Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Dumping

FINDING AND REASONS

Inquiry NQ-2024-001

Certain Wire Rod

Finding issued
Friday, October 4, 2024

Reasons issued
Friday, October 18, 2024

TABLE OF CONTENTS

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

CERTAIN WIRE ROD

FINDING

The Canadian International Trade Tribunal, pursuant to the provisions of section 42 of the *Special Import Measures Act* (SIMA), has conducted an inquiry to determine whether the dumping of certain hot-rolled wire rod of carbon steel and alloy steel of circular or approximately circular cross section, in coils, equal to or less than 25.5 mm in actual solid cross-sectional diameter, originating in or exported from the People's Republic of China, the Arab Republic of Egypt and the Socialist Republic of Vietnam (the subject goods), has caused injury or retardation or is threatening to cause injury, as these words are defined in SIMA. The following products are excluded:

- tire cord quality wire rod;
- stainless steel wire rod;
- tool steel wire rod;
- high-nickel steel wire rod;
- ball-bearing steel wire rod; and
- concrete reinforcing bars and rods (also known as rebar).

a) For greater clarity, tire cord quality wire rod is considered to be rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter, with an average partial decarburization of no more than 70 micrometers in depth (maximum 200 micrometers); having no non-deformable inclusions with a thickness (measured perpendicular to the rolling direction) greater than 20 micrometers; and, containing by weight the following elements in proportion: 0.68% or more carbon; less than 0.01% of aluminum; 0.04% or less, in aggregate, of phosphorus and sulfur; 0.008% or less of nitrogen, and not more than 0.55% in the aggregate, of copper, nickel and chromium.

b) Stainless steel wire rod is rod containing, by weight, 1.2% or less of carbon and 10.5% or more of chromium, with or without other elements.

c) Tool steel wire rod is considered to be rod containing the following combinations of elements in the quantity by weight respectively indicated: more than 1.2 percent carbon and more than 10.5 percent chromium; or not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

d) High-nickel steel wire rod is considered to be rod containing by weight 24% or more nickel.

e) Ball-bearing steel wire rod is considered to be rod containing iron as well as each of the following elements by weight in the amount specified: not less than 0.95 nor more than 1.13 percent of carbon; not less than 0.22 nor more than 0.48 percent of manganese; none, or not more than 0.03 percent of sulfur; none, or not more than 0.03 percent of phosphorus; not less than 0.18 nor more than 0.37 percent of silicon; not less than 1.25 nor more than 1.65 percent of chromium; none, or not more than 0.28 percent of nickel; none, or not more than 0.38 percent of copper; and none, or not more than 0.09 percent of molybdenum.

f) Concrete reinforcing bar, commonly known as rebar, means a steel bar produced with deformations. It is covered by the existing measures in force.

Further to the Tribunal's inquiry and following the issuance by the President of the Canada Border Services Agency of a final determination, dated September 4, 2024, that the above-mentioned goods have been dumped, the Tribunal finds, pursuant to subsection 43(1) of SIMA, that the dumping of the subject goods has caused injury to the domestic industry.

Eric Wildhaber

Eric Wildhaber
Presiding Member

Georges Bujold

Georges Bujold
Member

Randolph W. Heggart

Randolph W. Heggart
Member

The statement of reasons will be issued within 15 days.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	September 3, 4, 5 and 6, 2024
Tribunal Panel:	Eric Wildhaber, Presiding Member Georges Bujold, Member Randolph W. Heggart, Member
Tribunal Secretariat Staff:	Ana Poienaru, Lead Counsel Rigers Alliu, Counsel Mark Howell, Lead Analyst Andrew Wigmore, Analyst Vikram Iyer, Analyst Matthew Riopelle, Registry Officer Julie Charlebois, Data Services Advisor Arthur Grenon, Data Services Advisor

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Hoa Phat Dung Quat Steel Joint Stock Company	Peter Clark
Hoa Phat Hai Duong Steel Joint Stock Company	Peter Clark
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STATEMENT OF REASONS

INTRODUCTION

[1] The mandate of the Canadian International Trade Tribunal in this inquiry, pursuant to section 42 of the *Special Import Measures Act*[1] (SIMA), is to determine whether the dumping of certain wire rod, originating in or exported from the People's Republic of China (China), the Arab Republic of Egypt (Egypt) and the Socialist Republic of Vietnam (Vietnam) (the subject goods),[2] has caused injury or is threatening to cause injury, as these terms are defined in SIMA, and to determine such other matters as the Tribunal is required to determine under that section.

[2] For the reasons that follow, the Tribunal has determined that the dumping of the subject goods has caused injury to the domestic industry.

BACKGROUND

[3] This inquiry stems from a complaint filed with the Canada Border Services Agency (CBSA) on January 18, 2024, by Ivaco Rolling Mills 2004 LP (IRM). After reviewing that complaint, the CBSA subsequently decided to initiate, on March 8, 2024, an investigation, pursuant to subsection 31(1) of SIMA, into the alleged dumping of the subject goods.

[4] As a result of the CBSA's decision to commence investigations, the Tribunal initiated a preliminary injury inquiry pursuant to subsection 34(2) of SIMA, which began on March 11, 2024.

[5] On May 7, 2024, pursuant to subsection 37.1(1) of SIMA, the Tribunal determined that there was evidence that disclosed a reasonable indication that the dumping of the subject goods had caused injury to the domestic industry.[3]

[6] On June 6, 2024, the CBSA made a preliminary determination of dumping in respect of the subject goods.[4] It also considered that the imposition of provisional duties was necessary to prevent injury.[5]

[7] The Tribunal commenced this inquiry on June 7, 2024.[6]

[8] The Tribunal's period of inquiry (POI) covered three full years from January 1, 2021, to December 31, 2023, and included two interim periods: January 1, 2023, to March 31, 2023 (interim 2023), and January 1, 2024, to March 31, 2024 (interim 2024).

[9] As part of this inquiry, the Tribunal asked known domestic producers, importers, purchasers, foreign producers, as well as trade unions believed to represent workers employed in the production of wire rod, to fill out questionnaires by June 28, 2024. The Tribunal received 2 replies to the domestic producers' questionnaire, 10 replies to the importers' questionnaire, 19 replies to the purchasers' questionnaire, 2 replies to the foreign producers' questionnaire and 3 replies to the trade unions' questionnaire.

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1 R.S.C., 1985, c. S-15.
2 The full product definition is set out at paragraph 20 of these reasons.
3 *Certain Wire Rod* (7 May 2024), PI-2023-002 (CITT) [*Wire Rod PI*].
4 Exhibit NQ-2024-001-01; Exhibit NQ-2024-001-02 (protected).
5 Exhibit NQ-2024-001-01.A, p. 38.
6 Exhibit NQ-2024-001-03.

[10] Using the questionnaire responses[7] and other information on the record, staff of the Secretariat to the Tribunal prepared public and protected investigation reports on July 29, 2024. Given that IRM presented its injury claim in relation to the merchant market as further explained below, the Tribunal issued two investigation reports for the purposes of presenting the data that it collected in this inquiry: one consolidating the total domestic market[8] and one limited to the merchant market.[9] Fully revised versions of these reports were issued on August 22, 2024.[10]

[11] On August 6, 2024, the Tribunal received an exclusion request from Tree Island Industries Ltd. (Tree Island Industries).[11] This exclusion request was followed on August 14, 2024, by responses from IRM and ArcelorMittal Long Product Canada, G.P. (ArcelorMittal) (collectively the Domestic Producers) opposing the request.[12] The same day, the United Steelworkers (USW) filed correspondence opposing Tree Island Industries' request without setting out its arguments or evidence. On August 22, 2024, Tree Island Industries filed a reply to the Domestic Producers' arguments.

[12] On August 7, 2024, the Tribunal received case briefs and several witness statements from the Domestic Producers, the USW, and Lincoln Electric Company of Canada LP (Lincoln Electric) in support of a finding of injury or threat of injury.[13]

[13] On August 15, 2024, the following parties filed case briefs opposing a finding of injury or threat of injury: Tree Island Industries, Jebsen and Jessen Metals GmbH (Jebsen and Jessen), Hoa Phat Dung Quat Steel Joint Stock Company and Hoa Phat Hai Duong Steel Joint Stock Company (collectively Hoa Phat), and the Ministry of Trade and Industry, Egypt (Government of Egypt). Tree Island Industries and Jebsen and Jessen also filed witness statements.[14]

[14] The Domestic Producers and the USW filed reply case briefs on August 23, 2024. The Domestic Producers also included witness statements in their replies.

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7 In some of the responses, respondents indicated that they did not import or purchase wire rod during the POI. Other respondents did not complete their responses in a manner that permitted their use in preparing the investigation reports. Responses that were used to prepare investigation reports are identified in tables 1, 2, 5 and 8 of the reports.

8 Exhibit NQ-2024-001-06; Exhibit NQ-2024-001-07 (protected).

9 Exhibit NQ-2024-001-06.A; Exhibit NQ-2024-001-07.A (protected).

10 The revised public and protected investigation reports for the total domestic market are available in Exhibit NQ-2024-001-06.B and Exhibit NQ-2024-001-07.B (protected). As for the reports for the merchant market, they are available in Exhibit NQ-2024-001-06.C and Exhibit NQ-2024-001-07.C (protected).

11 Exhibit NQ-2024-001-29.1; Exhibit NQ-2024-001-30.1 (protected).

12 IRM's response is available in Exhibit NQ-2024-001-35.01 and Exhibit NQ-2024-001-36.01 (protected), whereas ArcelorMittal's response is available in Exhibit NQ-2024-001-35.02 and Exhibit NQ-2024-001-36.02 (protected).

13 IRM's case brief and witness statements are available in Exhibits NQ-2024-001-A-01 to A-012; ArcelorMittal's case brief and witness statements are available in Exhibits NQ-2024-001-B-01 to B-06; the USW's case brief and witness statements are available in Exhibits NQ-2024-001-C-01 to C-10; Lincoln Electric's case brief and witness statement are available in Exhibits NQ-2024-001-H-01 to H-04.

14 Tree Island Industries' case brief and witness statements are available in Exhibits NQ-2024-001-D-01.A to D-05; Jebsen and Jessen's case brief and witness statement are available in Exhibits NQ-2024-001-E-01 to E-04; Hoa Phat's case brief is available in Exhibits NQ-2024-001-F-01 to F-02.A; the Government of Egypt's case brief is available in Exhibit NQ-2024-001-I-01.

[15] The Tribunal also received a public submission from Davis Wire Industries Ltd. (Davis Wire Industries), which was not a party to the proceedings.[15]

[16] Furthermore, IRM and Jebsen and Jessen filed public and protected requests for information (RFIs). IRM directed its RFIs to Jebsen and Jessen and Tree Island Industries, whereas Jebsen and Jessen directed its RFIs to IRM and ArcelorMittal. The Tribunal received several objections to these RFIs. After reviewing the RFIs and considering the rationale and objections for each of them, the Tribunal issued directions to the parties indicating which RFIs required responses.[16] The RFI responses were received on August 23, 2024.[17]

[17] A hearing with public and *in camera* sessions was held in Ottawa from September 3 to September 6, 2024, with some parties and witnesses attending virtually. The Tribunal heard testimony from witnesses for IRM, ArcelorMittal, the USW, Lincoln Electric, Tree Island Industries, and Jebsen and Jessen. The Tribunal also heard closing arguments on the issue of injury and threat of injury and on the issue of the requested exclusion.

[18] There were several procedural matters that arose during the proceedings, including the hearing. They have already been sufficiently dealt with during the proceedings and will not be addressed again in substance by the Tribunal in these reasons.

RESULTS OF THE CBSA'S INVESTIGATION

[19] The CBSA continued its investigation concerning dumping concurrently with the Tribunal's inquiry, as described above. The CBSA's period of investigation for the dumping investigation covered the period from January 1, 2023, to December 31, 2023.[18] On September 4, 2024, pursuant to paragraph 41(1)(b) of SIMA, the CBSA made a final determination of dumping in respect of the subject goods as follows:[19]

Country of Origin or Export	Exporters	Margin of Dumping Expressed as a Percentage of Export Price
China	Jiangsu Shagang International Trade Co., Ltd	34.0%
	All other exporters	46.2%
Egypt	Suez Steel Co., Ltd	8.6%
	All other exporters	21.3%
Vietnam	Hoa Phat Dung Quat Steel Joint Stock Company	17.7%
	Hoa Phat Hai Duong Steel Joint Stock Company	13.5%

15 Davis Wire Industries did not file a notice of participation, nor did it seek leave to participate in this inquiry. The Tribunal received a submission on August 2, 2024, in which Davis Wire Industries expressed its disagreement with a finding of injury or threat of injury and its support for Tree Island Industries' position that British Columbia be treated as a separate market within Canada. See Exhibit NQ-2024-001-31.

16 Exhibit NQ-2024-001-RFI-01.

17 Exhibit NQ-2024-001-RI-01; Exhibit NQ-2024-001-RI-01.A (protected); Exhibit NQ-2024-001-RI-02; Exhibit NQ-2024-001-RI-02.A (protected).

18 Exhibit NQ-2024-001-04.A, p. 4.

19 Exhibit NQ-2024-001-04, p. 11.

PRODUCT

Product definition

[20] The CBSA defined the subject goods as follows:[20]

> Certain hot-rolled wire rod of carbon steel and alloy steel of circular or approximately circular cross section, in coils, equal to or less than 25.5 mm in actual solid cross-sectional diameter, originating in or exported from the People's Republic of China, the Arab Republic of Egypt and the Socialist Republic of Vietnam, excluding the following products:
>
> - tire cord quality wire rod;
> - stainless steel wire rod;
> - tool steel wire rod;
> - high-nickel steel wire rod;
> - ball-bearing steel wire rod; and
> - concrete reinforcing bars and rods (also known as rebar).
>
> a) For greater clarity, tire cord quality wire rod is considered to be rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter, with an average partial decarburization of no more than 70 micrometers in depth (maximum 200 micrometers); having no non-deformable inclusions with a thickness (measured perpendicular to the rolling direction) greater than 20 micrometers; and, containing by weight the following elements in proportion: 0.68% or more carbon; less than 0.01% of aluminum; 0.04% or less, in aggregate, of phosphorus and sulfur; 0.008% or less of nitrogen, and not more than 0.55% in the aggregate, of copper, nickel and chromium.
>
> b) Stainless steel wire rod is rod containing, by weight, 1.2% or less of carbon and 10.5% or more of chromium, with or without other elements.
>
> c) Tool steel wire rod is considered to be rod containing the following combinations of elements in the quantity by weight respectively indicated: more than 1.2 percent carbon and more than 10.5 percent chromium; or not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or not less than 0.5 percent carbon and not less than 5.5 percent tungsten.
>
> d) High-nickel steel wire rod is considered to be rod containing by weight 24% or more nickel.

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20 Exhibit NQ-2024-001-04.A, p. 6–7.

e) Ball-bearing steel wire rod is considered to be rod containing iron as well as each of the following elements by weight in the amount specified: not less than 0.95 nor more than 1.13 percent of carbon; not less than 0.22 nor more than 0.48 percent of manganese; none, or not more than 0.03 percent of sulfur; none, or not more than 0.03 percent of phosphorus; not less than 0.18 nor more than 0.37 percent of silicon; not less than 1.25 nor more than 1.65 percent of chromium; none, or not more than 0.28 percent of nickel; none, or not more than 0.38 percent of copper; and none, or not more than 0.09 percent of molybdenum.

f) Concrete reinforcing bar, commonly known as rebar, means a steel bar produced with deformations. It is covered by the existing measures in force.

Additional product information

[21] Although not reproduced here, additional information with respect to the product, its uses and characteristics, and its production process was provided by the CBSA in its statement of reasons for its final determination of dumping.[21]

PRELIMINARY MATTERS

Confidential information

[22] The Government of Egypt argued that the Tribunal failed to comply with its obligations under Articles 6.5.1 and 6.9 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994[22] (Anti-Dumping Agreement) because the Tribunal's investigation reports designated certain facts as confidential, particularly data concerning the volume of imports. The Government of Egypt submitted that non-confidential summaries of this information or statements as to why summaries were not possible should have been provided. According to the Government of Egypt, this hindered its ability to fully engage in the investigation process and to present comprehensive opposing views.[23]

[23] The Tribunal respectfully disagrees. The Tribunal has repeatedly addressed concerns of confidentiality in previous decisions. In *Refined Sugar*, in response to similar arguments made by the European Union, the Tribunal explained that it requires access to confidential commercial information in order for it to fulfill its statutory mandate.[24] The Tribunal indicated that if it insisted that all information on its record be made public, parties would foreseeably withhold certain information, thereby hindering the conduct of any inquiry. Having regard to domestic legislation,

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21 *Ibid*., p. 8–11.

22 WTO Anti-Dumping Agreement, online: https://www.wto.org/english/docs_e/legal_e/19-adp.pdf.

23 On this point, the Government of Egypt relied on Article 6.2 of the WTO Anti-Dumping Agreement, which provides as follows: "Throughout the anti-dumping investigation all interested parties shall have a full opportunity for the defence of their interests. To this end, the authorities shall, on request, provide opportunities for all interested parties to meet those parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered. Provision of such opportunities must take account of the need to preserve confidentiality and of the convenience to the parties. There shall be no obligation on any party to attend a meeting, and failure to do so shall not be prejudicial to that party's case. Interested parties shall also have the right, on justification, to present other information orally."

24 *Refined Sugar* (6 August 2021), RR-2020-003 (CITT), paras. 34–35 [*Refined Sugar*], referring to *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, para. 50.

international trade agreements and Canadian administrative law, the Tribunal adopted a balanced approach to protecting confidential information while also ensuring transparency of the adjudicative decision-making process.[25]

[24] The data presented in the investigation reports are based on a combination of information that is publicly available or properly designated as confidential by respondents to the Tribunal's questionnaires.[26] In this case, the domestic industry is comprised of two domestic producers, one of which accounts for the majority of the production of the domestic like goods, making the disclosure of aggregate data impossible in many instances.[27]

[25] Despite these constraints, the Tribunal believes that it has met its transparency obligations by placing as much information as possible in the public version of its investigation reports. In this regard, while absolute figures are, for the most part, confidential, several tables in the public reports include percent change figures to allow parties to gain a reasonable understanding of the substance of the information.[28] Moreover, the Tribunal also included a public summary table of confidential information which uses arrows to indicate the trends shown by certain data over the course of the POI. This includes trends in the volume of imports, both in absolute and in relative terms, as well as trends in the domestic industry's performance indicators such as production, sales, capacity, gross and net margins.[29] The Tribunal is satisfied that publicly available information allowed parties to understand and respond to the case being made by parties requesting SIMA protection.

[26] Furthermore, the Tribunal notes that pursuant to subsection 45(3) of *the Canadian International Trade Tribunal Act* and subrule 16(1) of the *Canadian International Trade Tribunal Rules*, information that has been designated as confidential may be disclosed to counsel who have provided the required declaration and undertaking. It was therefore open to the Government of Egypt to obtain access to confidential information by retaining independent counsel to act on its behalf in these proceedings.

[27] The Tribunal therefore finds that it has conducted this inquiry in a manner that complies with Canada's international obligations in this respect.

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25 *Refined Sugar*, paras. 34–35. See also, *Certain Fabricated Industrial Steel Components* (25 May 2017), NQ-2016-004 (CITT), paras. 23–25.

26 See sections 45 to 49 of the *Canadian International Trade Tribunal Act*, R.S.C., 1985, c. 47 (4th Supp.), which set out obligations and objectives similar to those in Articles 6.5 and 6.5.1 of the WTO Anti-Dumping Agreement. The Tribunal's *Confidentiality Guidelines* provide further guidance, including, inter alia, on the types of information that are typically considered confidential. Online: www.citt-tcce.gc.ca/en/resource-types/confidentiality-guidelines.html.

27 As indicated in the investigation reports, rigorous procedures are followed in preparing the report to ensure that confidentiality of data is not compromised, having regard to such things as the number of respondents and whether there is dominance (a situation where a small number of firms account for a very large portion of any data field such that confidential information could be revealed by means of reverse engineering). When any revision to an investigation report is issued, the same rigorous procedures are followed. See Exhibit NQ-2024-001-06.B, p. 8 and Exhibit NQ-2024-001-06.C, p. 8.

28 See, for example, Exhibit NQ-2024-001-06.B, tables 20 and 24; Exhibit NQ-2024-001-06.C, tables 20 and 24.

29 Exhibit NQ-2024-001-06.B, Table 17; Exhibit NQ-2024-001-06.C, Table 17.

Period of investigation

[28] The Government of Egypt argued that it was improper for the Tribunal to have used a three-year POI which also included interim 2024, whereas the CBSA selected a 12-month period of investigation for its dumping investigation, that is calendar year 2023. It argued that, instead, the Tribunal's injury analysis should mimic the CBSA's dumping period of investigation to ensure that any alleged injury is accurately attributed to the dumping rather than other factors. Moreover, the Government of Egypt submitted that it would be improper to compare the interim periods of 2023 and 2024 with one another, given the seasonal nature of wire rod.

[29] With respect, the Tribunal disagrees. The Tribunal's practice in an injury inquiry is to establish a POI of at least three years. Typically, the latter period of the Tribunal's POI will coincide with the CBSA's period of investigation. The Tribunal has discretion to establish the POI according to the circumstances appropriate to each case. Nothing in SIMA or the Anti-Dumping Agreement prevents the Tribunal from selecting a POI that goes beyond a three-year period. In fact, this concords with a recommendation of the WTO Committee on anti-dumping practices whereby "the period of data collection for injury investigations normally should be at least three years …".[30] This approach allows the Tribunal to assess, over a sufficiently lengthy period, any changes in the volume and prices of imports, in the prices of like goods, as well as the state of the domestic industry. In turn, this allows for a meaningful inquiry into allegations of a causal relationship between the dumping of the goods and the purported injury. Finally, the Tribunal examines data from the last quarter (or 6 or 9-month period) of a POI whose end period is not a full calendar year against the corresponding quarter (or 6 or 9-month period) of the previous year. This was done in this matter because the POI ended on March 31, 2024 (or with the 1st quarter of 2024).[31] This allows the Tribunal to control for year-over-year changes for a recent period, while also controlling for seasonal fluctuations between periods. As such, contrary to the contention of the Government of Egypt, the interim periods expressly allowed to take account of considerations of market seasonality.

Content of the investigation reports

[30] Relying on various provisions of the WTO Anti-Dumping Agreement, the Government of Egypt raised arguments with respect to the content of the Tribunal's investigation reports, essentially arguing that they should have included certain additional information, such as an injury margin calculation and an assessment of the causal link between the alleged injury to the domestic industry and the subject goods.

[31] With respect to a margin of injury calculation, the Government of Egypt submitted that such calculation was required for purposes of determining whether definitive duties should be imposed, and the extent to which they should be imposed, based on considerations of so-called "lesser duty". It is important to note, however, that the application of the concept of lesser duty is not mandatory under Article 9.1 of the Anti-Dumping Agreement.[32] Furthermore, Canada's legislation does not require the Tribunal to account for considerations of "lesser duty" in the context of final injury inquiries conducted pursuant to section 42 of SIMA such as these proceedings. It is important to

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30 Recommendation Concerning the Periods of Data Collection for Anti-Dumping Investigations, G/ADP/6, 16 May 2000, online: http://docsonline.wto.org.

31 Exhibit NQ-2024-001-06.C, p. 6.

32 Article 9.1 of the Anti-Dumping Agreement states that "[i]t is desirable that the imposition … [of] the duty be less than the margin if such lesser duty would be adequate to remove the injury to the domestic industry".

stress that Canada's trade remedies regime does indeed provide for such considerations in the context of public interest inquiries under section 45 of SIMA.[33] Accordingly, the Tribunal is not tasked with calculating a margin of injury or applying a "lesser duty" rule in the present inquiry.

[32] In respect of the Government of Egypt's contention that the investigation reports should have included a causality analysis of any effects of the subject goods on alleged injury to the domestic industry, the Tribunal recalls that these reports are not adjudicative findings. Rather, these reports are a consolidation of facts discovered over the course of the investigative phase of the Tribunal's inquiry through questionnaire responses from domestic producers, importers, foreign producers and from other relevant sources. These reports come to no dispositive conclusions on the presence or absence of injury or threat of injury. Tribunal investigation reports never contain such conclusions because it would be inappropriate, and premature if they did because at that point the Tribunal has not reviewed the entirety of the parties' evidence or argument on a given matter.

[33] Overall, when conducting an injury inquiry under SIMA, the Tribunal performs both an investigatory and adjudicative function. In this process, the investigation reports form part of the Tribunal's record. The Tribunal affords parties comprehensive quasi-judicial proceedings to make submissions based on the record and any additional evidence they wish to provide. It is only after the Tribunal has heard parties' representations on the totality of the record evidence that the Tribunal deliberates on what findings should be made. And it is only when it performs that adjudicative function that the Tribunal will formulate adjudicative conclusions. It is therefore entirely appropriate that the issues identified by the Government of Egypt pertaining to causality and materiality be addressed by the Tribunal in the statement of reasons that it provides further to the findings that it makes at the conclusion of an inquiry, and not in the Tribunal's investigation reports.

Special regard under Article 15 of the Anti-Dumping Agreement

[34] The Government of Egypt requested that the Tribunal afford Egypt special regard in application of Article 15 of the WTO Anti-Dumping Agreement, including the possibility of constructive remedies.[34]

[35] The Tribunal notes that under Canada's bifurcated trade remedies regime established under SIMA, Article 15 of the WTO Anti-Dumping could be addressed by proceedings before the CBSA as well as during any public interest inquiry held by the Tribunal.[35] As discussed above, the "lesser duty" concept finds no application in the context of the present proceedings under section 42 of SIMA. As for price undertakings, SIMA contemplates a process for price undertakings with the

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33 See, in that regard, *Concrete Reinforcing Bar* (22 December 2015), PB-2014-001 (CITT), paras. 29–30.

34 *Transcript of Public Hearing*, p. 104. Article 15 of the WTO Anti-Dumping Agreement provides as follows: "It is recognized that special regard must be given by developed country Members to the special situation of developing country Members when considering the application of anti-dumping measures under this Agreement. Possibilities of constructive remedies provided for by this Agreement shall be explored before applying anti-dumping duties where they would affect the essential interests of developing country Members."

35 Canada is one of only a few WTO Members that have what is known as a "bifurcated" system for antidumping and countervailing matters. The responsibilities are shared between the CBSA (determinations of dumping and/or subsidizing) and the Tribunal (determination of injury and causal link). Once the Tribunal makes a finding of injury or threat of injury, the associated protection in the form of anti-dumping and/or countervailing duties is imposed and administered by the CBSA, not by the Tribunal.

CBSA under section 49 and the following.[36] As such, the Tribunal is of the view that the Government of Egypt did not articulate a basis for the Tribunal to consider its request within the confines of the present proceedings. Consequently, the request is denied**.**

LEGAL FRAMEWORK

[36] 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" 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".

[37] 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 the purposes of its injury analysis.

[38] Given that the subject goods are originating in or exported from more than one country, the Tribunal must also determine if the prerequisite conditions are met in order to make a cumulative assessment of the effect of the dumping of the subject goods from all the subject countries on the domestic industry (that is, whether it will conduct a single injury analysis or a separate analysis for each subject country).

[39] The Tribunal can then assess whether the dumping of the subject goods has caused material injury to the domestic industry.[37] 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.[38] As a domestic industry is already established, the Tribunal will not need to consider the question of retardation.[39]

[40] 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 impact caused by such factors is not attributed to the dumping of the subject goods.

[41] If the Tribunal determines that the dumping of the subject goods has caused injury, the Tribunal will need to assess, pursuant to paragraph 42(1)(b) of SIMA, whether injury has been caused by a massive importation, which could result in the application of retroactive duties on subject goods released during the period of 90 days before the CBSA's preliminary determination.

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36 The Tribunal notes that the imposition of a "lesser duty" or a price undertaking are considered "constructive remedies" within the meaning of Article 15 of the WTO Anti-Dumping Agreement. See, for example, Report of the Panel, *European Communities – Anti-Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings From Brazil*, WTO Docs. WT/DS219/R, paras. 7.71, 7.77-7.78.

37 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.

38 Injury and threat of injury are distinct findings; the Tribunal is not required to make a finding relating to the threat of injury pursuant to subsection 43(1) of SIMA unless it first makes a finding of no injury.

39 Subsection 2(1) of SIMA defines "retardation" as "… material retardation of the establishment of a domestic industry".

[42] Finally, if the Tribunal determines that the dumping of the subject goods has caused injury or is threatening to cause injury to the domestic industry, it will need to decide whether to grant the exclusion requested by Tree Island Industries.

LIKE GOODS AND CLASSES OF GOODS

[43] In order for the Tribunal to determine whether the dumping of the subject goods has caused or is 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.[40]

[44] 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.

[45] In deciding the issue of like goods when goods are not identical in all respects to the other goods, the Tribunal typically considers 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).[41]

[46] In the preliminary inquiry, the Tribunal found that domestically produced wire rod is like goods in relation to the subject goods because these goods have uses and other characteristics that closely resemble those of the subject goods and therefore compete with the subject goods.[42]

[47] In this inquiry, IRM submitted that there is no basis for the Tribunal to depart from its previous finding since domestically produced wire rod and imported wire rod share the same physical, manufacturing and market characteristics. ArcelorMittal noted at the hearing that this issue was not contested. The opposing parties made no arguments.

[48] The evidence before the Tribunal demonstrates that wire rod is a semi-finished steel product of circular or approximately circular cross-section typically used to produce wire and wire products.[43] All wire rod is also drawn into wire for further downstream applications and for use in construction or general manufacturing activities.[44] Domestic producers produce or have the ability to produce the equivalent of the imported subject goods, regardless of the grade of the wire rod.[45]

[49] Domestically produced wire rod and imported wire rod are also comparable on factors such as the range of product line, production to technical specifications and availability of proprietary

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40 Should the Tribunal determine that there is more than one class of goods in this inquiry, it must conduct a separate injury analysis and decide 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.).

41 See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT), para. 48.

42 *Wire Rod PI*, paras. 25–28.

43 Exhibit NQ-2024-001-A.05, p. 2–3.

44 *Ibid*., p. 3–4, Exhibit NQ-2024-001-B-03, p. 4.

45 Exhibit NQ-2024-001-A.05, p. 5; Exhibit NQ-2024-001-B-03, p. 5–6.

specifications.[46] With respect to product quality, although Canada appears to have an advantage over the subject goods, the domestically produced and imported wire rod are nonetheless comparable.[47] The evidence also demonstrates that imported wire rod and domestically produced wire rod of the same grade are interchangeable when produced to the same specifications and grades.[48] Of note, respondents largely indicated that wire rod from China, Vietnam or Egypt is "frequently or always" interchangeable with domestic goods.[49] Furthermore, domestically produced wire rod and imported wire rod share a basic manufacturing process that consists of steelmaking, casting, hot-rolling, coiling and cooling.[50]

[50] Domestically produced wire rod and imported wire rod also share similar market characteristics, including channels of distribution by being sold through distributors or sold directly to end users.[51] However, 9 out of 14 purchasers indicated that domestic wire rod and imported wire rod do not share the same channels of distribution.[52] On this point, IRM noted that questionnaire respondents drew a distinction because wire rod is often imported by a broker or trading company, which are functionally distributors. Opposing parties have not rebutted this position.

[51] Overall, the Tribunal concludes that domestically produced goods of the same description as the subject goods are like goods to the subject goods.

[52] In addressing the issue of classes of goods, the Tribunal typically examines whether goods potentially included in separate classes of goods constitute "like goods" in relation to each other. If those goods are "like goods" in relation to each other, they will be regarded as comprising a single class of goods.[53]

[53] In the preliminary inquiry, the Tribunal found that there is one class of goods. There was no evidence supporting a finding that there is a clear dividing line between various types of wire rod such that they would not constitute like goods in relation to each other or fall along the same continuum of like goods.[54] In this final injury inquiry, no party argued that there is more than one class of goods.

[54] Accordingly, and considering the record evidence, the Tribunal finds that there is one class of goods.

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46 Exhibit NQ-2024-001-06.C, tables 11–13.

47 *Ibid*., Table 11.

48 *Ibid*., Table 10; Exhibit NQ-2024-001-A.05, p. 12; Exhibit NQ-2024-001-12.13, p. 7; Exhibit NQ-2024-001-12.03.B, p. 6; Exhibit NQ-2024-001-12.10, p. 6; Exhibit NQ-2024-001-12.06.A, p. 6.

49 Exhibit NQ-2024-001-06.C, Table 10.

50 Exhibit NQ-2024-001-09.02, p. 37–38.

51 Exhibit NQ-2024-001-A.05, p. 8–9; Exhibit NQ-2024-001-B-03, p. 5–6; Exhibit NQ-2024-001-06.C, Table 2.

52 Exhibit NQ-2024-001-06.C, Table 10; Exhibit NQ-2024-001-18.02C, p. 5; Exhibit NQ-2024-001-18.04.A, p. 5.

53 *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) [*Aluminum Extrusions*], para. 115; see also *Thermal Insulation Board* (11 April 1997), NQ-96-003 (CITT), p. 10.

54 *Wire Rod PI*, paras. 29–32.

DOMESTIC INDUSTRY

[55] 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.

[56] 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.[55]

[57] In the preliminary inquiry, the Tribunal found that IRM and ArcelorMittal were the only two known domestic producers of like goods and accounted for 100% of the total known and definitive production of wire rod in Canada.[56]

[58] In this inquiry, IRM and ArcelorMittal submitted that the two companies are still the only two known producers of like goods in Canada. None of the parties opposing a finding of injury made arguments on the composition of the domestic industry.

[59] IRM also explained and provided confidential evidence indicating that, while Sivaco Ontario, IRM's Canadian affiliate, resells IRM-produced wire rod into the merchant market, Sivaco Ontario does not produce wire rod and, therefore, it was not included in the "domestic industry" pursuant to subsection 2(1) of SIMA.[57] The Tribunal agrees.

[60] The uncontradicted evidence thus establishes that IRM and ArcelorMittal constitute the domestic industry for the purposes of this inquiry, since they are the only known domestic producers of like goods.[58]

CUMULATION

[61] Subsection 42(3) of SIMA directs the Tribunal to make an assessment of the cumulative effect of the dumping of the subject goods if it is satisfied that the margin of dumping in relation to the goods from each of those countries is not insignificant, the volume of goods from each subject

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55 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.); Panel Report, *China – Automobiles* (*US*), WT/DS440/R, at para. 7.207; Appellate Body Report, *EC – Fasteners* (*China*), WT/DS397/AB/R, paras. 411, 412, 419; Panel Report, *Argentina – Poultry* (*Brazil*), WT/DS241/R, para. 7.341.

56 *Wire Rod PI*, para. 38.

57 Sivaco Ontario is a division of Sivaco Wire Group 2004 LP, a wholly owned subsidiary of IRM's parent company, the Heico Companies, LLC's Metal Processing Group in Canada. See Exhibit NQ-2024-001-A-09, para. 3.

58 Exhibit NQ-2024-001-06.C, Table 18; Exhibit NQ-2024-001-07.C (protected).

country is not negligible, and cumulation is appropriate, taking into account the conditions of competition between the goods of each country or between them and the like goods.

[62] For the reasons that follow, the Tribunal is satisfied that it is appropriate to assess the cumulative effect of the dumping of the subject goods from China, Vietnam and Egypt and, thus, to conduct a single injury analysis in the circumstances of this case.

Insignificance and negligibility

[63] Under subsection 2(1) of SIMA, "insignificant" means, in relation to a margin of dumping, a margin that is less than 2% of the export price of the goods, and "negligible" means a volume that represents less than 3% of the total volume of goods meeting the product definition that are released into Canada from all countries.

[64] As seen above, the margins of dumping for each of the subject countries, as reported by the CBSA in its final determination, were greater than 2% and therefore not "insignificant".[59] Furthermore, the volume of dumped goods from each of the subject countries was greater than 3% of the total volume of imports meeting the product definition and therefore not "negligible".[60]

Assessment of cumulative effect – conditions of competition

[65] Having determined that the margins of dumping were not insignificant and that the volumes of dumped goods were not negligible, the Tribunal will now determine whether an assessment of the cumulative effect of the dumping of goods from the three subject countries is appropriate taking into account the conditions of competition between the goods of each of those countries or between those goods and the domestically produced like goods.

[66] Factors the Tribunal typically considers in assessing conditions of competition between subject goods and like goods include interchangeability, quality, pricing, distribution channels, modes of transportation, timing of arrivals and geographic dispersion. The Tribunal may also consider other factors in deciding whether the exports of a particular country should be cumulated, and no single factor is determinative.[61]

[67] In this case, IRM and ArcelorMittal submitted that it was appropriate to conduct a cumulative injury analysis given the conditions of competition between the subject goods and between the subject goods and the like goods. However, Tree Island Industries submitted that the Tribunal should conduct a separate injury analysis for the British Columbia geographic market to determine whether subject goods from Vietnam and China sold into British Columbia have caused or threaten to cause material injury to the domestic industry.

[68] In the preliminary inquiry, on the argument made by Hoa Phat that the Tribunal should conduct a separate injury analysis for the Western Canadian market, the Tribunal stated that there

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59 Exhibit NQ-2024-001-04, p. 11.

60 Exhibit NQ-2024-001-06.B (protected), Table 16.

61 See, for example, *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (17 August 2001), NQ-2001-001 (CITT), p. 16; *Waterproof Footwear* (25 September 2009), NQ-2009-001 (CITT), footnote 28; *Laminate Flooring* (16 June 2005), NQ-2004-006 (CITT), para. 80.

was no legal basis to divide the country into separate geographical markets in assessing whether it should cumulate the effects of the dumping of the subject goods from China, Vietnam and Egypt.[62]

[69] In this inquiry, relying on the Tribunal's analysis in *Structural Tubing*,[63] Tree Island Industries submitted that, in a large country like Canada, it may be appropriate to distinguish the effect of the subject goods from different subject countries based on differences in their geographical distribution. Tree Island Industries further submitted that a "decumulated" analysis undertaken in a separate geographic market required a consideration of the conditions of competition in that market relative to the conditions of competition in the rest of the country. According to Tree Island Industries, these factors include whether the domestic producers can supply Tree Island Industries different modes of transportation, different sales channels, different customers and different subject goods.

[70] In response, IRM and ArcelorMittal submitted that Tree Island Industries' proposed de-cumulation for a regional market in Canada has no legal basis and that the legal test should not be improperly extended. ArcelorMittal further submitted that the Tribunal has repeatedly expressed that the "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*" (emphasis in original).[64] According to ArcelorMittal, a decision to decumulate on the basis of conditions of competition must turn on positive evidence of sufficiently differing conditions of competition among the subject goods, or between subject goods and like goods, in the Canadian market considered as a whole. It follows that this assessment is not done by dividing Canada into separate regional markets but by examining the conditions of competition that exist in the Canadian market, overall, with respect to the subject goods from each of the subject countries.[65] In short, the Domestic Producers argue that SIMA does not allow the Tribunal to conduct a separate injury analysis for subject goods sold in British Columbia.

[71] Having considered the parties' arguments, the Tribunal finds no legal basis to apply the test for cumulation proposed by Tree Island Industries. Subsection 42(3) of SIMA specifies that, in determining whether it is appropriate to assess the cumulative effects of the dumped goods imported from different subject countries, the Tribunal should take into account the conditions of competition of goods from any of the subject countries and the goods from any other subject countries, or the conditions of competition between the subject goods and the like goods of domestic producers. The focus of the analysis is therefore on the conditions of competition as between the goods imported into Canada from any of the subject countries and the goods from any other subject countries, and as between those goods and the domestically produced like goods.

[72] The Tribunal does not interpret the reasons in *Structural Tubing* as supporting Tree Island Industries' position. In that decision, the Tribunal examined the conditions of competition in the Canadian marketplace between the goods from the three subject countries and between the subject goods and the like goods.[66]

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62 *Wire Rod PI*, para. 48.

63 *Structural Tubing* (23 December 2003), NQ-2003-001 (CITT) [*Structural Tubing*].

64 *Concrete Reinforcing Bar* (3 May 2017), NQ-2016-003 (CITT) [*Rebar II*], para. 76. ArcelorMittal also cites *Carbon Steel Welded Pipe* (26 June 2024), RR-2023-003 (CITT), para. 28.

65 ArcelorMittal cited *Cold Rolled Steel* (24 July 2018), PI-2018-002 (CITT), paras. 56–57.

66 *Structural Tubing*, p. 11.

[73] As noted above, geographical dispersion in Canada is a factor the Tribunal may consider in assessing whether it is appropriate to cumulate the effects of the dumped goods from different countries. Under this factor, the Tribunal may consider, for example, whether "the subject goods from only one subject country are present in a specific geographical market" and may find that this is a factor supporting a separate assessment of the effect of the goods from that subject country.[67] However, to the extent that Tree Island Industries is making this argument, the Tribunal finds that this factor is unsupported by the evidence on the record. Instead, the evidence before the Tribunal shows that, during the POI, end users and distributors located in British Columbia, Ontario and Québec imported from China and Vietnam.[68] As such, the geographical distribution of the subject goods in Canada does not support the conclusion that the Tribunal assesses the effects of the dumped goods from either China or Vietnam separately.

[74] Furthermore, the record also shows that other conditions of competition are the same between the subject goods, and between the subject goods and the like goods, for example:

- As discussed below, wire rod is a commodity product that competes based on price.
- The subject goods and the like goods share similar physical characteristics.[69]
- The subject goods are interchangeable and comparable with one another and with the like goods.[70]
- The subject goods compete in the Canadian market through similar channels of distribution.[71]
- The subject goods from all three subject countries use the same method of transportation: they arrive in a Canadian port by ocean vessels and are then trucked or railed to the customers' locations.[72] Canadian-produced goods are also transported to customers within Canada by truck or rail.[73]

[75] Considering the entirety of the evidence, the Tribunal deems a cumulative assessment to be appropriate, considering the conditions of competition between the subject goods from the subject countries and between them and the like goods of domestic producers. Therefore, the Tribunal will assess the cumulative effect of the dumping of the subject goods from China, Vietnam and Egypt.

INJURY ANALYSIS

[76] Subsection 37.1(1) of the *Special Import Measures Regulations*[74] (Regulations) identifies factors that the Tribunal may consider in determining whether the dumping has caused material injury to the domestic industry. These factors include: the volume of the dumped goods, their effect

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67 *Structural Tubing*, p. 10.
68 Exhibit NQ-2024-001-06.C, Table 2; see also the collective public exhibit containing replies to the importers' questionnaire in Exhibit NQ-2024-001-12.
69 Exhibit NQ-2024-001-06.C, tables 11–13.
70 See paragraphs 48–50 of these reasons.
71 See paragraphs 48–50 of these reasons.
72 Exhibit NQ-2024-001-12.06A, p. 6; Exhibit NQ-2024-001-B-03, p. 7.
73 Exhibit NQ-2024-001-09.02A, p. 12.
74 SOR/84-927.

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) prescribes factors that the Tribunal may consider in determining 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 in determining whether any factors other than the dumping of the goods have caused injury. However, SIMA or the Regulations do not require that a particular combination of factors demonstrates negative impacts, for the Tribunal to conclusively determine that the dumping has caused injury to the domestic industry. Injury can occur in a variety or multitude of contexts, particular to the different forces and behaviours present in a market at a given time.

[77] Similarly to the preliminary injury inquiry, IRM requested that the Tribunal focus its injury analysis on the merchant market, given that some of its sales and production are captive. The merchant market includes IRM's sales to non-affiliated purchasers, some transactions made by Sivaco and ArcelorMittal's sales to customers.[75] The Tribunal agrees and will therefore focus its injury analysis on the merchant market. In doing so, as mentioned above, the Tribunal gathered data and prepared two investigation reports: one for the merchant market, as defined here, and a second report for the consolidated market, which includes, in addition to the merchant market, IRM's sales to affiliated companies. However, consistent with the approach taken in previous cases presenting similar circumstances, the Tribunal will assess the materiality of any injury caused by the dumping of the subject goods against the domestic industry's production of like goods as a whole.[76] In short, on the facts of this case, the question that arises is whether any injury caused by the subject goods in the merchant market reaches a level sufficient to be qualified as "material", as required by SIMA, when considered in relation to the consolidated market or, in other words, to total domestic production of like goods.

[78] The Domestic Producers argued that the prices of the subject goods undercut the prices of the like goods and caused price depression beginning in H2 2022 and continuing and accelerating through Q1 2024. They argue that this, in turn, had a significant adverse impact at the tail end of the POI on the domestic industry's profitability and ability to raise capital, sales and production volumes, capacity utilization and productivity. The Domestic Producers further submitted that the adverse impact on the domestic industry was material, given the importance of its sales and results in the merchant market to its overall economic performance. The Domestic Producers and the USW addressed various negative impacts on workers caused by the subject goods.

[79] The opposing parties recognized that the Domestic Producers suffered injury up to a certain extent, but that it was not material, and that it was caused by factors other than the dumping of the subject goods. They argued that the Domestic Producers' declining profitability in the Canadian merchant market during the second part of the POI was primarily due to a contemporaneous downturn in global steel markets generally and an inventory overhang caused by panic buying in 2022. In their view, because the merchant market represents a relatively small portion of the Domestic Producers' total production and sales volumes of the like goods, any injury suffered in the merchant market cannot be considered as qualifying as material injury under SIMA.

[80] For the reasons that follow, the Tribunal finds that the subject goods, and particularly their prices, had a materially detrimental injurious effect on the domestic industry at the tail end of the POI, that is, in 2023 and in interim 2024. The price of the subject goods exercised pressure on the

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75 Exhibit NQ-2024-001-A.05, p. 9–11; Exhibit NQ-2024-001.B.04, p. 2.

76 See, for example, *Mattress Innerspring Units* (24 November 2009), NQ-2009-002 (CITT), paras. 64–65 and 109.

price of like goods that quickly altered the competitive environment for wire rod in the Canadian marketplace. Notwithstanding the contraction in demand, the evidence discussed in the analysis below shows that the subject goods caused price erosion in the latter part of the POI as they were the clear price leaders in the Canadian market. The subject goods' prices were used in negotiations to drive down the domestic industry prices, which demonstrates that the pricing pressures faced by the domestic industry were attributable to the subject goods as opposed to general market forces.

[81] The domestic industry suffered material injury caused by the subject goods in the form of reduced profitability in its sales in the merchant market, which had a material adverse impact on the domestic industry's overall financial performance. This occurred in a context where the only notable volume effect during the POI was the sharp and sustained substitution of the subject goods into the position previously held by the non-subject goods. With no alternative, because of the undercutting of the subject goods, the domestic industry held on as best as it could in order to maintain volume and market share, and the employment of their workforce, through sales made at depressed prices. The domestic industry cannot sustain the existential brink on which the subject goods have placed it as a result of their significant adverse price effects.

Import volume of the subject goods

[82] Paragraph 37.1(1)(a) of the Regulations identifies 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) as a factor which the Tribunal may consider.

[83] The domestic industry submitted that there was an absolute increase in the volume of imports of subject goods during the POI compared to 2020 or 2019, and that there was an increase in imports of subject goods relative to domestic production and domestic consumption of like goods during the POI.

[84] Opposing parties submitted that there was no increase in absolute imports of subject goods during the POI. Jebsen and Jessen further argued that IRM's reference to imports prior to the POI is an attempt to "gerrymander" the import volumes in the investigation report for more favourable results.

[85] The Tribunal denies the domestic industry's request to consider the volume of imports in 2020, as that year is prior to the Tribunal's POI, and because the Tribunal was presented with no compelling reason to include 2020 in the Tribunal's volume analysis. An important increase in the level of absolute imports of subject goods did occur from 2020 to 2021, but at most, this provides context only as was referred to by the Tribunal during the preliminary injury investigation when it echoed the CBSA's remarks for that year.[77] But for the Tribunal's purposes, it remains appropriate to examine only how volumes behaved during the POI, so from 2021 to 2023.

[86] The investigation report data shows a decline in the absolute imports of subject goods between 2021 and 2023, declining 1% in 2022 and 5% in 2023. Between interim periods 2023 and 2024, the absolute volume of imports of subject goods declined by 42%.[78] But overall, there was a

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77 *Wire Rod PI*, para. 59.

78 Exhibit NQ-2024-001-06.B, tables 19, 20; Exhibit NQ-2024-001-06C, tables 19, 20; Exhibit NQ-2024-001-07B (protected), tables 19, 20; NQ-2024-001-7C (protected), tables 19, 20.

sustained volume of subject goods for the duration of the POI. This occurred in a context where the total apparent Canadian market contracted, but where subject goods decreased less in comparison.

[87] Turning to the volume of subject goods relative to domestic production and consumption of like goods, the evidence on the record shows a net increase in subject goods relative to domestic production between 2021 and 2023: the ratio increased by 3 percentage points from 2021 to 2022, and then declined by 1 percentage point from 2022 to 2023. Furthermore, if looking at subject goods relative to domestic sales of domestic production, the increase in volumes is more considerable between 2021 and 2023 in both the consolidated and merchant markets, with the ratios increasing by 11 and 29 percentage points respectively over this period.[79] Furthermore, similarly to the declining trend observed above for subject goods in absolute volumes for the interim periods, the investigation report also shows declining trends in both measures of relative imports between the 2023 and 2024 interim periods. The increase in imports of subject goods relative to consumption or sales of like goods was largely attributable to the subject goods taking over market share from the non-subject goods over the POI.[80]

[88] The Tribunal remarks that while the 2024 interim period data shows a decline in both measures of relative imports compared to the 2023 interim period, the evidence indicates that the trend for the interim periods flips if import volumes for April 2023 and April 2024 were to be added to the Q1 2023 and Q1 2024 data. Again, given the broader commercial context, it is undeniable that important volumes of subject goods arrived in Canada in April 2024.[81] The Tribunal accepts that the investigation report data is not perfectly reflective of important swings that can occur from month-to-month depending on the timing of when even one shipment arrives by ocean-going vessel in Canada. With that as context, that Tribunal agrees with IRM that the trends observed for Q1 2024 compared to Q1 2023 should be given less weight.

[89] In the Tribunal's view, it therefore remains that, overall, the volume of subject goods relative to the consumption of like goods increased significantly over the POI.

Price effects of the subject goods

[90] According to paragraph 37.1(1)(b) of the Regulations, the Tribunal will consider the effect 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 will distinguish the price effect of the dumped goods from any price effects that have resulted from other factors affecting prices.

[91] As explained below, the Tribunal finds that the price of the subject goods significantly undercut and depressed but did not suppress the price of the like goods during the POI. Wire rod is a commodity product where price is the determining factor for purchasers.[82] Domestic producers face an overarching pressure from purchasers to lower prices for wire rod. These purchasers are often

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79 Exhibit NQ-2024-001-06B, Table 22; Exhibit NQ-2024-001-06C, Table 22; Exhibit NQ-2024-001-07B (protected), Table 22; Exhibit NQ-2024-001-07C (protected), Table 22.

80 NQ-2024-001-07.B(protected), Table 25; NQ-2024-001-07C (protected), Table 25.

81 Exhibit RR-2023-001-A-11, p. 3.

82 *Transcript of Public Hearing*, p. 25, 45, 108, 240.

wire manufacturers that face stiff competition in their own market and therefore look to acquire wire rod, their main input, at the lowest possible price.[83]

[92] Over the POI, the availability of low-priced dumped imports created a high degree of price transparency in the wire rod market, where purchasers asked the domestic industry to match the price of subject goods. The subject goods were the price leaders in the market. Small differences in price determine which sales are won.[84] Technical requirements in terms of coil weight or technical approvals are factors that can influence purchasing decisions. However, despite attempts to convince it otherwise,[85] the Tribunal finds that the preponderance of evidence shows that wire rod is nevertheless purchased primarily on the basis of price. Considerations pertaining to means of delivery or logistics also showed that purchasers will consider adapting their practices in order to accommodate the most attractively priced sources.[86]

Price undercutting

[93] The Tribunal will now examine allegations of price undercutting by examining average unit selling values, benchmark products, as well as lost sales and lost revenue allegations. The data in the investigation reports indicate that the average unit selling value (or price) of the subject goods undercut that of the like goods in every period of the POI. The degree of undercutting, expressed as a percentage of the price of the like goods, increased over the POI and peaked in the interim 2023 period in the merchant market and in both interim periods in the consolidated market.[87]

[94] For the merchant market, the price differential between the subject goods and the like goods was considerable throughout the POI, with the subject goods being lower priced in all periods. Additionally, and again, always to the disfavour of the like goods, the price differential on a dollar-per-tonne basis increased by 63% from 2021 to 2022, and by a further 20% from 2022 to 2023, or by 95% between 2021 and 2023. The undercutting was significant during the interim periods as well. While the differential on a dollar-per-tonne basis declined between the interim periods, the percentage of undercutting in the interim 2024 period remained similar to that experienced in full year 2023.

[95] The situation was similar for the like goods when examining the consolidated market: the subject goods were again lower priced in all periods by a significant difference when expressed on a dollar-per-tonne basis or as a percentage of the price of the like goods. The price differential on a dollar-per-tonne basis increased by 65% from 2021 to 2022, and by a further 37% from 2022 to 2023, or by 126% between 2021 and 2023. For the interim periods in the consolidated market, as was the case in the merchant market, the price difference was significant, with the subject goods undercutting by a dollar amount and percentage similar to that observed in full year 2023.

[96] The Tribunal also collected benchmark product information for the second quarter of 2022 to the first quarter of 2024 for 5 wire rod products based on diameter, carbon content and allowable surface quality defects, that were representative of the market for wire rod.[88] In total, the benchmark

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83 *Transcript of Public Hearing*, p. 108.

84 Exhibit NQ-2024-001-07B (protected), Table 35; Exhibit NQ-2024-001-07C (protected), Table 35. Exhibit NQ-2024-001-A-06, para. 32.

85 Exhibit NQ-2024-001-D-04, paras. 9–10.

86 Exhibit NQ-2024-001-47.A (protected), p.1-10; Exhibit NQ-2024-001-06 (protected), para. 53.

87 Exhibit NQ-2024-001-07.B (protected), Table 35; Exhibit NQ-2024-001-07.C (protected), Table 35.

88 Exhibit NQ-2024-001-06.B, p. 47; Exhibit NQ-2024-001-06.C, p. 47.

products represented 83% and 79% of total reported sales used to estimate the total merchant market volume for 2023 and interim 2024, respectively. For the consolidated market, the benchmark products represented 71% and 63% of total reported sales for 2023 and interim 2024.[89]

[97] In the merchant market, there were 36 points of comparison between sales of domestic production and subject goods. Prices of the subject goods undercut those of the like goods in 33 of the 36 periods of comparison.[90]

[98] Similar undercutting occurred in the consolidated market. There were 36 points of comparison between sales of domestic production and subject goods. Prices of the subject goods undercut those of the like goods in 35 of the 36 periods of comparison.[91]

[99] The domestic industry alleged it lost sales and revenue with respect to price undercutting and resulting price depression caused by the subject goods.

[100] The opposing parties disputed several of the allegations. For example, for some of the allegations, they submitted that they did not sell to the purchasers in question, that the offered price was higher than that alleged by the domestic industry, or that the price depression was due to other offers from non-subject goods. The Tribunal is of the view that these objections did not negate the fact that the subject goods regularly compete with the like goods at prices that undercut those like goods as established above. The Tribunal also observes that for many of the allegations, the responding party did not deny making an offer to the customer, or that the price offered undercut the price of the like goods. Further, most purchasers of wire rod that responded to the Tribunal's purchasers' questionnaire indicated that subject goods from all three countries are lower priced than the like goods.[92]

[101] The Tribunal notes that some lost sales allegations could not be verified or some pertained to offers of wire rod from non-subject countries. Nevertheless, evidence of undercutting was credibly established through multiple sources. Overall, the account-specific allegations were credible, and in many instances verified or not contested. They corroborated what is observed at the macro-level. As discussed below, the same was the case in support of price depression.

[102] Accordingly, the Tribunal finds that prices of the subject goods significantly undercut prices of the like goods during the POI. This was most pronounced in 2023 and interim 2024.

Price depression

[103] The domestic industry submitted that the subject goods caused it to experience price depression starting in the second half of 2022. The domestic industry pointed to a decline in the prices of like goods on an average annual basis, across the benchmark products and on sales to common accounts and to key accounts described in their lost sales allegations.

[104] The data in the investigation reports indicate that after experiencing an increase in 2022, the average price of the like goods declined 13% in 2023 compared to 2022 and declined 11% in interim

89 Exhibit NQ-2024-001-06.B, Table 48; Exhibit NQ-2024-001-06.C, Table 48.
90 Exhibit NQ-2024-001-06.C, Table 53.
91 Exhibit NQ-2024-001-06.B, Table 53.
92 *Ibid.*, tables 11–13; Exhibit NQ-2024-001-06.C, tables 11–13.

2024 compared to interim 2023. In the consolidated market these declines were 10% and 6%.[93] A similar decline in prices is observed in the benchmark product data and in the data on sales to common accounts. While there were some instances of increases in prices from quarter to quarter, in the majority of instances prices declined from one quarter to the next.[94]

[105] Jebsen and Jessen and Tree Island Industries argued that the pricing disparity that existed between subject goods and like goods was not a cause of price depression but rather that declining prices were a market-wide phenomenon. A witness for Jebsen and Jessen explained that the global wire rod prices began to decline in the third quarter of 2022 following the high prices experienced in H1 2022.[95] Moreover, Jebsen and Jessen submitted that an inventory overhang in H2 2022 and 2023 meant less demand for wire rod in Canada, thus further pressuring prices.

[106] With respect to the apparent decline in the domestic industry's prices of benchmark products, Jebsen and Jessen argued that the subject goods did not cause the declining prices because domestic benchmark products that did not experience head-to-head competition from the subject goods also declined in price by comparable amounts.

[107] IRM disputed Jebsen and Jessen on this latter point and argued that prices of benchmark products are interrelated and influence one another. For example, different benchmark products based on diameter and carbon content could influence prices for one another. ArcelorMittal added that pricing on one benchmark product can impact the prices of others as well, noting that the opposing parties did not argue that there are multiple classes of goods.

[108] The Tribunal rejects Jebsen and Jessen's arguments with respect to a lack of competition with the subject goods for certain benchmark products. The Tribunal finds that there are interrelated price effects across the spectrum of products within the single class of goods due to a close relationship between different types of wire rod within the Canadian wire rod market.[96]

[109] The Tribunal acknowledges that the decline in the market and the general decline in prices of wire rod was a reality that everyone faced. However, three factors show that price depression was caused by the low prices of the subject goods and not the state of the overall global steel market: the price undercutting itself; trends in prices of subject and non-subject goods in the Canadian market; and the fact that the subject goods were the price leaders and replaced significant volumes from non-subject countries.[97]

[110] The Tribunal recognizes that prices in the Canadian market were influenced by global pricing trends. However, important pricing behaviour that cannot be attributed to global pricing trends alone was also observed in Canada over the POI. Chiefly, prices of imports from different sources did not all follow the same trends or undercut to the same extent over the POI, and as such, the Tribunal gives more weight to the impact of the subject goods on prices in the Canadian market than to the impact of general global pricing trends.

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93 Exhibit NQ-2024-001-06.B, Table 36; Exhibit NQ-2024-001-06.C, Table 36.
94 Exhibit NQ-2024-001-07.B (protected), tables 54–63; Exhibit NQ-2024-001-07.C (protected), tables 54–63.
95 Exhibit NQ-2024-001-E03, paras. 18, 34.
96 Exhibit NQ-2024-001-A-15, para. 8; *Transcript of In Camera Hearing*, p. 232–234, 298.
97 Exhibit NQ-2024-001-07.B (protected), tables 19 and 25; Exhibit NQ-2024-001-07.C (protected), tables 19 and 25.

[111] As explained above, the subject goods significantly undercut the like goods during the POI, including the period for which the domestic industry claimed price depression. While the average unit value of the non-subject goods also undercut the like goods in all periods of the POI except for interim 2024, the average unit value of the subject goods was nonetheless lower than the non-subject goods and therefore the price leader, in all periods of the POI.[98] As the POI progressed, the subject goods increased their prominence in the Canadian market as they gained market share at the expense of the non-subject goods[99]. As the subject goods gained market share, they had an increasing influence on prices of like goods. The Tribunal therefore finds that the subject goods depressed prices of the like goods.

[112] The extent to which any purported inventory overhang played a role, if any, was not clearly ascertainable from the evidence on record. In this regard, the Tribunal notes that the volume of subject goods increased in 2022, while the volume of like goods and non-subject goods declined. As such, the increased imports of subject goods would have contributed, in large part, to any inventory overhang resulting in less demand for domestic wire rod. That said, the total volume in the market declined in 2022 compared to 2021, so the evidence does not indicate that the alleged so-called "panic buying" resulted in an increase in market volume overall.[100] The more compelling evidence is that the market reacted to the influx of low-priced subject goods by insisting that those prices become the new baseline; their availability and price was so attractive that they caused the displacement in their favour of volumes previously held by non-subject goods. Consequently, the domestic industry had to lower prices of the like goods to compete with prices of the subject goods to maintain its market share.

[113] In conclusion, the Tribunal finds that the subject goods depressed prices of the like goods beginning in the second quarter of 2022 through to the first quarter of 2024.

Price suppression

[114] IRM submitted that subject goods have also suppressed the prices of the like goods, making its argument based on an analysis of the domestic industry's selling prices and cost of goods manufactured. Jebsen and Jessen argued that the evidence on the domestic industry's cost of goods manufactured does not indicate that the domestic industry experienced price suppression.

[115] In assessing price suppression, the Tribunal typically looks at whether the domestic industry has been able to increase selling prices in step with increases in the cost of production by comparing trends in the domestic industry's average cost of goods sold per unit with its domestic unit sales values. By this measure, the domestic industry does not appear to have experienced price suppression over the POI.[101] Indeed, the domestic industry's unit cost of goods sold declined in both 2023 and interim 2024.[102] Rather, much of what was put forward as demonstrative of price suppression relates instead to impacts on financial results resulting from price depression. This is discussed below.

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98 Exhibit NQ-2024-001-06.B, Table 25, and Exhibit NQ-2024-001-06.C, Table 25; Exhibit NQ-2024-001-06.B, Table 35, and Exhibit NQ-2024-001-06.C, Table 35.

99 Exhibit NQ-2024-001-07.B (protected), Table 25; Exhibit NQ-2024-001-07.C (protected), Table 25.

100 Exhibit NQ-2024-001-07.B (protected), tables 24 and 25; Exhibit NQ-2024-001-07.C (protected), tables 24 and 25.

101 Exhibit NQ-2024-001-07.B (protected), tables 35, 36, 64 and 65; Exhibit NQ-2024-001-07.C (protected), tables 35,36, 64 and 65.

102 Exhibit NQ-2024-001- 07.B (protected), Table 65; Exhibit NQ-2024-001-07.C (protected), Table 65.

[116] For these reasons, the Tribunal finds that the domestic industry did not experience significant price suppression.

Conclusion on price effects

[117] The Tribunal finds that the subject goods significantly undercut and depressed, but did not suppress, the prices of the like goods.

Resulting impact on the domestic industry

[118] Pursuant to paragraph 37.1(1)(c) of the Regulations, the Tribunal considered the resulting impact of the subject 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.[103] The Tribunal then distinguished these effects from the effects of other factors also having an impact on the domestic industry.[104]

[119] Having regard to paragraph 37.1(3)(a) of the Regulations, the Tribunal considered whether a causal relationship exists between the dumping of the subject goods and the injury, on the basis of the volume, the price effect, and the impact on the domestic industry of the dumped goods.

[120] Based on the analysis below, the Tribunal finds that the subject goods had a significant adverse impact on the domestic industry's profitability and ability to raise capital. In the Tribunal's view, this is consistent with the earlier finding that the prices of the subject goods primarily depressed the prices of the like goods, and in a declining market, the domestic industry was only able to maintain its market share at the expense of its profitability. The Tribunal found no adverse effects of the subject goods on the domestic industry's employment, market share or capacity utilization during the POI.

[121] The Tribunal notes that the Domestic Producers provided extensive evidence on the importance of the merchant market to the domestic industry's overall performance. The Tribunal heard testimony from witnesses for IRM on the importance of the merchant market sales in the context of the domestic industry's overall profitability.[105] Witnesses explained that the merchant market was important in terms of both quality and quantity, and determined IRM's actions in other

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103 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.

104 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.

105 Exhibit NQ-2024-001-10.02B (protected), p. 19 and 43; Exhibit NQ-2024-001-10.01 (protected), p. 19. Exhibit NQ-2024-001-0A.08 (protected), p. 3–4, 10–15.

business segments.[106] A witness for ArcelorMittal also explained that wire rod sales to domestic and export markets are both fundamental to support its Canadian operations.[107]

[122] The Tribunal also heard testimony that IRM's sales to its affiliated companies, including Sivaco, are captive "only to a point" and that "point" is reached when the sustained price effects of the subject goods are no longer possible to bear for IRM (because of the sustained erosion of its bottom line), nor for Sivaco (because of the competition that it faces in the market for its goods). In this regard, IRM faces pressure from its affiliates to also import wire, which would not be part of IRM's business operating model as an integrated steel supplier in Canada.[108]

Financial performance

[123] The Domestic Producers submitted that the subject goods had an adverse impact on the domestic industry's overall profitability.

[124] Data in the confidential investigation reports shows that the domestic industry's gross margin in the merchant market significantly decreased in 2023 relative to 2022, and further decreased in interim 2024, on all metrics: in absolute terms, on a dollar-per-tonne basis and as a percent share.[109] The Tribunal also notes that the gross margin in the merchant market in 2023 was lower than the 2021 levels. Both Domestic Producers, taken individually, suffered reduced margins.[110] The Tribunal also observes that the trends are identical when looking at the consolidated market.[111] In the Tribunal's view, this follows the evidence of price depression caused by the subject goods starting in 2022 which then impacted the domestic industry's profitability by 2023.

[125] Consistent with significant reductions in profitability, IRM also claimed that the presence of subject goods has impaired the domestic industry's ability to raise capital and further invest in its assets during the POI. IRM submitted confidential evidence corroborating its claims.[112] The evidence in that regard is uncontroverted.

[126] ArcelorMittal stressed that the effects of the subject goods during the POI have undermined the success of significant investments that were made during the POI as well as of production development efforts.[113] A witness for ArcelorMittal also expressed concerns that the presence of the subject goods in the Canadian market has stalled ArcelorMittal's ability to attract investment dollars from its parent company and therefore impact its ability to pursue strategic capital investments.[114]

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106 *Transcript of Public Hearing*, p. 30, 32–33; *Transcript of In Camera Hearing*, p. 3–5, 22.

107 Exhibit NQ-2024-001-B.03, p. 8; Exhibit NQ-2024-001-B.04 (protected), p. 8.

108 *Transcript of Public Hearing*, p. 33–34. See also, Exhibit NQ-2024-001-A.03, p. 7–10. *Transcript of In Camera Hearing*, p. 23–24.

109 Exhibit NQ-2024-001- 07.C (protected), tables 64 and 65.

110 Exhibit NQ-2024-001-A.08 (protected), p. 7–8 and 19–20; Exhibit NQ-2024-001-A.08 (protected), p. 32–34. Exhibit NQ-2024-001-07.C (protected), Table 64 and Schedule 18.

111 Exhibit NQ-2024-001-07.B (protected), tables 64 and 65.

112 Exhibit NQ-2024-001-A-04 (protected), paras. 30–41; *Transcript of In Camera Hearing*, p. 16.

113 ArcelorMittal submitted that, despite having invested in the commissioning of a new rod mill during the POI and having returned to normal production levels, subject goods have hampered on its ability to increase their wire rod production and sales in Canada.

114 Exhibit NQ-2024-001-B-03, paras. 45–46. See also Exhibit NQ-2024-001-B-04 (protected), paras. 32–46.

[127] In view of the foregoing, the Tribunal finds that the domestic industry profitability and ability to raise capital were adversely impacted starting in 2023.

Market share, production, sales volume, and capacity utilization

[128] The total market for wire rod decreased in every year of the POI, in both the merchant and consolidated markets.[115] In this context, the domestic industry's market share in the merchant market, increased both in 2023 relative to 2022 and in the interim period, while it decreased overall in the POI.[116] The Tribunal observes a similar trend when looking at the consolidated market. In the presence of a declining market, market share is generally the most reliable comparative metric, as it accounts for relative increases or decreases in sales volumes. Thus, this demonstrates that in this declining market, the domestic industry lowered prices and sacrificed profits in an attempt to maintain its market share.

[129] The Tribunal also observed what follows. Total production in the merchant market increased by 1% in 2023 relative to 2022, even though total production decreased over the POI.[117] For 2023 relative to 2022, sales volume and the capacity utilization rate decreased.[118] The Tribunal characterizes these indicators as generally decreasing which, in the Tribunal's view, are largely attributable to the declining market, given that the impact of the price depression is on the domestic industry's profitability, and not on volume. As for the slight increase in total production in 2023, the Tribunal attributes this to ArcelorMittal ramp up period that was completed in early 2023.[119]

Employment, productivity and impact on workers

[130] Both IRM and the USW submitted various arguments on how the subject goods adversely impacted employment levels, idled employee contributions to manufacturing ("busywork"), or slowed-down productivity in the domestic industry, and in particular the merchant market.

[131] The USW largely focused on a decrease in the number of employees, in hours of work and in wages for its members employed at IRM in the production of wire rod sold into the merchant market. Moreover, the USW submitted that its members had been engaged in "busywork"[120] which was no longer sustainable. The USW further submitted that the presence of the subject goods was not only impacting its negotiations in upcoming collective bargaining, but current hiring and retention as well. Finally, the USW stressed that there is a real potential for layoffs as a direct result of the subject goods.

[132] The data in the investigation reports demonstrates that in 2023 relative to 2022, the domestic industry's total number of employees, total hours worked and total wages paid decreased by 5%, 5%, and 9% respectively.[121] Productivity in terms of pieces per employee or pieces per hour increased in

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115 Exhibit NQ-2024-001-06.B, Table 24; Exhibit NQ-2024-001-06.C, Table 24.

116 Exhibit NQ-2024-001-07.C (protected), Table 25.

117 Exhibit NQ-2024-001-07.B, tables 69 and 70; Exhibit NQ-2024-001-07.C (protected), tables 69 and 70.

118 Exhibit NQ-2024-001-07.B, tables 69 and 70; Exhibit NQ-2024-001-07.C (protected), tables 69 and 70.

119 *Transcript of Public Hearing*, p. 105–106. The ramp up period was described by Marc-Andre Guay as a period of time in which new equipment and technology are being progressively deployed, installed and tested. See also Exhibit NQ-2024-001-B-04 (protected), para. 57.

120 Exhibit NQ-2024-001-A-04 (protected), para. 24. See also Exhibit NQ-2024-001-C-03, para. 23; Exhibit NQ-2024-001-C-05, para. 14; *Transcript of In Camera Hearing*, p. 193.

121 Exhibit NQ-2024-001-06.B, Table 70; Exhibit NQ-2024-001-06.C, Table 70.

2023 relative to 2022. All of these indicators increased in the interim 2024 period relative to interim 2023.[122] All in all, the domestic industry's levels of employment and productivity have fluctuated throughout the POI.

[133] The Tribunal finds that, while some of the impacts in employment and productivity shown in the investigation reports could be the result of price effects of the subject goods on the domestic industry, they appear to be also attributable, in large part, to the year-over-year decline of the total wire rod market. Unlike the decline in the domestic industry's profitability, the evidence is thus insufficient for the Tribunal to conclude that any decline in employment or productivity observed during the POI was caused by the subject goods.

[134] Furthermore, on one hand, workers at IRM were engaged in "busywork" and on the other hand, ArcelorMittal's transitional phase during which a shift and modernization of the latter's production processes occurred. In that regard, the Tribunal heard testimony about the investments made by ArcelorMittal during the POI in modernizing its wire rod facility, including the commissioning of a new wire rod mill in late 2021.[123] ArcelorMittal's investments for its new wire rod mill necessitated a ramp up period, which took longer than expected because of numerous issues that were encountered and limited its production levels. The ramp-up period was expected to be completed in 2022 but was ultimately completed in early 2023.[124]

[135] Regardless, public and confidential evidence submitted by the parties speaks to the difficulties faced by the workers employed in the domestic industry and the difficulties faced by the domestic industry in terms of productivity. The Tribunal heard testimony from witnesses called by both IRM and the USW, who notably testified on the importance of the domestic industry's merchant market for the viability of their operations,[125] on slowdowns in terms of hours worked and productivity that they experienced[126] and the potential for layoffs.[127] Although the experience of workers employed at ArcelorMittal seems to have been different than those employed at IRM, concerns about how workers employed at ArcelorMittal could become exposed to the effects of low-priced competition were also voiced.[128] A witness for ArcelorMittal also expressed concerns about ArcelorMittal's ability to retain employees should it not maintain its production levels as a result of the low-priced competition from the subject goods.[129] Finally, the Tribunal heard testimony about how the continued slowdowns would undoubtedly significantly impact upcoming collective

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122 Exhibit NQ-2024-001-06.B, Table 70; Exhibit NQ-2024-001-06.C, Table 70.

123 *Transcript of Public Hearing*, p. 105–107. See also Exhibit NQ-2024-001-B-04 (protected), paras. 34–39. A witness for at ArcelorMittal, explained that ArcelorMittal rebuilt or revamped its rolling mill and decommissioned its old line back in December 2021.

124 *Transcript of Public Hearing*, p. 105–106. See also Exhibit NQ-2024-001-B-04 (protected), para. 57.

125 See, for example, *Transcript of Public Hearing*, p. 30.

126 See, for example, Exhibit NQ-2024-001-A-04 (protected), paras. 24–27; Exhibit NQ-2024-001-C-03, para. 23; Exhibit NQ-2024-001-C-06 (protected), paras. 13–14; See also *Transcript of Public Hearing*, p. 167–169, 187–188, 214–215; *Transcript of In Camera Hearing*, p. 191–193.

127 See, for example, Exhibit NQ-2024-001-A-04 (protected), paras. 22–24. See also *Transcript of In Camera Hearing*, p. 193–195.

128 See, for example, Exhibit NQ-2024-001-C-07, para. 13; See also *Transcript of Public Hearing*, p. 196, 212.

129 Exhibit NQ-2024-001-B-03, paras. 57–58.

bargaining outcomes for workers, and more particularly with respect to improvement in wages and other benefits.[130]

[136] The evidence reveals that from the workers' perspective, the domestic industry was under precarious conditions of employment and productivity during the POI and that the subject goods are a cause for important concern. However, the Tribunal finds that the dumping of the subject goods has not yet had materially adverse impacts on employment and productivity.

[137] The Tribunal also acknowledges that the situation experienced by the workers during the POI, as they lived it, was not positive. They understand that the busywork that management periodically requests them to do is a stopgap measure, and that this is already a sign of bad times and a negative omen for the future. From what they have experienced, the domestic industry has performed poorly. At the very least, the workers' collective bargaining situation is already weakened as a result of the domestic industry's declining financial performance. The Tribunal finds that the situation experienced by the workers does not have a positive outlook if recent trends continue.

Other factors and causation

[138] The Tribunal must assess whether there is a causal relationship between the dumping of the subject goods and any adverse effects on the domestic industry. To do so, the Tribunal must distinguish the impact of the subject goods from the impact of other factors also affecting the state of the domestic industry.[131] In other words, the Tribunal must determine whether the subject goods, in and of themselves, caused injury to the domestic industry. The Tribunal cannot assume that the mere presence and availability of the subject goods in the Canadian market resulted in material injury to the domestic industry.

[139] In this case, the previous analysis of the impact of the subject goods on the state of the domestic industry reveals more than a correlation between the presence of subject goods at dumped prices and the injury to the domestic industry during the POI in terms of reduced profitability and ability to raise capital. This analysis is indicative of a relationship of cause and effect between them, and the injury suffered by the domestic industry. The Tribunal's task is to complete the analysis by considering whether, and to what extent, any factors other than the dumping of the subject goods have also injured the domestic industry over this period. The question is whether, despite the losses suffered by the domestic industry that may be attributable to other factors, the dumping of the subject goods remains a cause of material injury.[132] The dumping of the subject goods need not be the only or even the main cause of injury.

[140] For the reasons that follow, despite claims of the opposing parties that the injury suffered by the domestic industry is attributable to the effects of other factors, the evidence indicates that the dumping of the subject goods remains a cause of material injury. In other words, the dumping of the

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130 See, in that regard, Exhibit NQ-2024-001-C-03, paras. 37–43; Exhibit NQ-2024-001-C-05, paras. 21–25; Exhibit NQ-2024-001-C-09, paras. 52–53.

131 See paragraph 37.1(3)(b) of the Regulations. See also *Silicon Metal* (19 November 2013), NQ-2013-003 (CITT), para. 109.

132 *Certain Upholstered Domestic Seating* (September 2, 2021), NQ-2021-002 (CITT) [*UDS*], para. 225. In the words of the WTO's Appellate Body, an investigating authority is required to determine whether, in light of the effects of other known factors, the subject imports can be considered a "genuine and substantial" cause of injury suffered by the domestic industry. See Appellate Body Report, *EU – Polyethylene Terephthalate (Pakistan)*, WT/DS486/AB/R, para. 5.226.

subject goods, in and of itself, caused material injury to the domestic industry, even after the consideration of the impact of the other factors.

[141] The Tribunal has already addressed and dismissed a number of factors claimed by the opposing parties as responsible for any injury suffered by the domestic industry, including, that an inventory overhang caused price depression,[133] and the contention that the competitive environment surrounding benchmark products would be preclusive of injury caused by the subject goods.[134]

[142] The parties opposed made additional claims relating to factors other than the dumping of the subject goods as being responsible for any injury suffered by the domestic industry. These remaining factors can be summarized as follows: competition from non-subject goods, the impact of COVID-19, geopolitical and economic uncertainty. and the resulting impact of supply issues in a period of high demand, market contraction in 2023, global price declines and the price of scrap.

[143] Opposing parties argued that non-subject goods rather than subject goods caused the negative price effects that the like goods experienced over the POI. However, the Tribunal is of the view that the data in the investigation reports indicate that non-subject goods did not cause injury the domestic industry over the POI. The prices of the non-subject goods increased over the POI, while the prices of the domestic goods decreased.[135] Furthermore, as previously discussed, the evidence on the record also demonstrates that non-subject goods lost market share to subject goods over the POI, thus disassociating them from any influence on the prices of the like goods, compared to the determinative effects of the subject goods.

[144] On the issue of any impact of COVID-19 on new demand for homes, the Tribunal recognizes that this may have had a negative impact at the beginning of the POI, but the Tribunal finds that there is no cogent evidence that this factor played a significant role at the tail end of the POI, when material injury to the domestic industry occurred.

[145] On the issue of any impact relating to geopolitical and economic insecurities, chiefly as a result of the Russian invasion of Ukraine, the Tribunal recognizes that they had worldwide consequences that brought on excessive inventory building and subsequent disposal, as well as inflationary and recessionary pressures. While these factors may have negatively affected the domestic industry's performance to a certain extent, no one was immune from them and it remains that they are independent from, and operated concurrently to, the price effects of the subject goods that drove down the domestic industry's prices towards the latter part of the POI. To the extent that the opposing parties attribute the shortage of supply in periods of elevated demand during a portion of the POI to these events, the Tribunal finds those availability of supply issues to have been largely resolved by 2023.[136]

[146] Furthermore, opposing parties submitted that these geopolitical and economic insecurities dampened demand leading to market contraction in 2023, which in turn caused the injury to the domestic industry. However, on this argument, the Tribunal has already reasoned that the decline in demand instead demonstrated that the subject goods, in and of themselves, caused the injury, given

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133 See paragraph 112 of these reasons.

134 See paragraphs 96, 104–108 of these reasons.

135 Exhibit NQ-2024-001-06.C (protected), Table 36.

136 Exhibit NQ-2024-001-07.C (protected), Table 69; Exhibit NQ-2024-001-B.10, p. 1, 12; See also *Transcript of Public Hearing*, p. 51, 151–154, 244–245, 298.

that in a declining market, the domestic industry was only able to maintain its market share at the expense of its profitability.[137] Put another way, the domestic industry had to face the additional burden of the price effects of the subject goods which, even if market demand declined, can be considered a genuine and substantial cause of injury.

[147] Opposing parties also claimed that global price declines in wire rod caused the injurious price impacts on the domestic industry's wire rod prices. The Tribunal is of the view that the available confidential evidence comparing the changes in wire rod prices in Canada and in other markets shows that from 2023 to Q1 2024, the domestic industry's declining prices cannot be attributed solely to global trends, since the domestic industry's prices declined at higher rates than the average prices in other markets.[138] Moreover, specifically in answer to any claims that U.S. prices had an impact on Canadian price trends, the Tribunal rejects such claims because the MEPS data shows divergent trends between U.S. and Canadian prices in 2023.[139]

[148] On the argument that soft scrap prices had an adverse impact on wire rod prices, since prices of wire rod are related to scrap costs, the Tribunal accepts the arguments and evidence presented by IRM indicating that the drop in the domestic industry's selling prices exceeded any downward scrap movement between Q2 2022 and Q1 2024.[140] As such, the movements of prices in the Canadian market did not all track the movements in scrap prices, particularly in the key injury period.

[149] On balance, the Tribunal finds that the claims of the parties opposed that there is no causal link between the subject goods and the injury in this matter because any such injury must be attributed to alleged adverse effects of other factors have been largely rebutted by the arguments and evidence relied upon by the Domestic Producers. The Tribunal sees no compelling evidence that would prevent it from attributing the injury suffered by the domestic industry since 2023 to the dumping of the subject goods. Accordingly, the Tribunal concludes that the evidence, as a whole, demonstrates that, while there were other factors that may have adversely affected the performance of the domestic industry during the POI, the dumping of the subject goods, in and of itself, was a cause of material injury to the domestic industry in 2023 and interim 2024.

Materiality

[150] The Tribunal must also examine whether the effects of imports of the subject goods noted above are "material", as contemplated in the definition of "injury" under subsection 2(1) of SIMA, which nevertheless does not define the term "material". The extent of injury during the relevant time

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137 See paragraph 128 of these reasons.

138 Exhibit NQ-2024-001-B.08 (protected), p. 53–55; Exhibit NQ-2024-001-10.02B (protected), p. 43; Exhibit NQ-2024-001-A-08 (protected), p. 8; Exhibit NQ-2024-001-B.04 (protected), p. 13–14, 33–34; Exhibit NQ-2024-001-07.C (protected), Table 64.

139 Exhibit NQ-2024-001-F.02 (protected), p. 14, 62–124.

140 Exhibit NQ-2024-001-A-14 (protected) p. 29, Table 2; Exhibit NQ-2024-001-A-16 (protected), p. 52–53; Exhibit NQ-2024-001-9.02.A, p. 8.

frame and the timing and duration of the injury are relevant considerations in determining whether any injury caused by the subject goods is "material".[141]

[151] On the extent of injury, considering the importance of the merchant market in relation to the domestic industry's overall production, the Tribunal finds that the loss in profitability was severe. In absolute terms, margins were cut by nearly half in 2023 relative to 2022, or by one third in interim 2024. The Tribunal finds this to be material injury.

[152] The Tribunal reaches a similar conclusion when examining the duration of the injury. As it has done previously, the Tribunal finds that the injury sustained by the domestic industry over 2023 and interim 2024, a period that also coincides with the period during which the CBSA found the subject goods to be dumped, to be significant and of sufficient duration to constitute an injury that is material in nature. As correctly argued by the Domestic Producers, the Tribunal's jurisprudence clearly indicates that material injury can occur over a short duration within the POI, such as 6 to 12 months. [142]

[153] In sum, the Domestic Producers have provided sufficient evidence addressing the significance of their losses in the domestic merchant market to support a finding that the injury that they suffered has attained a level that constitutes material injury. In other words, the injury suffered by the domestic industry in the merchant market is material when considered in relation to the domestic production as a whole. Accordingly, based on its assessment of the totality of the evidence on the record, the Tribunal finds that losses in the merchant market sustained by the domestic industry caused by the dumping of the subject goods had a material adverse impact on the domestic industry's overall financial performance.

[154] The Tribunal concludes that the domestic industry has suffered material injury caused by the subject goods. For reasons of judicial economy, it will not address the question as to whether the subject goods are threatening to cause injury.

Massive importation

[155] Given that the Tribunal has found that the dumping of the subject goods has caused injury, it needed to assess, pursuant to paragraph 42(1)(b) of SIMA, whether injury has been caused by a massive importation which could result in the application of retroactive duties on subject goods released during the period of 90 days before the CBSA's preliminary determination.

[156] None of the parties in this proceeding took a position on the issue of massive importation.

[157] For the purpose of assessing massive importations, the Tribunal compared volume of subject goods in Q1 2023 with Q1 2024, and the evidence indicates that in Q1 2024, volumes were lower

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141 The Tribunal suggested, in *Certain Hot-rolled Carbon Steel Plate* (27 October 1997), NQ-97-001 (CITT), p. 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]. *Certain Wind Towers* (December 1, 2023), NQ-2023-001 (CITT) [*Wind Towers*], para. 241.

142 *Cold-rolled Steel* (21 December 2018), NQ-2018-002 (CITT), paras. 6, 99–100; *Rebar II*, paras. 185–188; *Silicon Metal* (21 December 2018), PI-2013-001 (CITT), para. 42; *Sucker Rods* (14 December 2018), NQ-2018-001 (CITT), para. 151.

than in the same respective period in 2023.[143] Furthermore, there is no evidence of a build-up of inventory of subject goods between these 2 periods.[144]

[158] As such, the Tribunal finds that there is no evidence of massive importations and therefore no evidence that injury was caused by massive importations.

Special measures under section 53 of the *Customs Tariff*

[159] The parties made various submissions regarding the announcement made by the Government of Canada of its intentions to impose a surtax on imports of certain steel and aluminum products, including wire rod, from China.[145] This announcement was made prior to the hearing in these proceedings, and confirmed after it concluded.[146] However, as a matter of law, the Tribunal finds that this development does not affect the Tribunal's finding or analysis because any effects of the surtax are prospective, whereas the Tribunal's finding pertain to the effects of the subject goods during the POI when no surtax was in place.

[160] Once the Tribunal makes a finding of injury (based on the POI), the legal basis for the imposition of the duties is established and the Tribunal is not required to assess the situation of the subject goods in the Canadian market as of when the finding is put in place. The domestic industry is entitled to SIMA protection, notwithstanding other measures that may be taken by the Government of Canada and that may impact the importation of Chinese wire rod in the future.

[161] The situation would have been different had the Tribunal been required to determine whether the dumping of the subject goods threatened to cause injury. In that event, it would have been relevant for the Tribunal to consider any factor that may prospectively have an impact on the likely import volume of the subject goods for the upcoming 12-to-24-month period that is relevant for a threat of injury analysis. However, a finding of "injury" is distinct from a finding of "threat of injury", and the Tribunal is not required to make a finding relating to the threat of injury pursuant to subsection 43(1) of SIMA unless it first makes a finding of no injury. As the Tribunal made a finding of material injury in this case, there was no need to determine whether there is a threat of material injury to the domestic industry. For the same reason, the Tribunal need not consider any effect of the imposition of the surtax on the likely performance of the domestic industry at the time of its entry into force.

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143 Exhibit NQ-2024-001-07.B (protected), Table 22; Exhibit NQ-2024-001-07.C (protected), Table 22.

144 Collective reply to importer questionnaires.

145 Pursuant to section 53 of the *Customs Tariff*, S.C. 1997, c. 3.

146 See Department of Finance Canada, News release, "Final list of steel and aluminum products from China that will be subject to a 25 per cent surtax", online: https://www.canada.ca/en/department-finance/news/2024/10/final-list-of-steel-and-aluminum-products-from-china-that-will-be-subject-to-a-25-per-cent-surtax.html. The Tribunal takes judicial notice of this news release and the information contained therein, as they are so notorious and indisputable that they do not require proof. See, in that regard, *Canada (Citizenship and Immigration) v. Ishaq*, 2015 FCA 151 (CanLII), para. 20. According to this news release, the Government of Canada will apply a 25% surtax on imports of steel and aluminum products from China, effective October 22, 2024.

EXCLUSION REQUEST

[162] The Tribunal received a request from Tree Island Industries to exclude a subset of the subject goods from the scope of the Tribunal's finding. Specifically, Tree Island Industries described the wire rod imports for which it is seeking an exclusion as follows:

> Certain hot-rolled wire rod of carbon steel and alloy steel of circular or approximately circular cross section, in coils, equal to or less than 25.5 mm in actual solid cross-sectional diameter, originating in or exported from the Socialist Republic of Vietnam and imported by or on behalf of Tree Island Industries Ltd. from its qualified Vietnamese wire rod producer or its successor companies or such wire rod originating in or exported from the People's Republic of China and imported by or on behalf Tree Island Industries Ltd. from its qualified Chinese wire rod producer or its successor companies, for use in the production of wire goods at Tree Island's Richmond, B.C. facility.[147]

[163] In response to question 6 of the Tribunal's form typically used by requesters of product exclusions which asks them to provide a description of the relevant products in generic or non-proprietary terms, Tree Island Industries seemingly broadened the range of the subject goods covered by its exclusion request. It provided the following revised description:

> Certain hot-rolled wire rod of carbon steel and alloy steel of circular or approximately circular cross section, in coils, equal to or less than 25.5 mm in actual solid cross-sectional diameter, originating in or exported from the People's Republic of China and/or the Socialist Republic of Vietnam and imported by or on behalf of B.C. wire rod users for use in the production of wire goods at their manufacturing facilities located in the Province of British Columbia.[148]

[164] Based on the second description, the subset of the subject goods for which Tree Island Industries is seeking an exclusion is not limited to certain wire rod imported by Tree Island Industries, or on its behalf, from certain "qualified suppliers" located in China and Vietnam for its own use at its Richmond, British Columbia facility. Rather, the request covers *all* wire rod products meeting the technical specifications noted above, originating in or exported from China or Vietnam, without restriction in terms of suppliers or exporters. It also covers such products imported by *all* wire rod users for use at their manufacturing facilities located in British Columbia.

[165] The Domestic Producers submitted that Tree Island Industries' request was thus tantamount to a regional exclusion request because, in reality, Tree Island Industries was seeking the exclusion of subject goods imported for use in an entire Canadian region, namely, the province of British Columbia, from the scope of the Tribunal's finding. Tree Island Industries initially argued, in response, that the Domestic Producers mischaracterized the request.[149] However, Tree Island Industries acknowledged at the hearing that its request was akin to a request for a regional exclusion.[150]

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147 Exhibit NQ-2024-001-29.01, p. 1–2. See also other similar formulations, p. 4–5, 55.
148 Exhibit NQ-2024-001-29.01, p. 2. See also other similar formulations, p. 1, 4–5, 55.
149 Exhibit NQ-2024-001-37.01, paras. 2–3.
150 See Exhibit NQ-2024-001-29.01, p. 58, para. 19. See also *Transcript of Public Argument*, p. 194.

[166] The Tribunal agrees with the Domestic Producers that Tree Island Industries is, in effect, seeking a regional exclusion which, if granted, would result in the non-application of the finding to certain wire rod made in China and Vietnam imported by, or on behalf of, all wire rod users established in British Columbia, including Tree Island Industries. However, the Tribunal understands that Tree Island Industries has not abandoned its initial request that, at a minimum, an exclusion should be granted with respect to wire rod imported by it, or on its behalf, from its qualified Chinese and Vietnamese suppliers for its exclusive use at its Richmond, British Columbia manufacturing facility. This alternative description is more akin to a company-specific or importer-specific exclusion request.

[167] Therefore, the Tribunal will address both formulations of the request in its analysis below, as appropriate. Indeed, the consideration of the narrower importer-specific request would only be required if the broader request for a regional exclusion is denied. Before addressing Tree Island Industries' allegations, the Tribunal will first outline the legal principles upon which it relied in determining whether to grant any exclusion in this inquiry.

Legal principles

[168] SIMA implicitly authorizes the Tribunal to grant exclusions from the scope of a finding under subsection 43(1).[151] Exclusions are an extraordinary remedy that may be granted at the Tribunal's discretion, that is, when the Tribunal is of the view that the exclusions will not cause injury to the domestic industry.[152] The Tribunal has indicated in previous decisions that exclusions are granted only in exceptional circumstances.[153]

[169] The rationale for this high threshold is that the Tribunal's general conclusion that the dumping of the subject goods has caused injury to the domestic industry means that imports of *all* products captured by the product definition are, presumptively, injurious. In view of this finding, cogent case-specific evidence concerning the non-injurious effect of imports of specific products covered by the definition of the subject goods is required for exclusions to be granted.[154]

[170] In this case, it is uncontroverted that the domestic industry can produce products that compete with the products for which Tree Island Industries is seeking an exclusion.[155] Indeed, Tree Island Industries conceded that the Domestic Producers actively produce wire rod that is identical to or substitutable for the wire rod described in its exclusion request.[156] Exceptional circumstances warranting the granting of an exclusion are, in principle, not present in such cases. As the Tribunal found in *UDS*, evidence of actual production, at levels of production that are not insignificant, of substitutable domestic products and of probable competition between them and the products for which an exclusion is warranted provides an adequate and compelling basis to deny a request for

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151 *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.

152 See, for example, *Aluminum Extrusions*, para. 339; *Stainless Steel Wire* (30 July 2004), NQ-2004-001 (CITT), para. 96.

153 *Aluminum Extrusions*, para. 337.

154 *UDS*, paras. 291–293.

155 See *Transcript of Public Argument*, p. 196.

156 Exhibit NQ-2024-001-38.01, p. 42.

exclusion.[157] Therefore, the application of the factors typically examined by the Tribunal in its consideration of exclusion requests does not support Tree Island Industries' allegations.

[171] Nonetheless, Tree Island Industries' position is that either a regional or a company-specific exclusion should be granted in the circumstances of this case because, due to factors other than the dumping of the subject goods, the Domestic Producers are not capable of supplying like goods to Tree Island Industries or to other wire rod users in British Columbia. It also argues that the evidence indicates that the Domestic Producers are not interested to do so. According to Tree Island Industries, the subject goods described in either formulation of its request are therefore not injurious and are not threatening to cause injury to the domestic industry.

[172] The Tribunal cannot accept this argument for the reasons that follow. Having reviewed the totality of the evidence, the Tribunal finds that granting the exclusion requested by Tree Island Industries, in either formulation, would likely cause injury to the domestic industry. The Tribunal therefore denies Tree Island Industries' exclusion request.

Regional exclusion request

[173] The Tribunal previously framed the test for granting a regional exclusion as whether the goods for which an exclusion is required "do not threaten to cause injury to the domestic industry because the domestic producers have no reasonable prospect of becoming active suppliers in [the region in question], even if anti-dumping and countervailing duties are imposed."[158]

[174] The central arguments raised by Tree Island Industries in support of the alleged inability of the Domestic Producers to become active suppliers in British Columbia pertain to the following considerations: Tree Island Industries' particular situation, unique purchasing strategy and interactions with the Domestic Producers over the years. For example, Tree Island Industries cited its stringent qualification requirements that the Domestic Producers cannot purportedly meet. It also evoked transportation and logistical challenges that ostensibly prevent it from relying on the Domestic Producers as a source of supply. However, the record before the Tribunal indicates that there is another wire rod user and purchaser in British Columbia. There is no evidence that similar factors would negate the Domestic Producers' prospects of becoming active suppliers of this other purchaser, with anti-dumping duties in place. In other words, Tree Island Industries has not established that the Domestic Producers are unable to supply other wire rod users and purchasers in British Columbia.

[175] Accordingly, while Tree Island Industries submissions in this regard are relevant to its importer-specific exclusion request and will be addressed in that context below, they do not support granting a regional exclusion for subject goods imported for use in the entire province of British Columbia. In this case, the question is whether the Domestic Producers could, at least in part, serve the British Columbia market with the benefit of SIMA protection,[159] not whether it could service Tree Island Industries' account.

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157 *UDS*, paras. 299–301.

158 *Wind Towers*, para. 260.

159 See, for example, *Concrete Reinforcing Bar* (12 January 2000), NQ-99-002 (CITT), p. 26, where the Tribunal stated that "there is no requirement in SIMA for the industry to supply the totality of the market's needs."

[176] Moreover, there is evidence indicating that the Domestic Producers have been in regular contact with the other British Columbia wire rod user in recent years, including during the POI, and have submitted offers to sell wire rod to this potential customer.[160] This evidence alone is sufficient to demonstrate that they have an interest and willingness to supply the British Columbia market.

[177] The evidence also provides further confirmation that, at least with this other British Columbia wire rod purchaser, factors other than the dumping of the subject goods were never raised to explain the Domestic Producers' inability to secure a sale during the POI. In fact, it is reasonable to infer from this evidence that the reason for this state of affairs is the dumped price of the subject goods. According to public statements by this purchaser, the price offered by exporters of the subject goods competing with IRM for business with this British Columbia customer during the POI was significantly lower than IRM's price.[161]

[178] Tree Island Industries also submitted that the domestic producers are not competitive in British Columbia with non-subject goods. It argued that this lack of competitiveness with non-subject goods called into question the domestic producers' prospects of competitively supplying the British Columbia market even with anti-dumping duties in place. The Tribunal finds that this argument ignores that, in the absence of the unfairly priced competition from the subject goods, non-subject import pricing would also likely rise, probably allowing the domestic industry to be competitive on sales into British Columbia. IRM also presented arguments and filed credible confidential evidence that support the view that it would be competitive with so-called "undumped" prices in a fairly traded market.[162]

[179] Further, the Tribunal has previously noted that the imposition of SIMA duties necessarily raises the floor price in the region for which an exclusion is sought, such that the conditions of competition would be levelled for the domestic industry.[163] Similarly, the Tribunal expects that the new floor price of wire rod in British Columbia will be higher because of its finding. While the new floor price is not known at this time, the reliance on low-priced imports as leverage in negotiations with the Domestic Producers would be atoned. Therefore, the Tribunal cannot conclude that the Domestic Producers will be unable to competitively serve the British Columbia market with the finding in place. However, if the requested regional exclusion is granted, the evidence on the record clearly shows that the Domestic Producers will effectively remain denied of any meaningful opportunity to satisfy demand for wire rod in that market due to the continued availability of the subject goods at dumped prices.

[180] Finally, it warrants emphasizing that the domestic industry previously sold and delivered wire rod to customers in British Columbia.[164] According to the testimony heard by the Tribunal, ArcelorMittal also regularly ships various long products to customers in British Columbia.[165] These products include rebar in coil and wire, which are produced on the same equipment as wire rod or

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160 See, for example, Exhibit NQ-2024-001-A-06 (protected), p. 157; Exhibit NQ-2024-001-36.01 (protected), p. 28.
161 Exhibit NQ-2024-001-12.10, p. 7.
162 Exhibit NQ-2024-001-36.01 (protected), p. 29–31 and attachments referred therein.
163 *Concrete Reinforcing Bar* (9 January 2015), NQ-2014-001 (CITT) [*Rebar I*], paras. 284.
164 *Transcript of Public Hearing*, p. 94. See also, for example, Exhibit NQ-2024-001-36.01 (protected), p. 3, 5–6, paras. 5, 10–11, and attachments referred therein.
165 *Transcript of Public Hearing*, p. 114

from wire rod and can be transported by rail shipments across North America, a method of delivery with which ArcelorMittal has extensive experience and capabilities.[166]

[181] Thus, although Tree Island Industries referred to the Tribunal's regional exclusion analysis in *Wind Towers*, the Tribunal finds that the reasoning in *Wind Towers* on this issue is of no relevance here given that it is distinguishable on these facts alone. In that decision, the Tribunal considered that the unique feature of the sizable wind towers and the overwhelming logistical issues pertaining to their movement from Québec to Western Canada were, among others, facts that justified the granting of the regional exclusion request. These facts are simply not at play in the present case.

[182] Accordingly, the Tribunal sees no compelling evidence on the record that would suggest that the domestic industry does not have the capability or the willingness to supply wire rod in British Columbia. On the contrary, the preponderance of evidence indicates that the Domestic Producers would have a reasonable prospect of becoming active suppliers in that region with the finding in place. In short, granting the regional exclusion requested would cause injury to the domestic industry.

Importer-specific exclusion request

[183] Turning to Tree Island Industries' request that certain subject goods that it imports for its own use at its Richmond, British Columbia facility be excluded from the scope of the finding, the Tribunal has historically been reluctant to grant such company-specific exclusion requests so as to avoid the creation of unfair competitive advantage or trade distortion.[167] For this reason, such exclusions are rarely granted and may only be appropriate in the most specific and compelling set of circumstances.

[184] The evidence does not indicate that such circumstances are present in this case.

[185] First, there is evidence that allowing Tree Island Industries to continue to have access to the subject goods from its qualified Chinese and Vietnamese suppliers would put downward pressure on the prices of wire rod across the Canadian market.[168] Simply put, this evidence indicates the other wire rod purchasers, who are manufacturers of wire products like Tree Island Industries, will have no choice but to ask for price concessions from the Domestic Producers in order to compete with Tree Island Industries in the market for downstream products across Canada. As a result, even if the Domestic Producers were not successful in their efforts to sell to Tree Island Industries, granting a company-specific exclusion would likely still cause injury to the domestic industry.

[186] Second, the Tribunal is not persuaded by Tree Island Industries' arguments and evidence that the requirements of its process to qualify suppliers could not be met by the Domestic Producers, even with the finding in place. In this regard, the Tribunal accepts ArcelorMittal's submissions that Tree Island has adopted a qualification process that inherently promotes access to dumped pricing and places the Domestic Producers at a significant disadvantage. This is because Tree Island Industries requires new potential suppliers to offer delivered pricing that is competitive with the pricing that it obtains from its already qualified suppliers which, over the POI, has been dominated by the dumped

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166 See, in that regard, Exhibit NQ-2024-001-35.02, p. 65, para. 9, and Exhibit NQ-2024-001-36.02 (protected), p. 67, para. 27.

167 *UDS*, para. 376 and footnote 268; *Certain Fasteners* (24 October 2008), RD-2008-001 (CITT), paras. 23–27, 31; *Aluminum Extrusions*, para. 356; *Carbon and Alloy Steel Line Pipe* (29 March 2016), NQ-2015-002 (CITT), para. 251.

168 Exhibit NQ-2024-001-36.01 (protected), p. 14–16 and evidence referred to therein.

prices offered by its qualified suppliers from China and Vietnam. With the imposition of SIMA duties and the resulting new floor price for wire rod in the domestic market, those suppliers should no longer be the price leaders and the prices offered by the Domestic Producers should be more competitive with those offered by other qualified suppliers. Even assuming that Chinese and Vietnamese qualified suppliers could remain the price leaders with duties in place, the Domestic Producers' prices should also be more competitive with fairly traded wire rod from these sources.

[187] ArcelorMittal also provided evidence indicating that it could satisfy Tree Island Industries' demands in terms of its technical, logistical, and commercial requirements.[169] For example, Mr. Guay testified that ArcelorMittal produces wire rod of the same quality and even of more stringent qualities and sized than the "industrial quality" (IQ) rod that Tree Island Industries purchases.

[188] In terms of the logistical requirement, Mr. Liu's statement of evidence indicates that Tree Island Industries "concluded" that the freight and handling component would make the delivered price of the Domestic Producers uncompetitive. According to his evidence, this is the main reason, along with the risk and associated costs of delays caused by the railways, explaining why Tree Island Industries "concluded" that the Domestic Producers are not capable of delivering the wire rod that it needs in commercial quantities to keep its plant in operation.[170]

[189] However, the Tribunal notes that Tree Island Industries never informed the Domestic Producers that the freight and handling component was the problem or that they could not become qualified suppliers due to logistical obstacles and ill-suited methods of transportation. Further, the evidence provided by ArcelorMittal indicates that Tree Island Industries' delivery cost estimates are inaccurate and that the potential transportation methods to Richmond, British Columbia available for the Domestic Producers are feasible and competitive.[171] On balance, the evidence on the record indicates that the all-inclusive cost of transportation of wire rod from Eastern Canada to Richmond, British Columbia is not so exorbitant that it would be uncompetitive compared to freight costs associated with the imports of subject goods.[172] The Tribunal is therefore not persuaded that land freight rates make the supply of wire rod to Tree Island Industries an unrealistic proposition.

[190] Tree Island Industries also submitted that there is no transloader within a reasonable distance of Richmond, British Columbia that is able to handle and store the wire rod required to fulfil its needs and deliver it by truck, and that other logistical constraints, such as its limited capabilities to receive wire rod by truck make it difficult, if not impossible, for the Domestic Producers to become qualified suppliers. The Tribunal finds that these claims are not borne out by the evidence on the record. Again, the domestic industry does not have to establish that it is able to supply the totality of Tree Island Industries' needs. Nevertheless, the Domestic Producers reviewed the confidential evidence on the record with respect to Tree Island Industries monthly wire rod requirements and maximum capacity to receive wire rod by truck per month, and the Tribunal agrees with their assessment that Tree Island Industries can receive most of its required monthly shipments of wire rod

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169 See Exhibit NQ-2024-001-36.02 (protected), p. 63–66, paras. 12–25and Exhibit NQ-2024-001-35.02, p. 66–69, paras. 12–25. See also *Transcript of Public Hearing*, p. 107, 112–116.

170 Exhibit NQ-2024-001-D-03.A, p. 10.

171 Exhibit NQ-2024-001-B-08 (protected), p. 16–19 and evidence therein referred to.

172 See, for example, Exhibit NQ-2024-001-36.02 (protected), p. 65–66, paras. 22–25 and *Transcript of Public Hearing*, p. 112–116, 136–138, when compared to other confidential evidence on the record, such as: Exhibit NQ-2024-001-42 (protected), para. 38; *Transcript of In Camera Hearing*, p. 275–276; Exhibit NQ-2024-001-13.09 (protected), p. 5, 12.

by truck. They also identified transloaders that would be able to handle the requisite logistics for an important portion of Tree Island Industries monthly requirements.

[191] In summary, the Tribunal is not persuaded by Tree Island Industries arguments that transportation, logistics or other factors unrelated to the price of the wire rod itself is the principal cause of the Domestic Producers' failure to earn the status of qualified suppliers. Its reluctance to purchase domestically produced wire rod is better explained by the pressure that it faces from competition in the markets for the steel wire products that it produces, which provides a strong incentive for Tree Island Industries to purchase wire rod at the lowest possible cost, chiefly by doing business with its qualified Chinese and Vietnamese suppliers that give it access to dumped prices.

[192] Regarding the Domestic Producers' alleged lack of interest to supply Tree Island Industries or the British Columbia market, the Tribunal also disagrees with Tree Island Industries' assertions. Instead, the evidence on the record paints a more nuanced picture. Clearly, the Domestic Producers sought to make sales, in recent years, in the British Columbia market, including to Tree Island Industries.[173] This confirms that they are interested to supply Tree Island Industries. While discussions between Tree Island Industries and the Domestic Producers have stalled for some time, there is conflicting evidence on the party that bears the responsibility for pausing their discussions.

[193] However, based on the evidence on the record, the Tribunal finds that Tree Island Industries' expectations regarding low prices arising from the availability of low-priced subject goods certainly played an important role in the Domestic Producers' inability to become a qualified supplier and sell wire rod to Tree Island Industries during the POI. Indeed, the Tribunal considers that in a qualification process featuring a requirement that applicants demonstrate their competitiveness with unfairly priced wire rod, price was likely an insurmountable point of contention between the parties. For the Domestic Producers, meeting those expectations would be unsustainable. For Tree Island Industries, the availability of the subject goods made it altogether unnecessary, and indeed unattractive, to consider commercial relations with the Domestic Producers during the POI. It is therefore not surprising that no agreement was reached. In any event, both Domestic Producers have provided sufficient evidence to demonstrate that they have been and continue to be interested in supplying wire rod to Tree Island Industries.

[194] Based on the foregoing, the Tribunal finds that the evidence does not establish that the granting of a company-specific exclusion will not cause injury to the domestic industry. To the contrary, the granting of this exclusion would confer an unfair advantage to Tree Island Industries and likely perpetuate the injurious effects already suffered by the domestic industry caused by the low-priced subject goods.

REQUEST FOR THE TRIBUNAL TO ADVISE THE PRESIDENT OF THE CBSA

Overview

[195] The Tribunal received a request for the Tribunal to advise, under section 46 of SIMA, the President of the CBSA.

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173 *Transcript of Public Hearing*, p. 94. See also, for example, Exhibit NQ-2024-001-36.01 (protected), p. 47, 49–51, paras. 5, 10–12, and attachments referred therein; Exhibit NQ-2024-001-35.02, p. 64–65, paras. 2–3, 5–7.

[196] For the reasons that follow, the request is denied (Presiding Member Wildhaber is dissenting).

Reasons of the majority (Members Bujold and Heggart)

[197] IRM included, as part of its case brief, a request that the Tribunal advise the President of the CBSA, pursuant to section 46 of SIMA, that it is of the opinion that there is evidence that wire rod originating in or exported from the United Arab Emirates (UAE) have been or are being dumped, and the evidence discloses a reasonable indication that the dumping has caused injury, or is threatening to cause injury, to the domestic industry.

[198] In its reply brief, IRM amended its request because the confidential information filed in these proceedings alerted its counsel to the fact that it was recent imports of wire rod from another country, not the UAE, that was actually giving rise to concerns. The name of that country must remain confidential because IRM's evidence in support of this request is information concerning a single recent import transaction between a Canadian purchaser and one exporter from the country in question that was made available only to counsel who filed confidentiality undertakings. For the sake of completeness, the majority will, however, address the request as it relates to both the UAE and the other country identified in IRM's confidential reply brief.

[199] Section 46 of SIMA reads as follows:

> Where, during an inquiry referred to in section 42 respecting the dumping or subsidizing of goods to which a preliminary determination under this Act applies, the Tribunal is of the opinion that
>
> (a) there is evidence that goods the uses and other characteristics of which closely resemble the uses and other characteristics of goods to which the preliminary determination applies have been or are being dumped or subsidized, and
>
> (b) the evidence discloses a reasonable indication that the dumping or subsidizing referred to in paragraph (a) has caused injury or retardation or is threatening to cause injury,
>
> the Tribunal, by notice in writing setting out the description of the goods first mentioned in paragraph (a), shall so advise the President.

[200] In order to warrant advising the President of the CBSA pursuant to section 46 of SIMA, the evidence in the present case must indicate that: (1) wire rod from either the UAE or the other country is like goods to the subject goods, (2) there have been, or there are, actual imports of wire rod from these sources into Canada, (3) the wire rod imported from these sources has been or is being dumped, and (4) there is a reasonable indication that the dumping of these goods has caused injury or is threatening to cause injury.

[201] As the Tribunal has already determined that wire rod meeting the terms of the product definition, whether produced in Canada or the subject countries, are like goods and the evidence from the investigation reports indicating that similarly defined wire rod from any source is comparable in terms of physical characteristics and deemed interchangeable,[174] the evidence indicates that the first

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[174] See, for example, Exhibit NQ-2024-001-06.C, tables 11–13; Exhibit NQ-2024-001-06.B, tables 11–13; Exhibit NQ-2024-001-A-05, para. 35.

condition is met. The second condition is also met as the evidence on the record confirms that wire rod was imported into Canada from the UAE during the POI.[175] Moreover, there is evidence that wire rod from the other country has also indeed been imported into Canada.[176]

[202] However, for the reasons that follow, the Tribunal is unable to form the opinion that the evidence indicates that wire rod from the UAE have been or are being dumped. This conclusion on the third condition is sufficient to dispose of the request as it relates to wire rod from the UAE. The Tribunal therefore need not address whether the fourth condition is met by those imports.

[203] As previously noted, it is only if the Tribunal is of the opinion that there is sufficient evidence indicating that wire rod from the UAE have been or are being dumped that IRM's request may be granted. The evidence provided by IRM in this respect falls short of the mark.

[204] The Tribunal understands that the CBSA calculates dumping on a model-specific, transactional basis, so an average price analysis is not acceptable as sufficient evidence of dumping. Moreover, the Tribunal has previously found in the context of requests under section 46 of SIMA that "low prices are not, in and of themselves, necessarily indicative of dumping."[177] In short, average prices, which include many or all types of wire rod and cover sales to numerous customers, do not provide a reliable estimation of normal values or export prices, that is, the evidence normally required to establish whether or not wire rod from the UAE has been or is being dumped.

[205] Furthermore, the Tribunal notes that Jebsen and Jessen has provided compelling additional arguments, which were not rebutted by IRM, explaining that the evidence provided by IRM is insufficient to ensure the calculation of an estimated margin of dumping on a model-by-model basis and an "apple-to-apple" comparison between the normal value and export price of similar goods.[178] These submissions confirm that the record evidence does not support the view that wire rod imported from the UAE have been or are being dumped.

[206] Turning to the imports of wire rod from the other country, the Tribunal notes that IRM's evidence in support of its request is limited to a single recent import transaction by one Canadian purchaser of wire rod. IRM asserts that this provides a reasonable indication that Canadian purchasers are engaged in source switching which would foreseeably result in injury to the domestic industry.

[207] In this regard, even if the Tribunal were to consider that this evidence demonstrates that wire rod from that country have been or are being dumped, it would still not be persuaded that the fourth condition is met. Namely, the evidence is insufficient to conclude that there is a reasonable indication that the alleged dumping of these goods has caused injury or is threatening to cause injury. The request, as it relates to this other country, must fail on that basis alone.

[208] The majority notes that IRM is not claiming that the wire rod from that country, which is being imported into Canada, has caused injury to the domestic industry, nor did it refer to evidence indicating that the transaction in question has resulted in material injury to the domestic industry.

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175 Exhibit NQ-2024-001-06.C, Table 2; Exhibit NQ-2024-001-06.B, Table 2.
176 See Exhibit NQ-2024-001-A-14 (protected), paras. 171–174, and evidence referred therein.
177 *Greenhouse Bell Peppers* (19 October 2010), NQ-2010-001 (CITT), para. 202.
178 Exhibit NQ-2024-001-E-02, paras. 81–83.

Thus, there is no basis to find that there is a reasonable indication that these goods have caused injury.

[209] Turning to the issue of threat of injury, the mere evidence of a single transaction from one importer is simply insufficient, at this stage, for the majority of the Tribunal to form the opinion that there is evidence that discloses a reasonable indication that Canadian importers and purchasers are going to import large quantities of wire rod from that country in the near term. In light of the evidence presented, IRM's allegation do not stand up to a somewhat probing examination and fail to pass the "reasonable indication" test.

[210] Therefore, the evidence does not reasonably indicate that these goods, even assuming that they are being dumped, represent an imminent and foreseeable threat of injury to the domestic industry. Based on the limited information available at this time, the majority is unable to accept IRM's submissions that the low-priced wire rod imports from the country that it identified will result in the same price effects and likely impact as the subject goods. In fact, IRM's arguments that Canadian purchasers will turn to importing wire rod from that country in large volumes which would "foreseeably" result in material injury are speculative, at best.

[211] In summary, the Tribunal finds that the evidence provided by IRM, which does not address all the relevant factors set out in the Regulations, including subsection 37.1(3) which directs the Tribunal to consider whether a causal relationship exists between the dumping of the goods from that country and the threat of injury on the basis of the factors listed in subsections 37.1(1) and (2), and whether any factors other than the dumping of the goods in question are threatening to cause injury, is insufficient to allow the Tribunal to form the opinion that there is a reasonable indication that wire rod imported from the other confidential country source mentioned by IRM is, in and of itself, threatening to cause injury.

[212] The lack of evidence and the speculative nature of the allegations raised in support of IRM's request suggests that recourse to section 46 was perhaps not appropriate in the circumstances. Section 46 of SIMA should not be used as a means of circumventing the normal process for filing a complaint.[179] It is only in clear instances where the evidence collected or adduced during the Tribunal's inquiry process indicates that the conditions of section 46 are met that the Tribunal would normally alert the President of the CBSA. Commencement of proof or allegations that something "might" happen are simply insufficient.

[213] The Tribunal therefore denies IRM's request to advise the President of the CBSA pursuant to section 46 of SIMA.

Separate opinion (Presiding Member Wildhaber is dissenting)

[214] With respect for the opinion of my colleagues, I would grant the request, and advise the President.

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179 *Gypsum Board* (4 January 2017), NQ-2016-002 (CITT).

[215] I believe that section 46 of SIMA was intended as being part of an ongoing dialogue between the CBSA and the Tribunal within Canada's somewhat unique bifurcated trade remedies system.[180]

[216] I am also of the view that section 46 of SIMA constitutes an early warning system of sorts, by which the Tribunal can alert the CBSA to "special circumstances" as intended in application of Article 5.6 of the Anti-Dumping Agreement (ADA), and Article 11.6 of the Subsidies and Countervailing Measures Agreement (SCM Agreement).[181] These special circumstances are meant to allow the examination of allegedly injurious dumping and/or subsidizing under a different procedure than by way of a new "written application" by the domestic industry as provided by, respectively, Articles 5.1 and 11.1 of those agreements.

[217] As such, I am of the view that section 46 of SIMA is intended to provide a means for the Tribunal to "circle back" to the CBSA to address instances where new sources or origins of the same low-priced goods enter Canada while an inquiry under section 42 of SIMA is ongoing.[182]

[218] There is evidence on the record of additional sources of imports of goods that are like goods to the subject goods from at least one[183] source other than the subject countries in this matter. The issue is whether those goods are dumped. I am of the view that the evidence on the record regarding alleged dumping is on par with what I expect the CBSA requires under paragraph 31(1)(a) of SIMA, when deciding to initiate an investigation, or at least what the CBSA would require to pursue dialogue with the domestic industry in view of establishing a properly documented complaint. I am of the view that the evidence on the record is sufficient, as well, to reach the "reasonable indication"

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180 Canada and the United States are among the few trade remedies regimes to have a bifurcated system where dumping and subsidizing investigations (the CBSA and the United States Department of Commerce, respectively) and injury investigations (the Tribunal and United States International Trade Commission, respectively) are undertaken by separate organizations. Examples of jurisdictions that do not have a bifurcated system include Europe and Australia. The European Commission's Directorate-General for Trade is responsible for both decisions regarding the initiation and conduct of all aspects of the investigations. The Australian Anti-Dumping Commission is vested with a similar mandate. See: Andrew Lanouette, "From Bifurcation to Unification: Canadian Trade Remedies System Streamlined" (2013) 16:3, *Globetrotter*, Ontario Bar Association, p. 2, online: https://www.oba.org/en/pdf/sec_news_int_jul13_bifurcationtounification_lanouette.pdf; European Commission, *Report from the Commission to the European Parliament and the Council*, (Brussels: 2024), online: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52024DC0413; Development Research & Consulting, "Evaluation of the European Union's Trade Defence Instruments Final Evaluation Study" Country Report Australia, Evaluation Study (27 February 2012), Appendix I2, p. 2.

181 15 April 1994, online: http://www.wto.org/english/docs_e/legal_e/final_e.htm.

182 The Canadian trade remedies regime should operate in the most efficient manner possible to address instances of shifting sources of imports that are alleged (and very often ultimately found) to be dumped and/or subsidized. The CBSA and the Tribunal regularly end up considering multiple cases concerning the same like goods of differing origins. See, for example, relating to hot-rolled carbon steel plate or concrete reinforcing bars, respectively: *Hot-rolled Carbon Steel Plate* (6 January 2016), NQ-2015-001 (CITT); *Hot-rolled Carbon Steel Plate* (20 May 2014), NQ-2013-005 (CITT); *Hot-rolled Carbon Steel Plate* (2 February 2010), NQ-2009-003 (CITT); *Hot-rolled Carbon Steel Plate* (9 January 2004), NQ-2003-002 (CITT); *Hot-rolled Carbon Steel Plate* (12 July 2000), NQ-99-004 (CITT); *Hot-rolled Carbon Steel Plate* (27 October 1997), NQ-97-001 (CITT); *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Plate, Heat-treated or not* (17 May 1994), NQ-93-004 (CITT); *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Plate, Heat-treated or not* (6 May 1993), NQ-92-007 (CITT); *Concrete Reinforcing Bar* (2 July 2021), NQ-2020-005 (CITT); *Concrete Reinforcing Bar* (4 June 2021), NQ-2020-004 (CITT); *Rebar II*; *Rebar I*.

183 Exhibit NQ-2024-001-A-14, p. 100–105. Another possible source was suspected: see Exhibit NQ-2024-001-A-02, p. 154–160.

bar indicative of a likely threat of injury, on par too with what I expect the CBSA requires under paragraph 31(1)(b) when deciding to initiate an investigation. I would therefore grant the request to advise the President on those grounds.

[219] Importantly, section 31(7) of SIMA recognizes that the CBSA is the ultimate arbiter of whether an investigation should be initiated or not. As such, upon receipt of a notice from the Tribunal under section 46 of SIMA, I expect the CBSA to engage the domestic industry to verify or supplement the information that was provided to the Tribunal as the basis of the request under section 46, and in effect for the CBSA to decide whether to initiate a dumping investigation or not. I read section 46 of SIMA as entrusting the Tribunal with little more than a gate-keeping function against clearly unfounded or frivolous requests.

[220] In Canada's bifurcated trade remedies regime, it is the CBSA, not the Tribunal, who is responsible for deciding whether to initiate an investigation, and ultimately to determine what constitutes dumping or subsidizing.[184]

[221] I am therefore of the view that the modern principle of statutory interpretation[185] in section 12 of the *Interpretation Act*,[186] and the Tribunal's ability to read SIMA in accordance with Canada's international rights and obligations where appropriate, provide sufficient latitude to interpret section 46 of SIMA as requiring only a commencement of evidence that dumping or subsidizing is occurring for condition number 3 (as identified above) to be met and a commencement of evidence of injury or threat of injury for the "reasonable indication" threshold of condition 4 to be met. As indicated above, I am of the view that the conditions or thresholds of section 46 of SIMA have been met.

[222] To hold that the threshold of proof required to satisfy the conditions of section 46 is too high is tantamount to the Tribunal substituting its judgment for that of the CBSA under subsection 31(7) of SIMA, which is what the last amendment to that subsection sought to change.[187] Furthermore, I believe that the opposing parties' views are more appropriately addressed by the CBSA in the context of a dumping investigation, should one be initiated. It is therefore premature for the Tribunal to give significant weight to these views at this stage, or even to consider them at all. In this regard I am of the view that a request under section 46 of SIMA made by a domestic industry is meant to be an *ex parte* request. I believe this to be all the more the case given that section 46 also contemplates that

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184 Sections 31 to 41 of SIMA.

185 The modern principle of statutory interpretation provides that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament", E. A. Driedger, *The Construction of Statutes*, 2nd ed. (1983), p. 87; see also *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27; *Society of Composers, Authors and Music Publishers of Canada v. Entertainment Software Association*, 2022 SCC 30.

186 R.S.C., 1985, c. I-21.

187 Section 46 of SIMA was amended by the *World Trade Organization Agreement Implementation Act*, prior to which a referral by the Tribunal had the effect of initiating an investigation in respect of any country or countries named in the referral. The then Deputy Minister had no discretion to decide whether an investigation should commence. The Clause By Clause Guide to Bill C-57 addressed the rationale for the amendment to section 46 as follows: "First, the Tribunal is no longer authorized to direct the Deputy Minister to initiate an investigation. This change will allow the Deputy Minister to determine whether there is sufficient evidence of dumping … required to initiate the investigation. Such a determination falls directly within the jurisdiction of the Deputy Minister". See *World Trade Organization Agreement Implementation Act*, Clause By Clause Guide to Bill C-57, Department of Foreign Affairs and International Trade, November 1994, comments on Clause 171.

the Tribunal can advise the President on its own initiative. Moreover, the CBSA's decision to initiate an investigation is also made on the basis of information provided by only the requesting domestic industry.

[223] I am concerned, as well, that requiring too high a threshold of proof under section 46 of SIMA risks placing Canadian domestic industries at a disadvantage in comparison to counterparts in the vast majority of the jurisdictions of our trading partners that do not have a bifurcated system: in those jurisdictions the unified trade remedies authorities are responsible for determining both whether to initiate an investigation as well as determining whether dumping or subsidizing and injury have occurred, something that is not possible in Canada.[188] The Tribunal is differently positioned than the investigating authorities in those jurisdictions, and therefore section 46 of SIMA should be read in that context. Very practically, I read section 46 and subsection 31(7) of SIMA as recognizing that a decision as to whether a new investigation should be commenced rests with the President, and not the Tribunal, and that this results from a deliberate policy choice cognizant of the constraints of the Tribunal's expertise, and what is possible to accomplish within the time frame of an inquiry under section 42 of SIMA. In the absence of a clearly unfounded or frivolous request, I believe that the Tribunal should allow the advisory mechanism of section 46 of SIMA to operate its largely communicator function of alerting the President.

[224] I believe that this approach reappropriates into practice how the Tribunal intended section 46 of SIMA to be understood or operate when it first considered its current wording in *Stainless Steel Round Bar*:[189]

> ... one consequence of these amendments is that, as any "action" taken under section 46 of SIMA does not have the effect of actually initiating an investigation, it follows, then, that the level or standard of evidence needed to establish the conditions for establishing a case for notification has been reduced, since the Deputy Minister will independently consider whether an investigation should be initiated and, presumably, gather further evidence. In other words, what is now required under section 46 is information sufficient to warrant further consideration, not a final decision.

[225] Furthermore, I believe that when Parliament adopted section 46 of SIMA, it did not intend for Canadian domestic industries to have fewer rights than foreign industries vis-à-vis their investigating authorities. Similarly, Canada did not intend to place the bar higher for itself compared to the investigating authorities of its trading partners. It would be inappropriate for section 46 to be used as a means of requesting that the Tribunal advise the President to pursue a course of action that is not supported by evidence. Therefore, it would be reasonable to deny requests that are clearly unfounded. I do not consider this request to fall into that category.

[226] Rather, I believe that the request in issue here falls within the ambit of what is a proper request under section 46. I believe my reading of section 46 of SIMA to be concordant with the uniqueness of Canada's bifurcated trade remedies regime, because it permits the intended application of Articles 5.6 of the ADA and 11.6 of the SCM Agreement in Canada. I believe that this interpretation allows section 46 of SIMA to operate through the prism of section 12 of the *Interpretation Act*, which provides that "[e]very enactment is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its

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188 *Supra* note 178.

189 (4 September 1998), NQ-98-001 (CITT), p. 30.

objects.” In my view, the objective of section 46 of SIMA is to ensure that the CBSA pursues its work, if necessary and in a timely manner. The remedy envisaged for the benefit of Canada’s domestic industries and its workers is to allow for the prevention of injurious dumping or subsidizing from previously unidentified sources, where necessary. The proper operation of section 46 of SIMA fosters administrative efficiency by providing easier access to the CBSA, in continuity with the work of the Tribunal, and it leaves the decision on whether to initiate a further investigation with the President, and its specialized expertise in that area, as provided for by subsection 31(7) of SIMA.

[227] Finally, and again with respect for the position of my colleagues, I do not believe that recourse to section 46 of SIMA in the present circumstances can be described as “a means of circumventing the normal process for filing a complaint” (my colleagues’ words). Rather, I believe that section 46 of SIMA is simply a procedure that can be engaged when, like in this instance, the “special circumstances” of additional sources of goods that are “like” the subject goods, and that are reasonably shown to be similarly prejudicial (as the subject goods are) have been discovered during an inquiry under section 42 of SIMA.

CONCLUSION

[228] The Tribunal finds, pursuant to subsection 43(1) of SIMA, that the dumping of the subject goods has caused material injury to the domestic industry.

Eric Wildhaber

Eric Wildhaber
Presiding Member

Georges Bujold

Georges Bujold
Member

Randolph W. Heggart

Randolph W. Heggart
Member