Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Inquiry NQ-2014-002R

Oil Country Tubular Goods

Order issued
Thursday, September 8, 2022

Reasons issued
Friday, September 23, 2022

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IN THE MATTER OF a review, pursuant to paragraph 76.1(1)(b) of the *Special Import Measures Act*, of the threat of injury finding made by the Canadian International Trade Tribunal on April 2, 2015, in inquiry NQ-2014-002, concerning:

OIL COUNTRY TUBULAR GOODS ORIGINATING IN OR EXPORTED FROM THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU, THE REPUBLIC OF INDIA, THE REPUBLIC OF INDONESIA, THE REPUBLIC OF THE PHILIPPINES, THE REPUBLIC OF KOREA, THE KINGDOM OF THAILAND, THE REPUBLIC OF TURKEY, UKRAINE AND THE SOCIALIST REPUBLIC OF VIETNAM

ORDER

The Canadian International Trade Tribunal, pursuant to a request by the Minister of Finance under paragraph 76.1(1)(b) of the *Special Import Measures Act* (SIMA), has conducted a review of its threat of injury finding made on April 2, 2015, in inquiry NQ-2014-002, concerning the dumping of oil country tubular goods, which are casing, tubing and green tubes made of carbon or alloy steel, welded or seamless, heat-treated or not heat-treated, regardless of end finish, having an outside diameter from 2 3/8 inches to 13 3/8 inches (60.3 mm to 339.7 mm), meeting or supplied to meet American Petroleum Institute specification 5CT or equivalent and/or enhanced proprietary standards, in all grades, excluding drill pipe, pup joints, couplings, coupling stock and stainless steel casing, tubing or green tubes containing 10.5 percent or more by weight of chromium, originating in or exported from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, the Republic of India, the Republic of Indonesia, the Republic of the Philippines (the Philippines), the Republic of Korea (South Korea), the Kingdom of Thailand, the Republic of Turkey (Turkey), Ukraine and the Socialist Republic of Vietnam.

On August 7, 2020, the President of the Canada Border Services Agency, pursuant to paragraph 76.1(2)(b) of SIMA, continued the final determination of dumping in respect of the aforementioned goods originating in or exported from South Korea and Turkey with the following amendments: the termination of the dumping investigation in respect of the aforementioned goods exported from South Korea by Hyundai Steel Company (formerly Hyundai Hysco Co. Ltd.) (Hyundai Steel) and in respect of the aforementioned goods exported from Turkey by Borusan Mannesmann Boru Sanayi ve Ticaret A.Ş. (Borusan).

Further to its review, the Tribunal continues, pursuant to paragraph 76.1(2)(b) of SIMA, its threat of injury finding in respect of the aforementioned goods, other than those exported from South Korea by Hyundai Steel and those exported from Turkey by Borusan. For greater certainty, the Tribunal's order in expiry review RR-2019-006 rescinding the finding in respect of the aforementioned goods originating in or exported from the Philippines remains in effect.

Georges Bujold

Georges Bujold
Presiding Member

Peter Burn

Peter Burn
Member

Susan D. Beaubien

Susan D. Beaubien
Member

The statement of reasons will be issued within 15 days.

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STATEMENT OF REASONS

INTRODUCTION

[1] The Canadian International Trade Tribunal, pursuant to a request by the Minister of Finance under paragraph 76.1(1)(b) of the *Special Import Measures Act*[1] (SIMA), has conducted a review of its threat of injury finding made on April 2, 2015, in inquiry NQ-2014-002, concerning the dumping of oil country tubular goods (OCTG) originating in or exported from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei), the Republic of India (India), the Republic of Indonesia (Indonesia), the Republic of the Philippines (the Philippines), the Republic of Korea (South Korea), the Kingdom of Thailand (Thailand), the Republic of Turkey (Turkey), Ukraine and the Socialist Republic of Vietnam (Vietnam) (the subject goods).

[2] For the reasons that follow, the Tribunal continues, pursuant to paragraph 76.1(2)(b) of SIMA, its threat of injury finding in respect of the subject goods, other than those exported from South Korea by Hyundai Steel Company (formerly Hyundai Hysco Co. Ltd.) (Hyundai Steel) and those exported from Turkey by Borusan Mannesmann Boru Sanayi ve Ticaret A.Ş. (Borusan).

BACKGROUND

[3] On March 3, 2015, the Canada Border Services Agency (CBSA) made a final determination of dumping in respect of certain OCTG from Chinese Taipei, India, Indonesia, the Philippines, South Korea, Thailand, Turkey, Ukraine and Vietnam and of subsidizing in respect of certain OCTG originating in or exported from India, Indonesia and Vietnam.

[4] While the CBSA determined margins of dumping of 0.0 percent (when expressed as a percentage of the export price of the goods) for both Hyundai Steel and Borusan, it did not terminate its investigation in respect of these goods, as it had determined that the margin of dumping of all subject goods originating in or exported from South Korea and from Turkey were 19.1 percent and 18.9 percent, respectively, and therefore not "insignificant".[2] At the time, subsection 41(1) of SIMA only provided that the CBSA would terminate an investigation in respect of the goods of a *country* if the margin of dumping of the goods of *that country* was insignificant.[3]

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1 R.S.C., 1985, c. S-15.

2 CBSA Final Determination – Statement of Reasons (18 March 2015), online: <https://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/ad1404/ad1404-i14-fd-eng.html>, at paras. 188–189 and Appendix 1. Pursuant to subsection 2(1) of SIMA, a margin of dumping that is less than 2 percent of the export price of the goods is defined as insignificant. Under the World Trade Organization (WTO) Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-dumping Agreement), such a margin is referred to as being *de minimis* (see article 5.8).

3 The CBSA terminated its subsidy investigation in respect of certain OCTG from the Philippines, Thailand, and Ukraine, as it found that the amounts of subsidy were insignificant. Pursuant to subsection 2(1) of SIMA, an amount of subsidy that is less than 1 percent of the export price of the goods is defined as insignificant. However, section 41.2 of SIMA requires the CBSA to take into account Article 27.10 of the WTO Agreement on Subsidies and Countervailing Measures when conducting a subsidy investigation. This provision stipulates that a subsidy investigation involving a developing country must be terminated if the investigating authority (i.e. CBSA) determines that the total amount of subsidy for a developing country does not exceed 2 percent of the value of the goods. The CBSA extended developing country status to the 6 countries at issue. The Tribunal confined its inquiry consistent with the CBSA's final determination, i.e. the dumping of OCTG from Chinese Taipei, India, Indonesia, the Philippines, Korea, Thailand, Turkey, Ukraine and Vietnam, and the subsidizing of OCTG from India, Indonesia and Vietnam.

[5] On April 2, 2015, the Tribunal issued its finding in inquiry NQ-2014-002 *(OCTG II)*.[4] The Tribunal found that the dumping of the subject goods had not caused injury but was threatening to cause injury to the domestic industry.[5] This provided the CBSA with the legal authority to levy and collect anti-dumping duty on imports of subject goods.

[6] On December 30, 2020, following the conduct of an expiry review pursuant to subsection 76.03(3) of SIMA, the Tribunal made an order continuing its finding in respect of the subject goods except those from the Philippines. The Tribunal rescinded its finding with respect to subject goods from the Philippines.[6] This followed the CBSA's determination, made on July 23, 2020, that the expiry of the finding was likely to result in the continuation or resumption of dumping of subject goods from Chinese Taipei, India, Indonesia, South Korea, Thailand, Turkey, Ukraine and Vietnam and was unlikely to result in the continuation or resumption of dumping of subject goods originating in or exported from the Philippines.

[7] On April 30, 2020, pursuant to paragraph 76.1(1)(a) of SIMA, the Minister of Finance requested that the President of the CBSA review its final determination of dumping in respect of subject goods exported to Canada by Hyundai Steel and by Borusan, having regard to the recommendations and rulings of the WTO's Dispute Settlement Body (DSB) in *Canada – Anti-Dumping Measures on Imports of Certain Carbon Steel Welded Pipe from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu* (DS482), concerning the termination of investigations in respect of individual exporters with *de minimis* margins of dumping.[7]

[8] Recognizing that the outcome of the CBSA's review may have an impact on the Tribunal's threat of injury finding in *OCTG II*, the Minister of Finance further requested, pursuant to paragraph 76.1(1)(b) of SIMA, that the Tribunal review its threat of injury finding in *OCTG II* having regard to the DSB recommendations and rulings in DS482.[8]

[9] The Tribunal initiated the present review on June 1, 2020.

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4 *Oil Country Tubular Goods* (2 April 2015), NQ-2014-002 (CITT) [*OCTG II*].

5 In addition, the Tribunal found that the volumes of subsidized goods were negligible. It therefore terminated its inquiry regarding the subsidizing of subject goods from India, Indonesia and Vietnam pursuant to subsection 42(4.1) of SIMA.

6 *Oil Country Tubular Goods* (30 December 2020), RR-2019-006 (CITT). For greater certainty, the Tribunal notes that the rescission of the finding in respect of the subject goods from the Philippines at the conclusion of the expiry review is unaffected by the present order continuing the finding pursuant to paragraph 76.1(2)(b) of SIMA.

7 See the letter from the Minister of Finance (Exhibit NQ-2014-002R-01). The dispute in DS482 concerned the Tribunal's finding in *Carbon Steel Welded Pipe* (11 December 2012), NQ-2012-003 (CITT) [*CSWP*]. In its report in that dispute, the WTO panel found, *inter alia*, that Canada had acted inconsistently with its obligations under Article VI:2 of the General Agreement on Tariffs and Trade 1994 and under various provisions of the Anti-Dumping Agreement due to its failure to immediately terminate its investigation in respect of two exporters with *de minimis* margins of dumping, the treatment of imports from these exporters as "dumped imports" in the Tribunal's injury analysis, and the imposition of definitive anti-dumping duties on imports from these exporters. Panel Report, *Canada — Welded Pipe*, WT/DS482/R, at para. 8.1.

8 Following a similar request by the Minister of Finance under paragraph 76.1(1)(b) of SIMA for the Tribunal to review its threat of injury finding in *CSWP* having regard to the DSB recommendations and rulings in DS482, the Tribunal confirmed that the dumping of the subject goods in that case, excluding those exported by two named exporters with *de minimis* margins of dumping, had threatened to cause injury. The Tribunal therefore continued, with amendment, its finding in *CSWP*. See *Carbon Steel Welded Pipe* (8 December 2017), NQ-2012-003R (CITT).

[10] On August 7, 2020, the CBSA completed its review of its final determination of dumping in respect of the subject goods exported to Canada by Hyundai Steel and by Borusan. Pursuant to paragraph 76.1(2)(b) of SIMA, the CBSA continued its final determination of dumping in respect of the subject goods originating in or exported from South Korea and Turkey, but it terminated its dumping investigation in respect of those goods exported by Hyundai Steel and Borusan.[9] Consequently, Hyundai Steel and Borusan are no longer subject to the Tribunal's finding nor to this review. In its statement of reasons, the CBSA indicated that, as a result of this termination, anti-dumping duties would no longer be imposed on imports of subject goods from Hyundai Steel and Borusan.[10]

[11] On August 14, 2020, the Tribunal issued a revised investigation report (Revised IR), which contained only the tables and schedules from the investigation report (IR) distributed to parties in the original inquiry that were updated as part of the present review.[11] In the revised tables, the data concerning Hyundai Steel and Borusan were removed entirely from those of the subject imports from South Korea and Turkey, respectively, and moved to those of the non-subject imports from the same countries.[12] The Tribunal issued an addendum to its Revised IR on August 19, 2020.[13]

[12] On August 18, 2020, the domestic producers, Tenaris Canada (Tenaris), Evraz Inc. (Evraz) and Welded Tube of Canada Corporation (WTC) (the latter two jointly) filed notices of application for judicial review of the CBSA's decision to terminate its dumping investigation in respect of the subject goods exported from South Korea by Hyundai Steel and from Turkey by Borusan. On August 25, 2020, further to requests by the domestic producers, the Tribunal placed the present review in abeyance pending the resolution of the applications for judicial review. The Federal Court of Appeal dismissed the applications on May 19, 2022.[14] Consequently, on June 17, 2022, the Tribunal resumed its review.

[13] On July 6, 2022, Evraz and WTC (jointly) and Tenaris filed submissions in support of the continuation of the Tribunal's threat of injury finding in *OCTG II*.[15] They submitted that the removal of the goods exported by Hyundai Steel and Borusan has no meaningful impact on the data considered by the Tribunal in its threat of injury finding in *OCTG II*. No other submissions were received.

[14] The Tribunal has disposed of the matter without an oral hearing, having regard to the written submissions filed by the domestic producers, the Revised IR, the Tribunal's record in the original

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9 Exhibit NQ-2014-002R-04 at 11. In response to the DSB recommendations and rulings in DS482, Parliament amended SIMA to enable the CBSA to terminate dumping investigations in respect of exporters with insignificant (i.e. *de minimis*) margins of dumping.

10 Exhibit NQ-2014-002R-04B at 9 (para. 35). The CBSA made a similar statement in its notice of conclusion of the review of final determinations of dumping (online: <https://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/ad1402-1404/ad1402-1404-nc-eng.html>).

11 Exhibit NQ-2014-002R-11 at 4–7.

12 Due to the lack of exporter-specific data pertaining to the period of inquiry in the original inquiry, the Tribunal requested certain data from Hyundai Steel and Borusan regarding their exports to Canada during this period. Details with respect to the methodology followed by the Tribunal to remove the data concerning Hyundai Steel and Borusan are provided in the Revised IR (Exhibit NQ-2014-002R-11 at 6–7).

13 Exhibit NQ-2014-002R-11A.

14 *Algoma Tubes Inc. v. Canada (Attorney General)*, 2022 FCA 89.

15 The Tribunal's notice of review indicated that submissions were to consist solely of argument strictly in relation to the threat of injury finding, having particular regard to the Revised IR, and that no new or supplemental evidence would be accepted (Exhibit NQ-2014-002R-03 at 3).

inquiry, its statement of reasons for the threat of injury finding made on April 2, 2015, and the DSB recommendations and rulings in DS482.

LEGAL FRAMEWORK

[15] The request by the Minister of Finance that the Tribunal review its threat of injury finding in *OCTG II* was made pursuant to paragraph 76.1(1)(b) of SIMA, which provides as follows:

> **76.1 (1)** Where at any time after the issuance, by the Dispute Settlement Body established pursuant to Article 2 of Annex 2 to the WTO Agreement, of a recommendation or ruling, the Minister of Finance considers it necessary to do so, having regard to the recommendation or ruling, the Minister of Finance may request that
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> . . .
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> **(b)** the Tribunal review any order or finding described in any of sections 3 to 6, or any portion of such an order or finding and, in making the review, the Tribunal may re-hear any matter before deciding it.

[16] The responsibility of the Tribunal at the conclusion of the review is set out in subsections 76.1(2) and (3) of SIMA, which provide as follows:

> **(2)** On completion of a review under subsection (1), the President or the Tribunal, as the case may be, shall
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> **(a)** continue the decision, determination, re-determination, order or finding without amendment;
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> **(b)** continue the decision, determination, re-determination, order or finding with any amendments that the President or the Tribunal, as the case may be, considers necessary; or
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> **(c)** rescind the decision, determination, re-determination, order or finding and make any other decision, determination, re-determination, order or finding that the President or the Tribunal, as the case may be, considers necessary.
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> **(3)** If a decision, determination, re-determination, order or finding is continued under paragraph (2)(a) or (b) or made under paragraph (2)(c), the President or the Tribunal, as the case may be, shall give reasons for doing so and shall set out to what goods, including, if practicable, the name of the supplier and the country of export, the decision, determination, re-determination, order or finding applies.

[17] In the present case, the Minister of Finance requested that the Tribunal review its threat of injury finding in *OCTG II*, having regard to the DSB recommendations and rulings in DS482, which, for all intents and purposes, means having regard to the termination by the CBSA of its dumping investigation in respect of subject goods exported to Canada by Hyundai Steel and Borusan (i.e. the *de minimis* exporters). In practical terms, the Tribunal is tasked with considering whether, with the removal of Hyundai Steel and Borusan's goods, its threat of injury finding continues to be supported by the evidence on the record. This entails examining the impact of the revised data on the Tribunal's analysis in the original inquiry.

[18] In the conduct of its inquiry pursuant to subsection 42(1) of SIMA, the Tribunal had determined that the subject goods and domestically produced OCTG of the same description were like goods, that there was a single class of goods, and that Evraz, Tenaris, WTC and another domestic producer, Energex Tube, represented a major proportion of the domestic industry for the purposes of its injury analysis.[16] These determinations are unaffected by the termination of the CBSA's dumping investigations in respect of Hyundai Steel and Borusan and therefore need not be revisited in the context of the present review.

[19] The Tribunal had also conducted its injury analysis in the original inquiry on the basis of a cumulative assessment of the effect of the dumping of the subject goods from South Korea, Turkey and from all other subject countries, pursuant to subsection 42(3) of SIMA.[17] As the conditions that must be met in order to proceed with a cumulative assessment of injury may have been impacted by the termination of the CBSA's dumping investigations in respect of Hyundai Steel and Borusan, the Tribunal will first need to determine whether these conditions were still met before it can consider whether the subject goods, other than those exported to Canada by Hyundai Steel and Borusan, were threatening to cause injury to the domestic industry.

[20] In considering whether goods are threatening to cause injury, the Tribunal is guided by the factors prescribed in subsection 37.1(2) of the *Special Import Measures Regulations* (Regulations).[18] Further, subsection 37.1(3) of the Regulations directs the Tribunal to consider whether a causal relationship exists between the goods and the threat of injury on the basis of the factors listed in subsection 37.1(2) and whether any factors other than the dumping of the goods are threatening to cause injury. 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.

[21] Before proceeding with its analysis, the Tribunal will provide a brief summary of its finding in *OCTG II* in order to provide context for that analysis.

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16 *OCTG II* at paras. 34, 44, 54.

17 *Ibid.* at para. 92.

18 SOR/84-927. 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 factor that is relevant in the circumstances.

SUMMARY OF THE TRIBUNAL'S FINDING IN *OCTG II*

[22] The Tribunal's period of inquiry (POI) in *OCTG II* ran from January 1, 2011, to June 30, 2014, and included two interim periods, January to June 2013 (interim 2013) and January to June 2014 (interim 2014).

[23] As mentioned above, the Tribunal conducted its injury analysis in *OCTG II* on the basis of a cumulative assessment of the effect of the dumping of the subject goods from all subject countries, including South Korea and Turkey. In its analysis, the Tribunal was mindful of the fact that not all subject goods were dumped given that Hyundai Steel, Borusan, as well as other exporters had received zero margins, and it focused its analysis on the effect of those subject goods that were dumped.[19]

[24] With respect to past injury (i.e. injury occurring during the POI), the Tribunal found that the dumping of the subject goods had not, in and of itself, caused material injury to the domestic industry.[20] The Tribunal considered, rather, that the deterioration in performance experienced by the domestic industry during the POI was primarily due to factors other than the dumping of the subject goods, such as a substantial contraction in the apparent market, declining export sales, intra-industry competition, and imports by the domestic producers.[21]

[25] The Tribunal did, however, find that there was a clearly foreseen and imminent threat of material injury caused by the subject goods within the next 12 to 18 months.[22]

[26] Before embarking on its threat of injury analysis, the Tribunal commented on the context in which its analysis took place. The end of 2014 had seen a precipitous drop in oil prices. Going forward into 2015, pressures that had not been (or were only minimally) present in the market during the POI would challenge those that produced, imported, distributed and purchased OCTG, as the market had become highly unpredictable and volatile. A recovery was not forecasted to begin before the end of 2015, and oil prices were predicted to remain low for the remainder of 2015 going into 2016. This new paradigm would put great pressures on all market actors to reduce their costs and pricing would become central to all purchasing decisions.

[27] The Tribunal based its threat finding on a consideration of certain of the factors listed under subsection 37.1(2) of the Regulations. It analyzed (i) the likelihood of increased volumes of dumped goods; (ii) the capacity of the subject countries; (iii) the existence of a substantial risk of diversion; (iv) the potential for product shifting; and (v) the levels of inventories and the likely price effects of subject goods. Greater detail concerning the Tribunal's analysis of each of these factors in the original inquiry is provided below in the Tribunal's analysis of the relevant factor in the context of the present review.

[28] In addition, the Tribunal considered the impact of factors other than the dumping of the subject goods. The Tribunal concluded that these factors either did not threaten to cause injury or were not such as to negate its conclusion that subject imports were likely to cause injury to the domestic industry.

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19 *OCTG II* at paras. 94–104, 115–118, 192.
20 *Ibid.* at para. 188.
21 *Ibid.* at paras. 167–194.
22 The Tribunal's threat of injury analysis is contained in *OCTG II* at paras. 195–270.

[29] The Tribunal found that the threat of injury posed by the subject goods was material. It noted that the new paradigm of low oil prices elevated the threat of a surge in volume of low-priced imports from the subject countries and magnified their effect. The new market reality meant that the domestic producers had little capability to absorb the effects of growing volumes of low-priced subject imports and it escalated the resulting impact so as to make it material.

ANALYSIS

[30] The Tribunal will first determine whether the conditions necessary for the conduct of a cumulative assessment of injury continued to be met before reviewing the impact that the revised data, excluding Hyundai Steel and Borusan's goods, has on the threat of injury analysis in *OCTG II*.

Cumulation

[31] Subsection 42(3) of SIMA directs the Tribunal to make an assessment of the cumulative effect of the dumping or subsidizing of goods that are imported into Canada from more than one subject country if it is satisfied that (1) the margin of dumping in relation to the goods from each of those countries is not insignificant and the volume of the goods from each of those countries is not negligible;[23] and (2) such an assessment would be appropriate taking into account the conditions of competition between the goods from any of those countries and the goods from any other of those countries or the domestically produced like goods.

[32] The domestic producers argued that the Tribunal should conduct its analysis based on an assessment of the cumulative effect of the goods from all subject countries, as in the original inquiry.

[33] The Tribunal is of the view that the conditions set out in subsection 42(3) of SIMA continue to be met in this instance:

- The countrywide margins of dumping originally calculated by the CBSA for each subject country[24] over its period of investigation[25], *which included the exporters with de minimis margins of dumping*, were already greater than 2 percent of the export price of the goods and therefore were not insignificant.[26]

- The Addendum to the Revised IR shows that some of the subject countries still accounted for more than 3 percent of all imports during the CBSA's period of investigation and were therefore not negligible.[27] Imports from the remaining subject countries (i.e. those that individually accounted for less than 3 percent of all imports) together still accounted

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23 Subsection 2(1) of SIMA defines "negligible" as meaning a volume that represents less than 3 percent of the total volume of goods meeting the product definition that are released into Canada from all countries. However, if the total volume of imports of 3 or more countries, each accounting for less than 3 percent of the total volume of all imports, is more than 7 percent of the total volume of imports, the volume of goods of any of those countries is not negligible. In accordance with subsection 42(4.1) of SIMA, if the volume of dumped goods from a country is negligible, the Tribunal is required to terminate its inquiry in respect of those goods.

24 This included South Korea (19.1 percent) and Turkey (18.9 percent).

25 The CBSA's period of investigation ran from January 1, 2013, to March 31, 2014.

26 CBSA Final Determination – Statement of Reasons (18 March 2015), online: <https://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/ad1404/ad1404-i14-fd-eng.html>, Appendix 1.

27 Addendum to the Revised IR, Exhibit NQ-2014-002R-12A (protected), Table 1.

for more than 7 percent of all imports. Thus, the imports from all subject countries were not negligible within the meaning of subjection 2(1) of SIMA.

- There is nothing in the evidence or the arguments before the Tribunal to suggest that the removal of exports from Hyundai Steel and Borusan would impact the Tribunal's analysis, in *OCTG II,* of the conditions of competition between the remaining subject goods and between these subject goods and the like goods. Thus, the removal of the subject goods exported to Canada by Hyundai Steel and Borusan does not materially impact the Tribunal's finding that the conditions of competition support a cumulative assessment.

[34] Consequently, the Tribunal's analysis will proceed on the basis of a cumulative assessment of the effect of the dumping of the subject goods from South Korea and Turkey, other than those goods exported to Canada by Hyundai Steel and Borusan, and from all other subject countries.

Threat of injury analysis

Likelihood of increased dumped goods

[35] In the original inquiry, the Tribunal found that the volumes of dumped goods were likely to increase significantly in the next 12 to 18 months in light of the significant rate of increase in subject goods in the second half (H2) of 2014, particularly during the third quarter (Q3) of 2014.[28]

[36] The Tribunal based this finding on two sets of Statistics Canada data submitted by the domestic producers, which showed an increase of approximately 16 percent in imports from the subject countries in H2 2014 vs. H2 2013 and an increase of 55 percent in Q3 2014 vs. Q3 2013. As noted above, the POI ran from January 1, 2011, to June 30, 2014. Hence the data considered by the Tribunal pertained to the period immediately after the end of the POI.[29] By contrast, imports from non-subject countries remained essentially unchanged between H2 2013 and H2 2014.[30] In addition, the increase was an important reversal of the trend seen in first half (H1) of 2014, when imports from non-subject countries increased at a significant rate, while imports from subject countries fell marginally. The Statistics Canada data corroborated testimony heard by the Tribunal to the effect that subject imports volumes had increased by 35 percent in H2 2014, at the same time as oil prices declined by 50 percent. The Tribunal also referred to testimony that linked the increase in subject import volumes in H2 2014 to rumours of the impending investigation.

[37] Evraz and WTC submitted that the evidence on the record continues to demonstrate the same likely upward trend in the volume of subject imports. They supported their argument with different calculations reflecting how, in their view, the removal of the goods exported by Hyundai and Borusan would impact the Statistics Canada data relied upon by the Tribunal in the original inquiry.

[38] Tenaris argued that the exclusion of Hyundai Steel and Borusan has no meaningful effect on the Tribunal's finding with respect to likely volumes. Its argument focused on the Revised IR data

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28 *OCTG II* at paras. 216–223.

29 The Tribunal primarily focused on the data submitted by Evraz and WTC in its analysis. However, it noted that the data submitted by Tenaris showed an increase of 26 percent in the volume of goods from the subject countries in H2 2014 vs. H2 2013.

30 *OCTG II* at para. 218.

(i.e. data pertaining to the POI) resulting from the removal of Hyundai Steel and Borusan's exports. Tenaris argued that the resulting changes to IR data are insignificant.

[39] The post-POI Statistics Canada data upon which the Tribunal relied in *OCTG II* did not contain company-specific data allowing the Tribunal to readily assess the impact of the removal of Hyundai Steel and Borusan's goods on the data and the trends observed by the Tribunal in *OCTG II*. Nevertheless, the Tribunal has considered the impact of the removal of the subject goods by estimating what the Statistics Canada data for Q3 2014 and H2 2014 would have been if it had not included Hyundai Steel and Borusan's goods. In doing so, the Tribunal considered different scenarios reflecting the different proportion of all subject goods imports represented by Hyundai Steel and Borusan's exports during the different periods of the POI. Thus, under the different scenarios, the Tribunal assumed that Hyundai and Borusan's goods accounted, in Q3 2014 and H2 2014, for the same proportion of the overall volume of subject goods as they did in 2011, in 2012 and in 2013.

[40] These Tribunal estimations, as well as some of the calculations provided by the domestic producers,[31] show an increase in subject volumes that remains roughly the same whether Hyundai Steel and Borusan's goods are included in the Statistics Canada data. Consequently, the removal of these goods does not materially affect the Tribunal's finding in the original inquiry that the rate of increase in subject goods volumes in H2 2014—and particularly in Q3 2014—indicated that subject goods volumes were likely to increase significantly over the next 12 to 18 months.

Capacity of subject countries

[41] In the original inquiry, the Tribunal considered that the likelihood that the volumes of the subject goods would increase in the next 12 to 18 months was made all the more real by the dependence of the subject countries on export markets.[32] The Tribunal noted that producers from the subject countries for the most part exported substantially more OCTG than they sold on their domestic markets during most periods of the POI and that the nine subject countries had a much greater capacity to produce OCTG than their own domestic markets could possibly absorb.

[42] The Tribunal noted that, although there may be certain circumstances that might increase demand in the subject countries, their domestic markets would not be immune from the effects of the worldwide collapse in oil and gas prices. Thus, declines in demand in the subject countries could be anticipated.

[43] The Tribunal found that the capacity of subject countries to produce OCTG was substantial. The questionnaire respondents alone had substantial unused capacity, and the questionnaire respondents represented only a portion of the total OCTG capacity available in the subject countries. The Tribunal further referred to testimony discussing data presented in the 2014 Metal Bulletin Research (MBR) Outlook publication indicating that the 9 subject countries had a combined OCTG production capacity totalling over 3.29 million tonnes and excess capacity in the range of 1.135 million tonnes in 2013, the latter figure being slightly greater than the total apparent market in Canada in 2013, and these figures could be understated.

[44] Overall, the Tribunal considered that, given the export-oriented nature of the subject countries and the very real possibility that demand would be soft in their home markets in the next 12 to 18 months, the producers and exporters from the subject countries would be highly motivated

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31 See Evraz and WTC's brief, Exhibit NQ-2014-002R-19.01 (protected) at note 13.

32 *OCTG II* at paras. 224–233.

to find markets that could absorb some of their production. Canada was likely to continue to be an attractive destination in the near to medium term in the absence of anti-dumping duties given the declining demand worldwide, the existing presence of the subject goods in Canada and the fact that Canada was the fourth-largest market for OCTG and drilling was expected to continue even with low oil prices.

[45] Evraz and WTC argued that, if Borusan's capacity were removed from the total cumulated subject country capacity (which included only a subset of the foreign producers), the remaining capacity figures would be significant and overwhelming in relation to the apparent Canadian market at the time. Evraz and WTC also made representations concerning the impact of subtracting Hyundai Steel and Borusan's production capacity as reported by MBR from the total capacity figure for the subject countries reported in the 2014 MBR Outlook. Finally, they argued that nothing on the record affects the Tribunal's conclusions in the original inquiry with respect to the export-oriented nature of the producers in the subject countries, the likely subject country market conditions in 2014, or the attractiveness of the Canadian market.

[46] The data on record allow a relatively precise examination of the impact of the removal of the goods exported by Hyundai Steel and Borusan from the subject goods. Borusan had reported its production capacity in its response to the Tribunal's questionnaire in *OCTG II*, and that capacity was part of the evidence considered by the Tribunal in *OCTG II*.[33] Subtracting Borusan's reported capacity from the total production capacity reported by foreign producers who responded to the Tribunal's foreign producers' questionnaire does not significantly alter that total.

[47] Likewise, subtracting the production capacity reported by MBR for Hyundai Steel and Borusan[34] from the total capacity reported by MBR for all subject countries, discussed by the Tribunal in *OCTG II*, does not result in a drastic reduction of the latter.

[48] Consequently, the removal of the goods exported by Hyundai Steel and Borusan does not undermine the foundations of the Tribunal's conclusions on the issue of the subject countries' capacity in *OCTG II*.

[49] In addition, the Tribunal agrees with Evraz and WTC that its conclusions in *OCTG II* with respect to the export-oriented nature of the producers in the subject countries, the likely subject country market conditions in 2014, and the attractiveness of the Canadian market are all unaffected by the removal of the goods exported by Hyundai Steel and Borusan. Consequently, the Tribunal's conclusions on these issues also remain valid and aptly supported by the evidence on record.

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33 The Revised IR incorrectly stated that Borusan did not file a response to the Tribunal's foreign producers' questionnaire and that the removal of the two exporters did not impact the tables reporting data from responding foreign producers. Borusan did file a foreign producers' questionnaire, and its production capacity is reflected in Schedule 110 of the IR in *OCTG II*, Exhibit NQ-2014-002-08B (protected) at 306. Hyundai did not respond to the Tribunal's foreign producers' questionnaire and its data was therefore not included in the IR.

34 Exhibit NQ-2014-002-A-08 (protected) at 182–183.

Risk of diversion

[50] In *OCTG II*, the Tribunal considered that there was a very real possibility that measures in place on the subject goods in other export markets, combined with difficult market circumstances, would motivate subject country producers to pursue opportunities in Canada.[35] The Tribunal focused in particular on United States anti-dumping duties and countervailing measures imposed in 2014 on OCTG from 6 of the 9 subject countries, including South Korea and Turkey. The Tribunal referred to a publication by Pipelogix that estimated that over 55,000 tonnes of OCTG could be diverted to other markets each month, or greater than 660,000 tonnes annually, as a result of the United States measures and that the potential for diversion to Canada appeared to be the greatest for Korea, India, Vietnam and Turkey.

[51] The Tribunal noted that the Pipelogix report estimated that no volumes would be diverted from certain subject countries. The Tribunal considered that, nevertheless, in comparison to the size of the apparent market for OCTG in Canada, taking into account the new market realities that would exist over the next 12 to 18 months and the difficulties that OCTG producers faced in that context, even a lesser volume of OCTG diverted from the United States by some of the subject countries was likely to be problematic for domestic producers and to threaten their ability to compete.[36]

[52] Finally, noting the various measures in place and investigations launched by other countries, the Tribunal observed that the subject producers had a reasonably high propensity to dump. It considered that, in the new economic climate, the effects of unchecked dumping would be incredibly troublesome for domestic producers.

[53] Evraz and WTC argued that the removal of the Hyundai Steel and Borusan volumes does not affect the Tribunal's conclusion concerning the risk of diversion. They submitted that, even if the removal of Hyundai Steel and Borusan's goods may arguably result in the diversion of slightly less OCTG to Canada, the Tribunal found that the diversion of even small volumes would be problematic for the domestic industry.

[54] With respect to the latter, the Tribunal recalls its conclusion in *OCTG II*, noted above, that even if not all subject countries were likely to divert shipments of OCTG from the United States to Canada, a lesser volume of OCTG diverted from the United States by some of the subject countries would likely be problematic for domestic producers and threaten their ability to compete.[37] In addition, even though the Pipelogix publication identified South Korea and Turkey among the countries for which the risk of diversion to Canada appeared to be greatest, the volumes exported by Hyundai Steel and Borusan during the POI were relatively limited in comparison to the total volumes of subject goods, as were their production capacity in comparison to the total production capacity of the subject countries, which suggests that the two excluded exporters by themselves accounted for a limited proportion of the volumes that were likely to be diverted to Canada as a result of the measures imposed by the United States in 2014. Finally, the Tribunal arrived at its finding after considering not only the measures imposed by the United States but also measures imposed by, or the launching of investigations by, other countries against OCTG from other subject countries.

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35 *OCTG II* at paras. 234–243.
36 *Ibid.* at para. 240.
37 *Ibid.*

[55] In light of the foregoing, the Tribunal considers that the removal of Hyundai Steel and Borusan's exports does not significantly impact the Tribunal's conclusion concerning the likely risk of diversion.

Product shifting

[56] In the original inquiry, the Tribunal found that the subject country producers could shift production facilities away from the production of other goods (pipe and other tubular products) in order to increase production of the subject goods.[38] The Tribunal found, looking at the total capacity figures reported by responding foreign producers as being used to produce other goods, it was apparent that they had substantial capacity that could be shifted toward the production of OCTG. The Tribunal considered that, even if only a portion of that production capacity were shifted toward production of OCTG, the amounts would be significant. The Tribunal also noted that the questionnaire respondents represented only a fraction of the foreign producers.

[57] Evraz and WTC noted, correctly, that Hyundai Steel did not file a questionnaire response in *OCTG II* and therefore its removal has no impact on the data considered by the Tribunal in that inquiry with respect to the capacity of foreign producers to shift production. Evraz and WTC also presented data to the Tribunal showing Borusan's contribution to the total reported production of other products on the same equipment used to produce OCTG by responding foreign producers in *OCTG II*.

[58] Removing Borusan's reported production of other goods on the same equipment used to produce OCTG from the total corresponding figure for all responding foreign producers does not result in a change that is of such a magnitude as to undermine the Tribunal's conclusions in *OCTG II* and justify reaching a different conclusion in the present review.[39] Consequently, the Tribunal's analysis and conclusion on the issue of product shifting are not significantly impacted by the removal of the goods from Hyundai Steel and Borusan from the subject goods.

Inventories and likely price effects of subject goods

[59] In its threat of injury analysis in *OCTG II*, the Tribunal noted the high levels of inventories—including substantial levels of subject goods—held by distributors, which would be a problem given the context of depressed oil and gas prices.[40] The Tribunal considered that, given these high levels of inventories, the prevailing market conditions, and end users' demands for discounts, the strategies that distributors would use in this context would draw them to low-price subject imports, which would lead to price undercutting and price depression.

[60] Evraz and WTC argued that the Tribunal's conclusion with respect to the level of inventories in *OCTG II* is unaffected by the removal of Hyundai Steel and Borusan's goods. They submitted that there is no evidence before the Tribunal of the extent to which Hyundai Steel and Borusan contributed to the accumulation of inventories at the time but that, given the evidence before the

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38 *Ibid.* at paras. 244–248.

39 Compare Schedule 110 to Tables 177–181 of the IR in *OCTG II*, Exhibit NQ-2014-002-08B (protected). As noted above, the Revised IR incorrectly stated that Borusan did not file a response to the Tribunal's foreign producers' questionnaire. Borusan did file a questionnaire response, and its data regarding the production of other goods is reflected in Schedule 110 of the IR in *OCTG II*, Exhibit NQ-2014-002-08B (protected) at 306. Hyundai did not respond to the Tribunal's foreign producers' questionnaire.

40 *OCTG II* at paras. 249–260.

Tribunal, it is reasonable to conclude that they were not a significant presence in the accumulation of inventories.

[61] Tenaris argued that the removal of the goods exported by Hyundai Steel and Borusan has no meaningful effect on the Tribunal's price effects analysis. It submitted that the excluded volumes were very low, and the exclusion of those small volumes has, at the most, a small effect on average prices during the POI, in 2013 and H1 2014, which should have no impact on the Tribunal's finding.

[62] The evidence on the high levels of inventories held by distributors considered by the Tribunal in *OCTG II* did not distinguish between the sources of the inventories held by distributors in a manner that would allow the Tribunal to now ascertain with precision the contribution of the goods exported by Hyundai Steel and Borusan to these inventories. In any event, given the relatively limited volumes exported by Hyundai Steel and Borusan in relation to imports from other sources and to the total market, the Tribunal has no difficulty concluding that its finding on the levels of inventories and the resulting price effects remain unaffected by the removal of Hyundai Steel and Borusan's exports. Moreover, the Tribunal's analysis in *OCTG II* focused as much on the distributors' behaviours as it did on the high levels of inventories themselves, and the distributors' behaviours would not change whether they held OCTG exported by Hyundai Steel or Borusan vs. OCTG from other sources.

[63] As the Tribunal did not refer to the prices of subject goods during the POI in its threat of injury analysis in *OCTG II*, it is not strictly necessary for the purpose of the present review for the Tribunal to address the changes in import values and market prices during the POI resulting from the exclusion of Hyundai Steel and Borusan. In any event, the revised market unit values for the subject goods (after the removal of Hyundai Steel and Borusan's goods) did not show different trends, in terms of price undercutting during the POI, compared to those in the original investigation (i.e. those including Hyundai Steel and Borusan).[41]

[64] For the foregoing reasons, the removal of Hyundai Steel and Borusan's exports from the subject goods has no significant impact on the Tribunal's analysis and finding concerning the high levels of inventories and the resulting likely price effects of subject imports.

Factors other than dumped imports

[65] In its threat of injury analysis in *OCTG II*, the Tribunal considered a number of factors other than the dumped imports.[42]

[66] The Tribunal found that imports of non-subject goods, including imports by the domestic producers, did not threaten to cause injury to the domestic industry because (i) imports of non-subject goods would continue to be made to supplement domestic producers' offerings with sizes and grades not currently produced in Canada and in cases where customer delivery times posed challenges that

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41 The market unit values for non-subject goods from South Korea (i.e. for Hyundai Steel) and for Turkey (i.e. for Borusan) found at Table 9 of the Revised IR were incorrect, which had the effect of skewing the market unit values for South Korea, Turkey and the subject countries as a whole. In reaching its conclusion in this review, the Tribunal has applied the methodology explained at page 7 of the Revised IR (Exhibit NQ-2014-002R-11) to Hyundai Steel and Borusan's import unit values (i.e. it applied a markup to obtain a net delivered selling value in the Canadian market, as had been intended in the Revised IR).

42 *OCTG II* at paras. 261–266.

could be overcome only with resort to imported goods; and (ii) subject imports increased at a much faster rate than imports from non-subject countries in H2 2014.

[67] The domestic producers' declining export sales and the projected impact of the coming online of a new Tenaris facility in Texas on its operations over the next 12 to 18 months did not detract from the impact that the subject goods were expected to have.

[68] Even though not all subject goods were likely to enter Canada at dumped prices (i.e. because some exporters had zero margins), there would be sufficient dumped goods to pose a threat of material injury to the domestic industry given the likelihood of increased volumes and the intense pricing pressures in the market.

[69] The likely contraction in demand did not negate the injury that would be suffered by the domestic industry from increased volumes of subject goods in the Canadian market at dumped prices.

[70] Evraz and WTC submitted that the removal of Borusan and Hyundai Steel's goods from the subject goods does nothing to change the Tribunal's conclusion with respect to non-subject goods, particularly as the Tribunal had already acknowledged that the two exporters were not likely to contribute to the subject goods entering Canada at dumped prices and thus did not base its threat of injury finding on the likely volumes and prices for either Borusan or Hyundai Steel.

[71] On their face, the Tribunal's analysis and conclusions concerning other factors and the data and considerations upon which these conclusions rested are not significantly impacted by the removal of the goods imported from Hyundai Steel and Borusan. Moreover, as Evraz and WTC correctly noted, in *OCTG II*, the Tribunal already signalled that its threat of injury conclusion stood notwithstanding the fact that some imports, including from Hyundai Steel and Borusan, would not be at dumped prices.[43]

Materiality

[72] In the original inquiry, the Tribunal found that the threat of injury posed by the subject goods was material.[44]

[73] Given the Tribunal's conclusion above that the removal of Hyundai Steel and Borusan's exports does not significantly impact its analysis and finding with respect to any of the factors listed under subsection 37.1(2) of the Regulations, there is no reason to revisit the Tribunal's finding with respect to materiality in *OCTG II*.

Conclusion

[74] In sum, for the reasons discussed above, the Tribunal finds that the goods exported by Hyundai Steel and Borusan were not a determinative factor in the Tribunal's threat of injury analysis in the original inquiry, and the impact of removing these goods is limited and insufficient to justify the rescission of the Tribunal's finding in *OCTG II*.

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43 *Ibid.* at para. 265. As noted above, the Tribunal was also mindful of the fact that not all subject goods were dumped when conducting its past injury analysis and it sought to focus this analysis on the effect of the subject goods that were dumped. *OCTG II* at paras. 94–104, 115–118, 192.

44 *OCTG II* at paras. 267–270.

[75] Accordingly, the Tribunal confirms that the dumping of the subject goods, other than those exported to Canada from Hyundai Steel and Borusan, threatened to cause material injury to the domestic industry.

DOMESTIC PRODUCERS' ARGUMENT THAT DUTIES SHOULD HAVE CONTINUED TO APPLY

[76] In their submissions, the domestic producers took issue with the CBSA's decision to cease applying anti-dumping duties on imports of the subject goods exported by Hyundai Steel and Borusan.[45]

[77] Evraz and WTC submitted that the CBSA has usurped the Tribunal's jurisdiction to determine the scope of the goods subject to the Tribunal's finding and subject to anti-dumping duties by assuming that its determination had the automatic and immediate effect of amending the Tribunal's finding in *OCTG II*, which, they submit, is not the case under SIMA. They reasoned that subsection 3(1) of SIMA requires that duties be levied, collected and paid on all dumped and subsidized goods for which *the Tribunal* has made a finding. Thus, they submitted that it is only after the Tribunal amends its finding in *OCTG II* to exclude the goods exported by Borusan and Hyundai Steel that these goods are no longer subject to the application of anti-dumping duties under subsection 3(1) of SIMA. Evraz and WTC did not explicitly state what they requested of the Tribunal on this issue.

[78] Tenaris submitted that subsection 3(1) of SIMA requires that duties be levied, collected and paid on dumped imports when goods are subject to a Tribunal finding or order. Consequently, the subject goods from the two excluded producers remain covered by the Tribunal's finding and therefore the CBSA should continue to collect duties until the Tribunal amends its finding. Tenaris asked the Tribunal to clarify its role in amending the order or finding that governs SIMA duty liability, specifically as it applies to the CBSA's collection of duties.

[79] Having considered the matter, the Tribunal has determined that it would be inappropriate for it to make the clarification sought by Tenaris. Assuming that the CBSA's decision to cease applying duties on imports from the two excluded exporters was actually a decision made under section 76.1 of SIMA, the Tribunal has no authority to review a CBSA decision made pursuant to that provision. Further, other than in the context of appeals filed with the Tribunal under section 61 of SIMA (which is clearly not the case here), the Tribunal is without authority to review decisions made by the CBSA with respect to duty enforcement.

[80] The Tribunal adds that, even if it could have reviewed the CBSA's decision to cease imposing anti-dumping duties on imports of subject goods from Hyundai Steel and Borusan, it may not have come to the same conclusion as the domestic producers, as there are several cogent arguments that could be made in support of the CBSA's position on this issue.[46]

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45 As previously mentioned, in both its statement of reasons and notice of conclusion of the review of final determinations of dumping, the CBSA indicated that, as a result of the termination of its dumping investigation in respect of subject goods exported to Canada by Hyundai Steel and Borusan, anti-dumping duties would no longer be imposed on those goods.

46 The Tribunal notes that it did not receive any submissions on this issue, or on any issue for that matter, from parties opposed in interest to the domestic producers.

[81] In light of the foregoing, the Tribunal will not, in the context of this review, make any pronouncements on whether anti-dumping duties should have continued to apply on imports of subject goods from Hyundai Steel and from Borusan until the date of the present order, or on the respective roles of the CBSA and the Tribunal in that context.

CONCLUSION

[82] The Tribunal continues, pursuant to paragraph 76.1(2)(b) of SIMA, its threat of injury finding in respect of the subject goods, other than those exported from South Korea by Hyundai Steel and those exported from Turkey by Borusan. For greater certainty, the Tribunal's order in expiry review RR-2019-006 rescinding the finding in respect of the subject goods originating in or exported from the Philippines remains in effect.

Georges Bujold

Georges Bujold
Presiding Member

Peter Burn

Peter Burn
Member

Susan D. Beaubien

Susan D. Beaubien
Member