



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Dumping and Subsidizing

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## FINDINGS AND REASONS

Inquiry No. NQ-2021-001

Certain Grinding Media

*Finding issued  
Friday, August 27, 2021*

*Reasons issued  
Monday, September 13, 2021*

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

## CERTAIN GRINDING MEDIA

### FINDING

The Canadian International Trade Tribunal, pursuant to the provisions of section 42 of the *Special Import Measures Act (SIMA)*, has conducted an inquiry to determine whether the dumping and subsidizing of chrome cast iron grinding media in spherical (“ball”) or ovoid shape, with a diameter of 12.7 millimetres (½ inch) to and including 76.2 millimetres (3 inches) within tolerances of 5 percent (5%), with an alloy composition of 10 percent or more ( $\geq 10\%$  of total mass) chromium (“Cr”) content and produced through the casting method, originating in or exported from the Republic of India (the subject goods), have caused injury or retardation or are threatening to cause injury, as these words are defined in *SIMA*.

Further to the Canadian International Trade Tribunal’s inquiry, and following the issuance by the President of the Canada Border Services Agency of final determinations dated July 29, 2021, that the above-mentioned goods have been dumped and subsidized, the Tribunal hereby finds, pursuant to subsection 43(1) of *SIMA*, that the dumping and subsidizing of the subject goods have caused injury to the domestic industry.

Furthermore, the Tribunal hereby excludes subject goods imported for use in cement production facilities.

Serge Fréchette  
\_\_\_\_\_  
Serge Fréchette  
Presiding Member

Susan D. Beaubien  
\_\_\_\_\_  
Susan D. Beaubien  
Member

Randolph W. Heggart  
\_\_\_\_\_  
Randolph W. Heggart  
Member

The statement of reasons will be issued within 15 days.

Place of Hearing:	via videoconference
Dates of Hearing:	July 27, 28 and 29 and August 3 and 4, 2021
Tribunal Panel:	Serge Fréchette, Presiding Member Randolph W. Heggart, Member Susan Beaubien, Member
Support Staff:	Heidi Lee, Lead Counsel Sarah Shinder, Counsel Mark Howell, Lead Analyst Josée St-Amand, Analyst Andrew Wigmore, Analyst Patrick Stidwill, Data Services Advisor

**PARTICIPANTS:****Domestic Producers**

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**Importers/Exporters/Others**

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Lafarge Canada Inc.  
Lehigh Hanson Materials Limited  
  
AIA Engineering Limited  
Vega Industries Limited USA

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## STATEMENT OF REASONS

### INTRODUCTION

[1] The mandate of the Canadian International Trade Tribunal in this inquiry<sup>1</sup> is to determine whether the dumping and subsidizing of certain grinding media originating in or exported from the Republic of India (India) (the subject goods) have caused injury or are threatening to cause injury to the domestic industry.

[2] The Tribunal has determined, for the reasons that follow, that the dumping and subsidizing of the above-mentioned goods have caused material injury to the domestic industry.

### BACKGROUND

[3] This inquiry stems from a complaint filed with the Canada Border Services Agency (CBSA) on October 27, 2020, by Magotteaux Limitée (Magotteaux) and the subsequent decision by the President of the CBSA on December 17, 2020, to initiate investigations into the alleged dumping and subsidizing of the subject goods.

[4] On December 18, 2020, as a result of the CBSA's decision to initiate the investigations, the Tribunal initiated a preliminary injury inquiry pursuant to subsection 34(2) of *SIMA*. On February 15, 2021, the Tribunal determined that the evidence disclosed a reasonable indication that the dumping and subsidizing of the subject goods had caused or were threatening to cause injury to the domestic industry.<sup>2</sup>

[5] On April 30, 2021, the CBSA made preliminary determinations of dumping and subsidizing and imposed provisional anti-dumping and countervailing duties on the subject goods.<sup>3</sup>

[6] On May 3, 2021, the Tribunal commenced this final injury inquiry and issued a Notice of Commencement of Inquiry.<sup>4</sup> In the notice, the Tribunal stated that a public hearing would be held in July 2021, but due to circumstances relating to the COVID-19 pandemic, the type of hearing, location and exact date would be communicated at a later date.

[7] The Tribunal's period of inquiry (POI) was from January 1, 2018, to December 31, 2020.

[8] As part of these proceedings, a number of known importers, purchasers and foreign producers, as well as the one known domestic producer, Magotteaux, were asked to respond to Tribunal questionnaires. The Tribunal received 2 replies to the importers' questionnaire, 14 replies to the purchasers' questionnaire, and 1 reply to the foreign producers' questionnaire, from AIA Engineering Limited (AIA). The Tribunal also received a reply to the producers' questionnaire from

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<sup>1</sup> The inquiry is conducted pursuant to section 42 of the *Special Import Measures Act*, R.S.C., 1985, c. S-15 [*SIMA*].

<sup>2</sup> *Certain Grinding Media* (15 February 2021), PI-2020-006 (CITT) [*Certain Grinding Media PI*].

<sup>3</sup> Exhibit NQ-2021-001-01 at 5, 9, 15.

<sup>4</sup> Exhibit NQ-2021-001-003.

Magotteaux.<sup>5</sup> The responses to these questionnaires were used to prepare public and protected investigation reports, which were issued on June 21, 2021.<sup>6</sup>

[9] On June 28, 2021, Ash Grove, a division of CRH Canada Group Inc. (Ash Grove), Lafarge Canada Inc., and Lehigh Hanson Materials Limited, together as the Canadian Cement Producers (collectively, the Cement Producers), filed a product exclusion request covering subject goods for use in cement production. On July 5, 2021, Magotteaux filed its response opposing the request, and the Cement Producers filed a reply to the response on July 13, 2021.

[10] Also on June 28, 2021, Magotteaux filed a case brief, witness statements and other evidence in support of a finding of injury or threat of injury. On July 8, 2021, AIA and Vega Industries Limited USA (Vega) together (collectively, AIA/Vega) and the Cement Producers filed case briefs, witness statements and other evidence opposing a finding of injury or threat of injury. Magotteaux filed a reply brief, reply witness statement and additional evidence on July 19, 2021.

[11] On June 29, 2021, the Tribunal received requests for information (RFI) from Magotteaux directed to AIA/Vega, and from AIA/Vega and the Cement Producers directed to Magotteaux. Magotteaux and Vega objected to certain RFIs directed to them. On July 9, 2021, the Tribunal issued directions to the parties, requiring responses only to certain RFIs directed to Magotteaux.<sup>7</sup> Magotteaux's response was received on July 19, 2021.<sup>8</sup>

[12] The Tribunal informed the parties on July 6, 2021, that a hearing would be held by way of videoconference starting on July 27, 2021. On July 14, 2021, the Tribunal confirmed that it would hear both witness testimony and final arguments during the hearing. Detailed hearing procedures were provided to the parties on July 21, 2021, which included time reserved for potential Tribunal witnesses.

[13] The Tribunal commenced the hearing on July 27, 2021, as scheduled, and heard evidence from witnesses for Magotteaux, AIA/Vega and the Cement Producers.<sup>9</sup>

[14] On Thursday, July 29, 2021, the Tribunal adjourned the hearing until the following week. That same day, the Tribunal issued a subpoena compelling Mr. Suresh Kalagara, Chief Procurement Officer of ArcelorMittal Mining Canada G.P., to attend the hearing and give evidence on the matters in question.<sup>10</sup>

[15] The Tribunal also issued an order directing Molycop Canada (Molycop) to provide certain information related to its production of grinding media.<sup>11</sup> Molycop's responses were received on July 30, 2021. At the Tribunal's invitation, Mr. Michael Cooper, Metallurgy Specialist with Glencore Canada Corporation, also provided evidence at the hearing in this inquiry. It was the Tribunal's view

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<sup>5</sup> Exhibit NQ-2021-001-06 at 7-10.

<sup>6</sup> Exhibit NQ-2021-001-06; Exhibit NQ-2021-001-07 (protected).

<sup>7</sup> Exhibit NQ-2021-001-RFI-01; Exhibit NQ-2021-001-RFI-01A (protected).

<sup>8</sup> Exhibit NQ-2021-001-RI-01; Exhibit NQ-2021-001-RI-01A (protected).

<sup>9</sup> Prior to the hearing, each party accepted the risk of discussing their own confidential information through the Webex videoconferencing platform. As such, the Tribunal heard both public and *in camera* witness testimony through Webex.

<sup>10</sup> Exhibit NQ-2021-001-29.

<sup>11</sup> Exhibit NQ-2021-001-30.

that these three companies were in a position to provide information that was relevant to the issues in this inquiry.

[16] The hearing resumed on August 3, 2021, and the Tribunal heard testimony from Mr. Kalagara and Mr. Cooper. The Tribunal heard final arguments on August 4, 2021.

[17] The Tribunal issued its finding on August 27, 2021.

## RESULTS OF THE CBSA'S INVESTIGATION

[18] The CBSA's period of investigation for its dumping and subsidy investigations was from October 1, 2019, to September 30, 2020.<sup>12</sup> On July 29, 2021, the CBSA made final determinations of dumping and subsidization against India. The CBSA specified the margins of dumping (expressed as a percentage of the export price) as follows:<sup>13</sup>

Country of origin or export	Exporter	Margins of dumping
India	AIA Engineering Ltd.	15.7%
	All Other Exporters	38.7%

[19] The CBSA specified the margins of subsidy (expressed as a percentage of the export price) as follows:

Country of origin or export	Exporter	Amounts of subsidy
India	AIA Engineering Ltd.	6.3%
	All Other Exporters	34.5%

## PRODUCT

### Product definition

[20] The subject goods are defined as follows:

Chrome cast iron grinding media in spherical ("ball") or ovoid shape, with a diameter of 12.7 millimetres (½ inch) to and including 76.2 millimetres (3 inches) within tolerances of 5 percent (5%), with an alloy composition of 10 percent or more ( $\geq 10\%$  of total mass) chromium ("Cr") content and produced through the casting method, originating in or exported from the Republic of India.

<sup>12</sup> Exhibit NQ-2021-001-04A at 4.

<sup>13</sup> Exhibit NQ-2021-001-004 at 12, 13.



## Product information

[21] The CBSA provided the following additional product information:<sup>14</sup>

[28] For greater clarity, the product definition does not cover:

- Grinding media produced through the forging or stamping method; and
- Chromium cast iron grinding media with an alloy composition of less than 10 percent chromium (< 10% of total mass).

[29] Within the mineral processing industry, a range of grinding conditions or environments exists and each of these mill environments presents particular conditions for grinding media that require the application of specific physical and chemical properties for optimum grinding media performance. Size and chemical composition of grinding media are two important factors influencing a grinding's wear resistance and performance in a ball mill.

[30] Size of the grinding media depends on the mill feed size (particle size of material supplied to the mill) and achieved degree of fineness (size and percentage of required class size material at the exit of a ball mill). Grinding media are typically spherical in shape.

[31] GM are normally produced using a metal alloy composed mostly of steel scrap and alloys such as chromium. The chromium content of grinding media is another key component to the grinding media's performance and affects the grinding media's wear resistance against abrasion and corrosion, as well as the level of hardness of the grinding media.

[32] GM normally encompasses an alloy composition of 10 percent or more chromium content, with typical thresholds that do not exceed 35% chromium. The chromium content of GM is measured by testing the total chemical composition of the alloy with a spectrometer, determining the percentage of chromium to the total mass of the alloy.

[33] Production of GM in Canada focuses on the market segment of greatest demand which is 1" to 1 ½" grinding balls of 15% to 18% chromium content. There are no international technical standards applicable to grinding media.

## LEGAL FRAMEWORK

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

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

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<sup>14</sup> Exhibit NQ-2021-001-04A at 6, 7.

[24] Given that the CBSA has determined that the subject goods have been dumped and subsidized, the Tribunal must also determine whether it is appropriate to 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) in this inquiry.

[25] The Tribunal can then assess whether the dumping and subsidizing of the subject goods have caused material injury to the domestic industry. Should the Tribunal arrive at a finding of no material injury, it will determine whether there exists a threat of material injury to the domestic industry.<sup>15</sup> As a domestic industry is already established, the Tribunal will not need to consider the question of retardation.<sup>16</sup>

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

### LIKE GOODS AND CLASSES OF GOODS

[27] In order for the Tribunal to determine whether the dumping and subsidizing of the subject goods have caused or are threatening to cause injury to the domestic producers of like goods, it must determine which domestically produced goods, if any, constitute like goods in relation to the subject goods. The Tribunal must also assess whether there is, within the subject goods and the like goods, more than one class of goods.<sup>17</sup>

[28] 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.

[29] In deciding the issue of like goods when goods are not identical in all respects to the other goods, the Tribunal typically considers a number of factors, including the physical characteristics of the goods (such as composition and appearance) and their market characteristics (such as substitutability, pricing, distribution channels, end uses and whether the goods fulfill the same customer needs).<sup>18</sup>

[30] In addressing the issue of classes of goods, the Tribunal typically examines whether goods potentially included in separate classes of goods constitute “like goods” in relation to each other. If

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<sup>15</sup> Injury and threat of injury are distinct findings; the Tribunal is not required to make a finding relating to threat of injury pursuant to subsection 43(1) of *SIMA* unless it first makes a finding of no injury.

<sup>16</sup> Subsection 2(1) of *SIMA* defines “retardation” as “. . . material retardation of the establishment of a domestic industry.”

<sup>17</sup> Should the Tribunal determine that there is more than one class of goods in this inquiry, it must conduct a separate injury analysis and make a decision for each class that it identifies. See *Noury Chemical Corporation and Minerals & Chemicals Ltd. v. Pennwalt of Canada Ltd. and Anti-dumping Tribunal*, [1982] 2 F.C. 283 (F.C.).

<sup>18</sup> See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) [*Copper Pipe Fittings*] at para. 48.

those goods are “like goods” in relation to each other, they will be regarded as comprising a single class of goods.<sup>19</sup>

### **Like goods**

[31] In the preliminary injury inquiry, Magotteaux argued, and the Tribunal agreed, that domestically produced grinding media meeting the product definition were like goods to the subject goods.<sup>20</sup> There were no other arguments raised in respect of like goods.<sup>21</sup> The Tribunal indicated that it would re-examine these preliminary conclusions in the final injury inquiry.<sup>22</sup>

[32] In this proceeding, Magotteaux submitted that there is no reason to depart from the findings on like goods that were made at the preliminary inquiry stage.

[33] The opposing parties did not dispute that domestically produced grinding media that meet the product description are like goods to the subject goods, but AIA/Vega submitted that domestically produced forged (and not only cast) grinding media are also like goods in relation to the subject goods. AIA/Vega raised this argument for the first time in its case brief opposing a finding of injury.

[34] The Tribunal will first set out the procedural considerations raised by AIA/Vega’s argument before turning to the substance of their position.

#### Procedural considerations

[35] The determination of the scope of like goods is fundamental to the conduct of the Tribunal’s inquiry. It is the basis on which the domestic industry is defined, which is in turn essential to the assessment of injury. For this reason, parties are expected to raise arguments in relation to like goods, as well as other threshold issues such as classes of goods and which domestic producers comprise the domestic industry, at the earliest opportunity.

[36] In most cases, if not all, the proper time to do so is during the preliminary injury inquiry process, as the preliminary process determines key elements of the Tribunal’s investigation in the final inquiry. In the Notice of Commencement of Preliminary Injury Inquiry in this case, the Tribunal explicitly directed that submissions by parties opposed to the complaint should include evidence and argument concerning 1) whether there are goods produced in Canada other than those identified in the CBSA’s statement of reasons for initiating the investigations, that are like goods to the subject goods, 2) whether the subject goods comprise more than one class of goods, and 3) which domestic producers of like goods comprise the domestic industry.

[37] These submissions are requested from opposing parties at the preliminary injury inquiry stage precisely because the Tribunal relies on its preliminary findings on like goods, as well as any related arguments raised by parties, to develop the questionnaires and determine which Canadian producers to survey. Through the responses to the questionnaires, the Tribunal collects crucial data on the market in Canada, in particular on domestic producers of like goods. This evidence is the basis on which the Tribunal assesses the impact of the subject goods on the domestic industry. The Tribunal’s

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<sup>19</sup> *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) [*Aluminum Extrusions*] at para. 115. See also *Polyisocyanurate Thermal Insulation Board* (11 April 1997), NQ-96-003 (CITT) [*Thermal Insulation Board*] at 10.

<sup>20</sup> *Certain Grinding Media PI* at para. 22.

<sup>21</sup> *Ibid.* at para. 21.

<sup>22</sup> *Ibid.* at para. 22.

record also serves as the basis on which parties make their arguments supporting or opposing a finding of injury. The record must be objective and comprehensive in order to ensure that the Tribunal's analysis is conducted in accordance with the obligations imposed by the relevant WTO agreements and administrative law principles.<sup>23</sup> This is the principal objective of the Tribunal's investigative process.

[38] As a result, arguments regarding the scope of like goods that are raised after the preliminary injury inquiry, such as in this case, may give rise to serious concerns of procedural fairness and risk frustrating the proper conduct of the Tribunal's proceedings.

[39] In *Certain Grinding Media PI*, the Tribunal determined that domestically produced grinding media meeting the product definition were like goods to the subject goods. No arguments to the contrary were raised by any party, including AIA/Vega. For the purposes of these final injury proceedings, the Tribunal therefore collected information from the only domestic producer that had been identified as such during the preliminary inquiry, i.e. Magotteaux. The Tribunal's Investigation Report was finalized on this basis and issued to the parties.

[40] The Tribunal then received Magotteaux's case brief supporting a finding of injury, which was based on the data set out in the Investigation Report. AIA/Vega then filed their case brief opposing a finding of injury, and it was only then that they submitted that forged grinding media are also like goods in relation to the subject goods.<sup>24</sup>

[41] Based on the allegation that like goods are not limited to cast grinding media but also encompass forged grinding media, AIA/Vega argued that the domestic industry in this inquiry therefore included Molycop, a known Canadian producer of forged grinding media. AIA/Vega further argued that, as the Tribunal had not collected any data from Molycop, the Tribunal consequently did not have the information necessary to assess whether the domestic industry had suffered material injury. On that premise, AIA/Vega contended that the Tribunal was precluded from making a finding of injury.

[42] During oral arguments, counsel for Magotteaux agreed that if the Tribunal were to find that forged grinding media were like goods to the subject goods, this would impact the definition of the domestic industry such that the evidence placed before the Tribunal in this inquiry may not be sufficient to support a finding of injury or threat thereof.<sup>25</sup>

[43] In determining how to proceed, the Tribunal weighed several considerations.

[44] First, the Tribunal noted that the scope of like goods is a fundamental framework issue. In addition, there are no precedents on the issue as grinding media is a product that has not been previously examined by the Tribunal.

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<sup>23</sup> Under Article 3.1 of the Anti-dumping Agreement and Article 15.1 of the Agreement on Subsidies and Countervailing Measures, determinations of injury must be based on "positive evidence" and involve an "objective examination."

<sup>24</sup> Both AIA/Vega and the Cement Producers also raised arguments relating to classes of goods, which were also made for the first time in their opposing case briefs. In the Tribunal's view, these submissions should also have been made earlier.

<sup>25</sup> *Transcript of Public Hearing* - Arguments at 213-214.

[45] Second, the complainant did not argue that it had been prejudiced. The Tribunal concluded that the complainant had not been prejudiced and had been provided with an adequate opportunity to respond to the case being made by AIA/Vega with respect to the scope of like goods. The complainant availed itself of this opportunity in its reply submissions.

[46] Finally, the Tribunal considered the reason for the lateness. To explain the timing of their argument, counsel for AIA/Vega relied upon a decision issued by the Tribunal during the course of these proceedings in a concurrent and copending case, *UDS*.<sup>26</sup> In that decision, the Tribunal stated that it would not apply the “principle of co-extensiveness”, which provides that the scope of the domestically produced like goods should not be broader than the scope of the subject goods.<sup>27</sup> Counsel for AIA/Vega argued that the *UDS* decision represented a “clear signal” that the Tribunal was reconsidering the application of this principle, and it would not have been reasonable to raise such argument before this purported change in the law.

[47] While the Tribunal understands counsel’s reasoning, it also notes that the Tribunal in *UDS* did not decide to re-examine the principle of co-extensiveness on its own initiative, as suggested by counsel for AIA/Vega.<sup>28</sup> The parties in *UDS* raised these issues with supporting evidence in the preliminary inquiry phase.<sup>29</sup> Notably, the parties in *UDS* argued against the application of the principle of co-extensiveness at the preliminary inquiry phase without any “signal” or other implicit permission from the Tribunal that it may do so.

[48] Furthermore, parties are expected to put their best foot forward at the earliest opportunity when raising issues or advancing arguments in support of their case, including those related to like goods and other threshold issues. Such arguments should be raised during the preliminary injury inquiry, during questionnaire consultations or even at the commencement of the final injury inquiry.

[49] With that said, in the circumstances of this particular inquiry and having regard to the record, the Tribunal was not persuaded that AIA/Vega had split its case or had otherwise intended to frustrate the scope of the Tribunal’s inquiry.<sup>30</sup>

[50] In view of the foregoing, the Tribunal decided to examine whether forged grinding media are like goods to the subject goods.

[51] The Tribunal will now turn to consider whether forged grinding media are like goods to the subject goods.

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<sup>26</sup> *Certain Upholstered Domestic Seating* (2 September 2021) NQ-2021-002 (CITT) [*UDS*].

<sup>27</sup> Exhibit NQ-2021-001-34. See *Unitized Wall Modules* (12 November 2013) NQ-2013-002 (CITT) at para. 34; *Certain Fabricated Industrial Steel Components* (25 May 2017), NQ-2016-004 (CITT) at paras. 46-48; *Steel Piling Pipe* (4 July 2018), RR-2017-003 (CITT) at paras. 30-33; *Gypsum Board* (20 August 2018), PI-2018-003 (CITT) at paras. 32-34.

<sup>28</sup> *Transcript of Public Hearing - Arguments* at 123-124.

<sup>29</sup> *Upholstered Domestic Seating* (19 February 2021), PI-2020-007 (CITT) at para. 23 and footnote 19; Exhibit NQ-2021-001-34.

<sup>30</sup> The Tribunal has previously emphasized the importance of raising issues that affect the Tribunal’s collection of data as early as possible, including the responsibility of counsel to do so. See *Circular Copper Tube* (18 December 2013), NQ-2013-004 (CITT) at para. 6 and footnote 2.

Forged grinding media are not like goods

[52] At the outset, the Tribunal notes that it was not necessary to consider whether the principle of co-extensiveness should apply in this inquiry. Ultimately, the Tribunal found that the principle would not have affected the outcome of the like goods analysis.

[53] If the principle of co-extensiveness were applied, the definition of like goods would remain limited to domestically produced grinding media that meet the product definition. Forged grinding media would therefore be excluded.

[54] If the principle did not apply, to consider whether forged grinding media are like goods to the subject goods, the like goods analysis would still need to fall under the universe of paragraph 2(1)(b) of *SIMA*, i.e. one where there are no goods that are identical in all respects to the subject goods. As noted above, where there are no such identical 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).<sup>31</sup> Having conducted this analysis, as set out below, the Tribunal determined that forged grinding media are not like goods to the subject goods.

[55] Furthermore, in *UDS*, the Tribunal is expected to examine the principle of co-extensiveness in its reasons, which will be issued after the issuance of these reasons. In order to avoid potential inconsistency or ambiguity, the Tribunal will exercise judicial economy and will not consider whether the co-extensiveness principle should be applied in this case. This subject is better left with the panel of the Tribunal in *UDS*.

[56] Turning to the parties' submissions, AIA/Vega submitted that forged grinding media are substitutable for and directly compete with the grinding media described in the product definition (i.e. cast iron grinding media with 10 percent or more chromium content, which are generally considered as "high chrome" grinding media).<sup>32</sup> AIA/Vega argued that, despite physical differences, forged and cast grinding media are nearly identical in appearance and put to the exact same use, i.e. used to break down and reduce materials into smaller particles.

[57] Magotteaux disagreed. It argued that forged grinding media and high chrome cast iron grinding media have different chemical compositions, with the presence or absence of chromium content serving as a significant and distinct, if not determinative, factor in their physical performance and market characteristics.

[58] The parties did not disagree on the facts relating to the physical characteristics, pricing and typical end uses for forged and cast grinding media. However, they disputed whether these characteristics resulted in a sufficient degree of substitutability to create market competition between forged and cast grinding media, which could underpin a conclusion that forged grinding media closely resemble the subject goods.

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<sup>31</sup> See, for example, *Copper Pipe Fittings* at para. 48.

<sup>32</sup> Exhibit NQ-2021-001-A-03 at para. 14; Exhibit NQ-2021-001-A-05 at para. 6.

[59] As noted above, in deciding the issue of like goods when goods are not identical in all respects to the other goods, the Tribunal typically considers physical and market characteristics of the goods, including substitutability and whether the goods fulfill the same customer needs.<sup>33</sup>

[60] The degree of substitutability or interchangeability between products is a crucial factor in the like goods analysis, as it is generally a useful indicator of the level of actual competition between those goods. The circumstances of each case will determine which physical and market characteristics are the most significant in determining whether goods are considered by end users to be actual alternatives for other goods.

[61] Forged and cast grinding media are produced through different production processes.

[62] Cast grinding media is produced by pouring molten alloys into sand casts.<sup>34</sup> Through casting, the exact chemical composition of the metal alloy can be controlled, which is not possible through the forging method.<sup>35</sup> In addition, the Tribunal recalls that the subject goods are high chrome cast iron grinding media, that is grinding media with a chromium content of 10 percent or higher.<sup>36</sup> This level of chromium is only achievable through the casting method of production.<sup>37</sup> Due to the chromium content, high chrome cast grinding media is harder than forged grinding media and, as a result, is more resistant to corrosion and abrasion.<sup>38</sup> It therefore generally has a slower wear rate than forged grinding media.<sup>39</sup>

[63] Forged grinding media is produced by heating and shaping steel bars into balls.<sup>40</sup> Through this process, it is only possible to achieve chromium contents of up to one percent.<sup>41</sup> As a result, forged grinding media is more impact resistant, but wears down faster.<sup>42</sup>

[64] In part due to the differences in hardness, cast and forged grinding media cannot be used together in the same mill.<sup>43</sup> The greater hardness of high chrome cast grinding media would, over time, break down the softer forged grinding media.

[65] The evidence shows that these differences in physical properties between the two types of grinding media affect their end uses and the degree of substitutability between the two products.

[66] The primary users of grinding media are the mining and cement production sectors. For cement producers, there is no substitutability between the goods. Cement producers use almost

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<sup>33</sup> See, for example, *Copper Pipe Fittings* at para. 48.

<sup>34</sup> Exhibit NQ-2021-001-A-03 at paras. 19-37.

<sup>35</sup> *Transcript of Public Hearing* - Evidence at 15.

<sup>36</sup> Exhibit NQ-2021-001-A-03 at para. 14.

<sup>37</sup> *Transcript of Public Hearing* - Evidence at 16.

<sup>38</sup> Exhibit NQ-2021-001-A-20 at para. 5, 9, 12; *Transcript of Public Hearing* - Evidence at 21.

<sup>39</sup> *Transcript of Public Hearing* - Evidence at 61-62.

<sup>40</sup> *Ibid.* at 14; Exhibit NQ-2021-001-A-20 at para. 13.

<sup>41</sup> Exhibit NQ-2021-001-A-20 at para. 4.

<sup>42</sup> Exhibit NQ-2021-001-A-20 at para. 17.

<sup>43</sup> *Transcript of Public Hearing* - Evidence at 46, 278-279, 293, 312-313.

exclusively cast grinding media, such that neither they nor grinding media producers consider forged grinding media to be an alternative product for this application.<sup>44</sup>

[67] There is theoretical competition between forged and high chrome cast iron grinding media for certain mining operations, as most mining operations can use either forged or cast grinding media at different stages of mineral and ore processing.

[68] The evidence shows that there is an optimal ball size and metallurgy for each particular mill, which depends on a variety of factors, such as the ore being mined and the downstream processes.<sup>45</sup> For new operations, these specifications can be quickly determined through lab testing.<sup>46</sup> Once end users determine the range of optimal grinding media, they may seek to make small gains through further optimization, but the evidence shows that switching to another type of grinding media is uncommon.<sup>47</sup>

[69] Semi-autogenous grinding (SAG) mills are an exception. SAG mills generally use forged grinding media, as they can better withstand the impact within the larger mill.<sup>48</sup> As a result, there is no substitutability between the goods for use in SAG mills.

[70] AIA/Vega argued that high chrome cast iron grinding media producers expand their business by converting users away from forged grinding media, which, in its view, demonstrates competition between the two types. While the evidence shows that cast grinding media producers do seek to convert forged grinding media users, the Tribunal does not find that it is indicative of a high degree of competition.

[71] Between the two, high chrome cast iron grinding media is the value-added product, i.e. it is longer-lasting but more expensive, and the evidence shows that end users in the mining sector have a preference for high chrome cast iron grinding media, and it is only in a limited set of circumstances that there will be a preference for forged grinding media.<sup>49</sup> In this regard, Mr. Stéphan Marin of Magotteaux testified that, in his view, current customers that use high chrome grinding media are not willing to switch to forged.<sup>50</sup> He further confirmed that Magotteaux does not lose customers to forged grinding media.<sup>51</sup>

[72] The evidence also shows that the total cost of ownership is a key consideration for end users in purchasing grinding media.<sup>52</sup> Total cost of ownership relates to the tradeoff between wear rate (i.e. the consumption rate or how long the grinding media will last) and the cost of the grinding media.<sup>53</sup> In addition, the exact choice of grinding media highly depends on the specifications and

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<sup>44</sup> Exhibit NQ-2021-001-32 at 2. Mr. Cyril Caballero of Magotteaux stated that he was aware of one mill in one cement production plant that uses forged grinding media. He stated that this mill is very large in diameter, which is not common in the cement industry. See *Transcript of Public Hearing* - Evidence at 46.

<sup>45</sup> *Transcript of Public Hearing* - Evidence at 284-286.

<sup>46</sup> *Ibid.* at 295, 302.

<sup>47</sup> *Ibid.*

<sup>48</sup> Exhibit NQ-2021-001-32 at 1; *Transcript of Public Hearing* - Evidence at 27, 63-64, 119-120. The Tribunal notes that SAG mills tend to use larger-sized grinding media than the media captured by the product definition.

<sup>49</sup> Exhibit NQ-2021-001-32 at 2-3.

<sup>50</sup> *Transcript of Public Hearing* - Evidence at 35.

<sup>51</sup> *Ibid.* at 36.

<sup>52</sup> *Ibid.* at 143-144, 258.

<sup>53</sup> *Ibid.* at 263-264, 282-283.



requirements of the particular stage of production at a particular plant.<sup>54</sup> This evidence suggests that where the optimal choice in terms of total cost of ownership is forged grinding media, end users are also unlikely to switch to a different product. In this regard, Molycop noted that it had seen one customer switch from forged to cast when the price of cast grinding media dropped sufficiently, but stated that it does not expect to see other customers switching.<sup>55</sup> This was also consistent with Mr. Cooper's evidence.<sup>56</sup>

[73] Finally, the evidence shows that switching between forged and cast grinding media is a long and expensive endeavour, which confirms to the Tribunal that it is not a common practice. In this regard, the Tribunal found the information provided by Molycop and the testimony of Mr. Cooper to be highly instructive.

[74] In total, it can take 12 to 18 months for an end user to fully change a mill's grinding media from one product to another.<sup>57</sup> Once the new media is in the mill, it can take five or six weeks before the user can first see the effect of the new media on the refining process.<sup>58</sup> Purging the mill of previous balls alone can take 6 to 9 months.<sup>59</sup> Once the switch is complete, it can take up to 9 months for the end user to fully assess whether it was a worthwhile decision.<sup>60</sup> As Molycop stated, "the costs and inconvenience of a switch are too significant for it to be a regular business practice."<sup>61</sup> This was consistent with the evidence from Mr. Marin.<sup>62</sup>

[75] Based on the above, the Tribunal concludes that while there may be theoretical overlap between the uses of cast and forged grinding media, the commercial reality of the market is such that there is a low degree of actual substitutability between them, for practical purposes.<sup>63</sup> For some applications, such as cement production, there is no substitutability at all. For others, the evidence shows that, in each given application, users will identify and opt for the optimal grinding media solution based on its operational specification and the total cost of ownership. Switching between forged and cast grinding media is not a regular practice, nor is it one that is lightly undertaken.

[76] Accordingly, the Tribunal finds that cast and forged grinding media are not like goods within the meaning of paragraph 2(1)(b) of *SIMA*. As a result, the like goods are defined as domestically produced grinding media meeting the product definition.

### **Classes of goods**

[77] In addressing the issue of classes of goods, the Tribunal typically examines whether goods potentially included in separate classes of goods constitute "like goods" in relation to each other. If

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<sup>54</sup> *Ibid.* at 283-288; Exhibit NQ-2021-001-32 at 2.

<sup>55</sup> Exhibit NQ-2021-001-32 at 3.

<sup>56</sup> *Transcript of Public Hearing* - Evidence at 294-296, 300-303.

<sup>57</sup> Exhibit NQ-2021-001-32 at 4; *Transcript of Public Hearing* - Evidence at 289-290.

<sup>58</sup> *Transcript of Public Hearing* - Evidence at 289.

<sup>59</sup> Exhibit NQ-2021-001-32 at 4; *Transcript of Public Hearing* - Evidence at 289-290.

<sup>60</sup> Exhibit NQ-2021-001-32 at 4.

<sup>61</sup> *Ibid.*

<sup>62</sup> Exhibit NQ-2021-001-A-22 at para. 17.

<sup>63</sup> In the Tribunal's view, the distinction between theoretical substitutability and actual substitutability in the market also addresses any discrepancies in Molycop's questionnaire response and its response to the Tribunal's Production Order.

those goods are “like goods” in relation to each other, they will be regarded as comprising a single class of goods.<sup>64</sup>

[78] In the preliminary injury inquiry, the Tribunal found that the subjects goods comprise a single class of goods.<sup>65</sup> Magotteaux submitted that there is no reason to depart from this finding.

[79] The Cement Producers submitted that there are two classes of goods in the product definition: grinding media for cement use and grinding media for mining or other uses. According to the Cement Producers, grinding media supplied for cement production is not identical in all respects to grinding media supplied for mining or other uses, and the needs of each industry are different. The Cement Producers also submitted that the timing of sales and delivery are different, and there are significant differences in pricing. AIA/Vega made similar arguments.<sup>66</sup>

[80] In reply, Magotteaux submitted that the subject goods, i.e. high chrome cast grinding media, form a continuum of like goods in relation to each other that comprises a single class of goods, regardless of end use.

[81] The evidence on grinding media consumption by the cement sector, and by other sectors, was largely undisputed.

[82] Cement users buy significantly lower volumes of grinding media, as compared to other users, notably the mining industry. In this regard, Mr. Kunal Shah of AIA testified that a cement end user will typically buy about 100 tonnes per year, whereas a mining company will buy, on average, anywhere from 5,000 to 10,000 tonnes per year.<sup>67</sup> Cement users also tend to purchase a variety of different sizes and alloys, whereas mining customers tend to purchase large volumes of the same variety.<sup>68</sup>

[83] In the Tribunal’s view, there is no evidence of a dividing line that would clearly separate two classes of goods within the subject goods. There are no differences in the method of production, appearance or composition of grinding media for cement or for mining. The evidence also shows that grinding media within the product definition can be used interchangeably in mining or cement applications.<sup>69</sup> As Mr. Caballero stated, there is nothing unique about grinding media used by cement producers.<sup>70</sup>

[84] Altogether, while there is evidence of differences in marketing and sales to the different sectors, the Tribunal finds that those distinctions are not sufficient to distinguish between grinding media destined for the cement production sector and those destined for other sectors.

[85] On the basis of the above considerations, the Tribunal finds that there is a single class of goods.

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<sup>64</sup> *Aluminum Extrusions* at para. 115; see, also, *Thermal Insulation Board* at 10.

<sup>65</sup> *Certain Grinding Media PI* at para. 22.

<sup>66</sup> AIA/Vega submitted that there is 1) grinding media for mining uses, and 2) grinding media for cement uses. It did not include “or other”, as the Cement Producers did.

<sup>67</sup> *Transcript of Public Hearing* - Evidence at 145.

<sup>68</sup> *Ibid.* at 146.

<sup>69</sup> *Ibid.* at 111.

<sup>70</sup> *Ibid.* at 41-42.

## DOMESTIC INDUSTRY

[86] 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.

[87] The Tribunal must therefore determine whether there has been injury, or whether there is a threat of injury, to the domestic producers as a whole or those domestic producers whose production represents a major proportion of the total production of like goods.<sup>71</sup>

[88] The Tribunal’s record indicates that Magotteaux is the only producer in Canada of cast grinding media meeting the product definition, i.e. the only domestic producer of like goods.<sup>72</sup> This was not disputed by the parties.<sup>73</sup>

[89] Accordingly, the Tribunal finds that Magotteaux constitutes the domestic industry for the purposes of this inquiry.

## CROSS-CUMULATION

[90] This inquiry involves subject goods that were found by the CBSA to be both dumped and subsidized. There are no legislative provisions that directly address the issue of cross-cumulation of the effects of both dumping and subsidizing. However, as noted in previous cases, the effects of dumping and subsidizing of the same goods from a particular country are manifested in a single set of injurious price effects and it is not possible to isolate the effects caused by the dumping from the effects caused by the subsidizing.<sup>74</sup> In reality, the effects are so closely intertwined as to render it impossible to allocate discrete portions to the dumping and the subsidizing respectively.

[91] Given the above, the Tribunal’s usual practice is to make a cumulative assessment of the injurious effects of goods that are both dumped and subsidized. No party submitted that the dumping and subsidizing of the subject goods should be considered separately in this proceeding. Therefore, the Tribunal will make a cumulative assessment of the effects of the dumping and subsidizing of the subject goods.

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<sup>71</sup> The term “major proportion” means an important, serious or significant proportion of total domestic production of like goods and not necessarily a majority: *Japan Electrical Manufacturers Assn. v. Canada (Anti-Dumping Tribunal)*, [1986] F.C.J. No. 652 (F.C.A.); *McCulloch of Canada Limited and McCulloch Corporation v. Anti-Dumping Tribunal*, [1978] 1 F.C. 222 (F.C.A.); Panel Report, *China – Automobiles (US)*, WT/DS440/R, at para. 7.207; Appellate Body Report, *EC – Fasteners (China)*, WT/DS397/AB/R, at paras. 411, 412, 419; Panel Report, *Argentina – Poultry (Brazil)*, WT/DS241/R, at para. 7.341.

<sup>72</sup> Exhibit NQ-2021-001-06 at 7.

<sup>73</sup> Molycop confirmed that it did not produce any cast iron grinding media during the POI. See Exhibit NQ-2021-001-32 at 1.

<sup>74</sup> See, for example, *Copper Rod* (28 March 2007), NQ-2006-003 (CITT) at para. 48; *Seamless Carbon or Alloy Steel Oil and Gas Well Casing* (10 March 2008), NQ-2007-001 (CITT) at para. 76; *Aluminum Extrusions* at para. 147.

## INJURY ANALYSIS

[92] Subsection 37.1(1) of the *Special Import Measures Regulations*<sup>75</sup> prescribes that, in determining whether the dumping and subsidizing have caused material injury to the domestic industry, the Tribunal is to consider the volume of the dumped and subsidized goods, their effect on the price of like goods in the domestic market, and their resulting impact on the state of the domestic industry. Subsection 37.1(3) also directs the Tribunal to consider whether a causal relationship exists between the dumping and subsidizing of the goods and the injury on the basis of the factors listed in subsection 37.1(1), and whether any factors other than the dumping and subsidizing of the goods have caused injury.

[93] At the outset, the Tribunal notes that the opposing parties did not dispute or otherwise challenge the data in the Tribunal's investigation report relating to the injury factors. Overall, the opposing parties' submissions were heavily focused on the issues addressed above and raised only minimal arguments regarding injury. As such, the Tribunal's injury analysis, set out below, was based on the investigation report data and uncontroverted supporting evidence filed by Magotteaux.

### Import volume of dumped and subsidized goods

[94] Paragraph 37.1(1)(a) of the *Regulations* directs the Tribunal to consider the volume of the dumped or subsidized goods and, in particular, whether there has been a significant increase in the volume, either in absolute terms or relative to the production or consumption of the like goods. Magotteaux argued that the volume of dumped and subsidized goods increased significantly over the POI.

[95] The absolute volume of imports of subject goods increased in each year of the POI, increasing by 71 percent in 2019 and 38 percent in 2020.<sup>76</sup> This represents an increase of 136 percent over the entire POI. In comparison, volumes of non-subject imports decreased by 59 percent in 2019 and grew by 8 percent in 2020.<sup>77</sup>

[96] Subject goods held a dominant share of total imports throughout the POI. Their share of total imports increased in 2019 and 2020 to make up the vast majority of imports by the end of the POI. Conversely, the share of total imports held by non-subject imports was minimal throughout the POI.<sup>78</sup>

[97] Relative to domestic production, the volume of imports of subject goods increased over the POI, increasing by 22 percentage points in 2019 and 17 percentage points in 2020.<sup>79</sup> Similarly, the ratio of imports of subject goods to domestic sales of domestic production increased by 40 percentage points in 2019 and a further 42 percentage points in 2020.<sup>80</sup>

[98] In light of the foregoing, the Tribunal concludes that there has been a significant increase in both absolute and relative volumes of subject goods.

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<sup>75</sup> SOR/84-927 [*Regulations*].

<sup>76</sup> Exhibit NQ-2020-001-06, Table 14.

<sup>77</sup> *Ibid.*

<sup>78</sup> Exhibit NQ-2021-001-07 (protected), Table 15.

<sup>79</sup> Exhibit NQ-2020-001-06, Table 16.

<sup>80</sup> *Ibid.*

### Price effect of dumped and subsidized goods

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

[100] The Tribunal collected pricing information at four trade levels: sales to mining end users under term contracts, other sales to mining end users, sales to end users in the cement, utilities and aluminum sectors, and all other sales. Sales to mining end users under term contracts represented the vast majority of the total market. As a result, sales at this trade level were the predominant driver of overall market trends. In comparison, the other trade levels held a minimal share of total market sales. There were also no sales of subject goods in the all other sales level.<sup>81</sup>

[101] The Tribunal also collected quarterly data on sales of six benchmark products over a period of two years. Data collection for benchmarks was focused on sales to mining end users under term contracts.

#### Price undercutting

[102] Magotteaux submitted that the price comparisons in the Tribunal's investigation report indicate that the subject goods undercut the price of like goods over the POI. Magotteaux also argued that, as grinding media is a commodity product, purchasers are highly price sensitive.

[103] The evidence on record indicates that there is a considerable degree of price sensitivity among purchasers of grinding media.

[104] Most purchasers reported that the lowest-priced goods "always" or "usually" won the sale.<sup>82</sup> Most purchasers also stated that they would not be willing to pay a domestic premium for grinding media. Furthermore, most responding purchasers indicated that subject goods had the lowest net price, and over half stated that, where baseline quality and specifications were equal, a price differential between 1 and 10 percent would cause price to become the primary factor in purchasing decisions.<sup>83</sup> In this regard, all purchasers confirmed that subject goods and like goods were comparable in product quality.

[105] The investigation report data concerning average selling prices indicates that the subject goods did not undercut domestically produced like goods in 2018, but did undercut domestic prices in 2019 and 2020.<sup>84</sup> This coincided with a significant increase in import volumes of subject goods, as described above, and a considerable decline in sales volumes of like goods, notably 32 percent in 2019 and a further 16 percent in 2020.

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<sup>81</sup> Exhibit NQ-2021-001-07 (protected), Table 37; Exhibit NQ-2021-001-06, Table 33.

<sup>82</sup> Exhibit NQ-2021-001-06, Table 8.

<sup>83</sup> *Ibid.*

<sup>84</sup> As the prices of subject goods and like goods in the investigation report each represents the selling price of one company, the degree of undercutting cannot be indicated publicly as it would reveal the competitor's pricing to each party.

[106] Price undercutting was also observed at each trade level. For sales to mining end users under term contracts, subject goods undercut domestic prices in 2019 and 2020, though not in 2018.<sup>85</sup> In all other trade levels, sales of subject imports undercut domestic prices in each period of the POI.<sup>86</sup>

[107] Similarly, there was price undercutting in sales of the benchmark products. Across the benchmark products, there were 26 instances of competition between subject goods and like goods. Subject goods undercut domestic pricing in 24 of those instances.<sup>87</sup>

[108] The Tribunal also collected quarterly data for 2019 and 2020 on sales of like goods and subject goods to two common accounts, which provide examples of head-to-head competition for the same customers. There were five instances of competition between subject goods and like goods across two accounts.<sup>88</sup> Pricing data revealed no undercutting by subject goods for the common accounts.

[109] With respect to one of the common accounts, Magotteaux explained that it had stopped supplying grinding media in December 2018, prior to the period of data collection for the common accounts, as it could not compete with the pricing of the subject goods. From the fourth quarter of 2018 onward, Magotteaux made quarterly offers with increasingly lowered prices but was unable to secure any sales. However, in 2020, due to supply disruptions, the company purchased a limited amount of grinding media from Magotteaux as a “spot sale.” Magotteaux explained that it made the sale at a lower price, and committed to that price for the remainder of 2020 to attempt to gain orders from this purchaser.<sup>89</sup> According to Magotteaux, it failed to make further sales to this company.<sup>90</sup>

[110] With respect to the second common account, Magotteaux submitted that it lowered prices due to low-priced competition from subject goods.<sup>91</sup> According to Magotteaux, this purchaser also began product trials (i.e. “marked ball tests”) with grinding media supplied by Vega in the second half of 2020, which corresponds with the instances of competition in the common accounts data.<sup>92</sup> AIA/Vega confirmed that sales to this purchaser were made in the context of product trial tests and therefore the goods were not competitively priced.<sup>93</sup>

[111] The Tribunal therefore concludes that the subject goods significantly undercut the price of like goods, particularly in 2019 and 2020, which corresponded to the period during which there was a significant increase in the volume of subject imports and a considerable decline in the sales volumes of like goods.

### Price depression

[112] Magotteaux submitted that subject imports depressed the prices of the like goods over the POI.

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<sup>85</sup> Exhibit NQ-2021-001-07 (protected), Table 44.

<sup>86</sup> *Ibid.*, Tables 46, 48.

<sup>87</sup> *Ibid.*, Tables 60-62; Exhibit NQ-2021-001-06, Tables 60-62.

<sup>88</sup> Exhibit NQ-2021-001-07 (protected), Tables 63, 64.

<sup>89</sup> Exhibit NQ-2021-001-A-06 (protected) at paras. 26-40; Exhibit NQ-2021-001-A-05 at paras. 26-40

<sup>90</sup> Exhibit NQ-2021-001-A-06 (protected) at paras. 42-43; Exhibit NQ-2021-001-A-05 at paras. 42-43.

<sup>91</sup> Exhibit NQ-2021-001-A-06 (protected) at paras. 73-74; Exhibit NQ-2021-001-A-05 at paras. 73-74.

<sup>92</sup> Exhibit NQ-2021-001-A-06 (protected) at para. 75; Exhibit NQ-2021-001-A-05 at para. 75; Exhibit NQ-2020-002-07 (protected), Table 64.

<sup>93</sup> Exhibit NQ-2021-001-F-04 (protected) at para. 12; Exhibit NQ-2021-001-F-03 at para. 12.

[113] The average selling prices of subject goods and like goods both declined over the POI. Prices of like goods declined by 4 percent in 2019 and 11 percent in 2020.<sup>94</sup> Similarly, prices of the subject goods declined by 10 percent in 2019 and 9 percent in 2020.

[114] This trend is also visible at each trade level. Prices of like goods for mining sales under a term contracts declined by 4 percent in 2019 and 11 percent in 2020. In comparison, prices of subject imports at the same trade level declined by 10 percent in 2019 and a further 10 percent in 2020.<sup>95</sup> For all other trade levels, prices of like goods declined in 2019 and 2020, while prices of subject goods fluctuated but ultimately declined between 2018 and 2020.<sup>96</sup>

[115] The downward trend was also present in prices of benchmark products where there was ongoing competition between subject goods and domestic production in all eight quarters examined (i.e. the first quarter of 2019 to the fourth quarter of 2020).<sup>97</sup>

[116] The Tribunal's findings on subject import volumes and price undercutting are significant in the context of the price depression analysis. Following a significant increase in subject import volumes and a period of significant price undercutting in 2019, domestic prices saw a steeper decline in 2020. In addition, Magotteaux's decline in market share slowed to 7 percentage points in 2020, compared to 33 percentage points lost in 2019, suggesting that it adopted a strategy of lowering its prices in response to undercutting in an attempt to preserve sales volumes.<sup>98</sup> This is supported by the evidence of Mr. Marin, who explained that Magotteaux responded to the presence of subject goods by lowering prices during negotiations to attempt to maintain business, but was ultimately unable to maintain its sales volumes.<sup>99</sup>

[117] AIA/Vega argued that declining prices were caused by lower costs of raw materials. Indeed, Magotteaux's unit cost of goods sold (COGS) declined in each year of the POI. However, the decline in unit COGS in 2020 was exceeded by the decline in net sales value of domestically produced like goods that year. As set out in greater detail below, this resulted in a net loss for Magotteaux.<sup>100</sup> The evidence therefore indicates that the decrease in prices was not fully attributable to lowered costs and suggests that the subject goods exerted downward pressure on the price of like goods.

[118] The Tribunal therefore concludes that the subject goods significantly depressed the price of the like goods in 2020.

### Price suppression

[119] The price suppression analysis considers whether subject goods significantly suppressed the price of like goods by preventing price increases for those like goods that would otherwise likely have occurred.<sup>101</sup> In order to assess whether subject goods suppressed the price of the like goods, the Tribunal therefore typically compares the domestic industry's average unit COGS or cost of goods

<sup>94</sup> Exhibit NQ-2021-001-06, Table 43.

<sup>95</sup> *Ibid.*, Table 45.

<sup>96</sup> *Ibid.*, Tables 47, 49, 51.

<sup>97</sup> Exhibit NQ-2021-001-07 (protected), Tables 52-57.

<sup>98</sup> *Ibid.*, Tables 13, 19, 42; Exhibit NQ-2021-001-06, Tables 14, 20, 43.

<sup>99</sup> *Transcript of Public Hearing* - Evidence at 39-40, 125-126.

<sup>100</sup> Exhibit NQ-2021-001-07 (protected), Table 65; *Transcript of Public Hearing* - Evidence at 51.

<sup>101</sup> Paragraph 37.1(1)(b)(iii) of the *Regulations*.

manufactured (COGM) with its average selling prices in the domestic market to determine whether the domestic industry has been able to increase selling prices in line with increases in costs.

[120] Following this approach, the pricing data in the investigation report do not suggest there was any price suppression during the POI. Both COGS and COGM decreased on a per-unit basis over the POI, indicating that there was never an increase in costs which needed to be met with an increase in the price of domestically produced like goods.<sup>102</sup>

[121] Magotteaux argued that it experienced price suppression because the decline in its selling prices exceeded the decline in its costs, and its prices were not able to remain in step with its costs and resulted in lower per-unit gross margins. However, without an actual increase in COGS, the Tribunal typically considers evidence of a lowered margins as price depression, rather than price suppression, and may otherwise take it into account in assessing the impacts of the subject goods on profitability. The Tribunal was also not presented with other evidence regarding price increases “that would otherwise likely have occurred.”

[122] The Tribunal therefore concludes that the subject goods did not suppress the price of the like goods over the POI, as there was no increase in COGM or COGS over the POI that would have triggered a need to increase selling prices.

### Conclusion

[123] Based on the foregoing, the Tribunal finds that the subject goods significantly undercut and depressed prices of domestically produced like goods over the POI, but did not suppress any such prices.

### **Resulting impact on the domestic industry**

[124] Paragraph 37.1(1)(c) of the *Regulations* requires the Tribunal to consider the resulting impact of the dumped and subsidized 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.<sup>103</sup> This impact is to be distinguished from the impact of other factors also having a bearing on the domestic industry.<sup>104</sup> Paragraph 37.1(3)(a) requires the Tribunal to consider whether a causal relationship exists between the dumping or subsidizing of the goods and the injury, retardation or

<sup>102</sup> Exhibit NQ-2021-001-07 (protected), Table 65.

<sup>103</sup> Such factors and indices include (i) any actual or potential decline in output, sales, market share, profits, productivity, return on investments or the utilization of industrial capacity, (ii) any actual or potential negative effects on cash flow, inventories, employment, wages, growth or the ability to raise capital, (ii.1) the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods, and (iii) in the case of agricultural goods, including any goods that are agricultural goods or commodities by virtue of an Act of Parliament or of the legislature of a province, that are subsidized, any increased burden on a government support programme.

<sup>104</sup> Paragraph 37.1(3)(b) of the *Regulations* directs the Tribunal to consider whether any factors other than dumping or subsidizing of the subject goods have caused injury. The factors which are prescribed in this regard are (i) the volumes and prices of imports of like goods that are not dumped or subsidized, (ii) a contraction in demand for the goods or like goods, (iii) any change in the pattern of consumption of the goods or like goods, (iv) trade-restrictive practices of, and competition between, foreign and domestic producers, (v) developments in technology, (vi) the export performance and productivity of the domestic industry in respect of like goods, and (vii) any other factors that are relevant in the circumstances.



threat of injury, on the basis of the volume, the price effect, and the impact on the domestic industry of the dumped or subsidized goods.

### Sales and market share

[125] Magotteaux's domestic sales of like goods declined over the POI, decreasing by 32 percent in 2019 and a further 16 percent in 2020.<sup>105</sup> This trend is reflected in Magotteaux's sales to mining customers under term contracts, which fell by 34 percent in 2019 and 14 percent in 2020.<sup>106</sup>

[126] For all other trade levels, domestic sales of domestic production saw growth in 2019, and declined in 2020.<sup>107</sup> As explained above, each of these trade levels, individually and taken together, represent very low percentages of total sales volumes and are therefore not indicative of Magotteaux's overall performance. In addition, due to the small volumes, any changes from year to year resulted in large percent changes from one period to the next.

[127] The total Canadian market for grinding media remained relatively stable over the POI. The market expanded in 2019 and lost some of that gain in 2020.<sup>108</sup> Overall, there was a modest increase in the total market over the POI. As such, market expansion in 2019 was entirely fuelled by growth in sales of subject goods, which saw a 398 percent increase from 2018. Sales of subject goods increased by a further 11 percent in 2020, despite the contraction in the market that year.<sup>109</sup>

[128] These market shifts resulted in a loss of market share for like goods. Magotteaux lost 33 percentage points of market share in 2019 and an additional 7 percentage points in 2020. Conversely, the subject goods gained 34 points of market share in 2019 and 7 points in 2020.<sup>110</sup> This data indicates that subject goods displaced domestic production in 2019 and 2020. Sales to mining customers under term contracts saw the same displacement of domestic production by subject goods.<sup>111</sup>

[129] The other trade levels saw fluctuations in sales and market share trends. With respect to other mining sales, domestic production gained market share at the expense of subject goods in 2019, but this trend reversed in 2020.<sup>112</sup> With respect to sales to the cement, utilities and aluminum segment, sales of like goods increased and gained market share in 2019, which was at the expense of Magotteaux's own non-subject import sales. In 2020, sales of like goods and market share declined, which can be attributed to the subject goods.<sup>113</sup> However, the Tribunal again notes that these trade levels represent a minimal share of market volumes.

[130] In light of the foregoing, the Tribunal finds that the domestic industry lost sales and market share over the POI due to the presence of the subject goods.

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<sup>105</sup> Exhibit NQ-2021-001-06, Table 18; Exhibit NQ-2021-001-07 (protected), Tables 17, 18.

<sup>106</sup> Exhibit NQ-2021-001-06, Table 22; Exhibit NQ-2021-001-07 (protected), Tables 21, 22.

<sup>107</sup> Exhibit NQ-2021-001-06, Tables 26, 30, 34.

<sup>108</sup> *Ibid.* at 26; Exhibit NQ-2021-001-07 (protected), Table 18.

<sup>109</sup> Exhibit NQ-2021-001-07 (protected), Table 17; Exhibit NQ-2021-001-06, Table 18.

<sup>110</sup> Exhibit NQ-2021-001-06, Table 20; Exhibit NQ-2021-001-07 (protected), Tables 19, 20.

<sup>111</sup> Exhibit NQ-2021-001-06, Table 24; Exhibit NQ-2021-001-07 (protected), Tables 23, 24.

<sup>112</sup> Exhibit NQ-2021-001-06, Tables 26, 28; Exhibit NQ-2021-001-07 (protected), Tables 25-28.

<sup>113</sup> Exhibit NQ-2021-001-06, Tables 30, 32; Exhibit NQ-2021-001-07 (protected), Tables 29-32.

### Financial performance

[131] With respect to domestic sales in 2019, Magotteaux's sales volumes and net sales value on a per-unit basis declined, which the Tribunal found was attributable to the subject goods. However, Magotteaux nevertheless saw improved gross margins and net income on a per-unit basis due to a greater decline in unit COGS, as described above.<sup>114</sup>

[132] With respect to domestic sales in 2020, Magotteaux saw further declines in sales volumes and prices, which the Tribunal also found were attributable to the subject goods. These declines exceeded further declines in unit COGS and led to reduced gross margins on a per-unit level. As a result, Magotteaux saw net losses.<sup>115</sup>

[133] Magotteaux's export sales volumes increased from 2018 to 2020, but financial performance on exports ultimately declined over the POI.<sup>116</sup>

[134] Overall, the evidence indicates that Magotteaux experienced a significant decline in profitability over the POI due to the presence of subject goods.

### Other performance indicators

[135] Domestic production for domestic sales declined by 34 and 15 percent in 2019 and 2020, respectively. These declines are almost identical to the declines in Magotteaux's domestic sales from domestic production, which resulted from losing market share to subject goods. Total domestic production fared better, declining by 9 percent in 2019, and remaining steady in 2020, due to increases in production for export sales.<sup>117</sup> The declines in total domestic production were therefore attributable to declines in production for domestic sales.

[136] Magotteaux's practical plant capacity remained steady over the POI, but capacity utilization rates followed the same trends as observed for domestic production. The capacity utilization rate for domestic sales declined in both 2019 and 2020, while the capacity utilization rate for export sales increased in both years. The capacity utilization for total production declined in 2019 and remained steady in 2020.<sup>118</sup> Productivity also declined from 2018 to 2020.<sup>119</sup>

[137] Direct employment declined by 3 percent in 2019 and 1 percent in 2020. Hours worked and wages directly attributable to production of grinding media saw declines in 2019, and some improvement in 2020, though both remained at levels lower than in 2018.<sup>120</sup> In this regard, Mr. Patrick Laplante explained that as production decreased, Magotteaux reduced working hours by shutting down its plant for four extra weeks over 2019 and 2020 to avoid layoffs, due to the difficulty of replacing highly specialized employees, but was unable to avoid decreasing its number of direct employees.<sup>121</sup>

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<sup>114</sup> Exhibit NQ-2021-001-07 (protected), Table 65.

<sup>115</sup> *Ibid.*; *Transcript of Public Hearing* - Evidence at 51. See also Exhibit NQ-2021-001-A-09 at para. 6.

<sup>116</sup> Exhibit NQ-2021-001-07 (protected), Table 66; *Transcript of Public Hearing* - Evidence at 51.

<sup>117</sup> Exhibit NQ-2021-001-07 (protected), Table 12; Exhibit NQ-2021-001-06, Tables 12, 18, 20.

<sup>118</sup> Exhibit NQ-2021-001-07 (protected), Table 70; Exhibit NQ-2021-001-06, Table 71.

<sup>119</sup> Exhibit NQ-2021-001-07 (protected), Tables 70, 71.

<sup>120</sup> *Ibid.*; Exhibit NQ-2021-001-06, Table 71.

<sup>121</sup> Exhibit NQ-2021-001-A-03 at paras. 48-51.

[138] There was limited evidence that subject goods impacted future investments.<sup>122</sup>

Magnitude of the margin of dumping and amount of subsidy

[139] As noted above, the margins of dumping determined by the CBSA ranged from 15.7 percent to 38.7 percent, and the amounts of subsidy ranged from 6.3 percent to 34.5 percent, and were therefore not insignificant. With that said, the Tribunal does not consider the margins of dumping and amount of subsidy to necessarily represent the level of the injurious effects caused by the actual prices in Canada of the subject goods during the POI. The magnitude of the margins of dumping therefore did not add much to the evidence and analysis of injury.

Conclusion

[140] On the basis of the foregoing, the Tribunal finds that Magotteaux suffered injury in the form of lost sales and market share and loss of profitability due to the presence of the subject goods, which negatively impacted production, capacity utilization rates and employment.

**Other factors**

[141] Magotteaux submitted that while COVID-19 measures had an impact on the cost of materials and logistics, it had no impact on the consumption of grinding media in Canada. According to Magotteaux, the impact of the pandemic on the grinding media industry was relatively contained. The opposing parties did not dispute this position.

[142] The Tribunal agrees that there is limited evidence to suggest that circumstances surrounding the global COVID-19 pandemic caused the injury suffered by the domestic industry in 2020.

[143] Though some purchasers reported declines in purchases of grinding media or logistical difficulties as a result of public health measures, the overall market for grinding media experienced relatively little disruption due to COVID-19 measures. Mining activity and certain construction activity were considered to be essential and saw little interruption beyond temporary halts at the start of the pandemic in March 2020.<sup>123</sup>

[144] Further, the Tribunal observes that while the overall market saw a small decline in 2020, total volume sold exceeded that of 2018. In addition, the subject goods continued to increase in sales volume and market share.

[145] The Tribunal therefore finds that the circumstances relating to the COVID-19 pandemic did not have a significant impact on the domestic industry. Consequently, the injury suffered by Magotteaux cannot be attributed to this other factor.

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<sup>122</sup> *Ibid.* at paras. 45-47; Exhibit NQ-2021-001-A-04 (protected) at paras. 45-47; Exhibit NQ-2021-001-10.01 (protected) at 13.

<sup>123</sup> *Transcript of Public Hearing* - Evidence at 51, 52, 69; Exhibit NQ-2021-001-12.13 at 8; Exhibit NQ-2021-001-13.13 (protected) at 2; Exhibit NQ-2021-001-12.09 at 9; Exhibit NQ-2021-001-13.09 (protected) at 2; Exhibit NQ-2021-001-15.01 at 7; Exhibit NQ-2021-001-16.01 (protected) at 2.

## Materiality

[146] The Tribunal will now determine whether the effects of imports of the subject goods noted above are “material,” as contemplated in the definition of “injury” under section 2 of *SIMA*. *SIMA* does not define the term “material.” However, both the extent of injury during the relevant time frame and the timing and duration of the injury are relevant considerations in determining whether any injury caused by the subject goods is “material.”<sup>124</sup>

[147] In this case, Magotteaux experienced injury in 2019 and 2020, due to significant volumes of subject imports displacing domestic sales and undercutting and depressing domestic prices. The timing of these effects coincides with the CBSA’s period of investigation, which ranged from October 1, 2019, to September 30, 2020. These impacts caused Magotteaux’s financial performance indicators, including sales volumes and net sales value on a per-unit basis, to deteriorate in 2019 and further in 2020. Though Magotteaux managed to remain profitable in 2019 due to lowered costs, its profitability worsened considerably in 2020.

[148] In the circumstances, the Tribunal finds that the extent of the injury was material. The Tribunal therefore finds that the dumping and subsidizing of the subject goods caused material injury to the domestic industry.

## Conclusion

[149] In view of the foregoing, the Tribunal finds that the domestic industry was materially injured by the dumping and subsidizing of the subject goods from India. Accordingly, the Tribunal need not address the question of whether the subject goods are threatening to cause injury.

## EXCLUSION

[150] The Tribunal received a request from the Cement Producers to exclude products from the finding. Specifically, the Cement Producers requested a product exclusion for the entirety of the scope of the subject goods imported for use in cement production facilities (i.e. the goods subject to the exclusion request). For the reasons that follow, the Tribunal has decided to grant the product exclusion request.

[151] Before addressing this request, the Tribunal will outline certain general principles and the relevant factors it took into consideration in determining whether to grant the requested product exclusion.

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<sup>124</sup> The Tribunal suggested, in *Certain Hot-rolled Carbon Steel Plate* (27 October 1997), NQ-97-001 (CITT) at 13, that the concept of materiality could entail both temporal and quantitative dimensions: “[h]owever, the Tribunal is of the view that, to date, the injury suffered by the industry has not been *for such a duration* or *to such an extent* as to constitute ‘material injury’ within the meaning of *SIMA*” [emphasis added].

## General principles and relevant factors

[152] *SIMA* implicitly authorizes the Tribunal to grant exclusions from the scope of a finding.<sup>125</sup> Exclusions are an extraordinary remedy that may be granted at the Tribunal's discretion, i.e. when the Tribunal is of the view that such exclusions will not cause injury to the domestic industry.<sup>126</sup> The rationale is that, despite the general conclusion that the dumping and subsidizing of the goods have caused injury to the domestic industry, there may be case-specific evidence that imports of particular products captured by the definition of the goods have not caused injury.

[153] The onus is upon the requester to demonstrate that imports of the specific goods for which the exclusion is requested are not injurious to the domestic industry.<sup>127</sup> Thus there is an evidentiary burden on the requester to file evidence in support of its request.<sup>128</sup> However, there is also an evidentiary burden on the domestic producers to file evidence in order to rebut the evidence filed by the requester.<sup>129</sup>

[154] The Tribunal typically considers the following factors to determine whether the exclusion of a specific product is likely to cause injury to the domestic industry: whether the domestic industry produces the identical products for which exclusions are requested, whether it produces substitutable or competing products, whether it is an "active supplier" of identical or substitutable products and whether it has the capability of producing such products.<sup>130</sup> However, the relevance of each of these factors and the weight that the Tribunal will ascribe to any of them will depend on the facts and circumstances of each case.<sup>131</sup>

[155] Typically, the Tribunal denies exclusion requests if the domestic industry already produces the same products as those for which exclusions are requested (i.e. if it produces identical products), even if that production is limited.<sup>132</sup> The Tribunal will also deny an exclusion request where the

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<sup>125</sup> *Hetex Garn A.G. v. The Anti-dumping Tribunal*, [1978] 2 F.C. 507 (FCA); *Sacilor Aciéries v. Anti-dumping Tribunal* (1985) 9 C.E.R. 210 (CA); Binational Panel, *Induction Motors Originating In or Exported From the United States of America (Injury)* (11 September 1991), CDA-90-1904-01; Binational Panel, *Certain Cold-Rolled Steel Products Originating or Exported From the United States of America (Injury)* (13 July 1994), CDA-93-1904-09.

<sup>126</sup> See, for example, *Aluminum Extrusions* at para. 339; *Stainless Steel Wire* (30 July 2004), NQ-2004-001 (CITT) [*Stainless Steel Wire*] at para. 96. The Tribunal's very broad discretion on the issue of exclusions has been recognized by the Federal Court of Appeal. See *Owen & Company Limited v. Globe Spring & Cushion Co. Ltd.*, 2010 FCA 288 at para. 13.

<sup>127</sup> *Certain Fasteners* (6 January 2010), RR-2009-001 (CITT) [*Certain Fasteners*] at para. 243.

<sup>128</sup> *Aluminum Extrusions* at para. 192. The Tribunal will generally reject product exclusion requests where there is a lack of cogent case-specific evidence concerning the likely non-injurious effect of imports of particular products covered by the definition of the subject good in support of the requesters' claims. Indeed, a failure to provide sufficient information prevents the parties opposing the request from adequately responding and leaves the Tribunal in a position where it lacks evidence to find that imports of particular products for which exclusions are requested are not likely to cause injury to the domestic industry.

<sup>129</sup> A failure to do so could result in the requested exclusions being granted. In any case, much like its conclusion on the issue of whether the dumping and/or subsidizing of the subject goods has caused or is threatening to cause injury to the domestic industry, the Tribunal's decision on exclusion requests must be based on positive evidence, irrespective of the party that filed it.

<sup>130</sup> *Carbon Steel Screws* (2 September 2020), RR-2019-002 (CITT) [*Carbon Steel Screws*] at para. 227; *Stainless Steel Wire* at para. 96; *Certain Fasteners* at para. 245; *Aluminum Extrusions* at para. 188.

<sup>131</sup> *Carbon Steel Screws* at para. 227.

<sup>132</sup> See, for example, *Concrete Reinforcing Bar* (12 January 2000), NQ-99-002 (CITT) at 26, where the Tribunal stated that "there is no requirement in *SIMA* for the industry to supply the totality of the market's needs."

domestic industry is capable of, and provides evidence of “a firm intention” to begin, producing a product.<sup>133</sup>

[156] Altogether, the primary purpose of the product exclusion process is to ensure that its order is not overly broad. The idea is to confine the assessment of anti-dumping and countervailing duties to those goods that are likely to cause injury to the domestic industry and thereby avoid capturing goods that, despite falling within the scope of the subject goods, are unlikely to cause such injury for discrete reasons.

### **Analysis of the Cement Producers’ product exclusion request**

[157] The Cement Producers argued that Magotteaux does not produce the grinding media that Magotteaux sells to the cement segment and is therefore not an “active supplier” of the goods subject to the exclusion request. For its part, Magotteaux submitted that it produces goods that are identical to the goods subject to the exclusion request and therefore the request should be denied.

[158] There is no dispute that Magotteaux has the technical ability to produce the goods subject to the exclusion request.<sup>134</sup> The evidence establishes, and the parties agree, that Magotteaux does indeed produce the full range of grinding media falling within the product definition.

[159] However, the evidence also shows that Magotteaux does not produce any grinding media in Canada for the cement segment, and that its sales to the cement sector were of imports only. Mr. Kien Trinh of Ash Grove stated that none of the grinding media purchased by Ash Grove from Magotteaux in the past 10 years was produced in Canada.<sup>135</sup> This evidence was also echoed by Mr. Atl Martinez of LafargeHolcim North America and Mr. Greg Bailey of Lehigh Hanson, Inc.<sup>136</sup> This is consistent with the fact that Magotteaux had no sales of domestic production to the cement sector during the POI.<sup>137</sup>

[160] The record shows that Magotteaux’s sales to the Cement Producers are of grinding media produced at its sister plants in other countries, notably at its U.S. plant in Pulaski, Tennessee. Witnesses for Magotteaux explained that the Magog plant is more efficient when producing high quantities of the same type of grinding media.<sup>138</sup> As a result, the manufacturing of grinding media for use by cement producers, which typically purchase small quantities of various types, impacts efficiency at the Magog plant, as in order to produce each different size or composition of grinding media, production must be paused to switch the mold or melt new alloy.<sup>139</sup> Orders of assorted types were therefore allocated to the Pulaski plant.<sup>140</sup>

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<sup>133</sup> *Heavy Plate* (5 February 2021), NQ-2020-001 (CITT) at para. 161; *Hot-rolled Carbon Steel Plate* (4 June 2014), NQ-2013-005 (CITT) at para. 222.

<sup>134</sup> *Transcript of Public Hearing* - Evidence at 16-17; Exhibit NQ-2021-001-A-08 (protected) at paras. 19-20.

<sup>135</sup> Exhibit NQ-2021-001-22.01 at 12; *Transcript of Public Hearing* - Evidence at 232-233.

<sup>136</sup> Exhibit NQ-2021-001-22.01 at 18-19, 24-25; Exhibit NQ-2021-001-23.01 (protected) at 70-71, 82-83; *Transcript of Public Hearing* - Evidence at 202-203, 218.

<sup>137</sup> Exhibit NQ-2021-001-RI-01 at 9; Exhibit NQ-2021-001-RI-01B at 1; Exhibit NQ-2021-001-RI-01A (protected) at 9; Exhibit NQ-2021-001-RI-01C (protected) at 1; *Transcript of Public Hearing* - Evidence at 7-8, 54, 66.

<sup>138</sup> Exhibit NQ-2021-001-A-03 at para. 42; Exhibit NQ-2021-001-A-07 at para. 19; Exhibit NQ-2021-001-A-08 (protected) at para. 19; *Transcript of Public Hearing* - Evidence at 59.

<sup>139</sup> Exhibit NQ-2021-001-A-07 at para. 19; Exhibit NQ-2021-001-A-08 (protected) at para. 19; Exhibit NQ-2021-001-A-03 at para. 42.

<sup>140</sup> Exhibit NQ-2021-001-A-03 at para. 42.

[161] Magotteaux submitted that pressure from the subject goods pushed Magotteaux to shift smaller orders to Pulaski to keep the Magog plant as efficient as possible, but witness testimony confirmed that the change in allocation occurred more than 10 years ago.<sup>141</sup>

[162] Magotteaux also argued that it imports grinding media for sales to cement users due to purchasers' own North American pricing imperatives, which require Magotteaux to source from the United States, not because Magotteaux cannot or will not provide grinding media from its Magog plant. In this regard, the Cement Producers provided evidence to indicate that none of the three cement producers imposed sourcing requirements that would prohibit Magotteaux from supplying grinding media through its Magog plant, which the Tribunal accepts.<sup>142</sup>

[163] Finally, there was no evidence to convince the Tribunal that Magotteaux had a firm intention to begin producing grinding media for cement end users. Magotteaux confirmed that there had been no attempts or plans in 2019 or 2020 to allocate cement production back to the Magog plant.<sup>143</sup> Magotteaux also confirmed that there were no offers during the POI to supply the Cement Producers with grinding media produced in Canada, which was consistent with the evidence of Mr. Trinh and Mr. Bailey.<sup>144</sup>

[164] On the basis of the foregoing evidence, the Tribunal finds that Magotteaux does not produce grinding media for use in cement production and has no plans to do so. Accordingly, granting the exclusion would not cause injury to Magotteaux. The request for an exclusion for the subject goods imported for use in cement production facilities is therefore granted.

## CONCLUSION

[165] For the reasons set out above, the Tribunal finds, pursuant to subsection 43(1) of *SIMA*, that the dumping and subsidizing of the subject goods have caused injury to the domestic industry.

[166] Furthermore, the Tribunal hereby excludes subject goods imported for use in cement production facilities.

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Serge Fréchette  
Serge Fréchette  
Presiding Member

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Susan D. Beaubien  
Susan D. Beaubien  
Member

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Randolph W. Heggart  
Randolph W. Heggart  
Member

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<sup>141</sup> *Transcript of Public Hearing* - Evidence at 60.

<sup>142</sup> Exhibit NQ-2021-001-27.01 (protected) at 22-23, 25, 27; Exhibit NQ-2021-001-26.01 at 22-23, 25, 27.

<sup>143</sup> *Transcript of Public Hearing* - Evidence at 91-94.

<sup>144</sup> *Ibid.* at 96; Exhibit NQ-2021-001-22.01 at 13, 24-25; Exhibit NQ-2021-001-23.01 (protected) at 13, 82-83.