



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Dumping and Subsidizing

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## ORDER AND REASONS

Expiry review RR-2021-002

Welded Large Diameter Carbon  
and Alloy Steel Line Pipe

*Order and reasons issued  
Wednesday, August 3, 2022*

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IN THE MATTER OF an expiry review, pursuant to subsection 76.03(3) of the *Special Import Measures Act*, of the finding made by the Canadian International Trade Tribunal on October 20, 2016, in inquiry NQ-2016-001, concerning:

**WELDED LARGE DIAMETER CARBON AND ALLOY STEEL LINE PIPE  
ORIGINATING IN OR EXPORTED FROM THE PEOPLE’S REPUBLIC OF  
CHINA AND JAPAN**

**ORDER**

The Canadian International Trade Tribunal, pursuant to subsection 76.03(3) of the *Special Import Measures Act* (SIMA), has conducted an expiry review of the finding made on October 20, 2016, in inquiry NQ-2016-001, concerning the dumping of welded large diameter carbon and alloy steel line pipe with an outside diameter greater than 24 inches (609.6 mm), and less than or equal to 60 inches (1524 mm), regardless of wall thickness, length, surface finish (coated or uncoated), end finish (plain end or bevelled end), or stencilling and certification (including multiple-stencilled/multiple-certified line pipe for oil and gas transmission and other applications), originating in or exported from the People’s Republic of China (China) and Japan, and the subsidizing of the above-mentioned goods originating in or exported from China (the subject goods).

For greater certainty, the product definition includes:

- line pipe produced to American Petroleum Institute (“API”) specification 5L, in Grades A25, A, B and X grades up to and including X100, or equivalent specifications and grades, including specification CSA Z245.1 up to and including Grade 690;
- unfinished line pipe (including pipe that may or may not already be tested, inspected, and/or certified to line pipe specifications) originating in China and Japan, and imported for use in the production or finishing of line pipe meeting final specifications, including outside diameter, grade, wall-thickness, length, end finish, or surface finish; and
- non-prime and secondary pipes (“limited service products”).

In accordance with the Tribunal’s finding in inquiry NQ-2016-001, the subject goods exclude the following:

- ASME SA 672 or ASME SA 691 electric-fusion welded steel pipe as certified under the ASME “Boiler and Pressure Vessel Code” rules (and stencilled with at least one of the aforementioned standards), of a length not to exceed 15 feet (4.572 m), for use other than in a CSA Z-662 pipeline application and imported with authorized inspection certificates and applicable ASME Partial Data Reports;
- line pipe, regardless of grade, outside diameter and wall thickness, single stenciled as “DNV-OS-F101” for exclusive use in offshore applications and marked “For Offshore Applications Only”;
- submerged arc longitudinal welded line pipe, regardless of grade, outside diameter and wall thickness, in lengths of 60 feet (18.288 m) with no girth welds for exclusive use in slurry or tailings piping systems in oil sands projects and marked “For Use as Slurry/Tailings Pipe Only”;

for greater certainty, use in a pipeline meeting CSA Z-662 or as pressure piping meeting CSA B51 Code is not permitted under this exclusion; and

- submerged arc longitudinal welded line pipe, regardless of outside diameter, wall thickness and length, for exclusive use in high-temperature steam distribution pipelines and marked “For Steam Distribution Only”, certified to meet the requirements of CSA Z662-15 Clause 14 and/or Annex I and certified to have proven fatigue/creep test properties as provided in sections I.2.3.2 and I.3.2.1 of CSA Z662-15 as established by means of a creep test of no less than 10,000 hours carried out in accordance with ASTM E139.

Furthermore, in accordance with the Tribunal’s amended finding in interim review RD-2020-003, the subject goods also exclude longitudinally submerged arc welded line pipe with a double submerged arc weld, stencilled with grade API 2B whether or not stencilled to any other grade, regardless of outside diameter, with wall thicknesses greater than 1 inch for exclusive use in the production of debarker rotors and marked “For Use in Production of Debarker Rotor Only”.

Pursuant to paragraph 76.03(12)(b) of SIMA, the Tribunal continues its finding in respect of the aforementioned goods.

Furthermore, the Tribunal excludes the following from its order:

- longitudinally submerged arc welded line pipe with a double submerged arc weld, certified to CSA Z245.1 (Grade 483 or higher), regardless of outside diameter or wall thickness with fracture propagation resistance of CSA Category II M45C or equivalent produced in Japan and marked (by stenciling or otherwise) as “Station Pipe” and for the following exclusive uses: (i) for above-ground applications; (ii) above-ground facility or fabricated assembly; and (iii) below-ground applications within and for up to a distance of 100 metres from any facility or assembly; and
- longitudinally submerged arc welded line pipe with a double submerged arc weld, certified to CSA Z245.1 (Grade 483 or higher), regardless of outside diameter, with wall thicknesses greater than 23 mm, produced in Japan.

Susan D. Beaubien

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Susan D. Beaubien  
Presiding Member

Georges Bujold

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Georges Bujold  
Member

Frédéric Seppey

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Frédéric Seppey  
Member

Place of Hearing: Via videoconference  
Dates of Hearing: May 30 to 31, 2022

Tribunal Panel: Susan D. Beaubien, Presiding Member  
Georges Bujold, Member  
Frédéric Seppey, Member

Tribunal Secretariat Staff: Sarah Perlman, Lead Counsel  
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Rhonda Heintzman, Acting Lead Analyst  
Chelsea Lappin, Analyst  
Ozanay Bozkaya, Data Service Advisor  
Patrick Stidwill, Data Services Advisor  
Matthew Riopelle, Registrar Officer  
Lindsay Vincelli, Registrar Officer

**PARTICIPANTS:****Domestic Producers/Supporting Parties**

Evraz Inc. NA Canada

United Steelworkers

**Importers/Exporters/Others**

Cantak Corporation

Metal One Corporation

TransCanada PipeLines Limited

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## STATEMENT OF REASONS

### INTRODUCTION

[1] The Canadian International Trade Tribunal, pursuant to subsection 76.03(3) of the *Special Import Measures Act*<sup>1</sup> (SIMA), has conducted an expiry review of the finding made on October 20, 2016, in inquiry NQ-2016-001, concerning the dumping of certain welded large diameter carbon and alloy steel line pipe (LDLP) originating in or exported from the People's Republic of China (China) and Japan and the subsidizing of the above-mentioned goods originating in or exported from China (the subject goods).

[2] Under SIMA, findings of injury or threat of injury and the associated protection in the form of anti-dumping or countervailing duties expire five years from the date of the findings or, if one or more orders continuing the findings have been made, the date of the last order made under paragraph 76.03(12)(b), unless the Tribunal initiates an expiry review before that date. The finding in inquiry NQ-2016-001 was scheduled to expire on October 19, 2021.

[3] The Tribunal's mandate in this review is to determine whether the expiry of the finding is likely to result in injury to the domestic industry and then, accordingly, to make an order either continuing or rescinding the finding, with or without amendment.

### PROCEDURAL BACKGROUND

[4] The Tribunal issued its notice of expiry review on September 27, 2021. This notice triggered the initiation of an investigation by the Canada Border Services Agency (CBSA) on September 28, 2021, to determine whether the expiry of the Tribunal's finding was likely to result in the continuation or resumption of dumping and/or subsidizing of the subject goods.

[5] On February 24, 2022, the CBSA determined, pursuant to paragraph 76.03(7)(a) of SIMA, that the expiry of the finding was:

- (i) likely to result in the continuation or resumption of dumping of the subject goods from both China and Japan; and
- (ii) likely to result in the continuation or resumption of subsidizing of the subject goods from China.<sup>2</sup>

[6] Following the CBSA's determinations, the Tribunal began its expiry review on February 25, 2022, pursuant to subsection 76.03(10) of SIMA, to determine whether the expiry of the finding was likely to result in injury to the domestic industry.

[7] The period of review (POR) for the Tribunal's expiry review covered three calendar years, from January 1, 2019, to December 31, 2021.

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

<sup>2</sup> Exhibit RR-2021-002-03 at 1.

[8] The Tribunal asked known domestic producers, importers and purchasers of LDLP meeting the product definition, and known foreign producers of the subject goods, to complete questionnaires.

[9] The Tribunal received 1 response to the domestic producers' questionnaire, 11 responses to the importers' questionnaires, 9 responses to the purchasers' questionnaire as well as 1 response to the foreign producers' questionnaire.<sup>3</sup>

[10] Using the questionnaire responses and other information on the record, staff of the Secretariat to the Tribunal prepared public and protected versions of the investigation report, which were placed on the record and distributed to parties on April 19, 2022. Revised versions of the investigation report were likewise placed on the record and distributed to parties on April 25 and 27, 2022.

[11] Evraz Inc. NA Canada (Evraz), a domestic producer of LDLP, filed written submissions in support of the continuation of the finding, as did the United Steelworkers (USW), a trade union with members employed by Evraz.

[12] Submissions opposing the continuation of the finding were filed by TransCanada PipeLines Limited (TCPL), a purchaser/importer, as well as by Cantak Corporation (Cantak), another purchaser/importer, along with Metal One Corporation (Metal One), a Japanese steel trading company.

[13] The Tribunal received two requests for product exclusions from TCPL and three from Cantak/Metal One. Evraz replied to these product exclusion requests on May 4, 2022. TCPL and Cantak/Metal One then provided responses to Evraz's reply on May 12, 2022.

[14] On April 26, 2022, both Evraz and TCPL filed requests for information (RFIs) with the Tribunal. Evraz directed three RFIs to TCPL, two to Cantak, one to Metal One, and one to JFE Steel Corporation (JFE).<sup>4</sup> TCPL directed five RFIs to Evraz.

[15] Cantak, Metal One and TCPL all filed objections to Evraz's RFIs on April 29, 2022. Evraz did not object to TCPL's RFIs.

[16] Having considered the RFIs and the objections that were raised, the Tribunal issued directions to the parties on May 4, 2022, identifying which of the RFIs required responses. The responses were received on May 10, 2022, and placed on the record.

[17] TCPL filed an expert report by Mr. David Milmine on May 5, 2022. In rebuttal to Mr. Milmine, Evraz filed an expert report by Dr. Alan Murray on May 13, 2022.

[18] On May 12, 2022, the Tribunal requested that any party filing an expert report specify the proposed area of expertise for which they seek to have their respective expert qualified, as well as the areas of the confidential record to which their proposed expert witnesses would need access. Both Evraz and TCPL complied with the request on May 16, 2022.

[19] Shortly before the scheduled oral hearing, Evraz advised the Tribunal, on May 25, 2022, that the parties had reached an agreement with respect to product exclusions, pursuant to which Evraz

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<sup>3</sup> Exhibit RR-2021-002-05.A at Tables 2–5.

<sup>4</sup> JFE did not participate in the expiry review.



consented to certain proposed exclusions. The agreement was underpinned by an agreed statement of facts that was filed with the Tribunal.

[20] As a consequence of the agreement reached by the parties, TCPL and Cantak/Metal One requested that their case materials, including witness statements, written submissions and case briefs, be withdrawn from the record. In addition, Evraz and TCPL confirmed that the expert reports of both Mr. Milmine and Dr. Murray were no longer required and should also be withdrawn.

[21] The Tribunal sought clarification and requested, on May 26 and 27, 2022, that all parties clearly identify which documents were sought to be removed from the record. The parties replied to the Tribunal on May 27 and 29, 2022.<sup>5</sup>

[22] On May 30, 2022, the Tribunal advised the parties that the issue of removing documents from the record, including whether any such removal should be effected by way of withdrawal or striking out, was being taken under reserve. This matter is further addressed in the “Preliminary issues” section below.

[23] A hearing with public and *in camera* sessions was held by videoconference on May 30 and 31, 2022. The Tribunal heard evidence from fact witnesses called by both Evraz and the USW. TCPL and Cantak/Metal One declined to cross-examine the Evraz and USW witnesses.

[24] The Tribunal also heard arguments from both Evraz and the USW with respect to the continuation of the order, subject to the product exclusions that the parties had agreed upon. TCPL and Cantak/Metal One confined their oral submissions to the issue of product exclusions and urged the Tribunal to grant the scope of exclusions that had been agreed upon by the parties.<sup>6</sup>

## PRODUCT

### Product definition

[25] The subject goods are defined as follows:

Welded large diameter carbon and alloy steel line pipe originating in or exported from the People’s Republic of China and Japan with an outside diameter greater than 24 inches (609.6 mm), and less than or equal to 60 inches (1524 mm), regardless of wall thickness, length, surface finish (coated or uncoated), end finish (plain end or beveled end), or stenciling and certification (including multiple-stenciled/multiple-certified line pipe for oil and gas transmission and other applications).

[26] For greater certainty, the product definition includes:

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<sup>5</sup> Exhibit RR-2021-002-57; Exhibit RR-2021-002-58; Exhibit RR-2021-002-59; Exhibit RR-2021-002-60; Exhibit RR-2021-002-62; Exhibit RR-2021-002-63; Exhibit RR-2021-002-64; Exhibit RR-2021-002-65.

<sup>6</sup> Prior to the hearing, each party accepted the risk of discussing its own confidential information through the Webex videoconferencing platform. As such, the Tribunal heard both public and *in camera* witness testimony through Webex.

- line pipe produced to American Petroleum Institute (“API”) specification 5L, in Grades A25, A, B and X grades up to and including X100, or equivalent specifications and grades, including specification CSA Z245.1 up to and including Grade 690;
- unfinished line pipe (including pipe that may or may not already be tested, inspected, and/or certified to line pipe specifications) originating in China and Japan, and imported for use in the production or finishing of line pipe meeting final specifications, including outside diameter, grade, wall-thickness, length, end finish, or surface finish; and
- non-prime and secondary pipes (“limited service products”).<sup>7</sup>

[27] In accordance with the Tribunal’s finding in inquiry NQ-2016-001, the subject goods exclude the following:

- ASME SA 672 or ASME SA 691 electric-fusion welded steel pipe as certified under the ASME “Boiler and Pressure Vessel Code” rules (and stencilled with at least one of the aforementioned standards), of a length not to exceed 15 feet (4.572 m), for use other than in a CSA Z-662 pipeline application and imported with authorized inspection certificates and applicable ASME Partial Data Reports;
- line pipe, regardless of grade, outside diameter and wall thickness, single stenciled as “DNV-OS-F101” for exclusive use in offshore applications and marked “For Offshore Applications Only”;
- submerged arc longitudinal welded line pipe, regardless of grade, outside diameter and wall thickness, in lengths of 60 feet (18.288 m) with no girth welds for exclusive use in slurry or tailings piping systems in oil sands projects and marked “For Use as Slurry/Tailings Pipe Only”; for greater certainty, use in a pipeline meeting CSA Z-662 or as pressure piping meeting CSA B51 Code is not permitted under this exclusion; and
- submerged arc longitudinal welded line pipe, regardless of outside diameter, wall thickness and length, for exclusive use in high-temperature steam distribution pipelines and marked “For Steam Distribution Only”, certified to meet the requirements of CSA Z662-15 Clause 14 and/or Annex I and certified to have proven fatigue/creep test properties as provided in sections I.2.3.2 and I.3.2.1 of CSA Z662-15 as established by means of a creep test of no less than 10,000 hours carried out in accordance with ASTM E139.<sup>8</sup>

[28] Furthermore, in accordance with the Tribunal’s amended finding in interim review RD-2020-003, the subject goods also exclude longitudinally submerged arc welded line pipe with a double submerged arc weld, stencilled with grade API 2B whether or not stencilled to any other grade, regardless of outside diameter, with wall thicknesses greater than 1” for exclusive use in production of debarker rotors and marked “For Use in Production of Debarker Rotor Only”.<sup>9</sup>

<sup>7</sup> Exhibit RR-2021-002-03.A at para. 18.

<sup>8</sup> *Welded Large Diameter Carbon and Alloy Steel Line Pipe* (20 October 2016), NQ-2016-001 (CITT) [*Large Diameter Line Pipe*] at para. 215.

<sup>9</sup> *Welded Large Diameter Carbon and Alloy Steel Line Pipe* (16 April 2021), RD-2020-003 (CITT) at para. 2.

### **Additional product information**

[29] Large line pipe is used in the oil and gas sector primarily in pipelines for the transmission of oil and natural gas products over long distances but also in a variety of mining applications, including slurry pipe in oil sands operations.

[30] The Canadian market for large line pipe is governed by applicable line pipe specifications including Canadian Standards Association (CSA) specification Z245.1 for line pipe used in pipeline applications. Oil and gas transmission pipelines must conform to CSA Z662 (Oil and Gas Pipeline Systems).

[31] International trade in line pipe is governed primarily by API specification 5L. CSA Z245.1 Grade 448 pipe is considered to be equivalent to API 5L Grade X65. The API 5L X grade numbers define the minimum yield strength required of the grade in kilopounds per square inch. This equivalency applies to other specifications, including specifications by the International Organization for Standardization (ISO). As such, a particular line pipe may be certified and stenciled as complying with multiple standards if all the requirements of each standard/grade are met (leading to dual-, triple-, and further multiple-stenciled line pipe).

[32] It is common practice to certify multiple grades of pipe on a mill test report. It is also common practice to substitute grades other than that initially requested by a customer with an equivalent grade. Mill test reports are provided to show that the properties of the supplied pipe meet the requirements of the actual grade ordered.

### **PRELIMINARY ISSUES**

#### **Request for certain limited disclosure**

[33] As part of its evidence, Evraz filed a joint witness statement by Mr. David Coffin, Vice President Sales, Tubular, at Evraz, and Mr. Steven Kalny, Senior Director of line pipe and international sales at Evraz. Portions of that witness statement were redacted to protect information asserted by Evraz to be confidential. One specific section entitled “Examples of Japanese Bids on Products Within Evraz’s Production Capabilities Since 2019” was extensively redacted to protect information asserted by Evraz to be confidential.<sup>10</sup>

[34] On May 2, 2022, Cantak/Metal One requested that the Tribunal direct Evraz to provide at least certain limited disclosure concerning the allegations raised in paragraphs 38 to 47 of the joint witness statement of Messrs. Coffin and Kalny. In the alternative, Cantak/Metal One asked that these paragraphs be struck from the record. From the standpoint of Cantak/Metal One, this designation of confidentiality created an alleged unfairness because it left Cantak/Metal One unable to test the credibility of the information contained in these paragraphs.

[35] Evraz replied on May 3, 2022, contending that the Tribunal should dismiss Cantak/Metal One’s motion. In Evraz’s view, Cantak/Metal One was fully capable of testing the accuracy of the information obtained by Evraz as reported at paragraphs 38 to 47 of the joint witness statement and

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<sup>10</sup> See Exhibit RR-2021-002-A-05 at paras. 38–53; Exhibit RR-2021-002-A-06 (protected) at paras. 38–53.

that Cantak/Metal One's desire to test "how the information was obtained" is not relevant to the Tribunal's determination of likely injury, in the absence of the finding.

[36] On May 9, 2022, the Tribunal dismissed Cantak/Metal One's motion. The Tribunal determined that, as the information was designated as confidential by Evraz, it could not compel the limited disclosure of this information. It also found that Evraz had agreed to disclose sufficient information concerning these allegations to provide Cantak/Metal One with an opportunity to challenge their merits and credibility in their own submission or at the hearing.

[37] Members Bujold and Seppey also dismissed Cantak/Metal One's motion for the alternative relief of striking out paragraphs 38 through 47 of the joint witness statement on the basis that this evidence should remain on the record consistent with the Tribunal's practice of admitting evidence liberally. Ultimately, this evidence will be given the weight it deserves in the circumstances.

[38] Presiding Member Beaubien dissented with respect to the disposition of this aspect of Cantak/Metal One's motion, as the impugned portions of the joint witness statement comprised not only hearsay but instances of double hearsay, all cloaked with a designation of confidentiality. Paragraphs 38 to 47 of the joint statement could be fairly read as hearsay statements from a confidential source that were being tendered as proof of their content. Although there is a discretion to admit hearsay, this is typically contingent on the test of showing that the evidence is both reliable and necessary.<sup>11</sup> Notwithstanding the flexible approach usually adopted by the Tribunal with respect to receipt of evidence, it was premature, in these specific circumstances and given the allegations of prejudice advanced by Cantak/Metal One, to treat the impugned paragraphs as being presumptively admissible as evidence without further argument from the parties concerning whether the test for admission of hearsay had been met.

[39] As discussed below, the above concerns as advanced by Cantak/Metal One subsequently became moot when both TCPL and Cantak/Metal One sought leave to withdraw all their case materials from the record.<sup>12</sup>

### **Withdrawal of case materials**

[40] Although an expiry review takes the form of an inquiry as opposed to a litigious dispute, there will typically be parties to the proceeding who are adverse in interest to one or more of the other parties. As a decision to continue a finding must be based on positive evidence, the participation of parties adverse in interest allows for a greater range of evidence to be considered and for evidence to be tested by way of cross-examination.

[41] This case is unusual in that TCPL and Cantak/Metal One took steps to oppose the continuation of the finding but then sought to withdraw or have struck certain materials in order to implement an agreement that had been reached by all parties with respect to product exclusions.

[42] Typically, materials are struck where there are grounds to show that the material never should have been filed. That is not the case here. There is no basis for the Tribunal to find that the

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<sup>11</sup> *R. v. Khan*, [1990] 2 SCR 531; *R. v. Smith*, [1992] 2 S.C.R. 915; *Selmeci v. Canada*, 2002 FCA 293 at paras. 4–9; David M. Paciocco, *The Principled Use of Hearsay in Civil Cases: A Technical Guide to Avoiding Technicality*, 2009 87-2 Canadian Bar Review 277, 2009 CanLIIDocs 138 at 314–315.

<sup>12</sup> See para. 22 of these reasons above.

filing of evidence and arguments by TCPL and Cantak/Metal One was an abuse of process or otherwise ineligible for filing when those filings were made.

[43] The Panel considers that this situation is most analogous to a motion brought where the moving party seeks leave to withdraw an affidavit.<sup>13</sup> Granting leave to withdraw evidence is discretionary and must be made upon consideration of relevant factors. In this case, while TCPL and Cantak/Metal One originally intended to call certain witnesses, they subsequently advised the Tribunal that they would not be doing so. As such, the testimony of those witnesses would not be heard and there is consequently no opportunity to test that evidence on cross-examination.

[44] By seeking to withdraw the witness statements as well as other materials (such as arguments that refer to and rely upon the expected testimony of the witnesses), the opposing parties are effectively telling the Tribunal that they no longer stand behind the evidence that the witnesses would have given. Nor is the Tribunal, as factfinder in the context of an expiry review, able to pose its own questions to those witnesses.

[45] As the Tribunal must base its findings on positive evidence, materials that the filing party no longer stands behind can no longer be viewed as presumptively reliable. As such, it should not form part of the record underpinning the Tribunal's decision, as the Tribunal would be presumed to have considered all materials in the record.

[46] In such circumstances, the Tribunal considers that the optimal disposition is to grant TCPL and Cantak/Metal One leave to withdraw their materials.<sup>14</sup> To the extent that any reply materials refer to any evidence or argument that has been withdrawn, the Tribunal will disregard it.<sup>15</sup>

[47] As such, for all practical purposes, the continuation of the finding is in effect unopposed.

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<sup>13</sup> See, for example, *P.G. v. L.S.G.*, 2004 BCSC 518; *Solomon v. Unger*, 2022 ONSC 924; *Hong v. Lavy*, 2019 NSSC 271.

<sup>14</sup> These materials consist of Exhibit RR-2021-002-C-01; Exhibit RR-2021-002-C-02 (protected); Exhibit RR-2021-002-C-03; Exhibit RR-2021-002-C-04 (protected); Exhibit RR-2021-002-C-05; Exhibit RR-2021-002-C-06 (protected); Exhibit RR-2021-002-C-07; Exhibit RR-2021-002-C-08 (protected); Exhibit RR-2021-002-D-01; Exhibit RR-2021-002-D-02 (protected); Exhibit RR-2021-002-D-03; Exhibit RR-2021-002-D-04 (protected); Exhibit RR-2021-002-D-05; Exhibit RR-2021-002-D-06 (protected); Exhibit RR-2021-002-E-01; Exhibit RR-2021-002-E-02 (protected); Exhibit RR-2021-002-E-03; Exhibit RR-2021-002-E-04 (protected); Exhibit RR-2021-002-E-05; Exhibit RR-2021-002-E-06 (protected). The Tribunal notes that, although these materials are in effect withdrawn from the case record, they are nevertheless kept on the Tribunal's case management system for record-keeping purposes.

<sup>15</sup> These materials consist of Exhibit RR-2021-002-A-11; Exhibit RR-2021-002-A-12 (protected); Exhibit RR-2021-002-A-13; Exhibit RR-2021-002-A-14 (protected); Exhibit RR-2021-002-A-15; Exhibit RR-2021-002-A-16 (protected); Exhibit RR-2021-002-A-17; Exhibit RR-2021-002-A-18 (protected); Exhibit RR-2021-002-A-19; Exhibit RR-2021-002-A-20 (protected); Exhibit RR-2021-002-A-21; Exhibit RR-2021-002-A-22 (protected); Exhibit RR-2021-002-B-09.

## LEGAL FRAMEWORK

[48] The Tribunal is required, pursuant to subsection 76.03(10) of SIMA, to determine whether the expiry of the finding in respect of the subject goods is likely to result in injury to, or retardation of, the domestic industry.<sup>16</sup>

[49] Pursuant to subsection 76.03(12) of SIMA, if the Tribunal determines that the expiry of the finding is unlikely to result in injury, it is required to rescind it. However, if it determines that the expiry of the finding is likely to result in injury, the Tribunal is required to continue it, with or without amendment.

[50] Before proceeding with its analysis of the likelihood of injury, the Tribunal must first determine what constitutes “like goods”. Once that determination has been made, the Tribunal must determine what constitutes the “domestic industry”. The Tribunal must also determine whether it will make an assessment of the cumulative effects of the dumping of the subject goods from Japan and China and whether it will make an assessment of the cumulative effects of the dumping and subsidizing of the subject goods from China, i.e. whether it will cross-cumulate the effects for the Chinese subject goods. Ultimately, the issue is whether it is appropriate for the Tribunal to assess the likely effects of the subject goods from all subject countries cumulatively.

## LIKE GOODS AND CLASSES OF GOODS

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

[52] 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.

[53] In deciding the issue of like goods when goods are not identical in all respects to the other goods, the Tribunal typically considers a number of factors. These include the physical characteristics of the goods, such as composition and appearance, and their market characteristics,

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<sup>16</sup> Subsection 2(1) of SIMA defines “injury” as “material injury to the domestic industry” and “retardation” as “material retardation of the *establishment* of a domestic industry” [emphasis added]. Given that there is currently an established domestic industry, the issue of whether the expiry of the finding is likely to result in retardation does not arise in this expiry review.

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

such as substitutability, pricing, distribution channels, end uses and whether the goods fulfill the same customer needs.<sup>18</sup>

[54] In the original inquiry, although the evidence varied on the issue of substitutability and while LDLP produced in Canada is not identical in all respects to the subject goods, the Tribunal found that domestically produced LDLP of the same description as the subject goods constitutes like goods in relation to the subject goods.<sup>19</sup> In addition, since there is no bright dividing line of product classes within the diverse universe of LDLP, the Tribunal found that there is a single class of goods.<sup>20</sup>

[55] There is no evidence in the present expiry review that would reflect a change in conditions or circumstances. Accordingly, there is no basis for the Tribunal to depart from its previous finding with respect to these issues. As such, the Tribunal finds that domestically produced LDLP, defined in the same manner as the subject goods, constitutes like goods in relation to the subject goods and that there is a single class of goods.

## DOMESTIC INDUSTRY

[56] Subsection 2(1) of SIMA defines “domestic industry” as follows:

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

[57] The Tribunal must therefore determine whether there is a likelihood of injury to the domestic producers as a whole or those domestic producers whose production represents a major proportion of the total production of like goods.<sup>21</sup>

[58] In the original inquiry, the Tribunal found that Evraz was the only domestic producer of LDLP and, therefore, that Evraz alone comprised the entire domestic industry for the purposes of that inquiry.<sup>22</sup> There has been no change since then. Evraz remains the sole domestic producer of like goods and comprises the entirety of the domestic industry.<sup>23</sup>

## CUMULATION AND CROSS-CUMULATION

[59] Subsection 76.03(11) of SIMA provides that the Tribunal shall make an assessment of the cumulative effect of the dumping or subsidizing of goods “. . . that are imported into Canada from

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

<sup>19</sup> *Large Diameter Line Pipe* at paras. 70–71.

<sup>20</sup> *Ibid.* at paras. 72–75.

<sup>21</sup> The term “major proportion” means an important or significant proportion of total domestic production of the like goods and not necessarily a majority of these goods; see *Japan Electrical Manufacturers Assn. v. Canada (Anti-Dumping Tribunal)*, [1986] F.C.J. No. 652 (FCA); *McCulloch of Canada Limited and McCulloch Corporation v. Anti-Dumping Tribunal*, [1978] 1 F.C. 222 (FCA); Panel Report, *China – Automobiles (US)*, WT/DS440/R, at para. 7.207; Appellate Body Report, *EC – Fasteners (China)*, WT/DS397/AB/R, at paras. 411, 419, 430; Panel Report, *Argentina – Poultry (Brazil)*, WT/DS241/R, at paras. 7.341–7.344.

<sup>22</sup> *Large Diameter Line Pipe* at para. 28.

<sup>23</sup> Exhibit RR-2021-002-05.A at Table 2.

more than one country if the Tribunal is satisfied that an assessment of the cumulative effect would be appropriate taking into account the conditions of competition . . . ” between the goods imported into Canada from any of the countries and the goods from any other countries or between those goods and the like goods.

[60] In considering the conditions of competition between goods, the Tribunal typically takes into account the following factors, as applicable: the degree to which the goods from each subject country are interchangeable with the subject goods from the other subject countries or with the like goods; the presence or absence of sales of imports from different subject countries and of the like goods into the same geographical markets; the existence of common or similar channels of distribution; and differences in the timing of the arrival of imports from a subject country and of those from the other subject countries, as well as the availability of like goods supplied by the domestic industry.

[61] In the context of expiry reviews, the Tribunal has stated that the assessment of conditions of competition must be looked at prospectively.<sup>24</sup> Accordingly, when the Tribunal makes a prospective assessment of the conditions of competition in expiry reviews, its examination presupposes that competition will actually exist. In other words, if a finding or order expires, goods from each subject country will likely be present in the Canadian market at the same time.

[62] This expiry review involves subject goods from China and Japan for which the CBSA determined that rescission of the finding was likely to result in the continuation or resumption of dumping. With respect to China, the CBSA also concluded that rescission of the finding was likely to result in the continuation or resumption of subsidizing.

[63] In the original inquiry, the Tribunal proceeded with a cumulative analysis of the effects of the dumped and subsidized subject goods from China with those of the dumped subject goods from Japan. The Tribunal concluded that the conditions set out in subsection 42(3) of SIMA had been met and that the conditions of competition between the subject goods themselves and between the subject goods and the like goods were similar.<sup>25</sup>

[64] In the present case, Evraz submitted that the Tribunal should again cumulate the effects of the dumped subject goods from Japan and the dumped and subsidized subject goods from China, as the conditions of competition remain unchanged since the original investigation and therefore require cumulation.<sup>26</sup> It further argued that, as a matter of law, the Tribunal can cross-cumulate the subject goods.<sup>27</sup> Evraz referred to the Tribunal’s decision in *COR II*,<sup>28</sup> where the Tribunal cumulated the effects of the dumped and subsidized goods from Turkey and the dumped goods from Vietnam. In that case, the Tribunal found that it was compelled to cumulate the dumped goods from various countries, as it was convinced that subsection 42(3) of SIMA mandates the cumulation of the effect

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<sup>24</sup> *Hot-rolled Carbon Steel Plate* (9 January 2008), RR-2007-001 (CITT) at para. 48; *Carbon Steel Welded Pipe* (24 July 2001), RR-2000-002 (CITT) at 6–7.

<sup>25</sup> *Large Diameter Line Pipe* at paras. 77, 79. The Tribunal found that the Chinese and Japanese subject goods and the domestic like goods compete within the same request for proposal processes, for the same projects and for the same purchasers and that there was evidence of sustained head-to-head competition between those goods during the period of inquiry.

<sup>26</sup> *Large Diameter Line Pipe* at paras. 27–68, 79.

<sup>27</sup> Evraz referred to the separate opinion of Member Bujold on cumulation in *Carbon Steel Screws* (2 September 2020), RR-2019-002 (CITT) at paras. 59–130.

<sup>28</sup> *Corrosion-resistant Steel Sheet* (16 November 2020), NQ-2019-002 (CITT) [*COR II*].



of the dumped goods from both countries and that the conditions of competition warranted cumulation. The Tribunal was also of the view that a separate analysis with respect to the subsidized goods was not practically feasible in that case, having regard to the arguments and evidence on the record, which did not address the manner in which the effect of the subsidized goods should be isolated from the effects of the dumped goods.<sup>29</sup> Evraz submitted that a separate analysis for the subsidized goods would similarly not be feasible in this case because of the practical impossibility of differentiating the effects of dumping and subsidization.<sup>30</sup> These arguments by Evraz were unopposed.

[65] The Tribunal is satisfied, taking into account the provisions of subsection 76.03(11) of SIMA, that an assessment of the cumulative effects of the dumped subject goods from the two subject countries is appropriate in this case.

[66] In all material respects, the evidence indicates that the relevant conditions of competition have not changed since the original inquiry. In other words, the overarching conditions of competition between the subject goods themselves and between the subject goods and the like goods remain similar.

[67] Although the subject goods and like goods are not identical, they are highly similar. As explained in the original inquiry, LDLP is not, strictly speaking, a commodity product, nor is it a capital good: “LDLP is best described as a hybrid product that remains subject to price-driven considerations when purchased by end users in the oil and gas and extractions sectors alike.”<sup>31</sup>

[68] In order to be used for oil and gas transmission in Canada, all LDLP must meet the standards of the CSA. However, LDLP is normally categorized and referred to in the North American industry according to the internationally recognized and accepted API specification 5L.<sup>32</sup> LDLP is then manufactured to comply with technical specifications that are specific to an individual project.<sup>33</sup> As such, from a technical standpoint, LDLP is not interchangeable between pipeline projects *per se*.

[69] However, as LDLP is used in large infrastructure projects, the conditions of competition are such that domestic like goods will compete head-to-head with subject goods from China and/or Japan on the same request for proposal (RFP) process and for the same projects in order to supply the same purchasers.<sup>34</sup> When competing for business on a particular RFP or project, Chinese and Japanese subject goods are largely indistinguishable as between themselves and from Evraz’s goods, provided that the goods in question are produced to the same technical specifications. To successfully win a sale, the winning bidder must be able to meet specifications tailored to the project at a competitive price. Once a producer can fulfill the technical specifications of a given project, price becomes the dominant factor in winning the sale.<sup>35</sup>

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<sup>29</sup> *COR II* at paras. 68–73.

<sup>30</sup> *COR II* at paras. 68–72. According to Evraz, similarly to *COR II*, a separate analysis for the subsidized goods would not be practically feasible and therefore warrants a cumulative analysis. The USW generally relies on the same positions as Evraz; see Exhibit RR-2021-002-B-01 at paras. 21–29.

<sup>31</sup> *Large Diameter Line Pipe* at para. 38.

<sup>32</sup> Exhibit RR-2021-002-A-03 at para. 46.

<sup>33</sup> Exhibit RR-2021-002-A-05 at para. 21.

<sup>34</sup> Exhibit RR-2021-002-06.A (protected) at Table 12; Exhibit RR-2021-002-A-05 at para. 14.

<sup>35</sup> Exhibit RR-2021-002-A-06 (protected) at paras. 21–22.

[70] As such, and considering that there is no opposition on this matter, the Tribunal finds it appropriate to cumulate the effects of the dumped goods from China and Japan. Furthermore, the Tribunal considers that any discrete effects caused by the dumping of subject goods from China, as opposed to those caused by their subsidizing, cannot be isolated because the price effects of the subject goods from China would likely manifest themselves in a single set of prices.

[71] Accordingly, the Tribunal concludes that a cumulative assessment of all subject goods is appropriate in this case.

## LIKELIHOOD OF INJURY ANALYSIS

[72] An expiry review is forward-looking.<sup>36</sup> It follows that evidence from the period during which an order or a finding was being enforced is relevant insofar as it bears upon the prospective analysis of whether the expiry of the order or finding is likely to result in injury.<sup>37</sup>

[73] There is no presumption of injury in an expiry review; findings must be based on positive evidence. In the context of an expiry review, positive evidence can include evidence based on past facts that tend to support forward-looking conclusions.<sup>38</sup>

[74] In making its assessment of likelihood of injury, the Tribunal has consistently taken the view that the focus should be on circumstances that can reasonably be expected to exist in the near to medium term. The Tribunal typically uses a period of 12 to 24 months for its injury analysis.

[75] Evraz submitted that the Tribunal should conduct its analysis based on a 12- to 24-month timeframe but that it should also consider the clearly foreseeable and directly consequential impacts extending beyond that timeframe. In Evraz's view, this approach is justified because LDLP is sold intermittently in large quantities to service major projects. This factor is counterbalanced by the general volatility in market conditions where developments, such as the effects of COVID-19 pandemic and the Russia-Ukraine war, can arise quickly and have a disproportionate and unpredictable effect on market conditions, including supply and demand.

[76] Having considered the foregoing, the Tribunal concludes that its analysis should be conducted looking forward to the next 24 months.

[77] Subsection 37.2(2) of the *Special Import Measures Regulations*<sup>39</sup> (Regulations) lists factors that the Tribunal may consider in addressing the likelihood of injury in cases where the CBSA has determined that there is a likelihood of continued or resumed dumping. The factors that the Tribunal considers relevant in this expiry review are discussed in detail below.

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<sup>36</sup> *Certain Dishwashers and Dryers* (25 April 2005), RR-2004-005 (CITT) at para. 16.

<sup>37</sup> *Copper Pipe Fittings* (17 February 2012), RR-2011-001 (CITT) at para. 56. In *Thermoelectric Containers* (9 December 2013), RR-2012-004 (CITT) [*Thermoelectric Containers*] at para. 14, the Tribunal stated that the analytical context pursuant to which an expiry review must be adjudged often includes the assessment of retrospective evidence supportive of prospective conclusions. See also *Aluminum Extrusions* (17 March 2014), RR-2013-003 (CITT) [*Aluminum Extrusions*] at para. 21.

<sup>38</sup> *Thermoelectric Containers* at para. 14; *Aluminum Extrusions* at para. 21.

<sup>39</sup> S.O.R./84-927.

## Changes in market conditions

[78] In order to assess the likely volumes and prices of the subject goods and their impact on the domestic industry if the finding were rescinded, the Tribunal will first consider changes in international and domestic market conditions.<sup>40</sup>

### International market conditions

[79] The evidence indicates that the main factors affecting the international LDLP market are the weaker global economic outlook, the decline in global demand for LDLP, and the continuing global excess steel capacity.

## Global economy

[80] According to the International Monetary Fund (IMF), the global economy entered 2022 in a weaker position than previously expected. As the new Omicron COVID-19 variant spreads, countries have reimposed mobility restrictions. Rising energy prices and supply disruptions have resulted in higher and more broad-based inflation than anticipated, notably in the United States (U.S.) and many emerging markets and developing economies. Inflation is expected to remain elevated in the near term before subsiding in 2023.<sup>41</sup>

[81] The IMF further notes that the rapid increase in fuel prices is expected to moderate over 2022 and 2023, which will help contain headline inflation. Future markets indicate that oil prices will rise by approximately 12 percent and natural gas prices by approximately 58 percent in 2022 before retreating in 2023 as supply-demand imbalances recede further.<sup>42</sup>

[82] In addition, the Russia-Ukraine war has resulted in a barrage of sanctions that have targeted a range of Russian individuals and entities associated with the Russian oil and gas industry. Several countries have also prohibited imports of Russian oil, liquefied natural gas and coal.<sup>43</sup>

## Decline in global demand for LDLP

[83] As noted by the CBSA, the collapse in oil prices caused by COVID-19 containment measures, the oil price war in 2020 between Russia and the Organization of the Petroleum Exporting Countries, and concerns about oil prices in the foreseeable future have brought delays and cancellations of major pipeline projects globally. This has resulted in the lowest number of completed pipeline kilometres (km) in 25 years and a global contraction of demand for LDLP, which continued into 2021.<sup>44</sup>

[84] Global Energy Monitor reports a declining trend in pipeline length with an outer diameter exceeding 24” coming online since 2017, with only 11,729 km of pipeline becoming operational in

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<sup>40</sup> See paragraph 37.2(2)(j) of the Regulations.

<sup>41</sup> Exhibit RR-2021-002-A-09 at 601, 605.

<sup>42</sup> *Ibid.* at 605.

<sup>43</sup> *Ibid.* at 898–906, 919–920.

<sup>44</sup> Exhibit RR-2021-002-03.A at paras. 96, 98–99, 102; Exhibit RR-2021-002-A-09 at 17, 519–573, 582, 589, 597, 605, 800, 803, 813, 886.

2020, down from 21,255 km in 2017. The Westwood Global Energy Group and the International Energy Agency forecast that the total km of new pipeline and capital expenditures on pipeline installation during the 2021–2025 period are unlikely to recover to 2017–2019 levels due to geopolitical risks, the energy transition and a reduced appetite on the part of investors for hydrocarbon projects.<sup>45</sup>

[85] Similarly, GlobalData Energy forecasts that the total global pipeline completions between 2021 and 2025 are expected to be approximately 85,711 km, which is only 59 percent of the 145,000 km of pipeline completions that were forecast for construction globally between 2014 and 2018 at the time of the Tribunal’s original inquiry. Rystad Energy reports that global upstream oil and gas exploration investment in 2019 stood at around \$530 billion, before dropping to \$382 billion in 2020, and was expected to grow only marginally to \$390 billion in 2021.<sup>46</sup>

### **The global excess steel capacity situation continues**

[86] The global excess steel capacity is a chronic issue which underpinned the original finding and persists today. Indeed, as the Tribunal has noted in other steel cases, the perennial excess global steel capacity, which is largely attributable to massive production capacity in China, remains an important issue looming over the Canadian and global steel markets.<sup>47</sup> Overall, capacity continues to grow, despite flat or falling demand.

[87] According to the World Steel Association, global demand for steel grew by 2.7 percent in 2021 and is expected to expand by 0.4 percent in 2022 and 2.2 percent in 2023. In contrast, steel production increased by 3.7 percent in 2021 (reaching an all-time high of 1.9 billion MT), and global steelmaking capacity increased by 0.2 percent in 2021 compared to 2020.<sup>48</sup> The Organisation for Economic Co-operation and Development further indicates that, for the 2022–2024 period, the total increase in steelmaking capacity is expected to reach 158.8 million MT.<sup>49</sup>

[88] The World Steel Association also points out that, in 2020, China produced 1,064.8 million MT of crude steel (accounting for 57 percent of global production), nearly 70 million MT more than its steel consumption that year. Moreover, S&P Global mentions that, in 2019, China announced 8 new capacity replacement projects that will see 13.56 million MT per year of crude steel capacity commissioned in the next 3 to 4 years. In June 2021, China approved 9 steel projects under its production capacity swap program. S&P Global further mentions that, while some of the newly approved projects will lead to a net decline in capacity, China’s overall iron and steel capacity was expected to continue rising in 2021 and 2022. Indeed, upon the approved projects coming online, steelmaking capacity was set to increase to 1.288 billion MT per year by the end of 2021.

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<sup>45</sup> Exhibit RR-2021-002-A-09 at 13, 41, 275–276, 283. See also Exhibit RR-2021-002-03.A at para. 97.

<sup>46</sup> Exhibit RR-2021-002-03.A at para. 98; Exhibit RR-2021-002-A-09 at 17–19, 485, 509–514; Exhibit RR-2021-002-13.01 at 21–22.

<sup>47</sup> See, for example, *Carbon Steel Welded Pipe* (19 August 2013), RR-2012-003 (CITT) at para. 59; *Oil Country Tubular Goods* (2 March 2015), RR-2014-003 (CITT) at para. 55; *Steel Piling Pipe* (4 July 2018), RR-2017-003 (CITT) at para. 50; *Oil Country Tubular Goods* (10 December 2020), RR-2019-005 (CITT) at para. 41; *Carbon and Alloy Steel Line Pipe* (6 January 2022), RR-2020-004 (CITT) [*Line Pipe*] at para. 48.

<sup>48</sup> Exhibit RR-2021-002-A-09 at 959, 965, 969.

<sup>49</sup> *Ibid.* at 977. This figure includes 88.5 million MT of steelmaking capacity already underway and 73.3 million MT that is currently planned.

Furthermore, Hellenic Shipping News reports that Chinese inventories increased last year to historically high levels and, as of March 2022, China's steel inventories were again rising due to extensive lockdowns underway throughout the country, which have driven down steel demand and prices.<sup>50</sup>

[89] The World Steel Association data shows that, as the third-largest steel producer behind China and India, Japan produced 99.3 million MT of steel and consumed 63.2 million MT of steel in 2019. In 2020, Japan produced 83.2 million MT of steel, while the country's steel demand stood at 52.6 million MT that year. Japan's steel industry is therefore reliant on exports, and the country was the third major exporter in 2020, behind only China and Russia, exporting 29.8 million MT of steel.<sup>51</sup>

#### Domestic market conditions

[90] Demand for LDLP tends to be intermittent and dependent on either the development, repair or replacement of major infrastructure. Over the POR, the Canadian market for LDLP increased from 400,029 tonnes in 2019 to 505,297 tonnes in 2020, but then it dropped to 215,391 tonnes in 2021.<sup>52</sup> Meanwhile, with the finding and the consequent SIMA duties in place, sales volumes of the subject goods from China and Japan declined and lost significant market share during the POR.<sup>53</sup>

[91] Although demand in the Canadian market tended to be flat or declining over the POR, there is evidence that moderately increased demand is expected over the next 12 to 24 months.<sup>54</sup> Indeed, taking into consideration the LDLP RFPs identified by questionnaire respondents in addition to those that Evraz expects will be issued and awarded from 2022 through the first half of 2024, the total LDLP volumes to be bid in the next 12 to 24 months should increase.<sup>55</sup>

[92] In addition, the evidence shows that there is moderate potential for additional demand for Canadian natural gas arising from the objective of certain countries to reduce their dependence on Russian exports, having regard to the war in Ukraine.<sup>56</sup> However, given the long lead time required to plan and obtain regulatory approval for new pipeline projects in Canada, any such new demand is somewhat speculative and unlikely to materialize over the next 12 to 24 months.<sup>57</sup>

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<sup>50</sup> Exhibit RR-2021-002-A-09 at 934, 941, 1021, 1023, 1026, 1036.

<sup>51</sup> *Ibid.* at 934, 941, 952.

<sup>52</sup> Exhibit RR-2021-002-05.A at Table 20.

<sup>53</sup> Exhibit RR-2021-002-06.A (protected) at Tables 20–22; Exhibit RR-2021-002-09.A (protected).

<sup>54</sup> Exhibit RR-2021-002-03.A at para. 109; Exhibit RR-2021-002-06.B (protected) at Table 39.

<sup>55</sup> Exhibit RR-2021-002-A-02 (protected) at paras. 45, 105–106, at Table 2; Exhibit RR-2021-002-A-06 (protected) at para. 57, at 164; Exhibit RR-2021-002-06.B (protected) at Table 38; *Transcript of In Camera Hearing* at 4, 8–9.

<sup>56</sup> Exhibit RR-2021-002-A-09 at 256, 258, 260, 301, 304, 899, 904. At the hearing, Mr. Coffin of Evraz stated that Europe is primarily dependent on Eastern Europe for its supply of natural gas and that it is “rushing frantically for new supplies of natural gas.” According to Mr. Coffin, Canada is at the top of their mind, as the cooler climate lowers the cost to liquefy natural gas, which is one of the biggest costs in liquefied natural gas. See Exhibit RR-2021-002-A-05 at 31; *Transcript of Public Hearing* at 34–35.

<sup>57</sup> Exhibit RR-2021-002-06.B (protected) at Table 38; Exhibit RR-2021-002-A-06 (protected) at para. 17.

### Likely import volume of subject goods

[93] Paragraph 37.2(2)(a) of the Regulations directs the Tribunal to consider the likely volume of the dumped or subsidized goods if the order or finding is allowed to expire. In particular, the Tribunal should consider whether there is likely to be a significant increase in the volume of imports of the dumped or subsidized goods, either in absolute terms or relative to the production or consumption of like goods.

[94] The Tribunal's assessment of the likely volumes of subject goods encompasses the likely performance of the foreign industry, the potential for the foreign producers to produce goods in facilities that are currently used to produce other goods, evidence of the imposition of anti-dumping and/or countervailing measures in other jurisdictions, and whether measures adopted by other jurisdictions are likely to cause a diversion of the subject goods to Canada.<sup>58</sup>

#### Excess capacity and export orientation

[95] The evidence shows that both China and Japan have very significant excess LDLP capacities that dwarf the Canadian LDLP market, which ranged from approximately 215,391 MT to 505,297 MT during the POR.<sup>59</sup>

[96] Evraz submitted that Japanese producers have massive excess capacity that is intended to serve export markets. Indeed, the evidence before the Tribunal shows that the line pipe production capacity of JFE, Nippon Steel Corporation (Nippon), and Osaka Tokushu Kan Mfg. Co. Ltd (OTK) alone exceeds 1.5 million MT, while Japan has minimal domestic demand.<sup>60</sup> In this regard, Japan has no current or planned international oil or natural gas pipelines and few existing domestic pipelines.<sup>61</sup> Moreover, Global Energy Monitor reports that there are only two gas pipelines proposed or in development in Japan, which total 47.4 km, and no anticipated oil pipelines in development.<sup>62</sup> According to Evraz, future pipeline demand in Japan is estimated to be 182,172 MT, which leaves Japan with significant excess capacity.<sup>63</sup> As such, Japanese producers must seek export markets, including Canada, to absorb its excess production capacity of LDLP.

[97] Similarly, China has massive excess capacity in relation to its domestic demand. Evraz estimated that the minimum aggregated Chinese annual capacity is 20.5 million MT based on the limited information publicly available from a small subset of 40 Chinese producers. However, Evraz estimated that total Chinese production capacity is likely closer to 70 million MT, with 136 Chinese manufacturers capable of producing API 5L line pipe.<sup>64</sup> With Chinese domestic demand expected to reach 19.5 million MT in the foreseeable future, and with the conservative assumption that all this

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<sup>58</sup> Paragraphs 37.2(2)(a), (d), (f), (h) and (i) of the Regulations.

<sup>59</sup> Exhibit RR-2021-002-A-02 (protected) at paras. 74, 80; Exhibit RR-2021-002-A-09 at 1078, 1456, 1465–1468, 1496, 1514–1515; Exhibit RR-2021-002-06.A (protected) at Table 20.

<sup>60</sup> Exhibit RR-2021-002-A-09 at 1455, 1465–1468, 1496, 1514–1515.

<sup>61</sup> Japan has only 4,217 km of gas pipelines and 21 km of oil pipelines. Exhibit RR-2021-002-A-09 at 842.

<sup>62</sup> Exhibit RR-2021-002-A-09 at 842.

<sup>63</sup> Exhibit RR-2021-002-A-01 at paras. 73, 109; Exhibit RR-2021-002-A-09 at 1456, 1465–1468; Exhibit RR-2021-002-03.A at para. 155.

<sup>64</sup> Exhibit RR-2021-002-A-09 at 1067–1079.

demand would be required over the next 24 months, Evraz submitted that there would be more than 10.7 million MT of freely disposable capacity from Chinese LDLP producers.<sup>65</sup>

[98] The Tribunal notes that there was some discrepancy between JFE's calculations in reporting its capacity in its questionnaire response compared to the Tribunal's usual method.<sup>66</sup> However, even if the Tribunal relies on the capacity reported by JFE, the evidence still shows that China and Japan, whether considered individually or together, have very significant excess LDLP capacity, more than twentyfold the size of total demand in Canada.<sup>67</sup>

[99] Given this excess capacity, producers in the subject countries are likely to be export oriented. Indeed, this is reflected in statements made by certain producers in the subject countries in promotional materials or other publications. For example, Nippon stated in one of its publications that exports represent "a significant portion of [its] total revenue."<sup>68</sup> Similarly, JFE describes its business vision to be a "global steel supplier" and that the Japanese steel industry "has focused largely on exporting products from Japan."<sup>69</sup> Moreover, JFE highlights in its line brochure that two of its production facilities have shipping ports designated specifically for the purpose of export.<sup>70</sup> In addition, OTK and the Japanese trading companies Metal One and Marubeni-Itochu Steel have also expressed their export orientation. In fact, both trading companies' exports accounted for a significant proportion of their overall sales during the POR.<sup>71</sup>

[100] There is similar evidence in respect to the importance of export markets for Chinese producers of LDLP. For example, Baoji Petroleum Steel Pipe Co., whose line pipe capacity is approximately 1 million MT, indicated that it "actively promotes [an] overseas [export] strategy".<sup>72</sup> Huludao Pipe reports exporting nearly 90 percent of its total annual output to more than 62 countries, including Canada.<sup>73</sup> Nippon indicated in a press release that "a decline in domestic demand in China – the world's largest steel consuming country – and an increase in integrated steel production capacity in China's coastal regions and ASEAN will intensify competition in the export market."<sup>74</sup>

#### Product shifting between goods produced on the same equipment

[101] Evraz noted that the Tribunal has concluded in prior findings that "product shifting" as between tubular products was relatively straightforward to do and is incentivized by the extent of trade remedies applied in various countries to a range of energy tubular products.<sup>75</sup> In the absence of

<sup>65</sup> Exhibit RR-2021-002-A-01 at para. 105; Exhibit RR-2021-002-A-09 at 18, 24.

<sup>66</sup> Exhibit RR-2021-002-20.02 at 3. The Tribunal sought clarification from JFE regarding the calculation of its capacity, which confirmed that its calculations did not conform to the Tribunal's instructions in the questionnaire. See Exhibit RR-2021-002-RI-06.A (protected) at 1.

<sup>67</sup> Exhibit RR-2021-002-05.A at Table 20; Exhibit RR-2021-002-A-01 at paras. 102–110; Exhibit RR-2021-002-A-02 (protected) at paras. 102–110.

<sup>68</sup> Exhibit RR-2021-002-A-09 at 1059.

<sup>69</sup> *Ibid.* at 1982.

<sup>70</sup> *Ibid.* at 1453–1456.

<sup>71</sup> Exhibit RR-2021-002-A-01 at para. 123; Exhibit RR-2021-002-A-09 at 1515, 2041.

<sup>72</sup> Exhibit RR-2021-002-A-09 at 1276, 1935.

<sup>73</sup> *Ibid.* at 1956–1957, 1959.

<sup>74</sup> *Ibid.* at 1973–1974.

<sup>75</sup> Exhibit RR-2021-002-A-02 (protected) at paras. 124–125; *Line Pipe* at para. 57; *Oil Country Tubular Goods* (18 June 2015), NQ-2014-002 (CITT) at paras. 244–248.

evidence indicating that this state of affairs has changed, it is reasonable to infer that the likelihood of such product shifting remains a relevant consideration in this case.

[102] Evraz submitted that the proliferation of trade protection measures on a range of non-subject energy tubular products around the world also poses a risk for the Canadian market, as producers of energy tubular products can shift their production from non-subject line pipe to subject LDLP. The CBSA noted another 11 anti-dumping measures against Chinese steel tubular products, which can be produced on the same or similar equipment. In addition, according to Evraz, the trade restrictions imposed on Russia stemming from the Russia-Ukraine war have made it increasingly difficult for Chinese and Japanese LDLP producers to rely on the Russian market as an outlet for their exports. As such, Evraz argued that the expiry of the finding would lead to an opportunity for Chinese and Japanese producers to shift production to LDLP for export into the Canadian market.<sup>76</sup>

[103] Ultimately, the evidence shows that, even if all expected Canadian pipeline projects proceed within the next 12 to 24 months, the total domestic demand would still represent only a small proportion of the excess capacity of either Japan or China.<sup>77</sup>

#### Attractiveness and continued interest in the Canadian market

[104] Canada is one of the largest export markets for line pipe: it ranks third worldwide for total pipeline km installed and seventh for planned and announced total oil and gas pipeline length additions for 2021–2025.<sup>78</sup> If the finding expires, Canada would also be one of the few major markets without trade remedies in place on the subject goods. Such a scenario would, in all probability, motivate efforts to export increased volumes of subject goods to Canada.

[105] Data from IHS Markit and Japan Customs show that Canada is an attractive destination for Chinese and Japanese line pipe. Even with the finding in place, Chinese and Japanese producers continue to actively participate and compete in the Canadian market, with Canada remaining among the top export destinations for Japanese subject goods. In addition, Chinese and Japanese producers continue to have a presence in Canada through subsidiaries, sales offices or joint ventures.<sup>79</sup>

[106] Given the export orientation of both Chinese and Japanese producers, the Tribunal finds that, should the finding be rescinded, it is likely that these producers will look to export their excess capacity to Canada as one of the few remaining major markets open to Chinese and Japanese LDLP. Indeed, stagnant global demand and an increase in trade restrictions for Japanese and Chinese LDLP has diminished the number of export markets likely to be available to Chinese and Japanese exporters.

[107] Since the original finding, additional trade remedies have been put in place against Chinese and Japanese LDLP, including by the U.S., the European Union and Thailand. Currently, there are

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<sup>76</sup> Exhibit RR-2021-002-03.A at Table 4; Exhibit RR-2021-002-A-02 (protected) at para. 125.

<sup>77</sup> Exhibit RR-2021-002-A-02 (protected) at paras. 45, 105–106; Exhibit RR-2021-002-06.B (protected) at Table 38.

<sup>78</sup> Exhibit RR-2021-002-A-01 at para. 127; Exhibit RR-2012-002-A-09 at 586–587, 2044.

<sup>79</sup> Exhibit RR-2021-002-A-01 at paras. 135–138; Exhibit RR-2021-002-A-02 (protected) at paras. 129, 132–134; Exhibit RR-2021-002-A-09 at 1520, 2051–2053, 2060, 2084, 2110, 2138, 2213–2216, 2223–2228; Exhibit RR-2021-002-A-10 (protected) at 2272, 2274.



seven anti-dumping and countervailing measures against China and one anti-dumping measure against Japan.<sup>80</sup>

[108] In addition, Evraz noted that Chinese LDLP face a further 33 percent combined Section 232 and Section 301 tariffs for sales into the U.S. As such, Chinese LDLP is essentially locked out of the U.S. market.<sup>81</sup> Evraz also noted that, with regard to Section 232 tariffs, Japan has opted to settle with the U.S. for a quantitative restriction based on a tariff-rate quota, with Japan's in-quota volume for all steel products (i.e. 54 product categories) being 1.25 million MT. In 2021, Japanese LDLP represented only 2.8 percent of Japan's 1.17 million MT steel exports to the U.S.<sup>82</sup>

[109] The European Union imposed definitive global safeguard measures on September 26, 2019, in the form of a 25 percent tariff on steel products from all sources, including LDLP from China and Japan, which were extended to June 30, 2024.<sup>83</sup>

[110] Given the trade measures in place in several major markets faced by Chinese and Japanese exporters of LDLP, the Tribunal finds that these exporters are likely to seek other outlets, which would include Canada, should the finding be rescinded.

### Conclusion

[111] In sum, the Tribunal finds that producers of subject goods have considerable available excess production capacity and remain export oriented. Further, they have demonstrated a continued interest in the Canadian market while facing soft demand and import measures in other major export destinations. As a result, Canada remains an attractive market for Chinese and Japanese producers of the subject goods.

[112] In light of the foregoing, the Tribunal finds that the rescission of the finding would likely result in a significant increase in the volume of imports of the subject goods, in absolute and relative terms, in the next 24 months.

### **Likely price effects of subject goods**

[113] The Tribunal must consider whether, if the finding is allowed to expire, the dumping and subsidizing of goods is likely to significantly undercut the prices of like goods, depress those prices, or suppress them by preventing increases in those prices that would likely have otherwise occurred.<sup>84</sup> In this regard, the Tribunal distinguishes the price effect of the dumped and subsidized goods from any price effects that would likely result from other factors affecting prices.

[114] In the original inquiry, the Tribunal found that LDLP is not a commodity product or a capital good. Rather, it is a "hybrid product that remains subject to price-driven considerations when

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<sup>80</sup> Exhibit RR-2021-002-05.A at Table 51.

<sup>81</sup> Exhibit RR-2021-002-A-09 at 1805–1810, 1845–1847, 1883–1887. Section 232 tariffs of 25 percent were imposed on virtually every country on March 23, 2018, while Section 301 imposed an additional 15 percent tariff on Chinese LDLP on August 20, 2019, which was reduced to 7.5 percent as of February 14, 2020.

<sup>82</sup> Exhibit RR-2021-002-A-09 at 1805–1810; Exhibit RR-2021-002-13.01 at 560, 569, 638–639.

<sup>83</sup> Exhibit RR-2021-002-A-09 at 1889–1933.

<sup>84</sup> Paragraph 37.2(2)(b) of the Regulations.

purchased by end users in the oil and gas extraction sectors alike.”<sup>85</sup> It also found that the price is of fundamental importance due to the upfront and ongoing costs for pipeline operators and those in the mining and extraction sectors being very high.<sup>86</sup> This has not changed given that, according to the evidence, price is still a dominant, if not predominant, factor driving sales of LDLP.<sup>87</sup>

[115] The Tribunal notes that year to year price trend analysis is challenging in this case, as it typically reflects a patchwork of RFP sales sourced and delivered by different companies and varying product mix from year to year.

#### Price undercutting and price depression

[116] Evraz submitted that the subject goods are likely to re-enter the Canadian market at prices that significantly undercut its own. Indeed, Evraz provided an analysis of Japanese subject good pricing over the POR showing that, in the absence of duties and other costs, these goods would generally undercut the prices of like goods.<sup>88</sup>

[117] Evraz also submitted that the small volume of Chinese subject goods imported and sold into Canada during the POR shows their complete inability to compete in the Canadian market at fairly traded prices and “suggests that China will aggressively seek to re-enter the Canadian market in the absence of dumping duties”.<sup>89</sup>

[118] Evraz further submitted that, if the finding were rescinded, Japanese and Chinese subject goods would have to compete with concurrent and prevailing low-price offers in Canada from exporters of LDLP in order to regain market share, thus triggering a race to the bottom. In the original inquiry, the Tribunal found that head-to-head competition between subject good bidders led to progressively competitive bids and aggressively low pricing, which resulted in the undercutting of the like goods and caused non-subject bidders to drive down their bid offers.<sup>90</sup> In the current review, the Tribunal finds that low-priced subject goods would re-enter the Canadian market in the absence of a finding and drive down Canadian market prices.

[119] The evidence shows that Japanese exporters were willing and able to sell both subject and non-subject LDLP at significantly lower prices than their export prices to Canada over the POR. According to Japan Customs export data, the average Japanese export price to Canada for 2021 was \$1,386/MT, but Japanese exporters have also sold to other countries at lower average prices.<sup>91</sup> Similarly, IHS Markit data also shows low-priced Chinese LDLP worldwide. If these low-priced

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<sup>85</sup> *Large Diameter Line Pipe* at para. 38.

<sup>86</sup> *Large Diameter Line Pipe* at para. 45.

<sup>87</sup> *Transcript of Public Hearing* at 41–42; Exhibit RR-2021-002-A-06 (protected) at para. 22.

<sup>88</sup> Exhibit RR-2021-002-A-02 (protected) at para. 150, at Table 8; Exhibit RR-2021-002-A-08 (protected) at para. 38.

<sup>89</sup> Exhibit RR-2021-002-A-01 at para. 157; Exhibit RR-2021-002-06.A (protected) at Tables 14, 16, 20, 32.

<sup>90</sup> *Large Diameter Line Pipe* at paras. 105–106.

<sup>91</sup> For example, Japanese exporters sold LDLP to Norway for \$1,364/MT, to Qatar for \$1,296/MT, to Singapore for \$1,268/MT, to Taiwan for \$1,018/MT and to Vietnam for \$1,062/MT; see Exhibit RR-2021-002-A-09 at 1520. Evraz also noted that the presence of Japanese subject goods in the Canadian market was limited to “specialty steel products”, which prevents an apples-to-apples pricing comparison at the aggregate level; see Exhibit RR-2021-002-A-02 (protected) at para. 149. It is not clear if exports to other countries were likewise limited to such “specialty steel products”.

subject goods were to re-enter the Canadian market in the absence of a finding, they would put significant downward pressure on Evraz's prices.<sup>92</sup>

[120] The Tribunal finds that the evidence is consistent with Evraz's depiction of market conditions and supports Evraz's submissions that the Japanese producers are able to significantly reduce their prices into the Canadian market to regain market share. While Evraz's "corrected" analysis of Japanese average export pricing during the POR may underestimate the likely prices of Japanese LDLP should the finding be rescinded because it does not account for a number of issues,<sup>93</sup> it nonetheless suggests that, without the effect of the SIMA duties, Japanese exporters would likely sell LDLP at lower prices than at least some of their competitors in other countries and at lower prices than Evraz. Similarly, Chinese exporters who were unable or unwilling to compete in the Canadian market at fairly traded prices during the POR will likely aggressively seek to re-enter the Canadian market in the absence of duties by competing at or below competitor pricing, such as those offered by Japanese exporters seeking to regain market share or by exporters from non-subject countries who were present during the POR, seeking to maintain or grow their market share.<sup>94</sup>

[121] As such, the Tribunal finds that LDLP produced in non-subject countries will likely be priced in order to be competitive with subject goods that re-enter the market and vice versa. This would cause price undercutting and price depression due to a price spiral, with prices being driven ever lower and the domestic industry being drawn into the wake, forcing its prices down to maintain any prospect of winning or keeping the limited number of sales that will be available.

#### Price suppression

[122] Evraz submitted that the expiry of the finding is likely to result in significant price suppression. Evraz noted that there is currently a sharp rise in material costs, with the price of scrap rising significantly between Q4 2020 and the end of Q1 2022.<sup>95</sup> However, Evraz noted that Cantak reported in its questionnaire reply that its pricing is firm and not subject to escalation or increase, as its supplier does not rely on scrap for its production of LDLP.<sup>96</sup>

[123] The Tribunal finds that there is some evidence to support a conclusion of likely price suppression. Fastmarkets reports that the price of scrap has risen between the beginning of Q4 2020 and the end of Q1 2022.<sup>97</sup> According to Mr. Wihan Pretorius, this rise shows no sign of abating or reversing in the near future.<sup>98</sup> The Tribunal therefore finds that, as raw materials increase in price, especially fuelled by supply chain issues and increasing rates of inflation, the domestic industry is

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<sup>92</sup> Exhibit RR-2021-002-A-10 (protected) at 2274–2276.

<sup>93</sup> Exhibit RR-2021-002-A-01 at paras. 149–150. The Tribunal notes that, among others, Evraz's analysis removed the coating cost from the LDLP pricing. However, bare pipe is not sold to customers and, therefore, the removal of the coating cost from the prices of Japanese producers does not reflect an accurate picture of sales of LDLP in the Canadian market.

<sup>94</sup> Exhibit RR-2021-002-A-01 at para. 157; Exhibit RR-2021-002-A-02 (protected) at para. 160; Exhibit RR-2021-002-A-06 (protected) at para. 32.

<sup>95</sup> Exhibit RR-2021-002-A-04 (protected) at para. 14; Exhibit RR-2021-002-A-08 (protected) at para. 30; Exhibit RR-2021-002-A-10 (protected) at 3157; Exhibit RR-2021-002-14.01 (protected) at 1789–1820.

<sup>96</sup> Exhibit RR-2021-002-16.09 at 4.

<sup>97</sup> Exhibit RR-2021-002-A-10 (protected) at 3157.

<sup>98</sup> Exhibit RR-2021-002-A-08 (protected) at para. 30. See also Exhibit RR-2021-002-14.01 (protected) at 1818–1820.

unlikely to be able to recoup increased costs while its pricing is concurrently being driven downwardly due to competition from subject goods.

[124] As such, the Tribunal is of the view that the evidence indicates that the resumed or continued dumping and subsidizing of the subject goods is likely to cause significant adverse price effects, namely price undercutting, price depression and price suppression, over the next 24 months if the finding is rescinded.

### **Likely impact of the subject goods on the domestic industry**

[125] The Tribunal will now assess the likely impact of the above volumes and prices on the domestic industry if the finding were rescinded, taking into consideration the recent performance of the domestic industry.<sup>99</sup> In this analysis, the Tribunal distinguishes the likely impact of the dumped and subsidized goods from the likely impact of any other factors affecting or likely to affect the domestic industry.<sup>100</sup>

#### Recent performance of the domestic industry

[126] The LDLP market is characterized by large but infrequent projects. Evraz emphasized that the long delays between the award of an RFP and the actual sale mean that the financial impact of such sale may materialize months, if not years, later.<sup>101</sup> Accordingly, the domestic industry's sales, market shares, revenue, and margins fluctuate significantly year to year. As such, the Tribunal has examined the performance of the domestic industry year to year as well as over the POR as a whole.

[127] Since the finding has been in place, Evraz has been able to secure a degree of stability relative to the intermittent and fluid context of the market. While the performance of the domestic industry fluctuated significantly from one year to the next over the POR, when taken as a whole, the domestic industry's performance over the POR reflects improved financial performance, sales volumes, and market shares since the finding has been imposed.<sup>102</sup>

[128] Evraz's production for domestic sales and domestic sales from domestic production increased significantly in 2020 from 2019, followed by a significant decrease, below 2019 volumes, in 2021.<sup>103</sup> Taken as a whole, Evraz's production for domestic sales and domestic sales from domestic production have increased significantly compared to their volume trends in the original period of inquiry (POI).<sup>104</sup> These volume trends reflect Evraz's ability to secure bids during the POR.<sup>105</sup> Evraz's market share followed a similar year-to-year trend over the POR.<sup>106</sup> Additionally, the market

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<sup>99</sup> Paragraphs 37.2(2)(e) and (g) of the Regulations.

<sup>100</sup> See paragraph 37.2(2)(k) of the Regulations.

<sup>101</sup> Exhibit RR-2021-002-A-07 at para. 14; Exhibit RR-2021-002-A-08 (protected) at para. 51; *Transcript of In Camera Hearing* at 15–16.

<sup>102</sup> Exhibit RR-2021-002-A-02 (protected) at paras. 173–174; Exhibit RR-2021-002-A-05 at para. 11.

<sup>103</sup> Exhibit RR-2021-002-05.A at Table 15; Exhibit RR-2021-002-06.A (protected) at Tables 47–48.

<sup>104</sup> Exhibit RR-2021-002-09.C (protected) at Table 11; Exhibit RR-2021-002-06.A (protected) at Table 20.

<sup>105</sup> Evraz's Aid to Argument (protected) at 43; Exhibit RR-2021-002-09.A (protected) at 11; Exhibit RR-2021-002-14.01.A (protected) at 11–13; Exhibit RR-2021-002-A-06 (protected) at paras. 29–34, 39–53.

<sup>106</sup> Exhibit RR-2021-002-05.A at Table 15; Exhibit RR-2021-002-06.A (protected) at Tables 20–23.

share achieved over the total three-year period of the POR was also significantly improved from the original POI.

[129] At the gross margin level, Evraz's financial performance improved in 2020 from 2019; however, in 2021, Evraz's gross margins declined. At the net income level, Evraz's financial performance declined between 2019 and 2020 but improved in 2021.<sup>107</sup> Mr. Pretorius submitted in his witness statement that Evraz's financial performance in 2019 and 2020 reflects a lag in its secured sales from 2018 and 2019, whereas its financial performance in 2021 reflects deteriorating market conditions beginning in 2018 and increased competition for a smaller number of RFPs.<sup>108</sup>

[130] In addition, Evraz's capacity utilization rate for production for domestic sales improved significantly in 2020 but declined in 2021. However, its total production and capacity utilization rate only slightly increased in 2020 due to its declining export sales.<sup>109</sup> Further, its total capacity utilization decreased in 2021 well below the utilization rates achieved in 2019.<sup>110</sup>

[131] The total number of employees, hours worked, and wages paid decreased throughout the POR, while productivity increased in 2020 followed by a decrease below 2019 levels in 2021.<sup>111</sup>

[132] Considering the above, Evraz has experienced modest performance improvements since the finding has been imposed and, as a result, has been able to weather the market deterioration and uncertainty that characterized the Canadian market during the POR. While Evraz may see some improvements in the next 12 to 24 months with a recovering market and as it secured sales recently awarded, it remains in a vulnerable financial position. As further discussed below, without an order continuing the finding, the Tribunal is of the view that the resumed or continued dumping and subsidizing of the subject goods would have a significant adverse impact on Evraz's already fragile financial position.

#### Likely impact if the finding is rescinded

[133] Evraz submitted that the expiry of the finding would cause significant injury to its production and capacity utilization, sales volumes, market share, profitability, return on investment and future investments, cash flow and ability to raise capital, among others.

[134] To come to this conclusion, Evraz provided an impact analysis of its likely performance if the finding were to be rescinded, as compared to its likely performance should the finding be continued. Using relatively conservative assumptions, Evraz asserted that, should the finding be rescinded, it would experience similar lost sales volumes and price depression to those experienced during the original investigation's POI in the face of price competition from the subject goods. Evraz calculated its likely sales volume and revenue based on its 2015 market share of the anticipated sales to occur in 2022 and its 2015 gross margin, which Evraz submits is the period most representative of the effects of dumped and/or subsidized imports of the subject goods. This simulation suggests that Evraz has a

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<sup>107</sup> Exhibit RR-2021-002-05.A at Table 15; Exhibit RR-2021-002-06.A (protected) at Table 42.

<sup>108</sup> Exhibit RR-2021-002-A-02 (protected) at para. 180; Exhibit RR-2021-002-A-07 at para. 40; Exhibit RR-2021-002-A-08 (protected) at para. 41.

<sup>109</sup> Exhibit RR-2021-002-06.A (protected) at Table 44.

<sup>110</sup> Exhibit RR-2021-002-05.A at Table 15; Exhibit RR-2021-002-06.A (protected) at Table 47.

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

relatively narrow cushion to compete in a “race to the bottom” in terms of price before serious adverse financial consequences arise.<sup>112</sup>

[135] Although using Evraz’s 2015 market share may not fairly represent its likely market share without an order, given the fluctuating nature of market shares in the LDLP market, even if the analysis were based on Evraz’s three-year average market share during the original investigation’s POI, Evraz’s likely performance would still deteriorate significantly in the absence of the finding. The Tribunal therefore finds that the evidence credibly supports Evraz’s position that the resumed dumping and subsidizing of the subject goods are likely to cause significant adverse impacts on Evraz’s performance over the next 18 to 24 months.

[136] Evraz provided a chart showing significant improvement to its gross margin for domestic sales from domestic production once the finding took effect.<sup>113</sup> Considering the above, the Tribunal concludes that Evraz’s gains will likely be extinguished if it is forced to compete against the subject goods, should the finding be rescinded.

[137] Mr. Michael Yeats of Evraz stated that Evraz has made investments in its Regina operations since 2015, with its single largest investment reaching over \$300 million. Evraz is therefore concerned that the resumed dumping and subsidizing by the subject countries would affect the return on its investments and dampen future plans to invest in its business.<sup>114</sup>

[138] For its part, the USW submitted that the expiry of the finding would result in material injury to the Canadian industry and its workers.

[139] Mr. Steve Olson, an Evraz employee, testified that he had made the difficult decision, after having been laid off for five months from the Large Diameter Spiral Mill (LDM) in late 2020, to transfer to a different position working on the steelmaking side of Evraz’s facility. This required Mr. Olson to take a pay cut, lose his seniority, and assume an entry-level, lower-skilled job. Mr. Olson noted that many other laid off workers at the LDM were not as fortunate and that at least 100 of those workers never came back to Evraz.<sup>115</sup>

[140] The Tribunal finds that, given the vulnerable state of the domestic industry and the volatility of market demand for LDLP, further layoffs are likely to occur at Evraz if the finding is rescinded. This is consistent with Evraz’s evidence of likely material injury to the domestic industry if subject goods re-enter the market without anti-dumping and countervailing duties in place.

[141] As indicated earlier, the Tribunal has concluded that, if the finding is rescinded, significant volumes of subject goods are likely to materially undercut Evraz’s selling prices. This will cause Evraz to lower prices and lose sales. As a consequence, Evraz will be placed in a position of having to decrease, if not idle, its production, thus creating the conditions for a new wave of layoffs. Overall,

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<sup>112</sup> Exhibit RR-2021-002-A-02 (protected) at paras. 196, 218, 221; Exhibit RR-2021-002-09 (protected) at Tables 20, 29; *Transcript of In Camera Hearing* at 4, 9, 17–19.

<sup>113</sup> See Evraz’s Aid to Argument (protected) at 50; Exhibit RR-2021-002-06.A (protected) at Tables 42–43; Exhibit RR-2021-002-09 at Table 29; *Transcript of In Camera Hearing* at 15.

<sup>114</sup> Exhibit RR-2021-002-A-03 at paras. 34–41; Exhibit RR-2021-002-A-04 (protected) at paras. 34, 38–39, 41; Exhibit RR-2021-002-14.01.A (protected) at 8; *Transcript of Public Hearing* at 29, 65.

<sup>115</sup> Exhibit RR-2021-002-B-03 at paras. 32–36.

it is highly probable that these effects will significantly affect Evraz's profitability. In such circumstances, further investments into Evraz's facilities would also be placed in jeopardy.

[142] In summary, the Tribunal is satisfied that, if the finding is rescinded, Evraz will likely experience injury in terms of reduced production, sales, profitability, employment, and return on investment and that such injury will be material.

#### Factors other than the dumping and subsidizing

[143] Pursuant to paragraph 37.2(2)(k) of the Regulations, the Tribunal may consider any other factors that are relevant in the circumstances.<sup>116</sup>

[144] While Evraz did not explicitly identify such factors, and given that this case was effectively unopposed, the Tribunal, on its own initiative, considered whether there were some factors unrelated to the dumping and subsidizing of the subject goods that could adversely affect the domestic industry over the next 24 months. In doing so, the Tribunal was mindful that the effects of these other factors should not be attributable to an eventual rescission of the finding.

[145] The Tribunal has already noted that the current uncertain market conditions and the COVID-19 pandemic have placed Evraz in a tenuous position. However, the Tribunal is of the view that the effects of these market circumstances will only operate to further worsen the substantial adverse impact that the rescission of the finding would likely have on Evraz, as discussed above.

[146] As indicated above, non-subject goods are likely to compete with subject goods re-entering the Canadian market following the rescission of the finding. As such, subject and non-subject goods would compete for sales and market share against each other, as well as with Evraz, on the basis of price. Accordingly, the Tribunal finds that the subject goods, in and of themselves, are likely to cause significant price undercutting, price depression and/or lost sales for the domestic industry, notwithstanding any effects caused by non-subject imports.

[147] The Tribunal noted earlier that Evraz's export performance has declined over the POR. However, even as Evraz's net sales volumes of exports have decreased throughout the POR, the evidence shows that Evraz has been able to improve its financial performance in 2021.<sup>117</sup> As such, the Tribunal cannot find that Evraz's poor performance in the event of the rescission of the finding would be due to an inability to maintain adequate export sales.

[148] Finally, TCPL requested information from Evraz as to whether any potential purchasers, governments or regulatory bodies had indicated to Evraz that any potential sanctions against Russia may impact dealings with Evraz. In response, Evraz confirmed that there had been no indication that the sanctions imposed by Canada and other countries on Russia since February 2022 had or would impact its ability to transact business.<sup>118</sup> There is no evidence on the record that would suggest otherwise.

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<sup>116</sup> Paragraph 37.2(2)(k) refers to "any other factor pertaining to the current or likely behaviour or state of the domestic or international economy, market for goods or industry as a whole or in relation to individual producers, exporters, brokers or traders."

<sup>117</sup> Exhibit RR-2021-002-06.A (protected) at Tables 42–46.

<sup>118</sup> Exhibit RR-2021-002-RI-01 at 4; Exhibit RR-2021-002-RI-01.A (protected) at 4; Exhibit RR-2021-002-A-04 (protected) at paras. 28–31.

[149] Having accounted for the impact of the above factors and ensured not to attribute their effects to an eventual rescission of the finding, the Tribunal finds that the resumption of the dumping and subsidizing of the subject goods will likely result, in and of themselves, in material injury to Evraz over the next 18 to 24 months.

## CONCLUSION

[150] On the basis of the foregoing analysis, and pursuant to paragraph 76.03(12)(b) of SIMA, the Tribunal continues its finding in respect of certain welded large diameter carbon and alloy steel line pipe from China and Japan.

## EXCLUSIONS

[151] As noted above, the Tribunal received five requests to exclude products from any order continuing the finding. TCPL requested the following two products be excluded from the Tribunal's order:

- line pipe for oil and gas transmission service manufactured to American Petroleum Institute (API) specification 5L (all grades), Canadian Standards Association (CSA) Z245.1 (all grades), or equivalent specifications, in all sizes and wall thicknesses with fracture propagation resistance (as measured by drop-weight tear testing or DWTT) of CSA Category II M45C or equivalent; and
- line pipe for oil and gas transmission service manufactured to American Petroleum Institute (API) specification 5L (all grades), Canadian Standards Association (CSA) Z245.1 (all grades), or equivalent specifications, in sizes with wall thicknesses greater than 19.1 mm.<sup>119</sup>

[152] Cantak/Metal One requested the following three products be excluded from the Tribunal's order:

- double submerged arc welded line pipe, API 5L/CSA Z245.1-18, greater than 610 mm OD, all grades and all wall thickness, minus 45 degrees qualified for resistance for fractural propagation at M45C;
- double submerged arc welded line pipe, API 5L/CSA Z245.1-18, greater than 610 mm OD, all grades, 19.1 mm or greater wall thickness; and
- double submerged arc welded line pipe, API 5L/CSA Z245.1-18, greater than 610 mm OD, all grades and all wall thickness, Strain Based Design pipe used in high-stress applications, requiring longitudinal plastic strain capacity.<sup>120</sup>

[153] Although Evraz originally opposed the exclusion requests, Evraz, TCPL and Cantak/Metal One eventually agreed to the following two exclusions:

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<sup>119</sup> Exhibit RR-2021-002-30.02 at 2, 21.

<sup>120</sup> Exhibit RR-2021-002-30.01 at 3, 7, 11.



- longitudinally submerged arc welded line pipe with a double submerged arc weld, certified to CSA Z245.1 (Grade 483 or higher), regardless of outside diameter or wall thickness with fracture propagation resistance of CSA Category II M45C or equivalent produced in Japan and marked (by stenciling or otherwise) as “Station Pipe” and for the following exclusive uses: (i) for above-ground applications; (ii) above-ground facility or fabricated assembly; and (iii) below-ground applications within and for up to a distance of 100 metres from any facility or assembly (the “M45C exclusion”); and
- longitudinally submerged arc welded line pipe with a double submerged arc weld, certified to CSA Z245.1 (Grade 483 or higher), regardless of outside diameter, with wall thicknesses greater than 23 mm produced in Japan (the “Heavy Wall exclusion”).<sup>121</sup>

[154] Further, Cantak/Metal One indicated that they decided to abandon its exclusion request for LDLP with strain-based design.<sup>122</sup>

[155] For the reasons set out below, the Tribunal has decided to grant the exclusion requests.

### General principles

[156] SIMA authorizes the Tribunal to grant exclusions from the scope of an order or finding as part of its mandate in an expiry review.<sup>123</sup> Exclusions are an extraordinary remedy that may be granted at the Tribunal’s discretion, i.e. when the Tribunal is of the view that such exclusions will not cause injury to the domestic industry.<sup>124</sup> In the context of an expiry review, the rationale is that, despite the general conclusion that all goods covered by an order are likely to cause injury to the domestic industry, there may be case-specific evidence that imports of specific products falling within the definition of subject goods are not likely to cause injury.

[157] In determining whether an exclusion is likely to cause injury to the domestic industry, the Tribunal considers such factors as whether the domestic industry produces, actively supplies or is capable of producing like goods in relation to the subject goods for which the exclusion is requested.<sup>125</sup>

[158] The onus is upon the requester to demonstrate that imports of the specific goods for which the exclusion is requested are not likely to be injurious to the domestic industry.<sup>126</sup> However, there is

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<sup>121</sup> Exhibit RR-2021-002-53; Exhibit RR-2021-002-54; Exhibit RR-2021-002-55.

<sup>122</sup> Exhibit RR-2021-002-55 at 1.

<sup>123</sup> *Hetex Garn A.G. v. The Anti-dumping Tribunal*, [1978] 2 F.C. 507 (FCA); *Sacilor Aciéries v. Anti-dumping Tribunal* (1985) 9 C.E.R. 210 (CA); Binational Panel, *Induction Motors Originating in or Exported From the United States of America (Injury)* (11 September 1991), CDA-90-1904-01; Binational Panel, *Certain Cold-Rolled Steel Products Originating or Exported From the United States of America (Injury)* (13 July 1994), CDA-93-1904-09.

<sup>124</sup> See, for example, *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) at para. 339.

<sup>125</sup> *Certain Fasteners* (6 January 2010), RR-2009-001 (CITT) [*Fasteners*] at para. 245.

<sup>126</sup> *Fasteners* at para. 243.

also an evidentiary burden on the domestic industry to file sufficient evidence to rebut the evidence filed by the requester.<sup>127</sup>

[159] Ultimately, the Tribunal must determine whether it will exercise its discretion to grant product exclusions on the basis of its assessment of the totality of the evidence on the record.<sup>128</sup>

### Analysis

[160] A product exclusion may be granted by the Tribunal with or without the consent of the domestic industry. However, where the domestic industry consents to the exclusion, or does not oppose the request, the Tribunal usually concludes that the granting of the exclusion would not cause injury.<sup>129</sup> In this case, the Tribunal is effectively being asked to grant the exclusions on consent.

[161] As indicated by the Tribunal in *Plate VII*, “[a]ny exclusion to a finding should normally be defined as generically as possible to avoid potential trade distortions and unfair competitive advantages.”<sup>130</sup> Furthermore, the Tribunal stated that country, producer or exporter exclusions may only be appropriate in the most compelling circumstances.<sup>131</sup>

[162] In the current case, the Tribunal finds that, in consenting to the exclusion requests, Evraz is admitting that it will not be injured if the exclusion is granted. The Tribunal is also satisfied that the parties have drafted the exclusions as narrowly as possible and that there are compelling circumstances justifying the request for country-specific exclusions in relation to Japan, namely having regard to the overall scope of the line pipe products that Japan has the capacity to manufacture.

[163] Indeed, the agreed statement of facts states that annual imports of products meeting the description of the M45C exclusion and the Heavy Wall exclusion have been approximately 4,000 MT and 8,000 MT respectively. Evraz submitted that, although it is capable of producing M45C and Heavy Wall LDLP, these volumes are unlikely to injure it in the future.<sup>132</sup>

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<sup>127</sup> *Certain Fasteners* (5 January 2015), RR-2014-001 (CITT) at para. 198. A failure to do so may result in the requested exclusion being granted. Much like its conclusion on the issue of whether the expiry of the finding in respect of the subject goods is likely to result in injury to the domestic industry, the Tribunal’s decision on exclusion requests must be based on positive evidence, irrespective of the party that filed it.

<sup>128</sup> *Aluminum Extrusions* at para. 195.

<sup>129</sup> *Heavy Plate* (5 February 2021), NQ-2020-001 (CITT) at para. 179.

<sup>130</sup> *Hot-rolled Carbon Steel Plate* (13 March 2020), RR-2019-001 (CITT) [*Plate VII*] at para. 170; *Fasteners* (24 October 2008), RD-2008-001 (CITT) at para. 26; *Fasteners* at para. 272; *Concrete Reinforcing Bar* (9 January 2015), NQ-2014-001 (CITT) at para. 260.

<sup>131</sup> *Plate VII* at para. 172; *Certain Fabricated Industrial Steel Components* (25 May 2017), NQ-2016-004 (CITT) at para. 167; *Carbon Steel Welded Pipe* (11 December 2012), NQ-2012-003 (CITT) at para. 185.

<sup>132</sup> Exhibit RR-2021-002-33.01.A (protected) at 28–33, 1293–1331; Exhibit RR-2021-002-53 at 3; Exhibit RR-2021-002-A-04 (protected) at 49; *Transcript of Public Hearing* at 39–40; *Transcript of In Camera Hearing* at 12–13, 40, 45–47, 51–52, 56. It should be noted that TCPL and Cantak/Metal One disagreed that Evraz has the necessary capabilities to produce M45C and Heavy Wall LDLP; see Exhibit RR-2021-002-30.02 at 5, 24–25; Exhibit RR-2021-002-31.01 (protected) at 3, 11, 19; Exhibit RR-2021-002-34.01 at 1, 3, 5; Exhibit RR-2021-002-34.02 at 12–19; Exhibit RR-2021-002-35.02 (protected) at 7–15. However, considering the parties’ agreement that the excluded products would not injure the domestic industry, the Tribunal need not take position on this matter.

[164] However, Evraz submitted that it would be injured by Chinese products matching the description of the product exclusions, as the Government of China continues to create significant market distortions affecting the pricing of Chinese exports to Canada.<sup>133</sup> The Tribunal is of the view that parallel exclusions in favour of Chinese LDLP do not lead to the same conclusion that Evraz would not be injured. The evidence shows that Chinese producers are capable of shifting production and would have the range and capacity to leverage the exclusions in a manner that would enable downward substitutability of its products, thus causing injury to Evraz.<sup>134</sup>

### Conclusion

[165] In light of the foregoing, the Tribunal grants the exclusions as requested.

Susan D. Beaubien

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Susan D. Beaubien  
Presiding Member

Georges Bujold

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Georges Bujold  
Member

Frédéric Seppey

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Frédéric Seppey  
Member

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<sup>133</sup> Exhibit RR-2021-002-53 at 3; *Transcript of In Camera Hearing* at 33–35.

<sup>134</sup> Exhibit RR-2021-002-A-02 (protected) at paras. 124–126.

**APPENDIX A – EXCLUSIONS****GOODS EXCLUDED BY THE TRIBUNAL IN INQUIRY NQ-2016-001**

- ASME SA 672 or ASME SA 691 electric-fusion welded steel pipe as certified under the ASME “Boiler and Pressure Vessel Code” rules (and stencilled with at least one of the aforementioned standards), of a length not to exceed 15 feet (4.572 m), for use other than in a CSA Z-662 pipeline application and imported with authorized inspection certificates and applicable ASME Partial Data Reports;
- line pipe, regardless of grade, outside diameter and wall thickness, single stencilled as “DNV-OS-F101” for exclusive use in offshore applications and marked “For Offshore Applications Only”;
- submerged arc longitudinal welded line pipe, regardless of grade, outside diameter and wall thickness, in lengths of 60 feet (18.288 m) with no girth welds for exclusive use in slurry or tailings piping systems in oil sands projects and marked “For Use as Slurry/Tailings Pipe Only”; for greater certainty, use in a pipeline meeting CSA Z-662 or as pressure piping meeting CSA B51 Code is not permitted under this exclusion; and
- submerged arc longitudinal welded line pipe, regardless of outside diameter, wall thickness and length, for exclusive use in high-temperature steam distribution pipelines and marked “For Steam Distribution Only”, certified to meet the requirements of CSA Z662-15 Clause 14 and/or Annex I and certified to have proven fatigue/creep test properties as provided in sections I.2.3.2 and I.3.2.1 of CSA Z662-15 as established by means of a creep test of no less than 10,000 hours carried out in accordance with ASTM E139.

**GOODS EXCLUDED BY THE TRIBUNAL IN INTERIM REVIEW RD-2020-003**

- longitudinally submerged arc welded line pipe with a double submerged arc weld, stencilled with grade API 2B whether or not stencilled to any other grade, regardless of outside diameter, with wall thicknesses greater than 1” for exclusive use in production of debarker rotors and marked “For Use in Production of Debarker Rotor Only”.