

CERTAIN STEEL GOODS

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FOREWORD

On May 9, 2019, by the *Order Referring to the Canadian International Trade Tribunal, for Inquiry into and Reporting on, the Matter of the Exclusion of Certain Steel Goods from the Order Imposing a Surtax on the Importation of Certain Steel Goods*, the Canadian International Trade Tribunal was directed by Her Excellency the Governor in Council, on the recommendation of the Minister of Finance, to conduct an inquiry regarding exclusion requests concerning certain heavy plate and stainless steel wire which are subject to safeguard measures enacted in the *Order Imposing a Surtax on the Importation of Certain Steel Goods*.

The present report of the Tribunal is in response to the *Order Referring to the Canadian International Trade Tribunal, for Inquiry into and Reporting on, the Matter of the Exclusion of Certain Steel Goods from the Order Imposing a Surtax on the Importation of Certain Steel Goods*.

Rose Ann Ritcey
Rose Ann Ritcey
Presiding Member

Serge Fréchette
Serge Fréchette
Member

Peter Burn
Peter Burn
Member

EXECUTIVE SUMMARY

On May 9, 2019, by the *Order Referring to the Canadian International Trade Tribunal, for Inquiry into and Reporting on, the Matter of the Exclusion of Certain Steel Goods from the Order Imposing a Surtax on the Importation of Certain Steel Goods (Exclusions Inquiry Order)*, the Canadian International Trade Tribunal (the Tribunal) was directed by Her Excellency the Governor in Council, on the recommendation of the Minister of Finance, to conduct an inquiry regarding exclusion requests concerning certain heavy plate and stainless steel wire which are subject to safeguard measures enacted in the *Order Imposing a Surtax on the Importation of Certain Steel Goods (Surtax Order)*.

The Tribunal was directed to submit to the Governor in Council, within 60 days of the commencement of this inquiry, i.e. by July 15, 2019, a report including the Tribunal's determination, reasons and any recommendations in respect of exclusion requests made concerning the above-mentioned steel goods.

In summary, the Tribunal received requests for exclusions from 12 companies. The Tribunal recommends that the following exclusions be granted:¹

1. Hot-rolled carbon steel plate produced to the following specifications and grades: ASME SA-516/SA-516M or ASTM A-516/A-516M, normalized, ASME SA-299/SA-299M or ASTM A-299/A-299M, normalized, and ASME SA-537/SA-537M or ASTM A-537/A537M, normalized, in the following dimensions:
 - 2 inches thick, greater than or equal to 97 inches wide and greater than 473 inches long,
 - 2 inches thick, greater than or equal to 121 inches wide and greater than 380 inches long,
 - 2 inches thick, greater than or equal to 150 inches wide and greater than 270 inches long,
 - 2.25 inches thick, greater than or equal to 97 inches wide and greater than 420 inches long,
 - 2.25 inches thick, greater than or equal to 121 inches wide and greater than 330 inches long,
 - 2.25 inches thick, greater than or equal to 151 inches wide and of any length,
 - 2.5 inches thick, greater than or equal to 97 inches wide and greater than 380 inches long,
 - 2.5 inches thick, greater than or equal to 121 inches wide and greater than 300 inches long,
 - 2.5 inches thick, greater than or equal to 151 inches wide and of any length,
 - 2.75 inches thick, greater than or equal to 97 inches wide and greater than 340 inches long,
 - 2.75 inches thick, greater than or equal to 121 inches wide and of any length,
 - 3 inches thick, greater than or equal to 97 inches wide and greater than 250 inches long,

1. As will be discussed later, some of the recommended exclusions respond to more than one request and may not cover all of certain requests.

- 3 inches thick, greater than or equal to 121 inches wide and of any length,
 - 3.25 inches thick, greater than or equal to 97 inches wide and of any length, or
 - greater than or equal to 3.5 inches thick of any width and length.
2. Hot-rolled carbon steel plate in grade SA/A516-70 normalized in thicknesses greater than or equal to 3.25 inches and widths greater than or equal to 97 inches.
 3. Hot-rolled carbon steel plate in grade A516-70/SA516-70 normalized (heat treated) with a thickness of greater than 3.28 inches.
 4. Hot-rolled carbon steel plate manufactured to the following specifications and grades:
 - ASME SA285/SA-285M or ASTM A-285/A-285M,
 - ASME SA-299/SA-299M or ASTM A-299/A-299M,
 - ASME SA515/SA-515M or ASTM A-515/A-515M,
 - ASME SA-516/SA-516M or ASTM A-516/A-516M (including, but not limited to, SA/A516 Grade 70),
 - ASME SA-537/SA-537M or ASTM A-537/A-537M, or
 - ASME SA841/SA-841M or ASTM A-841/A-841M,

which is normalized (heat treated) and/or vacuum degassed (including while molten) with a sulphur content less than 0.005 percent and a phosphorus content less than or equal to 0.017 percent, imported exclusively for use in the manufacture of pressure vessels for the oil and gas sector for use in sour service and hydrogen-induced cracking applications.

5. High-strength low-alloy structural steel plate in grade A1066/A1066M, produced by thermo-mechanical controlled process.
6. Hot-rolled carbon steel plate for use in the manufacture of oil and gas line pipe (also known as skelp).
7. Hot-rolled carbon steel plate in grades API X70 PSL2 or CSA Gr.483 Cat. 2 for use in the manufacture of oil and gas line pipe.
8. 439 copper-coated TiCu stainless steel wire in diameters of 0.030 inch to 0.187 inch.

The full list of requests and corresponding recommendations is found in Appendix I to this report.

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PART I

INTRODUCTION

1. On October 10, 2018, the Governor in Council adopted the *Surtax Order*, thereby imposing a temporary surtax on the importation of certain classes of steel products that were alleged to have been imported into Canada in increased quantities and to have caused or threatened to cause serious injury to domestic producers of like or directly competitive goods.

2. On the same day, the Tribunal was directed by the *Order Referring to the Canadian International Trade Tribunal, for Inquiry into and Reporting on, the Matter of the Importation of Certain Steel Goods*, P.C. 2018-1275 (*Safeguard Inquiry Order*), to conduct a safeguard inquiry concerning the importation into Canada of certain steel goods subject to the *Surtax Order*. The classes of goods subject to the inquiry were: (1) heavy plate, (2) concrete reinforcing bar, (3) energy tubular products; (4) hot-rolled sheet, (5) pre-painted steel, (6) stainless steel wire, and (7) wire rod.

3. On April 3, 2019, the Tribunal published its report in response to the *Safeguard Inquiry Order*. The Tribunal's determinations and recommendations were as follows:

- Heavy plate from the subject countries (other than goods originating in Korea, Panama, Peru, Colombia and Honduras) was being imported in such increased quantities and under such conditions as to be a principal cause of a threat of serious injury to the domestic industry. The Tribunal therefore recommended a remedy in the form of a tariff rate quota (TRQ) on imports of heavy plate from subject countries, other than goods originating in Korea, Panama, Peru, Colombia, Honduras, or countries whose goods are eligible for *General Preferential Tariff* (GPT) treatment.
- Stainless steel wire imported from the subject countries (other than goods originating in Korea, Panama, Peru, Colombia and Honduras) was being imported in such increased quantities and under such conditions as to be a principal cause of a threat of serious injury to the domestic industry. Therefore, the Tribunal recommended a remedy in the form of a TRQ on imports of stainless steel wire from subject countries, other than goods originating in Korea, Panama, Peru, Colombia, Honduras, or countries whose goods are eligible for GPT treatment.
- The Tribunal did not recommend remedies with respect to the other five classes of goods.

4. On May 9, 2019, the Governor in Council, on the recommendation of the Minister of Finance, adopted the *Order Amending the Order Imposing a Surtax on the Importation of Certain Steel Goods (Final Safeguards) (Order amending the Surtax Order)*, thereby implementing the recommendations of the Tribunal to impose final safeguard measures with respect to heavy plate and stainless steel wire.²

2. The provisional measures regarding the other classes of goods expired on April 29, 2019.

5. Also on May 9, 2019, the Tribunal was directed under the terms of the *Exclusions Inquiry Order* to conduct an inquiry regarding exclusion requests³ concerning heavy plate and stainless steel wire products which are subject to the *Surtax Order*. Subject countries are all countries except the United States, Mexico, Chile, Israel, Korea, Colombia, Honduras, Panama, Peru and all countries benefitting from the GPT (as listed in Appendix B to the Notice of Commencement of Exclusions Inquiry)⁴.
6. The present report of the Tribunal is in response to the *Exclusions Inquiry Order*.

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3. The *Safeguard Inquiry Order* had expressly indicated that heavy plate and stainless steel wire each constituted a single class of goods and specifically instructed the Tribunal not to hear any motion to exclude any good from a class of goods or that would otherwise limit the scope of the inquiry, determination or recommendations.
 4. <http://www.citt-tcce.gc.ca/en/node/8574>. The Tribunal received correspondence from the Government of Costa Rica regarding their status as a developing country for the purposes of administering the TRQs. The Tribunal is of the view that such matters are not within its jurisdiction, as set out in the *Exclusions Inquiry Order*.

LEGAL FRAMEWORK

7. The purpose of this inquiry is to determine whether certain heavy plate and stainless steel wire products for which exclusion requests were submitted should be excluded from the safeguard measures imposed by the *Surtax Order*.

8. Section 4 of the *Exclusions Inquiry Order* states that if “the Tribunal determines that there is no domestic source of supply for the goods to which a request referred to in paragraph (a) applies, or no firm and commercially viable plan to produce those goods domestically, the Tribunal must recommend that those goods be excluded from the [*Surtax Order*]” [emphasis added].

9. Therefore, if the Tribunal determines that there is no domestic source of supply or firm and commercially viable plan to produce such goods domestically, the Tribunal will, in accordance with the direction provided in the *Exclusions Inquiry Order*, recommend the exclusion of the goods from the application of safeguard measures.

10. In considering any exclusion request made in the context of the present inquiry, the Tribunal must first determine what are the “goods” which could be considered to constitute a domestic source of supply as per the terms of the *Exclusions Inquiry Order*. In the Tribunal’s view, this term must be interpreted in the context of the proceedings which gave rise to the *Exclusions Inquiry Order*.

11. Under the *Safeguard Inquiry Order*, the Tribunal was directed to determine whether there was “... serious injury or threat thereof...” “... in relation to domestic producers of like or directly competitive goods...”⁵ In that respect, section 3 of the *Canadian International Trade Tribunal Regulations* provides as follows:

like or directly competitive goods means

(a) goods that are identical in all respects to the goods that are the subject of a complaint, or

(b) in the absence of any identical goods referred to in paragraph (a), goods the uses and other characteristics of which closely resemble those goods that are the subject of a complaint (*marchandises similaires ou directement concurrentes*)

12. Even though the definition of “like or directly competitive goods” applies to complaints made under the *Canadian International Trade Tribunal Act (CITT Act)*,⁶ the Tribunal stated in its 2019 report, *Safeguard Inquiry into the Importation of Certain Steel Goods*, that it also applies to references from the Minister of Finance to the Tribunal made pursuant to paragraph 20(a) of the *CITT Act*.⁷

13. In the context of inquiries conducted under the *Special Import Measures Act*,⁸ when the Tribunal analyzes whether domestic goods are “like or directly competitive” to subject goods, it typically looks at a number of factors, including the physical characteristics of the goods (such as appearance), their method of manufacture, their market characteristics (such as substitutability,

5. *CITT Act*, s. 2(1) “serious injury”; *Agreement on Safeguards*, art. 4.1.

6. R.S.C., 1985, c. 47 (4th Supp.).

7. *Certain Steel Goods* (3 April 2019), GC-2018-001 (CITT) at 20; *Certain Steel Goods* (August 2002), GC-2001-001 (CITT) [*Certain Steel Goods* 2002] at 15.

8. R.S.C. 1985, c S-15 [*SIMA*].

pricing and distribution), and the question of whether the goods fulfil the same customer needs. Given that the definition of “like or directly competitive goods” in the *CITT Act* is very similar to that of “like goods” in *SIMA*, the Tribunal applies the same analysis in this inquiry.⁹

14. In light of the above, the Tribunal does not confine the meaning of such “goods” *only* to identical goods produced in Canada. The Tribunal considers that a certain degree of substitutability between the subject goods and the domestic goods could satisfy the standard of “like or directly competitive goods”. Provided that “directly competitive goods” are goods that are currently being produced domestically or for which there is a firm and viable plan to produce them domestically, the applicable legal requirement under the *Exclusions Inquiry Order* would be met.

15. Where the domestic industry consents to an exclusion request, the Tribunal takes this to mean that there is no current or imminent domestic source of supply and recommends that the exclusion be granted.

16. Where the domestic industry opposes a request on the basis that like goods are produced in Canada, the Tribunal examines whether identical or similar or directly competitive goods are currently produced in Canada, or are the subject of firm and viable production plans.

17. In terms of context to this inquiry, the Tribunal is cognizant of the fact that the subject goods are fairly traded goods—not dumped or subsidized—and that the applicable threshold for the relevant injury considerations is “serious” (rather than “material”) injury. In that sense, there is not a complete parallel between exclusion proceedings in *SIMA* cases and the current inquiry, and each request must be examined on its own facts and within the specific context of this inquiry.

18. The *Exclusions Inquiry Order* contemplates that a domestic source of supply could also include goods that meet the requirement that corresponds to “firm and commercially viable plans to produce those goods domestically”. To determine whether specific circumstances meet that requirement, the Tribunal will examine factors such as the following:

- internal corporate approvals, e.g. capital and other commitments;
- production scheduling;
- technical certifications;
- acceptance by customers;
- product testing; and
- marketing efforts.

19. As for the timing of when goods would be produced, the Tribunal likewise examines each request on its own facts and in context of this inquiry. Whether timing considerations such as those applied in the past in a *SIMA* context equally apply in the context of this inquiry will be taken into account.

9. *Certain Steel Goods* 2002 at 15.

20. Pursuant to the provisions of the *Exclusions Inquiry Order*, the Tribunal notes that this exclusion process will be repeated every six months. As such, in circumstances where the Tribunal recommends that an exclusion not be granted because it finds that there are firm and commercially viable plans to produce goods domestically, a requester can resubmit its request on a timely basis if it considers that the domestic industry has not fulfilled those plans.

PART II

EXCLUSION REQUESTS AND RECOMMENDATIONS

21. The Tribunal received requests for exclusions from 12 companies in this inquiry. The requests regarding exclusions for specific products within the classes of heavy plate and stainless steel wire are listed in Appendix I and briefly discussed below.

Heavy Plate

22. The *Surtax Order* defined “heavy plate” as follows:

Hot-rolled carbon steel plate and high-strength low-alloy steel plate not further manufactured than hot-rolled, heat-treated or not, in widths from 80 inches ($\pm 2,030$ mm) to 152 inches ($\pm 3,860$ mm), and thicknesses from 0.375 inches (± 9.525 mm) to 4.0 inches (101.6 mm), with all dimensions being plus or minus allowable tolerances contained in the applicable standards. For greater certainty, these dimensional restrictions apply to steel plate, that contains alloys greater than required by recognized industry standards provided that the steel does not meet recognized industry standards for an alloy-specification steel plate.

The following goods are excluded:

- all plate in coil form; and
- all plate having a rolled, raised figure at regular intervals on the surface (also known as floor plate).

23. Algoma Steel Inc. (Algoma) was the only domestic producer of heavy plate that responded to requests for exclusions.¹⁰

Acier Wirth Steel

24. Acier Wirth Steel (Wirth), an importer and distributor of heavy plate, filed exclusion requests for “CSA G40.21 44W/50W or ASTM A572.50 3-4”¹¹ (A572.50 request) and “ASTM A516-70 / ASME SA516-70 normalized, 3” to 4” thick” (A516-70 request).¹² The Tribunal recommends that Wirth’s A572.50 request be denied and that its A516-70 request be granted in part for the reasons that follow.

25. Wirth submitted that Algoma does not have the capability to produce the plate subject to its exclusion requests.¹³ Algoma did not consent to the A572.50 request as it “produces plate to these grades and in these dimensions.”¹⁴ Algoma submitted documentation showing that it has produced

10. The other domestic producers of heavy plate as identified in the safeguard inquiry, i.e. SSAB Central Inc. and Janco Steel Ltd., did not respond.

11. Exhibit GC-2018-001-E1-03.05, Vol. 13 at 2. Wirth described the product as follows: “General Purpose Structural Steel Plates” and “Used for general construction structural applications, bridges, buildings, machine parts, moulds, etc”.

12. Exhibit GC-2018-001-E1-03.05, Vol. 13 at 6. Wirth described the product as follows: “PVQ Plate, Normalized, with Charpy Impact Test” and “Used for tanks, vessel”.

13. Exhibit GC-2018-001-E1-03.05, Vol. 13 at 3, 7.

14. *Ibid.* at 3; Exhibit GC-2018-001-E1-07.06, Vol. 13 at 4.

and sold both 44W and 50W heavy plate in the 3-4 inch thickness range.¹⁵ In addition, Algoma noted that “Wirth has not sought to establish whether there is a domestic source of supply, and would not purchase from a domestic source in any event.”¹⁶ The Tribunal notes that Algoma has provided invoices in the thickness range requested, and finds that Algoma therefore produces and sells A572.50 plate. The Tribunal recommends that Wirth’s A572.50 request be denied.

26. Algoma consented to the A516-70 request in thicknesses above 3.28 inches using the following language: “Hot-rolled carbon steel plate in grade A516-70/SA 516-70 normalized (heat treated) with a thickness of greater than 3.28 inches”.¹⁷ Algoma submitted that it is capable of producing A516-70 plate up to 3.28 inches thick, and provided an invoice as evidence, as well as a packing list for a purchase of slabs which, at a 3:1 ratio, allows Algoma to roll plate up to 3.28 inches thick.¹⁸ Accordingly, the Tribunal recommends that Wirth’s request be granted in part, using the language proposed by Algoma. This request is encompassed in the third exclusion recommended to be granted in the Executive Summary.

Edmonton Steel Plate Ltd.

Exclusions based on sulfur and phosphorus content

27. Edmonton Steel Plate Ltd. (ESPL), an importer, purchaser and end user of heavy plate, filed exclusion requests for the following:¹⁹

... hot-rolled steel plate manufactured to the following specifications and grades that is vacuum degassed and having a material chemistry that includes a sulfur content of less than or equal to 0.003% and/or a phosphorous content of less than or equal to 0.012%:

- ASME SA-516/SA-516M or ASTM A-516/A-516M,
- ASME SA-299/SA-299M or ASTM A-299/A-299M, and
- ASME SA-537/SA-537M or ASTM A-537/A-537M.

28. The Tribunal recommends that the request be granted in part for the reasons that follow.

29. ESPL submitted that Algoma does not produce this type of heavy plate in Canada, nor does it produce substitutable products or have firm and commercially viable plans to produce such heavy plate or substitutable products.²⁰ ESPL submitted that it has made multiple attempts to purchase such products from Algoma, but that Algoma has declined or offered alternative products of

15. Exhibit GC-2018-001-E1-07.06, Vol. 13 at 4; Exhibit GC-2018-001-E1-08.06 (protected), Vol. 14 at 7-35. The Tribunal notes that not all the invoices submitted by Algoma appear to be for heavy plate as it is defined in this inquiry.

16. Exhibit GC-2018-001-E1-07.01, Vol. 13 at 8.

17. Exhibit GC-2018-001-E1-03.05, Vol. 13 at 7; Exhibit GC-2018-001-E1-07.06, Vol. 13 at 10.

18. Exhibit GC-2018-001-E1-07.06, Vol. 13 at 10; Exhibit GC-2018-001-E1-08.06 (protected), Vol. 14 at 45-51. Algoma submitted that the specification of A516-70 Plate states that “[t]he ratio of reduction of thickness from a strand-cast slab to plate shall be at least 3:0:1 . . .”. See Exhibit GC-2018-001-E1-08.06 (protected), Vol. 14 at 43-44.

19. Exhibit GC-2018-001-E1-03.02, Vol. 13 at 5.

20. *Ibid.* at 3, 5, 7.

unacceptable chemistry.²¹ ESPL submitted that in March 2019, it requested “pricing for plate with sulfur (“S”) $\leq 0.002\%$ and phosphorus (“P”) $\leq 0.012\%$ and Algoma could only offer a maximum S of 0.005% and a maximum P of 0.020% .”²² ESPL submitted that the restrictions on sulfur and phosphorus content are based on the requirements of its customers for operational safety.²³

30. Algoma submitted that the most common pressure vessel quality (PVQ) specification is ASTM A516-70/ASME SA516, but that it is capable of producing or has produced in the past other grades, such as A299 and A537.²⁴ Although it has not received orders for all grades, Algoma stated that it is capable of providing them if requested.²⁵

31. Algoma also submitted that it regularly achieves lower sulphur and phosphorus content than the levels in ESPL’s request, but that it currently cannot consistently guarantee sufficiently low levels of these elements to routinely fill orders for such products. According to Algoma, PVQ with maximum sulfur and phosphorus levels below those which Algoma presently guarantees are only necessary in sour service and hydrogen-induced cracking applications.²⁶ A blanket exclusion covering the chemistries in ESPL’s request would threaten to displace Algoma’s production of PVQ, a key product segment for the company. Therefore, Algoma consented to this exclusion request on the condition that the following end-use provision be attached: “For use in sour service and hydrogen-induced cracking applications”.²⁷

32. In its reply to the Tribunal’s letter of June 27, 2019,²⁸ Algoma clarified that its “consent [was] predicated on the satisfaction of both chemistry requirements.”²⁹ In addition, it proposed the following wording for the end-use provision: “[I]mported exclusively for use in the manufacture of pressure vessels for the oil and gas sector for use in sour service and hydrogen-induced cracking applications”.³⁰

33. ESPL initially opposed Algoma’s request for any end-use restriction, stating that Algoma had provided no evidence that the plate imported by ESPL has or will be used in applications where the restricted chemistry is not required. ESPL noted that, nonetheless, Algoma is not capable of supplying identical or substitutable products.³¹ However, in response to the Tribunal’s letter of June 27, 2019, ESPL proposed that, if the Tribunal was to consider the imposition of an end-use restriction, it should consider using the following language: “[I]mported exclusively for the

21. *Ibid.* at 6. ESPL submitted correspondence with Algoma showing that Algoma either declined to offer the requested product or offered alternative products. See Exhibit GC-2018-001-E1-04.02 (protected), Vol. 14 at 21-29.

22. Exhibit GC-2018-001-E1-03.02, Vol. 13 at 6; Exhibit GC-2018-001-E1-04.02 (protected), Vol. 14 at 18.

23. Exhibit GC-2018-001-E1-03.02, Vol. 13 at 7-9, 22-25; Exhibit GC-2018-001-E1-04.02 (protected), Vol. 14 at 8-10.

24. Exhibit GC-2018-001-E1-07.03, Vol. 13 at 4, 9; Exhibit GC-2018-001-E1-08.03 (protected), Vol. 14 at 8-16.

25. Exhibit GC-2018-001-E1-07.03, Vol. 13 at 4.

26. Exhibit GC-2018-001-E1-07.01A, Vol. 13 at 4-6; Exhibit GC-2018-001-E1-07.03, Vol. 13 at 4.

27. Exhibit GC-2018-001-E1-07.01A, Vol. 13 at 6; Exhibit GC-2018-001-E1-07.03, Vol. 13 at 4.

28. Exhibit GC-2018-001-E1-19, Vol. 1. The Tribunal sent a letter to Algoma to propose a revised end-use restriction, should the Tribunal agree to apply one, and to seek clarification on which exclusion requests would be covered by the text of the exclusion. Requesters were invited to make submissions as well.

29. Exhibit GC-2018-001-E1-20, Vol. 1 at 2.

30. *Ibid.* at 2.

31. Exhibit GC-2018-001-E1-12.01, Vol. 13 at 2.

manufacture of pressure vessels or pressure vessel components for the oil, gas and petrochemical sectors.”

34. The Tribunal notes that exclusions are an exceptional measure. One must remember that the Tribunal has already found that the goods that are the subject of this exclusion request are part of a class of goods that threaten to cause serious injury to the domestic producers of like goods. As such, the applicants for the exclusion request must convince the Tribunal with sufficient evidence that the goods subject to their request will not contribute to the threat of serious injury. In the absence of convincing evidence to justify a request for exclusion, the Tribunal must err on the side of caution.

35. In the present case, ESPL and the other parties requesting exclusions for PVQ plate have not provided the Tribunal with sufficient evidence that expanding the end-use provision will not threaten serious injury to the domestic industry. In particular, they have not provided sufficient evidence that there are other end-uses that also *mandate* the type of plate being excluded, which Algoma acknowledges it cannot produce. Mr. Reimer, the Steel Plate Manager for ESPL, the party seeking the exclusion in the present instance, stated that “[t]he suggestion that restricted chemistry plates are only required for sour service and hydrogen-induced cracking is false”.³² However, no evidence was provided to support the statement. The only potential element in support of Mr. Reimer’s statement is found in its counsel’s reply of July 3, 2019 to the Tribunal’s letter of June 27, 2019. In that letter, counsel stated that ESPL had obtained confirmation from a client that the goods for which the exclusion is sought could also be used for application in a non-sour environment.³³ Notwithstanding these two statements, the Tribunal is left with no supporting documentation that the end-user in this example can *only* use such restrictive plate and not plate that Algoma can produce.

36. This lack of evidence is in contrast with the evidence provided by ESPL in support of its exclusion request which included sulphur and phosphorus specifications from several of its end-user customers.³⁴

37. This leaves the Tribunal no evidence that justifies opening the exclusion beyond the limitation that have been agreed to by Algoma particularly when the two statements referred to above suggest that the importation of the excluded products could result in the displacement of goods that are produced by the domestic industry and that are covered by the safeguard measure. As indicated above, the nature of an exclusion request requires the Tribunal to act with caution and consequently the Tribunal can only in part grant the exclusion requested by ESPL.

38. Therefore, the Tribunal recommends that ESPL’s request be granted in part through the fourth exclusion recommended in the Executive Summary.

Exclusions based on specifications and grades

39. ESPL also filed exclusion requests covering a wide range of specific thicknesses, widths, lengths and grades.³⁵

32. *Ibid.* at 4.

33. Exhibit GC-2018-001-E1-22, Vol. 1 at 1.

34. Exhibit GC-2018-001-E1-04.02, Vol. 14 at 7 and Attachment 4. The Tribunal cannot provide a detailed description of who are the end-users because of the confidentiality of the information.

40. The Tribunal recommends that ESPL's request be granted in part for the reasons that follow.

41. ESPL submitted that Algoma does not produce and is not able to supply the products for which it requested exclusions. ESPL again submitted that it has attempted to purchase such products from Algoma, where Algoma is only able to offer smaller plate.³⁶

42. Algoma consented to the request for all dimensions in thicknesses of 2 inches or higher, and opposed all those under 2 inches.³⁷ Algoma submitted evidence that it has produced and sold plate meeting ESPL's description in the following dimensions of thickness, width and length, respectively: "1.25"/>=150/>440" and "1.375"/>=150/>400".³⁸ Algoma submitted that it is capable of producing the other dimensions but has not received orders. Algoma provided a size chart showing Algoma's 166-inch mill dimensional capabilities, indicating that it can produce the dimensions it opposes.³⁹

43. As Algoma has provided invoices that it has sold plate in two of the dimensions requested by ESPL and provided evidence of its capability to produce the other dimensions from 1.25 inches to 1.75 inches in thickness, the Tribunal recommends that this request be granted solely for the dimensions listed in thicknesses of 2 inches or greater, and denied for all those below 2 inches. This request appears as the first exclusion recommended in the Executive Summary.

Hanwa Canada Corporation and Nippon Steel Corporation

44. Hanwa Canada Corporation (Hanwa), an importer and distributor of heavy plate, and Nippon Steel Corporation (Nippon), an exporter and foreign producer of heavy plate, filed identical exclusion requests for the following:

Hot-rolled carbon steel plate manufactured to: ASME SA516/SA-516M or ASTM A-516/A-516M, ASME SA285/SA-285M or ASTM A-285/A285M, ASME SA299/SA-299M or ASTM A-299/A-299M, ASME SA537/SA-537M or ASTM A-537/A-537M, ASME SA515/SA-515M or ASTM A-515/A-515M, ASME SA841/SA-841M or ASTM A-841/A-841M, which is normalized, vacuum degassed while molten and has a Sulphur content of equal to or less than 0.004% and a Phosphorus content of equal to or less than 0.015%.

45. The Tribunal recommends that the request be granted in part for the reasons that follow.

46. Nippon relied on the evidence of Mr. Reimer, ESPL's witness, in its submissions.⁴⁰ Nippon submitted "that Algoma does not, and cannot, produce vacuum degassed PVQ plate containing less

35. See Exhibit GC-2018-001-E1-03.02, Vol. 13 at 9-10.

36. Exhibit GC-2018-001-E1-03.02, Vol. 13 at 10; Exhibit GC-2018-001-E1-04.02 (protected), Vol. 14 at 21-29, 63. ESPL also submitted a letter from Algoma's CEO, stating that it does not produce certain plate requested by ESPL in its exclusion requests.

37. Exhibit GC-2018-001-E1-07.01A, Vol. 13 at 7; Exhibit GC-2018-001-E1-07.03, Vol. 13 at 12.

38. Exhibit GC-2018-001-E1-07.01, Vol. 13 at 10; Exhibit GC-2018-001-E1-07.03, Vol. 13 at 12; Exhibit GC-2018-001-E1-08.03 (protected), Vol. 14 at 23-39. Algoma provided invoices dated September 29, 2018 and April 13, 2019.

39. Exhibit GC-2018-001-E1-07.01, Vol. 13 at 10; Exhibit GC-2018-001-E1-07.03, Vol. 13 at 12; Exhibit GC-2018-001-E1-08.03 (protected), Vol. 14 at 40.

40. Exhibit GC-2018-001-E1-03.03, Vol. 13 at 5.

than 0.005% Sulphur and less than 0.020% Phosphorus”, and that there is no evidence that production of such plate is imminent.⁴¹ Nippon submitted that Algoma does not have vacuum degassing facilities, nor would it be able to build such facilities in a short to medium timeframe.⁴²

47. In addition, Nippon submitted that the higher price of low-sulphur, low-phosphorous vacuum-degassed PVQ plate means that it does not compete with non-vacuum degassed PVQ plate of 0.005 percent or greater sulphur content and 0.002 percent or greater phosphorous content.⁴³ Nippon noted that no evidence was provided to indicate that, if the exclusion were granted, users would substitute higher-priced and more stringent plate for the less expensive and less stringent plate produced by Algoma.⁴⁴

48. Nippon submitted that there are strict regulatory regimes for pressure vessels across Canada and around the world, and that the engineering requirements must be respected.⁴⁵ According to Nippon, the domestic industry does not produce any substitutable goods as “[t]he engineering specifications for High Stress Pressure Vessels require Normalized Low-Sulphur, Low-Phosphorus Vacuum-Degassed PVQ Plate.”⁴⁶

49. Algoma submitted that, in addition to the plate specified in ESPL’s request, it is capable of producing or has in the past actually produced A285, A515 and A841 plate, but consented to the request at the specified sulphur and phosphorous contents on the condition that the end-use provision referred to in ESPL’s request above be added.⁴⁷

50. Nippon objected to Algoma’s proposal to attach an end use requirement to Nippon’s exclusion request. Nippon again relied on ESPL’s position on the matter, but also submitted that the request for end use requirements goes beyond the directions in the *Exclusions Inquiry Order*, as it does not require that the Tribunal apply an injury test.⁴⁸

51. As already indicated, the Tribunal does not agree with Nippon’s argument that it is not required to consider whether the exclusions it recommends will threaten to cause serious injury to the domestic industry.

52. Since Algoma conditionally consents to the request, and for the reasons stated above in the Tribunal’s assessment of ESPL’s similar request, the Tribunal recommends that Hanwa’s and Nippon’s identical requests be granted in part through the fourth exclusion recommended in the Executive Summary.

41. *Ibid.* at 5, 6, 12-13.

42. *Ibid.* at 9.

43. *Ibid.* at 6, 14.

44. Exhibit GC-2018-001-E1-12.02, Vol. 13 at 4.

45. Exhibit GC-2018-001-E1-03.03, Vol. 13 at 5, 7-8.

46. *Ibid.* at 13.

47. Exhibit GC-2018-001-E1-07.04, Vol. 13 at 4, 9; Exhibit GC-2018-001-E1-08.04 (protected), Vol. 14 at 4, 12-15; Exhibit GC-2018-001-E1-07.05, Vol. 13 at 4, 9; Exhibit GC-2018-001-E1-08.05 (protected), Vol. 14 at 4, 12-15; Exhibit GC-2018-001-E1-07.01A, Vol. 13 at 5-6; Exhibit GC-2018-001-E1-08.01A (protected), Vol. 14 at 5-6; Exhibit GC-2018-001-E1-20, Vol. 1 at 2.

48. Exhibit GC-2018-001-E1-12.02, Vol. 13 at 2.

Olbert Metal Sales Limited

53. Olbert Metal Sales Limited (Olbert), an importer and distributor of heavy plate, filed exclusion requests for “A1066 / A1066M High-Strength Low-Alloy Structural Steel Plate Produced by Thermo-Mechanical Controlled Process”,⁴⁹ (A1066 request) and three individual requests for “SA/A516 Grade 70 Normalized Steel Carbon Plate” (SA/A516 requests) with varying specifications, including one with a specified minimum width and thickness, one with a minimum specified thickness, and one with specified maximum sulphur and phosphorus content.⁵⁰ The Tribunal recommends that the A1066 request be granted, that the SA/A516 request based on width and thickness and on thickness alone be granted, and that the SA/A516 request based on sulphur and phosphorus content be granted in part for the reasons that follow.

54. Olbert submitted that A1066 plate cannot be produced by Canadian steel mills.⁵¹ Algoma consented to this exclusion request.⁵² The Tribunal therefore recommends that this exclusion request be granted. This request appears as the fifth exclusion listed in the Executive Summary.

55. Olbert also submitted that SA/A516 plate with restricted sulphur and phosphorus requirements and in the requested thickness and width range cannot be produced by Canadian steel mills.⁵³ With regard to the two SA/A516 requests based on dimensions, Algoma consented to an exclusion of SA/A516 plate on the basis of a cross section of thickness of 3.25 inches *and* width of greater than or equal to 97 inches,⁵⁴ and to an exclusion of SA/A516 plate in thicknesses greater than 3.28 inches.⁵⁵ Accordingly, the Tribunal recommends that these exclusions be granted. The former request appears as the second exclusion recommended in the Executive Summary while the latter request is encompassed in the third exclusion recommended.

56. As for Olbert’s final SA/A516 request, which was based on maximum sulfur and phosphorus content, for the reasons stated above in the Tribunal’s assessment of ESPL’s similar request, the Tribunal recommends this request be granted in part through the fourth exclusion recommended in the Executive summary.

Salzgitter Mannesmann International (Canada) Inc.

57. Salzgitter Mannesmann International (Canada) Inc. (Salzgitter), an importer and distributor of heavy plate, filed seven exclusion requests.⁵⁶

49. Exhibit GC-2018-001-E1-03.01, Vol. 13 at 2.

50. *Ibid.* at 9, 15, 21.

51. *Ibid.* at 3.

52. Exhibit GC-2018-001-E1-07.02, Vol. 13 at 4; Exhibit GC-2018-001-E1-07.01A, Vol. 13 at 7. Although Algoma submitted that it is capable of producing this material, it submitted that “at present this limits our productivity in the mill to an extent that we will not regularly produce this material.”

53. Exhibit GC-2018-001-E1-03.01, Vol. 13 at 10, 16, 22.

54. Exhibit GC-2018-001-E1-07.02, Vol. 13 at 18.

55. *Ibid.* at 18, 23.

56. Exhibit GC-2018-001-E1-03.06, Vol. 13 at 2, 6, 10.

Exclusions based on dimensions

58. Salzgitter requested exclusions for the following products:
1. Hot-rolled carbon steel plate and high-strength low-alloy plate, made of any steel specification or grade, that is greater than 3.375 inches in thickness, and greater than 72 inches in width.
 2. Hot-rolled carbon steel plate in grade A516-70 normalized (heat treated) with a thickness of greater than 3.28 inches.
59. For the reasons that follow, the Tribunal recommends that the first request above be denied and that the second request be granted.
60. Salzgitter submitted that Algoma must reduce slabs on a 3:1 ratio in order to produce this steel, and that it “is not aware that Algoma has adequate and continuing supply of slabs in the correct size.”⁵⁷ Algoma consented to the second item above, but not to the first. Algoma submitted that it “produces plate up to the top-end thickness of the product definition, in widths greater than 72”.”⁵⁸
61. As Algoma consented to the second request, the Tribunal recommends that this request be granted. This request is encompassed in the third exclusion recommended in the Executive Summary. As for the first request, as Algoma has provided documentation showing a sale, mill test certificate and an invoice for the product requested, the Tribunal recommends that this request be denied.⁵⁹

Exclusions based on sulphur and phosphorus content and/or manufacturing process

62. Salzgitter requested the following three exclusions involving PVQ plate:
1. Hot-rolled carbon steel plate manufactured to:
 - ASME SA-516/SA-516M or ASTM A-516/A-516M
 - ASME SA-285/SA-285M or ASTM A-285/A-285M
 - ASME SA-299/SA-299M or ASTM A-299/A-299M
 - ASME SA-537/SA-537M or ASTM A-537/A-537M
 - ASME SA-515/SA-515M or ASTM A-515/A-515M
 - ASME SA-841/SA-841M or ASTM A-841/A-841Mwhich is both vacuum-degassed while molten and has a sulfur content of maximum 0.005 percent and phosphorous content of maximum 0.017 percent.

57. *Ibid.* at 3.

58. Exhibit GC-2018-001-E1-07.07, Vol. 13 at 3, 4, 8, 9.

59. *Ibid.* at 3, 4, 8, 9; Exhibit GC-2018-001-E1-08.07 (protected), Vol. 14 at 12-15.

2. Hot-rolled carbon steel plate manufactured to:

ASME SA-516/SA-516M or ASTM A-516/A-516M

ASME SA-285/SA-285M or ASTM A-285/A-285M

ASME SA-299/SA-299M or ASTM A-299/A-299M

ASME SA-537/SA-537M or ASTM A-537/A-537M

ASME SA-515/SA-515M or ASTM A-515/A-515M

that is made by a process that includes vacuum degassing while molten and is normalized (heat-treated).

3. Hot-rolled carbon steel plate manufactured to:

ASME SA-516/SA-516M or ASTM A-516/A-516M

ASME SA-285/SA-285M or ASTM A-285/A-285M

ASME SA-299/SA-299M or ASTM A-299/A-299M

ASME SA-537/SA-537M or ASTM A-537/A-537M

ASME SA-515/SA-515M or ASTM A-515/A-515M

that is normalized (heat-treated) and has a sulfur content of less than 0.003 percent.

63. For the reasons that follow, the Tribunal recommends that the first and third requests be granted in part and that the second request be denied.

64. Salzgitter relied on Nippon and ESPL's submissions to explain the reasons for these requests.⁶⁰ For the first and third items, Algoma relied on the same arguments and evidence as in its replies to Nippon and ESPL for sulphur- and phosphorus-restricted plate.⁶¹ For the second request, Algoma submitted that it produces and sells plate meeting these specifications. Algoma provided as evidence sales and production reports.⁶²

65. As Algoma provided invoices showing sales of the product requested for the second request, the Tribunal recommends that this request be denied. As for the first and third requests, for the reasons stated above in the Tribunal's assessment of ESPL's similar request, the Tribunal recommends these requests be granted in part through the fourth exclusion recommended in the Executive Summary.

60. Exhibit GC-2018-001-E1-03.06, Vol. 13 at 7.

61. Exhibit GC-2018-001-E1-07.07, Vol. 13 at 14, 15, 20, 28, 29; Exhibit GC-2018-001-E1-08.07 (protected), Vol. 14 at 18, 57; Exhibit GC-2018-001-E1-07.03, Vol. 13 at 4; Exhibit GC-2018-001-E1-08.03 (protected), Vol. 14 at 4; Exhibit GC-2018-001-E1-07.04, Vol. 13 at 4; Exhibit GC-2018-001-E1-08.04 (protected), Vol. 14 at 4.

62. Exhibit GC-2018-001-E1-07.07, Vol. 13 at 23; Exhibit GC-2018-001-E1-08.07 (protected), Vol. 14 at 36-54.

Exclusions based on end-use

66. Salzgitter requested the two following exclusions involving plate with a specific end-use:

1. Hot rolled carbon steel plate for use in the manufacture of oil & gas linepipe (also known as skelp).
2. Hot-rolled carbon steel plate in grade API X70 PSL2 and/or CSA Gr.483 Cat 2 for use in the manufacture of oil & gas linepipe

67. For the reasons that follow, the Tribunal recommends both these requests be granted.

68. Salzgitter submitted that “[s]kelp has historically been excluded from all SIMA inquiries on heavy plate.”⁶³ In addition, Salzgitter submitted that Algoma has not been able to demonstrate recent production and sales of the second product above.⁶⁴ Algoma opposed both requests on the basis that it can and does sell these products. Algoma provided evidence of sales of skelp, as well as a trial performed in 2008, which did not result in any orders. It also provided its published list of plate grades produced, which includes a list of various grades of API line pipe.⁶⁵ In addition, Algoma noted that Salzgitter’s requests themselves contain an end-use requirement for the manufacture of oil and gas line pipe, showing that such end-use requirements for exclusions are feasible.⁶⁶

69. In the Tribunal’s view, the evidence provided by Algoma was insufficient to show that it does, can, or intends to produce the products requested by Salzgitter. The invoices purporting to show sales of skelp were for products outside of the size range of heavy plate.⁶⁷ Further, a trial performed in 2008 is too distant to be accepted as proof of current capability, let alone firm plans to produce. Accordingly, the Tribunal recommends that the two exclusions be granted. These requests appear as the sixth and seventh exclusions recommended in the Executive Summary.

Stainless Steel Wire

70. The *Surtax Order* defined “stainless steel wire” as follows:

Cold drawn and cold drawn and annealed, stainless steel round wire, up to 0.256 inches (6.50 mm) in maximum solid cross-sectional dimension; and cold drawn, and cold drawn and annealed, stainless steel cold-rolled profile wire, up to 0.031 square inches (0.787 sq. mm) in maximum solid cross-sectional area.

71. There was only one domestic producer of stainless steel wire, namely Central Wire Industries (CWI), and it responded to the various exclusion requests.

Bohne Spring Industries Limited

72. Bohne Spring Industries Limited (Bohne), an importer, purchaser and end user of stainless steel wire, filed exclusion requests for “Stainless Steel Spring Wire Grades – Type 302, 17-7PH” in

63. Exhibit GC-2018-001-E1-03.06, Vol. 13 at 11.

64. Exhibit GC-2018-001-E1-12.03, Vol. 13 at 2.

65. Exhibit GC-2018-001-E1-07.07, Vol. 13 at 35, 40, 43.

66. Exhibit GC-2018-001-E1-07.01, Vol. 13 at 7.

67. Exhibit GC-2018-001-E1-08.07 (protected), Vol. 14 at 67-79.

sizes ranging from 0.015 inch to 0.207 inch, for use in aircraft parts, appliances, electrical equipment, and commercial applications (window parts).⁶⁸

73. The Tribunal recommends that Bohne's requests be denied for the reasons that follow.

74. Bohne submitted that it is requesting exclusions for type 302 and type 17-7PH stainless steel wire because it cannot always rely on this material being available from the United States, Korea or Canada in the sizes and quantities it uses. Bohne also submitted that the domestic industry does not supply the products for which the exclusions were requested.⁶⁹

75. CWI opposed these requests on the basis that it does produce, in Canada, products that are identical in all respects to those in Bohne's exclusion requests.⁷⁰

76. CWI submitted that it "currently produces and sells Type 302 spring wire in a wide range of sizes within the Canadian Market."⁷¹ CWI provided sales invoices and production reports from June 2018 to April 2019 for sizes ranging between 0.065 inch to 0.104 inch, and noted that it is "able to produce all sizes of spring wire within the range of .015" to .207" upon request."⁷²

77. CWI submitted that it has recently produced type 17-7PH for sale in the United States, and that it is also able to produce to sell within Canada upon customer request. CWI provided sales invoices and production reports of this type of wire from December 2018 and February 2019.⁷³

78. As indicated above, the Tribunal may only recommend the exclusion of the goods from the application of safeguard measures if there is no domestic source of supply or firm and commercially viable plans to produce such goods domestically. Therefore, the fact that type 302 and type 17-7PH stainless steel wire may be unavailable in the *quantities* required by Bohne is not a relevant consideration in this inquiry. Furthermore, the Tribunal notes that Bohne provided no supporting evidence that such products were indeed not available as required.⁷⁴

79. As CWI has satisfied the Tribunal that it does produce, in Canada, products that are identical in all respects to those which are the basis of Bohne's requests, the Tribunal recommends that Bohne's requests be denied.

68. Exhibit GC-2018-001-E1-05.01, Vol. 13 at 2.

69. *Ibid.* at 3.

70. Exhibit GC-2018-001-E1-09.01, Vol. 13 at 2.

71. *Ibid.* at 11.

72. *Ibid.* at 11-12; Exhibit GC-2018-001-E1-10.01 (protected), Vol. 14 at 5-12. The sales were for type 302 stainless steel wire in 0.011-inch, 0.065-inch, 0.08-inch, and 0.104-inch sizes.

73. Exhibit GC-2018-001-E1-09.01, Vol. 13 at 12; Exhibit GC-2018-001-E1-10.01 (protected), Vol. 14 at 16-24. On July 3, 2019, CWI confirmed that Type 177S is equivalent to Type 17-7PH (Exhibit GC-2018-001-E1-21, Vol. 1 at 1). The sizes of type 17-7PH wire listed on the sales invoices and production reports were within and below the size range requested by Bohne.

74. On the contrary, CWI submitted that it has a significant excess capacity to serve the domestic stainless steel wire market. See Exhibit GC-2018-001-E1-09.01, Vol. 13 at 9.

Exocor

80. Exocor, an importer and distributor of stainless steel wire, filed an exclusion request for “Executive 439TiCu Stainless Steel Wire” in diameters of 0.030 inch to 0.187 inch.⁷⁵ CWI consented to the exclusion request filed by Exocor because, although CWI produces and sells 439TiCu stainless steel wire in the Canadian market, it does not currently offer a copper-coated version (i.e. 439TiCu).⁷⁶ As such, the Tribunal understands that there is no current or imminent domestic source of supply.

81. Therefore, the Tribunal recommends that Exocor’s exclusion request be granted. On July 9, 2019, Exocor confirmed that “Executive” was a proprietary term. As the Tribunal does not usually grant exclusions based on proprietary terms, it recommends granting an exclusion for 439TiCu copper-coated stainless steel wire in diameters of 0.030 inch to 0.187 inch. This request appears as the eighth exclusion recommended in the Executive Summary.

The Furnace Belt Company Limited

82. The Furnace Belt Company Limited (Furnace Belt), an importer, purchaser, distributor, and Canadian manufacturer of stainless steel wire, filed exclusion requests for “314, 304 and 35/19cb stainless steel wire” of a diameter less than 0.5 inch.⁷⁷

83. The Tribunal recommends that Furnace Belt’s requests be denied for the reasons that follow.

84. Furnace Belt submitted that CWI cannot meet its demands in terms of volume and requires the importation of these types of wire in order to remain competitive. In addition, Furnace Belt alleged that it was facing quality and service issues with CWI since its Erin, Ontario, facility closed, and that the quality of imports is superior.⁷⁸

85. CWI opposed these requests on the basis that it does produce and sell all three products within Canada up to 0.256 inch, which is the top end of the product definition for stainless steel wire. CWI provided invoices showing that it does produce and sell types 304, 314 and 35/19cb wire.⁷⁹

86. Similarly to Bohne’s request, the Tribunal may only recommend the exclusion of the goods from the application of safeguard measures if there is no domestic source of supply or firm and commercially viable plans to produce such goods domestically. Furnace Belt did not provide any evidence to support its claims of issues with available volumes, quality and service, and, in any event, as previously noted, such issues are irrelevant to the Tribunal’s decision in the present instance.

75. Exhibit GC-2018-001-E1-05.05, Vol. 13 at 2.

76. *Ibid.* at 2, 9.

77. Exhibit GC-2018-001-E1-05.03, Vol. 13 at 2. As the definition of “stainless steel wire” only includes wire up to 0.256 inch in maximum solid cross-sectional dimension, Furnace Belt’s requests were broader than the product subject to the safeguard.

78. Exhibit GC-2018-001-E1-05.03, Vol. 13 at 3-4.

79. Exhibit GC-2018-001-E1-09.03, Vol. 13 at 13-14; Exhibit GC-2018-001-E1-10.03 (protected), Vol. 14 at 5-45. The sales were for type 304 stainless steel wire in sizes ranging from 0.1 inch to 0.187 inch between November 2018 and January 2019, type 314 in size ranges within Furnace Belt’s request, and type 35/19cb in sizes ranging from 0.12 inch to 0.135 inch and above in April and May 2019.

87. The Tribunal is satisfied that CWI produces, in Canada, products that are identical in all respects to those in Furnace Belt's requests, and recommends that Furnace Belt's exclusion requests be denied.

Precision Metals

88. Precision Metals, an exporter of stainless steel wire located in India, filed exclusion requests for "Stainless Steel welding wires, thick wires and fine wires". The requested exclusions are described as follows:⁸⁰

Characteristics	Description
1) Stainless steel welding wires	As per AWS Specification MIG, TIG, sub Arc & Core wires.
2) Stainless steel Fine wires	'0.006" to 0.0286" – used for Brading, Kitting and Weaving.
3) Stainless steel Thick wires	'0.029" to 0.866"-for cold heading, EPQ forming up Bending Application.

89. The Tribunal recommends that Precision Metals' requests be denied for the reasons that follow.

90. Precision Metals submitted that it requested the exclusions due to insufficient capacity and longer lead time of the domestic industry.⁸¹ CWI opposed the requests on the basis that it produces products that are identical in all respects to those in the exclusion, up to the maximum diameter of wire covered by the product definition.⁸² CWI provided sales invoices and production reports showing that the types of stainless steel wires requested by Precision Metals are produced and sold in Canada.⁸³

91. The Tribunal notes that the exclusion requests made by Precision Metals are extremely broad and therefore inappropriate.⁸⁴ The Tribunal is nonetheless satisfied that CWI produces identical products in Canada to those requested by Precision Metals.

92. The Tribunal recommends that these exclusion requests be denied.

RGL Reservoir Management Inc.

93. RGL Reservoir Management Inc. (RGL), an importer, purchaser and end user of stainless steel wire, filed an exclusion request for "Intermediate-annealed shaped stainless steel wire.

80. Exhibit GC-2018-001-E1-05.02, Vol. 13 at 2. As the description of "stainless steel wire" only includes wire up to 0.256 inch, Precision Metals' requests were broader than the products subject to the safeguard.

81. Exhibit GC-2018-001-E1-05.02, Vol. 13 at 3.

82. Exhibit GC-2018-001-E1-09.02, Vol. 13 at 2.

83. *Ibid.* at 15-16; Exhibit GC-2018-001-E1-10.02 (protected), Vol. 14 at 5-34. CWI stated that welding wires were sold between June 2018 and April 2019, fine wires ranging from 0.005 inch to 0.028 inch were sold in late 2018 to early 2019, and thick wires of 0.248 inch, which is one of the thickest diameter CWI can produce, were sold in May 2018.

84. Exhibit GC-2018-001-E1-09.02, Vol. 13 at 4, 15.

(‘Shaped Wire’).⁸⁵ The Tribunal recommends that RGL’s request be denied for the reasons that follow.

94. RGL submitted that this shaped wire “is not currently available from domestic producers in the necessary quantities, with the appropriate lead times and for a competitive price”, and that it had not confirmed the quality of CWI’s product.⁸⁶ CWI opposed the request on the basis that it produces products that are identical to those requested by RGL.⁸⁷ CWI provided an invoice for the sale of a product meeting the exact specifications described by RGL as well as other invoices and production reports for shaped wire of different mechanical properties.⁸⁸ In addition, CWI submitted that it has arranged to move some of its shaped wire production equipment from the United Kingdom to its facility in Perth, and that a new shaped line is intended to be commissioned to meet the requirements of the market.⁸⁹

95. As stated above with regard to Bohne and Furnace Belt’s requests, considerations of available quantity, quality, lead times and pricing are not relevant to the Tribunal’s decision with regard to exclusion requests.⁹⁰ The Tribunal is otherwise satisfied that CWI produces in Canada identical products to that requested by RGL as well as other shaped wire, and therefore recommends that this exclusion request be denied.

Voestalpine Bohler Welding Canada

96. Voestalpine Bohler Welding Canada (Voestalpine)⁹¹ filed an exclusion request for “Stainless steel cold drawn wires specifically for use as a welding wire in either the GMAW or GTAW process”.⁹² Voestalpine further describes the product as follows:

Characteristics	Description
Cold drawn	Welding wires cold drawn to required diameters with annealing were necessary.
Tensile strength	Welding wires need to be of a high tensile strength for proper feeding with welding machines
Lubricated	Welding wires need surface lubrication for proper feeding (amount is important)

85. Exhibit GC-2018-001-E1-05.04, Vol. 13 at 2-3. More specifically, RGL requests an exclusion for such wires of 0.09-inch width, 0.09-inch and 0.105-inch height, made of 304L grade steel, in 115 to 145 kilopounds per square inch tensile strength, of 92 hot-rolled band maximum hardness, cold drawn and intermediate-annealed.

86. Exhibit GC-2018-001-E1-05.04, Vol. 13 at 3.

87. Exhibit GC-2018-001-E1-09.04, Vol. 13 at 2.

88. *Ibid.* at 14-15; Exhibit GC-2018-001-E1-10.04 (protected), Vol. 14 at 5-24. CWI’s witness stated that the company sold this product to one customer between August 2018 and June 2019, and as early as 2016.

89. Exhibit GC-2018-001-E1-09.04, Vol. 13 at 15. CWI provided a copy of the capital expenditure approval form for the shaped wire equipment investment, along with a spreadsheet outlining the expenses incurred to commission the new line. Exhibit GC-2018-001-E1-10.04 (protected), Vol. 14 at 25-27.

90. See also Exhibit GC-2018-001-E1-09.04, Vol. 13 at 4.

91. Voestalpine did not specify whether it was an importer, purchaser, exporter, or foreign producer of stainless steel wire. See Exhibit GC-2018-001-E1-05.06, Vol. 13 at 2.

92. Exhibit GC-2018-001-E1-05.06, Vol. 13 at 2. “GMAW” stands for “gas metal arc welding” and “GTAW” stands for “gas tungsten arc welding”.

Controlled Ferrite	Welding wires of too low ferrite will hot crack and too high will decrease toughness at low temperatures
Dimensions	0.7 mm to 5 mm are possible in spools (common 0.9 mm and 1.2 mm) and cut lengths of 1000 mm (common 1.2mm – 3.2 mm)
Diameter accuracy	Since welding wires are feed trough liners and contact tips of nearly equivalent to the wire diameter, the tolerances need to be precise
Packaging	Spools of 15 kg, coils of 25 kg, drums of 100-250 kgs and cut lengths of 5 kg are common

97. At a minimum, Voestalpine requested an exclusion for the products used by two of its customers.

98. The Tribunal recommends that Voestalpine's request be denied for the reasons that follow.

99. Voestalpine submitted that the product it imports from Chinese Taipei is proven to be superior to that of the competition in its feeding, chemical controls and mechanical properties. Voestalpine also submitted that this product has been tested and approved by two large end users of stainless steel wire, that this approval process was time consuming and expensive, and that they would not wish to repeat the process now that the material from Chinese Taipei has been approved.⁹³

100. CWI opposed the request on the basis that it produces, in Canada, products that are identical to those requested by Voestalpine. CWI submitted that the exclusion "process is designed not to favour particular entities, but to assess whether certain products should rightfully be excluded from the scope of the Finding".⁹⁴ CWI noted that it is on the approved manufacturers list for wire produced for both the GMAW and GTAW processes with a major international manufacturer and marketer of transportation fuels, other petrochemical products and power.⁹⁵ Further, CWI submitted that it has certifications for all its welding wire products, including GMAW and GTAW standards, from the Canadian Welding Bureau.⁹⁶ In addition, CWI provided invoices and production reports showing sales and production between June 2018 and April 2019, of welding wire of the type which would meet either of the processes named by Voestalpine in its exclusion request.⁹⁷

101. The Tribunal again notes that questions of quality, along with those of testing or approval by customers, have no bearing on the Tribunal's decision with regard to the exclusion requests. The Tribunal is otherwise satisfied that CWI produces a product identical to that requested by Voestalpine in Canada.

102. Therefore, the Tribunal recommends that this exclusion request be denied.

93. Exhibit GC-2018-001-E1-05.06, Vol. 13 at 3.

94. Exhibit GC-2018-001-E1-09.06, Vol. 13 at 2, 4.

95. *Ibid.* at 25.

96. *Ibid.* at 6-19, 25-26; Exhibit GC-2018-001-E1-10.06 (protected), Vol. 14 at 5-8.

97. Exhibit GC-2018-001-E1-09.06, Vol. 13 at 26; Exhibit GC-2018-001-E1-10.06 (protected), Vol. 14 at 23-41.

APPENDIX I – LIST OF EXCLUSION REQUESTS AND RECOMMENDATIONS

Heavy Plate	
Exclusion Requests⁹⁸	Tribunal Recommendations
<i>Acier Wirth Steel</i>	
CSA G40.21 44W/50W or ASTM A572.50 3-4 ⁷	Deny
ASTM A516-70 / ASME SA516-70 normalized, 3” to 4” thick	Grant in part
<i>Edmonton Steel Plate Ltd.</i>	
Hot-rolled steel plate manufactured to the following specifications and grades that is vacuum degassed and having a material chemistry that includes a sulfur content of less than or equal to 0.003% and/or a phosphorus content of less than or equal to 0.012%: - ASME SA-516/SA-516M or ASTM A-516/A-516M, - ASME SA-299/SA-299M or ASTM A-299/A-299M, and - ASME SA-537/SA-537M or ASTM A-537/A-537M	Grant in part
Hot-rolled steel plate produced to the following specifications and grades: ASME SA-516/SA-516M or ASTM A-516/A-516M, Normalized ASME SA-299/SA-299M or ASTM A-299/A-299M, Normalized ASME SA-537/SA-537M or ASTM A-537/A-537M, Normalized and with the dimensions listed in the request	Grant in part
<i>Hanwa Canada Corporation</i>	
Hot-rolled carbon steel plate manufactured to: ASME SA516/SA-516M or ASTM A-516/A-516M, ASME SA285/SA-285M or ASTM A-285/A-285M, ASME SA299/SA-299M or ASTM A-299/A-299M, ASME SA537/SA-537M or ASTM A-537/A-537M, ASME SA515/SA-515M or ASTM A-515/A-515M, ASME SA841/SA-841M or ASTM A-841/A-841M, which is normalized, vacuum degassed while molten and has a Sulphur content of equal to or less than 0.004% and a Phosphorus content of equal to or less than 0.015%	Grant in part
<i>Olbert Metal Sales Limited</i>	
A 1066 / A 1066M High-Strength Low-Alloy Structural Steel Plate Produced by Thermo-Mechanical Controlled Process	Grant
Certain SA/A516 Grade 70 Normalized Steel Carbon Plate [No. 1]	Grant in part
Certain SA/A516 Grade 70 Normalized Steel Carbon Plate [No. 2]	Grant
Certain SA/A516 Grade 70 Normalized Steel Carbon Plate [No. 3]	Grant

98. The descriptions in this column are taken from field No. 1 in the Product Exclusion Request Form.

<i>Nippon Steel Corporation</i>	
Hot-rolled carbon steel plate manufactured to: ASME SA516/SA-516M or ASTM A-516/A-516M, ASME SA285/SA-285M or ASTM A-285/A-285M, ASME SA299/SA-299M or ASTM A-299/A-299M, ASME SA537/SA-537M or ASTM A-537/A-537M, ASME SA515/SA-515M or ASTM A-515/A-515M, ASME SA841/SA-841M or ASTM A-841/A-841M, which is normalized, vacuum degassed while molten and has a Sulphur content of equal to or less than 0.004% and a Phosphorus content of equal to or less than 0.015%.	Grant in part
<i>Salzgitter Mannesmann International (Canada) Inc.</i>	
Hot-rolled carbon steel plate and high-strength low-alloy plate, made to any steel specification or grade, that is greater than 3.375 inches in thickness, and greater than 72 inches in width	Deny
Hot-rolled carbon steel plate in grade A516-70 normalized (heat-treated) with a thickness of greater than 3.28 inches	Grant
Hot-rolled carbon steel plate manufactured to: ASME SA-516/SA-516M or ASTM A-516/A-516M ASME SA-285/SA-285M or ASTM A-285/A-285M ASME SA-299/SA-299M or ASTM A-299/A-299M ASME SA-537/SA-537M or ASTM A-537/A-537M ASME SA-515/SA-515M or ASTM A-515/A-515M ASME SA-841/SA-841M or ASTM A-841/A-841M which is both vacuum-degassed while molten and has a sulfur content of maximum 0.005 percent and phosphorus content of maximum 0.017 percent	Grant in part
Hot-rolled carbon steel plate manufactured to: ASME SA-516/SA-516M or ASTM A-516/A-516M ASME SA-285/SA-285M or ASTM A-285/A-285M ASME SA-299/SA-299M or ASTM A-299/A-299M ASME SA-537/SA-537M or ASTM A-537/A-537M ASME SA-515/SA-515M or ASTM A-515/A-515M that is made by a process that includes vacuum degassing while molten and is normalized (heat-treated)	Deny
Hot-rolled carbon steel plate manufactured to: ASME SA-516/SA-516M or ASTM A-516/A-516M ASME SA-285/SA-285M or ASTM A-285/A-285M ASME SA-299/SA-299M or ASTM A-299/A-299M ASME SA-537/SA-537M or ASTM A-537/A-537M ASME SA-515/SA-515M or ASTM A-515/A-515M that is normalized (heat-treated) and has a sulfur content of less than 0.003 percent	Grant in part
Hot rolled carbon steel plate for use in the manufacture of oil and gas line pipe (also known as skelp)	Grant
Hot-rolled carbon steel plate in grade API X70 PSL2 and/or CSA Gr.483 Cat 2 for use in the manufacture of oil and gas line pipe	Grant

Stainless Steel Wire	
Requests	Tribunal Recommendations
<i>Bohne Spring Industries Limited</i>	
Stainless Steel Spring Wire Grades - Type 302, 17-7PH	Deny
<i>Exocor</i>	
Executive 439TiCu Stainless Steel Wire	Grant
<i>The Furnace Belt Company Limited</i>	
314, 304 and 35/19cb stainless steel wire	Deny
<i>Precision Metals</i>	
Stainless Steel welding wires, thick wires and fine wires	Deny
<i>RGL Reservoir Management Inc.</i>	
Intermediate-annealed shaped stainless steel wire. ("Shaped Wire")	Deny
<i>Voestalpine Bohler Welding Canada</i>	
Stainless steel cold drawn wires specifically for use as a welding wire in either the GMAW or GTAW process	Deny

APPENDIX II – LIST OF PARTICIPANTS**Domestic Producers**

Algoma Steel Inc.

Central Wire Industries

Importers/Exporters/Others

Acier Wirth Steel

Nippon Steel Corporation

Salzgitter Mannesmann International (Canada) Inc.

Bohne Spring Industries Limited

Edmonton Steel Plate Ltd.

Exocor

Hanwa Canada Corporation

LNG Canada Development Inc.

Olbert Metal Sales Limited

Precision Metals / Venus Wire Industries Pvt. Ltd.

RGL Reservoir Management Inc.

The Furnace Belt Company Limited

Voestalpine Bohler Welding

Viraj Profiles Limited

Unions

United Steelworkers

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**APPENDIX III – ADMINISTRATIVE TRIBUNALS SUPPORT SERVICE OF
CANADA STAFF INVOLVED IN THE INQUIRY**

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Josée St-Amand, Analyst

LEGAL SERVICES

Peter Jarosz, Lead Counsel

Sarah Perlman, Counsel

COMMUNICATIONS AND EDITORIAL SERVICES

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Martin Pelchat, Communications Officer/Editor

Sara Pelletier, Senior Registrar Officer