



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

FINDING AND REASONS

Inquiry No. NQ-2017-002

Carbon and Alloy Steel Line Pipe

*Finding issued
Thursday, January 4, 2018*

*Reasons issued
Friday, January 19, 2018*

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

**CARBON AND ALLOY STEEL LINE PIPE ORIGINATING IN OR EXPORTED
FROM THE REPUBLIC OF KOREA**

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 carbon and alloy steel line pipe, as defined below, has caused injury or is threatening to cause injury to the domestic industry.

The goods subject to this inquiry are defined as follows:

Carbon and alloy steel line pipe originating in or exported from the Republic of Korea, welded or seamless, having a nominal outside diameter from 2.375 inches (60.3 mm) up to and including 24 inches (610 mm) (with all dimensions being plus or minus allowable tolerances contained in the applicable standards), including line pipe meeting or supplied to meet any one or several of API 5L, CSA Z245.1, ISO 3183, ASTM A333, ASTM A106, ASTM A53-B or their equivalents, in all grades, whether or not meeting specifications for other end uses (e.g. single-, dual-, or multiple-certified, for use in oil and gas or other applications), and regardless of end finish (plain ends, beveled ends, threaded ends, or threaded and coupled ends), surface finish (coated or uncoated), wall thickness, or length, excluding galvanized line pipe and excluding stainless steel line pipe (containing 10.5 percent or more by weight of chromium), and excluding goods covered by the Canadian International Trade Tribunal's finding in Inquiry No. NQ-2012-003.

For greater certainty, the product definition includes:

- a. unfinished line pipe (including pipe that may or may not already be tested, inspected, and/or certified to line pipe specifications) originating in the Republic of Korea and imported for use in the production or finishing of line pipe meeting final specifications, including outside diameter, grade, wall-thickness, length, end finish, or surface finish; and
- b. non-prime and secondary pipes ("limited service products").

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 December 5, 2017, that the aforementioned goods 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 has caused injury to the domestic industry.

Furthermore, the Canadian International Trade Tribunal excludes from its finding welded line pipe having nominal outside diameters from and including 18 inches to 24 inches (610 mm) (with all dimensions being plus or minus allowable tolerances contained in the applicable standards), regardless of grade and wall thickness, with a manganese content of no less than 16% by weight, for exclusive use in slurry, tailings, and pressure piping systems in oil sands projects, and marked "Not for CSA Z-662 Applications". For greater certainty, use in a pipeline meeting CSA Z-662 is not permitted under this exclusion.

Jean Bédard, Q.C.
Jean Bédard, Q.C.
Presiding Member

Peter Burn
Peter Burn
Member

Rose Ritcey
Rose Ritcey
Member

The statement of reasons will be issued within 15 days.

Place of Hearing: Ottawa, Ontario
Dates of Hearing: December 4 and 6, 2017

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Steel Corporation

Algoma Tubes Inc., Prudential Steel ULC and
Tenaris Global Services (Canada) Inc.

Importers/Exporters/Others

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Imperial Oil Limited
Posco Daewoo America Corp.

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STATEMENT OF REASONS

INTRODUCTION

1. The mandate of the Canadian International Trade Tribunal (the Tribunal) in this inquiry¹ is to determine whether the dumping of certain line pipe originating in or exported from the Republic of Korea (Korea) (the subject goods) has caused injury or is threatening to cause injury to the domestic industry.
2. For the reasons that follow, the Tribunal has determined that the subject goods have caused injury to the domestic industry.

BACKGROUND

3. This inquiry stems from a complaint filed by Evraz Inc. NA Canada and the Canadian National Steel Corporation (collectively, Evraz) and the initiation of an investigation on June 8, 2017, by the President of the Canada Border Services Agency (CBSA), into the alleged injurious dumping of certain line pipe originating in or exported from Korea.
4. Evraz's complaint and this inquiry follow closely after Inquiry No. NQ-2015-002,² in which the Tribunal found, in March 2016, that dumped and subsidized imports of line pipe from the People's Republic of China (China), defined in substantially the same way as the subject goods, had caused injury to the domestic industry. As part of that proceeding, preliminary anti-dumping and countervailing duties started applying on Chinese line pipe in late November 2015, with definitive duties coming into effect on the date of the Tribunal's finding of injury.
5. Evraz argued that very low-priced subject goods immediately entered the marketplace, replacing the Chinese line pipe that was no longer available at dumped and subsidized prices. It argued that, with the domestic industry having had no opportunity to recover from its already injured state, the new "surge"³ of subject goods had a devastating impact on the domestic industry's prices, output, sales, market share, profits, investments, capacity utilization, employment, wages, growth and ability to raise capital in 2016 and 2017. Evraz submitted that the subject goods have caused material injury to the domestic industry and, further, that they pose an imminent and foreseeable threat of injury in the near term.
6. Other parties arguing that the subject goods have caused injury or are threatening to cause injury to the domestic industry were Tenaris Global Services (Canada) Inc., Algoma Tubes Inc. and Prudential Steel ULC (collectively, Tenaris), a domestic producer of line pipe, as well as the United Steelworkers of Canada (USW), a union whose members include employees of Evraz and Tenaris.
7. The Tribunal received no submissions opposing a finding of injury or threat of injury.⁴ Imperial Oil Limited (Imperial Oil) and Posco Daewoo America Corp. (Posco) jointly filed requests for a product exclusion.
8. The Tribunal collected information from domestic producers, importers, purchasers and foreign producers and exporters of line pipe. The Tribunal's period of inquiry (POI) covered three full years, from January 1, 2014, to December 31, 2016, as well as the interim period of January 1 to June 30, 2017.
9. The Tribunal held a hearing in Ottawa, Ontario, on December 4 and 6, 2017. It included public and *in camera* sessions.

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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. *Carbon and Alloy Steel Line Pipe* (29 March 2016), NQ-2015-002 (CITT) [*Line Pipe I*].
 3. Exhibit NQ-2017-002-A-01 at para. 2, Vol. 11.
 4. LNG Canada Development Inc., Enbridge Pipelines Inc. and the Government of Korea filed notices of participation but did not file any submissions.

RESULTS OF THE CBSA'S INVESTIGATION

10. On December 5, 2017, the CBSA made a final determination of dumping. The CBSA's period of investigation covered the period from April 1, 2016, to March 31, 2017. It determined that 100 percent of the subject goods imported into Canada over this period were dumped. The CBSA specified the following margins of dumping:⁵

Exporters	Weighted average margin of dumping expressed as a percentage of export price
Husteel Co., Ltd.	4.1%
Hyundai Corporation	52.5%
Hyundai Steel Company	47.8%
Nexteel Co., Ltd.	12.9%
SeAH Steel Corporation	27.5%
All other exporters	88.1%

PRODUCT

Product Definition

11. The CBSA defined the subject goods as follows:⁶

Carbon and alloy steel line pipe originating in or exported from the Republic of Korea, welded or seamless, having a nominal outside diameter from 2.375 inches (60.3 mm) up to and including 24 inches (610 mm) (with all dimensions being plus or minus allowable tolerances contained in the applicable standards), including line pipe meeting or supplied to meet any one or several of API 5L, CSA Z245.1, ISO 3183, ASTM A333, ASTM A106, ASTM A53-B or their equivalents, in all grades, whether or not meeting specifications for other end uses (e.g. single-, dual-, or multiple-certified, for use in oil and gas or other applications), and regardless of end finish (plain ends, beveled ends, threaded ends, or threaded and coupled ends), surface finish (coated or uncoated), wall thickness, or length, excluding galvanized line pipe and excluding stainless steel line pipe (containing 10.5 percent or more by weight of chromium), and excluding goods covered by the Canadian International Trade Tribunal's finding in Inquiry No. NQ-2012-003.

For greater certainty, the product definition includes:

- a) unfinished line pipe (including pipe that may or may not already be tested, inspected, and/or certified to line pipe specifications) originating in the Republic of Korea and imported for use in the production or finishing of line pipe meeting final specifications, including outside diameter, grade, wall thickness, length, end finish, or surface finish; and
- b) non-prime and secondary pipes ("limited service products").

5. Exhibit NQ-2017-002-04, Vol. 1 at 137.

6. *Ibid.* at 135-36.

Additional Product Information

12. The CBSA provided the following additional product information:⁷

[25] Pipe that is being sold for oil and gas transmission purposes or process piping purposes is line pipe. Line pipe is used by the oil and gas industry in pipelines for the gathering and distribution of oil and gas or as process pipe used in steam generation facilities for steam assisted gravity drainage, petrochemical plants, upgraders, gas transmission facilities, and fabrication of modules.

[26] The Canadian market for oil and gas line pipe is governed by two main design codes depending on whether the line pipe is for pipelines or for process piping. Each code specifies the standards and grades of pipe that are acceptable for use. Together, the complainant and supporting producers manufacture or have the capability to manufacture line pipe under both design codes, in all grades. Pipelines must conform or be equivalent to CSA Z662 (oil and gas pipeline systems), and process piping must conform or be equivalent to ASME B31.1. These systems standards cover multiple pipe standards and can cover multiple grades of pipe.

[27] Examples of pipe standards include:

- CSA Z245.1;
- API 5L;
- ISO 3183;
- ASTM A333;
- ASTM A53-B; and
- ASTM A106.

[28] Pipe manufactured to a particular standard may be compatible with the requirements of another standard. This means that a particular pipe may be able to be certified as complying with multiple standards (if all the requirements of each standard/grade are met for that particular pipe). For example, CSA Z245.1 Grade 448 pipe is considered to be equivalent to API 5L Grade X65. The API 5L X grade numbers define the minimum yield strength required of the grade in kilopounds per square inch. Process piping is generally supplied with multiple stencils including API 5L, CSA Z245.1 and ASTM A106.

[29] Equivalent grades of pipe specified under each design code represent products that are equivalent regardless of manufacturing process. As a result, any grade of pipe is considered to be substitutable by a similar grade of pipe designed with a different standard. It is common practice to certify multiple grades of pipe on a mill test report. It is also common practice to substitute grades other than that initially requested by a customer with an equivalent grade. Mill test reports are provided to show that the properties of the supplied pipe meet the requirements of the actual grade supplied.

[30] Line pipe is normally marked or stenciled in paint on the external surface with the API, ASME, or equivalent specifications to which it has been manufactured and tested. The subject goods cover all line pipe meeting or supplied to meet the above specifications, regardless of whether the pipe has been multiple stenciled to indicate that it meets or is supplied to meet additional end use specifications. Line pipe that is manufactured and tested to meet higher API specifications (or equivalent CSA and ISO specifications) is automatically in conformity with lower specifications and may therefore have multiple stencils identifying additional end uses, such as American Society for Testing and Materials (ASTM), and equivalent specifications for end use as standard pipe (for low-pressure conveyance of steam, water, natural gas, air and other liquids in plumbing and heating applications), piling pipe, and other such end uses. Seamless line pipe conforming to API 5L may also be marked as conforming to pressure pipe applications under ASME B31.3. Additionally and for the same reasons, line pipe that is single-stenciled as API 5L may be used in lower specifications absent stencilling identifying that lower specification. All line pipe that is marked as meeting or that

7. Exhibit NQ-2017-002-04A, Vol. 1 at 156-157.

is supplied to meet API 5L (or equivalent specifications) for use as oil and gas pipelines or as ASME B31.3 for use as pressure pipe are covered in this complaint as subject goods regardless of whether the pipe is marked as meeting any other end-uses or is supplied to meet any other end-uses.

[31] Line pipe may be manufactured by the seamless or welded process. The typical end finish is a beveled end to allow for welding in the field, although line pipe may also be supplied as plain end (square cut), threaded, and threaded and coupled.

LEGAL FRAMEWORK

13. The Tribunal is required, pursuant to subsection 42(1) of *SIMA*, to inquire as to whether the dumping of the goods subject to an inquiry 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”.

14. 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.

15. The Tribunal can then assess whether the subject goods have caused material injury to the domestic industry. Should the Tribunal arrive at a finding of no material injury, it will determine whether there exists a threat of material injury to the domestic industry.⁸ As a domestic industry is already established, the Tribunal will not need to consider the question of retardation.⁹

16. 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

17. In order for the Tribunal to determine whether 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.¹⁰

18. 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.¹¹

8. 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.

9. Subsection 2(1) of *SIMA* defines “retardation” as “. . . material retardation of the establishment of a domestic industry”.

10. 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.).

11. 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). See, for example, *Concrete Reinforcing Bar* (3 May 2017), NQ-2016-003 (CITT) at para. 42.

19. In its preliminary injury inquiry, the Tribunal found that domestically produced line pipe 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.¹² The Tribunal reached the same conclusions in *Line Pipe I*.

20. The Tribunal did not receive any submissions challenging its preliminary findings with respect to like goods and classes of goods in this inquiry. The evidence confirms that the subject goods and domestically produced line pipe are interchangeable, comparable in quality, are generally in competition in the Canadian market, and are distributed through the same distribution channels.¹³ Furthermore, there was no evidence suggesting the existence of various classes of goods.

21. The Tribunal therefore finds that domestically produced line pipe of the same description as the subject goods constitutes like goods in relation to the subject goods, and will conduct its injury analysis on the basis of a single class of goods.

DOMESTIC INDUSTRY

22. 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.

23. 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.¹⁴

24. The evidence indicates that Evraz, Tenaris and Bri-Steel Manufacturing (Bri-Steel) account for the entirety of the known domestic production of the like goods. The Tribunal will therefore conduct its analysis in relation to these companies’ production of like goods.

INJURY ANALYSIS

25. Subsection 37.1(1) of the *Regulations* 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

12. *Carbon and Alloy Steel Line Pipe* (8 August 2017), PI-2017-001 (CITT) at paras. 17-18.

13. Exhibit NQ-2017-002-06B, Tables 4 and 5, Vol. 1.1A; Exhibit NQ-2017-002-A-04 (protected) at paras. 10-14, Vol. 12; Exhibit NQ-2017-002-G-05 at paras. 18-19, Vol. 11H.

14. 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 from the United States* (23 May 2014), WTO Doc. WT/DS440/R, Report of the Panel at para. 7.207; *European Community – Definitive Anti-dumping Measures on Certain Iron or Steel Fasteners from China* (15 July 2011), WTO Doc. WT/DS397/AB/R, Report of the Appellate Body at paras. 411, 419, 430; *Argentina – Definitive Anti-dumping Duties on Poultry from Brazil* (22 April 2003), WTO Doc. WT/DS241/R, Report of the Panel at paras. 7.341-7.344.

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.

26. As indicated at the outset, this case follows on the heels of *Line Pipe I*, where the Tribunal found that dumped and subsidized goods from China had caused injury to the domestic industry. Anti-dumping and countervailing duties started applying on imports of Chinese line pipe in late November 2015. The domestic industry claims that the subject goods immediately replaced the dumped and subsidized goods from China. The domestic industry's injury allegations therefore relate to 2016 and 2017.

27. Accordingly, the Tribunal's injury analysis will focus on 2016 and 2017.¹⁵ Developments in 2014 and 2015, while not attributable to the subject goods, provide relevant context to the allegations of injury in 2016 and 2017.

Import Volume of Dumped Goods

28. 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.

29. The absolute volume of imports of the subject goods declined from 21,851 tonnes in 2014 to 5,762 tonnes in 2015, before rising to 39,187 tonnes in 2016—an increase of 580 percent. In interim 2017, imports of the subject goods increased by 91 percent compared to interim 2016, reaching 37,925 tonnes.¹⁶

30. The increases in the volume of imports of the subject goods in 2016 and interim 2017 are particularly stark when considered in the context of the fluctuation of the Canadian market. The overall market shrank by 23 percent in 2015, then by 51 percent in 2016, before recovering by 26 percent in interim 2017 compared to the previous interim period.¹⁷

31. Relative to domestic production and domestic consumption, the volume of imports of the subject goods remained small in 2014 and 2015, before increasing significantly in 2016, and again in the interim period of 2017.¹⁸

32. The Tribunal finds that there was a significant increase in the absolute and relative volume of imports of the subject goods in 2016 and in interim 2017.

Price Effects of Dumped Goods

33. Paragraph 37.1(1)(b) of the *Regulations* directs 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

15. The Tribunal notes that while each case depends on its own facts, evidence regarding the recent past is more likely to be relevant to establishing the existence of a current causal link between dumping and injury and to justify the imposition of anti-dumping duties. See, for example, *Mexico – Anti-Dumping Duties on Steel Pipes and Tubes (Guatemala)* (8 June 2007), WTO Doc. WT/DS331/R, Final Report of the Panel at paras. 7.227-7.228; *Mexico – Definitive Anti-Dumping Measures on Beef and Rice* (29 November 2005), WTO Doc. WT/DS295/AB/R, Report of the Appellate Body at paras. 165-166.

16. Exhibit NQ-2017-002-06B, Tables 8 to 10, Vol. 1.1A.

17. *Ibid.*, Table 22. In these reasons, unless otherwise noted, the Canadian “market” is comprised of sales from domestic production and sales of imports by domestic producers and imports by importers, i.e. Scenario B of the Investigation Report. As further explained in footnote 26, *infra*, the domestic producers in this case largely compete with imports by importers.

18. Exhibit NQ-2017-002-06B, Table 11, Vol. 1.1A.

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. The Tribunal distinguishes the price effects of the dumped goods from any price effects that have resulted from other factors affecting prices.

Introduction: Price is Determinative in Purchasing Decisions

34. In *Line Pipe I*, the Tribunal found that “once certain pre-conditions are met and qualitative factors are comparable, price becomes the determining factor in purchasing decisions”¹⁹ and that there is a high degree of price transparency in the market.²⁰ These characteristics remain unchanged in the present inquiry.

35. Twelve of 17 firms having filled out a purchaser questionnaire reported that the lowest-priced goods “always” or “usually” win the sale.²¹ In addition, while top reasons for *not* purchasing the lowest-priced product included delivery time and terms, quality, technical specifications and reliability of supply, a majority of respondents deemed these same factors “comparable” between Canada and Korea, except for an advantage to Canada reported by most respondents for delivery time and terms; therefore, there is a significant degree of comparability between the subject goods and the like goods in respect to such non-price factors, which would typically enable the lowest-priced goods to win the sale.²²

36. The evidence also indicates that the domestic and imported goods (including the subject goods) are sold through the same channels of distribution, that there is a very small number of significant distributors active in this market and that, generally, the oil and gas industry is a small community, “where everybody seems to know what everybody is doing.”²³ Witnesses testified that “[t]hings travel quickly around the oil patch,”²⁴ and provided the Tribunal with detailed accounts of how this happened in practice in 2016.²⁵

37. The Tribunal takes this context into consideration in analyzing the price effects of the subject goods on the domestic like goods.

Price Undercutting

38. The domestic industry’s average unit net delivered selling values (NDSV) were consistently undercut by the average unit net delivered purchase values (NDPV) of the subject goods in all periods of the POI except 2014. The margins of undercutting were significant.²⁶

19. *Line Pipe I* at para. 105.

20. *Ibid.* at para. 108.

21. Exhibit NQ-2017-002-06B, Table 6, Vol. 1.1A.

22. *Ibid.*, Tables 5 and 6.

23. *Ibid.*, Table 4; *Transcript of Public Hearing*, Vol. 1, 4 December 2017, at 49.

24. *Ibid.* at 14.

25. See, for example, *Transcript of In Camera Hearing*, Vol. 1, 4 December 2017, at 5-6.

26. Exhibit NQ-2017-002-07B (protected), Tables 30 and 31, Vol. 2.1A. The domestic producers are largely situated at the same trade level as foreign producers. The domestic producers either compete directly with foreign producers for sales to the same end-users and distributor-importers; or compete indirectly with them through their respective distributors situated at the same trade level: Exhibit NQ-2017-002-G-05 at paras. 18-19, Vol. 11H; Exhibit NQ-2017-002-A-04 (protected) at para. 14, Vol. 12; Exhibit NQ-2017-002-A-11 at para. 7, Vol. 11H; Exhibit NQ-2017-002-A-12 (protected) at para. 23, Vol. 12B. As such, a comparison between the domestic industry’s NDSV and the NDPV of imports reflects the actual competition the domestic industry faces in the market. Nevertheless, even where the domestic industry’s selling prices are compared to the NDSV of the subject goods, undercutting is seen in most instances, including in 2016 and interim 2017: Exhibit NQ-2017-002-06B, Tables 33, 48, Vol. 1.1A; Exhibit NQ-2017-002-07B (protected), Tables 35, 37, Vol. 2.1A. This further speaks to the significance of the undercutting in this case.

39. A comparison between the domestic industry's average NDSV to distributors and distributors' average NDPV of the subject goods shows the same trend.²⁷ On the other hand, the domestic industry's average NDSV to end users and end-users' average NDPV does *not* show undercutting in 2016, and in interim 2017 there were no direct imports of the subject goods by end users.²⁸ The Tribunal attributes limited weight to this end-user data for the subject goods, as they were derived from a sample of only two questionnaire responses, and are thus likely a poor indicator of average pricing in the market.

40. Benchmark product data strongly confirm that the subject goods undercut the unit values of the like goods during the POI, including in 2016 and interim 2017. The average NDPV of the subject goods undercut the domestic industry's average NDSV in 93 percent of the instances where comparisons were available.²⁹ This is all the more significant as the benchmark data represent a high share of the volume of sales from domestic production and of the volume of imports in 2016 and interim 2017.³⁰

41. The witnesses described the extent of the undercutting they experienced in no uncertain terms. Mr. Kelly Smith, of Evraz, testified that the subject goods caused the "floor price [to] actually drop down further" whereas, up until that point, the Chinese prices seen before the imposition of duties had been considered the all-time low.³¹ Moreover, the domestic industry's uncontroverted evidence regarding specific sales won by the subject goods shows significant undercutting.³² In particular, Evraz's well-documented evidence regarding one large project (the significance of which is further discussed below) shows that the sale of subject goods was made at a price that, in the words of Mr. Smith, "established a crazy low benchmark pricing in the market" that very significantly undercut the domestic price.³³

42. The Tribunal finds that the subject goods have significantly undercut the prices of the like goods in 2016 and interim 2017.

Price Depression and Suppression

43. Evraz's position³⁴ was that it suffered price depression and suppression in 2016 due to the subject goods. Evraz witnesses testified that it suffered a *further deterioration* in pricing, at a time when it *expected to recover* from years of price depression and suppression sustained on account of dumped and subsidized Chinese imports.

44. Evraz witnesses testified that its prices did improve somewhat in the first half of 2017 owing to a short-lived combination of factors in Q1 2017. These factors included the fact that, at a time when demand improved, distributor inventories were very low and Evraz often had lead times shorter than those of imports. The witnesses also highlighted that Korean pricing was momentarily more disciplined due to

27. Exhibit NQ-2017-002-07B (protected), Table 35, Vol. 2.1A.

28. *Ibid.*, Table 37.

29. Exhibit NQ-2017-002-06B, Table 51, Vol. 1.1A.

30. *Ibid.*, Table 45. The volume of imports of the subject goods showing undercutting also represents a high proportion of the volume of imports of the subject goods in the head-to-head points of comparison with domestic sales of like goods for the benchmark products: Exhibit NQ-2017-002-A-02 (protected) at para. 34, Vol. 12.

31. *Transcript of Public Hearing*, Vol. 1, 4 December 2017, at 10, 54.

32. *Transcript of In Camera Hearing*, Vol. 1, 4 December 2017, at 41-43, 49-50; Exhibit NQ-2017-002-A-04 (protected) at paras. 33-75, Vol. 12; Exhibit NQ-2017-002-G-06 (protected) at paras. 26-38, Vol. 12B.

33. *Transcript of Public Hearing*, Vol. 1, 4 December 2017, at 11; *Transcript of In Camera Hearing*, Vol. 1, 4 December 2017, at 2-4.

34. In 2016 and interim 2017, Evraz accounted for the vast majority of domestic sales.

rumours about the filing of this trade case.³⁵ However, the witnesses testified that, with the inventory gap of early 2017 gone, pressure from purchasers referencing Korean pricing renewed in the second half of 2017.³⁶

45. The investigation report data show that the domestic industry's average NDSV decreased in 2016 compared to either its 2015 or 2014 average NDSV; it decreased further in interim 2017.³⁷ The average NDPV of the subject goods also declined during the POI, from \$1,522/tonne in 2014 to \$1,214/tonne in 2015, \$1,187/tonne in 2016 and \$1,181/tonne in interim 2017.³⁸

46. Data for sales to distributors tend to confirm depression of the domestic price over the POI, particularly in 2016. The domestic industry's average NDSV to distributors declined in each full year of the POI, but increased by 7 percent in interim 2017. The average NDPV for distributors' imports of subject goods followed a similar trend, reaching its lowest point in 2016, before increasing in interim 2017.³⁹ Domestic sales to the end-user trade level also show price erosion in 2016 followed by improvement in interim 2017; however, as noted previously, no meaningful comparison with the end-users' average NDPV of subject goods as reported in the investigation report is possible due to the limited data available in that respect.

47. There is also evidence of price depression at specific accounts. Mr. Smith, of Evraz, testified that Evraz saw a decline in its average selling price in 2016 compared to 2015 at two particular distributor accounts as a result of customers' feedback about Korean pricing.⁴⁰ This is consistent with the testimony of Mr. Quinton, of Gateway, a distributor of domestic line pipe, discussing generally how Gateway had to "put extreme pressure on Evraz to sell [it] at [Korean] levels, and that took some time, but [it was] able to get them down"⁴¹

48. When examined in light of the rapidly increasing volumes of low-priced subject goods discussed in the previous section,⁴² the evidence suggests that the subject goods have depressed the prices of the like goods, most significantly in 2016.

49. The Tribunal further examined whether the depression of domestic prices can be attributed to the subject goods in and of themselves. The record indicates that, in the relevant periods of 2016 and interim 2017, two non-dumping factors may have negatively impacted the domestic industry: imports from non-subject countries and the market contraction.

35. Exhibit NQ-2017-002-A-04 (protected) at paras. 15-32, Vol. 12; Exhibit NQ-2017-002-A-09 at paras. 29-30, Vol. 11H; *Transcript of Public Hearing*, Vol. 1, 4 December 2017, at 11-16, 56-57.

36. *Ibid.* at 17, 57-58; *Transcript of In Camera Hearing*, Vol. 1, 4 December 2017, at 18; *Transcript of Public Hearing*, Vol. 1, 4 December 2017, at 17.

37. Exhibit NQ-2017-002-07B (protected), Table 30, Vol. 2.1A. Table 59 indicates a different result for interim 2017 as the domestic industry is requested to provide its selling prices (as reported in Table 31) on a net delivered basis, while individual income statements (as consolidated in Table 59) are not required to be prepared on a net delivered basis.

38. Exhibit NQ-2017-002-06B, Table 31, Vol. 1.1A. A similar declining trend occurred throughout the POI in respect of the average NDSV of the subject goods; *ibid.*, Table 33.

39. Exhibit NQ-2017-002-07B (protected), Table 30 and 35, Vol. 2.1A. The declining trend was similar for distributors' sales of subject goods.

40. Exhibit NQ-2017-002-A-03 at paras. 76-78, Vol. 11; Exhibit NQ-2017-002-A-04 (protected) at paras. 76-82, Vol. 12.

41. *Transcript of Public Hearing*, Vol. 1, 4 December 2017, at 54.

42. In addition, the Tribunal notes that the rapid increase in the volume of imports of the subject goods in 2016 and interim 2017 is also apparent when examining imports by distributors: Exhibit NQ-2017-002-07B (protected), Table 24, Vol. 2.1A.

50. With regard to imports from non-subject countries, the Tribunal is satisfied that they did not have a significant impact on the 2016 and 2017 prices of the like goods. The volume of these imports declined greatly in 2016 but made some gains in interim 2017.⁴³ While the average NDPV of non-subject imports show several instances of undercutting of the domestic industry's average NDSV, the degree of undercutting was modest.⁴⁴ Indeed, Mr. Smith testified that Evraz is "not seeing a . . . very, very low market price from those other importers" and that Evraz is "able to compete with them."⁴⁵ The data before the Tribunal confirm the existence of a difference of almost \$300 per tonne in 2016 and close to \$400 per tonne in interim 2017 between the average NDPV of non-subject imports and those of the subject goods.⁴⁶

51. The Tribunal is also satisfied that the subject goods in and of themselves had significant negative price effects on the like goods distinguishable and separate from the price effects of the market contraction.

52. Oil and gas prices crashed at the end of 2014 and bottomed out in the first half of 2016.⁴⁷ As capital expenditure declined during 2015 and 2016, so did demand for line pipe.⁴⁸ Following an initial, already significant, contraction in 2015, the Canadian market halved in 2016 compared to 2015. In this environment, sales opportunities in 2016 were fewer and end-users exercised significant price pressure on their suppliers.⁴⁹ As oil prices stabilized in the latter part of 2016 and early 2017 to around US\$50 per barrel (West Texas Intermediate), the line pipe market also stabilized in 2017 to a level of activity that, while well short of that seen in 2014, is nevertheless deemed sustainable going forward.⁵⁰

53. However, the uncontroverted evidence is that there was a "significant delta" between the Korean pricing prevalent in the market in 2016 and interim 2017 and what would have been considered a "normal selling price based on the [down] market."⁵¹ In this regard, the fact that imports from non-subject countries remained priced significantly higher than the subject goods in 2016 and interim 2017 is consistent with the domestic industry's position.

54. Most tellingly, Evraz's witnesses testified about the impact of one major line pipe sale, mentioned above, of subject goods in 2016. Witnesses described the way in which this sale quickly established an exceptionally low price benchmark that purchasers could leverage.⁵² This evidence illustrated in specific terms how the subject goods set an aggressive low price that set them apart as the competition to beat. Furthermore, the "ripple effect" of the knowledge and availability of this kind of low pricing was to

43. Exhibit NQ-2017-002-06B, Table 8, Vol. 1.1A.

44. Exhibit NQ-2017-002-06B, Tables 31 to 33, 48, 51, Vol. 1.1A; Exhibit NQ-2017-002-07B (protected), Table 35, 37, Vol. 2.1A. In fact, there was no undercutting when considering unit values of non-subject imports on an aggregate average NDSV basis, nor was there any undercutting at the distributors trade level. Undercutting measured at benchmark products occurred in significantly fewer instances than in the case of the subject goods, particularly when focusing on data for 2016 and the first half of 2017.

45. *Transcript of Public Hearing*, Vol. 1, 4 December 2017, at 32.

46. Exhibit NQ-2017-002-06B, Table 31, Vol. 1.1A.

47. *Ibid.* at 96.

48. Exhibit NQ-2017-002-A-03 at para. 17, Vol. 11.

49. *Ibid.* at paras. 16-18; Exhibit NQ-2017-002-06B, Table 71, Vol. 1.1A.

50. *Transcript of Public Hearing*, Vol. 1, 4 December 2017, at 11-13, 27, 105. See also Exhibit NQ-2017-002-28.01, Vol. 1A at 2; Exhibit NQ-2017-002-06B, Table 73, Vol. 1.1A.

51. *Transcript of Public Hearing*, Vol. 1, 4 December 2017, at 17-18. See also *Transcript of Public Hearing*, Vol. 1, 4 December 2017, at 9; *Transcript of In Camera Hearing*, Vol. 1, 4 December 2017, at 13, 30-31, 56; Exhibit NQ-2017-002-A-06 (protected) at para. 36-39, Vol. 12.

52. *Transcript of Public Hearing*, Vol. 1, 4 December 2017, at 10-11; *Transcript of In Camera Hearing*, Vol. 1, 4 December 2017, at 2-7.

generally depress prices in the market. The subject goods were thus in and of themselves responsible for the depression of the domestic industry's prices.

55. In order to assess whether the price of the subject goods has suppressed the price of like goods, the Tribunal has tended to compare the domestic industry's average unit cost of goods sold or manufactured with its average unit selling values in the domestic market to determine whether the domestic industry has been able to increase selling prices in step with increases in the cost of production.⁵³ However, the Tribunal may examine more generally whether the subject goods have significantly "suppressed the price of like goods by preventing the price increases for those like goods *that would otherwise likely have occurred*" [emphasis added].⁵⁴

56. In 2014, the starting point for the Tribunal's analysis of prices in this case, the domestic industry's average NDSV already reflected significant erosion and suppression due to unfairly priced Chinese imports.⁵⁵ In light of the fact that the injurious effects of Chinese dumping and subsidizing were addressed by anti-dumping and countervailing duties as of late November 2015, and of the uncontroverted evidence of the domestic industry regarding what would have been a "normal" selling price in the absence of dumping in the context of the 2016 market, the domestic industry should have been in a position to reasonably raise its prices in 2016 from those prevalent in 2014 and 2015.⁵⁶

57. However, the immediate influx of volumes of subject goods in 2016 prevented the domestic industry from increasing its prices as it should have been able to do despite the weak market conditions in that year.⁵⁷ In this regard, in 2016, the subject goods also *suppressed* the prices of the like goods, in addition to having depressed them, as discussed above.

58. While some domestic producers may have experienced modest improvements in pricing in interim 2017, this improvement was a short-lived occurrence not indicative of a fundamental change in the negative price effects of the subject goods. Further, it is possible that the presence of the subject goods still had a price-suppressive effect during interim 2017. In addition, the Tribunal heard from witnesses that, in the latter

53. In the present inquiry, the domestic industry's cost of goods sold (on a dollar-per-tonne basis) declined in every period of the POI, except in interim 2017 compared to interim 2016, where it increased. See Exhibit NQ-2017-002-07B (protected), Table 59, Vol. 2.1A.

54. Subparagraph 37.1(1)(b)(iii) of the *Regulations*. See for instance *Certain Hot-rolled Carbon Steel Plate and High-strength Low-alloy Plate* (17 May 1994), NQ-93-004 (CITT) at pp. 20-21; *Polyiso Insulation Board* (6 May 2010), NQ-2009-005 (CITT) at para. 71. A finding that dumped goods prevented price increases for the like goods that would otherwise likely have occurred must be based, *inter alia*, on an objective examination of positive evidence of what the prices of the like goods would have been in the absence of dumping. *Russia – Anti-dumping Duties on Light Commercial Vehicles from Germany and Italy* (27 January 2017), WTO Doc. WT-DS479/R, Report of the Panel at paras. 7.57-7.61; *China – Countervailing and Anti-dumping Duties on Grain Oriented Flat-rolled Electrical Steel from the United States* (18 October 2012), WTO Doc. WT/DS414/AB/R, Report of the Appellate Body at paras. 130, 141, 152.

55. *Line Pipe I* at para. 135.

56. The Tribunal finds Evraz's estimate of what its average selling price in 2016 would have been in the absence of dumping to be reasonable. The estimate reflects the difference between Evraz's depressed 2016 average selling price and its 2012 average selling price, i.e. a price that prevailed before the market was distorted by unfairly traded Chinese imports. The estimate also takes account of the differing market conditions in 2016 and 2012. Exhibit NQ-2017-002-A-06 (protected) at para. 34, Vol. 12; *Transcript of In Camera Hearing*, Vol. 1, 4 December 2017, at 29-32.

57. *Transcript of In Camera Hearing*, Vol. 1, 4 December 2017, at 29-32.

part of 2017, increases in costs could not be offset by increases in pricing in the presence of low-priced volumes of subject goods in the latter part of 2017.⁵⁸

59. The Tribunal finds that the subject goods, in and of themselves, have significantly depressed and suppressed the prices of the like goods, particularly in 2016.

Resultant Impact on the Domestic Industry

60. Paragraph 37.1(1)(c) of the *Regulations* requires the Tribunal to consider the resulting impact of the dumped 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.⁵⁹ These impacts are to be distinguished from the impact of other factors also having a bearing on the domestic industry.⁶⁰ Paragraph 37.1(3)(a) of the *Regulations* requires the Tribunal to consider whether a causal relationship exists between the dumping 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 goods.

Sales and Market Share

61. Domestic sales declined in each full year of the POI and again in interim 2017 compared to interim 2016. The greatest declines occurred in 2016 and interim 2017, when domestic sales declined by 42 and 23 percent, respectively, compared to the previous period.⁶¹ The downward trend in domestic sales in 2016 and 2017 coincides with the increasing volumes and low and declining prices of the subject goods, as discussed above.

62. The domestic industry also adduced evidence regarding a number of specific sales that it lost to the subject goods.⁶² In this regard, the Tribunal recalls again the detailed evidence regarding one major sale won by the subject goods in 2016. The fact that Evraz was at the time the only producer in Western Canada of the required sizes of line pipe, along with evidence on the confidential record, explains why the domestic industry's expectation that, but for the availability of the subject goods, it would have otherwise obtained this particular sale was reasonable.⁶³ The loss of this major sale in itself represents a substantial volume of

58. *Transcript of Public Hearing*, Vol. 1, 4 December 2017, at 17; *Transcript of In Camera Hearing*, Vol. 1, 4 December 2017, at 18-19; Exhibit NQ-2017-002-G-05 at paras. 11-14, Vol. 11H.

59. 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.

60. 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 factor that is relevant in the circumstances.

61. Exhibit NQ-2017-002-06B, Table 63, Vol. 1.1A.

62. Exhibit NQ-2017-002-A-04 (protected) at paras. 19-26, 33-75, Vol. 12; *ibid.* at paras. 25-56; Exhibit NQ-2017-002-G-06 (protected) at paras. 26-38, Vol. 12B.

63. *Transcript of Public Hearing*, Vol. 1, 4 December 2017, at 24; *Transcript of In Camera Hearing*, Vol. 1, 4 December 2017, at 7, 20-22, 25.

lost sales.⁶⁴ When added to the volumes in issue in Evraz's and Tenaris's other lost sales allegations for 2016 and 2017, these sales represent a substantial proportion, by volume, of total domestic sales and of imports of the subject goods reported for 2016 and interim 2017.

63. The Canadian market contracted in 2016 by a rate greater than that of the decline in the volume of domestic sales. However, the opposite trend occurred in interim 2017: as the overall market recovered, the volume of domestic sales continued to plunge.⁶⁵

64. Market share fluctuations over the POI further indicate that the subject goods negatively affected the domestic industry's sales performance. The domestic industry's market share increased in 2015 and again in 2016, but then declined in interim 2017 to its lowest point of the POI. Over the same period, the market share of the subject goods, which was relatively small in 2014 and 2015, increased significantly in 2016 and reached its highest point in interim 2017. While the domestic industry's market share increased in 2016, the market share for the subject goods increased by a much greater extent during that same year.⁶⁶

65. The increases in the market shares of the subject goods and of the domestic industry in 2016 closely followed the imposition of anti-dumping and countervailing duties on line pipe from China in late November 2015, and coincided with a steep decline in the market share of non-subject imports. Thus, while the domestic industry captured some of the market share left available upon the imposition of anti-dumping and countervailing duties on line pipe from China, the subject goods made significantly bigger inroads.

66. The Tribunal finds that the subject goods prevented the domestic industry from capturing more sales and market share in 2016. This was especially significant because going into 2016, Evraz was "singularly focused on securing the sales opportunities that [it] knew were going to be available notwithstanding softened demand relative to 2015, and these sales were set to keep [its] operations running profitably even if at lower output."⁶⁷ In interim 2017, the decline in the market share of the domestic industry was accompanied by a significant gain in the market share of the subject goods as well as by that of the non-subject imports.

67. The Tribunal finds that the subject goods have negatively impacted the domestic industry's domestic sales and market share in 2016 and 2017.

Profitability

68. The financial results for the domestic industry's domestic sales deteriorated over the POI, most severely in 2016. The domestic industry's results improved somewhat in interim 2017.⁶⁸ The data show that these results are not due to cost increases; rather, they are the result of the depressed prices and declining sales volumes the domestic industry suffered because of the subject goods, as discussed in previous sections.

69. Ms. Afanasyeva, of Evraz, described Evraz's 2016 performance as "absolutely disastrous"⁶⁹ and that of interim 2017 as "less awful than in the previous period"⁷⁰. In contrast, she put forward an analysis showing that, in 2016, Evraz's profitability on its domestic sales could in fact have reached levels comparable to those seen in 2012, i.e. prior to the impact of dumping and subsidizing from China, had

64. *Ibid.* at 8-9.

65. Exhibit NQ-2017-002-06B, Table 22, Vol. 1.1A.

66. Exhibit NQ-2017-002-07B (protected), Table 23, Vol. 2.1A.

67. Exhibit NQ-2017-002-A-05 at para. 7, Vol. 11.

68. Exhibit NQ-2017-002-07B (protected), Table 59, Vol. 2.1A.

69. *Transcript of Public Hearing*, Vol. 1, 4 December 2017, at 18.

70. *Ibid.* at 21.

Evraz been able to win some of the sales captured by the subject goods in that year, and had it been able to increase its average selling price to a level reasonably expected in the 2016 market but for the dumping.⁷¹ The Tribunal finds the assumptions Evraz applied in this analysis to be reasonable; as discussed in previous sections, Evraz submitted uncontroverted evidence of sales volumes it lost to the subject goods and of the “significant delta” that existed between the prices of the subject goods and what would otherwise have been a reasonable selling price (i.e. not depressed and suppressed by dumping) in the context of the 2016 market.

70. The domestic industry’s financial results for its export sales were also challenging over the POI, including in 2016 and interim 2017.⁷² This export sales performance and its compounding effects on the overall profitability of the domestic industry are not attributable to the subject goods.

71. The Tribunal is satisfied that the subject goods have, in and of themselves, through their price depressing and suppressing effects, and by reason of the sales they caused the domestic industry to lose in the Canadian market, significantly and negatively impacted the overall profitability of the domestic industry in 2016 and interim 2017.

Production and Capacity Utilization

72. The total domestic production of like goods declined in 2016, and slightly increased in interim 2017 compared to interim 2016.⁷³ Consistent with the trend in production, the capacity utilization rate of the domestic industry also decreased in 2016, to its lowest point of the POI, before slightly increasing in interim 2017.⁷⁴

73. A separate analysis for production for domestic sales and for export sales confirms that both sets of data show a general decline over the POI; however, in interim 2017, production for domestic sales shows a significant decline compared to the previous interim period, while production for export sales shows a notable increase, without which the overall production and capacity utilization data for interim 2017 would have been even worse.⁷⁵

74. The evidence is clear that, for extended periods of the POI, domestic plants were either operating below their normal load or were entirely idled. Some of Evraz’s facilities were idled, and significant workforce reduction measures were also taken by Evraz as discussed below.⁷⁶ The details of the measures were testified to in camera.⁷⁷

75. As for Tenaris, it did not produce like goods in Canada in 2016. Tenaris suspended production at its Prudential plant in Calgary, Alberta, in late summer 2015 and in February 2016 at its Algoma Tubes plant in Sault Ste. Marie, Ontario,⁷⁸ due to the high level of inventories on the ground, the lack of orders and the lingering negative effects of low-priced imports from China at the beginning of the POI,⁷⁹ as also observed by the Tribunal in *Line Pipe I*.⁸⁰ Witnesses for Tenaris explained that during this time Tenaris was unable to

71. Exhibit NQ-2017-002-A-06 (protected) at paras. 34-35, Vol. 12.

72. Exhibit NQ-2017-002-07B (protected), Table 60, Vol. 2.1A.

73. *Ibid.*, Table 62; Exhibit NQ-2017-002-06B, Table 63, Vol. 1.1A.

74. Exhibit NQ-2017-002-07B (protected), Table 62, Vol. 2.1A.

75. *Ibid.*; Exhibit NQ-2017-002-06B, Table 63, Vol. 1.1A.

76. Exhibit NQ-2017-002-A-06 (protected) at para. 42, Vol. 12; Exhibit NQ-2017-002-A-10 (protected) at paras. 23-24, Vol. 12A; *Transcript of Public Hearing*, Vol. 1, 4 December 2017, at 20, 22.

77. *Transcript of In Camera Hearing*, Vol. 1, 4 December 2017, at 16, 21-22.

78. Exhibit NQ-2017-002-G-03 at para. 27, Vol. 11H; *Transcript of Public Hearing*, Vol. 1, 4 December 2017, at 99.

79. *Ibid.* at 113.

80. *Line Pipe I* at para. 170.

obtain sufficient sales to restart its line pipe production.⁸¹ Tenaris only resumed production at the end of 2016 at the Algoma Tubes plant and in the middle of 2017 at the Prudential plant.⁸²

76. It is clear that factors other than the subject goods contributed to the production and capacity utilization declines over the POI. As the witnesses testified, several of the plant idling decisions were made in 2015 and early 2016, that is, before the major effects of the subject goods from Korea were significantly felt. The general contraction in demand that started in 2015⁸³ and continued into 2016 also contributed to the lower output of the domestic industry.⁸⁴

77. Nevertheless, the subject goods aggravated the situation. The decrease in domestic production and capacity utilization in 2016 and 2017 coincides with the significant increases in the volume and market share of imports of the subject goods in 2016, and in interim 2017,⁸⁵ as discussed above. The Tribunal accepts Evraz's evidence specifically linking reductions in output tonnage to sales volumes lost to the subject goods. For instance, Mr. Harapiak testified that Evraz, as the only western Canadian producer of some sizes of line pipe, such as those of 20 and 24 inches in outside diameter, would have been in line for some orders lost to the subject goods, which would have helped maintain some production volumes.⁸⁶ Furthermore, the Tribunal finds that the subject goods likely delayed Tenaris's ability to resume line pipe operations.

78. In light of the foregoing, the Tribunal finds that the increased presence of subject goods in 2016 and 2017 have resulted in decreased production and capacity utilization for the domestic industry.

Employment, Wages and Productivity

79. The domestic industry's direct employment, hours worked and wages followed the trend in production, decreasing from 2014 to 2016, and increasing modestly in interim 2017 as compared to interim 2016.⁸⁷ Both measures of productivity also declined during the POI, showing no signs of recovery.⁸⁸

80. As discussed above, both Evraz and Tenaris idled operations at some of their mills during the POI. The idling of some of Evraz's facilities and other crewing reduction measures resulted in the layoff of many employees. Tenaris's mill shutdowns in 2015 and 2016 also negatively affected employment.

81. Four witnesses from the USW testified at the hearing to the significant reductions in employment and wages that severely impacted members of the USW who are employees of Evraz and Tenaris, particularly in 2016. Their testimonies expanded on the evidence of the domestic industry as to the impact of the subject goods on employment and put a human face on many of the harms identified by the domestic

81. *Transcript of Public Hearing*, Vol. 1, 4 December 2017, at 109-111, 114; Exhibit NQ-2017-002-G-05 at para. 24, Vol. 11H; Similarly, Mr. Guillermo Moreno stated that Korean line pipe imports in 2016 delayed the restart of production. Exhibit NQ-2017-002-G-03 at para. 27, Vol. 11H.

82. *Ibid.* at para. 29.

83. *Line Pipe I* at paras. 149 and 165.

84. Exhibit NQ-2017-002-06B (protected), Table 12, Vol. 1.1A; *ibid.*, Table 13; *Transcript of Public Hearing*, Vol. 1, 4 December 2017, at 22.

85. Exhibit NQ-2017-002-06B, Table 9, Vol. 1.1A.

86. *Transcript of Public Hearing*, Vol. 1, 4 December 2017, at 24.

87. Exhibit NQ-2017-002-07B (protected), Tables 62 and 63, Vol. 2.1A.

88. *Ibid.*

industry. The intervention of the USW in this proceeding illustrates the important and useful role that unions can play in injury inquiries.

82. Mr. Mike Day, local president of the USW at Evraz's Regina facility testified to the layoffs that occurred and their effects on employees and their benefits, such as on pensionable service.⁸⁹ Mr. Cody Alexander and Mr. Robert Gosse, local presidents of the USW at Tenaris's Algoma Tubes and Prudential facilities, respectively, testified to the difficult situation Tenaris's employees faced during the POI. Mr. Alexander explained that upon the employee recall in September 2016, many skilled workers refused to come back, which created many production issues and inefficiencies.⁹⁰ For his part, Mr. Gosse testified to the devastating impact that the layoff that occurred from 2015 to 2017, which was the longest in 50 years at the Prudential facility, had on the employees and the local community.⁹¹

83. Similarly to what was discussed in connection with trends in domestic production, the Tribunal recognizes again that some of the reductions in employment suffered by the domestic industry over the POI were attributable to factors other than the subject goods. Nevertheless, the subject goods significantly aggravated the situation. Mr. Harapiak, of Evraz, testified that employment levels would have been higher were it not for the subject goods.⁹² He explained that actions that had to be taken by Evraz in 2016 were much more severe than what they would see during a "normal market downturn".⁹³ He testified that Evraz had to sever a lot of its key operational people and that, as a result of such deep layoffs, many employees needed to be retrained, which caused a lot of inefficiencies in operations. He further testified that, had it been a "normal downturn", such as some he had been through, with no competition from the subject goods, Evraz would have been able to sustain some of its crewing, to redeploy some employees and to maintain its core group of employees.⁹⁴ Mr. David McHattie, of Tenaris, also described how the subject goods made more difficult Tenaris's efforts to restart operations in 2016 and 2017.⁹⁵

84. The Tribunal finds that the rise in imports of the subject goods in 2016 and 2017 have negatively impacted employment levels, wages and productivity.

Inventories

85. This factor was not the object of lengthy submissions. The domestic industry's inventory volumes declined throughout the POI.⁹⁶ Mr. Smith explained that Evraz does not stock line pipe in inventory but rather that its distributor network holds inventories. Mr. Quinton, of Gateway, confirmed that, in 2016, line pipe was being sold from inventories and that it had to put pressure on Evraz, as the other domestic producers were idled, to sell this line pipe at "Korean levels".⁹⁷ Mr. Moreno, of Tenaris, stated that Tenaris continued to sell line pipe out of its inventory while its production was idled to maintain client relationships.⁹⁸

89. *Transcript of Public Hearing*, Vol. 1, 4 December 2017, at 74.

90. *Ibid.* at 78-80, 94, 96-98; Exhibit NQ-2017-002-B-03 at paras. 8-19, Vol. 11H.

91. *Transcript of Public Hearing*, Vol. 1, 4 December 2017, at 84-85, 91.

92. *Ibid.* at 21-22.

93. *Ibid.* at 22.

94. *Ibid.* at 23. See also Exhibit NQ-2017-002-A-05 at para. 44, Vol. 11.

95. *Transcript of Public Hearing*, Vol. 1, 4 December 2017, at 110-14.

96. Exhibit NQ-2017-002-06B, Table 63, Vol. 1.1A. See also Exhibit NQ-2017-002-A-05 at para. 23, Vol. 11.

97. *Transcript of Public Hearing*, Vol. 1, 4 December 2017, at 53-54

98. Exhibit NQ-2017-002-G-03 at para. 27, Vol. 11H.

Cash flow, Return on Investments, Growth and Ability to Raise Capital

86. There is evidence indicating that, through their impact on the domestic industry's profitability in 2016 and interim 2017, the subject goods have also negatively affected the domestic industry's growth, ability to raise capital, ability to invest and its return on capital investments recently made.⁹⁹ In this regard, Mr. Harapiak, of Evraz, described a number of specific upgrades Evraz made at its facilities to improve its production in terms of quality and cost-effectiveness, and the need for the costs of these investments to be spread over sufficient volume of production.¹⁰⁰

87. With respect to cash flow, Ms. Afanasyeva testified that Evraz was "facing a very difficult liquidity situation in 2016, and from the profitability and revenue stream standpoint, those low priced Korean imports could not have come at a worse time."¹⁰¹ The evidence shows that the revenue lost in 2016 due specifically to the price depression and lost sales caused by the subject goods in and of themselves significantly exacerbated Evraz's liquidity difficulties in that year. In addition, Mr. Harapiak testified that Evraz was "not in a position to be looking at some of the maintenance and investment opportunities that [it] normally do[es] year to year because the cash flow wasn't there."¹⁰²

88. The subject goods have thus negatively affected the domestic industry's cash flow, return on investments, growth and ability to raise capital.

Magnitude of the Margin of Dumping

89. The margins of dumping determined by the CBSA are in the range of 4 to 88 percent of the export price and are thus significant. This said, the Tribunal does not consider the margins of dumping, expressed as a percentage of the export price, to necessarily represent the level of the injurious effects caused by the prices in Canada of the subject goods during the POI. The magnitude of the margins of dumping therefore did not add much to the evidence and analysis of the previous sections. To the extent that there is evidence on the record that a sale of line pipe can, all other terms being equal, be won on the basis of a price difference as small as 1 to 2 percent,¹⁰³ margins of dumping in the range of 4 to 88 percent of the export price could have the potential of translating into a selling price in Canada with a significant underselling effect.

Materiality

90. 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 time frame and the timing and duration of the injury are relevant considerations.¹⁰⁴

99. Exhibit NQ-2017-002-A-06 (protected) at paras. 45-48, Vol. 12; Exhibit NQ-2017-002-G-03 at para. 44, Vol. 11H.

100. Exhibit NQ-2017-002-A-10 (protected) at paras. 15-21, Vol. 12A.

101. *Transcript of Public Hearing*, Vol. 1, 4 December 2017, at 20. *Transcript of In Camera Hearing*, Vol. 1, 4 December 2017, at 17, 36-39.

102. *Transcript of Public Hearing*, Vol. 1, 4 December 2017, at 23.

103. Exhibit NQ-2017-002-A-11 at paras. 9-10, Vol. 11H; *Transcript of Public Hearing*, Vol. 1, 4 December 2017, at 50-51.

104. 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

91. In this case, the injury to the domestic industry manifested itself in 2016 and interim 2017 most apparently in the form of price undercutting, depression and suppression, loss of sales and market share, declining profitability, output, employment and effects on cash flow. In light of the evidence, there is no doubt that the extent of the injury due to the subject goods has been very significant.

92. The timing of the injury in this case is also significant, as it occurred immediately after the Tribunal's finding in *Line Pipe I*. Between the injurious effects of the dumped and subsidized goods from China leading up to the Tribunal's finding of March 2016, and the immediate arrival of large volumes of even lower-priced subject goods, the domestic industry had no room for recovery. Moreover, the subject goods entered the Canadian market in large volumes in 2016, a year where the domestic industry had to contend with a significant contraction in demand and output. In this context, the effect of the price undercutting, depression and suppression and sales volumes lost to the subject goods was only magnified.

93. On the basis of the foregoing, the Tribunal finds that the subject goods have caused material injury to the domestic industry. Accordingly, the Tribunal need not consider the question whether the subject goods are threatening to cause injury.

EXCLUSION

94. The Tribunal received joint requests from Imperial Oil and Posco to exclude products from a finding of injury or threat of injury.

95. *SIMA* implicitly authorizes the Tribunal to grant exclusions from a finding.¹⁰⁵ Exclusions are an extraordinary remedy that may be granted at the Tribunal's discretion, i.e. when the Tribunal is of the view that such exclusions will not cause injury to the domestic industry.¹⁰⁶ The rationale is that, despite the general conclusion that the dumping of the goods has caused injury to the domestic industry, there may be case-specific evidence that imports of particular products captured by the definition of the goods have not caused injury.

96. In determining whether an exclusion is likely to cause injury to the domestic industry, the Tribunal considers such factors as whether the domestic industry produces, actively supplies or is capable of producing like goods in relation to the goods for which the exclusion is requested.¹⁰⁷

97. The onus is upon the requester to demonstrate that imports of the specific goods for which the exclusion is requested are not injurious to the domestic industry.¹⁰⁸ Thus there is an evidentiary burden on

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].

105. *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 In or Exported 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.

106. See, for example, *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) at para. 339; *Stainless Steel Wire* (30 July 2004), NQ-2004-001 (CITT) at para. 96.

107. *Certain Fasteners* (6 January 2010), RR-2009-001 (CITT) [*Fasteners*] at para. 245.

108. *Fasteners* at para. 243.

the requester to file evidence in support of its request.¹⁰⁹ However, there is also an evidentiary burden on the domestic producers to file evidence in order to rebut the evidence filed by the requester.¹¹⁰

98. Section 42 of *SIMA* authorizes the Tribunal to exclude only goods which are subject goods. In an injury inquiry, the Tribunal does not have the jurisdiction to exclude non-subject goods or to issue any binding subjectivity rulings.¹¹¹

99. 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.

100. Imperial Oil and Posco's identical requests cover high manganese line pipe for use in slurry, tailings, and pressure piping (HMS slurry pipe) systems in oil sands projects. The basis for their requests was that HMS slurry pipe is significantly higher priced than conventional steel pipe, has limited slurry applications, and that the domestic producers do not have the proprietary technology to produce it. Imperial Oil and Posco also submitted that one domestic producer has declined to produce HMS slurry pipe from HMS steel plate produced by Posco.¹¹²

101. In response to the joint requests, Evraz and Tenaris initially consented to the exclusion in part, subject to certain amendments to its wording.¹¹³

102. On November 16, 2017, counsel for Evraz filed a letter with the Tribunal indicating that Imperial Oil, Posco, Tenaris and Evraz had agreed on the exclusion from the finding of products described as follows: "Welded line pipe having nominal outside diameters from and including 18 inches to 24 inches (610 mm) (with all dimensions being plus or minus allowable tolerances contained in the applicable standards), regardless of grade and wall thickness, with a manganese content of no less than 16% by weight, for exclusive use in slurry, tailings, and pressure piping systems in oil sands projects, and marked 'Not for CSA Z-662 Applications'. For greater certainty, use in a pipeline meeting CSA Z-662 is not permitted under this exclusion."¹¹⁴

103. As the record did not contain evidence as to whether the third domestic producer, Bri-Steel, supported the exclusion sought by Imperial Oil and Posco, the Tribunal invited the requesters to inquire whether Bri-Steel supports the product exclusion request agreed to by Evraz and Tenaris.¹¹⁵ On

109. *Aluminum Extrusions* (17 March 2014), RR-2013-003 (CITT) at para. 192. The Tribunal will generally reject product exclusion requests where there is a lack of cogent case-specific evidence concerning the likely non-injurious effect of imports of particular products covered by the definition of the subject goods in support of the requesters' claims. Indeed, a failure to provide sufficient information prevents the parties opposing the request from adequately responding and leaves the Tribunal in a position where it lacks evidence to find that imports of particular products for which exclusions are requested are not likely to cause injury to the domestic industry.

110. A failure to do so could result in the requested exclusions being granted. In any case, much like its conclusion on the issue of whether the dumping of the subject goods has caused injury to the domestic industry, the Tribunal's decision on exclusion requests must be based on positive evidence, irrespective of the party that filed it.

111. *Certain Fabricated Industrial Steel Components* (9 June 2017), NQ-2016-004 (CITT) at para. 157; *Carbon and Alloy Steel Line Pipe* (22 January 2016), NQ-2015-002 (CITT), Orders and Reasons—Procedural and Others, at para. 35.

112. Exhibit NQ-2017-002-24.02, Vol. 1.3 at 17-18.

113. Exhibit NQ-2017-002-26.02, Vol. 1.3; Exhibit NQ-2017-002-26.01, Vol. 1.3.

114. Exhibit NQ-2017-002-26.03, Vol. 1.3 at 146.

115. Exhibit NQ-2017-002-29, Vol. 1A at 5.

November 27, 2017, by letter to the Tribunal, Bri-Steel indicated its consent to the requested product exclusion.¹¹⁶

104. It was not disputed by any party to this inquiry that the products for which exclusion is requested are covered by the definition of the subject goods.

105. On the basis of the foregoing, the Tribunal is satisfied that the exclusion will not cause injury to the domestic industry and, therefore, excludes from its finding the goods described in Evraz's letter dated November 16, 2017.

CONCLUSION

106. Pursuant to subsection 43(1) of *SIMA*, the Tribunal finds that the dumping of line pipe originating in or exported from the Republic of Korea has caused injury to the domestic industry.

107. Furthermore, the Tribunal excludes from its finding welded line pipe having nominal outside diameters from and including 18 inches to 24 inches (610 mm) (with all dimensions being plus or minus allowable tolerances contained in the applicable standards), regardless of grade and wall thickness, with a manganese content of no less than 16% by weight, for exclusive use in slurry, tailings, and pressure piping systems in oil sands projects, and marked "Not for CSA Z-662 Applications". For greater certainty, use in a pipeline meeting CSA Z-662 is not permitted under this exclusion.

Jean Bédard, Q.C.

Jean Bédard, Q.C.

Presiding Member

Peter Burn

Peter Burn

Member

Rose Ritcey

Rose Ritcey

Member

116. Exhibit NQ-2017-002-32, Vol. 1A at 15.