



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Dumping and Subsidizing

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## ORDER AND REASONS

Expiry review RR-2023-008

Corrosion-Resistant Steel Sheet

*Order and reasons issued  
Wednesday, November 20, 2024*

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IN THE MATTER OF an expiry review, pursuant to subsection 76.03(1) of the *Special Import Measures Act*, of the finding made by the Canadian International Trade Tribunal on February 21, 2019, in inquiry NQ-2018-004, concerning:

**CORROSION-RESISTANT STEEL SHEET ORIGINATING IN OR EXPORTED  
FROM THE PEOPLE’S REPUBLIC OF CHINA, THE SEPARATE CUSTOMS  
TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU  
(CHINESE TAIPEI), THE REPUBLIC OF INDIA AND THE REPUBLIC OF  
KOREA**

**ORDER**

The Canadian International Trade Tribunal, pursuant to subsection 76.03(3) of the *Special Import Measures Act* (SIMA), has conducted an expiry review of the finding made on February 21, 2019, in inquiry NQ-2018-004, concerning the dumping of corrosion-resistant flat-rolled steel sheet products of carbon steel, including products alloyed with the following elements:

- Boron (B) not more than 0.01%,
- Niobium (Nb) not more than 0.100%,
- Titanium (Ti) not more than 0.08%, or
- Vanadium (V) not more than 0.300%,

in coils or cut lengths, in thicknesses up to 0.168 in. (4.267 mm) and widths up to 72 in. (1,828.8 mm) with all dimensions being plus or minus allowable tolerances contained in the applicable standards, chemically passivated, originating in or exported from the People’s Republic of China, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei), the Republic of India and the Republic of Korea, and excluding:

- unpassivated corrosion-resistant steel sheet products;
- corrosion-resistant steel sheet products for use in the manufacture of passenger automobiles, buses, trucks, ambulances or hearses or chassis therefor, or parts thereof, or accessories or parts thereof;
- steel products for use in the manufacture of aeronautic products;
- steel sheet that is coated or plated with tin, lead, nickel, copper, chromium, chromium oxides, both tin and lead (“terne plate”), or both chromium and chromium oxides (“tin-free steel”);
- stainless flat-rolled steel products;
- corrosion-resistant steel sheet products that have been pre-painted or coated with organic (non-metallic) coatings, including lacquers or varnishes;

- galvanized armouring tape, which is narrow flat steel tape of 3 in. or less, that has been coated by a final operation with zinc by either the hot-dip galvanizing or the electrogalvanizing process so that all surfaces, including the edges, are coated; and
- tool steel.

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

Serge Fréchette

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Serge Fréchette  
Presiding Member

Susan D. Beaubien

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Susan D. Beaubien  
Member

Susana May Yon Lee

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Susana May Yon Lee  
Member

The statement of reasons will be posted on the Tribunal's website at a later date.

Place of Hearing: Ottawa, Ontario  
Dates of Hearing: September 20, 2024

Tribunal Panel: Serge Fréchette, Presiding Member  
Susan D. Beaubien, Member  
Susana May Yon Lee, Member

Tribunal Secretariat Staff: Cynthia Morgan, Lead Counsel  
Joel Reinhardt, Counsel  
Mylène Lanthier, Lead Analyst  
Félix Filiatreault, Analyst  
Paula Place, Analyst  
River Pyne, Registry Officer  
Kaitlin Fortier, Registry Officer

**PARTICIPANTS:****Domestic Producers**

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Stelco Inc.

**Importers/Exporters/Others**

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JFE Shoji America, LLC

Knightsbridge International Corp.

Prosperity Tieh Enterprise Co., Ltd.

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## STATEMENT OF REASONS

### INTRODUCTION

[1] The Canadian International Trade Tribunal, pursuant to subsection 76.03(1) of the *Special Import Measures Act*<sup>1</sup> (SIMA), has conducted an expiry review of the finding made on February 21, 2019, in inquiry NQ-2018-004: *Corrosion-resistant Steel Sheet (COR 2018)*,<sup>2</sup> concerning the dumping of certain corrosion-resistant steel sheet (COR),<sup>3</sup> originating in or exported from the People's Republic of China (China), the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei), the Republic of India (India) and the Republic of Korea (Korea) (the subject goods).

[2] Under SIMA, a finding of injury or threat of injury, and the associated protection in the form of anti-dumping or countervailing duties, expires five years from the date of the finding unless the Tribunal initiates an expiry review before that date. The finding in *COR 2018* was scheduled to expire on February 20, 2024.

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

### PROCEDURAL BACKGROUND

[4] On January 15, 2024, the Tribunal issued a notice<sup>4</sup> to initiate an expiry review of its finding made on February 21, 2019, in *COR 2018*.<sup>5</sup> This notice triggered the initiation of an investigation by the Canada Border Services Agency (CBSA) on January 16, 2024,<sup>6</sup> to determine whether the expiry of the Tribunal's finding was likely to result in the continuation or resumption of dumping of the subject goods.

[5] On June 13, 2024, the CBSA determined<sup>7</sup> that the expiry of the finding made on February 21, 2019, in *COR 2018* was likely to result in the continuation or resumption of dumping of the subject goods from China, Chinese Taipei, India and Korea.<sup>8</sup>

[6] Following this determination, on June 14, 2024, the Tribunal began its expiry review to determine whether the expiry of the finding was likely to result in injury to the domestic industry.<sup>9</sup>

[7] The period of review (POR) for the Tribunal's expiry review covered three full years, from January 1, 2021, to December 31, 2023, as well as the period from January 1, 2024, to March 31,

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

<sup>2</sup> *Corrosion-resistant Steel Sheet* (21 February 2019), NQ-2018-004 (CITT) [*COR 2018*].

<sup>3</sup> COR for the purposes of this decision refers to corrosion-resistant steel sheet as defined within the product definition set out in these reasons.

<sup>4</sup> The notice was issued pursuant to subsection 76.03(1) of SIMA.

<sup>5</sup> Exhibit RR-2023-008-02, p. 1.

<sup>6</sup> Exhibit RR-2023-008-03, p. 1.

<sup>7</sup> Exhibit RR-2023-008-03, p. 1–2. The CBSA made its determination pursuant to paragraph 76.03(7)(a) of SIMA.

<sup>8</sup> Exhibit RR-2023-008-03, p. 1.

<sup>9</sup> Exhibit RR-2023-008-11, p. 2. The Tribunal undertook its expiry review pursuant to subsection 76.03(10) of SIMA.

2024. For comparative purposes, information was also collected and presented for the period of January 1, 2023, to March 31, 2023.<sup>10</sup>

[8] The Tribunal asked potential domestic producers and importers of COR, as well as potential foreign producers of the subject goods and unions representing workers employed by domestic producers, to complete questionnaires by July 5, 2024. The Tribunal received 2 completed domestic producers' questionnaires, 17 completed importers' questionnaires,<sup>11</sup> 3 completed foreign producers' questionnaires and 1 completed union questionnaire.

[9] Staff of the Secretariat to the Tribunal prepared public and protected investigation reports based on the questionnaire replies and other information on the Tribunal's record. The reports were distributed to parties on August 6, 2024.<sup>12</sup> Subsequent revisions to both the public and protected investigation reports were prepared and distributed to the parties on August 9, 2024,<sup>13</sup> and September 13, 2024, respectively.<sup>14</sup>

[10] ArcelorMittal Dofasco G.P. (AMD),<sup>15</sup> Stelco Inc. (Stelco)<sup>16</sup> and the United Steelworkers (USW)<sup>17</sup> filed written arguments and supporting evidence (including witness statements) on August 14, 2024, in support of a continuation of the finding.<sup>18</sup>

[11] Sacks Industrial Corp. (Sacks) filed a product exclusion request in this expiry review.<sup>19</sup> AMD and Stelco made submissions opposing the product exclusion request on August 20, 2024.<sup>20</sup> Sacks filed a reply on August 23, 2024.<sup>21</sup>

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<sup>10</sup> Exhibit RR-2023-008-05.B, p. 6.

<sup>11</sup> One questionnaire response was not useable.

<sup>12</sup> Exhibit RR-2023-008-05; Exhibit RR-2023-008-06 (protected).

<sup>13</sup> Exhibit RR-2023-008-05.A; Exhibit RR-2023-08-06.A (protected).

<sup>14</sup> Exhibit RR-2023-008-05.B; Exhibit RR-2023-08-06.B (protected).

<sup>15</sup> Exhibit RR-2023-008-A-01; Exhibit RR-2023-008-A-02 (protected); Exhibit RR-2023-008-A-03; Exhibit RR-2023-008-A-04 (protected); Exhibit RR-2023-008-A-05; Exhibit RR-2023-008-A-06 (protected); Exhibit RR-2023-008-A-07; and Exhibit RR-2023-008-A-08 (protected), including a witness statement submitted by Taylor Steel Inc. at Exhibit RR-2023-008-A-09; Exhibit RR-2023-008-A-10 (protected).

<sup>16</sup> Exhibit RR-2023-008-B-01; Exhibit RR-2023-008-B-02 (protected); Exhibit RR-2023-008-B-03; Exhibit RR-2023-008-B-04 (protected); Exhibit RR-2023-008-B-05; Exhibit RR-2023-008-B-06 (protected), including a witness statement submitted by Nova Steel Inc. at Exhibit RR-2023-008-B-07; and Exhibit RR-2023-008-B-08 (protected).

<sup>17</sup> Exhibit RR-2023-008-D-01; Exhibit RR-2023-008-D-02 (protected); Exhibit RR-2023-008-D-03; Exhibit RR-2023-008-D-04 (protected); Exhibit RR-2023-008-D-05; Exhibit RR-2023-008-D-06 (protected).

<sup>18</sup> This includes supplementary submissions made by the parties upon invitation from the Tribunal following the addition of the further revised investigation report and certain additional questionnaire responses to the record. See: Exhibit RR-2023-008-37.01; Exhibit RR-2023-008-38.01 (protected); Exhibit RR-2023-008-37.02; Exhibit RR-2023-008-38.02 (protected).

<sup>19</sup> Exhibit RR-2023-008-25.01.

<sup>20</sup> Exhibit RR-2023-008-27.01; Exhibit RR-2023-008-27.02; Exhibit RR-2023-008-28.01 (protected); Exhibit RR-2023-008-28.02 (protected).

<sup>21</sup> Exhibit RR-2023-008-29.01. To note, Sacks submitted a further reply submission on September 3, 2024 (Exhibit RR-2023-008-23.05) following the deadline for reply submissions with regard to the exclusion request. The Tribunal declined to accept these submissions on the grounds that doing so would be procedurally unfair. See Exhibit RR-2023-008-23.05.02.



[12] Upon the Tribunal's invitation,<sup>22</sup> parties also made submissions on September 9, 2024,<sup>23</sup> and on September 13, 2024,<sup>24</sup> to address the potential relevance to this expiry review of the federal government's intention to impose a 25% surtax on imports of certain steel and aluminum products from China, as announced by the Department of Finance on September 10, 2024.

[13] This expiry review was unopposed, with the exception of Sacks' product exclusion request. As such, the evidence and submissions of the participating parties were uncontradicted. The Tribunal conducted its review having regard to the investigation reports prepared by staff of the Secretariat to the Tribunal, and considering the evidence submitted by the participating parties.

[14] After seeking the views of the parties on the method for hearing,<sup>25</sup> the Tribunal held a file hearing on September 20, 2024.<sup>26</sup> The Tribunal closed the record on the same day.<sup>27</sup>

### **Late submission of response to importers' questionnaire**

[15] Based on the information available to the Tribunal at the beginning of this expiry review, T.Co Metals LLC (T.Co) likely imported a significant percentage of COR from non-subject countries during the POR. T.Co. did not reply to the Tribunal's importers' questionnaire by the deadline of July 5, 2024, despite having been contacted by the staff of the Secretariat to the Tribunal on several occasions to complete the questionnaire.

[16] On July 31, 2024, the Tribunal issued an explanatory letter to T.Co:

In order to assess the effects of [COR] dumping, the Tribunal must consider the effects of dumping in the overall context of the entire Canadian market for [COR]. As such, it requires economic data concerning the production, manufacture and importation of [COR] from all sources relevant to the Canadian marketplace, including imports from non-subject countries. This enables the Tribunal to form a comprehensive understanding of the Canadian market for [COR] for the purposes of this expiry review.<sup>28</sup>

[Emphasis in original]

[17] This letter also requested that T.Co confirm by August 1, 2024, that it would comply with the Tribunal's request for information. T.Co failed to confirm.<sup>29</sup>

[18] The Tribunal issued a production order to T.Co on August 8, 2024, requesting that it complete the importers' questionnaire by August 14, 2024.<sup>30</sup> T.Co did not comply with this

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<sup>22</sup> Exhibit RR-2023-008-23.04.

<sup>23</sup> Exhibit RR-2023-008-33.01; Exhibit RR-2023-008-34.01 (protected); Exhibit RR-2023-008-33.02; Exhibit RR-2023-008-34.02 (protected); Exhibit RR-2023-008-33.03; Exhibit RR-2023-008-34.03 (protected).

<sup>24</sup> Exhibit RR-2023-008-35.01; Exhibit RR-2023-008-35.02.

<sup>25</sup> Exhibit RR-2023-008-23.02; Exhibit RR-2023-008-23.02.1; Exhibit RR-2023-008-23.02.2.

<sup>26</sup> Exhibit RR-2023-008-23.04.

<sup>27</sup> Tribunal letter to counsel and self-represented participants dated September 23, 2024. The file hearing was held pursuant to rule 25.1 of the *Canadian International Trade Tribunal Rules*, SOR/91-499.

<sup>28</sup> Exhibit RR-2023-008-15.23.05, p. 2.

<sup>29</sup> *Ibid.*

<sup>30</sup> Exhibit RR-2023-008-15.23.06.

production order by the deadline. The Tribunal then initiated enforcement proceedings against T.Co.<sup>31</sup>

[19] After the Tribunal initiated the enforcement proceedings, T.Co submitted its response to the importers' questionnaire on October 2, 2024.<sup>32</sup>

[20] The Tribunal invited parties to provide submissions with respect to the late filing of T.Co's response to the questionnaire. Submissions were received from AMD, Stelco and the USW, all on October 10, 2024.<sup>33</sup>

[21] AMD and Stelco objected to the Tribunal admitting T.Co's response to the importers' questionnaire to the evidentiary record at this late stage in the inquiry. The USW did not oppose the inclusion of the late-filed questionnaire response, provided that all parties be given the opportunity to review and comment on the substance of the proposed evidence.

[22] After reviewing all the representations received, on October 11, 2024, the Tribunal decided not to accept the questionnaire response for reasons of procedural fairness.

[23] By the time T.Co provided its response to the questionnaire, parties to the inquiry had prepared and filed their evidence and written arguments. The Tribunal conducted its hearing, and the evidentiary record was closed.

[24] Expiry reviews conducted under SIMA are subject to a stringent and non-extendible statutory timeline.<sup>34</sup> Acceptance of T.Co's questionnaire response at such a late stage would have required a comprehensive update to the Tribunal's investigation report by staff of the Secretariat to the Tribunal. In turn, this would have necessitated providing all parties with a full and fair opportunity to review and respond to the information provided by T.Co. This would have unreasonably restricted the Tribunal's ability to fully deliberate and potentially would have jeopardized the preparation of full reasons in time to meet the statutory deadline.

[25] Moreover, the Tribunal received no submissions that admission or exclusion of T.Co's data would clearly benefit or prejudice any party.<sup>35</sup>

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<sup>31</sup> The order of the Tribunal was issued on September 23, 2024.

<sup>32</sup> The importers' questionnaire response from T.Co was submitted on October 2, 2024.

<sup>33</sup> Letter from Conlin Bedard LLP to the Tribunal on behalf of AMD and Stelco regarding T.Co's questionnaire response and the re-opening of the record dated October 10, 2024; Letter from Logie & Associates to the Tribunal on behalf of the USW regarding written submissions regarding T.Co's questionnaire response dated October 10, 2024.

<sup>34</sup> Subsection 76.03(10) of SIMA provides as follows: "If the President makes a determination [that the expiry of the order or finding in respect of any goods is likely to result in a continuation or resumption of dumping or subsidizing], the Tribunal shall, within *160 days* after the day on which that determination was received, determine whether the expiry of the order or finding in respect of the goods referred to in that subsection is likely to result in injury or retardation" [emphasis added]. In this expiry review, the Tribunal received the CBSA's determination on June 13, 2024. The Tribunal's determination in this expiry review must therefore be made by November 20, 2024.

<sup>35</sup> In weighing whether to allow late submissions, the Tribunal has previously considered whether the submissions contain information that was previously available, whether the information was relevant to the proceeding, and whether the probative value of the evidence outweighs any prejudice that may be caused by permitting the late filing. See *Heavy Plate* (5 February 2021), NQ-2020-001 (CITT), paras. 31–33.

[26] Accordingly, the Tribunal decided not to enter T.Co's questionnaire response onto the record. It communicated its decision to parties on October 16, 2024.<sup>36</sup>

## PRODUCT

### Product definition

[27] The subject goods are defined as follows:<sup>37</sup>

Corrosion-resistant flat-rolled steel sheet products of carbon steel, including products alloyed with the following elements:

- Boron (B) not more than 0.01%,
- Niobium (Nb) not more than 0.100%,
- Titanium (Ti) not more than 0.08%, or
- Vanadium (V) not more than 0.300%,

in coils or cut lengths, in thicknesses up to 0.168 in. (4.267 mm) and widths up to 72 in. (1,828.8 mm) with all dimensions being plus or minus allowable tolerances contained in the applicable standards, chemically passivated and excluding:

- unpassivated corrosion-resistant steel sheet products;
- corrosion-resistant steel sheet products for use in the manufacture of passenger automobiles, buses, trucks, ambulances or hearses or chassis therefor, or parts thereof, or accessories or parts thereof;
- steel products for use in the manufacture of aeronautic products;
- steel sheet that is coated or plated with tin, lead, nickel, copper, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel");
- stainless flat-rolled steel products;
- corrosion-resistant steel sheet products that have been pre-painted or coated with organic (non-metallic) coatings, including lacquers or varnishes;
- galvanized armouring tape, which is narrow flat steel tape of 3 in. or less, that has been coated by a final operation with zinc by either the hot-dip galvanizing or the electrogalvanizing process so that all surfaces, including the edges, are coated; and
- tool steel.

<sup>36</sup> The Tribunal's letter to counsel and self-represented participants dated October 16, 2024.

<sup>37</sup> Exhibit RR-2023-008-02, p. 1.

### Additional product information

[28] Additional detailed product information can be found in the CBSA's statement of reasons for the expiry review determination.<sup>38</sup>

### LEGAL FRAMEWORK

[29] The Tribunal is required to determine whether the expiry of the finding in *COR 2018* is likely to result in injury or retardation to the domestic industry.<sup>39</sup> If the Tribunal determines that the expiry of the finding is unlikely to result in injury, it is required to rescind the finding.<sup>40</sup> 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.<sup>41</sup>

[30] Before proceeding with its analysis of the likelihood of injury, the Tribunal must first determine what domestically produced goods are "like goods" in relation to the subject goods and whether there is more than one class of goods. Once those determinations have been made, the Tribunal must determine what constitutes the "domestic industry".

[31] Additionally, the Tribunal must determine whether it will assess the likely effect of the resumed or continued dumping of the subject goods from all subject countries cumulatively, that is, whether it will conduct a single injury analysis of the likely effect or separate analyses for dumping for certain subject countries.

### LIKE GOODS AND CLASSES OF GOODS

[32] 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>42</sup>

[33] 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.

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<sup>38</sup> Exhibit RR-2023-008-03.A, p. 6–8.

<sup>39</sup> Subsection 76.03(10) of SIMA. The Tribunal notes that subsection 2(1) of SIMA defines "injury" as "material injury to the domestic industry" and "retardation" as "material retardation of the *establishment* of a domestic industry" [emphasis added]. Given that there is currently an established domestic industry, the issue of whether the expiry of the finding is likely to result in retardation does not arise in this expiry review.

<sup>40</sup> Paragraph 76.03(12)(a) of SIMA.

<sup>41</sup> Paragraph 76.03(12)(b) of SIMA.

<sup>42</sup> Where the Tribunal determines that there is more than one class of goods in the 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).

[34] 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>43</sup> These same factors are also considered in deciding whether there is more than one class of goods.<sup>44</sup>

[35] In *COR 2018*, the Tribunal determined that domestically produced COR and the subject goods were like goods for the purposes of SIMA.<sup>45</sup> As such, in *COR 2018*, the Tribunal conducted its injury analysis on the basis of one class of goods.<sup>46</sup> In the current expiry review, AMD and Stelco argued that the record continues to support this finding.<sup>47</sup> The Tribunal finds no reason to depart from its previous conclusions with respect to like goods and classes of goods in the absence of any arguments or evidence to the contrary.

## DOMESTIC INDUSTRY

[36] 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.

[37] 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>48</sup>

[38] During the POR, there were two domestic producers of like goods in the Canadian market: AMD and Stelco.<sup>49</sup> As the evidence in this expiry review indicates that the foregoing companies account for all known domestic production of the like goods, the Tribunal finds that they constitute the domestic industry for the purpose of this expiry review.

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<sup>43</sup> See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT), para. 48.

<sup>44</sup> In order to decide whether there is more than one class of goods, the Tribunal must determine whether goods potentially included in separate classes of goods (or that have previously been included in separate classes of goods) constitute “like goods” in relation to each other. If they do, they will be regarded as comprising a single class of goods. In the event that the Tribunal finds that there is more than one class of goods, a separate injury analysis will have to be conducted in respect of each class of goods. See, for example, *Certain Fasteners* (7 January 2005), NQ-2004-005 (CITT), para. 70.

<sup>45</sup> *Corrosion-Resistant Steel* (8 March 2019), NQ-2018-004 (CITT), para. 32.

<sup>46</sup> *Corrosion-Resistant Steel* (8 March 2019), NQ-2018-004 (CITT), para. 32.

<sup>47</sup> Exhibit RR-2023-008-A-01, p. 12.

<sup>48</sup> *Steel Grating* (2 February 2022), RR-2020-005 (CITT), para. 28.

<sup>49</sup> Exhibit RR-2023-008-05.B, p. 9; Exhibit RR-2023-008-06.B (protected), p. 9.

## CUMULATION

[39] Subsection 76.03(11) of SIMA provides as follows:

For the purpose of subsection (10), the Tribunal shall make an assessment of the cumulative effect of the dumping or subsidizing of goods to which the determination of the President described in subsection (9) applies 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 goods to which the order or finding applies that are imported into Canada from any of those countries and

(a) goods to which the order or finding applies that are imported into Canada from any other of those countries; or

(b) like goods of domestic producers.

[40] With respect to the “conditions of competition”, relevant factors in determining whether a cumulative assessment is warranted include a consideration of whether the goods are interchangeable; an assessment of their quality, pricing, and concurrent presence in the same geographic market; and a consideration of whether the goods are distributed through the same channels or whether they employ the same means of transportation.<sup>50</sup> The foregoing list is not exhaustive, and no single factor is determinative.

[41] The Tribunal has stated that, in order to cumulate, it must be satisfied that the subject goods compete with each other and/or with the like goods to secure sales in Canada.<sup>51</sup> In expiry reviews, the assessment of the conditions of competition is prospective.<sup>52</sup>

[42] The domestic producers argued that the factual matrix supporting the cumulative assessment of the effects of the dumping of the subject goods in the original inquiry remains unchanged, and thus a cumulative assessment should also be applied in this expiry review.<sup>53</sup>

[43] The Tribunal observes that the conditions of competition between the subject goods from the subject countries and between the subject goods and domestic like goods remain the same as those that existed in the Tribunal’s original period of inquiry. Responses to the importers’ questionnaire demonstrate that there is a high degree of interchangeability between the foregoing products in the market.<sup>54</sup> Questionnaire responses also confirm that the foregoing products use similar channels of

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<sup>50</sup> *Cold-Rolled Steel* (19 September 2024), RR-2023-006 (CITT), para. 26.

<sup>51</sup> *Cold-Rolled Steel* (19 September 2024), RR-2023-006 (CITT), para. 26.

<sup>52</sup> *Cold-Rolled Steel* (19 September 2024), RR-2023-006 (CITT), para. 26; *Flat Hot-Rolled Carbon and Alloy Steel Sheet and Strip* (12 August 2016), RR-2015-002 (CITT), para. 47; see also *Refined Sugar* (30 October 2015), RR-2014-006 (CITT), para. 33.

<sup>53</sup> Exhibit RR-2023-008-A-01, p. 14–15.

<sup>54</sup> See, for example: Exhibit RR-2023-008-15.05A, p. 10; Exhibit RR-2023-008-15.25, p. 10; Exhibit RR-2023-008-15.15A, p. 10.

distribution.<sup>55</sup> Finally, in the Tribunal's view, nothing on the record suggests that the foregoing products do not maintain a concurrent presence in the market in the POR.

[44] Considering the above, the Tribunal concludes that there is no sound reason to modify its finding in *COR 2018*. The evidence in this expiry review supports a finding that the conditions of competition are such that the Tribunal should conduct a single injury analysis on the effects of the dumping of the subject goods from all subject countries.

## LIKELIHOOD OF INJURY ANALYSIS

[45] An expiry review is forward-looking.<sup>56</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>57</sup>

[46] 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 guidance of the World Trade Organization.<sup>58</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>59</sup>

[47] In making its assessment on the likelihood of injury, the Tribunal has consistently taken the view that the focus should be on circumstances that can reasonably be expected to exist in the near to medium term, which is generally considered to be a period that can extend up to 24 months from the date on which the order or finding would be rescinded.<sup>60</sup> In considering an expiry review's forward-looking nature,<sup>61</sup> the Tribunal has held that evidence from the POR 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>62</sup> Further, the Tribunal has 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.<sup>63</sup>

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<sup>55</sup> See, for example, Exhibit RR-2023-008-15.21A, p. 6; Exhibit RR-2023-008-15.25, p. 6; Exhibit RR-2023-008-15.16A, p. 6; Exhibit RR-2023-008-15.05A, p. 6; Exhibit RR-2023-008-15.01A, p. 6; Exhibit RR-2023-008-15.14, p. 6; Exhibit RR-2023-008-No.15.13B, p. 6; Exhibit RR-2023-008-15.08D, p. 8.

<sup>56</sup> *Certain Dishwashers and Dryers* (procedural order dated 25 April 2005), RR-2004-005 (CITT), para. 16. See also, for example, *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (13 May 2022), RR-2021-001 (CITT), para. 129; *Cold-rolled Steel* (19 September 2024), RR-2023-006 (CITT), para. 32.

<sup>57</sup> *Copper Pipe Fittings* (17 February 2012), RR-2011-001 (CITT), para. 56; *Thermoelectric Containers* (9 December 2013), RR-2012-004 (CITT) [*Thermoelectric Containers*], para. 14; *Aluminum Extrusions* (17 March 2014), RR-2013-003 (CITT) [*Aluminum Extrusions*], para. 21.

<sup>58</sup> *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (16 August 2006), RR-2005-002 (CITT), para. 59; *Cold-rolled Steel* (19 September 2024), RR-2023-006 (CITT), para. 33.

<sup>59</sup> *Thermoelectric Containers*, para. 14; *Aluminum Extrusions*, para. 21.

<sup>60</sup> See, for example, *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate* (31 October 2019), RR-2018-007 (CITT), para. 42.

<sup>61</sup> *Certain Dishwashers and Dryers* (procedural order dated 25 April 2005), RR-2004-005 (CITT), para. 16.

<sup>62</sup> *Copper Pipe Fittings* (17 February 2012), RR-2011-001 (CITT), para. 56. The Tribunal notes that, in this case, the USW argued, and the Tribunal accepts, that data from the period before the imposition of the finding in *COR 2018* are relevant to the Tribunal's analysis for the purposes of this expiry review. See Exhibit RR-2023-008-D-01, p. 29–30.

<sup>63</sup> See, for example, *Thermoelectric Containers*, para. 14.

[48] The Tribunal adopts the foregoing approach for the purpose of its analysis and will consider the period up to 24 months from the date on which the finding could be rescinded.

[49] Subsection 37.2(2) of the *Special Import Measures Regulations*<sup>64</sup> (Regulations) lists factors that the Tribunal may consider in addressing the likelihood of injury in cases where the CBSA has determined that there is a likelihood of continued or resumed dumping. The factors that the Tribunal considers relevant in this expiry review are discussed below.

### **Changes in market conditions**

[50] In order to assess the likely volumes and prices of the subject goods and their impact on the domestic industry if the finding is rescinded, the Tribunal first usually considers any changes in domestic and international market conditions.<sup>65</sup> Such an analysis is expressly provided for in the Regulations.<sup>66</sup>

#### International market conditions

[51] The domestic producers, and to a similar extent the USW, argued that weak global economic growth weighed on global steel markets during the POR and will continue to do so over the next 12 to 24 months. In support, the parties submitted evidence which suggests that the global economy will remain sluggish in the near term. They pointed to International Monetary Fund (IMF) reporting which estimated global growth at 3.2% in 2023 and forecast global growth at the same pace in 2024 and 2025.<sup>67</sup> This forecast is below the historical (2000–2019) global growth average of 3.8%.<sup>68</sup> The parties also provided evidence of persistent global excess steel capacity during the POR, pointing to data from the Organisation for Economic Co-operation and Development (OECD). These data suggests that global steelmaking capacity reached record highs of nearly 2.5 billion metric tons (MT) in 2023.<sup>69</sup> The OECD further predicts that the volume of excess steel capacity will become even more acute in the years from 2024 to 2026, with an additional 46 million MT of global steelmaking capacity forecasted, coupled with soft forecasted global demands.<sup>70</sup> This evidence suggests that pressures in the global steel supply are likely to lead to depressed prices and diminished profitability for steel producers.<sup>71</sup> Considering COR specifically, the domestic industry pointed to Commodities Research Unit (CRU) data as evidence, which the Tribunal accepts as a reasonable proxy for COR for the purposes of this expiry review. In this respect, the CRU data forecast significant excess production capacity in the years leading up to and including 2026.<sup>72</sup>

[52] The Tribunal considers the foregoing evidence to be generally relevant and credible with respect to the international market conditions governing the subject goods for the purposes of its injury analysis. The Tribunal also accepts the evidence submitted by Stelco and AMD with respect to

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<sup>64</sup> SOR/84-927.

<sup>65</sup> *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (26 August 2016), RR-2015-002 (CITT), para. 59.

<sup>66</sup> Paragraph 37.2(2)(j) of the Regulations.

<sup>67</sup> Exhibit RR-2023-008-A-01, p. 128.

<sup>68</sup> Exhibit RR-2023-008-A-01, p. 128.

<sup>69</sup> Exhibit RR-2023-008-A-01, p. 144.

<sup>70</sup> Exhibit RR-2023-008-A-01, p. 144.

<sup>71</sup> Exhibit RR-2023-008-A-01, p. 152–153.

<sup>72</sup> Exhibit RR-2023-008-A-02 (protected), p. 159–170; Exhibit RR-2023-008-A-01, p. 159–160; Exhibit RR-2023-008-A-01, p. 32–33.



the market conditions within each subject country, and collectively, which is detailed in what follows.

## China

[53] According to the IMF, China's GDP growth between 2022 and 2023 was significantly lower than the 8.4% growth in 2021 that arose in the context of post-pandemic economic stimulus.<sup>73</sup> In 2024 and 2025, growth is predicted to drop to 4.6% and 4.1% respectively, compared to pre-pandemic GDP growth of 6.8% and 6% in 2018 and 2019.<sup>74</sup>

[54] AMD and Stelco submitted evidence that growth in the Chinese economy has been hobbled by downturns in its property sector,<sup>75</sup> as well as softening in demand within its automotive<sup>76</sup> and manufacturing sectors,<sup>77</sup> the latter of which accounts for about 30% of its steel demand.<sup>78</sup> Notably, CRU data forecast growth in China's COR consumption in 2024 through 2026. However, AMD and Stelco argued, and the Tribunal accepts, that this will not be sufficient to absorb China's excess production capacity which CRU data suggest is forecasted to persist during the same period.<sup>79</sup>

[55] The evidence also points to excess Chinese steelmaking capacity leading to increased levels of production beyond real demand<sup>80</sup> and to a strong export orientation for Chinese steel products, and COR products in particular.<sup>81</sup>

## Chinese Taipei

[56] Economic conditions within Chinese Taipei reflect a generally uneven trajectory. Its GDP growth rate in 2023 was 1.4% (the lowest since the 2009 global financial crisis), whilst future projections forecast a growth rate of 3.1% in 2024, declining to 2.7% in 2025.<sup>82</sup> Chinese Taipei also possesses significant excess production capacity for steel generally and for COR in particular,<sup>83</sup> and there is evidence which suggests that challenging conditions for its domestic steel industry, including competition from Chinese steel products<sup>84</sup> and lagging domestic consumption of steel goods,<sup>85</sup> have driven increased export sales of the subject goods.<sup>86</sup>

<sup>73</sup> Exhibit RR-2023-008-A-01, p. 131, 133.

<sup>74</sup> Exhibit RR-2023-008-A-01, p. 133.

<sup>75</sup> Exhibit RR-2023-008-A-01, p. 127, 177, 178.

<sup>76</sup> Exhibit RR-2023-008-A-01, p. 231.

<sup>77</sup> Exhibit RR-2023-008-A-01, p. 247–256.

<sup>78</sup> Exhibit RR-2023-008-A-01, p. 245.

<sup>79</sup> Exhibit RR-2023-008-A-02 (protected), p. 159–170; Exhibit RR-2023-008-A-01, p. 159–160; Exhibit RR-2023-008-A-01, p. 37–39.

<sup>80</sup> Exhibit RR-2023-008-A-01, p. 260–261.

<sup>81</sup> Exhibit RR-2023-008-A-01, p. 262; Exhibit RR-2023-008-A-03, p. 136–139.

<sup>82</sup> Exhibit RR-2023-008-A-01, p. 132, 331–333.

<sup>83</sup> Exhibit RR-2023-008-A-02 (protected), p. 159–170; Exhibit RR-2023-008-A-01, p. 159–160; RR-2023-008-A-01, p. 41.

<sup>84</sup> Exhibit RR-2023-008-A-01, p. 338–339.

<sup>85</sup> Exhibit RR-2023-008-A-01, p. 340–341.

<sup>86</sup> Exhibit RR-2023-008-A-01, p. 316–326.

## Korea

[57] The OECD reports that Korea's GDP growth was 1.3% in 2023 and forecasts it rising to 2.6% in 2024 before falling to 2.2% in 2025.<sup>87</sup> In a similar vein, the IMF projects growth of 2.3% in both 2024 and 2025, dipping to 2.0% in 2026.<sup>88</sup> These projected GDP growth levels are improvements from 2023, but are weaker than Korea's average growth from 2016 to 2018 (2.9% to 3.2%).<sup>89</sup>

[58] AMD and Stelco submitted, and the Tribunal accepts, that challenges in Korea's consuming industries, particularly its underperforming construction sector,<sup>90</sup> have contributed to excess production within the country for steel generally and for COR in particular.<sup>91</sup>

## India

[59] In 2021, the Government of India introduced a "Production-Linked Incentive" program for "Specialty Steel," inclusive of COR, which incentivizes domestic producers to meet significant production and export targets over a six-year period, beginning in the Government of India's 2023–2024 fiscal year.<sup>92</sup> As a result of this program, it is estimated that over the 2024–2026 period India could continue to yield excess galvanized steel production annually.<sup>93</sup> Considering India's economic outlook, the IMF projects that India's economy will experience positive growth in the coming years, with the GDP growth rate being projected to reach 6.8% in 2024 and 6.5% in 2025, compared to 7.8% in 2023.<sup>94</sup>

[60] AMD and Stelco submitted, and the Tribunal accepts, that this growth is largely attributable to investments in India's technology sector<sup>95</sup> and that downstream domestic COR consumers, such as India's construction<sup>96</sup> and automotive<sup>97</sup> industries are forecasted to experience declines in growth, diminishing the size of the consumer market for the subject goods. Evidence shows that India's domestic steel producers are also facing increased competition from inexpensive Chinese steel.<sup>98</sup>

## The subject countries

[61] The Tribunal accepts that the collective demand for COR in the subject countries will be slow over the next 24 months. At the same time, the subject countries had substantial excess capacity during the POR, which CRU has forecasted to continue over the medium term.<sup>99</sup> Moreover, the CRU

<sup>87</sup> Exhibit RR-2023-008-A-01, p. 141.

<sup>88</sup> Exhibit RR-2023-008-A-01, p. 132.

<sup>89</sup> Exhibit RR-2023-008-A-01, p. 132.

<sup>90</sup> Exhibit RR-2023-008-A-01, p. 351–353, 372–378.

<sup>91</sup> Exhibit RR-2023-008-A-02 (protected), p. 159–170; Exhibit RR-2023-008-A-01, p. 159–160; RR-2023-008-A-01, p. 52–54.

<sup>92</sup> Exhibit RR-2023-008-A-01, p. 473–476, 477–486.

<sup>93</sup> Exhibit RR-2023-008-A-02 (protected), p. 159–166; Exhibit RR-2023-008-A-01, p. 61–36, 159, 483–485.

<sup>94</sup> Exhibit RR-2023-008-A-01, p. 133.

<sup>95</sup> Exhibit RR-2023-008-A-01, p. 545–559.

<sup>96</sup> Exhibit RR-2023-008-A-01, p. 560–562; Exhibit RR-2023-008-A-02 (protected), p. 566.

<sup>97</sup> Exhibit RR-2023-008-A-01, p. 566–567.

<sup>98</sup> Exhibit RR-2023-008-A-01, p. 581–583.

<sup>99</sup> Exhibit RR-2023-008-A-03, p. 136–139; Exhibit RR-2023-008-A-04 (protected), p. 86–95.

data provides that the subject countries continue to have significant production volumes exceeding the demand of those countries.<sup>100</sup> The prospect of slow domestic demand and excess capacity with respect to COR in the subject countries, in combination with other factors, such as numerous trade remedies measures on certain COR products imposed by WTO members on the subject countries,<sup>101</sup> make it reasonable to conclude that the subject countries will be motivated to export their excess COR over the next 24 months. Indeed, the Tribunal recognizes that if the subject countries were to supply the entire Canadian market for COR, it would barely move the needle on increasing the subject countries' collective capacity utilization rate.<sup>102</sup>

### Domestic market conditions

[62] Evidence on the record suggests that the Canadian economy is experiencing a period of inflationary easing. The Bank of Canada reports that measures of core inflation declined from roughly 3.5% to 2.75% between December 2023 and June 2024 and that the share of prices which rose more than 3% during the foregoing period is now close to its historical average. The Bank of Canada also reports that, after having stalled in the second half of 2023, Canada's GDP expanded by roughly 1.75% in the first quarter of 2024, driven by strong population growth. However, on a per-person basis, GDP contracted for the fourth consecutive quarter due to ongoing weak household spending.

[63] Overall, the Tribunal considers that the economic outlook for Canada in the coming months is generally positive, with economic growth forecast to increase in the second half of 2024 and beyond, and growth in GDP anticipated to be about 2% in 2025 and 2.5% in 2026.<sup>103</sup> This positive trajectory also accords with the Bank of Canada's decision to reduce its policy rate by 25 basis points in September 2024<sup>104</sup> and by a further 50 basis points in October 2024.<sup>105</sup>

[64] The Tribunal is also aware that the Government of Canada has announced the imposition of a 25% surtax on the import of certain steel and aluminum products from China.<sup>106</sup> The 25% surtax came into effect on October 22, 2024.<sup>107</sup> The Government of Canada has also announced a tariff remission process for Canadian businesses importing certain Chinese goods, "[t]o ensure that Canadian industry has sufficient time to adjust supply chains, remission will provide relief from the

<sup>100</sup> Exhibit RR-2023-008-A-03, p. 136–139; Exhibit RR-2023-008-A-04 (protected), p. 86–95.

<sup>101</sup> Exhibit RR-2023-008-05.B, Table 47; Exhibit RR-2023-008-A-03, p. 40–41.

<sup>102</sup> Exhibit RR-2023-008-A-03, p. 136–139; Exhibit RR-2023-008-A-04 (protected), p. 86–95; Exhibit RR-2023-008-06.B (protected), Table 12.

<sup>103</sup> Exhibit RR-2023-008-A-01, p. 754.

<sup>104</sup> Bank of Canada, "Bank of Canada reduces policy rate by 25 basis points to 4¼%", Bank of Canada Media Release (4 September 2024), online: <https://www.bankofcanada.ca/2024/09/fad-press-release-2024-09-04/>.

<sup>105</sup> Bank of Canada, "Bank of Canada reduces policy rate by 50 basis points to 3¾%", Bank of Canada Media Release (23 October 2024), online: <https://www.bankofcanada.ca/2024/10/fad-press-release-2024-10-23/>.

<sup>106</sup> Department of Finance Canada, "Canada taking further action to protect workers and critical industries against unfair Chinese competition", Department of Finance Canada Media release (1 October 2024), online: <https://www.canada.ca/en/department-finance/news/2024/10/canada-taking-further-action-to-protect-workers-and-critical-industries-against-unfair-chinese-competition.html>. See also Department of Finance Canada "Final list of steel and aluminum products from China that will be subject to a 25 per cent surtax", Department of Finance Canada (October 1, 2024), online: <https://www.canada.ca/en/department-finance/news/2024/10/final-list-of-steel-and-aluminum-products-from-china-that-will-be-subject-to-a-25-per-cent-surtax.html>.

<sup>107</sup> Canada Border Services Agency, "Customs Notice 24–36: China Surtax Order (2024) – Steel and Aluminum" (18 October 2024), online: <https://www.cbsa-asfc.gc.ca/publications/cn-ad/cn24-36-eng.html>.

payment of surtaxes, or the refund of surtaxes already paid, under specific and exceptional circumstances.”<sup>108</sup>

[65] Considering the COR market specifically, the Tribunal accepts evidence from AMD and Stelco which shows that a surge in demand for the subject goods occurred in 2021, as consumers with depleted inventories sought to restock following the height of the COVID-19 pandemic,<sup>109</sup> an occurrence that also pushed up pricing.<sup>110</sup> The Tribunal also finds that price spikes were observed in 2022 as consumers sought to stockpile inventory in response to the war in Ukraine.<sup>111</sup> Domestic producers submitted, and the Tribunal accepts, that the market returned to more typical demand patterns in 2023.<sup>112</sup> This evidence of the domestic producers is consistent and aligns with investigation report data.

#### Conclusion on market conditions

[66] The Tribunal concludes that the evidence demonstrates that present international market conditions are as described above. Those conditions will likely persist during the next 24 months. Domestic economic conditions in the subject countries will likely not be favourable to COR producers as a result of low economic growth and low demand for COR. Consequently, COR producers in the subject countries are likely to be confronted with over production and excess production capacity of the subject goods, as well as serious import competition for their products, including from imports originating from other subject countries. Overall, the evidence suggests that economic conditions in the subject countries will likely remain such that COR producers within these countries are likely to significantly seek out and rely on export opportunities during the next 24 months to sustain their business, which will post a significant collective threat to the Canadian COR market, if the finding is rescinded.

[67] As for the Canadian market conditions relevant to the subject goods, the Tribunal finds that those conditions are likely to be generally positive moving forward as inflationary pressures diminish. The Tribunal finds that the domestic market will likely enjoy both economic and GDP growth over the next 24 months.

[68] The prevailing commercial interest rates are also likely to fall in reaction to the prime rate reduction approach recently adopted by the Bank of Canada in September and October 2024, in accordance with the gradual reduction of inflationary pressures. In the Tribunal’s view, this change is likely to encourage economic activities and favour demand generally, but it will also likely favour demand for COR more specifically. After a period of adjustment following the COVID-19 pandemic, the domestic industry is now of the view, and the Tribunal agrees, that the domestic COR market has aligned itself with typical market conditions. The Tribunal deems it reasonable to conclude,

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<sup>108</sup> Department of Finance Canada, “Canada announces tariff remission process for Canadian businesses importing certain Chinese goods”, Department of Finance Canada Media release (18 October 2024), online: <https://www.canada.ca/en/department-finance/news/2024/10/canada-announces-tariff-remission-process-for-canadian-businesses-importing-certain-chinese-goods.html>.

<sup>109</sup> Exhibit RR-2023-008-06.B (protected), Table 12; Exhibit RR-2023-008-A-05, p. 12; Exhibit RR-2023-008-A-07, p. 7; Exhibit RR-2023-008-B-05, p. 4.

<sup>110</sup> Exhibit RR-2023-008-A-07, p. 7.

<sup>111</sup> Exhibit RR-2023-008-A-07, p. 7; Exhibit RR-2023-008-B-05, p. 5.

<sup>112</sup> Exhibit RR-2023-008-A-07, p. 7; Exhibit RR-2023-008-B-05, p. 5.

therefore, that the Canadian market conditions and demand for COR are likely to remain stable or to improve slightly in the near to medium term.

[69] Further, against the backdrop of the international market conditions canvassed above, the Canadian market is also likely to present an attractive option to exporters of the subject goods (including subject goods from China) if the finding is rescinded, even when the impacts of the 25% surtax of COR products are taken into consideration.<sup>113</sup> The Tribunal finds that there is no compelling evidence on the evidentiary record to suggest that the surtax would yield a significant effect on the likely volumes or pricing of the subject goods from the subject countries on a cumulative basis over the near to medium term, as further explained in the respective sections below.

### **Likely import volume of the subject goods if the finding expires**

[70] The Regulations<sup>114</sup> provide that the Tribunal may consider the likely volume of the dumped goods 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 if the finding is allowed to expire.

[71] In assessing the likely volumes of dumped imports, the Tribunal may consider factors such as the likely performance of the foreign industry, the potential for foreign producers to make goods in facilities that are currently used to produce other goods, evidence of the imposition of anti-dumping and/or countervailing measures in other jurisdictions, and whether measures taken by other jurisdictions are likely to cause a diversion of the subject goods to Canada.<sup>115</sup>

[72] Considering the foregoing framework and the evidence, the Tribunal makes the following findings. The Tribunal finds the evidence highlighted to be relevant and credible.

#### Reliability of the investigation report data

[73] To begin, the Tribunal must address the reliability of its investigation report data which was the subject of some submissions within this expiry review. Specifically, the domestic producers expressed concerns about the investigation report,<sup>116</sup> arguing that there were significant discrepancies between the import volumes reported in the investigation report and the CBSA's import volumes, especially for 2021. Notwithstanding these concerns, the Tribunal notes that the domestic producers stated that the import volume trends observed in the investigation report generally aligned with their experience in the Canadian market.

[74] The Tribunal wishes to express at the outset that the accuracy and reliability of the investigation report data are some of its primary concerns in its trade remedies inquiries. Accordingly, in this expiry review, the Tribunal and staff of the Secretariat to the Tribunal did their

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<sup>113</sup> The Tribunal notes the domestic industry's submission that the Government of Canada's announcement indicates that the surtax measures will be reviewed within a period of 12 months from their time of entry into force. See Exhibit RR-2023-008-33.02, p. 3.

<sup>114</sup> See paragraph 37.2(2)(a) of the Regulations.

<sup>115</sup> Paragraphs 37.2(2)(a), (d), (f), (h) and (i) of the Regulations.

<sup>116</sup> Although these submissions were made specifically in reference to the investigation report which was first issued in this expiry review (i.e., Exhibit RR-2023-008-05 and Exhibit RR-2023-008-06) the nature of these comments are broadly generalizable across all of the investigation reports which were issued for the purposes of the Tribunal's review.

utmost to collect, organize and present the data that best represent the state of the overall Canadian market for the products that are subjected to this order over the Tribunal's POR.

[75] In this expiry review, as per its usual practice, the Tribunal sought and obtained timely questionnaire responses from producers, importers, unions and foreign producers. This information is reflected in the investigation report. Using its standard methodology, the Tribunal estimated import and sales data for importers that were not selected to complete a questionnaire, for importers that did not submit a questionnaire response and for importers that submitted an unreliable questionnaire response.<sup>117</sup>

[76] The Tribunal acknowledges that the timely filing of complete and useable data through the importers' questionnaires by all selected importers would have yielded the most accurate and reliable data for the investigation report. There were unusual and extenuating circumstances that precluded the inclusion, in the record, of all questionnaires received from importers who were asked to submit a questionnaire. Notwithstanding, the Tribunal is satisfied that the standard methodology it used to estimate import and sales data from importers produced a reliable estimation of import and market volumes in this expiry review.

[77] Regarding the potential for non-subject goods being included in the Tribunal's data, the questionnaires prescribed that only the data for the goods covered by the product definition were to be included, while data for goods outside of the product definition were to be excluded. Aside from enforcement data, the import data that the CBSA collected, which the CBSA made available to the Tribunal in this expiry review pursuant to paragraph 107(4)(b) of the *Customs Act*, are based mainly on the Harmonized System (HS) codes which may not align with the product definition of the subject goods.

[78] In conclusion, the Tribunal is satisfied that the data contained in the investigation report are reliable for the purpose of its likely injury analysis.

#### Import volumes during the POR

[79] The investigation report data show that the total volume of imports of COR decreased from 2021 to 2023 and increased in interim 2024 relative to interim 2023.<sup>118</sup> The volume of imports of COR from the subject countries followed the same trend.

[80] The domestic producers argued that while COR imports from China, Taiwan and Korea decreased in 2022, they still maintained a significant share of all imports.<sup>119</sup> On a cumulated basis, the evidence shows that the share of imports from the subject countries was at a meaningful level in both 2021 and 2022 but dropped in 2023 and in interim 2024.<sup>120</sup>

[81] Henry Wegiel of AMD noted in his witness statement that imports from the subject countries increased in 2021 and 2022 because of a rise in global prices combined with outdated CBSA normal

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<sup>117</sup> Exhibit RR-2023-008-05.B, p. 8, 10.

<sup>118</sup> Exhibit RR-2023-008-05.B, Table 9.

<sup>119</sup> The Tribunal notes that there was virtually no subject imports from India throughout the entirety the POR. See Exhibit RR-2023-008-05.B, Table 8.

<sup>120</sup> Exhibit RR-2023-008-06.B (protected), Table 10.

values.<sup>121</sup> Imports from the subject countries then decreased once the CBSA normal values were updated in April 2023.<sup>122</sup>

[82] The evidence also indicates that the volume of imports from non-subject countries decreased in 2023 but increased significantly in Q1 2024 when compared to Q1 2023.<sup>123</sup> Imports from non-subject countries, as reported in the investigation report, included exports to Canada from Türkiye's foreign producers, who were excluded from the finding in *Corrosion-resistant Steel Sheet (COR 2019)*.<sup>124</sup>

[83] The evidence shows that the volume of imports of the subject goods relative to the volume of domestic production and to the volume of the sales of domestic production decreased between 2021 and 2023,<sup>125</sup> which is consistent with the trend seen for the volume of the share of imports.

#### Likely import volumes if the finding expires

[84] AMD and Stelco argued that large volumes of dumped COR will enter the Canadian market if the finding expires. In support, and as canvassed in the Tribunal's discussion on international market conditions above, the domestic industry argued that the subject countries are facing weak economic and market conditions for both steel in general and for the COR subjected to this order. They also argued that the subject countries will have significant production capacity and low utilization rates for COR and will be adding production capacity in future years. Finally, the domestic producers pointed to evidence that demonstrated that the high volume of exports from China to the other subject countries will impose considerable pressure on the subject countries' respective domestic markets. The domestic producers argued that these factors will increase the subject countries' propensity to export. In that regard, Mr. Wegiel from AMD submitted that the subject countries exported almost 20 million MT of COR in 2023, which represented many times the size of the Canadian market during the POR.<sup>126</sup>

[85] The domestic producers argued that each subject country will increase its COR production and production capacity in the forthcoming years.<sup>127</sup> They submitted that, based on CRU forecasts, the subject countries' combined production of COR is projected to increase by several million MT by 2026. The combined production capacity is also projected to increase<sup>128</sup> even though the domestic industry contended that the subject countries already had several million MT of excess capacity in 2023, which can supply the Canadian market many times over.<sup>129</sup>

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<sup>121</sup> The CBSA initiated a re-investigation to update the normal values of this measure on October 31, 2022. The CBSA concluded this re-investigation on April 26, 2023. Given a lack of evidence to the contrary, the Tribunal is willing to accept that import volumes from subject countries had already started to decrease during the period of January to March 2023, due to the CBSA's initiation and ongoing re-investigation at that time. See Exhibit RR-2023-008-05.B, Table 8.

<sup>122</sup> Exhibit RR-2023-008-03.A, p. 5; Exhibit RR-2023-008-A-03, p. 7.

<sup>123</sup> Exhibit RR-2023-008-05.B, Table 9.

<sup>124</sup> *Corrosion-resistant Steel Sheet* (16 November 2020), NQ-2019-002 (CITT).

<sup>125</sup> Exhibit RR-2023-008-05.B, Table 11.

<sup>126</sup> Exhibit RR-2023-008-A-03, p. 36. See Exhibit RR-2023-008-06.B (protected), Table 12, for the size of the Canadian market.

<sup>127</sup> Exhibit RR-2023-008-A-04 (protected), para. 104.

<sup>128</sup> *Ibid.*

<sup>129</sup> *Ibid.*

[86] Mr. Wegiel noted that demand for COR in the subject countries is increasing.<sup>130</sup> However, as addressed above, the Tribunal has already accepted that demand for COR in the subject countries will remain weak and will not be sufficient to compensate for their excess capacity over the short to medium term. As a result, the Tribunal agrees with the domestic producers that the subject countries will be strongly motivated to export their excess production.

[87] AMD and Stelco argued that the presence of imports from subject countries in the market during the POR is a demonstration that exporters from each of the subject countries have an ongoing interest in exporting to the Canadian market. The ties between the subject countries' exporters and certain Canadian importers and the ability of the subject countries' exporters to rapidly shift exports between markets when the opportunity arises were factors that were emphasized by AMD and Stelco.<sup>131</sup> To support this argument, Brian Healey from AMD stated that "the continued interest in the Canadian market by producers in the Subject Countries even following the 2022 normal value re-investigations is very concerning to AMD in the event that the Finding is rescinded".<sup>132</sup>

[88] The Tribunal finds that exporters in the subject countries maintained an interest in the Canadian market during the POR, including cultivating close business connections with Canadian importers of goods that are similar, in description, to the subject goods. These established connections between subject countries' exporters and Canadian importers will likely facilitate a significant increase in volumes of subject goods into the Canadian market in a relatively short time if the finding is rescinded.

[89] Considering the foregoing, the parties submitted that the Canadian market will be very attractive to exporters in the subject countries because there will be stable COR demand in Canada.<sup>133</sup> This phenomenon would be exacerbated by the price spreads between the US Midwest price and the subject countries' prices.<sup>134</sup> The Tribunal concludes, based on the evidence, that Canada is forecast to have stable demand and relatively high COR prices over the next 24 months.

[90] The Tribunal also finds that Canada will be a very attractive destination for exports from the subject countries. Producers in the subject countries will be confronted with difficult domestic market conditions that will highly constrain their ability to absorb excess capacity. As such, the subject countries' exporters will be looking for export markets. Canada will be one such market, given that certain exporters already have established connections with Canadian importers, as discussed above. This analysis is also consistent with the Tribunal's evaluation of international market conditions relevant to COR, as discussed above.

[91] In addition, the Tribunal considers that the foregoing conditions are likely to be exacerbated by international trade remedies that have been imposed by other countries and that remain in force. For example, Mr. Wegiel provided evidence showing that there are multiple anti-dumping and countervailing measures against certain COR products from the subject countries, specifically 25 against China, 4 against India, 8 against Korea and 5 against Chinese Taipei.<sup>135</sup>

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<sup>130</sup> Exhibit RR-2023-008-A-04 (protected), para. 104.

<sup>131</sup> Exhibit RR-2023-008-A-03, p. 144–147.

<sup>132</sup> Exhibit RR-2023-008-A-07, para. 24.

<sup>133</sup> Exhibit RR-2023-008-A-01, p. 777; Exhibit RR-2023-008-A-06 (protected), para. 54.

<sup>134</sup> Exhibit RR-2023-008-A-02 (protected), p. 120.

<sup>135</sup> Exhibit RR-2023-008-A-03, para. 119.



[92] The domestic producers argued that the existence of such measures limits the subject countries' export options and increases the likelihood that the subject goods will be diverted into Canada should the finding be rescinded. Gui Jacinto from the USW expressed the view that the Section 232 tariff on certain steel products imposed by the United States has resulted in diversion of steel products from the subject countries into the Canadian market.<sup>136</sup>

[93] In a similar vein, evidence by Mr. Wegiel and Mr. Gauthier suggests that the equipment necessary to produce automotive or unpassivated corrosion-resistant steel sheet, goods which are not subject to this finding, can also be used for COR production.<sup>137</sup> This led the domestic producers to argue that if the finding expires, producers from subject countries may shift from producing other steel products (or corrosion-resistant steel sheet not specifically subjected to this finding) to producing COR to take advantage of new export opportunities. They argued that such a shift could be driven by existing trade remedies against related steel products and the potential for increased COR production to meet export demands.

[94] Considering the above, the Tribunal concludes that the existence of trade remedies measures in other important markets for steel products will limit the export options of the subject countries' exporters. The Tribunal also considers it likely that such measures would serve as a catalyst for excess COR produced in the subject countries to be diverted into markets such as Canada should the finding be rescinded.

[95] In conclusion, the Tribunal is persuaded that the rescission of the finding is likely to result in a significant increase in the volumes of imports of the subject goods over the next 24 months.

#### **Likely price effects if the finding expires**

[96] The Tribunal will next consider whether, if the finding expires, the subject goods are likely to significantly undercut the prices of domestically produced like goods in the domestic market, depress those prices or suppress those prices by preventing increases that would likely have otherwise occurred.<sup>138</sup> In this regard, the Tribunal distinguishes the price effect of the subject goods from any price effects that would likely result from other factors affecting prices.<sup>139</sup>

[97] AMD and Stelco argued that the subject goods will likely return to Canada at very low prices that undercut and depress the domestic industry's prices if the finding is rescinded. The Tribunal generally accepts this characterization and bases its finding on the evidence highlighted below, which it found to be both relevant and credible when considered in the context of the applicable legal framework.

#### Importance of price

[98] The Tribunal determined in *COR 2018* that COR is a commodity product and, as such, is price sensitive.<sup>140</sup> The evidence in this expiry review continues to support this finding.

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<sup>136</sup> Exhibit RR-2023-008-D-05, paras. 43–46.

<sup>137</sup> Exhibit RR-2023-008-A-03, p. 5; Exhibit RR-2023-008-A-05, paras. 13, 16–24.

<sup>138</sup> Paragraph 37.2(2)(b) of the Regulations.

<sup>139</sup> *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (13 May 2022), RR-2021-001 (CITT), para. 170.

<sup>140</sup> *Corrosion-resistant Steel Sheet* (21 February 2019), NQ-2018-004 (CITT), para. 53.

For example, Beric Sykes of Nova Steel stated that the primary reason for purchasing COR from offshore sources is price, as COR is a commodity product.<sup>141</sup> Brian Healey of AMD also noted that “typically, demand is relatively stable, and as such, pricing is quite competitive among the various participants in the market.”<sup>142</sup> Michael Gauthier of AMD stated that “the commodity nature of COR means that even a small quantity of low-priced imports, if sustained by sufficient production capacity in the country of export, is sufficient to disrupt market conditions and to bring prices down in Canada.”<sup>143</sup>

[99] The Tribunal also finds that the evidence indicates that customers of imported COR are essentially the same as for domestically produced like goods. The subject goods and the like goods are distributed through the same channels, either to distributors, steel service centres or end users.<sup>144</sup>

#### Prices in the Canadian market during the POR

[100] The evidence shows that price undercutting by the subject goods occurred during the POR and that COR prices have now stabilized following an anomalous period in 2021 and 2022.

[101] The average selling prices of the subject goods undercut the average selling prices of the like goods in 2021 despite the imposition of anti-dumping duties. In addition, there was only a small differential in prices from all sources in 2022.<sup>145</sup>

[102] The Tribunal accepts the domestic industry’s submission that the years 2021 and 2022 were characterized by exceptional events and the domestic COR market in those years was not representative of a typical year. This argument was supported by the evidence of witnesses for AMD which showed that global prices of COR rose in 2021 and 2022. At the same time, CBSA normal values became outdated which allowed exporters of the subject goods with prospective normal values for COR to undercut domestic prices and export to Canada.

[103] Mr. Healey explained in his witness statement that COR prices in Canada were high in 2021 due to pent-up demand resulting from the pandemic but decreased in late 2021 and early 2022 due to the presence of increased volumes of low-priced imports. AMD experienced an increase in prices in early 2022 in response to the war in Ukraine, but prices then declined over the year.<sup>146</sup> Mr. Healey noted that the domestic COR market returned to more typical demand patterns in 2023 but that prices fell from Q1 to Q2 2024 due to increased competition from imports from multiple countries.<sup>147</sup>

[104] The evidence shows that average market prices declined in 2023 and remained low in Q1 2024 as low-priced imports from non-subject countries increased their presence in the Canadian market.<sup>148</sup> The Tribunal takes note of the USW’s arguments that the sales data from the United States

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<sup>141</sup> Exhibit RR-2023-008-B-07, p. 7.

<sup>142</sup> Exhibit RR-2023-008-A-07, p. 4.

<sup>143</sup> Exhibit RR-2023-008-A-05, p. 13.

<sup>144</sup> Exhibit RR-2023-008-12.02, p. 7; Exhibit RR-2023-008-12.01, p. 8; Exhibit RR-2023-008-15.08, p. 4, 7; Exhibit RR-2023-008-15.05A, p. 3, 6; Exhibit RR-2023-008-15.21, p. 3; Exhibit RR-2023-008-15.14, p. 3, 6; Exhibit RR-2023-008-15.12, p. 3, 6; Exhibit RR-2023-008-15.16, p. 3, 6; Exhibit RR-2023-008-15.20, p. 3; Exhibit RR-2023-008-15.13, p. 3, 6; Exhibit RR-2023-008-15.01A, p. 3.

<sup>145</sup> Exhibit RR-2023-008-06.B (protected), Table 27.

<sup>146</sup> Exhibit RR-2023-008-06.B (protected), Table 27; Exhibit RR-2023-008-A-07, p. 7.

<sup>147</sup> Exhibit RR-2023-008-A-07, p. 7.

<sup>148</sup> Exhibit RR-2023-008-06.B (protected), Table 27; Exhibit RR-2023-008-05.B, Table 13.

may not be reliable and should be disregarded.<sup>149</sup> Imports from other non-subject countries were responsible for the greatest increases in market volumes in Q1 2024. In sum, there is persuasive evidence that imports from other non-subject countries were likely the low-price leaders in the Canadian market in 2023 and in Q1 2024.<sup>150</sup>

#### Likely price undercutting and price depression

[105] The domestic industry and the USW submitted that if the finding is rescinded, the prices of the subject goods will undercut the prices of the domestic producers over the next 24 months because offshore imports are only able to compete in Canada if they are priced lower than the domestic producers' prices.

[106] In support of their position, the domestic producers pointed to the prices of subject imports in the Canadian market before the *COR 2018* finding and also during 2021 and 2022 before the CBSA updated the normal values. Indeed, Don Prodeus of Taylor Steel noted that "in March 2022, we had an offer from China which was [...] lower than the domestic mills at the time." Likewise, Mr. Healey provided several examples of prices of subject COR offered by importers during the POR before normal values were updated which were lower than AMD's prices.<sup>151</sup>

[107] The domestic industry and the USW contended that imports from non-subject countries, particularly Türkiye, have become the low-price leaders in the market since the completion of the CBSA's normal value re-investigation in 2023 and that Turkish COR have since been consistently offered and sold to Canadian purchasers at prices that undercut the domestic producers' prices.<sup>152</sup> In this regard, the domestic producers referred to evidence from witness statements providing details pertaining to more than 40 offers of primarily non-subject COR (mostly Turkish) made to Canadian purchasers in 2023 and 2024 in which the domestic producers' prices were undercut by the offered prices. In these instances, the domestic producers either reduced their price to compete with the import offer or lost the sale to the offshore source.<sup>153</sup> Given the lack of any contrary evidence on the evidentiary record, the Tribunal accepts the domestic industry's lost sales allegations.

[108] Considering COR prices in a broader context, witnesses for AMD and Stelco stated that their base prices for commercial grade COR in a specific width and thickness (not including delivery costs) generally trend with CRU's US Midwest spot price.<sup>154</sup> They suggested that the difference in CRU prices that are forecast between the Canadian prices and the prices in the subject countries over the next two years will provide an opportunity for the subject goods to undercut the prices of Canadian COR.<sup>155</sup> To this end, Mr. Gauthier in his witness statement noted that "irrespective of whether the finding is continued, CRU forecasts that there will be a decline in North American COR pricing over the course of 2024 and through 2026" and that, if the finding is rescinded, "offers for large volumes of low-priced subject goods would accelerate and compound the downward price trend and cause pricing to fall farther and faster than would otherwise be the case."<sup>156</sup>

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<sup>149</sup> Exhibit RR-2023-008-37.02, p. 1.

<sup>150</sup> Exhibit RR-2023-008-05.B, Table 13; Exhibit RR-2023-008-05.B (protected), Table 27.

<sup>151</sup> Exhibit RR-2023-008-A-08 (protected), p. 8–9.

<sup>152</sup> Exhibit RR-2023-008-A-01, p. 87–92.

<sup>153</sup> Exhibit RR-2023-008-A-01, p. 87–92; Exhibit RR-2023-008-B-06 (protected), p. 7–10.

<sup>154</sup> Exhibit RR-2023-008-A-07, p. 5; Exhibit RR-2023-008-B-05, p. 4–5.

<sup>155</sup> Exhibit RR-2023-008-A-02 (protected), p. 120.

<sup>156</sup> Exhibit RR-2023-008-A-05, p. 15, 17.

[109] The Tribunal finds that the evidence supports the conclusion that, in the absence of the finding, increasing volumes of subject goods would enter Canada at prices that would trigger and accelerate a downward price spiral that would confront the domestic industry.

[110] In addition, Mr. Wegiel believes that, if the finding is rescinded, the Canadian price will fall toward a China import parity price (IPP), that is, the Chinese price for COR, as reported by CRU, plus freight and logistics charges. Mr. Wegiel also believes that the Canadian price of COR would begin to decline immediately and that prices of all other imports would then need to descend to the Chinese IPP price to remain competitive.<sup>157</sup>

[111] The Tribunal notes that the Government of Canada's implementation of the 25% steel surtax on certain COR from China covered in this order will likely have the impact of increasing the IPP, while the surtax is in effect. At the same time, however, the Tribunal is of the view that if the finding is rescinded, even with the 25% surtax in place, the prices of subject goods will likely still undercut and depress the domestic industry's prices over the next 24 months, given the evidence on the record.

[112] The Tribunal recognizes that Chinese exporters can minimize the impact of the 25% surtax by reducing their export prices, as the surtax is calculated as a percentage of the export price. However, this recourse is not available to Chinese exporters who have been issued prospective normal values on the given models of subject goods covered by this trade remedies order.

[113] Finally, the domestic producers emphasize that the CBSA has already determined that exporters of the subject goods will likely continue to export to Canada at dumped prices if the finding is rescinded.<sup>158</sup> They further argue that the evidence supports the conclusion that the likely subject prices would be even lower than the threshold of dumped prices. This premise is supported by statements made by Mr. Wegiel who noted that "the Chinese price would most likely be below that forecast by CRU"<sup>159</sup> given that dumping requires exports to be sold below home market prices, which will cause an even greater degree of price undercutting. Likewise, Mr. Sykes stated that if the finding is rescinded, he expects that the prices of subject imports "would be at least \$350/MT below the comparable prices of the Canadian mills and likely significantly more."<sup>160</sup>

Conclusion: prices of subject goods will likely undercut and depress prices of like goods

[114] Although the evidence submitted by the domestic industry in respect of the likely price effects is uncontested, it is credible and persuasive.

[115] The data in the investigation report establish that the price of subject imports undercut the price of domestic like goods in 2021. The domestic industry also provided persuasive examples of offers made of subject goods before the normal values were updated at prices below those of the domestic producers.

[116] The investigation report data also establish that non-subject imports were likely the low-price leaders during the POR. This is consistent with evidence provided by several witnesses. The investigation report also demonstrates that after the CBSA's announcement of the re-investigation in

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<sup>157</sup> Exhibit RR-2023-008-A-03, p. 47-49.

<sup>158</sup> Exhibit RR-2023-008-03.A, p. 5.

<sup>159</sup> Exhibit RR-2023-008-A-04, p. 47.

<sup>160</sup> Exhibit RR-2023-008-B-07, p. 8.

October 2022 and, furthermore, after the normal values were updated in April 2023, volumes of non-subject imports increased while volumes of subject imports decreased.

[117] The Tribunal has often found that it is reasonable to assume that, absent any other barriers, subject imports will likely increase in the Canadian market when a finding is rescinded.<sup>161</sup> Subject goods will likely seek to enter the market at prices that will allow them to compete with the low-price leaders in that market. This premise is simply consistent with rational economic behaviour.<sup>162</sup> While the Government of Canada's implementation of the 25% surtax on the imports of certain COR from China covered in this order may serve as a trade barrier and have some impact on disciplining the volume and price of imports into Canada, the Tribunal finds that these basic economic assumptions continue to hold, at least in the circumstances of this case.

[118] The Tribunal has already concluded that exporters in the subject countries have maintained an ongoing interest in the Canadian market, that they have good connections with Canadian importers, that they are likely to resume exporting to Canada in significant increased quantities, that they are export-oriented, and that they will continue to experience significant pressure to export.

[119] Furthermore, the Tribunal finds that the behaviour of the importers of subject goods during the POR, before the *COR 2018* finding and before the CBSA's announcement of the re-investigation in October 2022, is indicative of how they will likely behave if the finding expires. Importers of the subject goods can be expected to adopt pricing that will maximize their market penetration as they will no longer be constrained by anti-dumping duties imposed by the finding. In so doing, they will aim to compete with imports from non-subject countries, the likely low-price leaders, which will no doubt undercut and depress the prices of the domestic industry.

[120] The Tribunal considers the undercutting and price depression scenarios described above by Mr. Wegiel, Mr. Gauthier and Mr. Sykes, in terms of both the magnitude of the undercutting and the time frame within which it would be implemented, to be reasonable and consistent with other evidence presented to the Tribunal. The undercutting would likely be significant, and it would likely occur shortly after the expiry of the finding, which will result in the depression of the domestic industry's prices.

[121] In conclusion, the Tribunal is convinced that subject imports of COR will re-enter the Canadian market at prices that will undercut and depress the prices of the domestic industry if the finding expires.

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

[122] As part of its review, the Tribunal will assess the likely impact of the above volumes and prices on the domestic industry if the finding expires,<sup>163</sup> taking into consideration the likely performance of the domestic industry. In this analysis, the Tribunal distinguishes the likely impact of

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<sup>161</sup> See, for example, *Liquid Dielectric Transformers* (20 December 2023), RR-2022-004 (CITT), para. 88; *Welded Large Diameter Carbon and Alloy Steel Line Pipe* (3 August 2022), RR-2021-002, para. 118.

<sup>162</sup> See, for example, *Dry Wheat Pasta* (20 March 2024), RR-2023-001 (CITT), para. 101; *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (13 May 2022), RR-2021-001 (CITT), para. 181.

<sup>163</sup> Paragraphs 37.2(2)(e) and (g) of the Regulations.

the dumped goods from the likely impact of any other factors affecting or likely to affect the domestic industry.<sup>164</sup>

### Recent performance of the domestic industry

[123] The Tribunal has considered certain aspects of the domestic industry's recent performance in its analysis regarding the volume and prices of the subject goods, discussed above. Other key indicators that the Tribunal deems to be of particular relevance in the context of the current expiry review include the domestic industry's profitability and sales during the POR.

[124] AMD and Stelco argued, and the Tribunal accepts, that the domestic industry's results regarding the foregoing metrics were driven principally by atypical market conditions caused by the extraordinary events surrounding the COVID-19 pandemic and the onset of the war in Ukraine in 2021 and 2022. This position is supported by financial information related to the domestic producers' sales volumes and net income following 2021.<sup>165</sup> It is also supported by witness statements which illustrate the disruptive nature of the foregoing shock events on the domestic industry's business. For example, Mr. Gauthier noted that the company made a healthy net income on domestic COR sales in 2021 and 2022, followed by a year-on-year decline in sales volumes in 2022 given the extraordinary events, a phenomenon that was compounded by sustained import competition against the domestic like goods.<sup>166</sup> The foregoing trajectory is also supported by Stelco's witness, Mr. Harris, and his comments on pricing which are relevant to declines in the company's COR prices in 2023.<sup>167</sup>

[125] In addition to the domestic industry's profitability and sales, the Tribunal also considers key employment figures during the POR in its analysis. The USW argued that the resilience of the domestic industry (and, as a corollary, the stability of worker conditions) was attributable principally to the market discipline introduced by the Tribunal's finding in *COR 2018*. The Tribunal observes that this characterization is supported by data which the USW argues, and the Tribunal agrees, demonstrate the relative stability of, and in some cases improvements in, employment levels across the domestic industry during the POR.<sup>168</sup>

[126] Ron Wells of the USW expressed the view that the market discipline imposed by the finding helped to facilitate wage increases for the union's members during this same period of time.<sup>169</sup> The Tribunal observes that these gains are also reflected in the applicable collective agreements and accepts this evidence.<sup>170</sup>

[127] Considering the foregoing evidence, the Tribunal is satisfied that the years 2021 and 2022 in the POR constituted an anomalous period characterized by increased prices and abnormal purchasing

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<sup>164</sup> See paragraph 37.2(2)(k) of the Regulations.

<sup>165</sup> Exhibit RR-2023-008-05.B, tables 35, 36; Exhibit RR-2023-008-06.B (protected), tables 35, 36; RR-2023-008-B-03, p. 11; RR-2023-008-B-04 (protected), p. 11; RR-2023-008-A-06 (protected), p. 20, Exhibit RR-2023-008-A-05, p. 20.

<sup>166</sup> Exhibit RR-2023-008-A-05, p. 20–21; Exhibit RR-2023-008-A-06 (protected), p. 20–21. In this regard, the Tribunal also accepts evidence demonstrating an upward trend in import competition from the subject goods during the first quarter of 2024. See Exhibit RR-2023-008-05.B, Table 9.

<sup>167</sup> Exhibit RR-2023-008-B04 (protected), p. 11; RR-2023-008-B-03, p. 11.

<sup>168</sup> Exhibit RR-2023-008-21.01A, p. 4; Exhibit RR-2023-008-22.01A, p. 4 Exhibit, RR-2023-008-05.B, Tables 5, 40, 41; Exhibit, RR-2023-008-06.B (protected), tables 5, 40, 41.

<sup>169</sup> Exhibit RR-2023-008-D-03, p. 6–7.

<sup>170</sup> Exhibit RR-2023-008-D-03, p. 11–176.

patterns, as reflected in the key performance markers of the domestic industry during this time. The Tribunal is also of the view that the results in 2021 and 2022 are not a reliable predictor that comparable outcomes will be sustained in the near term. This is an unlikely and challenging premise for the domestic industry should the finding be rescinded, particularly in light of evidence of continued foreign competition against the domestic like goods by the subject goods and the volume and prices of the subject goods within the domestic market by the subject countries which would be expected without the discipline provided by SIMA measures.

#### Likely performance of the domestic industry if the finding expires

[128] The Tribunal must ultimately assess whether the likely volume and price effects of the subject goods are likely, *in and of themselves*, to result in material injury to the domestic industry. This assessment is considered in the context of the domestic industry's recent performance<sup>171</sup> and, where relevant, takes into account the impact from other factors unrelated to the dumping of the subject goods. What follows is a summary of the argument and evidence that the Tribunal finds to be persuasive, credible and relevant to this aspect of its analysis.

[129] The domestic producers and the USW argued that the domestic industry would suffer material injury in the absence of the finding. In support of this view, in addition to the evidence and argument which has already been canvassed elsewhere in this decision,<sup>172</sup> the domestic producers supplied an internal analysis which forecasts worsening financial performance and diminishing capital investments in the event of a rescinded finding.<sup>173</sup> For example, Mr. Harris submitted that COR from the subject countries in the absence of the order "would adversely impact Stelco's COR production, sales, revenue, profitability, and ability to continue investing" in its facilities.<sup>174</sup> Mr. Gauthier similarly predicted falling net income and diminished profitability in the absence of the market discipline imposed by the finding as well as likely impacts to AMD's capital investments in the medium to long term.<sup>175</sup>

[130] The USW, for its part, argued that COR will face intense foreign competition in the domestic market, pointing to, *inter alia*, evidence from the present expiry review's investigation report which demonstrates sustained market penetration of the goods covered by this expiry review from both subject and non-subject countries during the POR to substantiate its position.<sup>176</sup> The USW also points to the stale normal values on imports of the subject goods from subject countries during the POR as hobbling the domestic industry's performance. It reiterates that the volume of imports resulting from the stale normal values should be viewed as a predictor of the market disruption that is likely to occur if the finding is rescinded. Against this backdrop, the USW predicts that the stability and gains employees have enjoyed over the POR with respect to key markers surrounding worker conditions

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<sup>171</sup> Paragraph 37.2(2)(c) of the Regulations directs the Tribunal to examine the likely performance of the domestic industry, taking into account the industry's recent performance, including trends in production, capacity utilization, employment levels, prices, sales, inventories, market share, exports and profits.

<sup>172</sup> See in particular the Tribunal's analysis pertaining to volume and pricing, above.

<sup>173</sup> In this connection, the domestic producers provided financial forecasts in addition to the general analyses described within these reasons. See, for example, Exhibit RR-2023-008-A-06 (protected), p. 23; Exhibit RR-2023-008-B-04 (protected), p. 19.

<sup>174</sup> Exhibit RR-2023-008-B-03, p. 19–20; Exhibit RR-2023-008-B-04 (protected), p. 19–20.

<sup>175</sup> Exhibit RR-2023-008-A-05, p. 23–25; Exhibit RR-2023-008-A-06 (protected), p. 23–25.

<sup>176</sup> Exhibit RR-2023-008-05.B, Table 25; Exhibit RR-2023-008-06.B (protected), Table 25. In this connection, the Tribunal finds that the following exhibits are also instructive: Exhibit RR-2023-008-05.B, tables 12, 14; Exhibit RR-2023-008-06.B (protected), tables 12, 14.

such as employment levels,<sup>177</sup> wages, hiring and retention, as well as pension and benefits will be lost in the absence of the market discipline imposed by the finding.

[131] Evidence presented to the Tribunal supports the above arguments made by the USW. This includes previously cited remarks from Mr. Wells who described how the USW was able to take advantage of a stable domestic market to bargain for wage increases for its membership, but also predicted less favourable outcomes in the absence of the finding.<sup>178</sup> Mr. Wells also highlighted the importance of the company's economic health to employee pension and benefit schemes,<sup>179</sup> leading to the conclusion, in the Tribunal's view, that the potential for adverse outcomes in these domains also looms in the absence of the finding.

[132] The Tribunal notes that, in framing its analysis, the USW submitted that recent changes to SIMA and its regulations are of significance to the Tribunal's analytical approach. Specifically, they assert that changes to subsection 2(11) of SIMA, which now read as follows:

(11) In any assessment of injury under this Act, any impacts on workers employed in the domestic industry shall be taken into account;

and recent changes to subsection 37.2(2) of the Regulations highlighted in the following:<sup>180</sup>

37.2(2)(e) the likely impact of the dumped or subsidized goods on domestic industry if the order or finding is allowed to expire, having regard to all relevant economic factors and indices, including ...

(iii) any potential negative effects on employment levels or the terms and conditions of employment of the persons employed in the domestic industry, including their wages, hours worked, pension plans, benefits or worker training and safety; ...

(g) the potential negative effects of the dumped or subsidized goods on existing development and production efforts, including effects on hiring and on efforts to produce a derivative or more advanced version of like goods;

[Emphasis added by the USW]

redefine the ways in which the domestic industry can be injured in expiry reviews to include the negative impacts on workers, inclusive of affected workers both "upstream" and "downstream" within the COR supply chain.<sup>181</sup>

[133] Considering the foregoing argument, the Tribunal has thus far taken the view that the changes to the SIMA framework require the Tribunal to take into account the impact on workers as a

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<sup>177</sup> To this end, the USW points to data which suggest that employment levels remained relatively stable over the POR. Exhibit RR-2023-008-21.01A, p. 4; Exhibit RR-2023-008-22.01A, p. 4; Exhibit, RR-2023-008-05.B, tables 5, 40, 41; Exhibit, RR-2023-008-06.B (protected), tables 5, 40, 41.

<sup>178</sup> Exhibit RR-2023-008-D-03, p. 6–8. See also Exhibit RR-2023-008-D-03, p. 11–176 for the collective agreement.

<sup>179</sup> Exhibit RR-2023-008-D-03, para. 41–43.

<sup>180</sup> SOR/84-927.

<sup>181</sup> Exhibit RR-2023-008-D-01, p. 28–29.



*factor* in its assessment of whether there is an injury or a threat of injury to the domestic industry.<sup>182</sup> Indeed, in a recent decision, the Tribunal has clarified that it considers that subsection 2(11) of SIMA together with the amendments to sections 37.1 and 37.2 of the Regulations operates such that impacts on workers are now expressly included as a factor in its assessment of whether there is an injury or a threat of injury to the domestic industry.<sup>183</sup> The Tribunal is not persuaded that it should depart from the foregoing approach for the purposes of its analysis in this particular case.<sup>184</sup>

#### Conclusions on the likely impact on the subject goods if the finding is rescinded

[134] For reasons outlined above, the Tribunal has already found that the prices of the subject goods will likely significantly undercut and depress the prices of like domestic goods in the absence of the finding.

[135] Further, the Tribunal has determined that the rescission of the finding would likely result in attracting significantly increased volumes of COR to Canada in the near to medium term.

[136] The Tribunal finds that the confluence of these events will likely yield meaningful negative economic consequences for the domestic industry. Presuming that trends observed during the POR are harbingers of what could be expected if the finding is rescinded, and considering the evidence which has been canvassed above, the Tribunal finds that an increase in volume of the subject goods at undercut prices will likely cause lost market share for like goods within the domestic industry.

[137] As demand shifts away from domestic like goods to imports of the subject goods, sales (and consequently revenues) will be lost by the domestic industry. While it may be that the domestic industry could attempt to mitigate against these negative effects by reducing the prices of its like goods to improve its competitive advantage, such a business is unlikely to be either practical or effective. If implemented, reducing the loss of market share by continuously cutting prices would mean preserving sales would come at the expense of declining revenues from sales. In either scenario, the Tribunal finds that the domestic industry is likely to suffer adverse economic effects; margins will be significantly reduced, as will the profitability of the domestic industry overall.

[138] Against a backdrop of diminished profitability and reduced market share, the Tribunal finds it likely that the level of production and use of production capacity in relation to like domestic goods will also be negatively affected. Diminished demand will likely yield lower production volumes. As a corollary, reduced production capacity utilization of the subject goods within the domestic market are also likely to occur.

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<sup>182</sup> See, for example, *Copper Pipe Fittings* (17 February 2012), RR-2011-001 (CITT), para. 33; *Dielectric Transformers* (20 December 2023), RR-2022-004 (CITT), para. 118; *Cold-Rolled Steel* (19 September 2024), RR-2023-006 (CITT), para. 88–90.

<sup>183</sup> See *Seamless Carbon or Alloy Steel Oil and Gas Well Casing* (24 July 2024), RR-2023-004 (CITT), paras. 98–99.

<sup>184</sup> This includes the arguments presented by the USW with respect to the consideration of “upstream” and “downstream” workers in the Tribunal’s analysis. See Exhibit RR-2023-008-D-01, p. 28–29. The Tribunal notes that in *Sour (Tart) Cherries* (30 January 1989), CIT-2-88 (CITT) the Tribunal does not expressly adopt the consideration of workers “upstream” and “downstream” the production chain as a requisite part of its analysis. Considering this fact, and in the absence of any other convincing argument and evidence, the Tribunal is not persuaded that it should expand its analysis of impacts on workers, despite the recent amendment to SIMA.

[139] While the Tribunal acknowledges that the domestic COR industry is somewhat structurally attuned to production imperatives, it also considers that there is a cost associated with those imperatives, and those costs would necessarily have to be absorbed and spread over a smaller volume of production. All of the above would negatively affect the profitability of the industry and put at risk future development and investments.

[140] The Tribunal accepts the USW's evidence that the expiry of the finding would cause employment uncertainty for workers in the domestic COR industry. The stability and gains with respect to employment levels and working conditions enjoyed by workers over the POR would likely be in jeopardy in the absence of the market discipline imposed by the finding.

[141] In sum, the Tribunal finds that the expiry of the finding and the resulting increase in volume of subject imports at undercutting prices would likely result in significant negative economic and commercial consequences for the domestic industry. It concludes that those consequences would constitute injury and that the injury sustained would be material when considering the state of the industry at the end of the POR. Finally, the Tribunal finds that there is no evidence to suggest that there are other factors that could explain the likely injury that the domestic industry could suffer within the next 24 months.

## EXCLUSIONS

[142] The Tribunal received a request from Sacks to exclude goods of the following description from the order continuing the finding:<sup>185</sup> "Corrosion-resistant steel sheet, hot-dipped galvanized coil strip with 64.2 mm width and 90g/m<sup>2</sup> zinc coating each side".

[143] Sacks also set out the following additional product characteristics for the product to which it is seeking an exclusion:<sup>186</sup>

Characteristics	Description
Zinc coating	90g/m <sup>2</sup> each side
Tensile strength	379-400 mpa
Yield strength	>241 mpa
Elongation	36%-38%
Width	64.2 mm
Thickness	0.5 mm

<sup>185</sup> Exhibit RR-2023-008-25.01, p. 2.

<sup>186</sup> Exhibit RR-2023-008-25.01, p. 3.

[144] Sacks provided evidence that it had inquired about the purchase of the following product from the Canadian Service Centre, Samuel, Son & Co: ASTM A653 G60-GR40 Galvanized (Bright finish/Regular spangle) 26 ga (.020 nominal) x 36.<sup>187</sup>

[145] There is some uncertainty concerning the exact description of the product for which Sacks is seeking an exclusion. With that said, based on the evidence, the Tribunal finds that the product in which Sacks is seeking an exclusion has the ASTM specification of A653 and a grade of G40, in addition to the product description and additional product specifications indicated by Sacks in its request form.

[146] AMD and Stelco opposed Sacks' exclusion request. They assert that the domestic industry can supply an identical product, if the slitting coil function to meet the width requirement were carried out by a Canadian service centre.<sup>188</sup> In the alternative, AMD and Stelco provided evidence that the domestic industry regularly supply a substitutable product, such as ASTM A653 G-60 GR 33, that would compete head-to-head with the product to which an exclusion was requested.<sup>189</sup>

[147] For the reasons given below, there is insufficient evidence to demonstrate that the conditions for granting the exclusion request have been met.

### General principles concerning product exclusion requests

[148] It is well established in the Tribunal's case law that exclusions are extraordinary measures and that the Tribunal retains very broad discretion to grant exclusions as the nature of the matter may require.<sup>190</sup> The fundamental principle is that the Tribunal will grant product exclusions only when it is of the view that such exclusions will not cause injury to the domestic industry.<sup>191</sup> In the context of an expiry review, the Tribunal's analysis will consider whether, notwithstanding the general conclusion that all goods covered by an order are likely to cause injury to the domestic industry, there may be case-specific evidence that imports of particular product captured by the definition of the subject goods that are not likely to cause injury to the domestic industry.<sup>192</sup>

[149] The onus is upon the requester, in this case, Sacks, to demonstrate that imports of the specific goods for which the exclusion is requested are not likely to be injurious to the domestic industry.<sup>193</sup>

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<sup>187</sup> Exhibit RR-2023-008-25.01, p. 7.

<sup>188</sup> Exhibit RR-2023-008-27.01, p. 17.

<sup>189</sup> See, for example, Exhibit RR-2023-008-27.02, p. 19.

<sup>190</sup> See *Owen & Company Limited v. Globe Spring & Cushion Co. Ltd.*, 2010 FCA 288, para. 13. See also, for example, *Gypsum Board* (19 January 2017), NQ-2016-002 (CITT), para. 162; *Welded Large Diameter Carbon and Alloy Steel Line Pipe* (4 November 2016), NQ-2016-001 (CITT), para. 188; *Carbon and Alloy Steel Line Pipe* (29 March 2016), NQ-20125-0021 (CITT), para. 201; *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT), para. 339; RR-2024-002, para. 109.

<sup>191</sup> *Certain Fasteners* (6 January 2010), RR-2019-001 (CITT), para. 242, citing *Stainless Steel Wire* (30 July 2004), NQ-2004-001 (CITT), para. 96. See also *Thermoelectric Containers* (9 December 2013), RR-2012-004 (CITT), para. 101.

<sup>192</sup> *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate* (13 February 2015), RR-2014-002 (CITT), para. 109; *Certain Whole Potatoes* (25 September 2015), RR-2014-004 (CITT), para. 128; *Gypsum Board* (3 November 2022), RR-2021-004 (CITT), para. 166; *Photovoltaic Modules and Laminates* (25 March 2021), RR-2020-001 (CITT), para. 128.

<sup>193</sup> *Welded Large Diameter Carbon and Alloy Steel Line Pipe* (3 August 2022), RR-2021-002 (CITT), para. 158; *Gypsum Board* (3 November 2022), RR-2021-004 (CITT), para. 168; *Certain Fasteners* (6 January 2010), RR-

[150] In determining whether an exclusion is likely to cause injury to the domestic industry, the Tribunal considers such factors as whether the domestic industry produces, actively supplies or is capable of producing like goods in relation to the subject goods for which the exclusion is requested.<sup>194</sup>

[151] If the domestic industry produces identical products, as a general rule, the Tribunal denies these requests. In such a context, it is generally reasonable to conclude that there will be head-to-head competition between such products and those for which the exclusions are requested. In that situation, it is also generally apparent that granting the requested product exclusions would likely cause injury to the domestic industry and undermine the remedial effect of the order.<sup>195</sup>

[152] In the absence of production of identical products, the Tribunal will next consider whether the domestic industry currently produces products that are substitutable for, or compete with, the products for which exclusions are requested.<sup>196</sup>

[153] In considering the capability of the domestic industry to produce a product that is identical or substitutable for the product that is the subject of the exclusion request, the Tribunal has stated that it expects the relevance of this factor to be more limited in an expiry review. Essentially, as the review takes place after anti-dumping measures have been in place for five years, it is presumed that the domestic industry was not prevented from producing a product because of injury due to the dumping at that time.<sup>197</sup> However, the Tribunal has found that there are situations where the domestic industry's capability of producing such products remains a pertinent factor in an expiry review, including, but not exclusive to, scenarios wherein a *new product* is introduced into the market,<sup>198</sup> and where the goods in question were custom products.<sup>199</sup>

[154] Ultimately, the Tribunal must determine whether it will exercise its discretion to grant product exclusions on the basis of its assessment of the totality of the evidence on the record.<sup>200</sup>

### **Analysis of Sacks' specific product exclusion request**

#### The domestic industry cannot currently produce the identical products without the aid of

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2009-001 (CITT), para. 243; *Photovoltaic Modules and Laminates* (25 March 2021), RR-2020-001 (CITT), para. 129.

<sup>194</sup> *Welded Large Diameter Carbon and Alloy Steel Line Pipe* (3 August 2022), RR-2021-002 (CITT), para. 157; *Gypsum Board* (3 November 2022), RR-2021-004 (CITT), para. 167; *Certain Fasteners* (6 January 2010), RR-2009-001 (CITT), para. 245; *Photovoltaic Modules and Laminates* (25 March 2021), RR-2020-001 (CITT), para. 133.

<sup>195</sup> *Carbon Steel Screws* (2 September 2020), RR-2019-002 (CITT), para. 228.

<sup>196</sup> *Carbon Steel Screws* (2 September 2020), RR-2019-002 (CITT), para. 229; *Certain Upholstered Domestic Seating* (2 September 2021), NQ-2021-002 (CITT), para. 296.

<sup>197</sup> *Photovoltaic Modules and Laminates* (25 March 2021), RR-2020-001 (CITT), para. 132; *Certain Fasteners* (6 January 2010), RR-2009-001 (CITT), para. 247–248.

<sup>198</sup> *Photovoltaic Modules and Laminates* (25 March 2021), RR-2020-001 (CITT), para. 133; *Carbon Steel Screws* (2 September 2020), RR-2019-002 (CITT), para. 239.

<sup>199</sup> *Aluminum Extrusions* (17 March 2014), RR-2013-003 (CITT), para. 246; *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate* (30 January 2015), RR-2014-002 (CITT), para. 112.

<sup>200</sup> *Welded Large Diameter Carbon and Alloy Steel Line Pipe* (3 August 2022), RR-2021-002 (CITT), para. 159; *Photovoltaic Modules and Laminates* (25 March 2021), RR-2020-001 (CITT), para. 145; *Photovoltaic Modules and Laminates* (25 March 2021), RR-2020-001 (CITT), para. 130.

the service centre

[155] Stelco and AMD provided evidence that they could *supply* the identical product to which Sacks is requesting an exclusion.<sup>201</sup> However, the domestic producers cannot *produce* the identical product, with the width requirement specified by Sacks (i.e., 64.2 m), of the requested exclusion, without a third-party service slitting the coil. Mr. Brain Healey of AMD stated as follows:

AMD has the technical capability of producing all of the specific product characteristics noted in the exclusion request form...but with an exception regarding width. COR in 64.2 mm (2.5”) widths is slit from a coil. For narrow widths like this, customers generally process a coil themselves or purchase processed COR from a service centre.<sup>202</sup>

[156] Similarly, Mr. Gregory Anderson of Stelco provided as follows:

Stelco is capable of supplying COR of this width, which is commonly referred to as “strip”, by sending a coil to a third-party processor that would slit the coil to narrower widths and then deliver the product to the customer. Typically, customers would purchase smaller volumes of strip directly from a service centre.<sup>203</sup>

[157] In the Tribunal’s view, the email of Samuel and Son, a Canadian service centre, to Sacks, quoting a price for the supply of “ASTM A653 G60-GR40 Galvanized (Bright finish/Regular spangle) 26 ga (.020 nominal) x 36” product also provides further evidence that the service centres are able to supply the goods to which an exclusion is requested.<sup>204</sup>

[158] With that said, the Tribunal has already determined that AMD and Stelco compose the entirety of the Canadian domestic industry for COR in this expiry review. The service centres are not part of the domestic industry. As AMD and Stelco cannot produce identical goods to which Sacks is requesting an exclusion without the slitting service provided by the service centre, the Tribunal concludes that the domestic producers do not *produce* the identical product to which an exclusion is requested.

The domestic industry can produce and supply a substitutable product

[159] The Tribunal finds, however, that the domestic industry can produce and actively supplies at least one substitutable product to the product that Sacks is requesting an exclusion.

[160] AMD provided evidence, including purchase orders to multiple customers, showing that it regularly supplies COR with specification ASTM A653 G-60 GR33 to the domestic market.<sup>205</sup> Mr. Healey then stated in his witness statement that the product to which Sacks is seeking an exclusion “is substitutable for and would compete with our sales of ASTM A653 G-60 GR33. AMD can provide the coil described in the request. Allowing the exclusion would likely adversely impact AMD’s sales of ASTM A653 G-60 GR33 sales to this customer and other customers...”<sup>206</sup> The

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<sup>201</sup> Exhibit RR-2023-008-27.01, p. 17; Exhibit RR-2023-008-27.02, p. 17–18.

<sup>202</sup> Exhibit RR-2023-008-27.01, p. 17.

<sup>203</sup> Exhibit RR-2023-008-27.02, p. 17–18.

<sup>204</sup> Exhibit RR-2023-008-25.01, p. 7.

<sup>205</sup> Exhibit RR-2023-008-27.01, p. 11, 17, 20–21; Exhibit RR-2023-008-28.01 (protected), p. 8, 14, 17–22.

<sup>206</sup> Exhibit RR-2023-008-27.01, p. 18.

Tribunal is willing to accept Mr. Healey's testimony in this regard, given that Sacks has not provided any evidence to the contrary.

[161] The Tribunal notes that Sacks in its reply submission stated that its requested exclusion specified an elongation factor of "36–38% - 22% gives us serious trouble".<sup>207</sup> Mr. Healey did not explicitly state that AMD can produce the substitutable product with the elongation factor specified by Sacks.<sup>208</sup> However, without evidence to the contrary, the Tribunal accepts Mr. Healey's statement that AMD has the technical capacity of producing *all* of the specific product characteristic specified in the exclusion request with the exception of the width requirement.<sup>209</sup>

[162] As the Tribunal has noted above, exclusions are extraordinary discretionary measures, and Sacks, the requester, has the onus to provide positive evidence as to why an exclusion should be granted. Here, Sacks has not provided any evidence to show that the domestic industry cannot produce the substitutable product to a 36–38% elongation factor. Sacks has also not provided evidence showing that a different elongation factor (i.e., 22%) would render the product produced by the domestic industry not substitutable.

[163] As the Tribunal finds that the domestic industry is able to produce a substitutable product to which an exclusion is requested, the Tribunal does not need to consider whether the domestic industry is *capable* of producing the identical or substitutable product.

The Tribunal cannot consider the impact on downstream users in the context of a product exclusion request

[164] Sacks, which acts as an import agent for Structawire ULC, argued that Structawire ULC uses the COR to which Sacks has requested a product exclusion as input material to manufacture a proprietary stucco lath downstream product, Fusion, in Canada.<sup>210</sup> In a statement forming part of Sacks' submissions, Structawire ULC notes that it "could not maintain this business with the base cost of galvanized sheet made & transported overland across Canada" and that its "finished product costs are largely dependent upon our obtaining competitive world market (China) mill prices & competitive freight price to port of Vancouver which has been all along & is today ocean shipping service from China." Structawire ULC notes that "[w]ithout our ability to freely import our galvanized sheet from China, Vietnam, etc., we are at a loss in our ability to compete effectively".<sup>211</sup> Furthermore, in reply, Sacks submitted that "[w]e cannot base our business on domestic prices, compromised specifications & huge overhead transportation & remain competitive on the West Coast of N. America."<sup>212</sup>

[165] The Tribunal has carefully considered these submissions. However, the Tribunal cannot consider potential negative effects that requesters or downstream users, Canadian or otherwise, may experience as a result of higher selling prices in the context of an expiry review for the purposes of

<sup>207</sup> Exhibit RR-2023-008-29.01, p. 2.

<sup>208</sup> Mr. Healey stated as follows: "I note that AMD has the technical capability of producing all the specific product characteristics noted in the exclusion request form, *including tensile strength, yield strength, coating and dimensions*, but with an exception regarding width. COR in 64.2 mm (2.5") widths is slit from a coil" [emphasis added]. Exhibit RR-2023-008-27.01, p. 17.

<sup>209</sup> Exhibit RR-2023-008-27.01, p. 17.

<sup>210</sup> Exhibit RR-2023-008-29.01, p. 1.

<sup>211</sup> Exhibit RR-2023-008-25.01, p. 6.

<sup>212</sup> Exhibit RR-2023-008-29.01, p. 2.

determining whether to grant product exclusions. Such effects are usually considered to be normal and logical consequences of anti-dumping measures.<sup>213</sup> It is in the context of a public interest inquiry that the Tribunal may consider the effect that the imposition of an anti-dumping duty has on producers in Canada that use the goods as inputs in the production of other goods.<sup>214</sup>

[166] For the foregoing reasons, the Tribunal denies Sacks' product exclusion request in this expiry review.

## CONCLUSIONS

[167] On the basis of the foregoing analysis, and pursuant to paragraph 76.03(12)(b) of SIMA, the Tribunal continues its finding in respect of the subject goods originating in or exported from China, Chinese Taipei, India, and Korea.

Serge Fréchette

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Serge Fréchette  
Presiding Member

Susan D. Beaubien

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Susan D. Beaubien  
Member

Susana May Yon Lee

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Susana May Yon Lee  
Member

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<sup>213</sup> *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT), para. 339.

<sup>214</sup> See subparagraph 40.1(2)(d)(iii) of the Regulations. In addition, section 45 of SIMA and subsection 40.1(1) of the Regulations provides that if the Tribunal makes an injury finding, it can initiate, on its own initiative or at the request of an interested person made within 45 days of the finding, a public interest inquiry if it is of the opinion that there are reasonable grounds to consider that the imposition of an anti-dumping measure would not be in the public interest.