



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

DETERMINATION AND REASONS

Preliminary injury inquiry
PI-2021-006

Drill Pipe

*Determination issued
Tuesday, May 24, 2022*

*Reasons issued
Monday, June 13, 2022*

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

DRILL PIPE

PRELIMINARY DETERMINATION OF INJURY

The Canadian International Trade Tribunal, pursuant to the provisions of subsection 34(2) of the *Special Import Measures Act* (SIMA), has conducted a preliminary injury inquiry into whether there is evidence that discloses a reasonable indication that the dumping and subsidizing of drill pipe, including heavy weight drill pipe (HWDP), meeting or manufactured to American Petroleum Institute (API) 5DP or API 7-1 specifications, or comparable or proprietary standards, in all grades (including proprietary or enhanced grades), made of carbon or alloy steel, in nominal sizes of 2 ³/₈ inches (outside diameter 60.3 mm) to 7 ⁵/₈ inches (outside diameter 193.7 mm) (with all dimensions being plus or minus allowable tolerances contained in the applicable standards), in any length, originating in or exported from the People's Republic of China (the subject goods), have caused injury or retardation or are threatening to cause injury, as these words are defined in SIMA.

This preliminary injury inquiry follows the notification, on March 25, 2022, that the President of the Canada Border Services Agency had initiated investigations into the alleged injurious dumping and subsidizing of the subject goods.

Pursuant to paragraph 35(1)(b) of SIMA, the Tribunal concludes that the evidence does not disclose a reasonable indication that the dumping and subsidizing of the subject goods have caused injury or retardation or are threatening to cause injury. Therefore, pursuant to paragraph 35(3)(a) of SIMA, the Tribunal terminates the preliminary injury inquiry with respect to the subject goods.

Peter Burn

Peter Burn

Presiding Member

Susan D. Beaubien

Susan D. Beaubien

Member

Randolph W. Heggart

Randolph W. Heggart

Member

The statement of reasons will be issued within 15 days.

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STATEMENT OF REASONS

INTRODUCTION

[1] On February 3, 2022, Command Drilling Products Ltd. (CDP) filed a complaint with the Canada Border Services Agency (CBSA) alleging that the dumping and subsidizing of certain drill pipe originating in or exported from the People's Republic of China (China) (the subject goods) have caused injury or retardation or are threatening to cause injury to the domestic industry.

[2] CDP is a member of the Command Energy Group, a privately held Canadian group of companies. In addition to CDP, the group includes a Texas-based affiliate, Command Tubular Product LLC (CTP USA), as well as Command Tubular Products Ltd. (CTP), an importer of subject goods from China as well as non-subject goods produced by CTP USA.¹

[3] On March 25, 2022, the CBSA initiated investigations with respect to the dumping and subsidizing of the subject goods, pursuant to subsection 31(1) of the *Special Import Measures Act* (SIMA).²

[4] As a result of the CBSA's decision to initiate these investigations, the Canadian International Trade Tribunal began its preliminary injury inquiry pursuant to subsection 34(2) of SIMA on March 28, 2022. The purpose of the inquiry is to determine whether the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury or retardation or are threatening to cause injury to the domestic industry.

[5] CDP's complaint is opposed by Hilong Petropipe Co., Ltd. (Hilong), an importer of subject goods. No other parties filed notices of participation or submissions.

[6] On May 10, 2022, the Tribunal held a videoconference to gather evidence relating to the issues of like goods and classes of goods. Mr. Ed Murphy and Mr. Dave Kapy appeared as witnesses on behalf of CDP. Mr. Marcelo Silva Menezes and Mr. Darren Stocks appeared as witnesses on behalf of Hilong.

[7] Pursuant to paragraph 35(1)(b) of SIMA, the Tribunal determined on May 24, 2022, that the evidence does not disclose a reasonable indication that the dumping and subsidizing of the subject goods have caused injury or retardation or are threatening to cause injury. Therefore, pursuant to paragraph 35(3)(a), the Tribunal terminated the preliminary injury inquiry with respect to the subject goods. The reasons for the determination are set out below.

PRODUCT DEFINITION

[8] The CBSA defined the subject goods as follows:³

Drill pipe, including heavy weight drill pipe (HWDP), meeting or manufactured to American Petroleum Institute (API) 5DP or API 7-1 specifications, or comparable or proprietary standards, in all grades (including proprietary or enhanced grades), made of carbon or alloy steel, in nominal sizes of 2 3/8" (outside diameter 60.3 mm) to 7 5/8" (outside diameter

¹ Exhibit PI-2021-006-02.01 at para. 11.

² R.S.C., 1985, c. S-15.

³ Exhibit PI-2021-006-02.09.

193.7 mm) (with all dimensions being plus or minus allowable tolerances contained in the applicable standards), in any length, originating in or exported from the People's Republic of China.

Additional product information

[9] Drill pipe consists of heavy, and usually seamless, tubing with high-strength tool joints on either end.⁴ It is used for drilling oil wells and is the link between the drilling rig on the surface and the drill bit, which it causes to rotate at the bottom of the well while also circulating drilling fluids.⁵ Drill pipe (variously referred to as “joints”, “pieces” or “assemblies”) is produced by welding two tool joints—generally a “pin” or externally threaded connector at one end and a “box” or internally threaded connector at the other—to a drill pipe body.⁶

[10] Drill pipe bodies are seamless pipes with upset ends, without tool joints attached and are manufactured from oil country tubular goods green seamless tube.⁷ Drill pipes are attached to one another via the tool joints to create a “drill string”.⁸ Generally, a drill string will contain both HWDP and non-heavy weight, or “standard”, drill pipe.⁹

[11] “Standard” drill pipe generally meets API 5DP specifications, whereas HWDP generally meets API 7-1 specifications.¹⁰ API is a global certification organization that exists to create high-quality uniform standards for drill pipe and other products used in the oil and gas sector.¹¹ For drill pipe, the standards set minimum requirements for parameters such as the correct hardness of the steel, proper heat treatment, dimensional control, personnel certification, qualification process and chemical analyses.¹² Certification or licencing by API involves inspection of the drill pipe operation to ensure that the manufacturer's production process and internal quality management systems comply with the standards.¹³ Thus, API certification is regarded in the industry as the best way to ensure that manufacturers are following the standards.¹⁴

[12] The main difference between HWDP and “standard” drill pipe is that HWDP has a thicker wall.¹⁵ HWDP generally acts as a transition between the drill collar and the drill pipe and is used in both conventional and horizontal drilling in modern drilling applications.¹⁶ It is especially well suited to directional drilling because it bends more easily than standard drill pipe.¹⁷

⁴ Exhibit PI-2021-006-02.01 at para. 22.

⁵ Exhibit PI-2021-006-06.01B at para. 11; Exhibit PI-2021-006-02.01 at paras. 21–22.

⁶ Exhibit PI-2021-006-02.01 at paras. 23–24, 26–27. See also API 5DP specification for drill pipe, Exhibit PI-2021-006-06.01 at 43–175.

⁷ Exhibit PI-2021-006-02.01 at paras. 25, 54; see also *Transcript of Public Hearing* at 24, 25–26.

⁸ Exhibit PI-2021-006-02.01 at para. 23.

⁹ *Ibid.* at para. 45; *Transcript of Public Hearing* at 10, 20–21, 36–37.

¹⁰ Exhibit PI-2021-006-02.01 at paras. 20, 32–33.

¹¹ Exhibit PI-2021-006-06.01C at para. 10.

¹² Exhibit PI-2021-006-06.01B at para. 29.

¹³ Exhibit PI-2021-006-06.01 at 104.

¹⁴ Exhibit PI-2021-006-06.01B at para. 28.

¹⁵ Exhibit PI-2021-006-03.01B at para. 16; *Transcript of Public Hearing* at 10.

¹⁶ *Transcript of Public Hearing* at 20–21.

¹⁷ Exhibit PI-2021-006-06.01C at para. 22.

[13] According to the complaint, drill pipe can be produced from used or new drill pipe bodies.¹⁸ New drill pipe has a useful life of three to five years.¹⁹ Drill pipe bodies can be reused within that timeframe, as long as they are considered to be in “premium” condition, which means 80 percent or more of the original wall thickness remains.²⁰ Similarly, “premium” condition tool joints can be removed from a damaged pipe body and reused.²¹

THE CBSA’S DECISION TO INITIATE THE INVESTIGATIONS

[14] The CBSA initiated investigations pursuant to subsection 31(1) of SIMA, as it was of the opinion that there was evidence that the subject goods had been dumped and subsidized and that there was evidence that disclosed a reasonable indication that the dumping and subsidizing have caused and were threatening to cause injury to the domestic industry.²²

[15] For the period of January 1, 2021, to December 31, 2021, the CBSA estimated that the subject goods were dumped by a margin of 39.8 percent, expressed as a percentage of the export price.²³

[16] For the period of January 1, 2021, to December 31, 2021, the CBSA estimated that the subject goods were subsidized by an amount of 31.1 percent, expressed as a percentage of the export price.²⁴

LEGISLATIVE FRAMEWORK

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

Reasonable indication

[18] The term “reasonable indication” is not defined in SIMA but is understood to mean that the evidence need not be “conclusive, or probative on a balance of probabilities”.²⁵ The reasonable indication standard is lower than the standard that applies in a final injury inquiry under section 42 of SIMA.²⁶

[19] The Tribunal expects that the evidence at the preliminary phase of proceedings will be significantly less detailed and comprehensive than the evidence in a final injury inquiry. Not all the

¹⁸ Exhibit PI-2021-006-02.01 at paras. 54, 63.

¹⁹ Exhibit PI-2021-006-06.01C at para. 7; Exhibit PI-2021-006-02.01 at para. 115.

²⁰ Exhibit PI-2021-006-02.01 at paras. 121–122.

²¹ *Ibid.* at para. 124.

²² Exhibit PI-2021-006-05 at para. 166.

²³ *Ibid.* at para. 97.

²⁴ *Ibid.* at para. 130.

²⁵ *Ronald A. Chisholm Ltd. v. Deputy M.N.R.C.E.* (1986), 11 CER 309 (FCTD).

²⁶ *Sucker Rods I* (17 July 2018), PI-2018-001 (CITT) at para. 13; *Certain Fabricated Industrial Steel Components* (10 November 2016), PI-2016-003 (CITT) [*FISC*] at para. 13.

evidence is available at the preliminary phase, and the evidence cannot be tested to the same extent as during a final injury inquiry.

[20] However, the outcome of preliminary injury inquiries must not be taken for granted.²⁷ Simple assertions are not sufficient.²⁸ Complaints, as well as the cases of parties opposed, must be supported by positive evidence that is both relevant and sufficient in that it addresses the necessary requirements in SIMA and the relevant factors of the *Special Import Measures Regulations* (Regulations)²⁹ and does so in a manner that is sufficiently convincing at this stage of the inquiry.

Injury, retardation and threat of injury

[21] Subsection 2(1) of SIMA defines “retardation” as “. . . material retardation to the establishment of a domestic industry” and defines “injury” as “. . . material injury to a domestic industry”. It also defines “domestic industry” as “. . . the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods except that, where a domestic producer is related to an exporter or importer of dumped or subsidized goods, or is an importer of such goods, **domestic industry** may be interpreted as meaning the rest of those domestic producers.” Therefore, the Tribunal must identify the like goods and the domestic industry that produces those goods before examining allegations of injury, retardation or threat of injury.

[22] The Tribunal has previously found that SIMA views retardation and injury (or threat of injury) as two distinct and mutually exclusive concepts. Retardation is possible only if there is no established domestic industry, whereas injury or threat of injury is possible only in the case of an already established domestic industry.³⁰

[23] In previous decisions, the Tribunal has consistently held that the commencement of domestic production is proof of the establishment of a domestic industry and that there can therefore be no retardation if there is domestic production of like goods.³¹ As a result, if the Tribunal determines that there is no domestic industry producing like goods, it will not examine any claims of injury or threat of injury but will proceed to examine whether there has been material retardation of the establishment of a domestic industry.

[24] In making its preliminary determination, the Tribunal takes into account the injury, retardation and threat of injury factors that are prescribed in section 37.1 of the Regulations. These

²⁷ *Concrete Reinforcing Bar* (12 August 2014), PI-2014-001 (CITT) at paras. 18–19.

²⁸ Article 5 of the World Trade Organization’s Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 requires an investigating authority to examine the accuracy and adequacy of the evidence provided in a dumping complaint to determine whether there is sufficient evidence to justify the initiation of an investigation and to reject a complaint or to terminate an investigation as soon as an investigating authority is satisfied that there is not sufficient evidence of dumping or injury. Article 5 also specifies that simple assertions that are not substantiated with relevant evidence cannot be considered sufficient to meet the requirements of the article.

²⁹ SOR/84-927.

³⁰ *Potassium Silicate Solids* (6 March 2012), PI-2011-003 (CITT) [*Potassium Silicate Solids*] at para. 35.

³¹ *Gypsum Board* (20 August 2018), PI-2018-003 (CITT) [*Gypsum Board*] at paras. 38, 39; *Potassium Silicate Solids* at paras. 35–37; *Preformed Fibreglass Pipe Insulation with a Vapour Barrier* (19 November 1993), NQ-93-002 (CITT) at 22; *Oil and Gas Well Casing* (4 July 2001), RR-2000-001 (CITT) at 11; *Fresh Garlic* (21 March 1997), NQ-96-002 (CITT) at 18.

include the import volumes of the dumped and subsidized goods; the effects of the dumped and subsidized goods on the price of like goods; the resulting economic impact of the dumped and subsidized goods on the domestic industry; and, if injury, retardation or threat of injury is found to exist, whether a causal relationship exists between the dumping and subsidizing of the goods and the injury, retardation or threat of injury.

POSITIONS OF THE PARTIES

[25] CDP's principal claim is that it suffered injury because it has been unable to proceed with the planned expansion of its Canadian operations due to the presence of dumped and subsidized subject goods in the market. According to CDP, it was already engaged in the production of like goods and, therefore, it could not bring a claim of material retardation, given that a domestic industry was already established. CDP further claimed that volumes of subject goods are increasing, that the subject goods are undercutting both CDP's prices and those of its affiliate, CTP, of goods originating in the United States (U.S.), and that the subject goods have prevented CDP from increasing its share of the Canadian market, prices, employment levels and profits.

[26] Hilong claims that the goods produced by CDP are not comparable to the subject goods because the former are not in fact produced to the industry specifications named in the product definition. Hilong additionally submits that any injury suffered by CDP was caused by factors other than the dumping or subsidizing, such as the presence of non-subject imports from the U.S. at high volumes and low prices. Moreover, there was a downturn in the oil and gas industry during the COVID-19 pandemic, which resulted in fewer drilling operations and, therefore, fewer purchases of drill pipe.

LIKE GOODS

[27] Subsection 2(1) of SIMA defines "like goods" in relation to any other goods as follows:

- (a) goods that are identical in all respects to the other goods, or
- (b) in the absence of any goods described in paragraph (a), goods the uses and other characteristics of which closely resemble those of the other goods.

[28] In determining the issue of like goods where 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).³²

[29] CDP submits that the drill pipe it makes is virtually identical to the subject goods in many cases and that its proprietary types of drill pipe are substitutable for the subject goods. It further submits that the drill pipe it has produced competes directly with subject goods.

³² See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at para. 48.

[30] CDP's evidence is that it currently makes drill pipe from drill pipe bodies owned and provided by its customers, in new or used condition.³³ Generally, this process involves the removal and replacement of existing tool joints on used drill pipe in premium condition.³⁴ Importantly, CDP uses a process called "stub welding" to affix the new tool joints to the existing pipe bodies.³⁵ This was confirmed by CDP's witness Mr. Murphy during the videoconference on like goods and classes of goods.³⁶

[31] CDP also claims that it is currently capable of producing drill pipe with an outer diameter in the range of 2 3/8" to 7 5/8", including both standard and HWDP drill pipe. It further claims to be capable of producing all grades of drill pipe, including all API grades, as well as enhanced grades (such as "V" grade non-HWDP).³⁷ Furthermore, CDP submits that it is capable of producing drill pipe from new drill pipe bodies that it has purchased but that this is currently cost prohibitive, given the competition from the subject goods.³⁸

[32] Hilong submits that the subject goods and CDP's drill pipe are not comparable and do not compete in the Canadian market. According to Hilong, CDP cannot manufacture drill pipe to the API 5DP standard, as that specification requires that tool joints be welded to the drill pipe body using the rotary friction method, whereas CDP uses stub welding. Rotary friction and stub welding are two different and distinguishable forms of welding.

[33] In particular, Hilong notes that the API 5DP specification provides that:

6.4.3 Welding of Tool Joints to Drill Pipe Body and Postweld Heat Treatment

*The welding of the tool joint to the drill pipe body shall be by the rotary friction welding process. A postweld heat treatment shall be performed through the entire thickness and from the weld line to beyond where the flow lines of the tool joint and drill pipe body material change direction because of the welding process. The weld shall be austenitized, cooled below the transformation temperature, and tempered at a minimum temperature of 593 °C (1100 °F).*³⁹

[Bold in original, emphasis added]

³³ *Transcript of Public Hearing* at 11–12; Exhibit PI-2021-006-02.01 at paras. 78, 127, 134; Exhibit PI-2021-006-03.01 (protected) at paras. 4, 134, 140. At the videoconference on like goods and classes of goods, Mr. Murphy stated that CDP has purchased new finished drill pipe or new drill pipe bodies from its existing customers and then proceeded to "change that product into something else" before selling it to other customers (*Transcript of Public Hearing* at 30). However, this contradicts statements that he made elsewhere in his testimony, including in response to a clarification question posed immediately following this statement, as well as the evidence provided in the complaint. In addition, the documentary evidence of CDP's actual sales provided with the complaint concern only the replacement of tool joints on used drill pipe; see Exhibit PI-2021-006-03.01 (protected) at 2106–2110.

³⁴ Exhibit PI-2021-006-02.01 at paras. 21–22.

³⁵ *Ibid.* at para. 22.

³⁶ *Transcript of Public Hearing* at 16.

³⁷ Exhibit PI-2021-006-02.01 at para. 146. Although CDP claims that specialty grades of drill pipe V and SS are not covered by the API 5DP standard, it is referring to an outdated copy. The updated copy provided by Hilong (which dates to March 2020) includes those specifications; see Exhibit PI-2021-006-06.01 at 52, 128.

³⁸ *Transcript of Public Hearing* at 8–9, 11.

³⁹ Exhibit PI-2021-006-06.01 at 67.

[34] Rotary friction welding is defined as follows:

Solid state welding under compressive force contact of work pieces rotating relative to one another along a common axis to increase temperature and plastically displace material from the faying surfaces.

*NOTE Either direct drive or inertia friction welding is acceptable.*⁴⁰

[Emphasis added]

[35] The foreword to the standard further provides that:

Shall: As used in a standard, “shall” denotes a minimum requirement in order to conform to the standard.⁴¹

[36] Hilong further submits that CDP no longer holds a licence for the API 5DP specification. Evidence provided by both CDP and Hilong’s indicates that CDP’s licence for the API 5DP specification was withdrawn by CDP in 2017.⁴²

[37] Hilong’s witness, Mr. Menezes, affirmed that the API 5DP specification expressly requires that friction welding be used to manufacture drill pipe.⁴³ He claimed that, in his 23 years of industry experience, he has never heard of a company that would be willing to use a drill string that is not compliant with API standards because there are elevated health, safety and environmental risks associated with the use of non-API compliant pipes. Those risks are significant. Mr. Menezes testified that the use of uncertified drill pipe could result in a loss of insurance for the drill pipe rig operator.⁴⁴

[38] Further, in his statement, Mr. Stocks claimed that Hilong’s drill pipe does not compete with the drill pipe produced by CDP (i.e. drill pipe produced from used drill pipe bodies with tool joints attached using the stub welding method) in the Canadian market.⁴⁵ Mr. Stocks stated that Hilong only sells drill pipe manufactured using new drill pipe bodies in the Canadian market.⁴⁶ At the videoconference, he clarified that Hilong did sell some used drill pipe from its rental fleet in Canada during the market downturn in 2020.⁴⁷

[39] In reply, CDP reiterated its claim that its drill pipe competes directly with the subject goods. In his witness statement, Mr. Garvey said that CDP’s goods are sold through the same channels of distribution as the subject goods and to the same customers for the same end use, namely the drilling of oil wells.⁴⁸

⁴⁰ *Ibid.* at 57.

⁴¹ *Ibid.* at 45.

⁴² Exhibit PI-2021-006-02.01 at 1669; Exhibit PI-2021-006-06.01 at 269.

⁴³ *Transcript of Public Hearing* at 34.

⁴⁴ Exhibit PI-2021-006-06.01B at paras. 52–53, 55–56; *Transcript of Public Hearing* at 37–38.

⁴⁵ Exhibit PI-2021-006-06.01C at para. 14; see also *Transcript of Public Hearing* at 37.

⁴⁶ Exhibit PI-2021-006-06.01C at paras. 5, 8, 9.

⁴⁷ *Ibid.* at para. 63; *Transcript of Public Hearing* at 39.

⁴⁸ Exhibit PI-2021-006-09.01A at para. 10.

[40] During the videoconference, Mr. Murphy stated that CDP has lost sales to Chinese imports on the basis of price and that it received no feedback that these sales were lost due to the product not meeting specifications or because of CDP's use of used drill pipe.⁴⁹

[41] CDP stressed that, although it does not currently hold an API 5DP licence, its products are nevertheless produced to that standard (or beyond it, in the case of its proprietary tool joints), that its product is physically and technically identical to drill pipe made by a manufacturer who has the API certification, and that CDP's customers accept and use its products based on brand recognition and recognition for quality in conformity with API specifications.⁵⁰

[42] According to CDP, the only benefit of holding the API 5DP licence is that it allows the licence holder to stencil its products with the API monogram. From CDP's standpoint, holding the API 5DP licence was no longer cost-effective.⁵¹

[43] In addition, CDP noted that it holds an API 7-1 licence to produce integral HWDP. Integral HWDP is produced from a whole bar of steel where the tool joints are integrated to the pipe body without welding being required.⁵² Finally, CDP claimed that an API certification is not necessary to produce its proprietary grades of drill pipe, as the proprietary grades are not covered by the standard.⁵³

[44] At the videoconference, CDP stated that its goods were manufactured "in accordance with" API standards, notwithstanding that it uses stub welding instead of rotary friction welding.⁵⁴

[45] The Tribunal finds that the goods produced by CDP are not identical in all respects to the subject goods. The product definition covers "drill pipe . . . *meeting or manufactured to* American Petroleum Institute (API) 5DP or API 7-1 specifications, or comparable or proprietary standards" [emphasis added]. As further explained below, the evidence before the Tribunal indicates that drill pipe made by CDP neither meets nor is manufactured to such specifications or standards.

[46] First, CDP acknowledged at the videoconference that the use of stub welding to affix the tool joints to the drill pipe bodies renders it non-compliant with the API specifications. In any event, the plain wording of the extracts from the API 5DP specification cited above clearly indicate that rotary friction welding is the only recognized method for affixing tool joints to drill pipe bodies under the API 5DP specification. Mr. Menezes also stated that rotary friction welding is required to produce welded HWDP.⁵⁵

[47] Second, the evidence is that the goods produced by CDP are not physically identical to the subject goods. Since the like goods are generally produced from used drill pipe bodies, they may not have the same wall thickness as new drill pipe bodies, as "premium" classified drill pipe bodies are only required to retain 80 percent of the original wall thickness. In addition, the like goods are produced using a different welding method, which creates different physical characteristics.

⁴⁹ *Transcript of Public Hearing* at 6–7.

⁵⁰ Exhibit PI-2021-006-02.01 at para. 74; Exhibit PI-2021-006-09.01A at paras. 8–9; *Transcript of Public Hearing* at 27–28.

⁵¹ Exhibit PI-2021-006-09.01A at paras. 7–8.

⁵² Exhibit PI-2021-006-06.01B at para. 41.

⁵³ Exhibit PI-2021-006-02.01 at paras. 30, 160.

⁵⁴ *Transcript of Public Hearing* at 10, 11.

⁵⁵ Exhibit PI-2021-006-06.01B at para. 41.

According to Mr. Menezes, the stub welding process “spreads a lot of heat on the material, changing the properties and mak[ing] like a huge affected zone on the [sic] both sides of the component”,⁵⁶ whereas the rotary friction method “produces very limited and narrow heat-affected zone regions resulting in excellent metallurgical properties in the joint area.”⁵⁷

[48] In addition, the Tribunal also finds, having considered the totality of the evidence and relevant factors, that the goods produced by CDP do not “closely resemble” the subject goods. While the end uses of the domestic and subject goods may be similar, the goods are not sufficiently similar in terms of other market characteristics. Simply put, the drill pipe that CDP currently makes and the subject goods do not compete in the marketplace.

[49] As noted above, the evidence of Hilong’s witnesses was that it does not compete with CDP in the Canadian marketplace and that drill pipe users would never purchase non-API certified products. In response, CDP acknowledged that it does not currently hold a licence for the API 5DP standard but argued that its customers do not require the API monogram to be stamped on the goods they purchase from CDP because they are content to rely on CDP’s reputation for quality and its assurances that its internal quality control systems are in conformity with the API specifications (despite the fact that it uses stub welding instead of rotary friction welding).⁵⁸

[50] While this may be feasible under CDP’s current business model, which principally if not exclusively involves the replacement of tool joints on customer-owned, used drill pipe, the Tribunal does not accept that this means that CDP’s goods and the subject goods are viewed as substitutable in the marketplace. While customers may consider stub welding acceptable for the repair or refurbishment the goods that they already own, this does not necessarily mean that they would accept new goods produced using this method, which again would mean that the goods do not comply with the API specifications.

[51] With respect to the API monogram specifically, the Tribunal notes that the API licence does not merely allow for the licence holder to stamp the API monogram on its products. According to the information on the program available in Appendix A to the API 5DP specification, licence holders are audited for compliance with the specification both before and after obtaining the licence.⁵⁹ Therefore, only licence holders are subject to third-party verification of whether their internal quality management systems actually meet the standards set out in the specification. The Tribunal considers that the API monogram would accordingly serve as an important indicator of quality in the market, consistent with Mr. Menezes’ testimony.

[52] The Tribunal considers that the API certification is an added feature providing significant benefit to purchasers as a means to assure quality and mitigate risk. The absence of API certification thus differentiates the CDP drill pipe from that of Hilong and other API-certified manufacturers of drill pipe. To the extent that the evidence from CDP and Hilong diverges on this issue, the Tribunal prefers, and assigns greater weight, to the evidence of Mr. Menezes.

⁵⁶ *Transcript of Public Hearing* at 34.

⁵⁷ Exhibit PI-2021-006-06.01B at para. 44.

⁵⁸ *Transcript of Public Hearing* at 28.

⁵⁹ Exhibit PI-2021-006-06.01 at 104–107. This is consistent with Mr. Murphy’s testimony; see *Transcript of Public Hearing* at 7–8, 18–19.

[53] In light of the above, the Tribunal finds that the drill pipe that CDP has actually sold to date does not constitute like goods to the subject goods.⁶⁰

[54] However, CDP claims that the like goods analysis must also assess whether the goods that it is capable of producing, but has not yet been able to produce due to alleged pressure from dumped and subsidized imports, constitute like goods to the subject goods.

[55] The Tribunal considers that capability to produce should only be considered in the context of a material retardation analysis. Indeed, the only case law that CDP cites to support the idea that the like goods should include goods that the domestic producers are capable of producing (but do not actually produce) was decided in that context.⁶¹

[56] Similarly, in the material retardation context, the Tribunal should also consider whether the goods that the domestic producer plans to begin producing in Canada are like goods to the subject goods. In this case, that would include goods produced to the API 5DP specification using the rotary friction welding process. CDP has provided evidence that it has already purchased an inertia friction welding apparatus and that it will produce drill pipe using that methodology if it can proceed with its planned expansion.⁶²

[57] In addition, Mr. Garvey stated that CDP will seek to renew its API 5DP licence as part of its planned Canadian expansion if it can justify the additional expense of maintaining a licence.⁶³

[58] Based on the analysis above, if CDP were to begin producing drill pipe using rotary friction welding under API certification, then the Tribunal considers that those goods would constitute like goods to the subject goods.

Classes of goods

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

[60] Hilong proposed the following classes of goods, namely:

I. New API 5DP and comparable Standard Drill Pipe

1. Drill Pipe according to API 5DP or comparable standards (friction welding)

II. Repaired or Reused Non Standard Drill Pipe and Heavy Weight Drill Pipe.⁶⁴

⁶⁰ The Tribunal notes that, while CDP does hold a licence to produce integral HWDP, it did not provide any evidence that it had produced any integral HWDP; see Exhibit PI-2021-006-03.01 (protected) at 2106–2110. In addition, Mr. Murphy’s testimony was that integral HWDP is a small segment of the market; see *Transcript of Public Hearing* at 24.

⁶¹ *Printing Plates*, CIT-4-87 at 10.

⁶² Exhibit PI-2021-006-10.01 (protected) at 30–32; Exhibit PI-2021-006-09.01A at para. 28.

⁶³ Exhibit PI-2021-006-09.01A at para. 11.

⁶⁴ Exhibit PI-2021-006-06.01C at para. 18.

[61] Hilong summarizes the key differences between its two proposed classes in the following way: (i) different industry standards (API 5DP vs. API 7-1); (ii) different physical characteristics (thin vs. thick wall); (iii) different functions and use; and (iv) different proportions of the drill string (90 percent vs. 10 percent).⁶⁵

[62] Since the Tribunal has determined that CDP's drill pipe does not constitute like goods to the subject goods, it need not examine Hilong's claim that repaired or reused drill pipe and new API 5DP drill pipe are separate classes of goods.

[63] However, given the Tribunal's finding that, if CDP were to begin producing API-certified drill pipe, that would be like goods to the subject goods, the Tribunal will briefly address Hilong's claim that new standard drill pipe produced to the API 5DP standard is a separate class of goods from HWDP.

[64] Previous Tribunal findings have established that there is a single class of goods where the goods have the same end uses and exist along a continuum of different grades, strengths and sizes.⁶⁶ The Tribunal has also found that production to different standards or through different processes does not justify the separation of goods into separate classes where they exist on a continuum.⁶⁷ In this case, standard drill pipe and HWDP have the same end uses, as they are all interconnected tubular steel products used in the drill string for oil and gas exploration. Further, the other characteristics are on a continuum, such as wall thickness (HWDP vs. non-HWDP), length, and grades (which have, *inter alia*, different tensile strengths).

[65] As a result, the Tribunal finds that standard drill pipe and HWDP produced to API specifications are a single class of goods.

DOMESTIC INDUSTRY

[66] 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

[67] CDP claims that it is the only domestic Canadian producer of drill pipe. The CBSA has confirmed that there are no other known producers of drill pipe in Canada. Accordingly, CDP accounts for 100 percent of drill pipe production.⁶⁸

[68] CDP argues that its operations in Canada should be considered to constitute "production" under SIMA. CDP claims that it performs a number of drill pipe manufacturing and finishing operations in Canada, including:

- welding tool joints to a drill pipe body;

⁶⁵ Exhibit PI-2021-006-07.01 (protected) at para. 11.

⁶⁶ *Oil Country Tubular Goods* (23 March 2010), NQ-2009-004 (CITT) [*OCTG*] at para. 83; *Oil Country Tubular Goods* (2 March 2015), RR-2014-003 (CITT) at para. 30.

⁶⁷ *Circular Copper Tube* (18 December 2013), NQ-2013-004 (CITT) at paras. 54–55; *Sucker Rods* (14 December 2018), NQ-2018-001 (CITT) at para. 30.

⁶⁸ Exhibit PI-2021-006-05 at paras. 64–65.

- heat treatment;
- addition of hard-banding; and
- welding shorter drill pipe bodies together to create a longer drill pipe body.⁶⁹

[69] CDP submits that these complex operations substantially transform an unfinished drill pipe body into a finished drill pipe assembly and that the cost of these operations represents a very significant portion of the total cost of the finished drill pipe assembly.⁷⁰ In the complaint, CDP also claimed that it produces all the tool joints it uses from bar stock.⁷¹

[70] CDP further claimed that the Tribunal has considered “tolling producers”, i.e. parties that do not take ownership of goods but provide further processing as a service for the owners of those goods, as part of the domestic industry in previous cases.

[71] Hilong submits that CDP is not a domestic producer of “standard” drill pipe because it cannot produce API 5DP certified drill pipe. In addition, Hilong claims that, because CDP only produces drill pipe from used drill pipe bodies, it should not be considered a producer. Instead, Hilong submits that CDP is a “machine shop” providing a repair service to drill pipe owners/users.

[72] In reply, CDP claims that it is not merely a machine shop or service provider involved in the repair or refurbishment of used drill pipe and that Hilong’s arguments discount the complexity of CDP’s stub welding manufacturing process.

[73] Since the Tribunal has determined that there is no domestic production of like goods, there can be no domestic industry. However, even if the Tribunal had reached a different conclusion about the like goods issue, the Tribunal considers that CDP is not engaged in the “production” of drill pipe.

[74] “Domestic producer” and “production” are not defined in SIMA. However, there is a substantial body of Tribunal jurisprudence that discusses the meaning of “production” in the SIMA context. In *OCTG*, the Tribunal developed an interpretation of “domestic industry” based on dictionary definitions of “production” as well as the object, purpose, context and legislative scheme of SIMA.⁷² The Tribunal has found that “there is a ‘domestic industry’ if there is a person or company manufacturing or harvesting like goods in Canada, especially in large quantities”,⁷³ and that “a ‘domestic industry’ exists if there is a person or company in Canada that actually manufactures or harvests like goods, on a non-trivial scale, that compete with the dumped or subsidized goods.”⁷⁴ The Tribunal has further found that, where there has only been minimal production of some like goods, there was no domestic industry engaged in the production of those goods.⁷⁵

[75] In *Steel Grating*, the Tribunal similarly noted the ordinary meaning of “production” when determining whether fabricators of grating could be considered as domestic producers. While the Tribunal took notice of a wide range of value-added features associated with fabrication and

⁶⁹ Exhibit PI-2021-006-02.01 at 1431.

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² *OCTG* at paras. 90–104.

⁷³ *OCTG* at para. 95.

⁷⁴ *OCTG* at para. 104.

⁷⁵ *OCTG* at paras. 108–111.

finishing activities, it nevertheless found that these activities did not constitute domestic production of like goods.⁷⁶

[76] This issue is also addressed in the Tribunal's case law pertaining to steel sheet, concerning whether service centres (companies that cut sheet to length from coils, flatten them, and in some cases perform further finishing operations) should be considered as domestic producers. In these decisions, the Tribunal has found that the further processing undertaken by the service centres did not constitute a substantial transformation of the nature of the product into a new and materially different product.⁷⁷

[77] As noted above, CDP claims that the Tribunal has recognized that goods produced under tolling arrangements form part of domestic production in the past. However, the case law cited by CDP does not strongly support its claim. CDP referred to *Steel Sheet RR*, in which the Tribunal stated, without further explanation, that a producer that was providing a coating service for other parties on a tolling basis was part of the domestic industry.⁷⁸ In the more recent corrosion-resistant steel sheet cases, the Tribunal has found that it was not clear to what extent the same producer's tolling activities constituted domestic production.⁷⁹ CDP also cited *Copper Rod*, pertaining to production where the customers did not pay for the underlying cost of copper, yet the goods were still considered part of domestic production. Although the Tribunal referred to these as "toll" customers, it is not clear from the decision whether the customers retained ownership of the goods.⁸⁰

[78] In fact, there is significant Tribunal jurisprudence to the effect that entities providing services under tolling arrangements are *not* engaged in the production of like goods. In *Aluminum Extrusions*, the Tribunal found that subcontractors providing finishing and fabrication services on what was essentially a tolling basis on behalf of domestic producers of aluminum extrusions were not producers of like goods. Such production remained attributable to the producers that retained ownership of the goods.⁸¹ Similarly, in *FISC*, the Tribunal considered production under a tolling arrangement as production by the party that *ordered* the tolling service (i.e. the owner of the goods) and not the party that provided it.⁸² In *Carbon Steel Welded Pipe*, the Tribunal again found that "providing discrete production services to domestic producers on a fee-for-service or tolling basis while producers retain ownership of the goods is not domestic production of like goods."⁸³

⁷⁶ *Steel Grating* (18 April 2016), RR-2015-001 (CITT) [*Steel Grating*] at paras. 53–56.

⁷⁷ *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (12 August 2016), RR-2015-002 (CITT) at paras. 43–44 (the unrolling and cutting of sheet does not change its essential character or properties; there is therefore no substantial transformation of the product); *Cold-rolled Steel* (24 July 2018), PI-2018-002 (CITT) at paras. 44–45 (value-added services such as unrolling and slitting or cutting does not involve a substantial transformation of the product into a new and materially different product but is instead akin to finishing). See also *Corrosion-resistant Steel Sheet* (21 February 2019), NQ-2018-004 (CITT) [*Steel Sheet NQ*] at para. 36; *Corrosion-resistant Steel Sheet* (7 January 2020), PI-2019-002 (CITT) [*Steel Sheet PI*] at para. 22.

⁷⁸ *Certain Corrosion-resistant Steel Sheet Products* (27 July 2004), RR-2003-003 (CITT) [*Steel Sheet RR*] at para. 16, note 8.

⁷⁹ *Steel Sheet NQ* at para. 35; *Steel Sheet PI* at para. 21.

⁸⁰ *Copper Rod* (28 March 2007), NQ-2006-003 (CITT) [*Copper Rod*] at note 11.

⁸¹ *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) [*Aluminum Extrusions*] at para. 141.

⁸² *FISC* at para. 57.

⁸³ *Carbon Steel Welded Pipe* (15 February 2019), NQ-2018-003 (CITT) [*Carbon Steel Welded Pipe*] at para. 67.

[79] In summary, in order to constitute production for SIMA purposes, the Tribunal's jurisprudence has concluded the following:

- production should involve a substantial transformation of a product into a new and materially different product;
- fabrication and finishing, and similar "value-added services", do not constitute a substantial transformation;
- production should be non-trivial and the goods produced should compete with the subject goods; and
- services performed on a tolling basis, where the service provider does not take ownership of the goods, does not constitute production of like goods.

[80] Applying the above principles to the facts of this case, the Tribunal concludes that CDP is not engaged in the production of drill pipe. CDP's current activities are those of an "assembler" or repairer of drill pipe that seeks to extend the useful life of used drill pipe. More specifically, CDP's current activities consist almost exclusively of removing tool joints from existing drill pipe and replacing them with new tool joints. This cannot be said to constitute a substantial transformation into a new and materially different product, as the process in effect does not change the nature of the goods at all; the goods begin and end the process as drill pipe. While the process may be more complex and cost-intensive when compared to cutting sheet from coil, or some fabrication or finishing processes, this does not change the fact that the process does not alter the fundamental nature of the goods. It is more akin to a value-added service. In this regard, the Tribunal notes that CDP's own witness characterized CDP and other drill pipe manufacturers as "assemblers" and acknowledged that the affixing of new tool joints to used pipe bodies is akin to a service.⁸⁴

[81] In addition, CDP's production volumes over the last three years have been minimal.⁸⁵ As discussed extensively in the like goods section above, the evidence is that its drill pipe does not compete in the market with the subject goods.

[82] Finally, it is established that the vast majority, if not all, of CDP's supposed production of drill pipe has been on a basis akin to a tolling arrangement, where it has affixed new tool joints to customer-owned drill pipe.⁸⁶ As noted above, the Tribunal finds that there is no persuasive evidence that CDP takes title to the drill pipe at any point in the process and that it could, for example, sell the refurbished drill pipe and transfer ownership of that pipe to a different customer, for CDP's own profit and benefit.

[83] As a result, the Tribunal concludes that CDP is not a domestic producer, and there is no domestic industry currently producing like goods. The Tribunal therefore cannot proceed to assess whether there is a reasonable indication of injury or threat of injury.

[84] However, the Tribunal sees no reason why the welding of new tool joints to new drill pipe bodies, in a manner consistent with the relevant API standards, would not constitute production for

⁸⁴ *Transcript of Public Hearing* at 17, 25.

⁸⁵ Exhibit PI-2021-006-02.01 at paras. 4, 87; Exhibit PI-2021-006-03.01 (protected) at 80; Exhibit PI-2021-006-03.08 (protected) at 14.

⁸⁶ *Transcript of Public Hearing* at 11, 30; Exhibit PI-2021-006-02.01 at paras. 78, 127, 134; Exhibit PI-2021-006-03.01 (protected) at paras. 4, 134, 140.

the purposes of SIMA. Given CDP's evidence that (i) it is capable of producing drill pipe from new drill pipe bodies; and (ii) it has plans to expand its production of drill pipe to include API 5DP certified drill pipe, the Tribunal accepts that CDP constitutes the domestic industry for the purposes of examining material retardation.

MATERIAL RETARDATION

[85] The Tribunal's mandate under subsection 37.1(1) of SIMA is to determine whether there is a reasonable indication that the dumping or subsidizing "has caused injury *or retardation* or threat of injury" [emphasis added]. CDP did not allege material retardation of the establishment of a domestic industry in its complaint, as its position is that it is already engaged in the production of like goods. However, the Tribunal considers that, given the nature of the evidence in this case and its findings above, it should nevertheless examine whether there is a reasonable indication of material retardation in this instance. In this regard, in response to Hilong's arguments on the issue, CDP stated that all the evidence necessary for the Tribunal to make an assessment of material retardation is already present in the complaint.

[86] The elements necessary to establish a claim of material retardation were most recently articulated in *Gypsum Board* as follows:

- there is **no domestic industry producing like goods**. . . .
- the complainant has a **substantial commitment** to establish a domestic industry. A plan to begin production is not enough. The commitment usually has the following elements:
 - a. production will begin in the near future;
 - b. the venture is commercially feasible;
 - c. there is an assurance that the plan will be implemented.
- the efforts to establish a domestic industry are adversely affected to a material degree by the dumping.⁸⁷

[Footnotes omitted, bold in original]

[87] With respect to the first element of the test, the Tribunal has already determined that there is no domestic industry currently producing like goods. The Tribunal will therefore examine whether the second element is met, i.e. whether the complainant has made a substantial commitment to establish a domestic industry.

Substantial commitment

[88] In *Gypsum Board*, the Tribunal noted that this part of the test is "especially fact-dependent and is to be evaluated on a case-by-case basis. However, the principle behind this test is clear: the Tribunal should not extend anti-dumping protection unless there will be some production to protect in the near future."⁸⁸

[89] As the Tribunal has found that the drill pipe that CDP has sold to date does not constitute like goods to the subject goods, the focus of this analysis will be on the evidence provided by CDP

⁸⁷ *Gypsum Board* at para. 38.

⁸⁸ *Gypsum Board* at para. 40.

regarding its plans to begin producing like goods, i.e. drill pipe produced from new drill pipe bodies using the rotary friction welding method under an API licence.

[90] CDP provided evidence that it has already purchased an inertia friction welder and has facilities ready to receive it, together with additional equipment that will be required for the inertia friction line.⁸⁹ CDP also claimed that it has secured firm financing for its planned expansion.⁹⁰

[91] Hilong submits that these plans are not sufficiently well developed. In particular, it notes that there was no business case or feasibility study submitted with the complaint and that the proof of financing submitted was conditional. Further, Hilong contends that the Command Energy Group's previous involvement in bankruptcy proceedings would prevent it from securing the required capital for expansion.

[92] The Tribunal finds that, while the purchase of the appropriate welding equipment does constitute some evidence of an intention to establish a domestic industry, the financing of the remainder of the planned expansion investment is tentative. In addition, the timelines provided by CDP for the installation of the new welding equipment and subsequent renewal of its API 5DP certification, as well as the start of production once construction has begun, are arguably not in the "near future".⁹¹

[93] Further, CDP has stated explicitly that the renewal of its API 5DP licence is contingent on it receiving a satisfactory rate of return on its proposed investment in expansion.⁹² As such, CDP's expansion plans are indefinite and somewhat speculative. The Tribunal is not persuaded that it is likely, much less assured, that the plan will be implemented.

[94] In sum, the Tribunal finds that CDP has not evidenced a substantial commitment to begin production of like goods.

Adverse impact

[95] The Tribunal also considers that the efforts to establish a domestic industry have not been adversely affected to a material degree by the dumping and subsidizing of the subject goods.

[96] According to the CBSA's estimates of drill pipe imports, subject imports decreased from 2018 to 2020 before rebounding in 2021, but not to 2019 levels. However, non-subject U.S. import volumes were substantially higher than subject imports in 2019, 2020 and 2021.⁹³ Further, between 2018 and 2021, when the overall market contracted by 58 percent, subject imports declined by 72 percent, but U.S. imports and imports from all other countries declined by only 42 percent.⁹⁴

⁸⁹ Exhibit PI-2021-006-09.01A at para. 28; Exhibit PI-2021-006-09.01 at 30–31; Exhibit PI-2021-006-10.01 (protected) at 30–32.

⁹⁰ Exhibit PI-2021-006-09.01A at para. 28; Exhibit PI-2021-006-03.01 (protected) at 642–687.

⁹¹ Exhibit PI-2021-006-03.01 (protected) at para. 404; Exhibit PI-2021-006-10.01A (protected) at para. 11.

⁹² Exhibit PI-2021-006-10.01A (protected) at para. 11.

⁹³ Exhibit PI-2021-006-05 at 13.

⁹⁴ Exhibit PI-2021-006-05 at 24; Exhibit PI-2021-006-03.08 (protected) at 14. It should be noted that this assessment of the market includes domestic production volumes as reported by CDP; however, since CDP's production volumes are minimal, the trends are the same if domestic production is removed from the total market volume.

[97] Furthermore, both the CBSA and CDP's estimates of import prices show that, on an annual average basis, U.S. imports were consistently priced lower than the subject goods in terms of unit value.⁹⁵

[98] The Tribunal finds that subject imports have been declining, both in absolute terms and relative to other sources in the market, and that non-subject imports from the U.S. account for a higher share of the import market. Further, non-subject imports from the U.S. have been the price leaders in the market. The ability of U.S. producers to continue to sell into Canada on an anti-dumping, duty-free basis raises significant questions, if not doubt, concerning the ability of CDP to generate sustained profits from its Canadian facility against U.S. competition, even in the absence of Chinese competition.

[99] In light of the above, the Tribunal considers it more likely that U.S. imports, rather than subject imports, are responsible for any adverse impact on the domestic industry's ability to enter the domestic market. The Tribunal accordingly finds that any adverse impact caused by the subject goods is not material.

[100] Finally, the Tribunal wishes to offer the following brief comments. The Tribunal considers it is noteworthy that CDP's affiliate, CTP, has imported new API-compliant drill pipe manufactured by CTP USA into the Canadian market. This raises questions as to whether the Command Energy Group's strategy would involve using export sales to Canada as the means to increase the capacity utilization of its own already API-compliant U.S. plant before commencing the establishment of an API-compliant drill pipe operation in Canada.

CONCLUSION

[101] On the basis of the foregoing analysis, the Tribunal determines that the evidence does not disclose a reasonable indication that the dumping and subsidizing of the subject goods have caused injury or retardation or are threatening to cause injury to the domestic industry.

Peter Burn

Peter Burn
Presiding Member

Susan D. Beaubien

Susan D. Beaubien
Member

Randolph W. Heggart

Randolph W. Heggart
Member

⁹⁵ Exhibit PI-2021-006-03.01 (protected) at 80; Exhibit PI-2021-006-03.08 (protected) at 13–14.