras. 33-36. See also *Seamless Casing* at para. 71; *Seamless Carbon or Alloy Steel Oil and Gas Well Casing* (11 March 2013), RR-2012-002 (CITT) at paras. 56-57; *Seamless Casing RR* at paras. 24-32.

¹⁴ Exhibit PI-2021-003-02.01 at 22, 23, 1392.

interpreted to mean an important, serious or significant proportion of total domestic production of like goods and not necessarily a majority.¹⁵

[25] However, the Tribunal may decide to exclude a domestic producer from the domestic industry if that producer contributes to, or benefits from, the dumping, either directly as an importer or indirectly through related companies.¹⁶ The Tribunal has also stated that it will exercise its discretion to exclude, or not exclude, a producer, in a manner that promotes the objectives of *SIMA*, which include providing protection, in appropriate circumstances, in the form of antidumping or countervailing measures, for companies that produce goods in Canada.¹⁷

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

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

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

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

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

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

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

[28] According to the complainants, the current domestic producers of like goods include Evraz, WTC and Algoma. Prudential also produced like goods until it was idled in 2020 and then permanently decommissioned. In its statement of reasons, the CBSA noted three producers, including the complainants and Tenaris Canada.¹⁸ According to the evidence on the record, Algoma and

¹⁵ *Japan Electrical Manufacturers Assoc. v. Canada (Anti-Dumping Tribunal)*, [1982] 2 FC 816 (FCA). *McCulloch of Canada Limited and McCulloch Corporation v. Anti-Dumping Tribunal*, [1978] 1 F.C. 222 (FCA); Panel Report, *China – Automobiles (US)*, WT/DS440/R at para. 7.207; Appellate Body Report, *EC – Fasteners (China)* at paras. 411, 419, 430; Panel Report, *Argentina – Poultry (Brazil)*, WT/DS241/R at paras. 7.341-7.344.

¹⁶ *Carbon and Alloy Steel Line Pipe* (29 March 2016), NQ-2015-002 (CITT) at para. 70; *Photovoltaic Modules and Laminates* (3 July 2015), NQ-2014-003 (CITT) at para. 56; *Carbon Steel Screws* (2 September 2020), RR-2019-002 (CITT) at para. 31.

¹⁷ *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate* (6 January 2016), NQ-2015-001 (CITT) at para. 58; *Cross-linked Polyethylene Tubing* (29 September 2006), NQ-2006-001 (CITT), at para. 54.

¹⁸ According to the declaration of Mr. David McHattie of Tenaris Canada, Prudential closed in July 2020; Exhibit PI-2021-003-08.02A at para. 8.

Prudential are owned and controlled subsidiaries of Tenaris S.A., a Luxembourg public limited liability company (*société anonyme*).¹⁹

[29] Additionally, the complainants submitted that for the purposes of the preliminary injury assessment, the “domestic industry” should be defined as including only themselves and that Algoma and Prudential should be excluded due to their relationship with a related exporter, Tubos de Acero de Mexico, SA (TAMSA), and importer, TGSC. The complainants submitted that the subject goods are sold by TAMSA to TGSC, who is the sole importer of the subject goods and operates essentially as a distributor.²⁰ Both TAMSA and TGSC are owned and controlled subsidiaries of Tenaris S.A. The related status of the companies within Tenaris Canada, i.e. TGSC, Algoma and Prudential, as well as these companies and TAMSA, was not contested by Tenaris Canada before the Tribunal.

[30] The Tribunal typically treats a domestic producer of like goods as if it were not part of the domestic industry and limits its injury analysis to the other domestic producers, if the domestic producer of like goods is first and foremost a conduit for the importation of the subject goods. In past cases, the Tribunal has considered both structural and behavioural factors to assist in making a decision on whether to exclude a domestic producer from the scope of the domestic industry. Whereas structural factors are concerned with the characteristics of the market and the producer’s place in that market (expressed by various ratios of imports of subject goods, domestic production and sales of both), behavioural factors focus on the behaviour of the producer, including whether the producer imports the subject goods as a defensive or aggressive measure and whether it imports the subject goods to fill a specific market niche or to compete broadly with the like goods produced by other domestic producers. These factors are not exhaustive or universally applicable.

[31] Based on data from Statistics Canada and their own commercial intelligence, the complainants estimated Tenaris Canada’s sales from subject imports and sales from domestic production. These estimates show a large ratio of imports to both domestic production and sales from domestic production.²¹ The ratio of Tenaris Canada’s volume of subject imports to its domestic production volume also shows a declining percentage, with the exception of the period from January to April 2021 (interim 2021), where the percentage is higher than it was for the period from January to April 2020 (interim 2020).²²

[32] With respect to Tenaris Canada’s behaviour, the complainants argued that Tenaris Canada’s imports are not a defensive measure or a way to fill a specific market niche, but an aggressive measure to capture market share from the other domestic producers and compete with the like goods produced by the complainants. Its behaviour with respect to the Mexican exporter is different than with respect to other non-related foreign producers; it operates “harmoniously” and in a manner that is “complementary” to TAMSA. In this regard, the complainants referred to testimony of Tenaris Canada from the hearing in the *Safeguard Inquiry*,²³ as well as declarations from officers of

¹⁹ Exhibit PI-2021-003-02.01 at 290, 1563, 1615.

²⁰ *Ibid.* at 136, 1295, 1413, 1432, 1500.

²¹ *Ibid.* at 28; Exhibit PI-2021-003-3.01 (protected) at 25.

²² Exhibit PI-2021-003-02.01, at 28, 29; Exhibit PI-2021-003-3.01 (protected) at 25, 26.

²³ *Safeguard Inquiry into the Importation of Certain Steel Goods* (3 April 2019), GC-2018-001 (CITT) [*Safeguard Inquiry*]; Exhibit PI-2021-003-02.01 at 387-390. The Tribunal in the *Safeguard Inquiry* found that Tenaris Canada’s imports from Mexico displaced a significant portion of domestic production and sales and its decision to import from Mexico resulted from a corporate decision to idle its Canadian operations and supply the weak Canadian

Alberta Tubular Products, Hallmark Tubulars Ltd. and Triumph Tubular & Supply Ltd. regarding the behaviour of Tenaris Canada in the OCTG market.²⁴ It was asserted that Tenaris Canada's imports of subject goods are not *complementary* to Canadian production and sales, and that it has decommissioned Prudential and supplies customers from inventories of the subject goods. The complainants argued that the subject imports are replacing carbon grade products that were previously produced at Prudential; these are not niche products that cannot be produced in Canada.²⁵

[33] For its part, Tenaris Canada submitted that it should not be excluded from the domestic industry, arguing that its imports of the subject goods are intended to complement its sales of domestically produced like goods. It has also made significant investments to expand its production at Algoma. Tenaris Canada argued that excluding it as a domestic producer would fail to recognize that the domestic industry as a whole is gaining market share, including because Tenaris Canada leverages subject goods to sell more Canadian production.²⁶ Tenaris Canada submitted that its higher imports in 2021 were due to the changeover in production from Prudential to Algoma, that the new ERW mill in Sault Ste. Marie will be operational in the first quarter of 2022 and that imports in 2021 are a temporary measure to meet domestic demand until the new mill is operational.

[34] At this preliminary injury stage, the Tribunal is satisfied that the issue of whether Algoma and Prudential should be included in the definition of domestic industry is a relevant one, considering the status of Algoma, Prudential, TGSC and TAMSA as subsidiaries of Tenaris S.A. However, there is insufficient information at this time to allow the Tribunal to properly decide whether to exclude Tenaris Canada from the domestic industry.

[35] An issue which the Tribunal looks to examine further during the final injury inquiry is the manner in which Tenaris Canada prices like goods and the subject imports. Tenaris Canada has stated in its submissions that it applies one price for customers regardless of whether the goods are domestically produced or imported. This, combined with the integrated nature of the relationship with its distributor arm, TGSC, appears to imply that Tenaris Canada may be in a position to set the selling prices for both its domestic production and subject goods in a way that secures accounts with purchasers. Without comprehensive data, the Tribunal cannot at this time fully assess how this marketing strategy should be considered in the relevant behavioural analysis. Additionally, the Tribunal notes that the CBSA has referred to another importer of the subject goods whose import volumes are not on the record.

[36] Assuming for the purposes of this preliminary injury inquiry that Tenaris Canada is not excluded as a domestic producer, and noting that data regarding Tenaris Canada is not available on the record of this preliminary inquiry, the Tribunal may consider whether the complainants represent a major proportion of the total domestic production of like goods. The complainants submitted that

market with imports from TAMSA. Moreover, the Tribunal observed that, while some of the imports involved specialty products not made in Canada, a significant portion could have been produced in Canada (by Tenaris Canada or other domestic producers). See *Safeguard Inquiry* at 84, 85. Note however that the product definition of energy tubular products was significantly broader than OCTG's.

²⁴ Exhibit PI-2021-003-03.01 (protected) at 1284, 1316, 1465; Exhibit PI-2021-003-02.01 at 1412, 1413, 1438, 1500.

²⁵ Exhibit PI-2021-003-02.01 at 31; Exhibit PI-2021-003-03.01 (protected) at 28.

²⁶ Exhibit PI-2021-003-08.02 at para. 33.

they constitute a portion of the total domestic production of like goods that is representative of a major proportion.

[37] Based on the estimates on the record with respect to the complainants' proportion of total domestic production,²⁷ the Tribunal is satisfied that Evraz and WTC's domestic production represents a major proportion. As noted by the CBSA, the complainants' production accounted for more than 25 percent of the production of like goods in Canada.²⁸ It is well above thresholds previously considered for a major proportion.²⁹ As such, the Tribunal will conduct its injury analysis for the purposes of this preliminary injury inquiry on this basis.

INJURY ANALYSIS

Import volume of dumped goods

[38] According to the CBSA's estimate of subject imports, the absolute volume of imports decreased year over year from 2018 to 2020. However, subject imports increased in interim 2021 from interim 2020.³⁰ The CBSA's estimates show that, as a percentage of total import volumes, imports of the subject goods declined from 22 percent in 2018 to 14.1 percent in 2019, but increased to 20.9 percent in 2020. In the first quarter of 2021, the subject goods represented 32.8 percent of total imports, which is noticeably higher than the same period in 2020 at 20.5 percent.³¹

[39] Relative to domestic production and domestic sales of domestic production, the import volumes of the subject imports decreased from 2018 to 2019, but rose significantly from 2019 to 2020, and increased again in interim 2021.³²

[40] Having considered the evidence on the record, the Tribunal finds that there is a reasonable indication of a significant increase in imports of subject goods relative to domestic production and sales of domestic production in 2020 and interim 2021, as well as in absolute terms in interim 2021.

Effects on prices of like goods

[41] It has been established in previous findings of the Tribunal that OCTG is a commodity product that trades on price.³³ Nothing suggests otherwise in the present case. Moreover, the complainants have noted that there is significant price transparency in the market and increasing price sensitivity (due to the collapse of oil prices in the first half of 2020 as further described below).³⁴

²⁷ Exhibit PI-2021-003-03.07 (protected) at 12; Exhibit PI-2021-003-09.02 (protected) at 14.

²⁸ Exhibit PI-2021-003-05 at para. 51. The CBSA noted in its statement of reasons that this was inclusive of Algoma, Prudential and Hydril.

²⁹ The Tribunal has previously implied that it considers 20 percent or more to constitute a major proportion; *Venetian Blinds and Slats* (18 June 2004), NQ-2003-003 (CITT) at paras. 66-67.

³⁰ Exhibit PI-2021-003-03.07 (protected) at 20.

³¹ Exhibit PI-2021-003-05 at 12.

³² Exhibit PI-2021-003-03.07 (protected) at 21.

³³ For example, *OCTG I* at paras. 124-126; *OCTG I RR* at paras. 65, 66, 73; *OCTG II RR* at paras. 145, 146.

³⁴ Exhibit PI-2021-003-02.01 at 1297, 1433, 1501.

[42] The complainants submitted that the Tribunal should place less weight on the aggregate price analysis due to product mix and more weight on a comparative price analysis of benchmark products and account-specific allegations. The Tribunal agrees that the product range in OCTG may be a factor in comparing average selling prices with those of the subject goods, masking price differentials between comparable products. While the Tribunal does not have extensive data to conduct a comparative price analysis of benchmark products, it will assess the evidence before it with this issue in mind.

[43] The complainants alleged that the subject goods have undercut, depressed and suppressed the prices of like goods.

[44] The evidence in the complaint indicates that, on an average annual aggregate basis, there was no undercutting of domestic prices by the subject goods over the period from 2018 to 2020. However, selling prices of the subject goods undercut domestic selling prices in the first quarter of 2021.³⁵ The complainants also provided a more granular pricing comparison between specific grades of subject and like goods for the first quarter of 2021, by month. This comparison also indicates that domestic selling prices were undercut by the subject goods in interim 2021.³⁶

[45] With respect to price depression, at the aggregate level, the complainants' evidence indicates that their average unit value for sales from domestic production has decreased each year between 2018 and 2020, with a slight increase in interim 2021 (compared to interim 2020).³⁷

[46] In terms of the domestic industry's inability to increase prices in the face of rising costs, the evidence on the record indicates that, on a dollar-per-tonne basis, the cost of goods sold (COGS) increased in 2019 and then decreased in 2020, while domestic sales prices decreased throughout this period.³⁸ Price suppression is therefore clearly seen in 2019.

[47] The complainants' evidence also included their COGS-to-net-sales ratio which increased from 2018 to 2020 and account-specific evidence to show a significant price-cost squeeze.³⁹

[48] As has been previously noted by the Tribunal, without an actual increase in COGS, the Tribunal typically considers evidence of a price-cost squeeze as price depression rather than price suppression and may otherwise take it into account in assessing impacts on profitability.⁴⁰

[49] The Tribunal notes that from 2018 to 2020, domestically produced like goods remained the price leaders. Moreover, prices of subject imports increased in 2019 from 2018, only slightly

³⁵ Exhibit PI-2021-003-03.01 (protected) at 59-60; Exhibit PI-2021-003-03.07 (protected) at 19, 20. To derive unit prices for the subject goods, Tribunal staff used the CBSA's estimate of imports by value for each period and divided the amount by CBSA's estimate of imports by volume.

³⁶ The complainants submitted average unit values for subject imports of seamless casing, grades J55, H40, and K55, with outside diameters greater than 7 to 11.75 inches, based on Statistics Canada data (HS Code 7304.29.00.21). They submitted domestic sales from domestic production of a similar model range for comparison; Exhibit PI-2021-003-02.01 at 64; Exhibit PI-2021-003-03.01 (protected) at 61.

³⁷ Exhibit PI-2021-003-03.01 (protected) at 480-482.

³⁸ *Ibid.* at 66.

³⁹ *Ibid.* at 65-67.

⁴⁰ *Concrete Reinforcing Bar* (4 June 2021) NQ-2020-004 (CITT) at para. 91.

decreasing in 2020. However, a more significant price decrease for subject imports can be seen in interim 2021 as compared to prices in interim 2020.⁴¹

[50] The Tribunal is of the view that, notwithstanding the higher priced subject goods, prices of like goods have experienced depression and suppression by the subject goods. The evidence indicates that TAMSAs only produces seamless steel pipes⁴² (which usually have a price premium⁴³), and the Tribunal has considered the complainants' submissions and evidence with respect to the price-depressive effects of lower-priced seamless products or higher end products on prices of like goods (which consist of welded products⁴⁴).⁴⁵ Evraz also noted that Tenaris Canada itself has made the argument in the upcoming fourth OCTG case⁴⁶ with respect to the possibility that higher grades can be substituted for lower grades (i.e. customers may switch from non-heat-treated domestic J55 to the dumped heat-treated, higher grade L80 or P110 if they can get the latter for close to the same price).⁴⁷ The Tribunal also finds that Tenaris Canada's submissions with respect to the product mix in the first quarter of 2021 suggest that in the previous period, subject imports were higher-cost OCTG.⁴⁸ The complainants have also argued that imports of higher cost seamless products from Mexico are in fact undercutting domestically produced welded products.⁴⁹ In this regard, as discussed below, there is some evidence on the record which indicates that there is competition between the subject goods and like goods offered by Canadian distributors.

[51] In the Tribunal's view, insofar as the subject goods are comprised mostly of higher-cost OCTG imports in 2019 and 2020, the price depressive and suppressive effects of the subject goods may not be seen in the aggregate selling prices. During the final injury inquiry, a more comprehensive examination will be possible. However, for the purposes of this preliminary injury inquiry, the Tribunal is satisfied that there is reasonable indication that domestic prices were significantly depressed in 2019 and 2020 and suppressed by the subject goods in 2019.

[52] The complainants also made allegations of lost sales or price depression suffered by Evraz's distributors during the period from 2019 to the first quarter of 2021.⁵⁰ They submitted that the subject goods from TAMSAs are the price leaders and substantially undercut like goods sold by its distributors. The allegations are sourced from informal feedback from the distributor or the client, or based on market intelligence.

[53] The Mexican Embassy and Tenaris Canada argued that the complainants have not explained how injury to distributors supports injury to the domestic producers caused by the allegedly dumped Mexican OCTG.

⁴¹ Exhibit PI-2021-003-03.07 (protected) at 19, 20.

⁴² Exhibit PI-2021-003-02.01 at 147, 327, 1090.

⁴³ The complainants submitted a Pipelogix report showing seamless spot pricing being on average higher than welded spot pricing. Exhibit PI-2021-003-03.01 (protected) at 1145-1147.

⁴⁴ The complainants employ the ERW production process; Exhibit PI-2021-003-02.01 at 1293, 1377, 1378.

⁴⁵ Exhibit PI-2021-003-03.01 (protected) at 1125; 1141.

⁴⁶ In preliminary injury inquiry PI-2021-004, Tenaris Canada has alleged injury or threat of injury caused by OCTG from the Republic of Austria.

⁴⁷ Exhibit PI-2021-003-11.01 at 30, 31.

⁴⁸ The Tribunal notes that the lower prices seen in the first quarter of 2021 may be due to a certain product mix, as noted by Tenaris Canada; Exhibit PI-2021-003-09.02 (protected) at para. 46.

⁴⁹ Exhibit PI-2021-003-02.01 at 65, 1384-1385.

⁵⁰ Exhibit PI-2021-003-03.01 (protected) at 56-59.

[54] Tenaris Canada also argued that the evidence supplied by the complainants does not provide direct evidence of injury experienced by the domestic industry. The allegations do not reveal the level of undercutting to Evraz's domestic selling prices given that the prices of OCTG sold by the distributors would likely include a mark up to varying degrees, into which the Tribunal has little insight at this stage. Moreover, there is little evidence that would confirm that any sales allegedly lost by a distributor were not eventually made to a different account.

[55] The accuracy of the allegations was refuted by Tenaris Canada using evidence from Tenaris Canada's sales database.⁵¹ In response, the complainants submitted that Tenaris Canada's evidence was insufficient in rebutting their allegations. In this regard, the complainants argued that the evidence was compiled by counsel for Tenaris Canada and that there was limited ability to assess the data given that Tenaris Canada only provided specific screen shots of the sales database as supporting evidence.⁵²

[56] As such, the Tribunal finds that, to the extent that Tenaris Canada has put forth evidence sourced from Tenaris Canada's own sales database, and considering that the evidentiary threshold must be placed in the context of a preliminary injury inquiry, Tenaris Canada's evidence shows that some of the volumes described in Evraz's allegations may not have competed with the volumes of subject goods. However, even removing such volumes from the whole of Evraz's allegations, the Tribunal notes that there are remaining sales volumes of like goods which were in head-to-head competition with the subject goods from TAMSA.⁵³

[57] The Tribunal is therefore of the view that the allegations are indicative of head-to-head competition between the distributors who, as noted by the complainants, are the only ones to purchase OCTG from the complainants.⁵⁴ Lost sales or price depression experienced by purchasers of OCTG produced by Evraz may indicate injury to the domestic producers insofar as they would impact the degree to which purchasers would continue to purchase domestically produced OCTG. However, the Tribunal will need to further examine the scope of these allegations and their impact on the domestic industry during the final injury inquiry.

[58] Given the analysis above, the Tribunal finds that the evidence does disclose a reasonable indication that the dumping of the subject goods has significantly undercut, depressed and suppressed the prices of like goods.

Resultant impact on the domestic industry

[59] As part of its analysis under paragraph 37.1(1)(c) of the *Regulations*, the Tribunal must consider the impact of the dumped goods on the state of the domestic industry and, in particular, all relevant economic factors and indices that have a bearing on the state of the domestic industry.

[60] In a preliminary injury inquiry, the Tribunal must determine whether the evidence discloses a reasonable indication of a causal link between the dumping of the subject goods and the injury, on the basis of the resultant impact of the volume and price effects of the dumped goods on the domestic

⁵¹ Exhibit PI-2021-003-09.02 (protected) at 20-30.

⁵² Tenaris Canada provided counsel its sales database from which counsel compared that data to the allegations made by the complainants; Exhibit PI-2021-003-11.01 at 23.

⁵³ Exhibit PI-2021-003-03.01 (protected) at 56-59.

⁵⁴ Exhibit PI-2021-003-02.01 at 1295, 1393.

industry. The standard is whether there is a reasonable indication that the dumping of the subject goods has, *in and of itself*,⁵⁵ caused injury.

[61] The complainants submitted that the subject goods have caused material injury to the domestic industry through price undercutting, price depression, price suppression, lost sales and lost market share, which in turn negatively impacted financial performance, employment, return on investments, production and capacity utilization.

Market share

[62] According to the CBSA's estimation of the domestic market, between 2018 and 2020, the domestic OCTG market declined significantly, with even further declines seen in interim 2021 as compared to interim 2020. In this contracting market, the evidence on the record indicates that after gaining market share between 2018 and 2019 from 27 percent to 29.8 percent, in 2020, the like goods produced by the domestic industry lost market share to a greater extent than the gains made in the previous year. In 2020, the complainants' market share dropped to 24 percent. The domestic industry's market share was at its lowest in interim 2021 at 19.5 percent as compared with 27.5 percent in interim 2020.⁵⁶

[63] Meanwhile, the CBSA's estimates also show that the market share of the subject goods saw a decline from 2018 to 2019 from 13.7 percent to 8.2 percent which was followed by an increase to 11.8 percent in 2020.⁵⁷ However, a noticeable increase in market share of the subject goods is seen in interim 2021 at 18.8 percent as compared to interim 2020 at 10.8 percent, the same period in which, as noted above, the domestic industry saw a greater decline in its market share.⁵⁸

[64] The Mexican Embassy submitted that the imposition of antidumping duties further to *OCTG I* and *OCTG II* has reduced imports from other countries, meaning that subject imports gained share in total imports and in the Canadian market. However, in the Tribunal's view, duties have been applied to imports from the countries subject to these two decisions since 2009 and 2014, and have been continued since, with the exception of the Philippines. As such, the imposition of antidumping duties on these countries does not, in itself, tend to explain the most recent gains in market share by the subject goods.

[65] Bearing in mind the lower evidentiary threshold applicable at the preliminary inquiry stage, the Tribunal finds that these trends show a reasonable indication that the subject goods negatively impacted the market share of domestically produced like goods.

Financial results and other performance indicators

[66] The evidence on the record indicates that there has been a decrease in the domestic industry's financial performance in terms of net sales value of domestically produced goods, gross margin and

⁵⁵ *Gypsum Board* (5 August 2016), PI-2016-001 (CITT) at para. 44; *Copper Rod* (30 October 2006), PI-2006-002 (CITT) at paras. 40, 43; *Galvanized Steel Wire* (22 March 2013), PI-2012-005 (CITT) at para. 75; *Circular Copper Tube* (22 July 2013), PI-2013-002 (CITT) at para. 82.

⁵⁶ Exhibit PI-2021-003-05 at 13; Exhibit PI-2021-003-03.07 (protected) at 21.

⁵⁷ Exhibit PI-2021-003-05 at 13.

⁵⁸ *Ibid.*

net income between 2018 and 2020, on a per-unit basis.⁵⁹ As noted above, the complainants also experienced a price-cost squeeze over this period. Although there was some improvement in the domestic industry's financial performance in the first quarter of 2021, the Tribunal finds it of less significance considering the deterioration of the domestic industry's financial position during the previous two full years.

[67] The same trends are seen with respect to the volume of domestic sales, total production and capacity utilization. While the domestic industry's capacity remained stable, its capacity utilization rate declined substantially between 2018 and 2020, as well as between interim 2020 and 2021. These trends are consistent with the domestic industry's production levels, which decreased substantially over the same period.⁶⁰ The evidence indicates that Prudential's idled production did not have the effect of improving Evraz's and WTC's ability to expand production or capture market share in 2020.⁶¹

[68] According to the complainants, total direct and indirect employment remained relatively stable in 2018 and 2019, until employment levels dropped in 2020. Total wages paid by the domestic industry decreased between 2018 and the first quarter of 2021, with the most marked decrease happening between 2019 and 2020.⁶² Although the complainants acknowledged that the downturn in the domestic OCTG market impacted employment in 2020, they nevertheless attributed the extent of the layoffs and the time Evraz had to idle its operations to Tenaris Canada's imports of the subject goods. For example, the USW submitted that Evraz's Calgary plant production was completely shut down in June 2020 partly because of dumped Mexican OCTG imports at the time of a severe market downturn; this led to the layoff of 220 employees involved in OCTG production for 11 months, of which approximately 190 employees have now returned.⁶³

[69] The complainants have been able to invest significantly in their OCTG production over the period examined. Some adverse impacts on these investments were noted.⁶⁴

[70] As indicated earlier, bearing in mind the lower evidentiary threshold applicable at the preliminary inquiry stage, the Tribunal finds that the evidence available at this stage of the proceedings reasonably indicates that the injury suffered by the domestic industry over the period examined can be characterized as material.

Causation and other factors

Declining domestic oil industry

[71] The Tribunal notes the significant contraction in domestic demand for OCTG, which the complainants attributed to the oil price collapse in the first half of 2020 and the slowdown of drilling

⁵⁹ Exhibit PI-2021-003-03.01 (protected) at 480.

⁶⁰ *Ibid.* (protected) at 874.

⁶¹ Exhibit PI-2021-003-02.01 at 82, 83; Exhibit PI-2021-003-03.01 (protected) at 79, 80.

⁶² Exhibit PI-2021-003-03.01 (protected) at 876.

⁶³ Exhibit PI-2021-003-11.02A at paras. 12-14.

⁶⁴ Exhibit PI-2021-003-03.01 (protected) at 1235, 1242, 1243, 1256.

in Western Canada. A softening of prices for Canadian oil production began in 2019 following transportation capacity constraints which led to oil production cuts by the Government of Alberta.⁶⁵

[72] While the complainants agree that the collapse in their production, capacity utilization and domestic sales from domestic production can be attributed in part to the downturn in the oil and gas industry, they submit that the subject goods also participated in this collapse. The complainants submitted that the domestic industry could have weathered the domestic market's contraction over 2019 and 2020 significantly better but for the subject goods, which caused the complainants to lose sales volumes and reduce its domestic pricing.⁶⁶ Moreover, even with improvements seen in drilling activity in Canada in the latter part of 2020, there has been no commensurate increase in output for the domestic industry.⁶⁷

[73] Having considered the parties' submissions with respect to market conditions for OCTG, the Tribunal agrees that the downturn in the oil-producing industry created market conditions that adversely impacted the domestic industry's performance. However, at this preliminary stage of inquiry, notwithstanding the effect of the decline in domestic oil industry, the evidence on the record reasonably indicates that the subject goods have also affected the domestic industry, as observed in the market share trends described above. Furthermore, the Tribunal notes that there has been a more recent increase in import volumes of the subject goods while the domestic market has continued to decrease in size.

[74] With more comprehensive data, during the final injury inquiry, the Tribunal may assess in more detail the extent to which the dumping of the subject goods has, in and of itself, caused injury to the domestic industry.

Product differentiation

[75] Tenaris Canada submitted that it competes with Evraz on products produced in Canada, and that the goods imported from Mexico cannot be injurious, as the grades imported from TAMSA cannot be produced by the complainants (e.g. C90, T95, C110).⁶⁸

[76] The Tribunal is not persuaded by this argument from Tenaris Canada at this preliminary stage given the evidence on the record that there are some imports from Mexico that can be produced by the domestic industry.⁶⁹ Moreover, as discussed above, lower pricing of seamless products may have price-depressive effects on welded products.

Intra-industry competition

[77] Tenaris Canada also submitted that Evraz and its distributors are being injured by undercutting and sales lost to Tenaris Canada's domestic production. Tenaris Canada explained that its products are priced the same, regardless of origin. Evraz argued that if Tenaris Canada's domestic OCTG is undercutting Evraz's OCTG, the admission by Tenaris Canada that it prices all products the same, regardless of origin, would indicate that Mexican imports are undercutting Evraz's OCTG.

⁶⁵ Exhibit PI-2021-003-02.01 at 1299-1300, 1394.

⁶⁶ *Ibid.* at 1365-1367, 1369, 1383-1384; Exhibit PI-2021-003-03.01 (protected) at 1239.

⁶⁷ For instance, see Exhibit PI-2020-003-02.01 at 91; Exhibit PI-2020-003-03.01 (protected) at 88, 1249-1250.

⁶⁸ Exhibit PI-2021-003-08.02 at 14-15, Exhibit PI-2021-003-08.02A at 6.

⁶⁹ Exhibit PI-2021-003-09.02 (protected) at 15.

[78] As mentioned above, at this stage, the record is insufficient to adequately examine the issues raised by the parties concerning Tenaris Canada's pricing strategy. During the final injury inquiry, and with more comprehensive pricing data from Tenaris Canada with respect to its domestic selling prices and import pricing, the Tribunal should be able to examine the full scope of undercutting by the subject goods.

The domestic industry's business model

[79] The complainants sell like goods exclusively through arm's-length distributors.⁷⁰ Tenaris Canada argues that the complainants' reliance on arm's-length distributors is the source of its injury. In explaining the attribution of injury to the domestic industry's business model, Tenaris Canada alleged that distributors maintain speculative inventory, causing inventory swings; it noted that in 2020, a destocking competition between distributors caused Evraz to be without any new purchase orders.⁷¹ In other words, Tenaris Canada alleges that the injury to the domestic industry is self-inflicted through a non-viable commercial strategy that relies on independent distributors who do not operate in furtherance of the domestic producer's interest. According to Mr. McHattie of Tenaris Canada, the reliance on arm's-length distributors for sales has caused further harm to Evraz in the face of rising production costs for welded OCTG caused by the significant increase in hot-rolled coil (HRC), an input for OCTG.⁷² Distributors refuse to buy speculative inventory at higher prices.

[80] In reply, the complainants argued that there was no merit to Tenaris Canada's submission that use of arm's-length distributors has contributed to their injury. TGSC itself is a distributor that is subject to inventory swings, overhead and selling costs. Moreover, Tenaris Canada's non-arm's-length distribution model makes no material impact on its level of sales. With respect to production costs, Evraz submitted that as an integrated steel producer, its raw material input is scrap, not HRC. Consequently, price changes for HRC do not impact Evraz's costs of production and furthermore, based on Tenaris Canada's pricing data for billet, Evraz's material costs to produce OCTG have increased less than Tenaris Canada's costs to produce seamless OCTG.

[81] The Tribunal is of the view that there is insufficient evidence on the record to fully examine the domestic industry's business model as a factor in causation. The role played by different marketing and distribution strategies for OCTG will need to be more fully evaluated at the final injury inquiry stage. During the final injury inquiry, the Tribunal will also have more comprehensive data concerning the production costs for each of the domestic producers.

Non-subject goods

[82] Tenaris Canada submitted that distributors compete with it using non-subject imports, i.e. OCTG from Austria and Brazil. The Tribunal also notes that imports from the United States have increased its market share and appear to undercut prices of like goods in all periods. However, based on the evidence on the record at this stage,⁷³ in the Tribunal's view, the presence of non-subject

⁷⁰ Exhibit PI-2021-003-03.01 (protected) at 1123, 1264.

⁷¹ In comparison, Tenaris Canada sells all of its subject goods through its affiliated distributor, TGSC.

⁷² Exhibit PI-2021-003-08.02A at 13.

⁷³ Exhibit PI-2021-03.01 (protected) at 50, 60, footnote 159; Exhibit PI-2021-03.07 (protected) at 19-21, 38; Exhibit PI-2021-003-05 at 13.

imports has not been shown to have negated the existence of a causal link between the subject imports and injury to the domestic industry as it is defined in this preliminary injury inquiry.

[83] Considering the above, the Tribunal is satisfied that the evidence discloses a reasonable indication that material injury was caused by the subject goods during the period examined.

THREAT OF INJURY

[84] In light of the finding that there is a reasonable indication that the dumping of the subject goods has caused injury, the Tribunal will exercise judicial economy and not consider whether there is a reasonable indication that the dumping of the subject goods is threatening to cause injury.

CONCLUSION

[85] On the basis of the foregoing analysis, the Tribunal determines there is evidence that discloses a reasonable indication that the dumping of the subject goods has caused injury to the domestic industry.

Peter Burn

Peter Burn
Presiding Member

Serge Fréchette

Serge Fréchette
Member

Frédéric Seppey

Frédéric Seppey
Member