Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Dumping and Subsidizing

FINDING AND REASONS

Inquiry No. NQ-2016-003

Concrete Reinforcing Bar

Finding issued
Wednesday, May 3, 2017

Reasons issued
Thursday, May 18, 2017

Canada

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IN THE MATTER OF an inquiry, pursuant to section 42 of the *Special Import Measures Act*, respecting:

CONCRETE REINFORCING BAR ORIGINATING IN OR EXPORTED FROM THE REPUBLIC OF BELARUS, CHINESE TAIPEI, THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA, JAPAN, THE PORTUGUESE REPUBLIC AND THE KINGDOM OF SPAIN

FINDING

The Canadian International Trade Tribunal, pursuant to the provisions of section 42 of the *Special Import Measures Act*, has conducted an inquiry to determine whether the dumping of hot-rolled deformed steel concrete reinforcing bar in straight lengths or coils, commonly identified as rebar, in various diameters up to and including 56.4 millimeters, in various finishes, excluding plain round bar and fabricated rebar products, originating in or exported from the Republic of Belarus, Chinese Taipei, the Hong Kong Special Administrative Region of the People's Republic of China, Japan, the Portuguese Republic and the Kingdom of Spain has caused injury or retardation or is threatening to cause injury. Also excluded is 10 mm diameter (10M) rebar produced to meet the requirements of CSA G30 18.09 (or equivalent standards) 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) up to and including 8 feet (243.84 cm).

Further to the Canadian International Trade Tribunal's inquiry, and following the issuance by the President of the Canada Border Services Agency of a final determination dated April 3, 2017, that the above-mentioned goods originating in or exported from the Republic of Belarus, Chinese Taipei, the Hong Kong Special Administrative Region of the People's Republic of China, Japan, the Portuguese Republic and the Kingdom of Spain have been dumped, the Canadian International Trade Tribunal hereby finds, pursuant to subsection 43(1) of the *Special Import Measures Act*, that the dumping of the above-mentioned goods originating in or exported from the Republic of Belarus, Chinese Taipei (excluding those goods exported by Feng Hsin Steel Co., Ltd.), the Hong Kong Special Administrative Region of the People's Republic of China, Japan, the Portuguese Republic and the Kingdom of Spain has caused injury to the domestic industry.

Jason W. Downey
Jason W. Downey
Presiding Member

Ann Penner
Ann Penner
Member

Rose Ritcey
Rose Ritcey
Member

The statement of reasons will be issued within 15 days.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	April 3 to 5, 2017
Tribunal Panel:	Jason W. Downey, Presiding Member Ann Penner, Member Rose Ritcey, Member
Support Staff:	Laura Little, Lead Counsel Kalyn Eadie, Counsel Gayatri Shankarraman, Lead Analyst Rebecca Campbell, Analyst Grant MacDougall, Analyst

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STATEMENT OF REASONS

INTRODUCTION

1. The mandate of the Canadian International Trade Tribunal (the Tribunal) in this inquiry[1] is to determine whether the dumping of rebar[2] originating in or exported from the Republic of Belarus (Belarus), Chinese Taipei, the Hong Kong Special Administrative Region of the People's Republic of China (Hong Kong), Japan, the Portuguese Republic (Portugal) and the Kingdom of Spain (Spain) (the subject goods) has caused or is threatening to cause injury to the domestic industry.

2. The Tribunal has determined, for the reasons that follow, that the dumping of the subject goods has caused material injury to the domestic industry. Therefore, the Canada Border Services Agency (CBSA) will impose definitive anti-dumping duties on imports of the subject goods.

3. The Tribunal has decided to grant an exclusion for non-dumped subject goods exported by Feng Hsin Steel Co., Ltd. (Feng Hsin), as will be discussed below.

BACKGROUND

4. On June 30, 2016, ArcelorMittal Long Products Canada, g.p. (ArcelorMittal), Gerdau Ameristeel Corporation (Gerdau) and AltaSteel Ltd. (AltaSteel) filed a complaint with the CBSA alleging that they had been injured (or were being threatened with injury) by the dumping of rebar from Belarus, Chinese Taipei, Hong Kong, Japan, Portugal and Spain.

5. As will be discussed more fully below, their complaint was filed in the wake of the imposition of anti-dumping and countervailing duties against rebar originating in or exported from the People's Republic of China (China), the Republic of Korea (Korea) and the Republic of Turkey (Turkey),[3] following the Tribunal's finding (hereafter "Rebar I"), in January 2015, that the dumping and subsidizing of rebar imported from those countries was threatening to cause injury to the domestic industry.[4]

6. ArcelorMittal, Gerdau and AltaSteel alleged that the Canadian market had stabilized once duties were imposed and selling prices for rebar began to recover. However, that recovery was short-lived, as importers and purchasers of rebar instead began to source dumped goods from the countries that are the subject of this inquiry.

7. On August 19, 2016, the President of the CBSA decided to initiate an investigation into the alleged injurious dumping.

8. The CBSA's investigation triggered the initiation of a preliminary injury inquiry by the Tribunal on August 22, 2016. The Tribunal issued its preliminary determination on October 19, 2016, that the evidence

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1. The inquiry is conducted pursuant to section 42 of the *Special Import Measures Act*, R.S.C., 1985, c. S-15 [*SIMA*].
2. A detailed description of the goods subject to this inquiry is found under the "Product" heading below.
3. Countervailing duties were only applied against imported rebar originating in or exported from China, since Korean and Turkish rebar was not subsidized, whereas rebar from all three countries was dumped and, therefore, subject to anti-dumping duties.
4. *Concrete Reinforcing Bar* (9 January 2015), NQ-2014-001 (CITT) [hereinafter "*Rebar I*", for ease of reference, despite two older cases involving rebar: *Concrete Reinforcing Bar* (12 January 2000), NQ-99-002 (CITT) and *Concrete Reinforcing Bar* (1 June 2001), NQ-2000-007 (CITT)].

disclosed a reasonable indication that the dumping of the subject goods had caused or was threatening to cause injury.

9. On January 3, 2017, the CBSA made a preliminary determination of dumping, resulting in the imposition of provisional anti-dumping duties on the subject goods. On January 4, 2017, the Tribunal commenced this inquiry.[5]

10. The Tribunal's period of inquiry (POI) was from January 1, 2013, to September 30, 2016, and included two interim periods: January 1 to September 30, 2015 (interim 2015) and January 1 to September 30, 2016 (interim 2016).

11. On January 4, 2017, the Tribunal sent requests to complete questionnaires to domestic producers, importers, purchasers and foreign producers of rebar. Using the questionnaire replies and import data from the CBSA, staff of the Secretariat to the Canadian International Trade Tribunal of the Administrative Tribunals Support Service of Canada (CITT Secretariat) prepared public and protected versions of the investigation report that were distributed, along with the remainder of the record, to those parties that had filed notices of participation in the inquiry.[6] Parties then filed case briefs and evidence.

12. The supporting parties are the domestic producers that filed the complaint—ArcelorMittal, Gerdau and AltaSteel—and Max Aicher (North America) Ltd. (MANA). The supporting parties submitted evidence and argument.

13. The opposing parties that filed evidence and argument with the Tribunal are the following: MEGASA; LMS Limited Partnership (LMS); the Delegation of the European Union to Canada (the EU Delegation); the Embassy of Spain; and the Hong Kong Special Administrative Region Government (the Government of Hong Kong).

14. Celsa Atlantic, S.L. and Nervacero, S.A. (both part of, and collectively referred to herein as, the CELSA Group) filed a request for a product exclusion, with supporting documentary evidence. The CELSA Group did not provide argument or evidence addressing the issues of injury and threat of injury.

15. The other parties that filed notices of participation, but did not file briefs or evidence, are the Ministry of International Trade, Government of British Columbia; the Ministry of Foreign Affairs of the Republic of Belarus; the Canadian Home Builders' Association; Acierco KSE Inc. (Acierco); C&F International; and Peak Products Manufacturing Inc.

16. On February 27, 2017, the parties filed requests for information (RFIs) directed at other parties. The Tribunal issued directions to the parties on March 6, 2017, requiring responses to certain of these RFIs. The responses were received by March 17, 2017, and placed on the record.[7]

17. The Tribunal held a public pre-hearing teleconference with counsel and parties on March 28, 2017, to discuss any preliminary matters in advance of the hearing. The specific topics addressed were the hearing schedule and the availability of information on international prices or indices for scrap metal used in the

5. C. Gaz. 2017.I.199.
6. All public exhibits were made available to the parties. Protected exhibits were made available only to counsel who had filed the required declaration and undertaking with the Tribunal in respect of confidential information.
7. On February 10, 2017, the Tribunal also issued advanced RFIs to importers in order to collect information regarding imports from exporters who had received margins of dumping of less than two percent. Responses were received and filed on February 17, 2017.

production of rebar. Following the teleconference, Gerdau, ArcelorMittal, MANA and MEGASA filed information with the Tribunal in relation to international scrap metal prices on March 29, 2017.

18. The Tribunal's hearing was held in Ottawa, Ontario, from April 3 to 5, 2017. It included public and *in camera* sessions.[8] The Tribunal heard testimony from witnesses of the supporting parties and MEGASA.[9]

RESULTS OF THE CBSA'S INVESTIGATION

19. The CBSA's period of investigation (the CBSA's POI) with respect to the allegations of dumping covered June 1, 2015, to May 31, 2016. On April 3, 2017, the CBSA made the following determinations:

- 100 percent of the subject goods originating in or exported from Belarus had been dumped by a margin of 37.5 percent, when expressed as a percentage of the export price;
- 98.3 percent of the subject goods originating in or exported from Chinese Taipei had been dumped by a margin of 97.5 percent, when expressed as a percentage of the export price;[10]
- 100 percent of the subject goods originating in or exported from Hong Kong had been dumped by a margin of 54 percent, when expressed as a percentage of the export price;
- 100 percent of the subject goods originating in or exported from Japan had been dumped by a margin of 108.5 percent, when expressed as a percentage of the export price;
- 100 percent of the subject goods originating in or exported from Portugal had been dumped by a margin of 2.4 percent, when expressed as a percentage of the export price; and
- 100 percent of the subject goods originating in or exported from Spain had been dumped by a margin of 38.2 percent, when expressed as a percentage of the export price.[11]

20. Accordingly, the CBSA concluded that the overall margins of dumping were not insignificant.[12]

PRODUCT

Product Definition

21. The subject goods are defined as follows:

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8. The parties were given the opportunity to provide testimony and oral submissions at the hearing with respect to the CELSA Group's exclusion request. Certain witnesses for the domestic industry were examined and cross-examined on that issue and ArcelorMittal and Gerdau addressed the product exclusion request in their respective oral arguments. The CELSA Group did not make oral argument.
9. MEGASA filed a witness statement by Mr. J. M. Carracedo, who was unable to attend the hearing on relatively short notice. Consequently, MEGASA provided two other witnesses—Mr. A. Carreira and Mr. R. Pérez—who together had knowledge of all the information in Mr. Carracedo's witness statement and were able to speak to the same evidence. None of the supporting parties objected to the change in MEGASA's witnesses. Similarly, Gerdau had filed a witness statement by Mr. A. Lamb, who was replaced at the hearing by Mr. R. Paiva, with no objection from the opposing parties. *Transcript of Public Hearing*, Vol. 1, 3 April 2017, at 9-11.
10. The estimated volume of dumped goods as a percentage of country imports for Chinese Taipei reflects the removal of the volume of all imports from the exporter with a margin of dumping of 0 percent of the export price. Exhibit NQ-2016-003-04, Vol. 1 at 108.2.
11. Exhibit NQ-2016-003-04, Vol. 1 at 108.11, 108.16.
12. Exhibit NQ-2016-003-04A at para. 156, Vol. 1.

> Hot-rolled deformed steel concrete reinforcing bar in straight lengths or coils, commonly identified as rebar, in various diameters up to and including 56.4 millimeters, in various finishes, excluding plain round bar and fabricated rebar products, originating in or exported from the Republic of Belarus, Chinese Taipei, the Hong Kong Special Administrative Region of the People's Republic of China, Japan, the Portuguese Republic and the Kingdom of Spain. Also excluded is 10 mm diameter (10M) rebar produced to meet the requirements of CSA G30 18.09 (or equivalent standards) 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) up to and including 8 feet (243.84 cm).

Additional Product Information

22. The CBSA provided the following additional product information:[13]

> For further clarity, the subject goods include all hot-rolled deformed bar, rolled from billet steel, rail steel, axle steel, low alloy-steel and other alloy steel that does not comply with the definition of stainless steel.
>
> Uncoated rebar, sometimes referred to as black rebar, is generally used for projects in non-corrosive environments where anti-corrosion coatings are not required. On the other hand, anti-corrosion coated rebar is used in concrete projects that are subjected to corrosive environments, such as road salt. Examples of anti-corrosion coated rebar are epoxy or hot-dip galvanized rebar. The subject goods include uncoated rebar and rebar that has a coating or finish applied.
>
> Fabricated rebar products are generally engineered using Computer Automated Design programs, and are made to the customer's unique project requirements. The fabricated rebar products are normally finished with either a protective or corrosion-resistant coating. Fabricated rebar is not included in the product definition of subject goods. Rebar that is simply cut-to-length is not considered to be a fabricated rebar product and it is included in the definition of the subject goods.

PROCEDURAL ISSUE

23. The EU Delegation and the Embassy of Spain submitted that the record lacked sufficient non-confidential information to allow interested parties to obtain a "reasonable understanding of the substance" of the confidential information on the record, as required by Article 6.5.1 of the World Trade Organization (WTO) *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*.[14] They argued that they were therefore unable to exercise their full rights of defence.

24. In particular, the EU Delegation submitted that the non-confidential information in the investigation report was limited to only three injury indicators (i.e. total import volume, market share and consumption). It further alleged that the lack of non-confidential data in the investigation report was inconsistent with Article 12.2.1(iv) of the WTO *Anti-dumping Agreement*, which requires a public notice or report that contains "sufficiently detailed explanations for the preliminary determinations on dumping and injury".

25. Similarly, the Embassy of Spain's case brief pointed to a lack of the following information on the public record: indexed aggregated volume of the subject goods relative to domestic production or

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13. *Ibid.* at paras. 34-36.
14. https://www.wto.org/english/docs_e/legal_e/19-adp.pdf [WTO *Anti-dumping Agreement*]. Article 6.5.1 provides as follows: "The authorities shall require interested parties providing confidential information to furnish non-confidential summaries thereof. These summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. In exceptional circumstances, such parties may indicate that such information is not susceptible of summary. In such exceptional circumstances, a statement of reasons why summarization is not possible must be provided."

consumption, indexed aggregated data on price effects and indexed aggregated data on the domestic industry's economic and financial performance indicators.

26. ArcelorMittal and AltaSteel replied that they had no objection to placing information previously designated as confidential on the public record, including import volumes and values of the subject goods, as well as total and unit values of the subject goods (both import values and sales prices). The Tribunal rejected that approach.

27. The WTO Appellate Body has held that Article 6.5.1 of the WTO *Anti-dumping Agreement* serves to balance the goals of protecting confidentiality while ensuring the transparency of the investigation process.[15] As a result, any non-confidential summaries must protect the confidential information at issue, while at the same time contain sufficient detail to permit other parties a reasonable understanding of the substance of the information, so that they may respond and defend their interests.[16]

28. Similarly, the Tribunal has a statutory responsibility to protect information designated by parties as confidential, which must be balanced with the procedural fairness protections available under Canadian law. In this case, the Tribunal considers that it was fully justified in protecting the information that was designated as confidential in light of these responsibilities. The data for import volumes and values by subject country, as presented in the investigation report, were based on confidential information provided by respondents to the Tribunal's questionnaires that were the importers of record and, as a small number of importers account for a large share of the information presented from each of the subject countries in certain years of the POI, disclosing this information, even at the aggregate level, would reveal confidential information. Accordingly, this information required protection in keeping with relevant provisions of the *Canadian International Trade Tribunal Act* and the *Canadian International Trade Tribunal Rules*.[17]

29. Other relevant information was, however, public and available to all parties, including the EU Delegation and the Embassy of Spain. The investigation report contained non-confidential information that is relevant to several injury factors during the POI, such as indexed data on import volumes (including total apparent imports, imports from the subject countries and imports from the non-subject countries), the total apparent market size in terms of volume, and the market share and unit values of sales from both domestic production and imports of the subject goods.[18]

30. The investigation report also presented non-confidential data showing the percent changes or percent shares in each period of the POI for the volume, market share and unit values of the total apparent market, domestic sales from domestic production and total domestic sales from imports, and the unit values of imports from the subject countries and non-subject countries.[19]

31. In terms of performance indicators, the investigation report presented non-confidential, consolidated data for the domestic producers (excluding MANA) on production, capacity, total production capacity

15. WTO Appellate Body Report, *EC – Fasteners*, para. 7.515; See, also, WTO Panel Report, *Mexico – Steel Pipes and Tubes* at para. 7.380.
16. WTO Appellate Body Report, *EC – Fasteners* para. 7.515; See, also, WTO Panel Report, *Argentina – Ceramic Tiles* at para. 6.39.
17. The filing and disclosure of confidential information on the record of this proceeding is governed by sections 45 and 46 of the *Canadian International Trade Tribunal Act*, R.S.C., 1985, c. 47 (4th Supp.) and rule 16 of the *Canadian International Trade Tribunal Rules*, S.O.R./91-499.
18. Exhibit NQ-2016-003-06E, Table 30, Vol. 1.1A.
19. *Ibid.*, Tables 36, 37, 45, 47.

utilization rates, the number of employees, hours worked, wages and productivity.[20] The public record also contained Statistics Canada data on import volumes and values in relation to the subject goods, as submitted by the domestic producers.[21]

32. Indeed, the EU Delegation and the Embassy of Spain, in their respective submissions, referred to some of this non-confidential information concerning injury indicators; namely, the volume and market share of domestic sales from domestic production and the consolidated production capacity of the domestic producers.[22] The Embassy of Spain also referred to the Statistics Canada data.[23]

33. With respect to the allegation made by the EU Delegation on the basis of Article 12.2.1(iv) of the WTO *Anti-dumping Agreement*, the Tribunal notes that the investigation report is not meant to provide the Tribunal's explanations for its preliminary determination of injury, and that therefore Article 12.2.1(iv) is not applicable. A public statement of reasons for the Tribunal's preliminary determination of injury was provided.[24]

34. Therefore, the Tribunal believes that it has met its transparency obligations, as more than sufficient information was publicly available to allow parties to gain an understanding of the claims made against them and to respond fully. On this point, the Tribunal notes that many of these indicators were not addressed by either the EU Delegation or the Embassy of Spain, other than to mention that they were in their opinion insufficient.

LEGAL FRAMEWORK

35. The Tribunal is required, pursuant to subsection 42(1) of *SIMA*, to inquire as to whether the dumping of the subject goods has caused injury or retardation or is threatening to cause injury, with "injury" being defined, in subsection 2(1), as ". . . material injury to a domestic industry". In this regard, "domestic industry" is defined in subsection 2(1) by reference to the domestic production of "like goods".

36. Accordingly, the Tribunal must first determine what constitutes "like goods". Once that determination has been made, the Tribunal must determine what constitutes the "domestic industry" for purposes of its injury analysis.

37. Since the subject goods originate in or are exported from more than one country, the Tribunal must also determine whether the conditions are met for a cumulative assessment of the effect of the dumping of the subject goods from all the subject countries on the domestic industry.

38. The Tribunal can then assess whether the dumping and subsidizing of the subject goods have caused material injury to the domestic industry.[25] Should the Tribunal arrive at a finding of no material

20. *Ibid.*, Tables 74, 76. The consolidated data on other performance indicators for the domestic industry are protected in the investigation report due to the presentation of two sets of consolidated tables, one including MANA and one excluding MANA, to facilitate analysis given that MANA only started production in 2015 (see para. 50).
21. Exhibit NQ-2016-003-B-07, Attachment 1, Vol. 11A; Exhibit NQ-2016-003-A-03, Attachment 1, Vol. 11.
22. *Transcript of Public Hearing*, Vol. 3, 5 April 2017, at 204; Exhibit NQ-2016-003-M-01, Vol. 13.
23. *Transcript of Public Hearing*, Vol. 3, 5 April 2017, at 204-205.
24. *Concrete Reinforcing Bar* (19 October 2016), PI-2016-002 (CITT) [*Rebar PI*] at paras. 12, 34-52.
25. The Tribunal will proceed to determine the effect of the dumping of the subject goods on the domestic industry, for individual countries or for the cumulated countries, as appropriate.

injury, it will determine whether there exists a threat of material injury to the domestic industry.[26] As a domestic industry is already established, the Tribunal does not need to consider the question of retardation.[27]

39. In conducting its analysis, the Tribunal will also examine other factors that might have had an impact on the domestic industry to ensure that any injury or threat of injury caused by such factors is not attributed to the effects of the dumping.

LIKE GOODS AND CLASSES OF GOODS

40. In order for the Tribunal to determine whether the dumping of the subject goods have caused or are threatening to cause injury to the domestic producers of like goods, it must determine which domestically produced goods, if any, constitute like goods in relation to the subject goods. The Tribunal must also assess whether there is, within the subject goods and the like goods, more than one class of goods.[28]

41. Subsection 2(1) of *SIMA* defines "like goods", in relation to any other goods, as follows:

> (a) goods that are identical in all respects to the other goods, or
>
> (b) in the absence of any goods described in paragraph (a), goods the uses and other characteristics of which closely resemble those of the other goods.

42. In deciding the issue of like goods when goods are not identical in all respects to the other goods, the Tribunal typically considers a number of factors, including the physical characteristics of the goods (such as composition and appearance) and their market characteristics (such as substitutability, pricing, distribution channels, end uses and whether the goods fulfill the same customer needs).[29]

43. In its preliminary injury inquiry, the Tribunal found that domestically produced rebar of the same description as the subject goods constitutes like goods in relation to the subject goods. It also found that there was one class of goods.[30]

44. The Tribunal did not receive any submissions challenging its preliminary findings. As such, the Tribunal sees no reason to depart from them given the undisputed evidence that the physical characteristics of domestically produced rebar resemble those of the subject goods; in fact, they are produced to meet the same Canadian standard (CSA G30 18).[31] In addition, the evidence shows that the subject goods and domestically produced rebar are substitutable and that they generally compete against one another in the Canadian market, have the same end uses and similar distribution channels.[32]

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26. Injury and threat of injury are distinct findings; the Tribunal is not required to make a finding relating to threat of injury pursuant to subsection 43(1) of *SIMA* unless it first makes a finding of no injury.
27. Subsection 2(1) of *SIMA* defines "retardation" as ". . . material retardation of the establishment of a domestic industry".
28. Should the Tribunal determine that there is more than one class of goods in this inquiry, it must conduct a separate injury analysis and make a decision for each class that it identifies. See *Noury Chemical Corporation and Minerals & Chemicals Ltd. v. Pennwalt of Canada Ltd. and Anti-dumping Tribunal*, [1982] 2 F.C. 283 (F.C.).
29. See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at para. 48.
30. *Rebar PI* at para. 26.
31. Exhibit NQ-2016-003-01A, Vol. 1 at 27; Exhibit NQ-2016-003-06E, Table 4, Vol. 1.1A; *Transcript of Public Hearing*, Vol. 1, 3 April 2017, at 66, Vol. 2, 4 April 2017, at 158.
32. Exhibit NQ-2016-003-06E, Tables 8, 11-14, 80, Vol. 1.1A; Exhibit NQ-2016-003-07E (protected), Tables 38, 41, Schedules 7, 8, 9, Vol. 2.1A; Exhibit NQ-2016-003-C-05 at paras. 21-22, Vol. 11C; Exhibit NQ-2016-003-B-05 at para. 4, Vol. 11.

45. The Tribunal therefore finds that domestically produced rebar constitutes like goods in relation to the subject goods, and will conduct its injury analysis on the basis of one class of goods.

DOMESTIC INDUSTRY

46. Subsection 2(1) of *SIMA* defines "domestic industry" as follows:

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

47. The Tribunal must therefore determine whether there has been injury, or whether there is a threat of injury, to the domestic producers as a whole or those domestic producers whose production represents a major proportion of the total production of like goods.[33]

48. ArcelorMittal, Gerdau and AltaSteel submitted that they account for a major proportion of the total domestic production of the like goods during the POI and, therefore, should be considered the "domestic industry" for the purposes of the injury analysis.

49. No party disputed that Gerdau, ArcelorMittal, AltaSteel and MANA accounted for the domestic production as a whole of the like goods during the POI.[34] As a result, the Tribunal does not need to address the question of whether Gerdau, ArcelorMittal and AltaSteel constitute a "major proportion" of the domestic industry.

50. In light of the above, the Tribunal finds that Gerdau, ArcelorMittal, AltaSteel and MANA constitute the "domestic industry". However, when examining the trends in the consolidated financial performance indicators for the domestic industry as part of the injury analysis, the Tribunal will take into consideration the fact that MANA only began domestically producing and selling like goods in the Canadian market in 2015.[35]

CUMULATION

51. Subsection 42(3) of *SIMA* directs the Tribunal to make an assessment of the cumulative effect of the dumping of the subject goods from the subject countries if it is satisfied that certain conditions are met.

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33. The term "major proportion" means an important, serious or significant proportion of total domestic production of like goods and not necessarily a majority: *Japan Electrical Manufacturers Assn. v. Canada (Anti-Dumping Tribunal)*, [1986] F.C.J. No. 652 (F.C.A); *McCulloch of Canada Limited and McCulloch Corporation v. Anti-Dumping Tribunal*, [1978] 1 F.C. 222 (F.C.A.); *China – Anti-dumping and countervailing duties on certain automobiles (US)*, (23 May 2014), WTO Docs. WT/DS440/R, Report of the Panel at para. 7.207; *European Community – Definitive anti-dumping measures on certain iron or steel fasteners (China)*, (15 July 2011), WTO Docs. WT/DS397/AB/R, Report of the Appellate Body at paras. 411, 419, 430; *Argentina – Definitive Anti-dumping duties on poultry (Brazil)*, (22 April 2003), WTO Docs. WT/DS241/R, Report of the Panel at paras. 7.341-7.344.

34. Exhibit NQ-2016-003-04A at para. 51, Vol. 1.

35. To that effect, the investigation report presented data on the performance indicators of the domestic industry in two sets of consolidated tables, one including MANA and one excluding it, in order to facilitate the injury analysis (Exhibit NQ-2016-003-06E, Vol. 1.1A at 14). MANA was a relatively small player in the market in 2015 and 2016 (Exhibit NQ-2016-003-D-02 at para. 16, Vol. 11C; Exhibit NQ-2016-003-11.02, Vol. 3 at 35).

Specifically, the Tribunal must be satisfied that (1) the margin of dumping in relation to the goods from each of those countries is not insignificant[36] and that the volume of dumped goods imported into Canada from any of those countries is not negligible,[37] and (2) cumulation is appropriate, taking into account the conditions of competition between the goods of each country or between those goods and the like goods.

52. Gerdau, ArcelorMittal and AltaSteel submitted that both parts of the test are satisfied and that it is therefore appropriate in this case to conduct a cumulative injury analysis.

53. MEGASA, supported by the EU Delegation, submitted that the subject imports from Portugal should not be assessed on a cumulative basis with the subject imports from the other subject countries.

54. The Government of Hong Kong and the Embassy of Spain claimed that rebar imported into Canada from their respective countries were non-injurious but did not directly address the conditions for cumulation.

55. As will be discussed below, the Tribunal will undertake an assessment of the cumulative effect of the dumping of all of the subject goods, including those from Portugal.

Margins of Dumping and Volume of Dumped Goods

56. Under subsection 2(1) of *SIMA*, "insignificant" is defined as a margin of dumping that is less than two percent of the export price of the goods. Under subsections 2(1) and 42(4.1), "negligible" means a volume of dumped goods that is less than three percent of the total volume of imports of subject and non-subject goods that are of the same product description as the dumped goods and released into Canada.

57. MEGASA highlighted the fact that Portugal's final margin of dumping of 2.4 percent was just above the "insignificant" threshold of two percent and much lower than the margins of dumping of the other subject countries. It therefore suggested that Portugal should be de-cumulated for the purposes of the injury analysis.

58. LMS argued that the Tribunal should terminate its inquiry against certain subject countries with import volumes that fell below three percent in certain periods covered in the Tribunal's POI (as opposed to the CBSA's POI). LMS relied on the investigation report data on subject import volumes, which were based on replies to the Tribunal's questionnaires and estimations using CBSA import data.[38]

59. The Tribunal disagrees. None of the margins of dumping in relation to the subject goods from Belarus, Chinese Taipei, Hong Kong, Japan, Portugal and Spain were "insignificant", as they were all greater than the threshold of two percent of the export price set out in subsection 2(1) of *SIMA*.

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36. Subsection 2(1) of *SIMA* defines "insignificant" as meaning "(a) in relation to a margin of dumping, a margin of dumping that is less than two percent of the export price of the goods . . .".
37. Subsection 2(1) of *SIMA* defines "negligible" as meaning "in respect of the volume of goods of a country, less than 3% of the total volume of goods that are released into Canada from all countries and that are of the same description as the goods. However, if the total volume of goods of three or more countries — each of whose exports of goods into Canada is less than 3% of the total volume of goods that are released into Canada from all countries and that are of the same description — is more than 7% of the total volume of goods that are released into Canada from all countries and that are of the same description, the volume of goods of any of those countries is not negligible".
38. Exhibit NQ-2016-003-07 (protected), Tables 31, 33, Vol. 2.1.

60. Furthermore, the Tribunal's assessment of whether the volume of dumped imports from a country is "negligible" is typically based on the import activity during the CBSA's POI.[39] Such an approach allows the Tribunal to compare the volume of dumped goods of a country to the total volume of imports from all sources, during a period for which dumping has been confirmed. The Tribunal sees no reason to depart from this approach in the present case,[40] especially since the subject import volumes in the investigation report cover periods that do not coincide with the CBSA's period of investigation.[41] During these periods, the volumes of imports of the subject goods from each of the subject countries were all greater than three percent of total apparent imports.[42]

61. In light of the above, the Tribunal finds that the margins of dumping were not insignificant and that the volume of subject goods from each subject country is not negligible. Therefore, the first part of the test set out in subsection 42(3) of *SIMA* has been met.

Conditions of Competition

62. With respect to the second part of the test regarding conditions of competition, the Tribunal must be satisfied that the subject goods compete with each other and/or with the domestic like goods. Historically, the Tribunal has held that relevant factors relating to the conditions of competition can include interchangeability, quality, pricing, distribution channels, modes of transportation, timing of arrivals and geographic dispersion.[43] As the Tribunal has previously stated, it recognizes that there may be other factors that it can consider in deciding whether the exports of a particular country should be cumulated and that no single factor may be determinative.[44]

63. Gerdau, ArcelorMittal and AltaSteel submitted that the following conditions of competition exist between rebar imported from each of the subject countries and between those goods and the domestically produced like goods: they are fungible, they are sold through the same channels of distribution and they compete in the same geographical markets in Canada at the same time.

64. While MEGASA accepted that most of the conditions of competition relied upon by the domestic producers were present, it argued that the different timing of imports of the subject goods from Portugal and

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39. *Rebar I* at para. 92; *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate* (6 January 2016), NQ-2015-001 (CITT) at para. 84; *Circular Copper Tube* (2 January 2014), NQ-2013-004 (CITT) at footnote 41; *Hot-rolled Carbon Steel Plate* (4 June 2014), NQ-2013-005 (CITT) at para. 64; *Copper Pipe Fittings* (6 March 2007), NQ-2006-002 (CITT) at para. 71.
40. The traditional approach is also consistent with the Government of Canada's 2003 notification to the WTO Committee on Anti-Dumping Practices, which indicated that its normal practice would be to carry out the negligibility assessment by reference to the CBSA's POI. Canada, *Notification concerning the time-period for determination of negligible import volumes* (27 January 2003), WTO Doc: G/ADP/N/100/CAN. See also WTO Committee on Anti-Dumping Practices, *Recommendation concerning the time-period to be considered in making a determination of negligible import volumes* (29 November 2002), WTO Doc: G/ADP/10, which sets out two other periods that could be used to make a determination of negligibility; neither alternative was possible in this case due to the unavailability of data covering the relevant periods.
41. The investigation report provides data on subject import volumes for the three full calendar years of the Tribunal's POI (2013, 2014 and 2015), plus two interim periods (January 1 to September 30, 2015, and January 1 to September 30, 2016). Those periods do not line up with, and are broader than, the CBSA's dumping POI, i.e. June 1, 2015, to May 31, 2016.
42. Exhibit NQ-2016-003-07E (protected), Table 79, Vol. 2.1A; Exhibit NQ-2016-003-04, Vol. 1 at 108.16.
43. See, for example, *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (17 August 2001), NQ-2001-001 (CITT) at 16; see, also, *Waterproof Footwear* (25 September 2009), NQ-2009-001 (CITT) at note 28.
44. *Laminate Flooring* (16 June 2005), NQ-2004-006 (CITT) at para. 80.

those imported from Belarus was the most important factor for the Tribunal to consider. In addition, it urged the Tribunal to consider several other factors than those that the Tribunal traditionally considers to justify its view that subject goods from Portugal should be de-cumulated from the injury analysis.[45]

65. According to MEGASA, imports from Portugal could be distinguished (and therefore de-cumulated) from the other subject countries because of MEGASA's strategy in international markets, including the Canadian market.[46] Specifically, MEGASA submitted that, unlike other steel production facilities, it does not face a production imperative because of its strong financial position. As a result, MEGASA would, could and did restrain itself from making unprofitable sales to the Canadian market. It alleged that this was demonstrated by the fact that it stopped selling rebar to Canada after January 2016 due to lower-priced subject imports from Belarus, which drove the Canadian market price below the price at which it was willing to sell. MEGASA further submitted that, unlike the other subject countries, Portuguese rebar is not subject to any trade defence measures imposed by other jurisdictions.

66. In reply, Gerdau, ArcelorMittal and AltaSteel challenged MEGASA's claim regarding the differences in the pricing and timing of subject imports from Portugal vis-à-vis the imports from the other subject countries during the POI. They submitted that, contrary to MEGASA's claim that it restrained its sales to the Canadian market when pricing was "too" low, subject imports from Portugal competed with the other subject goods throughout the POI, including all of interim 2016, when MEGASA continued to actively pursue Canadian sales. ArcelorMittal and AltaSteel further argued that MEGASA's intention is not relevant in an inquiry such as this. As such, the intent or marketing strategy behind MEGASA's decision to stop selling rebar in Canada after January 2016 does not necessarily warrant de-cumulation, especially when other conditions of competition were undisputedly present throughout the POI.

67. The Tribunal finds that the conditions of competition between the subject goods themselves and between the subject goods and the like goods are similar, and that they do not support the de-cumulation of Portugal.

68. The purchasers that responded to questionnaires indicated that the goods of each of the subject countries and the like goods share similar physical characteristics[47] and that they are largely interchangeable commodity products.[48] Price is a very important factor in purchasing decisions, and the lowest-priced goods usually win the contract or sale, subject to comparability of other key factors (e.g. product quality, meeting technical specifications and delivery time and terms).[49]

69. Furthermore, rebar from each of the subject countries is shipped to Canada via the same mode of transportation (ocean freight)[50] and is distributed through similar channels as the like goods.[51] While half of the responding purchasers indicated that domestic and imported rebar are distributed through different channels,[52] the Tribunal attributes this to the fact that domestically produced rebar is sold directly to end users, whereas foreign producers sell to end users directly or via traders/distributors. Either way, the data

45. *Transcript of Public Hearing*, Vol. 3, 5 April 2017, at 314-324.
46. As the sole Portuguese producer of rebar exported to Canada during the POI, MEGASA submitted that its evidence should be taken as the evidence of Portugal. *Transcript of Public Hearing*, Vol. 3, 5 April 2017, at 293.
47. Exhibit NQ-2016-003-06E, Tables 12-14, Vol. 1.1A.
48. *Ibid.*, Table 8.
49. *Ibid.*, Tables 17-19, 22, 23.
50. Exhibit NQ-2016-003-A-05 at para. 10, Vol. 11; Exhibit NQ-2016-003-A-03 at paras. 17-18, Vol. 11.
51. Exhibit NQ-2016-003-06E, Tables 1, 11, Vol. 1.1A.
52. *Ibid.*, Table 11.

show that end users/fabricators are the major consumers of both imported and domestically produced rebar in the Canadian market,[53] with examples of sales to common end user accounts.[54]

70. Typically, rebar from the Asian-based subject countries (Chinese Taipei, Hong Kong and Japan) is imported into western Canada while rebar from the European-based subject countries (Spain, Portugal and Belarus) enters into eastern Canada. However, that is not always the case. Subject imports from Chinese Taipei, for example, entered Canada on both the east and west coasts during the POI.[55] Likewise, confidential examples of specific offers or sales involving cross-country delivery demonstrate that subject imports from all subject countries were available throughout the entire domestic market, regardless of their port of entry.[56] Large end user/fabricator and distributor purchasers have distribution networks and locations across Canada, which allow them to distribute the subject imports throughout the country.[57] The extensive reach of such networks is supported by evidence of sales of imported and domestically produced rebar in the same regions of Canada over the POI[58] and the fact that the average delivery costs from eastern to western Canada (and vice versa) are not prohibitive, given the selling price differentials between the subject goods and the domestic like goods.[59]

71. As further evidence of the common distribution channels for imports from each of the subject countries, the combined purchasing activities of three of the major importer-distributors of rebar in Canada—Acierco, C&F International and Ferrostaal Steel GmbH—included all but one subject country (Belarus) in 2015 and all six subject countries in 2016.[60] Each of those distributors imported subject goods from both Asian- and European-based sources. For example, Ferrostaal purchased rebar from Belarus, Hong Kong, Japan and Portugal.

72. With respect to the timing of imports, the Tribunal is not convinced by MEGASA's argument that the effect of the imports from Portugal should be de-cumulated from the effects of the imports from the other subject countries, on the basis that the imports from Portugal entered the Canadian market during a different time frame from that of the imports of Belarus. In fact, the timing of the Portuguese imports was not fundamentally different from the timing of imports from the other subject countries, including Belarus.

73. The subject goods from Portugal were imported concurrently with the subject goods from the other four subject countries present in the market in 2015, and competed with one another and with the domestically produced like goods during that period.[61] There is evidence that this competition continued into 2016, when rebar from Belarus entered the Canadian market. While MEGASA's "last" export sale to

53. *Ibid.*, Tables 2, 35; Exhibit NQ-2016-003-07E (protected), Tables 38, 41, Vol. 2.1A.
54. Exhibit NQ-2016-003-06E, Table 2, Vol. 1.1A; Exhibit NQ-2016-003-07E (protected), Schedules 7, 8 and 9, Vol. 2.1A.
55. Exhibit NQ-2016-003-B-07, Attachment 1, Vol. 11A. Note: CITT Secretariat staff cross-checked Facility for Information Retrieval Management (FIRM) data with questionnaire responses by looking only at surveyed respondents in FIRM data and removing all respondents indicating that they did not import the subject goods.
56. Exhibit NQ-2016-003-06E, Table 1, Vol. 1.1A; Exhibit NQ-2016-003-07E (protected), Schedule 40, Vol. 2.1A; Exhibit NQ-2016-003-15.23 (protected), Vol. 6A at 84; Exhibit NQ-2016-003-15.21A (protected), Vol. 6A at 48; Exhibit NQ-2016-003-15.19 (protected), Vol. 6 at 238; Exhibit NQ-2016-003-15.19A (protected), Vol. 6 at 243; Exhibit NQ-2016-003-B-07, Attachment 1, Vol. 11A; Exhibit NQ-2016-003-H-04 (protected), Vol. 14.
57. Exhibit NQ-2016-003-B-07, Attachment 2, Vol. 11A.
58. Exhibit NQ-2016-003-06E, Table 80, Vol. 1.1A.
59. *Ibid.*, Table 82; Exhibit NQ-2016-003-07E (protected), Tables 59-61, Vol. 2.1A.
60. Exhibit NQ-2016-003-06E, Table 1, Vol. 1.1A.
61. Exhibit NQ-2016-003-07E (protected), Tables 31, 33, 44, 46, Vol. 2.1A.

Canada was made in January 2016, those imports only arrived in April 2016.[62] Mr. R. Pérez testified that MEGASA's customers in Canada are resellers of rebar and that MEGASA has no knowledge (or responsibility) for the price, terms or timing of the resale of its rebar in the Canadian market.[63]

74. Since MEGASA does not control the resale of its product in the Canadian market, it cannot be said that the Portuguese goods were not competing against the subject imports from Belarus or, for that matter, the other subject countries throughout interim 2016. On the contrary, the benchmark product data shows that domestic sales of Portuguese rebar occurred in the second and third quarters of 2016, at the same time as the other subject goods and domestically produced like goods.[64] In addition, MEGASA's own evidence shows that it continued to actively pursue sales and make offers to its Canadian customers throughout the entire interim 2016 period.[65]

75. In the Tribunal's view, the allegation that the entry of the Belarussian subject goods towards the end of the POI, in 2016, drove down the domestic market prices to a level that was unprofitable for MEGASA does not negate the conditions of competition that clearly existed between the Portuguese subject goods and the other subject goods and/or the like goods. As such, as competition from the subject goods intensified in the domestic market through 2014 and 2015, it may have even "softened the ground" for lower pricing and higher volumes of subject goods in 2016.

76. In terms of MEGASA's submission that it has intentionally stopped selling rebar to the Canadian market until domestic market prices increase, the Tribunal does not find it appropriate to de-cumulate on the basis of MEGASA's own corporate financial position and/or marketing strategy given the evidence that imports of the subject goods from Portugal did compete with other subject goods and like goods throughout the POI, including the most recent interim 2016 period. While, according to the evidence on the Tribunal's record, MEGASA accounted for substantially all, if not all, of Portuguese rebar exports to Canada during the POI,[66] the Tribunal's assessment is focused on the conditions of competition that exist in the Canadian market with respect to the subject goods from each of the subject *countries*. As stated above, MEGASA admitted that it does not control the resale of its products by its customers in Canada.

77. In sum, the Tribunal finds none of the factors relied upon by MEGASA sufficient to distinguish the conditions of competition relative to Portuguese rebar from those that apply to the other subject countries, nor does the Tribunal find that the Portuguese subject goods would not compete with the like goods under similar conditions of competition.

78. Therefore, the Tribunal determines that the second part of the test set out in subsection 42(3) is met and, accordingly, that cumulating the effects of the dumping of the subject goods is appropriate for the purposes of the injury analysis.

62. Exhibit NQ-2016-003-A-15, para. 11 and Attachment A, Vol. 11; *Transcript of Public Hearing*, Vol. 2, 4 April 2017, at 138.
63. *Ibid.* at 139, 160-162, 196-197.
64. Exhibit NQ-2016-003-07E (protected), Table 62, Vol. 2.1A.
65. Exhibit NQ-2016-003-H-03 at paras. 24, 28-44, Vol. 13; Exhibit NQ-2016-003-H-04 (protected), Attachments 5, 6, 8, 10, 12, 13, Vol. 14; *Transcript of Public Hearing*, Vol. 2, 4 April 2017, at 144, 164-165.
66. Exhibit NQ-2016-003-H-03 at para. 9, Vol. 13; *Transcript of Public Hearing*, Vol. 2, 4 April 2017, at 149-150.

INJURY ANALYSIS

Context for the Analysis

79. As noted above, this inquiry follows in the wake of *Rebar I*, in which the Tribunal found that the domestic industry had been threatened with injury by dumped and subsidized imports from China, Korea and Turkey. Beginning in January 2015, Chinese, Korean and Turkish imports were thus subject to the discipline of anti-dumping and/or countervailing duties.

80. With these duties in place, Chinese, Korean and Turkish imports decreased from large volumes in 2013 and 2014 to zero by 2015. More importantly, the domestic industry began to stabilize and compete with imports on a more level playing field. From 2014 to the second quarter of 2015, witnesses characterized the Canadian market as a "cost-plus" one, in which domestic producers were able to make sales at a cost plus profit margin price.[67]

81. Indeed, domestic producers took steps to invest in their facilities, change certain aspects of their business models and increase production and sales given their expectation that the Canadian market would recover even more. For example, AltaSteel secured more sales in British Columbia.[68] ArcelorMittal invested substantially in its rebar facilities.[69] In 2015, Gerdau "repatriated" production from its U.S. operations back to Canada by hiring a third crew at its plant in Whitby, Ontario.[70] MANA began production in Canada in 2015 and invested approximately $62 million to upgrade a facility it purchased in 2010.[71]

82. Nevertheless, at the same time, new sources of imports from the subject countries in this investigation began to penetrate the Canadian market at unfairly low (i.e. dumped) prices. The notable exception was one exporter from Chinese Taipei; the CBSA determined that Feng Hsin had an overall weighted average margin of dumping of zero percent, expressed as a percentage of the export price.[72]

83. Domestic producers were thus faced with a clear example of "source switching" (or the game of "whack a mole", as characterized by ArcelorMittal).[73] From the third quarter of 2015 until the end of 2016, rising volumes of subject goods allegedly placed downward pressure on the price of like goods. Witnesses characterized this market as an "import parity" market,[74] as imports began to allegedly impact domestic production, sales, prices, investments and financial results, especially given that rebar is a commodity product that sells predominately on the basis of price (a finding the Tribunal made in *Rebar I* and reached again as noted above in the section on "conditions of competition").

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67. *Transcript of Public Hearing*, Vol. 1, 3 April 2017, at 17, 32-33, 116.
68. Exhibit NQ-2016-003-B-05 at paras. 45-46, Vol. 11; *Transcript of Public Hearing*, Vol. 1, 3 April 2017, at 115, 120-122.
69. *Ibid.* at 25-26, 32.
70. Exhibit NQ-2016-003-A-09 at paras. 6-11, Vol. 11; *Transcript of Public Hearing*, Vol. 1, 3 April 2017, at 92-93.
71. Exhibit NQ-2016-003-D-02 at paras. 4-5, 16, Vol. 11C; *Transcript of Public Hearing*, Vol. 2, 4 April 2017, at 126-127.
72. See para. 19; Exhibit NQ-2016-003-04, Vol. 1 at 108.11, 108.16.
73. *Transcript of Public Hearing*, Vol. 3, 5 April 2017, at 265.
74. *Transcript of Public Hearing*, Vol. 1, 3 April 2017, at 17-20, 33-34.

84. With the imposition of provisional duties on subject goods in January 2017, however, the Canadian market began to stabilize once again, returning to what domestic producers characterized as a "cost plus market".[75]

85. It is within this context that the Tribunal must now conduct its injury analysis.

86. Subsection 37.1(1) of the *Special Import Measures Regulations*[76] prescribes that, in determining whether the dumping has caused material injury to the domestic industry, the Tribunal is to consider the volume of the dumped goods, their effect on the price of like goods in the domestic market, and their resulting impact on the state of the domestic industry. Subsection 37.1(3) also directs the Tribunal to consider whether a causal relationship exists between the dumping of the goods and the injury on the basis of the factors listed in subsection 37.1(1), and whether any factors other than the dumping of the goods have caused injury.

Treatment of Non-Dumped Goods

87. The Tribunal must consider the effect of the *dumped* goods on the domestic industry.[77] Given that Feng Hsin of Chinese Taipei had an overall weighted average margin of dumping of zero percent, the Tribunal will conduct its injury analysis without considering those subject goods.

88. The parties did not object to this approach,[78] which is similar to the approach taken by the Tribunal in previous inquiries involving exporters with margins of dumping of zero percent.[79] This approach also follows the direction of the WTO panel in *Canada – Carbon Steel Welded Pipe*,[80] i.e. that imports from an exporter with a zero percent, or *de minimis*,[81] final margin of dumping should not be treated as dumped imports for the purpose of the injury analysis.[82]

Import Volume of Dumped Goods

89. Paragraph 37.1(1)(a) of the *Regulations* directs the Tribunal to consider the volume of the dumped goods and, in particular, whether there has been a significant increase in the volume, either in absolute terms or relative to the production or consumption of the like goods.

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75. *Ibid.* at 24.
76. S.O.R./84-927 [*Regulations*].
77. Subsection 42(1) of *SIMA* provides that the Tribunal "shall make inquiry with respect to . . . (a) in the case of any goods to which the preliminary determination applies, *as to whether the dumping or subsidizing of the goods* (i) *has caused injury or retardation or is threatening to cause injury* . . ." [emphasis added].
78. *Transcript of Public Hearing*, Vol. 3, 5 April 2017, at 221, 226, 281-282.
79. *Oil Country Tubular Goods* (2 April 2005), NQ-2014-002 (CITT) at paras. 99-102; *Carbon Steel Welded Pipe* (11 December 2012), NQ-2012-003 (CITT) at para. 85; *Polyiso Insulation Board* (6 May 2010), NQ-2009-005 (CITT) at para. 74; *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at para. 86.
80. *Canada – Anti-dumping Measure on Imports of Certain Carbon Steel Welded Pipe from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu* (21 December 2016), WTO Doc. WT/DS482/R, Report of the Panel [*Canada – Welded Pipe*].
81. Article 5.8 of the WTO *Anti-Dumping Agreement* provides that "[t]he margin of dumping shall be considered to be *de minimis* if this margin is less than 2 per cent, expressed as a percentage of the export price." The term "insignificant" is similarly defined in subsection 2(1) of *SIMA*.
82. *Canada – Welded Pipe* at paras. 7.83, 7.88. See also *European communities – Anti-dumping Measure on Farmed Salmon from Norway* (16 November 2007), WTO Doc. WT/DS337/R, Report of the Panel at paras. 7.624-7.628.

90. The domestic producers submitted that there was a significant increase in the volume of imports of dumped subject goods into Canada, both in absolute terms and relative to domestic production and consumption. The domestic producers also claimed that the recent surge of imports from the subject countries exceeded even the level of imports from the Rebar I countries at their peak.[83]

91. MEGASA acknowledged that the absolute volume of imports from the subject countries increased. It argued, however, that the significance of that increase must be tempered by the fact that there will always be an absolute increase in imports when new source countries enter the Canadian market. In addition, it submitted that the timing of the increases in subject imports from Portugal did not coincide with the injurious effects allegedly experienced by the domestic industry. In the Tribunal's view, these latter arguments are relevant to the question of causation, which will be addressed below.

92. The evidence indicates that there were no imports of the subject goods in 2013. However, as noted above, after preliminary duties were imposed on imports from the Rebar I countries on September 11, 2014, small volumes of subject goods began to enter the Canadian market.[84] In 2015, the absolute volume of imports of the subject goods rose dramatically, increasing to levels approximately 10 times greater than in 2014. In interim 2016, the volume of subject goods continued to increase, albeit at a much more modest pace.[85]

93. At the same time, imports of non-subject goods decreased. From 2014 to 2015, there was a significant decrease in the absolute volume of non-subject imports overall and, to a lesser extent, total imports, given that Rebar I countries left the market and Gerdau repatriated production to Canada.[86] The volumes of non-subject imports and total imports continued to decline in interim 2016 as compared to interim 2015.[87]

94. Furthermore, the import volumes of the subject goods increased relative to the domestic production of like goods and the consumption of like goods in 2014 and, to a substantial extent, in 2015. Both ratios decreased somewhat in interim 2016 as compared to interim 2015.[88]

95. Therefore, the Tribunal finds that there was a significant increase in the volume of the dumped subject goods in both absolute and relative terms.

Price Effects of Dumped Goods

96. Paragraph 37.1(1)(b) of the *Regulations* direct the Tribunal to consider the effects of the dumped goods on the price of like goods and, in particular, whether the dumped goods have significantly undercut or depressed the price of like goods, or suppressed the price of like goods by preventing the price increases for those like goods that would otherwise likely have occurred. In this regard, the Tribunal distinguishes the price effects of the dumped goods from any price effects that have resulted from other factors affecting prices.

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83. Exhibit NQ-2016-003-B-01 at paras. 77-78, Vol. 11; *Transcript of Public Hearing*, Vol. 1, 3 April 2017, at 17, 27.
84. Exhibit NQ-2016-003-06E, Table 30, Vol. 1.1A; Exhibit NQ-2016-003-A-03 at paras. 14-16 and Attachment 1, Vol. 11.
85. Exhibit NQ-2016-003-06E, Tables 30, 32, Vol. 1.1A.
86. *Ibid.*, Table 30.
87. *Ibid.*, Table 32.
88. Exhibit NQ-2016-003-07E (protected), Table 34, Vol. 2.1A.

97. To that end, the Tribunal collected data from the domestic producers, importers, purchasers and foreign producers regarding sales by trade level, sales of benchmark products and sales to common accounts. In light of the arguments raised by the parties in respect of price depression and price suppression, the Tribunal also requested information from the parties on international prices of scrap metal used in rebar production; such information was filed by Gerdau, ArcelorMittal, AltaSteel, MANA and MEGASA.[89] As will be discussed below, the Tribunal considered both domestic and international scrap metal pricing data in its analysis of price depression and price suppression.

98. The domestic producers submitted that the subject goods undercut the price of like goods—even when factoring in a $30 per metric tonne domestic price premium that the Tribunal found in *Rebar I* and which witnesses confirmed remains accurate today[90]—and caused price depression and price suppression. Their witnesses provided a number of specific allegations of price undercutting, price depression and lost sales due to the subject goods. They referred to the Tribunal's finding in *Rebar I* that price is a key driving factor in capturing sales and submitted that the same situation still holds true in this case.[91]

99. MEGASA argued that when the domestic price premium and other "necessary" adjustments are taken into consideration, the subject goods did not undercut the price of the like goods. MEGASA further argued that the account-specific injury allegations submitted by the domestic producers did not support a finding of price depression and that there was no evidence of price suppression during the POI.

Price Undercutting

100. The domestic industry submitted that there is substantial evidence of price undercutting, as demonstrated by comparing the average annual selling prices of like and subject goods, sales by trade level, sales to common accounts and sales of benchmark products.

101. ArcelorMittal and AltaSteel argued that the selling prices of like goods should also be directly compared with import unit values, as the domestic industry competes directly with importers and the average selling price data includes the distributor/service centre markup.

102. ArcelorMittal and AltaSteel also argued that for benchmark products, comparisons should be adjusted to account for the longer lead times associated with subject goods. Specifically, as subject goods that are sold in one quarter will only be imported in the following quarter (based on the average delivery times for imports), the subject good prices should be lagged by one quarter to account for the fact that the price effect occurs when the goods are sold, and not when they enter the market.

103. As noted above, MEGASA argued that the subject goods did not undercut the domestic selling prices, when the domestic selling prices were adjusted to account for the domestic price premium of $30 per metric tonne plus three other "necessary" factors, including the following:

- The difference between theoretical weight and actual weight

  MEGASA argued that, given that domestic producers sell on actual weight, and MEGASA (and other foreign producers) sell on theoretical weight, allegations of price

89. Exhibit NQ-2016-003-A-17 (protected), Vol. 12; Exhibit NQ-2016-003-A-17A (protected), Vol. 12; Exhibit NQ-2016-003-C-13 (protected), Vol. 12B; Exhibit NQ-2016-003-H-05 (protected), Vol. 12B; Exhibit NQ-2016-003-D-04 (protected), Vol. 12B.
90. *Transcript of Public Hearing*, Vol. 1, 3 April 2017 at 18, 107, 119.
91. *Rebar I* at paras. 100, 280.

undercutting were not being made on an "apples to apples" basis.[92] MEGASA, therefore, submitted that the Tribunal should add 2.5 percent to selling prices of imports to account for the difference in theoretical weight.[93]

- Smaller volume of domestic sales

  MEGASA also submitted that the domestic selling prices should be adjusted to account for the fact that, on average, the domestic producers make smaller volume sales, whereas foreign producers generally sell only large volumes due to the fact that they ship by ocean vessel. As there is usually a discount associated with larger volume sales, in MEGASA's submission, the domestic selling prices are artificially inflated.[94] MEGASA suggested that the Tribunal take the average of the discount that would apply to each type of customer to whom domestic producers sold (i.e. small-, medium- and large-volume customers) as representative of the amount by which the domestic selling prices should be adjusted.[95]

- Inland freight

  Finally, MEGASA argued that the prices should be adjusted to account for the fact that subject import prices do not generally include inland freight.[96]

104. In MEGASA's view, when these three other factors are taken into account, all price undercutting would be eliminated, except perhaps by one subject country at the end of the POI.[97]

105. In reply, the domestic industry argued that, even when accounting for a $30 per metric tonne domestic premium, there is still evidence of significant price undercutting. ArcelorMittal and AltaSteel also submitted that the benchmark product and common accounts comparisons still show significant price undercutting even with the domestic premium factored in—especially after accounting for the one-quarter lag for longer lead times associated with the subject goods.

106. Gerdau submitted that, even if the price premium eliminated undercutting at the average annual level and end-user trade level, there was still undercutting by some individual subject countries in every period of the POI. In addition, Gerdau argued that, even when the domestic premium is accounted for, the Tribunal should take into consideration the fact that significant volumes are associated with the sales in those quarters where subject good prices undercut the domestic selling prices. With respect to the other pricing adjustments proposed by MEGASA, Gerdau submitted that those adjustments were unnecessary.

107. The Tribunal agrees. To the extent that MEGASA's arguments pertained to the elimination of price undercutting by Portugal alone, the Tribunal notes that it has decided to conduct the injury analysis on a cumulated basis in this case. Accordingly, the Tribunal's analysis of price undercutting is focused on the subject countries as a whole.

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92. *Transcript of Public Hearing*, Vol. 3, 5 April 2017, at 305-306; *Ibid.* at 45. There was evidence that imports from the United States are sold on an actual weight basis: see *Transcript of Public Hearing*, Vol. 1, 3 April 2017, at 54.
93. *Transcript of Public Hearing*, Vol. 3, 5 April 2017, at 307, 311.
94. *Ibid.* at 307-309.
95. *Transcript of Public Hearing*, Vol. 1, 3 April 2017, at 43-45; Vol. 3, 5 April 2017, at 308; *Transcript of In Camera Hearing*, Vol. 1, 3 April 2017, at 13-14.
96. *Transcript of Public Hearing*, Vol. 3, 5 April 2017, at 301.
97. *Ibid.* at 312.

108. With regard to the various adjustments to the price undercutting analysis proposed by MEGASA, the Tribunal agrees with the factoring in of the domestic price premium but does not consider that any of the other adjustments proposed by MEGASA are necessary for three reasons.

109. First, the Tribunal sees no reason to further adjust the price comparisons based on the difference between actual and theoretical weight. As Mr. M. Canosa of Gerdau testified, the conversion from theoretical to actual weight is already factored into the $30 per metric tonne domestic premium.[98]

110. Second, the Tribunal is not convinced that any differences in the volumes in which the like goods and the subject goods are sold in the domestic market result in a systematic impact on the price differential. While some of the domestic producers testified that generally there is a discount associated with larger volume sales, they also indicated that they make sales to customers across a broad spectrum of volumes.[99] In addition, there is evidence that the domestic producers sell to at least some of the same accounts as importers in similar large volumes and that the pricing data in the investigation report already include whatever discount they provided.[100]

111. MEGASA did not provide evidence to support its claim that imports of the subject goods are sold to customers in Canada in large volumes at a discount, whereas like goods tend to be sold in smaller volumes. On the contrary, MEGASA's witnesses testified that it will make smaller volume sales if the freight costs are reasonable.[101] Again, the pricing data in the investigation report reflects any discounts that were provided for sales of both subject and like goods. Accordingly, the Tribunal will not make any adjustments to its price undercutting exercise in this regard.

112. Third, the selling prices of imported goods that are presented in the market tables in the investigation report are reported on a delivered basis, as are domestic selling prices.[102] No further adjustment to account for any differences in inland freight is therefore required.

113. Turning now to the data in the investigation report, on an average annual basis, the market selling price of the subject goods significantly undercut the market selling price of the like goods in every period of the POI where there were imports of subject goods (i.e. except 2013). On average, the prices of sales from imports of subject goods were also lower than the prices of imports from non-subject countries.[103] When the average market selling price of like goods is compared to import prices, there is also undercutting in every period of the POI except 2013, to a greater degree than when the market price of sales from imports is used as the basis of comparison.[104]

114. Taking into account the domestic premium of $30 per metric tonne, price undercutting occurred in 2014 and interim 2015 and 2016, albeit to a much lesser extent in the latter periods, and was eliminated in 2015, as the pricing in full year 2015 reflects the dramatic decrease in the price of like goods that occurred in

98. *Transcript of Public Hearing*, Vol. 1, 3 April 2017, at 99; see also *Transcript of In Camera Hearing*, Vol. 1, 3 April 2017, at 25-26, 45, 59-60.
99. *Transcript of Public Hearing*, Vol. 1, 3 April 2017, at 43-45; *Transcript of In Camera Hearing*, Vol. 1, 3 April 2017, at 13-14.
100. Exhibit NQ-2016-003-07E (protected), Tables 63-65 and Schedules 7-9, Vol. 2.1A.
101. *Transcript of Public Hearing*, Vol. 2, 4 April 2017, at 180-181.
102. Exhibit NQ-2016-003-06E, Vol. 1.1A at 14-15.
103. Exhibit NQ-2016-003-07E (protected), Table 46, Vol. 2.1A.
104. *Ibid.*, Tables 44, 46.

the fourth quarter of 2015.[105] When the market selling price of like goods is compared to the import price, undercutting remains in all periods of the POI.[106]

115. With respect to end users, which account for the bulk of the domestic market in volume terms, the price of the subject goods undercut the price of the like goods in every period of the POI where subject goods were present.[107] For sales to distributors, the price of the subject goods undercut the price of the like goods in 2014, interim 2015 and interim 2016, but not full year 2015.[108] When the domestic premium is accounted for, the price of the subject goods undercut the price of the like goods sold to end users only in interim 2016.[109] For sales to distributors, accounting for the domestic premium eliminated undercutting in every period.[110]

116. The investigation report also includes data on sales to three common accounts. The selling price of the subject goods undercut the selling price of the like goods in 92 percent of the instances where price comparison was possible. Accounting for the domestic premium, 77 percent of the instances of price comparison continued to show undercutting; in 23 percent of the instances, the subject goods' selling price undercut the domestic selling price by $50 per metric tonne or more.[111]

117. The investigation report also provides quarterly comparisons between the selling prices of like and subject goods for six benchmark products.[112] Taken together, these benchmark products represent 85 percent of the total apparent market in 2015 and 88 percent of the total apparent market in interim 2016 in terms of volume.[113]

118. The benchmark comparisons show that the selling price of subject goods undercut the domestic selling price in the majority of instances. In contrast, the selling prices of non-subject goods undercut the selling price of the like goods to a lesser degree and in a minority of instances.[114] In addition, the volume of subject goods that were imported at undercutting prices was significant, as it accounted for a majority of the total volume of subject imports.[115]

119. The average differential between the selling price of like goods and subject goods in each of the eight quarters shows undercutting for all six benchmarks, except for in the first quarter of 2016 where there is no undercutting. Generally, the degree of undercutting is substantial in the first two quarters of benchmark comparisons (the fourth quarter of 2014 and the first quarter of 2015), decreased in the second quarter of 2015, but then increased, on average, in the third and fourth quarters of 2015. In the second and third quarters of 2016 the undercutting reappeared in substantial amounts, but generally did not exceed those amounts observed in the fourth quarter of 2014 and the first quarter of 2015.[116]

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105. *Ibid.*, Table 46.
106. *Ibid.*, Tables 44, 46.
107. Exhibit NQ-2016-003-06E, Table 35, Vol. 1.1A; Exhibit NQ-2016-003-07E (protected), Tables 41, 50, Vol. 2.1A.
108. Exhibit NQ-2016-003-07E (protected), Table 48, Vol. 2.1A.
109. *Ibid.*, Table 50.
110. *Ibid.*, Table 48.
111. *Ibid.*, Tables 63-65.
112. *Ibid.*, Tables 52-57.
113. Exhibit NQ-2016-003-06E, Table 58, Vol. 1.1A.
114. Exhibit NQ-2016-003-07E (protected), Table 62, Vol. 2.1A.
115. *Ibid.*, Schedules 1-6.
116. *Ibid.*, Tables 59-61.

120. When the benchmark product selling prices of subject goods are lagged by one quarter to account for delivery times, the number of instances of price undercutting increased. The amount by which the subject goods undercut the like goods was generally greater in the first few quarters where benchmark comparisons were made than the amount of undercutting without the one-quarter lag, but the amount of undercutting generally decreased towards the end of the POI.[117]

121. When the domestic premium is factored into this analysis, the degree of undercutting decreases, in terms of both frequency and amount, but it remains substantial. If the subject goods' selling prices are lagged by one quarter to account for delivery times, the number of instances of price undercutting increases slightly.[118]

122. ArcelorMittal, AltaSteel and Gerdau also submitted account-specific allegations of lost sales. The Tribunal was able to corroborate some of these allegations with information from importers' questionnaire responses. Among the allegations related to common accounts, there is evidence of lost sales of significant volumes at prices that undercut the domestic selling prices by a substantial amount in the fourth quarter of 2015 and interim 2016.[119]

123. On this basis, the Tribunal finds that there is evidence of significant price undercutting by the subject goods, even when the domestic price premium is taken into account, particularly at the end of the POI.

Price Depression

124. Gerdau, ArcelorMittal and AltaSteel submitted that the subject goods caused price depression. They argued that increasing volumes of low-priced subject imports forced them to lower their pricing to maintain sales and market share as importers and purchasers switched sources from the Rebar I countries from the last quarter of 2014 onwards. In this regard, the domestic producers provided a number of account-specific allegations of price depression.

125. MEGASA argued that the account-specific injury allegations submitted by the domestic producers did not support a finding of price depression.

126. The investigation report indicates that the average selling price of the like goods increased by two percent from 2013 to 2014 and then decreased by five percent in 2015 and by 15 percent from interim 2015 to interim 2016.[120] The average selling price of the subject goods followed a similar trend in 2015 and interim 2016.[121] These patterns hold true when examining sales to both trade levels (i.e., sales to end users and distributors).[122]

127. Likewise, the pricing data for benchmark products show, on the whole, comparable movements in the selling prices of the subject goods and the like goods—especially when a quarter lag is applied to the prices of the subject goods.[123] In general, the selling prices of benchmark products for both the subject

117. *Ibid.*, Tables 59-61.
118. *Ibid.*, Tables 52-57.
119. Exhibit NQ-2016-003-C-08 (protected) at paras. 39, 41, 45, and Attachments 1, 3, 5, Vol. 12B; Exhibit NQ-2016-003-07E (protected), Tables 63, 65 and Schedules 7, 9, Vol. 2.1A.
120. Exhibit NQ-2016-003-06E, Table 47, Vol. 1.1A.
121. Exhibit NQ-2016-003-07E (protected), Table 47, Vol. 2.1A.
122. *Ibid.*, Tables 49, 51.
123. *Ibid.*, Tables 52-57.

goods and the like goods decreased from the fourth quarter of 2014 to the first quarter of 2016, after which point selling prices increased in either the first or second quarter of 2016 (depending on the product).

128. Therefore, the Tribunal finds that the correlation in the direction of movement, or "co-movement", in the selling prices of the subject goods and like goods at both the macro and account levels is indicative of price depression.

129. Nevertheless, the Tribunal questioned whether a causal link could be established between the two sets of prices. To that end, the Tribunal considered the domestic industry's specific allegations of price depression and the evidence on the importance of price in purchasing decisions. It also considered the extent to which the prices of like goods could have been affected by non-dumping factors, such as the prices of non-subject goods and changes in the cost of scrap metal used in rebar production.

130. While the pricing movements of non-subject imports during the POI were similar to those of the subject goods and the like goods,[124] they do not explain the price depression experienced by the domestic industry in 2015 and interim 2016. By 2015, the market share of imports from the Rebar I countries had dwindled to a negligible level, while the bulk of non-subject imports from the United States were priced above both the subject goods and like goods in 2015 and interim 2016.[125]

131. The price of scrap metal, which is the main raw material used in rebar production,[126] was clearly an important factor in the downward trends in the pricing of like goods and subject goods during the POI. International scrap metal prices were available on a quarterly basis, which allowed for a comparison to the quarterly pricing data for benchmark products in this case. The parallel movements in the pricing of imported and domestic rebar followed a similar trend to scrap metal prices up until the fourth quarter in 2015.[127] That is, the price of scrap metal decreased from the fourth quarter of 2014, reaching a low point at the end of the third quarter of 2015. Scrap metal prices began to increase in the fourth quarter of 2015 followed by a sharper increase in the first quarter of 2016.

132. The domestic producers' consolidated financial results for domestic sales show that the direct materials (i.e. scrap metal[128]) component of the cost of goods manufactured decreased from 2014 to the fourth quarter of 2015 and then increased in interim 2016, following the trends in international scrap metal prices.[129]

133. Several witnesses for the domestic industry—including Mr. H. Wegiel and Mr. G. Inniss of ArcelorMittal, Mr. M. Canosa of Gerdau and Mr. B. Zurbrigg of AltaSteel—testified that, under the import parity conditions that existed in the Canadian market in late 2014 and most of 2015, the downward pressure from low-priced subject goods forced them to decrease their pricing at a faster rate than scrap metal prices fell.[130]

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124. *Ibid.*, Table 47.
125. *Ibid.*, Tables 37 and 46.
126. *Transcript of Public Hearing*, Vol. 1, 3 April 2017, at 20, 96; Exhibit NQ-2016-003-07E (protected), Schedules 31-34, Vol. 2.1A.
127. Exhibit NQ-2016-003-A-17 (protected), Vol. 12; Exhibit NQ-2016-003-A-17A (protected), Vol. 12; Exhibit NQ-2016-003-C-13 (protected), Vol. 12B; Exhibit NQ-2016-003-H-05 (protected), Vol. 12B; Exhibit NQ-2016-003-D-04 (protected), Vol. 12B.
128. Exhibit NQ-2016-003-07E (protected), Schedules 31-34, Vol. 2.1A.
129. *Ibid.*, Table 67.
130. *Transcript of Public Hearing*, Vol. 1, 3 April 2017, at 18-20, 33, 95-96, 116.

134. To test this assertion, the Tribunal looked at the "metallic margins" of the domestic producers (i.e. the difference between raw material costs and actual selling prices), which allowed for more focus on the impact of the cost of scrap metal than gross margin unit values.[131] All other things being equal, if the subject goods were having a price-depressive effect in 2015, the Tribunal would have expected to see shrinking metallic margins.

135. The Tribunal found that throughout most of 2015, the domestic producers were able to maintain stable metallic margins, although there is some evidence that metallic margins fell in the last quarter of 2015.[132]

136. Following the increase in scrap metal prices at the end of 2015 and in the first quarter of 2016, metallic margins quickly declined for the next two quarters of 2016. It is at this juncture (i.e. the first quarter of 2016) that the decrease in the prices of like goods can no longer be attributed to scrap metal prices alone; as the consolidated cost of goods manufactured (COGM) increased, the net sales value (NSV) per tonne of domestic production for domestic sales continued to decline.[133] Likewise, the selling prices for each of the six benchmark products decreased in the first quarter of 2016, and by the third quarter they were still below where they had been in the fourth quarter of 2015, despite the increase in raw materials costs.[134]

137. Witnesses for the domestic producers provided evidence regarding the manner in which a number of customers used low subject import prices to negotiate a lower price with the domestic producers.[135] While some aspects of their account-specific allegations of price depression were tested in cross-examination by MEGASA, they were largely uncontroverted.[136] The Tribunal accepts that those specific allegations of price depression demonstrate that the pricing behaviour of the subject goods was tied to the price depression of like goods experienced by the domestic industry. This linkage is further supported by the fact that responding purchasers identified the use of market intelligence on prices in negotiation as the most common method of establishing a transaction price for rebar.[137]

138. However, the falling cost of raw materials up until the fourth quarter of 2015 clearly shielded the domestic producers financially from the full effects of the downward price pressure of the subject goods on the prices of like goods. Then, in the first quarter of 2016, a notable spread between rising scrap metal prices and diminishing rebar prices materialized, creating an unavertable situation where the domestic producers were no longer able to withstand the price-depressing effects of the subject goods to maintain their metallic margins.

139. In light of the above, the Tribunal finds that while there is some evidence of price depression caused by the low-priced subject goods, the decrease in the price of like goods was largely attributable to the falling cost of scrap metal during most of the POI. In early 2016, the depressed prices of the like goods were fully

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131. *Ibid.* at 20.
132. *Ibid.* at 19-24; Protected Aid to Argument filed by ArcelorMittal and AltaSteel during the hearing on April 5, 2017, tab 6 at 2, Vol. 18; Exhibit NQ-2016-003-C-05A (protected), Vol. 12B.
133. Exhibit NQ-2016-003-07E (protected), Table 67, Vol. 2.1A.
134. *Ibid.*, Tables 52-57; Exhibit NQ-2016-003-A-17 (protected), Vol. 12; Exhibit NQ-2016-003-A-17A (protected), Vol. 12; Exhibit NQ-2016-003-C-13 (protected), Vol. 12B; Exhibit NQ-2016-003-H-05 (protected), Vol. 12B; Exhibit NQ-2016-003-D-04 (protected), Vol. 12B.
135. Exhibit NQ-2016-003-A-03 at para. 7, Vol. 11; Exhibit NQ-2016-003-B-06 (protected) at paras. 28, 35-36, 38-39, 40-41, 53, Vol. 12A; Exhibit NQ-2016-003-C-08 (protected) at paras. 40, 45, 48-50, 57, Vol. 12B; and Exhibit NQ-2016-003-A-06 (protected) at paras. 20-22, Vol. 12.
136. *Transcript of In Camera Hearing,* Vol. 1, 3 April 2017, at 17-25, 36-39.
137. Exhibit NQ-2016-003-06E, Table 26, Vol. 1.1A.

caused by the subject goods. The Tribunal finds, however, that this did not amount to significant price depression; rather, as will be discussed below, the situation experienced by the domestic industry was one of significant, and injurious, price suppression.

Price Suppression

140. The domestic industry argued that the low prices of the subject goods caused price suppression in the domestic industry, particularly when the interim 2016 period is compared to the last quarter of 2015.

141. To assess price suppression, the Tribunal typically compares the changes in the domestic industry's COGM per metric tonne to the changes in the weighted average selling prices of the like goods to determine if the domestic producers have been able to increase selling prices in step with increases in the cost of production.

142. As discussed above, the increase in the COGM over the period during which the price suppression is alleged reflects the rising cost of scrap metal in contrast with the decline in the price of like goods sold domestically.

143. From 2013 to 2014, the domestic industry's COGM per metric tonne increased in step with the increase in the NSV per metric tonne of domestic production for domestic sales (as well as the average domestic selling price of the like goods).[138]

144. From 2014 to 2015, both the COGM per metric tonne and the NSV per metric tonne of like goods decreased.[139] While the NSV did not decline to the same extent as the COGM, the Tribunal is not convinced by the allegation that such a "cost-price squeeze" constituted a form of price suppression. Given that the domestic industry was operating in a falling cost environment at the time, it did not establish that the dumped goods prevented price increases for the like goods that would otherwise likely have occurred. Moreover, the impact of the "cost-price squeeze" is already accounted for in the analysis of profitability indicators, i.e. the gross margin.

145. Nevertheless, the evidence demonstrates that the domestic producers were unable to increase selling prices in the face of increasing input costs in interim 2016; their metallic margin had hit a low point from which they were unable to recover. An examination of the consolidated income statement of the domestic industry and international scrap metal pricing data confirms that the cost of scrap metal used to produce rebar started to increase in the fourth quarter of 2015 and continued to rise until mid-2016, while the prices of domestically produced rebar continued to fall.[140]

146. Therefore, the Tribunal finds that the high volumes of subject goods entering the domestic market in 2015 and interim 2016 were priced below the like goods and that the resulting downward pressure on prices in the Canadian market prevented the domestic industry from raising its prices when the COGM suddenly increased in early 2016, resulting in significant price suppression.

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138. *Ibid.*, Table 46; Exhibit NQ-2016-003-07E (protected), Table 67, Vol. 2.1A.
139. *Ibid.*, Table 67.
140. Exhibit NQ-2016-003-06E, Table 46, Vol. 1.1A; Exhibit NQ-2016-003-07E (protected), Table 67, Vol. 2.1A; Exhibit NQ-2016-003-C-13 (protected), Vol. 12B; Exhibit NQ-2016-003-A-17 (protected), Vol. 12; Exhibit NQ-2016-003-A-17A (protected), Vol. 12; Exhibit NQ-2016-003-H-05 (protected), Vol. 12B; Exhibit NQ-2016-003-D-04 (protected), Vol. 12B.

Summary

147. In light of the significant and increasing volume of the subject goods, in both absolute and relative terms, particularly in 2015, the Tribunal finds that the low-priced subject goods significantly undercut the price of the like goods in 2015 and interim 2016. It also finds that the subject goods significantly suppressed the price of like goods in interim 2016. This conclusion is not negated by the impact of other factors on the price of domestically produced goods, including the domestic price premium or changes in the cost of raw materials used in the production of rebar.

Resultant Impact on the Domestic Industry

148. Paragraph 37.1(1)(c) of the *Regulations* requires the Tribunal to consider the resulting impact of the dumped and subsidized goods on the state of the domestic industry and, in particular, all relevant economic factors and indices that have a bearing on the state of the domestic industry.[141] These impacts are to be distinguished from the impact of other factors also having a bearing on the domestic industry.[142] Paragraph 37.1(3)(a) of the *Regulations* requires the Tribunal to consider whether a causal relationship exists between the dumping or subsidizing of the goods and the injury, retardation or threat of injury, on the basis of the volume, the price effect, and the impact on the domestic industry of the dumped or subsidized goods.

149. As noted above, the domestic producers argued that, despite the *Rebar I* finding, they were unable to benefit from the expected market recovery and their related investments and operational improvements, because of the negative effects of "source switching", i.e. the replacement of low-priced imports from the Rebar I countries with the subject goods.

150. Parties opposed pointed to other non-related factors to explain the basis for any injury the domestic producers may have experienced, such as their business strategy.

Production, Sales from Domestic Production and Market Share

151. The domestic industry argued that, while it made some gains in production, sales and market share following *Rebar I*, increasingly significant volumes of imports of subject goods at unfairly low prices prevented them from further increasing production and sales and from capturing a greater share of the market. Any increases in domestic production, sales and market share in 2015 and 2016 could be attributed to Gerdau's repatriation of its sales from U.S. imports.

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141. Such factors and indices include (i) any actual or potential decline in output, sales, market share, profits, productivity, return on investments or the utilization of industrial capacity, (ii) any actual or potential negative effects on cash flow, inventories, employment, wages, growth or the ability to raise capital, (ii.1) the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods, and (iii) in the case of agricultural goods, including any goods that are agricultural goods or commodities by virtue of an Act of Parliament or of the legislature of a province, that are subsidized, any increased burden on a government support programme.

142. Paragraph 37.1(3)(b) of the *Regulations* directs the Tribunal to consider whether any factors other than dumping or subsidizing of the subject goods have caused injury. The factors which are prescribed in this regard are (i) the volumes and prices of imports of like goods that are not dumped or subsidized, (ii) a contraction in demand for the goods or like goods, (iii) any change in the pattern of consumption of the goods or like goods, (iv) trade-restrictive practices of, and competition between, foreign and domestic producers, (v) developments in technology, (vi) the export performance and productivity of the domestic industry in respect of like goods, and (vii) any other factors that are relevant in the circumstances.

152. MEGASA submitted that the domestic industry did not lose market share and that, despite a decrease in 2014, sales from domestic production recovered to pre-2013 levels at the end of the POI.

153. The EU Delegation and the Embassy of Spain submitted that in 2015 the domestic industry's production, sales and market share increased, precisely when the subject imports reached their peak volume of the POI. They, therefore, called into question whether the alleged injury was actually caused by the subject goods versus other non-dumping factors, such as the business strategies of the domestic producers.

154. In 2014, the domestic industry's production decreased by a modest amount as compared to 2013. Sales from domestic production decreased by seven percent over the same period.[143] The subject goods were not yet a significant presence in the market in 2013 and 2014, but large volumes of sales from Rebar I countries were still being made.[144]

155. In terms of market share, the domestic producers lost six percentage points in 2014 as compared to 2013,[145] but the total volume of the Canadian market increased by eight percent.[146] This reduced share is largely attributable to the increased market share of Rebar I countries, as subject imports only gained minimal market share that year.[147]

156. In 2015, the domestic industry's production increased as compared to 2014.[148] Sales from domestic production also increased by 12 percent during this period.[149] While the total volume of the Canadian market contracted by nine percent,[150] the domestic industry increased its market share by nine percentage points.[151] However, these increases can be explained by MANA's entry into the market and Gerdau's repatriation of its U.S. imports, as the data show a corresponding significant decrease in sales from the domestic producers' U.S. imports as well as in their market share in 2015 as compared to 2014.[152]

157. The volume of sales from imports of subject goods also increased nearly tenfold in 2015 as compared to 2014.[153] As well, subject imports saw their most dramatic increase in market share from 2014 to 2015, while the Rebar I countries' market share decreased by approximately the same amount.[154] Accordingly, the domestic producers are correct that the market share vacated by the Rebar I countries was captured by the subject goods.

158. In the interim 2016 period, domestic production volumes increased while sales from domestic production increased by 14 percent as compared to the same period in 2015.[155] In addition, the overall market increased by eight percent[156] and the domestic industry's market share increased by two percentage

143. Exhibit NQ-2016-006-06E, Table 75, Vol. 1.1A; Exhibit NQ-2016-003-07E (protected), Table 75, Vol. 2.1A.
144. Exhibit NQ-2016-003-07E (protected), Table 35, Vol. 2.1A.
145. Exhibit NQ-2016-003-06E, Table 37, Vol. 1.1A.
146. *Ibid.*, Table 36.
147. Exhibit NQ-2016-003-07E (protected), Table 37, Vol. 2.1A.
148. *Ibid.*, Table 75.
149. Exhibit NQ-2016-003-06E, Table 75, Vol. 1.1A.
150. *Ibid.*, Table 36.
151. *Ibid.*, Table 37.
152. Exhibit NQ-2016-003-07E (protected), Tables 36, 37, Vol. 2.1A.
153. *Ibid.*, Table 35.
154. *Ibid.*, Table 37.
155. Exhibit NQ-2016-006-06E, Table 75, Vol. 1.1A; Exhibit NQ-2016-003-07E (protected), Table 75, Vol. 1.1A.
156. Exhibit NQ-2016-006-06E, Table 36, Vol. 1.1A.

points.[157] These increases are partially explained by MANA's entry into the market as a domestic producer. As well, Gerdau made further repatriation efforts in 2016,[158] which are reflected in the decreases in the domestic industry's sales from U.S. imports and the market share of those sales.[159]

159. During the interim 2016 period, sales from imports of subject goods also increased, even though they were not on pace to achieve the same growth rate as in 2015,[160] and their market share also increased slightly.[161] The presence of the subject goods in the market prevented the domestic producers from gaining more of the additional market that became available in the interim 2016 period.

160. Therefore, while the increased presence of the subject goods did not result in decreased production, sales, or market share, they prevented the domestic industry from further increasing production and sales and from significantly increasing its share of the market that was made available by the exit of the Rebar I countries, as that share was captured by the subject goods.

Profitability

161. The domestic industry argued that the fact that it had to lower its prices in order to compete with low-priced imports of subject goods and attempt to maintain its market share caused it to suffer a decline in profitability.

162. Gerdau estimated its financial performance in 2016, "but for" the subject imports and on the basis of the assumption that the scrap metal cost-sales price differential (i.e. the metallic margin) would remain the same as it was in 2015. It concluded that, without the subject goods, its 2016 financial results would have improved significantly over those observed in the rest of the POI.[162] Likewise, ArcelorMittal estimated its financial performance in full year 2016 "but for" the effect of the dumping of the subject goods, by adding a figure reflecting the company's margin between average selling prices and cost of production in February 2017, the first full month since preliminary duties were imposed, to its 2016 net revenue. According to this analysis, if the subject goods had not entered the market and impacted the margin between selling prices and costs of production, ArcelorMittal's financial position would have shifted from a loss to a profit.[163]

163. MEGASA argued that any injury suffered by the domestic industry cannot be attributed to imports from Portugal because the domestic industry's financial results improved when MEGASA was selling to Canada (i.e. 2014 to 2015) and worsened when it was not (i.e. 2016).

164. As the Tribunal has determined that a cumulated approach to the injury analysis is appropriate, it is not necessary to address MEGASA's claims that subject goods from Portugal did not have a negative impact on the domestic industry's profitability. Further, as discussed above, Portuguese rebar was in fact present in the Canadian market at low prices in 2016.

165. In examining the domestic industry's profitability indicators, the Tribunal will focus on the gross margin level in light of the fact that MANA only began domestic production in 2015. Such a conservative approach will ensure that any negative financial results related to MANA's start-up costs that would appear at the net income level are not attributed to the subject goods.

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157. *Ibid.*, Table 37.
158. Exhibit NQ-2016-003-A-09 at para. 10, Vol. 11.
159. Exhibit NQ-2016-003-07E (protected), Tables 36, 37, Vol. 2.1A.
160. *Ibid.*, Table 36.
161. *Ibid.*, Table 37.
162. Exhibit NQ-2016-003-A-07 at paras. 40-44, Vol. 11; Exhibit NQ-2016-003-A-01 at para. 56, Vol. 11.
163. Exhibit NQ-2016-003-C-05 at paras. 50-54, Vol. 11C.

166. The domestic industry's financial results show a minimal improvement in the gross margin in 2014 as compared to 2013. In 2015, the gross margin showed a marked improvement as compared to 2014. From 2014 to 2015, the NSV declined at the per metric tonne level, but by far less than the decreases in both the consolidated cost of goods sold (COGS) and the COGM, which were driven by the decrease in direct materials used. These decreasing costs allowed the domestic industry to benefit from the highest gross margin, as compared to the remainder of the POI,[164] despite the entry of significant volumes of subject goods during this period.

167. However, the domestic industry's profitability dramatically declined in interim 2016 as compared to the same period in 2015. The NSV decreased by approximately twice as much as the decrease in the COGM and COGS, which resulted in a significant decline in the gross margin per metric tonne.[165] This effect is noteworthy even when accounting for the impact of MANA's higher-priced sales in the third quarter of 2016 compared to the second quarter of 2016, when it shifted to spot-market sales to command a higher price for immediate delivery.[166]

168. As 2016 was on pace to have the largest annual volume of subject imports at significantly low prices, and the domestic producers did not have the ability to decrease their prices to the degree observed while still covering their costs, the data for interim 2016 support the domestic industry's argument that it was forced to compete on price with the subject goods in order to maintain market share, which resulted in serious financial losses.

169. As such, the data support the domestic industry's argument that it had been recovering financially in the wake of *Rebar I*. The data also support the claim that the entry of the subject imports caused the domestic industry's profitability to significantly decline, most notably at the end of the POI.

Capacity Utilization, Employment and Productivity

170. The domestic industry submitted that the dumping of the subject goods prevented it from achieving an expected improvement in capacity utilization, which was already at an unsustainably low level due to the Rebar I imports. In Gerdau's case, the subject goods prevented it from efficiently running the third crew at its Whitby operation; indeed, it stressed that the third crew is in jeopardy without a positive finding in this case. However, Gerdau also stressed that absent the subject imports, it should be able to add a fourth crew to its Whitby facility given the strong Canadian demand for rebar. ArcelorMittal and AltaSteel incurred several unplanned mill shutdowns due to a lack of orders.

171. The domestic industry also argued that they were unable to improve capacity utilization by producing other types of bar on the same machines as those markets are already mature.

172. The Embassy of Spain submitted that the low capacity utilization of the domestic producers could indicate that their mills are oversized. For its part, the Government of Hong Kong submitted that the domestic industry has not been injured in terms of capacity utilization and employment, as capacity utilization remained stable and employment numbers increased from 2013 to 2015.

173. The investigation report reveals that the domestic industry's capacity utilization rate was stable throughout the POI.[167]

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164. Exhibit NQ-2016-003-07E (protected), Table 67, Vol. 2.1A.
165. *Ibid.*, Table 67.
166. *Transcript of Public Hearing*, Vol. 2, 4 April 2017, at 127-128.
167. Exhibit NQ-2016-003-07E (protected), Table 73, Vol. 2.1A.

174. Direct employment, hours worked and wages decreased significantly in 2014 as compared to 2013 while productivity increased by approximately the same degree,[168] which suggests that fewer employees were producing similar volumes of goods. This decrease is most likely not attributable to the subject goods given the low volume of imports in 2014.

175. The domestic industry's direct employment, hours worked and wages increased in 2015, due to the addition of Gerdau's third crew and MANA's entry into the market; productivity, in terms of tonnes per employee, decreased slightly in 2015. In interim 2016, direct employment, hours worked and wages increased modestly as compared to interim 2015.[169]

176. Overall, the Tribunal finds that, despite the addition of Gerdau's third crew and MANA's entry into the market, the domestic industry was unable to increase employment, productivity and capacity utilization to the degree that it expected in light of the *Rebar I* finding. The evidence of unplanned mill shutdowns in 2015 and 2016[170] supports the domestic industry's claim that current capacity utilization levels are verging on unsustainable.

Return on Investments and Ability to Raise Capital

177. The domestic industry submitted that each company must compete for investment dollars with other international companies within their respective corporate groups and that, accordingly, they are not able to raise capital when their financial performance is poor, as it has been during the POI.[171] For example, two of three major capital expenditure projects at ArcelorMittal's Canadian operations were put on hold in 2016 due to poor financial performance.[172] As this poor financial performance is attributable to competition with the subject goods, the impact on investments is accordingly the result of imports of the subject goods.

178. Further, the domestic industry submitted that it has not been able to realize a full return on investments made in anticipation of the improvement in market conditions after the *Rebar I* finding because of competition with imports of the subject goods.

179. For example, ArcelorMittal was able to secure a substantial investment to improve its rebar facilities after the *Rebar I* finding, and that project is now being finalized.[173] However, it may not be able to realize the returns on this investment due to the impact that competition with the low-priced subject imports has had on its financial performance.

180. Gerdau submitted that increasing volumes of the subject goods in the market prevented it from fully repatriating production to Canada, even in the context of increased market demand in Canada.[174] As Gerdau's operations require a minimum amount of production to run efficiently with three crews, its inability to secure the full volume of sales repatriated from the U.S. has put the third crew at risk.[175] If the third crew is laid off, then Gerdau will lose the value of its investment in training those employees, as well as the cost efficiencies gained by operating with three crews.[176]

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168. *Ibid.*, Table 75.
169. *Ibid.*
170. Exhibit NQ-2016-003-C-08 (protected) at para. 59, Vol. 12B; Exhibit NQ-2016-003-B-06 (protected) at paras 59-61, Vol. 12A.
171. Exhibit NQ-2016-003-A-11 at para. 23, Vol. 11; *Transcript of Public Hearing*, Vol. 1, 3 April 2017, at 25-26.
172. *Ibid.* at 26; *Transcript of In Camera Hearing*, Vol. 1, 3 April 2017, at 7-9.
173. *Transcript of Public Hearing*, Vol. 1, 3 April 2017, at 25-26, 32.
174. Exhibit NQ-2016-003-A-09 at paras. 9, 11, Vol. 11; *Transcript of Public Hearing*, Vol. 1, 3 April 2017, at 92.
175. *Ibid.* at 92-93.
176. Exhibit NQ-2016-003-A-09 at paras. 12-13, Vol. 11.

181. Notwithstanding the gains it made in B.C. sales, in part due to the reduced competition from imports from the Rebar I countries, AltaSteel argued that it has faced challenges due to the need to compete with low-priced subject imports in this case.[177]

182. Finally, the *Rebar I* finding was a significant factor in MANA's decision to enter the Canadian rebar market. MANA invested approximately $62 million in upgrading the facility it purchased in 2010, which only began operations in 2015.[178] MANA has since been engaged in efforts to convince users to buy the higher strength product that it produces at this facility.[179] Mr. W. Sommerer of MANA testified that the use of the higher strength material would be more cost-effective for users as it would mean that less steel and less concrete would be required in the structures; however, the continued availability of low-priced subject goods has meant that users have had no incentive to purchase these products from MANA.[180]

183. In light of the above, the Tribunal finds that the dumping of the subject goods has had a significant impact on the domestic industry's return on investments and ability to raise capital.

Materiality

184. The Tribunal will now determine whether the effects of imports of the subject goods noted above are "material", as contemplated in the definition of "injury" under section 2 of *SIMA*. *SIMA* does not define the term "material". However, both the extent of injury during the relevant timeframe and the timing and duration of the injury are relevant considerations in determining whether any injury caused by the subject goods is "material".[181]

185. In this case, the injury to the domestic industry manifested primarily at the end of the POI, particularly in the last quarter of 2015 and the interim 2016 period, in the form of a sharp decline in its profitability and a negative impact on its ability to raise capital. During this period the large volume of low-priced subject goods entering the Canadian market also hindered the domestic industry from realizing improvements in production, sales, market share, employment and capacity utilization that were expected in the wake of *Rebar I*. While this timeframe represents only a portion of the POI, the Tribunal finds that this injury was indeed material in a manner consistent with some of its previous findings.[182]

186. The timing of the injury in this case is also significant given the overlap with the CBSA's dumping POI; in other words, the injury is most prevalent during the period when imports of subject goods were being dumped in large volumes.

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177. Exhibit NQ-2016-003-B-05 at paras. 45-56, Vol. 11; *Transcript of Public Hearing*, Vol. 1, 3 April 2017, at 115, 120-122.
178. Exhibit NQ-2016-003-D-02 at paras. 5, 16, Vol. 11C; *Transcript of Public Hearing*, Vol. 2, 4 April 2017, at 126-127.
179. Exhibit NQ-2016-003-D-02 at paras. 5, 17, Vol. 11C.
180. *Ibid.* at paras. 9-13.
181. The Tribunal suggested, in *Certain Hot-rolled Carbon Steel Plate* (27 October 1997), NQ-97-001 (CITT) at 13, that the concept of materiality could entail both temporal and quantitative dimensions, "[h]owever, the Tribunal is of the view that, to date, the injury suffered by the industry has not been for such a duration or to such an extent as to constitute 'material injury' within the meaning of *SIMA*" [emphasis added].
182. In *Large Diameter Line Pipe* (20 October 2016), NQ-2016-001 (CITT), the domestic industry conceded that it had not suffered injury in the first year of the POI. Nevertheless, the Tribunal found the injury in the third year to be material in terms of its lost sales and market share, reduced production and declining gross margins, notwithstanding a "temporary recovery of the domestic industry situation" in the following interim period (paras. 154-160). In *Stainless Steel Sinks* (24 May 2012), NQ-2011-002 (CITT), the impact on the domestic producers' financial performance did not show up until the third year of the POI, which was also when the subject goods started entering the market in significant volumes (para. 141). The Tribunal found material injury in that case as well.

187. The extent of the injury suffered by the domestic industry during this timeframe was also severe. Despite significant investments into its operations, the domestic industry was prevented from increasing production, sales, market share, employment and capacity utilization to the expected degree. The domestic industry saw a steep decline in profitability, which contributed to its inability to raise further capital.

188. Therefore, the Tribunal finds that the dumping of the subject goods has caused material injury to the domestic industry.

EXCLUSIONS

189. The Tribunal considered whether to grant two exclusions. Consideration of the first exclusion was initiated by the Tribunal itself as a result of the CBSA's determination that Feng Hsin of Chinese Taipei had an overall weighted average margin of dumping of zero percent, and in light of the WTO Panel's decision in *Canada – Welded Pipe*. The second exclusion was requested by the CELSA Group should the Tribunal reach a finding of injury or threat thereof.

190. The Tribunal will consider these two exclusions in turn.

Exporter Exclusion for Feng Hsin Steel Co., Ltd.

191. Following the CBSA's final determination that Feng Hsin had a zero percent margin of dumping, the Tribunal asked the parties for their views on how to treat Feng Hsin's non-dumped goods for the purposes of the injury inquiry.[183] The Tribunal raised the question in light of the recent conclusion of the WTO Panel in *Canada – Welded Pipe* that goods found not to be dumped should not be treated as dumped goods and anti-dumping investigations against the goods of exporters with a *de minimis*[184] margin of dumping must be immediately terminated.[185]

192. Despite agreeing that Feng Hsin's goods should be excluded from the injury analysis because they were not dumped, ArcelorMittal, AltaSteel and Gerdau argued that the Tribunal should not exclude Feng Hsin from any positive injury finding.[186] They relied on the argument that the WTO *Canada – Welded Pipe* decision has not yet been implemented into Canadian law, even though the bill to do so is currently before Parliament. The bill as presently worded would require the CBSA to terminate its investigations at the final determination, in relation to the goods of exporters with zero or insignificant final margins of dumping.[187] The domestic producers argued that under Canadian law it is the responsibility of Parliament, and not the Tribunal, to implement decisions interpreting international treaties. In this regard, ArcelorMittal and AltaSteel cited a decision of the Federal Court, in *Pfizer v. Canada*,[188] where the issue concerned the implementation and legislation into domestic law of a WTO Agreement by Parliament.[189]

183. *Transcript of Public Hearing*, Vol. 1, 3 April 2017, at 87.
184. A margin of dumping is considered to be "*de minimis*" if it is less than two per cent, expressed as a percentage of the export price, as per Article 5.8 of the *Anti-dumping Agreement*. Likewise, under *SIMA*, the same definition is used for the term "insignificant" in subsection 2(1).
185. *Canada – Welded Pipe* at para. 7.37.
186. *Transcript of Public Hearing*, Vol. 3, 5 April 2017 at 221-226, 280-285.
187. Protected Aid to Argument filed by ArcelorMittal and AltaSteel during the hearing on April 5, 2017, tab 2 at 9, Vol. 18.
188. *Pfizer Inc. v. Canada*, [1999] F.C.J. No. 1122 [*Pfizer*].
189. *Pfizer* at paras. 36, 44-47.

193. The domestic producers also argued that the Minister of Finance may refer any adverse WTO finding back to either the CBSA or the Tribunal with instructions regarding the implementation of such a finding and/or make an order for the remission of duties, which they argued are tools that the Minister could use pending the amendment of *SIMA*.

194. Lastly, ArcelorMittal and AltaSteel noted that in the *Canada – Welded Pipe* case the Government of Chinese Taipei disagreed with Canada's position that subsection 43(1) of *SIMA* gives the Tribunal discretion to exclude the goods of exporters from findings of injury specifically on the basis of their *de minimis* margins of dumping.[190]

195. MEGASA took no position on the issue of how to treat Feng Hsin.

196. The recent *Canada – Welded Pipe* case marks the first time that a WTO panel has addressed the *SIMA* provisions on terminating an anti-dumping investigation and/or that a panel has reviewed an injury finding of the Tribunal. Accordingly, the Tribunal considers that failure by Canada to terminate an investigation in respect of exporters with individual *de minimis* margins of dumping would be inconsistent with article 5.8 of the *Anti-dumping Agreement*.[191]

197. The proposed amendments to *SIMA* would bring the statute into compliance with the *Anti-dumping Agreement* by allowing the CBSA to immediately terminate future investigations against individual exporters. However, those amendments are still before Parliament and would not apply retroactively. Moreover, while the Minister has the authority in *SIMA* to refer matters back to the CBSA and the Tribunal to give effect to WTO decisions, it is uncertain that such authority would be used in the present case.

198. In the meantime, and regardless of what the fate of the bill may be or what the Minister may do, it is well established that the Tribunal has the discretionary authority in subsection 43(1) of *SIMA* to exclude certain subject goods from its findings of injury.[192] Subsection 43(1) provides that, in an injury inquiry pursuant to section 42, the Tribunal "shall . . . make such order or finding with respect to the goods to which the final determination applies *as the nature of the matter may require*, and shall declare to *what goods, including, where applicable, from what supplier and from what country of export*, the order or finding applies" (emphasis added).

199. In the past, the Tribunal has refused to grant producer exclusions for non-dumping exporters solely on the basis that this would allow the exporter a "licence to dump" in the future.[193] However, the WTO decision in *Canada – Welded Pipe* concluded that, *inter alia*, article 5.8 of the *Anti-dumping Agreement* requires the termination of an investigation in respect of exporters with individual *de minimis* margins of dumping.[194]

200. Article 5.8 provides as follows:

> 5.8 An application under paragraph 1 shall be rejected and *an investigation shall be terminated promptly* as soon as the authorities concerned are satisfied that there is not sufficient evidence of

190. *Canada – Welded Pipe* at para. 7.193.
191. *Ibid.* at para. 7.37.
192. *Hetex Garn A.G. v. The Anti-dumping Tribunal*, [1978] 2 F.C. 507 (FCA); *Sacilor Aciéries v. Anti-dumping Tribunal* (1985) 9 C.E.R. 210 (CA); Binational Panel, *Induction Motors Originating From the United States of America (Injury)* (11 September 1991), CDA-90-1904-01; Binational Panel, *Certain Cold-rolled Steel Products Originating or Exported From the United States of America (Injury)* (13 July 1994), CDA-93-1904-09.
193. *Carbon Steel Welded Pipe* (11 December 2012), NQ-2012-003 (CITT) at para. 181-184.
194. *Canada – Welded Pipe* at para. 7.37.

> either dumping or of injury to justify proceeding with the case. *There shall be immediate termination in cases where the authorities determine that the margin of dumping is de minimis*, or that the volume of dumped imports, actual or potential, or the injury, is negligible. The margin of dumping shall be considered to be *de minimis* if this margin is less than 2 per cent, expressed as a percentage of the export price. The volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular country is found to account for less than 3 per cent of imports of the like product in the importing Member, unless countries which individually account for less than 3 per cent of the imports of the like product in the importing Member collectively account for more than 7 per cent of imports of the like product in the importing Member.
>
> [Emphasis added]

201. According to the WTO Panel, "the second sentence of Article 5.8, when read in light of the context of the phrase 'margin of dumping' as used in other provisions of the *Anti-dumping Agreement*, requires immediate termination of an investigation in respect of exporters that have individual *de minimis* margins of dumping."[195] In fact, the Appellate Body had previously taken the same approach in *Mexico – Definitive Anti-dumping Measures on Beef and Rice*.[196]

202. In the present case, the Tribunal's finding that the dumping of the subject goods has caused injury to the domestic industry cannot include the subject goods exported by Feng Hsin given that it has been found to have not been dumping by the CBSA. In such circumstances, the WTO *Anti-dumping Agreement* requires termination in relation to Feng Hsin.

203. Accordingly, in these circumstances, the Tribunal finds it appropriate to exercise its discretion to effectively terminate the present proceedings with respect to Feng Hsin's goods. Indeed, Canada pointed out to the WTO panel in *Canada – Welded Pipe* that subsection 43(1) of *SIMA* enables the Tribunal to terminate proceedings with respect to goods of exporters with *de minimis* individual margins of dumping by way of a producer/exporter-specific exclusion.[197]

204. While the discretionary exercise of this authority will not eliminate the need to amend *SIMA* (for *SIMA* to be consistent with the *Anti-Dumping Agreement*, it must require termination in these circumstances on a non-discretionary basis), it does enable the Tribunal to treat Feng Hsin's goods in a manner that is consistent with both *SIMA* and the *Anti-Dumping Agreement* at the present time. In this regard, the Tribunal is mindful that it is obliged to interpret and apply *SIMA* in a manner that is in conformity with Canada's international obligations except where *SIMA* clearly conveys a contrary intent.[198] There is no such contrary intention here.

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195. *Ibid.*
196. *Mexico – Definitive Anti-dumping Measures on Beef and Rice* (29 November 2005), WTO Doc. WT/DS295/AB/R, Report of the Appellate Body.
197. *Canada – Welded Pipe* at paras. 7.192-7.196. The WTO Panel did not find that the Tribunal did not possess this discretion, only that this mechanism would not ensure *immediate* termination of the investigation, as required by the wording of Article 5.8; *Canada – Welded Pipe* at paras. 7.203-7.210.
198. The Supreme Court of Canada in *R. v. Hape* [2007] 2 SCR 292, 2007 SCC 26 (CanLII) at para. 53, stated that "[i]t is well-established principle of statutory interpretation that legislation will be presumed to conform to international law. The presumption of conformity is based on the rule of judicial policy that, as a matter of law, courts will strive to avoid constructions of domestic law pursuant to which the state would be in violation of its international obligations, unless the wording of the statute clearly compels that result." See also *National Corn Growers Assn. v. Canada (Import Tribunal)*, [1990] 2 SCR 1324.

205. In light of the above, the Tribunal excludes from its injury finding the subject goods exported by Feng Hsin.

Request for Product Exclusion from the CELSA Group

General Principles

206. In determining whether a product exclusion is likely to cause injury to the domestic industry, the Tribunal typically considers such factors as whether the domestic industry produces, actively supplies or is capable of producing identical or substitutable products that would potentially be in direct competition with the subject goods for which the exclusion is requested.[199] The Tribunal is mindful of whether an exclusion would undermine the injury's remedial effect by encouraging purchasers to switch to a significant extent from the dumped goods that are the subject of the finding to dumped goods covered by the exclusion.

207. Every party must submit its best evidence either in support of or against an exclusion request. In this way, the evidentiary burden is to be shared by all parties so that the Tribunal can determine whether it will exercise its discretion to grant product exclusions on the basis of its assessment of the totality of the evidence on the record.[200]

208. Accordingly, parties are expected to file probative, compelling and case-specific evidence in support of or against the granting of exclusions, so that the Tribunal can reach an informed decision on the issue of whether the importation of particular products covered by the definition of the subject goods for which exclusions are requested is likely to cause injury to the domestic industry. The evidentiary burden is shared by all parties and, ultimately, the Tribunal must determine whether it will exercise its discretion to grant product exclusions on the basis of its assessment of the totality of the evidence on the record.

209. It is with these considerations in mind that the Tribunal will now address the product exclusion request that it received from the CELSA Group.

Analysis of Product Exclusion Request from the CELSA Group

210. The CELSA Group requested an exclusion for CELSA MAX® hot-rolled deformed concrete bars in coils produced with spooler technology ("hot-spooled DBIC"). It is produced in spooled coils in diameters of up to 25mm in grades B500B and B450C to meet several international standards.[201]

211. The CELSA Group submitted that CELSA MAX® hot-spooled DBIC is distinct from other coiled rebar for several reasons. Firstly, due to the lack of twist in the coil, the coils are easier to process and there is no bending out of plane after the de-coiling process. This reduces the number of defective pieces produced by the processor, allowing for higher processing speeds and increased productivity.[202]

212. Secondly, the higher tonnage per coil (up to 3MT per spool) and the possibility to use all diameters needed means that fewer changes are required by the user during the processing of the coil, thus allowing for fewer machine adjustments, higher productivity and fewer leftovers.[203]

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199. *Certain Fasteners* (6 January 2010), RR-2009-001 (CITT) [*Fasteners 2009*] at para. 245.
200. *Aluminum Extrusions* (17 March 2014), RR-2013-003 (CITT) at paras. 193-95; *Fasteners 2009* at para. 199.
201. Exhibit NQ-2016-003-24.01, Vol. 1.3 at 3.
202. *Ibid.* at 4.
203. *Ibid.*

213. Thirdly, the fact that the coils are larger and more compact, yet contain more tonnes of steel per coil, means that less space is lost per coil. The more compact coils are easier and safer to manipulate, transport and stack, which provides significant logistic savings for the users of the coils as well as safety improvements throughout the supply chain.[204]

214. Finally, special proprietary machinery is required to produce the spooled coils, and the production process to obtain the spooled coils is distinct.[205]

215. The CELSA Group argued that the domestic industry does not produce an identical or substitutable product. The CELSA Group submitted that, of the domestic producers, only ArcelorMittal produces rebar in coils, and that it does not produce coils in 20M and 25M diameters. The CELSA Group further argued that coiled rebar is a niche of ten percent or less of the rebar market in Canada and injury cannot occur to producers that are not in this segment.

216. The domestic industry opposed the exclusion request on the grounds that the product at issue is directly competitive with and substitutable for both the rebar in coils and rebar in straight lengths that it produces, and that accordingly granting the exclusion would cause injury.

217. While the domestic industry conceded that only ArcelorMittal produces rebar in coils, and only in 10M and15M diameters,[206] it submitted that, generally, rebar in coils is fully substitutable for rebar in straight lengths, which it produces in diameters up to 35M.[207] The only difference between rebar in coils and straight rebar is that rebar in coils undergoes an additional step in the production process (coiling) and must be straightened before it can be used.

218. ArcelorMittal and AltaSteel submitted that, although rebar in coils can command a price premium of between $25-50 per metric tonne, customers will often choose to use straight rebar instead of coiled rebar because the lower price associated with straight rebar outweighs the convenience and lower yield loss associated with using rebar in coils.[208]

219. The domestic industry submitted that the CELSA Group has attempted to distinguish CELSA MAX® hot-spooled DBIC from domestically produced rebar on the basis of packaging and aesthetic features, neither of which are relevant to the Tribunal's analysis. Furthermore it charged that the CELSA Group overlooked the factors that the Tribunal should consider, namely, whether domestically produced rebar has the same physical and chemical characteristics and the same end uses as the product in question, whether it fills the same customer needs and whether it competes in the same market. The domestic industry submitted that all these criteria are met by the rebar it produces.

220. The CELSA Group replied that rebar in coils should not be considered substitutable for straight rebar. The CELSA Group argued that the fact that coiled rebar achieves a price premium in the market suggests that coils do not actually directly compete with straight rebar in such a competitive commodity market, because otherwise there would be no market for coiled rebar.

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204. *Ibid.*
205. *Ibid.*; Exhibit NQ-2016-003-28.01, Vol. 1.3 at 109.
206. *Transcript of Public Hearing*, Vol. 1, 3 April 2017, at 55-57. Although Gerdau supplies rebar in coils to Canada from its U.S. facilities, it does not produce rebar in coils at its Canadian mills: see Exhibit NQ-2016-003-26.04A, Vol. 1.3 at 88 and *Transcript of Public Hearing*, Vol. 1, 3 April 2017, at 103.
207. Exhibit NQ-2016-003-26.04, Vol. 1.3 at 82.
208. Exhibit NQ-2016-003-26.01A, Vol. 1.3 at 39; Exhibit NQ-2016-003-26.02, Vol. 1.3 at 51.

221. Further, the CELSA Group argued that as straightening rebar amounts to fabrication, fabricated rebar is not a subject good; therefore, rebar in straight lengths should not be considered substitutable for rebar in coils.

222. The Tribunal accepts that rebar in coils and rebar in straight lengths are substitutable for one another. Rebar "in straight lengths and in coils" are both specifically included in the product definition, and no party argued or presented evidence during this proceeding that rebar in straight lengths and rebar in coils are not like goods to one another. Specifically, the fact that rebar packaged in coils must be uncoiled and cut-to-length before it can be used has never been presented as a reason to distinguish between rebar in coils and rebar in straight lengths.

223. Further, the only argument that has been put forward as to why rebar in straight lengths and rebar in coils should not be considered substitutable is that the price premium for coils precludes direct competition between rebar in coil and rebar in straight lengths. However, the domestic industry's evidence is universally that rebar in coils and rebar in straight lengths do compete.[209]

224. Similarly, the Tribunal finds that the CELSA MAX® hot-spooled DBIC is fully substitutable for, and would compete with, both straight rebar and coil produced by the domestic industry. In the absence of any substantive evidence put forward by the CELSA Group, the Tribunal accepts the domestic industry's evidence that the process of spooling during production does not change the characteristics of the product.[210] Similarly, the process of unspooling, even if the end user must use special machinery, does not change the product; nor is the unspooled rebar used for different applications.[211] The Tribunal does not consider the unspooling of rebar that has been packaged in coils to constitute fabrication, especially since the additional product information says that cutting to length is not fabrication.[212]

225. The Tribunal also accepts that the CELSA MAX® hot-spooled DBIC cannot be differentiated from the domestically produced rebar on the basis that it meets international standards, as if it were to enter the Canadian market, it would have to meet the CSA standard.[213] In addition, the Tribunal notes that MANA's evidence is that it produces rebar in similar high-strength grades as the CELSA MAX® hot-spooled DBIC.[214]

226. Finally, the Tribunal accepts the domestic industry's evidence that domestically produced rebar would be used for the same end uses, fill the same customer needs and compete in the same market as the CELSA MAX® hot-spooled DBIC.[215]

227. While the Tribunal accepts that the product for which the exclusion is requested is packaged in a way that makes it easier and safer to store and transport, and that the spooling process may further allow for cost efficiencies, this does not change the fact that the domestically produced rebar and the CELSA MAX® hot-spooled DBIC are fully substitutable.

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209. Exhibit NQ-2016-003-26.01A, Vol. 1.3 at 39.
210. Exhibit NQ-2016-003-26.03A, Vol. 1.3 at 70; Exhibit NQ-2016-003-26.04A, Vol. 1.3 at 89.
211. Exhibit NQ-2016-003-26.01A, Vol. 1.3 at 39; Exhibit NQ-2016-003-26.02, Vol. 1.3 at 51; Exhibit NQ-2016-003-26.03A, Vol. 1.3 at 70; Exhibit NQ-2016-003-26.04A, Vol. 1.3 at 89.
212. See para. 22.
213. Exhibit NQ-2016-003-26.02, Vol. 1.3 at 51.
214. Exhibit NQ-2016-003-26.03, Vol. 1.3 at 56.
215. Exhibit NQ-2016-003-26.01A, Vol. 1.3 at 39; Exhibit NQ-2016-003-26.02, Vol. 1.3 at 52; Exhibit NQ-2016-003-26.03A, Vol. 1.3 at 70; Exhibit NQ-2016-003-26.04A, Vol. 1.3 at 89.

228. Furthermore, the Tribunal finds that, if the exclusion were granted, it would cause injury to the domestic industry. Rebar in diameters of 25M and smaller (coil and straight bar) represents 80 percent of the Canadian market.[216] Further, there is evidence that, given that the majority of end users already own the equipment, the cost of straightening and cutting coil is not high (in the range of $20-35 per metric tonne),[217] and that the premium that would normally be charged for coil would be completely eroded by dumping.[218] As a result, there would be no barrier to the CELSA MAX® hot-spooled DBIC being able to compete on price with either coil or straight bar. Accordingly, the CELSA MAX® hot-spooled DBIC could displace a substantial portion of domestic production were it to enter the Canadian market at dumped prices.

229. The Tribunal therefore denies this exclusion request.

CONCLUSION

230. Pursuant to subsection 43(1) of *SIMA*, the Tribunal finds that the dumping of the subject goods has caused injury to the domestic industry.

231. Furthermore, the Tribunal excludes from its injury finding the above-mentioned goods from Chinese Taipei exported by Feng Hsin.

Jason W. Downey
Jason W. Downey
Presiding Member

Ann Penner
Ann Penner
Member

Rose Ritcey
Rose Ritcey
Member

216. Exhibit NQ-2016-003-26.01A, Vol. 1.3 at 39; *Transcript of Public Hearing*, Vol. 1, 3 April 2017, at 76; Exhibit NQ-2016-003-06E, Table 58, Vol. 1.1A.
217. *Transcript of Public Hearing*, Vol. 1, 3 April 2017, at 59, 79.
218. Exhibit NQ-2016-003-26.04A, Vol. 1.3 at 89.