



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Dumping and Subsidizing

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## FINDING AND REASONS

Inquiry NQ-2021-004

Oil Country Tubular Goods

*Finding issued  
Wednesday, January 26, 2022*

*Reasons issued  
Thursday, February 10, 2022*

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

## OIL COUNTRY TUBULAR GOODS

### FINDING

The Canadian International Trade Tribunal, pursuant to the provisions of section 42 of the *Special Import Measures Act* (SIMA), has conducted an inquiry to determine whether the dumping of 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  $\frac{3}{8}$  inches to 13  $\frac{3}{8}$  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, has caused injury or retardation or is threatening to cause injury, as these words are defined in SIMA.

Further to the Tribunal's inquiry, and following the issuance by the President of the Canada Border Services Agency of a final determination dated December 22, 2021, that the above-mentioned goods have been dumped, the Tribunal finds, pursuant to subsection 43(1) of SIMA, that the said dumping has not caused injury and is not threatening to cause injury to the domestic industry.

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

Frédéric Seppey  
\_\_\_\_\_  
Frédéric Seppey  
Member

Peter Burn  
\_\_\_\_\_  
Peter Burn  
Member

The statement of reasons will be issued within 15 days.

Place of Hearing:	Via videoconference
Dates of Hearing:	December 29 to 31, 2021, and January 4 and 5, 2022
Tribunal Panel:	Serge Fréchette, Presiding Member Frédéric Seppey, Member Peter Burn, Member
Tribunal Secretariat Staff:	Alain Xatruch, Lead Counsel Sarah Shinder, Counsel Shawn Jeffrey, Lead Analyst Chelsea Lappin, Analyst Joseph Long, Analyst Patrick Stidwill, Data Services Advisor Matthew Riopelle, Registrar Officer Geneviève Bruneau, Registrar Officer

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Tenaris Canada

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Trimark Tubulars Ltd.

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## STATEMENT OF REASONS

### INTRODUCTION

[1] The mandate of the Canadian International Trade Tribunal in this inquiry conducted pursuant to section 42 of the *Special Import Measures Act*<sup>1</sup> (SIMA) is to determine whether the dumping of certain oil country tubular goods (OCTG) originating in or exported from the United Mexican States (Mexico) (the subject goods) has caused injury or is threatening to cause injury to the domestic industry.

[2] The Tribunal has determined, for the reasons that follow, that the dumping of the subject goods has not caused injury and is not threatening to cause injury to the domestic industry.

### BACKGROUND

[3] This inquiry stems from a complaint filed with the Canada Border Services Agency (CBSA) on May 10, 2021, by Evraz Inc. NA Canada (Evraz) and Welded Tube of Canada Corp. (WTC) (collectively, the complainants), and the subsequent decision by the CBSA, on June 30, 2021, to initiate an investigation into the alleged dumping of the subject goods pursuant to subsection 31(1) of SIMA.

[4] On July 2, 2021, as a result of the CBSA's decision to initiate the investigation, the Tribunal initiated a preliminary injury inquiry pursuant to subsection 34(2) of SIMA. On August 30, 2021, pursuant to subsection 37.1(1), the Tribunal determined that there was evidence that disclosed a reasonable indication that the dumping of the subject goods had caused injury to the domestic industry.<sup>2</sup>

[5] On September 28, 2021, the CBSA made a preliminary determination of dumping in respect of the subject goods.<sup>3</sup> It also considered that the imposition of provisional duty was necessary to prevent injury.<sup>4</sup> On September 29, 2021, the Tribunal commenced this inquiry.<sup>5</sup>

[6] The Tribunal's period of inquiry (POI) was from January 1, 2018, to June 30, 2021, and included two interim periods: January 1, 2020, to June 30, 2020 (interim 2020), and January 1, 2021, to June 30, 2021 (interim 2021).

[7] As part of this inquiry, a number of known domestic producers, importers, purchasers and foreign producers of OCTG were asked to respond to Tribunal questionnaires by October 20, 2021. The Tribunal issued one set of questionnaires for domestic producers, importers and purchasers as part of both the present inquiry and, what was at the time a potential inquiry concerning the dumping

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<sup>1</sup> R.S.C., 1985, c. S-15.

<sup>2</sup> *Oil Country Tubular Goods* (30 August 2021), PI-2021-003 (CITT) [*OCTG III PI*].

<sup>3</sup> Exhibit NQ-2021-004-01 at 10–11.

<sup>4</sup> *Ibid.* at 10.

<sup>5</sup> Exhibit NQ-2021-004-03.

of OCTG of the same description originating in or exported from the Republic of Austria (Austria),<sup>6</sup> as the POI and the possible questionnaire respondents would be the same for both inquiries.<sup>7</sup>

[8] The Tribunal received replies to its Producers' Questionnaire from the complainants, which both produce welded (also referred to as electric resistance welded, or ERW) OCTG in Canada, and from Tenaris Canada, a collection of affiliated companies comprised of Algoma Tubes Inc. (Algoma), Prudential Steel ULC (Prudential), Tenaris Global Services (Canada) Inc. (TGSC) and Hydril Canadian Company LP (Hydril).<sup>8</sup> The Tribunal also received replies to its other questionnaires from 12 importers of subject goods and/or goods meeting the product definition, including WTC and Tenaris Canada, as well as from 15 purchasers and 1 foreign producer of such goods.<sup>9</sup>

[9] Using the questionnaire responses and other information on the record, staff of the Secretariat to the Tribunal prepared public and protected investigation reports, which were issued to parties on November 17, 2021.<sup>10</sup> Revised investigation reports were issued on November 26, 2021, and again on December 7, 2021, with a number of additional minor revisions being made to the reports thereafter.<sup>11</sup>

[10] On November 24, 2021, following the receipt of revisions to the benchmark product data in Tenaris Canada's questionnaire responses and the identification of an inconsistency in how the data had been reported by some of the other respondents, the Tribunal sent a supplemental questionnaire to selected respondents in order to collect detailed information with respect to sales of both base and enhanced grades of benchmark products. Responses were due by December 1, 2021. On December 7, 2021, the Tribunal issued public and protected investigation report supplements, which presented the information collected for base and enhanced grades of benchmark products separately. A minor revision to the supplements was made on January 4, 2022.

[11] On November 24, 2021, Tenaris Canada filed five requests for the exclusion of specific products from any eventual finding of injury or threat of injury in respect of the subject goods. The complainants filed responses opposing the requests on December 2, 2021, and Tenaris Canada filed

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<sup>6</sup> At the time the Tribunal issued its questionnaires, an inquiry to determine whether the dumping of certain OCTG from Austria has caused injury or is threatening to cause injury to the domestic industry had not been initiated as the CBSA had not yet made a preliminary determination of dumping in respect of those goods. The CBSA made such a determination on October 25, 2021. Consequently, on October 26, 2021, the Tribunal initiated, pursuant to subsection 42(1) of SIMA, an inquiry in respect of certain OCTG from Austria (Inquiry NQ-2021-006, *OCTG IV*).

<sup>7</sup> The foreign producers in *OCTG IV* were asked to respond to Tribunal questionnaires on October 26, 2021, when the Tribunal initiated its inquiry in that case.

<sup>8</sup> During the POI, Tenaris Canada consisted of Algoma (the only domestic producer of seamless OCTG, which it produces in Sault Ste. Marie, Ontario), Prudential (which, until July 2020, produced welded OCTG at its facility in Calgary, Alberta), TGSC (which provides management, sales and marketing support to Algoma and formerly provided those services to Prudential while also importing OCTG from Mexico and other countries) and Hydril (which provides specialized threading and coupling operations to produce accessories and premium connections for casing and tubing). The production of welded OCTG (i.e. OCTG formerly produced by Prudential) is currently in the process of being relocated to the Algoma facility in Sault Ste. Marie as part of a large industrial transformation project.

<sup>9</sup> One of the responses to the Purchasers' Questionnaire was incomplete and could therefore not be used.

<sup>10</sup> The protected investigation report containing information designated as confidential was distributed, along with the remainder of the protected record, to counsel who had signed the required declaration and undertaking.

<sup>11</sup> Minor revisions or addendums were issued on December 14 and 20, 2021, and on January 4, 2022. The revised reports issued on December 7, 2021, incorporated an addendum issued on November 29, 2021.



replies to these responses on December 10, 2021. On December 14, 2021, the Tribunal provided the complainants with an opportunity to file submissions in response to Tenaris Canada's proposed narrowing of the terms of one of its exclusion requests. The complainants filed such submissions on December 17, 2021, and Tenaris Canada replied to these submissions on December 21, 2021.

[12] On November 25, 2021, the complainants and the United Steelworkers (USW)<sup>12</sup> filed case briefs, witness statements and other evidence in support of a finding of injury or threat of injury in respect of the subject goods. Alberta Tubular Products Ltd. (ATP) and Trimark Tubulars Ltd. (Trimark), both stocking distributors of domestically produced and imported OCTG, also filed witness statements in support of such a finding. On December 3, 2021, Tenaris Canada filed a case brief, witness statements and other evidence opposing a finding of injury or threat of injury. On December 13, 2021, the complainants filed a reply brief, reply witness statements and additional evidence. The USW also filed a reply brief while ATP and Trimark filed reply witness statements.

[13] As the Tribunal issued the investigation report supplements on December 7, 2021, it provided Tenaris Canada with an opportunity to file additional submissions with respect to the contents of the supplements, which it did on December 16, 2021. The complainants replied to these submissions on December 20, 2021.

[14] On November 25, 2021, the complainants and Tenaris Canada filed various public and protected requests for information (RFIs) with the Tribunal, which were directed at each other and, in the case of Tenaris Canada, were also directed at ATP and Trimark. On November 29, 2021, the Tribunal received objections to certain RFIs from the complainants. On December 1, 2021, after reviewing the RFIs and taking into account the rationale for them and the objections filed, the Tribunal issued directions to the parties, indicating which RFIs required responses. Responses were required from Evraz, Trimark and Tenaris Canada.<sup>13</sup> The Tribunal also directed Tenaris Canada to respond to additional questions. The responses were received and placed on the record on December 10, 2021.

[15] As per its usual practice, the Tribunal accorded parties the opportunity to notify it of matters which had arisen prior to the hearing. On December 22, 2021, the complainants and Tenaris Canada made requests to the Tribunal, with one of Tenaris Canada's requests being the subject of an objection by Trimark. The Tribunal issued directions to parties in relation to these requests on December 24, 2021.

[16] A hearing with public and *in camera* sessions was held by videoconference from December 29 to 31, 2021, and on January 4 and 5, 2022. The Tribunal heard evidence on the issue of injury from witnesses for Evraz, WTC, ATP, Trimark, Tenaris Canada and the USW, as well as from

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<sup>12</sup> The USW is an international trade union representing a number of members directly or indirectly employed in the manufacture of OCTG at Evraz, WTC, Algoma and Prudential. Although Tenaris Canada permanently closed its Prudential mill in Calgary, Alberta, the workers remain USW members in good standing until Prudential settles its pension liabilities. See Exhibit NQ-2021-004-E-02 at paras. 4-7.

<sup>13</sup> Exhibit NQ-2021-004-RFI-01; Exhibit NQ-2021-004-RFI-01.A (protected).

a witness for Cenovus Energy Inc. (Cenovus), who was called by the Tribunal.<sup>14</sup> The Tribunal also heard closing arguments on the issues of injury and product exclusions from the complainants, and from Trimark, the USW and Tenaris Canada.

[17] The Tribunal issued its finding on January 26, 2022.

## RESULTS OF THE CBSA'S INVESTIGATION

[18] On December 22, 2021, the CBSA, pursuant to paragraph 41(1)(b) of SIMA, made a final determination of dumping in respect of the subject goods.<sup>15</sup> The CBSA's period of investigation was from May 1, 2020, to April 30, 2021.<sup>16</sup> For this period, the CBSA calculated a margin of dumping of 43.3 percent for the subject goods exported by Tubos de Acero de Mexico, SA (TAMSA) and a margin of dumping of 164.7 percent for the subject goods exported by all other exporters.<sup>17</sup> According to the CBSA, the subject goods exported to Canada by TAMSA during the period of investigation represented 99 percent of the value of all subject goods shipped to Canada during this period.<sup>18</sup>

## PRODUCT

### Product definition

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

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.<sup>19</sup>

### Additional information

[20] The CBSA provided the following additional product information:

[26] For greater certainty, the term "green tube" refers to unfinished casing, tubing, or other tubular products (including upgradable OCTG that may or may not already be tested, inspected, and/or certified) originating in or exported from Mexico and imported for use in

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<sup>14</sup> Mr. Chris Awe of Cenovus accepted the invitation extended by the Tribunal to testify at the hearing and give evidence to assist the Tribunal in rendering its decision. As per its usual practice, the Tribunal issued a subpoena compelling Mr. Awe to attend the hearing and provide oral testimony in response to questions pertaining to the list of general topics set out in an appendix to the subpoena. The Tribunal also requested that Mr. Awe file, prior to the hearing, a brief statement outlining his anticipated testimony in regard to each of these general topics. Mr. Awe filed a public will-say statement with the Tribunal on December 24, 2021.

<sup>15</sup> Exhibit NQ-2021-004-04 at 9–10.

<sup>16</sup> Exhibit NQ-2021-004-04.A at para. 11.

<sup>17</sup> Exhibit NQ-2021-004-04 at 14.

<sup>18</sup> Exhibit NQ-2021-004-04.A at para. 74.

<sup>19</sup> Exhibit NQ-2021-004-04 at 9.

the production or finishing of OCTG meeting final specifications, including grade and connections, required for use downhole. Green tubes, as they are commonly referred to in the OCTG industry, are intermediate or in process tubing and casing which require additional processing, such as threading, heat treatment and testing, before they can be used as fully finished oil and gas well casing or tubing in end-use applications.

[27] For greater clarity, the product definition does not include green tubes originating in or exported from Mexico which are upgraded in the manner described above in an intermediate country prior to being exported to Canada for purposes of this dumping investigation. The CBSA considers these high-strength tubing and casing to originate in the intermediate country for purposes of the investigation.

[28] Pup joints are essentially short lengths of OCTG used for spacing in a drill string, and these are excluded where their length is 12 feet or below (with a three-inch tolerance), as defined in the API 5CT specification.

[29] Furthermore, accessory products used in conjunction with downhole OCTG tubing and casing strings such as cross-over joints, marker joints, elbows etc. are not covered by the product definition, nor are further manufactured products which use OCTG as inputs to their production such as vacuum insulated tubing (VIT). Coiled tubing is also not part of the product definition.<sup>20</sup>

[21] Although not reproduced here, additional information with respect to the characteristics and uses of the product and its production process was also provided by the CBSA in its statement of reasons for its final determination of dumping.<sup>21</sup>

## LEGAL FRAMEWORK

[22] The Tribunal is required, pursuant to subsection 42(1) of SIMA, to inquire as to whether the dumping of the subject goods has caused injury or retardation<sup>22</sup> or is threatening to cause injury, with “injury” being defined, in subsection 2(1), as “. . . material injury to a domestic industry”. In this regard, “domestic industry” is defined in subsection 2(1) by reference to the domestic production of “like goods”.

[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.

[24] The Tribunal can then assess whether the dumping of the subject goods has 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>23</sup> If the Tribunal

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<sup>20</sup> Exhibit NQ-2021-004-04.A at paras. 26–29.

<sup>21</sup> *Ibid.* at paras. 30–50.

<sup>22</sup> Subsection 2(1) of SIMA defines “retardation” as “. . . material retardation of the establishment of a domestic industry.” As a domestic industry is already established, the Tribunal will not need to consider the question of retardation.

<sup>23</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.

finds no injury and no threat of injury, it will not need to proceed with an examination of the product exclusions filed by Tenaris Canada.

[25] 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.

## LIKE GOODS AND CLASSES OF GOODS

[26] In order for the Tribunal to determine whether the dumping of the subject goods has caused or is threatening to cause injury to the domestic producers of like goods, it must determine which domestically produced goods, if any, constitute like goods in relation to the subject goods. The Tribunal must also assess whether there is, within the subject goods and the like goods, more than one class of goods.<sup>24</sup>

[27] 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.

[28] 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>25</sup> In addressing the issue of classes of goods, the Tribunal typically examines whether goods potentially included in separate classes of goods constitute “like goods” in relation to each other. If those goods are “like goods” in relation to each other, they will be regarded as comprising a single class of goods.<sup>26</sup>

[29] In previous proceedings concerning both similarly and identically defined OCTG, the Tribunal has consistently found, taking into account the above factors, that domestically produced seamless and welded OCTG constitute “like goods” in relation to the subject goods and that there is a single class of goods.<sup>27</sup> Notably, in *OCTG II*, which concerned identically defined OCTG, the Tribunal found that the characteristics of domestically produced OCTG closely resembled those of

<sup>24</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>25</sup> See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at para. 48.

<sup>26</sup> *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) at para. 115; see also *Polyisocyanurate Thermal Insulation Board* (11 April 1997), NQ-96-003 (CITT) at 10.

<sup>27</sup> See *Seamless Carbon or Alloy Steel Oil and Gas Well Casing* (10 March 2008), NQ-2007-001 (CITT) [*Seamless Casing*] at paras. 50, 60, 64–71; *Oil Country Tubular Goods* (23 March 2010), NQ-2009-004 (CITT) [*OCTG I*] at paras. 78–80, 82–83; *Oil Country Tubular Goods* (2 April 2015), NQ-2014-002 (CITT) [*OCTG II*] at paras. 32–34, 42–44. See also the Tribunal’s most recent expiry reviews of the findings in these past cases: *Seamless Carbon or Alloy Steel Oil and Gas Well Casing* (28 November 2018), RR-2017-006 (CITT) [*Seamless Casing RR*] at para. 32; *Oil Country Tubular Goods* (10 December 2020), RR-2019-005 (CITT) [*OCTG I RR*] at paras. 22–24, 27; *Oil Country Tubular Goods* (30 December 2020), RR-2019-006 (CITT) [*OCTG II RR*] at paras. 33–36.

the subject goods when produced to meet comparable specifications, that the goods were substitutable and that they generally competed against one another in the Canadian market, had the same end uses and were distributed through the same channels.<sup>28</sup> The Tribunal was also satisfied that no persuasive evidence had been presented to justify a finding that casing and tubing, or seamless and welded OCTG, constituted separate classes of goods.<sup>29</sup>

[30] The complainants submitted that the evidence on the record in this inquiry makes it clear that there have been no material changes to the physical and market characteristics of OCTG, or to the way that OCTG is produced and sold in the market, since the time of the Tribunal's prior findings. The other parties presented no evidence or argument challenging the Tribunal's prior findings on these issues.

[31] In the absence of any evidence to the contrary, the Tribunal sees no reason to reach different conclusions in the present inquiry. The Tribunal will therefore conduct its inquiry on the basis that domestically produced OCTG of the same description as the subject goods are "like goods" in relation to the subject goods and that there is a single class of goods.

## DOMESTIC INDUSTRY

[32] Subsection 2(1) of SIMA defines "domestic industry" as follows:

... the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods except that, where a domestic producer is related to an exporter or importer of dumped or subsidized goods, or is an importer of such goods, "domestic industry" may be interpreted as meaning the rest of those domestic producers.

[33] The Tribunal must therefore determine whether there has been injury, or whether there is a threat of injury, to the domestic producers as a whole of the like goods or those domestic producers whose collective production represents a major proportion of the total production of the like goods.<sup>30</sup> However, the Tribunal has the discretion to exclude a domestic producer from the domestic industry if that producer is related to an exporter or importer of dumped goods, or is itself an importer of such goods. The applicable test for determining whether a domestic producer is related to an exporter or importer of dumped goods is set out under subsection 2(1.2) of SIMA.<sup>31</sup>

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<sup>28</sup> *OCTG II* at para. 33.

<sup>29</sup> *Ibid.* at paras. 42, 44.

<sup>30</sup> While the term "major proportion" is not defined in SIMA, or in the WTO Anti-dumping Agreement (ADA), it has been interpreted to mean an important, serious or significant proportion of total domestic production of like goods and not necessarily a majority. See *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>31</sup> The test is based on the notions of control (i.e. whether the parties control each other, are controlled by a third person or control a third person) and behaviour (i.e. whether there are grounds to believe that the producer behaves differently towards the exporter or importer than does a non-related producer). 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."

[34] The evidence indicates that, during the POI, there were four known domestic producers of like goods, i.e. Evraz, WTC, Algoma and Prudential.<sup>32</sup> The Tribunal received complete responses to its Producers' Questionnaire from all of these producers.<sup>33</sup>

[35] The evidence also indicates that Algoma and Prudential were related to each other and to TGSC (which imported subject goods), TAMSA (which produced and exported subject goods), and Tenaris Global Services S.A. in Uruguay (TGSU) (an intermediary vendor which facilitated export sales of subject goods to Canada), through common ownership and control by Tenaris S.A., a Luxembourg public limited liability company (*société anonyme*).<sup>34</sup> The status of these companies as "related" was not contested by Tenaris Canada before the Tribunal. The question that therefore arises in this inquiry is whether the Tribunal should exercise its discretion to exclude Tenaris Canada, and more precisely Algoma and Prudential, from the domestic industry.

[36] At the preliminary injury inquiry stage, the Tribunal indicated that, while the issue of whether Tenaris Canada should be excluded from the domestic industry was relevant considering the status of Algoma, Prudential, TGSC and TAMSA as subsidiaries of Tenaris S.A., there was insufficient information at that time to allow it to properly decide the matter.<sup>35</sup> The Tribunal added that, during the final injury inquiry, it would examine further the manner in which Tenaris Canada sets selling prices for both domestically produced like goods and subject goods, and how its marketing strategy in this regard should be considered in the relevant behavioural analysis.<sup>36</sup>

[37] In light of the unresolved nature of this issue, the investigation report was prepared with two scenarios and corresponding sets of data, i.e. one with Tenaris Canada included as part of the domestic industry and the other where it was excluded from the domestic industry.<sup>37</sup> The Tribunal must now decide which of these two scenarios will be adopted for the purpose of its injury analysis.

### **Should Tenaris Canada be excluded from the domestic industry?**

[38] The complainants are of the view that Tenaris Canada should be excluded from the domestic industry for the purposes of the present inquiry. On the other hand, Tenaris Canada is of the view that it is first and foremost a domestic producer of like goods and should therefore form part of the domestic industry.

[39] The complainants submitted that the Tribunal should exclude Tenaris Canada through the application of its structural and behavioural framework developed under subsection 2(1) of SIMA. They submitted that, in the alternative, the Tribunal can consider Tenaris Canada as part of the domestic industry but exercise its discretion to determine injury with respect to the complainants

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<sup>32</sup> As previously mentioned, Prudential produced like goods at its facility in Calgary, Alberta, until July 2020, after which the facility was idled and then permanently decommissioned.

<sup>33</sup> The response from Tenaris Canada contained consolidated production, sales and financial data for Algoma, Prudential and TGSC (i.e. data pertaining to the production and sale of domestically produced like goods).

<sup>34</sup> See Exhibit NQ-2021-004-09.02B at 3–5; Exhibit NQ-2021-004-C-07 at 632–633, 645; Exhibit NQ-2021-004-RI-01 at 9; Exhibit NQ-2021-004-RI-01.A (protected) at 41. Algoma, Prudential, TGSC, TAMSA and TGSU are wholly owned subsidiaries of Tenaris S.A. While Tenaris Canada identified TGSU as the exporter for commercial purposes, the CBSA determined that TAMSA was the exporter for SIMA purposes (see Exhibit NQ-2021-004-04A at para. 78).

<sup>35</sup> *OCTG III PI* at para. 34.

<sup>36</sup> *Ibid.* at para. 35.

<sup>37</sup> See Exhibit NQ-2021-004-06.D at 9.

alone as constituting a “major proportion” of the domestic industry. Finally, they submitted that, in the further alternative, the Tribunal can consider Tenaris Canada as part of the domestic industry and determine injury with respect to the domestic industry “as a whole”, but treat all injury caused by Tenaris Canada’s imports from Mexico, including injury to Tenaris Canada’s own production, as legitimate injury for SIMA purposes (i.e. injury that is not considered to be self-inflicted).

[40] As the Tribunal ultimately finds that Tenaris Canada should be excluded from the domestic industry under the first of the three analytical approaches raised by the complainants, there is no need to fully address the remaining two alternative approaches.<sup>38</sup>

[41] Where a domestic producer contributes to, or benefits from, the potentially injurious dumping, either directly as an importer or indirectly through related companies, the Tribunal may decide to treat that domestic producer as if it were not part of the domestic industry and limit its analysis of injury and threat of injury to the other domestic producers in order to promote the objectives of SIMA.<sup>39</sup> Those objectives include protecting producers in Canada from injury or threat of injury caused by imports of dumped goods.<sup>40</sup>

[42] In previous 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.<sup>41</sup> 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 (both directly and indirectly through related companies). Behavioural factors can include whether the producer imports the subject goods as a defensive measure against other dumped goods or as an aggressive measure to capture market share from other domestic producers of like goods, 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.

[43] These factors have been developed by the Tribunal to guide the exercise of its discretion under subsection 2(1) of SIMA. However, they are not exhaustive or universally applicable.<sup>42</sup> Nor are they intended to be applied mechanically. Rather, the weight to give to each applicable factor is highly dependent on the factual circumstances of each case. Ultimately, the exclusion of a producer

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<sup>38</sup> The Tribunal notes that, in its view, the first alternative approach proposed by the complainants is not founded in law as the Tribunal cannot exercise its discretion to assess injury to a “major proportion” of the domestic industry in circumstances where it has decided not to exclude a domestic producer that is related to an exporter or importer of dumped goods, or that is itself an importer, *and* where it has at its disposal all of the information necessary to assess injury to domestic producers “as a whole”. For reasons of judicial economy, the Tribunal will not address the second alternative approach proposed by the complainants.

<sup>39</sup> *Photovoltaic Modules and Laminates* (3 July 2015), NQ-2014-003 (CITT) [*Photovoltaic Modules*] at para. 56; *Carbon and Alloy Steel Line Pipe* (29 March 2016), NQ-2015-002 (CITT) [*Line Pipe*] at para. 70.

<sup>40</sup> *Ibid.*; *Cross-linked Polyethylene Tubing* (29 September 2006), NQ-2006-001 (CITT) at para. 54; *Canadian Steel Producers Assn. v. Canada (Commissioner of Customs and Revenue)*, [2004] 2 FCR 642, 2003 FC 1311 (CanLII) at para. 40.

<sup>41</sup> *Photovoltaic Modules* at para. 59; *Line Pipe* at para. 72; *Carbon Steel Screws* (2 September 2020), RR-2019-002 (CITT) [*Carbon Steel Screws*] at para. 36.

<sup>42</sup> *OCTG III PI* at para. 30.

from the domestic industry is entirely within the Tribunal's discretion based upon the facts presented in each inquiry.<sup>43</sup> The Tribunal will now turn to its consideration of the facts in the present inquiry.

[44] In terms of structural factors, the evidence on the record indicates that, although Tenaris Canada imported and sold into the Canadian market a fairly significant volume of subject goods during the POI, its domestic production and sales of like goods were greater throughout this period.<sup>44</sup> The evidence further indicates that Tenaris Canada was the single largest domestic producer of like goods over the POI, with its domestic production and sales of like goods accounting for a relatively large proportion of the total domestic production and sales of like goods over this period.<sup>45</sup>

[45] Therefore, from a strict mathematical standpoint, Tenaris Canada is predominantly a domestic producer. However, as will be further addressed below, the volume of subject goods imported and sold by Tenaris Canada during the POI, which is nevertheless significant, suggests that these goods were an important element of its commercial strategy and further, that they were not in the nature of a defensive measure.

[46] As indicated in the Tribunal's investigation report, Tenaris Canada was the only questionnaire respondent that reported having imported subject goods over the Tribunal's POI.<sup>46</sup> It therefore accounted for the totality of reported imports of subject goods for this period. That Tenaris Canada accounted for all, or nearly all, imports of subject goods over the POI is confirmed by the CBSA, which found that all subject goods exported to Canada by TAMSAs during its dumping period of investigation were to TGSC and that these exports represented 99 percent of the total value of subject goods shipped to Canada during this period.<sup>47</sup>

[47] The Tribunal finds that, in the circumstances of the present inquiry, this last factor is highly relevant to its analysis as it suggests that Tenaris Canada was largely, if not entirely, shielded from any adverse effects of the subject goods.

[48] In terms of behavioural factors, Tenaris S.A. is one of the world's leading producers of steel products for the global energy industry, with an integrated, worldwide network of production facilities located in over 15 countries (including Algoma of Canada and TAMSAs of Mexico).<sup>48</sup> In addition, TGSU is the global headquarters of a network of affiliates (including TGSC) that perform marketing, customer services, international distribution and logistics, thereby providing access to particular markets for all Tenaris products.<sup>49</sup> As such, TGSC offers a single price for a particular Tenaris item prior to selecting an actual source of supply from within the Tenaris production network.<sup>50</sup> TGSC's status as a "low-risk" distributor of Tenaris products means it is entitled to receive retrospective transfers from Tenaris mills, both foreign and domestic, when it sells to

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<sup>43</sup> See *EC – Iron or Steel Fasteners (China)*, WT/DS397/R at para. 7.244, where the WTO panel found that there is nothing in Articles 3.1 or 4.1 of the ADA that limits the discretion of investigating authorities to exclude, or not, related or importing domestic producers.

<sup>44</sup> Exhibit NQ-2021-004-07.C (protected), Tables 64, 68, Schedule 45.

<sup>45</sup> *Ibid.*, Table 68, Schedules 42, 45, 48.

<sup>46</sup> Exhibit NQ-2021-004-06.D, Tables 3, 4.

<sup>47</sup> Exhibit NQ-2021-004-04.A. at para. 74. See also Exhibit NQ-2021-004-04 at 19; Exhibit NQ-2021-004-C-03 at para. 15.

<sup>48</sup> Exhibit NQ-2021-004-C-07 at 631, 839.

<sup>49</sup> *Transcript of Public Hearing* at 304; *Transcript of In Camera Hearing* at 243–244.

<sup>50</sup> *Transcript of Public Hearing* at 190–191; 284–285, 291, 301, 302–303; *Transcript of In Camera Hearing* at 241–244.



end-users at prices that do not cover general, selling and administrative (GS&A) expenses or a defined target profit margin.<sup>51</sup> In the Tribunal's view, the foregoing illustrates that the Tenaris mills behave differently towards TGSC than do non-related producers, which further supports a finding that these entities are related within the meaning of that term, as defined under subsection 2(1.2) of SIMA.

[49] In addition, Tenaris Canada imported all, or nearly all, of the subject goods over the POI. Consequently, there were no other dumped goods from Mexico against which its own imports could form the basis of a defensive strategy (i.e. a strategy aimed at maintaining market share that may otherwise have been lost to subject goods imported by unrelated market competitors). Simply put, Tenaris Canada could not initiate a defensive strategy against its own imports. It therefore follows that Tenaris Canada must have imported the subject goods as part of an aggressive strategy.

[50] Tenaris Canada maintained that it did not import the subject goods as part of an aggressive strategy, but rather to complement domestic production with goods it could not produce domestically and, following the closure of its Prudential mill in 2020, to continue serving existing customers with certain grades of products that had previously been manufactured there until its new welded OCTG production line, being built at its Algoma facility in Sault Ste. Marie, becomes operational. According to Mr. Ricardo Prospero, President and Managing Director of the Tenaris companies in Canada, this new production line will be operational in March 2022, with commercial production to meet customer orders starting in April 2022.<sup>52</sup>

[51] The Tribunal is of the view that the important volume of subject goods imported and sold by Tenaris Canada during the POI was part and parcel of its commercial strategy to compete with other domestic producers for additional market share by offering customers a complete range of products in a timely manner and, in the latter part of the POI, to maintain market share that might otherwise have been lost to other domestic producers following the closure of the Prudential mill.<sup>53</sup> While there is some dispute regarding the extent to which the complainants were capable of producing all of the grades of OCTG imported by Tenaris Canada from Mexico, the evidence indicates that they could, at a minimum, produce a sizeable proportion of those grades.<sup>54</sup> The subject goods imported by Tenaris Canada were therefore not filling a specific market niche, but were instead competing broadly with like goods produced by the complainants. The Tribunal notes that the manner in which Tenaris Canada sets selling prices for both domestically produced like goods and subject goods would not fundamentally change this situation. Given these circumstances, the Tribunal finds that Tenaris Canada imported the subject goods as part of a deliberate and aggressive strategy.

[52] Tenaris Canada also argued that it should form part of the domestic industry on the basis that it is first and foremost a domestic producer of like goods, as evidenced by the fact that it was the single largest domestic producer of like goods over the POI, that its sales are primarily and increasingly from domestic production, and that it has been making significant investments to grow its Canadian operations.

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<sup>51</sup> *Transcript of Public Hearing* at 201, 275–278, 291–292, 295–296; *Transcript of In Camera Hearing* at 184–185, 190, 233–240, 253; Exhibit NQ-2021-004-RI-01 at 10.

<sup>52</sup> Exhibit NQ-2021-004-A-07 at paras. 21, 29, 60.

<sup>53</sup> See *Ibid.* at paras. 5, 9, 30, 43, 48, 51. In fact, Tenaris Canada has been importing OCTG from TAMSAC since its inception in 2000 and continuously since 2008 (see Exhibit NQ-2021-004-A-07 at para. 15).

<sup>54</sup> See Exhibit NQ-2021-004-A-05 at para. 16; Exhibit NQ-2021-004-A-06 (protected) at para. 17; Exhibit NQ-2021-004-C-02 (protected) at para. 43; Exhibit NQ-2021-004-C-11 at paras. 7–11; Exhibit NQ-2021-004-D-12 at paras. 2–5. See also the complainants' *Protected Aid to Arguments*, Vol. 18 at 15.

[53] As stated above, the Tribunal acknowledges that, based on structural factors, Tenaris Canada is first and foremost a domestic producer of like goods. Indeed, it has formed part of the domestic industry in previous injury inquiries, which did not involve dumped or subsidized Mexican OCTG. However, this conclusion must be considered in light of the fact that, in the present case, Tenaris Canada, through TGSC, imported all, or nearly all, of the subject goods over the POI and that these imports formed part of a calculated commercial strategy. Tenaris Canada's status as a domestic producer does not negate the fact that it meaningfully benefitted from the sale of subject goods, which competed broadly with the like goods produced by the complainants.

[54] Moreover, while the Tribunal has previously stated that it *typically* treats a domestic producer of like goods as if it were not part of the domestic industry if the producer is first and foremost a conduit for the importation of the subject goods<sup>55</sup>, there is no free-standing "first and foremost" legal test. The Tribunal is of the view that, where a domestic producer imports all, or nearly all, of the subject goods and those goods compete broadly with the like goods produced by the other domestic producers, as is the case here, its exclusion from the domestic industry is consistent with the objectives of SIMA, even if the producer is not first and foremost a conduit for the importation of the subject goods. Ultimately, it is the fact that Tenaris Canada substantially benefitted from the sale of the subject goods and was therefore insulated from any potential adverse effects arising therefrom, that justifies its exclusion in this present case, thereby ensuring that the aggregate data relating to the state of the domestic industry are not distorted.

[55] In light of the foregoing, the Tribunal finds that it is appropriate to exclude Tenaris Canada from the definition of the domestic industry for the purposes of the present inquiry.

### **Composition of the domestic industry**

[56] Given Tenaris Canada's exclusion, the domestic industry in this case is comprised of Evraz and WTC, the only remaining known domestic producers of OCTG covered by the product definition. The Tribunal will therefore determine whether the dumping of the subject goods has caused injury, or is threatening to cause injury, to the complainants.

### **INJURY ANALYSIS**

[57] Subsection 37.1(1) of the Special Import Measures Regulations (Regulations)<sup>56</sup> prescribes that, in determining whether the dumping has caused material injury to the domestic industry, the Tribunal is to consider the volume of the dumped goods, their effect on the price of like goods in the domestic market, and their resulting impact on the state of the domestic industry. Subsection 37.1(3) also directs the Tribunal to consider whether a causal relationship exists between the dumping of the goods and the injury on the basis of the factors listed in subsection 37.1(1), and whether any factors other than the dumping have caused injury.

[58] The Tribunal notes that, since the domestic industry is comprised of only Evraz and WTC and there is a relatively limited number of importers involved in this inquiry, it is not possible, in many cases, to reveal aggregated import, sales, pricing, production and financial data in these reasons without compromising, either directly or indirectly, the confidentiality of the information of one or

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<sup>55</sup> See, for example, *Wheat Gluten* (22 April 2021), NQ-2020-003 (CITT) at para. 40; *Carbon Steel Screws* at para. 36; *Photovoltaic Modules* at para. 78.

<sup>56</sup> SOR/84-927.

more respondents.<sup>57</sup> In these cases, the Tribunal will provide, to the extent feasible, a general range of magnitude.

[59] Before proceeding with its injury analysis, the Tribunal will first provide some context for that analysis by summarizing important developments that have occurred since it made its finding in *Seamless Casing* and that have had an impact on the OCTG market during the POI.

### Context for the injury analysis

[60] This injury inquiry (*OCTG III*) follows a number of trade remedy proceedings concerning oil and gas well casing and tubing conducted by the Tribunal since 2007.

[61] In March 2008, the Tribunal found, in *Seamless Casing*, that the dumping and subsidizing of seamless casing from the People's Republic of China (China) were threatening to cause injury to the domestic industry. This finding remains in place, having been continued by the Tribunal in March 2013 and November 2018 following the conduct of expiry reviews.<sup>58</sup> This finding will expire in November 2023, unless the Tribunal initiates an expiry review before then.

[62] In March 2010, the Tribunal found, in *OCTG I*, that the dumping and subsidizing of OCTG from China, excluding seamless casing covered by the above-mentioned finding, had caused injury to the domestic industry. This finding also remains in place, having been continued by the Tribunal in March 2015 and December 2020 following the conduct of expiry reviews.<sup>59</sup>

[63] In April 2015, the Tribunal found, in *OCTG II*, 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 was threatening to cause injury to the domestic industry. This finding was continued in part by the Tribunal in December 2020 following the conduct of an expiry review.<sup>60</sup>

[64] In April 2019, the Tribunal concluded its safeguard inquiry into the importation of seven classes of steel products, including energy tubular products (a category of products that broadly covers OCTG and line pipe), and found that, while there had been a significant increase in imports of energy tubular products from all sources (except for a small number of countries that were excluded from the inquiry), this had not caused serious injury, and was not threatening to cause serious injury, to domestic producers of like or directly competitive goods.<sup>61</sup> The domestic producers

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<sup>57</sup> The Tribunal is obligated, pursuant to section 45 of the *Canadian International Trade Tribunal Act* (CITT Act), to protect information that has been designated as confidential by respondents. As indicated in the Tribunal's investigation report, rigorous procedures are followed in preparing the report to ensure that confidentiality of data is not compromised (see Exhibit NQ-2021-004-06.D at 10–11). In some cases, revisions to the investigation report may lead to previously public information being treated as confidential so as not to expose the confidential revised data.

<sup>58</sup> *Seamless Carbon or Alloy Steel Oil and Gas Well Casing* (11 March 2013), RR-2012-002 (CITT); *Seamless Casing RR*.

<sup>59</sup> *Oil Country Tubular Goods* (2 March 2015), RR-2014-003 (CITT); *OCTG I RR*.

<sup>60</sup> *OCTG II RR*. The Tribunal rescinded its finding with respect to OCTG from the Philippines.

<sup>61</sup> *Safeguard Inquiry into the Importation of Certain Steel Goods* (3 April 2019), GC-2018-001 (CITT) [*Steel Safeguard Inquiry*] at 90. Subsection 2(1) of the CITT Act defines "serious injury" as a "significant overall impairment in the position of the domestic producers". This has been held by the Tribunal to be more than the

that formed part of the domestic industry included Bri-Steel Corporation (a seamless pipe producer), Evraz, Tenaris Canada and WTC.<sup>62</sup>

[65] Notably, the Tribunal found that, to the extent that the domestic industry as a whole had suffered injury that was less than “serious”, the injury was largely self-inflicted as a result of Tenaris Canada’s own imports, a significant portion of which were from TAMSA and which had displaced domestically produced energy tubular products throughout the period of inquiry (i.e. from January 1, 2015, to June 30, 2018).<sup>63</sup> The Tribunal considered that intra-industry competition was also an important factor of injury to the domestic industry.<sup>64</sup> With respect to threat of injury, the Tribunal found that these same factors, along with projected relatively low market demand for 2019, were more important causes of likely future injury to the domestic industry than the increase in subject imports.<sup>65</sup>

[66] As mentioned earlier, on October 26, 2021, less than one month after it initiated the current inquiry, the Tribunal initiated its inquiry in *OCTG IV* to determine whether the dumping of OCTG of the same description from Austria has caused injury or is threatening to cause injury to the domestic industry. The complaint in *OCTG IV* was filed by Tenaris Canada with the CBSA on May 17, 2021, one week after Evraz and WTC filed the complaint that eventually led to the initiation of the present inquiry. The Tribunal’s finding in *OCTG IV* is scheduled to be issued on February 22, 2022.

[67] Canada is one of the world’s largest producers of natural gas and crude oil. It is therefore an important market for OCTG. As the Tribunal reiterated in recent expiry reviews, the Canadian OCTG market moves in tandem with oil and gas exploration and production, and is closely tied to the number of operating rigs or wells at any given time.<sup>66</sup> As oil and gas drilling increases, so does demand for OCTG. Rig or well count and drilling activity are, in turn, influenced by the price of oil and gas, i.e. the higher the price, the more drilling activity occurs.

[68] The Canadian OCTG market fell in 2019 and in 2020 due to lower demand caused by a number of factors, including transportation capacity constraints, which in turn led to the announcement by the Government of Alberta of a mandatory 8.7 percent cut in oil production beginning in January 2019, and the onset of both the Russia-Saudi Arabia oil price war and global COVID-19 containment measures early in 2020, which severely depressed oil prices and curtailed domestic and international demand for oil and gas.<sup>67</sup> This prompted Evraz to temporarily idle some of its mills for important periods of time beginning in April 2020.<sup>68</sup> Signs of a return of demand appeared in late 2020 and into 2021, and higher demand is forecasted for 2022.<sup>69</sup>

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injury threshold applicable in the context of injury inquiries under SIMA, which is that of “material injury” (see *Steel Safeguard Inquiry* at 26).

<sup>62</sup> *Steel Safeguard Inquiry* at 75–76.

<sup>63</sup> *Ibid.* at 84–85.

<sup>64</sup> *Ibid.* at 85.

<sup>65</sup> *Ibid.* at 89–90.

<sup>66</sup> See *Seamless Casing RR* at paras. 51–52; *OCTG I RR* at para. 40; *OCTG II RR* at para. 81.

<sup>67</sup> Exhibit NQ-2021-004-C-03 at paras. 37, 39; Exhibit NQ-2021-004-C-05 at para. 13; Exhibit NQ-2021-004-A-03 at 4–8, 26–29.

<sup>68</sup> Exhibit NQ-2021-004-C-03 at para. 40; Exhibit NQ-2021-004-C-04 (protected) at para. 43; Exhibit NQ-2021-004-C-05 at para. 10; Exhibit NQ-2021-004-C-06 (protected) at paras. 33–34.

<sup>69</sup> Exhibit NQ-2021-004-C-07 at 621–622.

[69] The downturn in the Canadian OCTG market resulting from the above factors and the subsequent beginnings of a recovery near the end of the POI are clearly reflected in the Tribunal's investigation report data<sup>70</sup> and track price movements for oil and gas, as well as changes in drilling activity, during this period. Indeed, various benchmark prices for oil and gas, and drilling activity in Canada, generally fell in 2019 and again in early 2020, before rising gradually in late 2020 and in 2021.<sup>71</sup>

[70] Another relevant development that occurred during the POI, and which has already been mentioned above, was Tenaris Canada's decision to close its Prudential mill in Calgary, Alberta, in 2020, and to relocate the production of welded OCTG to its Algoma facility in Sault Ste. Marie. The relocation of welded OCTG production to Sault Ste. Marie is part of a \$117 million industrial transformation project undertaken by Tenaris Canada, which will also see the installation of a new premium threading line and industrial system, as well as various productivity, quality and safety improvements, at its Algoma facility.<sup>72</sup> Tenaris Canada expects production of welded OCTG to begin in March 2022, with commercial production to meet customer orders starting in April 2022.<sup>73</sup>

[71] It is within this context that the Tribunal will undertake its injury analysis.

### **Import volume of dumped goods**

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

[73] In absolute terms, the volume of subject imports decreased year over year by 60 percent in 2019 and by a further 22 percent in 2020, before increasing by 21 percent in interim 2021, when compared to interim 2020.<sup>74</sup> The evidence on the record suggests that the increase in subject imports in interim 2021 was entirely attributable to an important increase in the importation of J55 casing, i.e. carbon grade OCTG.<sup>75</sup> In fact, if imports of J55 casing from TAMSA had remained at levels observed in the second half of 2019 and in 2020, the total volume of subject imports would have declined by more than 25 percent in interim 2021, when compared to interim 2020.<sup>76</sup> According to Mr. Prosperi, Tenaris Canada had to import large volumes of J55 casing to fill the temporary production gap left by the closure of the Prudential mill and continue serving existing customers pending the completion of its new welded OCTG production line in Sault Ste. Marie.<sup>77</sup>

[74] The volume of non-subject imports from countries with measures in place (i.e. countries covered by the Tribunal's findings in *Seamless Casing*, *OCTG I* and *OCTG II*), Austria, the United States

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<sup>70</sup> See Exhibit NQ-2021-004-06.D, Tables 68, 75.

<sup>71</sup> Exhibit NQ-2021-004-10.02 (protected) at 88–89, 102; Exhibit NQ-2021-004-A-03 at 30–31, 106–107; Exhibit NQ-2021-004-C-07 at 618–619; *Transcript of Public Hearing* at 45–46.

<sup>72</sup> Exhibit NQ-2021-004-A-07 at paras. 8, 18; *Transcript of Public Hearing* at 185–186.

<sup>73</sup> Exhibit NQ-2021-004-A-07 at para. 21.

<sup>74</sup> Exhibit NQ-2021-004-06.D, Table 65.

<sup>75</sup> Exhibit NQ-2021-004-13.05.C (protected) at 9–10, 39.

<sup>76</sup> *Ibid.* at 9; Exhibit NQ-2021-004-07.C (protected), Table 64.

<sup>77</sup> Exhibit NQ-2021-004-A-07 at paras. 29, 33, 48.

and other countries (i.e. all other remaining countries), whether taken individually or collectively, declined from 2018 to 2020 and again in interim 2021.<sup>78</sup>

[75] The above volumes resulted in the share of total imports held by the subject goods decreasing in 2019, before increasing somewhat in 2020, for a net decline of 2 percentage points over this period.<sup>79</sup> However, in interim 2021, that share increased by 12 percentage points, when compared to interim 2020. Again, if imports of J55 casing had remained at levels observed in the second half of 2019 and in 2020, the subject goods' share of total imports would have decreased in interim 2021, when compared to both interim 2020 and full year 2018.<sup>80</sup>

[76] Relative to domestic production, the volume of subject imports decreased year over year by 23 percentage points in 2019, before increasing by 30 percentage points in 2020 and by a further 10 percentage points in interim 2021, when compared to interim 2020.<sup>81</sup> Relative to domestic sales from domestic production (i.e. sales by the domestic industry to distributors), the volume of subject imports followed a similar trend, decreasing by 26 percentage points in 2019, before increasing by 25 percentage points in 2020 and by a further 47 percentage points in interim 2021, when compared to interim 2020. In both cases, the increases in the relative volume of subject imports in 2020 and interim 2021 are the result of significantly decreased domestic production and sales by the domestic industry, which, to a large extent, appear to have been the result of inventory destocking by distributors (inventory destocking and its role as a non-dumping factor causing injury to the domestic industry will be addressed in more detail further below).

[77] As will also be discussed further below, competition between the subject goods and the like goods produced by the domestic industry occurs at the end-user trade level. Since the complainants (i.e. the domestic industry) only sell like goods directly to distributors, assessing the volume of subject imports relative to sales to distributors, as was done above, does not provide a true representation of the volume of subject goods that are imported relative to the actual *consumption* of like goods in the market.<sup>82</sup> When assessed relative to sales of domestically produced like goods by distributors (i.e. sales by distributors to end-users), the volume of subject imports decreased year over year by 52 percentage points in 2019, before increasing by 7 percentage points in 2020 and by a further 11 percentage points in interim 2021, when compared to interim 2020.<sup>83</sup> In this case, the increases in 2020 and interim 2021 were much less pronounced than those observed when the comparison was performed using sales by the domestic industry, as the distributors maintained sales volumes while significantly destocking their inventories. The volume of subject imports relative to distributors' sales of domestically produced like goods was also lower in interim 2021 than it was at the beginning of the POI.

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<sup>78</sup> Exhibit NQ-2021-004-06.D, Table 65; Exhibit NQ-2021-004-07.C (protected), Tables 64, 65.

<sup>79</sup> Exhibit NQ-2021-004-07.C (protected), Table 66.

<sup>80</sup> Exhibit NQ-2021-004-13.05.C (protected) at 9; Exhibit NQ-2021-004-07.C (protected), Tables 64, 66.

<sup>81</sup> Exhibit NQ-2021-004-06.D, Table 67.

<sup>82</sup> This is because distributors are intervening actors between the complainants and the end-users, and their actions, such as their decision to destock inventories during the POI in the present case, rather than the dumping, may be the cause of injury to the domestic industry.

<sup>83</sup> Exhibit NQ-2021-004-07.C (protected), Tables 64, 75.

[78] If imports of J55 casing had remained at levels observed in the second half of 2019 and in 2020, the volume of subject imports relative to distributors' sales of domestically produced like goods would have decreased in interim 2021, when compared to both interim 2020 and full year 2018.<sup>84</sup>

[79] On the basis of the foregoing, it is clear that, if Tenaris Canada had not imported large volumes of J55 casing following the closure of the Prudential mill, there would have been no significant increase, either in absolute or relative terms, in the volume of subject imports in any period of the POI.<sup>85</sup> However, as the Tribunal is conducting its inquiry on the basis that there is a single class of goods, there are no grounds upon which to consider imports of J55 casing separately from all other imports of subject goods. The Tribunal therefore finds that there was a significant increase in the volume of subject imports in interim 2021, both in absolute and relative terms.

[80] Tenaris Canada submitted that a significant proportion of all subject imports were higher-end OCTG grades that competed against other imports that the complainants did not produce and were incapable of producing, and should therefore be excluded from the injury analysis. Although Tenaris Canada filed exclusion requests with respect to these grades, it nonetheless asked that these "non-competing" volumes be discounted at this stage of the analysis.

[81] The Tribunal notes, as it has above, that it is conducting its inquiry on the basis that there is a single class of goods. If it were to exclude, at this stage of the analysis, the grades of OCTG for which Tenaris Canada requested exclusions, it would in effect be creating a separate class of goods.<sup>86</sup> The Tribunal does however acknowledge that the granting of exclusions for products that account for a large proportion of the subject goods imported over the POI would present certain challenges and could, depending on the circumstances, require the Tribunal to consider whether the dumping of the remaining subject goods (i.e. those that have not been excluded) is causing injury, or threatening to cause injury, to the domestic industry. Given that the Tribunal has ultimately found no injury or threat thereof in the present case, it need not address Tenaris Canada's product exclusion requests or consider whether it would be required to recommence its injury analysis in the event that these exclusions were granted.

### **Price effect of dumped goods**

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

[83] Before addressing the effect of the dumped goods on the price of like goods, the Tribunal will first determine the relative importance of price in purchasing decisions for OCTG, the trade level at which competition occurs between the subject goods and the like goods, whether purchasers are willing to pay a premium for seamless OCTG compared to welded OCTG of the same grade, as well

<sup>84</sup> Exhibit NQ-2021-004-13.05.C (protected) at 9; Exhibit NQ-2021-004-07.C (protected), Tables 64, 75.

<sup>85</sup> The only increase would have been the increase of 7 percentage points in the volume of subject imports relative to distributors' sales of domestically produced like goods in 2020.

<sup>86</sup> The Tribunal has previously rejected similar requests. See *Welded Large Diameter Carbon and Alloy Steel Line Pipe* (20 October 2016), NQ-2016-001 (CITT) at para. 93; *Carbon and Alloy Steel Line Pipe* (29 March 2016), NQ-2015-002 (CITT) at para. 92.

as address arguments raised by the complainants regarding the role, if any, played by the subject goods in allowing Tenaris Canada to sell both domestically produced like goods and subject goods at the same price (i.e. Tenaris Canada's "one price" strategy). These issues are particularly relevant to the Tribunal's price undercutting analysis.

#### Importance of price in purchasing decisions

[84] The Tribunal has consistently found that imported and domestically produced OCTG, whether seamless or welded, are commodity products that are largely traded on the basis of price and that price is therefore a primary consideration affecting purchasing decisions.<sup>87</sup> This was not the subject of dispute between the parties.

[85] The evidence gathered by the Tribunal in the present inquiry confirms that this remains the case. For example, all respondents to the Tribunal's Purchasers' Questionnaire indicated that the lowest net price was a very important or somewhat important factor used in purchasing decisions and that the lowest-priced goods always, usually or sometimes won contracts or sales.<sup>88</sup> The majority of respondents also indicated that a 0 to 10 percent reduction in price would cause price to become the primary factor in purchasing decisions.<sup>89</sup> Further, a number of witnesses confirmed that, not only is OCTG purchased by distributors and end-users primarily on the basis of price, but, due to current market conditions, there is considerable price transparency among competing suppliers and distributors, such that small volume offers can produce important and widespread price effects.<sup>90</sup>

[86] In light of the foregoing, the Tribunal finds that price is a primary consideration in purchasing decisions for OCTG and that dumped goods offered or sold at lower prices than domestically produced like goods can therefore have adverse effects on the price of like goods.

#### Trade level at which competition occurs

[87] The complainants submitted that price comparisons can only be meaningful if they are made at trade levels at which the subject goods and the like goods directly compete with each other. In their view, since TGSC sells directly to end-users, the relevant point of comparison for the Tribunal's price undercutting analysis is a sale by a Canadian distributor (e.g. ATP or Trimark) of Evraz or WTC products to end-users.

[88] Tenaris Canada essentially agreed that consideration has to be given to the fact that the complainants sell to distributors, whereas it sells to end-users. However, it noted that distributors are intervening actors between the complainants and the end-users and that their actions can be a cause of injury to the complainants.

[89] The evidence on the record indicates that, over the Tribunal's POI, the complainants sold the totality of the OCTG they produced to distributors, who, in turn, sold the large majority of these

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<sup>87</sup> See, most recently, *Seamless Casing RR* at para. 73; *OCTG I RR* at paras. 65–67; *OCTG II RR* at paras. 145–149.

<sup>88</sup> Exhibit NQ-2021-004-06.G, Table 7; Exhibit NQ-2021-004-07.F (protected), Table 6.

<sup>89</sup> Exhibit NQ-2021-004-07.F (protected), Table 6. There is evidence that, in some cases, long-term clients may be reluctant to change suppliers when the pricing differential is minimal. See Exhibit NQ-2021-004-B-01 at para. 35.

<sup>90</sup> Exhibit NQ-2021-004-C-03 at paras. 26–27; Exhibit NQ-2021-004-D-05 at paras. 10–11, 13; Exhibit NQ-2021-004-B-01 at para. 35.



products to end-users.<sup>91</sup> Moreover, as previously indicated, Tenaris Canada accounted for the totality of reported imports of subject goods over the Tribunal's POI. Therefore, since Tenaris Canada did not purchase any OCTG from the complainants and sold the large majority of the subject imports directly to end-users,<sup>92</sup> competition between the subject goods and the like goods occurred almost exclusively at the end-user trade level.<sup>93</sup> It is at this trade level that purchasers were faced with the choice to purchase the subject goods from Tenaris Canada or the like goods from other distributors, and it is therefore at this trade level that the Tribunal will conduct its price undercutting analysis.

[90] The Tribunal notes that, to the extent that the complainants' distributors were undersold by Tenaris Canada, any resulting volume and price effects would constitute injury to the complainants' distributors and not necessarily to the complainants themselves. In order to find that any price undercutting caused injury to the complainants, the Tribunal would next have to consider whether, on the basis of the evidence on the record, those volume and price effects were passed on to the complainants. In other words, the Tribunal would have to consider whether there is a causal link between any injury suffered by the distributors and injury suffered by the domestic industry. In that sense, the Tribunal agrees with Tenaris Canada that distributors are intervening actors and that their actions, rather than the dumping of the subject goods, can be the cause of injury to the domestic industry.

#### Existence of a seamless premium

[91] The complainants argued that the evidence of price undercutting in this case must be considered in light of the price premium, in the range of \$200 per metric tonne (MT), or around 15 percent, that has historically prevailed in the Canadian market for seamless OCTG over welded OCTG of the same grade. They submitted that any contraction of that premium constitutes a form of underselling and can create adverse spillover price effects across the spectrum of OCTG.

[92] Tenaris Canada submitted that, in Canada, during the POI, there was no relevant seamless premium and that prices of seamless OCTG should therefore be directly compared to prices of welded OCTG. In particular, it noted that, as a result of the rising cost of hot-rolled coil, the production of welded OCTG has lost its perceived cost advantage compared with the production of seamless OCTG. In its view, there is only a seamless premium with end-users whose risk profile determines that they prefer a product without a weld.<sup>94</sup>

[93] The complainants replied that the evidence, and in particular the benchmark product data, demonstrates a clear seamless premium that contracted and, in some cases, completely erased, in the last eight quarters of the POI as Tenaris Canada sold low-priced Mexican seamless OCTG into Canada. They also took issue with Tenaris Canada's assertion that welded OCTG has lost its perceived cost advantage, noting that Tenaris Canada's data are not seamless-only costing data and that it only compared its costs with those of Evraz and not WTC.

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<sup>91</sup> Exhibit NQ-2021-004-09.01 at 7; Exhibit NQ-2021-004-10.01 (protected) at 6; Exhibit NQ-2021-004-09.03.B at 5; Exhibit NQ-2021-004-10.03.B (protected) at 5; Exhibit NQ-2021-004-19.09.A (protected) at 10; Exhibit NQ-2021-004-19.13.A (protected) at 10.

<sup>92</sup> Exhibit NQ-2021-004-09.02 at 7; Exhibit NQ-2021-004-13.05.C (protected) at 7.

<sup>93</sup> Since Tenaris Canada also sold the large majority of its domestically produced goods directly to end-users, competition between those goods and the like goods also occurred almost exclusively at the end-user trade level. See Exhibit NQ-2021-004-10.02.C (protected) at 6.

<sup>94</sup> Exhibit NQ-2021-004-A-05 at para. 39.

[94] In the Tribunal's opinion, the relevant question for the purpose of determining whether the subject goods had significant adverse effects on the price of like goods during the POI is whether purchasers were willing to pay up to an additional \$200 per MT for a particular grade of seamless OCTG over the same grade of welded OCTG in instances where both types met their technical requirements for a particular end use and thus competed with each other solely on the basis of price. It follows that, if purchasers were willing to do so, then this would signify that any contraction of that alleged \$200 per MT seamless premium would likely result in distributors of welded OCTG losing sales and/or seeing their prices depressed, as purchasers would switch to seamless OCTG or demand price reductions.

[95] The fact that there has historically been a price differential between the same grades of seamless and welded OCTG and that, in certain cases, it appears to have contracted over the POI (as demonstrated by the benchmark product data in the Tribunal's investigation report) do not constitute positive evidence of a seamless premium in the sense advocated by the complainants. Rather, a difference in price between seamless and welded OCTG may simply reflect a lesser degree of competition due to the fact that some purchasers had a requirement for seamless OCTG, or chose to purchase seamless OCTG for reasons that are not inherently tied to the manufacturing method for the product (e.g. because of delivery times or the existence of long-term supply relationships), and were therefore at a disadvantage when negotiating prices.<sup>95</sup>

[96] Indeed, the evidence on the record indicates that, when seamless OCTG is not specified or required for specific end uses, purchasers are not willing to pay a premium for that product. For example, Mr. Chris Awe, Senior Supply Chain Management Upstream Advisor at Cenovus, explained that, while there was in the past a perception that seamless OCTG was a better quality product, that is a dated view, and today, seamless and welded OCTG can compete with each other in most applications.<sup>96</sup> He added that, subject to any technical requirements, Cenovus may use either seamless or welded OCTG in premium applications and that it would not pay \$2 per MT more for seamless OCTG if both seamless and welded OCTG met all of its technical specifications.<sup>97</sup>

[97] This is corroborated by responses to the Tribunal's Purchasers' Questionnaire, which indicate that the overwhelming majority of respondents are not willing to pay any premium for a higher grade or specification of OCTG if they are not technically required for the end use.<sup>98</sup> In other words, there is no price differential that would cause these respondents to purchase a higher grade or specification of OCTG than is technically required. This demonstrates that purchasers would also not be willing to

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<sup>95</sup> See Exhibit NQ-2021-004-07.F (protected), Table 6, for a list of reasons provided by respondents to the Tribunal's Purchasers' Questionnaire for not purchasing the lowest-priced product.

<sup>96</sup> Exhibit NQ-2021-004-46 at para. 12; *Transcript of Public Hearing* at 328, 377. In his will-say statement, Mr. Awe indicated that one exception is "sour" wellbores, which are better served by seamless OCTG. See also *Transcript of Public Hearing* at 134-135.

<sup>97</sup> Exhibit NQ-2021-004-46 at paras. 7, 8, 18; *Transcript of Public Hearing* at 329-330, 378.

<sup>98</sup> Exhibit NQ-2021-004-06.G, Table 3. See also the individual responses to question 6C of the Tribunal's Purchasers' Questionnaire where only one of eight respondents indicated that it would be willing to pay a premium for a higher grade or specification of OCTG (see Exhibit NQ-2021-004-18.12.A at 5). The Tribunal notes that this respondent likely misinterpreted the questions in that part of the questionnaire and understands its responses as meaning that it pays a premium of up to 10 percent in circumstances where a higher grade or specification is *required*. See also other information on the confidential record supporting the view that purchasers would not pay a premium for a higher grade or specification of OCTG where it was not required for the application. See Exhibit NQ-2021-004-A-04 (protected) at 5.

pay a premium for seamless OCTG where welded OCTG would meet their technical requirements for a particular end use.

[98] In light of the foregoing, the Tribunal finds that there is no seamless premium and that, accordingly, a price differential of less than \$200 per MT between seamless and welded OCTG would not cause purchasers to switch from welded OCTG to seamless OCTG or to demand price reductions for welded OCTG. Therefore, the Tribunal will not deduct an amount of \$200 per MT from the selling price of dumped seamless OCTG when performing its price undercutting analysis.

Tenaris Canada's "one price" strategy

[99] The complainants contended that Tenaris Canada's use of significantly dumped Mexican imports and import pricing allowed it to make single "one price" offers for OCTG, regardless of origin, at the lowest levels necessary to secure sales in the Canadian market. They submitted that the distortive impact of this import-leveraged "one price" strategy is made evident by Tenaris Canada's transfer pricing between TGSC and TGSU, which ensures that, regardless of the price set by TGSC to secure a sale in the market, TGSC's profitability will be kept whole by TGSU and/or the supplying mill (i.e. TAMSA).

[100] The complainants added that whether a particular sale has been lost to a Tenaris Canada "one price" offer that is then fulfilled by Mexican imports, Canadian-produced OCTG, or some combination thereof is beside the point as it is clear that the dumped Mexican import pricing is the driver that artificially and unfairly subsidizes a "one price" offer.

[101] Tenaris Canada submitted that the reality is its "one price" approach is, if anything, domestically leveraged, as selling prices from imports are usually higher than the prices of its comparable domestically produced goods. It added that its transfer pricing mechanisms have nothing to do with actual arm's length pricing decisions in selling to end-users, as it sells at the highest price possible based on market realities. In this regard, it explained that, at the beginning of the year, notional transfer prices are set between TGSC and TGSU, and adjustments are subsequently made if those were set too high (payment from TGSU to TGSC) or too low (payment from TGSC to TGSU) in order to adjust profits to comply with income tax requirements.

[102] This case has involved the "old wine" of steel in the "new bottles" of a digital, globalized economy. Tenaris S.A. is one of the world's leading producers of steel goods used in the oil and gas industry, with manufacturing facilities located in over 15 countries (including Canada and Mexico) and a global distribution network headquartered in Uruguay (i.e. TGSU) with a presence in over 30 countries, including Canada.

[103] Through its local distribution arm in Canada (i.e. TGSC), Tenaris offers potential Canadian customers appropriate tubular products at a single price without regard to the eventual source of supply for that product from within the Tenaris family of manufacturing facilities.<sup>99</sup> The offered products are then supplied to TGSC from these (domestic or foreign) facilities at non-arm's length prices.<sup>100</sup> TGSC is deemed a "low-risk" distributor that is entitled to receive post-transaction transfers

<sup>99</sup> *Transcript of Public Hearing* at 304; *Transcript of In Camera Hearing* at 243–244.

<sup>100</sup> In fact, product from a foreign Tenaris facility, like TAMSA in Mexico, is sold to TGSU, with TGSU then exporting the product to Canada for purchase by TGSC (see *Transcript of Public Hearing* at 242, 267; *Transcript of In Camera Hearing* at 232–233). However, for SIMA purposes, the CBSA determined that TAMSA was the exporter (see Exhibit NQ-2021-004-04A at para. 78).

from its related Tenaris suppliers (both foreign and domestic) when TGSC's sales revenues generated from end-users are insufficient to cover its general, selling and administrative expenses, and a defined target profit margin.<sup>101</sup>

[104] As noted earlier, TGSC sells both Mexican and domestic OCTG. Within the Tenaris transfer price adjustment scheme, TGSC deals through TGSU when importing product from foreign affiliates but deals directly with domestic suppliers for purely domestic transactions. Where warranted, transfer price adjustments occur between TGSU and TGSC, and between domestic suppliers and TGSC, depending on the source of the material and the cause of the loss.<sup>102</sup> In 2020, transfer price adjustments flowed to TGSC from its related suppliers, meaning that TGSC's selling prices to end-users were not sufficient to cover its general, selling and administrative expenses and a defined target profit margin.<sup>103</sup> Transfers to TGSC flowed in part from TGSU (for the dumped Mexican imports) but primarily from Algoma.

[105] The inference is threefold. First, the ability of TGSC to aggressively price both TAMSA and Algoma products was enhanced by its low-risk distributor status and knowledge of its access to future transfer price adjustments—an advantage that is unavailable to an independent distributor requiring a revenue stream from customers sufficient to cover its expenses and generate a positive net profit margin.

[106] Second, the principal source of the OCTG sold by TGSC at prices below its acquisition costs was not TAMSA, but Canadian affiliates.

[107] Third, TGSU does not provide any support in the form of transfer price adjustments for domestically produced goods. The transfer payments that flow between TGSU and TGSC relate to the cost of imported products, and imported products alone.<sup>104</sup> In other words, Tenaris Canada's domestically produced goods and Mexican goods operate in different silos, insofar as transfer price adjustments are concerned. It therefore follows that the price and cost structure of the domestically produced goods is free from any influence exerted by the subject goods from a transfer pricing perspective.

[108] There is also no evidence that Tenaris Canada utilizes its corporate structure to leverage the subject goods in a way that would allow the Tribunal to conclude that any injury resulting from low-priced domestically produced goods is attributable to the subject goods. In fact, there is no evidence on the record that suggests that Tenaris Canada implements a one-price strategy in the sense that was initially argued by the complainants. What may or may not be qualified as Tenaris Canada's

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<sup>101</sup> *Transcript of Public Hearing* at 201, 275–278, 291–292, 295–296; *Transcript of In Camera Hearing* at 184–185, 190, 233–240, 253; Exhibit NQ-2021-004-RI-01 at 10. Canada, and other members of the Organisation for Economic Co-operation and Development (OECD), follow the OECD Transfer Pricing Guidelines in their approach to transfer pricing cases. Since 1997, Canada's transfer pricing rules have been included in section 247 of the Canadian *Income Tax Act*, which essentially requires that Canadian taxpayers document non-arm's length transactions with non-residents, use arm's length transfer prices and make appropriate adjustments so that transactions reflect arms-length values. The purpose is to avoid the erosion of the domestic tax base through profit-shifting to low-tax jurisdictions. Meanwhile, non-arm's length transactions between related parties within Canada are governed by other fair market value provisions in section 247.

<sup>102</sup> *Transcript of In Camera Hearing* at 233, 234.

<sup>103</sup> *Transcript of Public Hearing* at 202; *Transcript of In Camera Hearing* at 184–185, 253; Exhibit NQ-2021-004-RI-01 at 10.

<sup>104</sup> *Transcript of In Camera Hearing* at 233, 234.

“one price” strategy is limited to quoting one price per item, per customer at a given time.<sup>105</sup> In other words, this “one price” does not apply across time periods, customers or individual items.

[109] In addition, there is no evidence that Tenaris Canada offers bundled pricing in the conventional sense (i.e. that a lower price for a bundle composed of both subject goods and domestically produced goods is only made possible by the inclusion of the subject goods).<sup>106</sup> Testimony from Ms. Shellie Clark and Mr. Ricardo Prosperi of Tenaris Canada is clear in this regard. TGSC exclusively uses itemized pricing.<sup>107</sup> Customers are free to choose, and have chosen, to purchase certain items and not others or, in other words, to split their orders.<sup>108</sup> The Tribunal therefore finds that these pricing mechanisms and structures, together with Tenaris Canada’s implementation of transfer price adjustments, are not supportive of an integrated strategy to leverage subject goods in the way argued by the complainants.<sup>109</sup>

[110] The basic finding of this inquiry is that the complainants have not been materially injured by the dumping of Mexican OCTG, but rather by the impact of a number of other factors. These factors include the existence of a major industry downturn, the COVID-19 pandemic, the destocking of inventory by independent distributors resulting in a lower level of sales by the complainants, and by the aggressive pricing by TGSC of domestic like goods produced by its Canadian-based affiliate (i.e. intra-industry competition). That being stated, the Tribunal does not wish to understate the impact of TGSC’s overall “one price” strategy on the complainants’ economic performance.

[111] In light of the foregoing, the Tribunal will not attribute any effect of the goods produced in Canada by Tenaris Canada on the price of like goods produced by the domestic industry to the dumping of the subject goods. In other words, any adverse price effect resulting from Tenaris Canada’s domestically produced goods will be considered injury caused by factors other than the dumping and will be treated accordingly.

### Price undercutting

[112] The Tribunal will determine the extent to which the subject goods undercut the price of like goods on the basis of the above findings, i.e. that price is the key consideration in purchasing decisions, that competition between the subject goods and the like goods occurred at the end-user trade level, that there is no seamless premium and that any price undercutting by Tenaris Canada’s domestically produced goods is a factor that is unrelated to the dumping of the subject goods.

[113] The data concerning average selling prices indicate that, at the end-user trade level, the subject goods were priced significantly higher than the domestically produced like goods in all periods of the POI, except in interim 2021, during which the subject goods were priced only marginally higher than the domestically produced like goods.<sup>110</sup> The reduced price differential in interim 2021 is the result of an increase of 5 percent in the selling price of like goods, combined with

<sup>105</sup> *Transcript of Public Hearing* at 190, 282, 285.

<sup>106</sup> *Ibid.* at 270–273, 307–308.

<sup>107</sup> *Ibid.* at 191–192, 270–273, 278–279.

<sup>108</sup> *Ibid.* at 179, 191–192, 309.

<sup>109</sup> The Tribunal also notes that the percentage of Tenaris Canada’s total sales represented by the subject goods has been decreasing over the POI, despite an increase in the importation of carbon grade OCTG in interim 2021 following the closure of the Prudential mill, thereby suggesting a reduced ability to leverage subject goods in the way argued by the complainants. See Exhibit NQ-2021-004-07.C (protected), Table 68.

<sup>110</sup> Exhibit NQ-2021-004-07.C (protected), Table 84.

a decrease of 22 percent in the selling price of subject goods during that period.<sup>111</sup> The decrease in the selling price of subject goods is attributable to an important increase in sales of J55 casing, which is a lower-priced grade of OCTG.<sup>112</sup>

[114] The data concerning average selling prices also indicate that Tenaris Canada's domestically produced goods were priced very similarly to the domestically produced like goods throughout the POI, sometimes slightly higher and at other times slightly lower.<sup>113</sup>

[115] The complainants submitted that, in past cases involving OCTG, the Tribunal recognized the more limited utility of average price data due to product mix issues but still examined these data as a macro indicator of market trends.

[116] Tenaris Canada agreed that product mix issues can be problematic in average price comparisons. It submitted that the price difference for the first 36 months of the POI indicates that a large portion of the subject goods is high-priced goods that do not compete with the domestically produced like goods and, therefore, cannot be injurious.

[117] The Tribunal agrees that the comparison of average selling prices at an aggregate level is of a more limited utility in this case given the product mix issues that arise with a product definition that covers a relatively wide spectrum of grades and types of OCTG. However, in the present case, these data do suggest that, prior to interim 2021, there were likely more limited volumes of subject goods competing directly with the domestically produced like goods. Given the relatively large price differential that existed between the subject goods and the domestically produced like goods prior to interim 2021, it is unlikely that there were large volumes of the former priced below the latter.

[118] As previously mentioned, the Tribunal sent a supplemental questionnaire to selected respondents to collect detailed information with respect to sales of both base and enhanced grades of benchmark products. The information collected covered purchases and sales of a total of 36 benchmark products (10 seamless OCTG and 8 welded OCTG for both base and enhanced grades) over a period of eight quarters (i.e. the last eight quarters of the POI).

[119] The Tribunal has indicated above that it would conduct its price undercutting analysis at the end-user level since it is at this level that competition between the subject goods and the like goods took place during the POI. However, the investigation report supplement issued by the Tribunal on December 7, 2021, only presented the data collected with respect to sales of base and enhanced grades of benchmark products by Tenaris Canada (for both subject imports and its domestically produced goods) and by the domestic industry (i.e. by Evraz and WTC to distributors). Accordingly, the Tribunal will rely on the investigation report supplement for data pertaining to sales of benchmark products by Tenaris Canada and on the responses to the supplemental questionnaire filed by ATP and Trimark for data pertaining to their sales of benchmark products produced by the domestic industry.<sup>114</sup> The complainants and Tenaris Canada took the same approach in preparing their submissions to the Tribunal.<sup>115</sup>

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<sup>111</sup> Exhibit NQ-2021-004-06.D, Table 85.

<sup>112</sup> Exhibit NQ-2021-004-07.D (protected), Schedule 2.

<sup>113</sup> Exhibit NQ-2021-004-07.C (protected), Table 84.

<sup>114</sup> Exhibit NQ-2021-004-06.E; Exhibit NQ-2021-004-07.D (protected), Tables 17–42, 59–84, Schedules 1–52; Exhibit NQ-2021-004-29.03 (protected) at 2–5; Exhibit NQ-2021-004-29.05 (protected) at 2–5. As previously indicated, the large majority of sales made by Tenaris Canada, as well as by distributors of the domestically

[120] Quarterly comparisons were possible between sales of subject goods and sales of domestically produced like goods in 47 instances.<sup>116</sup> In 26 of these 47 instances, the subject goods undercut the prices of like goods. Although the volume of subject goods that undercut the prices of like goods represented 45 percent of the total volume of subject goods that competed with the like goods in the aforementioned 47 instances, it represented less than 20 percent of the total volume of like goods it undercut in the 26 reported instances of undercutting. In addition to the relatively low volume of subject goods that undercut the prices of like goods, the large majority of that volume was limited to a small number of instances occurring mostly in interim 2021. In fact, a single one of the 26 instances of undercutting, occurring in interim 2021, accounted for more than a third of the total volume of subject goods that undercut the prices of the like goods, and the top 4 instances together accounted for approximately two thirds of that volume. Moreover, the level of undercutting for these 4 instances ranged from 1 to 6 percent when expressed as a percentage of the price of the like goods. This is not indicative of price undercutting that can be described as significant.

[121] With respect to sales of Tenaris Canada's domestically produced goods, quarterly comparisons with sales of domestically produced like goods were possible in 57 instances. In 46 of these 57 instances, Tenaris Canada's domestically produced goods undercut the prices of like goods. The volume of Tenaris Canada's domestically produced goods that undercut the prices of like goods represented 82 percent of Tenaris Canada's total sales volume of domestically produced goods that competed with the like goods in the aforementioned 57 instances. It also represented more than 85 percent of the total volume of like goods it undercut in the 46 reported instances of undercutting. Contrary to the subject goods, the volume of Tenaris Canada's domestically produced goods that undercut the prices of like goods was dispersed over a larger number of instances of undercutting throughout the last eight quarters of the POI, with the top 14 instances together accounting for approximately two thirds of that volume. Moreover, the level of undercutting for these 14 instances ranged from 1 to 14 percent when expressed as a percentage of the price of the like goods.

[122] The above clearly demonstrates that there is a stark contrast between the relative importance and potential impact of the subject goods on the like goods vis-à-vis that of Tenaris Canada's domestically produced goods. While the volume of subject goods that undercut the prices of domestically produced like goods was small, both in absolute and relative terms, and was concentrated within a small number of instances, the volume of Tenaris Canada's domestically produced goods that undercut the prices of like goods was far more important and more evenly distributed. Moreover, in the 40 instances where there were sales of both the subject goods and Tenaris Canada's domestically produced goods, the latter were lower-priced in 31 of these instances. Therefore, to the extent that any price undercutting has led to volume and price effects on the

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produced like goods, were made directly to end-users. Moreover, an important proportion of the sales made by Evraz and WTC were to ATP and Trimark.

<sup>115</sup> For reference, the complainants included with their reply brief tables that combine all of the relevant sales data for the benchmark products. See Exhibit NQ-2021-004-C-10 (protected) at 90–101. For all intents and purposes, and other than correcting for what appears to have been a few minor transcription errors by the complainants, this is the data upon which the Tribunal relied for the purposes of its price undercutting analysis. In cases where no references are provided, it should be assumed that reference is being made to those data.

<sup>116</sup> Because Evraz and WTC only produce welded OCTG, comparisons were only theoretically possible for a total of 16 benchmark products (8 welded OCTG benchmark products compared to the equivalent 8 seamless OCTG benchmark products for both base and enhanced grades). Since the benchmark product data cover a period of eight quarters, there are a total of 128 potential instances of comparison during this period.

domestically produced like goods, these effects can reasonably be attributed to Tenaris Canada's domestically produced goods.<sup>117</sup>

[123] Finally, ATP and Trimark, as well as the complainants, made a total of approximately 20 detailed account-specific injury allegations, the majority of which pertained to sales that were allegedly lost to subject goods. Since distributors directly competed with Tenaris Canada for sales to end-users during the POI, they were best placed to make these allegations. Indeed, the large majority of the account-specific injury allegations were made by ATP and Trimark, with Evraz and WTC also making some allegations that largely overlapped with those of ATP and Trimark.

[124] The complainants submitted that the account-specific evidence shows losses to Evraz and WTC that are in the tens of thousands of metric tonnes and tens of millions of dollars from those sample accounts alone. They submitted that these losses were the result of ATP and Trimark having lost sales when quoting Evraz and WTC's products or by pressuring them to lower their prices, and were facilitated by Tenaris Canada's "one price" strategy, which enabled it to win critical sales and cause lower market pricing for OCTG.

[125] Tenaris Canada countered that the account-specific injury allegations show ATP, Trimark and the complainants mistook competition from domestic production as competition from subject goods. More specifically, they claimed that 13 of the allegations concerned sales that were either entirely or predominantly goods that were, or would have been, produced in Canada and that the remaining allegations concerned end-users that are not customers of Tenaris Canada.

[126] The Tribunal finds that the account-specific injury allegations made by ATP, Trimark and the complainants do not, in this case, offer compelling evidence of price undercutting by the subject goods. Following the Tribunal's finding above that the price undercutting by the subject goods was not significant and that it was instead Tenaris Canada's domestically produced goods that were primarily responsible for any volume and price effects that the domestic industry may have suffered, the evidence on the record suggests that the same conclusion can be drawn here as well. Indeed, the evidence reveals that a very significant proportion of the sales that were lost to Tenaris Canada were comprised either solely or mostly of domestically produced goods.<sup>118</sup> The evidence also reveals that certain sales that were allegedly lost to Tenaris Canada ultimately did not materialize.<sup>119</sup>

[127] Moreover, the volume of sales (in metric tonnes) that are alleged to have been lost to Tenaris Canada does not square with the evidence regarding the evolution of the distributors' share of the

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<sup>117</sup> To be clear, the Tribunal is not suggesting that Tenaris Canada's domestically produced goods competed directly with its imports of subject goods, as the evidence indicates that the subject goods were generally imported to complement domestic production. However, as sales were likely made at different times throughout a particular quarter, it is reasonable to assume that prices for the subject goods and domestically produced goods varied accordingly.

<sup>118</sup> In its *Protected Aid to Arguments*, Vol. 18 at 11, Tenaris Canada indicates that, by its own calculations, 93 percent of the sales covered by account-specific injury allegations consisted of domestically produced goods. The Tribunal notes that the information provided by the parties in this case made it challenging to achieve absolute certainty with respect to the specific details regarding the exact volumes and the time period over which these sales were made. That being said, after removing an instance of double counting and making other corrections and adjustments based on the Tribunal's own understanding of the information on the record, it can safely conclude that at least 80 percent, if not more, of the sales covered by the allegations consisted of domestically produced goods.

<sup>119</sup> See Exhibit NQ-2021-004-A-10 (protected) at paras. 53, 79–80.



market during the POI. As will be discussed in more detail further below, the data in the Tribunal's investigation report indicate that distributors that sell domestically produced like goods gained market share over the POI. Since the Canadian OCTG market shrank over the POI, it is reasonable to expect that some purchasers may have decided to cancel existing orders or simply not place any new orders. However, given that distributors did not lose any market share, it is also reasonable to assume that, if they did in fact lose sales to the subject imports or Tenaris Canada's domestically produced goods, Tenaris Canada must have lost just as many sales to those same distributors on other accounts.

[128] As will also be discussed further below, although Evraz and WTC's sales to distributors declined significantly over the POI, this was the result of the downturn in the market and inventory destocking by distributors. Thus, these "lost" sales cannot be attributed to any price undercutting, whether by the subject goods or Tenaris Canada's domestically produced good

[129] In light of all of the above, the Tribunal concludes that the subject goods did not significantly undercut the price of the like goods over the POI.

### Price depression

[130] At the end-user trade level, the average selling prices of domestically produced like goods sold by distributors decreased year over year by 2 percent in 2019 and by 7 percent in 2020, before increasing by 5 percent in interim 2021, when compared to interim 2020.<sup>120</sup> The average selling prices of Tenaris Canada's domestically produced goods generally followed the same trend, but with more subdued movements. By contrast, the average selling prices of subject goods increased by 7 percent in 2019 before decreasing by 9 percent in 2020 and by a further 22 percent in interim 2021, when compared to interim 2020.

[131] The above data show that the average selling prices of domestically produced like goods were depressed in both 2019 and 2020, but not in interim 2021. The Tribunal notes that the average selling prices of like goods sold by the domestic industry to distributors followed the same trend and the changes were generally of the same magnitude as the changes in the distributors' average selling prices.<sup>121</sup> The evidence indicates that, by and large, any price effects sustained by the distributors were passed on to the complainants.<sup>122</sup>

[132] Although average selling prices of domestically produced like goods were depressed in 2019 and 2020, the Tribunal is of the view that the evidence on the record does not support a finding that this price effect was attributable to the subject goods. This is due in part to the inverse correlation between their respective price movements in 2019 and 2021. While the average selling prices of like goods sold by distributors decreased by 2 percent in 2019 and increased by 5 percent in interim 2021, the selling prices of subject goods did the opposite by increasing by 7 percent in 2019 and decreasing by 22 percent in interim 2021.<sup>123</sup> The decrease in the selling prices of like goods in 2019 also coincided with a very significant decrease in the volume of subject imports, both in absolute and relative terms, and the increase in the selling prices of like goods in interim 2021 coincided with a

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<sup>120</sup> Exhibit NQ-2021-004-06.D, Table 85.

<sup>121</sup> Exhibit NQ-2021-004-07.C (protected), Table 81.

<sup>122</sup> The fact that average selling prices at both trade levels moved in tandem throughout the POI suggests that, excluding the impact of inventory levels and any destocking of those inventories, distributors were generally able to maintain their margins on the sale of domestically produced like goods.

<sup>123</sup> Exhibit NQ-2021-004-06.D, Table 85.

significant increase in the volume of subject imports.<sup>124</sup> Further, the majority of the observed price undercutting by the subject benchmark products (on a volume basis) occurred in interim 2021, a period during which the average selling prices of like goods increased by 5 percent.

[133] The evidence also indicates that average selling prices of domestically produced like goods trended in line with market developments over the POI. As previously discussed, the Canadian OCTG market fell in 2019 and in 2020 due to lower demand caused by a number of factors, including the Russia-Saudi Arabia oil price war and COVID-19 containment measures, before gradually recovering in late 2020 and in 2021. These factors led to somewhat reduced oil and gas prices and reduced drilling activity in 2019 and a significant reduction in these prices and drilling activity in 2020, before recovering late in 2020 and in 2021.<sup>125</sup>

[134] The complainants submitted that the data show that, in 2020, average selling prices of subject goods and domestically produced like goods both decreased while the volume of subject imports increased substantially in relative terms and their ratio of cost of goods manufactured (COGM) to sales also increased. In their view, this shows that the price depression was caused by subject imports and not by changes in the market.

[135] The evidence before the Tribunal does show that average selling prices of subject goods and like goods both decreased in 2020. However, taking into consideration the fact that (1) the volume of subject imports relative to distributors' sales of domestically produced like goods only increased by 7 percentage points in 2020,<sup>126</sup> (2) the majority of the volume of subject goods that undercut the price of like goods was concentrated in interim 2021 (i.e. the last two of the eight quarters for which benchmark product data were collected) and not 2020, (3) the price undercutting by Tenaris Canada's domestically produced goods was much more significant, and (4) the downturn in the market in 2020 was considered severe, the Tribunal finds that the decrease in the average selling prices of like goods for 2020, as well as for 2019, were price effects attributable to factors other than the dumping of the subject goods.

[136] The Tribunal notes that the pricing data with respect to benchmark products combining both base and enhanced grades of OCTG confirm that there was no price depression over the last eight quarters of the POI. In particular, when examined from end point to end point (i.e. from the third quarter of 2019 to the second quarter of 2021), average selling prices of like goods sold by the domestic industry to distributors increased for every single benchmark product for which they had sales.<sup>127</sup> When the weighted average selling prices for the first three quarters (i.e. the third and fourth quarters of 2019 and the first quarter of 2020) are compared with prices for the last three quarters (i.e. the fourth quarter of 2020 and the first and second quarters of 2021), there were increases for five of the seven benchmark products, with the remaining two exhibiting very minor declines.<sup>128</sup>

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

<sup>124</sup> *Ibid.*, Table 65, 67; Exhibit NQ-2021-004-07.C (protected), Tables 64, 75.

<sup>125</sup> Exhibit NQ-2021-004-10.02 (protected) at 88–89, 102.

<sup>126</sup> Exhibit NQ-2021-004-07.C (protected), Tables 64, 75. As previously stated, assessing the volume of subject imports relative to sales to distributors does not provide a true representation of the volume of subject goods that are imported relative to the actual *consumption* of like goods in the market.

<sup>127</sup> Exhibit NQ-2021-004-07.C (protected), Tables 108–133.

<sup>128</sup> *Ibid.*, Tables 108–133, Schedules 1–26.

### Price suppression

[138] In order to assess whether the subject goods have suppressed the prices of domestically produced like goods, the Tribunal typically compares the domestic industry's average unit cost of goods sold (COGS) or COGM with its average unit selling values in the domestic market to determine whether the domestic industry has been able to increase selling prices in line with increases in costs.<sup>129</sup>

[139] The domestic industry's per-unit COGS and COGM for domestic sales both increased in 2019, before declining in 2020 and in interim 2021, when compared with interim 2020.<sup>130</sup> Since the domestic industry's per-unit net sales value decreased in 2019, the increases in costs for that year were not met with equivalent increases in selling prices, resulting in price suppression and corresponding reduced margins. These margins remained flat in 2020, before improving in interim 2021 as costs declined and net sales value increased.

[140] The complainants submitted that, once the reason for the decline in the domestic industry's overall COGM in 2020 is taken into consideration, it leads to the conclusion that there was also price suppression in 2020.<sup>131</sup>

[141] The Tribunal finds that the decrease in the domestic industry's overall COGM in 2020 is largely irrelevant as production volumes were much lower due to the downturn in the market that year. To the extent that a decrease in overall COGM is a result of lower production volumes, as it is in this case, the only relevant metric is that of per-unit COGM. As indicated above, per-unit COGM declined in 2020.

[142] For essentially the same reasons as stated above by the Tribunal on the issue of price depression, there is no evidence of a link between the price suppression that occurred in 2019 and the dumping of the subject goods. In addition to market developments that caused demand to begin falling in the Canadian OCTG market in 2019, the volume of subject imports decreased significantly, both in absolute and relative terms, while the average selling prices of the subject goods to end-users increased by 7 percent during that same year.<sup>132</sup> The volume of subject benchmark products that undercut the prices of like goods in the third and fourth quarters of 2019 (the only quarters in 2019 for which data were collected) was also minuscule, whereas the volume of domestic benchmark products produced by Tenaris Canada that undercut the prices of like goods in those quarters was orders of magnitude larger. Accordingly, the Tribunal finds that the price suppression that occurred in 2019 was not a price effect that could reasonably be attributed to the dumping of the subject goods.

[143] The complainants also submitted that the Tribunal has recognized that it may also consider indicators of price suppression other than trends in costs over the POI.<sup>133</sup> They submitted that, in the present case, interim 2021 represented a period of early recovery of the oil and gas industry—and hence the market for OCTG—such that they should have been able to increase prices more. In other words, the complainants took the view that they had clearly been prevented from implementing price increases that should have otherwise occurred, particularly in interim 2021.

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<sup>129</sup> *Heavy Plate* (5 February 2021), NQ-2020-001 (CITT) at para. 118.

<sup>130</sup> Exhibit NQ-2021-004-07.C (protected), Table 98.

<sup>131</sup> See Exhibit NQ-2021-004-C-06 (protected) at para. 33.

<sup>132</sup> Exhibit NQ-2021-004-06.D, Tables 65, 67, 85.

<sup>133</sup> See, for example, *Cold Rolled Steel Sheet* (January 7, 2019), NQ-2018-002 (CITT) at para. 60.

[144] As the Tribunal has previously stated, price suppression, as described in paragraph 37.1(1)(b) of the Regulations, can encompass any situation where price increases “would otherwise likely have occurred” and is therefore not limited to situations where an increase in costs is not met by an equivalent increase in selling prices.<sup>134</sup> This is, of course, contingent on there being positive evidence demonstrating the existence of such a situation. In this case, other than claiming that they should have been able to increase prices to a greater degree in interim 2021 as the Canadian OCTG market was recovering, the complainants did not quantify with any level of precision the magnitude of that expected increase.

[145] The Tribunal has found that there was a significant increase in the volume of subject imports in interim 2021. Additionally, approximately two thirds of the total volume of subject benchmark products that undercut the prices of the domestically produced like goods over the last eight quarters of the POI were sold to end-users in interim 2021. Therefore, it is not beyond the realm of possibility that the subject goods suppressed the price of the like goods during this period. However, while the proportion of subject benchmark products that undercut the prices of the like goods in interim 2021 was greater than in other periods of the POI, the level of the undercutting was not significant. In fact, the weighted average level of undercutting during this period was less than 4 percent. In contrast, the volume of domestic benchmark products produced by Tenaris Canada that undercut the prices of the like goods in interim 2021 was more than four times larger than that of the subject benchmark products that undercut the prices of the like goods and the weighted average level of undercutting was more than 8 percent. Overall, the Tribunal finds that, to the extent that the prices of domestically produced like goods were suppressed in 2021, this was largely attributable to factors other than the dumping of the subject goods.

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

### Conclusion

[147] The Tribunal finds that the subject goods did not significantly undercut, depress or suppress the prices of domestically produced like goods over the POI. Any price undercutting, depression or suppression in this case is primarily the result of other factors, including aggressive pricing by Tenaris Canada of domestically produced goods (i.e. intra-industry competition). Whether such aggressive pricing raises competition concerns in a domestic market is an issue beyond the jurisdiction of the Tribunal.

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

[148] Paragraph 37.1(1)(c) of the Regulations requires the Tribunal to consider the resulting impact of the dumped goods on the state of the domestic industry and, in particular, all relevant economic factors and indices that have a bearing on the state of the domestic industry.<sup>135</sup> These impacts are to

<sup>134</sup> *Certain Upholstered Domestic Seating* (2 September 2021), NQ-2021-002 (CITT) [UDS] at para. 194.

<sup>135</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.

be distinguished from the impact of other factors also having a bearing on the domestic industry.<sup>136</sup> Paragraph 37.1(3)(a) requires the Tribunal to consider whether a causal relationship exists between the dumping of the goods and the injury or threat of injury, on the basis of the volume, the price effect, and the impact on the domestic industry of the dumped goods.

[149] Having already determined that the subject goods did not significantly undercut, depress or suppress the prices of domestically produced like goods over the POI, the Tribunal finds, as discussed below, that any volume and price effects (e.g. reduced sales, profitability and employment) experienced by the domestic industry over this period were primarily the result of factors other than the dumping of the subject goods. To the extent that the dumping caused some injury, that injury was not material.

#### Sales and market share

[150] As previously indicated, competition between the subject goods and the like goods occurred almost exclusively at the end-user trade level. The total Canadian OCTG market at that trade level declined in volume year over year by 17 percent in 2019, by 34 percent in 2020 and by 7 percent in interim 2021, when compared with interim 2020.<sup>137</sup> However, the distributors which sell domestically produced like goods generally performed better than the market as their sales increased by 19 percent in 2019, before declining by 38 percent in 2020 and by a further 5 percent in interim 2021, when compared with interim 2020.

[151] The distributors' general overall performance is clearly reflected in their market share, which increased importantly in 2019 and then remained relatively flat with a slight decrease in 2020, followed by a slight increase in interim 2021, when compared to interim 2020.<sup>138</sup> The distributors gained market share over the POI as their share reached its highest point in interim 2021. Conversely, the market share held by the subject goods fell in 2019 and then remained relatively flat for the remainder of the POI. The market share held by Tenaris Canada's domestically produced goods also fell in 2019, before increasing in 2020 and then falling to its lowest point of the POI in interim 2021.

[152] The Tribunal notes that the distributors' marked increase in sales and market share in 2019 is likely the result of missing sales data—especially for 2018—from distributors which purchased like goods from the domestic industry but did not respond to the Tribunal's Purchasers' Questionnaire.<sup>139</sup>

<sup>136</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.

<sup>137</sup> Exhibit NQ-2021-004-06.D, Table 76.

<sup>138</sup> Exhibit NQ-2021-004-07.C (protected), Table 77. Following the hearing in the present inquiry, and further to questions sent by the Tribunal to Trimark in the context of the *OCTG IV* inquiry, Trimark corrected data pertaining to its sales from imports in 2019. See Exhibit NQ-2021-004-RI-02.B at 2–3; Exhibit NQ-2021-004-RI-02.C (protected) at 4. Market shares at the end-user trade level were recalculated for 2019 using these revised data. Market shares for distributors and Tenaris Canada (for sales of both domestically produced goods and subject goods) were minimally impacted.

<sup>139</sup> The evidence on the record indicates that the difference in the domestic industry's volume of sales to distributors, as reported in responses to the Tribunal's Producers' Questionnaire, and the distributors' volume of purchases

Higher sales figures for distributors in 2018 would have reduced the magnitude of the year-over-year increase in sales and market share in 2019. However, the remainder of the POI would not have been materially affected and the distributors' market share would have remained relatively flat.

[153] The sales data for the domestic industry tell a different story as sales decreased year over year in 2019, followed by further declines in 2020 and in interim 2021, when compared with interim 2020.<sup>140</sup> For every period of the POI, the domestic industry fared worse than the distributors to which they sold. The evidence on the record is clear: the domestic industry's underperformance relative to distributors and the end-user market in general was largely, if not entirely, the result of inventory destocking by these distributors. From 2019 to interim 2021, those distributors that responded to the Tribunal's Purchasers' Questionnaire and indicated making purchases from the domestic industry collectively destocked their inventory of domestically produced like goods by what can only be described as a very considerable amount.<sup>141</sup> It follows that, if these distributors had maintained their inventories at their 2018 levels throughout the POI and instead purchased the same volume of goods from the domestic industry as they sold to end-users and other distributors from 2019 to interim 2021, the domestic industry's sales performance would have mirrored that of the general market.

[154] As previously indicated, an important proportion of the sales made by the domestic industry were to ATP and Trimark, which are some of the distributors that destocked their inventories of domestically produced goods.<sup>142</sup> There is little to no indication that this destocking was a result of, or was spurred on by, the dumping of the subject goods. Indeed, the reasons given for the destocking by the witnesses for both ATP and Trimark, especially those given during the hearing, make it clear that other factors were primarily at play.<sup>143</sup>

[155] That other factors were at play is corroborated by the fact that some prominent distributors, including TGSC, also destocked their inventories of imported goods over the POI.<sup>144</sup> Moreover, Tenaris Canada also significantly destocked its inventories of domestically produced goods from 2019 to interim 2021.<sup>145</sup> The fact that the destocking was widespread and covered both domestically produced goods and imported goods, including those of Tenaris Canada, belies the complainants' claims that it was attributable to Mexican OCTG. The Tribunal therefore concludes that the sales lost

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from the domestic industry, as reported in responses to the Tribunal's Purchasers' Questionnaire, was by far the largest in 2018. It was necessary to adjust the purchase volumes, as some reported purchases were actually of OCTG imported from the United States. For 2019 to interim 2021, the reported (and adjusted) purchases made by distributors accounted for the large majority of the sales made by the domestic industry. See Exhibit NQ-2021-004-07.C (protected), Table 68; Exhibit NQ-2021-004-C-12 (protected) at para. 21, footnote 1; the replies to the Tribunal's Purchasers' Questionnaire; Exhibit NQ-2021-004-19.13.B (protected) at 1; Exhibit NQ-2021-004-07.E (protected) at 1.

<sup>140</sup> Exhibit NQ-2021-004-07.C (protected), Tables 69, 73.

<sup>141</sup> See the replies to the Tribunal's Purchasers' Questionnaire. The amount of destocking for each respondent was obtained by calculating the difference between the volume of domestically produced like goods they purchased from the domestic industry and the volume of these goods they sold to end-users and other distributors. See also Tenaris Canada's *Protected Aid to Arguments*, Vol. 18 at 46.

<sup>142</sup> Exhibit NQ-2021-004-19.09.A (protected) at 10; Exhibit NQ-2021-004-19.13.A (protected) at 10.

<sup>143</sup> Exhibit NQ-2021-004-B-01 at para. 33; *Transcript of In Camera Hearing* at 121–125, 131–132, 141–142, 161. The suggestion that inventory destocking was the result of sales lost to subject goods seems to contradict the fact that distributors did not lose market share over the POI. Had they lost sales, they would have lost market share and the destocking would have been less pronounced.

<sup>144</sup> See the replies to the Tribunal's Importers' Questionnaire.

<sup>145</sup> Exhibit NQ-2021-004-06.D, Schedule 46.

by the domestic industry over the POI were primarily the result of factors other than the dumping of the subject goods.

[156] The complainants submitted that Tenaris Canada's imports of carbon grade OCTG (mostly J55 casing, but also H40 casing) since the closure of the Prudential mill created and maintained business in interim 2021 and beyond that that otherwise would have gone to the domestic industry. In their view, the presence of these subject imports prevented the domestic industry from increasing its sales at a critical time.

[157] Tenaris Canada responded that the increase in its imports of carbon grade OCTG from TAMSA in Mexico was only to preserve its market position in meeting the drilling requirements of existing customers pending the completion of its new welded OCTG production line at Algoma. It added that its sales of H40 and J55 casing as a proportion of its total sales remained steady and that it therefore did not take market share with its increased imports.

[158] The Tribunal is of the view that Tenaris Canada's reasons for increasing its imports of carbon grade Mexican OCTG, however much sense it may have made from a business perspective, do not alter the fact that dumped goods allowed it to maintain sales and market share that it may otherwise have lost. The presence in the market of dumped H40 and J55 casing thus prevented the domestic industry from competing and gaining additional market share that should have become available following the closure of the Prudential mill.

[159] That being said, the evidence on the record indicates that Tenaris Canada's sales volume of H40 and J55 casing in interim 2021 was relatively small compared to the volume of domestically produced like goods that were destocked by distributors during that period.<sup>146</sup> The sales volume of H40 and J55 casing was also relatively small compared to the volume of other domestic benchmark products sold by Tenaris Canada that undercut the prices of the like goods during that same period. Therefore, even if the Tribunal were to assume that, absent the dumping, the domestic industry would have captured a major proportion of sales of H40 and J55 casing that was made by Tenaris Canada in interim 2021, it would still not find that the dumping of the subject goods caused injury that can be defined as material in the circumstances of this case.<sup>147</sup>

[160] In light of the foregoing, the Tribunal finds that the evidence demonstrates that, while the domestic industry lost sales and was prevented from making additional sales, the former is primarily the result of factors other than the dumping of the subject goods and the latter has not resulted in injury that meets the threshold of materiality.

#### Financial performance

[161] The domestic industry's financial performance, as it relates to domestic sales, generally deteriorated from 2018 to interim 2020, but then improved in the second half of 2020 and in interim

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<sup>146</sup> Exhibit NQ-2021-004-13.05.C (protected) at 11; Exhibit NQ-2021-004-A-06 (protected) at 6; replies to the Tribunal's Purchasers' Questionnaire.

<sup>147</sup> The Tribunal notes that the benchmark products for which it collected data in this inquiry did not include H40 casing. Therefore, it cannot be certain as to whether imports of H40 casing from Mexico undercut the prices of H40 casing produced by the domestic industry. Moreover, the evidence on the record indicates that not all sales of subject imports of J55 casing in interim 2021 undercut the prices of J55 casing produced by the domestic industry and sold to end-users by distributors.

2021, when compared to interim 2020.<sup>148</sup> That deterioration was due to decreasing sales volume and lower per-unit gross margins due to lower net sales values.

[162] Having already determined that the subject goods themselves did not have significant adverse effects on the volumes and prices of the domestically produced like goods, the domestic industry's negative financial performance over part of the POI is the result of factors other than the dumping of the subject goods. To the extent that the domestic industry was prevented from making additional sales in interim 2021 following the closure of the Prudential mill, these sales would not have been sufficient to have a material impact on its overall profitability.

#### Other performance indicators

[163] The domestic industry's production volumes for domestic sales declined in 2019 and 2020, before increasing in interim 2021, when compared to interim 2020.<sup>149</sup> Capacity utilization for domestic sales followed the same trend. As for direct employment, hours worked and wages, these all declined throughout the POI.

[164] Just as above with the domestic industry's financial performance, its poor performance with respect to production, capacity utilization and employment is attributable to factors other than the dumping of the subject goods.

#### Conclusion

[165] On the basis of the above factors, the Tribunal finds that the domestic industry suffered injury over the POI in the form of lost sales and a reduction in gross margins, which, in turn, negatively impacted production, capacity utilization and employment. However, as will be summarized below, the evidence on the record indicates that this injury was not caused by the subject goods. To the extent that the subject goods did cause some injury, it was not material.

#### **Other factors and causation**

[166] As stated earlier, paragraph 37.1(3)(a) of the Regulations requires the Tribunal to consider whether a causal relationship exists between the dumping of the goods and the injury, on the basis of the volume, the price effect, and the impact on the domestic industry of the subject goods. In order to do so, the Tribunal must distinguish the impact of the subject goods from the impact of other factors also having a bearing on the state of the domestic industry.<sup>150</sup> In other words, the Tribunal must determine whether the subject goods, in and of themselves, caused injury to the domestic industry. The Tribunal cannot assume that the mere presence and availability of the subject goods in the Canadian market resulted in material injury to the domestic industry.<sup>151</sup>

[167] In its above analysis of the price effect and impact of the subject goods on the state of the domestic industry, the Tribunal has already amply discussed the other factors that were, in the Tribunal's opinion, primarily responsible for the injury suffered by the domestic industry over the POI. These are the large volumes and low prices of Tenaris Canada's domestically produced goods (i.e. intra-industry competition), the downturn in the Canadian OCTG market due to lower demand

<sup>148</sup> Exhibit NQ-2021-004-07.C (protected), Tables 98–99.

<sup>149</sup> *Ibid.*, Tables 103–104.

<sup>150</sup> See paragraph 37.1(3)(b) of the Regulations.

<sup>151</sup> *Silicon Metal* (19 November 2013), NQ-2013-003 (CITT) at para. 109.



caused by a number of factors, including the Russia-Saudi Arabia oil price war and the COVID-19 pandemic, and the destocking of inventory by independent distributors.

[168] In support of their view that there is a strong causal link that exists between Tenaris Canada's imports of subject goods and the injury suffered by the domestic industry during the POI, the complainants note that, since the imposition of provisional duty of 51.1 percent on subject goods exported to Canada by TAMSAs following the CBSA's preliminary determination of dumping on September 28, 2021,<sup>152</sup> their situation has improved as Tenaris Canada increased prices on subject imports and ceased importing meaningful volumes of such imports.

[169] The Tribunal however finds, consistent with the fact that injury suffered by the domestic industry over the POI was primarily the result of factors other than the dumping of the subject goods, that any significant improvement in the situation of the domestic industry following the imposition of provisional duty is likely also the result of other factors. Indeed, as previously mentioned, the Canadian OCTG market began to recover in late 2020 and in 2021 as oil and gas prices and drilling activity increased.<sup>153</sup> There are also indications that inventory destocking had abated towards the very end of the POI.<sup>154</sup>

[170] Moreover, in situations where the dumping of the subject goods is ultimately found not to have caused material injury to the domestic industry over the POI, the imposition of provisional duty in a relatively high amount on subject imports, such as is the case here, will typically result in lower import volumes and thus provide the remaining players in the market an opportunity to vie for that newly available market share. Even in situations where the dumping has been found to have caused injury, the magnitude of the margin of dumping and, by implication, the amount of provisional duty imposed on the goods, may do more than simply prevent the continuation of that injury. As the Tribunal has stated on numerous occasions, it does not consider that margins of dumping calculated by the CBSA necessarily represent the level of the injurious effects caused by the actual prices in Canada of the subject goods during the POI.<sup>155</sup>

[171] In light of the foregoing, the Tribunal finds that the injury suffered by the domestic industry over the POI was primarily caused by factors other than the dumping of the subject goods. The Tribunal also finds that any injury caused by the dumping of the subject goods was not material.

## THREAT OF INJURY ANALYSIS

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

[173] The Tribunal is guided in its consideration of this question by subsection 37.1(2) of the Regulations, which prescribes factors to be taken into account for the purposes of its threat of injury

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<sup>152</sup> Exhibit NQ-2021-004-01 at 17.

<sup>153</sup> Exhibit NQ-2021-004-10.02 (protected) at 102.

<sup>154</sup> See, for example, *Transcript of In Camera Hearing* at 142.

<sup>155</sup> See, for example, *UDS* at para. 222.

analysis.<sup>156</sup> Further, subsection 37.1(3) directs the Tribunal to consider whether a causal relationship exists between the dumping of the goods and the threat of injury on the basis of the factors listed in subsection 37.1(2), and whether any factors other than the dumping of the goods are threatening to cause injury.

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

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

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

[Emphasis added]

[176] As the Tribunal has previously indicated, the fundamental requirement that threat of injury findings must be based on facts and not on "allegation, conjecture or remote possibility" aims to mitigate the risk that such findings may be grounded in speculation about possible future events, rather than objective facts directing such a conclusion.<sup>157</sup>

[177] The Tribunal has also indicated that there must be a high probability of a change in circumstances compared to those that existed during the POI, such that the subject goods would threaten to cause material injury in the very near future in the absence of measures.<sup>158</sup> Where the

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<sup>156</sup> Subsection 37.1(2) of the Regulations reads as follows: "The following factors may be considered in determining whether the dumping or subsidizing of goods is threatening to cause injury: (a) the nature of the subsidy in question and the effects it is likely to have on trade; (b) whether there has been a significant rate of increase of dumped or subsidized goods imported into Canada, which rate of increase indicates a likelihood of substantially increased imports into Canada of the dumped or subsidized goods; (c) whether there is sufficient freely disposable capacity, or an imminent, substantial increase in the capacity of an exporter, that indicates a likelihood of a substantial increase of dumped or subsidized goods, taking into account the availability of other export markets to absorb any increase; (d) the potential for product shifting where production facilities that can be used to produce the goods are currently being used to produce other goods; (e) whether the goods are entering the domestic market at prices that are likely to have a significant depressing or suppressing effect on the price of like goods and are likely to increase demand for further imports of the goods; (f) inventories of the goods; (g) the actual and potential negative effects on existing development and production efforts, including efforts to produce a derivative or more advanced version of like goods; (g.1) the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods; (g.2) evidence of the imposition of anti-dumping or countervailing measures by the authorities of a country other than Canada in respect of goods of the same description or in respect of similar goods; and (h) any other factors that is relevant in the circumstances."

<sup>157</sup> *Polyethylene Terephthalate Resin* (16 March 2018), NQ-2017-003 (CITT) at para. 167.

<sup>158</sup> *Ibid.* at paras. 170–171.

situation in the future will be the same or similar to the period for which no injury was found, there cannot be a “change of circumstances” and thus there cannot be a threat of injury.<sup>159</sup>

[178] In the present case, the Tribunal has already found that the injury suffered by the domestic industry over the POI was primarily caused by factors other than the dumping of the subject goods and that any injury that may have been caused by the dumping of the subject goods was not material. Absent a change in the circumstances that led to this finding, or in the face of a change in circumstances that does not create a situation in which injury is clearly foreseen and imminent, there can be no basis upon which to make a finding that the dumping of the subject goods is threatening to cause injury.

[179] The Tribunal must therefore determine whether there is a high probability of a change in circumstances that will lead to a situation in which the dumping of the subject goods would, in the very near future, cause material injury to the domestic industry. For the reasons set out below, the Tribunal finds that, while the evidence indicates that there is a high probability of a change in circumstances, this change does not lead to a situation in which the dumping of the goods will, in the very near future, cause injury to the domestic industry. Rather, this change in circumstances leads the Tribunal to find that any injury that the domestic industry may currently suffer, which would not be considered material, is likely to decrease or cease altogether.

#### **Time frame for the threat analysis**

[180] In assessing threat of injury, the Tribunal typically considers a time frame of 12 to 18 months, and no more than 24 months, beyond the date of its finding, depending on the unique circumstances of each case. The complainants submitted that such a time period is appropriate in this case and is also consistent with the Tribunal’s decision in *OCTG II*.<sup>160</sup>

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

#### **Likelihood of increased dumped goods**

[182] Paragraphs 37.1(2)(b) and (c) of the Regulations require the Tribunal to consider the rate of increase of dumped goods imported into Canada and the freely disposable capacity of the producers of those goods in its determination of whether there is a likelihood of substantially increased imports of the subject goods.

[183] The complainants submitted that a confluence of factors, including (1) current import volume trends, (2) TAMSA’s export orientation and current level of excess capacity, (3) increased drilling activity in Canada, and (4) the likely diversion of subject imports away from the United States market as result of trade measures against imports of OCTG from Mexico and other countries, support a finding that the volume of subject imports will continue to increase over the next 12 to 18 months in the absence of anti-dumping measures.

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<sup>159</sup> *Ibid.* at para. 173. The requirement for a change in circumstances has also been enunciated in numerous other decisions. See, for example, *Decorative and Other Non-structural Plywood* (19 February 2021), NQ-2020-002 (CITT) at para. 198; *Nitisinone Capsules* (18 April 2019), NQ-2018-005 (CITT) at paras. 123-124; *Corrosion-resistant Steel Sheet* (21 February 2019), NQ-2018-004 (CITT) at para. 108.

<sup>160</sup> *OCTG II* at para. 206.

[184] Tenaris Canada countered that the recent and temporary increase in the volume of subject imports was to fill a production gap caused by the closure of the Prudential mill and that imports will decline sharply once its new welded OCTG production line in Sault Ste. Marie is operational in April 2022.

[185] As indicated above, the Tribunal found that, in absolute terms, the volume of subject imports decreased in 2019 and 2020, before increasing by 21 percent in interim 2021, when compared to interim 2020. The Tribunal also found that the volume of subject imports relative to sales of domestically produced like goods by distributors decreased in 2019, before increasing by 7 percentage points in 2020 and by a further 11 percentage points in interim 2021, when compared to interim 2020.<sup>161</sup> However, and more importantly, the Tribunal noted that, if imports of J55 casing from TAMSAs had remained at levels observed in the second half of 2019 and in 2020, the total volume of subject imports would have declined in interim 2021, in both absolute and relative terms, when compared to interim 2020.

[186] Therefore, if Tenaris Canada had not imported large volumes of J55 casing following the closure of the Prudential mill, the total volume of subject imports would have clearly been on a *decreasing* trend at the end of the POI. This fact is of central importance to the Tribunal's threat of injury analysis. As will be discussed further below, the evidence on the record supports a finding that Tenaris Canada will likely curtail its imports of J55 casing from Mexico once its new welded OCTG production line becomes operational in the near term.

[187] The complainants maintained that there is a strong likelihood of a significant increase in the volume of subject imports in the next 12 to 18 months given the increases observed in interim 2021 and up to the imposition of provisional duty by the CBSA at the end of September 2021. In this regard, they noted that Statistics Canada data show that the volume of subject imports increased substantially in the third quarter of 2021 as well as in the first three quarters of 2021, when compared to the same period in 2020.<sup>162</sup>

[188] While data pertaining to a post-POI period can provide confirmation of continuation or acceleration of trends observed during the POI and may thus be relevant for assessing threat of injury, they are by no means determinative.<sup>163</sup> The weight given to this type of information, or any information for that matter, will ultimately depend on the particular facts and circumstances of each individual case. In the present case, there is no information on the record with respect to sales of domestically produced like goods (either by the domestic industry or distributors) in the third quarter of 2021. As such, the Tribunal is unable to assess whether there was also an increase in the volume of subject imports *relative* to sales of domestically produced like goods by distributors during that period.<sup>164</sup> In any event, as discussed below, there is evidence indicating that the current increase in the volume of subject imports, which is entirely attributable to the importation of J55 casing from

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<sup>161</sup> As previously explained, this relative measure is more appropriate in the present case given that competition between the subject goods and the like goods occurs at the end-user trade level and that actions taken by distributors, who purchase domestically produced like goods from the domestic industry and resell them to end-users, may be the cause of injury to the domestic industry.

<sup>162</sup> See Exhibit NQ-2021-004-C-07 at 3.

<sup>163</sup> *Concrete Reinforcing Bar* (2 July 2021), NQ-2020-005 (CITT) at para. 66.

<sup>164</sup> Evidence on the record suggests that, during this time period, the total Canadian OCTG market was expected to increase as a result of a market recovery owing to increases in drilling activity. Notably, in November 2021, the Petroleum Services Association of Canada increased its 2021 forecast for the total number of wells to be drilled. See Exhibit NQ-2021-004-A-03 at 21–22.

Mexico, is only temporary and that subject imports are likely to decrease in the imminent and foreseeable future.

[189] Tenaris Canada has submitted evidence indicating that it is currently in the process of relocating the production of welded OCTG to its Algoma facility in Sault Ste. Marie as part of a \$117 million industrial transformation project. The fact that Tenaris Canada has made such an investment with a view to eventually operating the new welded OCTG production line is uncontroverted.<sup>165</sup>

[190] Tenaris Canada has also adduced evidence to suggest that the construction of this new production line is at an advanced stage and that the line will begin operating in March 2022, with commercial production to meet customer orders starting in April 2022.<sup>166</sup> While Mr. Prosperi has recognized in his testimony that it is possible that certain contingencies may occur, he remains “extremely confident” that Tenaris Canada is going to be able to start producing at the end of March 2022.<sup>167</sup> At the time of the Tribunal’s hearing, concrete steps related to the commissioning of the new production line were underway, including steps for the hiring of crews.<sup>168</sup> Even if Tenaris Canada’s witnesses could not assert with absolute certainty that the new welded OCTG production line would become operational in March 2022, owing to the possibility of contingencies, there is sufficient evidence on the record to support a finding that it will become operational in the 4 to 6 months following the Tribunal’s finding in this inquiry, which the Tribunal considers to be imminent.

[191] The evidence also reveals that Tenaris Canada’s new welded OCTG production line will be used to produce J55 casing and that Tenaris Canada plans to stop all imports of J55 casing that can be produced in Canada once the line becomes operational.<sup>169</sup> This is consonant with Tenaris Canada’s overarching stated policy to produce whatever it can in Canada.<sup>170</sup> Given the advanced stage of construction of Tenaris Canada’s production line, the Tribunal finds that any assertions to the effect that Tenaris Canada would continue to rely heavily on importations of subject goods in the next 12 to 18 months, rather than instead utilizing its newly built production facility in Canada, constitutes conjecture.

[192] Once imports of J55 casing from TAMSA are discounted, the remaining volume of subject goods that were imported generally decreased over the POI. Indeed, Tenaris Canada’s increases in

<sup>165</sup> See Exhibit NQ-2021-004-A-07 at paras. 17–21. See also *Transcript of Public Hearing* at 112–113, 121, where Mr. Steve Sutton of ATP did not deny that Tenaris Canada would use its new welded OCTG production line once completed.

<sup>166</sup> Exhibit NQ-2021-004-A-07 at paras. 17, 21, 29, 60; *Transcript of Public Hearing* at 187–188, 256–257. See also Exhibit NQ-2021-004-RI-01.A (protected) at 7–28, 31–33, where, in response to a request for information made by the complainants, Tenaris Canada filed commercial documents which provide detailed information pertaining to the construction progress of the new welded OCTG production line, information pertaining to other short- to mid-term upgrades to its existing production facilities, the anticipated production capacity of its operations, as well as the number of new dedicated finishing lines that will exist post-expansion.

<sup>167</sup> *Transcript of Public Hearing* at 257–258.

<sup>168</sup> *Ibid.* at 258.

<sup>169</sup> *Ibid.* at 188–189. While the evidence indicates that Tenaris Canada will be incapable of producing welded J55 casing falling outside certain dimensional ranges (i.e. casing with outside diameters of less than 4 ½ inches and more than 12 ¾ inches), it also indicates that these products represent a very small proportion of the overall Canadian OCTG market and that they accounted for an extremely small proportion of the total volume of subject imports of J55 casing in interim 2021. See Exhibit NQ-2021-004-A-07 at para. 27; *Transcript of Public Hearing* at 186, 189; Exhibit NQ-2021-004-A-24 (protected) at 6–7.

<sup>170</sup> Exhibit NQ-2021-004-A-07 at para. 12.

domestic production capabilities for certain grades or dimensional ranges of seamless OCTG over the POI have been met with associated decreases in imports for those same categories of products.<sup>171</sup> Moreover, Tenaris Canada expects to be able to produce an additional size, as well as an additional grade, of OCTG on a commercial basis before the end of 2022.<sup>172</sup> This is expected to further reduce the volume of subject imports in the next 12 to 18 months.

[193] Overall, the evidence on the record indicates that, despite the increase in the volume of imports of J55 casing from Mexico, the proportion of Tenaris Canada's total sales represented by domestically produced goods has increased over the POI.<sup>173</sup> In fact, Mr. Prosperi testified that, while Tenaris Canada has in the past few years been producing in Canada around 70 percent of the OCTG it has sold domestically, it is targeting to increase that figure to 84 percent by the end of 2023.<sup>174</sup> This will likely result in a further reduction of subject imports.

[194] The Tribunal finds that the above evidence is sufficient to conclude that there is not a likelihood of substantially increased imports of subject goods into Canada in the next 12 to 18 months. In fact, this evidence suggests that such imports are likely to *decrease* over the next 4 to 6 months and thereafter. As such, the Tribunal does not find it necessary to examine the complainants' arguments with respect to TAMSA's export orientation and current level of excess capacity, the increased drilling activity in Canada and the likely diversion of subject imports away from the United States market as a result of trade measures against imports of OCTG from Mexico and other countries.<sup>175</sup>

### Likely price effects

[195] The Tribunal found above that the subject goods had not significantly undercut, depressed or suppressed the prices of domestically produced like goods over the POI and that any adverse price effects in this case were primarily the result of other factors, including aggressive pricing by Tenaris Canada of domestically produced goods and the downturn in the Canadian OCTG market.

[196] There is no evidence to suggest that there will be a change in circumstances such that the subject goods would now begin to have significant adverse effects on the price of the like goods in the absence of measures. In fact, with the Tribunal having found that the volume of subject imports is likely to decrease in the short term, it can only conclude that any adverse price effects will likely be the result of other factors, including correspondingly larger volumes of Tenaris Canada's domestically produced goods being sold in the market.

[197] Therefore, the Tribunal finds that the evidence does not indicate that the subject goods are likely to have a significant depressing or suppressing effect on the price of the like goods in the next 12 to 18 months.

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<sup>171</sup> For example, Tenaris Canada states that it can now produce seamless OCTG with outside diameters of 6 5/8 and 7 5/8 inches. See Exhibit NQ-2021-004-RI-01 at 1; Exhibit NQ-2021-004-A-07 at para. 38; *Transcript of Public Hearing* at 207; Exhibit NQ-2021-004-A-24 (protected) at 5–6.

<sup>172</sup> Exhibit NQ-2021-004-RI-01 at 1; *Transcript of Public Hearing* at 205–206.

<sup>173</sup> Exhibit NQ-2021-004-07.C (protected), Table 68. See also Exhibit NQ-2021-004-A-06 (protected) at para. 19 (Table 4).

<sup>174</sup> *Transcript of Public Hearing* at 175, 214–215. See also Exhibit NQ-2021-004-RI-01.A (protected) at 17.

<sup>175</sup> The Tribunal is of the view that these factors are of little relevance in the particular circumstances of this case given the affiliated status of the Tenaris companies, the complementary nature of the subject imports (i.e. the reasons for which Tenaris Canada imports the goods) and the Tribunal's finding that imports of subject goods are likely to decrease in the short term. In other words, the Tribunal is of the view that these factors have not affected Tenaris Canada's decision to import subject goods over the POI, and the Tribunal fails to see how they would do so in the future.

**Likely impact on the domestic industry**

[198] The Tribunal found above that, although the domestic industry had suffered injury over the POI, that injury was not caused by the dumping of the subject goods. Rather, it found that the injury was primarily the result of intra-industry competition, the downturn in the Canadian OCTG market and the destocking of inventory by independent distributors. The Tribunal also found that, to the extent that the subject goods had caused some injury to the domestic industry, that injury was not material in nature.

[199] Having found that imports of the subject goods are likely to decrease in the short term and are not likely to have significant adverse effects on the price of the like goods in the next 12 to 18 months, the Tribunal also concludes that the dumping of the subject goods is not likely to be the cause of any injury that may be suffered by the domestic industry during this time period. Any such injury would be the result of factors unrelated to the dumping of the subject goods.

**Conclusion**

[200] On the basis of the foregoing, the Tribunal finds that the dumping of the subject goods is not threatening to cause injury to the domestic industry in the next 12 to 18 months.

**EXCLUSIONS**

[201] Given the Tribunal's finding that the dumping of the subject goods has not caused injury and is not threatening to cause injury to the domestic industry, it is unnecessary to consider whether the exclusions requested by Tenaris Canada should be granted.

**CONCLUSION**

[202] The Tribunal finds, pursuant to subsection 43(1) of SIMA, that the dumping of the subject goods has not caused injury and is not threatening to cause injury to the domestic industry.

Serge Fréchette

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Serge Fréchette

Presiding Member

Frédéric Seppey

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Frédéric Seppey

Member

Peter Burn

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Peter Burn

Member