



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

FINDING
AND REASONS

Inquiry NQ-2021-006

Oil Country Tubular Goods

*Finding issued
Tuesday, February 22, 2022*

*Reasons issued
Wednesday, March 9, 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 Republic of Austria, 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 January 21, 2022, 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.

Peter Burn

Peter Burn
Presiding Member

Serge Fréchette

Serge Fréchette
Member

Frédéric Sepey

Frédéric Sepey
Member

The statement of reasons will be issued within 15 days.

Place of Hearing: Via videoconference
Dates of Hearing: January 26, 27 and 28, 2022

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(Canada) Inc. and Hydril Canadian Company LP
(collectively “Tenaris Canada”)

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Welded Tube of Canada Corp.

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STATEMENT OF REASONS

INTRODUCTION

[1] The mandate of the Canadian International Trade Tribunal in this inquiry¹ is to determine whether the dumping of certain oil country tubular goods (OCTG) originating in or exported from the Republic of Austria (Austria) (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 17, 2021, by Algoma Tubes Inc. (Algoma), Prudential Steel ULC (Prudential), Tenaris Global Services (Canada) Inc. (TGSC) and Hydril Canadian Company LP (Hydril) (collectively Tenaris Canada) and the subsequent decision by the CBSA, on July 7, 2021, to initiate an investigation into the alleged dumping of the subject goods.

[4] On July 8, 2021, as a result of the CBSA's decision to initiate an investigation, the Tribunal initiated a preliminary injury inquiry pursuant to subsection 34(2) of the *Special Import Measures Act* (SIMA). On September 7, 2021, 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.²

[5] On October 25, 2021, the CBSA made a preliminary determination of dumping and imposed provisional anti-dumping duties on the subject goods.³ On October 26, 2021, the Tribunal commenced this inquiry.⁴

[6] The Tribunal's period of inquiry (POI) covered three full years from January 1, 2018, to December 31, 2020, and included two interim periods: January 1 to June 30, 2020 (interim 2020), and January 1 to June 30, 2021 (interim 2021).⁵

[7] As part of this inquiry, a number of known domestic producers, importers, purchasers and foreign producers of OCTG were asked to respond to questionnaires from the Tribunal by October 20, 2021. The Tribunal initiated an inquiry concerning the dumping of OCTG of the same description originating in or exported from the United Mexican States (Mexico) on September 29, 2021.⁶ As the POI and the questionnaire recipients would be the same for both

¹ The inquiry is conducted pursuant to section 42 of the *Special Import Measures Act*, R.S.C., 1985, c. S-15.

² *Oil Country Tubular Goods* (7 September 2021), PI-2021-004 (CITT) [*OCTG IV PI*].

³ Exhibit NQ-2021-006-01.

⁴ Exhibit NQ-2021-006-03.

⁵ Exhibit NQ-2021-006-06 at 9.

⁶ *Oil Country Tubular Goods* (26 January 2022), NQ-2021-004 (CITT) [*OCTG III*]. The CBSA made a preliminary determination of dumping in that case on September 28, 2021. At that time, the CBSA had not yet made a preliminary determination of dumping in respect of certain OCTG from Austria.

inquiries, the Tribunal issued a single set of questionnaires for domestic producers, importers and purchasers.⁷

[8] The Tribunal received replies to its producer questionnaire from 3 domestic producers of goods meeting the product definition, namely Tenaris Canada, Evraz Inc. NA Canada (Evraz) and Welded Tube of Canada Corp. (WTC).⁸ 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 15 purchasers⁹ and 1 foreign producer of such goods.

[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 on December 14, 2021.¹⁰ A number of revisions were subsequently made to both the public and protected investigation reports, and fully revised reports were issued on January 27, 2022.

[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 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 14, 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 December 21, 2021, Trimark Tubulars Ltd. (Trimark), a Canadian importer and distributor of OCTG, and voestalpine Tubulars GmbH & Co KG (VAT), the foreign producer of subject goods, each filed the same three requests for the exclusion of specific products from any eventual finding of injury or threat of injury in respect of the subject goods. Tenaris Canada filed a response opposing the requests on December 29, 2021. Trimark and VAT filed replies to that response on January 6, 2022.¹¹

[12] On December 22, 2021, Tenaris Canada and the United Steelworkers (USW)¹² filed case briefs, witness statements and other evidence in support of a finding of injury or threat of injury in

⁷ The foreign producers in the current case were sent questionnaires on October 26, 2021, when the Tribunal initiated the current inquiry.

⁸ 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.

⁹ One of the responses to the purchaser questionnaire was incomplete and, therefore, could not be used.

¹⁰ Exhibit NQ-2021-006-06; Exhibit NQ-2021-006-07 (protected).

¹¹ On January 28, 2022, VAT further confirmed the proper description for the exclusion requests filed by itself and Trimark.

¹² The USW is an international trade union representing a number of members directly or indirectly employed in the manufacturing of OCTG at Evraz, WTC, Algoma and Prudential. Although Tenaris Canada permanently closed

respect of the subject goods. The same day, the Delegation of the European Union to Canada (EU Delegation) filed a case brief, in which it indicated that it took issue with the confidential designations of the information in this case and a finding of injury. On January 4, 2022, Trimark and VAT filed case briefs, witness statements and other evidence in opposition to a finding of injury or threat of injury. Tenaris Canada filed a reply brief and additional evidence on January 10, 2022.

[13] Although Evraz and WTC filed notices of participation, they did not file any evidence or arguments, take position or otherwise participate in the inquiry.

[14] On December 22, 2021, Tenaris Canada filed with the Tribunal two requests for information (RFIs) directed to Trimark. Trimark did not object to the RFIs. On December 30, 2021, after reviewing the RFIs and taking into account the rationale for them and the information available on the record, the Tribunal directed Trimark to respond to the RFIs. The Tribunal also directed Tenaris Canada to respond to additional questions. The responses were received and placed on the record on January 6, 2022.¹³

[15] On January 11, 2022, the Tribunal directed Trimark to respond to further questions. Trimark filed a response on January 18, 2022, and answered additional questions from the Tribunal stemming from that response on January 25, 26 and 27, 2022.

[16] As per its usual practice, the Tribunal accorded parties the opportunity to notify it of matters which had arisen prior to the hearing. On January 19, 2022, Tenaris Canada made a request to the Tribunal, to which Trimark and VAT objected. The Tribunal issued directions to Trimark in relation to that request on January 21, 2022. Trimark provided its response to the request on January 26, 2022.

[17] On January 24, 2022, VAT made a request to add an article to the record, which was opposed by Tenaris Canada and the USW. The Tribunal denied the request on January 26, 2022, due to the lateness of the request.

[18] The Tribunal held a videoconference hearing from January 26 to 28, 2022, and heard testimony from Mr. Ricardo Prospero, Mr. David McHattie, Ms. Shellie Clark and Mr. Pablo Toy for Tenaris Canada; Mr. Mike Day and Mr. Stacy Hanley for the USW; Mr. Gordon Kozak for Trimark; and Mr. Gernot Graller-Kettler for VAT.

[19] On January 26, 2022, during the course of the hearing, the Tribunal requested that Tenaris Canada provide additional information regarding net delivered selling values. Tenaris Canada filed the requested information on January 27, 2022, and provided a correction to that information on February 1, 2022. Further, in response to a request made by the Tribunal on January 28, 2022, Tenaris Canada filed a post-hearing submission regarding its income statements on January 31, 2022, to which Trimark and VAT provided comments on February 2, 2022, with Tenaris Canada providing a final reply on February 7, 2022.

[20] The Tribunal issued its finding on February 22, 2022.

its Prudential mill in Calgary, Alberta, the workers remain USW members in good standing until Prudential settles its pension liabilities. See Exhibit NQ-2021-006-E-01 at paras. 4–5.

¹³ Trimark later provided a correction to some data provided in its response on January 19, 2022.

RESULTS OF THE CBSA'S INVESTIGATION

[21] On January 21, 2022, the CBSA made a final determination of dumping in respect of the subject goods.¹⁴ The CBSA's period of investigation was from May 1, 2020, to April 30, 2021.¹⁵

[22] The CBSA determined that 100 percent of the subject goods imported into Canada during this period had been dumped.¹⁶ It also determined that the weighted average margin of dumping of the subject goods, when expressed as a percentage of the export price, was 34.6 percent for VAT—the sole exporter of subject goods to Canada.¹⁷

PRODUCT

Product definition

[23] 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 Austria.*¹⁸

Product information

[24] 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 Austria and imported for use in 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 Austria 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.

¹⁴ Exhibit NQ-2021-006-04 at 9–10.

¹⁵ Exhibit NQ-2021-006-04.A at para. 12.

¹⁶ Exhibit NQ-2021-006-04 at 19.

¹⁷ *Ibid.* at 14.

¹⁸ Exhibit NQ-2021-006-01.A at para. 25.

[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.¹⁹

PRELIMINARY MATTERS

Treatment of confidential information in the investigation report

[25] In its case brief, the EU Delegation argued that the Tribunal failed to comply with its obligations under articles 6.5.1 and 6.9 of the World Trade Organization (WTO) Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-dumping Agreement)²⁰ and the relevant WTO jurisprudence because the Tribunal's public investigation report did not disclose essential facts, designated an excessive quantity of information as confidential, and failed to provide either non-confidential summaries of this information or statements as to why such summarizations were not possible. Ultimately, the EU Delegation argued that interested parties without counsel representation were prevented from having a reasonable understanding of the case and exercising their rights of defence.²¹

[26] The Tribunal respectfully disagrees, as it has done in previous proceedings where the EU Delegation made the same or similar arguments.

[27] The WTO Appellate Body has held that article 6.5.1 of the Anti-dumping Agreement—which requires the provision of non-confidential summaries—serves to balance the goals of protecting confidentiality and ensuring the transparency of the investigation process.²² As a result, any

¹⁹ *Ibid.* at paras. 26–29.

²⁰ WTO Anti-dumping Agreement, online: <https://www.wto.org/english/docs_e/legal_e/19-adp.pdf>. Article 6.5 provides that information which is by nature confidential or which is provided on a confidential basis by parties to an investigation shall, upon good cause shown, be treated as such by the authorities. Article 6.5.1, which the EU Delegation referenced, provides that:

The authorities shall require interested parties providing confidential information to furnish non-confidential summaries thereof. These summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. In exceptional circumstances, such parties may indicate that such information is not susceptible of summary. In such exceptional circumstances, a statement of reasons why summarization is not possible must be provided.

Article 6.9 of the Anti-dumping Agreement provides that: “The authorities shall, before a final determination is made, inform all interested parties of the essential facts under consideration which form the basis for the decision whether to apply definitive measures. Such disclosure should take place in sufficient time for the parties to defend their interests.”

²¹ Exhibit NQ-2021-006-F-01 at 1–3.

²² Appellate Body Report, *EC – Fasteners (China)*, WT/DS397/AB/R at para. 542; see also Panel Report, *Mexico – Steel Pipes and Tubes (Guatemala)*, WT/DS331/R at para. 7.380.

non-confidential summaries must protect the confidential information at issue while at the same time contain sufficient detail to permit other parties a reasonable understanding of the substance of the information, so that they may respond and defend their interests.

[28] The data presented in the investigation report are largely based on information provided by respondents to the Tribunal's questionnaires, which is properly designated as confidential by respondents and which the Tribunal has a statutory obligation to protect.²³ In this case, the domestic industry comprises three entities, and there is only one known importer of the subject goods, making the disclosure of aggregate data difficult, if not impossible, in many cases.²⁴

[29] Despite these limitations, the Tribunal believes that it has met its transparency obligations by placing as much information as possible in the public version of its investigation report. In this regard, while absolute figures are, for the most part, confidential, several tables in the report include percent change figures in order to allow parties to gain an understanding of the substance of the information. Furthermore, to improve transparency without disclosing confidential information, the investigation report contains a public summary table of confidential information, in which arrows are used to indicate the increases and decreases of certain data over the POI.²⁵

[30] Finally, the Tribunal notes that, pursuant to subsection 45(3) of the *Canadian International Trade Tribunal Act*²⁶ and subrule 16(1) of the *Canadian International Trade Tribunal Rules*, information that has been designated as confidential may be disclosed to counsel who have provided the required declaration and undertaking. Thus, it was open to the EU Delegation to obtain access to confidential information by retaining counsel to act on its behalf in these proceedings, as the participating party from Austria did in this case. As the Tribunal has previously stated, “[p]roviding access to confidential information in this way allows the Tribunal to obtain maximum voluntary participation from interested parties, ensure transparency and, at the same time, protect confidential information.”²⁷

[31] The Tribunal believes that this balanced approach is consistent with Canada's WTO obligations and is confident that it compares favourably with the approach taken in other leading jurisdictions.

²³ In accordance with sections 45 to 49 of the *Canadian International Trade Tribunal Act*, which set out obligations and objectives similar to those in articles 6.5 and 6.5.1 of the Anti-dumping Agreement. The Tribunal's *Confidentiality Guidelines* provide further guidance, including, *inter alia*, on the types of information that are typically considered confidential. Online: <citt-tcce.gc.ca/en/resource-types/confidentiality-guidelines.html>.

²⁴ As indicated in the investigation report, rigorous procedures are followed in preparing the report to ensure that confidentiality of data is not compromised, having regard to such things as the number of respondents and whether there is dominance (a situation where a small number of firms account for a very large portion of any data field such that confidential information could be revealed by means of reverse engineering). When any revision to the investigation report is issued, the same rigorous procedures are followed. In addition, those revisions may lead to previously public information being treated as confidential so as not to expose the confidential revised data. See Exhibit NQ-2021-006-06 at 10.

²⁵ Exhibit NQ-2021-006-06, Table 16.

²⁶ R.S.C., 1985, c. 47 (4th Supp.).

²⁷ *Wheat Gluten* (22 April 2021), NQ-2020-003 (CITT) at para. 19, citing *Certain Fabricated Industrial Steel Components* (25 May 2017), NQ-2016-004 (CITT) at para. 25.

Request to strike Mr. Toy's witness statement

[32] On January 12 and 13, 2022, Trimark and VAT asked the Tribunal to strike from the record all or part of Mr. Toy's witness statement, filed as part of Tenaris Canada's reply submissions on January 10, 2022, or, in the alternative, to have the opportunity to file sur-replies.²⁸ Trimark and VAT alleged that Mr. Toy's witness statement dealt exclusively with Trimark and VAT's exclusion requests and that Tenaris Canada was therefore attempting to improperly and unfairly buttress this exclusion evidence, which would have been due on December 29, 2021, under the guise of its injury reply material.

[33] On January 14, 2022, Tenaris Canada responded that the paragraphs sought to be struck from Mr. Toy's witness statement are in direct answer to allegations contained in Trimark and VAT's submissions and witness statements. Tenaris Canada provided a table summarizing the claims in Trimark's case brief and witness statements to which Mr. Toy's own statements were replying. Furthermore, Tenaris Canada noted that Trimark makes many of the same claims in both its case brief and in its exclusion requests such that the issues of injury and exclusions are deeply interrelated in this case. Therefore, Tenaris Canada submitted that the fact that Mr. Toy's witness statement could be relevant to the question of product exclusions should not bar its admissibility, given its relevance to the question of injury.

[34] The Tribunal denied Trimark and VAT's requests on January 20, 2022, indicating that it would provide a more complete analysis in its statement of reasons.

[35] Reply submissions and evidence are properly filed where they are in direct reply to, and are rationally connected to, another party's arguments and evidence.²⁹ In the current case, some of the questions pertaining to the issues of injury and product exclusion are closely related. The evidence relating to one issue may, as such, be relevant to the other.

[36] Although Mr. Toy's witness statement seems to address questions pertaining to Trimark and VAT's product exclusion requests, it concurrently responds to claims made by Trimark in its opposing case brief, as noted by Tenaris Canada. The Tribunal saw no basis, therefore, to strike parts of Mr. Toy's witness statement.

[37] Ultimately, the Tribunal was of the view that Mr. Toy's witness statement addresses arguments raised by Trimark and VAT in their case briefs and that it was properly filed as part of Tenaris Canada's reply submissions. Furthermore, Trimark and VAT had the opportunity to question Mr. Toy at the hearing regarding the contents of his witness statement.

LEGAL FRAMEWORK

[38] 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 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".

²⁸ Exhibit NQ-2021-006-36; Exhibit NQ-2021-006-37.

²⁹ *Decorative and Other Non-structural Plywood* (19 February 2021), NQ-2020-002 (CITT) at para. 57.

[39] 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.

[40] 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.³⁰ As a domestic industry is already established, the Tribunal will not need to consider the question of retardation.³¹

[41] 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

[42] 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.³²

[43] 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.

[44] 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).³³

[45] 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

³⁰ 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.

³¹ Subsection 2(1) of SIMA defines “retardation” as “. . . material retardation of the establishment of a domestic industry”.

³² 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.).

³³ See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at para. 48.

those goods are “like goods” in relation to each other, they will be regarded as comprising a single class of goods.³⁴

[46] 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.³⁵ Similarly, the evidence in this case indicates that subject goods and domestically produced OCTG have the same or similar physical characteristics, as they are made to the same American Petroleum Institute (API) specifications and fall within the same parameters of size and composition. They also share the same or similar market characteristics in terms of substitutability, price, distribution channels and end uses, and they supply the same customer needs.³⁶

[47] In its written submissions, Trimark argued that seamless and welded OCTG, as well as different types of OCTG such as casing and tubing, should be considered different classes of goods, noting that different types, grades, and dimensions of OCTG command different prices in the market. Trimark suggested that, to understand competition in the OCTG market, “a type (tubing, casing etc.) and size/grade-by-size/grade analysis is required.”³⁷ Trimark also argued that the subject goods imported during the POI are largely in grades/specification and dimensions for use in applications where an identical or substitutable product is not available from domestic production.

[48] In reply, Tenaris Canada noted that Trimark did not raise the issue of classes of goods in *OCTG III* and indeed appeared to take an inconsistent position on this issue.

[49] The Tribunal has considered and rejected arguments similar to those of Trimark in past OCTG cases. In *OCTG I*, the Tribunal found that casing and tubing were sufficiently alike as to constitute a single class of goods, considering that they were made to the same API specifications, had the same/similar appearance and composition, were generally substitutable for one another, were both used downhole to extract oil and gas, and were sold through the same distribution channels.³⁸ In *OCTG II*, it was argued that seamless and welded, as well as casing and tubing, represented different classes of goods. The Tribunal was unconvinced, finding that both green tubes and finished OCTG, either seamless or welded, possessed sufficiently similar characteristics, were designed for the same end uses and were interchangeable, and therefore constituted a single class of goods.³⁹

[50] More specifically, beyond stating its disagreement with the Tribunal’s historic approach to treating OCTG as a single class of goods, Trimark has not provided specific reasons or evidence as to why the Tribunal should depart from the reasoning above in this case. Regarding Trimark’s position that different types, grades, and dimensions of OCTG command different prices in the market, the

³⁴ *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) at para. 115; see also *Thermal Insulation Board* (11 April 1997), NQ-96-003 (CITT) at 10.

³⁵ See *Oil Country Tubular Goods* (23 March 2010), NQ-2009-004 (CITT) [*OCTG I*] at paras. 78, 83; *Oil Country Tubular Goods* (2 April 2015), NQ-2014-002 (CITT) [*OCTG II*] at paras. 34, 44; *Oil Country Tubular Goods* (10 December 2020), RR-2019-005 (CITT) [*OCTG IRR*] at para. 27; *Oil Country Tubular Goods* (30 December 2020), RR-2019-006 (CITT) [*OCTG II RR*] at para. 36; *OCTG III* at para. 31.

³⁶ Exhibit NQ-2021-006-06, Tables 8–10.

³⁷ Exhibit NQ-2021-006-D-01 at para. 9.

³⁸ *OCTG I* at para. 78.

³⁹ *OCTG II* at paras. 38–39, 42.

Tribunal finds that such differences are, in this case, properly taken into account through the consideration of benchmark products.

[51] For the foregoing reasons, the Tribunal finds that the subject goods are “like goods” in relation to domestically produced OCTG and that there is one class of goods.

DOMESTIC INDUSTRY

[52] 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 . . .”.

[53] The Tribunal must therefore determine whether there has been injury, or whether there is a threat of injury, to the domestic producers as a whole or those domestic producers whose production represents a major proportion of the total production of like goods.⁴⁰

[54] During the POI, there were three known domestic producers of OCTG: Tenaris Canada (of which Algoma and Prudential were the production arms), Evraz and WTC. Although Evraz and WTC did not take position in this inquiry, the Tribunal received questionnaire responses from all three domestic producers.⁴¹ As Tenaris Canada, Evraz and WTC accounted for all known domestic production of like goods over the POI, they constitute the domestic industry for the purposes of this inquiry.

INJURY ANALYSIS

[55] Subsection 37.1(1) of the *Special Import Measures Regulations* (Regulations)⁴² 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), as well as whether any factors other than the dumping of the goods have caused injury.

⁴⁰ The term “major proportion” means an important, serious or significant proportion of total domestic production of like goods and not necessarily a majority: *Japan Electrical Manufacturers Assn. v. Canada (Anti-Dumping Tribunal)*, [1986] F.C.J. No. 652 (F.C.A.); *McCulloch of Canada Limited and McCulloch Corporation v. Anti-Dumping Tribunal*, [1978] 1 F.C. 222 (F.C.A.); Panel Report, *China – Automobiles (US)*, WT/DS440/R, at para. 7.207; Appellate Body Report, *EC – Fasteners (China)*, WT/DS397/AB/R, at paras. 411, 412, 419; Panel Report, *Argentina – Poultry (Brazil)*, WT/DS241/R, at para. 7.341.

⁴¹ At the preliminary inquiry, data were not available on the record for Evraz and WTC, and the Tribunal therefore conducted its preliminary injury analysis on the basis of Tenaris Canada’s production of like goods, being satisfied that it accounted for a major proportion of the total domestic production of the like goods; see *OCTG IV PI* at paras. 32–35. As data are now available for all three known producers, the Tribunal will consider all known domestic producers of like goods as representing the domestic industry as a whole for the purposes of its injury analysis.

⁴² SOR/84-927.

Context for the injury analysis

[56] This injury inquiry (*OCTG IV*) follows a number of trade remedy proceedings concerning oil and gas well casing and tubing conducted by the Tribunal since 2007.⁴³ In its most recent injury inquiry, *OCTG III*, initiated less than one month prior to the current inquiry, the Tribunal determined on January 26, 2022, that the dumping of OCTG of the same description from Mexico had not caused injury and was not threatening to cause injury to the domestic industry.

[57] 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 it is closely tied to the number of operating rigs or wells at any given time.⁴⁴ 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.

[58] The Canadian OCTG market contracted in 2019 and in 2020 due to lower demand caused by a number of factors, including transportation capacity constraints, which led to the announcement by the Government of Alberta of a mandatory 8.7 percent cut in oil production beginning in January 2019, 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.⁴⁵ Signs of a return of demand appeared in late 2020 and into 2021, and higher demand is forecasted for 2022.⁴⁶

[59] In Canada, Algoma Tubes is the principal production facility of OCTG for Tenaris S.A. of Luxembourg, one of the world's leading producers of OCTG, with production facilities in over 15 countries and some 30 affiliates acting as marketing and distribution arms for Tenaris S.A. products in key oil and gas markets around the world.⁴⁷ TGSC acts as the Canadian distributor of OCTG products produced at Tenaris S.A. facilities worldwide, but it primarily sells seamless OCTG sourced from Algoma Tubes, as well as from Tenaris S.A.'s TAMSA mill in Mexico.⁴⁸

[60] Tenaris Canada competes at the end-user trade level with the subject goods sold by Trimark. The product of a recent merger between two distributors—Triumph and Hallmark—Trimark distributes a range of welded OCTG products made by Evraz and WTC, as well as high-grade seamless OCTG made by VAT, namely products for sour service, with high yield strengths, and/or

⁴³ The history of trade proceedings regarding such products was recently summarized in *OCTG III* at paras. 60–65.

⁴⁴ See *Seamless Carbon or Alloy Steel Oil and Gas Well Casing* (28 November 2018), RR-2017-006 (CITT) [*Seamless Casing RR*] at paras. 51–52; *OCTG I RR* at para. 40; *OCTG II RR* at para. 81; *OCTG III* at para. 67.

⁴⁵ Exhibit NQ-2021-006-A-03 at 12; Exhibit NQ-2021-006-A-13 at 15–16; Exhibit NQ-2021-006-D-01 at paras. 104–105; Exhibit NQ-2021-006-D-03 at paras. 16–18; Exhibit NQ-2021-006-D-04 (protected) at 46; Exhibit NQ-2021-006-G-03 at paras. 5–6, at 52–53.

⁴⁶ Exhibit NQ-2021-006-A-03 at 8; Exhibit NQ-2021-006-A-07 at paras. 27, 34; Exhibit NQ-2021-006-D-03 at para. 19; Exhibit NQ-2021-006-G-03 at paras. 7–8, 21, at 52–53, 57; *Transcript of Public Hearing* at 221, 223, 241.

⁴⁷ Exhibit NQ-2021-006-G-01 at 37–39, 43, 50.

⁴⁸ Exhibit NQ-2021-006-10.02.D (protected) at 6; Exhibit NQ-2021-006-13.05.C (protected) at 6–7, 14–15, 22–23.

with premium connections.⁴⁹ To a lesser extent, Evraz and WTC compete with the subject goods at the distributor trade level for sales to Trimark.⁵⁰

[61] The use of the subject goods in Canada is confined primarily to the Duvernay and Montney regions of northeastern British Columbia and northwestern Alberta, where high-grade OCTG, particularly enhanced L80 and P110 grades as well as sour service proprietary grades with higher performing connections, are required for the horizontal drilling and hydraulic fracturing that gain access to “unconventional” natural gas and natural gas liquids.⁵¹ It was confirmed by the absence of lower-grade subject imports in the benchmark product data that the subject goods are confined to the higher end of the OCTG market.⁵²

[62] The evidence suggests that the level of drilling activity for unconventional oil and gas in the Duvernay and Montney regions during the POI stands in sharp contrast to the low level of activity in conventional fields elsewhere in Alberta, Saskatchewan and Manitoba.⁵³ Indeed, as noted by Mr. Prosperi, although the downturn in the market affected all of the Canadian oil and gas industry, certain areas for drilling have been less affected than others.⁵⁴ According to Ms. Clark, while oil produced in Western Canada is in large part exported and is therefore more susceptible to global price changes, the natural gas and natural gas liquids prevalent in the Duvernay and Montney regions are less so impacted. In addition, Ms. Clark noted that dry natural gas prices are mostly impacted by supply and demand within North America, while natural gas liquids are used in plastics such as packaging and personal protective equipment for which demand has been relatively stable, especially compared to the demand for oil, throughout the COVID-19 pandemic.⁵⁵

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

Import volume of dumped goods

[64] 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.

⁴⁹ Exhibit NQ-2021-006-A-05 at paras. 10–12; Exhibit NQ-2021-006-A-07 at paras. 10–12; Exhibit NQ-2021-006-D-03 at paras. 3, 13; *Transcript of Public Hearing* at 185, 248.

⁵⁰ Exhibit NQ-2021-006-07.A (protected), Schedules 1–52; Exhibit NQ-2021-006-D-03 at para. 22; Exhibit NQ-2021-006-26.02 (protected) at 42–46.

⁵¹ Exhibit NQ-2021-006-A-05 at paras. 15, 31–32; Exhibit NQ-2021-006-A-07 at paras. 23, 25; Exhibit NQ-2021-006-A-09 at para. 9; Exhibit NQ-2021-006-A-15 at para. 4; Exhibit NQ-2021-006-D-02 (protected) at paras. 40–90; *Transcript of Public Hearing* at 19–21, 23–25, 101–102.

⁵² Exhibit NQ-2021-006-07.A (protected), Schedules 1–52; Exhibit NQ-2021-006-07.D (protected).

⁵³ Exhibit NQ-2021-006-A-07 at paras. 22, 24–26; Exhibit NQ-2021-006-A-17 at para. 12; Exhibit NQ-2021-006-D-03 at para. 20; *Transcript of Public Hearing* at 103, 219, 241.

⁵⁴ Exhibit NQ-2021-006-A-05 at para. 31.

⁵⁵ *Transcript of Public Hearing* at 21–24, 28, 242–243.

[65] In absolute terms, the volume of subject imports decreased by 53 percent from 2018 to 2020.⁵⁶ This decrease corresponded with the 57 percent decrease in the domestic market due to depressed market conditions in the oil and gas industry and the COVID-19 pandemic.⁵⁷

[66] The total 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*) and from countries without measures (i.e. the United States and all other countries) also declined between 2018 and 2020 and again in interim 2021.⁵⁸

[67] The share of total imports held by the subject goods increased in 2019 but decreased in 2020, and it somewhat increased again between interim 2020 and interim 2021, for a net increase of 4 percentage points over the POI. Non-subject imports by importers also saw an increase in their share of total imports in 2019 and a decrease in 2020 but saw a further decrease over the interim periods, for a net decrease of 14 percentage points over the POI. The share held by non-subject imports by the domestic industry decreased in 2019 and increased in 2020 but saw an increase between the interim periods, for a net increase of 9 percentage points over the POI.⁵⁹

[68] Relative to domestic production, imports of subject goods increased by 7 percentage points from 2018 to 2019, remained stable in 2020, and decreased by 3 percentage points between the interim periods, for a net increase of 3 percentage points over the POI. Relative to domestic sales from domestic production, imports of subject goods increased by 5 percentage points in 2019, decreased by 4 percentage points in 2020, and increased again by 3 percentage points in interim 2021 over interim 2020, for a net increase of 4 percentage points over the POI.⁶⁰

[69] However, as further discussed below, the evidence suggests that the latter increase relative to domestic sales is attributable in great part to a decrease in domestic sales by Evraz in the face of inventory destocking by its customers. Indeed, distributor purchasers appear to have sold more domestically produced OCTG than they purchased between 2019 and interim 2021.⁶¹ More relevant, when imports of subject goods are assessed relative to sales of domestically produced like goods, including Tenaris and distributor purchasers, at the *end-user* trade level (where the majority of the competition occurs between the like goods and the subject goods), those imports increased by 1 percent in 2019, decreased by 6 percent in 2020, and remained steady in interim 2021 over interim 2020 for a net decrease of 4 percent over the POI.⁶²

⁵⁶ Exhibit NQ-2021-006-06, Table 18; Exhibit NQ-2021-006-07 (protected), Tables 17–18.

⁵⁷ Exhibit NQ-2021-006-07.F (protected), Table 21.

⁵⁸ Exhibit NQ-2021-006-07 (protected), Tables 17–18.

⁵⁹ Exhibit NQ-2021-006-07 (protected), Table 19.

⁶⁰ Exhibit NQ-2021-006-06, Table 20.

⁶¹ See the replies to the Tribunal's purchaser questionnaire; Exhibit NQ-2021-006-19.09.A (protected) at 10; Exhibit NQ-2021-006-19.08.A (protected) at 9; Exhibit NQ-2021-006-19.04.A (protected) at 10; Exhibit NQ-2021-006-19.13.A (protected) at 10; Exhibit NQ-2021-006-07.F (protected), Table 28. The amount of destocking for each respondent was obtained by calculating the difference between the volume of domestically produced like goods that it purchased from the domestic industry and the volume of these goods that it sold to end users and other distributors. See also Exhibit NQ-2021-006-G-03 at para. 8. Tenaris Canada also significantly destocked its inventories of domestically produced goods and imported goods between 2019 and interim 2021; Exhibit NQ-2021-006-10.02.D (protected) at 6; Exhibit NQ-2021-006-13.05.C (protected) at 7, 15, 23.

⁶² Exhibit NQ-2021-006-07 (protected), Tables 17, 28.

[70] In light of the foregoing, the Tribunal finds that, over the entire POI, there was a substantial decrease in the absolute volume of subject imports and no significant increase in the volume of subject imports in relative terms.

Price effect of dumped goods

[71] Paragraph 37.1(1)(b) of the Regulations directs the Tribunal to consider the effects 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 effects of the dumped goods from any price effects that have resulted from other factors affecting prices.

[72] However, before addressing the effect of the dumped goods on the price of like goods, the Tribunal must 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, and whether purchasers are willing to pay a premium for certain types of OCTG.

Importance of price in purchasing decisions

[73] 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.⁶³ This was not the subject of dispute between the parties.

[74] The evidence gathered by the Tribunal in the present inquiry confirms that this remains the case. For example, all respondents to the Tribunal's purchaser questionnaire indicated that the lowest net price was a very important or somewhat important factor in purchasing decisions and that the lowest-priced goods always, usually or sometimes won contracts or sales.⁶⁴ 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.⁶⁵ Further, Ms. Clark 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, which can produce important and widespread price effects.⁶⁶

[75] 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 levels for pricing comparison

[76] As indicated above, competition between the subject goods and the like goods occurs at two points in the market. First, there is competition at the end-user trade level between Tenaris Canada's

⁶³ See, most recently, *Seamless Casing RR* at para. 73; *OCTG I RR* at paras. 65–67; *OCTG II RR* at paras. 145–149; *OCTG III* at paras. 84–86.

⁶⁴ Exhibit NQ-2021-006-06, Table 11.

⁶⁵ *Ibid.*, Table 8.

⁶⁶ *Transcript of Public Hearing* at 36–38.

sales of like goods and Trimark's sales of subject goods, where nearly 70 percent of the sales of Tenaris Canada's benchmark products by volume are in competition with subject goods.⁶⁷

[77] Second, and to a much lesser extent, competition occurs at the distributor trade level between Evraz and WTC's with regard to sales of like goods to Trimark and Trimark's purchases of subject imports. The volumes of subject and like goods in competition at that level are much less important due to the limited overlap between Evraz and WTC's like goods and the subject goods purchased by Trimark, where only four benchmark products are in competition, representing approximately 20 percent of Evraz and WTC's total sales of benchmark products by volume.⁶⁸

[78] Considering the above, the Tribunal finds that the point of competition is primarily at the end-user trade level and will proceed with its pricing analysis with this in mind.

Seamless price premium

[79] The evidence on record indicates that the price differential between the same grades of seamless and welded OCTG contracted over the POI.⁶⁹ In *OCTG III*, it was explained that there is now very little difference in quality between seamless and welded tubes and, thus, a seamless premium no longer exists. Consistent with the Tribunal's findings in *OCTG III*, the Tribunal finds that, when seamless OCTG is not specified or required for specific end uses, purchasers are not willing to pay a premium for that product.⁷⁰ In any event, both Tenaris Canada's sales of like goods and Trimark's sales of subject goods to end users are of seamless OCTG. As such, the existence or absence of a seamless premium does not affect the Tribunal's pricing analysis for the most part. However, the absence of a seamless premium also means that the Tribunal has not adjusted its pricing analysis when assessing competition between seamless OCTG from Austria and welded like goods.

Price undercutting

[80] 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 the point of competition is primarily at the end-user trade level, and that there is no seamless premium.

[81] On an aggregate basis, the domestic industry's goods were priced lower than the subject goods throughout the POI, with the price differential increasing between 2018 and 2020, and decreasing between the interim periods.⁷¹ However, as submitted by Tenaris Canada and Trimark, the Tribunal finds that average pricing is of more limited utility in this case, as subject imports do not include the lower-end grades supplied by the domestic industry.⁷² Put another way, Evraz and

⁶⁷ Exhibit NQ-2021-006-A-02 (protected) at paras. 21–30; Exhibit NQ-2021-006-07.A (protected), Schedules 1–52.

⁶⁸ Exhibit NQ-2021-006-07.A (protected), Schedules 1–52; Exhibit NQ-2021-006-D-03 at para. 22; Exhibit NQ-2021-006-26.02 (protected) at 42–46; Exhibit NQ-2021-006-07.A (protected), Schedules 1–52.

⁶⁹ Exhibit NQ-2021-006-07.A (protected), Tables 1–68.

⁷⁰ *OCTG III* at paras. 91–98.

⁷¹ Exhibit NQ-2021-006-07.F (protected), Table 33.

⁷² Exhibit NQ-2021-006-D-01 at para. 93; Exhibit NQ-2021-006-A-01 at para. 18.

WTC's selling prices reflect sales of lower-grade OCTG, which make up the bulk of their sales and do not compete with the subject goods purchased by Trimark.⁷³

[82] 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 included sales of a total of 36 benchmark products (10 seamless OCTG and 8 welded OCTG benchmark products of both base and enhanced grades) over a period of eight quarters (i.e. the last eight quarters of the POI). Consistent with VAT's focus on the production and sale of advanced, higher-grade OCTG, there were no base subject benchmark products imported from Austria.⁷⁴

[83] Quarterly comparisons were possible between sales of the subject goods and sales of the domestically produced like goods in 34 instances of competition.⁷⁵ In 7 of these 34 instances, the subject goods undercut the prices of like goods. The volume of subject goods that undercut the like goods represented only 8 percent of the total volume of subject goods that competed with the like goods in the aforementioned 34 instances.⁷⁶ Put another way, the subject goods did not undercut domestic industry prices in 8 out of 10 instances of competition representing over 90 percent of the subject goods in competition. Moreover, the volume of subject goods that undercut domestic like goods represented a very small proportion of Tenaris Canada's total sales of like good benchmark products.⁷⁷

[84] In addition, undercutting among the benchmark products was limited to three products throughout the eight quarters reviewed (i.e. from the third quarter of 2019 to the second quarter of 2021). While price undercutting ranged from 1 to 20 percent, the undercutting was of less than 5 percent for 72 percent of the volume of subject goods undercutting like goods. Instances of significant undercutting were limited in overall volume and inconsistent throughout the eight quarters reviewed.⁷⁸ Overall, the Tribunal finds that this evidence does not indicate significant price undercutting.

[85] Further, the potential injury to the domestic industry is mitigated by the fact that the high-end subject goods compete primarily against higher-end Tenaris products made in Canada and elsewhere.⁷⁹ Indeed, the extent to which Tenaris Canada could produce competing products at its Algoma production facility during the POI remains unclear. Although the Tribunal heard testimony that Tenaris Canada can produce some competing products at its Algoma production facility,⁸⁰ the evidence on the record suggests that, over the POI, Algoma was in the process of developing its ability to produce and supply such competing products at a commercial level. In the meantime,

⁷³ Exhibit NQ-2021-006-07.A (protected), Schedules 1–52.

⁷⁴ *Ibid.*; Exhibit NQ-2021-006-G-03 at para. 10.

⁷⁵ Exhibit NQ-2021-006-07.A (protected), Table 42; Exhibit NQ-2021-006-29.03 at 24–27; Exhibit NQ-2021-006-29.04 at 4–5; Exhibit NQ-2021-006-29.02 at 4–5; Exhibit NQ-2021-006-29.01 at 4–5.

⁷⁶ Exhibit NQ-2021-006-07.A (protected), Table 42, Schedules 35, 38, 41, 44, 47, 50.

⁷⁷ *Ibid.*, Schedules 1–52.

⁷⁸ Exhibit NQ-2021-006-07.A (protected), Schedules 35, 38, 41, 44, 47, 50.

⁷⁹ *Transcript of Public Hearing* at 32–35, 92, 102–104, 114–120, 219–220, 232–235; *Transcript of In Camera Hearing* at 56, 73–76, 82, 86, 139–140, 143–144, 148–149; Exhibit NQ-2021-006-07.A (protected), Tables 1, 35.

⁸⁰ Exhibit NQ-2021-006-A-17 at paras. 19, 22–26, 28–29; *Transcript of Public Hearing* at 87–88; *Transcript of In Camera Hearing* at 29.

competing OCTG would have had to be sourced by Tenaris Canada from outside Canada, such as from its affiliate in Mexico, TAMSA.⁸¹

[86] With respect to account-specific allegations, Tenaris Canada submits 10 examples of lost sales or price erosion.⁸² Tenaris Canada submits that these allegations covered a large proportion of the total subject goods sales between 2019 and 2021 and that the lost sales only happened because of price undercutting. Tenaris Canada estimates that it incurred losses in the tens of thousands of metric tonnes and tens of millions of dollars from these allegations.⁸³

[87] Trimark submits that Tenaris Canada's allegations were the product of faulty commercial intelligence and were not supported by evidence other than the witness statement of Ms. Clark. Tenaris Canada subsequently filed some documentation to support its assertions.⁸⁴ Nevertheless, the Tribunal finds that the account-specific injury allegations do not, in this case, offer compelling evidence of price undercutting by the subject goods. In fact, the evidence shows that, for some of its allegations, Tenaris Canada may not have been able to provide the required product or may have been acting upon inaccurate commercial intelligence (for instance, *inter alia*, that it was competing with the subject goods when it was not or that Trimark or VAT were holding prices at certain levels when they were not).⁸⁵ In addition, there were inconsistencies between Tenaris Canada's submissions regarding these allegations, the data it provided in response to the Tribunal's request for information and the testimony of the witnesses at the hearing.⁸⁶

[88] Consistent with the Tribunal's finding above that the price undercutting by the subject goods was not significant, the evidence on the record suggests that the same conclusion can be drawn here as well. 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

[89] Tenaris Canada argues that it was necessary for the domestic industry to engage in vigorous pricing competition in order not to lose sales to the subject goods, while sellers of the subject goods would often respond with even more aggressive prices at the next tender, leading to a downward spiral representative of price depression in the industry. Trimark argues that any downward trends in prices were the result of a decline in market conditions, non-subject imports from Mexico, and intra-

⁸¹ Exhibit NQ-2021-006-D-03 at para. 65; Exhibit NQ-2021-006-D-04 (protected) at paras. 65, 81; *Transcript of Public Hearing* at 25, 42–53, 95, 104–105, 216–217, 263–264; *Transcript of In Camera Hearing* at 21–23, 136–137.

⁸² Exhibit NQ-2021-006-A-01 at paras. 57–88; Exhibit NQ-2021-006-A-02 (protected) at paras. 57–88.

⁸³ *Transcript of Public Hearing* at 33–34. In its RFI response, Tenaris Canada removed some volumes from three allegations to reflect products that would not have been entirely supplied from the domestic production; see Exhibit NQ-2021-006-RI-01 at 1; Exhibit NQ-2021-006-RI-01.A (protected) at 1–2.

⁸⁴ Exhibit NQ-2021-006-A-14 (protected) at 3–110.

⁸⁵ Exhibit NQ-2021-006-D-03 at paras. 48, 53, 55, 58–60, 63, 65–66, 69–70, 72–75, 77, 79, 84–86, 91, 93; Exhibit NQ-2021-006-D-04 (protected) at paras. 48, 51, 53, 55, 58–66, 68–75, 77, 79, 91–93; *Transcript of In Camera Hearing* at 132–133, 135–137, 140, 148–149, 151–157, 167–169.

⁸⁶ Exhibit NQ-2021-006-A-01 at paras. 59–60, 62–88; Exhibit NQ-2021-006-A-02 (protected) at paras. 58–88; Exhibit NQ-2021-006-RI-01.A (protected) at 2; *Transcript of In Camera Hearing* at 11–30; 49–55, 71–80.

industry competition, as opposed to the niche and high-priced presence of the subject goods in the Canadian market.

[90] At the end-user trade level, i.e. where most of the competition between subject and like goods occurred over the POI, the average selling price of domestically produced like goods trended downward during the full years of the POI, resulting in a 6 percent decline. During this same period, the price of subject goods trended upward, resulting in a 6.5 percent increase, suggesting that price depression was not caused by the subject goods.⁸⁷

[91] The pricing data with respect to benchmark products of like goods and subject goods show that prices generally declined over the last eight quarters of the POI, although with fluctuations from quarter to quarter and among different products. In particular, when the first three quarters (i.e. the third and fourth quarters of 2019 and the first quarter of 2020) are compared with the last three quarters (i.e. the fourth quarter of 2020 and the first and second quarters of 2021), average selling prices of like goods sold by Tenaris Canada declined for every benchmark product for which they had sales except for one, and average selling prices of like goods sold by Evraz and WTC increased for every benchmark product for which they had sales. Meanwhile, although there were fluctuations in subject good benchmark product selling prices over the last eight quarters of the POI, average selling prices of subject goods declined for every benchmark product for which they had sales when comparing the first three quarters with the last three quarters of the collected benchmark data (i.e. the last eight quarters of the POI).⁸⁸

[92] Further, Tenaris Canada alleges that pricing pressure from the subject goods meant that it had to decrease its prices to compete with the subject goods resulting in price depression. The evidence does not appear to support such cause and effect. While the benchmark pricing for both subject goods and Tenaris Canada's like goods in competition did decline and the price differential did decrease over the last eight quarters of the POI, the quarter-by-quarter price decreases do not appear to correlate in terms of their magnitude. Moreover, the volume of subject goods in competition over the last eight quarters of the POI represented a relatively small proportion of the total benchmark sales by the domestic industry, thus attenuating any potential depressive effect of the subject goods on the prices of the like goods, or the likelihood that the subject goods were a significant driver of the pricing trends in the like goods.

[93] While Tenaris Canada argues that price undercutting and market share lost to the dumped goods negatively affected its gross margins and led to price depression, the Tribunal is of the view that the relative impact of the undercutting goods was insignificant and was unlikely to result in significant price depression affecting the subject goods. Indeed, as discussed above, the selling prices of subject goods only undercut the domestic industry's prices in 7 of 34 instances of competition, and the volume of undercutting subject goods only accounted for 8 percent of the volume of goods in competition.

[94] In addition, as discussed above, Tenaris Canada provides 10 account-specific examples of lost sales and price erosion. Tenaris Canada indicates that, relying on its commercial intelligence, it determined that it needed to lower its pricing in order to compete with the subject goods and make certain sales. However, as noted above, the evidence shows that Tenaris Canada may have relied on

⁸⁷ Exhibit NQ-2021-006-06, Table 38; Exhibit NQ-2021-006-07 (protected), Tables 37–38.

⁸⁸ Exhibit NQ-2021-004-07.A (protected), Tables 9–34, 43–68.

inaccurate commercial intelligence and may not have been competing with the subject goods to the extent that it believed.⁸⁹ Furthermore, given the inconsistencies regarding these allegations, the Tribunal finds that they fail to convincingly show a cause-and-effect relationship between subject goods and like goods pricing. As such, the Tribunal is of the view that there is no clear indication that the prices of subject goods had a direct impact on the prices of like goods.

[95] Tenaris Canada also submits that most Austrian imports are high-grade and/or enhanced OCTG, which both command price premiums, and that, as customers expect a price differential between high and low grades, or between enhanced and base grades of OCTG, low-priced higher- or enhanced-grade OCTG can cause cascading price pressure on lower- or base-grade OCTG.⁹⁰

[96] The evidence shows that there is generally a premium for the high-grade subject goods that make up the bulk of the imports from Austria. Out of the 14 respondents to the Tribunal's purchaser questionnaire, 7 indicated that higher grades are interchangeable, and 5 of these 7 respondents indicated that they would be willing to purchase a higher than necessary grade of OCTG for its end use if it were priced within 10 percent of the requested grade.⁹¹

[97] When examining the benchmark data, there are parallel price declines among higher- and lower-grade OCTG, as well as among enhanced and base-grade OCTG.⁹² However, the evidence on the record does not indicate that such parallel declines are the result of any cascading effect from the dumping of the subject goods as opposed to other causes.

[98] In fact, the evidence supports the view that any price depression is due to such other causes. The evidence 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 several factors, including the Russia-Saudi Arabia oil price war and COVID-19 containment measures, before gradually recovering in late 2020 and into 2021. These factors led to reduced prices of oil and gas as well as a decrease in drilling activity in 2019 and 2020, before recovering late in 2020 and into 2021.⁹³

[99] Moreover, intra-industry competition between Evraz/WTC and Tenaris Canada also contributed to price depression over the POI. In particular, the role played by TGSC over the POI as the price leader in the domestic market had a significant impact on the average selling price of like goods at the sales to end-user level. Relative to the very small volumes of undercutting subject goods observed in the last eight quarters of the POI, Tenaris Canada's leading selling prices of domestically produced OCTG are far more likely as an explanation for and driving force of the domestic industry's selling price trends over the POI. Considering benchmark data on the record, in the last eight quarters of the POI, there were 57 instances of competition between Tenaris Canada's

⁸⁹ Exhibit NQ-2021-006-A-01 at paras. 57–88; Exhibit NQ-2021-006-A-02 (protected) at paras. 57–88; Exhibit NQ-2021-006-A-14 (protected) at 3–110; Exhibit NQ-2021-006-D-03 at paras. 48, 58–60, 63, 65–66, 69–70, 72–75, 77, 79, 93; Exhibit NQ-2021-006-D-04 (protected) at paras. 51, 55, 58–66, 68–75, 77, 79, 92–93; *Transcript of In Camera Hearing* at 132–133, 135–137, 140, 148–149, 151–157.

⁹⁰ *Transcript of Public Hearing* at 19, 36–38, 119, 125–126. See *Carbon and Alloy Steel Line Pipe* (29 March 2016), NQ-2015-002 (CITT) at paras. 116–118; *Welded Large Diameter Carbon and Alloy Steel Line Pipe* (24 May 2016), PI-2015-003 (CITT) at para. 37.

⁹¹ Exhibit NQ-2021-006-06, Table 8.

⁹² Exhibit NQ-2021-006-07.A (protected), Tables 1–68.

⁹³ Exhibit NQ-2021-006-10.02 (protected) at 88–89, 102.

domestically produced goods and Evraz's and WTC's domestically produced goods sold by Alberta Tubular Products Ltd. and Trimark.⁹⁴ In 46 of these 57 instances, Tenaris Canada's domestically produced goods undercut the prices of Evraz and WTC's like goods sold by distributors.⁹⁵

[100] Based on the information above, the Tribunal concludes that the subject goods have not significantly depressed the prices of the like goods over the POI.

Price suppression

[101] 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 cost of goods manufactured (COGM) with its average unit selling values in the domestic market to determine whether the domestic industry has been able to increase selling prices in line with increases in costs.⁹⁶

[102] The domestic industry's average per-unit COGS and COGM for domestic sales both increased significantly in 2019, before declining in 2020 and in interim 2021, when compared with interim 2020. 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 reduced margins. The net sales value remained suppressed in 2020. Although the net sales value recovered somewhat in interim 2021, the domestic industry's gross margin for that period still remained lower than in 2018.⁹⁷

[103] The evidence does not suggest a causal relationship between the price suppression that occurred and the dumping of the subject goods. In 2019, the volume of subject imports decreased significantly in absolute terms, in line with the falling demand in the Canadian OCTG market. Yet the average selling prices of the subject goods to end users increased by 2 percent during that same year.⁹⁸ As well, 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 was collected) was insignificant.⁹⁹ Accordingly, the Tribunal finds that the price suppression that occurred in 2019 cannot reasonably be attributed to the dumping of the subject goods.

[104] Rather, the evidence suggests that the inability to pass on cost increases through price increases was attributable primarily to the collapse of the OCTG market, particularly the market for

⁹⁴ An important proportion of the sales made by Evraz and WTC were to Alberta Tubular Products Ltd. and Trimark.

⁹⁵ As a low-risk distributor, TGSC was eligible to receive retrospective transfers from related supplying mills in the event that its successful bid price did not cover selling, general and administrative costs and a specified targeted profit margin. This offers an advantage to TGSC that is unavailable to an independent distributor and enables TGSC to price aggressively both its domestically produced and imported products. Exhibit NQ-2021-006-29.03 (protected) at 2-5; Exhibit NQ-2021-006-29.04 (protected) at 2-5; Exhibit NQ-2021-006-29.05 at 4-5; Exhibit NQ-2021-006-44.01 (protected) at 6, 10-13, 16; Exhibit NQ-2021-006-RI-01.B (protected) at 5; Exhibit NQ-2021-006-10.02 (protected) at 19.

⁹⁶ *Heavy Plate* (5 February 2021), NQ-2020-001 (CITT) at para. 118.

⁹⁷ Exhibit NQ-2021-004-07 (protected), Table 79.

⁹⁸ Exhibit NQ-2021-006-07.F (protected), Table 38.

⁹⁹ Exhibit NQ-2021-006-07.A (protected), Table 42; Exhibit NQ-2021-006-29.03 at 24-27; Exhibit NQ-2021-006-29.04 at 4-5; Exhibit NQ-2021-006-29.02 at 4-5; Exhibit NQ-2021-006-29.01 at 4-5.

lower-grade OCTG products used in conventional drilling.¹⁰⁰ In addition, 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.

[105] The Tribunal therefore finds that there is no evidence of a link between the price suppression and the dumping of the subject goods. Instead, the trends in the net sales value and COGM and COGS followed the market's decline and recovery observed over the POI. The Tribunal therefore concludes that the subject goods have not significantly suppressed the prices of the like goods over the POI.

Conclusion

[106] The Tribunal finds that the subject goods have not significantly undercut, depressed or suppressed the prices of domestically produced like goods over the POI. Any price undercutting, depression or suppression in this case are more likely the result of other factors, including the deterioration in market conditions, the COVID-19 pandemic, and intra-industry competition.

Resulting impact on the domestic industry

[107] Paragraph 37.1(1)(c) of the Regulations requires the Tribunal to consider the resulting impact of the subject 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.¹⁰¹ These impacts are to be distinguished from the impact of other factors also having a bearing on the domestic industry.¹⁰² 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.

[108] Given the Tribunal's finding above 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 reduced sales, profitability and employment experienced by the domestic industry over this period were primarily the result of factors other than the dumping of subject goods. To the extent that the dumping caused some injury, that injury was not material.

¹⁰⁰ Exhibit NQ-2021-006-13.05 (protected) at 47–49.

¹⁰¹ 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.

¹⁰² 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.

Sales and market share

[109] While sales from domestic production decreased by 57 percent between 2018 and 2020 and decreased by a further 25 percent between interim 2020 and interim 2021, sales from subject imports decreased by 30 percent between 2018 and 2020 and increased by 27 percent in interim 2021 over interim 2020.¹⁰³ However, given that the OCTG market essentially collapsed from 2018 to 2020, the domestic industry's market share serves as a better gauge of domestic industry performance than the absolute volume of sales.

[110] The domestic industry's market share for sales from the domestic production remained stable between 2018 and 2019 but decreased by 1 percentage point in 2020 and 2 percentage points in interim 2021 as compared to interim 2020. The market share for sales of subject imports, for its part, remained fairly stable between 2018 and 2020, increasing in 2019 and remaining stable in 2020. The subject goods increased their market share in interim 2021 from interim 2020.¹⁰⁴

[111] In addition, the domestic industry's export sales substantially decreased between 2018 and 2020. While export sales have increased in interim 2021 over interim 2020, prices remain below 2018 levels.¹⁰⁵

[112] As indicated above, the Tribunal notes that the evidence shows that distributors were destocking domestic like goods out of their inventory during the POI. The information received from distributors that responded to the Tribunal's purchaser questionnaire indicates a considerable destocking of their inventory of domestically produced like goods between 2019 and interim 2021,¹⁰⁶ which limited their need to purchase domestic like goods from the domestic producers over that period.

[113] In addition, there was recovery in the domestic OCTG market in interim 2021, particularly in the Duvernay and Montney regions, which require high-grade seamless OCTG such as the subject goods, which would explain, in part, the increase in the subject goods' market share.¹⁰⁷

[114] At the end-user trade level, the market share held by domestically produced like goods sold by domestic producers decreased by 6 percentage points over the POI, while the share held by subject goods increased by 6 percentage points over the same period. However, the Tribunal notes that distributors' sales of domestically produced like goods (i.e. like goods against which Tenaris Canada was also competing) increased their market share by 11 percentage points over the POI.¹⁰⁸

¹⁰³ Exhibit NQ-2021-006-06, Table 22; Exhibit NQ-2021-006-07 (protected), Tables 21–22.

¹⁰⁴ Exhibit NQ-2021-006-07.F (protected), Table 24.

¹⁰⁵ Exhibit NQ-2021-006-07 (protected), Table 84; Exhibit NQ-2021-006-D-04 (protected) at 35; *Transcript of Public Hearing* at 63.

¹⁰⁶ See the replies to the Tribunal's purchaser questionnaire. The amount of destocking for each respondent was obtained by calculating the difference between the volume of domestically produced like goods it purchased from the domestic industry and the volume of these goods it sold to end users and other distributors. See also Exhibit NQ-2021-006-G-03 at para. 8.

¹⁰⁷ Exhibit NQ-2021-006-D-03 at para. 20. See also Exhibit NQ-2021-006-G-03 at paras. 7–9, at 53–57.

¹⁰⁸ Exhibit NQ-2021-006-07.F (protected), Tables 28, 30.

[115] In light of the foregoing, the Tribunal finds that the evidence demonstrates that the domestic industry's lost sales and market share are primarily the result of factors other than the dumping of subject goods.

Financial performance

[116] The domestic industry's gross margin decreased between 2018 and 2020, before increasing in interim 2021 over interim 2020. However, the gross margin in interim 2021 was still lower than it was in 2018, and the domestic industry's net income followed a similar trend.¹⁰⁹

[117] Nevertheless, having already determined that the subject goods themselves did not have significant adverse effects on the volumes of sales and prices of domestically produced like goods, the Tribunal also finds that the domestic industry's financial performance over the POI is the result of factors other than the dumping of the subject goods.

[118] The Tribunal notes that its ability to assess the industry's financial performance was not aided by the inconsistent and contradictory evidence regarding the financial performance of Tenaris Canada and its constituent entities. The evidence shows that TGSC was a low-risk distributor with a profit margin achieved via post-transaction transfers from related suppliers, namely Algoma and Prudential. However, the de-consolidated financial statements of the different entities constituting Tenaris Canada stand in stark contrast to the financial picture of Tenaris Canada originally presented to the Tribunal by the complainant.¹¹⁰

Other performance indicators

[119] In the face of the OCTG market collapse and other factors further addressed below, the domestic industry generally saw its capacity utilization, productivity and employment decline over the POI.¹¹¹

[120] In this context, the Tribunal notes that Evraz idled certain facilities in 2020 into the first half of 2021.¹¹² In addition, Tenaris S.A. made a decision to consolidate its production in Canada, closing its Prudential mill in Calgary, Alberta, in July 2020 with a view to relocating its production of welded OCTG to its Algoma facility in Sault Ste. Marie. This \$117-million industrial transformation project will also see the installation of a new premium threading line and industrial system, as well as various productivity, quality and safety improvements.¹¹³ During this period when domestic

¹⁰⁹ Exhibit NQ-2021-006-07 (protected), Table 79.

¹¹⁰ Exhibit NQ-2021-006-44.01 (protected) at 6, 10–13, 16; Exhibit NQ-2021-006-RI-01.B (protected) at 5; Exhibit NQ-2021-006-10.02 (protected) at 19; *Transcript of Public Hearing* at 126–127; *Transcript of In Camera Hearing* at 8–9, 34–48, 60–65, 68–71.

¹¹¹ Exhibit NQ-2021-006-06, Table 85; Exhibit NQ-2021-006-07 (protected), Tables 84–85.

¹¹² Exhibit NQ-2021-006-E-03 at para. 17; Exhibit NQ-2021-006-E-05 at paras. 14–15, 31; *Transcript of Public Hearing* at 186, 188.

¹¹³ Exhibit NQ-2021-006-A-03 at 15–16; Exhibit NQ-2021-006-E-05 at para. 29; *Transcript of Public Hearing* at 24, 27–28, 65–67, 86, 89; *Transcript of In Camera Hearing* at 4. While production at the Prudential mill was suspended around July 2020 due to the market decline, the decision to close the mill was made around September or October 2020.

production of welded OCTG has been halted, Tenaris Canada has been importing J55 casing, i.e. carbon-grade OCTG, from its Mexican affiliate, TAMSA.¹¹⁴

[121] The domestic industry's number of direct employees, number of hours worked and wages paid all decreased throughout the POI and were lower in interim 2021 than they were in 2018. As noted by Mr. Day of the USW, although production at Evraz has continued throughout the COVID-19 pandemic, it has done so under strict restrictions with staggered shifts and breaks in order to minimize contact between workers, which have led to some reductions in productivity.¹¹⁵ In addition, as indicated by Mr. Hanley of the USW, at least part of the layoffs of Evraz employees in 2020 and 2021 was unavoidable due to the market downturn.¹¹⁶ The number of direct employees did recover slightly in interim 2021 as compared to 2020 as a whole, though not when compared to interim 2020.¹¹⁷

[122] Tenaris Canada submitted that the dumping of the subject goods forced it to lay off workers during the POI and delayed \$36 million of investments from 2018 to 2019 while reducing its ability to realize returns on these and planned investments and putting future investments at risk.¹¹⁸ However, this ignores the impact of the closure of Prudential, the extremely weak market situation during the POI and the evidence regarding Algoma's profitability, which, as indicated above, appears to be inconsistent with Tenaris Canada's prior statements and testimony.

[123] Just as with regard to the domestic industry's financial performance, the Tribunal finds that the domestic industry's poor performance with respect to capacity utilization, productivity, employment and investments is attributable to factors other than the dumping of the subject goods.

Magnitude of the margin of dumping

[124] The CBSA determined that the margin of dumping for VAT, the sole exporter of subject goods, was 34.6 percent and was therefore not insignificant.¹¹⁹ That said, the Tribunal does not consider that the margin of dumping, expressed as a percentage of the export price, necessarily represents the level of injurious effect caused by the prices in Canada of the subject goods during the POI. The magnitude of the margin of dumping therefore did not add much to the evidence or analysis of injury.

Conclusion

[125] On the basis of the foregoing, the Tribunal finds that the domestic industry suffered injury over the POI in the form of lost sales and reduced profitability, which, in turn, negatively impacted production, capacity utilization and employment. However, as will be summarized below, the

¹¹⁴ Exhibit NQ-2021-006-D-05 at 13–14, 16, 23–24, 64–65.

¹¹⁵ Exhibit NQ-2021-006-E-03 at para. 14.

¹¹⁶ Exhibit NQ-2021-006-E-05 at para. 17.

¹¹⁷ Exhibit NQ-2021-006-07 (protected), Table 84.

¹¹⁸ Exhibit NQ-2021-006-A-03 at 15; Exhibit NQ-2021-006-A-05 at paras. 16–18; Exhibit NQ-2021-006-A-06 (protected) at paras. 16, 18; Exhibit NQ-2021-006-A-07 at paras. 36–37; Exhibit NQ-2021-006-A-08 (protected) at para. 37; Exhibit NQ-2021-006-A-15 at paras. 6–7; Exhibit NQ-2021-006-A-16 (protected) at para. 6; *Transcript of Public Hearing* at 98.

¹¹⁹ Exhibit NQ-2021-006-04 at 14, 19.

evidence on the record indicates that this injury was caused by a number of factors other than the dumping of the subject goods.

Other factors and causation

[126] 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.¹²⁰ 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.¹²¹

[127] As discussed above, there is limited and—in the Tribunal’s view—unpersuasive evidence of any significant price undercutting, lost sales or price depression or suppression. Rather, the evidence strongly suggests that the lower prices and the poor performance of the domestic industry were caused by other factors also discussed above, namely the profound oil market collapse; the COVID-19 pandemic; the idling of Evraz facilities; the closure of Prudential by Tenaris Canada, with its production of J55 tubes replaced by imports from TAMSA; intra-industry competition, with TGSC being an aggressive price leader;¹²² the deteriorating export performance of Canadian producers; and inventory destocking by the distributor customers of Evraz that limited additional sales during the POI.¹²³ In addition, as stated above, the evidence suggests that the subject goods compete in the Duvernay and Montney regions with Tenaris products made in Canada and elsewhere, which further mitigates the significance and materiality of the potential injury to the domestic industry as a whole.

[128] 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.

MASSIVE IMPORTATION

[129] Tenaris Canada submitted that the conditions exist for a finding of massive importation pursuant to paragraphs 42(1)(b) and (c) of SIMA. However, a finding of material injury to the domestic industry is a condition precedent to a finding of massive importation¹²⁴ and, therefore, the Tribunal determines that there is no basis for a finding of massive importation in this case.

¹²⁰ See paragraph 37.1(3)(b) of the Regulations.

¹²¹ *Silicon Metal* (19 November 2013), NQ-2013-003 (CITT) at para. 109.

¹²² *Transcript of Public Hearing* at 113.

¹²³ Exhibit NQ-2021-006-A-03 at 12; Exhibit NQ-2021-006-A-13 at 15–16; Exhibit NQ-2021-006-D-01 at paras. 104–105; Exhibit NQ-2021-006-D-03 at paras. 16–18; Exhibit NQ-2021-006-D-04 (protected) at 46; Exhibit NQ-2021-006-E-03 at para. 17; Exhibit NQ-2021-006-E-05 at paras. 14–15, 29, 31; Exhibit NQ-2021-006-G-03 at paras. 5–6, at 52–53; *Transcript of Public Hearing* at 65–66, 68, 69–70, 188; *Transcript of In Camera Hearing* at 138.

¹²⁴ See also *Waterproof Footwear and Waterproof Footwear Bottoms* (7 January 2003), NQ-2002-002 (CITT) at para. 17.

THREAT OF INJURY ANALYSIS

[130] 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.

[131] 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 analysis.¹²⁵ Further, subsection 37.1(3) of the Regulations directs the Tribunal to consider whether a causal relationship exists between the dumping of the goods and the threat of injury on the basis of the factors listed in subsection 37.1(2) and whether any factors other than the dumping of the goods is threatening to cause injury.

[132] Also of relevance 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.

[133] 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]

[134] 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.¹²⁶

¹²⁵ 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 are relevant in the circumstances.”

¹²⁶ *Polyethylene Terephthalate Resin* (16 March 2018), NQ-2017-003 (CITT) at para. 167.

[135] 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.¹²⁷ Where the 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.¹²⁸

[136] For the reasons that follow, the Tribunal finds that the dumping of the subject goods is not threatening to cause injury to the domestic industry.

Time frame for the threat analysis

[137] In assessing threat of injury, the Tribunal typically considers a time frame of 12 to 18 months beyond the date of its finding, depending on the unique circumstances of each case. However, the use of the word “imminent” probably implies a period near the shorter end of that range.

[138] Tenaris Canada submits that there is an imminent and foreseeable threat of injury in the next several months or quarters. No party argued that the Tribunal should depart from this time frame, and the Tribunal sees no reasons to do so, noting that this is also consistent with the Tribunal’s recent decision in *OCTG III*.¹²⁹ The Tribunal will therefore consider the next 12 to 18 months in its analysis of threat of injury.

Likelihood of increased dumped goods

[139] 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.

[140] Tenaris Canada submits that trends in the volume of imports 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.

[141] Tenaris Canada argues that the market share of sales from subject imports to end users increased throughout the POI, with a corresponding decrease in Tenaris Canada’s market share at that trade level. For its part, Trimark argues that the end-user market share of subject goods was, in fact, stable from 2018 to 2020 and that any apparent changes in interim 2021 reflect the staggered timing of VAT’s deliveries and overall increases in market demand.¹³⁰

[142] When looking at actual imports, the fact remains that the volume of subject imports declined in every year of the POI, as well as over the interim periods.¹³¹ As outlined above, subject imports

¹²⁷ *Ibid.* at paras. 170–171.

¹²⁸ *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.

¹²⁹ *OCTG III* at para. 181.

¹³⁰ Exhibit NQ-2021-006-07.F (protected), Table 30; Exhibit NQ-2021-006-RI-04.C (protected) at 1.

¹³¹ Exhibit NQ-2021-006-06, Table 16; Exhibit NQ-2021-006-07 (protected), Table 17.

did increase somewhat relative to both domestic production and domestic sales of like goods. However, in the Tribunal's view this is largely explained by a decrease in domestic sales of like goods sales in the face of destocking of distributors' inventories. Moreover, the increase disappears when considered at the end-user trade level, where the majority of competition between subject and like goods takes place.

[143] With regard to the post-POI period, Tenaris Canada notes that imports of subject goods reached a record high of 11,917 MT in September 2021, which was surpassed in November 2021, when it reached 15,400 MT.¹³² However, the Tribunal finds persuasive Trimark's position that import volumes in late 2021 were proportionate to market demand, which was supported by witness testimony regarding the number of wells drilled (as a proxy indicator of market demand) from 2018 to 2021, and were affected by factors related to shipping and logistics.¹³³

[144] Mr. Graller-Kettler indicated that VAT's OCTG production capacity has been constrained by running the mill at a reduced three-shift operation rather than four, as it did in the past. This is not intended to change this year or next. VAT's production of OCTG will be further constrained by the strategic corporate decision to focus more on industrial tubes (which are made on the same equipment as OCTG).¹³⁴

[145] Considering the above, the Tribunal is of the view that the evidence does not indicate that the volume of subject goods is likely to significantly increase over the next 12 to 18 months.

Likelihood of significant price effects

[146] As further noted above, 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. The Tribunal found above that the subject goods did not significantly undercut, depress or suppress the prices of the domestically produced like goods over the POI and that any adverse price effects in this case were primarily the result of other factors.

[147] There is no evidence to suggest that there will be a change in circumstances such that the subject goods would begin to have significant adverse effects on the price of the like goods in the absence of measures. Tenaris Canada argues that without the imposition of duties, price decreases of subject goods would continue, therefore depressing domestic prices within a few quarters. However, as evidenced by the benchmark product data, competition between the subject goods and the like goods is ultimately limited and, as such, the potential for any price depressing effect of significance is limited. Based on the evidence before the Tribunal, as indicated above, the only clearly foreseen change in circumstances is a market recovery, with increasing demand and rising prices likely to alleviate the effects of the market collapse that occurred in 2020.

[148] In addition, the evidence indicates that, since the imposition of anti-dumping duties on the subject goods, Trimark has continued to import the subject goods, paying the duties and passing the cost onto end users. The Tribunal has seen no evidence to contradict the testimony of Trimark's

¹³² Exhibit NQ-2021-006-A-07 at para. 14; see also Exhibit NQ-2021-006-RI-04.C at 1.

¹³³ Exhibit NQ-2021-006-D-03 at paras. 16–20, 97; Exhibit NQ-2021-006-D-04 (protected) at para. 97; *Transcript of Public Hearing* at 144–145, 174–175, 220–221; *Transcript of In Camera Hearing* at 176–180, 183–185.

¹³⁴ *Transcript of Public Hearing* at 148–149, 170–171; *Transcript of In Camera Hearing* at 96, 99–100, 104–108, 113; Exhibit NQ-2021-006-G-03 at para. 19.

witness that its market share has not diminished and that end users have not cancelled their orders. These observations tend to confirm the limited competition and potential impact of the subject goods on the like goods.

[149] 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.

Likely impact on the domestic industry

[150] 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 the downturn in the Canadian OCTG market, domestic intra-industry competition, the COVID-19 pandemic, corporate consolidation, the deteriorating export performance of the domestic industry 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.

[151] Having found no compelling evidence that imports of the subject goods are likely to increase significantly in the short term or to have significant adverse effects on the price of the like goods in the next 12 to 18 months, the Tribunal concludes that the dumping of the subject goods is not likely to cause material injury to the domestic industry during this period.

Conclusion

[152] 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

[153] 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 Trimark and VAT should be granted.

CONCLUSION

[154] 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.

Peter Burn

Peter Burn
Presiding Member

Serge Fréchette

Serge Fréchette

Member

Frédéric Seppey

Frédéric Seppey

Member