Canadian International Trade Tribunal

Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Dumping and Subsidizing

DECISION AND REASONS

Requests for the initiation of a public interest inquiry
PB-2024-002 and PB-2024-003

Concrete Reinforcing Bar

Decision and reasons issued
Tuesday, February 3, 2026

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IN THE MATTER OF representations as to whether there are reasonable grounds to consider that the imposition, in whole or in part, of an anti-dumping duty on imports of hot-rolled deformed steel concrete reinforcing bar in straight lengths or coils, commonly identified as rebar, in various diameters up to and including 56.4 millimetres, in various finishes, excluding plain round bar and fabricated rebar products, originating in or exported from the Republic of Bulgaria, the Kingdom of Thailand, and the United Arab Emirates, as a result of the Canadian International Trade Tribunal's finding dated January 13, 2025, in inquiry NQ-2024-003 conducted pursuant to section 42 of the *Special Import Measures Act*, would not or might not be in the public interest pursuant to section 45 of the *Special Import Measures Act*.

DECISION

Pursuant to section 45 of the *Special Import Measures Act* (SIMA), the Canadian International Trade Tribunal is of the opinion that there are no reasonable grounds to consider that the imposition of an anti-dumping duty, or the imposition of such a duty in the full amount provided for by SIMA, in respect of the goods referred to in the Tribunal's finding in inquiry NQ-2024-003 would not or might not be in the public interest. Accordingly, the Tribunal will not initiate a public interest inquiry into this matter.

Bree Jamieson-Holloway

Bree Jamieson-Holloway
Presiding Member

Frédéric Seppey

Frédéric Seppey
Member

Randolph W. Heggart

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STATEMENT OF REASONS

OVERVIEW

[1] These requests for a public interest inquiry arise from the finding made by the Canadian International Trade Tribunal on January 13, 2025, that the dumping of certain concrete reinforcing bar (rebar) originating in or exported from the Republic of Bulgaria (Bulgaria), the Kingdom of Thailand (Thailand) and the United Arab Emirates (UAE) has caused injury to the domestic industry.

[2] In the wake of its finding, the Tribunal received two properly documented requests for the initiation of a public interest inquiry on February 17 and 21, 2025: one from Promet Steel JSC (Promet) and one from the Ministry of Economy of Ukraine (Ukraine), respectively. The two requests, both of which were in respect of anti-dumping duties against imports of rebar from Bulgaria in particular, were combined by the Tribunal for determination together. The requests will be referred to in these reasons as "the request".

[3] The request seeks public interest relief of the anti-dumping duties assessed against imports of rebar from Bulgaria as a result of the Tribunal's finding. The request is based on Promet's reliance, as a Bulgarian subsidiary of the Ukrainian steel company Metinvest Group, on Ukrainian steel billets supplied by Metinvest Group's Ukrainian subsidiary, Kamet Steel (Kamet), to manufacture rebar for export to Canada. Therefore, the anti-dumping duties assessed against imports of rebar from Bulgaria will affect sales in Canada and potentially reduce Promet's purchases of steel billets from Ukraine.

[4] The context for the request is Canada's support for Ukraine following the Russian Federation's 2022 invasion of Ukraine and the ongoing war in Ukraine. Canada has implemented a number of measures to support Ukraine, including measures to protect Ukrainian imports from certain duties. The request seeks to have Bulgarian imports of rebar treated with similar favour by Canada, given that the steel billets used to manufacture the Bulgarian rebar are sourced from Ukraine.

[5] In this context, the Tribunal takes seriously the request and the importance of Canada's support for Ukraine in the current conflict. While acknowledging Canada's commitment to Ukraine, for the reasons that follow, the Tribunal finds that there are, under the *Special Import Measures Act* (SIMA),[1] no reasonable grounds to consider that the imposition of duties in respect of imports of rebar from Bulgaria, or the imposition of such duties in the full amount, would not or might not be in the public interest. Therefore, the Tribunal will not initiate a public interest inquiry in this instance. However, the Tribunal notes that this decision is not a negative assessment of the importance of the Ukrainian war effort and Canada's contribution to it as an ally. It is simply not within the Tribunal's authority to exercise statutory powers outside of its mandate, whether in support of Ukraine or otherwise.

BACKGROUND

[6] On January 13, 2025, in inquiry NQ-2024-003, the Tribunal found, pursuant to subsection 43(1) of SIMA, that the dumping of hot-rolled deformed steel concrete reinforcing bar in straight lengths or coils, commonly identified as rebar, in various diameters up to and including 56.4 millimetres, in various finishes, excluding plain round bar and fabricated rebar products,

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

originating in or exported from Bulgaria, Thailand and the UAE (the subject goods) had caused injury to the domestic industry.[2]

[7] On March 6, 2025, the Tribunal notified all those who received a copy of its injury finding in NQ-2024-003 that it had received on February 17 and 21, 2025, properly documented requests for the initiation of a public interest inquiry from Promet (PB-2024-002) and Ukraine (PB-2024-003), pursuant to subsection 45(1) of SIMA. The Tribunal invited interested persons to file submissions supporting or opposing the initiation of a public interest inquiry. The Tribunal decided to combine both requests.[3] On March 19, 2025, the Tribunal issued a revised notice of a properly documented request for the initiation of a public interest inquiry.

[8] The Tribunal received submissions in support of the initiation of a public interest inquiry from the European Commission.

[9] The Tribunal received submissions opposing the initiation of a public interest inquiry from AltaSteel Inc., ArcelorMittal Long Products Canada, G.P., Gerdau Ameristeel Corporation, Max Aicher North America Inc. (Domestic Producers) and the United Steelworkers (USW).

[10] The Tribunal received reply submissions from Promet, Ukraine and the Domestic Producers.

POSITION OF THE PARTIES

[11] Promet and Ukraine both submitted that the imposition of anti-dumping duties on imports of rebar from Bulgaria would not serve the public interest and that eliminating or reducing the duties would be in "the public interest of Canada." Specifically, Promet and Ukraine submitted that:

- imposing duties on Bulgarian rebar made from Ukrainian steel (a vital industry for Ukraine's war effort) "directly contradicts the Canadian government's strong support of Ukraine during the Russian invasion, by encouraging Canada-Ukraine trade",[4] as evidenced by various acts and declarations of Canada, most notably the *Ukraine Goods Remission Order* (Remission Order)[5] exempting Ukrainian goods from duties under SIMA;

- the Canada Border Services Agency's (CBSA) rate of anti-dumping duties assessed against Promet's Bulgarian exports were inflated as a result of the adverse impact of the Russian invasion of Ukraine on input costs;

- the Tribunal should exempt SIMA duties under subsection 14(1) of SIMA; and

- the anti-dumping duties are likely to have an adverse effect on the various factors for consideration under SIMA, including competition, downstream industries and consumers in Canada, while disproportionately impacting Bulgarian exporters without commensurate benefits accruing to the domestic industry.

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2 *Concrete Reinforcing Bar* (13 January 2025), NQ-2024-003 (CITT) [*Rebar V*].
3 The Tribunal's record for the request was maintained under PB-2024-002.
4 Exhibit PB-2024-002-01, p. 2.
5 SOR/2022-127 as amended by SOR/2024-111.

[12] In support of the initiation of a public interest inquiry, the European Commission submitted that Kamet's operations in Ukraine had become unprofitable due to the difficult circumstances caused by the war, including increased transportation and energy costs, power cuts and lack of work force. As a result of unprofitability, Promet's acquisition costs for Ukrainian steel billets were below the cost of production of the billets. As a result of those lower costs, an adjustment was applied to Promet's steel billet acquisition costs for rebar production by the CBSA, inflating the normal value of Bulgarian subject goods. This led to increased dumping margins for Bulgaria, which were the highest among subject countries in inquiry NQ-2024-003. The European Commission also noted that higher volumes of imports originated from the UAE rather than Bulgaria.

[13] The European Commission argued that the SIMA duties for Bulgaria at the current level will undoubtedly result in a decrease of subject imports from Bulgaria, which will ultimately negatively affect the Ukrainian steel industry, thereby undermining Canada's policy of providing support to Ukraine's war effort. The European Commission also submitted that the Remission Order *may* also provide a basis for exempting Bulgarian subject imports produced with significant Ukrainian inputs. The European Commission emphasized that the "political climate" had changed significantly since January 2025 and that the continued support of Ukraine at all levels should remain a common goal.

[14] The Domestic Producers submitted in opposition to the request that a public interest inquiry was not warranted in this case. Their overarching arguments, as summarized in their brief, were as follows:

- The requesters failed to identify a *Canadian* public interest affected by the imposition of SIMA duties on the subject goods.
- The requesters are impermissibly seeking a public interest inquiry into Bulgaria only, while the Tribunal conducted an injury inquiry on a cumulated basis of three subject countries which must be considered under subsection 45(1) of SIMA.
- The request contains bald and speculative assertions about the effects of duties on competition in the Canadian downstream industries, thereby failing to meet the evidentiary burden for initiation of a public interest inquiry.
- Only foreign entities supported the request and no Canadian parties supported the request or participated in this proceeding, despite being notified of the injury inquiry and the existence of the request, which provides a basis for the Tribunal to reject the request.
- The Tribunal has no jurisdiction to exempt Promet from SIMA duties pursuant to subsection 14(1) of SIMA.
- The requesters provided no evidence that they attempted to invoke the Remission Order for imports of subject goods and were denied by the CBSA.
- The forum of a public interest inquiry under section 45 of SIMA to exempt all imports from Bulgaria is not appropriate for a single producer in Bulgaria using steel billets from a single company in Ukraine.

- The correct forum for challenging the CBSA's dumping methodology used to determine the final margin of dumping for Promet is a judicial review of the CBSA's decision, not a public interest inquiry at the Tribunal.

[15] The USW submitted in opposition to the request that section 45 of SIMA is intended to address exceptional circumstances where there is a broad public interest impacted by the imposition of SIMA duties, not a narrow commercial interest of a single foreign entity. The USW argued that the request is speculative and does not particularize, nor provide *prima facie* evidence of, any alleged impacts on Canadian competition, downstream industries and consumers. Alleged price increases alone are not sufficient to support the initiation of a public interest inquiry. The public interest at stake in section 45 of SIMA, according to USW, is the Canadian domestic market and domestic public interest, not the impact on foreign entities. The Remission Order on its own terms also cannot be used by the Tribunal, as it currently exists to exempt Bulgarian rebar from SIMA duties. According to USW, Canadian supply chain resilience will also not be impacted, as there are many suppliers of rebar and the product is a fully interchangeable commodity.

[16] In reply to the submissions of the European Commission, the Domestic Producers argued that the level of anti-dumping duties level imposed on Bulgarian imports is not a factor or basis to warrant a public interest inquiry, nor is the Tribunal the correct forum for such a dispute. According to the Domestic Producers, the European Commission also failed to demonstrate that SIMA duties on Bulgaria affected a Canadian domestic public interest.

[17] In reply, Promet argued that the unique nature of Promet and its role as a customer of the Ukrainian steel industry is inherently linked to the Canadian public interest. While the Domestic Producers argued that the Canadian public interest should be considered solely based on Canadian market conditions, Promet argued that the Canadian public interest should not be interpreted so narrowly. Promet submits that Canada has clearly demonstrated, through the Remission Order and other means, that support for Ukraine is in the Canadian public interest.

[18] In support of Promet's position, Ukraine argued in reply that, in the second half of 2023 and in 2024, Promet represented 100% of the volume of subject goods exported to Canada from Bulgaria and there was no evidence of other exporters during the period of inquiry. In Ukraine's submission, a relief of duties would benefit Promet, a direct and vital supporter of the Ukrainian steel industry. Ukraine also conceded that potential Bulgarian producers and exporters of subject goods, which may use Ukrainian materials, will face the same obstacles and benefits as Promet. Ukraine also supported the European Commission's submission that the protection provided to the Canadian domestic industry by the imposition of SIMA duties is limited, since imports from the UAE are by far the largest segment of imports and are likely to continue in significant quantities due to the low level of duties assessed against subject imports from the UAE.

LEGAL FRAMEWORK

[19] For the Tribunal to initiate a public interest inquiry pursuant to section 45 of SIMA, it must be of the opinion that there are reasonable grounds to consider that the imposition of an anti-dumping duty in respect of the subject goods, or the imposition of such a duty in the full amount, would not or might not be in the public interest.

[20] The Tribunal will, therefore, examine whether, given all the circumstances in the Canadian market, there are reasonable grounds to consider that the imposition of duties will result or may result in negative effects that run counter to the public interest.[6] To that end, the Tribunal generally considers the following factors set out in subsection 40.1(3) of the *Special Import Measures Regulations* (Regulations):

> (3) For the purposes of subsection 45(3) of the Act, the following factors are prescribed:
>
> (a) whether goods of the same description are readily available from countries or exporters to which the order or finding does not apply;
>
> (b) whether imposition of an anti-dumping or countervailing duty in the full amount
>
> (i) has eliminated or substantially lessened or is likely to eliminate or substantially lessen competition in the domestic market in respect of goods,
>
> (ii) has caused or is likely to cause significant damage to producers in Canada that use the goods as inputs in the production of other goods and in the provision of services,
>
> (iii) has significantly impaired or is likely to significantly impair competitiveness by
>
> (A) limiting access to goods that are used as inputs in the production of other goods and in the provision of services, or
>
> (B) limiting access to technology, or
>
> (iv) has significantly restricted or is likely to significantly restrict the choice or availability of goods at competitive prices for consumers or has otherwise caused or is otherwise likely to cause them significant harm; and
>
> (c) whether non-imposition of an anti-dumping or countervailing duty or the non-imposition of such a duty in the full amount provided for in sections 3 to 6 of the Act is likely to cause significant damage to domestic producers of inputs, including primary commodities, used in the domestic manufacture or production of like goods.[7]

[21] When the Tribunal finds injury pursuant to section 42 of SIMA, the consequent anti-dumping and/or countervailing duties become the default position with respect to all goods to which the finding applies. In making a request for the initiation of a public interest inquiry, it is this default position that a requester ultimately seeks to have varied by means of a recommendation from the

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6 *Certain Wire Rod* (3 April 2025), PB-2024-001 (CITT), para. 11 [*Wire Rod PB*]; *Circular Copper Tube*, (14 April 2014), PB-2013-001 (CITT), para. 9 [*Circular Copper Tube*]; *Aluminum Extrusions* (30 June 2009), PB-2008-003 (CITT), para. 16 [*Aluminum Extrusions*]; *Carbon Steel Welded Pipe* (19 December 2008), PB-2008-001 (CITT), para. 15 [*Carbon Steel Welded Pipe*]; *Refined Sugar* (4 April 1996), PB-95-002 (CITT), p. 3–5 [*Refined Sugar*].

7 S.O.R./84-927. Although the factors in paragraph 40.1(3) of the Regulations are prescribed to an actual public interest inquiry, the Tribunal considers these factors relevant in determining whether there are reasonable grounds to indicate that a public interest inquiry is warranted. More so, since these factors mirror the factors that requesters need to address when filing a request for a public interest inquiry (see paragraph 40.1(2)(d) of the Regulations).

Tribunal to the Minister of Finance. The question then becomes whether, given all circumstances in the Canadian market, there are reasonable grounds to consider that this new default position results in negative effects that are too great to be in the public interest.[8] Thus, the Tribunal will only proceed to a public interest inquiry if it is satisfied that there are reasonable grounds to consider that compelling, special or exceptional circumstances exist that necessitate a consideration of the public interest.[9]

[22] Furthermore, the Tribunal has stated that depending on the circumstances, "public interest" may refer to the interests of the Canadian public at large or to those of a segment of that public. The Tribunal has held that it must distinguish between the intended and unintended consequences of imposing duties. The Tribunal also held that section 45 of SIMA contemplates, as an intended consequence, that SIMA duties will necessarily cause some negative impact as market actors adjust to subject goods no longer being traded at unfair prices. However, unintended consequences of SIMA duties could include unacceptable effects on supply, competition or competitiveness, or on the welfare of Canadian downstream industries, their customers or end users.[10]

[23] Consistent with the legislative framework, it is incumbent on the requester to demonstrate to the Tribunal that the initiation of a public interest inquiry is warranted. The Tribunal has been clear that the requester bears the onus of presenting a *prima facie* case, supported by specific evidence that the imposition of anti-dumping and/or countervailing duties, or the imposition of such duties in the full amount provided by SIMA in respect of the goods, would not or might not be in the public interest.[11]

Public interest scope

[24] The requesters and the parties opposed in this case disagreed on the scope of the "public interest" under examination in a public interest inquiry under SIMA. The Domestic Producers and USW argued that "public interest" under section 45 of SIMA contemplates consideration of the Canadian market conditions alone, to the exclusion of foreign entities and interests. On that basis, they argue that the requesters' position advocating for the consideration of foreign interests fails to establish a Canadian domestic public interest into which an inquiry could be conducted.

[25] The Tribunal does not accept that the requesters' framing of the "public interest" at issue here is advocating an expansion of section 45 of SIMA to include purely foreign interests. The submissions of the requesters were more nuanced and conceded that the "public interest" at issue is the Canadian public interest. The requesters' argument is that the Canadian public interest should not be interpreted so narrowly as to take into consideration only Canadian domestic market conditions to the exclusion of all other factors in the Canadian public interest, one of those being Canadian support of Ukraine in its war effort.[12] This is a theoretically plausible submission that the Tribunal must analyze carefully, as it will have a significant bearing on the viability of a public interest inquiry in this case.

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8 *Aluminum Extrusions*, para. 16; *Concrete Reinforcing Bar* (22 December 2015), PB-2014-001 (CITT), paras. 32–38 [*Rebar*].

9 *Certain Flat Hot-Rolled Steel Products*, p. 5.

10 *Rebar,* para. 34; *Circular Copper Tube*, para. 8; *Aluminum Extrusions*, para. 11; *Certain Flat Hot-Rolled Steel Products*, p. 5; *Carbon Steel Welded Pipe*, para. 9. See also *Copper Pipe Fittings* (14 May 2007), PB-2006-001 (CITT), paras. 15–19; *Refined Sugar,* p. 2–5.

11 *Wire Rod PB*, para. 17; *Circular Copper Tube*, para. 10; *Carbon Steel Welded Pipe*, para. 14; *Aluminum Extrusions*, para. 16.

12 Exhibit PB-2024-002-08.02, p. 1.

[26] The Tribunal agrees with the requesters and those in opposition that the relevant public interest, which is part of the object of SIMA, is the Canadian public interest in protecting domestic producers from dumped goods which may cause material injury to a domestic industry. The Tribunal and the Federal Court have framed the public interest this way on a number of occasions.[13]

[27] The core question for the Tribunal is what factors it may take into consideration in assessing impacts on the Canadian public interest and whether the foreign policy interests of Canada in supporting an ally in its war effort is one such factor. For the reasons that follow, the Tribunal is not prepared, in this case, to accept that it would be in the Canadian public interest to consider that the production of subject goods in a third country (Bulgaria), solely on the grounds that it sources manufacturing inputs from Ukraine, should be considered an extension of Canada's support of its ally and the Ukrainian war effort.

Scope of public interest factors

[28] Subsection 45(3) of SIMA states that in a public interest inquiry the Tribunal "shall" take into account "any factors", including prescribed factors, that it considers relevant. The Tribunal's interpretation and expansion of "any factors" in SIMA must be consistent with the text, context and purpose of SIMA.[14] Subsection 40.1(3) of the Regulations provides the prescribed factors set out above.

[29] Promet argued that Article 6 of the World Trade Organization (WTO) Anti-Dumping Agreement (ADA) contains requirements for balancing the rights of all parties involved in an injury investigation and to consider broader public interest concerns.

[30] SIMA has not expressly incorporated Article 6 of the ADA, although it has implemented its requirements. Provisions of the ADA provide useful context within which SIMA may be interpreted.[15] Article 6 of the ADA requires that "all interested parties shall have a full opportunity for the defence of their interests". In addition, Article 6.12 of the ADA provides for industry and consumer associations to make submissions regarding an investigation.

[31] However, there is no requirement in the ADA that foreign interests be considered on a stand-alone basis in an injury inquiry. The procedural rights set out in Article 6 of the ADA simply safeguard the fairness of the injury inquiry process and the opportunity for all interested parties, including foreign parties, to be heard. Thus, while the ADA provides guidance to the Tribunal, it does not stipulate whether certain foreign policy interests of the investigating country must be considered in determining what is in the "public interest". The Tribunal must turn to its own jurisprudence and look beyond the ADA for such guidance.

[32] In assessing the impact of SIMA duties on the Canadian public interest, the Tribunal typically considers whether there are "unintended consequences" of SIMA duties on the Canadian market. The Tribunal would normally expect evidence of some *intended* negative impact on certain

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13 *Certain Flat Hot-Rolled Carbon and Alloy Steel Products*, (3 September 1999), PB-99-001 (CITT), p. 5 [*Certain Flat Hot-Rolled Steel Products*]; *Refined Sugar,* p. 4–5; *Gypsum Board* (January 19, 2017), GC-2016-001 (CITT), para. 37. *GRK Fasteners v. Canada (Attorney General)*, 2011 FC 198, para. 5*; Prairie Tubulars (2015) Inc. v. Canada Border Services Agency et al*., 2018 FC 991, para. 6.

14 *Canadian Hardwood Plywood and Veneer Association v. Canada (Attorney General)*, 2023 FCA 154, para. 84.

15 *Ibid.*, paras. 82–84; *Concrete Reinforcing Bar* (22 December 2015), PB-2014-001 (CITT), para. 29.

market participants as they adjust to a fairly traded market.[16] The Tribunal in *Concrete Reinforcing Bar* noted that a period of adjustment to the natural consequences of the imposition of SIMA duties should be expected and differentiated from the unintended consequences.

[33] Examples of "unintended consequences" provided by the Tribunal in *Concrete Reinforcing Bar* from both the Regulations and Tribunal cases were as follows:

- Undue reduction of competition in the domestic market, which might lead to unnecessarily high prices.
- Unacceptable reduction in choice, quality or quantity of product for consumers.
- Significant damage to downstream industries.
- Absence of imports from other sources to which the finding or order does not apply.
- Inability of the domestic industry to supply all the domestic market, either geographically or seasonally.
- Damage to some aspect of society considered an overwhelming priority, such as health, safety, education, or public or national security.
- Normal values or export prices that, while accurate, may not reflect the economic realities and may force exporters out of the domestic market.
- Price increases larger than necessary to eliminate the injury from dumped or subsidized imports.[17]

[34] From this list, as well as the list set out in subsection 40.1(3) of the Regulations, it is evident that the Tribunal's focus is to be on the unintended consequences primarily within Canada's domestic market, but not to the exclusion of any broader aspect of Canadian society considered to an "overwhelming priority". Other aspects of Canadian society include "health, safety, education, or public or national security". Each of these aspects are domestic or "national" in subject matter, having to do with conditions in Canada as the investigating country.

[35] On this basis, while the Tribunal considers that there is nothing in the ADA, SIMA, the Regulations or Tribunal cases that excludes, in principle, Canada's foreign policy from informing the assessment of the unintended consequences of SIMA duties where such foreign policy is an "overwhelming priority", the negative impact on any such Canadian foreign policy is assessed within Canada, rather than within foreign countries. The negative impact on the Canadian public interest must be within Canada.

[36] The ultimate question for the Tribunal in this case is whether there are reasonable grounds to consider that an unintended consequence for a particular producer in a subject country (Bulgaria), which sources inputs from a supplier in a non-subject ally of Canada (Ukraine), is a sufficient connection to constitute an "overwhelming priority" within Canada that is being damaged by SIMA duties.

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16 *Concrete Reinforcing Bar* (22 December 2015), PB-2014-001 (CITT), para. 34.
17 *Ibid.*

[37] It is not in dispute between the parties that Canada's support for Ukraine is a strong priority of the government and that Ukraine is a non-subject country for the purpose of the Tribunal's SIMA finding. Strong support for Ukraine is evidenced through a number of *direct* measures implemented by Canada, including the Remission Order. The Remission Order contains specific terms providing for the remission of duties, including SIMA duties, for goods originating in Ukraine.[18] It does not expressly provide for the remission of duties on goods manufactured in third countries using inputs from Ukraine. As noted by the Tribunal in its finding, pursuant to section 3 of the Remission Order, claims for remission must be made to the Minister of Public Security and Emergency Preparedness (the Minister) within two years of the date of importation.[19] A decision on remission of duties by the Minister cannot be pre-empted by the Tribunal as a matter of statutory jurisdiction.

[38] The Tribunal was not provided with any evidence from Promet or Ukraine that *indirect* support for Ukraine through the industries of third countries was an overwhelming priority of Canada through specific measures, such as the remittance of duties for third countries using Ukrainian inputs. For the Tribunal to assert that Canada places an "overwhelming priority" on *indirect* support for a non-subject country (Ukraine) through a public interest inquiry into exports from a subject country would stray into foreign and trade policy regarding two trade partners of Canada (Ukraine and Bulgaria) that the Tribunal is not mandated by statute to adjudicate.

[39] Therefore, the Tribunal finds that, in the circumstances of this case, a Canadian public interest is not engaged by the request based solely on Canada's support for Ukraine through a third country, Bulgaria.

Ukrainian steel industry

[40] Promet, Ukraine and the European Commission also made submissions regarding the state of Ukraine's steel industry, the operations of Metinvest Group in Ukraine and Bulgaria, and the impact of Russia's invasion of Ukraine on Metinvest Group's operations as the parent entity of Promet and Kamet.

[41] While the Tribunal appreciates the real difficulties faced by the Ukrainian steel industry in its support of Ukraine's war effort, the internal economic conditions of a foreign non-subject country alone are too remote of a consideration for assessing an impact on the Canadian public interest for the reasons outlined above.

Consideration of the margins of dumping

[42] The Tribunal notes that Promet, Ukraine and the European Commission all submitted that, in deciding whether to initiate a public interest inquiry, the Tribunal should consider the margins of dumping assessed against Bulgaria, which resulted from inflated normal values determined for the subject goods exported by Promet.

[43] The Tribunal notes that it is not empowered by statute in the context of a public interest inquiry to revisit the calculation of the margins of dumping made by the CBSA. Subsection 45(1) of SIMA only contemplates an examination of whether the "imposition of such a duty in the full amount" is in the public interest. For the Tribunal to address the question of "full amount" of duty,

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[18] According to the Remission Order, the goods originate in Ukraine "if they acquired their physical and technical characteristics in Ukraine".

[19] *Rebar V*, para. 73.

the requesters must first meet the threshold for initiating a public interest inquiry, where a reduction of duty may be considered if deemed relevant by the Tribunal. In the absence of reasonable grounds to consider that the imposition of an anti-dumping duty might not be in the public interest, the "default position" of fairly traded goods based on SIMA duties and existing margins of dumping prevail.

Exemption under subsection 14(1) of SIMA

[44] Promet and Ukraine submitted that the Tribunal should exempt Bulgarian subject goods from SIMA duties under subsection 14(1) of SIMA. As noted by the Tribunal in its finding, subsection 14(1) of SIMA provides that "[t]he Governor in Council may, on the recommendation of the Minister of Finance, make regulations exempting any goods or class of goods from the application of this Act". The Tribunal does not have the power of the Minister of Finance or Governor in Council pursuant to subsection 14(1) of SIMA to exempt Promet's goods from the application of anti-dumping duties: that power rests with the Governor in Council.[20]

OTHER PRESCRIBED CONSIDERATIONS

[45] The Tribunal may also examine the factors set out in subsection 40.1(3) of the Regulations which it considers relevant. The following factors were considered relevant by the Tribunal or were argued by the parties.

Availability of goods of the same description

[46] Pursuant to paragraph 40.1(3)(a) of the Regulations, the Tribunal considered the availability of goods of the same description from non-subject countries. Rebar, being a commodity product produced in many countries, is available from a wide range of non-subject countries, as argued by the Domestic Producers. Without any evidence or submissions to the contrary from Promet and Ukraine, the Tribunal finds that there is no adverse impact on the public interest because rebar is available from non-subject countries.

Impact on competition in the domestic market

[47] Pursuant to subparagraph 40.1(3)(b)(i) of the Regulations, the Tribunal considered possible impacts of the imposition of duties in respect of the subject goods on competition in the domestic market but found no indication that the duties would have the unintended consequence of eliminating or substantially lessening such competition.

[48] Promet and Ukraine argued, without particulars and evidence, that SIMA duties would diminish competition; however, the Tribunal has no basis to assess that contention. As underscored by the Domestic Producers, the Tribunal has considerable evidence on the record that shows significant supply of rebar from several domestic producers and several non-subject countries. These circumstances are not indicative of an uncompetitive or short-supplied marketplace. On balance, the evidence suggests that rebar from multiple sources will remain available at competitive pricing in the Canadian market, despite the imposition of duties.

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[20] *Ibid.*, para. 71.

[49] Promet and Ukraine allege that the SIMA duties *may* increase the price of rebar in Canada. However, as found by the Tribunal in *Concrete Reinforcing Bar*, price increases alone are not sufficient grounds for a public interest inquiry, since increased prices naturally flow from the imposition of SIMA duties.[21]

Effect on downstream industries or consumers

[50] Pursuant to subparagraphs 40.1(3)(b)(ii) and (iv), and clause 40.1(3)(b)(iii)(A) of the Regulations, the Tribunal considers whether the imposition of duties in respect of the subject goods, or the imposition of such duties in the full amount, would have an impact on downstream industries and consumers.

[51] Promet and Ukraine alleged without evidence that domestic industries that use rebar may face heightened production costs, which would decrease output, drive job losses and create inflationary pressures for consumers. In contrast, the Domestic Producers provided evidence that rebar prices in Canada have declined since SIMA duties came into effect.[22]

[52] The Tribunal notes that price increases for downstream users alone may not be sufficient to find that the imposition of duties is not in the public interest, without evidence of a significant imbalance in the market at present or in the foreseeable future.[23] To initiate a public interest inquiry, there must be evidence of effects or potential effects beyond the narrow commercial interests of downstream users or importers.[24] The Tribunal has previously found that continued competition in the Canadian market and price sensitivity due to the commodity nature of the subject goods offset the potential increase in costs due to the duties.[25]

[53] Without positive evidence from the requesters establishing a *prima facie* case of a significant imbalance in the market from the imposition of duties, the Tribunal cannot make a speculative assessment.

[54] Accordingly, the Tribunal finds that there are no reasonable grounds to consider that the imposition of duties:

- has caused or is likely to cause significant damage to producers in Canada that use the goods as inputs in the production of other goods and in the provision of services,
- has or will limit access to goods that are used as inputs in the production of other goods and in the provision of services, and
- has significantly restricted or is likely to significantly restrict the choice or availability of goods at competitive prices for consumers or has otherwise caused or is otherwise likely to cause them significant harm.

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21 *Concrete Reinforcing Bar* (22 December 2015), PB-2014-001 (CITT), para. 130.
22 Exhibit PB-2024-002-06.02, p. 34.
23 *Rebar*, paras. 104, 109–110.
24 *Certain Flat Hot-Rolled Steel Products*, p. 7.
25 *Refrigerators, Dishwashers and Dryers* (October 3, 2000), PB-2000-002 (CITT), p. 7. See also *Polyisocyanurate Thermal Insulation Board* (June 13, 1997), PB-97-001 (CITT), p. 5.

Limited access to inputs and technology

[55] Pursuant to clause 40.1(3)(b)(iii)(B) of the Regulations, the Tribunal considered potential impacts on access to technology.

[56] Promet asserted without evidence that Bulgarian rebar "may offer technological advantages or quality standards crucial for certain Canadian industries."[26] The Domestic Producers point to evidence from the injury inquiry that indicates that rebar is generally interchangeable and technically compatible.

[57] The Tribunal finds Promet's submission perplexing since there were no arguments and evidence in the injury inquiry that Bulgarian rebar had any notably unique characteristics that could not be supplied by other domestic or non-subject foreign producers.

[58] The Tribunal finds that there is insufficient evidence to establish reasonable grounds that the imposition of duties has significantly impaired or is likely to significantly impair competitiveness by limiting access to technology. The evidence available from the injury inquiry shows that imported and domestically produced rebar are interchangeable and technically comparable. Therefore, there is no reasonable ground to indicate that SIMA duties impair competitiveness by limiting access to technology.

Impact on global supply chain resilience

[59] Pursuant to paragraphs 40.1(3)(a) and (c) of the Regulations, the Tribunal considered whether the imposition of anti-dumping duties in the full amount could have an impact on global supply chain resilience.

[60] Promet argued that international disruptions since 2020 impacting the steel industry—such as the COVID-19 pandemic, the Russian invasion of Ukraine, the surge in energy prices, and nations seeking to secure stable supply chains—make it essential that Bulgarian rebar bolster Canada's supply chain. Promet did not point to any data that supports the essential nature of Bulgarian rebar imports for Canada. The Domestic Producers point to the evidence in the injury inquiry indicating that global supply chains for rebar are robust and offer multiple sources for the same commodity product.

[61] The Tribunal finds that, in the absence of evidence to the contrary, rebar is readily available from non-subject countries as well as multiple domestic producers providing ample supply chain resilience.

[62] In conclusion, the Tribunal also agrees with the Domestic Producers that each of the above-noted factors addressing the impacts on the Canadian market is typically supported by Canadian domestic market participants. Canadian participation helps demonstrate the pressing public interest served by initiating a public interest inquiry. In this case, Canadian importers of Bulgarian rebar, such as Jebsen & Jessen Metals Canada Inc. and others, have not supported the request before the Tribunal. The only support for the initiation of a public interest inquiry comes from foreign governments and a single foreign producer. Thus, this request lacks any Canadian support for a public interest inquiry. This fact confirms to the Tribunal that there are no reasonable grounds on which to consider the Canadian public interest to be under threat from the current SIMA duties.

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[26] Exhibit PB-2024-002-01, p. 10.

CONCLUSION

[63] The Tribunal finds that the requesters have failed to establish a *prima facie* case that there are reasonable grounds to consider that the imposition of duties, or the imposition of such duties in the full amount provided for by SIMA, would not or might not be in the public interest. Therefore, the Tribunal finds that there are no reasonable grounds to warrant the initiation of a public interest inquiry.

Bree Jamieson-Holloway
Bree Jamieson-Holloway
Presiding Member

Frédéric Seppey
Frédéric Seppey
Member

Randolph W. Heggart
Randolph W. Heggart
Member