Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

Safeguard Inquiry into the Importation of Certain Steel Goods

Inquiry No. GC-2018-001

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FOREWORD

On October 10, 2018, Her Excellency the Governor in Council, on the recommendation of the Minister of Finance, pursuant to paragraph 20(a) of the *Canadian International Trade Tribunal Act*, directed the Canadian International Trade Tribunal, by Order in Council P.C. 2018-1275, to inquire into and report on the importation of certain steel goods.

The purpose of this inquiry was to determine whether seven classes of steel goods were being imported into Canada in such increased quantities and under such conditions as to be a principal cause of serious injury or threat of serious injury to domestic producers of like or directly competitive goods. The Tribunal was directed, if it made an affirmative finding for any class of goods, to recommend the most appropriate remedy to address the injury or threat thereof.

The Tribunal was directed to submit to the Governor in Council, by April 3, 2019, a report including the Tribunal's determination, reasons and any recommendations. Accordingly, the Tribunal is pleased to submit the following report.

This inquiry is one of the most complex inquiries ever conducted by the Tribunal. There were 119 participants, including Canadian and foreign steel producers, steel importers, trade unions and governments. Over 38,000 pages of documents were submitted. The Tribunal conducted hearing sessions for each class of steel goods covered by the above Order in Council. The Tribunal heard submissions on injury and remedy together.

The Tribunal thanks the parties, counsel and witnesses for their participation and invaluable assistance.

The Tribunal also thanks the team of support staff for their dedication, professionalism and commitment to excellence.

Serge Fréchette
Serge Fréchette
Presiding Member

Peter Burn
Peter Burn
Member

Rose Ann Ritcey
Rose Ann Ritcey
Member

EXECUTIVE SUMMARY

On October 10, 2018, the Tribunal was directed by the *Order Referring to the Canadian International Trade Tribunal, for Inquiry into and Reporting on, the Matter of the Importation of Certain Steel Goods*, P.C. 2018-1275 (Order), to conduct a safeguard inquiry concerning the importation into Canada of certain steel goods. The classes of goods subject to the inquiry are: (1) heavy plate, (2) concrete reinforcing bar, (3) energy tubular products; (4) hot-rolled sheet, (5) pre-painted steel, (6) stainless steel wire, and (7) wire rod. This document is the Tribunal's report on the results of the inquiry.

The direction to initiate a safeguard investigation followed the imposition of provisional safeguard measures pursuant to section 55 of the *Customs Tariff* on imports of certain steel goods based on a confidential report to Cabinet from the Minister of Finance.

On October 12, 2018, the Government of Canada notified the World Trade Organization's (WTO) Committee on Safeguards that it had initiated this safeguard investigation, citing a significant increase in total imports of the seven products in the first quarter of 2018. In the Notification under Article 12.4 of the *Agreement on Safeguards* that is required before taking a provisional safeguard measure, Canada advised that the Minister of Finance had determined the existence of critical circumstances, based on publicly available import data and confidential industry submissions.

The purpose of the inquiry was to determine whether any of these goods were imported into Canada in such increased quantities and under such conditions as to be a principal cause of serious injury or threat thereof to domestic producers of such goods. The Order directed the Tribunal to have regard to Canada's international trade rights and obligations.

The Order provided that certain imports were to be excluded from the Tribunal's inquiry—namely, imports from the United States, Israel and other *Canada-Israel Free Trade Agreement* (*CIFTA*) beneficiaries, Chile and Mexico (with the exception of energy tubular products and wire rod from Mexico).

The Order required the Tribunal, in the event it determined that there was an increase in imports, and serious injury or threat thereof, to make separate determinations regarding subject goods originating in and imported from certain free trade agreement partners. Specifically, the Tribunal had to determine if subject goods from Panama, Peru, Colombia, Honduras and the Republic of Korea (Korea) were a principal cause of serious injury or threat thereof.

The Tribunal also had to determine if energy tubular products or wire rod originating in and imported from Mexico did not account for a substantial share of total imports of energy tubular products or wire rod, or did not contribute importantly to serious injury or threat thereof.

Specific treatment was also outlined for imports from countries benefiting from the *General Preferential Tariff* (GPT).

The Tribunal was instructed not to hear any motion to exclude any good from a class or that would otherwise limit the scope of the inquiry, determination or recommendations.

If ultimately the inquiry showed that imports of a class of goods caused or threatened to cause serious injury, the Order directed the Tribunal to provide recommendations on the most appropriate remedy to address the injury.

There were 119 participants in the inquiry, including domestic producers, trade unions, importers, foreign producers and users of the goods. Several foreign governments also participated. The Tribunal held 13 days of public hearings in January 2019. The Tribunal considered evidence from 44 witnesses. Parties filed written submissions and presented oral argument. The Tribunal was directed to submit a report to the Governor in Council by April 3, 2019.

DETERMINATIONS AND RECOMMENDATIONS

The Tribunal's determinations and recommendations are as follows:

- The Tribunal finds that **heavy plate** from the subject countries (other than goods originating in Korea, Panama, Peru, Colombia and Honduras) is being imported in such increased quantities and under such conditions as to be a principal cause of a threat of serious injury to the domestic industry. The Tribunal therefore recommends a remedy in the form of a tariff rate quota (TRQ) on imports of heavy plate from subject countries, other than goods originating in Korea, Panama, Peru, Colombia, Honduras, or countries whose goods are eligible for GPT treatment.
- The Tribunal finds that, while there has been a significant increase in the importation of **concrete reinforcing bar** from the subject countries, this increase as well as the conditions under which the subject reinforcing bar is being imported have not caused serious injury, and are not threatening to cause serious injury, to the domestic industry. The Tribunal therefore does not recommend a remedy in respect of concrete reinforcing bar.
- The Tribunal finds that, while there has been a significant increase in the importation of **energy tubular products** from the subject countries, this increase as well as the conditions under which the subject energy tubular products are being imported have not caused serious injury, and are not threatening to cause serious injury, to the domestic industry. The Tribunal therefore does not recommend a remedy in respect of energy tubular products.
- The Tribunal finds that **hot-rolled sheet** imported from the subject countries is not being imported in such increased quantities as to cause or threaten to cause serious injury to the domestic industry. Given that a safeguard measure can only be applied if a product is being imported in such increased quantities, the Tribunal does not recommend a remedy in respect of hot-rolled sheet.
- The Tribunal finds that **pre-painted steel** imported from the subject countries is not being imported in such increased quantities as to cause or threaten to cause serious injury to the domestic industry. Given that a safeguard measure can only be applied if a product is being imported in such increased quantities, the Tribunal does not recommend a remedy for pre-painted steel.
- The Tribunal finds that **stainless steel wire** imported from the subject countries (other than goods originating in Korea, Panama, Peru, Colombia and Honduras) is being imported in such increased quantities and under such conditions as to be a principal

cause of a threat of serious injury to the domestic industry. Therefore, the Tribunal recommends a remedy in the form of a TRQ on imports of stainless steel wire from subject countries, other than goods originating in Korea, Panama, Peru, Colombia, Honduras, or countries whose goods are eligible for GPT treatment.

- The Tribunal finds that **wire rod** imported from the subject countries is not being imported in such increased quantities as to cause or threaten to cause serious injury to the domestic industry. Given that a safeguard measure can only be applied if a product is being imported in such increased quantities, the Tribunal does not recommend a remedy for wire rod.

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PART I – INTRODUCTION

ORGANIZATION OF THE REPORT

This report is divided into 10 parts:

- Part I provides general information concerning the conduct of the inquiry.
- Part II describes the economic context of the inquiry.
- Part III sets out the legal framework for the inquiry.
- Parts IV to X provide the reasons for the Tribunal's injury determinations for the seven classes of goods.

In conducting the Tribunal's analysis and formulating its Report, the Tribunal was mindful of the nature of the Report and its recommendatory (as opposed to a purely adjudicative) function. In this particular context, the Tribunal determined it would be preferable to provide a more comprehensive set of reasons rather than using an approach based on judicial economy. These reasons for decision also varied depending on the parties' submissions to the Tribunal regarding a specific class of goods. For example, regarding classes of goods where the Tribunal did not find a significant increase in imports (and therefore did not recommend a remedy), it nonetheless provided observations regarding the state of the domestic industry for that class of goods, or the role of the subject imports and other factors, in the product-specific parts of this report. Accordingly, not every product-specific part of this report follows the same structure or has the same content.

ORDER IN COUNCIL

On October 10, 2018, the Tribunal was directed, under the terms of the Order, to conduct a safeguard inquiry concerning imports into Canada of seven classes of steel goods.[1] This document is the Tribunal's report on the results of the inquiry.

The Order identified seven classes of goods subject to the inquiry:

1. heavy plate;
2. concrete reinforcing bar;
3. energy tubular products;
4. hot-rolled sheet;
5. pre-painted steel;
6. stainless steel wire; and
7. wire rod.

The Order was made on the recommendation of the Minister of Finance, pursuant to paragraph 20(a) of the *Canadian International Trade Tribunal Act* (*CITT Act*).[2] The Order defined

1. The Order and a detailed product description for each class of goods, including representative HS codes, can be found at http://orders-in-council.canada.ca/attachment.php?attach=36956&lang=en.
2. R.S.C. 1985 (4th Supp.), c. 47.

the scope of the inquiry and established the considerations and factors for the Tribunal to take into account.

The Order to initiate a safeguard inquiry followed the imposition of provisional safeguard measures on imports of certain steel goods pursuant to section 55 of the *Customs Tariff*, based on a confidential report to Cabinet from the Minister of Finance. The provisional measure took the form of a 200-day TRQ reflecting historic import volumes and trade patterns, in excess of which a surtax of 25 percent applies.

On October 12, 2018, the Government of Canada notified the WTO's Committee on Safeguards that it had initiated this safeguard investigation, citing a significant increase in total imports of the seven products in the first quarter of 2018. In its Notification under Article 12.4 of the *Agreement on Safeguards* that is required before taking a provisional safeguard measure, Canada advised that the Minister of Finance had determined that there existed critical circumstances, based on publicly available import data and confidential industry submissions.[3]

The Order specifically provided the following instructions to the Tribunal:

- Exclude from the Tribunal's inquiry imports from the United States, Israel and other *CIFTA* beneficiaries, Chile and Mexico (the latter with the exception of energy tubular products and wire rod, which were within the scope of the Tribunal's inquiry).
- Determine if energy tubular products or wire rod originating in and imported from Mexico did not account for a substantial share of total imports of energy tubular products or wire rod, or did not contribute importantly to serious injury or threat thereof.
- Where the Tribunal determined that there was an increase in imports, and serious injury or threat thereof, make separate determinations regarding subject goods originating in and imported from certain free trade agreement partners. Specifically, the Tribunal had to determine if subject goods from Panama, Peru, Colombia, Honduras and Korea were a principal cause of serious injury or threat thereof.
- If there was a determination of no such causation, share or contribution by subject goods imported into Canada from free trade agreement partners or (in the case of energy tubular products and wire rod) Mexico, determine whether subject goods were imported from all other countries subject to the inquiry but not covered by the determination, in such increased quantities and under such conditions as to be a principal cause of serious injury or threat thereof.
- Not address, in any recommendations concerning a class of goods, goods imported from and originating in a country benefiting from the GPT where the importation of such goods in 2017 did not exceed 3 percent of the total importation of goods of that class, provided that the importation of goods of that class from all GPT countries with less than 3 percent import share in 2017 collectively did not exceed 9 percent of the total importation of goods of that class.

3. The full notification to the WTO can be found at the following address: https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=@Symbol=%20(g/sg/n/6/can/4)&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true#.

- Not hear any motion to exclude any good from a class or that would otherwise limit the scope of the inquiry, determination or recommendations.

If the Tribunal determined that increased imports were a principal cause of serious injury or threat thereof, it was directed to make recommendations to the Governor in Council on the most appropriate remedy to address such injury, over a period of three years.

The Tribunal was directed to submit its report no later than April 3, 2019.

CONDUCT OF THE INQUIRY

On October 11, 2018, the Tribunal sent a copy of its *Notice of Commencement of Safeguard Inquiry – Certain Steel Goods* (Notice) to persons and governments known to have an interest in the inquiry. The Notice was also published in the *Canada Gazette* and posted on the Tribunal's website at http://www.citt-tcce.gc.ca.

The Notice included a detailed schedule of events, including dates when parties were to file notices of participation, file written submissions, and reply to other parties' submissions. The Notice also announced that the Tribunal would hold public hearings starting on January 3, 2019.[4] The Notice gave parties and their counsel directions regarding procedural and preliminary matters, the submission of written materials, confidentiality, witness selection, the conduct of hearings, and other rules and procedures applicable to the inquiry.

On October 31, 2018, the Tribunal held a teleconference to discuss its case management directions with those who had filed notices of participation and representation. The Tribunal subsequently provided parties with its responses to questions arising from the teleconference, and advised parties that they could present final arguments in a written closing brief.

PARTICIPATION IN THE INQUIRY

There were 119 participants that filed notices of participation in the inquiry. Many parties made written submissions regarding injury and remedy, and many replied to the submissions of others. Parties and their counsel are listed in Appendix I.

PRE-HEARING FACT-FINDING

The Tribunal's fact-finding was based primarily on a questionnaire survey of 959 domestic producers, importers, and foreign producers of the steel goods subject to the inquiry. In addition, the Tribunal sent 215 letters to embassies requesting that they forward the Notice to any firms who produce and/or export any of the steel goods and complete the foreign producers' questionnaire. The Tribunal received 327 responses.

Questionnaire respondents provided economic and other information for the period of inquiry (POI), i.e. January 1, 2015, to June 30, 2018, inclusive. A summary of the questionnaire replies was prepared for parties to use as a common factual starting point in addressing the issues in the inquiry. In addition to a general report covering methodological matters and giving a profile of

4. The schedule was subsequently modified so that hearings started on January 7, 2019. The revised Notice can be found at the following link: http://www.citt.gc.ca/en/node/8405.

the Canadian steel industry and market, separate reports (statistical summaries) on the industry and market were prepared for each of the seven classes of goods.[5]

Despite the extensive verification process undertaken by the Tribunal, it is possible that import data used in the fact-finding phase of the inquiry contained data on imports of goods not subject to the inquiry.[6] It is also possible that imports of some goods subject to the inquiry may not have been captured if they were imported under an HS Code that was not included in the illustrative HS Code lists for the seven classes of goods. However, the Tribunal considers that the import data compiled represents the best and most reliable basis for assessing import trends over the POI.

CONFIDENTIALITY AND ACCESS TO CONFIDENTIAL INFORMATION

The Tribunal members and its support staff are under a statutory obligation not to disclose confidential information which the Tribunal receives as part of any of its mandates. Its governing legislation also provides for the disclosure of all of the confidential information to independent counsel for the parties that have made the required declaration and undertaking to protect the information. Any violation of the terms of their declaration and undertaking is a serious offence.

In the current inquiry, especially as contrasted with the Steel Safeguard Inquiry of 2002,[7] a large quantity of information had to be designated as confidential. A primary reason for this is that there are fewer steel producers in Canada today than there were in that prior period, and, therefore, it was more difficult to make aggregate industry data public without revealing company-specific information.[8]

Certain parties, including foreign governments not represented by counsel, requested disclosure of more information than was initially disclosed in the Tribunal's statistical summaries. The Tribunal addressed these concerns by providing some revisions to its public statistical summaries which revealed more information. In doing so, the Tribunal reminded parties of the following:

- Some data fields may be public for class of goods but confidential for another class.
- The data presented in the revised statistical summaries adhere to the Trade Remedies Investigations Branch's confidentiality procedures in order to comply with the statutory requirements governing the designation of confidential information in the Tribunal's

5. The import data presented in the statistical summaries are derived from the responses provided to the Tribunal's questionnaires and from estimations using the Canada Border Services Agency (CBSA) Facility for Information Retrieval Management (FIRM) data. FIRM data on the 10-digit Harmonized System (HS) tariff classification code are recorded for a good when it enters Canada. FIRM data are confidential.
6. Although the Order did not include HS Codes, the Department of Finance prepared illustrative lists of 10-digit HS Codes for goods in each of the seven classes. These HS codes were used to determine which importers would receive questionnaires. However, respondents were directed to provide information on all imports matching the product definition, no matter the HS code under which they were imported.
7. *Steel Goods* (August 2002), GC-2001-001 (CITT) [*Steel Goods*]. Available online at: http://publications .gc.ca/Collection/F42-12-2002E.pdf.
8. As well, the statistical summaries presented the data in more detail (e.g. domestic producer imports were presented separately from excluded country imports, as were subject country imports) than in the 2002 Steel Safeguard inquiry, which further restricted the data which could be made public without inadvertently revealing company-specific information.

proceedings found in sections 45 to 49 of the *CITT Act*. These requirements cover instances where there are only one or two respondents providing the information, i.e. where there is no possibility of aggregating confidential information to make it public. They also require the Tribunal to consider whether there is dominance—where a small number of firms account for a very large portion of any data field such that confidential information could be revealed by means of reverse-engineering the data.

- Counsel who have signed Declarations and Undertakings received the protected revised statistical summaries, as they had with the entirety of the confidential record.

Accordingly, not every product-specific part of this report will present the same range of information, depending on what data can be made public.

PUBLIC HEARINGS

The inquiry was conducted in accordance with the *Canadian International Trade Tribunal Rules* (*CITT Rules*).[9] The Tribunal varied and supplemented the *CITT Rules* to provide for a more expeditious process reflecting the short time frame for completion of the inquiry.[10]

At the public hearings, the Tribunal questioned witnesses for the domestic producers, importers, foreign producers and users of the various steel goods on key issues. Witnesses were selected by the Tribunal from among those who had filed witness statements. In selecting witnesses, the Tribunal took account of matters it believed required clarification. Parties questioned witnesses, made oral arguments, and had the opportunity to submit written final arguments.

Appendices I and II list the witnesses and counsel who appeared at the public hearings.

In the course of the public hearings, the parties had the opportunity to file additional evidence as part of their witness statements. One such type of evidence was Statistics Canada[11] import data submitted by witnesses for the domestic industry as relevant, including data regarding issues of increased imports and threat of serious injury. Parties opposed argued that such data was inadmissible (especially Q3 2018 data which was said to be outside of the Tribunal's POI) and unreliable given the differences between it and data derived from Tribunal questionnaires. The Tribunal finds that the data is admissible as it is relevant. While the Tribunal's period for data gathering for its statistical summaries is the POI, relevant evidence which can be received from parties is not confined to that time period. This should be especially evident as part of the Tribunal's mandate is to assess issues regarding threat of serious injury, an assessment that is by its nature focused on future events. The Tribunal also tested the reliability of the Statistics Canada data (as explained in the product-specific parts of this report) in deciding what weight, if any, to place on it in a given context.

9. SOR/91-499.
10. Rule 6 allows the Tribunal to dispense with, vary or supplement the *CITT Rules* to provide for a more expeditious process as permitted by the circumstances and considerations of fairness.
11. Statistics Canada data is a limited set of import information, collected from customs declarations by the CBSA, essentially consisting of tariff classification, volume, value for duty and origin of goods. The CBSA has access to more extensive data, as part of its FIRM system, on which data the Tribunal routinely relies in *SIMA* proceedings.

PART II – MARKET AND INTERNATIONAL TRADE CONTEXT

GLOBAL STEEL TRADE ISSUES

There is significant world trade in steel goods, including the seven classes of steel goods covered by this inquiry. The Organisation for Economic Co-operation and Development (OECD) estimated that in 2014 the volume of global steel exports stood at around 442 million metric tonnes (tonnes), which was slightly higher than the volume recorded in 2007, prior to the financial crisis.[12] More recently, the OECD estimates the volume of global steel exports was 449 million tonnes during the first seven months of 2017 (annualized), using monthly data from the International Steel Statistics Bureau.[13] This is down from 460 million tonnes in 2016.[14]

In an effort to address global steel trade issues, industrialized nations worked toward liberalizing trade in steel. During the Uruguay Round of multilateral trade negotiations which ended in 1994, current members of the WTO, including Canada, made commitments to reduce tariffs on steel imports. They also agreed to limit the use of quantitative restrictions but allow the imposition of safeguard measures to address injurious increases in fairly traded steel. To that end, the WTO signatories committed to phase in tariff reductions for steel, and signed the *Agreement on Safeguards.*[15]

Negotiations to address steel production overcapacity have continued since September 2001 in the OECD and, more recently, in the G-20.[16]

Notwithstanding these efforts, international trade in steel continues to be distorted by massive steel production overcapacity, fuelled primarily by China's extraordinary economic expansion since 2000. Since 2000, global crude steelmaking capacity has more than doubled from 1,061 million tonnes to an estimated 2,291 million tonnes in 2018—nearly 50 percent larger than total global demand.[17] Over the same period, the global crude steelmaking capacity-to-consumption gap has more than tripled from just over 200 million tonnes in 2000 to approximately 650 million tonnes in 2016.[18]

China is responsible for 75 percent of new steel capacity since 2000, with its crude steelmaking capacity increasing sevenfold from 150 million tonnes in 2000 to an estimated 1,048 million tonnes in 2018—a level that represents more than 46 percent of total world crude steel capacity.[19] Trading partners with domestic steelmaking capacity have sought commitments from China to reduce its excess capacity and eliminate further subsidies.[20] China's response has been to acknowledge the problem and to make repeated commitments to reduce steel production capacity. While Chinese crude steel making capacity has declined by about 100 million tonnes

12. Exhibit GC-2018-001-066.38, Vol. 1 at 6.
13. Exhibit GC-2018-001-066.39, Vol. 1 at 13.
14. *Ibid.*
15. Canada bound its tariffs at zero percent for all of the subject goods at the conclusion of the Uruguay Round: Exhibit GC-2018-001-066.43, Vol. 1.
16. Exhibit GC-2018-001-066.36, Vol. 1 at 6-9; Exhibit GC-2018-001-066.27, Vol. 1.
17. Exhibit GC-2018-001-066.29, Vol. 1 at 4 and 12.
18. *Ibid.* at 12.
19. *Ibid.* at 4.
20. Exhibit GC-2018-001-066.31, Vol. 1 at 4.

since 2015,[21] this is just a small step considering the exponential growth seen in the previous years. The net result is that China has added nearly 500 million tonnes of new capacity since 2007.[22]

Steel producers have responded to episodes of weak growth and the global overcapacity issue, in part, by increasing market and product concentration. Driven by external forces increasingly global and diverse, the North American and global steel industry saw a wave of consolidation between 1995 and 2005, including mergers and the selling of non-core assets, resulting in increased concentration in regional markets and increased market power.[23] In 1995, the top 10 producers supplied 20 percent of global steel output. By 2005, this figure had increased to about 29 percent.[24] The global trend has been particularly noticeable in areas where there has been more regional consolidation over the years, including the United States.[25]

The advancement in information technology has allowed globally integrated steel producers, such as ArcelorMittal, to gain a competitive advantage by leveraging technological advances across their plants and adjusting to local demand shifts.[26]

While steel market conditions have shown some cyclical recovery in 2017, the underlying trend in global steel demand remains weak and excess capacity remains significant.[27] The World Steel Association forecasts that global steel demand will stay on the low growth track, with demand in 2018 and 2019 showing a mild deceleration over 2017.[28]

Continued rationalization of excess capacity and further consolidation will be necessary to bring back efficiency and profitability to the industry.[29] This process is supported by several countries, including Canada, who have identified various measures to promote industry consolidation and facilitate changes in ownership structure, corporate governance, and corporate financing.[30] In North America, recent mergers and acquisitions activity has focused on Canadian producers Essar Algoma and U.S. Steel Canada and American producers A.K. Steel and Nucor.[31]

The last few years have seen increasing international trade tensions, especially with regard to steel. Trade-restrictive regimes for steel have arisen in major markets around the world, with anti-dumping duty, countervailing duty, and more recently, safeguard measures being employed numerous times.

Most notably, in April 2017, the Trump administration self-initiated an unprecedented investigation of the impact of imported steel on U.S. national security pursuant to section 232 of the *Trade Expansion Act of 1962*.[32] On March 8, 2018, President Trump issued Proclamations on Adjusting Imports of Steel and Aluminum into the United States, following a recommendation

21. Exhibit GC-2018-001-066.29, Vol. 1 at 4.
22. *Ibid.*
23. Exhibit GC-2018-001-066.25, Vol. 1 at 5.
24. *Ibid.* at 19.
25. *Ibid.* at 19 and 21.
26. Exhibit GC-2018-001-066.28, Vol. 1 at 27-28.
27. Exhibit GC-2018-001-066.27, Vol. 1 at 1.
28. Exhibit GC-2018-001-066.34, Vol. 1 at 3.
29. Exhibit GC-2018-001-066.25, Vol. 1 at 5 and 15; Exhibit GC-2018-001-066.35, Vol. 1 at 6.
30. Exhibit GC-2018-001-066.27, Vol. 1 at 23.
31. Exhibit GC-2018-001-066.35, Vol. 1 at 7; Exhibit GC-2018-001-066.27 at 49-50.
32. Exhibit GC-2018-001-075.15, Vol. 5 at 7.

from U.S. Commerce Secretary Wilbur Ross, according to which steel was being imported in such quantities and under such circumstances as to threaten to impair the national security, with the excess global production of steel and the present quantities of steel imports into the United States "weakening our internal economy and shrinking our ability to meet national security production requirements in a national emergency."[33]

Canada and Mexico were temporarily excluded from the original proclamations. However, on May 31, 2018, President Trump extended the coverage of the section 232 measures to include Canada and Mexico, and imposed a 25 percent tariff on imports of certain steel products.[34]

On July 1, 2018, Canada responded by imposing a countermeasure, i.e. a 25 percent surtax on up to C$16.6 billion in imports of steel (and other products) from the United States, representing the value of 2017 Canadian exports affected by the U.S. measures.

The European Union followed suit with provisional safeguard measures on imports of 28 steel product categories on July 18, 2018,[35] imposing definitive safeguard measures on imports of 26 steel products on January 31, 2019.[36] China and Mexico also implemented specific measures, with China implementing countermeasures on $60 billion in U.S. goods on August 3, 2018, and Mexico imposing countermeasures on imports of five categories of steel products from the United States in June 2018.[37] Additionally, the Eurasian Economic Union (comprising of the Kyrgyz Republic, the Russian Federation, Kazakhstan and Armenia) initiated a safeguard investigation on certain flat-rolled steel products on August 7, 2018.[38] Turkey also imposed provisional safeguard measures on five steel product categories in September 2018.[39]

It is in this context that Canada imposed provisional safeguard measures and the Tribunal initiated and conducted this investigation.

THE CANADIAN STEEL MARKET

The use of steel in the Canadian economy is widespread. The most important steel-using sectors are manufacturing, particularly the automotive and transport equipment industries, and construction and energy sectors.

Canadian demand for steel consistently exceeds supply. Apparent consumption in Canada (domestic production minus exports plus imports) averaged 14.6 million tonnes in the period 2015-2017, with production of 12.9 million tonnes, exports of 6.4 million tonnes and imports of

33. Section 232 of the *Trade Expansion Act of 1962*, 19 U.S.C. § 1862(c), was the provision relied on by the President of the United States, to adjust the imports of goods or materials from other countries, through tariffs or other means, if it is found that the quantity or circumstances surrounding those imports threaten to impair national security. The consequent actions are referred to as "section 232 measures" throughout this Report.
34. Exhibit GC-2018-001-075.15, Vol. 5 at 20.
35. Exhibit GC-2018-001-03A, Vol. 1.1 at 25.
36. Available online at https://eeas.europa.eu/delegations/world-trade-organization-wto/56228/steel-commission-intends-impose-definitive-safeguard-measures-imports-certain-steel-products-4_en.
37. Exhibit GC-2018-001-066.05, Vol. 15 at 39.
38. Exhibit GC-2018-001-077.06, Vol. 5 at 101-104.
39. Exhibit GC-2018-001-066.05, Vol. 15 at 116.

8.1 million tonnes, leaving import penetration at approximately 60 percent of total market demand.[40]

Canadian steel producers, particularly in more populous Central Canada, have long operated within a highly integrated cross-border market with American producers located in the Great Lakes region. The cross-border movement of steel products has been encouraged by the existence of an integrated cross-border automotive industry since the signing of the *Canada—United States Automotive Products Agreement* of 1965 (commonly known as the Auto Pact) – the automotive industry being a major steel consumer.[41]

Canada's steel industry, as with all of North America, has become increasingly foreign-owned during the 21st century.[42] For example, ArcelorMittal purchased both the flat products producer Dofasco (now ArcelorMittal Dofasco) and various long product operations, now operating as ArcelorMittal Long Products Canada and is part of ArcelorMittal Americas, a wholly owned subsidiary of ArcelorMittal of Luxembourg.[43] Gerdau, a Brazilian multinational, entered the Canadian market in 1989 with the purchase of Courtice Steel Inc. and formed Gerdau Ameristeel Corporation in 1999.[44] The global pipe and tube producer, Tenaris, operates Algoma Tubes, Prudential Steel ULC, Tenaris Global Services (Canada) and Hydril Canadian Company LP in Canada.[45] Stelco has emerged as a separate public company after a period of ownership by U.S. Steel.[46] IPSCO has become part of Evraz North America, which is itself a subsidiary of UK-based Evraz plc; Algoma Steel Inc., formerly Essar Steel Algoma Inc., has been reorganized and sold by its previous owner (the Essar group of India) to a private equity firm and its term lenders.[47]

Canada's relatively small domestic market means that the ability to address both domestic and U.S. demand is often necessary to justify investment in efficient facilities of scale. It also means that Canadian steel users necessarily rely on imports to meet more specialized needs. At the same time, in a global steel company, the supply chain needs to be optimized at the global rather than the local level to maximize profit.[48] In this context, as a result of the *North American Free Trade Agreement* (*NAFTA*) and other globalizing market forces, Canadian steel producers increasingly participate in an integrated North American market with demand being driven by North American supply chains in energy, construction and manufacturing.[49]

Geography has facilitated the development of an integrated steel market in the Great Lakes region. It has also impeded the development of a single national steel market across Canada, as the vast distance between Quebec and Southern Ontario and the West Coast means most Canadian steel producers face a formidable cost disadvantage in transporting products by rail to Vancouver, relative to the cost of trucking steel to Vancouver from adjacent Pacific Northwest states, or shipping steel from Asia by boat to the Port of Vancouver.

40. Exhibit GC-2018-001-066.32, Vol. 1 at 6 and Exhibit GC-2018-001-066.24, Vol. 1 at 6.
41. Cross-border commerce also occurs "upstream" at the level of coal, iron and other steel inputs.
42. One estimate suggests foreign steelmakers owned 42 percent of steel capacity in the *NAFTA* region: GC-2018-001-066.28, Vol. 1 at 24.
43. Exhibit GC-2018-001-079.06, Vol. 5 at 42.
44. Exhibit GC-2018-001-073.06, Vol. 5 at 47.
45. Exhibit GC-2018-001-075.19, Vol. 5 at 43.
46. Exhibit GC-20118-001-077.04, Vol. 5 at 24.
47. Exhibit GC-2018-001-071.06, Vol. 5 at 71.
48. Exhibit GC-2018-001-066.25, Vol. 1 at 23-24.
49. Exhibit GC-2018-001-066.27, Vol. 1 at 53.

Canada was the world's 16th-largest steel importer in 2017, with Canada's imports representing about 2 percent of all steel imported globally in 2017. Canada imported steel from over 100 countries and territories, though the top 10 countries together accounted for over 85 percent of total steel imports in 2017. Consistent with the reality of an integrated cross-border market in the Great Lakes region, the United States accounts for approximately half of all steel imports into Canada, and is the largest source of Canada's steel imports in flat, long, tubular, and stainless products. For instance, in H1 2018, imports from the United States accounted for 70 percent of Canada's flat product imports, 55 percent of long product imports, 64 percent of stainless steel imports and 39 percent of pipe and tube imports.[50]

CANADIAN STEEL PRODUCTION

Steel production in Canada is now dominated by foreign-owned companies, with many domestically owned firms having been purchased by multinational steel companies during the first decade of the 21st century.[51] The largest producer, Luxembourg-based ArcelorMittal, alone accounts for roughly half of Canadian steel production through its two subsidiaries, ArcelorMittal Dofasco and ArcelorMittal Long Products Canada.[52]

The seven classes of steel goods subject to the inquiry account for 85 percent of carbon and alloy steel produced in Canada.[53] There are 15 firms producing these products across Canada.[54] In 2017, the Canadian primary steel industry employed more than 23,000 people,[55] and had export sales of $7.9 billion.[56] Domestic sales from the seven classes of goods totalled $4.4 billion.[57]

CANADA'S STEEL IMPORT REGIME

All imports of the seven classes of steel goods into Canada are subject to Most Favourite Nation duty-free tariff treatment.[58]

Canada has considered safeguard measures for the steel industry in the past. The Tribunal conducted a steel safeguard inquiry in 2002.[59] The following nine classes of steel goods were subject to that inquiry: discrete plate; hot-rolled sheet and coil; cold-rolled sheet and coil; corrosion-resistant sheet and coil; hot-rolled bars; angles, shapes and sections; cold-drawn and finished bars and rods; reinforcing bars; and standard pipe. As a result of that inquiry, the Tribunal

50. Exhibit GC-2018-001-066.32, Vol. 1 at 1-4.
51. For some examples, Exhibit GC-2018-001-024.04, Vol. 3 at 377; GC-2018-001-026.04, Vol. 3 at 15; Exhibit GC-2018-001-073.06, Vol. 5 at 47.
52. Exhibit GC-2018-001-066.24, Vol. 1 at 6.
53. Available online at: https://www150.statcan.gc.ca/n1/pub/71-607-x/71-607-x2018006-eng.htm and various statistical summaries.
54. Exhibit GC-2018-001-03A, Vol. 1.1 at 22.
55. Available online at: https://international.gc.ca/trade-commerce/controls-controles/steel_alum-acier_alum.aspx?lang=eng.
56. Available online at: https://www5.statcan.gc.ca/cimt-cicm/home-accueil?lang=eng.
57. Various statistical summaries.
58. *Customs Tariff*, S.C. 1997, c. 36, Schedule.
59. *Steel Goods.*

made several recommendations regarding remedies for five of the nine steel goods;[60] however, the Government of that time did not implement any of those recommendations.

Canadian anti-dumping measures currently apply to imports of goods of four of the seven classes of goods subject to the inquiry, and some subject goods are also subject to Canadian countervailing measures.[61] Certain measures have been in place for several years, and many of them are not scheduled to expire until 2023.[62] Canada's anti-dumping and countervail regime is very effective at blocking unfairly traded goods from entering the Canadian market, as imports of steel products from countries subject to such measures are minimal in most instances.

As of the beginning of 2018, Canada had 46 outstanding anti-dumping orders against steel products from 23 countries, including six anti-dumping orders against Korean products and seven against Chinese products. There were also eight outstanding countervailing duty orders, including six orders against Chinese products.

60. These products were discrete plate, cold-rolled sheet and coil, reinforcing bars, angles, shapes and sections, and standard pipe.
61. The products are heavy plate, energy tubular products, rebar and hot-rolled sheet.
62. Exhibit GC-2018-001-05A, Vol. 1.1 at 35; Exhibit GC-2018-001-09B, Vol. 1.1 at 44; Exhibit GC-2018-001-07A, Vol. 1.1 at 34; and Exhibit GC-2018-001-011A, Vol. 1.1 at 35.

PART III – LEGAL FRAMEWORK

OVERVIEW

The Governor in Council may refer to the Tribunal, for inquiry and a report thereon, any matter regarding goods imported into Canada in such increased quantities and under such conditions as to be a principal cause of serious injury or threat thereof to domestic producers of like or directly competitive goods.[63] The Governor in Council establishes the terms of reference for the inquiry and report.[64] The Tribunal must conduct the inquiry and prepare the report in accordance with the terms of reference.[65] The *Canadian International Trade Tribunal Regulations* (*CITT Regulations*) provide interpretative guidance and prescribe factors to be examined in an inquiry under paragraph 20(a) of the *CITT Act*.

On October 10, 2018, on the recommendation of the Minister of Finance and pursuant to paragraph 20(a) of the *CITT Act*, the Governor in Council directed the Tribunal to undertake a safeguard inquiry regarding the importation of certain steel goods into Canada.[66] The Order established the terms of reference for the inquiry, and prescribed considerations and factors for the Tribunal to take into account.[67] Subject to an exception for GPT countries, the Order also directed the Tribunal to make remedy recommendations if it found serious injury to domestic producers or threat thereof.[68]

In carrying out the inquiry pursuant to the provisions of the Order, the Tribunal was directed to have regard to Canada's rights and obligations under international trade agreements.[69] The relevant agreements include the WTO *Agreement on Safeguards*[70] and the *General Agreement on Tariffs and Trade 1994* (*GATT 1994*).[71]

63. *CITT Act*, paragraph 20(a).
64. *CITT Act*, subsection 20.2(1).
65. *CITT Act*, subsection 21(1).
66. Order, section 1.
67. Order, sections 2-5.
68. Order, section 6.
69. Order, section 1.
70. The original 1947 *General Agreement on Tariffs and Trade* (*GATT*) contained a safeguard provision, i.e. Article XIX. A separate agreement on the rules for application of safeguard measures pursuant to Article XIX was concluded during the Uruguay Round of multilateral trade negotiations, and entered into force in 1995 with the inception of the WTO. The *Agreement on Safeguards* aims to (i) clarify and reinforce *GATT* disciplines, particularly those of Article XIX; (ii) re-establish multilateral control over safeguards and eliminate measures that escape such control; and (iii) encourage structural adjustment on the part of industries adversely affected by increased imports, thereby enhancing competition in international markets. The *Agreement on Safeguards* was negotiated in large part because *GATT* Contracting Parties had been applying a variety of so-called "grey area" measures that were not imposed pursuant to Article XIX, and thus were not subject to multilateral discipline through *GATT*. The *Agreement on Safeguards* now clearly prohibits such measures, and has specific provisions for eliminating those that were in place at the time the WTO *Agreement on Safeguards* entered into force.
71. Canada is a WTO Member; it is also a party to *NAFTA*, *CIFTA*, the *Canada-Chile Free Trade Agreement*, the *Canada-Colombia Free Trade Agreement*, the *Canada-Korea Free Trade Agreement*, the *Canada-Peru Free Trade Agreement*, the *Canada-Panama Free Trade Agreement* and the *Canada-Honduras Free Trade Agreement*.

The legal framework reflects the requirements of the Order, the *CITT Act*, the *CITT Regulations*, and Canada's rights and obligations under international trade agreements. The specific elements of the Tribunal's injury analysis and remedy determinations are set out below.

INJURY ANALYSIS

The Tribunal's inquiry was to determine whether goods of the seven classes of goods were imported into Canada in such increased quantities and under such conditions as to be a principal cause of serious injury or threat thereof to domestic producers of like or directly competitive goods.[72] Therefore, to make its determination for each class of goods, the Tribunal considered:

(a) whether domestically produced steel goods were "like or directly competitive" to imported goods of a subject class of goods;

(b) where the goods were like or directly competitive, who were the domestic producers of such goods;

(c) whether there was a significant increase in imports of the subject goods;

(d) if such an increase occurred, whether it resulted from unforeseen developments and the effect of obligations incurred by Canada under *GATT 1994*, including tariff concessions;

(e) if the increased imports arose from unforeseen developments and the effect of Canada's *GATT 1994* obligations, whether there was serious injury to domestic producers of like or directly competitive goods;

(f) if there was serious injury, whether the significant increase in imports is a principal cause of the injury;

(g) if there was no serious injury or the increase in imports is not a principal cause of the injury, the Tribunal examined whether there was a threat of serious injury;

(h) if there was a threat of serious injury, the Tribunal assessed whether the increase in imports is a principal cause of that threat; and

(i) if the Tribunal determined that an increase in imports of goods of a class from all sources other than the United States, Chile, Israel or another *CIFTA* beneficiary, and in certain cases Mexico, is a principal cause of serious injury or threat thereof, it considered whether imports of such goods from certain free trade agreement partners are a principal cause of the injury or threat thereof, and if not, the Tribunal determined whether all the goods of that class imported from all other countries subject to the inquiry were imported in such increased quantities to be a principal cause of serious injury or threat thereof.

Each of the above-mentioned elements of the Tribunal's injury analysis is discussed in more detail below.

72. *CITT Act*, paragraph 20(a).

Like or directly competitive goods

The Tribunal must determine whether domestically produced steel goods are "like or directly competitive" to imported goods of a subject class of goods. "Like or directly competitive goods" are goods that are identical in all respects to, or have uses and other characteristics that closely resemble, goods that are the subject of the inquiry.[73]

In its analysis of whether domestic goods are "like or directly competitive" to goods in a subject class of imported goods, the Tribunal examined a range of factors, including: physical characteristics (such as physical appearance and composition), market characteristics (such as substitutability, pricing and distribution), and the question of whether the goods meet the same customer needs.[74]

The Tribunal was specifically prohibited by subsection 3(2) of the Order from considering whether the subject and like goods were comprised of more than one class of goods.

Domestic producers

The Tribunal's injury analysis must consider the impact of the imported subject goods on domestic producers of like or directly competitive goods in Canada.[75] Neither the *CITT Act*, nor the *CITT Regulations*, nor the *CITT Rules* define "domestic producers" for the purposes of a safeguard inquiry. The *Agreement on Safeguards* also addresses injury in the context of the impact of imports on the performance of a domestic industry.[76] It defines "domestic industry" as "the producers as a whole of the like or directly competitive products operating within the territory of a Member, or those whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products."[77] The words "as a whole" and "a major proportion" address "the *number* and the *representative nature* of producers making up the domestic industry—they are a *quantitative* benchmark for the proportion of producers . . . which a safeguard investigation has to cover."[78]

As mentioned earlier, the Order requires the Tribunal to have regard to Canada's rights and obligations under international trade agreements.[79] Therefore, in conducting its injury analysis for

73. For the purposes of the *CITT Act*, section 3 of the *CITT Regulations* defines "like or directly competitive goods" as "(a) goods that are identical in all respects to the goods that are the subject of a complaint, or (b) in the absence of any identical goods referred to in paragraph (a), goods the uses and other characteristics of which closely resemble those goods that are the subject of a complaint" Although the definition refers to goods that "are the subject of a complaint", the Tribunal has previously held that the definition also applies to an inquiry referred to the Tribunal pursuant to paragraph 20(a) of the *CITT Act*; *Steel Goods* at 12.
74. *Steel Goods* at 15; *Bicycles and Frames* (September 2005), GS-2004-01 and GS-2004-002 (CITT) [*Bicycles and Frames*] at para. 65.
75. Paragraph 2(1)(a), Order; paragraph 5(1)(c), *CITT Regulations*; and paragraph 20(a), *CITT Act*.
76. *Agreement on Safeguards*, article 4.1(a).
77. *Agreement on Safeguards*, article 4.1(c).
78. *United States – Safeguard Measures on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia*, WTO Docs. WT/DS177/AB/R (1 May 2001), Report of the Appellate Body [*U.S. – Lamb*] at para. 91.
79. Order, section 1.

each class of goods, the Tribunal has identified the domestic producers on the basis of the *Agreement on Safeguards* definition.

The Tribunal must determine what constitutes the domestic industry for each product. Although the Tribunal may determine that all *or* a subset of all domestic producers constitute the domestic industry, once it has made that determination, its analysis of whether the domestic industry has been injured must proceed on the same basis.[80] In this respect, the Federal Court of Appeal has approved of the Tribunal's methodology and stated that "[t]he wording of subsection 2(1) of [the *Special Imports Measure Act*] leaves it open, depending on the circumstances, to consider 'domestic producers' as a whole or a 'major proportion' thereof for purposes of making a determination regarding the domestic industry."[81]

Increase in imports

The Tribunal must determine whether any of the subject goods have been imported into Canada in such increased quantities since January 1, 2015, and under such conditions, as to be a principal cause of serious injury or threat thereof.[82] To determine whether the subject goods have been imported in increased quantities, the Tribunal must examine the actual volume of the goods imported into Canada.[83] When examining actual import volumes, the Tribunal must consider whether there has been a significant increase in the importation into Canada of the goods.[84] Where such an increase has occurred, the Tribunal must consider the rate and amount of the increase, either absolutely or relative to the production in Canada of like or directly competitive goods.[85]

Similarly, the *Agreement on Safeguards* states that safeguard measures can only be applied if products are imported in such increased quantities, in absolute terms or relative to domestic production, and under such conditions, as to cause or threaten to cause serious injury.[86] The *Agreement on Safeguards* also provides that the competent authority must evaluate all relevant objective and quantifiable factors, including the rate and amount of the increase, in absolute and relative terms.[87] The Tribunal must base its evaluation of objective and quantifiable factors, such as its evaluation of the rate and amount of increased imports, on objective data and evidence.[88]

According to the WTO Appellate Body, the phrase "in such increased quantities" in the *Agreement on Safeguards* and *GATT 1994* Article XIX:1(a) means that "the increase in imports must have been recent enough, sudden enough, sharp enough, and significant enough, both

80. The Tribunal acknowledges that it is often presented with a domestic industry where the various domestic producers are performing differently, including as a result of their corporate organization, business structure or market focus. It is open for parties to make any arguments regarding such performance but the overall approach to the Tribunal's injury analysis remains as stated above.
81. *Essar Steel Algoma Inc. v. Jindal Steel and Power Limited* (9 August 2017), 2017 FCA 166 at paras. 20, 24; leave to appeal to the Supreme Court of Canada denied.
82. Order, subsections 2(2) and 3(1); *CITT Act*, paragraph 20(a).
83. *CITT Regulations*, paragraph 5(1)(a).
84. *CITT Regulations*, subsection 5(2).
85. *Ibid.*
86. Article 2.1; Article XIX:1(a) of *GATT 1994* contains a similar requirement.
87. Article 4.2(a); *NAFTA* contains a similar provision (para. 9, Annex 803.3).
88. *U.S. – Lamb* at paras. 129 and 130.

quantitatively and qualitatively, to cause or threaten to cause 'serious injury'."[89] An assessment of whether an increase is "recent enough, sudden enough, and significant enough" should not be done in the abstract.[90] The question is not whether imports have increased recently and suddenly in the abstract; rather, the increase in imports must have a "certain degree of being recent and sudden."

Determining whether the requirement for imports to be "in such increased quantities" has been met does not involve a mere mathematical or technical determination.[91] It is not sufficient to show simply that imports in one year were more than in a previous year or years.[92] Recent imports must be examined, not just import trends during a period of several years in the past.[93]

This is not to suggest that import trends are not relevant. Investigative authorities are expected to consider trends in imports over the period of inquiry, not to simply compare end points, such as the beginning and end of a period of inquiry.[94] There must be an explanation of how the trend in imports over a period of inquiry supports a finding of "such increased imports" within the meaning of the *Agreement on Safeguards* and *GATT 1994* Article XIX:1(a).[95]

The term "recent" need not be interpreted as meaning that imports must continue to increase right up to the date of the determination, nor does it imply an analysis limited to the present.[96] There can be a '"recent' increase even if that increase has ceased prior to the date of the determination, as long as imports remain at a sharply increased level."[97]

With such considerations in mind, it follows that the Tribunal will generally:

- determine if the evidence shows an increase in imports for a class of goods, considering recent imports, import trends, and end-point comparisons;
- determine the rate and amount of the increase in absolute terms and relative to the production in Canada of like or directly competitive goods; and
- assess whether the increased quantity of imports is recent enough, sharp enough, sudden enough, and significant enough, both in absolute terms and relative to production in Canada, to cause or threaten to cause serious injury.[98]

89. *Argentina – Safeguard Measures on Imports of Footwear* (12 January 2000), WTO Docs. WT/DS121/AB/R, Report of the Appellate Body [*Argentina – Footwear*] at para. 131; *United States – Definitive Safeguard Measures on Imports of Certain Steel Products* (10 December 2003), WTO Docs. WT/DS248/AB/R, WT/DS249/AB/R, WT/DS251/AB/R, WT/DS252/AB/R, WT/DS253/AB/R, WT/DS254/AB/R, WT/DS258/AB/R and WT/DS259/AB/R, Report of the Appellate Body [*U.S. – Steel*] at para. 346.
90. *U.S. – Steel* at para. 360.
91. *Argentina – Footwear* at para. 131.
92. *Ibid.*
93. *Ibid.* at para. 130.
94. *Ibid.* at para. 129; *U.S. – Steel* at paras. 354 and 355.
95. *US – Steel* at para. 374.
96. *United States – Definitive Safeguard Measures on Imports of Circular Welded Carbon Quality Line Pipe from Korea* (29 October 2001), WTO Docs. WT/DS202/R, Report of the Panel [*Line Pipe*] at paras. 7.207 and 7.208.
97. *Ibid.* at para. 7.208.
98. *Steel Goods* at 17; *Bicycles and Frames* at para. 85.

The Tribunal also addressed the more qualitative assessment of a "significant" increase by viewing import volumes in the context of market size.

Unforeseen developments and obligations under *GATT 1994*

The relevance of unforeseen developments and of the effect of Canada's obligations under *GATT 1994* in a safeguard inquiry is not addressed in domestic legislation. However, the Order requires the Tribunal to have regard to Canada's rights and obligations under international trade agreements.[99] The Tribunal notes that its past decisions have taken into account international trade agreements to which Canada is a party.[100]

Article XIX of *GATT 1994* (Emergency Action on Imports of Particular Products) provides that safeguard measures can only be imposed if certain circumstances exist and specific conditions are met,[101] and provides in part as follows:

> 1.(a) *If, as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under this Agreement, including tariff concessions*, any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the contracting party shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession.
>
> [Emphasis added]

Therefore, as part of its injury analysis, for each class of goods with a significant increase in imports, the Tribunal considers whether the increase resulted from "unforeseen developments" and the effect of Canada's obligations, including tariff concessions. Before a safeguard measure can be applied, both unforeseen developments and the effect of *GATT 1994* obligations must be shown to exist.[102] The Tribunal must explain how evidence of unforeseen developments and *GATT 1994* obligations or concessions undertaken by Canada demonstrates the existence of the "circumstances" in the first clause of Article XIX:1(a).[103]

Unforeseen developments

"Unforeseen developments" are developments that would have been "unforeseen" or "unexpected" at the time the importing WTO member undertook relevant *GATT 1994*

99. Section 1, Order.
100. *Steel Goods* at 9.
101. The first clause in Article XIX:1(a) does not establish independent conditions, but rather describes certain circumstances that must be demonstrated as a matter of fact. *Ukraine – Definitive Safeguard Measures on Certain Passenger Cars* (20 July 2015), WTO Docs. WT/DS468/R and Add. 1, Report of the Panel [*Ukraine – Passenger Cars*] at para. 7.52, citing *Korea – Definitive Safeguard Measure on Imports of Certain Dairy Products* (21 December 1999), WTO Docs. WT/DS98/AB/R, Report of the Appellate Body at para. 85 [*Korea – Dairy*] and *Argentina – Footwear* at para. 92.
102. For safeguards to be applied on imports of several different products, "the demonstration of 'unforeseen developments' must be performed for *each* product subject to a safeguard measure." *US – Steel* at para. 319; *US – Lamb* at paras. 72 and 76; *Ukraine – Passenger Cars* at para. 7.52.
103. *Ukraine – Passenger Cars* at paras. 7.52-7.54.

obligation(s).[104] More specifically, unforeseen developments are "developments occurring after the negotiation of the relevant tariff concession which it would not be reasonable to expect that the negotiators of the country making the concession could and should have foreseen at the time when the concession was negotiated."[105] The Tribunal is expected to demonstrate the existence of unforeseen developments, and explain how they resulted in increased imports.[106]

The existence of relevant unforeseen developments can be established by evidence provided by the domestic industry.[107] The Tribunal must provide reasoned and adequate explanations to show how the developments were unexpected or unforeseen,[108] and resulted in increased imports.[109] This includes explaining the timing of events that form the basis of the unforeseen developments in order to show that there is a temporal connection between the events themselves and the increase in imports.[110]

Canada's *GATT 1994* obligations respecting the seven classes of steel goods, specifically the relevant tariff concessions, were undertaken by Canadian negotiators in the Uruguay Round of Multilateral Trade Negotiations. The issue is whether the increase in imports resulted from developments that could not have been reasonably foreseen by trade negotiators in 1994, when Canada undertook obligations applicable to the subject steel goods.[111]

Ultimately, the issue is not whether an increase in imports was unforeseen.[112] Rather, the issue is whether there were unforeseen developments that *resulted in* or *led to* the import surge.[113]

In matters related to international trade in steel, the overarching unforeseen development since 1994 is the continuing and increasing overcapacity in world steel production. While there may have been excess steelmaking capacity in 1994, it could not be foreseen that such a situation would not only persist, but dramatically worsen for over two decades, i.e. until the present time. As noted above, since 2000, global crude steelmaking capacity has more than doubled from 1,061 million tonnes to an estimated 2,290.7 million tonnes in 2018.[114] Over the same period, beginning just prior to China's accession to the WTO, China's crude steelmaking capacity has increased sevenfold from 149.6 million tonnes in 2000 to an estimated 1,048.0 million tonnes in 2018.[115] Since 2000, the

104. *Korea – Dairy* at para. 86; *Argentina – Footwear* at para. 93. Events that have been found to constitute "unforeseen developments" include: an increase in non-domestic production capacity, higher domestic demand, decreased demand in major markets, and currency depreciation. See *India – Certain Measures on Imports of Iron and Steel Products* (6 November 2018), WTO Doc. WT/DS518/R, Report of the Panel [*India – Steel*] at para. 7.97.
105. *Argentina – Footwear* at para. 96, citing the *Report of the Intersessional Working Party on the Complaint of Czechoslovakia Concerning the Withdrawal by the United States of a Tariff Concession under the Terms of Article XIX*, GATT/CP/106, adopted 22 October 1951.
106. *Ukraine – Passenger Cars* at para. 7.67; *India – Steel* at para. 7.88.
107. *Ibid.*
108. *Ibid.* at 7.95.
109. *Ibid.* at para. 7.87.
110. *Ibid.* at para. 7.114.
111. *Argentina – Definitive Safeguard Measure on Imports of Preserved Peaches* (14 February 2003), WTO Docs. WT/DS238/R, Report of the Panel [*Argentina – Preserved Peaches*] at paras. 7.25-7.29; *U.S. – Steel* at para. 10.74.
112. *Ukraine – Passenger Cars*; *Argentina – Preserved Peaches.*
113. *Ibid*.
114. Exhibit GC-2018-001-066.29, Vol. 1 at 4.
115. *Ibid*.

global crude steelmaking capacity-to-consumption gap has more than tripled from just over 200 million tonnes to approximately 650 million tonnes in 2016.[116]

Continued and increasing overcapacity of this magnitude and duration was not, and could not have been predicted in 1994, as it could not be forecast by market mechanics. Instead, numerous complex socio-political factors, such as the continuing transition of China's industry and economy, were at play to continue and exacerbate this overcapacity.

A second unforeseen development was the imposition of measures regarding steel imports by U.S. President Trump pursuant to a self-initiated investigation under section 232 of the *Trade Expansion Act of 1962*. This section authorizes the President of the United States, through tariffs or other means, to adjust the imports of goods or materials from other countries if it is found that the quantity or circumstances surrounding those imports threaten to impair national security. President Trump imposed the section 232 measures on steel (and aluminum) from most countries in early 2018, and extended the coverage to include Canada on May 31, 2018.[117]

The product-specific parts of this Report also discuss these and other issues related to unforeseen developments.

Obligations under *GATT 1994*

Article XIX:1(a) requires identification of the specific obligations (including tariff concessions), and the effect thereof, that resulted in the increase in imports.[118] The Tribunal's report is expected to identify the relevant *GATT 1994* obligation(s), and to explain how the obligation(s) limits its ability to react to the import surge causing injury.[119]

There are several such obligations identified by the Tribunal. These include the facts that Canada:

- committed not to impose quantitative restrictions under Article XI of *GATT 1994*, and
- bound the tariff applicable to the seven classes of goods at zero percent.

Article II of *GATT 1994* established Schedules of Concessions that set out the WTO Members' tariff concessions. Article II provides that products for which tariff concessions were made should be exempt from ordinary customs duties in excess of those provided in the Schedule.[120] As a result, not only did tariff concessions reduce tariffs, they prevented WTO

116. *Ibid.* at 12.
117. The Tribunal believes this to be the first time this section 232 has been used since the creation of the WTO in 1995.
118. *Ukraine – Passenger Cars* at para. 7.96.
119. *India – Steel* at para. 7.89.
120. For example, Article II:1(b) provides as follows:

> (b) The products described in Part I of the Schedule relating to any contracting party, which are the products of territories of other contracting parties, shall, on their importation into the territory to which the Schedule relates, and subject to the terms, conditions or qualifications set forth in that Schedule, be exempt from ordinary customs duties in excess of those set forth and provided therein. Such products shall also be exempt from all other duties or charges of any kind imposed on or in connection with the importation in excess of those imposed on the date of this Agreement or those directly and mandatorily required to be imposed thereafter by legislation in force in the importing territory on that date.

Members from unilaterally applying higher tariffs, except under exceptional circumstances. Therefore, under Article II and the related Schedules of Concessions, a WTO member cannot impose tariffs above the bound tariff rate.

A tariff *binding* is a tariff concession, and represents an obligation not to raise the tariff above the bound rate.[121] Thus, the effect of a bound tariff is that it limits the ability of a WTO member to increase the tariff to stem the flow of increased imports.

As such, the bound tariffs and the inability to impose quantitative restrictions regarding the seven classes of goods prevented Canada from addressing any significant increase in imports. However, the *Agreement on Safeguards* continued to provide an emergency mechanism (including quotas, TRQs or duties) to deal with such fairly traded goods including steel products.

Therefore, for classes of subject goods with a significant increase in imports, the Tribunal has examined whether the increase resulted from the applicable Canadian concessions and related obligations including those not to impose a higher tariff.

Serious injury

The Order requires the Tribunal to determine, assuming the relevant conditions precedent discussed above are satisfied, whether imports of the subject goods are a principal cause of serious injury to domestic producers.[122] "Serious injury" is defined as meaning, in relation to domestic producers of like or directly competitive goods, a "significant overall impairment in the position of the domestic producers."[123] Serious injury is clearly more than material injury as the latter term is used in the *Special Import Measures Act*[124] proceedings. Given the definitions and the context, which is that safeguard measures are emergency ones, the Tribunal views this determination as having a high threshold and as being product-specific. In examining whether the domestic industry suffered serious injury, the Tribunal was required to evaluate all relevant factors that have a bearing on domestic producers of like or directly competitive goods, including actual changes in the level of production, employment, sales, market share, profits and losses, productivity, return on investment, utilization of production capacity, cash flow, inventories, wages, and growth or the ability to raise capital or investments.[125]

121. The WTO's *Dictionary of Trade Policy Terms* defines this term in part as follows: "Binding: also called concession. A legal obligation not to raise tariffs on particular products above the specified rate agreed in WTO negotiations and incorporated in a country's schedule of concessions" (online at http://ctrc.sice.oas.org/trc/WTO/Documents/Dictionary%20of%20trade%20%20policy%20terms.pdf).
122. Order, subsection 3(1).
123. *CITT Act*, section 2. Under Article 4.1(a) of the *Agreement on Safeguards*, "serious injury" is defined as "a significant overall impairment in the position of a domestic industry." "Serious injury" is similarly defined under Article 805 of *NAFTA*.
124. R.S.C., 1985, c. S-15 [*SIMA*].
125. *CITT Act*, subsection 5(4). The Tribunal notes that whether a domestic producer missed or would miss an internal target for profits or return on investment does not necessarily translate into a significant overall impairment, i.e. serious injury, or threat of serious injury to a domestic industry. The Tribunal has previously indicated that, in the context of *SIMA*, internal targets are not performance indicators that, in and of themselves, concern the Tribunal. *Gypsum Board* (20 August 2018), PI-2018-003 (CITT) at para. 60.

Similarly, Article 4.2(a) of the *Agreement on Safeguards* and paragraph 9 of Annex 803.3 of *NAFTA* also require the Tribunal to consider a list of relevant factors, all of which are reflected in the factors identified above.[126]

Principal cause of serious injury

Where the Tribunal finds that the domestic producers have suffered serious injury, it must assess whether the increased imports are a principal cause of that serious injury.[127] "Principal cause" is defined as meaning an important cause that is no less important than any other cause of the serious injury or the threat thereof.[128] A causal link between the increased imports and serious injury must be established, and serious injury caused by factors other than increased imports must not be attributed to increased imports.[129]

As part of this analysis, the Tribunal was required to examine the effect of imported subject goods on prices of like or directly competitive goods produced and sold in Canada.[130] Specifically, the Tribunal had to consider whether:

- the prices of the imported goods significantly undercut the prices of like or directly competitive goods produced and sold in Canada; and
- the effect of the imported goods was to depress significantly the prices of, or to limit to a significant degree increases in the prices of, like or directly competitive goods produced and sold in Canada.[131]

For the purpose of determining whether there is a causal link between the increased imports and the serious injury or threat thereof, the Tribunal considers the effect of the increased imports on the domestic producers, and takes steps to ensure that any injury caused by other factors is not attributed to the increase in imports.[132] Specifically, the Tribunal examines other factors potentially causing injury, and if such factors have caused injury, the Tribunal evaluates whether the impact of the injurious factors was more important than the impact of the increase in imports.[133]

Threat of serious injury

When the Tribunal finds that there has been a significant increase in the importation of a good, but that there was no serious injury or increased imports were not a principal cause of serious injury, the Tribunal must determine whether the increased imports are a threat of serious injury.[134] Threat of serious injury means serious injury that, on the basis of facts, and not merely of

126. The Tribunal's Notice of Commencement of Inquiry includes a consolidated list of the injury factors enumerated in the Order and in section 5 of the *CITT Regulations*.
127. Order, subsection 3(1), and *CITT Act*, paragraph 20(a).
128. *CITT Act*, subsection 19.01(1). The definition applies to inquiries under section 20 of the *CITT Act*.
129. *Agreement on Safeguards*, Article 4.2. Paragraph 10, Annex 803.3, *NAFTA*, has similar requirements.
130. *CITT Regulations*, subsections 5(1) and 5(3).
131. *Ibid.*
132. *Bicycles and Frames* at para. 107.
133. *Ibid.*
134. Order, subsection 3(1).

allegations, conjecture or remote possibility, is clearly imminent.[135] Article 4.1(b) of the *Agreement on Safeguards*, as well as Article 805 of *NAFTA*, defines this term in a similar manner.

The Tribunal is therefore mindful that a determination of threat is to be based on facts and not on "conjecture".[136] Further, the Tribunal notes the following guidance from the WTO's Appellate Body:

> . . . [W]e see the word "clearly", which qualifies the word "imminent", as an indication that there must be a **high degree of likelihood that the anticipated serious injury will materialize in the very near future**. We also note that Article 4.1(b) provides that any determination of a threat of serious injury "shall be based on facts and not merely on allegation, conjecture or *remote possibility*." To us, the word "clearly" also relates to the factual demonstration of the existence of the "threat". Thus, the phrase "clearly imminent" indicates that, as a matter of fact, it must be manifest that the domestic industry is on the brink of suffering serious injury.[137]
>
> [Italics in original; bold added for emphasis]

On a related point, the WTO Panel in *U.S. – Coated Paper (Indonesia)* observed the following:

> . . . [*I*]*t is the essence of a threat determination that the situation existing during the POI is predicted to change* such that there will be injury in the imminent future, if measures are not imposed. The lack of present material injury caused by subject imports may be a consequence of their volumes during the POI, their price effects, their impact during the POI or the injurious effects of other factors. What is important in a determination of threat of injury is that the investigating authority adequately explains, based on the evidence before it, why the situation it predicts can be projected to occur.[138]
>
> [Emphasis added]

In conducting its analysis of whether there is a threat of serious injury, the Tribunal first assessed the state of the market in the most recent part of its POI, i.e. during the first half of 2018, in order to assess likely future events. The Tribunal has taken into account the evidence received on demand, prices, and the general economic and financial situation for steel for 2018 in Canada, and world markets. Then, the Tribunal considered whether an evaluation of the factors listed under subsection 5(4) of the *CITT Regulations* indicated that a negative impact would materialize in the near future; in this inquiry, the near future is generally meant to be the next 12 months, i.e. within calendar year 2019.

Principal cause of threat of serious injury

Where the Tribunal finds that the domestic producers are threatened with serious injury, it must assess whether the increased imports are a principal cause of this threat.[139] As with serious injury, a causal link between the increased imports and the *threat* of serious injury must be

135. *CITT Act*, subsection 2(1).
136. *Agreement on Safeguards*, Article 4(1)(b).
137. *US – Lamb* at para. 125.
138. *United States – Anti-Dumping and Countervailing Measures on Certain Coated Paper from Indonesia* (6 December 2017), WTO Docs. WT/DS491/R, Report of the Panel at para. 7.313.
139. Order, subsection 3(1); *CITT Act*, paragraph 20(a).

established under the provisions of the *Agreement on Safeguards*, and serious injury which will be caused by factors other than increased imports must not be attributed to increased imports.[140]

In assessing whether there is a causal link, the Tribunal considered what would be the effect of imported subject goods on prices of like or directly competitive goods produced and sold in Canada.

Goods of certain free trade agreement partners

Panama, Peru, Colombia, Honduras and Korea

Where the Tribunal finds serious injury or threat thereof, it must conduct a separate analysis in respect of goods imported from Canada's free trade agreement partners of Panama, Peru, Colombia, Honduras and Korea. The analysis has two parts.

First, where the Tribunal determines that imports of a class of goods from all subject sources are being imported in such increased quantities and under such conditions as to be a principal cause of serious injury, or threat of serious injury, to the domestic producers of like or directly competitive goods, the Tribunal shall determine whether imports of the goods from Panama, Peru, Colombia, Honduras and Korea,[141] each taken on their own, are a principal cause of the serious injury or threat of serious injury.[142]

Second, where the Tribunal determines that imports of a class of goods from Panama, Peru, Colombia, Honduras or Korea are not a principal cause of serious injury or threat thereof, it must then determine whether all the goods of that class were imported into Canada from all other countries subject to the inquiry that are not covered by any such determination, in such increased quantities and under such conditions as to be a principal cause of serious injury or threat thereof to domestic producers of like or directly competitive goods.[143]

Mexico (energy tubular and wire rod)

If the Tribunal finds serious injury or threat thereof regarding energy tubular products or wire rod, it must also conduct a separate analysis in respect of such goods imported into Canada from Mexico.[144] The analysis has two parts.

First, where the Tribunal determines that imports of energy tubular products or wire rod from all subject sources are being imported in such increased quantities and under such conditions as to be a principal cause of serious injury, or threat of serious injury, to the domestic producers of like or directly competitive goods, the Tribunal must determine whether the quantity of such goods imported from Mexico accounts for a substantial share of total imports of goods of the class in question; and the goods imported from Mexico contribute importantly to the injury or threat

140. Article 4.2, paragraph 10. Annex 803.3, *NAFTA*, has similar requirements.
141. The Tribunal must assess whether specified imported goods from Korea and goods of the same kind imported from other countries are being imported in increased quantities "in absolute terms" (*CITT Act*, section 20.07).
142. *CITT Act*, sections 20.031, 20.04, 20.05, 20.06 and 20.07.
143. Order, section 5.
144. Order, section 4.

thereof.[145] "Contribute importantly" means an important cause, but not necessarily the most important cause.[146]

Second, where the Tribunal determines that energy tubular product or wire rod imports originating in Mexico do not account for a substantial share of total imports of the class of goods at issue or do not contribute importantly to serious injury or threat thereof, it must then determine whether all the goods of that class were imported into Canada from all other countries subject to the inquiry that are not covered by any such determination, in such increased quantities and under such conditions as to be a principal cause of serious injury or threat thereof to domestic producers of like or directly competitive goods.[147]

RECOMMENDATIONS ON APPROPRIATE REMEDIES

The Order provides as follows:

> [I]f the Tribunal determines that importation of the goods of a class described in the schedule is a principal cause of serious injury or threat thereof to domestic producers of like or directly competitive goods, the Tribunal must make recommendations, in respect of each class of goods, as to the most appropriate remedy to address, over a period of three years, the injury caused or threatened to be caused by increased importation into Canada of that class of goods, in accordance with Canada's rights and obligations under international trade agreements.[148]

Three different types of trade measures are commonly used to remedy serious injury or threat thereof caused by increased imports. The first is simple surtaxes, which apply to all imports irrespective of their volume. The second is quotas, which establish an upper limit on the absolute volume of imports that can enter the market within a given period of time. Finally, there are TRQs, which impose different tariff rates below and above a predetermined import volume threshold.

The Tribunal asked parties to consider potential remedies in their submissions. The Tribunal considered all of the evidence and argument presented on the subject of remedies, including the relative suitability of the three types of remedies available.

As will be discussed later in this report, the Tribunal is recommending that TRQs be applied on imports of the two products for which it is recommending a remedy.

In determining the appropriate level of the above-quota surtax, the Tribunal considered various factors including (1) the threat of serious injury caused by increased imports, (2) the views of the various parties on the level of surtax required, (3) the methodologies suggested by various parties for establishing a surtax, (4) domestic prices during the POI, and (5) the recent developments in the market for each of the products. In formulating its recommendations where threat of injury to a domestic industry was found, the Tribunal has taken into account the needs of those domestic producers as well as the interests of the downstream industries. The Tribunal believes that there is an important public interest issue in achieving a balanced recommendation on remedy, one that removes the threat of serious injury to the domestic producers from increased imports, while, at the same time, minimizing the costs to the Canadian economy.

145. *CITT Act*, section 20.01.
146. *CITT Act*, subsection 20.01(1), and Article 805, *NAFTA*.
147. Order, section 4.
148. Order, subsection 6(1).

In this approach, the Tribunal is taking into account the positions of all interested parties and is recommending that safeguard measures be applied only to the extent necessary to offset the threat of serious injury being caused by increased imports, and in a manner consistent with Canada's international obligations, including Article 7.4 of the *Agreement on Safeguards*, which provides that, in order to facilitate adjustment, the Member applying the safeguard measures shall progressively liberalize them at regular intervals during the period of application.

The Tribunal also believes that the Government should periodically review these measures to ensure that they remain appropriate. This recommendation reflects the fact that Canadian and global market conditions could change significantly during the period of the application of the measures. Also, the Government should take account of the manner in which trade measures on steel are applied in the United States, the European Union or other jurisdictions and of any changes that may be made there in response to market or other conditions.

Article 2(2) of the *Agreement on Safeguards* provides that safeguard measures shall be applied to a product being imported irrespective of its source. However, the Tribunal was directed by section 5 of the Order to exclude from any remedy, steel goods originating in Panama, Peru, Colombia, Honduras and Korea, if they are not found to be a principal cause of serious injury or threat of serious injury. In this case, the Tribunal would recommend that measures be applied to imports from any remaining countries. In addition, the Tribunal's recommendations on remedy do not apply to imports originating in the United States, Chile, Mexico,[149] Israel or other *CIFTA* beneficiary.

Article 9.1 of the *Agreement on Safeguards* provides that "safeguard measures shall not be applied against a product originating in a developing country Member as long as its share of imports of the product concerned in the importing Member does not exceed three percent, provided that developing country Members with less than three percent import share collectively account for not more than nine percent of total imports of the product concerned."

Similarly, subsection 6(2) of the Order provides that the Tribunal's recommendations must not address goods of a class that are being imported from a country benefiting from the GPT—and originating in that country—for which importation of the goods of that class did not, in 2017, exceed 3 percent of the total importation of goods of that class, provided that the importation of goods of that class from all countries benefiting from the GPT did not, in 2017, exceed 9 percent of the total importation of goods of that class.

Consequently, the Tribunal recommends that imports from countries benefiting from the GPT that meet these conditions be excluded from the application of safeguard measures.

149. Except in the case of energy tubular products and wire rod.

PART IV – HEAVY PLATE

PRODUCT

The first class of goods subject to the Tribunal's inquiry is heavy plate. The Order provides the following description of this class of goods:[150]

> Hot-rolled carbon steel plate and high-strength low-alloy steel plate not further manufactured than hot-rolled, heat-treated or not, in widths from 80 inches (± 2,030 mm) to 152 inches (± 3,860 mm), and thicknesses from 0.375 inches (± 9.525 mm) to 4.0 inches (101.6 mm), with all dimensions being plus or minus allowable tolerances contained in the applicable standards. For greater certainty, these dimensional restrictions apply to steel plate, which contains alloys greater than required by recognized industry standards provided that the steel does not meet recognized industry standards for an alloy-specification steel plate.
>
> The following goods are excluded:
>
> - all plate in coil form, and
> - all plate having a rolled, raised figure at regular intervals on the surface (also known as floor plate).

Heavy plate that is the subject of this inquiry is a subset of "plate" as defined for numerous previous *SIMA* proceedings;[151] heavy plate is a wider and thicker type of plate. In those proceedings, the Tribunal has made numerous factual findings in terms of methods of production and product characteristics for plate and those findings are relevant here. The Tribunal takes judicial notice and adopts the following:

- While details vary from mill to mill, the process by which plate is produced from molten steel generally consists of the following steps: slab production, descaling, rolling, levelling and cutting to size; the plate is then tested and shipped. Plate may be heat-treated in processes that may include annealing, normalizing, stress relieving, quenching, tempering or combinations of these treatments.[152]
- Plate formed directly into rectangular shapes is referred to in the steel industry as "discrete plate" and may be produced in any thickness covered by the product definition. The rectangular shapes can also be produced by unwinding plate that has been formed into coils and cutting it into separate lengths. Such plate is referred to as "plate from coil" or "cut-to-length plate".[153]
- Heavy plate is used in a number of applications, the most common of which are the production of rail cars, oil and gas storage tanks, heavy machinery, agricultural

150. In addition, the Department of Finance published an illustrative list of HS Codes for heavy plate, which are 7208.51.00.10, 7208.51.00.93, 7208.51.00.94, 7208.51.00.95, 7208.52.00.10, 7208.52.00.93 and 7208.52.00.96: Exhibit GC-2018-001-01A, Vol. 1 at 3.
151. See, for example, *Plate from Ukraine* (30 January 2015), RR-2014-002 (CITT) [*Plate from Ukraine*]; *Plate from Korea et al.* (20 May 2014), NQ-2013-005 (CITT) [*Plate from Korea et al.*]; *Plate from Bulgaria et al.* (7 January 2014), RR-2013-002 (CITT) [*Plate from Bulgaria*].
152. *Plate from China* (9 August 2018), RR-2017-004 (CITT) at para. 13.
153. *Ibid.* at para. 14.

equipment, bridges, industrial buildings, high-rise office towers, automobile and truck parts, ships and barges, and pressure vessels.[154]

- Plate is a commodity product that is sold on the basis of price, all other criteria being equal.[155] Its production is capital-intensive and exhibits high fixed costs of production, which provide an incentive for steel mills to increase production to cover these costs.[156]

SUMMARY

The Tribunal finds that heavy plate from the subject countries (other than goods originating in Korea, Panama, Peru, Colombia and Honduras) is being imported in such increased quantities and under such conditions as to be a principal cause of a threat of serious injury to the domestic industry. The Tribunal therefore recommends a remedy in the form of a TRQ on imports of heavy plate from subject countries, other than goods originating in Korea, Panama, Peru, Colombia, Honduras, or countries whose goods are eligible for GPT treatment.

ANALYSIS

The legal principles applicable to the analysis are set out in Part III of this report.

Like or directly competitive goods

The like goods are goods of the same description as above, manufactured in Canada. Although parties opposing the imposition of safeguard measures contested the ability of the domestic industry to make all specifications of heavy plate, they did not present any evidence or argument that the domestic industry did not produce like goods. The Tribunal considered these arguments not to be relevant to a like-product analysis in the context of this safeguard inquiry. Those arguments may be relevant in the context of a like-product analysis under *SIMA* where parties can argue that there is more than a single class of goods within the definition of like goods or in the context of an exclusion request. However, the Order expressly indicates that heavy plate constitutes a single class of goods and specifically instructed the Tribunal not to hear any motion to exclude any good from a class of goods or that would otherwise limit the scope of the inquiry, determination or recommendations.

The evidence was that domestic heavy plate is identical to, or has uses and other characteristics that closely resemble, the imported heavy plate that is the subject of this inquiry.[157] On the basis of evidence on the record, the Tribunal finds that domestically produced heavy plate is like goods or directly competitive goods to the subject imported heavy plate.

Domestic producers

Three domestic producers of heavy plate in Canada responded to the Tribunal's Producers' Questionnaire. They are Algoma Steel Inc. (formerly Essar Steel Algoma Inc., [Algoma]), SSAB

154. *Ibid.* at para. 15.
155. *Plate from Ukraine* at para. 88; *Plate from Bulgaria et al.* at para. 32; *Plate from Korea et al.* at para. 96.
156. Exhibit GC-2018-001-071.06, Vol. 5 at 27, 45-46; Exhibit GC-2018-001-072.06 (protected), Vol. 6 at 27, 45-46; *Plate from China* (8 January 2013), RR-2012-001 (CITT) at paras. 99-101.
157. Exhibit GC-2018-001-020.08, Vol. 3.

Central Inc. (SSAB) and Janco Steel Ltd. (Janco).[158] Algoma, by far the largest domestic producer,[159] is an integrated steel mill located in Sault Ste. Marie, Ontario. SSAB is a steel service centre located in Scarborough, Ontario, and Janco is a steel service centre located in Stoney Creek, Ontario.

Parties opposing did not present any evidence or argument that there were any other significant domestic producers.

Therefore, the Tribunal finds that the collective output of these producers constitutes a major proportion of the total domestic production of heavy plate.

Increase in imports

Table 1 shows the volume of imports of heavy plate into Canada for the period of January 1, 2015, to June 30, 2018.

Table 1
Imports of Heavy Plate (Volume)
(Tonnes)

				Interim	
	2015	2016	2017	2017	2018
Subject Countries	106,574	74,261	147,373	56,049	51,284
Total Imports	474,141	497,191	535,622	241,015	190,305

Source: Exhibit GC-2018-001-05B, Vol. 1.1 at 16.

158. Samuel, Son & Co., Limited (Samuel) is a service centre which likely produces some like goods at various locations in Canada. It was asked to complete a Producers' Questionnaire. Samuel was not included in the Statistical Summary as a domestic producer because, after several revisions, its response to the questionnaire was not viewed as reliable. Samuel's revised response indicated that the amount of its production within the scope of the inquiry is a minor proportion of domestic production: Exhibit GC-2018-001-104 (protected), Vol. 2; Exhibit GC-2018-001-105 (protected), Vol. 2 and Exhibit GC-2018-001-108 (protected), Vol. 2. The part of Samuel's response regarding its imports *was* included as part of importer data. Several other steel service centres that produced substantial volumes of plate within the scope of previous proceedings responded to the Producers' Questionnaire that they did not produce heavy plate as defined in this inquiry, for example: Acier Nova Inc. (Exhibit GC-2018-001-20.06, Vol. 3 at 1-2), Del Metals (Exhibit GC-2018-001-20.04, Vol. 3 at 1-2), Evraz Inc. NA Canada (Exhibit GC-2018-001-20.07, Vol. 3 at 1-3), Russel Metals Inc. (Exhibit GC-2018-001-20.03, Vol. 3 at 1-2), Varsteel Ltd. (Exhibit GC-2018-001-20.13, Vol. 3 at 1-2). As well, a previously unknown domestic producer, High Strength Plates & Profiles Inc. (HSPP), made itself known to the Tribunal. HSPP did not provide any production data, but did complete an Importers' Questionnaire: Exhibit GC-2018-001-35.04, Vol. 3.1. HSPP is also very likely to account for a very minor amount of domestic production, as it was completely unknown to the industry and the Tribunal in all previous Plate proceedings.

159. Since Algoma is such a large part of the domestic industry, much of the domestic industry's information (including trends in financial performance) was kept confidential in order to protect Algoma's business interests and the integrity of the Tribunal process.

Parties opposing the imposition of a safeguard remedy argued that there was no increase in imports which satisfied the requirements of Canadian law and the *Agreement on Safeguards*. Parties supporting the imposition of a safeguard remedy had a contrary position. They also introduced evidence from Statistics Canada regarding imports in Q3 of 2018.[160]

Table 1 shows that, in absolute terms, the volume of subject imports of heavy plate into Canada decreased in 2016 as compared to 2015, but then suddenly and sharply increased by approximately 73,000 tonnes in 2017. In percentage terms, the increase of 98 percent in 2017 was the sharpest year-on-year increase observed for any class of goods in this inquiry. While the volume in 2016 was much reduced as compared to the 2015 volume, the volume in 2017 was still 38 percent greater than the 2015 volume.

Subject imports decreased by nine percent in interim 2018 as compared to interim 2017, but this rate of decrease nevertheless implies that the volume of subject imports was on pace to remain at a sharply higher volume compared to the full years 2015 and 2016. This is because a simple comparison of the first halves of 2017 and 2018 masks the fact that most of the increase in subject imports in 2017 (approximately 60 percent) occurred in the second half of the year.

In terms of assessing the most recent trends in the volume of subject imports, the Tribunal determined that, *in the case of heavy plate*, Statistics Canada data were reliable and useful, with imports in the prior two quarters tracking the data compiled by the Tribunal.[161] The Statistics Canada import data for 2018 show that the volume of subject imports up to the end of the third quarter of 2018 was 118,284 tonnes, which was already greater than the full-year volume for 2015.[162]

The ratio of subject imports to domestic production[163] increased along a similar trend. In 2016, the ratio decreased by 12 percentage points, but then increased by 38 percentage points in 2017, for a net increase of 20 percentage points over the three-year period. There was an increase of one percentage point in interim 2018 as compared to interim 2017. In other words, while there was an absolute decrease in subject imports in interim 2018, there was no decrease relative to domestic production.

160. The general discussion concerning the admissibility of Q3 2018 data is contained in Part II above. In the case of heavy plate, parties opposed argued that the Statistics Canada data was neither admissible nor reliable.
161. The Tribunal conducted an analysis to assess the accuracy of the Statistics Canada import volume data regarding heavy plate by comparing the first half 2017 and first half 2018 Statistics Canada data with the data regarding these same periods as presented in the Tribunal's Statistical Summary for Plate. The Tribunal's analysis showed that its data represented 97 percent and 95 percent of the Statistics Canada data for first half 2017 and first half 2018, respectively. Therefore, the Tribunal has concluded that the Statistics Canada data for imports of heavy plate in Q3 2018 is accurate and useful for the purposes of its inquiry regarding this class of goods: Exhibit GC-2018-001-071.06, Vol. 5 at 12.
162. Testimony indicated that seasonal patterns in demand for imports remained stable in the Canadian market throughout the POI, which suggests that subject imports in the first half of 2018 (51,284 tonnes) would be less than half the annual total. Therefore, the annual total in 2018 is very likely to be at least 127,000 tonnes, i.e. well in excess of the 106,574 tonnes imported in 2015: *Transcript of Public Hearing* at 54; Exhibit GC-2018-001-006B (protected), Vol. 2.1 at 16.
163. The volume of domestic production itself is confidential: Exhibit GC-2018-001-005B, Vol. 1.1 at 19.

This increase in subject imports in 2017 is significant when viewed in the context of the Canadian market. Relative to domestic sales from domestic production, imports of the subject goods decreased by 20 percentage points in 2016, but then increased by 46 percentage points in 2017, for a net increase of 26 percentage points over the three-year period. There was also an increase of two percentage points in interim 2018 as compared to interim 2017. In other words, while there was an absolute decrease in subject imports in interim 2018, there was no decrease relative to sales from domestic production. In addition, the increases in subject imports represent a sizeable portion of the domestic market.[164]

Accordingly, the Tribunal concludes that in 2017, there was an increase in subject imports and that the increase in these imports was recent enough, sudden enough, sharp enough and significant enough, in absolute terms and relative to domestic production of heavy plate.

Unforeseen developments and *GATT 1994* obligations

Having found that there was such an increase in subject imports of heavy plate in 2017, the Tribunal considers whether the increase resulted from unforeseen developments and the effect of Canada's *GATT 1994* obligations.

Unforeseen developments

The domestic industry submitted that increasing global overcapacity and various trade remedy actions, especially since 2017, were developments which could not be reasonably foreseen by Canadian negotiators in 1994. Other parties submitted that these developments were not "unforeseen" and could not be linked to the increase in imports.

For the reasons that follow, the Tribunal finds that the increase in imports was due to a combination of unforeseen developments. The overarching unforeseen development is the continuing unresolved and substantially increasing overcapacity in world steel production, including heavy plate production, which could not be foreseen in 1994.

The developments in excess capacity for steel generally have been described in Part II above.

Evidence on the record with regard to the global capacity utilization rate on reversing mills (which capacity is dedicated exclusively to the production of discrete plate, mostly in the dimensions covered by the heavy plate product description) is projected to remain well under 80 percent through 2020. The excess capacity will remain at about 40 million tonnes in 2019 and 2020, which represents many times the size of the total Canadian market for plate in 2017. Evidence shows that the majority of this global excess capacity is located in the subject countries.[165]

The Tribunal's record indicates that overcapacity in the new sources of heavy plate imports, i.e. Turkey and Malaysia, was high.[166] These sources of heavy plate imports in the POI are not

164. Exhibit GC-2018-001-005B, Vol. 1.1 at 16 and 20; Exhibit GC-2018-001-06B (protected), Vol. 2.1 at 20.
165. Exhibit GC-2018-001-071.06, Vol. 5 at 21, 47-49; Exhibit GC-2018-001-072.06 (protected), Vol. 6 at 21, 47-49.
166. *Transcript of Public Hearing* at 51; Exhibit GC-2018-001-066.27, Vol. 1 at 6, 13, 21, 37-40, 43; Exhibit GC-2018-001-066.29, Vol. 1 at 4.

subject to anti-dumping and countervailing (AD/CV) measures in Canada. The resulting pricing in subject countries is persistently much lower than North American prices.[167] Subject countries' exports of heavy plate are shipped to various destinations around the world, including Canada, if there is an opportunity to do so. The ensuing opportunistic and random trade flows were unforeseen, and have created a situation resulting in import surges in markets open to such imports such as the Canadian market for heavy plate.

The Tribunal has no doubt that continuing and increasing overcapacity generally, and specifically in respect of new sources of heavy plate in the POI, led to the surge of heavy plate into Canada in 2017 and that this surge was unforeseen.

The other unforeseen developments of importance for heavy plate imports into Canada were even less predictable, including the major depreciation of the Turkish lira in mid-2017 and omnibus U.S. AD/CV measures against plate from, among others, Turkey in early 2017,[168] as well as the proposed U.S. section 232 measures.[169] These led directly to the increase in subject imports in 2017.

GATT 1994 obligations

In 1994, Canada agreed not to impose quantitative restrictions on trade in goods and bound the tariff for heavy plate at zero percent.[170] The effect of the concession and the obligations arising under Articles II:1(a) and XI of *GATT 1994* was to prevent Canada from imposing tariffs above the bound tariff rate or quotas as a means of addressing the significant increase in imports of heavy plate in 2017.

Serious injury

Having found that subject imports have increased, the Tribunal has to determine whether serious injury has occurred.

As determined by the Tribunal and admitted by Algoma, imports increased only as of 2017; it follows that any injury suffered in 2015 and 2016 cannot be attributed to an increase in imports.[171] Accordingly, the Tribunal will focus on developments from 2017 on, but will also place them in the context of the entire POI.

167. *Transcript of Public Hearing* at 16-17; Exhibit GC-2018-001-072.06 (protected), Vol. 6 at 135.
168. The issue of the depreciation of the Turkish lira as an unforeseen development is discussed at length in the Reinforcing Bar chapter where the Tribunal acknowledges that while currency fluctuations *per se* are foreseeable, it is of the view that, in this instance, it was the timing, speed and depth of the depreciation of the modern lira within the context of the broader economic instability in Turkey that could not be foreseen by negotiators in 1994. Similarly, while countries' use of AD/CV measures *per se* are foreseeable, the impact of omnibus U.S. AD/CV measures (covering almost a dozen countries) in the context of the significant global overcapacity and trade uncertainty could not have been foreseen.
169. Exhibit GC-2018-001-003B, Vol. 1.1 at 15; Exhibit GC-2018-001-005B, Vol. 1.1 at 37; The Tribunal heard evidence that the U.S. section 232 measures resulted in diversion even before their official implementation: *Transcript of Public Hearing* at 14-15.
170. Exhibit GC-2018-001-066.43, Vol. 1 at 33 *et seq.*
171. The causes of injury in 2015-2016 were mainly Algoma's restructuring from bankruptcy protection, which created increased costs and market uncertainty over its operations and viability as a supplier. However, Algoma emerged from bankruptcy protection in November 2018: Exhibit GC-2018-001-067, Vol. 1 at 1.

The following table summarizes the domestic industry's performance during the POI. All financial performance data of the domestic industry (which mainly consists of Algoma's results) gathered by the Tribunal, including percent changes, is confidential, so that not even index results can be presented.

Table 2
Summary of Domestic Performance Indicators (Index)

				Interim	
	2015	2016	2017	2017	2018
Practical Plant Capacity	100	100	100	100	100
Total Production	100	93	91	100	91
Production for Domestic Sales	100	97	103	100	91
Production for Export Sales	100	83	64	100	91
Capacity Utilization Rate (%)	100	93	91	100	91
Market	100	96	101	100	89
Domestic Sales from Domestic Production	100	96	101	100	89
Producers Market Share (%)	100	99	100	100	100
Total Direct Employees	100	97	102	100	111
Total Wages ($000) - Direct Employment	100	97	107	100	109
Total Hours Worked (000) - Direct Employment	100	95	107	100	107
Productivity - Tonnes/ Hour Worked (Direct)	100	98	85	100	84
Producer Inventories	100	87	88	100	125
Inventory as % of Production	100	95	97	100	138
Selling Prices					
Domestic Sales from Domestic Production	**100**	89	104	100	111
Total - Subject Countries	100	**84**	**98**	**100**	**107**
Excluded Countries	100	90	103	100	108
Total - Subject Goods Market Share	100	58	100	100	141
Excluded Countries - Market Share	100	116	100	100	88

Note(s):
1. 2015 = 100 and Interim 2017 = 100
2. Index values are notional, and there is no indexing between a full calendar year and an interim period.
3. The bolded index values under "Selling Prices" indicate the lowest price in the market for that period.
Source: Exhibit GC-2018-001-05B, Vol. 1.1 at 15, 22, 25 and 31.

Algoma publicly presented some significant negative results and trends in key performance indicators. Specifically, it presented that it was unable to grow its domestic sales, its productivity declined in 2016, 2017 and interim 2018, and its capacity utilization fell from interim 2017 to interim 2018. Parties opposed argued that the negative performance was not caused by increased imports but rather by other factors, mostly related to Algoma's restructuring.

In terms of trends for key performance indicators in 2017, the domestic industry performed better in 2017 compared to 2016 despite the increase in subject imports. Its results in 2017 were generally positive.

Indeed, production for domestic sales, domestic sales from domestic production, total employment, total hours worked and total wages (as well as financial results) increased in 2017, compared to declines in 2016.[172] The domestic industry was able to maintain its share of the

172. Exhibit GC-2018-001-006B (protected), Vol. 2.1 at 27, 31 and 32; Exhibit GC-2018-001-005B, Vol. 1.1 at 32.

expanding market as subject imports took share from imports of U.S. heavy plate.[173] The capacity utilization rate and inventories in relation to domestic production remained stable.[174] Total production decreased marginally, entirely due to a decrease in production for export sales. Productivity also declined.[175]

As stated above, the majority of subject imports in 2017 entered Canada in the latter half of 2017, so it is not surprising that their impact would not be felt in that year. The selling prices of subject imports significantly undercut domestic industry prices during 2017 and increasingly in interim 2018, and were the price leaders throughout the POI (except for 2015); conversely, prices of imports from the United States were the highest.[176]

There was no evidence of price depression at the aggregate level as the selling prices of like goods increased throughout the POI. However, as conceded by parties opposing, the domestic industry experienced price suppression as evidenced in the movement in and magnitude of its gross margin in interim 2018 compared to interim 2017.[177]

Moreover, performance for interim 2018 started to show weaknesses particularly in certain financial results, as well as in total production (both production for domestic and export sales declined), sales volumes, capacity utilization and volumes of inventories.[178] The domestic industry did not lose market share despite the shrinking market as subject imports continued to gain share at the expense of U.S. imports.[179]

In summary, throughout the POI, the domestic industry's performance was weak. On balance, however, the Tribunal finds that the domestic industry did not experience a significant overall impairment to its position in terms of the duration and magnitude of the impact caused by the increased imports, and so did not experience serious injury.

On the basis of the preceding examination of the domestic industry's performance indicators, the Tribunal finds that the position of the domestic industry has not suffered significant overall impairment and has therefore not experienced serious injury.

The Tribunal will now examine whether the increased subject imports *threaten* to cause serious injury.

173. Exhibit GC-2018-001-006B (protected), Vol. 2.1 at 20-22; Exhibit GC-2018-001-005B, Vol. 1.1 at 21.
174. Exhibit GC-2018-001-006B (protected), Vol. 2.1 at 31.
175. *Ibid.* at 31-32; Exhibit GC-2018-001-005B, Vol. 1.1 at 32.
176. The degree of undercutting was greater when comparing importers' landed prices to domestic selling prices, and indicated undercutting even in 2015.
177. Exhibit GC-2018-001-006B (protected), Vol. 2.1 at 25, 27; see also Exhibit GC-2018-001-070.08 (protected), Vol. 6 at 24; Exhibit GC-2018-001-072.06 (protected), Vol. 6 at 44.
178. Exhibit GC-2018-001-006B (protected), Vol. 2.1 at 27, 31-32; Exhibit GC-2018-001-005B, Vol. 1.1 at 32.
179. Exhibit GC-2018-001-006B (protected), Vol. 2.1 at 20, 21-22; Exhibit GC-2018-001-005B, Vol. 1.1 at 21.

Threat of serious injury

Having determined that there were increased imports, but that there was no serious injury to the domestic producers, the Tribunal must determine whether there is a threat of serious injury if safeguard measures are not imposed.

The Tribunal is of the view that the increased imports of heavy plate into the Canadian market will continue in their elevated amounts. There are distinct supply and demand factors contributing to this situation. In terms of supply, the subject imports are being pushed out of their domestic and other export markets by continuing and increasing excess capacity in the subject countries and trade restrictions in many key markets. There is also a corresponding demand (or pull) factor of the Canadian market being relatively high-priced and featuring no trade restrictions on a number of subject countries.

The evidence before the Tribunal also indicates that the price undercutting, which persisted through nearly all of the POI, was increasing in magnitude in interim 2018 as compared to prior periods including interim 2017.[180] Even with imports at current levels, it is likely that the existing price undercutting would continue in the next 12 months if safeguard measures are not imposed.

In view of these circumstances, the Tribunal concludes that, without the protection afforded by safeguard measures, the injury experienced by the domestic industry that began in interim 2018 will imminently become serious, and that the increased imports will be a principal cause thereof.

The domestic industry argued that it faced a threat of injury, caused by the increased imports, and especially in light of a continued diversion of subject imports into Canada and the domestic industry's vulnerable overall condition. Parties opposing the imposition of safeguard measures pointed to some of the improving results of the domestic industry in arguing the opposite view.

As noted above, heavy plate is a commodity product that is sold on the basis of price, and the high fixed costs of production provide an incentive for steel mills to increase production to cover these costs.[181]

It is also important to note that importers who are willing to deal with the extra time required for offshore heavy plate to be delivered to Canada have obtained the subject goods in large quantities and at low prices in the past from a wide variety of sources, and there is no reason to think that they will not continue to seek out new sources in the future.[182]

With this context, the Tribunal began its analysis of threat of serious injury by assessing the current state of both the Canadian and global markets for heavy plate. In that respect, the Tribunal considers that current events and indicators are the best predictors of the near future. These included the recent volumes of subject imports, and likely future impact of recent U.S. trade remedy measures on imports of heavy plate. In addition, the Tribunal took into account the countermeasures

180. Exhibit GC-2018-001-006B (protected), Vol. 2.1 at 25; Exhibit GC-2018-001-072.06 (protected), Vol. 6 at 14-16.
181. Exhibit GC-2018-001-071.06, Vol. 5 at 27, 45-46; Exhibit GC-2018-001-072.06 (protected), Vol. 6 at 27, 45-46; *Plate from China* (8 January 2013), RR-2012-001 (CITT) at paras. 99-101.
182. *Transcript of Public Hearing* at 48-52.

which Canada placed on imports from the United States in mid-2018 as a response to U.S. section 232 measures.

Within Canada, the evidence indicates stable demand for heavy plate in the near to medium term.[183] The extension of U.S. section 232 measures to Canada and Canada's imposition of countermeasures has fundamentally changed trade flows between Canada and the United States. Whereas in the past Canadian plate pricing tended to track the U.S. Midwest price, this is no longer the case as the higher U.S. price now reflects the additional protection offered by the section 232 measures. Nonetheless, compared to markets other than the United States, plate prices in Canada are expected to remain relatively high over the short to medium term.[184]

Globally, as more fully set out above in the Unforeseen Developments section for steel in general, the subject countries exhibit significant plate overcapacity of over 40 million tonnes.[185] Their domestic sales, as well as exports to other jurisdictions, are also constrained by increasing low-priced Chinese exports caused by the slowing Chinese economy.[186] There is no evidence to suggest that demand will increase significantly in other markets to absorb the excess capacity. Also, the proliferation of trade remedy measures in various jurisdictions, including the United States and the European Union, is restricting their options for other export sales.[187]

As evidence of how quickly and easily global trade flows in heavy plate can change, the witness for Algoma stated that the surge in subject imports into Canada started when AD/CV actions in the United States were imposed in early 2017 on almost a dozen countries.[188] In fact, data gathered by the Tribunal indicates that some of the countries that contributed most significantly to the increase in imports beginning in the second half of 2017 had measures imposed against them as part of that proceeding.[189] The increased import presence during the fall of 2018 also included sources that had been unheard-of in the Canadian market for decades, such as the Republic of North Macedonia.[190] This further demonstrates that there are ample future sources of subject imports apart from those countries that were part of the surge in imports in 2017. It also indicates that even though there are many Canadian AD/CV findings on plate in Canada, the Canadian market remains open to imports from a wide range of sources.

In the Tribunal's view, the phenomenon of increased subject imports experienced in the Canadian market in 2017, and persisting in Q3 2018, will continue in the immediate future if

183. *Ibid.* at 13, 19, 55; Exhibit GC-2018-001-071.06, Vol. 5 at 59.
184. *Transcript of Public Hearing* at 13-17; *Transcript of In Camera Hearing* at 22-23, 27; Exhibit GC-2018-001-072.06 (protected), Vol. 6 at 60-62, Exhibit GC-2018-001-071.06, Vol. 5 at 60-62.
185. *Ibid.* at 21.
186. *Ibid.* at 22-23. Exhibit GC-2018-001-072.06 (protected), Vol. 6 at 22-23.
187. Exhibit GC-2018-001-071.06, Vol. 5 at 19-23; Exhibit GC-2018-001-072.06 (protected), Vol. 6 at 19-23; Exhibit GC-2018-001-005B, Vol. 1.1 at 52; Exhibit GC-2018-001-006B (protected), Vol. 2.1 at 52.
188. *Transcript of Public Hearing* at 15-16; Exhibit GC-2018-001-005B, Vol. 1.1 at 37 (Table 30). According to that table, in a decision in early 2017, the United States added the following 10 countries to be impacted by anti-dumping and/or countervailing measures on plate: Austria, Belgium, Brazil, France, Germany, Italy, Japan, South Africa, Chinese Taipei and Turkey.
189. Exhibit GC-2018-001-35.21, Vol. 3.1 at 10; Exhibit GC-2018-001-20.10C, Vol. 3 at 8; Exhibit GC-2018-001-35.22, Vol. 3.1 at 13.
190. Exhibit GC-2018-001-071.06, Vol. 5 at 24, 52, 65-66; Exhibit GC-2018-001-072.06 (protected), Vol. 6 at 24, 52, 65-66, 139; *Transcript of Public Hearing* at 42.

safeguard measures are not imposed. Witnesses stated that subject imports have been filling the gap left by imports of heavy plate from the United States.[191] Thus, the diversion of subject imports of heavy plate originally destined for the United States is already occurring.

The most likely scenario is that sales of U.S. imports in Canada will continue to be displaced by subject imports. First, U.S. imports would continue to face a 25 percent surtax. As well, high U.S. domestic prices continue to make the domestic U.S. market (which is protected against subject imports) more attractive for U.S. producers than the Canadian market.[192] U.S. producers are more likely to walk away from sales and not compete on price in the Canadian market.

In terms of the future prices of the subject imports, the Tribunal heard confidential testimony about the unchanging commercial rationale for the persistent undercutting of domestic prices.[193] Subject import sales and offers are already being made at accounts held by both U.S. or Canadian producers and such competition will continue.[194] Algoma also provided multiple examples where it competed against low-priced offers from subject countries and reduced its prices to make the sale.[195]

Further, underlying market fundamentals suggest that domestic pricing may weaken in the future. Although the Canadian price no longer necessarily tracks the Midwest price, that latter price is forecast to decline from its high point after Q3 2018.[196] To the extent Canada faces a similar downward pricing trend, it will only be exacerbated by increased volumes of low-priced subject imports.

As well, the unit cost of goods has been increasing in the later part of the POI and especially in interim 2018,[197] and there was no evidence presented that it would start to decrease in the near term. Future increases in costs would make the domestic industry even more vulnerable to price suppression.

All the above leads the Tribunal to conclude that increasing volumes of low-priced subject imports would continue to compete with and displace sales of domestic heavy plate, take sales and market share which could have otherwise been held by the domestic industry, and cause either continued price suppression, as seen in interim 2018, or outright price depression.[198]

Keeping in mind the fragile state of the domestic industry and the early signs of injury seen in interim 2018, the evidence shows that such significant future effects would result in significant lost profits and financial performance at unsustainable levels in the near future i.e. calendar year 2019.[199] The Tribunal finds that such a decline in financial performance would have a cascading overall negative impact on the domestic industry, including preventing Algoma from successfully

191. *Ibid.* at 52, 54-55.
192. Exhibit GC-2018-001-072.06 (protected), Vol. 6 at 60-62.
193. *Transcript of In Camera Hearing* at 55.
194. See, for example, Exhibit GC-2018-001-35.19, Vol. 3.1.
195. *Transcript of In Camera Hearing* at 8; Exhibit GC-2018-001-072.06 (protected), Vol. 6 at 14, 151.
196. *Transcript of Public Hearing* at 13; Exhibit GC-2018-001-071.06, Vol. 5 at 59, 60-62; Exhibit GC-2018-001-072.06 (protected), Vol. 6 at 59, 60-62.
197. Exhibit GC-2018-001-006B (protected), Vol. 2.1 at 27.
198. Precise market share information is confidential: Exhibit GC-2018-001-006B (protected), Vol. 2.1 at 22.
199. Exhibit GC-2018-001-072.06 (protected), Vol. 6 at 26.

emerging from its recent restructuring and returning it to its negative performance as seen in the earlier part of the POI. Specifically, the impact of such negative financial performance would be reductions or a halt to investments currently planned by Algoma,[200] layoffs and lost profits, among other serious negative consequences. Very quickly, the continuing high levels of volumes of lower-priced subject imports would lead to a deterioration in the overall position of the domestic industry to such a degree that it would constitute serious injury.

In sum, the Tribunal concludes that the increased subject imports are a principal cause of a threat of serious injury.

Given that the evidence indicates that the increase in subject imports is likely to be a principal cause of threat of serious injury due to continued price suppression and price depression, the Tribunal will address whether there are other causes of the threat of serious injury which are more important.

First, the Tribunal considered the effect of further declines in export sales on the domestic industry; the domestic industry's export sales already declined 36 percent from 2015 to 2017 and 9 percent from interim 2017 to interim 2018. Although the loss of additional export volumes may have a negative effect on the domestic industry, it will not be as important as the negative effect of the subject imports, as export sales constitute a much smaller portion of total production compared to domestic sales. Consequently, the decline in export volumes, and its effect of increasing the fixed costs to be borne by domestic sales, would not account for most of the price suppression to be suffered in the near future. In this respect, it should be noted that the domestic industry has more than ample capacity to replace any lost export sales with domestic sales.

Second, the Tribunal considered whether imports from the United States, which are the bulk of the imports of heavy plate into Canada, are a more important cause of the threat of serious injury than the subject imports. The Tribunal's data does not support such a proposition. During the POI, imports from the United States were receding in volume in 2017 and interim 2018, and were priced comparably with domestic industry prices.[201] As discussed above, there is no reason to think that imports from the United States will return to Canada in significant volumes, given the current circumstances where U.S. producers can enjoy higher prices in their protected domestic market.

Finally, none of the important causes of threat of serious injury that may be relevant to other products being investigated, including significantly diminished future demand, self-inflicted injury due to domestic producer imports, or intra-industry competition, are applicable to heavy plate.

To conclude, the Tribunal is of the view that there are no other causes of the threat of serious injury more important, individually or collectively, than increased subject imports. Therefore, based on the above review of the evidence, the Tribunal finds that there is a threat of serious injury of which a principal cause is the increased subject imports.

200. *Transcript of Public Hearing* at 20-21.

201. Exhibit GC-2018-001-005B, Vol. 1.1 at page 17; Exhibit GC-2018-001-006B (protected), Vol. 2.1 at 23, 25.

Goods of certain free trade agreement partners

In accordance with the principles discussed in Part III of this report, pursuant to the Order, and in accordance with sections 20.031, 20.04, 20.05, 20.06 and 20.07 of the *CITT Act*, the Tribunal conducted the following analysis with respect to imports from Panama, Peru, Colombia, Honduras and Korea.

There were no imports of heavy plate from Panama, Peru, Colombia and Honduras during the POI and therefore imports from none of these sources can be on its own a principal cause of a threat of serious injury. Accordingly, subject imports from these sources should be excluded from the application of any remedy.

With regard to Korea, although the volume of subject imports from Korea to Canada increased in 2017 and interim 2018, the volumes themselves were not nearly as high as those from the remaining subject countries.[202] In terms of selling prices, the prices of imports from Korea declined by 24 percent in 2016, but then increased by 29 percent in 2017. In interim 2018, the price of sales of imports from Korea decreased by 4 percent compared to interim 2017.[203] According to Statistics Canada data, in 2017 and throughout the POI, the unit values of imports from Korea were higher than those from other subject countries.[204]

Although the Statistics Canada Q3 2018 data shows a marked increase in imports from Korea when compared to the previous quarters in 2017 and 2018 (which comprised approximately 30 percent of subject imports in that quarter unlike previous periods), this single data point does not result in the conclusion that imports from Korea are a principal cause of threat of serious injury on their own.[205]

The Tribunal has analyzed its confidential information regarding volumes and prices of the goods from Korea in the POI along with the above evidence.[206] The evidence confirms the view that Korea has not been a supplier of sufficient volumes or demonstrated significant price-leadership in the past and there is nothing in the evidence to lead to the conclusion that the volumes of imports from Korea will increase substantially nor that prices of Korean heavy plate would undercut those of the domestic industry, suppress or depress domestic prices and thus cause any negative effects in future.

Therefore, the Tribunal concludes that subject imports from Korea *on their own* are not a principal cause of threat of serious injury.

202. Exhibit GC-2018-001-005B, Vol. 1.1 at 16-17; Exhibit GC-2018-001-006B (protected), Vol. 2.1 at 16. Certain Korean plate is subject to AD measures in Canada: *Plate from Korea et al.*
203. Exhibit GC-2018-001-005B, Vol. 1.1 at 26.
204. Exhibit GC-2018-001-071.06, Vol. 5 at 100.
205. *Ibid.* at 101. As described above, the interim 2017 and interim 2018 Statistics Canada data for the subject countries as a whole track closely those found in the Statistical Summary. However, the same is not true with regard to Korea for interim 2017. Therefore, the Q3 2018 Statistics Canada data for Korea may not be as reliable in terms of assessing trends for that country on its own.
206. Exhibit GC-2018-001-006B (protected), Vol. 2.1 at 16, 20, 23, and 25.

Given the above finding regarding Korea, the Tribunal must exclude goods imported from Korea from its analyses concerning increased imports, threat of injury and causation.[207]

Considering the low volumes and relatively high prices of Korean goods in the past, the Tribunal's conclusions with respect of increased imports, serious injury and principal cause of the threat of serious injury are the same, or even stronger, when imports from Korea are excluded from that group, as the latter goods are part of other subject imports.

The Tribunal therefore finds that the increased imports (excluding imports from Korea, Panama, Peru, Colombia and Honduras) are a principal cause of threat of serious injury.

207. This concept that "... the scope of the serious injury investigation need not correspond exactly to the scope of application of a safeguard measure" as long as the injury analysis is done on the basis of the goods ultimately subject to the measure, is generally referred to as *parallelism*: *U.S. – Wheat Gluten* (22 December 2000), WTO Docs. WT/DS166/AB/R at paras. 96-98: *U.S. – Line Pipe* (15 February 2002), WTO Docs. WT/DS202/AB/R at paras. 186-187.

REMEDY RECOMMENDATION

INTRODUCTION

The Tribunal found that imports of heavy plate from the subject countries (other than goods originating from Korea, Panama, Peru, Colombia and Honduras) are being imported in such increased quantities and under such conditions, as to be a principal cause of a *threat* of serious injury to the domestic industry. Accordingly the Tribunal recommends a remedy in the form of a TRQ on imports of heavy plate from subject countries, other than goods originating in Korea, Panama, Peru, Colombia and Honduras, or countries whose goods are eligible for GPT treatment. Both the in-quota volumes and the above-quota surtaxes are to be liberalized over the three-year quota period.

The following section explains the reasons for the Tribunal's choice of remedy, including the details of the remedy proposed.

CHOICE OF REMEDY

Position of parties

The Tribunal considered all the evidence and arguments presented on the subject of remedies, including the relative suitability of the three types of remedies available, i.e. surtaxes, quotas and TRQs. The Tribunal heard witnesses for domestic producers and importers. The Tribunal also heard a witness testifying on behalf of the United Steelworkers (USW).

Algoma and USW argued in favour of TRQs.[208] Algoma submitted that a TRQ would allow imports to remain at historic levels that will minimally disrupt supply for Canadian customers, while protecting the domestic industry from further injury. The surtax would create balance, with trade still flowing freely and consumers still having access to imports, but with Algoma not being threatened with serious injury by surging imports.[209] Algoma argued in favour of the current provisional measure, which sets the in-quota volume at 94,301 tonnes, annualized, for the first year, with an increase of that in-quota of no more than 10 percent in the second and third years. They also argued for an above-quota surtax of 25 percent, the same rate specified in the current provisional measure. USW recommended a continuation of the interim safeguard measures, as enacted on October 11, 2018, with some amendments. It argued for a TRQ, based on a three-year average of subject imports, applied and renewed on a quarterly basis, with a maximum import level apportioned to any single country, based on historical import shares between countries.[210]

Importers generally suggested that if a remedy were to be imposed, it should be a TRQ set according to a three-year average of the most representative years, for a period not exceeding three years, and be progressively liberalized, if not phased out, over that period.[211] Importers that suggested a specific surtax rate recommended a rate of 10 percent.[212]

208. Exhibit GC-2018-001-071.06, Vol. 5 at 33, 34; Exhibit GC-2018-001-071.07, Vol. 5 at 27.
209. Exhibit GC-2018-001-071.06, Vol. 5 at 33, 34.
210. Exhibit GC-2018-001-071.07, Vol. 5 at 27, 29, 30.
211. Exhibit GC-2018-001-071.12, Vol. 5 at 17; Exhibit GC-2018-001-071.14, Vol. 5 at 32; Exhibit GC-2018-001-071.15, Vol. 5 at 27.
212. Exhibit GC-2018-001-071.14, Vol. 5 at 32; Exhibit GC-2018-001-071.15, Vol. 5 at 27.

Importers suggested that the current "first-come-first-served" method of quota allocation has been disruptive to the marketplace and created significant uncertainty and should be replaced with, for example, an allocation system based on historical exporter or country shares.[213]

Some parties suggested the remedy should exclude imports from the country of an affiliate company, or their own country. For example, SSAB Central and SSAB AB requested a specific exclusion for Sweden and Finland or, alternatively, that a TRQ be set for the 3-year average imports of SSAB Central from its affiliates located in Sweden, Finland and the United States. The Government of Chinese Taipei requested that Chinese Taipei be exempted from the safeguard measures.[214] The Government of British Columbia requested a regional exemption for imports, into that province, of heavy plate from subject countries.[215] The Tribunal rejected these suggestions in formulating its remedy recommendation.

Tribunal analysis

The Tribunal recognizes the need for imports in the domestic heavy plate market and believes that a TRQ will provide reasonable access to imports, minimize disruption to the domestic industry and give the domestic producers time to adjust their operations while the market stabilizes. The Tribunal also agrees that the current first-come first-served method for administering has caused considerable disruption and uncertainty in the market.

Specifically, the Tribunal recommends:

- that an in-quota volume representing the total amount of permitted imports at the in-quota rate be fixed, as required by Article XIII:2(a) of *GATT 1994*. The Tribunal recommends that the in-quota volume be set at 100,000 tonnes for the first year.
- that the in-quota volume be increased each year by 10 percent, i.e. to 110,000 tonnes in the second year and to 121,000 tonnes in the third year.
- that no surtax be applied to the in-quota imports. This will permit a non-injurious level of imports to enter the country without restriction.
- that the above-quota surtax be set at a declining rate, starting at 20 percent the first year, 15 percent the second year then 10 percent in the third year, to ensure that imports above the in-quota volume do not cause the continuation of a threat of serious injury.
- that the Governor in Council consider a different method of allocating the in-quota volume than the first-come first-served basis used for the provisional safeguard measure.

213. *Transcript of Public Hearing* at 59; *ibid.* at 145-146; Exhibit GC-2018-001-071.14, Vol. 5 at 35, 36; Exhibit GC-2018-001-071.15, Vol. 5 at 29-31.
214. Exhibit GC-2018-001-071.04, Vol. 5 at 23; Exhibit GC-2018-001-071.05, Vol. 5 at 10; Exhibit GC-2018-001-071.08, Vol. 5 at 3-6; GC-2018-001-071.09, Vol. 5 at 4, 10; *Transcript of Public Hearing* at 105-107, 111.
215. Exhibit GC-2018-001-071.03, Vol. 5 at 3.

Table 3
Recommendation on Remedy for Heavy Plate

(Tonnes)

	In-quota Volume	Above-quota Surtax
First Year	100,000	20 %
Second Year	110,000	15 %
Third Year	121,000	10 %

Since the Tribunal determined that imports from Korea are not, on their own, a principal cause of threat of serious injury, the Tribunal's recommended remedy should not apply to imports from Korea. There were no imports of heavy plate from Panama, Peru, Colombia and Honduras during the POI and therefore imports from none of these sources can be, on its own, a principal cause of a threat of serious injury. Accordingly, subject imports from these sources should be excluded from the application of any remedy. Imports from GPT countries are either non-existent or *de minimis*.

Consequently, the Tribunal's recommended remedy should also not apply to imports from Korea, Panama, Peru, Colombia, Honduras and GPT countries.

The Order excluded imports from the United States, Chile, Mexico, Israel and other *CIFTA* beneficiary countries from the subject goods. Consequently, the Tribunal's recommended remedy should not apply to imports from these countries.

In arriving at the above recommendation, the Tribunal considered the current state of the market. Prices (both domestic and import) began moving upwards in the latter part of 2017 after several U.S. AD/CV duty measures came into force[216] and in 2018 following the initiation of the U.S. section 232 investigation.[217] Prices of domestic sales from domestic production rose in the first half of 2018 as did the prices of imports of the subject goods, but to a lesser extent. Consequently, domestic producers experienced higher price undercutting by subject imports.

The Tribunal considers that a remedy is needed to prevent a deterioration in the domestic industry's market share, and allow for increased capacity utilization and improved financial performance (i.e. increased gross margins and profits). This will in turn allow the domestic industry to adjust its position in the face of this sudden and unexpected increased level of competition, by assisting the industry to realize its investment plans.[218] In sum, the recommended safeguard measures should remedy the threat of serious injury caused by increased subject imports.

The proposed in-quota volume of 100,000 tonnes is based on the average volume of heavy plate imported from subject countries[219] in the years 2015 to 2018, based on data compiled by the

216. *Transcript of Public Hearing* at 53-54.
217. *Ibid.* at 27.
218. *Ibid.* at 29, 36; *Transcript of In Camera Hearing* at 13-15.
219. All countries except the U.S., Mexico, Chile, Israel or another *CIFTA* beneficiary, GPT countries and Korea.

Tribunal for 2015 to 2017 and an estimate of 2018 subject country imports extrapolated from existing data.[220]

As suggested by several parties, the in-quota amount is adjusted upwards by 10 percent for the growth in the market.[221] The amount of the in-quota volume would be 110,000 tonnes for the second year and 121,000 tonnes for the third year. This recommended increase is based on the suggestion of several respondents regarding appropriate quota liberalization.

In the Tribunal's view, in-quota imports into Canada in the first year of the TRQ should not exceed 100,000 tonnes, as that could cause injury to Canadian producers. At a lower volume of in-quota imports, there would be a risk of damaging the international competitiveness of the downstream manufacturing and construction industries in Canada. The Tribunal notes that imports of heavy plate have become, over the years, an important means of supplying the needs of the market.

The surtax proposed by the Tribunal corresponds to the approximate increase in the price of above-quota imports that the Tribunal believes is necessary to mitigate the threat that imports will significantly undercut the average selling price of the domestic industry in the near future.[222] This adjusted price should allow the domestic producers to sell heavy plate at prices similar to those in the period before the injurious increase in imports. The recommended surtax rate should be able to decline over time as the domestic market adjusts to its operations to address the threat posed by the current surge in imports, by covering potential price undercutting that could remain present in the Canadian market in the foreseeable future.

Quota administration

With respect to the administration of the quota, Algoma submitted that, in order to prevent "a rush" to market, a quota period-limit should be imposed for each quarter of the year that is equal to 25 percent of the annual TRQ volume. Should import volumes exceed 25 percent in a given quarter, a surtax would be imposed. The domestic producers also submitted that the remedy should impose a quantitative limit so that no single country, or group of countries, benefits from a disproportionate share of the quota. According to Algoma, imposing a quantitative limit of 23 percent of the in-quota volume to any country or group of countries, as imposed in the provisional measures, is a fair and reasonable quantitative limit.[223]

The Tribunal also heard from many importers that the current "first-come first-served" method of quota allocation administered under the provisional measures has caused considerable uncertainty and disruption in the market.[224] The Tribunal recommends that the Governor in Council

220. The estimate of the 2018 subject country imports is based on the same ratio of imports from the subject countries during interim 2017 when compared to the full year 2017.
221. Exhibit GC-2018-001-071.14, Vol. 5 at 32; Exhibit GC-2018-001-071.15, Vol. 5 at 27; Exhibit GC-2018-001-071.06, Vol. 5 at 33.
222. The surtax was calculated using the estimated potential level of price undercutting for the period of 2015 to interim 2018, as well as a projection of potential price undercutting thereafter. For the projection period, the estimated unit selling values of sales from domestic production and imports of the subject good were calculated by applying the average growth rate of those unit selling values over the POI to derive forecasted prices for the period up to 2021.
223. Exhibit GC-2018-001-071.06, Vol. 5 at 33, 34; Exhibit GC-2018-001-071.07, Vol. 5 at 27, 30.
224. *Transcript of Public Hearing* at 59; *ibid.* at 145.

should consider alternative methods of allocation, such as quota allocation based on country-specific considerations, or on a historical exporter share basis in order to preserve the traditional market shares of suppliers. Changing the allocation method would give importers more certainty on whether or not their imports will incur a surtax, allowing them to more precisely determine the appropriate selling price to their customers.

The Tribunal recommends that the Government of Canada periodically review these measures to ensure that they remain appropriate. This recommendation reflects the fact that Canadian and global market conditions could change significantly during the period of the application of the measures. Also, the Canadian government should take account of the manner in which trade measures on steel are applied in the United States and the European Union and of any changes that may be made there in response to market or other conditions.

PART V – CONCRETE REINFORCING BAR

PRODUCT

The second class of goods considered by the Tribunal is concrete reinforcing bar, which is commonly identified as rebar. The Order provides the following description of this class of goods:[225]

> Hot-rolled deformed steel concrete reinforcing bar in straight lengths or coils, commonly identified as rebar, in various diameters up to 56.4 millimeters, in various finishes.
>
> The following goods are excluded:
>
> - plain round bar;
> - fabricated rebar products; and
> - 10-mm-diameter (10M) rebar produced to meet the requirements of CSA G30 18.09 (or equivalent standards) and that is coated to meet the requirements of epoxy standard ASTM A775/A 775M 04a (or equivalent standards) in lengths from 1 foot (30.48 cm) to 8 feet (243.84 cm).

Rebar, as defined above, is nearly identical to concrete reinforcing bar that has been the subject of two recent inquiries[226] conducted by the Tribunal pursuant to section 42 of *SIMA*. The only difference is that stainless steel rebar is not excluded from the description set out in the Order, whereas it was excluded in the *SIMA* inquiries. The Tribunal takes judicial notice of, and adopts, the following factual findings it made in these previous proceedings concerning methods of production and product characteristics:

- Rebar is produced by casting molten steel into rectangular billets of steel that are cut-to-length. The billets are then rolled into various sizes of rebar, which is cut to various lengths depending on the customers' requirements. Rebar is rolled with deformations on the bar, which provides gripping power so that concrete adheres to the bar and provides reinforcing value.
- Uncoated rebar, sometimes referred to as black rebar, is generally used for projects in non-corrosive environments. On the other hand, anti-corrosion coated rebar is used in concrete projects that are subjected to corrosive environments, such as those where road salt is used.
- Fabricated rebar products, which are not covered by the definition, are generally engineered using computer-automated design programs and are made to the customer's unique project requirements. Rebar that is simply cut-to-length is not considered to be a fabricated rebar product.
- Rebar is produced in Canada in accordance with the National Standard of Canada CAN/CSA-G30.18-M92 for Billet-Steel Bar for Concrete Reinforcement prepared by the Standards Association and approved by the Standards Council of Canada.

225. In addition, the Department of Finance published an illustrative list of HS Codes for rebar, which are 7213.10.00.00 and 7214.20.00.00. See Exhibit GC-2018-001-01A, Vol. 1 at 3.
226. See *Concrete Reinforcing Bar* (9 January 2015), NQ-2014-001 (CITT) [*Rebar I*] and *Concrete Reinforcing Bar* (3 May 2017), NQ-2016-003 (CITT) [*Rebar II*].

SUMMARY

The Tribunal finds that, while there has been a significant increase in the importation of rebar from the subject countries, this increase as well as the conditions under which the subject rebar is being imported have not caused serious injury, and are not threatening to cause serious injury, to the domestic industry. The Tribunal therefore does not recommend a remedy in respect of rebar.

ANALYSIS

The legal principles applicable to the analysis are set out in Part III of this report.

Like or directly competitive goods

The Tribunal must determine whether domestically produced rebar is "like or directly competitive" goods to the subject imported rebar.

Parties supporting the imposition of a safeguard measure submitted that, in previous inquiries concerning rebar, the Tribunal found that domestically produced rebar constituted like goods in relation to the subject goods imported from the covered countries and that nothing on the record of the present inquiry supports a contrary finding.

Parties opposing the imposition of a safeguard measure agreed that domestically produced rebar is essentially like or directly competitive goods to the subject imported rebar. However, they submitted that there are certain products that the domestic industry does not produce, such as stainless steel rebar, and that, in the absence of domestic production, there is no legal basis to impose a safeguard measure on that product.

For its part, the Economic Division of the Taipei Economic and Cultural Office in Canada submitted that, since rebar imported from Chinese Taipei is often individually packaged, cut with smoother finishes and fit for consumer use, it should not be considered as directly competitive with domestically produced rebar.

In *Rebar I* and *Rebar II*, as well as in *Steel Goods*, the Tribunal determined that domestically produced rebar constituted like goods in relation to the subject goods. Indeed, in *Rebar I*, the Tribunal concluded that the subject goods and domestically produced rebar were commodity products that competed with one another in the Canadian marketplace on the basis of price and were otherwise fully interchangeable.[227]

The Tribunal does note that, in the above-referenced inquiries, the subject goods did not include stainless steel rebar.[228] However, stainless steel rebar is not excluded from the subject goods in the present inquiry. That being said, the evidence on the record is that stainless steel rebar is produced by at least one domestic producer and, in any event, represents a very small proportion of the total rebar market in North America.[229] Moreover, to the extent that the arguments of the parties opposing the imposition of a safeguard measure and the Economic Division of the Taipei Economic and Cultural Office in Canada are intended to raise issues pertaining to classes of goods (i.e. sub-classes of rebar) or to request exclusions, these matters cannot be addressed as they are outside the scope of the inquiry.[230]

227. *Rebar I* at para. 47.
228. See *Steel Goods* at 193; *Rebar I* at para. 18 and *Rebar II* at para. 22.
229. Exhibit GC-2018-001-73.08, Vol. 5 at 18; *Transcript of Public Hearing* at 597, 643-644.
230. See Order and the Tribunal's Revised Notice of Commencement of Safeguard Inquiry.

Therefore, for the purpose of this inquiry, the Tribunal finds that domestically produced rebar, of the same description as the subject goods, is like or directly competitive goods to the subject imported rebar.

Domestic producers

The domestic producers of rebar are Moly-Cop AltaSteel Ltd., dba AltaSteel (AltaSteel), ArcelorMittal Long Products Canada G.P. (AMLPC), Gerdau Ameristeel Corporation (Gerdau), Ivaco Rolling Mills 2004 L.P. (Ivaco) and Max Aicher (North America) Ltd. (MANA).

AltaSteel produces rebar at its facility in Edmonton, Alberta.

AMLPC produces rebar cut to length at its facilities in Contrecœur and Longueuil, Quebec. It also produces rebar in coils at the Contrecœur facility.

Gerdau produces rebar at its facilities in Whitby and Cambridge, Ontario, and in Selkirk, Manitoba.

Ivaco produces rebar in irregular wound coils at its facility in L'Orignal, Ontario.

Finally, MANA produces rebar at its facility in Hamilton, Ontario.

In 2017, these five producers together produced approximately 480,000 tonnes of rebar,[231] which constitutes all known domestic production of rebar. In the absence of any evidence to the contrary, the Tribunal finds that AltaSteel, AMLPC, Gerdau, Ivaco and MANA are the producers as a whole of the like or directly competitive goods and therefore constitute the domestic industry for the purposes of this inquiry.

Increase in imports

Table 4 shows the volume of imports into Canada of rebar for the period of 2015 to June 30, 2018, the volume of domestic production for the same period and subject imports as a percentage of domestic production.

Table 4
Imports and Domestic Production of Rebar

				Interim	
	2015	**2016**	**2017**	**2017**	**2018**
Total Imports (tonnes)	647,942	645,404	651,258	222,241	415,994
Percent Change		(0)	1		87
Subject Imports (percent change)		15	(21)		136
Production (tonnes)	558,570	574,444	480,138	249,424	280,912
Percent Change		3	(16)		13
Subject Imports as a Percentage of Production (percentage point change)		8	(4)		46

Source: Exhibit GC-2018-001-07A, Tables 7, 8, 10, 23, 24, Vol. 1.1.

231. Exhibit GC-2018-001-07A, Table 23, Vol. 1.1.

Parties supporting the imposition of a safeguard measure submitted that there had been two surges in the volume of subject imports over the POI, first in 2016 and then again in interim 2018, with the latter being more recent and pronounced than the former.

Parties opposing the imposition of a safeguard measure took the position that there was no increase in imports at any time during the POI which satisfied the requirements of Canadian law and the *Agreement on Safeguards*.[232]

The Tribunal collected the volume of imports of rebar for the period of 2015 to June 30, 2018. As shown in Table 4, the volume of imports overall, including non-subject imports, was 647,942 tonnes in 2015, 645,404 tonnes in 2016, and 651,258 tonnes in 2017 for an overall increase of just 1 percent. However, the volume increased from 222,241 tonnes in interim 2017 to 415,994 tonnes in interim 2018; an increase of 87 percent.

The picture, in absolute terms, is similar when looking at subject imports. The volume of subject imports decreased by 9 percent from 2015 to 2017.[233] However, the volume suddenly increased by 136 percent in interim 2018 as compared to interim 2017[234] and accounted for much of the overall increase in imports in interim 2018.[235] This increase is sharp and significant even when considered against the backdrop of a 40 percent expansion of the Canadian rebar market at the same time.[236] In this respect, it is also worth noting that sales in Canada of subject imports in interim 2018 increased by 98 percent whereas domestic sales from domestic production increased by only 9 percent.[237] Moreover, the rate of the absolute increase in subject imports in interim 2018 was such that the volume of such imports for 2018 as a whole was on pace to far exceed the volumes of subject imports for any of the preceding years of the POI.

This conclusion is supported by publicly available Statistics Canada data that was supplied by the domestic industry.[238] This data indicates that the trend observed in interim 2018 persisted beyond June 30, 2018, into the third quarter of 2018 and even into October 2018 when provisional safeguard measures were imposed.[239] While the Statistics Canada data, when compared to the data contained in the Tribunal's Statistical Summary for Rebar, underestimates the volume of subject imports in all periods of the inquiry, it follows the same general trend. Therefore, while it normally

232. At the hearing, the Canadian Coalition for Construction Steel (CCCS), one of the parties opposing the imposition of a safeguard measure, appeared to change its position and acknowledged that there had been a significant increase in imports, both in absolute and relative terms. See *Transcript of Public Hearing* at 759.
233. Exhibit GC-2018-001-07A, Table 7, Vol. 1.1.
234. The Tribunal notes that a comparison of the volume of subject imports for interim 2017 and 2017 as a whole shows that the increase in subject imports actually began in the second half of 2017.
235. Exhibit GC-2018-001-08A (protected), Table 7, Vol. 2.1. By comparison, the volume of non-subject imports increased by 44 percent in interim 2018 as compared to interim 2017. See Exhibit GC-2018-001-07A, Table 8, Vol. 1.1.
236. Exhibit GC-2018-001-07A, Table 12, Vol. 1.1. The domestic industry argues that the 40 percent increase in the Canadian rebar market in interim 2018, as compared to interim 2017, is a result of an increase in inventories resulting from anticipatory purchases and not actual market demand. This will be addressed further below.
237. Exhibit GC-2018-001-07A, Table 12, Vol. 1.1.
238. Exhibit GC-2018-001-73.06, Vol. 5 at 98-100, 102-105.
239. As stated in Part III, relevant evidence which can be received from parties is not confined to the Tribunal's period for data gathering for its statistical summaries.

hesitates to ascribe much weight to this type of data, the Tribunal is of the view that, in the current circumstances, it can reasonably rely on the Statistics Canada data to *confirm* that the trend in subject imports observed in interim 2018 continued in the third quarter of 2018 and would have, absent the imposition of provisional safeguard measures, also continued in the fourth quarter.[240]

A similar trend is also apparent for imports in relative terms. Relative to domestic production, the volume of subject imports increased by 8 percentage points in 2016 over 2015, decreased by 4 percentage points in 2017, and then surged by 46 percentage points in interim 2018. Relative to domestic sales from domestic production, a similar trend was observed with an increase of 51 percentage points in interim 2018.[241]

Accordingly, by every measure, the increase in subject imports of rebar in interim 2018 has been recent enough, sudden enough, sharp enough and significant enough.

In contrast, the evidence does not support the domestic industry's assertion of a recent, sudden, sharp and significant enough increase in subject imports in 2016. While it is true that the absolute volume of subject imports increased by 15 percent in 2016 as compared to 2015, this increase was not, in the Tribunal's view, particularly sharp and, in any event, it was more than wiped out by a 21 percent decrease in the volume of subject imports the following year. As discussed above, the volume of subject imports decreased by 9 percent from 2015 to 2017. In this respect, the Tribunal is mindful that an increase in imports that satisfies the requirements of the *Agreement on Safeguards* "should be evident both in an end-point-to-end-point comparison and in an analysis of intervening trends over the period".[242] That is not the case here. Indeed, relative to domestic production, the volume of subject imports increased by only 8 percentage points in 2016. Similarly, relative to domestic sales from domestic production, the increase was only 6 percentage points.[243] These increases were then followed by decreases in 2017 of 4 and 3 percentage points, respectively.[244]

In light of the foregoing, the Tribunal concludes that only the increase in subject imports of rebar that occurred in interim 2018 has been recent enough, sudden enough, sharp enough and significant enough, both in absolute terms and relative to domestic production of rebar.

Unforeseen developments and *GATT 1994* obligations

Having found that there was such an increase in subject imports in interim 2018, the Tribunal must consider whether the increase resulted from unforeseen developments and the effect of Canada's *GATT 1994* obligations.

240. Although there is no Statistics Canada data on the record for the months of November and December 2018, a witness for the domestic industry indicated that there was a decline in the volume of subject imports for those months owing to the imposition of provisional safeguard measures by the Government of Canada. See *Transcript of Public Hearing* at 606.
241. Exhibit GC-2018-001-07A, Table 10, Vol. 1.1.
242. *Argentina – Safeguard Measures on Imports of Footwear* (25 June 1999), WTO Docs. WT/DS121/R, Panel Report at para 8.157, affirmed in *Argentina – Safeguard Measures on Imports of Footwear* (adopted 12 January 2000), WTO Docs. WT/DS121/AB/R, Appellate Body Report at para. 129.
243. Exhibit GC-2018-001-07A, Table 10, Vol. 1.1.
244. *Ibid.*

Unforeseen developments

Parties supporting the imposition of a safeguard measure submitted that the increase in subject imports was a result of unforeseen developments, which include global steel overcapacity, the imposition of trade measures and their subsequent diversionary effects, and the ongoing economic instability in Turkey associated with the significant devaluation of its currency and rising inflation.

Parties opposing the imposition of a safeguard measure submitted that the unforeseen developments alleged by the domestic industry were not the cause of the increase in subject imports as their timing did not correspond to the increase that occurred in interim 2018. They also submitted that these developments were not unforeseen.

For the reasons that follow, the Tribunal finds that the increase in the volume of subject imports in interim 2018 was due to a combination of unforeseen developments, including global steel overcapacity and the various foreign trade measures which are also the subject of discussion in other parts of this report. However, the predominant development in the case of rebar was the rapid and sustained depreciation of Turkey's currency, the lira, and the resulting impact that it had on the enforcement of the Tribunal's finding issued in January 2015 in *Rebar I*.

In *Rebar I*, the Tribunal found that the domestic industry had been threatened with injury by dumped imports from Turkey and Korea, and by dumped and subsidized imports from China. As a result of this finding, beginning in January 2015, imports of rebar from Turkey, Korea and China were subject to the discipline of anti-dumping duties. This did not prohibit rebar from these countries from being imported into Canada; it simply required that they be imported at the applicable normal values calculated by the CBSA. However, exporters that failed to cooperate with the CBSA in their enforcement of the Tribunal's finding were not provided normal values and their exports of rebar to Canada, if any, would be assessed an anti-dumping duty of 41 percent.[245]

With this finding in place, imports of Turkish, Korean and Chinese rebar decreased from large volumes in prior years to zero in 2015 and in 2016.[246] This occurred despite the fact that at least one exporter from each country appears to have cooperated with the CBSA and were thus likely issued normal values.[247]

In May 2017, the Tribunal issued its finding, in *Rebar II*, that the dumping of rebar from Belarus, Chinese Taipei, Hong Kong, Japan, Portugal and Spain had caused injury to the domestic industry. Imports of rebar from these countries similarly decreased from large volumes in 2015 and 2016 to zero in 2017 and in interim 2018, save for Belarus which exported rebar to Canada during this last period.[248]

245. See *Rebar I* at para. 244.
246. See Exhibit GC-2018-001-08A (protected), Schedule 1, Vol. 2.1. Import data from the CBSA does indicate that an extremely low amount of Chinese rebar was imported over this period.
247. See the CBSA's statement of reasons for its final determination with respect to the dumping of rebar originating in or exported from China, Korea and Turkey, which is available at https://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/ad1403/ad1403-i14-fd-eng.html.
248. Exhibit GC-2018-001-08A (protected), Schedule 1, Vol. 2.1. One exporter from Belarus appears to have cooperated with the CBSA and was therefore likely issued normal values. Imports from other exporters would be assessed an anti-dumping duty of 108.5 percent. See the CBSA's statement of reasons for its final determination with respect to the dumping of rebar originating in or exported from Belarus, Chinese Taipei, Hong Kong, Japan, Portugal and Spain, which is available at https://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/rb22016/rb22016-fd-eng.html.

In interim 2017, Turkish rebar began reappearing in the Canadian market. During this period, imports of Turkish rebar already accounted for more than half of subject imports.[249] Imports of Turkish rebar then increased significantly, both in the second half of 2017 and in interim 2018. In fact, the increase in interim 2018, as compared with interim 2017, was 192 percent.[250] By this time, Turkish rebar accounted for nearly three quarters of subject imports, with the remainder mainly being imports from Belarus and Malaysia.[251] In short, the significant increase in subject imports observed in interim 2018 was largely attributable to Turkish rebar.

Coinciding with the reappearance of Turkish rebar in the Canadian market were the Tribunal's finding in *Rebar II*, which created an important void in the market, and the accelerating depreciation of the Turkish lira, which allowed Turkish rebar to be imported at lower values. As the CBSA normally issues normal values to exporters in their own currency, any depreciation of the currency has the effect of lowering the price at which goods can be exported to Canada without incurring anti-dumping duties. The information on the record indicates that the Turkish lira lost 7.2 percent of its value versus the Canadian dollar in 2016, followed by a further 23.3 percent decline in 2017 and finally another 32.3 percent decline in 2018.[252]

While the CBSA conducted re-investigations in 2016, 2017 and 2018 to update normal values for exporters of Turkish rebar,[253] the currency continued to depreciate during the time between re-investigations, allowing Turkish rebar to be imported at lower values in 2017 and 2018.[254] When the Tribunal looked at the details for imports during this period, it found that virtually all imports of Turkish rebar were from exporters that had been issued normal values from the CBSA.[255] In the Tribunal's view, there is a link between the rapid and sustained depreciation of the Turkish lira, which could not be foreseen in 1994,[256] and the increase in imports of Turkish rebar, which account for the large majority of subject imports.

Other developments which could not be foreseen in 1994 and which likely contributed to the increase in subject imports were the continuing and increasing overcapacity in world steel production and the inability of successive multilateral efforts to address this overcapacity, trade remedy measures against rebar from various sources,[257] and the unilateral imposition of tariffs on steel products, including rebar, by the United States under section 232 of the *Trade Expansion Act*

249. Exhibit GC-2018-001-08A (protected), Table 7 and Schedule 1, Vol. 2.1.
250. Exhibit GC-2018-001-07A, Schedule 2, Vol. 1.1.
251. Exhibit GC-2018-001-08A (protected), Table 7 and Schedule 1, Vol. 2.1.
252. Exhibit GC-2018-001-03B, Table 14, Vol. 1.1.
253. Exhibit GC-2018-001-89.06, Vol. 7 at 12, 32-44.
254. The depreciation of the Turkish lira and its impact on normal values was discussed by a number of witnesses. See, for example, Exhibit GC-2018-001-73.04, Vol. 5 at 59, 75; Exhibit GC-2018-001-73.08, Vol. 5 at 19; *Transcript of Public Hearing* at 587. Parties supporting the imposition of a safeguard measure submitted that outdated normal values have allowed Belarusian rebar to re-enter the Canadian market in interim 2018. However, no additional evidence was provided in this regard.
255. This is based on import data from the CBSA and responses to the Tribunal's Importer and Exporter Questionnaires.
256. The Tribunal has taken note of the arguments raised by the Turkish Steel Exporters' Association regarding currency fluctuations. While the Tribunal acknowledges that currency fluctuations *per se* are foreseeable, it is of the view that, in this instance, it was the timing, speed and depth of the depreciation of the modern lira within the context of the broader economic instability in Turkey that could not be foreseen by negotiators in 1994.
257. See Exhibit GC-2018-001-07A, Tables 26-31, Vol. 1.1. Although the Tribunal recognizes that trade remedy measures *per se* are foreseeable, it is of the view that, in this instance, it was their proliferation in the context of increasing overcapacity in world steel production that could not be foreseen by negotiators in 1994.

of 1962, as well as the imposition of provisional safeguard measures on steel products, including rebar, by the European Union.

However, absent the ongoing economic instability in Turkey, the other unforeseen developments noted above would not have led to the increase in subject imports observed in interim 2018 or, at the very least, would not have led to such a significant increase. This view is supported by the fact that, other than imports of rebar from Turkey, Belarus and Malaysia in interim 2018, there were essentially no significant volumes of subject imports from other countries, including from those that had been present in the Canadian market prior the Tribunal's findings in *Rebar I* and *II*.[258]

GATT 1994 obligations

In 1994, Canada bound the tariff for rebar at zero percent.[259] Moreover, Canada agreed, by virtue of Article XI of *GATT 1994*, not to impose quantitative restrictions. The effect of the concession and the obligation arising under Articles II:1(a) and XI of *GATT 1994* was to prevent Canada from imposing tariffs above the bound tariff rate, or from imposing quotas, as a means of addressing the significant increase in imports of rebar in interim 2018.

Serious injury

Having found that there was a significant increase in subject imports in interim 2018, the Tribunal has to determine whether the domestic industry suffered serious injury.

As the Tribunal has concluded that a significant increase in subject imports of rebar only occurred in interim 2018, it follows that any injury suffered prior to that period cannot be attributed to those increased imports. Accordingly, the Tribunal will focus on developments since 2017, but will also place them in the context of the entire POI.

The following table summarizes the domestic industry's performance during the POI. As all financial performance indicators for the domestic industry, including percent changes, are confidential, they have not been included in the table.

258. Exhibit GC-2018-001-08A (protected), Schedule 1, Vol. 2.1.
259. Exhibit GC-2018-001-66.43, Vol. 1 at 37.

Table 5
Summary of Domestic Performance Indicators (Index)

	2015	2016	2017	Interim 2017	2018
Practical Plant Capacity	100	100	98	100	104
Total Production	100	103	86	100	113
Production for Domestic Sales	100	103	85	100	118
Production for Export Sales	100	97	154	100	10
Capacity Utilization Rate (%)	100	103	87	100	108
Market	100	103	96	100	140
Domestic Sales from Domestic Production	100	106	88	100	109
Producers Market Share (%)	100	103	91	100	78
Subject Goods Market Share (%)	100	115	100	100	141
Excluded Countries Market Share (%)	100	78	116	100	103
Total Direct Employees	100	104	103	100	99
Total Wages ($000) - Direct Employment	100	110	108	100	100
Total Hours Worked (000) - Direct Employment	100	109	109	100	108
Productivity - Tonnes/ Hour Worked (Direct)	100	94	79	100	105
Producer Inventories	100	70	32	100	159
Inventory as % of Production	100	68	37	100	141
Selling Prices					
Domestic Sales from Domestic Production	100	**88**	**101**	**100**	120
Total - Subject Countries	**100**	92	107	100	**114**
Excluded Countries	100	88	102	100	110

Notes:
1. Index base: 2015 = 100 and interim 2017 = 100
2. Index values are notional, and there is no indexing between a full calendar year and an interim period.
3. The bolded index values under "Selling Prices" indicate the lowest price in the market for that period.
Source: Exhibit GC-2018-001-07A, Tables 6, 13, 16, 23, Vol. 1.1.

Parties supporting the imposition of a safeguard measure noted that the domestic industry has suffered losses in every period of the inquiry. Moreover, they submitted that the increase in imports in interim 2018 put a stop to any industry recovery that had been underway following the Tribunal's finding in *Rebar II*, as evidenced by worsening results in interim 2018 as compared to the second half of 2017. Parties opposing the imposition of a safeguard measure submitted that virtually all the factors relating to the performance of the domestic industry show positive trends from interim 2017 to interim 2018.

The evidence shows that, in terms of trends for key performance indicators, the domestic industry performed as well or better in interim 2018 as compared to the period preceding the increase in subject imports. As shown in Table 5, the Canadian rebar market contracted by 4 percent from 2015 to 2017, but grew by 40 percent in interim 2018 as compared to interim 2017. In general, the domestic industry's performance broadly followed this pattern, with many indicators trending downward in 2017, but then trending upward in interim 2018.

For example, domestic sales from domestic production decreased by 12 percent from 2015 to 2017, but then increased by 9 percent in interim 2018 as compared to interim 2017.

Similarly, total production (i.e. production for domestic market sales, export sales and further internal processing) decreased by 14 percent from 2015 to 2017, but increased by 13 percent in interim 2018 as compared to interim 2017. In terms of production for domestic market sales, it

increased by 18 percent in interim 2018 as compared to interim 2017. At this pace, total production for 2018 is expected to reach a level above those of 2015 and 2017, and not far off from the high for the POI reached in 2016.[260]

The average selling prices of domestic rebar increased by 1 percent from 2015 to 2017, and then increased by 20 percent in interim 2018 as compared to interim 2017. The interim 2018 selling value was by far the highest value observed during the POI.[261]

Inventories held by domestic producers decreased by 68 percent from 2015 to 2017, but increased by 59 percent in interim 2018 as compared to interim 2017 and, as a result, returned to 2015 levels.[262]

The domestic industry's practical plant capacity decreased by 2 percent from 2015 to 2017 and then increased by 4 percent in interim 2018 as compared to interim 2017. The rate of capacity utilization for rebar fell by 13 percent from 2015 to 2017, but then increased by 8 percent in interim 2018 as compared to interim 2017. The rate of capacity utilization for other goods (i.e. non-rebar products)[263] produced on the same equipment increased from 2015 to 2017 and increased again in interim 2018, as compared to interim 2017.[264]

While the domestic industry's productivity decreased by 21 percent from 2015 to 2017, this was followed by an increase of 5 percent in interim 2018 as compared to interim 2017. Total direct employment and total wages from direct employment essentially remained the same in interim 2018 as compared to interim 2017, while total hours worked from direct employment increased by 8 percent over the same period.

The domestic industry's share of the market fell by 9 percent in 2017 as compared with 2015, and 22 percent[265] in interim 2018 as compared to interim 2017. However, this was in the context of a growing market where the domestic industry still managed to increase domestic sales and generally improve performance, as attested by the above-noted economic indicators. Moreover, when compared to the second half of 2017, the domestic industry's market share actually increased slightly in interim 2018.[266]

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260. Exhibit GC-2018-001-07A, Table 23, Vol. 1.1.
261. Exhibit GC-2018-001-08A (protected), Table 16, Vol. 2.1.
262. *Ibid.*, Table 23.
263. Other products generally produced on the same equipment are wire rod, special bar quality products and merchant bar quality products. See Exhibit GC-2018-001-73.04, Vol. 5 at 50; Exhibit GC-2018-001-73.06, Vol. 5 at 48.
264. Exhibit GC-2018-001-08A (protected), Table 23, Vol. 2.1.
265. The Tribunal notes that market share is, by its nature, already expressed in percentage terms. Thus, changes to this market share that are also expressed in percentage terms must not be confused with changes expressed in percentage points. For example, a decrease of 50 percent from an existing market share of 20 percent would be equivalent to a decrease of 10 percentage points (i.e. 50 percent of 20 percent is equal to 10 percentage points). Only in cases where the initial market share is 100 percent would the reduction in percentage terms and percentage points be equivalent. In the present case, the 22 percent decrease in market share equates to a lower percentage point decrease. The same holds true when discussing increases in market share. For example, an increase of 100 percent from an existing market share of 20 percent would be equivalent to an increase of 20 percentage points (i.e. 100 percent of 20 percent is equal to 20 percentage points).
266. Exhibit GC-2018-001-08A (protected), Tables 11, 13, Vol. 2.1.

The financial performance indicators show that there was an improvement in the financial performance of the domestic industry in interim 2018 as compared to interim 2017 in line with the majority of the indicators already discussed. In fact, all financial performance indicators showed an increase or improvement over this period (though a few indicators did worsen slightly in interim 2018 when compared to the second half of the prior year). However, as noted above, the domestic industry, when considered on an aggregate basis, did suffer losses at the net income level in every period of the inquiry.[267]

The Tribunal notes that Gerdau did submit, as part of its case brief, its financial results for the third quarter of 2018.[268] Gerdau submitted that these results demonstrate that, by this time, its financial performance was rapidly deteriorating as a result of the increased volumes of subject imports and their price effects. The timing of the inquiry prevented the Tribunal from collecting such results from all domestic producers for inclusion in its Statistical Summary for Rebar, and no other domestic producers saw fit to submit their Q3 2018 results. The Tribunal is not willing to place undue weight on the evidence of a single company in regard to the injury suffered by the domestic industry as a whole.

In terms of trends for key economic indicators, the above analysis demonstrates that the domestic industry generally performed better in interim 2018 compared to interim 2017, despite the significant increase in subject imports. Production for domestic sales, capacity utilization, domestic sales, average selling prices, total hours worked, productivity and all financial performance indicators increased or improved during this period.

Although the domestic industry did suffer losses at the net income level in every period of the inquiry, and most certainly suffered some injury in the form of lost market share to subject imports in interim 2018,[269] the Tribunal fails to see how a generally *improved* performance during this time frame can correspond to injury that is considered serious or, in other words, to a significant overall impairment in the position of the domestic industry. In that respect, the Tribunal recalls that the threshold for serious injury is clearly more than that of material injury.[270] As stated above, any injury suffered prior to the period during which the significant increase in subject imports took place cannot be attributed to those imports. Therefore, while the Tribunal concedes that the domestic industry has suffered some injury in interim 2018 and that a few indicators may have declined slightly as compared to the second half of 2017, it is of the view that such injury remained below the threshold for serious injury.

On the basis of the foregoing, the Tribunal finds that the domestic industry did not suffer serious injury contemporaneously with the increase in subject imports that occurred in interim 2018.

Even supposing that the Tribunal had found that the domestic industry suffered serious injury in interim 2018, the evidence does not appear to show that the increase in the volume of subject imports would have been a principal cause of such injury. The Tribunal is mindful that the following analysis is not essential considering its finding in respect of serious injury. In the present

267. *Ibid.*, Table 18.
268. Exhibit GC-2018-001-74.06 (protected), Vol. 6 at 85.
269. Most of the market share lost by the domestic industry was in favour of subject imports. However, some was also lost in favour of non-subject rebar imported by the domestic industry itself. See Exhibit GC-2018-001-08A (protected), Table 13, Vol. 2.1.
270. See Part III.

case, however, the Tribunal considers it important to nevertheless specifically address arguments of parties supporting the imposition of a safeguard measure regarding the alleged effects of subject imports on prices of rebar in Canada.

It is well understood that a key factor in establishing a causal nexus between the subject imports and serious injury is evidence that the imports have significantly undercut, depressed or suppressed the prices of domestically produced like or directly competitive goods. Parties supporting the imposition of a safeguard measure submitted that there is such evidence. Parties opposing the imposition of a safeguard measure took the opposite view.

As stated by the Tribunal in *Rebar I*, rebar is a commodity product and price is a key consideration affecting purchasing decisions.[271] In terms of competition between subject imports and domestically produced goods, the evidence on the record indicates that it generally takes place at the level of fabricator purchases (i.e. sales to fabricators).[272] This is where the Tribunal focused its analysis.

The Tribunal's analysis demonstrates that, taking into consideration adjustments made to reflect the fact that LMS Limited Partnership, an importer of subject goods, is actually a rebar fabricator and not a distributor,[273] the data contained in the Tribunal's Statistical Summary only shows minimal price undercutting at the average annual level by subject imports in 2015 and in interim 2018.[274] However, once the recognized $25 to $40 per tonne domestic price premium is taken into account, price undercutting is eliminated in all periods of the inquiry.[275] Even if the Tribunal were to accept a statement from a domestic industry witness to the effect that, in some cases, the premium is between $0 and $10 per tonne,[276] this range would still be sufficient to eliminate price undercutting in interim 2018.

Furthermore, the Tribunal is not convinced by AMLPC's argument that, if the data is sorted based on imports that arrive in Eastern Canada and imports that arrive in Western Canada, a clear pattern of price undercutting is demonstrated.[277] While the calculations done by AMLPC do show some price undercutting in Western Canada in 2015 and interim 2018 even when considering the recognized domestic price premium, the reported volumes of subject imports arriving in Western Canada show no increases in interim 2018 as compared to interim 2017.

As stated above, the significant increase in subject imports in interim 2018 was largely attributable to imports from Turkey and, to a lesser extent, imports from Belarus, which both arrived in Eastern Canada. As for AMLPC's calculations for Eastern Canada, where imports from Turkey and Belarus are alleged to compete with domestically produced rebar, they do not show

271. See *Rebar I* at paras. 100, 280.
272. Exhibit GC-2018-001-73.04, Vol. 5 at 49; Exhibit GC-2018-001-73.06, Vol. 5 at 63; Exhibit GC-2018-001-73.11, Vol. 5 at 63; Exhibit GC-2018-001-73.05, Vol. 5 at 5; *Transcript of Public Hearing* at 590, 642, 680.
273. See Exhibit NQ-2016-003-14.18A, Vol. 5 at 1.
274. Exhibit GC-2018-001-08B (protected), Vol. 2.1 at 2.
275. In *Rebar I*, the Tribunal deducted a representative $30 per tonne in order to account for the price premium component allegedly enjoyed by domestic producers from the average annual price per tonne of sales from domestic production. See *Rebar I* at paras. 139-141. The Tribunal followed the same approach in *Rebar II*. See *Rebar II* at paras. 108, 123.
276. Exhibit GC-2018-001-73.04, Vol. 5 at 51.
277. See Exhibit GC-2018-001-74.04 (protected), Vol. 6 at 21-22.

price undercutting in any period of the inquiry when considering the recognized domestic price premium. Moreover, once domestic industry prices are adjusted by removing AltaSteel's sales,[278] there is no price undercutting in any period of the inquiry, other than 2015, even before factoring in the domestic price premium.

The Tribunal also considered specific allegations of price undercutting made in witness statements.[279] While the Tribunal recognizes that the data included in the Statistical Summary for Rebar relates to actual sales and does not reflect low price offers that were matched by domestic producers, it notes that the quantum of the alleged undercutting is many orders of magnitude larger than what is shown in the Tribunal's average annual data and questionnaire responses, thereby casting serious doubt on the reliability of the allegations.[280]

In light of the foregoing, the Tribunal finds that, contrary to the allegations made by the parties supporting the imposition of a safeguard measure, there is little evidence of price undercutting—let alone undercutting that can be characterized as significant.

Turning to price depression and suppression, the data in the Statistical Summary indicates that the average delivered selling value of domestic rebar rose by 15 percent in 2017 and then by 20 percent in interim 2018 as compared to interim 2017.[281] The data also indicates that, although the cost of goods sold on a per tonne basis increased in 2017 and then again in interim 2018 as compared to interim 2017, those increases were at a lower rate than those of the average delivered selling value over the corresponding periods.[282] Thus, it is clear that the subject imports neither depressed nor suppressed prices for domestically produced rebar in interim 2018.

On the basis of the foregoing, even if the Tribunal had found that the domestic industry had suffered serious injury in interim 2018, the increase in subject imports during that period would not have constituted a principal cause of such injury.

The Tribunal will now examine whether the increase in subject imports is a principal cause of a threat of serious injury.

278. AMLPC made certain assumptions in performing its calculations. Notably, it assumed that domestic sales in Western Canada were uniquely those of AltaSteel and that domestic sales in Eastern Canada were those of the domestic industry, including AltaSteel. It also assumed that imports that arrive in Eastern Canada and imports that arrive in Western Canada do not compete with each other (i.e. they each remain in the part of the country where they arrived). Given that AltaSteel is located in Edmonton, Alberta, and that it describes itself as the primary domestic rebar supplier in Western Canada, the Tribunal adjusted domestic industry prices for Eastern Canada by removing AltaSteel's sales from the calculation.
279. Exhibit GC-2018-001-74.04 (protected), Vol. 6 at 54-55, 132-39; Exhibit GC-2018-001-74.05 (protected), Vol. 6 at 8, 19-23; Exhibit GC-2018-001-74.06 (protected), Vol. 6 at 70-72.
280. The Tribunal reviewed questionnaire responses for importers and domestic producers and found that average sales values for the importers and producers concerned for the period during which the alleged undercutting took place almost never reflected the claimed level of undercutting. The large majority of allegations pertained to Turkish rebar.
281. Exhibit GC-2018-001-07A, Table 17, Vol. 1.1.
282. See Exhibit GC-2018-001-08A (protected), Table 18, Vol. 2.1. The same statement can also be made with respect to the cost of goods manufactured.

Threat of serious injury

In examining whether the increase in subject imports in interim 2018, absent the imposition of safeguard measures, is a principal cause of threat of serious injury, the Tribunal primarily focused on changes and developments in the Canadian market expected during the remainder of 2019.

Parties supporting the imposition of a safeguard measure submitted that a sustained high volume of subject imports caused by global trade measures and their diversionary effects, outdated normal values for Turkish and Belarusian exporters, and global steel overcapacity will result in a significant reduction in domestic market pricing for rebar which will, in turn, cause serious injury to the domestic industry.

Parties opposing the imposition of a safeguard measure submitted that there is no threat of serious injury to the domestic industry given that there is a lack of evidence pointing to a sustained increase in imports; and the performance of the domestic industry improved in interim 2018—and is expected to continue to do so in the near term.

For the reasons that follow, the Tribunal is of the view that the significant increase in subject imports observed in interim 2018, which was largely attributable to Turkish rebar, will likely not be sustained at similar levels in 2019. Moreover, while inventories of rebar held by fabricators may reduce domestic sales in the near term as the inventories are partially consumed, that injury will likely not be of such severity and duration as to be considered serious.

As explained above in the Unforeseen Developments section, the increase of subject imports in interim 2018 resulted primarily from the rapid depreciation of the Turkish lira and the ensuing impact it had on the CBSA's enforcement of the Tribunal's finding in *Rebar I*. Indeed, the conduct of re-investigations on a roughly annual basis by the CBSA, combined with the rapid depreciation of the lira, allowed Turkish rebar purchased from exporters who had been issued normal values expressed in Turkish lira to be imported into Canada at lower prices without being subject to anti-dumping duties.

However, on December 18, 2018, the CBSA issued two notices indicating that it had concluded normal value reviews to update the normal values applicable to certain rebar exported to Canada by two separate Turkish exporters.[283] The updated normal values came into effect the same day the notices were issued. Notably, both notices included the following statement:

> During the course of the normal value review, representations and case arguments were received on behalf of counsel for the Canadian producers. Issues raised in these submissions include: deficiencies and completeness of exporter's response and adjustments to normal values due to rebar price fluctuations and the declining value of the Turkish Lira. The information submitted in these documents was given due consideration by the CBSA prior to the conclusion of this normal value review. The information on the record shows a volatile exchange rate for the Turkish Lira and high levels of inflation in Turkey. To address these factors the CBSA issued the normal values to [name of exporter] in U.S. Dollars.[284]

283. Exhibit GC-2018-001-66.47, Vol. 1 at 1-6.
284. *Ibid.* at 2, 5.

The Tribunal understands from these notices that the domestic producers participated in the review by making representations and arguments.[285] Additionally, and more importantly for the purposes of this threat analysis, the CBSA acknowledged the volatility of the Turkish lira, as well as the high levels of inflation in Turkey, and consequently issued revised normal values in U.S. dollars to the two concerned exporters. Given the relatively stable Canada-United States exchange rate, it follows that the conditions that led to the significant increase in imports of rebar from Turkey during the recent past should not repeat themselves in 2019 and beyond.

When pressed at the hearing, a witness for the domestic industry recognized that the issuance of normal values in U.S. dollars may reduce the volume of rebar from Turkey being imported into Canada.[286] Yet, in responding to questions from the Tribunal, the same witness noted that the new normal values issued in U.S. dollars were only for two exporters and that, given the number of exporters in Turkey, this did not give the domestic industry any comfort.[287]

The two exporters who were issued revised normal values in U.S. dollars by the CBSA on December 18, 2018, are the only exporters that currently have normal values that have shipped rebar to Canada during the POI.[288] Furthermore, it is entirely reasonable to assume that, should the issues related to the depreciation of the Turkish lira become a problem for other exporters, the CBSA will deal with them in a similar and effective manner.

It must also be borne in mind that, without the "advantage" of a rapidly depreciating lira, Turkish exporters were completely absent from the Canadian market in 2015 and in 2016[289] following the Tribunal's finding in *Rebar I*, despite the fact that at least one exporter had normal values during this period.[290] In light of the foregoing analysis, the Tribunal concludes that imports of rebar from Turkey will not likely continue at levels seen in late 2017 and interim 2018.

As for the prospect of a significant increase in imports of Belarusian rebar in 2019, the Tribunal notes that revised normal values were issued to a Belarusian exporter on May 4, 2018.[291] Import data from the CBSA indicates that all imports of Belarusian rebar subsequent to the Tribunal's finding in *Rebar II* took place in interim 2018 before those revised normal values were issued. Statistics Canada data on the record also indicates that there were no imports of rebar from Belarus in the third quarter of 2018 and in the month of October 2018.[292] Similar to the situation with Turkey, it is reasonable to assume that, should currency and inflation-related issues wreak havoc on normal values issued to Belarusian exporters, the CBSA will deal with these in the same manner as it has dealt with the Turkish issues.

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285. This was confirmed at the hearing by a witness for the domestic industry. See *Transcript of Public Hearing* at 631-633.
286. *Transcript of Public Hearing* at 637.
287. *Ibid.* at 587-588.
288. The two exporters in question are Çolakoğlu Metalurji A.S. and IÇDAŞ Celik Enrji Tersane ve Ulasim Sanayi A.S. See Exhibit GC-2018-001-66.47, Vol. 1 at 1, 4 and import data from the CBSA.
289. See Exhibit GC-2018-001-08A (protected), Schedule 1, Vol. 2.1.
290. See the CBSA's statement of reasons for its final determination with respect to the dumping of rebar originating in or exported from China, Korea and Turkey, which is available at https://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/ad1403/ad1403-i14-fd-eng.html. See also Exhibit GC-2018-001-89.06, Vol. 7 at 12, 39-40.
291. Exhibit GC-2018-001-89.06, Vol. 7 at 34.
292. Exhibit GC-2018-001-73.06, Vol. 5 at 99-100.

At the hearing, witnesses for the domestic industry noted that, even if the issues with Turkey are addressed, there are other countries that will simply take its place.[293] Given the large number of rebar-producing countries,[294] the Tribunal does not dispute that some of these countries will naturally seek to fill part of the void created by the likely decrease in subject imports from Turkey and Belarus. In addition, the overcapacity in world steel production, trade remedy measures and global trade measures, such as the section 232 tariffs and the European Union safeguard measures, will likely cause diversionary pressure which could, absent other mitigating factors, result in subject imports completely filling that void.

However, this must be tempered by the fact that, on July 1, 2018, the Government of Canada began applying countermeasures on imports of certain products, including rebar from the United States, in response to the section 232 tariffs. Statistics Canada data show that imports of rebar from the United States subsequently decreased in the third quarter of 2018 by more than 50 percent from previous quarters.[295] The Tribunal is of the view that the domestic industry has an opportunity to gain market share as a result of the void created by both the likely decrease in subject imports from Turkey and Belarus, as well as the likely decrease in imports from the United States.

There is evidence on the record which indicates that imports from Egypt, Indonesia, Italy, Malaysia, Mexico, the Philippines, Singapore and Vietnam could potentially fill the above mentioned void.[296] With respect to Mexico, the terms of the Order are clear: the Tribunal's inquiry must not consider imports of rebar from Mexico. Of the remaining countries, imports from Indonesia, Malaysia, the Philippines, Singapore and Vietnam arrive, or would arrive, in Western Canada whereas imports from Egypt and Italy arrive, or would arrive, in Eastern Canada.

Given the evidence that there are significant costs associated with shipping rebar from Western to Eastern Canada and vice versa,[297] subject imports arriving in Western Canada from Asian-Pacific countries will very likely remain there and compete mainly with domestic rebar produced by AltaSteel[298] for the share of the market vacated by imports of rebar from the United States due to the application of the Canadian countermeasures discussed above.[299] The decrease in

293. *Transcript of Public Hearing* at 589-590.
294. Exhibit GC-2018-001-74.04 (protected), Vol. 6 at 153-154.
295. Exhibit GC-2018-001-73.06, Vol. 5 at 99.
296. See Exhibit GC-2018-001-08A (protected), Schedule 1, Vol. 2.1; Exhibit GC-2018-001-73.06, Vol. 5 at 99; Exhibit GC-2018-001-52.03, Vol. 3.2 at 10; *Transcript of In Camera Hearing* at 185, 192, 211; *Transcript of Public Hearing* at 655, 677.
297. See Exhibit GC-2018-001-73.02, Vol. 5 at 31; Exhibit GC-2018-001-74.11 (protected), Vol. 6 at 36; Exhibit GC-2018-001-90.05 (protected), Vol. 8 at 31; *Transcript of Public Hearing* at 652, 654; *Transcript of In Camera Hearing* at 187-188, 197-198.
298. The evidence on the record indicates that domestic producers other than AltaSteel, which are located in Ontario and Quebec, have traditionally shipped minimal amounts of rebar to Western Canada and British Columbia in particular (see Exhibit GC-2018-001-73.04, Vol. 5 at 112; Exhibit GC-2018-001-73.11, Vol. 5 at 39, 41, 48, 52; *Transcript of Public Hearing* at 652-53). Although Gerdau contends that it is currently making efforts to increase sales in British Columbia, the Tribunal is not persuaded that any additional contribution to fixed costs resulting from an increase in production attributable to a fourth crew at its Whitby mill would be sufficient to overcome high shipping costs and allow it to be competitive in that market.
299. The Tribunal heard testimony that imports of rebar from the United States have historically represented a significant portion of the British Columbia market and that total imports from the United States decreased by half after the imposition of the Canadian countermeasures. See *Transcript of Public Hearing* at 575, 604, 616, 621-622. See also Exhibit GC-2018-001-73.06, Vol. 5 at 99.

subject imports from Turkey and Belarus, which arrive in Eastern Canada, will have no foreseeable impact on this situation, as they remain in the East.[300] Under these conditions, the Tribunal is of the view that, while the volume of subject imports will certainly increase in Western Canada and in British Columbia in particular, it will likely be at the expense of imports from the United States, with total imports remaining at or below historical levels.[301]

In Eastern Canada, the likely decrease in subject imports from Turkey and Belarus will provide domestic producers with an opportunity to regain lost market share. While imports from Egypt, Italy, or any other potential source for that matter, could, in theory, take over most of that share, the Tribunal views this possibility as remote. There have been relatively little imports of rebar from Italy during the POI and there have been none from Egypt.[302] While it is axiomatic that other potential sources of supply will always vie for available market share, the Tribunal cannot recommend the imposition of a safeguard measure on this basis alone—there must be a sustained increase in imports that threatens to cause serious injury to the domestic industry.

In this case, the Tribunal is not persuaded that the increase in subject imports observed in interim 2018 will be maintained at similar levels in 2019 such that it would warrant the imposition of a safeguard measure. The Tribunal remarks that the domestic industry is already benefitting from protection afforded by its findings in *Rebar I* and *II*, which reduces the risk of diversion. Should the domestic industry believe that it is being injured by the importation of dumped or subsidized rebar from countries that are not covered by these findings, it would be open to it to file another complaint with the CBSA pursuant to *SIMA*.

Given the likely decrease in the volume of subject imports in 2019, as compared to interim 2018, the effect of such reduced imports on prices of domestically produced rebar is expected to be minimal at most. The Tribunal recalls that it already found that there was little evidence of price undercutting and no evidence of price depression and suppression in interim 2018, when imports of rebar from Turkey accounted for nearly three quarters of subject imports. Given that rebar from Turkey is said to sell at lower prices than rebar from other countries,[303] it is reasonable to assume that a decrease in imports of rebar from Turkey would result in higher prices and thus make any alleged price effects for 2019 even less probable.

Notwithstanding the above conclusions regarding the likely volume of subject imports in 2019 and their likely price effects, the Tribunal must still determine whether the increase in subject imports that occurred in interim 2018, which has already been found not to have caused injury to the domestic industry, threatens to cause serious injury in the near future.

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300. Although there is evidence that Turkish rebar has been offered to customers in Western Canada, there is no evidence of any actual sales. See Exhibit GC-2018-001-73.05, Vol. 5 at 14.
301. The Tribunal heard testimony that subject imports are replacing imports of rebar from the Northwestern United States (see *Transcript of In Camera Hearing* at 239). Although AltaSteel confirmed that it gained market share as a result of the Canadian countermeasures and the Tribunal's finding in *Rebar II* (see Exhibit GC-2018-001-73.05, Vol. 5 at 10-11), there is evidence to suggest that further gains, especially in British Columbia, may be constrained by other factors (see, for example, *Transcript of Public Hearing* at 652-653 and Exhibit GC-2018-001-73.11, Vol. 5 at 51).
302. Based on import data from the CBSA and responses to the Tribunal's Importers' Questionnaire. With respect to Italy, it is conceivable that it may choose to focus on the European Union market following the European Union's imposition of safeguard measures on steel products, including rebar.
303. *Transcript of Public Hearing* at 589-591.

Parties supporting the imposition of a safeguard measure submitted that the increase in subject imports in interim 2018 has created a significant inventory overhang that threatens domestic industry sales in 2019 in light of the fact that actual demand for rebar is projected to be relatively flat. Parties opposing the imposition of a safeguard measure submitted that the increase in subject imports reflects the growth in the Canadian rebar market due to rapidly increasing demand.

The evidence on the record indicates that demand for rebar in the Canadian market in 2018 was expected to be within the range of historical average demand. Indeed, a number of witnesses estimated demand for rebar in 2018 at levels that were consistent with demand seen in previous years.[304] Accepting that this is the case, the 40 percent increase in the market in interim 2018, as compared to interim 2017,[305] suggests that there was likely an inventory buildup with fabricators, rather than an actual increase in demand.[306] The maximum potential size of this likely inventory overhang can be approximated by annualizing total market sales for interim 2018 and deducting estimated demand from the result. This calculation yields a substantial inventory overhang, which is within the same range as the amount put forth by the domestic industry.[307]

While there is some evidence on the record that confirms that fabricators are in fact holding higher than usual levels of inventories,[308] the Tribunal does not have sufficient information to corroborate the approximation performed above. Moreover, the Tribunal is mindful of the fact that part of the 40 percent increase in the market in interim 2018 is attributable to sales of non-subject imports and sales from domestic production, which increased by 44 and 9 percent, respectively, in interim 2018 as compared to interim 2017.[309] Put another way, in terms of volume, less than two thirds of the increase in the market in interim 2018 was attributable to the increase in sales of subject imports.[310] Thus, the Tribunal is of the view that the increase in subject imports in interim 2018 should not be considered as being the sole contributor to the inventory overhang.[311]

As for expected demand for rebar in the Canadian market in 2019, the Tribunal was presented with conflicting evidence. Parties supporting the imposition of a safeguard measure referred to a number of economic forecasts by Canada's major banks and other organizations to

304. Exhibit GC-2018-001-74.06 (protected), Vol. 6 at 61; Exhibit GC-2018-001-73.04, Vol. 5 at 58; Exhibit GC-2018-001-73.11, Vol. 5 at 30, 36, 63; *Transcript of In Camera Hearing* at 190.
305. Exhibit GC-2018-001-07A, Table 12, Vol. 1.1.
306. Inventories held by fabricators consist of rebar that has been sold by domestic producers and importers. This must be distinguished from inventories held by domestic producers and importers, which have not yet been sold and do not form part of the market.
307. See Exhibit GC-2018-001-74.06 (protected), Vol. 6 at 25-26; Gerdau's Aid to Argument (protected) at Tab 4, Vol. 18; *Transcript of In Camera Hearing* at 190.
308. Exhibit GC-2018-001-73.11, Vol. 5 at 38; Exhibit GC-2018-001-74.06 (protected), Vol. 6 at 73-74; Exhibit GC-2018-001-74.09 (protected), Vol. 6 at 5; *Transcript of In Camera Hearing* at 236-237; *Transcript of Public Hearing* at 577-578, 646.
309. Exhibit GC-2018-001-07A, Table 12, Vol. 1.1.
310. See Exhibit GC-2018-001-08A (protected), Table 11, Vol. 2.1.
311. Although a witness for AMLPC testified that domestically produced rebar and imports from the United States are not typically used to build inventory, a witness for Salit Steel, a fabricator and distributor of steel products, confirmed that it stores both domestic and foreign steel, including steel from the United States (see *Transcript of Public Hearing* at 602-603, 647-648). It is also very likely that some imports from the United States were used to build inventory prior to the coming into force of the countermeasures imposed in response to the section 232 tariffs.

support their view that market growth would be minimal at best,[312] whereas parties opposing such a measure mainly relied on one fabricator's knowledge of the market to support their claim that overall growth in the construction sector would result in higher demand.[313] The Tribunal need not settle this issue as, either way, its ultimate conclusion on the issue of whether the inventory overhang threatens to cause serious injury to the domestic industry would remain the same.

Therefore, for the purposes of its analysis, the Tribunal will assume that demand for rebar in 2019 will be relatively flat and that, consequently, part of this demand will be supplied from existing inventories rather than new sales. Put another way, until inventories are depleted, demand for rebar will lag and the domestic industry can be expected to experience a reduction in sales. In *Rebar I*, the Tribunal found that an inventory overhang would be consumed and continue to have an adverse impact on the domestic industry for two quarters.[314] In the current proceeding, witnesses for the domestic industry testified that, following the Tribunal's finding in *Rebar II*, it took approximately three quarters for the inventory overhang to be consumed and the expectation is that it would take five to six months for the current inventory to be flushed out.[315] The Tribunal thus finds it reasonable to assume that the current inventory overhang will be consumed, at the latest, by the end of the second quarter of 2019−approximately three quarters after the imposition of provisional safeguard measures and a little more than six months after the CBSA issued revised normal values to two Turkish exporters.

Finally, the Tribunal heard testimony that the inventory overhang is indeed having an impact on some domestic producers' sales for certain accounts for 2019, as well as on crewing and production levels.[316] It is very likely that some of this injury is being at least partially offset by the effects of the provisional safeguard measures and the countermeasures in response to the section 232 tariffs.[317] In fact, witnesses confirmed that prices for rebar are currently near all-time highs.[318] In any event, while the domestic industry may experience some injury in the form of a reduction in sales resulting from the inventory overhang, the Tribunal is of the view that this injury will likely not be of such severity and duration as to constitute serious injury or, in other words, a significant overall impairment in the position of the domestic industry. As previously indicated, the threshold for serious injury is clearly more than that of material injury.

Based on the above review of the evidence, the Tribunal finds that the increased imports are not a principal cause of threat of serious injury.

Conclusions

The Tribunal finds that, while there has been a significant increase in the importation of subject rebar into Canada, this increase as well as the conditions under which the subject rebar is being imported have not caused serious injury and are not threatening to cause serious injury to

312. See, for example, Exhibit GC-2018-001-73.06, Vol. 5 at 24-25; Exhibit GC-2018-001-74.06 (protected), Vol. 6 at 202; Exhibit GC-2018-001-89.05, Vol. 7 at 18-19.
313. See Exhibit GC-2018-001-73.11, Vol. 5 at 36-38.
314. See *Rebar I* at para. 242.
315. *Transcript of Public Hearing* at 568-70, 580; *Transcript of In Camera Hearing* at 186.
316. *Transcript of Public Hearing* at 566, 571. See also Exhibit GC-2018-001-74.06 (protected), Vol. 6 at 58, 74, 87; Exhibit GC-2018-001-73.04, Vol. 5 at 56; Exhibit GC-2018-001-73.07, Vol. 5 at 41; Exhibit GC-2018-001-90.05 (protected), Vol. 8 at 27-28.
317. See *Transcript of Public Hearing* at 606; *Transcript of In Camera Hearing* at 186.
318. Exhibit GC-2018-001-74.11 (protected), Vol. 6 at 32; *Transcript of In Camera Hearing* at 233.

domestic producers of like or directly competitive goods. In light of these findings, the Tribunal does not need to consider whether imports from Canada's free trade partners are a principal cause of the serious injury or threat thereof, and the Tribunal does not recommend a remedy in respect of rebar.

PART VI – ENERGY TUBULAR PRODUCTS

PRODUCT

The third class of goods considered by the Tribunal is energy tubular products (ETP).[319] The Order provides the following description of this class of goods:[320]

> Carbon and alloy steel energy tubular products, including line pipe, tubing, and casing, finished or unfinished, welded or seamless, having a nominal outside diameter from 2.375 inches (60.3 mm) to 60 inches (1,524 mm) (with all dimensions being plus or minus allowable tolerances contained in the applicable standards), heat treated or not heat treated, regardless of length, wall thickness, surface finish (coated or uncoated), and end finish (plain, bevelled, threaded, or threaded and coupled), in all grades, meeting or supplied to meet American Petroleum Institute (API) 5L, API 5L-B, API 5CT, Canadian Standards Association (CSA) Z245.1, International Standards Organization (ISO) 3183, American Society for Testing and Materials (ASTM) ASTM A333, ASTM A106, ASTM A53-B or their equivalents or enhanced proprietary standards, whether or not actually certified or stenciled, whether or not meeting specifications for other end uses, including single-certified, dual-certified or multiple-certified, for use in oil and gas, piling pipe, or other applications.
>
> For greater certainty, this class includes casing and tubing that are referred to as "green tubes" in the industry. These are formed tubes with the requisite chemistry and dimensions of casing or tubing, but that require further processing before they may be used in a well. They are included in this class as unfinished, non-heat treated, or plain end pipe. The finishing required may be heat treatment, threading, coupling, testing, or any combination of these processes.
>
> The following goods are excluded:
>
> - Drill pipe, pup joints, couplings, coupling stock, galvanized or stainless steel line pipe, and casing or tubing containing 10.5% or more by weight chromium;
> - Submerged arc longitudinal welded line pipe, regardless of grade, outside diameter and wall thickness, in lengths of 60 feet (18.288 m) with no girth welds for exclusive use in slurry or tailings piping systems in oil sands projects and marked "For Use as Slurry/Tailings Pipe Only". For greater certainty, use in a pipeline meeting CSA Z-662 or as pressure piping meeting CSA B51 Code is not permitted under this exclusion;
> - Submerged arc longitudinal welded line pipe, regardless of outside diameter, wall thickness and length, for exclusive use in high-temperature steam distribution

319. With respect to this class of goods, on October 30, 2018, the Tribunal issued a direction requesting that, as part of their response to the Tribunal's questionnaires, domestic producers and importers provide additional information indicating the approximate percentage of domestic production and imports constituting an energy (as compared to a non-energy) tubular product. The data collected by the Tribunal showed that non-energy tubular products accounted for a very small proportion of the total production for domestic sales and of the total imports of the subject goods during the period of investigation, as reported in the domestic producers and importers' responses to the Tribunal's questionnaires.
320. In addition, the Department of Finance published an illustrative list of HS Codes for ETP: 7304.19.00.10; 7304.19.00.20; 7304.29.00.11; 7304.29.00.19; 7304.29.00.21; 7304.29.00.29; 7304.29.00.31; 7304.29.00.39; 7304.29.00.81; 7304.29.00.89; 7305.11.00.10; 7305.11.00.20; 7305.12.00.10; 7305.12.00.30; 7305.19.00.10; 7305.19.00.20; 7306.19.00.10; 7306.19.00.90; 7306.29.00.11; 7306.29.00.19; 7306.29.00.51; 7306.29.00.59; 7306.29.00.61 and 7306.29.00.69. Exhibit GC-2018-001-01A, Vol. 1 at 5.

pipelines and marked "For Steam Distribution Only", certified to meet the requirements of CSA Z662-15 Clause 14 or Annex I and certified to have proven fatigue and creep test properties as provided in sections I.2.3.2 and I.3.2.1 of CSA Z662-15 as established by means of a creep test of no less than 10,000 hours carried out in accordance with ASTM E139;

- Unfinished seamless carbon or alloy steel line pipe in the form of mother tubes having outside diameters of 184, 197, 210, 235, 260, 286, 328, 350, 368, 377, 394, 402, 419, 426, 450, 475, 480, 500, 521, 530, 560, 585 or 610 mm, in wall thicknesses from 9 mm to 110 mm and in lengths ranging from 7.72 m to 15.24 m, not stenciled as meeting any line pipe product specification, but imported for use in the production, and not solely for finishing, of seamless line pipe made to any one or several of API 5L, CSAZ245.1, ISO 3183, ASTM A333, ASTM A335, ASTM A106, ASTM A53 or their equivalents;
- ASME SA 672 or ASME SA 691 electric-fusion welded steel pipe as certified under the ASME "Boiler and Pressure Vessel Code" rules (and stencilled with at least one of the aforementioned standards), of a length not to exceed 15 feet (4.572 m), for use other than in a CSA Z-662 pipeline application and imported with authorized inspection certificates and applicable ASME Partial Data Reports;
- Line pipe, regardless of grade, outside diameter and wall thickness, single stenciled as "DNV-OS-F101" for exclusive use in offshore applications and marked "For Offshore Applications Only"; and
- Welded line pipe having nominal outside diameters from 18 inches to 24 inches (610 mm) (with all dimensions being plus or minus allowable tolerances contained in the applicable standards), regardless of grade and wall thickness, with a manganese content of no less than 16% percent by weight, for exclusive use in slurry, tailings, and pressure piping systems in oil sands projects, and marked "Not for CSA Z-662 Applications". For greater certainty, use in a pipeline meeting CSA Z-662 is not permitted under this exclusion.

The ETP class of goods comprises products that have been included in previous *SIMA* investigations: oil country tubular goods (OCTG), seamless casing, line pipe and large diameter line pipe. The Tribunal takes judicial notice of, and adopts, the following factual findings it made in these previous proceedings concerning methods of production and product characteristics:

- OCTG are carbon or alloy steel pipes used for the exploration and exploitation of oil and natural gas. OCTG is manufactured by the seamless or by the electric-resistance welding (ERW) process, and can be subdivided into casing and tubing. Casing is used to prevent the walls of an oil or gas well from collapsing, both during drilling and after completion of the well. Tubing is used within the casing to convey oil and gas to the surface. OCTG meet or are supplied to meet API specification 5CT, in all applicable grades.[321]

321. *Seamless Carbon or Alloy Steel Oil and Gas Well Casing* (10 March 2008), NQ-2007-001 (CITT) [*Seamless Casing NQ*] at paras. 15-23; *Seamless Carbon or Alloy Steel Oil and Gas Well Casing* (11 March 2013), RR-2012-002 [*Seamless Casing 1st review*] at paras. 16-23; *Seamless Carbon or Alloy Steel Oil and Gas Well Casing* (28 November 2018), RR-2017-006 (CITT) [*Seamless Casing 2nd review*] at paras. 14-16; *Oil Country Tubular Goods* (23 March 2010), NQ-2009-004 (CITT) [*OCTG I*] at paras. 23-29; *Oil Country Tubular Goods* (2 March 2015), RR-2014-003 (CITT) [*OCTG I 1st Review*] at paras. 9-11; *Oil Country Tubular Goods* (2 April 2015), NQ-2014-002 (CITT) [*OCTG II*] at paras. 20-22.

- Line pipe from 2.375 inches (60.3 mm) up to and including 24 inches (609.6 mm[322]), in nominal outside diameter ("small diameter line pipe") is pipe that is sold for oil and gas transmission purposes or process piping purposes. Small diameter line pipe is used by the oil and gas industry in pipelines for the gathering and distribution of oil and gas, or as process pipe used in steam generation facilities for steam-assisted gravity drainage, petrochemical plants, upgraders, gas transmission facilities, and fabrication of modules. Line pipe may be manufactured by the seamless or welded process. The Canadian market for oil and gas line pipe is governed by two main design codes depending on whether the line pipe is for pipelines or for process piping. Pipelines must conform or be equivalent to CSA Z662 (oil and gas pipeline systems), and process piping must conform or be equivalent to ASME B3l.1. These systems standards cover multiple pipe standards and can cover multiple grades of pipe. Examples of pipe standards include: CSA Z245.1, API 5L, ISO 3183, ASTM A333, ASTM A53-B, and ASTM A106. Pipe manufactured to a particular standard may be compatible with the requirements of another standard, i.e. a particular pipe may be certified as complying with multiple standards if all the requirements of each standard/grade are met for that particular pipe.[323]

- Large diameter line pipe, defined as line pipe of a diameter greater than 24 inches (609.6 mm) and less than or equal to 60 inches (1,524 mm), is used in the oil and gas sector primarily in pipelines for the transmission of oil and natural gas products over long distances, but also in a variety of mining applications, including as slurry pipe in oil sands operations. The Canadian market for large diameter line pipe is governed by applicable line pipe specifications including Canadian Standards Association (CSA) specification Z245.1 for line pipe used in pipeline applications. Oil and gas transmission pipelines must, in turn, for example, conform to CSA Z662 (Oil and Gas Pipeline Systems). However, international trade in line pipe is governed primarily by API specification 5L. A particular line pipe may be certified and stenciled as complying with multiple standards if all the requirements of each standard/grade are met (leading to dual-, triple-, and further multiple-stenciled line pipe). Large diameter line pipe is manufactured by using two main production processes: the helical submerged arc welded (HSAW) and the longitudinal submerged arc welded (LSAW) methods. It is also subjected to a range of highly advanced and specialized tests and/or coating mediums to reflect industry standards and purchaser-driven technical specifications. Large diameter line pipe is used in many different end uses, some of which have their own requisite testing before a mill can be certified to produce large diameter line pipe to industry standards.[324]

322. In the product definition in *Carbon and Alloy Steel Line Pipe* (29 March 2016), NQ-2015-002 (CITT) [*Line Pipe I*] and *Welded Large Diameter Carbon and Alloy Steel Line Pipe* (20 October 2016), NQ-2016-001 [*Large Diameter Line Pipe*], the CBSA equated 24 inches with 609.6 mm. In *Carbon and Alloy Steel Line Pipe* (4 January 2018), NQ-2017-002 (CITT) [*Line Pipe II*], 24 inches was equated with 610 mm.
323. See *Line Pipe I* at para. 20; *Line Pipe II* at para.12.
324. *Large Diameter Line Pipe* at paras. 4-5, 33-38.

- OCTG and small diameter line pipe are commodity products that are traded largely on the basis of price.[325] In contrast, large diameter line pipe is neither a commodity product nor a capital good; it is best described as a hybrid product that remains subject to price-driven considerations when purchased by end users in the oil and gas and extraction sectors alike.[326]

SUMMARY

The Tribunal finds that, while there has been a significant increase in the importation of ETP from the subject countries, this increase as well as the conditions under which the subject ETP are being imported have not caused serious injury, and are not threatening to cause serious injury, to the domestic industry. The Tribunal therefore does not recommend a remedy in respect of energy tubular products.

ANALYSIS

The legal principles applicable to the analysis are set out in Part III of this report.

Like or directly competitive goods

The Tribunal must determine whether domestically produced ETP is "like or directly competitive" goods to the subject imported ETP.

Parties supporting the imposition of a safeguard measure submitted that domestically produced ETP constituted like goods in relation to the imported subject goods.

Parties opposing the imposition of a safeguard measure argued the following: (1) the domestic producers are incapable of supplying certain types of ETP through domestic production; (2) the Tribunal cannot attribute injury to imports of what is not manufactured in Canada; and (3) there is no legal basis to impose a safeguard measure where there is no domestic industry for a particular product. Certain parties opposing argued that the ETP class of goods, as defined in the Order, actually conflates distinct classes of goods.[327] These parties argued that, as a result of the inclusion of products which are not all "like" each other, the aggregate pricing data collected by the Tribunal precludes any meaningful price comparisons, particularly as the product mix may vary. They also argued that there is a risk that the Tribunal could recommend the imposition of safeguard measures on imported OCTG by improperly attributing injury caused by imported line pipe to imported OCTG, or vice versa.

325. See *Seamless Casing 1st review* at para. 120; *Seamless Casing 2nd review* at para. 73; *OCTG I* at paras. 141-142; *OCTG I 1st Review* at paras. 122-133; *OCTG II* at para. 125; *Line Pipe I* at paras. 105, 217, 249; *Line Pipe II* at para. 34.

326. *Large Diameter Line Pipe* at para. 38.

327. These parties each classified the various types of ETP into different product categories. One party proposed the following classification: (i) carbon OCTG grades; (ii) alloy OCTG grades; (iii) small diameter line pipe; and (iv) large diameter line pipe: Exhibit GC-2018-001-75.29, Vol. 5 at 31. Another party proposed the following classification: (i) seamless OCTG; (ii) welded OCTG; (iii) line pipe below 16" in outside diameter (OD); and (iv) line pipe in excess of 16" OD: Exhibit GC-2018-001-75.27, Vol. 5 at 10.

While the Tribunal recognizes that there may be some validity in the arguments presented by parties opposed, the Tribunal is bound by the terms of the Order in Council, which direct the Tribunal to consider ETP as a single class of goods:

> In carrying out its mandate, the Tribunal must . . . conduct its analysis taking into account all goods of each class described in the schedule, and . . . conduct its analysis on the basis of domestic producers of like or directly competitive goods, as defined in section 3 of the *Canadian International Trade Tribunal Regulations*, for each class described in the schedule. . . .[328]

ETP are produced in a variety of diameters and grades across a wide range of product types. Nonetheless, the Tribunal determines that comparable domestic ETP and imported ETP compete with one another in the Canadian marketplace on the basis of price and that they have the same general end uses.

Therefore, for purposes of this inquiry, the Tribunal finds that domestically produced ETP of the same description as the subject goods are like or directly competitive goods in relation to the subject imported ETP.[329]

Domestic producers

The domestic producers of ETP are Bri-Steel Corporation (Bri-Steel), Evraz Inc. NA Canada and the Canadian National Steel Corporation (collectively, Evraz), Tenaris Canada (which includes Tenaris Global Services (Canada) Inc., Algoma Tubes Inc. and Prudential Steel ULC—collectively, Tenaris) and Welded Tube of Canada (Welded Tube).

The domestic industry's production capabilities are as follows:

- Bri-Steel manufactures seamless pipe at its Edmonton facility.[330]
- Evraz manufactures ERW small diameter line pipe, HSAW large diameter line pipe and ERW tubing in Regina, Saskatchewan, ERW casing in Calgary, Alberta, ERW small diameter line pipe and casing in Red Deer, Alberta and ERW small diameter line pipe, Double Submerged Arc Welded (DSAW) large diameter line pipe, and ERW casing in Camrose, Alberta.[331]
- Tenaris produces seamless OCTG and small diameter line pipe at Algoma Tubes in Sault Ste. Marie, Ontario, and ERW OCTG and small diameter line pipe at Prudential Steel in Calgary, Alberta.[332]

328. Order in Council, Section 2(1)(a)-(b).
329. To ensure the representativeness and accuracy of its analysis of the price effects of the subject goods (given the potential effect of product mix issues on aggregate ETP pricing data), the Tribunal collected additional pricing data from ETP producers and importers with respect to eight benchmark products within this class of goods. The eight benchmark products are: (i) 6 5/8" OD (Outside Diameter) Uncoated Line Pipe; (ii) 8 5/8" OD Uncoated Line Pipe; (iii) 12 3/4" OD Uncoated Line Pipe; (iv) 24" OD Uncoated Line Pipe; (v) J55 Seamless Casing; (vi) L80 Seamless Casing; (vii) J55 ERW Casing; and (viii) L80 ERW Casing. Exhibit GC-2018-001-09E, Vol. 1.1 at 7.
330. Exhibit GC-2018-001-24.01, Vol. 3 at 3.
331. Exhibit GC-2018-001-24.05A, Vol. 3 at 8-9, 15.
332. Exhibit GC-2018-001-24.04D, Vol. 3 at 4-5.

- Welded Tube produces ERW casing and has facilities in Concord, Port Colborne, and Welland, Ontario.[333]

It is not disputed that Bri-Steel, Evraz, Tenaris and Welded Tube account for all known domestic production of ETP and, therefore, represent the entirety of the domestic industry. Therefore, in the absence of any evidence to the contrary, the Tribunal finds they are the producers as a whole of the like or directly competitive goods and that they constitute the "domestic industry" of like or competitive products.

Increase in imports

Parties opposing the imposition of a safeguard measure argued that there was no increase in imports which satisfied the requirements of Canadian law and the *Agreement on Safeguards*; parties supporting the imposition of a safeguard measure held the contrary position.

With respect to absolute volumes of imports, Table 6 shows the volume of ETP imports into Canada for the POI.

Table 6
Imports of Energy Tubular Products
(Tonnes)

				Interim	
	2015	**2016**	**2017**	**2017**	**2018**
Subject Countries	499,913	307,424	534,681	252,735	335,255
Total Imports	736,957	460,357	838,892	395,259	452,176

Source: Exhibit GC-2018-001-09B, Table 10, Vol. 1.1.

Table 6 shows that, in absolute terms, the volume of subject imports decreased by approximately 192,000 tonnes in 2016, but then increased by approximately 227,000 tonnes in 2017 for a net increase of approximately 35,000 tonnes over the three years. In percentage terms, subject imports decreased by 39 percent in 2016 and then increased by 74 percent in 2017 for a net increase of 7 percent.[334] The ratio of subject imports relative to domestic production decreased by 6 percentage points from 2015 to 2016 and then remained stable from 2016 to 2017.[335] Looking at annual trends in the volume of subject imports, the Tribunal does not find that the increase in 2017 alone or the increase from 2015 to 2017 can be characterized as significant. The rate of increase in subject imports during the 2015 to 2017 period was less than the growth in the market.[336]

333. Exhibit GC-2018-001-24.03B, Vol. 3 at 2-3.
334. Exhibit GC-2018-001-009B, Tables 10, 11, Vol. 1.1.
335. *Ibid.*, Table 13 at 27.
336. *Ibid.*, Table 10 at 24; Exhibit GC-2018-001-010B (protected), Table 14, Vol. 2.1.

However, as seen in Table 6, in interim 2018, the volume of subject imports increased by approximately 82,000 tonnes, which represented an increase of 33 percent over interim 2017. Also, in interim 2018, the ratio of subject imports to domestic production increased by 2 percentage points.[337] It is difficult to pinpoint when the additional increase in the volume of subject imports observed in 2018 began, but according to credible testimony during the hearing, it began sometime in the latter part of 2017.[338]

In the Tribunal's view, the increase in subject imports in interim 2018 is recent, sudden and sharp enough. It is also significant enough. In terms of its duration, the increase was observed within a six-month period and builds off of the increase that had started in 2017. The increase is also significant in terms of the volumes at issue and of their share of the Canadian market.[339] Contrary to the assertion of certain parties opposed, the increase was greater than the increase in the total market.[340] Finally, it cannot be ignored, from a contextual point of view, that the increase in subject goods in interim 2018 represented a 27 percent increase relative to domestic sales of domestic production when compared to interim 2017.[341]

The domestic industry submitted publicly available Statistics Canada data that, they asserted, shows that the increase in imports continued beyond interim 2018, into Q3 2018.[342] Parties opposing the imposition of a safeguard measure objected to the Tribunal relying on data beyond June 30, 2018.

The Tribunal determined that, in the case of ETP, Statistics Canada data provided a reasonably reliable indication of imports in Q3 2018. This data suggests that the increase in imports from subject countries did continue in Q3 2018, when compared to the same period in 2017.[343] Therefore, the Tribunal is of the view that it can reasonably rely on the Statistics Canada data to *confirm* that the trend in subject imports observed in interim 2018 continued in Q3 2018.[344]

337. Exhibit GC-2018-001-009B, Table 13, Vol. 1.1 at 27.
338. Exhibit GC-2018-001-75.19, Vol. 5 at 46; *Transcript of Public Hearing* at 1044-1045, 1049-1050, 1128 and 1132-1133. While seasonal factors may have had some influence on drilling activities (and, hence, import trends) in the second half of 2017, the Tribunal believes that the difference between volumes of subject imports in interim 2017 and interim 2018 supports the view that the increase in subject imports likely became more acute sometime in Q3 or Q4 2017.
339. Exhibit GC-2018-001-10B (protected), Table 16, Vol. 1.1 at 30.
340. Exhibit GC-2018-001-009B, Tables 11 and 15, Vol. 1.1 at 25 and 29.
341. *Ibid.*, Table 13 at 27.
342. Exhibit GC-2018-001-75.17, Vol. 5 at Attachment A-1.
343. The Tribunal conducted an analysis to assess the reliability of the Statistics Canada import volume data regarding ETP by comparing the Statistics Canada data for 2015, 2016, 2017, interim 2017 and interim 2018 with the import data in the Tribunal's Statistical Summary for ETP for each respective period. The Tribunal's analysis determined that its data represented between 91 and 100 percent of the Statistics Canada data for these periods. Therefore, the Tribunal has concluded that the Statistics Canada data for imports of ETP in Q3 2018 is reliable for the purposes of its inquiry regarding this class of goods.
344. It is also reasonable to assume that the upward trend observed in interim 2018 and Q3 2018 would have continued in Q4 2018 but for the imposition of provisional safeguard measures by the Government of Canada, which blurs the picture. In this respect, although the provisional safeguard measures are likely to have impacted the volume of subject imports in November and December 2018, there is no Statistics Canada data on the record for these months. In light of the lead time between the placing of an order and the delivery of subject ETP, the Tribunal does not form an opinion as to whether the imposition of the provisional safeguard measures resulted in a decline of subject import volumes in those months.

In light of the foregoing, the Tribunal concludes that the volume of subject ETP imports increased in interim 2018, and that this increase was recent enough, sudden enough, sharp enough and significant enough.

Unforeseen developments and *GATT 1994* obligations

Having found that there was such an increase in subject imports of ETP in interim 2018, the Tribunal must consider whether the increase resulted from unforeseen developments and the effect of Canada's *GATT 1994* obligations.

Unforeseen developments

Parties supporting the imposition of a safeguard measure submitted that the following were developments which could not be reasonably foreseen by Canadian negotiators in 1994 and were directly linked to the increase in subject imports:

- global steel overcapacity, in particular for ETP;
- the U.S. section 232 investigation and measures, the responses to these measures by other countries and the resulting diversion of ETP to Canada; and
- the imposition of anti-dumping measures in 2018 by the United States on large diameter line pipe from a number of countries, including Canada.

Parties opposing the imposition of a safeguard submitted that these developments were not "unforeseen" and could not be linked to the increase in subject imports.

For the reasons that follow, the Tribunal finds that the increase in imports was due to a combination of unforeseen developments. The overarching unforeseen development with respect to ETP is the continuing unresolved and substantially increasing overcapacity in world steel production, including ETP production, which could not be foreseen in 1994.

The developments in excess capacity for steel generally, and in China in particular, have been described in Part III above. With respect to excess capacity for ETP specifically, according to Metal Bulletin Research (MBR) OCTG Intelligence Service Data, in 2017 the global production capacity for OCTG alone (i.e. not counting global capacity for line pipe) was roughly twice the global demand. This excess capacity was equivalent to almost 20 times the total Canadian OCTG consumption as reported by MBR.[345] Given that MBR also establishes that North American consumption exceeds North American capacity, the global overcapacity for OCTG can be attributed to non-*NAFTA* countries—and, therefore, largely to subject countries—particularly

345. Exhibit GC-2018-001-76.19 (protected), Vol. 6 at 156, 159. The Tribunal views the MBR data concerning OCTG in Canada as reasonable. The Tribunal compared the Canadian consumption of OCTG in 2017 from MBR OCTG Intelligence Service Data (Exhibit GC-2018-001-76.19 (protected), Vol. 6 at 157) to the Canadian ETP market in the Statistical Summary (Exhibit GC-2018-001-10B (protected), Table 14, Vol. 2.1 at 28). The Tribunal is of the view that the MBR OCTG consumption data for Canada is reasonable for the OCTG portion of the overall Canadian ETP market given the breakdown observed between imports of OCTG and line pipe, based on the HS Code breakdown in CBSA's FIRM data and producers' and importers' questionnaire responses.

China.[346] The data gathered by the Tribunal also shows an excess capacity from foreign producers from subject countries vastly exceeding the total Canadian market.[347]

The other unforeseen developments that have led to the increase in subject imports are the U.S. section 232 measures and the extent of the resulting trade diversion of ETP to Canada. In this respect, the U.S. section 232 measures added to the trade-diverting effects of the numerous trade remedies that were already in place around the world against ETP from the subject countries.[348]

The evidence before the Tribunal indicates that the announcement and eventual imposition by the United States of the section 232 measures led to a diversion of ETP imports to the Canadian market sometime during the second half of 2017 and interim 2018. Witnesses for the domestic industry outlined these dynamics in a cogent fashion. In particular, they explained that as soon as the section 232 investigation was announced in April 2017, non-*NAFTA* exporters began looking for new markets, and they began to see more aggressive offers in the market. By the end of Q3 2017 and into Q4 2017, they started to see a very sudden and significant increase of imports from non-*NAFTA* countries.[349] These explanations are borne out by the data before the Tribunal, which supports the view that the increase in subject imports likely became more acute sometime in Q3 or Q4 2017.[350] The data also shows that the exports to the United States of foreign producers who responded to the Tribunal's questionnaire decreased by 32 percent from interim 2017 to interim 2018, while their exports to Canada increased by 41 percent during the same period.[351]

Having discussed the relationship between the increase in subject imports and the unforeseen developments, the Tribunal cannot ignore, however, the fact that, as will be discussed later, the increase in subject imports was also in part due to the incapacity of the domestic producers to respond to the increase in demand for ETP quickly enough.

In light of all of the above, the Tribunal finds that the evidence on record demonstrates that the main causes of the increased volumes of subject imports in interim 2018 are the global overcapacity, including in some of the main subject sources of ETP imports into Canada, as well as the announcement and imposition of the U.S. section 232 measures.

GATT 1994 obligations

In 1994, Canada bound the tariff for ETP at zero percent.[352] Moreover, Canada agreed, by virtue of Article XI of *GATT 1994*, not to impose quantitative restrictions. The effect of the concession and the obligations arising under Articles II:1(a) and XI of the *GATT 1994* was to

346. Exhibit GC-2018-001-76.19 (protected), Vol. 6 at 156, 158-159.
347. Exhibit GC-2018-001-10B (protected), Table 47, Vol. 2.1 at 60.
348. There are 63 AD/CV measures in place by WTO Members against ETP. The Tribunal also notes that in August 2018, the United States imposed provisional anti-dumping duties on large diameter line pipe from Canada, China, Korea, India, Turkey and Greece. The United States imposed provisional countervailing duties on imports of the same goods from China, Korea, India, and Turkey in June 2018. Exhibit GC-2018-001-75.17, Vol. 5 at 106-107.
349. Exhibit GC-2018-001-75.19, Vol. 5 at 46; *Transcript of Public Hearing* at 1045, 1049-1050, 1128 and 1132-1133.
350. See the discussion in the "Increase in imports" section above.
351. Exhibit GC-2018-001-009B, Table 47, Vol. 1.1, at 60. The countermeasures imposed by Canada on imports of steel products from the United States also likely contributed to an increase in subject imports after their imposition in July 2018 (i.e. in Q3 2018 and beyond).
352. Exhibit GC-2018-001-066.43, Vol. 1 at 44-45.

prevent Canada from imposing tariffs above the bound tariff rate, or from imposing quotas, as a means of addressing the significant increase in imports of ETP in interim 2018.

Serious injury

Having found that there was a significant increase in subject imports in interim 2018, the Tribunal must now determine whether the domestic industry suffered serious injury. The Tribunal's analysis focuses on developments in the interim 2018 period, while placing them in the context of developments during the entire POI.

Evraz argued that, if the Tribunal finds that a *major proportion* of the domestic industry (as opposed to the domestic industry "as a whole") has been injured, the Tribunal may reach the conclusion that the domestic industry has suffered serious injury. This argument finds no support in Canadian law, the *Agreement on Safeguards*, or precedent.[353] When the Tribunal collects data for the entire domestic industry, it assesses injury with respect to the entire domestic industry. In the present case, the Tribunal did collect data for the entire domestic industry. As a result, it will make its serious injury determination on the basis of the industry as a whole.

The following table summarizes the domestic industry's performance during the POI. As all financial performance indicators for the domestic industry, including percent changes, are confidential, they have not been included in the table.

Table 7
Summary of Domestic Performance Indicators (Index)

				Interim	
	2015	2016	2017	2017	2018
Practical Plant Capacity	100	103	108	100	105
Total Production	100	67	116	100	129
Production for Domestic Sales	100	110	160	100	110
Production for Export Sales	100	24	74	100	171
Capacity Utilization Rate (%)	100	65	108	100	123
Market	100	84	112	100	113
Domestic Sales from Production	100	108	137	100	104
Producers' Market Share (%)	100	128	123	100	92
Total Direct Employees	100	66	112	100	125
Total Wages ($000) - Direct Employment	100	61	109	100	129
Total Hours Worked (000) - Direct Employment	100	63	120	100	119
Productivity - Tonnes/ Hour Worked (Direct)	100	105	97	100	108
Producers' Inventories (Tonnes)	100	77	122	100	189
Inventory as % of Production	100	116	105	100	147
Selling Prices					
Domestic Sales from Domestic Production	**100**	93	**96**	**100**	**118**
Total Subject Countries	100	87	104	100	112
Excluded Countries	100	**81**	96	100	115
Total - Subject Goods - Market Share	100	82	93	100	123
Excluded Countries - Market Share	100	85	73	100	63

Note(s):
1. 2015 = 100 and Interim 2017 = 100
2. Index values are notional, and there is no indexing between a full calendar year and an interim period.
3. The bolded index values under "Selling Prices" indicate the lowest price in the market for that period.
Source: Exhibit GC-2018-001-09B, Table 9, Vol. 1.1 at 23; Exhibit GC-2018-001-010B (protected), Tables 16, 19, 26, Vol. 2.1 at 30, 33, 39.

353. See Part III above.

Parties supporting the imposition of a safeguard measure argued that the increased volumes of subject imports caused serious injury to the domestic industry. They asserted that the subject imports took sales and, thus, market share, away from the domestic industry, which resulted in an increase in its inventories and negatively impacted its profitability. For their part, parties opposing the imposition of a safeguard measure submitted that the domestic industry was not seriously injured as a result of subject imports.

It is not in dispute that the domestic industry's performance during the POI was severely impacted by the sharp and sudden contraction in demand for ETP due to a sharp decline in energy prices at the end of 2014. Energy prices and the ETP market remained depressed until the end of 2016/early 2017, when they started to recover.[354] In 2017 as a whole, the total market increased by 33 percent over 2016,[355] though witnesses testified that demand in 2017 remained well below where it had been in 2013-2014.[356] The market increased by 13 percent in interim 2018 compared to interim 2017.[357]

Also of relevance to the performance of the domestic industry during the POI are the affirmative findings of injury by the Tribunal in the context of *SIMA* inquiries concerning small diameter line pipe from China and Korea, and large diameter line pipe from China and Japan.[358] In these three *SIMA* cases, the Tribunal considered the performance of the domestic industry during periods overlapping with the POI in the present inquiry and found that the domestic industry producing in these segments of the ETP industry had been injured as a result of dumped and subsidized imports.

The table above demonstrates an improvement in the performance of the domestic industry in interim 2018 as compared to interim 2017, notwithstanding the significant increase in subject imports in that period. Domestic sales increased throughout the POI and increased by 4 percent in interim 2018 over interim 2017.[359] The domestic industry's total production increased by 29 percent in interim 2018 over interim 2017, while production for domestic sales increased by 10 percent.[360] The domestic industry's practical plant capacity increased throughout the POI, albeit by a small margin, whereas the capacity utilization rate increased significantly in interim 2018 as compared to interim 2017.[361] The industry's productivity in tonnes per hour worked increased by 8 percent in interim 2018 compared to interim 2017.[362]

Direct employment increased by 25 percent in interim 2018, while direct employment wages increased in interim 2018 by 29 percent.[363] However, the domestic producers indicated that

354. *Transcript of Public Hearing* at 1048; *ibid.* at 1201-1205; *Seamless Casing 2nd review* at para. 56-57.
355. Exhibit GC-2018-001-009B, Table 15, Vol. 1.1 at 29.
356. *Transcript of Public Hearing* at 1237, 1295.
357. Exhibit GC-2018-001-009B, Table 15, Vol. 1.1 at 29.
358. The Tribunal made affirmative injury determinations covering portions of the POI in *Line Pipe I* at para. 199; *Line Pipe II* at paras. 93, 106; and *Large Diameter Line Pipe* at para. 214.
359. Exhibit GC-2018-001-009B, Table 9, Vol. 1.1 at 23.
360. *Ibid.*, Table 27 at 40.
361. *Ibid.*; Exhibit GC-2018-001-010B (protected), Table 26, Vol. 2.1 at 39.
362. Exhibit GC-2018-001-009B, Table 27, Vol. 1.1 at 40.
363. *Ibid.*

they had to lay off employees in the second half of 2018 and early 2019, which would change the trajectory of the positive employment trends observed in the Statistical Summary.[364]

However, the Tribunal cannot ignore that some indicators trended downward in interim 2018. First, in terms of market share, sales of domestic production decreased by 8 percent in interim 2018.[365] Nonetheless, this decrease must be considered together with an increase in the domestic industry's sales of subject imports and in the market share for those sales.[366] Second, domestic producers' inventories of domestically produced ETP increased by 89 percent in interim 2018 over interim 2017.[367] This increase must also be contextualized. As will be discussed below, witnesses explained that inventories were depleted during the difficult period of 2016 and had to be replenished in 2017 as the market was recovering. It must also be noted that importers' inventories also increased during the same period, albeit to a much smaller extent, which suggests that the increase in producers' inventories may have other causes than increased subject import volumes.[368]

As well, several elements of the financial performance of the domestic industry[369] deteriorated in interim 2018 when compared with the performance in interim 2017.[370]

The above picture indicates that the domestic industry has suffered some injury. However, the test in this part of the analysis is not whether the domestic industry has experienced injury or even material injury, but whether it has experienced "serious injury".[371] In this case, the Tribunal considers that the injury suffered by the domestic injury does not rise to the level of serious injury or represent a "significant overall impairment" in the position of the domestic industry.

When the Tribunal considers the overall performance of the domestic industry during the relevant period, it finds that, despite some difficulties experienced in interim 2018, the domestic industry's position has greatly improved since the fall in oil prices in 2014. Almost all major indicators show an improvement since 2015 and 2016.[372] This general improvement in the condition of the domestic industry over the POI cannot be ignored when determining whether the injury it suffered in interim 2018 is a significant overall impairment of its position. As a result, even if the performance of the domestic industry deteriorated somewhat in interim 2018, it did not do so to such an extent that it resulted in a significant overall impairment of its position, and therefore in serious injury.

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364. Exhibit GC-2018-001-75.11, Vol. 5 at 16; Exhibit GC-2018-001-75.19, Vol. 5 at 20 and 77.
365. Exhibit GC-2018-001-009B, Table 9, Vol. 1.1. The Tribunal notes that market share is, by its nature, already expressed in percentage terms. Thus, changes to this market share that are also expressed in percentage terms must not be confused with changes expressed in percentage points.
366. Exhibit GC-2018-001-010B (protected), Tables 14 and 16, Vol. 2.1 at 28 and 30.
367. Exhibit GC-2018-001-009B, Table 9, Vol. 1.1 at 16.
368. *Ibid.*, Table 34 at 46.
369. As noted above, the data concerning financial performance indicators for the domestic industry gathered by the Tribunal, including percent change and indices, is confidential.
370. Exhibit GC-2018-001-010B, Tables 21-23, Vol. 2.1 at 33-35. The Tribunal further notes that, as part of its case brief, one of the domestic producers submitted its financial results for Q3 2018. As Q3 2018 is outside the POI covered by the questionnaires, no other domestic producers submitted their Q3 2018 results. The Tribunal is not willing to place undue weight on the evidence of a single company in regard to the injury suffered by the domestic industry as a whole.
371. The requirements for what constitutes "serious injury" have been described in Part III (Legal Framework) of this report.
372. Exhibit GC-2018-001-010B (protected), Table 8, Vol. 2.1 at 22.

With respect to the causal link between the increase in subject imports and the injury suffered by the domestic industry, the Tribunal first recalls that subject imports gained market share in interim 2018. They did so at the expense of both the domestic industry and non-subject (i.e. U.S.) imports.[373] However, as noted above, the domestic industry's sales of subject imports and the market share of these sales increased in interim 2018, making up for part of the decrease in the domestic industry's market share for sales from domestic production.

As indicated in other sections of this report, a key factor in establishing a causal nexus between subject imports and serious injury is evidence that the imports have significantly undercut, depressed or suppressed the prices of the domestically produced like or directly competitive goods. The Tribunal has noted in previous *SIMA* findings that OCTG and small diameter line pipe are commodity products, with price being a key consideration affecting purchasing decisions.[374]

The evidence before the Tribunal confirms that price is an important consideration, provided the products meet the requirements and the delivery schedule desired by the purchaser.[375] However, despite what is alleged by parties in support of a safeguard measure, the evidence indicates that the subject imports have not had significant effects on the price of domestic like and directly competitive goods.

Although the aggregate pricing data contained in the Tribunal's Statistical Summary shows undercutting by subject imports in interim 2018 when the comparison is performed using the import prices, there is no undercutting when the sales prices of imports are compared to the sales prices of domestic ETP.[376]

Similarly, the benchmark pricing data shows that, in interim 2018, the import prices of subject goods undercut the prices of the domestic like goods for six of the seven benchmark products for which there was competition,[377] with the extent of the price undercutting greater in interim 2018 than in interim 2017 for all but one of the benchmark products.[378] However, at the level of the sales of imports, there was undercutting in interim 2018 for only one benchmark product out of seven for which there was competition between subject imports and the domestic like goods.[379]

It follows from all of the above that the level and extent of price undercutting observed in interim 2018 cannot be characterized as significant.

373. *Ibid.*, Table 16 at 30.
374. See above, product section.
375. *Transcript of Public Hearing* at 1196, 1294-1295, 1301-1303.
376. Exhibit GC-2018-001-010B (protected), Tables 17 and 19, Vol. 2.1 at 31, 33. Competition between subject imports and domestic ETP takes place both at the distributor and at the end-user level. Based on the responses to the Tribunal's questionnaires, the vast majority of subject imports were imported by distributors who in turn sold the goods to end users.
377. Exhibit GC-2018-001-009E, Table 27, Vol. 1.1 at 35.
378. Exhibit GC-2018-001-010E (protected), Tables 19-22, Vol. 2.1 at 21-24.
379. Exhibit GC-2018-001-09E, Table 28, Vol. 1.1 at 36.

As for price depression, the evidence before the Tribunal shows that the prices of domestic ETP increased in interim 2018.[380] The Tribunal cannot therefore conclude that there was price depression.

In terms of price suppression, the evidence[381] gives credence to allegations that competition with subject imports prevented domestic producers from recovering the entirety of increasing raw material costs, and suggests that some price suppression resulting from subject imports occurred during the POI. However, the relatively limited extent of such suppression, together with the limited price undercutting, is not significant enough to support a strong causal nexus between the increase in the volume of subject imports and any injury that the domestic industry experienced in interim 2018.

Also key to the determination of a causal relationship is whether there are any causes of the injury that cannot be attributed to subject imports. In this regard, the evidence on the record shows certain forms of self-inflicted injury.

The evidence suggests that the increased market share of subject imports in interim 2018 was in part attributable to the domestic industry's inability to ramp up production quickly enough to satisfy fast-growing domestic demand, thereby causing importers and certain domestic producers to fulfil orders with imported ETP.[382] In respect of the latter, the evidence establishes that the domestic industry's own imports of the subject goods displaced domestically produced ETP throughout the POI, including in interim 2018. Tenaris accounted for all of the domestic industry's imports from the subject countries during the POI,[383] and a significant portion of these imports are from Tenaris' Mexican affiliate, TAMSA.[384] The evidence before the Tribunal suggests that, while certain of these imports involved specialty products not made in Canada, a significant portion of these substitutable products (or similar products) could have been produced in Canada (by Tenaris or other domestic producers).[385] In this respect, a witness from Evraz indicated that imports from *NAFTA* countries, including Mexico, are in direct competition with its production and sales in Canada.[386]

For this reason, even though Tenaris' imports from Mexico were generally priced higher than other subject imports and domestic ETP,[387] the evidence establishes that they displaced Canadian production and sales of ETP by the domestic industry.

Tenaris' imports of subject goods from Mexico resulted from a corporate decision by Tenaris to idle its Canadian operations and supply the weak Canadian market with imports from

380. Exhibit GC-2018-001-009B, Table 20, Vol. 1.1; Exhibit GC-2018-001-010E (protected), Tables 3-18, Vol. 2.1 at 5-20.
381. Exhibit GC-2018-001-010B (protected), Table 21, Vol. 2.1 at 35.
382. *Transcript of Public Hearing* at 1204-1206; Exhibit GC-2018-001-75.19, Vol. 5 at 72.
383. Exhibit GC-2018-001-009B, Tables 1 and 11, Vol. 1.1 at 12 and 25.
384. *Transcript of Public Hearing* at 1081-1082; Exhibit GC-2018-001-009B, Table 1, Vol. 1.1 at 12; Exhibit GC-2018-001-010B (protected), Table 10, Vol. 2.1 at 24.
385. Exhibit GC-2018-001-75.19, Vol. 5 at 72; *Transcript of Public Hearing* at 1052, 1081-1082, 1139; *Transcript of In Camera Hearing* at 314, 318-319; Exhibit GC-2018-001-25.04G (protected), Vol. 4.
386. *Transcript of Public Hearing* at 1139.
387. Exhibit GC-2018-001-010B (protected) Tables 17 and 19, Vol. 2.1 at 31 and 33; Exhibit GC-2018-001-010E (protected), Tables 3-18, Vol. 2.1 at 11-26.

TAMSA.[388] Tenaris argued that it did so in order to maintain its market position and relationship with its clients during the period when its Canadian production facilities were suspended.[389] However, although decreasing somewhat, significant volumes of subject imports from TAMSA continued into interim 2018, i.e. even after Tenaris' Canadian facilities had resumed operating.[390]

Tenaris sought to justify its import strategy as a reasonable business and commercial strategy. That may be so, but the Tribunal cannot simply accept Tenaris' explanations as a valid consideration for not treating this strategy as having resulted in self-inflicted injury for the purpose of its analysis. The present inquiry is intended to determine whether safeguard measures should be imposed in order to protect the domestic industry against the injury that the subject imports are alleged to have caused. Considered from the point of view of the domestic industry as a whole (and even considered from the viewpoint of Tenaris' Canadian operations), Tenaris' imports from TAMSA and from other subject countries had the effect of displacing Canadian production. The domestic industry's imports from all subject countries increased by 8 percent in interim 2018 compared to interim 2017,[391] substituting for domestic production and domestic sales from domestic production. The replacement of domestic production by subject imports also means that the domestic industry is less able to benefit from economies of scale, thereby spreading domestic producers' fixed costs over a smaller base than would otherwise be the case. Thus, the evidence before the Tribunal indicates that a portion of any injury experienced by the domestic industry is self-inflicted.

Finally, the evidence on the record indicates that the domestic producers operate within a very competitive market.[392] Aggressive sales strategies by some domestic producers have intensified this competition.[393] Without reaching a definitive conclusion on the issue, the Tribunal considers that intra-industry competition is an important factor of injury to the domestic industry.

For all of the above reasons, the Tribunal concludes that the increase in the subject imports in interim 2018 did not cause serious injury to the domestic industry; and, to the extent that the domestic industry suffered a lesser degree of injury, it was largely self-inflicted.

Threat of serious injury

Having determined that the domestic industry did not suffer serious injury and, in addition, that increased volumes of imports were not a principal cause of the injury suffered by the domestic producers in interim 2018, the Tribunal must now determine whether the increased volumes of subject imports are a principal cause of threat of serious injury.

388. *Transcript of Public Hearing* at 1059-1061. Tenaris suspended production activities at its Canadian facilities during part of the POI, while the market recovered. Witnesses for Tenaris indicated that during the POI, Tenaris postponed resuming production in Canada until there was sustained demand for a given product (i.e. X tonnes for 4-6 months) sufficient to justify resuming production activities. In the meantime, Tenaris supplied Canadian demand through imports from TAMSA. Exhibit GC-2018-001-75.19, Vol. 5 at 73 at para. 29.
389. Exhibit GC-2018-001-075.19, Vol. 5 at 71-73; *Transcript of Public Hearing* at 1060.
390. Exhibit GC-2018-001-009B, Tables 1 and 11, Vol. 1.1 at 12 and 25.
391. *Ibid.*, Table 11 at 25.
392. *Transcript of Public Hearing* at 1251; *Transcript of In Camera Hearing* at 386-387, 389-390.
393. *Transcript of Public Hearing* at 1251; *Transcript of In Camera Hearing* at 375-378.

The Tribunal's analysis of this question focuses on the changes in circumstances and developments expected during the remainder of 2019 that may result in the domestic industry's situation deteriorating into one of serious injury. The Tribunal takes into consideration, as relevant context to its analysis, the fact that although the domestic industry's situation improved during the latter part of the POI, it likely remains fragile, in particular as a result of the impact of the downturn in the ETP market earlier in the POI.[394] Moreover, in performing its threat of injury analysis, the Tribunal is mindful that a determination of threat is to be based on "facts" and not on "conjecture".[395]

Parties supporting the imposition of a safeguard measure submitted that subject imports threaten to cause serious injury to the domestic industry unless a safeguard measure is imposed. Their allegations in this respect rely on a projected increase in subject imports volumes at prices that would make it impossible for the domestic industry to recoup increasing raw materials costs. The same parties also argued that importers stockpiled subject imports during the POI, resulting in a large inventory overhang that will take some time to work through and will negatively impact demand and ETP prices in the coming months. They project that the inventory overhang and future subject imports will have an injurious impact on, *inter alia*, their sales, production and employment levels.

Parties opposing the imposition of a safeguard measure contested these arguments and argued that subject imports do not threaten to injure the domestic industry, adding that factors other than the increased volumes of subject imports threaten to injure the domestic industry.

For the reasons that follow, the Tribunal is of the view that the increased volumes of subject imports are not a principal cause of threat of injury.

The Tribunal begins its analysis by assessing the current state of the Canadian market for ETP. At the end of 2018, Canadian oil prices were low, and the difference between Canadian and U.S. oil prices was at the greatest level seen during the POI.[396] This led the government of Alberta to impose an 8.7 percent mandatory cut in oil production for 2019.[397] As a result of these measures and the anticipated low oil prices,[398] it is projected that there will be less oil drilling in 2019 than in 2018, resulting in a decrease in demand for ETP in the Canadian market.[399] A witness for the domestic industry explained that the number of drilling rigs operating in 2018 in Canada was down by 30 percent from 2017 and that he expected 2019 levels to be at least 10 percent below those of 2018.[400]

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394. As noted above, the domestic industry also suffered injury during the POI as a result of dumped and subsidized imports from some of the subject countries. See *Line Pipe I* at para. 199; *Line Pipe II* at paras. 93, 106; and *Large Diameter Line Pipe* at para. 214.
395. See the discussion concerning threat of injury in Part III (Legal Framework) above.
396. *Transcript of Public Hearing* at 1215; Exhibit GC-2018-001-075.17, Vol. 5 at 146. The discount of Canadian compared to U.S. oil prices is attributed, among other factors, to transportation bottlenecks—insufficient railroad or pipeline infrastructure—constraining the delivery of Western Canadian oil to market. *Transcript of Public Hearing* at 1280; Exhibit GC-2018-001-075.19, Vol. 5 at 78.
397. Exhibit GC-2018-001-075.12, Vol. 5 at 40-42.
398. A witness indicated that unless there is an improvement in the dynamics within the oil and gas industry, there will be significant downward pressures on prices in 2019. *Transcript of Public Hearing* at 1293.
399. *Transcript of Public Hearing* at 1291-1293; Exhibit GC-2018-001-075.17, Vol. 5 at 53.
400. *Transcript of Public Hearing* at 1047.

The projected contraction in the Canadian ETP market means that fewer subject imports will be drawn into the market. In this context, the Tribunal is not convinced that there will be a *sustained* increase in the volume of subject imports. As indicated above, diversion of ETP imports into Canada began in late 2017 and early 2018.[401] In other words, the U.S. section 232 measures are not a new development likely to lead to *sustained* increases in subject imports. In addition, the Statistics Canada data for Q3 2018, a period during which the section 232 measures were in place, shows that the increase in the volume of subject imports stabilized, albeit remaining at a high level.[402] Furthermore, although the European Union imposed definitive TRQ on a series of steel products,[403] the fact that the increase in subject imports volumes stabilized in Q3, a period during which the provisional EU measures were in place, does not point to the likelihood that injurious levels of ETP will be diverted from the European Union into Canada in the coming months as a result. Finally, there is no evidence to the effect that new sources of subject imports are likely to appear and seek to increase their imports to Canada. This is especially true given that no new significant sources of subject imports appeared when the market was expanding, which makes it unlikely, all other factors being equal, that they would be attracted to the Canadian market when it is contracting.

For these reasons, notwithstanding the large excess capacity in the global ETP industry, in particular in subject countries, and the fact that subject countries' access to other markets has been curtailed (including as a result of the imposition by the United States of new countervailing and anti-dumping measures on large diameter line pipe in June and August 2018), the evidence on the record does not indicate that subject import volumes are likely to see *sustained* increases during the remainder of 2019 in the event that no definitive safeguard measure is imposed and provisional measures are lifted.

In any event, there will likely be more "room" in the market as U.S. imports diminish. U.S. imports accounted for 36 percent of imports in 2017, but decreased sharply to only represent 26 percent of imports in interim 2018.[404] They can be expected to decrease further as a result of the 25 percent countermeasure on U.S. imports applied by Canada effective July 1, 2018. Both the domestic industry and the subject imports will likely compete for the market share vacated as a result of the expected decline in U.S. imports.[405]

Parties supporting the imposition of a safeguard measure also argued that the increased volumes of subject imports have led to the creation of a large overhang of subject imports inventory that will undermine future sales and drive down prices for several months. The Statistical Summary

401. See above, section on unforeseen developments.
402. See above, section on increase in imports.
403. Exhibit GC-2018-001-66.44, Vol. 1 at 2. The European Union's TRQs are based on the average volume of imports into the European Union over the past three years, plus 5 percent, with a 25 percent out-of-quota tariff. The steel product categories subject to the EU measures include "other seamless tubes", "large welded tubes" and "other welded pipes", which overlap with the ETP class of goods as defined in the Order.
404. Exhibit GC-2018-001-009B, Tables 11-12, Vol. 1.1. The Tribunal notes, however, that a significant portion of the U.S. imports were imports of green tubes by a domestic producer that transforms these green tubes into finished OCTG in its Canadian facilities. A significant portion of the decrease in U.S. imports was due to a decrease in this domestic producer's U.S. imports.
405. The domestic industry has likely had time to adjust to the new market reality post-imposition of the Canadian countermeasures and to position itself so as to respond more effectively to domestic demand and to compete for the market share being vacated by U.S. imports.

data shows that inventories increased in the latter part of the POI, particularly in interim 2018.[406] However, the Tribunal heard testimony that indicated that the current level of inventories is not as great as it was in 2015-2016 and that because inventories were depleted by the end of 2016, they needed to be replenished.[407] In addition, to the extent that there is indeed an inventory overhang in the market, the evidence shows that domestic producers, through their imports and through their domestic production, contributed as much as importers did in creating it.[408]

Turning to the likely future price effects of subject imports, the Tribunal concluded above that although there was some undercutting by subject imports, the extent of the undercutting was limited. The aggregate pricing evidence collected by the Tribunal suggests that, on average, the price of subject imports at the import price and sales levels has been increasing since 2017.[409] The benchmark pricing data shows a similar trend for the majority of the benchmark products, at both the import price and at the sales price levels.[410] This being the case, nothing on the record suggests that the level of price undercutting is likely to significantly increase during the remainder of 2019 and that injury would materialize in any greater degree as a consequence.[411] Likewise for price suppression: the evidence[412] does not support a conclusion that subject imports will contribute more to price suppression in the near term than during the POI.

In addition, the Tribunal notes that witnesses for end users of large diameter line pipe alleged that Evraz, the sole Canadian producer of that type of ETP, has committed its available capacity and will not be in a position to supply all upcoming demand for large diameter line pipe.[413] Evraz countered that its facilities will have unused capacity in 2019.[414] Although the evidence before the Tribunal does not allow it to reach a definitive conclusion in this respect, it suggests that a significant portion of Evraz' capacity for the production of large diameter line pipe has already been booked. The same end-user witnesses also testified that, in any event, they need to diversify their sources of supply to reduce commercial and technical risks and ensure security of supply, and had concerns about the safeguard measure creating a monopoly.[415] These two considerations lead the Tribunal to believe that the subject imports are unlikely to have a serious impact on the performance of the segment of the domestic industry producing large diameter line pipe.

In view of the above, the Tribunal concludes that increased volumes of subject imports are not a principal cause of threat of serious injury to the domestic industry. For the sake of completeness, the Tribunal now considers other causes of threat of injury to the domestic industry for the remainder of 2019.

In its serious injury analysis, the Tribunal concluded that imports of the subject goods by the domestic industry have displaced domestic sales from domestic production during the POI,

406. Exhibit GC-2018-001-009B, Table 34, Vol. 1.1.
407. *Transcript of Public Hearing* at 1204-1205, 1242, 1244, 1282-1283, 1311.
408. Exhibit GC-2018-001-010B (protected), Tables 26, 34, Vol. 2.1 at 32, 46.
409. Exhibit GC-2018-001-009B, Tables 17-20, Vol. 1.1 at 31-34.
410. Exhibit GC-2018-001-010E (protected), Tables 3-18, Vol. 2.1 at 5-20.
411. In addition, it is reasonable to assume that subject imports in 2019 will essentially be of the same origin as in interim 2018. As noted above, there is no evidence to the effect that imports from other sources would increase in the near term.
412. *Inter alia*, Exhibit GC-2018-001-010B (protected), Table 21, Vol. 2.1 at 35.
413. *Transcript of Public Hearing* at 1259-1260, 1283-1286.
414. Exhibit GC-2018-001-75.17, Vol. 5 at 72; Exhibit GC-2018-001-76.17 (protected), Vol. 6 at 72-73.
415. *Transcript of Public Hearing* at 1260-1261, 1269, 1281.

including in interim 2018. The evidence does not suggest that the domestic producers are likely to significantly curb their imports of the subject goods. First, as noted above, volumes of subject imports by the domestic industry were on an upward trend in interim 2018, increasing by 8 percent compared to interim 2017, and they accounted for a significant share of the subject imports.[416] A substantial share of Tenaris' imports from Mexico during the POI were products that Tenaris itself could have manufactured in Canada or that other Canadian producers could have produced as substitutes.[417] The Tribunal is of the view that Tenaris' subject country imports, including those from Mexico, are likely to continue at high volumes. There is no evidence that Tenaris is considering changing its current corporate approach of supplying the Canadian market with imports from TAMSA in Mexico in the foreseeable future.[418] In light of the foregoing and in light of projected market conditions, the Tribunal concludes that subject imports by the domestic industry are likely to continue at high volumes during the period relevant for its threat of injury assessment.

Another factor that is likely to constitute an important cause of threat of injury is the decreased level of demand in the Canadian market. The evidence shows that the domestic industry's performance throughout the POI was significantly impacted by fluctuations in demand for ETP in the Canadian market and the generally depressed state of the market compared to the pre-crisis period, i.e. 2013 and 2014. Going forward, as noted above, industry participants forecast that the market will slow down compared to 2018. The weakening ETP market projected for the remainder of 2019 is likely to have a significant impact on the situation of the domestic industry, in the form of lost sales, decreased production, and the possible related worsening in profitability, employment and other indicators. The projected relatively low demand for 2019 is likely to be a greater cause of threat of injury than any other cause identified before the Tribunal, including the increased volumes of subject imports.

Finally, the Tribunal cannot ignore the difficulties that the domestic industry is confronted with at this time in terms of its access to the U.S. market. Despite the fact that the domestic industry's exports increased in interim 2018, the evidence on record strongly suggests that the domestic industry will likely suffer injury as a result of the application by the United States of the section 232 measures on Canadian exports of ETP.[419] The loss of export volumes necessarily has a negative impact on the domestic industry (for instance by impacting Canadian producers' ability to benefit from economies of scale).

As for the segment of the domestic industry that produces large diameter line pipe, the effect of the U.S. section 232 measures is compounded by the imposition, by the United States, of anti-dumping duties on imports from a number of countries, including Canada.[420]

Moreover, as indicated above,[421] intra-industry competition has been a factor of injury to the domestic industry. The evidence does not indicate that this is likely to materially change in the

416. Exhibit GC-2018-001-009B, Table 11, Vol. 1.1 at 25; Exhibit GC-2018-001-010B (protected), Table 12, Vol. 2.1 at 26.
417. See above, injury section.
418. *Transcript of Public Hearing* at 1057.
419. Exhibit GC-2018-001-075.25, Vol. 5 at 30, 34; Exhibit GC-2018-001-75.11, Vol. 5 at 38 at para. 47; *Transcript of Public Hearing* at 1112.
420. Exhibit GC-2018-001-075.17, Vol. 5 at 64 at para. 14, and at 107-109. The U.S. authorities had not issued their final determination at the time the record in the present inquiry closed.
421. See above, section on injury.

future. As a result, this situation is likely to continue to pose a threat of injury to the domestic industry.

Finally, the parties opposing the imposition of a safeguard measure raised a number of other factors that, in their view, either mitigate the injury suffered by the domestic industry or threaten to injure the domestic industry. They argued, in particular, that the domestic producers are unable to supply the entire range of ETP required by Canadian customers and that Canadian distributors/importers are unable to source ETP from the domestic industry directly. In light of its findings above, the Tribunal need not consider these arguments in more detail.

For the foregoing reasons, the evidence on record does not support a conclusion that increased volumes of subject imports are a principal cause of threat of serious injury to the domestic industry: subject imports are not a significant cause of threat of *serious* injury to the domestic industry, and part of the injury resulting from subject imports will be self-induced. Moreover, other factors threaten to injure the domestic industry, including one—the projected decline in demand for ETP—which is a more important cause of injury than subject imports.

Conclusions

The Tribunal finds that, while there has been a significant increase in the importation of subject ETP, this increase as well as the conditions under which the subject ETP are being imported have not caused serious injury to domestic producers of like or directly competitive goods and, even if the injury suffered by the domestic industry were serious, the increase in subject imports is not a principal cause of that injury. Moreover, the increase in subject imports is not a principal cause of *threat* of serious injury, and other factors are more important causes of likely future injury to the domestic industry. In light of these findings, the Tribunal does not need to consider whether imports from Canada's free trade partners are a principal cause of the serious injury or threat thereof, and the Tribunal does not recommend a remedy in respect of ETP.

PART VII – HOT-ROLLED SHEET

PRODUCT

The fourth class of goods considered by the Tribunal is hot-rolled sheet (HRS). The Order describes the class of goods as follows:[422]

> Flat hot-rolled carbon and alloy steel sheet and strip, including secondary or nonprime material, in various widths from 0.75 inches (19 mm) and wider, and
>
> - for product in coil form, in thicknesses from 0.054 inches to 0.625 inches (1.37 mm to 15.875 mm),
> - for product that is cut to length, in thicknesses from 0.054 inches up to but not including 0.187 inches (1.37 mm up to but not including 4.75 mm).
>
> The following goods are excluded:
>
> - flat-rolled stainless steel sheet and strip; and
> - flat hot-rolled, cut to length alloy steel products containing no less than 11.5 percent manganese, in thicknesses from 0.12 inches to 0.19 inches (3 mm to 4.75 mm).[423]

HRS has been the subject of previous *SIMA* proceedings. In those proceedings, the Tribunal has made numerous factual findings in terms of methods of production and product characteristics for HRS. Those findings are relevant here,[424] and the Tribunal takes judicial notice and adopts them.

For the purposes of this report, it is sufficient to recall that, while details may vary from mill to mill, the process by which HRS is produced is generally the same for all domestic mills. HRS is rolled on a continuous strip mill at temperatures above 870°C (1600°F) from an incoming hot slab up to 9 inches (229 mm) thick produced in a basic oxygen furnace or an electric arc furnace. During hot rolling, surface oxide (scale) forms, which is not acceptable for some applications. This scale may be removed by acid pickling.

Furthermore, HRS is primarily a generic commodity product. Most HRS is sold by the domestic industry in coiled form. It may be sold as such in the open (or merchant) market or may be used by domestic mills as feedstock for further internal processing.

In the merchant market, HRS is used in the following applications, among others:

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422. Exhibit GC-2018-001-01, Vol. 1 at 10.
423. In addition, the Department of Finance published an illustrative list of HS Codes for HRS: 7208.25.00.00; 7208.26.00.00; 7208.27.00.00; 7208.36.00.00; 7208.37.00.10; 7208.37.00.20; 7208.37.00.50; 7208.38.00.10; 7208.38.00.20; 7208,38.00.50; 7208.39.00.00; 7208.53.00.00; 7208.54.00.00; 7208.90.00.00; 7211.14.00.90; 7211.19.00.90; 7225.30.00.00; and 7226.91.00.00. Exhibit GC-2018-001-01A, Vol. 1 at 5.
424. See *HRS from Brazil et al.* (12 August 2016), RR-2015-002 (CITT) [*HRS 4th Review*] at paras. 8-12; *HRS from China et al.* (15 August 2011), RR-2010-001 (CITT) [*HRS 3rd Review*] at paras. 18-23; *HRS from Bulgaria et al.* (16 August 2006), RR-2005-002 (CITT) [*HRS 2nd Review*] at paras. 12-15; *HRS from France et al.* (30 June 2004), RR-2003-002 (CITT) [*HRS 1st Review*] at paras. 15-19; *HRS from Chinese Taipei et al.* (17 August 2001), NQ-2001-001 (CITT) [*HRS 2nd Inquiry*] at 4-5; *HRS from Romania et al.* (2 July 1999), NQ-98-004 (CITT) [*HRS 1st Inquiry*] at 4-5.

- various manufacturing applications, i.e. brackets, trailer applications and drawn sheets;
- various construction/structural applications, i.e. bridges, buildings, railway cars, guard rails and sheet pilings;
- the manufacture of various agricultural products, i.e. tractors, ground tillers and disks used in tilling; and
- the manufacture of automobiles, i.e. frames, bumpers, wheels, hood hinges, brake shoes, seat tracking, wheel rims, impact support, washer base and automotive brace.

HRS is also used by domestic mills as feedstock or substrate for the manufacture of further internally processed goods or value-added products, such as cold-rolled steel sheet and corrosion-resistant steel sheet—key inputs in the production of automotive vehicles.

SUMMARY

The Tribunal finds that HRS imported from the subject countries is not being imported in such increased quantities as to cause or threaten to cause serious injury to the domestic industry. Given that a safeguard measure can only be applied if a product is being imported in such increased quantities, the Tribunal does not recommend a remedy in respect of HRS.

ANALYSIS

The legal principles applicable to the analysis are set out in Part III of this report.

Like or directly competitive goods

To determine whether domestically produced HRS is "like or directly competitive" to the subject imported HRS, the Tribunal considered its physical and market characteristics.

Domestic HRS is identical to, or has uses and other characteristics that closely resemble, the imported HRS that is the subject of this inquiry. On the basis of evidence on the record and for the purpose of this inquiry, the Tribunal finds that domestically produced HRS is like or directly competitive goods to the imported HRS, which is consistent with findings from previous *SIMA* proceedings.[425]

Parties opposing the imposition of safeguard measures argued that some of the imported HRS is of a higher quality than the domestic HRS. They also argued that the domestic producers cannot produce some of the subject imports and that the domestic industry cannot ship to Western Canada. The Tribunal considered these arguments not to be relevant to a like-product analysis in the context of this safeguard inquiry. Those arguments may be relevant in the context of a like-product analysis under *SIMA* where parties can argue that there is more than a single class of goods within the definition of like goods or in the context of an exclusion request. However, the Order expressly indicates that HRS constitutes a single class of goods and specifically instructed the Tribunal not to hear any motion to exclude any good from a class of goods or that would otherwise limit the scope of the inquiry, determination or recommendations.

425. *HRS 4th Review* at paras. 31-36; *HRS 3rd Review* at paras. 73-76; *HRS* 2nd Review at paras. 38-41; *HRS 1st Review* at paras. 56-59; *HRS 2nd Inquiry* at 11-12; *HRS 1st Inquiry* at 16.

Domestic producers

The domestic producers of HRS are Algoma Steel Inc. (Algoma), Stelco Inc. (Stelco), ArcelorMittal Dofasco G.P. (AMD) and Evraz Inc. NA Canada (Evraz), collectively the "domestic producers".

Parties opposing the imposition of a safeguard measure did not present any evidence or argument that there were any other significant domestic producers of HRS.

Accordingly, the Tribunal finds that the collective output of these domestic producers constitutes a major proportion of the total domestic production of HRS.

Increase in imports

The Tribunal collected the volume of imports of HRS for the POI, i.e. January 1, 2015, to June 30, 2018. Due to confidentiality reasons, the specific volumes of subject imports cannot be reproduced here.

Parties opposing the imposition of a safeguard measure argued that the subject imports have not increased such as to be sufficient for the purposes of the requirements of Canadian and international law. They argued in particular that the import volumes were stable over the POI. Parties supporting the imposition of a safeguard measure argued that the volume of subject imports has surged.

In terms of absolute volumes of HRS, there was a minimal decrease in 2016 as compared to 2015 (i.e. 1 percent), a much more substantial decrease in 2017 (i.e. 34 percent), for a net decrease of 35 percent over the three years, and a 32 percent increase in interim 2018. Although recent and sudden enough, the Tribunal found that this latter increase was not sharp enough, or significant enough. Rather, the rate of increase over interim 2017 suggested that subject imports were at most on course to return to their 2015 or 2016 levels. The increased volume of subject imports in interim 2018 was insignificant—even trivial—relative to the domestic producers' sales in Canada, and took place in the context of a growing market.

Moreover, relative to the size of the overall Canadian market, the increase in volume in interim 2018 was far from significant enough to be a cause or threat of serious injury. To add further context regarding the structure of the market, the annual consumption of HRS in Canada (i.e. total domestic production minus export sales plus imports) is approximately 8 million tonnes. Over half of domestic HRS production is consumed as substrate feedstock for further internal processing into cold-rolled and other higher-value steel products. The "other half" of domestic HRS production is traded in the merchant market, which is supplied primarily by the domestic producers (often pursuant to manufacturing supply chain contracts).

Both hot-rolled and further processed cold-rolled and corrosion-resistant steel sheet have many applications in the highly integrated Canada-U.S. automotive industry located in Southern Ontario and the adjacent Great Lakes states. Consistent with the reality of a unified cross-border automotive industry, a very large portion of the total HRS imports into Canada come from the United States—imports which have been excluded from this inquiry pursuant to the Order.[426] It

426. The volume of *total* imports, including non-subject imports from the United States, was 620,003 tonnes in 2015, 602,265 tonnes in 2016 and 735,065 tonnes in 2017. The volume in interim 2017 was 378,171 tonnes and the volume in interim 2018 was 334,554 tonnes. Exhibit GC-2018-001-012A (protected), Table 6, Vol. 2.1.

follows that HRS imports from the subject countries constitute only a small percent of total HRS imports and represent a minimal percent of the merchant market, let alone of annual Canadian HRS production or consumption.

Additionally, relative to domestic production, subject imports did not increase at all during the POI. In fact, the only movement was a decrease of 1 percentage point in 2017. In the other years of the POI, the relative volumes were flat.

Relying on publicly available Statistics Canada data, rather than the import data collected by the Tribunal for the POI, the domestic producers argued that an "increase in imports" in Q3 2018 strongly supports a finding that the U.S. section 232 measures enacted at the end of Q1 and Q2 2018 have resulted in actual diversion of HRS into the Canadian market. In this regard, they submitted that the volume of subject imports for Q3 2018 (i.e. 53,594 tonnes) exceeded the total for the first two quarters of 2018 combined and that, further, a comparison of Q3 2018 vs. Q3 2017 shows an increase of 59 percent in the volume of subject imports, while a comparison of 9-months 2018 vs. 9-months 2017 shows an increase of 31 percent. While the domestic producers acknowledge that Q3 2018 falls outside the POI, they argue that (1) the Order contemplates the consideration of the most recently available information and only specifies a start-date for the POI (with no end date); (2) it is reasonable and necessary for the Tribunal to consider the conditions prevailing in the most recent timeframe; and (3) where such information is available and demonstrates a relevant trend, it is highly germane to the Tribunal's analysis.

The parties opposing the imposition of a safeguard measure fundamentally opposed the domestic producers' reliance on the Q3 2018 data for purposes of meeting the "increase in imports" element. Their main argument is that the import volumes relied upon by the domestic producers for Q3 2018 are based on data from Statistics Canada, which differ significantly from the import volumes found in the Tribunal's Statistical Summary for HRS that were based on questionnaire responses and the application of the Tribunal's methodology for calculating non-reported volumes. They also argued that Q3 2018 data regarding an increase in imports should not be used to trigger an injury analysis that would lack the complete Q3 2018 dataset regarding financial and operating performance needed to assess injury or causation.

The Tribunal determined that the volume of subject HRS imports set out in the Statistics Canada data for the Tribunal's POI is substantially larger than those volumes shown in the confidential Statistical Summary. As well, the trends in volumes in the two data sets are different, especially from interim 2017 to interim 2018. Therefore, Statistics Canada data regarding HRS imports does not constitute reliable evidence that the Tribunal can use, and the Tribunal gave no weight to Q3 2018 evidence in its "surge" analysis described above.

Accordingly, the Tribunal concludes that subject imports of HRS are not being imported in sufficiently increased quantities.

Unforeseen developments and *GATT 1994* obligations

Having found there has not been a sufficient increase in HRS imports from subject countries, it is not necessary to consider whether an increase in imports resulted from unforeseen developments and the effect of Canada's *GATT 1994* obligations.

Serious injury

Having found no sufficient increase in HRS imports from subject countries, the Tribunal does not need to consider whether the domestic industry has experienced serious injury. Indeed, the domestic producers expressly indicated that they are not claiming serious injury.[427] For the sake of completeness, however, the Tribunal will briefly analyze whether there was evidence of serious injury.

The following table summarizes the domestic producers' performance during the POI. All financial performance data of the domestic producers, gathered by the Tribunal, including percent changes, is confidential, so that only index results can be presented.

Table 8
Summary of Domestic Performance Indicators (Index)

	2015	2016	2017	Interim 2017	2018
Practical Plant Capacity	100	102	102	100	101
Total Production	100	103	109	100	109
Production for Domestic Sales	100	109	118	100	113
Production for Export Sales	100	113	121	100	126
Capacity Utilization Rate (%)	100	101	107	100	108
Market	100	105	116	100	109
Domestic Sales from Domestic Production	100	107	116	100	113
Producers Market Share (%)	100	102	100	100	104
Total Direct Employees	100	97	102	100	106
Total Wages ($000) - Direct Employment	100	101	109	100	113
Total Hours Worked (000) - Direct Employment	100	95	102	100	110
Productivity - Tonnes/ Hour Worked (Direct)	100	108	107	100	100
Producer Inventories	100	126	184	100	150
Inventory as % of Production	100	123	168	100	138
Selling Prices					
Domestic Sales from Domestic Production	**100**	97	**117**	**100**	**109**
Total - Subject Countries	100	**84**	115	100	109
Excluded Countries	100	100	115	100	108
Total - Subject Goods Market Share	100	91	56	100	107
Excluded Countries - Market Share	100	92	113	100	80

Note(s):
1. 2015 = 100 and Interim 2017 = 100
2. Index values are notional, and there is no indexing between a full calendar year and an interim period.
3. The bolded index values under "Selling Prices" indicate the lowest price in the market for that period.
Source: Exhibit GC-2018-001-11A, Vol. 1.1 at 15, 22, 25 and 31.

The Tribunal notes that, even if it considered the increased level of imports experienced in interim 2018 to be "recent, sharp, sudden and significant", the increased imports from subject countries would not have been a principal cause of serious injury to the domestic industry.

427. Exhibit GC-2018-001-77.05, Vol. 5 at para. 7; Exhibit GC-2018-001-77.04, Vol. 5 at para. 7; Exhibit GC-2018-001-77.06, Vol. 5 at para. 7.

The performance of the domestic industry has not deteriorated. On the contrary, in interim 2018, the capacity utilization rate was 90 percent—the highest at any point during the POI[428]—and output, sales and market share were all up compared to interim 2017.[429] The domestic producers' gross margin and net income continued to improve over the POI, having their strongest financial performance in interim 2018.[430] Similarly, compared to interim 2017, the price of domestically produced HRS was stronger.[431] Cash flow was also better,[432] as were employment and wages.[433] Very few indicators were trending negatively.

Therefore the Tribunal finds that the domestic industry has not suffered significant overall impairment, i.e. serious injury.

Threat of serious injury

Given that the Tribunal has found that HRS is not being imported from subject countries in "such increased quantities" so as to permit the imposition of a safeguard measure, it is also not necessary to assess whether such an increase in imports is threatening to cause serious injury. However, the parties made extensive submissions on the question of threat of serious injury, so the Tribunal has prepared an overview of whether the evidence suggests such a threat.

As explained in Part III, a determination of threat must be based on "facts" not "conjecture", and there must be a high degree of likelihood that serious injury will materialize in the very near future. Therefore, the Tribunal focused on conditions, changes and developments in the Canadian market expected before the end of 2019.

The domestic producers argued that the increase in subject imports will be sustained by virtue of:

(1) the increased number of anti-dumping/countervailing measures in place that will likely divert volume to Canada;

(2) excess capacity on a global and country-specific basis;

(3) growth in capacity outpacing growth in demand—both globally and on a country-specific basis;

(4) China being the principal driver of global overcapacity and disruption;

(5) the U.S. 232 measures having already resulted in actual diversion of HRS to the Canadian market (citing shipments from a number of countries in Q3 2018); and

(6) the structure of the Canadian market (with global steel traders and large service centres), which allows for the importation of large quantities of HRS in a very short period of time.

In terms of likely price effects, the domestic producers submitted that the pricing activities of the subject countries over the POI indicate that injurious price undercutting will continue in the

428. Exhibit GC-2018-001-011A, Table 4, Vol. 1.1.
429. *Ibid.*, Table 5; Exhibit GC-2018-001-12A (protected), Table 12, Vol. 2.1.
430. Exhibit GC-2018-001-012A (protected), Table 17, Vol. 2.1.
431. *Ibid.*, Table 15.
432. *Ibid.*, Table 21.
433. *Ibid.*, Table 22.

future. In terms of price depression, they indicate that Algoma and AMD have been forced to reduce their respective prices in Q3 2018. In terms of forecasting the price trends without the safeguard measure, they indicate that "the domestic producers have benefited from relatively high pricing in 2018, particularly in the second and third quarter of the year."[434] However, this pricing has already peaked and is projected to decline through the end of 2019.

For their part, the parties opposed focused their submissions almost exclusively on the absence of an "increase in imports" and did not substantively address the domestic producers' threat allegations. They generally argued that there is no evidence that the trade measures by other WTO members have caused or are likely to cause trade diversion to the Canadian market. Furthermore, they noted the current, healthy state of the domestic industry and submitted that the domestic industry is far from being on the brink of a significant overall impairment.

The Tribunal is of the view that much of the evidence of threat of serious injury relied upon by the domestic producers is unsupported; and there is not a high degree of likelihood that serious injury is imminent.

As discussed above, the volume of subject imports started to trend upwards in interim 2018, and evidence was presented that this continued into Q3 2018. The domestic producers indicated that they enjoyed relatively high prices until recently due to the anti-dumping measure imposed by the Tribunal on imports from China, Chinese Taipei, India and Ukraine.[435] The Tribunal notes that the imposition of the U.S. section 232 measures caused a substantial increase in the price of steel during the same period.[436]

The U.S. section 232 measures were extended to include Canadian steel on June 1, 2018, prompting Canada to impose countermeasures on U.S. steel products effective July 1, 2018.[437] It was indicated that certain Canadian and U.S. suppliers have chosen to absorb the border charge to maintain important cross-border customer relationships.[438] It is clear to the Tribunal that a primary source for a threat of serious injury to the domestic HRS industry is the continuation of these two-way trade barriers, which are acting as a quintessential "spanner in the North American automotive works" given the importance of access to the U.S. market in general, and of the frictionless movement of steel and other inputs along cross-border manufacturing supply chains in particular.[439]

There are some grounds for concern that the domestic industry will face headwinds in the near future in terms of potentially increasing subject imports and consequent price effects. Given the Tribunal's previous finding that there was no indication of existing injury, let alone serious injury, it is, however, clear that it would take a sudden and dramatic deterioration in the state of the domestic industry's economic performance for it to suffer "significant overall impairment"—the standard that must be met for an injurious situation to be qualified as "serious", as established earlier in this report.

434. Exhibit GC-2018-001-77.05, Vol. 5 at para. 64.
435. *Ibid.* at paras. 7-8 and 64.
436. *Transcript of Public Hearing* at 200-201.
437. *Ibid.* at 201-202.
438. *Ibid.* at 204-205.
439. The domestic industry was not only able to maintain its export sales but actually increased them over the POI. Exhibit GC-2018-001-011A, Table 23, Vol. 1.1.

Such a dramatic change in the fortunes of the domestic HRS industry relative to its current positive position would logically require a future substantial surge in imports—likely at injurious low prices notwithstanding the existence of anti-dumping measures[440] against many HRS exporters. Despite the arguments presented by the domestic producers, there is insufficient evidence that such a dramatic change in circumstances is likely. Furthermore, the Tribunal has no authority to recommend a safeguard remedy against a possible future surge in imports of subject goods. Such a remedy would clearly be inconsistent with Canada's international trade obligations under the WTO *Agreement on Safeguards.*

Therefore, the Tribunal finds that the subject imports, had they been found to be increased, do not threaten serious injury to the domestic industry.

Conclusions

The Tribunal finds that there has been no significant increase in subject imports of HRS and that, in any event, it would have found no serious injury or threat thereof. In light of these findings, the Tribunal does not need to consider whether imports from Canada's free trade partners are a principal cause of the serious injury or threat thereof, and the Tribunal does not recommend a remedy in respect of HRS.

440. *Ibid.*, Table 27.

PART VIII – PRE-PAINTED STEEL

PRODUCT

The fifth class of goods considered by the Tribunal is pre-painted steel. The Order describes the class of goods as follows:[441]

> Pre-painted flat-rolled products of non-alloy and alloy steel (net including stainless steel) which are painted, varnished or coated with plastics on at least one side, in coils or cut lengths, in thicknesses up to 0.079 inches (2.0066 mm) and widths up to 61.5 inches (1562.1 mm) with all dimensions being plus or minus allowable tolerances contained in the applicable standards.
>
> The following goods are excluded:
>
> - products with a final coating of zinc-dust (a zinc-rich paint, containing by weight 70% or more of zinc); and
> - products with a substrate with a metallic coating of chromium.

The Tribunal has not previously dealt with pre-painted steel in the context of *SIMA* proceedings.

The Tribunal's key findings on methods of production and product characteristics of pre-painted steel are as follows:

- pre-painted steel (known in other jurisdictions as painted or coated steel) is a high-value-added flat-rolled steel product. It is generally produced by coating flat-rolled steel with paint;[442]
- substrates used to produce pre-painted steel include cold-rolled steel, corrosion-resistant steel and galvalume steel;[443]
- there are a wide variety of paints that provide different protective and decorative attributes, resulting in a wide range of final pre-painted steel prices;[444]
- end uses for pre-painted steel include roofing, major appliances, pre-engineered buildings, automotive parts, light fixtures and ceiling grid systems;[445] and
- a unique aspect of pre-painted steel (which constrains the ability to switch suppliers) is the importance of a consistent colour palette for replacements or extensions.[446]

SUMMARY

The Tribunal finds that pre-painted steel imported from the subject countries is not being imported in such increased quantities as to cause or threaten to cause serious injury to the domestic

441. In addition, the Department of Finance published an illustrative list of HS Codes for pre-painted steel, which are 7210.70.00.00 and 7212.40.00.00: Exhibit GC-2018-001-01A, Vol. 1 at 6.
442. Exhibit GC-2018-001-79.06, Vol. 5 at 6.
443. *Ibid.*
444. *Ibid.* at 48; *Transcript of Public Hearing* at 373-374.
445. Exhibit GC-2018-001-79.06, Vol. 5 at 6.
446. *Transcript of Public Hearing* at 413, 428.

industry. Given that a safeguard measure can only be applied if a product is being imported in such increased quantities, the Tribunal does not recommend a remedy for pre-painted steel.

ANALYSIS

The legal principles applicable to the analysis are set out in Part III of this report.

Like or directly competitive goods

To determine whether domestically produced pre-painted steel is "like or directly competitive" to the subject imported pre-painted steel, the Tribunal considered its physical and market characteristics.

Domestic pre-painted steel is identical to, or has uses and other characteristics that closely resemble, the imported pre-painted steel that is the subject of this inquiry.[447] On the basis of evidence on the record and for the purpose of this inquiry, the Tribunal finds that domestically produced pre-painted steel is a like or directly competitive good to the subject imported pre-painted steel.

Parties opposing the imposition of safeguard measures argued that some of the imported pre-painted steel is of a higher quality than the domestic pre-painted steel. They also argued that the domestic producers cannot produce some of the subject imports and that the domestic industry cannot ship to Western Canada. The Tribunal considered these arguments to be irrelevant to a like-product analysis in the context of this safeguard inquiry. Those arguments may be relevant in the context of a like-product analysis under *SIMA* where it is argued that there is more than a single class of goods within the definition of like goods or in the context of an exclusion request. However, the Order expressly indicates that pre-painted steel constitutes a single class of goods and specifically instructed the Tribunal to not hear any motion to exclude any good from a class of goods or that would otherwise limit the scope of the inquiry, determination or recommendations.

Domestic producers

The domestic producers of pre-painted steel are ArcelorMittal Dofasco G.P. (AMD), Stelco Inc. (Stelco) and Continuous Colour Coat (CCC).[448]

Parties opposing the imposition of a safeguard measure argued that there are no domestic producers of pre-painted steel in Canada as no single entity manufactures the steel substrate and paints the steel to make pre-painted steel, and, therefore, that the tolling operation used by AMD and Stelco cannot be considered domestic production. However, the Tribunal has previously stated the opposite regarding very similar finishing processes in *Aluminum Extrusions*:[449]

447. Exhibit GC-2018-001-079.06, Vol. 5 at 48.
448. In addition to their response to the Producers' Questionnaire, AMD and Stelco filed briefs and witness statements with the Tribunal whereas CCC did not file any additional materials. There was a potential domestic producer identified late in the proceeding – Jemline Strapping. Its production in 2017 is likely an insignificant part of total domestic production; accordingly, its information was not taken into account in the preparation of the Statistical Summary.
449. (17 March 2009), NQ-2008-003 (CITT) at paras. 52, 141.

> Domestic producers of aluminum extrusions may offer finishes and fabrication services as part of their aluminum extrusion manufacturing process. *Types of finishes primarily include:* mechanical, bright dip, anodizing, *electrolytic colour, powder coat and liquid paint.* Types of fabrication services primarily include: fabrication, assembly and computer numerical control (CNC) machining. *These services are offered in-house or are sub-contracted out to another firm that specializes in that particular service.*
>
> . . .
>
> With respect to finishers and fabricators of aluminum extrusion products, the Tribunal heard evidence that, when the domestic producers of aluminum extrusions outsource the fabrication or finishing of aluminum extrusion products, the subcontractors do those operations on behalf of the extruders and are essentially service providers. The extrusions that are outsourced for finishing and fabrication remain the extruder's property and are generally returned to the extruders that, in turn, sell the products to their customers. In effect, aluminum extrusion products are provided to finishers and fabricators on a tolling basis. In view of this evidence, the Tribunal is not convinced that finishers and fabricators that provide services to the aforementioned domestic producers of aluminum extrusions by performing certain processing steps on their products actually produce like goods. *Since the extruders retain ownership of the outsourced products throughout this process and then sell the finished products to their customers, the Tribunal is of the view that the products that are sent to finishers and fabricators and then returned to the domestic producers of aluminum extrusions must be considered as part of the domestic production of the extruders.*[450]
>
> [Emphasis added]

The evidence is that AMD (or Stelco, as the case may be) retain ownership of the steel substrate at all times, pay the painting company (Baycoat) for the painting, and then resell the finished goods.[451] The Tribunal is therefore of the view that AMD and Stelco are domestic producers.

Accordingly, the Tribunal considers that the collective output of the three producers listed above constitutes a major proportion of total domestic production of pre-painted steel.

Increase in imports

Table 9 shows the volume of imports of pre-painted steel for the POI, i.e. January 1, 2015, to June 30, 2018.

450. See also *Stainless Steel Round Bar* (4 September 1998), NQ-98-001 (CITT) at 10: "*As the Tribunal has determined that stainless steel round bar produced by Atlas which undergoes an intermediate process in the United States on a tolling basis should be considered part of domestic production*, the Tribunal has not revised the data on imports as shown in the import tables of its staff report" [emphasis added]. See also *Carbon Steel Welded Pipe* (11 December 2012), NQ-2012-003 (CITT) at paras. 66-68.

451. Exhibit GC-2018-001-079.06, Vol. 5 at 45.

Table 9
Total Imports
(Tonnes)

				Interim	
TONNES	**2015**	**2016**	**2017**	**2017**	**2018**
Total - Subject Countries	81,584	94,040	110,488	52,839	54,905
Total - Imports	131,432	127,278	136,307	66,522	71,439

Source: Exhibit GC-2018-001-05B, Vol. 1.1 at 16.

Parties opposing the imposition of a safeguard measure argued that these increases are not sufficient for the purposes of the requirements of Canadian and international law. They argued in particular that the import volumes were stable over the POI. Parties supporting the imposition of a safeguard measure argued that the volume of subject imports has surged.

In the Tribunal's view, these increases were neither sudden nor sharp nor significant, whether considering year-to-year, interim comparisons, or the period from 2015 to 2017.

In terms of absolute numbers, Table 9 shows that the volume of subject imports increased by approximately 12,500 tonnes in 2016 and 16,500 tonnes in 2017, for a total increase of 29,000 tonnes from 2015 to 2017. In interim 2018, the volume of subject imports increased by approximately 2,100 tonnes only. In percentage terms, these volumes represented an overall increase of 35 percent in 2017 as compared to 2015 and four percent in interim 2018 as compared to 2017.

The Tribunal does not consider that the increase in subject imports was significant. First, the increase in any given year of the POI represented "less than a boatload" of offshore pre-painted steel.[452] Further, relative to domestic production, the details of which production are confidential, subject imports increased by just one percentage point in 2016 as compared to 2015, eight percentage points in 2017 as compared to 2016, and three percentage points in interim 2018 as compared to interim 2017. Similarly, the volume of subject imports relative to domestic sales of domestic production increased by only nine percentage points in 2017 (after not having increased at all in 2016) and by four percentage points in interim 2018.[453] Finally, the additional volumes of subject imports represented a very small portion of the Canadian market. For example, the additional volume of subject imports in interim 2018 accounted for just one percent of the market.[454]

While recent enough, even if the Tribunal had considered the increase in subject imports significant, the increases were not sudden enough or sharp enough to satisfy the requirements of Canadian law or the *Agreement on Safeguards*. In particular, the increases were gradual and in

452. *Transcript of Public Hearing* at 523.
453. Exhibit GC-2018-001-13A, Vol. 1.1 at 11.
454. *Ibid.* at 15, 19.

stable magnitudes: 15 percent in 2016 over 2015 and 17 percent in 2017 over 2016. The four percent increase in interim 2018 was small and indicates that the increase is actually decelerating.

The domestic industry submitted Statistics Canada data showing an eight percent increase in the volume of subject imports in the first three quarters of 2018 as compared to the same period in 2017.[455] In terms of assessing the most recent trends in the volume of subject imports, the Tribunal determined that, in the case of pre-painted steel, Statistics Canada data were reliable and useful, with the data from earlier periods tracking closely those in the Statistical Summary.[456] However, in the Tribunal's view, this information supports the finding that the increase has not been sharp and, in fact, may be tapering off.

Accordingly, the Tribunal concludes that subject imports of pre-painted steel are not being imported in sufficiently increased quantities.

Unforeseen developments and *GATT 1994* obligations

Having found no sufficient increase in pre-painted steel imports from subject countries, it is not necessary to consider whether an increase in imports resulted from unforeseen developments and the effect of Canada's *GATT 1994* obligations.

Serious injury

Having found no significant increase in pre-painted steel imports from subject countries, the Tribunal does not need to consider whether the domestic industry has experienced serious injury. For the sake of completeness, however, the Tribunal will also briefly analyze whether there was evidence of serious injury.

The following table summarizes the domestic producers' performance during the POI. All financial performance data of the domestic producers gathered by the Tribunal, including percent changes, is confidential, so that not even index results can be presented.

The Tribunal notes that, even if it considered the increased level of imports experienced to be "recent, sudden, sharp and significant", the increased imports from subject countries would not have been a principal cause of serious injury to the domestic industry.

The performance of the domestic industry has been good throughout the POI. Domestic production and the rate of capacity utilization remained relatively stable in the POI. The domestic industry's domestic sales were stable, except for interim 2018, but the domestic producers' market share was unaffected; it remained stable for the entire POI. The inventory held by the domestic producers during the 2015 to 2017 period decreased every year; there was an increase only in

455. Exhibit GC-2018-001-080.06 (protected), Vol. 6 at 66.

456. The Tribunal conducted an analysis to assess the accuracy of the Statistics Canada import volume data regarding pre-painted steel by comparing the first half 2017 and first half 2018 Statistics Canada data with the data regarding these same periods as presented in the Tribunal's Statistical Summary for Pre-painted Steel. The Tribunal's analysis showed that its own data represented 105 percent and 100 percent of the Statistics Canada data for first half 2017 and first half 2018, respectively. Therefore, the Tribunal has concluded that the Statistics Canada data for imports of pre-painted steel in Q3 2018 is reliable and useful for the purposes of its inquiry regarding this class of goods: Exhibit GC-2018-001-079.06, Vol. 5 at 104; *Transcript of Public Hearing* at 362.

interim 2018. The industry's productivity in tonnes per hour showed a significant overall decline in 2017 and interim 2018, but at the same time both employment and wages improved significantly. While all financial performance indicators for the domestic industry are confidential, the financial performance of the domestic industry was positive and improving.[457]

Table 10
Summary of Domestic Performance Indicators (Index)

	2015	2016	2017	Interim 2017	2018
Practical Plant Capacity	100	100	111	100	100
Total Production	100	113	112	100	98
Production for Domestic Sales	100	115	112	100	97
Production for Export Sales	100	97	111	100	104
Capacity Utilization Rate (%)	100	113	101	100	98
Market	100	107	107	100	101
Domestic Sales from Domestic Production	100	115	113	100	96
Producers Market Share (%)	100	107	105	100	96
Total Direct Employees	100	100	98	100	98
Total Wages ($000) - Direct Employment	100	103	105	100	102
Total Hours Worked (000) - Direct Employment	100	98	82	100	76
Productivity – Tonnes / Hour Worked (Direct)	100	115	136	100	129
Producer Inventories	100	115	116	100	102
Inventory as % of Production	100	102	103	100	105
Selling Prices					
Domestic Sales from Domestic Production	**100**	**103**	**112**	**100**	**107**
Total - Subject Countries	100	103	105	100	102
Excluded Countries	100	105	112	100	102
Total - Subject Goods Market Share	100	107	121	100	105
Excluded Countries - Market Share	100	62	48	100	117

Note(s):
1. 2015 = 100 and interim 2017 = 100
2. Index values are notional, and there is no indexing between a full calendar year and an interim period.
3. The bolded index values under "Selling Prices" indicate the lowest price in the market for that period.
Source: Exhibit GC-2018-001-13A, Vol. 1.1 at 14, 21, 24 and 30.

Moreover, the evidence does not indicate that the increased imports were a principal cause of any injury. A key factor in establishing a causal nexus between the subject imports and serious injury is evidence that the imports have significantly undercut, depressed or suppressed the prices of the domestically produced like or directly competitive goods. In this respect, the record shows little or no evidence of any price undercutting, price depression or price suppression.[458]

Stelco alleged that "[e]vidence of price suppression related to Safeguard Country price undercutting is also evident from the Tribunal's record". The domestic industry argued that the Tribunal should compare its selling prices to importers' purchase prices, i.e. exporters' selling prices, to properly assess price competition. If the Tribunal were to accept this methodology for this

457. Public submissions indicated that "[t]he domestic industry's profitability did increase on a consolidated basis over the POI". Exhibit GC-2018-001-079.05, Vol. 5 at 19.
458. Exhibit GC-2018-001-13A, Vol. 1.1 at 24.

product, such an analysis would show significant price undercutting;[459] however, there would remain no evidence of price depression or price suppression.

Stelco argued that the Tribunal should find price suppression in the sense of preventing price increases that would have otherwise likely occurred. It compared U.S. and Canadian pricing and argued that Canadian prices were lower than the historic gap would suggest and that, therefore, there was price suppression. However, the mere existence or widening of such a gap is not sufficient evidence of price suppression. There was neither evidence of rising costs showing a "cost-price squeeze" that is often the reason for price suppression, nor evidence that the domestic industry attempted to raise overall prices but was unsuccessful due to competition from imports.

Therefore the Tribunal finds that the domestic industry did not suffer significant overall impairment, i.e. serious injury, and that even if it did, the subject imports are not a principal cause thereof.

Threat of serious injury

Given that the Tribunal has found that pre-painted steel is not being imported from subject countries in "such increased quantities" so as to permit the imposition of a safeguard measure, it is also not necessary to assess whether such an increase in imports is threatening to cause serious injury. However, the parties made extensive submissions on the question of threat of serious injury, so the Tribunal has prepared an overview of whether the evidence suggests such a threat.

As explained in Part III, a determination of threat must be based on "facts" not "conjecture", and there must be a high degree of likelihood that serious injury will materialize in the very near future. Therefore, the Tribunal focused on conditions, changes and developments in the Canadian market expected before the end of 2019.

The Tribunal is of the view that much of the evidence of threat of serious injury relied upon by the domestic producers is unsupported and there is not a high degree of likelihood that serious injury is imminent.

AMD pointed to excess capacity in the subject countries and the risk of diversion as a result of recent trade measures, in attempting to show that subject imports will increase further (and compete at lower prices).

Firstly, the Tribunal is of the view that the argument predicting a significant increase in the volume of subject imports in the future is speculative and was not adequately supported by positive evidence. Overcapacity alone does not establish that subject imports will increase in volume in the near to medium term.[460]

Secondly, it should be recalled that trends in recent volumes of subject imports do not by themselves show that further increases will occur. Absolute volumes of subject imports show only a

459. *Ibid.* at 22, 24.

460. Although the capacity reported by foreign producers that responded to the Tribunal's questionnaire is small in relation to the capacity cited in the evidence submitted by AMD, it is not reflective of significant overcapacity unlike the latter data: Exhibit GC-2018-001-13A, Vol. 1.1 at 49.

marginal increase in interim 2018. It is also notable that subject import prices increased throughout the POI.[461]

On the contrary, witnesses questioned by the Tribunal did not see an increase in future imports or a risk of diversion.[462] This is confirmed by the Tribunal's data set out above, which essentially saw steady volumes of subject imports, especially when compared to domestic production.

Regarding diversion in the future, the Tribunal also took into account the various trade measures imposed in the United States.

Regarding the impact of the AD/CV measures covering pre-painted steel in the United States, these date back to 2016 for the majority of sources shipping to Canada, i.e. Korea, Chinese Taipei and China.[463] Most of any diversion resulting from these measures was absorbed into the Canadian market some time ago.

The Tribunal also notes that U.S. section 232 measures seem to have had no effect regarding diversion. On the contrary, as described above, in the latest interim period, i.e. immediately prior to and just after the imposition of U.S. section 232 measures, subject imports increased the least during all the POI. Subject imports in Q3 2018 followed the same pattern of modest growth. The evidence thus does not point to the likelihood that injurious levels of pre-painted steel will be diverted from the United States into Canada in the near future.

The European Union's final safeguard measures continue to allow for imports into that market, at normal tariff rates, of volumes based on the average volume of imports into the European Union over the past three years plus five percent. The domestic industry essentially withdrew its claims that these measures would result in diversion in the immediate future of subject goods otherwise destined for the European Union.[464] In the Tribunal's opinion as well, the evidence does not point to the likelihood that injurious levels of pre-painted steel will be diverted from the European Union into Canada in the near future.

Accordingly, the Tribunal concludes that the facts on the record do not support the conclusion that the current volume of imports is likely to increase significantly in the near future.

Further, the subject imports, despite allegedly undercutting domestic prices, did not cause serious injury, and the Tribunal sees no evidence that there is any change in circumstances so that they threaten to cause serious injury in the near future. This is especially true given the relative lack of injury in the POI and the marginal increases in recent import volumes. Absent some impending dramatic change in circumstances (which was not shown by the evidence), the subject imports do not pose a threat of injury, i.e. they will not seriously injure the domestic industry in the near future.

461. *Ibid.* at 24.
462. *Transcript of In Camera Hearing* at 161-162, 173-174.
463. Exhibit GC-2018-001-13A, Vol. 1.1 at 34. Witnesses stated that the diversion of Chinese goods as a result of U.S. measures occurred early in this period but that goods from Chinese Taipei and Korea (which were subject to lower duties in the United States) continued to be shipped to the United States until the imposition of U.S. section 232 measures; *Transcript of Public Hearing* at 359.
464. Exhibit GC-2018-001-079.06A, Vol. 5 at 1-16.

Therefore, the Tribunal finds that the subject imports, had they been found to be imported in increased quantities, do not threaten serious injury to the domestic industry.

Conclusions

The Tribunal finds that there has been no significant increase in subject imports of pre-painted steel and that, in any event, it would have found no serious injury of threat thereof. In light of these findings, the Tribunal does not need to consider whether imports from Canada's free trade partners are a principal cause of the serious injury or threat thereof, and the Tribunal does not recommend a remedy in respect of pre-painted steel.

PART IX – STAINLESS STEEL WIRE

PRODUCT

The sixth class of goods considered by the Tribunal is stainless steel wire (SSW). The Order describes this class of goods as follows:

> Cold drawn and cold drawn and annealed, stainless steel round wire, up to 0.256 inches (6.50 mm) in maximum solid cross-sectional dimension; and cold drawn, and cold drawn and annealed, stainless steel cold-rolled profile wire, up to 0.031 square inches (0.787 sq. mm) in maximum solid cross-sectional area.[465]

The first part of this definition is similar to the description of SSW in a 2004 injury inquiry by the Tribunal. However, that proceeding did not include profile wire.[466] There were also numerous exclusions made in the 2004 proceeding, including stainless steel wire in diameters of 0.032 inches (0.813 mm) and smaller and nickel-coated stainless steel wire.[467] Nonetheless, in those proceedings, the Tribunal made numerous factual findings in terms of methods of production and product characteristics for SSW. On the basis of the evidence on the record for this inquiry,[468] the Tribunal considers those findings to still be relevant, takes judicial notice and adopts the following:

- The production process is essentially the cold drawing of stainless steel rod of appropriate alloy composition through one or more dies. As the wire is drawn to smaller diameters, annealing operations are performed to allow it to be further drawn to its finished size and specification.[469]
- The wire may be treated to provide special surface conditions or appearance, including matte and diamond finishes. In addition, coatings may be applied to serve as lubricants in subsequent processing or manufacturing operations.[470]
- Much of the stainless steel wire consumed in Canada is sold for further manufacture, in various categories that include cold-heading and forming wire, fine wire (wire in diameters of 0.032 inches 0.813 mm and smaller), belting wire and spring wire. The wire is used in the manufacture of various products, such as cold-headed pins, nails, bolts, screws, rivets, hinges, springs, racks, grills, hooks, rings and similar formed parts, filters, wire lines and continuous wire conveyor belts.[471]
- Stainless steel wire can also be sold in the form of finished products, such as welding wire in metal-inert gas, tungsten-inert gas and sub-arc product forms, and lashing wire. Welding wire is used, among other things, as part of a welding process to bond parts

465. In addition, the Department of Finance published an illustrative list of HS Codes for SSW: 7223.00.00.10 and 7223.00.00.20. "Backgrounder – Support for Canadian Steel Producers Through Provisional Safeguards on Certain Steel Imports", Department of Finance Canada, October 11, 2018; Exhibit GC-2018-001-01A, Vol. 1 at 6.
466. *Certain Stainless Steel Wire* (30 July 2004), NQ-2004-001 (CITT) [*SSW Injury Inquiry*] and *Stainless Steel Wire* (29 July 2009), RR-2008-004 (CITT).
467. *SSW Injury Inquiry* at paras. 96-118.
468. For instance, see Tom Dodds' Statement at Exhibit GC-2018-001-82.05 (protected), Vol. 6 at paras. 4-9; *Transcript of Public Hearing* at 980-983 and 987.
469. *SSW Injury Inquiry* at para. 14.
470. *Ibid.* at para. 15.
471. *Ibid.* at para. 17.

used in manufacturing equipment and products made from stainless steel plate or tubes. Lashing wire, due to its strength and corrosion resistance, is used in the telephone and cable industries to support signal-carrying cables made of other materials.[472]

- All the different types of wire also have similar market characteristics, such as pricing structure and channels of distribution, as well as the same general uses that require corrosion-resistance properties.[473]

SUMMARY

The Tribunal finds that SSW imported from the subject countries (other than goods originating in Korea, Panama, Peru, Colombia and Honduras) is being imported in such increased quantities and under such conditions as to be a principal cause of a threat of serious injury to the domestic industry. Therefore, the Tribunal recommends a remedy in the form of a TRQ on imports of SSW from subject countries, other than goods originating in Korea, Panama, Peru, Colombia, Honduras, or countries whose goods are eligible for GPT treatment.

ANALYSIS

The legal principles applicable to the analysis are set out in Part III of this report.

Like or directly competitive goods

To determine whether domestically produced SSW is "like or directly competitive" to the subject imported SSW, the Tribunal considered its physical and market characteristics.

SSW can be produced in a variety of sizes and diameters across a wide range of product types, including different alloying elements, chemical makeup, finish or treatments, according to client specifications and product type.[474] However, the Tribunal determined that domestic SSW and imported SSW compete with one another (i.e. similar pricing structure and channels of distribution) and have the same general end uses.[475] Therefore, on the basis of evidence on the record and for the purpose of this inquiry, the Tribunal finds that domestically produced SSW is like or directly competitive goods to the imported SSW.

RGL Reservoir Management Inc. (RGL), an end user of SSW in Alberta, argued that CWI Industries, Ltd. (CWI), the sole domestic producer of SSW, does not produce the specific type of SSW (i.e. cold-rolled shaped SSW) that it requires for building wire wrap screens used for sand control in heavy oil production.[476] The Tribunal considered this argument not to be relevant to a like-product analysis in the context of this safeguard inquiry. That type of argument may be relevant in the context of a like-product analysis under the *Special Import Measures Act* (*SIMA*), where parties can argue that there is more than a single class of goods within the definition of like goods or in the context of an exclusion request. However, in the context of this particular safeguard inquiry, the Order expressly indicates that SSW constitutes a single class of goods and specifically instructed the Tribunal not to hear any motion to exclude any good from a class of goods or that would otherwise limit the scope of the inquiry, determination or recommendations.

472. *Ibid.* at para. 18.
473. *Ibid.* at para. 40.
474. Exhibit GC-2018-001-81.05, Vol. 5 at 48-49.
475. For example, see *Transcript of Public Hearing* at 980-981.
476. Exhibit GC-2018-001-81.03, Vol. 5 at 3.

Domestic producers

CWI (or the domestic industry) is the sole Canadian producer of SSW. In addition to its current facility in Perth, Ontario, it also has production facilities in the United States and the United Kingdom.[477]

Parties opposing a safeguard measure did not present any evidence or argument that there were any other significant domestic producers. Therefore, the Tribunal finds that the output of CWI constitutes the total domestic production of SSW.

Increase in imports

The Tribunal collected data on the volume of imports, from January 1, 2015, to June 30, 2018. Due to confidentiality reasons, the specific volumes of subject imports cannot be reproduced here. Therefore, where possible, the Tribunal relies on the publicly available percent change tables for the analysis that follows.

Parties opposing a safeguard measure took the position that the volume of imports from subject countries has not increased sufficiently to justify the imposition of such a measure under Canadian law and the *Agreement on Safeguards*. In contrast, CWI submitted that there was a recent, sudden, sharp and significant increase in the volume of subject imports in interim 2018 as compared to interim 2017 in both absolute and relative terms.

Compared to the six other products, the actual tonnages of the subject imports (as well as those of the excluded imports) were very small throughout the POI. Therefore, the changes in absolute volumes were also very small. In percentage terms, the volume of subject imports decreased by 1 percent in 2016 as compared to 2015 and increased by 9 percent in 2017 as compared to 2016, for a net increase of 8 percent over the three-year period. However, in interim 2018, the volume of subject imports increased by 82 percent as compared to interim 2017.[478]Moreover, the rate of the increase in subject imports in interim 2018 was such that the volume of subject imports for 2018 as a whole was on pace to exceed the volumes of subject imports for any of the preceding years of the POI.

The increase in subject imports relative to domestic production in interim 2018 was almost as sharp. Relative to domestic production, the volume of subject imports decreased by 20 percentage points in 2016, increased by 3 percentage points in 2017, and then increased by 84 percentage points in interim 2018 as compared to interim 2017.[479] In fact, in interim 2018, the volume of subject imports rose to exceed the volume of domestic production.

Therefore, the increase in subject imports of SSW in interim 2018 was clearly recent, sudden, and sharp enough to cause injury to CWI. The increase was also significant enough when viewed in the context of the Canadian market, which grew by 21 percent in interim 2018. Relative to domestic sales from domestic production, the volume of subject imports in interim 2018 was 142 percentage points greater than in interim 2017.

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477. In March 2017, CWI announced the closure of its facility in Erin, Ontario, and the closure was completed as of March 2018. The closure is discussed in further detail later in this chapter.
478. Exhibit GC-2018-001-15A, Table 7, Vol. 1.1.
479. Exhibit GC-2018-001-15B, Table 9, Vol. 1.1.

CWI submitted that publicly available Statistics Canada data support the conclusion that the surge in subject imports continued into Q3 2018 and October 2018.[480] The Tribunal determined that, in the case of SSW, these Statistics Canada data do not provide a reasonably reliable indication of subject imports beyond the POI, because the trends and volumes in the Statistics Canada data are very different than those in the Statistical Summary.[481]

In conclusion, the volume of subject imports of SSW increased in interim 2018 both absolutely and relatively, and these increases have been recent, sharp, sudden and significant.

Unforeseen developments and *GATT 1994* obligations

Having found that there has been such an increase in subject imports in interim 2018, the Tribunal must consider whether the increase resulted from unforeseen developments and the effect of Canada's *GATT 1994* obligations.

Unforeseen developments

CWI submitted that the significant increase in imports in 2018 resulted from the following unforeseen developments: (1) trade measures and the subsequent diversion of SSW imports; (2) the Canadian countermeasures against the United States; and (3) global overcapacity for SSW.[482] It also noted that the Order already recognized the following events in terms of unforeseen developments: ". . . global overcapacity in steel production and the fact that a number of WTO members have taken or are considering taking measure to restrict importation of steel into their markets . . .".

Parties opposing a safeguard measure submitted that these developments were not "unforeseen" and that they could not be linked to the increase in subject imports.

For the reasons that follow, the Tribunal finds that the increase in subject imports was due to a combination of unforeseen developments.

There are no industry publications that track global SSW capacity.[483] As such, in addition to the information in its Statistical Summary, the Tribunal relied on the global overcapacity data for steel generally as a proxy for overarching trends in the SSW market.

The developments in excess capacity for steel generally have been described in Part II above. Here the Tribunal recalls that the continuing unresolved and substantially increasing overcapacity in world steel production could not be foreseen in 1994.

As for SSW specifically, Table 41 of the Tribunal's Statistical Summary provides an overview of the responses provided by five foreign producers. Even based on this small sample, it is clear that foreign production of subject goods, let alone capacity, is many times larger than the total Canadian market. The Tribunal finds this to be a strong indication of the extent of overproduction and excess capacity of SSW.

480. Exhibit GC-2018-001-81.05, Vol. 5 at 16-18.
481. Exhibit GC-2018-001-15A, Table 6, Vol. 1.1 and Exhibit GC-2018-001-82.05 (protected), Vol. 6 at 96.
482. Exhibit GC-2018-001-82.05 (protected), Vol. 6 at 7.
483. Exhibit GC-2018-001-81.05, Vol. 5 at paras. 98 and 101.

Additionally, Table 41 indicates that a large majority of foreign production of SSW is intended for export markets. Furthermore, export sales to Canada increased by 61 percent in interim 2018 while export sales to the United States decreased by 6 percent in the same period.[484] The Tribunal finds this to be evidence of the diversion of exports by the subject countries, likely due to market uncertainty preceding the final imposition of U.S. section 232 measures.

In this regard, CWI testified that it had seen a "big change" in the presence of the subject imports over the past year as "their focus . . . has moved away from the US."[485] CWI also submitted that it had experienced an immediate impact of section 232 measures in Canada, as the volume and offers of subject imports increased significantly.[486]

The Tribunal has no doubt that overcapacity, generally, in combination with the effect of the U.S. section 232 measures, led to the particular surge of SSW into Canada in interim 2018, and that these circumstances were unforeseen.

GATT 1994 obligations

In 1994, Canada agreed not to impose quantitative restrictions and bound the tariff for SSW at zero percent.[487] The effect of the concession, and the obligation arising under Articles II:1(a) and XI of *GATT 1994*, was to prevent Canada from imposing tariffs above the bound tariff rate or quotas as a means of addressing the significant increase in imports of SSW in 2018.

Serious injury

Having found that there was a significant increase in subject imports in interim 2018, the Tribunal has to determine whether such an increase is a principal cause of serious injury to the domestic industry.

As the Tribunal has concluded that a significant increase in subject imports of SSW only occurred in interim 2018, it follows that any injury suffered prior to that period cannot be attributed to those increased imports. Accordingly, the Tribunal will focus on developments during the second half of 2017 and interim 2018, but will also place them in the context of the entire POI.

CWI argued that the subject imports undercut its pricing consistently and by significant margins and that this price undercutting has forced its pricing downward, which was an important part of the reason that it was forced to close its facility in Erin, Ontario.[488] It also argued that the imposition of the U.S. section 232 measures caused an immediate diversion of subject imports into Canada and that the Canadian countermeasures displaced U.S. imports with those from subject countries. Without any safeguard protection, CWI indicated that it will be forced to seriously evaluate moving its remaining production equipment to its U.S. facilities.

Parties opposing the imposition of safeguard measures were mostly unrepresented by counsel and, thus, did not have access to the Tribunal's confidential record. They generally argued that the standard for "serious injury" in the safeguard context is "very high" and "exacting" and that

484. Exhibit GC-2018-001-15A, Table 41, Vol. 1.1.
485. *Transcript of Public Hearing* at 991.
486. Exhibit GC-2018-001-82.05 (protected), Vol. 6 at 79-81.
487. Exhibit GC-2018-001-066.43, Vol. 1 at 33 *et seq.*
488. Exhibit GC-2018-001-81.05, Vol. 5 at 51.

the evidence on the record did not meet that high standard. They also argued that the trends in the imports from subject countries did not coincide with changes in the injury factors and that any injury caused by other factors must not be attributed to the increase in subject imports. Additionally, RGL submitted that imports of shaped SSW are priced similarly to domestically produced shaped wire and are, as a result, not a cause of injury.[489] RGL further submitted that CWI has not been supplying the oil and gas market in Western Canada and, therefore, that CWI should not be impacted by subject imports in that region.[490]

The following table summarizes the domestic industry's performance during the POI. As all financial performance indicators for the domestic industry, including the percent changes, are confidential, they have not been included in the table.

Table 11
Summary of Domestic Performance Indicators (Index)

				Interim	
	2015	**2016**	**2017**	**2017**	**2018**
Practical Plant Capacity	100	100	100	100	59
Total Production	100	134	137	100	50
Production for Domestic Sales	100	128	129	100	44
Production for Export Sales	100	139	146	100	57
Capacity Utilization Rate (%)	100	134	137	100	84
Market	100	98	129	100	121
Domestic Sales from Domestic Production	100	99	104	100	59
Producers Market Share (%)	100	101	81	100	49
Total Direct Employees	100	91	93	100	74
Total Wages ($000) - Direct Employment	100	95	94	100	65
Total Hours Worked (000) - Direct Employment	100	90	91	100	74
Productivity - Tonnes/ Hour Worked (Direct)	100	148	151	100	68
Producer Inventories	100	98	86	100	57
Inventory as % of Production	100	74	62	100	114
Selling Prices					
Domestic Sales from Domestic Production	100	**87**	89	**100**	**105**
Total - Subject Countries	**100**	101	**100**	100	103
Excluded Countries	100	95	94	100	105
Total - Subject Goods Market Share	100	104	83	100	150
Excluded Countries - Market Share	100	95	139	100	120

Note(s):
1. 2015 = 100 and Interim 2017 = 100
2. Index values are notional, and there is no indexing between a full calendar year and an interim period.
3. The bolded index values under "Selling Prices" indicate the lowest price in the market for that period.
Source: Exhibit GC-2018-001-15A, Vol. 1.1 at 15, 22, 25 and 31.

In terms of trends for key performance indicators, CWI's performance generally suffered in interim 2018 as compared to interim 2017. Practical plant capacity, total production, production for domestic sales and export sales and capacity utilization decreased, significantly so, in some instances. Similarly, productivity, total employment, total hours worked and wages were also down.

489. Exhibit GC-2018-001-81.03, Vol. 5 at 7.
490. *Ibid.*

The domestic industry's share of the market also fell significantly as it lost share to both subject imports and U.S. imports, although more to the former.

CWI submitted more than a dozen account-specific allegations of either lost sales and/or price depression due to competition from subject imports, with some of those related to lost sales occurring in interim 2018.[491] The allegations were uncontroverted and show lost sales to two different subject countries.

However, the financial performance indicators show that, both in terms of percentage and on a per-unit basis, gross margin and net income improved from 2015 to 2017.[492] Further, in interim 2018, gross margins remained flat while net income became positive for the first time during the POI.[493] Return on investment and cash flow also improved in interim 2018. In the Tribunal's view, the positive financial results in interim 2018 reflect the diverse effects of the sale in March 2018 of CWI's facility in Erin, Ontario. For example, without the one-time proceeds from the sale, CWI would have experienced another loss at the net income level in interim 2018.[494]

It is clear that CWI's otherwise weakened performance in interim 2018 stems principally from the closure of the Erin plant that was completed in March 2018. By way of example, practical plant capacity decreased by 41 percent between interim 2018 and interim 2017. The same can be said for other factors like total production, production for domestic and export sales, market share as well as the employment/wage factors.

However, the Tribunal does not accept CWI's argument that the closure of the Erin facility was due to the increase in subject imports. The Tribunal first notes that CWI itself did not identify the increase in imports as a *principal* cause of the closure; rather, it acknowledged that a variety factors contributed to the decision to close it.[495] Further, the decision to close the facility took place *before* the increase in subject imports in interim 2018; the closure was announced in March 2017.[496] As such, the closure cannot be attributed to the increase in imports in interim 2018, and CWI's counsel went as far as acknowledging this conclusion in responding to questions from the Tribunal.[497]

The Tribunal also considered whether subject imports had significantly undercut, depressed or suppressed the prices of domestically produced like or directly competitive goods. While there is evidence of price undercutting in interim 2018, there is little or no evidence of price depression or price suppression during this time.

CWI's average selling price increased in interim 2018 as compared to interim 2017 and it remained the price leader in the market.[498] However, on the basis of the Tribunal's confidential record, it is clear that the prices from certain countries such as Germany and Japan were very high

491. Exhibit GC-2018-001-82.05 (protected), Vol. 6 at 80-81, 104.
492. Exhibit GC-2018-001-16A (protected), Table 17, Vol. 2.1.
493. *Ibid.*
494. Exhibit GC-2018-001-82.05 (protected), Vol. 6 at 8 and 27.
495. *Ibid.* at 49; *Transcript of Public Hearing* at 997-998.
496. *Ibid.* at 997.
497. *Ibid.* at 1012.
498. Exhibit GC-2018-001-16A (protected), Tables 13 and 15, Vol. 2.1. Comparing CWI's average selling price to the average landed price of subject imports indicates substantial undercutting in both interim 2017 and 2018.

and, despite their small volumes, disproportionally affected the average selling price of subject imports. On the other hand, imports from China and India, two of the largest sources of subject imports, were priced much lower and undercut CWI's selling prices.

As for price depression, CWI submitted that, following the closure of the Erin plant, its product mix shifted toward higher-priced products.[499] Therefore, comparing CWI's average price in interim 2018 to its average price in interim 2017 is not useful in terms of identifying whether there was price depression. Further, according to CWI, the U.S. section 232 measures caused an artificial increase in SSW prices across North America in 2018.[500] Finally, CWI submitted pricing data by type of SSW, which show some products having higher prices in Q2 2018 compared to Q1 2018 and others having lower prices, but with the "total" price still being higher.[501]

As mentioned, CWI's gross margin percentage remained stable from interim 2017 to interim 2018 so there was no price suppression.

On the basis of the preceding, the Tribunal finds that, even if the position of the domestic industry suffered a significant overall impairment, i.e. serious injury, in interim 2018, the increase in subject imports is not a principal cause of that injury. Most of the negative performance in interim 2018 stems from the closure of the Erin facility which, as determined above, was itself not caused by the increase in the subject imports.

The Tribunal will go on to examine whether the increase in subject imports is a principal cause of a threat of serious injury.

Threat of serious injury

The Tribunal will now determine whether the increase in subject imports in interim 2018, absent the imposition of safeguard measures, is a principal cause of threat of serious injury. The Tribunal primarily focused its threat analysis on the predicted changes and developments in the Canadian market expected during the remainder of 2019.

CWI submitted that certain countries continue to ship SSW to Canada in high volumes notwithstanding the imposition of the provisional safeguard measures, and that the increase is likely to continue in light of the global overcapacity and the diversionary effect of global trade measures. CWI argued that the subject imports will continue to result in price undercutting, price depression and price suppression, and indicated that it was increasingly vulnerable to low-priced subject imports. Citing the closing of its Erin facility and its continued poor financial performance, CWI suggested that, without the protection of safeguard measures, it would have no choice but to move its remaining Canadian production to the United States.

Parties opposing the imposition of safeguard measures were mostly unrepresented by counsel and thus did not have access to the Tribunal's confidential record. As such, relying heavily on the jurisprudence from the WTO, they generally argued that the standard for "serious injury", even in the context of threat, is "very high" and "exacting", and that the evidence on the record did not meet that high standard. They also argued that any threat of serious injury must be "clearly

499. Exhibit GC-2018-001-81.05, Vol. 5 at 54.
500. Exhibit GC-2018-001-82.05 (protected), Vol. 6 at 24 and 32; and Tom Dodds' Statement of Evidence (*ibid.* at 75).
501. *Ibid.* at 75.

imminent" and such a determination shall be based on facts and not merely on allegations, conjecture or remote possibility.

Additionally, and similar to its above-noted arguments regarding serious injury, RGL submitted that imports of shaped SSW are priced similarly to domestically produced shaped wire and are, as a result, not a cause of threat of injury.[502] RGL further submitted that CWI has not been supplying the oil and gas market in Western Canada and, therefore, CWI should not be impacted by imports in that region.[503] RGL argued that increase imports of shaped SSW will likely stay at current levels.[504]

The Tribunal will conduct its threat analysis by considering the following: the current state of the domestic industry and the SSW market; the likely future volume of subject imports in light of the diversionary trade remedies and global overcapacity; and the effect of continuing increases in subject imports on the domestic industry.

The Tribunal notes the following comments made by CWI's counsel: "The catalyst for this whole safeguard proceeding . . . is the 232 imposition of duties in March 2018, but unlike the case for some other products, with stainless steel wire you have a domestic industry that was already suffering in terms of its sales in Canada even before the 232."[505] The Tribunal agrees with this assessment. CWI was financially vulnerable even before the collective effect of the diversionary trade remedy measures and global overcapacity. It remains on the verge of becoming unprofitable and shuttering its Perth facility, notwithstanding the temporary financial boost that resulted from the sale of its Erin facility.

Historically, imports from the United States have accounted for a significant share of the Canadian SSW market, i.e. approximately 35 percent from 2015 to 2017.[506] However, the extension of U.S. section 232 measures to Canada and Canada's imposition of countermeasures have fundamentally changed trade flows between Canada and the United States. Prior to the imposition of the U.S. section 232 measures, CWI considered North America to be "one market".[507] For the time being, CWI (and SSW suppliers from around the world) will be less able to export to the United States due to section 232 measures. Further, there is less need for U.S. suppliers to look to export markets, given the domestic market opportunity created by the U.S. section 232 protection.

On the other hand, the same U.S. section 232 measures give offshore suppliers an important reason to look to Canada. As more fully set out above in the Unforeseen Developments section, the steel industries of the subject countries exhibit significant overcapacity generally and, on the basis of the responses from foreign exporters, specifically with respect to SSW. There is no evidence to suggest that demand will increase significantly in other markets to absorb the excess capacity. Also, trade remedy measures in the European Union against SSW imports from India will continue to restrict India's options with regard to that market.

502. Exhibit GC-2018-001-81.03, Vol. 5 at 7.
503. *Ibid.*
504. Exhibit GC-2018-001-81.03, Vol. 5 at 8.
505. *Transcript of Public Hearing* at 1007.
506. Exhibit GC-2018-001-81.05, Vol. 5 at 50.
507. *Transcript of Public Hearing* at 990.

The evidence indicates that the domestic SSW market will be, at best, stable in the near- to medium-term with a potential, slight slowdown in Western Canada.[508] Currently, CWI cannot fully supply the domestic market and, therefore, part of the demand must be met by imports. In the Tribunal's view, the phenomenon of increased *subject* imports experienced in the Canadian market in interim 2018 is likely to continue in the immediate future if safeguard measures are not imposed. Witnesses stated that subject imports have already been filling the gap left by U.S. imports of SSW,[509] thus indicating that exporters in subject countries have increased their interest and presence in the Canadian market. In terms of supply, the subject imports are being pushed out of their domestic and other export markets by continuing and increasing excess capacity in the subject countries.[510] In terms of demand, the Canadian market is relatively high-priced and has no trade restrictions.

CWI further testified that since the imposition of the Canadian countermeasures, purchasers who historically purchased SSW from the United States have been pushed to shop around to avoid the additional 25 percent cost.[511] They have noticed a notable decrease in U.S. SSW available in the Canadian market since the surge of imports in interim 2018.[512]

Similarly, the subject imports are competing against domestic SSW. CWI provided an uncontested, comprehensive list of more than a dozen account-specific allegations of either lost sales and/or price depression due to competition from subject imports. By far the largest loss of revenue occurred in July 2018 when CWI was significantly undercut by SSW from India.[513] The list shows the severe degree of price undercutting faced by CWI in relation to the subject imports, including several allegations from recent months in Q3 2018.[514] The Tribunal agrees with CWI's assertion that the result of this recent and consistent undercutting is resulting in lower domestic selling prices as CWI attempts to meet or beat the prices of the subject imports.[515]

The Tribunal also heard testimony that CWI has seen significant price increases for its feedstock (i.e. wire rod) from U.S. suppliers.[516] CWI indicated that prices for its feedstock from the United States have generally increased, notwithstanding the fact that these imports are no longer covered by the U.S. section 232 measures and Canada's countermeasures.[517] Given the recent and consistent pricing pressure experienced by CWI due to the subject imports, the Tribunal can only conclude that CWI will not be able to raise its prices to cover these cost increases and will experience price suppression.

All the above leads the Tribunal to conclude that increasing volumes of low-priced subject imports will continue to compete with and displace sales of domestic SSW, take sales and market share away from an already vulnerable domestic industry, and cause either significant price suppression or outright price depression. Keeping in mind the precarious state of CWI and the early signs of injury seen in interim 2018, the evidence shows that such significant future negative price

508. Exhibit GC-2018-001-81.05, Vol. 5 at 70; *Transcript of Public Hearing* at 1006.
509. Exhibit GC-2018-001-81.05, Vol. 5 at 50-51; *Transcript of Public Hearing* at 991.
510. Exhibit GC-2018-001-15A, Table 41, Vol. 1.1.
511. Exhibit GC-2018-001-81.05, Vol. 5 at 19. *Transcript of In Camera Hearing* at 289-290.
512. Exhibit GC-2018-001-81.05, Vol. 5 at 50-51.
513. *Ibid.* at 81.
514. *Ibid.* at 76-78; Exhibit GC-2018-001-82.05 (protected), Vol. 6 at 104.
515. Exhibit GC-2018-001-81.05, Vol. 5 at 70.
516. *Transcript of Public Hearing* at 1002.
517. *Ibid.* at 988.

effects would result in significant lost profits and financial performance at unsustainable levels in the near future.

In sum, the Tribunal concludes that the continued increase in subject imports is likely to be a principal cause of a threat of serious injury. In view of these circumstances, the Tribunal concludes that, without the protection afforded by safeguard measures, the injury experienced by CWI that began in interim 2018 will imminently become serious, and that the increase of subject imports is a principal cause thereof.

Given that the evidence indicates that the increase in subject imports is a principal cause of threat of serious injury, the Tribunal will address whether there are other causes of the threat of serious injury which are more important.

First, the Tribunal considered whether CWI's decision to shut its Erin facility was a more important cause of future serious injury than the subject imports. There is no doubt that the closure of the Erin facility created a void in the market, as CWI could not immediately increase production volumes to offset the loss of capacity, especially in the face of large volumes of low-priced subject imports.[518] However, the Tribunal heard that CWI transferred some of the equipment from Erin to its remaining Perth facility, with the hope of being able to manufacture the lower-end products that had previously been produced at Erin.[519] CWI has also made capital investments to increase its capacity for shape/profile wire and welding wire.[520] With additional crew levels, CWI will be able to further increase capacity and production.[521] Therefore, in the future, assuming the absence of injurious volumes of subject imports, CWI will be able to produce a large enough volume of SSW at its Perth facility to make it a viable and potentially profitable operation. Accordingly, the closure of the Erin facility is not a more important cause of threat of serious injury than the subject imports.

The Tribunal also considered the effect of further declines in export sales by CWI. As indicated in the Statistical Summary, CWI's export sales had already declined by 43 percent in interim 2018 compared to interim 2017. Nonetheless, in interim 2018, its volume of export sales was larger than the volume of domestic sales. Although the loss of additional export volumes will have a negative effect on CWI, it will not be more important than the negative effect of the subject imports. While the closure of the Erin facility leaves CWI capacity-constrained (in that it cannot fully meet domestic SSW demand), a gap has been created in the domestic market by the exit of the U.S. imports. CWI could offset lost export sales by filling this domestic market gap, thereby sustaining its Perth operation.

The Tribunal also considered RGL's argument that CWI has not been supplying Western Canada and that, therefore, it could not be impacted by subject imports in that region. However, CWI witnesses testified that it has customers in British Columbia, has made sales in Alberta over the last two years and has a distribution centre in Alberta. As such, the Tribunal does not consider this factor to be a more important cause of threat of serious injury than the subject imports.

518. Exhibit GC-2018-001-82.05 (protected), Vol. 6 at 51 and 53.
519. *Transcript of Public Hearing* at 997-1001.
520. Exhibit GC-2018-001-82.05 (protected), Vol. 6 at 62; *Transcript of Public Hearing* at 1001.
521. Exhibit GC-2018-001-82.05 (protected), Vol. 6 at 36, 49 and 62.

Finally, none of the important causes of threat of serious injury that may be relevant to other products being investigated, including significantly diminished future demand, self-inflicted injury due to domestic producer imports, or intra-industry competition, are applicable to SSW.

To conclude, the Tribunal is of the view that there are no other causes of the threat of serious injury more important, individually or collectively, than the increased subject imports. Therefore, based on the above review of the evidence, the Tribunal finds that there is a threat of serious injury of which a principal cause is the increase in subject imports.

Goods of certain free trade agreement partners

In accordance with the principles discussed in Part III of this report, pursuant to the Order, and in accordance with sections 20.031, 20.04, 20.05, 20.06 and 20.07 of the *Canadian International Trade Tribunal Act*, the Tribunal conducted the following analysis with respect to imports from Panama, Peru, Colombia, Honduras and Korea.

There were no imports of SSW from Panama, Peru, Colombia and Honduras during the POI and, therefore, imports from none of these sources can be on their own a principal cause of a threat of serious injury.[522] Accordingly, subject imports from these sources should be excluded from the application of any remedy.

With regard to Korea, although the volume of subject imports from that country increased in 2017 and interim 2018, it did so at only half the rate of subject imports generally.[523] Moreover, the volume of subject imports from Korea was not nearly as large as the volume of imports from the other subject countries.[524] In terms of selling prices, while the price of imports from Korea decreased by 2 percent in interim 2018,[525] the Korean price remained higher than that of the domestic industry.[526]

The Tribunal analyzed its confidential information regarding volumes and prices of the goods from Korea during the POI along with the above evidence. The evidence confirms the view that Korea has not supplied sufficient volumes or been a significant price leader in the past; there is nothing in the evidence to lead to the conclusion that the volumes of imports from Korea will increase substantially or that prices of Korean SSW will significantly undercut those of CWI, or suppress or depress domestic prices thereby causing any negative effects in future.[527]

Therefore, the Tribunal concludes that subject imports from Korea, *on their own*, are not a principal cause of threat of serious injury.

522. Exhibit GC-2018-001-16A (protected), Schedule 4, Vol. 2.1.
523. Exhibit GC-2018-001-15A, Table 7, Vol. 1.1.
524. Exhibit GC-2018-001-16A (protected), Schedule 3, Vol. 2.1.
525. *Ibid.*, Table 16.
526. *Ibid.*, Table 15. In interim 2018, the selling price of subject imports from Korea was lower than the average selling price of subject imports generally. However, as explained above, there were some imports of very high-priced stainless steel wire that skewed the average.
527. The Tribunal notes that, as part of its Injury Allegation Summary Table (Exhibit GC-2018-001-82.05 (protected), Vol. 6 at 104), CWI alleged that it lost sales to subject imports from Korea imported by a particular importer; however, Table 2 of the Tribunal's Statistical Summary indicates that that particular importer did not import subject imports from Korea during the POI.

Given the above finding regarding Korea, the Tribunal must re-conduct its increased imports, serious injury, threat of serious injury and causation analyses by treating imports from Korea as excluded goods.

Considering the low volumes and relatively high prices of Korean goods in the past, the Tribunal's conclusions with respect of increased imports, serious injury and principal cause of the threat of serious injury (being the remaining subject imports) are the same or even stronger when imports from Korea are excluded from that group.

Therefore, the Tribunal finds that the increased imports (excluding imports from Korea, Panama, Peru, Colombia and Honduras) are a principal cause of threat of serious injury.

REMEDY RECOMMENDATION

INTRODUCTION

The Tribunal finds that imports of SSW from the subject countries (other than goods originating in Panama, Peru, Colombia, Honduras and Korea) are being imported in such increased quantities and under such conditions as to be a principal cause of a *threat* of serious injury to the domestic industry. Accordingly, the Tribunal recommends a remedy in the form of a TRQ on imports of SSW from subject countries, other than goods originating in Panama, Peru, Colombia, Honduras or Korea, or countries whose goods are eligible for GPT treatment. Both the in-quota volume and the above-quota surtaxes are to be liberalized over the three-year quota period.

This following section explains the reasons for the Tribunal's choice of remedy, including details of the remedy proposed.

CHOICE OF REMEDY

Position of parties

The Tribunal considered all the evidence and arguments presented on the subject of remedies, including the relative suitability of the three types of remedies available, i.e. surtaxes, quotas and TRQs. The Tribunal heard witnesses for CWI and one importer, RGL. The Tribunal also heard statements at the hearing from the governments of India and Thailand.

CWI argued in favour of a more restrictive quota volume than was applied provisionally by the Department of Finance.[528] CWI argued that the recommended quota should be 20 percent less than the present quota[529] in its first year of implementation in order to permit CWI to regain market share, and to give the market a full year to stabilize.[530] More specifically, CWI suggested a quota of 1,618 tonnes for the first year, 2,022 tonnes for the second year and 2,426 tonnes for the third year.[531] Additionally, CWI argued in favour of applying an in-quota surtax of 12 percent for welding wire and shape/profile wire because it is consistently forced to lower prices to unsustainable levels to compete with low-priced subject imports for these types of products.[532] CWI argued in favour of a 25 percent above-quota surtax for all SSW products over the three-year period.[533]

RGL, an importer of SSW, did not provide any specific arguments for a remedy. It argued against maintaining a surtax on SSW and argued in favour of providing a regional exemption to Alberta or an exemption for imports from the European Union.[534]

528. Exhibit GC-2018-001-81.05, Vol. 5 at 34.
529. The provisional quota for SSW is 1,868 tonnes, which gives an annualized volume of 3,409 tonnes. See https://www.fin.gc.ca/n18/data/18-090-order-decret-bil.pdf at page 7.
530. Exhibit GC-2018-001-81.05, Vol. 5 at 35.
531. *Ibid.* at 36.
532. Exhibit GC-2018-001-81.05, Vol. 5 at 35. The suggested in-quota tariff rate is a reflection of the average price depression for these types of SSW in the three most recent import intelligence reports submitted by CWI.
533. Exhibit GC-2018-001-81.05, Vol. 5 at 35.
534. Exhibit GC-2018-001-81.03, Vol. 5 at 10.

The Government of Chinese Taipei and the European Union Commission argued in favour of a TRQ in their written submissions.[535] The Government of Chinese Taipei did not provide details for their TRQ recommendation. The European Union Commission argued that only a volume-type measure like a TRQ would be adequate in this inquiry.[536] The European Union Commission suggested that the TRQ be based on the average imports of the last three years, determined for each supplying country, and that the safeguard duty only apply to import volumes that exceed the quota.[537]

Tribunal analysis

The Tribunal accepts CWI's arguments with respect to the type of remedy that should be imposed and, accordingly, recommends a TRQ for three years.

Specifically, the Tribunal recommends:

- that an in-quota volume representing the total amount of permitted subject country imports at the in-quota rate be fixed, as required by Article XIII:2(a) of *GATT 1994*. The Tribunal recommends that the in-quota volume be set at 2,800 tonnes for the first year.
- that the in-quota volume be increased each year by 10 percent, i.e. to 3,080 tonnes in the second year and to 3,388 tonnes in the third year.[538]
- that no surtax be applied to the in-quota imports. This will permit a non-injurious level of imports to enter the country without restriction.
- that the above-quota surtax be set at a declining rate, starting at 25 percent in the first year, 15 percent in the second year and 5 percent in the third year to ensure that imports above the in-quota volume do not cause the continuation of a threat of serious injury.
- that the Governor in Council consider a different method of allocating the in-quota volume than the first-come first-served basis used for the provisional safeguard measure.

Table 12
Recommendation on Remedy for Stainless Steel Wire

(tonnes)

	In-quota Volume	Above-quota Surtax
First Year	2,800	25%
Second Year	3,080	15%
Third Year	3,388	5%

Since the Tribunal determined that Korean imports are not, on their own, a principal cause of threat of serious injury, the Tribunal's recommended remedy should not apply to imports from Korea.

535. Exhibit GC-2018-001-81.04, Vol. 5 at 9; Exhibit GC-2018-001-81.02, Vol. 5 at 3.
536. Exhibit GC-2018-001-81.02, Vol. 5 at 3.
537. *Ibid.*
538. The proposed quota volumes would be lower than the annualized provisional level over the entire three years.

Imports from GPT countries are either non-existent or *de minimis*.

The Order excluded imports from the United States, Chile, Mexico, Israel and other *CIFTA* beneficiary countries from the subject goods. Consequently, the Tribunal's recommended remedy should not apply to imports from these countries.

In arriving at the above recommendation, the Tribunal considered that the market for SSW in Canada was mature and would remain stable over the next several years.[539] It also considered that, even if CWI is able to increase is output to the maximum extent, it will not be able to fully satisfy domestic demand and, therefore, imports of SSW will be necessary. Finally, the Tribunal considered that U.S. imports of SSW will not entirely disappear from the domestic market, even though they are likely to be significantly lower than in the past.[540]

The challenge is to determine a quota volume and surtax rate that will provide reasonable access to imports, minimize disruption to the domestic industry and allow the market to stabilize. The TRQ should allow reasonable time for CWI to consolidate and expand capacity while allowing imports to fill the existing gap in a mature market place. At the same time, the volume of in-quota imports should be sufficient to not risk damaging the international competitiveness of the downstream manufacturing industries in Canada. The surtax should ensure that prices of above-quota imports are at non-injurious levels.

The proposed in-quota volume of 2,800 tonnes[541] in the first year reflects the following elements: the average quantity of SSW imported from subject countries (excluding Korea) in the years 2015 to 2017;[542] an assessment of CWI's theoretical maximum capacity at its Perth facility;[543] and the potential level of U.S. imports.[544]Traditionally, imports have originated in the United States and subject countries.[545] With U.S. imports playing a significantly reduced role in the Canadian market due to Canadian countermeasures, subject imports must fill the gap in the market.

The surtax proposed by the Tribunal corresponds to the approximate increase in the price of the above-quota imports that the Tribunal believes is necessary to mitigate the threat that imports will significantly suppress the average selling price of the domestic industry in the near future.[546]

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539. Exhibit GC-2018-001-81.05, Vol. 5 at 70.
540. In this regard, the Tribunal notes the testimony of CWI witnesses that some of their U.S. customers were willing to absorb the 25 percent surtax. See *Transcript of Public Hearing* at 996. In the Tribunal's view, it is reasonable to believe that some Canadian customers will behave similarly with regard to U.S. imports.
541. In its submissions, CWI proposed that the quota be 20 percent less than the present quota in its first year of implementation. See Exhibit GC-2018-001-81.05, Vol. 5 at 35.
542. Given that the surge in imports occurred in interim 2018, the Tribunal did not consider it appropriate to extrapolate an import volume for that year to include in the calculation of the average volume of subject imports.
543. Exhibit GC-2018-001-82.05 (protected), Vol. 6 at 62, 103. *Transcript of In-Camera Hearing* at 301. In its submissions and testimony, CWI proposed different capacity levels and future sales with safeguard protection. The Tribunal took account of the range of these estimates when recommending the first year quota volume.
544. Exhibit GC-2018-001-81.05, Vol. 5 at 35.
545. Exhibit GC-2018-001-16A (protected), Tables 6 and 8, Vol. 2.1.
546. The surtax was calculated using the estimated potential level of price undercutting for the period of 2015 to interim 2018, as well as a projection of the maximum potential price undercutting thereafter using import landed values against the price of domestic sales in the market. See Exhibit GC-2018-001-16A (protected), Tables 13 and 15, Vol. 2.1. For the projection period, the estimated unit selling values of sales from domestic production and import landed value of the subject good were calculated by applying the average growth rate of those unit selling values over the POI to derive forecasted prices until 2021.

The suggested surtax in the first year is also recommended by CWI in its submissions.[547] A declining surtax will allow for a gradual liberalization of safeguard measures as CWI adjusts to the market. As CWI consolidates and expands its plant capacity, it will be in a better position to compete with imports of SSW products once safeguard protections are finally lifted.

CWI argued for an in-quota surtax of 12 percent on welding and profile/shape wire to alleviate pricing pressures from low-priced subject imports of these particular SSW products.[548] The Tribunal recalls that the Order directed it to not "hear any motion . . . that would otherwise limit scope of the . . . recommendations". In the Tribunal's view, having a separate in-quota rate for welding and profile/shape wire would limit the scope of its remedy recommendation for SSW. In any event, the Tribunal is not convinced that CWI can supply the entire Canadian market with these SSW products and, therefore, believes that applying an in-quota surtax would unduly burden importers.

Quota administration

The Tribunal recommends that the Government of Canada periodically review these measures to ensure that they remain appropriate. This recommendation reflects the fact that Canadian and global market conditions could change significantly during the period of the application of the measures. Also, the Canadian government should take account of the manner in which trade measures on steel are applied in the United States and the European Union and of any changes that may be made there in response to market or other conditions.

547. Exhibit GC-2018-001-81.05, Vol. 5 at 35.
548. *Ibid.*

PART X – WIRE ROD

PRODUCT

The seventh class of goods considered by the Tribunal is wire rod. The Order describes the class of goods as follows:

> Certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, less than 19.00 mm in actual solid cross-sectional diameter.
>
> The following goods are excluded:
>
> - stainless steel;
> - tool steel;
> - high-nickel steel;
> - ball bearing steel; and
> - concrete reinforcing bars and rods (also known as rebar).[549]

The Tribunal has not previously dealt with wire rod in the context of *SIMA* proceedings.

Wire rod is produced in diameters up to 18.7 mm.[550] The basic manufacturing process for all wire rod consists of steelmaking, casting, hot-rolling, coiling and cooling.[551] The equipment, machinery and production facilities are the same for all wire rod production.[552] Wire rod is sold in irregularly wound coils for further wire drawing and finishing by wire drawers and other end users.[553]

There are five basic types of wire rod, including welding quality, mesh quality (low carbon), industrial quality (low carbon), high carbon quality and cold-heading quality.[554] There are significant differences in pricing for different types of wire rod.[555] Areas of application for wire rod include the following:

- tire bead and tire cord;[556]
- steel wire;[557]
- wire mesh;[558]

549. In addition, the Department of Finance published an illustrative list of HS Codes for wire rod, which are 7213.20.00.10, 7213.91.00.11, 7213.91.00.21, 7213.91.00.31, 7213.99.00.10, 7213.99.00.30, 7213.99.00.50 and 7227.90.00.10. Exhibit GC-2018-001-01A, Vol. 1 at 6-7.
550. Exhibit GC-2018-001-83.06, Vol. 5 at 6.
551. *Ibid.*
552. *Ibid.*
553. *Ibid.*
554. *Ibid.* at 49.
555. *Ibid.* at 6.
556. *Ibid.* at 7, 49, 50; Exhibit GC-2018-001-83.09, Vol. 5 at 18; Exhibit GC-2018-001-47.08, Vol. 3.1, Question 4; Exhibit GC-2018-001-32.03, Vol. 3, Question 7.
557. Exhibit GC-2018-001-47.15, Vol. 3.1, Question 4.
558. *Transcript of Public Hearing* at 866, 875; Exhibit GC-2018-001-83.06, Vol. 5 at 50; Exhibit GC-2018-001-47.04, Vol. 3.1, Question 4; Exhibit GC-2018-001-47.05, Vol. 3.1, Question 4; Exhibit GC-2018-001-47.09, Vol. 3.1, Question 4; Exhibit GC-2018-001-32.02, Vol. 3, Question 7; Exhibit GC-2018-001-32.03, Vol. 3, Question 7.

- nails;[559]
- springs;[560]
- fencing;[561]
- wire rope;[562]
- welding consumables;[563]
- screws;[564] and
- electric welded chains.[565]

SUMMARY

The Tribunal finds that wire rod imported from the subject countries is not being imported in such increased quantities as to cause or threaten to cause serious injury to the domestic industry. Given that a safeguard measure can only be applied if a product is being imported in such increased quantities, the Tribunal does not recommend a remedy for wire rod.

ANALYSIS

The legal principles applicable to the analysis are set out in Part III of this report.

Like or directly competitive goods

To determine whether domestically produced wire rod is "like or directly competitive" to subject wire rod, the Tribunal considered the goods' physical and market characteristics.

Ivaco Rolling Mills 2004 LP (Ivaco), a party supporting the imposition of a safeguard measure, submitted that "domestically produced wire rod products constitute like or directly competitive goods to the Subject Goods".[566] Parties opposed to a safeguard measure made several arguments, including the following:

559. *Transcript of Public Hearing* at 821; Exhibit GC-2018-001-83.06, Vol. 5 at 49-50; Exhibit GC-2018-001-47.04, Vol. 3.1, Question 4; Exhibit GC-2018-001-47.07, Vol. 3.1, Question 4; Exhibit GC-2018-001-32.02, Vol. 3, Question 7.
560. *Transcript of Public Hearing* at 821; Exhibit GC-2018-001-83.06, Vol. 5 at 50; Exhibit GC-2018-001-47.13, Vol. 3.1, Question 4; Exhibit GC-2018-001-32.02, Vol. 3, Question 7; Exhibit GC-2018-001-32.03, Vol. 3, Question 7.
561. *Transcript of Public Hearing* at 866; Exhibit GC-2018-001-83.06, Vol. 5 at 49-50; Exhibit GC-2018-001-47.09, Vol. 3.1, Question 4; Exhibit GC-2018-001-32.03, Vol. 3, Question 7.
562. *Transcript of Public Hearing* at 821; Exhibit GC-2018-001-83.06, Vol. 5 at 50; Exhibit GC-2018-001-32.03, Vol. 3, Question 7.
563. *Transcript of Public Hearing* at 823; Exhibit GC-2018-001-32.02, Vol. 3, Question 7.
564. *Transcript of Public Hearing* at 822; Exhibit GC-2018-001-32.02, Vol. 3, Question 7; Exhibit GC-2018-001-32.03, Vol. 3, Question 7.
565. *Transcript of Public Hearing* at 821.
566. Exhibit GC-2018-001-83.06, Vol. 5 at 8.

(i) imported wire rod does not fall within the definition of "like or directly competitive goods" in the *Canadian International Trade Tribunal Regulations*;[567]

(ii) the domestic industry does not produce goods that are like or directly competitive to a specific type of imported wire rod;[568]

(iii) there are two distinct types of wire rod (low carbon commodity and high carbon specialty) that are neither identical nor substitutable, and therefore are not like or directly competitive to the subject goods;[569] and,

(iv) it is not clear which types of wire rod are produced domestically, and whether such wire rod is like or directly competitive with imported wire rod.[570]

However, as stated in Part III, for the purposes of this inquiry, the imported "good" or "product" at issue is wire rod as described in the product description. While the market may distinguish between low carbon commodity and high carbon specialty wire rod based on their chemical composition and use, the Order expressly indicated that these products constitute a single class of goods and specifically instructed the Tribunal not to hear any motion to exclude any good from a class or that would otherwise limit the scope of the inquiry, determination or recommendations.[571] The question therefore is whether domestic wire rod meeting the product description in the Order is identical to, or has uses and other characteristics that closely resemble, the imported wire rod.

On the basis of evidence on the record, and notwithstanding any differences between subsets of wire rod, the Tribunal finds that domestically produced wire rod is like or directly competitive to the imported wire rod that is the subject of this inquiry.

Domestic producers

The domestic producers of wire rod are Ivaco and ArcelorMittal Long Products Canada G.P. (AMLPC) (collectively, the domestic producers).[572]

Michelin North America (Canada) Inc. (Michelin), a party opposed to a safeguard measure, argued that Ivaco should be excluded from consideration as part of the domestic industry on the basis that it does not produce a subset of wire rod that is like or directly competitive to the subset of wire rod imported by Michelin.[573] However, no party alleged that Ivaco produces *none* of the wire rod that is like or directly competitive to wire rod imported from subject countries. The Tribunal reiterates that the good or product that is subject to the inquiry is wire rod falling within the product

567. Exhibit GC-2018-001-83.09, Vol. 5 at 6.
568. Exhibit GC-2018-001-83.08, Vol. 5 at para. 25; Exhibit GC-2018-001-99.01, Vol. 7 at para. 7; *Transcript of Public Hearing* 949, 952.
569. Exhibit GC-2018-001-83.08, Vol. 5 at 6; Exhibit GC-2018-001-83.09, Vol. 5 at 6; Exhibit GC-2018-01-83.01, Vol. 5 at 5.
570. Exhibit GC-2018-001-99.01, Vol. 7 at 7.
571. Exhibit GC-2018-001-01, Vol. 1 at 5-6.
572. Exhibit GC-2018-001-17A, Vol. 1.1 at 9. Ivaco and AMLPC both completed the Tribunal's Producers' Questionnaire, but only Ivaco submitted a case brief. Ivaco's brief includes a letter from AMLPC stating that it "supports the imposition of a safeguard measure to stabilize the Canadian market against disruptive, low-priced imports". Counsel for Ivaco is also counsel for AMLPC regarding other classes of goods subject to the inquiry.
573. Exhibit GC-2018-001-83.09, Vol. 5 at 6.

description. The fact that there may be subsets of that good is immaterial for the purpose of identifying the domestic producers.

Production volume data is confidential and cannot be reproduced here to establish that the collective output of Ivaco and AMLPC is a major proportion of total domestic wire rod production. However, on the basis of Ivaco's uncontested submission that it and AMLPC constitute a major proportion of total domestic wire rod production,[574] the Tribunal finds that the collective output of Ivaco and AMLPC constitutes a major proportion of the total domestic production of wire rod.

Increase in imports

The Tribunal collected the volume of imports of wire rod for the POI, i.e. January 1, 2015, to June 30, 2018. Due to confidentiality reasons, the specific volumes of subject imports cannot be reproduced here. Therefore, where possible, the Tribunal relies on the publicly available percent change tables for the analysis that follows.[575]

The domestic industry submitted publicly available Statistics Canada data for the HS Codes identified by the Department of Finance that, it asserted, show that the increase in the volume of imports in 2016 was not nearly as large as suggested by the data on the Tribunal record,[576] and that the 13 percent increase in interim 2018 is likely understated.[577] Tree Island Industries Ltd., a party opposed, argued that the Statistics Canada data were of questionable quality and probative value because, in part, no witnesses were proposed who could give evidence on methodology, and there was no reason to believe that the domestic industry's evidence is accurate, persuasive or superior to evidence on the record.[578]

The Tribunal determined that, in the case of wire rod, these Statistics Canada data do not provide a reasonably reliable indication of imports in interim 2018, because the trends in the Statistics Canada data are very different than those in the Statistical Summary.[579] Further, the Statistics Canada data, when compared to the data contained in the Statistical Summary for Wire Rod, underestimate the volume of subject imports in all periods of the POI.[580]

As well, Ivaco submitted that wire rod is imported under HS Codes not reflected in the Department of Finance's illustrative list. Ivaco's witnesses' statements reflect their understanding that wire rod is also being shipped under HS Codes 7213.91.00.29, 7213.91.00.39 and 7213.91.00.19. The Tribunal's methodological approach to questionnaire data collection has been explained in Part I. In the case of wire rod, questionnaire respondents should have reported wire rod being imported under *all* HS Codes,[581] not just those included in the illustrative list. To the extent

574. Exhibit GC-2018-001-83.06, Vol. 5 at 7. AMLPC did not submit a case brief (*supra*, note 24).
575. Exhibit GC-2018-001-17A, Vol. 1.1 at 16, 18.
576. Exhibit GC-2018-001-83.06, Vol. 5 at 10-11.
577. Exhibit GC-2018-001-99.04, Vol. 7 at 4.
578. Exhibit GC-2018-001-99.03, Vol. 7 at 3.
579. The Statistics Canada data is at Exhibit GC-2018-001-83.06, Vol. 5 at 117, and the Statistical Summary data is at Exhibit GC-2018-001-17A, Table 7, Vol. 1.1 at 15.
580. The Statistics Canada data is at Exhibit GC-2018-001-83.06, Vol. 5 at 117, and the Statistical Summary data is at Exhibit GC-2018-001-17A, Table 7, Vol. 1.1 at 15.
581. Except HS Codes for stainless steel, tool steel, high-nickel steel, ball bearing steel, and concrete reinforcing bars/rods (also known as rebar), as excluded by the Order (Exhibit GC-2018-001-01, Vol. 1 at 10).

that they did so, the data is in the Statistical Summary. The Tribunal sees no reason to rely on the trends in the expanded Statistics Canada data presented by Ivaco.

In absolute terms, import volumes were virtually unchanged in 2017 as compared to 2015.[582] While imports increased by 31 percent in 2016, they decreased by 24 percent in 2017, meaning that there was only a small increase in imports over the 2015 to 2017 period.[583] Table 8 of the Statistical Summary shows a 13 percent increase in interim 2018 over interim 2017,[584] which is the focus of the domestic producers' claim of a significant increase.

The Tribunal finds that although the absolute increase in interim 2018 was recent, it was not sudden, sharp or significant. Import volumes fluctuated from January 1, 2015, to the end of 2017, both in absolute terms and relative to domestic production. The increase in interim 2018 is within that trend and reflects part of a gradual increase. The 13 percent increase in interim 2018 is not significant, as this additional volume accounts for a very small part of the Canadian market in interim 2018. In addition, the rate of increase puts the subject imports on pace to return to a volume that was just shy of the 2017 volume—nothing more.

In terms of imports relative to domestic production, Table 11 of the Statistical Summary shows that subject imports increased by ten percentage points in 2016 but then decreased by 12 percentage points in 2017. Imports only had a six percentage point increase in interim 2018 as compared to interim 2017.

Accordingly, the Tribunal concludes that subject imports of wire rod are not being imported in sufficiently increased quantities.

Unforeseen developments and *GATT 1994* obligations

Having found no sufficient increase in wire rod imports from subject countries, it is not necessary to consider whether an increase in imports resulted from unforeseen developments and the effect of Canada's *GATT 1994* obligations.

Serious injury

Having found no sufficient increase in wire rod imports from subject countries, the Tribunal does not need to consider whether the domestic industry has experienced serious injury. For the sake of completeness, however, the Tribunal will briefly analyze whether there was evidence of serious injury.

The table below summarizes the domestic industry's performance indicators during the POI. The domestic producers' performance data, gathered by the Tribunal, is confidential and cannot be reproduced here. Therefore, the table provides indexed results.

The Tribunal notes that, even if it considered the increased level of imports experienced in 2018 to be "recent, sudden, sharp and significant", the increased imports from subject countries are not a principal cause of serious injury to the domestic industry.

582. Exhibit GC-2018-001-18A (protected), Vol. 2.1 at 15.
583. Exhibit GC-2018-001-17A, Table 8, Vol 1.1 at 16.
584. Exhibit GC-2018-001-18A (protected), Vol. 2.1 at 15.

Table 13
Summary of Domestic Performance Indicators (Index)

				Interim	
	2015	**2016**	**2017**	**2017**	**2018**
Practical Plant Capacity	100	100	100	100	100
Total Production	100	104	105	100	98
Production for Domestic Sales	100	108	109	100	99
Production for Export Sales	100	102	100	100	97
Capacity Utilization Rate (%)	100	104	105	100	98
Market	100	115	106	100	106
Domestic Sales from Domestic Production	100	102	111	100	95
Producers Market Share (%)	100	88	105	100	89
Subject Goods Market Share (%)	100	113	95	100	107
Excluded Countries Market Share (%)	100	64	113	100	231
Total Direct Employees	100	105	108	100	101
Total Wages ($000) - Direct Employment	100	108	113	100	100
Total Hours Worked (000) - Direct Employment	100	106	105	100	101
Productivity – Tonnes / Hour Worked (Direct)	100	97	99	N/A	N/A
Producer Inventories	100	88	118	100	113
Inventory as % of Production	100	85	113	100	116
Selling Prices					
Domestic Sales from Domestic Production	100	96	111	100	112
Total - Subject Countries	**100**	**89**	116	100	119
Excluded Countries	100	88	**99**	**100**	**115**

Note(s):
1. 2015 = 100 and Interim 2017 = 100
2. Index values are notional, and there is no indexing between a full calendar year and an interim period.
3. The bolded index values under "Selling Prices" indicate the lowest price in the market for that period.
Source: Exhibit GC-2018-001-17A, Vol. 1.1 at 14 and 31; Exhibit GC-2018-001-18A (protected), Vol. 2.1 at 21, 24 and 30.

The table shows that the performance of the domestic industry has changed little since the alleged surge in subject imports. Domestic production for domestic sales increased modestly from 2015 through 2017, with a slight decrease in interim 2018. Practical plant capacity from 2015 through interim 2018 was unchanged. The capacity utilization rate also increased modestly from 2015 through 2017, but then decreased slightly in interim 2018. In short, these performance indicators were relatively stable. Domestic sales of domestically produced wire rod increased slightly from 2015 to 2017. Both domestic sales and market share decreased in interim 2018. However, the total apparent market increased in 2016 and 2017 compared to 2015, and again in interim 2018 over interim 2017. Selling prices for domestic sales of domestic production, imports from subject countries, and imports from excluded countries all decreased in 2016, but increased in 2017 and interim 2018. Finally, productivity in tonnes per hour increased in 2016, then remained fairly stable in 2017 (with no data available for interim 2018). Direct employment improved from 2015 to interim 2018, and wages improved from 2015 to 2017, with no change in interim 2018. Overall, the indicators reflected in Table 13 for interim 2018 are equal to or higher than interim 2017, or down only slightly.[585]

In terms of the domestic industry's financial performance, the data is confidential and cannot be reproduced here.[586] The confidential evidence indicates that the domestic industry's

585. Exhibit GC-2018-001-17A, Table 24, Vol 1.1.
586. Exhibit GC-2018-001-18B (protected), Vol. 2.1.

profitability, in terms of domestic sales, increased on a consolidated basis over the POI.[587] Indeed, Ivaco focused its oral argument on the *threat* of injury and appeared to acknowledge that the financial performance indicators cannot support a finding of serious injury.[588]

Therefore the Tribunal finds that the domestic industry has not suffered significant overall impairment, i.e. serious injury.

Threat of serious injury

Given that the Tribunal has found that wire rod is not being imported from subject countries in "such increased quantities" so as to permit the imposition of a safeguard measure, it is not necessary to assess whether an increase in imports is threatening to cause serious injury. However, the parties made extensive submissions on the question of threat of serious injury, so the Tribunal has prepared an overview of whether the evidence suggests such a threat.

As explained in Part III, a determination of threat must be based on "facts" not "conjecture", and there must be a high degree of likelihood that serious injury will materialize in the very near future. Therefore, the Tribunal focused on conditions, changes and developments in the Canadian market as can be expected before the end of 2019.

Ivaco submitted that the upward trend in the volume of subject imports would continue.[589] Ivaco referred to excess capacity overseas and to a serious risk of diversion resulting from trade measures in other jurisdictions.[590] The Statistical Summary shows significant global wire rod overcapacity—averaging 40 percent capacity utilization from 2015 to interim 2018, and practical plant capacity increasing in 2017 and interim 2018.[591] Ivaco submitted a confidential table purporting to show "potential" diversion resulting from U.S. and EU measures.[592]

Parties opposed to the imposition of a measure argued that (i) the alleged threat of future diversion makes this case premature because the threat must be a "present threat";[593] (ii) the evidence does not establish that diversion will happen "overnight";[594] and (iii) it is not clear when diversion would occur and why it would happen at a particular time.[595] Parties opposed to the imposition of a measure also argued that a claim of a risk of diversion based on speculation about future imports does not establish whether (or when) diversion is likely to occur.[596]

The Tribunal is of the view that much of the evidence of threat of serious injury relied upon by the domestic producers is unsupported; and there is not a high degree of likelihood that serious injury is imminent.

587. *Ibid.*, Table 18, Vol. 2.1 at 1.
588. *Transcript of Public Hearing* at 892.
589. Exhibit GC-2018-001-83.06, Vol. 5 at 24.
590. *Transcript of Public Hearing* at 897-899.
591. Exhibit GC-2018-001-18A (protected), Table 44, Vol. 2.1 at 49.
592. Exhibit GC-2018-001-84.06 (protected), Table 11, Vol. 6 at 24-25, as modified by Exhibit GC-2018-001-100.04a, Vol. 18 at 6.
593. *Transcript of Public Hearing* at 932.
594. *Ibid.* at 938.
595. *Ibid.*
596. *Ibid.*

The argument predicting continued or increased volumes of subject imports in the future is not adequately supported by positive evidence. Overcapacity does not, in and of itself, establish a threat of serious injury. Rather, there must be positive evidence showing that the overcapacity leads to imminent significant overall impairment. Similarly, the evidence must show existing or impending diversion leading to such impairment materializing in the very near future. "Potential" diversion alone does not establish threat.

In terms of likely future prices, Ivaco submitted that the subject imports would have significant adverse price effects on the price of domestic wire rod. Ivaco relied upon the argument that there was existing price undercutting in 2018 and that domestic prices were "starting to fall".[597] However, the confidential record shows that prices actually increased from 2016 to 2017, and again in interim 2018 over interim 2017. Further, contrary to Ivaco's claim, there was no price undercutting in 2017 or interim 2018 when looking at the market as whole.[598] Looking to the future, the Tribunal is not convinced that these trends would change imminently.

The Tribunal is mindful of Ivaco's contention that commodity and specialty wire rod are subject to different pricing dynamics. The Tribunal considered Ivaco's price undercutting table and arguments, which indicate price undercutting and were primarily based on (i) confidential evidence regarding specific transactions and product-subset-specific pricing; (ii) comparisons using just landed prices for a mix of both end users and distributors; and (iii) Statistics Canada data.[599]

First, the Tribunal does not accept that, for this product, the appropriate price comparison is the domestic selling price to the landed import price. For this reason, the Tribunal relied on average market prices in the Statistical Summary, which reflect the value of import purchases by end users and import sales by distributors, and, as noted above, shows no price undercutting in 2017 or interim 2018.[600] Second, even if the Tribunal were to accept Ivaco's analysis for low carbon commodity wire rod as being the appropriate comparison, it notes that the degree of undercutting in interim 2018 was minimal. Finally, as for the comparison with Statistics Canada data, the Tribunal has already indicated that it does not consider these data to be reliable proxies for the subject goods.

The Tribunal also finds that there is no indication that market prices will be adversely affected by subject imports in the near future.

Ivaco also argued that the domestic industry will lose domestic sales and market share to subject imports.[601] However, as discussed above, the domestic producers' financial performance has been improving since 2015, with interim 2018 data strongly suggesting that full year 2018 would show a further improvement.[602] There is little or no positive evidence that the domestic industry will imminently experience a significant overall impairment.

In light of the above review of the threat of injury factors, and the negative determination regarding the "increase in imports" element, the Tribunal is of the view that the domestic producers' threat of injury arguments are unduly speculative and based on conjecture, with insufficient positive evidence of threat.

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597. *Ibid.* at 898-899.
598. Exhibit GC-2018-001-18A (protected), Tables 16 and 17, Vol. 2.1.
599. Exhibit GC-2018-001-84.06 (protected), Vol. 6 at 18.
600. *Supra*, note 50.
601. *Trasnscript of Public Hearing* at 895-896.
602. Exhibit GC-2018-001-18B (protected), Table 18, Vol. 2.1 at 1.

Moreover, in the absence of wire rod *being* imported "in such increased quantities", the Tribunal has no authority to recommend a safeguard remedy against a possible future increase in imports of subject goods. Such a remedy would clearly be inconsistent with Canada's international trade obligations under the World Trade Organization *Agreement on Safeguards*.

Therefore, the Tribunal finds that the subject imports, had they been found to be increased, do not threaten serious injury to the domestic industry.

Conclusions

The Tribunal finds that there has been no significant increase in subject imports of wire rod and that, in any event, the evidence does not indicate serious injury or a threat thereof. In light of these findings, the Tribunal does not need to consider whether imports from Canada's free trade partners are a principal cause of the serious injury or threat thereof, and the Tribunal does not recommend a remedy in respect of wire rod.

APPENDIX I – LIST OF PARTICIPANTS

Domestic Producers	Counsel/Representatives
Algoma Steel Inc. (formerly Essar Steel Algoma Inc.) Stelco Inc.	Benjamin P. Bedard R. Benjamin Mills Linden Dales Shannel Rajan David Plotkin Lydia Blois
ArcelorMittal Dofasco G.P.	Paul Conlin M. Drew Tyler Shannon McSheffrey Jeremy D'Souza
ArcelorMittal Long Products Canada G.P.	Paul Conlin M. Drew Tyler Shannon McSheffrey David Plotkin Jeremy D'Souza
Bri-Steel Manufacturing	Neil Rasmussen
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Ivaco Rolling Mills 2004 LP	Benjamin P. Bedard R. Benjamin Mills

	Linden Dales Shannel Rajan Jeremy D'Souza Lydia Blois
Max Aicher (North America) Ltd. Tenaris Canada	Geoffrey C. Kubrick Jonathan P. O'Hara Lucas Kokot Lisa Page Marie-Ève Jean
Moly-Cap AltaSteel Ltd. d.b.a. AltaSteel	Benjamin P. Bedard R. Benjamin Mills Linden Dales Shannel Rajan Lydia Blois
Nova Tube Inc. / Nova Steel Inc.	Paul Conlin Shannel Rajan
SSAB Central Inc.	Richard A. Wagner Alison G. FitzGerald Ali Tejpar
Welded Tube of Canada Corp.	Lawrence L. Herman

Importers/Exporters/Others	**Counsel/Representatives**
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Alberta Pressure Vessel Manufacturers' Association Borusan Mannesmann Boru Sanayi ve Ticaret A.Ş. Çelik İhracatçilari Birliği (Steel Exporters' Association Turkey) Çolakoğlu Metalurji A.S. Habaş Sinai ve Tibbi Gazlar İstihsal Endüstrisi A.S. Icdas Celik Enerji Tersane ve Ulasim San.A.S. Imco International Steel Trading Inc.	Victoria Bazan
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BAM-JJM-Manson Joint Venture	Irene Stewart

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Canadian Coalition for Construction Steel Imperial Oil Limited LNG Canada Development Inc. POSCO POSCO Daewoo America Corp.	Jesse Goldman Milos Barutciski Matthew Kronby Julia Webster Erica Lindberg Jacob Mantle Sam Levy
Canadian Natural Resources Limited Coastal Gas Link Pipeline Project	Riyaz Dattu Gajan Sathananthan
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China Steel Corporation	Ming-Yuan Chen
Chung Hung Steel Corporation	Wen-Chou Li
Dongbu Steel Co., Ltd. / Dongbu Incheon Steel	Keun Chae Na
Easy Building Products Ltd.	Darrel H. Pearson Sabrina A. Bandali
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High Strength Plates & Profiles Inc.	Jason Brock
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Hoa Phat Hung Yen Steel Company Limited	Nguyen Thi To Hoai
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Knightsbridge International Corp. TMK-Artrom S.A.	Cyndee Todgham Cherniak Heather Innes Anumeet Toor
Korea Iron and Steel Association	Haram Chun
Maanshan Iron & Steel Co., Ltd.	Wang Hongbing
Major Pipe & Supply Ltd.	Zach St. Croix
Maple Reinders Constructors Ltd.	J. Eric VanGinkel
Michelin North America (Canada) Inc.	Michael Kaylor John M. Peterson
Pacific Tubulars Ltd. Tree Island Industries Ltd.	Gordon LaFortune
PAO Severstal	George V. Bishaev
Precision Metals / Venus Wire Industries Pvt. Ltd.	Thrideep S. Pillai
Prosperity Tieh Enterprise Co., Ltd.	Ching-Hang Lin
PT.Raajratna Wire	Fitrianto
PT Gunawan Dianjaya Steel, Tbk.	Gunato Gunawan
PT Putra Baja Deli	Kok Wie
QBD Cooling Systems Inc.	David Gonsalves
RGL Resevoir Management Inc.	Hansine Ullberg Kostelecky
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Southern Steel Rod Sdn Bhd	Cheah Yin Lian
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The TMK Group	Mikhail Adoniev Ekaterina Shteynberg
Tianjin Pipe (Group) Corporation	Zhang Jun
TransCanada PipeLines Limited	Riyaz Dattu Gajan Sathananthan Jacob Schmidt
Vallourec Canada, Inc.	James McIlroy
Variperm (Canada) Limited	James Nurcombe
Viraj Profiles Limited	Rakesh Agarwal
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Zhejiang P.R.P.T. Prepainted Technology Co. Ltd.	Wen Xiaoqiong

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Delegation of the European Union to Canada	Leah Littlepage
Economic Division of the Taipei Economic and Cultural Office in Canada	Susan Chi-Chuan Hu
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Embassy of Ukraine to Canada	Oleh Khavroniuk
Government of Alberta	Kyle Dylan Dickson-Smith
Government of Argentina	Gustavo Lunazzi

Government of Brazil - Embassy in Ottawa	Marcelo Ramos Araujo Felipe Gomes Sequeiros Clarissa Souza Della Nina Ricardo Gaudieley Fleury Marília Oliveira Barbosa
Government of British Columbia	Nathaniel Carnegie
Government of India	Rasika Chaube Sudipt Parth
Government of Indonesia	Pradnyawati Yulastiawarman Zakaria Christhophorus Barutu
Government of Newfoundland and Labrador	Jeffrey Thomas
Government of Saskatchewan	Rob Swallow
Government of Turkey	Özgür Volkan AĞAR Hasan Kocasoy
Government of Viet Nam	Chu Thang Trung
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Ministry of Economic Development of the Russian Federation	Oleg Plaksin
Ministry of Economy of the United Arab Emirates	Karim Toumi
Ministry of Industry and Trade of the Russian Federation	Konstantin Kim
Province of Nova Scotia	Vincent DeRose Jennifer Radford Daniel Hohnstein Chirani Mudunkotuwa Alejandro Barragan
Royal Norwegian Embassy in Ottawa	Andreas Aure
Thai Trade Centre (Royal Thai Government)	Thanakrit Luangasnathip
Trade Representation of the Russian Federation in Canada	Valerii Maksimov Iaroslav Zemliachenko

APPENDIX II – WITNESSES APPEARING BEFORE THE TRIBUNAL

Heavy Plate

Laura Devoni Manager – Trade and Economics Algoma	Robert W. Dionisi Chief Commercial Officer Algoma
Kalyan Ghosh President and Chief Executive Officer Algoma	Fernando Ferreira President Acier Wirth Steel
Jonathan Adkins Vice President Salzgitter Mannesmann International (Canada) Inc	John Kallio Recording Secretary United Steelworkers Local 2251

Concrete Reinforcing Bar

Roger Paiva Vice President and Merchant Operations Gerdau	Henry Wegiel Director – Government and Trade Relations Corporate Affairs ArcelorMittal Dofasco
François Perras President and CEO ArcelorMittal Long Products Canada	Steven Cohen President and CEO Salit Steel
Tim McMenamin Vice President Ferrostaal Steel Canada Inc.	Wayne Thiessen Controller Gerdau Ameristeel Corporation
Dan Potter Vice President Purchasing Salit Steel	Dan Bourdon Regional Sales Representative, Rebar North Gerdau Long Steel North America

Energy Tubular Products

David McHattie Vice-President Institutional Relations – Canada Tenaris	Guillermo Moreno President – Managing Director Canada Tenaris
Kelly Smith V.P. Sales and Business Development - OCTG / Line Pipe Evraz North America	David Coffin Vice President Sales Evraz
Olesya Afanasyeva VP of Finance Evraz North America	Mike Service Director, SCM Category Management Enbridge Inc.
Jim Phalen Director, Canada Sales and Marketing Vallourec Canada Inc.	Richard Shields President Pacific Tubulars Ltd.
Philippe Girard Manager, SCM, Drilling and Completions Suncor Energy Inc.	Marius Bordieanu Director, Oil Sands and In Situ Drilling Engineering Suncor Energy Inc.
Trevor D. Schmidt Category Manager, Line Pipe Supply Chain Management TransCanada PipeLines Limited	

Hot-rolled Sheet

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Trevor Harris Vice President, Corporate Affairs Stelco	

Pre-painted Steel

Henry Wegiel Director – Government and Trade Relations Corporate Affairs ArcelorMittal Dofasco	Sylvia Mielke Owner Knightsbridge International Corp
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Trevor Harris Vice President, Corporate Affairs Stelco	Jim Ritchie CEO Cascadia Metals Ltd.
Mark Friesen Director of Sales and Procurement Cascadia Metals Ltd.	

Stainless Steel Wire

T.J. (Tom) Dodds Vice President, Commercial Central Wire Industries	Paul From President and CEO CWI Group of Companies

Wire Rod

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Francis Miner Manager, Trade and Contract Management IVACO	Deron Dunbar Director of Sales and Marketing IVACO Rolling Mills LP
Mike Johnson Senior Buyer, Purchasing Michelin North America, Inc.	Nancy Davies VP Finance and CFO Tree Island Steel
Remy Stachowiak Chief Operating Officer Tree Island Steel	Dale R. MacLean President and CEO Tree Island Steel
Brian Liu Sr. Director, Strategic Procurement and Operations Management Tree Island Steel	James R. Baske President and CEO HEICO Metal Processing Group

APPENDIX III – ATSSC STAFF INVOLVED IN THE INQUIRY

EXECUTIVE DIRECTOR AND GENERAL COUNSEL

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TRADE REMEDIES INVESTIGATIONS

Director and Chief Economist

Greg Gallo

Core Team

Shawn Jeffrey

Chelsea Lappin

Gayatri Shankarraman

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