

## 駐加拿大代表處經濟組 函

受文者：經濟部國際貿易局

發文日期：中華民國109年12月31日

發文字號：加經字第1090000506號

速別：普通件

密等及解密條件或保密期限：

附件：如文（加經1090000506\_Attach1.pdf、加經1090000506\_Attach2.pdf）

主旨：有關加拿大國際貿易法庭通知就原產地或出口國為我國等國之部分石油管產品完成反傾銷案落日複查程序事，敬請查照。

說明：

- 一、依據加國國際貿易法庭（CITT）登記處副處長Stephanie Duffy本（109）年12月30日致本組電子郵件辦理；另本組本年7月23日加經字第1090000316號函諒邀察及。
- 二、CITT已依據加國「特別進口措施法」（SIMA）完成本案落日複查程序，裁定對我國、印度、印尼、南韓、泰國、土耳其、烏克蘭及越南進口之部分石油管產品（Oil Country Tubular Goods）將續課徵反傾銷稅5年；此外，依據加拿大邊境服務署（CBSA）認定，CITT原判決終止失效並不會導致自菲律賓進口之本案相關產品繼續傾銷，CITT爰裁定撤銷對自菲律賓進口產品之原判決。詳情請參閱CITT本案通知信函及裁定判決理由書（如附件1、2）。
- 三、謹查，本案遭課徵反傾銷稅石油管產品之稅號一般列於：



7304.29.00.11、7304.29.00.19、7304.29.00.21、  
7304.29.00.29、7304.29.00.31、7304.29.00.39、  
7304.29.00.41、7304.29.00.49、7304.29.00.51、  
7304.29.00.59、7304.29.00.61、7304.29.00.69、  
7304.29.00.71、7304.29.00.79、7304.39.00.60、  
7304.59.00.50、7306.29.00.11、7306.29.00.19、  
7306.29.00.21、7306.29.00.29、7306.29.00.31、  
7306.29.00.39、7306.29.00.61、7306.29.00.69、  
7306.30.00.20、7306.30.00.30、7306.50.00.00、  
7306.90.00.10、7306.90.00.20項下。

四、另查，CBSA曾於本年5月25日就本案完成價格複查（re-investigation），並更新相關涉案出口廠商相關產品之正常價格及出口價格，我國計中鴻鋼鐵、鑫陽鋼鐵及天聲工業等3家廠商獲CBSA給予特定正常價格（請參閱本組本年5月25日加經字第1090000212號函）；至其他廠商之進口產品則將以出口價格加計37.4%之反傾銷稅。

正本：經濟部國際貿易局

副本：電2081/0161文  
交04換01章

駐加拿大代表處經濟組

寄件者: CITT-TCCE <CITT-TCCE@tribunal.gc.ca>

寄件日期: 2020 年 12 月 30 日 16:07

主旨: RR-2019-006 / Oil Country Tubular Goods / Orders and Reasons

On February 24, 2020, the Canadian International Trade Tribunal issued a notice of expiry review informing all interested parties that it was initiating an expiry review of its finding made on April 2, 2015, in Inquiry No. NQ 2014 002, concerning the dumping of oil country tubular goods, which are casing, tubing and green tubes made of carbon or alloy steel, welded or seamless, heat-treated or not heat-treated, regardless of end finish, having an outside diameter from 2 3/8 inches to 13 3/8 inches (60.3 mm to 339.7 mm), meeting or supplied to meet American Petroleum Institute (API) specification 5CT or equivalent and/or enhanced proprietary standards, in all grades, excluding drill pipe, pup joints, couplings, coupling stock and stainless steel casing, tubing or green tubes containing 10.5 percent or more by weight of chromium, originating in or exported from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, the Republic of India, the Republic of Indonesia, the Republic of the Philippines, the Republic of Korea, the Kingdom of Thailand, the Republic of Turkey, Ukraine and the Socialist Republic of Vietnam. This notice was published in Part I of the March 6, 2020, edition of the Canada Gazette. The Tribunal issued a further revised notice and expiry review schedule on October 21, 2020.

The Tribunal has now completed its expiry review pursuant to subsection 76.03(3) of the Special Import Measures Act (SIMA). The Tribunal has made orders in accordance with paragraphs 76.03(12)(a) and 76.03(12)(b) of SIMA. Enclosed is a copy of the orders with reasons in English. Please note that the French version of the reasons will be sent to you as soon as possible.

**Stephanie Duffy**

Deputy Registrar

Secretariat to the Canadian International Trade Tribunal

Administrative Tribunals Support Service of Canada / Government of Canada

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Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Dumping and Subsidizing

## ORDERS AND REASONS

Expiry Review No. RR-2019-006

Oil Country Tubular Goods

*Orders and reasons issued  
Wednesday, December 30, 2020*

Canada

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IN THE MATTER OF an expiry review, pursuant to subsection 76.03(3) of the *Special Import Measures Act*, of the finding made by the Canadian International Trade Tribunal on April 2, 2015, in Inquiry No. NQ-2014-002, concerning:

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

**ORDERS**

The Canadian International Trade Tribunal, pursuant to subsection 76.03(3) of the *Special Import Measures Act* (*SIMA*), has conducted an expiry review of the finding made on April 2, 2015, in Inquiry No. NQ-2014-002, concerning the dumping of oil country tubular goods, which are casing, tubing and green tubes made of carbon or alloy steel, welded or seamless, heat-treated or not heat-treated, regardless of end finish, having an outside diameter from 2 3/8 inches to 13 3/8 inches (60.3 mm to 339.7 mm), meeting or supplied to meet American Petroleum Institute (API) specification 5CT or equivalent and/or enhanced proprietary standards, in all grades, excluding drill pipe, pup joints, couplings, coupling stock and stainless steel casing, tubing or green tubes containing 10.5 percent or more by weight of chromium, originating in or exported from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, the Republic of India, the Republic of Indonesia, the Republic of the Philippines, the Republic of Korea, the Kingdom of Thailand, the Republic of Turkey, Ukraine and the Socialist Republic of Vietnam.

Pursuant to paragraph 76.03(12)(b) of *SIMA*, the Tribunal hereby continues its finding in respect of the aforementioned goods originating in or exported from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, the Republic of India, the Republic of Indonesia, the Republic of Korea, the Kingdom of Thailand, the Republic of Turkey, Ukraine and the Socialist Republic of Vietnam.

Pursuant to paragraph 76.03(12)(a) of *SIMA*, and following the determination of the President of the Canada Border Services Agency that the expiry of the finding is unlikely to result in the continuation or resumption of dumping of the aforementioned goods originating in or exported from the Republic of the Philippines, the Tribunal hereby rescinds its finding with respect to those goods.

Georges Bujold  
\_\_\_\_\_  
Georges Bujold  
Presiding Member

Jean Bédard  
\_\_\_\_\_  
Jean Bédard  
Member

Susan D. Beaubien  
\_\_\_\_\_  
Susan D. Beaubien  
Member

Place of Hearing: Ottawa, Ontario  
Date of Hearing: October 29, 2020  
Tribunal Panel: Georges Bujold, Presiding Member  
Jean Bédard, Member  
Susan D. Beaubien, Member  
Support Staff: Martin Goyette, Lead Counsel  
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**PARTICIPANTS:****Domestic Producers**

Tenaris Canada

Welded Tube of Canada Corp

Evraz Inc. NA Canada

**Importers/Exporters/Others**Vallourec Canada Inc.  
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## STATEMENT OF REASONS

### INTRODUCTION

[1] The Canadian International Trade Tribunal, pursuant to subsection 76.03(3) of the Special Import Measures Act,<sup>1</sup> has conducted an expiry review of the finding made on April 2, 2015, in Inquiry No. NQ-2014-002, concerning the dumping of oil country tubular goods (OCTG) originating in or exported from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei), the Republic of India (India), the Republic of Indonesia (Indonesia), the Republic of the Philippines (Philippines), the Republic of Korea (South Korea), the Kingdom of Thailand (Thailand), the Republic of Turkey (Turkey), Ukraine and the Socialist Republic of Vietnam (Vietnam) (the subject goods).

[2] Under *SIMA*, findings of injury or threat of injury and the associated protection in the form of anti-dumping duties expire five years from the date of the findings or, if one or more orders continuing the findings have been made, the date of the last order made under paragraph 76.03(12)(b), unless the Tribunal initiates an expiry review before that date. The finding in Inquiry No. NQ-2014-002 was scheduled to expire on April 1, 2020.

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

### PROCEDURAL BACKGROUND

[4] The Tribunal issued its notice of expiry review on February 24, 2020. This notice triggered the initiation of an investigation by the Canada Border Services Agency (CBSA) on February 25, 2020, to determine whether the expiry of the Tribunal's finding was likely to result in the continuation or resumption of dumping.

[5] On July 23, 2020, the CBSA determined, pursuant to paragraph 76.03(7)(a) of *SIMA*, that the expiry of the finding:

- (a) was likely to result in the continuation or resumption of dumping of subject goods originating in or exported from Chinese Taipei, India, Indonesia, South Korea, Thailand, Turkey, Ukraine and Vietnam; and
- (b) was unlikely to result in the continuation or resumption of dumping of subject goods originating in or exported from the Philippines.

[6] In view of the CBSA's determination, pursuant to subsections 76.03(9) and (10) of *SIMA*, the goods in respect of which the Tribunal must determine whether the expiry of the finding is likely to result in injury or retardation no longer include OCTG from the Philippines.<sup>2</sup> On July 24, 2020, following the CBSA's determination, the Tribunal began its expiry review.

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<sup>1</sup> R.S.C., 1985, c. S-15 [*SIMA*].

<sup>2</sup> Indeed, as discussed below, in these circumstances, paragraph 76.03(12)(a) of *SIMA* directs the Tribunal to make an order rescinding the finding in respect of goods from the Philippines.

[7] The period of review (POR) for the Tribunal's expiry review covered three calendar years, from January 1, 2017, to December 31, 2019, as well as the interim period of January 1 to June 30, 2020 (interim 2020). For comparative purposes, information was also collected and presented for the interim period of January 1 to June 30, 2019 (interim 2019).

[8] Domestic producers and importers of OCTG, and foreign producers of the subject goods, were asked to respond to questionnaires from the Tribunal.<sup>3</sup> The Tribunal received three responses to the domestic producers' questionnaire from companies stating that they produce like goods in relation to the subject goods. The Tribunal received 18 completed replies to the importers' questionnaire, including two from domestic producers. Finally, the Tribunal did not receive any replies to the foreign producers' questionnaire.

[9] Using the questionnaire replies and other information on the record, staff of the Secretariat to the Canadian International Trade Tribunal prepared public and protected versions of the investigation report.

[10] Tenaris Canada (Tenaris), Evraz Inc. NA Canada (Evraz), Welded Tube of Canada (Welded Tube) (domestic producers of OCTG), and the United Steelworkers (a trade union) filed written submissions in support of a continuation of the finding.

[11] The Ministry of Trade of the Republic of Indonesia and the Ministry for Development of Economy, Trade and Agriculture of Ukraine filed written submissions opposing the continuation of the finding.

[12] Vallourec Canada Inc., PT Citra Tubindo Tbk., and Pacific Tubulars Ltd. filed notices of participation but did not make submissions in this proceeding.

[13] This expiry review was conducted during the COVID-19 pandemic. On July 21, 2020, the Tribunal issued a Practice Direction in which it indicated that all in-person hearings were cancelled until December 31, 2020, due to COVID-19-related restrictions. On September 22, 2020, the Tribunal wrote to the parties to invite comments on how it should proceed with the hearing, which had been scheduled to commence on October 19, 2020, as an in-person hearing. The Tribunal submitted different options to the parties and invited them to provide comments on draft procedures for the conduct of the hearing which it circulated to them.

[14] On October 9, 2020, the Tribunal informed the parties of its decision as to the format of the hearing. Pursuant to rule 25.1 of the *Canadian International Trade Tribunal Rules*,<sup>4</sup> the Tribunal decided that the hearing would proceed by way of written submissions, with the exception of the parties' closing arguments, which the Tribunal heard during a videoconference held on October 29, 2020.

<sup>3</sup> With the exception of the foreign producers' questionnaire, the Tribunal issued combined questionnaires for this review and for Expiry Review No. RR-2019-005: *Oil Country Tubular Goods* (10 December 2020), RR-2019-005 (CITT) [*OCTG I*]. The similarities in the product definitions in the two reviews and their closely connected timelines made it possible to issue combined questionnaires, thereby limiting the burden placed on the parties' and Tribunal's resources, particularly in the context of the prevailing COVID-19 pandemic.

<sup>4</sup> SOR/91-499 [*Rules*].

## PRODUCT

### Product definition

[15] The subject goods are defined as follows:

Oil country tubular goods, which are casing, tubing and green tubes made of carbon or alloy steel, welded or seamless, heat-treated or not heat-treated, regardless of end finish, having an outside diameter from 2 3/8 inches to 13 3/8 inches (60.3 mm to 339.7 mm), meeting or supplied to meet American Petroleum Institute (API) specification 5CT or equivalent and/or enhanced proprietary standards, in all grades, excluding drill pipe, pup joints, couplings, coupling stock and stainless steel casing, tubing or green tubes containing 10.5 percent or more by weight of chromium, originating in or exported from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei), the Republic of India, the Republic of Indonesia, the Republic of the Philippines, the Republic of Korea, the Kingdom of Thailand, the Republic of Turkey, Ukraine and the Socialist Republic of Vietnam

[16] In light of the CBSA's determination that the expiry of the finding was unlikely to result in the continuation or resumption of dumping of the subject goods originating in or exported from the Philippines, and pursuant to subsections 76.03(9) and (10) of *SIMA* cited above, as well as subsection 76.03(8) and paragraph 76.03(12)(a),<sup>5</sup> the Tribunal need not consider subject goods from the Philippines in its analysis.

### Product information<sup>6</sup>

[17] As noted in previous proceedings, OCTG are carbon or alloy steel pipes used for the exploration and exploitation of oil and natural gas. The product definition includes non-prime and secondary pipes (limited service products). It also includes intermediate or in-process tubular goods (known in the industry as "green tubes") that require additional processing, such as threading, heat treatment or testing, before they can meet the requirements of a particular API specification.

[18] Casing is used to prevent the walls of an oil or gas well from collapsing, both during drilling and after completion of the well. Tubing is used within the casing to convey oil and gas to the surface. Both casing and tubing must be able to withstand outside pressure and internal yield pressures within an oil or gas well. They must also have sufficient joint strength to hold their own

<sup>5</sup> Subsection 76.03(8) of *SIMA* provides that if the President of the CBSA determines that the expiry of the finding in respect of any goods is unlikely to result in a continuation or resumption of dumping, the Tribunal shall not take those goods into account in assessing the cumulative effect of dumping or subsidizing under the subsection. Furthermore, paragraph 76.03(12)(a) directs the Tribunal to make an order rescinding the finding in respect of goods referred to in subsection 76.03(8).

<sup>6</sup> See Inquiry No. NQ-2014-002 at paras. 20-22. See also the product information provided in the CBSA's Statement of Reasons in its expiry review, Exhibit RR-2019-006-03A at paras. 25-26:

[25] The product definition includes "green tubes." Green tubes, as they are commonly referred to in the OCTG industry, are intermediate or in-process tubing and casing which require additional processing, such as threading, heat-treatment or testing, before they can be used as fully finished oil and gas well casing or tubing in end-use applications.

[26] Pup joints, which are essentially short lengths of OCTG used for spacing in a drill string, are excluded where their length is 12 feet or below (with a three inch tolerance), as defined in the API 5CT specification.

weight and must be equipped with threads sufficiently tight to contain the well pressure where lengths are joined.

[19] OCTG meet or are supplied to meet API specification 5CT, in all applicable grades, including but not limited to H40, J55, K55, M65, N80, L80, L80 HC, L80 Chrome 13, L80 LT, L80 SS, C90, C95, C110, P110, P110 HC, P110 LT, T95, T95 HC and Q125, or proprietary grades manufactured as substitutes for these specifications.<sup>7</sup> The most common grades of low-strength casing and tubing are J55, K55 and H40. Heat-treated grades (e.g. N80, P110, and L80) are more sophisticated grades of pipe and are used in deeper wells and more demanding environments, such as low-temperature services, sour service and heavy oil recovery.

### **PRELIMINARY ISSUE – CONFIDENTIAL INFORMATION IN THE INVESTIGATION REPORT**

[20] In its case brief<sup>8</sup> and in comments it submitted with respect to the conduct of the Tribunal's hearing,<sup>9</sup> the Government of Indonesia, through its Ministry of Trade, took issue with the redaction of confidential information in the public version of the investigation report.

[21] The Government of Indonesia considered that the public version of the investigation report did not disclose critical information, such as economic indicators of the domestic industry, and did not provide non-confidential summaries of the confidential information in sufficient detail to allow a reasonable understanding of the substance of the information submitted in confidence. The Government of Indonesia submitted that the redaction of confidential information in the investigation report impaired its ability to understand the impact of the finding and that it was in violation of Articles 6.4 and 6.5 of the WTO Anti-dumping Agreement.<sup>10</sup> It requested that the Tribunal reissue the public version of the investigation report to address this issue.

<sup>7</sup> These proprietary grades are not necessarily API-certified, but, rather, are made to proprietary standards which exceed API specification 5CT.

<sup>8</sup> Exhibit RR-2019-006-J-01 at paras. 3-5.

<sup>9</sup> Government of Indonesia's comments on the hearing proceeding mechanism of 29 September 2020.

<sup>10</sup> World Trade Organization, Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 [WTO Anti-dumping Agreement], online: <[https://www.wto.org/english/docs\\_e/legal\\_e/19-adp.pdf](https://www.wto.org/english/docs_e/legal_e/19-adp.pdf)>. Article 6.4 provides that:

The authorities shall whenever practicable provide timely opportunities for all interested parties to see all information that is relevant to the presentation of their cases, that is not confidential as defined in paragraph 5, and that is used by the authorities in an anti-dumping investigation, and to prepare presentations on the basis of this information.

Article 6.5 provides that information which is by nature confidential, or which is provided on a confidential basis by parties to an investigation shall, upon good cause shown, be treated as such by the authorities. In addition, Article 6.5.1, which the Government of Indonesia did not explicitly refer to but which it alluded to in its comments, provides that:

The authorities shall require interested parties providing confidential information to furnish non-confidential summaries thereof. These summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. In exceptional circumstances, such parties may indicate that such information is not susceptible of summary. In such exceptional circumstances, a statement of reasons why summarization is not possible must be provided.

[22] The WTO Appellate Body has held that Article 6.5.1 of the WTO Anti-dumping Agreement – which requires the provision of non-confidential summaries – serves to balance the goals of protecting confidentiality and ensuring the transparency of the investigation process.<sup>11</sup>

[23] The Tribunal notes that these obligations and objectives are addressed by the statutory framework for trade remedy cases in Canada. Moreover, the Tribunal is of the view that, in the circumstances of this expiry review, it applied the relevant provisions of domestic law governing the protection of confidential information in a manner which complies with Canada's international obligations.

[24] Following the Tribunal's practice, the data presented in the investigation report are largely based on information that is properly designated as confidential by respondents to the Tribunal's questionnaires, which the Tribunal has a statutory obligation to protect. In this case, the domestic industry is comprised of three domestic producers, two of which account for the majority of the production of the domestic like goods, and a limited number of importers responded to the Tribunal's questionnaire. Consequently, it was not possible to reveal aggregated data based on questionnaire responses for most indicators without compromising the confidentiality of the information of one or more respondents. The particulars of the current expiry review therefore considerably limited that Tribunal's ability to publicly disclose in its investigation report generic or consolidated summaries of the confidential information provided by few participants.

[25] Despite these case-specific constraints, the Tribunal believes that it has met its transparency obligations by placing as much information as possible in the public version of its investigation report. Moreover, on October 7, 2020, the Tribunal issued a revision of the public version of the investigation report which disclosed some information that had previously been redacted. Accordingly, the Tribunal gave serious consideration to the concerns expressed by the Government of Indonesia and attempted, taking into account its statutory obligations, to limit the extent of the redaction of confidential information.

[26] Finally, pursuant to subsection 45(3) of the *Canadian International Trade Tribunal Act*<sup>12</sup> and subrule 16(1) of the *Rules*, information that has been designated as confidential may be disclosed to counsel who have provided the required declaration and undertaking. Thus, it was open to the Government of Indonesia to obtain access to confidential information by retaining counsel to act on its behalf in these proceedings. As the Tribunal has previously stated, "[p]roviding access to confidential information in this way allows the Tribunal to obtain maximum voluntary participation from interested parties, ensure transparency and, at the same time, protect confidential information."<sup>13</sup>

## LEGAL FRAMEWORK

[27] The Tribunal is required, pursuant to subsection 76.03(10) of *SIMA*, to determine whether the expiry of the finding in respect of the subject goods is likely to result in injury or retardation for the domestic industry.<sup>14</sup> Pursuant to subsection 76.03(12), if the Tribunal determines that the expiry of

<sup>11</sup> WTO Appellate Body Report, *EC – Fasteners*, WT/DS397/AB/R at para. 542; see also WTO Panel Report, *Mexico – Steel Pipes and Tubes*, WT/DS331/R at para. 7.380.

<sup>12</sup> R.S.C. 1985, c. 47 (4th Supp.).

<sup>13</sup> *Certain Fabricated Industrial Steel Components* (25 May 2017), NQ-2016-004 (CITT) at para. 25.

<sup>14</sup> Subsection 2(1) of *SIMA* defines "injury" as "material injury to the domestic industry" and "retardation" as "material retardation of the establishment of a domestic industry" [emphasis added]. Given that there is currently an established domestic industry, the issue of whether the expiry of the finding is likely to result in retardation does not arise in this expiry review.

the finding is unlikely to result in injury, it is required to rescind it. However, if it determines that the expiry of the finding is likely to result in injury, the Tribunal is required to continue the finding, with or without amendment.

[28] Before proceeding with its analysis of the likelihood of injury, the Tribunal must first determine what constitutes “like goods”. Once that determination has been made, the Tribunal must determine what constitutes the “domestic industry”.

[29] The Tribunal must also determine whether it is appropriate to assess the likely effect of the resumed or continued dumping of the subject goods from all subject countries cumulatively, i.e. whether it will conduct a single analysis of the likely effect or a separate analysis for each subject country.

### LIKE GOODS AND CLASSES OF GOODS

[30] In order for the Tribunal to determine whether the resumed or continued dumping of the subject goods is likely to cause material injury to the domestic producers of like goods, it must determine which domestically produced goods, if any, constitute like goods in relation to the subject goods. The Tribunal must also assess whether there is, within the subject goods and the like goods, more than one class of goods.<sup>15</sup>

[31] Subsection 2(1) of *SIMA* defines “like goods”, in relation to any other goods, as follows:

(a) goods that are identical in all respects to the other goods, or

(b) in the absence of any goods described in paragraph (a), goods the uses and other characteristics of which closely resemble those of the other goods.

[32] In deciding the issue of like goods when goods are not identical in all respects to the other goods, the Tribunal typically considers a number of factors, including the physical characteristics of the goods, such as composition and appearance, and their market characteristics, such as substitutability, pricing, distribution channels, end uses and whether the goods fulfill the same customer needs.<sup>16</sup>

[33] In the original inquiry (Inquiry No. NQ-2014-002), the Tribunal determined that domestically produced OCTG of the same description as the subject goods were like goods in relation to the subject goods.<sup>17</sup> In addition, the Tribunal found that there was a single class of goods.<sup>18</sup>

[34] Evraz and Welded Tube argued that the Tribunal should maintain the same conclusions in this expiry review, as none of the facts underlying the Tribunal’s prior decisions on this issue have changed. No other party made arguments on these issues.

<sup>15</sup> Should the Tribunal determine that there is more than one class of goods in this expiry review, it must conduct a separate injury analysis and make a decision for each class that it identifies. See *Noury Chemical Corporation and Minerals & Chemicals Ltd. v. Pennwalt of Canada Ltd. and Anti-dumping Tribunal*, [1982] 2 F.C. 283 (FC).

<sup>16</sup> See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at para. 48.

<sup>17</sup> Inquiry No. NQ-2014-002 at para. 34.

<sup>18</sup> *Ibid.* at para. 45.

[35] There is, in the present expiry review, no argument suggesting or evidence indicating changes in the underlying facts that led to the above conclusions in Inquiry No. NQ-2014-002. This being the case, the Tribunal is satisfied that there is no information on the record of the present expiry review that would warrant departing from its original conclusions on these issues.

[36] The Tribunal therefore finds that domestically produced OCTG are like goods in relation to the subject goods and that there is a single class of goods.

## DOMESTIC INDUSTRY

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

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

[38] The Tribunal must therefore determine whether there is a likelihood of injury to the domestic producers as a whole or those domestic producers whose production represents a major proportion of the total production of like goods.<sup>19</sup>

[39] The evidence indicates that there were three known Canadian producers of like goods during the POR,<sup>20</sup> namely, Evraz, Welded Tube, and Tenaris.<sup>21</sup> Accordingly, the Tribunal finds that these producers constitute the domestic industry within the meaning of subsection 2(1) of *SIMA* and will assess whether the expiry of the finding is likely to result in injury on this basis.

## CUMULATION

[40] Subsection 76.03(11) of *SIMA* provides that the Tribunal shall make an assessment of the cumulative effect of the dumping or subsidizing of goods “that are imported into Canada from more than one country if the Tribunal is satisfied that an assessment of the cumulative effect would be appropriate taking into account the conditions of competition” between the goods imported into

<sup>19</sup> The term “major proportion” means an important or significant proportion of total domestic production of the like goods and not necessarily a majority of these goods: *Japan Electrical Manufacturers Assn. v. Canada (Anti-Dumping Tribunal)*, [1986] F.C.J. No. 652 (FCA); *McCulloch of Canada Limited and McCulloch Corporation v. Anti-Dumping Tribunal*, [1978] 1 F.C. 222 (FCA); Panel Report, *China – Automobiles (US)*, WT/DS440/R, at para. 7.207; Appellate Body Report, *EC – Fasteners (China)*, WT/DS397/AB/R, at paras. 411, 412, 419; Panel Report, *Argentina – Poultry (Brazil)*, WT/DS241/R, at paras. 7.341-7.344.

<sup>20</sup> At the time of Inquiry No. NQ-2014-002, there was a fourth domestic producer, Energex Tube. However, it has since ceased production of like goods. See *Seamless Carbon or Alloy Steel Oil and Gas Well Casing* (28 November 2018), RR-2017-006 (CITT) [*Seamless Casing*] at para. 35.

<sup>21</sup> During the POR, the Tenaris companies in Canada consisted of Algoma Tubes Inc. (the only domestic producer of seamless OCTG), Prudential Steel ULC (which makes OCTG by the electric resistance welding method), Tenaris Global Services (Canada) Inc., and Hydril Canadian Company Inc. Tenaris Global Services (Canada) Inc. provides management, sales and marketing support to the production facilities of Algoma Tubes Inc. and Prudential Steel ULC. Hydril Canadian Company LP provides specialized threading and coupling operations to produce accessories and premium connections for OCTG casing and tubing.

Canada from any of the countries and the goods from any other countries or between those goods and the like goods.

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

[42] In the context of an expiry review, the assessment of conditions of competition is forward-looking.<sup>22</sup> Moreover, consistent with subsection 76.03(8) of *SIMA*, the Tribunal's analysis is limited to the countries for which the CBSA has found a likelihood of resumed or continued dumping, i.e. all subject countries in Inquiry No. NQ-2014-002 except for the Philippines.

[43] In Inquiry No. NQ-2014-002, the Tribunal found that the conditions of competition between the subject goods and domestic OCTG justified conducting the Tribunal's injury analysis on a cumulated basis. The Tribunal therefore proceeded with a single injury analysis to determine the effect of the dumping of the subject goods from all of the subject countries upon the domestic industry.<sup>23</sup>

[44] Likewise, the Tribunal finds that a cumulative assessment of the effect of the dumped goods from all subject countries in Inquiry No. NQ-2014-002 except for the Philippines, which the Tribunal does not include in this analysis, is appropriate in the present expiry review. In doing so, the Tribunal has taken the evidence on the relevant conditions of competition into account.

[45] First, the evidence establishes that the subject goods from different subject countries are interchangeable among themselves and with the like goods. OCTG are commodity products that compete against one another on the basis of price.<sup>24</sup> Both domestic and imported OCTG are manufactured to API specification 5CT and are intended for the same end uses and fulfill the same customer needs.<sup>25</sup> The importers who responded to the Tribunal's questionnaires did not identify any distinguishing features between subject goods from different subject countries and, for the most part, they reported that domestic like goods and subject goods of the same specifications and grade were interchangeable.<sup>26</sup> All of this underscores the high degree of substitutability between the subject goods and the like goods.

<sup>22</sup> *Hot-rolled Carbon Steel Plate* (13 March 2020), RR-2019-001 (CITT) at para. 35.

<sup>23</sup> Inquiry No. NQ-2014-002 at para. 92.

<sup>24</sup> Exhibit RR-2019-006-B-07 at para. 12; Exhibit RR-2019-006-C-03 at para. 22.

<sup>25</sup> Exhibit RR-2019-006-C-03 at para. 12.

<sup>26</sup> Exhibit RR-2019-006-16.15 at 5; Exhibit RR-2019-006-16.18A at 5; Exhibit RR-2019-006-16.19 at 6; Exhibit RR-2019-06-16.28A at 5; Exhibit RR-2019-006-16.29 at 5. In addition, in Inquiry No. NQ-2014-002, the Tribunal found that seamless OCTG and welded OCTG are, in the vast majority of instances, fully interchangeable. Inquiry No. NQ-2014-002 at para. 42. In the same vein, in the recent expiry review in *OCTG I*, the Tribunal found that domestically produced OCTG (both seamless and welded) are like goods in relation to the subject goods and that they constitute a single class of goods.



[46] The evidence on record shows that the domestic like goods and subject goods from most of the subject countries continued to compete in the Canadian market during the POR.<sup>27</sup> Moreover, the evidence shows that the domestic like goods and the subject goods from all subject countries are likely to compete in the same market in the event of a rescission of the order.

[47] Moreover, the evidence on record in this expiry review shows that the domestic like goods and OCTG from other sources, including subject imports, continue to be sold through similar distribution channels in Canada. OCTG are typically sold through distributors, though in some instances they are sold directly by the Canadian producers to end users or are imported by end users themselves.<sup>28</sup> In addition, imported OCTG from all sources are typically shipped to Canada via ocean freight. Both imported and domestically produced OCTG are shipped within Canada to distributors and end users by the same methods, i.e. truck and rail, through stocking points throughout Western Canada.<sup>29</sup>

[48] Finally, no relevant differences in the timing of the arrival of imports from different subject countries were alleged that could undermine the Tribunal's conclusion concerning the conditions of competition.

[49] The Government of Ukraine, through the Ministry for Development of Economy, Trade and Agriculture of Ukraine, argued that the Tribunal should separately analyze the subject goods from Ukraine in its analysis and should exclude these goods from its order in the event that it continued the finding. The Government of Ukraine argued in this respect that Ukraine's ability to compete on world markets has been undermined by the ongoing conflict with Russia and the fact that it has lost part of its production facilities, including in the metallurgical sector, which affected its steel production and export capacities.

[50] The Tribunal is unable to accept the Government of Ukraine's submission in this respect. The Government of Ukraine's arguments focus on the economic and market conditions faced by Ukrainian producers *in their domestic market*. In contrast, the Tribunal's cumulation analysis concerns the conditions of competition between subject and like goods *in the Canadian market*.<sup>30</sup> In this regard, the Government of Ukraine does not allege differences, in terms of the factors relevant to the issue of cumulation, between Ukrainian OCTG and domestic OCTG or OCTG from the other subject countries. The Government of Ukraine does not contest that, when subject goods from Ukraine enter the Canadian market, they compete with like goods and with subject goods from other countries under similar conditions.

[51] The Government of Ukraine further argued that Ukraine had a negligible share of Canada's total imports of OCTG before measures were imposed, and it has ceased exporting to Canada since the finding, which means that it is unlikely that subject imports of Ukrainian origin would increase in quantities that would cause or threaten to cause injury to the Canadian industry.

[52] In support of this argument, the Government of Ukraine argued that most of Ukraine's exports are destined for the European Union given the preferential access they receive and

<sup>27</sup> See also Inquiry No. NQ-2014-002 at para. 33. There were no imports of the subject goods from Ukraine during the POR.

<sup>28</sup> Inquiry No. NQ-2014-002 at para. 86; Exhibit RR-2019-006-05, Tables 2 and 3; Exhibit RR-2019-006-B-07 at para. 12.

<sup>29</sup> Exhibit RR-2019-006-C-03 at paras. 20-21.

<sup>30</sup> *Cold-rolled Steel* (7 January 2019), NQ-2018-002 (CITT) at para. 41.

geographical proximity, and that Canada and North America are not priority markets for Ukrainian exports. The Government of Ukraine further argued that Ukraine's steelmaking capacity has decreased due to the conflict with Russia, in addition to being reduced due to the COVID-19 pandemic. Finally, the Government of Ukraine submitted that Ukraine's worldwide exports of OCTG decreased in 2019 compared to 2018, further decreased in the first half of 2020 compared to the first half of 2019 and have remained below 2014 levels.<sup>31</sup>

[53] A cumulated injury analysis presupposes that competition exists between subject goods of different origins. As stated above, the Tribunal's assessment of the conditions of competition in an expiry review is a prospective one, focused on the situation in the event of a rescission of the finding.<sup>32</sup> As such, the Tribunal does not consider the question of whether the goods were imported into the Canadian market while the finding is in place as conclusive. On the other hand, the Tribunal has, in past expiry reviews, decided not to cumulate subject goods from a country where it found that subject goods from that country were not likely to be present on the Canadian market in the event of a rescission of the finding, or were only likely to be present in negligible quantities.<sup>33</sup>

[54] In the present expiry review, the Tribunal finds that despite the presence of factors that may be affecting steel production in Ukraine, more than negligible volumes of subject goods from Ukraine are likely to be present in the Canadian market if the finding is rescinded.

[55] In this regard, evidence on the record reveals that notwithstanding the impact of the COVID-19 pandemic and of the geopolitical situation described by the Government of Ukraine, Ukrainian producers continue and are projected to continue to produce and export significant quantities of OCTG.<sup>34</sup> The data provided by the Government of Ukraine to the Tribunal in support of its position supports this view, as they show that Ukraine's global exports of OCTG in 2017-2019 increased from 2015-2016 levels and represented 76 to 84 percent of Ukraine's OCTG export volumes in 2014.<sup>35</sup>

[56] The Government of Ukraine reported a significant decrease in Ukraine's total exports of OCTG in interim 2020 compared to 2019, but the volumes exported in interim 2020 remained significant. These trends in Ukraine's total exports submitted by the Government of Ukraine are similar to the trends that can be observed from the data submitted by the domestic producers,<sup>36</sup> and appear to broadly correlate with the movements in demand over the POR that have affected all Canadian and foreign producers.

[57] Moreover, on balance, the Tribunal is persuaded that Ukraine remains an export-oriented OCTG-producing country and that an open Canadian market would be an attractive market for Ukrainian producers and exporters. The evidence demonstrates that Ukrainian producers continue to

<sup>31</sup> Exhibit RR-2019-006-H-01 at 2-6.

<sup>32</sup> *Hot-rolled Carbon Steel Plate* (13 March 2020), RR-2019-001 (CITT) at paras. 35, 44.

<sup>33</sup> See *Carbon Steel Welded Pipe* (24 July 2001), RR-2000-002 (CITT) at 7; *Hot-rolled Carbon Steel Plate* (9 January 2008), RR-2007-001 (CITT) at paras. 56-59; *Refined Sugar* (1 November 2010), RR-2009-003 (CITT) at paras. 96-102; *Refined Sugar* (28 September 2012), RR-2009-003R (CITT) at para. 54.

<sup>34</sup> Exhibit RR-2019-006-H-01 at 3; Exhibit RR-2019-006-A-08 (protected) at 5-6; Exhibit RR-2019-006-B-12 (protected) at para. 28; Exhibit RR-2019-006-B-14 (protected) at 85-87.

<sup>35</sup> Exhibit RR-2019-006-H-01 at 3.

<sup>36</sup> Exhibit RR-2019-006-A-08 (protected) at 5-6; Exhibit RR-2019-006-B-12 (protected), para. 28; Exhibit RR-2019-006-B-14 (protected) at 85-87.

export significant volumes to the United States and that Interpipe, an important Ukrainian producer, maintains an interest in the North American market.<sup>37</sup>

[58] The evidence also shows that Ukraine has generally increased its focus on exports, becoming more export-oriented than previously.<sup>38</sup> If anything, the weak Ukrainian and European markets, together with the ban on imports of certain OCTG from Ukraine imposed by Russia,<sup>39</sup> all operate to increase the attractiveness of the Canadian market to Ukrainian exporters, especially if access to that market is not subject to the disciplines of anti-dumping measures, as would occur if the finding were rescinded.

[59] Finally, this conclusion is reinforced by the evidence showing that imports of subject goods from Ukraine were increasing during the period immediately preceding the finding in Inquiry No. NQ-2014-002 but disappeared from the market during the POR. The fact that there were no imports of subject goods during the POR suggests that Ukrainian exporters were unable to sell the subject goods at undumped prices in Canada, indicating that the finding had the effect of restricting the volume of dumped imports from Ukraine during the POR. This suggests that imports from Ukraine are likely to resume should the finding be rescinded.

[60] In light of the foregoing, the Tribunal will conduct its injury analysis on the basis of a cumulated assessment of subject goods from Chinese Taipei, India, Indonesia, South Korea, Thailand, Turkey, Ukraine and Vietnam.

## LIKELIHOOD OF INJURY ANALYSIS

[61] An expiry review is forward-looking.<sup>40</sup> It follows that evidence from the period during which an order or a finding was being enforced is relevant insofar as it bears upon the prospective analysis of whether the expiry of the order or finding is likely to result in injury.<sup>41</sup>

[62] There is no presumption of injury in an expiry review. Findings must be based on positive evidence, in compliance with domestic law and consistent with the requirements of the WTO.<sup>42</sup> In the context of an expiry review, positive evidence can include evidence based on past facts that tend to support forward-looking conclusions.<sup>43</sup>

[63] In making its assessment of likelihood of injury, the Tribunal has consistently taken the view that the focus should be on circumstances that can reasonably be expected to exist in the near to

<sup>37</sup> Exhibit RR-2019-006-B-14 (protected) at 85-87; Exhibit RR-2019-006-B-09 at 837; Exhibit RR-2019-006-B-13 at 21.

<sup>38</sup> Exhibit RR-2019-006-A-10 (protected) at para. 18; Exhibit RR-2019-006-A-08 at 6.

<sup>39</sup> Evidence before the Tribunal indicates that Russia has banned imports of at least some OCTG from Ukraine since April 2019. Exhibit RR-2019-006-A-11 at 5-20; Exhibit RR-2019-006-A-08 (protected) at 20; Exhibit RR-2019-006-B-13 at 21.

<sup>40</sup> *Certain Dishwashers and Dryers* (procedural order dated 25 April 2005), RR-2004-005 (CITT) at para. 16.

<sup>41</sup> *Copper Pipe Fittings* (17 February 2012), RR-2011-001 (CITT) at para. 56. In *Thermoelectric Containers* (9 December 2013), RR-2012-004 (CITT) [*Thermoelectric Containers*] at para. 14, the Tribunal stated that the analytical context pursuant to which an expiry review must be adjudged often includes the assessment of retrospective evidence supportive of prospective conclusions. See also *Aluminum Extrusions* (17 March 2014), RR-2013-003 (CITT) [*Aluminum Extrusions*] at para. 21.

<sup>42</sup> *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (16 August 2006), RR-2005-002 (CITT) at para. 59.

<sup>43</sup> *Thermoelectric Containers* at para. 14; *Aluminum Extrusions* at para. 21.

medium term. This is generally considered to be a period that can extend to up to 24 months from the date on which the finding or order would be rescinded.<sup>44</sup>

[64] In their submissions, Evraz and Welded Tube refer to the events that are likely to occur within this timeframe, whereas Tenaris suggests that the Tribunal could look beyond 24 months in the current exceptional circumstances caused by the COVID-19 pandemic.<sup>45</sup> The Tribunal considers that it would be particularly difficult to make any meaningful projection beyond the next 24 months given the current market conditions. Consequently, the Tribunal finds that its usual timeframe of 24 months for its prospective analysis is appropriate in the context of the present expiry review.

[65] Due to the small number of domestic producers and importers involved in this expiry review, and in order to protect the confidential information of the respondents, most of the imports, sales, pricing, production and financial data, even in aggregate form, cannot be publicly disclosed. The Tribunal's statutory obligation to protect confidential information on the record applies equally to the contents of its statement of reasons.<sup>46</sup>

[66] Subsection 37.2(2) of the *Special Import Measures Regulations*<sup>47</sup> lists factors that the Tribunal may consider in addressing the likelihood of injury in cases where the CBSA has determined that there is a likelihood of continued or resumed dumping. The factors that the Tribunal considers relevant in this expiry review are discussed in detail below.

#### **Preliminary issue: treatment of OCTG exported by Hyundai and Borusan**

[67] On April 30, 2020, pursuant to paragraph 76.1(1)(a) of *SIMA*, the Minister of Finance requested that the CBSA review certain decisions under subsection 41(1) of *SIMA* in respect of individual exporters with *de minimis* margins of dumping, having regard to the recommendations and rulings of the Dispute Settlement Body (DSB) of the WTO in *Canada — Welded Pipe*.<sup>48</sup> In *Canada — Welded Pipe*, a WTO panel found that Canada acted inconsistently with the obligation under Article 5.8 of the WTO Anti-Dumping Agreement to immediately terminate an original investigation with respect to exporters with *de minimis* margins of dumping. The DSB subsequently recommended that Canada bring its measures into conformity with its international obligations.

[68] The Minister's request specifically referred to the CBSA's original dumping investigation concerning the subject goods, including OCTG exported by Hyundai Hysco Co., Ltd. (Hyundai), and Borusan Mannesmann Boru Sanayi ve Ticaret A.Ş (Borusan). This dumping investigation triggered the conduct of the Tribunal's inquiry pursuant to subsection 42 of *SIMA* which resulted in the finding that is under review in the present proceedings.

[69] The Minister further stated that the outcome of the CBSA's review pursuant to section 76.1 of *SIMA* may require that the Tribunal review its finding in Inquiry No. NQ-2014-002. As such, pursuant to paragraph 76.1(1)(b) of *SIMA*, the Minister requested that the Tribunal review its finding in Inquiry No. NQ-2014-002 having regard to the DSB recommendations and rulings in *Canada — Welded Pipe*.

<sup>44</sup> See e.g. *Seamless Casing* at para. 47; *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate* (31 October 2019), RR-2018-007 (CITT) at para. 42.

<sup>45</sup> Exhibit RR-2019-006-A-02 (protected), para. 53; Exhibit RR-2019-006-A-01, para. 53.

<sup>46</sup> See paragraphs [23].

<sup>47</sup> S.O.R./84-927 [Regulations]

<sup>48</sup> Panel Report, *Canada — Welded Pipe*, WT/DS482/R [Canada — Welded Pipe]; Exhibit RR-2019-006-A-15 at 3-4.

[70] Further to the Minister's request, the CBSA initiated its review of its final determinations of dumping on May 29, 2020.<sup>49</sup> The Tribunal initiated its own review of its finding pursuant to paragraph 76.1(1)(b) of *SIMA* on June 1, 2020.

[71] On August 7, 2020, the CBSA issued its decision in its review, pursuant to section 76.1(2)(b) of *SIMA*. The CBSA confirmed that the margins of dumping for Hyundai and Borusan during the period of inquiry in the dumping investigation were insignificant. The CBSA continued the final determination of dumping at which it arrived in the original investigation with respect to OCTG originating in or exported from South Korea and Turkey with the following amendments: the CBSA terminated the dumping investigation regarding OCTG exported from South Korea by Hyundai and OCTG exported from Turkey by Borusan.<sup>50</sup>

[72] Evraz, Welded Tube and Tenaris applied for judicial review of this decision to the Federal Court of Appeal. On August 25, 2020, the Tribunal decided to hold its review pursuant to section 76.1 of *SIMA* in abeyance pending disposition of the applications for judicial review filed in the Federal Court of Appeal with respect to the CBSA's decision in its review pursuant to section 76.1.<sup>51</sup>

[73] In view of these developments in the separate, but related, proceedings pursuant to section 76.1, the Tribunal examined the question of how it should treat goods from Hyundai and Borusan in the context of the present expiry review. Through questions addressed to the parties, the Tribunal sought submissions on this issue. The Tribunal considered the parties' responses to these questions as well as the arguments presented by the parties on this issue at the hearing.

[74] The Tribunal recognizes that there is some uncertainty as to the effect of a deemed CBSA decision pursuant to section 41 of *SIMA* in a context such as the present one. The issue has not been debated before the Tribunal; no party before the Tribunal has asked for the exclusion of goods from the two producers from its analysis or from its eventual order. In view of this, and having considered the issue, the Tribunal has decided to conduct its likelihood of injury analysis on the basis that OCTG exported by Hyundai and Borusan remains subject to its finding in Inquiry No. NQ-2014-002 and this expiry review.

[75] The Tribunal's mandate under subsection 76.03(10) of *SIMA* is to determine whether the expiry of the order or finding in respect of *the goods referred to in the CBSA's determination of likely resumed or continued dumping* in its own expiry review is likely to result in injury or retardation.<sup>52</sup> Thus, the CBSA's expiry review determination defines the goods which the Tribunal must consider as part of its own expiry review. In the present case, the CBSA's analysis and

<sup>49</sup> Exhibit RR-2019-006-A-15 at 81.

<sup>50</sup> *Ibid.* at 78.

<sup>51</sup> Exhibit RR-2019-006-A-15 at 94. On October 27, 2020, the domestic producers informed the Tribunal that the Federal Court of Appeal had consolidated their applications for judicial review with respect to the CBSA's determination. Exhibit RR-2019-006-B-15A.

<sup>52</sup> Furthermore, as noted above, footnote 5, subsection 76.03(8) and paragraph 76.03(12)(a) direct the Tribunal to, respectively, (i) not take into account goods for which the CBSA made a negative likelihood of dumping determination in assessing the cumulative effect of dumping; and (ii) rescind the finding in respect of those same goods. *A contrario*, this implies that the Tribunal's likelihood of injury analysis must take into account all goods for which the CBSA reached an affirmative likelihood of dumping determination.

determination that continued or resumed dumping is likely included goods exported by Hyundai and Borusan.<sup>53</sup>

[76] Section 2 (1) of *SIMA* provides that an order or finding, in relation to the Tribunal, means the following:

[A]n order or finding made by the Tribunal under section 43 or 44 that has not been rescinded under any of sections 76.01 to 76.1 and subsection 91(3) but, if the order or finding has been amended one or more times under any of section 75.3, subsections 75.4(8) and 75.6(7) and sections 76.01 to 76.1, as it was last amended.

[77] The CBSA's decision in its review pursuant to section 76.1 of *SIMA* of its determinations under section 41(1) of *SIMA* does not have the effect of amending the Tribunal's finding. Section 76.1 establishes one mechanism whereby *the Tribunal* may amend an order or finding, in light of recommendations and rulings of the WTO DSB in a dispute, upon receiving a request from the Minister of Finance. However, the review triggered through that mechanism is not yet reflected by a decision of the Tribunal to continue, amend or rescind the finding in issue, having regard to the outcome of the CBSA's review. As such, for the purposes of this expiry review, the Tribunal's finding in Inquiry No. NQ-2014-002 remains unchanged.

[78] Finally, no party has requested that the Tribunal exclude the goods exported by Hyundai and Borusan from the likelihood of injury analysis or from any consequential order, in the event that the Tribunal makes an affirmative determination concerning likelihood of injury.

[79] In short, goods exported by Hyundai and Borusan are covered by the CBSA's expiry review determination under 76.03(9). The Tribunal's finding has not been amended. Consequently, the Tribunal must consider these goods as part of its analysis in the present review. Any amendments to the Tribunal's finding that may be required as a result of the outcome of the CBSA's decision under section 76.1 of *SIMA* are properly the object of the Tribunal's related review pursuant to section 76.1 of *SIMA*. If necessary, this issue will be addressed in the context of that review.

### Changes in market conditions

[80] In order to assess the likely volumes and prices of the subject goods and their impact on the domestic industry if the finding is allowed to expire, the Tribunal will first consider changes in international and domestic market conditions.<sup>54</sup> These changes provide general context for the Tribunal's analysis.

#### Canadian market and global markets

[81] Canada is one of the world's largest producers of natural gas and of crude oil. As such, it is an important market for OCTG products. The Canadian OCTG market moves in tandem with oil and gas exploration and production and is closely tied to the number of operating rigs or wells at any given time. As oil and gas drilling increases, so does demand for OCTG. Rig or well count and

<sup>53</sup> The CBSA determination in its expiry review, dated August 7, 2020, predated its decision in its review under Section 76.1 of *SIMA*.

<sup>54</sup> See paragraph 37.2(2)(j) of the *Regulations*.

drilling activity are, in turn, influenced by the price of oil and gas, i.e. the higher the price, the more drilling activity occurs.<sup>55</sup>

[82] Perennial excess global steel capacity, largely attributable to massive production capacity in China, remains an important issue overhanging the Canadian and global steel markets, including for OCTG.<sup>56</sup>

[83] In *OCTG I*, a recent expiry review concerning certain OCTG from China, the Tribunal described relevant trends in global and Canadian market conditions pertaining to this product, as well as relevant changes to the Chinese market.

[84] The key evidence before the Tribunal in the present review is largely the same as that considered by the Tribunal in *OCTG I*, which proceeded in parallel to the present expiry review.<sup>57</sup> Thus, with respect to international and domestic market conditions, other than those in the subject countries, the Tribunal refers to its findings in *OCTG I*<sup>58</sup> and makes similar findings in this case.

[85] In essence, in *OCTG I*, the Tribunal noted that the Canadian and global OCTG markets are currently experiencing a significant downturn. This downturn results from low global oil prices (which because of transportation bottlenecks affecting Canadian oil exports, result in even lower Canadian oil prices), as well as the global economic slowdown caused by the COVID-19 pandemic. The pandemic and the containment measures imposed by governments worldwide in reaction to the pandemic have pushed the global economy into a deep recession, disrupting economic activity and affecting oil demand.

[86] In *OCTG I*, the Tribunal noted that the International Monetary Fund (IMF) predicts a contraction in the world economy in 2020, to be followed by a recovery in 2021. Forecasts for global OCTG demand show a significant decline in 2020 followed by improvement from 2022 onwards. However, these projections involve an unusually high degree of uncertainty, as they hinge on assumptions concerning the future evolution of the pandemic.

[87] Other developments noted by the Tribunal in *OCTG I* include the proliferation of trade measures on steel products and on OCTG in particular. These include the 25 percent tariff surcharge imposed in March 2018 by the United States on imports of steel products, including OCTG, from most countries pursuant to Section 232 of the *U.S. Trade Expansion Act of 1962*. At present, Canada is not subject to these tariff surcharges, and neither is South Korea. Instead, imports of steel from South Korea are subject to quotas. Moreover, the European Union has imposed safeguard measures on steel products, including seamless pipe, in the form of tariff-rate quotas based on historic volumes. These measures are set to remain in place until the end of June 2021.

[88] In *OCTG I*, from the evidence pertaining to market conditions, the Tribunal concluded as follows:

<sup>55</sup> *Seamless Casing* at paras. 51-52, cited in *OCTG I* at para. 40.

<sup>56</sup> *Seamless Casing* at para. 53; *OCTG I* at para. 41.

<sup>57</sup> The evidentiary record, arguments and issues before the Tribunal with respect to international and domestic market conditions largely overlapped between the two reviews. The Tribunal issued its order and Statement of Reasons in *OCTG I* on December 10, 2020, i.e. 20 days before its order in this expiry review.

<sup>58</sup> *OCTG I* at paras. 42-54.

... while there are indications of potential limited improvement in market conditions in 2021 and 2022 as compared to 2020, the domestic market is not likely to experience significant growth in the next 18-24 months. On balance, the current and foreseeable market conditions are likely to be such as to increase the domestic industry's vulnerability to the resumed or continued dumping and subsidizing of the subject goods.<sup>59</sup>

The Tribunal reiterates this finding in the context of this expiry review.

#### Domestic markets of the subject countries

[89] The forecasts for the domestic markets of the subject countries follow global trends. The IMF predicts an average contraction of 2.4 percent in the subject countries' gross domestic products (GDP) in 2020, followed by an increase of 5.5 percent in 2021.<sup>60</sup>

[90] The evidence on record shows that the national markets of the subject countries will face difficult conditions and low demand in the near term, consistent with global events. The declines in the oil and gas industry have impacted drilling activity globally. As a result, domestic demand for OCTG has declined in oil-producing subject countries, as has demand in the export markets of the subject countries.<sup>61</sup> In addition, the COVID-19 pandemic has had a severe impact on the national economies of the subject countries. Most national economies were set to grow before the COVID-19 pandemic but are now predicted to contract.

[91] Limited information was received by the Tribunal pertaining to the markets of individual subject countries. The relevant available information is summarized below.

#### India

[92] Prior to the COVID-19 outbreak, in October 2019, the IMF had forecast that India's GDP would increase by 7.0 percent in 2020.<sup>62</sup> In April 2020, the IMF revised this forecast indicating a 1.9 percent increase in GDP in 2020. In June 2020, the IMF further revised its forecast, projecting a 4.5 percent contraction in 2020 and a 6.0 percent increase in 2021.<sup>63</sup>

[93] The CBSA indicated that India's OCTG market is the sixth largest in the world.<sup>64</sup> Lockdown measures are reported to have led to a decline in the country's demand for oil and natural gas, the first time in 20 years that demand for oil declined year on year.<sup>65</sup> Oil and gas production declined. There were reports of delays in upstream oil exploration and production projects. The Oil and Natural Gas Corporation Limited, India's large state-owned oil company, reported that it was likely to cut its capital expenditures spending by 15 percent from its 2020 target.<sup>66</sup>

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<sup>59</sup> *Ibid.* at para. 54.

<sup>60</sup> Exhibit RR-2019-006-A-07 at 64.

<sup>61</sup> Exhibit RR-2019-006-A-08 (protected) at 20-21.

<sup>62</sup> Exhibit RR-2019-006-B-09 at 149.

<sup>63</sup> *Ibid.* at 59, 101, 287-288.

<sup>64</sup> Exhibit RR-2019-006-03A at para. 371.

<sup>65</sup> Exhibit RR-2019-006-B-09 at 69-71, 303, 306.

<sup>66</sup> Exhibit RR-2019-006-13.04A at 126, 159.



[94] Indian OCTG exporters confirmed in public documents that the COVID-19 pandemic and associated lockdowns impacted their operations and sales.<sup>67</sup> One of the producers, Indian Seamless Steels & Alloys Ltd., highlighted that the pandemic and lockdowns worldwide were likely to adversely impact demand for seamless tubes and steel, but indicated that supply chain issues and uncertainty in imports of seamless tubes may also create opportunity for the demand on the domestic market.<sup>68</sup>

### Indonesia

[95] According to the IMF's April 2020 economic outlook, Indonesia's GDP was forecast to grow by 0.5 percent in 2020 (compared to a 5.1 percent growth forecast by the IMF in October 2019) and by 8.2 percent in 2021.<sup>69</sup>

[96] As a result of COVID-19 containment measures, in the second quarter of 2020, for the first time in 20 years, Indonesia's economy contracted. Indonesia's economy was also expected to contract in the third quarter of 2020.<sup>70</sup>

[97] During the first six months of 2020, oil and gas production was below target as a result of low prices and the effects of the pandemic. The investment outlook for the Indonesian oil and gas sectors was also diminished.<sup>71</sup>

[98] Demand for steel, including for steel pipe used in oil and gas exploration, also dropped as a result of the pandemic.<sup>72</sup>

[99] Indonesia's crude oil output is reported to have been declining for years as key fields run dry. Production levels are set to continue declining due to the lack of sufficient replacement oilfields.<sup>73</sup> PT Citra Tubindo Tbk., an Indonesian OCTG producer, stated that throughout 2019, the oil and gas industry faced declining production, price instability, and low findings of new reserves. However, the company indicated, investment in the oil and gas sector would increase during the period 2019 to 2027, with new offshore and onshore projects being planned in order to meet increased production targets.<sup>74</sup>

### South Korea

[100] In October 2019, the IMF projected a 2.2 percent growth in South Korea's GDP in 2020. In April 2020, the IMF revised this projection to forecast a contraction of 1.2 percent in 2020 and a recovery of 3.4 percent in 2021.<sup>75</sup>

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<sup>67</sup> Exhibit RR-2019-006-B-09 at 356, 482.

<sup>68</sup> *Ibid.* at 482.

<sup>69</sup> *Ibid.* at 59, 149.

<sup>70</sup> *Ibid.* at 959-961.

<sup>71</sup> Exhibit RR-2019-006-13.04A at 3-4.

<sup>72</sup> *Ibid.* at 7-10.

<sup>73</sup> *Ibid.* at 11-14.

<sup>74</sup> Exhibit RR-2019-006-B-09 at 994.

<sup>75</sup> *Ibid.* at 59, 149.

[101] The CBSA noted that the domestic OCTG market in South Korea is rather insignificant. As a result, OCTG production is primarily destined to export markets.<sup>76</sup>

#### Chinese Taipei

[102] According to its April 2020 forecasts, the IMF anticipates that Chinese Taipei's GDP will contract by 4 percent in 2020, before recovering by 3.5 percent in 2020.<sup>77</sup>

[103] Domestic demand for OCTG in Chinese Taipei is small,<sup>78</sup> meaning that OCTG producers in Chinese Taipei rely heavily on export markets. Domestic crude oil production is low and decreased further in April 2020.<sup>79</sup>

#### Thailand

[104] In October 2019, the IMF forecast that Thailand's GDP would grow by 3.0 percent in 2020. Highlighting the effects of the COVID-19 pandemic, the IMF revised this forecast in April 2020, predicting a 6.7 percent contraction in 2020, followed by a 6.1 percent recovery in 2021.<sup>80</sup>

[105] According to Fastmarkets Bulletin Research (MBR), Thailand is a net importer of OCTG. Thailand's apparent domestic consumption of OCTG during the POR has decreased since the time of Inquiry No. NQ-2014-002, but was forecast to increase significantly in 2020, 2021 and 2022.<sup>81</sup>

[106] In April 2020, oil production in Thailand reached an all-time low.<sup>82</sup> By May 2020, the largest Thai producer of oil and gas, state-owned PTT Exploration and Production PLC, announced plans to cut investment by up to 15 percent due to the sharp drop in oil prices and weak demand for petrochemicals amid the COVID-19 pandemic.<sup>83</sup>

#### Turkey

[107] In October 2019, the IMF forecast that Turkey's GDP would grow by 3.0 percent in 2020.<sup>84</sup> This forecast was revised in April 2020, with the IMF forecasting that Turkey's GDP would contract by 5.0 percent in 2020 before increasing by 5.0 percent in 2021.<sup>85</sup>

[108] Turkey has seen a dramatic worsening of macroeconomic conditions in recent years.<sup>86</sup> The Turkish lira has depreciated significantly, hitting all time lows in 2018 and, despite attempts by the Central Bank of the Republic of Turkey to keep the currency stable, again in 2020.<sup>87</sup>

<sup>76</sup> Exhibit RR-2019-006-03A at paras. 496-497.

<sup>77</sup> Exhibit RR-2019-006-B-09 at 59.

<sup>78</sup> Exhibit RR-2019-006-A-08 (protected) at 14.

<sup>79</sup> Exhibit RR-2019-006-13.04 at 348; Exhibit RR-2019-006-03A, para. 327.

<sup>80</sup> Exhibit RR-2019-006-B-09, at 149.

<sup>81</sup> Exhibit RR-2019-006-A-08 (protected) at 16.

<sup>82</sup> Public Exhibit RR-2019-006-13.04A at 353-357, 380.

<sup>83</sup> Exhibit RR-2019-006-B-09 at 1276.

<sup>84</sup> *Ibid.* at 148.

<sup>85</sup> *Ibid.* at 58.

<sup>86</sup> *Ibid.* at 148.

<sup>87</sup> *Ibid.* at 1255-1265; Exhibit RR-2019-006-13.04A at 396.

[109] Turkey's OCTG producers face major competition from imports within their domestic market and rely significantly on exports.<sup>88</sup>

#### Ukraine

[110] The Tribunal has noted some developments with respect to Ukraine's production of the subject goods.<sup>89</sup>

[111] In October 2019, the IMF forecast that Ukraine's GDP would grow by 3 percent in each of 2020 and 2021.<sup>90</sup> The IMF revised this outlook in April 2020, forecasting a 7.7 percent contraction in 2020 followed by a 3.6 percent recovery in 2021.<sup>91</sup>

[112] Interpipe reported that in the first half of 2019, its pipe segment and OCTG business were under pressure due to weakened demand caused by a slump in overall drilling activity in Ukraine and overstocking by domestic OCTG users. Other reasons noted were decreasing pipe sales to the United States and the European Union, and an adverse pricing environment.<sup>92</sup> Interpipe's OCTG sales recovered somewhat in June and July 2020 compared to prior months, due to export sales.<sup>93</sup>

[113] Gas consumption has been declining in Ukraine. Gas production decreased by 1.4 percent in 2019, due to the largest domestic gas producer revising its strategy for the exploration and production of gas.<sup>94</sup>

#### Vietnam

[114] In its October 2019 economic outlook, the IMF forecast that Vietnam's GDP would grow by 6.5 percent in real terms in 2020.<sup>95</sup> The IMF adjusted this projection downwards in April 2020, to forecast a 2.7 percent growth in GDP in 2020 and a 7 percent growth in 2021.<sup>96</sup>

[115] Fitch Solutions projected, in April 2020, that demand for refined fuels in Vietnam would contract by 1 percent in 2020, down from a previous forecast of a 3 percent expansion.<sup>97</sup> Demand for oil and petrol had already declined by more than 30 percent at the time due to the COVID-19 pandemic, resulting in high inventories.<sup>98</sup>

[116] Prior to the pandemic, state-owned Vietnam Oil and Gas Group (PetroVietnam) had forecast its production output to decrease by 10 percent per year until 2025 as a result of depleting mature fields and a lack of new exploration and investment.<sup>99</sup> In March 2020, PetroVietnam announced that it planned to cut crude oil output by at least 19 percent in 2020 – with further cuts possible in light of

<sup>88</sup> Exhibit RR-2019-006-A-08 (protected) at 12.

<sup>89</sup> See paragraphs [52].

<sup>90</sup> Exhibit RR-2019-006-B-09 at 148.

<sup>91</sup> *Ibid.* at 58.

<sup>92</sup> Exhibit RR-2019-006-13.04A at 422; Exhibit RR-2019-006-B-09 at 1292.

<sup>93</sup> Exhibit RR-2019-006-B-09 at 1317, 1322.

<sup>94</sup> Exhibit RR-2019-006-13.04A at 424.

<sup>95</sup> Exhibit RR-2019-006-B-09 at 149.

<sup>96</sup> *Ibid.* at 59.

<sup>97</sup> Exhibit RR-2019-006-13.04A at 439.

<sup>98</sup> Exhibit RR-2019-006-B-09 at 1327-1328.

<sup>99</sup> Exhibit RR-2019-006-13.04A at 428-429.

low oil prices – and would switch to purchasing oil to take advantage of oil prices below its costs of production.<sup>100</sup> Apart from the financial impact of the COVID-19 pandemic,<sup>101</sup> PetroVietnam's oil and gas exploration and production projects were impacted by employment and equipment delivery delays.<sup>102</sup> In addition, in July 2020, PetroVietnam decreased its proposed budget for oil and gas projects in view of the double impact caused by the pandemic and low oil prices.<sup>103</sup>

[117] In March 2020, Jadestone Energy Inc., a Singaporean gas producer, announced the cancellation of all 2020 capital expenditure spending to develop the Nam Du and U Minh offshore gas fields in Vietnam. The company continues to await government approvals for the project, which are unlikely to be brought onstream until late 2022, at the earliest.<sup>104</sup>

### Likely import volume of the subject goods

[118] Paragraph 37.2(2)(a) of the *Regulations* directs the Tribunal to consider the likely volume of the dumped goods if the finding is rescinded, and, in particular, whether there is likely to be a significant increase in the volume of imports of the dumped goods, either in absolute terms or relative to the production or consumption of like goods. This assessment includes the likely performance of the foreign industry, the potential for the foreign producers to produce goods in facilities that are currently used to produce other goods, evidence of the imposition of anti-dumping or countervailing measures in other jurisdictions, and whether measures adopted by other jurisdictions are likely to cause a diversion of the subject goods to Canada.<sup>105</sup>

[119] The domestic producers argue that subject imports would rapidly overwhelm the Canadian market if the finding is rescinded. Evraz and Welded Tube argued that this is supported by evidence of an increase in imports in the first half of 2020, at the start of an unprecedented market downturn.<sup>106</sup> Tenaris submitted that the subject goods would regain their pre-finding market share should the finding expire, or likely more, given the increased price sensitive market.

[120] The supporting parties submitted evidence to support their argument that, should the finding be rescinded, Canada would become the largest open market in the global OCTG market. This evidence demonstrates the subject countries' excess capacity, the weak demand forecasts for their national markets in the next 24 months, and the export orientation of the subject countries' producers.

[121] The Government of Ukraine argued that given the negligible volumes of imports from Ukraine before and after the imposition of measures, it is unlikely that imports from Ukraine would significantly increase if the finding were allowed to expire. The Government of Indonesia did not address the issue of likely import volumes in its submissions.

<sup>100</sup> *Ibid.* at 430-432.

<sup>101</sup> Exhibit RR-2019-006-B-09 at 1327.

<sup>102</sup> Exhibit RR-2019-006-13.04A at 430-432.

<sup>103</sup> Exhibit RR-2019-006-B-09 at 1330.

<sup>104</sup> Exhibit RR-2019-006-13.04A at 427.

<sup>105</sup> Paragraphs 37.2(2)(a), (d), (f), (h) and (i) of the *Regulations*.

<sup>106</sup> Evraz and Welded Tube also argued that the exporters' normal values were outdated in interim 2020. They note that the CBSA issued recalculated normal values in May 2020.

### Volume of subject goods during the POR

[122] Over the period of review, imports of subject goods only captured a small portion of the Canadian market, i.e. less than 1 or 2 percent.<sup>107</sup> However, in absolute terms, the volume of subject imports increased year over year, as well as in the interim period. The volume of subject imports increased by 12 percent (from 2,408 to 2,703 tonnes) in 2018 over 2017, by 229 percent (from 2,703 to 8,899 tonnes) in 2019 over 2018, and by 2,365 percent (from 202 to 4,979 tonnes) in interim 2020 over interim 2019.<sup>108</sup> These increases are notable in a market that contracted year over year during the same period and contracted 35 percent over the period 2017 to 2019 and 19 percent in interim 2020 compared to interim 2019.<sup>109</sup>

[123] In relative terms, the volume of subject imports represented a small proportion of the domestic production and of the sales of domestic production during the POR, but these ratios grew over the course of the POR and in interim 2020.<sup>110</sup>

### Excess capacity

[124] Steel production, including OCTG production, is highly capital-intensive with high fixed costs. Manufacturers must operate at a high level of production capacity to recuperate these fixed costs.<sup>111</sup> This creates an incentive to export when home market demand is low, as is currently the case.

[125] Evidence before the Tribunal indicates the producers in the subject countries are experiencing significant excess capacity. MBR reported that these producers have notably low capacity utilization rates. Their capacity utilization is not expected to improve markedly in 2021.<sup>112</sup>

[126] Some producers in the subject countries have recently increased their OCTG capacity despite operating at low capacity utilization rates. During the POR, SeAH Holdings (Vietnam)<sup>113</sup> and Surya Roshni Group (India)<sup>114</sup> brought online new pipe facilities that increased their production capacity for subject goods. Interpipe (Ukraine)<sup>115</sup> also invested to increase its OCTG production capacity.

[127] The production capacity reported by MBR encompasses only seven out of the eight subject countries considered by the Tribunal in its analysis. It also does not include all producers holding a licence for API specification 5CT.<sup>116</sup> Thus, this evidence likely understates total production capacity in the subject countries. Nevertheless, according to the available MBR data, and consistent as well with Simdex data on the record, the production capacity in the subject countries is several times that

<sup>107</sup> Exhibit RR-2019-006-05A at Table 10.

<sup>108</sup> *Ibid.* at Tables 6, 7.

<sup>109</sup> Exhibit RR-2019-006-05A at Tables 10, 11.

<sup>110</sup> Exhibit RR-2019-006-06 (protected) at Table 9.

<sup>111</sup> See e.g. Exhibit RR-2019-006-03A at paras. 274-275; *Seamless Casing* at para. 66.

<sup>112</sup> Exhibit RR-2019-006-22.01 (protected) at 29; Exhibit RR-2019-006-A-08 (protected) at 3-19.

<sup>113</sup> Exhibit RR-2019-006 B-09 at 839.

<sup>114</sup> *Ibid.* at 821.

<sup>115</sup> *Ibid.* at 833.

<sup>116</sup> Exhibit RR-2019-006-A-07 at 5-13; Exhibit RR-2019-006-B-09 at 1653-1665.

of the entire Canadian market. Moreover, the excess capacity alone surpasses total OCTG demand in the Canadian market.<sup>117</sup>

[128] In addition, the capacity figures mentioned above do not reflect the potential additional capacity available at facilities that have the ability to switch production from non-subject to subject goods, such as those that hold API-5L licences or produce other tubular products,<sup>118</sup> should there be increased opportunities to export OCTG.

[129] As noted above, even before the recent downturn in market conditions, producers in several subject countries suffered from low or declining market demand. The current market downturn is likely to add to existing excess capacity.

#### Export orientation of the subject countries

[130] Evidence on record supports the domestic producers' allegations concerning the strong export orientation of the producers in the subject countries.

[131] As the Tribunal found in Inquiry No. NQ-2014-002, there is limited demand in the home markets of several of the subject countries.<sup>119</sup> Data from MBR Tracker indicate that domestic consumption accounted for only a portion of domestic production in the subject countries in 2019. As discussed above, IMF forecasts and other evidence suggest that demand for OCTG is expected to remain low or even decrease in subject country markets. As such, subject country producers are likely to export a majority of their production.<sup>120</sup> Moreover, as noted above, generally speaking, OCTG production is capital-intensive, which fosters exports. In addition, in the case of OCTG from India, Ukraine and Vietnam, global export volumes have increased over the period of review.<sup>121</sup>

[132] While no foreign producer participated in the Tribunal's inquiry, information on the record with respect to specific subject producers further indicates that exports are important to their operations. For instance, Interpipe (Ukraine), PT Citra Tubindo Tbk. (Indonesia), and SeAH (Vietnam and South Korea) describe their export business strategies in publicly available documents submitted to the Tribunal.<sup>122</sup>

[133] The export orientation of producers in the subject countries is exacerbated by China's massive excess capacity, production, and export strategy.<sup>123</sup> These producers are facing competition from Chinese imports not only on world markets but also on their home markets.<sup>124</sup> Evidence on

<sup>117</sup> Exhibit RR-2019-006-05A, Table 10; Exhibit RR-2019-006-22.01 (protected) at 29; Exhibit RR-2019-006-A-08 (protected) at 3-19; RR-2019-006-B-10 at 1877-1878.

<sup>118</sup> Exhibit RR-2019-006-A-08 (protected) at 5-19; Exhibit RR-2019-006-A-07 at 11-27; Exhibit RR-2019-006-B-09 at 1653-1665.

<sup>119</sup> *OCTG II* at paras. 224-225.

<sup>120</sup> Exhibit RR-2019-006-A-02 (protected) at para. 82; Exhibit RR-2019-006-A-08 (protected) at 4.

<sup>121</sup> Exhibit RR-2019-006-B-09 at 1693-1694, 1700, 1711-1712, 1715, 1733; Exhibit RR-2019-006-A-08 (protected) at 6, 8, 18.

<sup>122</sup> Exhibit RR-2019-006-B-09 at 998, 631; Exhibit RR-2019-006-B-13 at 21.

<sup>123</sup> *OCTG I* at paras. 58-60; *Seamless Casing* at paras. 65-66; *Oil Country Tubular Goods* (2 March 2015), RR-2014-003 (CIIT) at paras. 54-55 [Expiry Review No. RR-2014-003]; *Certain Steel Goods* (3 April 2019), GC-2018-001 (CIIT) [*Certain Steel Goods*] at 12-13.

<sup>124</sup> Exhibit RR-2019-006-03A, paras. 278-279; Exhibit RR-2019-006-B-09 at 1780, 1783, 1785-1791, 1798-1799, 1801, 1807-1808, 1810-1811, 1818-1824, 1828, 1846, 1855.

record demonstrates that South Korea and Indonesia are top markets for Chinese pipe and tube.<sup>125</sup> China accounts for the largest share of imports of pipe and tube into Chinese Taipei, Vietnam and Indonesia, and the second largest into Thailand.<sup>126</sup> In addition, evidence shows that Turkish imports of Chinese pipe are increasing rapidly.<sup>127</sup>

[134] Overall, the evidence indicates that subject producers are likely to continue seeking export markets.

Attractiveness of the Canadian market

[135] Canada remains a leading export market for several of the subject countries.<sup>128</sup>

[136] The United States, Russia, Canada and China are the four largest OCTG markets in the world.<sup>129</sup> With the exception of China, they all have measures in place against OCTG from one or more of the subject countries.

[137] The U.S. measures imposed pursuant to Section 232 of the *Trade Expansion Act of 1962* create a significant risk of diversion of OCTG and other energy tubular goods from the U.S. market.<sup>130</sup> The European Union's safeguard measures imposed in February 2019 add to this risk of diversion.<sup>131</sup> Moreover, as noted above, evidence before the Tribunal indicates that Russia has banned imports of at least some OCTG from Ukraine since April 2019.<sup>132</sup>

[138] In addition, there are several measures against OCTG and other pipe products from subject countries in other markets.<sup>133</sup>

[139] A rescission of the finding would increase the attractiveness of the Canadian market to subject country exporters as, unlike other markets, it would not be subject to the disciplines of anti-dumping or other measures.

[140] Moreover, given the subject country producers' strong reliance on exports, and home market competition with low-priced Chinese imports, it is likely that subject country producers would seek out markets with measures against Chinese OCTG, such as is the case in Canada.<sup>134</sup>

[141] The Tribunal finds that Canada will remain an attractive market for the subject countries.

<sup>125</sup> Exhibit RR-2019-006-B-09 at 1822, 1829.

<sup>126</sup> *Ibid.* at 1829, 1847, 1856, 1815.

<sup>127</sup> *Ibid.* RR-2019-006-B-09 at 1801, 1786-1791.

<sup>128</sup> *Ibid.* at 645, 824, 827, 831.

<sup>129</sup> Exhibit RR-2019-006-28.01 (protected) at 18; Exhibit RR-2019-006-A-08 (protected) at 25.

<sup>130</sup> Exhibit RR-2019-006-27.02 at 928-933.

<sup>131</sup> Exhibit RR-2019-006-A-07 at 71-118; Exhibit RR-2019-006-27.02 at 963-999.

<sup>132</sup> Exhibit RR-2019-006-A-08 (protected) at 20; Exhibit RR-2019-006-A-11 at 5-20; Exhibit RR-2019-006-B-13 at 21.

<sup>133</sup> Exhibit RR-2019-006-05 at Table 51; Exhibit RR-2019-006-B-01 at para. 168; Exhibit RR-2019-006-B-09 at 1862-1875; Exhibit RR-2019-006-A-03 at 12-16; Exhibit RR-2019-006-04 (protected) at paras. 412-414, 465-466, 537-539, 578-579, 623-625, 649-650, 672-673.

<sup>134</sup> Exhibit RR-2019-006-05 at Table 51. On December 10, 2020, the Tribunal continued the order in *OCTG I*, imposing anti-dumping and countervailing measures against certain OCTG from China.

### Conclusion on likely volumes

[142] In sum, the Tribunal finds that producers of subject goods have considerable available production capacity, remain export-oriented, and are likely to face challenging market conditions in their home markets and in global export markets. Further, they have demonstrated a continued interest in the Canadian market and face trade remedies and other import measures in other jurisdictions.

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

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

[144] The Tribunal must consider whether, if the finding is allowed to expire, the dumping of the subject goods is likely to significantly undercut the prices of the like goods, depress those prices, or suppress them by preventing increases in those prices that would likely have otherwise occurred.<sup>135</sup> In this regard, the Tribunal distinguishes the price effects of the subject goods from any price effects that would likely result from other factors affecting prices.

[145] In previous OCTG cases, the Tribunal found that OCTG are a commodity product for which price is an important factor in purchasing decisions and that, accordingly, price becomes the primary consideration affecting purchasing decisions.<sup>136</sup>

[146] The evidence on the record of the present expiry review indicates that these conclusions remain valid. For example, Mr. Coffin and Mr. Smith of Evraz stated that “OCTG is purchased by distributors and end users on the basis of price. The lowest-priced bid for these products will usually win among the qualified bids that meet the purchaser’s minimum requirements.”<sup>137</sup> Mr. Hanley of Welded Tube provided a similar description of the importance of price in purchasing decisions, stating that OCTG ultimately compete with one another on price.<sup>138</sup>

[147] The witness statements submitted to the Tribunal support the view that there is considerable price transparency in the Canadian OCTG market, and that due to current market conditions, purchasers are even more price-sensitive than in the past, as they are focused on paying the lowest price.<sup>139</sup> As such, domestic producers do not benefit from a price premium for their products and are forced to compete on price with imported OCTG, including the subject goods.<sup>140</sup> This situation is attributable to a small and competitive OCTG distribution network, which negotiates pricing with the domestic producers based on its knowledge of import pricing.<sup>141</sup>

<sup>135</sup> Paragraph 37.2(2)(b) of the *Regulations*.

<sup>136</sup> Expiry Review No. RR-2014-003 at paras. 122, 133; *Seamless Casing* at para. 73.

<sup>137</sup> Exhibit RR-2019-006-C-03 at para. 22.

<sup>138</sup> Exhibit RR-2019-006-B-07 at paras. 12, 24.

<sup>139</sup> Exhibit RR-2019-006-C-03 at paras. 17-18, 22-23; Exhibit RR-2019-006, B-07 at para. 12, 24.

<sup>140</sup> In Inquiry No. NQ-2014-002 at para. 126, the Tribunal found that “the evidence demonstrated that, while a small price premium of 2 to 3 percent may have existed prior to 2013, it no longer exists in the present market.” The absence of a price premium is also supported by confidential information on the Tribunal’s record.

<sup>141</sup> Exhibit RR-2019-006-C-03 at para. 17.



[148] As a result, even small volumes of unfairly priced goods in the market can establish a new low-pricing point with which distributors need to compete in order to maintain or gain sales. As Mr. Coffin and Mr. Smith of Evraz explain, “[i]f our price to one of our distributors is not competitive with the subject import pricing, these distributors will lose sales to their competitors who source the subject imports and will therefore have little choice but to demand better pricing from us or seek supply from elsewhere.”<sup>142</sup> As such, domestic producers face considerable pressure to offer lower prices to remain competitive in a contracting market.<sup>143</sup>

[149] The Tribunal finds that purchases of OCTG are made largely on the basis of price. Consequently, customers would, by and large, likely switch suppliers solely on this basis, particularly in the current and foreseeable market conditions.<sup>144</sup>

#### Price undercutting

[150] Limited volumes of sales of the subject goods occurred during the POR.<sup>145</sup> Data from the investigation report show that the average unit values of domestic sales from domestic production were lower than the average unit values of the subject goods in the market, as well as, in most instances, the average unit values of sales from other, non-subject, imports. The average unit value of subject imports was, for most of the POR, higher than that of non-subject imports. However, during the most recent interim period, January to June 2020, subject goods were priced significantly below domestic goods and non-subject imports.<sup>146</sup> Average unit value data collected by trade level, where comparisons exist, show similar results.

[151] Benchmark data show undercutting of domestic prices in about 63 percent of the points of competition with subject goods and 45 percent of the points of competition with non-subject imports, although the rates of undercutting are relatively limited and the associated volumes are relatively small in comparison to total sales in those same periods.<sup>147</sup>

[152] Having regard to the commodity nature of OCTG as well as the high price sensitivity of the current and likely market, it is reasonable to find, as in past cases,<sup>148</sup> that, in order to increase sales to Canada, the subject goods would have to compete at or below prevailing market prices. Particularly in view of the previously discussed current and foreseeable market conditions, it stands to reason that, if the order is rescinded, the subject goods will compete on price to gain market shares at the expense of the like goods and of the non-subject goods in the Canadian market.

[153] Indeed, the evidence indicates that, in the absence of the finding, subject country exporters would have the ability to lower prices in the Canadian market significantly, when compared to levels seen during the POR.

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<sup>142</sup> *Ibid.* at para. 16.

<sup>143</sup> Exhibit RR-2019-006-C-03 at paras. 16, 23; Exhibit RR-2019-006-B-07 at paras. 12, 24.

<sup>144</sup> The Tribunal reached the same conclusion in the *OCTG I* at paras. 66-68.

<sup>145</sup> Exhibit RR-2019-006-06A (protected) at Table 10.

<sup>146</sup> Exhibit RR-2019-006-6 (protected) at Table 21. It should be noted that questionnaire response rates were limited due, in part, to COVID-19 effects. The smaller sample size may have impacted certain results throughout the investigation report, including the reported average unit values of subject goods. Nonetheless, these results remain credible and the best available evidence.

<sup>147</sup> Exhibit RR-2019-006-05 at Table 42; Exhibit RR-2019-006-06 (protected) at Tables 36-38. Here too, the Tribunal notes the potential impact of the lower response rate to its questionnaires.

<sup>148</sup> See, for example, *Seamless Casing* at para. 80.

[154] As noted above, the evidence suggests that the subject goods can occasionally undercut the prices of like goods, even with duties in place. Moreover, during the POR, the average duties collected ranged from a high of 37 percent of the value for duty of the imported subject goods in 2017, to a low of 2 percent in interim 2020.<sup>149</sup> These figures, and the evidence concerning the limited volume of subject goods imported during the POR, suggest that, as argued by the domestic producers, subject goods cannot make significant inroads in the Canadian market without dumping.<sup>150</sup>

[155] A conclusion that the subject goods are likely to significantly undercut the price of the like goods if the finding is rescinded is also supported by the presence in the Canadian market of other low-priced (non-subject) OCTG which, for some benchmark products, significantly undercut the price of the like goods during the POR.<sup>151</sup> The same conclusion is also supported by a comparison of the average market pricing of individual non-subject countries<sup>152</sup> to the weighted average pricing of the domestic industry,<sup>153</sup> which also shows instances of significant undercutting. In order to increase sales volumes and market shares, subject goods would have to enter the Canadian market at or below prevailing market prices, and thus would have to match some already low third-country import prices. Considering the pricing pressure from end users, further price undercutting would likely result from subject goods competing among themselves and with non-subject goods. Put another way, a rescission of the finding would likely lead to a downward pricing spiral and race towards the lowest possible price.

[156] The domestic producers also submitted export pricing data for several subject countries obtained from available sources. They submit that these data demonstrate significant potential for subject good prices to decrease in the absence of the finding. The data submitted by the domestic producers show possible large margins of price undercutting by the subject goods.

[157] One set of data submitted by the parties is based on average export pricing, from UN Comtrade data, for all subject countries (excluding Chinese Taipei) to all destinations. The objective of Tenaris' exercise is to derive a hypothetical export price to Canada. Tenaris compares this figure to an estimated weighted average "normal value" for imports of all subject countries to Canada during the POR (derived from CBSA's enforcement statistics) to arrive at a likely price decrease of subject goods from

<sup>149</sup> Exhibit RR-2019-006-05A at Table 5.

<sup>150</sup> The Tribunal found a similar situation in *Seamless Casing*, at para. 82 and in *OCTG I* at para. 75. Evraz and Welded Tube noted that the CBSA conducted a normal value re-investigation that concluded on May 25, 2020. They argued that the subject imports made in interim 2020 benefited from long-outdated normal values.

<sup>151</sup> Exhibit RR-2019-006-05, Table 42; Exhibit RR-2019-006-6 (protected), Tables 36-38. Again, the Tribunal notes that benchmark pricing data are limited due to the lower response rate to its questionnaire in this expiry review. Evraz and Welded Tube (Exhibit RR-2019-006-B-01, at para. 202 and Exhibit RR-2019-006-B-09 at 1761-1762) submitted a comparison of the average unit values of subject imports of seamless casing and of welded casing during the second quarter of 2020 (obtained from Statistics Canada) to the price of the lowest-priced non-subject imports of the same goods during the same period, obtained from the same source, as a means of demonstrating the potential decrease in subject import pricing that could result from the rescission of the finding. This comparison, while informative, suffers from some of the same limitations discussed in footnote 158158.

<sup>152</sup> As reported in questionnaire responses.

<sup>153</sup> Exhibit RR-2019-006-05 at Table 21.

all origins of \$406 if measures were not in place during the POR.<sup>154</sup> Comparing the resulting prices of subject goods to those of domestic OCTG leads to significant margins of undercutting.<sup>155</sup>

[158] For their part, Evraz and Welded Tube submitted comparisons based on IHS Markit export pricing data for the first half of 2020 for seamless and for welded OCTG, from 5 of the subject countries (India, South Korea, Thailand, Turkey, and Ukraine), under HS Codes 7306.29 and 7304.29.<sup>156</sup> Once estimated freight and delivery costs are added, the prices derived from these data undercut the domestic producers' corresponding average unit selling prices, and any other selling prices in the Canadian market.<sup>157</sup> For each subject country, the resulting margins of undercutting are, once again, significant.

[159] The comparisons of subject country export pricing to other destinations and domestic industry pricing during the POR, as submitted by the domestic producers, may amplify the level of undercutting that would result from the rescission of the finding.<sup>158</sup> Nonetheless, the domestic producers' estimates, while imperfect, are based on the best available private and public sources on export pricing, in view of the absence of participation of foreign producers. Overall, these estimates show the potential for the subject goods to be exported at prices lower than those observed in the Canadian market during the POR. They further support the view that the subject goods are likely to significantly undercut prevailing Canadian prices, including the prices of the domestic like goods, if the finding is rescinded.

[160] In conclusion, given the commodity nature of OCTG and price sensitivity in the market, should the finding be rescinded, there is cogent evidence that the subject goods would be able to enter the Canadian market at lower prices, and would do so in order to gain market share. These prices are likely to significantly undercut the prices of the like goods.

#### Price depression

[161] Given the likelihood of price undercutting should the order be rescinded, and the increasingly price-sensitive OCTG market, the domestic industry argues that it would have to significantly reduce its prices to secure the small volumes of anticipated sales in the next 12 to 18 months. Witness statements submitted by the domestic industry state that in the event of a rescission of the finding, there would be a "race to the bottom" in the pricing of OCTG.<sup>159</sup>

[162] The Tribunal finds it reasonable to project that the domestic producers' prices would be forced downwardly by a significant amount, to a point below the prices that would otherwise prevail,

<sup>154</sup> Exhibit RR-2019-006-A-01 at para. 48.

<sup>155</sup> Exhibit RR-2019-006-A-02 (protected) at para. 49.

<sup>156</sup> Exhibit RR-2019-006-B-02 (protected) at paras. 204-206. Evraz and Welded Tube only included data for countries that they considered to be meaningful suppliers of seamless or of welded OCTG, which they defined as 500 metric tonnes of exports in the first half of 2020, with the result that only data for either seamless or welded OCTG were included in the comparison for each of the five subject countries.

<sup>157</sup> *Ibid.*

<sup>158</sup> The data from UN Comtrade, IHS Markit and Statistics Canada used in the comparisons provided by the domestic producers comprise a potentially wide range of subject and non-subject goods, which are then compared to data concerning the goods under investigation (CBSA's weighted average enforcement pricing data or the domestic industry's own pricing data).

<sup>159</sup> Exhibit RR-2019-006-B-07 at para. 37; Exhibit RR-2019-006-C-03 at para. 37.

because the domestic producers would have to compete against subject goods for any available sales in a depressed market.

[163] As noted above, OCTG are a commodity product that competes predominantly on price. Given customers' heightened price sensitivity, and faced with increasing volumes of subject imports with price undercutting, the domestic industry would have no other choice but to reduce its prices in order to maintain sales volumes and preserve market share. By driving down OCTG prices in the Canadian market, the subject goods would also lower the value of existing inventory.

[164] In sum, without anti-dumping duties in place, the Canadian market is likely to see a significant decline in the prices of the subject goods and, as a result, a decline in prevailing market prices, including the price of the like goods.

[165] On this basis, the Tribunal finds that, should the order be rescinded, the subject goods will likely significantly depress the prices of like goods.

#### Price suppression

[166] There is insufficient evidence regarding projections in costs trends for the Tribunal to draw conclusions concerning price suppression. In any event, current market conditions make any selling price increase unlikely, even without increased competition from subject goods. As a result, the Tribunal is unable to find that the rescission of the finding would likely prevent increases in the prices of like goods that would likely have otherwise occurred. Accordingly, the Tribunal cannot conclude that the subject goods will likely suppress the price of the like goods.

#### Conclusion

[167] In sum, the Tribunal finds that the resumed or continued dumping of the subject goods is likely to cause significant adverse price effects, namely, price undercutting and price depression, over the next 24 months, if the finding is rescinded.

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

[168] The Tribunal will now assess the likely impact of the above volumes and prices on the domestic industry if the finding were rescinded, taking into consideration the recent performance of the domestic industry.<sup>160</sup> In this analysis, the Tribunal distinguishes the likely impact of the dumped goods from the likely impact of any other factors affecting or likely to affect the domestic industry.<sup>161</sup>

#### Recent performance of the domestic industry

[169] The domestic industry's performance generally declined over the POR. While the domestic industry saw improvement in some indicators in 2018 over 2017, the improvement was short-lived, as its performance declined significantly in 2019 and interim 2020.

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<sup>160</sup> Paragraphs 37.2(2)(c)(e) and (g) of the *Regulations*.

<sup>161</sup> See paragraph 37.2(2)(k) of the *Regulations*.

[170] For instance, total production, capacity utilization<sup>162</sup> and productivity declined during the POR, as did the volume of export sales.<sup>163</sup> Following improvement in 2018 over 2017, the volume of domestic sales from domestic production and profitability deteriorated in 2019 over 2018 and in interim 2020 compared to interim 2019.<sup>164</sup> By contrast, the domestic industry's market share for sales from domestic production improved in 2018 over 2017, then remained relatively consistent.<sup>165</sup>

[171] The improvement in the domestic industry's performance in 2018 over 2017 shows that the domestic industry was able to benefit from the improved oil and gas market in that period, at least to some degree. In addition, the domestic industry was able to improve and maintain market share during the POR.

[172] However, the overall deterioration in most performance indicators from 2017 to 2020 is notable. It shows that the domestic industry remains sensitive to declining demand and to pricing pressure. The current economic downturn underlines the vulnerability of the domestic industry to any adverse effects that would result from the rescission of the finding, particularly as the timing and extent of the recovery is uncertain.<sup>166</sup>

Likely impact on the domestic industry if the finding is rescinded

[173] The domestic producers argued that their situation would be significantly impaired if the finding is rescinded. They submitted that the expiry of the finding could not come at a worse time, as the domestic industry faces difficult market conditions and attempts to benefit from any economic recovery towards the end of 2020 and into 2021.

[174] The parties opposed did not specifically address the likely impact that a rescission of the finding would have on the domestic industry.

[175] The domestic producers' witnesses submitted written testimonies to the Tribunal in which they provided detailed explanations of the impact that the rescission of the finding would have on their operations, investments, and profitability.<sup>167</sup> These testimonies show that any lost sales or price undercutting by subject and non-subject goods would have a severe impact on the domestic producers. The domestic producers' witnesses also explained that if the finding is rescinded, the price depression and increased volume of subject goods that would ensue could go as far as to threaten the viability of domestic production of OCTG.<sup>168</sup>

<sup>162</sup> Practical plant capacity increased in 2018 but declined again in 2019 and interim 2020. Exhibit RR-2019-006-06 (protected) at Table 46.

<sup>163</sup> Exhibit RR-2019-006-06 (protected) at Tables 44, 46.

<sup>164</sup> *Ibid.* at Table 43. See also other performance indicators, Exhibit RR-2019-006-06 (protected) at Table 46.

<sup>165</sup> *Ibid.* at Table 12.

<sup>166</sup> The domestic producers' vulnerability is apparent from the confidential evidence. Exhibit RR-2019-006-B-01 at para. 1; Exhibit RR-2019-006-B-08 (protected) at para. 9; Exhibit RR-2019-006-C-04 (protected) at para. 30; Exhibit RR-2019-006-B-04 (protected) at paras. 12, 16; Exhibit RR-2019-006-C-06 (protected) at para. 28; Exhibit RR-2019-006-E-09 at 15, 23-24, 30-31.

<sup>167</sup> Exhibit RR-2019-006-A-04 (protected) at paras. 26-30; Exhibit RR-2019-006-C-06 (protected) at paras. 18, 23-31; Exhibit RR-2019-006-C-04 (protected) at 30, 39; Exhibit RR-2019-006-B-04 (protected) at paras. 16, 24; Exhibit RR-2019-006-A-06 (protected) at para. 12.

<sup>168</sup> Exhibit RR-2019-006-C-03 at para. 37; Exhibit RR-2019-006-B-07 at para. 37.

[176] The United Steelworkers highlighted the threat posed by the resumption of dumping of the subject goods to employment in the OCTG industry. It submitted that injury to the domestic industry resulting from the resumption of unfair trade practices in this case would have a profound negative impact in terms of lost employment and wages. Witness statements from trade union officials representing employees of the domestic producers were filed in support of this argument and are discussed in more detail below.

[177] For the reasons that follow, the Tribunal finds that the evidence credibly supports the arguments of the domestic parties regarding the likely significant adverse impact of the resumed or continued dumping of the subject goods on the domestic industry's performance over the next 24 months.

[178] The Tribunal finds that the domestic industry is unlikely to maintain even its recent level of depressed performance if the finding is rescinded. The finding provides a degree of stability in the market. Should it be allowed to expire, the recent negative trends are likely to worsen. Thus, the Tribunal finds that, without the finding, the domestic industry would likely struggle to perform in a sustainable range and would be materially injured by the resumed or continued dumping of the subject goods.

[179] The Tribunal has already found that, if the finding is rescinded, the subject goods will likely significantly undercut domestic producers' selling prices and that, as a result, domestic pricing will likely be significantly depressed. The Tribunal finds that this price depression would in turn likely lead to a significant negative impact on the domestic industry's revenues and profits. In this respect, Tenaris and Evraz provided data models showing the impact that certain levels of price depression caused by the subject goods would have had on past performance or could have on expected performance in the near term, should the finding be rescinded.<sup>169</sup>

[180] In reviewing the data models provided by Tenaris and Evraz, the Tribunal tested the potential impact of the subject goods on the domestic industry's profitability. In doing so, the Tribunal applied a conservative assumption of the price depression that would likely result from a rescission of the finding.<sup>170</sup> Even under this conservative estimate, the rescission of the finding would result in a material worsening of the financial performance of the domestic industry.

<sup>169</sup> The parties relied on projected subject good pricing in the event of a rescission of the finding calculated based on the data discussed at paras. 97 and 98. Tenaris submitted a model that compared subject country export prices from UN Comtrade export pricing data against CBSA enforcement data to determine the likely price decrease in Canada. The percentage of price decrease was then applied to the domestic producers' financial results to determine the likely impact of price depression on performance. Evraz estimated average subject country prices based on IHS Markit data adding in ocean and inland freight. Evraz argued that the pricing of like goods would converge to the lowest of these prices due to the commodity nature of OCTG. This pricing estimate was then worked into a "but-for" analysis that demonstrated the impact on Evraz's projected 2021 financial results should the finding be removed. Exhibit RR-2019-006-A-02 (protected) at paras. 91-93; Exhibit RR-2019-006-B-02 (protected) at paras. 248-250; Exhibit RR-2019-006-C-06 (protected) at paras. 20-23; Exhibit RR-2019-006-C-04 (protected) at paras. 34-35.

<sup>170</sup> In this regard, the Tribunal has previously found that a price difference "as small as 2 to 3 percent could sway a sale from one supplier to another." Expiry Review No. RR-2014-003 at para. 133. As noted above, in the present expiry review, the evidence is that purchasers are even more price-sensitive and thus even more inclined to seek out the lowest prices in the market. In any event, the evidence on the record indicates potential price undercutting substantially greater than 2-3 percent in the absence of the order.

[181] As such, the Tribunal finds that the domestic industry would find itself in a precarious financial position without the order in place, even before any potential losses in sales volumes are considered. To the extent that the domestic industry resists price declines, it is likely to lose sales volumes to the subject goods. This outcome, which would be magnified by the capital-intensive nature of OCTG production, would lead to reduced production volumes and a compounding effect on the domestic industry's bottom line and operations, significantly exacerbating the damaging effects already caused by weak market demand.

[182] The Tribunal finds that the likelihood of reduced profitability and output would also jeopardize the domestic industry's significant recent, ongoing and planned investments and harm its ability to raise capital. This is supported by cogent evidence from domestic producer witnesses speaking to the impact of rescinding the finding.<sup>171</sup> The evidence submitted by the domestic producers also supports the conclusion that the rescission of the finding would likely have a significant adverse impact on capacity utilization and employment.<sup>172</sup>

[183] In addition, witness statements from United Steelworkers officials representing employees of the domestic producers underline how job retention at Canadian facilities is contingent on the continuation of the finding.<sup>173</sup> The evidence provided by these witnesses supports the view that the rescission of the finding would likely be severely detrimental or even fatal to production at certain facilities.<sup>174</sup> Moreover, the loss of skilled workers resulting from layoffs is likely to have long-lasting adverse effects the domestic industry's ability to attract and retain skilled and productive employees.<sup>175</sup>

[184] In sum, the evidence on record establishes that the rescission of the order will likely result in material injury to the domestic industry over the next 24 months.

#### Factors other than the dumping of the subject goods

[185] Pursuant to paragraph 37.2(2)(k) of the *Regulations*, the Tribunal may consider certain other factors that are relevant in the circumstances.<sup>176</sup>

<sup>171</sup> Exhibit RR-2019-006-C-06 (protected) at paras. 24-27; Exhibit RR-2019-006-B-04 (protected) at para. 24; Exhibit RR-2019-006-A-04 (protected) at paras. 27-28; Exhibit RR-2019-006-A-06 (protected) at para. 12.

<sup>172</sup> Exhibit RR-2019-006-A-04 (protected) at para. 30; Exhibit RR-2019-006-C-06 (protected) at paras. 28-30; Exhibit RR-2019-006-B-04 (protected) at paras. 12, 15-17.

<sup>173</sup> Exhibit RR-2019-006-E-05 at paras. 73-74; Exhibit RR-2019-006-E-03 at para. 34; Exhibit RR-2019-006-E-09 at paras. 24, 30, 34, 38.

<sup>174</sup> Exhibit RR-2019-006-E-03 at para. 34; Exhibit RR-2019-006-E-09 at paras. 24, 30, 34, 38.

<sup>175</sup> Exhibit RR-2019-006-E-05 at paras. 39-42; Exhibit RR-2019-006-E-09 at para. 20; Exhibit RR-2019-006-E-07 at para. 23. The United Steelworkers also argued that the term "employment" in the *Regulations* should be construed broadly to include the terms and conditions of employment (e.g. pensions, benefits, training and safety measures) and submitted that the likely negative impact of the dumping of the subject goods on such factors should be taken into account by the Tribunal. Given its conclusion that the rescission of the finding would have a material adverse impact on employment even on a more limited construction of the term "employment", the Tribunal does not need to address the question of statutory interpretation raised by the United Steelworkers.

<sup>176</sup> Paragraph 37.2(2)(k) refers to "any other factor pertaining to the current or likely behaviour or state of the domestic or international economy, market for goods or industry as a whole or in relation to individual producers, exporters, brokers or traders."

[186] The Tribunal, on its own initiative, has considered whether there were factors unrelated to the dumping of the subject goods that could adversely affect the domestic industry in the next 24 months.

[187] In this regard, the Tribunal has already noted that the current market conditions and the COVID-19 pandemic place the domestic industry in a tenuous situation. However, these challenging market circumstances only serve to increase the substantial adverse impact that the rescission of the finding would likely have on the domestic industry.

[188] The injury that is likely to result from the dumping of the subject goods, if the order is rescinded, will be, in and of itself, of a magnitude sufficient to amount to material injury. It will be over and above any negative impact on the domestic industry resulting from the COVID-19 pandemic or other factors that are likely to limit the growth of the Canadian OCTG market in the near to medium term. Put another way, the evidence indicates that the rescission of the finding would render an already difficult situation materially worse.

[189] In fact, the evidence indicates that without the protection afforded by the finding, increased volumes of subject goods would likely prevent the domestic industry from weathering the current storm resulting from the various market challenges that it faces in the Canadian market.<sup>177</sup> In short, without the continuation of the finding, the domestic industry would not be able to benefit from an eventual market recovery in the next 24 months.

[190] In addition, the domestic producers themselves have highlighted the competition they face from imports from certain non-subject countries. As stated above, producers from the subject countries are likely to have strong incentives to seek additional sales and, in order to re-enter the Canadian market, they will have to compete for sales and market share not only with the domestic industry but also with non-subject countries on the basis of price. In doing so, the subject goods, in and of themselves, are likely to cause significant price undercutting, price depression and/or lost sales. These effects are properly attributable to the subject goods and are likely to lead to injury over and above any effects from the pricing pressures that may otherwise be felt from non-subject sources with the finding in place.<sup>178</sup>

[191] The record evidence also suggests some measure of self-injury by the domestic industry, for instance, through domestic industry imports.<sup>179</sup> There is also some evidence to indicate that the domestic industry has, at times, been unable to fill certain demand requirements or is slow to respond to sudden increases in demand.<sup>180</sup> These factors of self-injury were noted by the Tribunal in its recent safeguard inquiry.<sup>181</sup> However, there is insufficient evidence for the Tribunal to conclude in the present expiry review that these other factors would, to a material extent, likely cause future injury.<sup>182</sup>

<sup>177</sup> See e.g. Exhibit RR-2019-006-C-06 (protected) at paras. 12, 16-19, 30; Exhibit RR-2019-006-B-03 at paras. 22-23, 25-28; Exhibit RR-2019-006-B-06 (protected) at para. 15; Exhibit RR-2019-005-B-08 (protected) at paras. 41-43; Exhibit RR-2019-006-C-03 at paras. 37-39.

<sup>178</sup> The domestic producers also made representations with respect to competition from imports of non-subject goods from China in the event of a rescission of the order in *OCTG I*. As noted above, on December 10, 2020, the Tribunal continued the order in *OCTG I*. This being the case, the Tribunal need not consider the impact of imports from China on the domestic industry.

<sup>179</sup> Exhibit RR-2019-006-06 (protected) at Table 6; Exhibit RR-2019-006-16.37A at 13.

<sup>180</sup> Exhibit RR-2019-006-16.19 at 7; Exhibit RR-2019-006-16.16 at 4; Exhibit RR-2019-006-16.37A at 11, 13.

<sup>181</sup> *Certain Steel Goods* at 84-85.

<sup>182</sup> The Tribunal arrives at the same conclusion with respect to another allegation made confidentially by a questionnaire respondent.



[192] On balance, having accounted for the impact of the above factors and ensured not to attribute their effects to the dumping of the subject goods, the Tribunal finds that the resumption or continuation of the dumping of the subject goods will likely result, in and of itself, in material injury to the domestic industry over the next 24 months.

## CONCLUSION

[193] On the basis of the foregoing analysis, and pursuant to paragraph 76.03(12)(b) of *SIMA*, the Tribunal hereby continues its finding in respect of the subject goods originating in or exported from Chinese Taipei, India, Indonesia, South Korea, Thailand, Turkey, Ukraine and Vietnam.

[194] Pursuant to paragraph 76.03(12)(a) of *SIMA*, and following the determination of the President of the CBSA that the expiry of the finding is unlikely to result in the continuation or resumption of dumping of the subject goods originating in or exported from the Philippines, the Tribunal hereby rescinds its finding with respect to those goods.

Georges Bujold

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Georges Bujold  
Presiding Member

Jean Bédard

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Jean Bédard  
Member

Susan D. Beaubien

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Susan D. Beaubien  
Member