



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Expiry review RR-2023-003

Carbon Steel Welded Pipe

*Order and reasons issued
Wednesday, June 26, 2024*

TABLE OF CONTENTS

ORDER i

STATEMENT OF REASONS 1

 INTRODUCTION 1

 PRODUCT 2

 Product definition 2

 Additional product information 3

LEGAL FRAMEWORK 3

LIKE GOODS AND CLASSES OF GOODS 4

DOMESTIC INDUSTRY 5

CUMULATION AND CROSS-CUMULATION 5

LIKELIHOOD OF INJURY ANALYSIS 8

 Changes in market conditions 9

 Likely import volume of the subject goods if the order expires 15

 Likely price effects if the order expires 18

 Likely impact of the subject goods on the domestic industry 21

CONCLUSION 25

SEPARATE REASONS OF MEMBER BECKETT 26

IN THE MATTER OF an expiry review, pursuant to subsection 76.03(1) of the *Special Import Measures Act*, of the order made by the Canadian International Trade Tribunal on October 15, 2018, in expiry review RR-2017-005, concerning:

**CARBON STEEL WELDED PIPE ORIGINATING IN OR EXPORTED FROM
THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN
AND MATSU, THE REPUBLIC OF INDIA, THE SULTANATE OF OMAN, THE
REPUBLIC OF KOREA, THE KINGDOM OF THAILAND AND THE UNITED
ARAB EMIRATES**

ORDER

The Canadian International Trade Tribunal, pursuant to subsection 76.03(3) of the *Special Import Measures Act* (SIMA), has conducted an expiry review of the order it made on October 15, 2018, in expiry review RR 2017-005.

Pursuant to paragraph 76.03(12)(b) of SIMA, the Tribunal continues the aforementioned order.

Eric Wildhaber

Eric Wildhaber
Presiding Member

Cheryl Beckett

Cheryl Beckett
Member

Georges Bujold

Georges Bujold
Member

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

Place of Hearing: Ottawa, Ontario (file hearing)
Date of Hearing: April 22, 2024

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Cheryl Beckett, Member
Georges Bujold, Member

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STATEMENT OF REASONS

INTRODUCTION

[1] The Canadian International Trade Tribunal, pursuant to subsection 76.03(1) of the *Special Import Measures Act*¹ (SIMA), has conducted an expiry review of the order made on October 15, 2018, in expiry review RR-2017-005, concerning the dumping of carbon steel welded pipe (CSWP), as further defined in paragraph 13 below, originating in or exported from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei) (excluding goods exported from Chinese Taipei by Chung Hung Steel Corporation and Shin Yang Steel Co. Ltd), the Republic of India (India), the Sultanate of Oman (Oman), the Republic of Korea (Korea), the Kingdom of Thailand (Thailand) and the United Arab Emirates (UAE) (excluding goods exported from the UAE by Conares Metal Supply Ltd.), and the subsidizing of the aforementioned goods originating in or exported from India (the subject goods).

[2] Under SIMA, a finding of injury or threat of injury, and the associated protection in the form of anti-dumping or countervailing duties, expires five years from the date of the finding or, if one or more orders continuing the finding have been made, the date of the last order made under paragraph 76.03(12)(b), unless the Tribunal initiates an expiry review before that date. The order in expiry review RR-2017-005 is scheduled to expire on October 15, 2024.

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

PROCEDURAL BACKGROUND

[4] The Tribunal issued its notice² of expiry review on August 21, 2023.³ This notice triggered the initiation of an investigation by the Canada Border Services Agency (CBSA) on August 22, 2023,⁴ to determine whether the expiry of the Tribunal's order was likely to result in the continuation or resumption of dumping and subsidizing of the subject goods.

[5] On January 18, 2024, the CBSA determined⁵ that the rescission of the order made on October 15, 2018, in expiry review RR-2017-005 was likely to result in the continuation or resumption of dumping of the subject goods from Chinese Taipei, India, Oman, South Korea, Thailand and the UAE, and the continuation or resumption of subsidizing of the subject goods from India.⁶

¹ R.S.C., 1985, c. S-15.

² The notice was issued pursuant to subsection 76.03(1) of SIMA.

³ Exhibit RR-2023-003-02 at 1.

⁴ Exhibit RR-2023-003-03 at 1.

⁵ The CBSA made its determination pursuant to paragraph 76.03(7)(a) of SIMA.

⁶ Exhibit RR-2023-003-03 at 1.

[6] Following the CBSA's determination, the Tribunal began its expiry review⁷ on January 19, 2024, to determine whether the expiry of the order was likely to result in injury to the domestic industry.⁸

[7] The period of review (POR) for the Tribunal's expiry review covers three full years, from January 1, 2020, to December 31, 2022, as well as the period from January 1, 2023, to September 30, 2023. For comparative purposes, information was also collected and presented for the period of January 1, 2022, to September 30, 2022.⁹

[8] The Tribunal asked potential domestic producers and importers of CSWP, as well as potential foreign producers of the subject goods and unions representing workers employed by domestic producers, to complete questionnaires. The Tribunal received 5 replies to the domestic producers' questionnaire, 14 replies to the importers' questionnaire, no replies to the foreign producers' questionnaire and 1 reply to the unions' questionnaire.¹⁰

[9] Staff of the Secretariat to the Tribunal prepared public and protected investigation reports based on the questionnaire replies and other information on the Tribunal's record. The reports were placed on the record and distributed to parties on March 11, 2024.¹¹

[10] Submissions were filed by Nova Tube Inc. and Nova Steel Inc. (Nova), DFI Corporation (DFI), Atlas Tube Canada ULC (Atlas), Welded Tube Canada Corp. (Welded Tube) and the United Steelworkers (USW) union supporting the continuation of the order.¹²

[11] This expiry review is unopposed. As such, the evidence and submissions of the participating parties are uncontradicted. The Tribunal conducted its review based on the marketplace data obtained using questionnaire responses, as well as the evidence submitted by the participating parties.

[12] On April 22, 2024, in Ottawa, Ontario, the Tribunal held a file hearing on the basis of the written documentation filed in this matter.¹³

PRODUCT

Product definition

[13] The subject goods are defined as follows:

Carbon steel welded pipe, commonly identified as standard pipe, in the nominal size range from 1/2 inch up to and including 6 inches (12.7 mm to 168.3 mm in outside diameter) inclusive, in various forms and finishes, usually supplied to meet ASTM A53, ASTM A135, ASTM A252, ASTM A589, ASTM A795, ASTM F1083 or Commercial Quality, or AWWA

⁷ The Tribunal initiated its expiry review pursuant to subsection 76.03(10) of SIMA.

⁸ Exhibit RR-2023-003-12 at 3.

⁹ Exhibit RR-2023-003-05 at 6.

¹⁰ *Ibid.* at 10–15.

¹¹ *Ibid.*; Exhibit RR-2023-003-06 (protected).

¹² Exhibit RR-2023-003-A-01; Exhibit RR-2023-003-A-02 (protected); Exhibit RR-2023-003-B-01; Exhibit RR-2023-003-B-02 (protected); Exhibit RR-2023-003-D-01; Exhibit RR-2023-003-D-02 (protected); Exhibit RR-2023-003-C-01; Exhibit RR-2023-003-C-02 (protected).

¹³ The file hearing was held pursuant to rule 25.1 of the *Canadian International Trade Tribunal Rules*, SOR/91-499.

C200-97 or equivalent specifications, including water well casing, piling pipe, sprinkler pipe and fencing pipe, but excluding oil and gas line pipe made to API specifications exclusively, and excluding 1 mm thick carbon steel tubing (SPCC 1, 25.6 mm in outside diameter), double coated (first coated with acrylonitrile butadiene styrene, then with polyvinyl chloride), and non-galvanized, ASTM A53, Grade B, Schedule 80 pipe, with an inside diameter of 1 1/4 inches to 1 1/2 inches, in 22 ft. lengths, with the inside weld scarfed, originating in or exported from the Republic of Korea, and produced with AISI C1022M steel with a carbon content of 0.18 percent to 0.23 percent and a manganese content of 0.80 percent to 1.00 percent.¹⁴

[14] In this expiry review, for the purpose of data collection, the Tribunal interpreted the product definition as not including the following:

- CSWP imported for automotive or aerospace end uses; and
- single stenciled CSWP made to the specification ASTM A500.

[15] This is consistent with the approach taken by the Tribunal in expiry review RR-2017-005.¹⁵ It also aligns with determinations made by the Tribunal in RR-2018-001 and NQ-2018-003, covering similarly defined CSWP. The Tribunal found that the product definition in those cases did not include single stenciled CSWP made to the specification ASTM A500.¹⁶ This interpretation was not challenged by the parties in the context of the present expiry review.

Additional product information

[16] The Tribunal notes that additional detailed product information can be found in the CBSA's statement of reasons for the expiry review determination.¹⁷

LEGAL FRAMEWORK

[17] The Tribunal is required to determine whether the expiry of the order concerning the subject goods is likely to result in injury or retardation for the domestic industry.¹⁸ If the Tribunal determines that the expiry of the order is unlikely to result in injury, it is required to rescind it.¹⁹ However, if it determines that the expiry of the order is likely to result in injury, the Tribunal is required to continue it, with or without amendment.

¹⁴ Exhibit RR-2023-003-02 at 1.

¹⁵ *Carbon Steel Welded Pipe* (15 October 2018), RR-2017-005 (CITT). In that case, the Tribunal decided to adopt an approach consistent with the CBSA's position regarding import data used for the purposes of its dumping investigation concerning similarly defined CSWP. The CBSA clarified its position in this respect with an email to the Tribunal on August 3, 2018.

¹⁶ *Carbon Steel Welded Pipe* (28 March 2019), RR-2018-001 (CITT); *Carbon Steel Welded Pipe* (15 February 2019), NQ-2018-003 (CITT).

¹⁷ Exhibit RR-2023-003-03.A at 8–9.

¹⁸ Subsection 76.03(10) of SIMA. The Tribunal notes that subsection 2(1) of SIMA defines “injury” as “material injury to the domestic industry” and “retardation” as “material retardation of the *establishment* of a domestic industry” [emphasis added]. Given that there is currently an established domestic industry, the issue of whether the expiry of the order is likely to result in retardation does not arise in this expiry review.

¹⁹ Subsection 76.03(12) of SIMA.

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

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

LIKE GOODS AND CLASSES OF GOODS

[20] In order for the Tribunal to determine whether the resumed or continued dumping and subsidizing of the subject goods is likely to cause material injury to the domestic producers of like goods, it must determine which domestically produced goods, if any, constitute like goods in relation to the subject goods. The Tribunal must also assess whether there is, within the subject goods and the like goods, more than one class of goods.²⁰

[21] 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.

[22] In deciding the issue of like goods when goods are not identical in all respects to the other goods, the Tribunal typically considers a number of factors, including the physical characteristics of the goods, such as composition and appearance, and their market characteristics, such as substitutability, pricing, distribution channels, end uses and whether the goods fulfill the same customer needs.²¹ These same factors are also considered in deciding whether there is more than one class of goods.²²

[23] The CSWP described in the product definition has been the subject of several previous inquiries and expiry reviews before the Tribunal, including the original inquiry and expiry review directly connected to the current proceeding. The Tribunal has consistently found that domestically produced CSWP is like goods to the subject goods and that there is a single class of goods.²³ Nova

²⁰ Should the Tribunal determine that there is more than one class of goods in this expiry review, it must conduct a separate injury analysis and make a decision for each class that it identifies. See *Noury Chemical Corporation and Minerals & Chemicals Ltd. v. Pennwalt of Canada Ltd. and Anti-dumping Tribunal*, [1982] 2 F.C. 283 (FC).

²¹ See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at para. 48.

²² In order to decide whether there is more than one class of goods, the Tribunal must determine whether goods potentially included in separate classes of goods (or that have previously been included in separate classes of goods) constitute “like goods” in relation to each other. If they do, they will be regarded as comprising a single class of goods. See, for example, *Certain Fasteners* (7 January 2005), NQ-2004-005 (CITT) at para. 70.

²³ *Carbon Steel Welded Pipe* (28 March 2019), RR-2018-001 (CITT) at para. 25; *Carbon Steel Welded Pipe* (4 March 2019), NQ-2018-003 (CITT) at para. 56; *Carbon Steel Welded Pipe* (15 October 2018), RR-2017-005 (CITT) at para. 19; *Carbon Steel Welded Pipe* (19 August 2013), RR-2012-003 (CITT) at para. 24; *Carbon Steel Welded Pipe* (27 December 2012), NQ-2012-003 (CITT) at para. 63; *Carbon Steel Welded Pipe* (4 September 2008), NQ-2008-001 (CITT) at para. 45.

and DFI argued that the facts in respect of CSWP continue to support these conclusions.²⁴ In the absence of any arguments or evidence to the contrary, the Tribunal finds no reason to depart from its previous conclusions with respect to like goods and classes of goods.

DOMESTIC INDUSTRY

[24] 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.

[25] The Tribunal must therefore determine whether there is a likelihood of injury to the domestic producers as a whole or those domestic producers whose production represents a major proportion of the total production of like goods.²⁵

[26] During the POR, there were five domestic producers of like goods in the Canadian market: Atlas, DFI, Nova, Welded Tube and Evraz Inc. NA Canada (Evraz).²⁶ As the foregoing companies account for all known domestic production of the like goods, the Tribunal finds that they constitute the domestic industry for the purpose of this expiry review.

CUMULATION AND CROSS-CUMULATION

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

... the Tribunal shall make an assessment of the cumulative effect of the dumping or subsidizing of goods to which the determination of the President described in subsection (9) applies that are imported into Canada from more than one country if the Tribunal is satisfied that an assessment of the cumulative effect would be appropriate taking into account the conditions of competition between goods to which the order or finding applies that are imported into Canada from any of those countries and

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

(b) like goods of domestic producers.

²⁴ Exhibit RR-2023-003-A-01 at 14; DFI indicated that it supported Nova’s submissions (see Exhibit RR-2023-003-C-01 at 4).

²⁵ The Tribunal observes that the term “major proportion” has been found to mean an important or significant proportion of total domestic production of the like goods and not necessarily a majority of these goods. For example, see: *Japan Electrical Manufacturers Assn. v. Canada* (Anti-Dumping Tribunal), [1986] F.C.J. No. 652 (FCA); *McCulloch of Canada Limited and McCulloch Corporation v. Anti-Dumping Tribunal*, [1978] 1 F.C. 222 (FCA); Panel Report, *China – Automobiles (US)*, WT/DS440/R, at para. 7.207; Appellate Body Report, *EC – Fasteners (China)*, WT/DS397/AB/R, at paras. 411, 412, 419; Panel Report, *Argentina – Poultry (Brazil)*, WT/DS241/R, at para. 7.341.

²⁶ Exhibit RR-2023-003-05 at 11.

[28] In order to consider the potential injurious effects of the dumping or subsidizing of goods from multiple subject countries on a cumulative basis, the Tribunal must be satisfied that such a cumulative analysis is appropriate in light of the “conditions of competition” between the goods imported into Canada from any of the subject countries and the goods from any other subject countries or between those goods and the domestically produced like goods.

[29] Relevant factors in determining whether the conditions of competition warrant a cumulative assessment are typically the degree to which the goods are interchangeable, their quality, pricing, presence in the same geographic market at the same time, distribution through the same channels or the use of the same means of transportation.²⁷ The list is not exhaustive, and no single factor is determinative. The Tribunal has stated that, to cumulate, it must be satisfied that the subject goods compete with each other and/or with the like goods to secure sales in Canada.²⁸ In expiry reviews, the assessment of the conditions of competition is prospective.²⁹

[30] Nova and the USW submitted that the conditions of competition, both among goods from the subject countries and between subject goods and domestically produced like goods, demonstrate that subject and domestically produced CSWP are substitutable and directly compete for customers across Canada through the same established channels of distribution. Specifically, Nova submitted the following:

- in the previous expiry review, the Tribunal found that CSWP is a commodity product;³⁰
- questionnaire responses also indicate that subject goods and like goods are commodity products that meet common specifications and sizes, are interchangeable and substitutable for each other, and are typically sold on the basis of price;³¹
- subject goods and like goods are sold in the same geographic markets;³²
- subject goods and like goods are sold in the Canadian market through the same distribution channels,³³ at the same time (throughout the year);³⁴ and
- subject goods and like goods have the same physical characteristics, being produced to the same technical specifications, grades, sizes, coatings and finishes.³⁵

[31] These arguments by Nova and the USW were unopposed.

[32] As was the case in expiry review RR-2017-005, the conditions of competition continue to support a cumulative analysis that examines the impact of subject goods from all six subject

²⁷ *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at para. 73.

²⁸ *Corrosion-resistant Steel Sheet* (21 February 2019), NQ-2018-004 (CITT) at para. 45; *Cold-rolled Steel* (21 December 2018), NQ-2018-002 (CITT) at para. 39.

²⁹ *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (12 August 2016), RR-2015-002 (CITT) at para. 47; see also *Refined Sugar* (30 October 2015), RR-2014-006 (CITT) at para. 33.

³⁰ *Carbon Steel Welded Pipe* (15 October 2018), RR-2017-005 (CITT) at para. 26.

³¹ Exhibit RR-2023-003-16.03 at 11; Exhibit RR-2023-003-16.06C at 11; Exhibit RR-2023-003-16.13 at 11.

³² Exhibit RR-2023-003-A-03 at 16; Exhibit RR-2023-003-A-05 at 11–26.

³³ Exhibit RR-2023-003-05 at tables 1, 2; Exhibit RR-2023-003-A-03 at 13, 16; Exhibit RR-2023-003-A-05 at 6–7.

³⁴ Exhibit RR-2023-003-06 (protected) at tables 39, 40, 41, 42.

³⁵ Exhibit RR-2023-003-16.06C at 11; Exhibit RR-2023-003-A-03 at 12–13.

countries. However, the issue that arises is whether it is appropriate, under subsection 76.03(11) of SIMA, for the Tribunal to cumulatively assess the effect of the dumping and subsidizing of the subject goods from Chinese Taipei, Korea, Thailand, Oman, the UAE and India in a single injury analysis or whether the Tribunal must instead conduct two separate analyses: one assessing the effect of the dumping of the subject goods from Chinese Taipei, Korea, Thailand, Oman and the UAE, and a separate analysis assessing the effect of the dumping and subsidizing of the subject goods from India.

[33] In expiry review RR-2017-005, the Tribunal articulated the view that, even if the evidence on the relevant conditions of competition suggested that the Tribunal could employ a cumulative approach in its analysis of the impact of the subject goods, a single injury analysis was not appropriate.³⁶ The Tribunal reasoned that, in light of Canada's international obligations and, consistent with its interpretation and approach under subsection 42(3) of SIMA (the almost identical provision governing cumulation in inquiries conducted pursuant to section 42), it would not be appropriate under subsection 76.03(11) to conduct a cumulative assessment of the effects of goods from a country that have been dumped and subsidized with the effects of goods from another country that are only dumped or only subsidized.

[34] In this expiry review, Nova and the USW submit that the Tribunal should not follow this interpretative approach. They argue that, properly interpreted, subsection 76.03(11) of SIMA requires an assessment of the cumulative effects of dumped goods from more than one country if the Tribunal is satisfied that such an assessment is appropriate, taking into account the conditions of competition between the subject goods of each country or between them and the like goods. Given that the CBSA determined that the expiry of the order was likely to result in the continuation or resumption of dumping of goods from the six subject countries into Canada and the evidence on the conditions of competition noted above, Nova and the USW submit that the Tribunal must consider the likely injurious effects of the subject goods from all six countries on a cumulative basis.

[35] The majority of the Tribunal agrees with the interpretation and application of subsection 76.03(11) of SIMA proposed by Nova and the USW on the facts of this case.³⁷ In particular, the majority interprets subsection 76.03(11) as *mandating* a cumulative assessment of the effects of the CSWP from all subject countries in the present circumstances.

[36] In any event, the majority notes that there is no provision in the World Trade Organization (WTO) agreements or other international obligations that constrain the Tribunal's ability to cumulatively assess the effects of subject goods from a country that are only dumped and the effects of subject goods from another country that are both dumped and subsidized in an expiry review. This means that the majority's approach is not inconsistent with Canada's international obligations. On that basis alone, the majority is unable to endorse the Tribunal's conclusion in expiry review RR-2017-005 that the most appropriate approach, taking into account Canada's international obligations, WTO jurisprudence and the language in the SIMA, is to conduct a separate analysis with respect to the subject goods from India. Considering the above, and for the reasons given in the

³⁶ *Carbon Steel Welded Pipe* (15 October 2018), RR-2017-005 (CITT) at paras. 23–54.

³⁷ The majority of the Tribunal agrees with the interpretation and application of subsection 76.03(11) of SIMA proposed by Nova and the USW on the facts of this case. Member Beckett's separate views on the interpretation and application of this provision in this expiry review are provided in the last section of these reasons.

separate opinions in *Carbon Steel Screws*,³⁸ *Rebar I Expiry Review*³⁹ and *Flat Hot-rolled Carbon Alloy Steel Sheet and Strip*,⁴⁰ the fact that Indian subject goods are also subsidized does not merit a decumulated assessment of the impact of those goods.⁴¹

[37] To conclude, the majority of the Tribunal is satisfied, taking into account the provisions of subsection 76.03(11) of SIMA and the unopposed submissions regarding the conditions of competition between the subject goods of each country and between them and the like goods, that an assessment of the cumulative effects of the resumed or continued dumping and subsidizing of the subject goods from the six subject countries is appropriate in this case.

[38] The Tribunal will therefore conduct a single injury analysis of the effects of the dumping and subsidizing of the subject goods from all subject countries.

LIKELIHOOD OF INJURY ANALYSIS

[39] An expiry review is forward-looking.⁴² It follows that evidence from the period during which an order or a finding was being enforced is relevant insofar as it bears upon the prospective analysis of whether the expiry of the order or finding is likely to result in injury.⁴³

[40] There is no presumption of injury in an expiry review; findings must be based on positive evidence, in compliance with domestic law and consistent with the requirements of the World Trade Organization.⁴⁴ In the context of an expiry review, positive evidence can include evidence based on past facts that tend to support forward-looking conclusions.⁴⁵

[41] In making its assessment of likelihood of injury, the Tribunal has consistently taken the view that the focus should be on circumstances that can reasonably be expected to exist in the near to medium term, which is generally considered to be a period that can extend up to 24 months from the date on which the order or finding would be rescinded.⁴⁶ In this case, the Tribunal was not presented

³⁸ *Carbon Steel Screws* (2 September 2020), RR-2019-002 (CITT) at paras. 59–128.

³⁹ *Concrete Reinforcing Bar* (14 October 2020), RR-2019-003 (CITT) [*Rebar I Expiry Review*] at paras. 92–178.

⁴⁰ *Flat Hot-rolled Carbon Alloy Steel Sheet and Strip* (13 May 2022), RR-2021-001 (CITT) at paras. 114–127.

⁴¹ In other words, given the aforementioned conditions of competition, the Tribunal *must* cumulatively assess the effects of the resumed or continued dumping *and* subsidizing of the subject goods from *all* countries in a single injury analysis. Further, as noted in previous cases, a cross-cumulative assessment of the effects of the dumping and subsidizing of the same goods from a single country is required given that the effects are so closely intertwined as to render it impossible to allocate discrete portions of injury to the dumping and the subsidizing. See, for example, *Pup Joints* (29 December 2022), RR-2021-005 (CITT) at paras. 30–32; *Certain Wind Towers* (17 November 2023), NQ-2023-001 (CITT) at paras. 66–68.

⁴² *Certain Dishwashers and Dryers* (procedural order dated 25 April 2005), RR-2004-005 (CITT) at para. 16.

⁴³ *Copper Pipe Fittings* (17 February 2012), RR-2011-001 (CITT) at para. 56. In *Thermoelectric Containers* (9 December 2013), RR-2012-004 (CITT) [*Thermoelectric Containers*] at para. 14, the Tribunal stated that the analytical context pursuant to which an expiry review must be adjudged often includes the assessment of retrospective evidence supportive of prospective conclusions. See also *Aluminum Extrusions* (17 March 2014), RR-2013-003 (CITT) [*Aluminum Extrusions*] at para. 21.

⁴⁴ *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (16 August 2006), RR-2005-002 (CITT) at para. 59.

⁴⁵ *Thermoelectric Containers* at para. 14; *Aluminum Extrusions* at para. 21.

⁴⁶ See, for example, *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate* (31 October 2019), RR-2018-007 (CITT) at para. 42.

with any argument that it should consider a different period. It therefore finds it appropriate to focus its analysis on the next 24 months.

[42] Subsection 37.2(2) of the *Special Import Measures Regulations*⁴⁷ (Regulations) lists factors that the Tribunal may consider in addressing the likelihood of injury in cases where the CBSA has determined that there is a likelihood of continued or resumed dumping or subsidizing. The factors that the Tribunal considers relevant in this expiry review are discussed below.

Changes in market conditions

[43] In order to assess the likely volumes and prices of the subject goods and their impact on the domestic industry if the order is rescinded, the Tribunal first usually considers any changes in domestic and international market conditions.⁴⁸ The Regulations provide that the Tribunal may consider domestic and international changes in market conditions in making its determination.⁴⁹

[44] Nova, DFI and the USW submitted that relatively weak economic growth in Canada and globally, combined with market conditions in the subject countries (including significant excess production capacity, export-oriented producers, propensity to dump similar goods, and interest in the Canadian market), make it likely that resumed dumping (and subsidizing, with respect to India) of the subject goods is likely to result in injury to the domestic industry if the order were rescinded.

[45] The Tribunal reviewed the uncontroverted arguments and evidence submitted by the parties, finding the following observations to be particularly relevant and credible.

International market conditions

[46] The Tribunal accepts the evidence submitted by Nova that global excess steelmaking capacity and weak global economic growth will undermine steel demand generally, including for the subject goods, while trade remedies against CSWP from the subject countries in other jurisdictions will all combine to make it likely that subject countries will export large volumes of CSWP to Canada.

[47] Pertaining to global excess steelmaking capacity, the evidence indicates that global steelmaking capacity increased by 16.3 million metric tonnes (MT) to 2.442 billion MT in 2022 and was expected to increase by 57.1 million MT to 2.499 billion MT in 2023, with the gap between global steelmaking capacity and production increasing from 556 million MT in 2022 to 611 million MT in 2023, and further capacity growth expected.⁵⁰

[48] High interest rates and inflation also continue to weigh on the global economy, with global GDP growth expected to fall from 3% in 2022 to 2.4% in 2024, and only partially recovering to 2.7% in 2025,⁵¹ which will likely result in contracting demand for steel despite continued increases in steel production in Asia (particularly China).⁵² According to evidence submitted by Nova, global prices for hot-rolled coil (HRC), the main raw material input for CSWP, increased considerably in 2021

⁴⁷ SOR/84-927.

⁴⁸ *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (26 August 2016), RR-2015-002 (CITT) at para. 59.

⁴⁹ Paragraph 37.2(2)(j) of the Regulations.

⁵⁰ Exhibit RR-2023-003-A-01 at 177, 213–214, 220–222.

⁵¹ *Ibid.* at 156–171.

⁵² *Ibid.* at 172–210.

before declining in 2022 and 2023,⁵³ indicating uncertainty and decreasing prices in the global CSWP market. The Tribunal accepts Nova's argument that these factors, combined with excess global steelmaking capacity, will make producers of subject goods eager to access any available market, including Canada, if the finding is rescinded.

[49] The Tribunal also notes Nova's submission that security/logistical challenges relating to shipping through the Red Sea⁵⁴ will increase the attractiveness of shipping from India, Oman and the UAE to Canada's west coast relative to Europe, as the latter route relies on passage through the Red Sea and Suez Canal. While the Tribunal finds this argument plausible, at most, this dynamic seems likely to contribute to some degree of diversion rather than being a major cause of it. While the European market is as accessible to these subject countries as Canada is when the Suez Canal route is unhindered by its current challenges, it is not clear to the Tribunal that Canada is currently significantly more accessible to them than Europe is.

[50] Nova further provided the following submissions regarding market conditions affecting specific subject countries, which the Tribunal found to be both relevant and credible.⁵⁵

Chinese Taipei

[51] Evidence on the record indicates that Chinese Taipei is heavily exposed to the struggling mainland Chinese economy and experiencing high interest rates. Nova argued, and the Tribunal accepts, that these combined factors indicate a negative short-term economic outlook for the country, which entered a recession in May 2023.⁵⁶ The IMF expects economic growth in Chinese Taipei to increase from 0.8% in 2023 to 3.0% in 2024, then slow to 2.6% in 2025, with high interest rates expected to reduce steel demand in the auto manufacturing and construction sectors (the latter being the source of most demand for CSWP).⁵⁷ Chinese Taipei has significant production capacity, both for steel generally and CSWP specifically, and there is evidence that increasing capacity utilization rates have been driven by increased export sales.⁵⁸

India

[52] India is the world's second-largest producer of both crude steel as well as steel pipes and tubes.⁵⁹ The evidence provided suggests that India's steel industry has grown alongside public investments in infrastructure and industrial capacity.⁶⁰ This spending has been focused in the lead-up to India's 2024 election and is expected to grow more slowly thereafter (slowing to 1.2% growth in Q4 2023, the slowest since fiscal year 2018–2019). There is also projected declining—though still strong—growth in both overall GDP (to 6.5% in fiscal year 2024–2025 from 7.2% in fiscal year 2022–2023, according to the IMF) and the construction sector specifically (from 9.6% annual growth

⁵³ *Ibid.* at 224; Exhibit RR-2023-003-A-02 (protected) at 25–26, at tables 1, 2, at 227.

⁵⁴ Exhibit RR-2023-003-A-01 at 148–155.

⁵⁵ DFI and the USW largely reiterated these views, referring mainly to the CBSA's statement of reasons (and witness statements in the case of the USW).

⁵⁶ Exhibit RR-2023-003-A-01 at 228–233, 235–126, 238–239, 243–245; Exhibit RR-2023-003-A-02 (protected) at 237–239, 248–254.

⁵⁷ Exhibit RR-2023-003-A-01 at 247–264.

⁵⁸ This remains the case even when non-subject exporters are excluded. See Exhibit RR-2023-003-A-01 at 28–29, 33, at tables 3, 4, 7, at 277–286.

⁵⁹ Exhibit RR-2023-003-A-01 at 315–318, 327.

⁶⁰ *Ibid.* at 329–330.

in 2023 to a projected 5.9% on average from 2024 to 2027).⁶¹ Evidence indicates that India's crude steel production capacity has continued to increase into 2024 and will likely continue to do so in light of the government's stated goal of 300 million MT of capacity (and 255 million MT of actual production) by 2031.⁶²

[53] The Tribunal accepts Nova's submissions and evidence that suggest that growth in actual demand for steel in India is expected to decline—though, again, remain strong—from 9.3% in 2022 to 7.7% in 2024. Further, domestic consumption of steel pipe and tube (welded and seamless) had recovered above 2020 levels by March 31, 2023.⁶³ Indian HRC prices (which, as noted above, is the primary CSWP input) have decreased from their peak in April 2022, which Nova submits indicates downward trends in Indian CSWP prices and is consistent with global trends in steel prices.⁶⁴ Data further suggest that Indian CSWP producers are export-oriented, with exports increasing from 202,000 MT in 2020 to 299,000 MT (annualized estimate) in 2023, though they peaked at 330,000 MT in 2021.⁶⁵

Oman

[54] The World Bank estimates Oman's GDP growth at 1.4% in 2023, a marked slowdown from growth of 3.1% in 2021 and 4.3% in 2022 (though a recovery is expected, with 2.7% growth in 2024 and 2.9% in 2025). The main risks to its economy are oil price volatility, regional geopolitical risk and related supply chain disruptions, and high interest rates.⁶⁶

[55] The evidence suggests that the combined estimated CSWP production capacity of two out of three known Omani producers is 550,000 MT. One of these producers, Al Jazeera Steel, which the CBSA has previously used as a proxy for Omani production and capacity figures, has an estimated capacity of 300,000 MT and an excess capacity of 71,453 MT in 2023, although its capacity utilization rate has increased from 59% in 2020 to 76% in 2023.⁶⁷ Nova submits that Al Jazeera Steel's weak profit margins (2.5% in 2022 and 3.3% in 2023) reflect weak steel and CSWP demand, while the company has predicted continued "high exports from China and modest recovery of steel demand growth" to continue in 2024. The company has also named North America one of its key export markets.⁶⁸

[56] United Nations Comtrade data provided by Nova indicate that Oman's CSWP exports increased from 7,526 MT in 2020 to 108,944 MT in 2021 but declined to 74,726 MT in 2022 and 47,320 MT in 2023.⁶⁹ The Tribunal notes that the figures for 2020 and 2021 may be distorted by impacts of the COVID-19 pandemic and subsequent reopening, while Nova suggests and the Tribunal accepts that the figure for 2023 is likely underreported due to missing import data for several of Oman's largest export markets.

⁶¹ *Ibid.* at 355, 357, 362.

⁶² *Ibid.* at 337, 339, 376.

⁶³ *Ibid.* at 182, 387–381.

⁶⁴ *Ibid.* at 439–443; Exhibit RR-2023-003-A-02 (protected) at 227, 686.

⁶⁵ Exhibit RR-2023-003-A-01 at 44, at tables 13, 14, at 445–492.

⁶⁶ *Ibid.* at 161, 523, 607, 635–636.

⁶⁷ *Ibid.* at 49, at Table 16, at 524–538, 583, 598, 604, 611.

⁶⁸ *Ibid.* at 524, 605–610, 614. Nova calculated net profit margins for Al Jazeera Steel as the profit before tax divided by revenues.

⁶⁹ Exhibit RR-2023-003-A-01 at 445–492.

South Korea

[57] South Korea has the world's sixth-largest steelmaking capacity according to the Organisation for Economic Co-operation and Development and is Asia's fourth-largest exporter (after China, India and Türkiye) of steel pipes, tubes and hollow profiles.⁷⁰ The IMF estimates South Korea's GDP growth at 1.4% in 2023, down from 4.3% in 2021 and 2.6% in 2022, though this is expected to recover to 2.3% in 2024 and 2025.⁷¹ The Tribunal agrees with Nova's submission that a shift to lower government spending growth since 2022 will likely weaken infrastructure spending but that government supports for the steel industry specifically will likely support production in that sector despite weak domestic demand.⁷²

[58] The Tribunal also accepts the evidence submitted by Nova, based on reported welded and electric resistance welded pipe capacity for some of South Korea's largest producers, indicating CSWP production capacity of over 4.3 million MT. Nova submits that this is conservative, as it omits several producers as well as planned capacity upgrades.⁷³

[59] Domestic steel demand in South Korea dropped sharply in 2022 due to declining investment and construction activity, with a "mild" recovery expected through 2024 following "years of contraction" in the construction sector.⁷⁴ The Tribunal notes the evidence of statements by South Korean producers indicating a focus on exports, including to North America, although trade data indicate Korean CSWP exports declined slightly from 273,029 MT in 2020 to 243,273 MT in 2023.⁷⁵

Thailand

[60] Thailand's economy continues to struggle with reduced tourism as it recovers from the COVID-19 pandemic. After growing at only 1.5% in 2021 and 2.6% in 2022, evidence provided indicates that Thailand's GDP grew slower than expected (2.5%) in 2023 and is projected to increase moderately and then stabilize at 3.2% in 2024 and 3.1% in 2025.⁷⁶ Nova submitted evidence estimating Thai CSWP production capacity at 950,000 MT.⁷⁷

[61] Although capacity utilization figures for CSWP specifically are unavailable, Thailand's capacity utilization rate as of mid-2023 was 33% for steel bar and long products, 24% for flat products, and below 30% for steel products generally. Despite this, the evidence indicates likely continued increases in steel production capacity, while domestic steel demand is expected to remain flat as the construction sector struggles with high inflation and lack of public infrastructure spending due to political tensions following the May 2023 general election.⁷⁸

[62] Nova also submitted evidence that Thailand's domestic CSWP prices are declining and that steel producers will focus on export markets outside their local region due to domestic competition from Chinese imports and generally increasing steel production capacity in China and Association of

⁷⁰ *Ibid.* at 215–219, 317–318, 322–324.

⁷¹ *Ibid.* at 261, 369.

⁷² *Ibid.* at 650–657.

⁷³ *Ibid.* at 659–668; Exhibit RR-2023-003-A-02 (protected) at 55, at Table 18, at 913–1008.

⁷⁴ Exhibit RR-2023-003-A-01 at 178, 181, 670, 672.

⁷⁵ *Ibid.* at 57–58, at para. 157, at 674–687.

⁷⁶ *Ibid.* at 158, 688–690.

⁷⁷ *Ibid.* at 702–707; Exhibit RR-2023-003-A-02 (protected) at 60, at para. 166, at Table 20, at 1052–1076.

⁷⁸ Exhibit RR-2023-003-A-01 at 691–700, 709–733.

Southeast Asian Nations countries.⁷⁹ Nova submits that Thailand's exports of CSWP have increased from 110,192 MT in 2020 to 166,394 MT in 2023, and that steel exports are an explicit priority of the Thai government via the public arm's-length Iron and Steel Institute of Thailand.⁸⁰

UAE

[63] According to the World Bank, the UAE's GDP grew by 3.5% in 2021 and 6.6% in 2022. However, it was estimated to moderate to 3.4% growth in 2023 and projected to then stabilize at 3.7% in 2024 and 3.8% in 2025.⁸¹ The construction industry is projected to grow by 3% annually from 2025 through 2028, supported by upcoming infrastructure projects.⁸² However, evidence also suggests that UAE CSWP producers will likely face continued strong competition from Chinese steel exports to the UAE, which rose by 34% from 2021 to 2022 and by a further 83% year-over-year in interim period 2023.⁸³

[64] Nova submitted evidence estimating total production capacity of UAE producers subject to the finding at over 2.2 million MT, with total (subject and non-subject) capacity over 3.2 million MT.⁸⁴ UAE exports of CSWP increased from 102,957 MT in 2020 to 219,913 MT in 2023,⁸⁵ although the Tribunal notes that this appears to reflect exports of all products under HS code 7306.30 and therefore almost certainly includes some non-subject goods. Nova argued that the level of non-subject exports to Canada from the UAE over the POR, when compared to the level of subject exports from the UAE over the same period, indicates that UAE exporters of CSWP would likely resume selling large volumes of dumped CSWP into Canada if the finding were rescinded.⁸⁶ The Tribunal notes the evidence of statements by several UAE producers suggesting that they are generally export-oriented, including with respect to Canada.⁸⁷

Domestic market conditions

[65] Overall, the evidence indicates that the Canadian economy is in a period of weak but stable growth. Bank of Canada data indicate Canadian GDP growth dropping from 3.8% in 2022 to just 1.0% in 2023 and 0.8% in 2024, before recovering to 2.4% in 2025. Evidence indicates that inflation remained high, estimated at 3.9% in 2023 but then will lower to 2.8% in 2024 and 2.2% in 2025.⁸⁸ Construction investment increased significantly post-COVID-19 but has since moderated in the face of rapidly rising interest rates and tight labour markets, with evidence of growth closer to 1% from 2022 to 2023.⁸⁹ Canada's construction sector, though forecast to contract by 5.2% in 2023, is then projected to stabilize and maintain 2.7% growth between 2025 and 2027. The Tribunal accepts

⁷⁹ *Ibid.* at 695–698, 736–752.

⁸⁰ *Ibid.* at 753–763.

⁸¹ *Ibid.* at 161.

⁸² *Ibid.* at 777–780.

⁸³ *Ibid.* at 489–492, 781–782.

⁸⁴ *Ibid.* at 787–804; Exhibit RR-2023-003-A-02 (protected) at 67, at para. 191, at Table 23, at 1160–1184. As with the other estimates of this nature, Nova submitted that this figure is conservative, given the lack of data for several producers.

⁸⁵ Exhibit RR-2023-003-A-01 at 445, 450. Again, Nova submits that the 2023 figure is low due to lack of data from several of its export markets.

⁸⁶ See Exhibit RR-2023-003-A-02 (protected) at para. 197; Exhibit RR-2023-003-06 (protected) at Table 8.

⁸⁷ Exhibit RR-2023-003-A-01 at 800, 824–828.

⁸⁸ *Ibid.* at 1253.

⁸⁹ *Ibid.* at 1271–1274.

Nova's submission that these dynamics will support stable demand for steel in the next 12 to 24 months, noting responses from the importers' questionnaire that anticipated stable demand for CSWP as economic weakness is balanced by declining inventory levels,⁹⁰ following on from an inventory overhang in early 2023.⁹¹

[66] DFI referred to its questionnaire response in submitting that ongoing changes in the Canadian oil and gas industry, including market volatility, changes in the uses of CSWP in that sector, and regulatory uncertainty have hampered new exploration and drilling activity (and related demand for CSWP) despite the recent commodity price recovery.⁹²

[67] The USW, for its part, highlighted the same factors affecting Canadian economic performance generally and the construction industry specifically, noting the 44% contraction in the Canadian CSWP market between interim 2022 and 2023, a reduction of 68,271 MT.⁹³

Conclusion on market conditions

[68] The uncontroverted evidence on the record indicates that producers and exporters of subject goods face a weakening global economy characterized by slowing economic growth in the short term. Although global economic growth is generally projected to stabilize in 2024 and 2025, the evidence indicates that the construction sector (the source of most demand for CSWP) will likely lag due to high interest rates and declining public infrastructure investment, notably in the subject countries.

[69] Meanwhile, global production capacity (of steel products generally and CSWP specifically), including in the subject countries, continues to increase despite considerable excess capacity. Evidence on the record indicates that producers in the subject countries, which are already export-oriented, face price competition in their domestic markets from imports, especially from China, which is likely to generate downward pressure on their own prices and an even greater incentive to seek export markets, especially those with higher prices.

[70] The evidence indicates that these factors accurately describe the international market conditions affecting subject goods when considered on a cumulated basis, even if not all factors affect each subject country to the same extent. For example, although growth in India's economy generally, and its construction sector specifically, is expected to remain relatively robust (while still declining) in the next 24 months, the sheer scale of its absolute and planned additional production capacity suggests to the Tribunal a strong incentive to seek out export markets during that period, including Canada.

⁹⁰ *Ibid.* at 1274–1279; Exhibit RR-2023-003-16.12B at 15; Exhibit RR-2023-003-16.11 at 14.

⁹¹ Exhibit RR-2023-003-A-01 at 117–118; Exhibit RR-2023-003-A-02 (protected) at 117–118; Exhibit RR-2023-003-05 at Table 13; Exhibit RR-2023-003-06 (protected) at Table 13; Exhibit RR-2023-003-A-03 at 17–18; Exhibit RR-2023-003-A-05 at 4–5; Exhibit RR-2023-003-16.03 at 12. Although the Tribunal finds that there is sufficient evidence to support a finding that there was an inventory overhang, it observes that the evidence submitted by Nova in this regard appears to be based on its market intelligence and CBSA data on imports from non-subject countries which were higher than the estimates in the investigation report. The Tribunal notes that it is not clear if, or to what extent, those estimates were refined to remove non-CSWP from HS code data.

⁹² Exhibit RR-2023-003-13.07A at 8, 9, 11.

⁹³ Exhibit RR-2023-003-05 at tables 12, 13.

[71] Against this backdrop of international market conditions, the Canadian market is likely to remain attractive to exporters of subject goods due to its stable, if weak, economic growth generally and construction investment specifically and its associated demand for CSWP. As discussed in the following sections, the Canadian CSWP market is also characterized by relatively high prices and a sustained penetration by subject goods, even in the presence of the order.

Likely import volume of the subject goods if the order expires

[72] The Regulations⁹⁴ provide that the Tribunal may consider the likely volume of the dumped or subsidized goods and, in particular, whether there is likely to be a significant increase in the volume of imports of the dumped or subsidized goods, either in absolute terms or relative to the production or consumption of like goods if the order is allowed to expire.

[73] In assessing the likely volumes of dumped and subsidized imports, the Tribunal may consider factors such as the likely performance of the foreign industry, the potential for foreign producers to produce goods in facilities that are currently used to produce other goods, evidence of the imposition of anti-dumping and/or countervailing measures in other jurisdictions, and whether measures taken by other jurisdictions are likely to cause a diversion of the subject goods to Canada.⁹⁵

[74] Considering the foregoing framework, and the evidence on the record, the Tribunal makes the following findings, in light of the evidence highlighted, which it found to be relevant and credible.

Recent import volumes of the subject goods

[75] During the POR, the evidence demonstrated that the subject goods continued to be present in the Canadian market. In this connection, the Tribunal notes that the absolute volume of subject goods increased by over 1000% in 2021 and a further 51% in 2022. The volume then declined by 38% in interim period 2024 compared to the same period of 2023.⁹⁶ Volumes in most periods were considerably higher than volumes imported during the previous POR in RR-2017-005.⁹⁷ Finally, the Tribunal further observes that imports relative to domestic production and domestic sales of like goods also increased in 2022 and 2023 but declined between the two interim periods.⁹⁸

[76] Altogether, the Tribunal finds that the foregoing demonstrates that there was proven market penetration of the subject goods during the POR, notwithstanding the presence of the order.

⁹⁴ See paragraph 37.2(2)(a) of the Regulations.

⁹⁵ Paragraphs 37.2(2)(a), (d), (f), (h) and (i) of the Regulations.

⁹⁶ Exhibit RR-2023-003-06 (protected) at tables 12, 13; Exhibit RR-2023-003-05 at tables 12, 13.

⁹⁷ Exhibit RR-2023-003-09 (protected) at Table 4.

⁹⁸ Exhibit RR-2023-003-06 (protected) at Table 11.

Likely import volumes if the order expires

[77] Nova and the other supporting parties argued that several factors would result in a likely increase in the volume of subject imports if the order expired. These include the following:

- Certain market conditions globally and within the subject countries such as the availability of supply resulting from large capacity levels of the subject goods in the subject countries; forecast weakened demand and prices in the foreign producers' domestic and regional markets; and trade restrictive measures on CSWP and similar products in other countries.
- High fixed costs resulting in an export orientation for producers of the subject goods and the relative attractiveness of the Canadian market as a destination for those goods.
- The potential for shifting production capacity currently used to produce similar products to CSWP, and the presence of established distribution channels for the subject goods and similar goods in Canada.

[78] The Tribunal finds that the evidence supports the foregoing arguments.

[79] Nova submitted evidence pertaining to production capacity, production, sales in domestic and export markets, and export orientation of producers in the subject countries.⁹⁹ It calculated that the subject countries have over 15 million tonnes of production capacity¹⁰⁰ and exported over a million tonnes of CSWP in 2023.¹⁰¹ The Tribunal observes that, while this calculation undoubtedly includes capacity already in use to produce products outside the scope of the product definition, it nevertheless indicates that the subject countries have high levels of capacity that could be used to produce CSWP and that producers in the subject countries engage in significant export activity.

[80] Additionally, the Tribunal has already found that the price and demand for CSWP are likely to be weak within the subject countries.¹⁰²

[81] Turning to global trade restrictive measures relevant to the subject goods, the Tribunal observes that several countries have anti-dumping and other trade restrictive measures on CSWP or similar products from the subject countries, which Nova argued increases the likelihood of the resumption of large volumes of subject goods being exported to Canada.¹⁰³ In the U.S., for example, CSWP imports from Thailand, India, Chinese Taipei, Oman and the UAE are subject to a 25% Section 232 tariff, while CSWP imports from South Korea are subject to a quota.¹⁰⁴ The

⁹⁹ See, for example: Exhibit RR-2023-003-A-01 at 179–185, 269–270, 273–278, 285–287, 337–340, 384–389, 390–391, 394–396, 401, 403–405, 407, 410–411, 419, 429–431, 445–448, 524–525, 527, 532–533, 598, 604, 609, 611, 649, 659, 662, 672, 674, 686–687, 691–693, 702–707, 726, 733, 736, 753–763, 787, 790–800, 803–804, 824–828; Exhibit RR-2023-003-A-02 (protected) at 288–330, 439–628, 826–832, 913–1009, 1052–1076, 1160–1184.

¹⁰⁰ Including capacity of excluded exporters: 200,000 tonnes for Chung Hung (Chinese Taipei) and 990,000 tonnes for Conares (UAE).

¹⁰¹ See subject country export figures at tables 6, 13, 17, 19, 21, 24 of Exhibit RR-2023-003-A-02. Export data for Chinese Taipei and the UAE include exports by excluded exporters.

¹⁰² See the Tribunal's discussion on international market conditions above.

¹⁰³ Exhibit RR-2023-003-A-01 at 830–1224, summarized in Table 25 of Exhibit RR-2023-003-A-01.

¹⁰⁴ Exhibit RR-2023-003-A-01 at 830–831, 1165–1170.

European Union and United Kingdom also extended or are considering extending safeguard measures on steel products, including CSWP.¹⁰⁵ The Tribunal finds that the existence of measures restricting or discouraging exports from the subject countries to other markets are likely to make Canada a relatively more attractive market for the subject goods if the finding expired.

[82] Further, parties advanced that the relatively higher CSWP prices in North America compared to other export markets contribute to the relative attractiveness of Canada as a destination for the subject goods. There are no published pricing data for CSWP; nevertheless, CRU publishes prices for HRC which accounts for 85% of production costs for CSWP. Nova submitted data showing that HRC prices in the U.S. Midwest, which it submits is a reasonable proxy for Canadian prices, exceed those in other markets.¹⁰⁶ The Tribunal considers these to be reasonable assumptions supporting the inference that CSWP prices in North America are high relative to other markets.

[83] In terms of demand specifically within Canada, Nova submitted, and the Tribunal accepts, that demand for steel, though not booming, will maintain a healthy growth trajectory boosted by increased public-sector investment and moderate investments in residential housing construction, renovation and maintenance projects. In particular, the Tribunal observes that forecasts for the housing sector, residential renovation and maintenance, and construction sector all expect some growth in the next 24 months.¹⁰⁷ The strength of demand for the subject goods within the Canadian market was also illustrated by evidence tendered by DFI, which indicated that it primarily sells CSWP for use in the energy sector in Western Canada and submitted that there is hope for increased demand in 2024–2025, given that well drilling activity has increased in 2023 over 2022 and is forecast by DFI to increase even more in 2024 due to one of two major pipeline construction projects expected to be commissioned in Q2 2024.¹⁰⁸

[84] Turning to the subject of costs, in RR-2017-005, the Tribunal found that producers of CSWP have high fixed costs that provide an incentive to sell at low prices to increase capacity utilization.¹⁰⁹ Nova submitted, and the Tribunal agrees, that this continues to be a characteristic of CSWP that is likely to lead to increased volumes of imports of subject goods if the order expires. The Tribunal considers that this production imperative would encourage exporters to increase production for export to Canada as long as the market is receptive to it.

[85] Considering the parties' arguments concerning the ability of foreign producers to harness existing distribution channels and production capacity for goods similar to CSWP to facilitate market access for the subject goods, the Tribunal accepts that production could be shifted to the subject goods if there were an advantage to do so. For example, Nova pointed to Statistics Canada data showing imports of CSWP in diameters exceeding those of the product definition from subject countries in 2022 and 2023.¹¹⁰ It argued, and the Tribunal accepts, that producers could easily shift production to the subject goods if the order expires and take advantage of existing distribution channels in Canada.

¹⁰⁵ *Ibid.* at 832-1104, 1230–1249.

¹⁰⁶ Exhibit RR-2023-003-A-02 (protected) at 227; Exhibit RR-2023-003-A-01 at 227. Nova explained that Canadian prices are lower than U.S. Midwest prices but higher than prices in other markets.

¹⁰⁷ Exhibit RR-2023-003-A-02 (protected) at 1669–1678; Exhibit RR-2023-003-A-01 at 1270–1279.

¹⁰⁸ Exhibit RR-2023-003-13.07A at 9.

¹⁰⁹ *Carbon Steel Welded Pipe* (15 October 2018), RR-2017-005 (CITT) at para. 68.

¹¹⁰ Exhibit RR-2023-003-A-01 at 1280–1283.

[86] Having considered the totality of the evidence and arguments presented, the Tribunal concludes that the current international and domestic market conditions make it likely that the expiry of the order will attract significant volumes of the subject goods to Canada. Relevant factors supporting this finding include the supply of the subject goods in domestic and international markets, the export orientation of the subject countries, tepid demand (both inside the subject countries and worldwide) and associated decreasing prices in relation to CSWP, and the relative attractiveness of the Canadian market where subject imports have established channels of distribution and proven sustained market penetration. The Tribunal observes that this was sustained even with the order in place. Taken together, the Tribunal considers that these elements are likely to provide an environment where the expiry of the order will attract significantly increased volumes of CSWP to Canada over the next 24 months.

Likely price effects if the order expires

[87] The Tribunal will next consider whether, if the order expires, the subject goods are likely to significantly undercut the prices of domestically produced like goods in the domestic market, depress those prices, or suppress those prices by preventing increases that would likely have otherwise occurred.¹¹¹ In this regard, the Tribunal distinguishes the price effect of the subject goods from any price effects that would likely result from other factors affecting prices.¹¹²

[88] The Tribunal begins by noting market trends from the POR. In this regard, the Tribunal finds that investigation report data reveal that the subject goods were present in the market during the POR and undercut the price of like goods even with duties in place.

[89] To begin, the Tribunal observes that Thailand was the price leader among all import sources during the POR, and the subject country had the highest share among subject goods and gained market share over the POR.¹¹³ More generally, the average selling price of imports from subject countries undercut the average price of like goods in all periods except for 2020.¹¹⁴ In periods where there was undercutting, the degree of undercutting increased year over year. In 2021 and 2022, the widening gap was largely due to the increase in the price of like goods.¹¹⁵ While the prices of imports from subject countries are largely based on CBSA enforcement data, which do not include delivery to Canada, the Tribunal notes that the undercutting trend remains the same when adding the maximum delivery cost that was reported in questionnaire responses to estimate a delivered price for the subject goods trend. Specifically, the Tribunal observes that the estimated delivered prices of the subject goods undercut the prices of the like goods in each period of the POR, except for in 2020.¹¹⁶

¹¹¹ Paragraph 37.2(2)(b) of the Regulations.

¹¹² *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (13 May 2022), RR-2021-001 (CITT) at para. 170.

¹¹³ Exhibit RR-2023-003-05 at Table 14; Exhibit RR-2023-003-06 (protected) at tables 14, 24.

¹¹⁴ Exhibit RR-2023-003-06 (protected) at Table 24; Exhibit RR-2023-003-05 at Table 25.

¹¹⁵ Exhibit RR-2023-003-05 at Table 25.

¹¹⁶ Exhibit RR-2023-003-17.15A (protected) at 4–35; Exhibit RR-2023-003-17.11 (protected) at 4–35; Exhibit RR-2023-003-17.06C (protected) at 4–35; Exhibit RR-2023-003-17.03 (protected) at 5–36; Exhibit RR-2023-003-17.12B (protected) at 5–36; Exhibit RR-2023-003-17.07B (protected) at 2–33; Exhibit RR-2023-003-17.16 (protected) at 5–33; Exhibit RR-2023-003-17.13 (protected) at 4–35; Exhibit RR-2023-003-17.10A (protected) at 4–35; Exhibit RR-2023-003-17.09 (protected) at 4–35; Exhibit RR-2023-003-17.01A (protected) at 1; Exhibit RR-2023-003-17.05A (protected) at 3; Exhibit RR-2023-003-17.08A (protected) at 2–33; Exhibit RR-2023-003-17.17A (protected) at 4–35.

[90] Both the average price of like goods and the average price of imports from subject countries tracked on the same trend as the aggregate market. The aggregate market price increased in each year of the POR, then decreased in the interim period.¹¹⁷ The Tribunal therefore finds that the apparent undercutting during the POR does not appear to have depressed prices of the like goods.

[91] Finally, the average price of non-subject imports did not undercut the price of like goods during the POR.¹¹⁸ However, the Tribunal observes that the price leader among the non-subject imports undercut the price of like goods in every period of the POR.¹¹⁹

Likely price undercutting and price depression

[92] Nova and Atlas argued that, if the order expires, exporters in the subject countries will likely sell subject goods at low prices that will undercut, depress and suppress the domestic industry's prices. In the Tribunal's view, the parties' evidence supports the view that price undercutting and price depression is likely in the absence of the market discipline afforded by the order.

[93] To begin, the evidence establishes that CSWP is a commodity product with price transparency and trades primarily on price in the market. This conclusion is supported by producers' questionnaires and party submissions which convey CSWP as a commodity that trades primarily on price, and whose market price can be established by imported goods due to the level of price transparency in the market.¹²⁰ The Tribunal notes that this view is consistent with evidence provided by producers which suggests that CSWP is sensitive to price erosion.¹²¹ It is also consistent with the Tribunal's previous findings related to the subject goods.¹²²

[94] There is also significant evidence to support the view that price competition for commodity products, as detailed above, would likely cause exporters in the subject countries to sell subject goods at low prices that would result in the domestic industry's prices being undercut and depressed. For example, as already detailed, DFI argued that CSWP is sensitive to price erosion.¹²³ Atlas demonstrated first-hand experience with an importer willing to switch to lower-priced imports.¹²⁴ The USW, for its part, argued that the price leaders have already disrupted the Canadian market and that their prices are indicative of likely prices if the order expires.¹²⁵

[95] Mr. Gravel from Nova stated that the company is experiencing price pressure from imports and has to lower price offers to remain competitive, and he expects that, if the order expires, prices will be reduced even further.¹²⁶ He noted that Nova's prices can change based on the cost of materials and price of other offers, namely, imports circulating in the market.¹²⁷ Mr. Gravel also stated that customers often share with Nova the price of import offers, which has caused it to reduce

¹¹⁷ Exhibit RR-2023-003-05 at Table 25.

¹¹⁸ Exhibit RR-2023-003-06 (protected) at Table 24

¹¹⁹ *Ibid.* at Table 24.

¹²⁰ Exhibit RR-2023-003-13.07A at 8, 10.

¹²¹ *Ibid.* at 12.

¹²² *Carbon Steel Welded Pipe* (15 October 2018), RR-2017-005 (CITT) at para. 26.

¹²³ Exhibit RR-2023-003-13.07A at 12.

¹²⁴ Exhibit RR-2023-003-14.08A (protected) at 32.

¹²⁵ Exhibit RR-2023-003-06 (protected) at Table 24.

¹²⁶ Exhibit RR-2023-003-A-06 (protected) at para. 11; Exhibit RR-2023-003-A-05 at para. 11.

¹²⁷ Exhibit RR-2023-003-A-06 (protected) at para. 15; Exhibit RR-2023-003-A-05 at para. 15.

its price in order to remain competitive.¹²⁸ As well, he explained that negotiations with this type of competition has continued into Q1 2024.¹²⁹ Nova argued that it has experienced pricing pressures from countries with findings in place and gave examples of instances where its price was undercut by offers of imports from Thailand and other countries subject to Tribunal findings on CSWP.¹³⁰ Indeed, the Tribunal observes that the investigation report reveals a similar phenomenon, showing that even prices of imports from countries subject to a Tribunal order can still undercut the price of like goods. Domestic producers have demonstrated instances where they have lowered their prices in order to compete with the low-priced imports, even if average domestic selling prices increased over the POR.¹³¹

[96] The Tribunal notes that Nova also argued that the domestic industry's price without Evraz would be more representative of domestic producer pricing because of its unique position as an actor in this market.¹³² Even so, Nova submitted undercutting scenarios that include and exclude Evraz as part of the domestic industry. The Tribunal observes that investigation report data show that the price of subject goods undercut the price of like goods during the POR whether including or excluding Evraz.¹³³ This indicates that undercutting would likely occur regardless of whether Evraz's sales of CSWP are considered.

[97] Considering the above, the Tribunal is persuaded that the prices of like goods are likely to be undercut and depressed by the subject goods in the absence of market discipline.

Likely price suppression

[98] In his testimony, Mr. Gravel of Nova stated that, if the order expires, domestic producers will need to reduce their prices to compete with the subject goods, which will result in them not being able to increase prices when costs increase.¹³⁴ However, little evidence was submitted to indicate that input costs will likely increase in the next 24 months. Nova submitted that HRC makes up 85% of the total cost of production of CSWP and, based on CRU HRC prices, concluded that HRC prices are volatile. However, the Tribunal observes that year-over-year rates of change indicate that the U.S. Midwest (as well as Germany, Italy, and the United Kingdom) HRC price has declined in 2022 and 2023.¹³⁵ In the absence of evidence that this trend is likely to reverse in the near future, the Tribunal is not persuaded that domestic producers would have to raise their prices to offset increases in material input costs. As such, although price suppression may happen should costs increase significantly, given the generally declining recent trend in input costs as well as the more recent decline in market pricing, there is insufficient evidence to conclude that, should the order expire, the subject goods are likely to suppress the prices of like goods by preventing increases that otherwise would have occurred.

¹²⁸ Exhibit RR-2023-003-A-05 at paras. 26–28; Exhibit RR-2023-003-A-06 (protected) at para. 63; Exhibit RR-2023-003-A-05 at para. 63; Exhibit RR-2023-003-A-06 (protected) at 41–42, 52–55, 60–62.

¹²⁹ Exhibit RR-2023-003-A-06 (protected) at 63–65, 72–73, 75.

¹³⁰ *Ibid.* at 32–40, 42.

¹³¹ Exhibit RR-2023-003-05 at tables 24–25; Exhibit RR-2023-003-06 (protected) at Table 24.

¹³² Exhibit RR-2023-003-13.04A at 8.

¹³³ Exhibit RR-2023-003-06 (protected) at tables 12, 24.

¹³⁴ Exhibit RR-2023-003-A-05 at para. 27.

¹³⁵ Exhibit RR-2023-003-A-02 (protected) at 227.

Conclusion on likely price effect if the order expires

[99] Considering the totality of the evidence that has been presented, and for the reasons outlined above, the Tribunal concludes that, if the order expires, the subject goods are likely to undercut and depress the prices of the like goods over the next 24 months. Unrestrained by the discipline afforded by the order, the prices of the subject goods will likely converge to the price of the subject or non-subject goods that is the lowest at a given time. Those prices will likely significantly undercut the prices of the like goods, as they already have during the POR while the order has been in place, only henceforth to a more significant degree. The Tribunal also finds that prices of the subject goods will likely remain depressed in that context.

Likely impact of the subject goods on the domestic industry

[100] The Tribunal will assess the likely impact of the above volumes and prices on the domestic industry if the order expires,¹³⁶ taking into consideration the likely performance of the domestic industry. In this analysis, the Tribunal distinguishes the likely impact of the dumped and subsidized goods from the likely impact of any other factors affecting or likely to affect the domestic industry.¹³⁷

Recent performance of the domestic industry

[101] The domestic industry has seen mixed results across a number of factors during the POR, notwithstanding the current order's mitigating effects. Domestic production of like goods declined by 11% in 2021 but increased by 26% in 2022, then declined by 13% between interim periods. The decline in 2022 was driven largely by a decline in production for export sales, while the decline in interim period 2023 was driven by production for export sales.¹³⁸ Production for domestic sales represented an increasing share of total domestic production of like goods during the POR.¹³⁹ Overall, the volume of domestic sales from domestic production increased during the POR but more recently has experienced a decline. Data show that sales increased by 1% in 2021 and by 21% in 2022; however, they subsequently decreased by 11% between interim periods.¹⁴⁰ Export sales, on the other hand, experienced an overall decline between 2020 and 2022 but increased by 10% between interim periods.¹⁴¹

[102] The domestic industry's Canadian market share was characterized by similarly uneven results, with domestic producers suffering a decrease in market share by 4 percentage points in 2021 but rebounding by 2 percentage points in 2022. During the interim period between January and September 2023, domestic producers gained 13 percentage points to reach 37% of the domestic market share over the same period in the previous year.¹⁴² However, the Tribunal observes that the share of sales of imports of the subject goods from dumping countries also increased during the POR from 2020 to 2022, and in the interim period during 2023, portending increased competition from subject countries.¹⁴³

¹³⁶ Paragraphs 37.2(2)(e) and (g) of the Regulations.

¹³⁷ See paragraph 37.2(2)(k) of the Regulations.

¹³⁸ Exhibit RR-2023-003-06 (protected) at tables 35, 36; Exhibit RR-2023-003-05 at tables 35, 36.

¹³⁹ Exhibit RR-2023-003-06 (protected) at Table 37.

¹⁴⁰ Exhibit RR-2023-003-05 at Table 13.

¹⁴¹ Exhibit RR-2023-003-06 (protected) at tables 35, 36; Exhibit RR-2023-003-05 at tables 35, 36.

¹⁴² Exhibit RR-2023-003-05 at Table 14.

¹⁴³ *Ibid.* at Table 14. The Tribunal observes that sales were driven by sales of imports from Thailand.

[103] The evidence considered by the Tribunal also presented a mixed picture of the domestic industry's financial performance. Fluctuations were observed with respect to both the domestic industry's gross margin and net income during the POR. In terms of gross and net margins expressed as a percentage of net sales revenues, the domestic industry's financial performance on export sales exceeded that of its performance on domestic sales.¹⁴⁴ This uneven trajectory was reflected in the parties' witness testimony and in their submissions. For example, Mr. Jones of Nova referred to the company's deteriorating financial performance during specific periods within the POR.¹⁴⁵ DFI in its submissions referred to the industry's only "recent return to profitability", suggesting that any such gains were attributable to the existence of orders disciplining the importation of CSWP.¹⁴⁶ Softness was also observed in the capacity utilization rate during the POR, with Mr. Jones describing Nova's capacity utilization for CSWP as "low",¹⁴⁷ and DFI similarly characterizing industry capacity utilization for like goods as "miniscule [*sic*]",¹⁴⁸ characterizations which the Tribunal finds are supported by investigation report data.¹⁴⁹

[104] Finally, the Tribunal notes that key employment indicators also at times oscillated during the POR. The number of direct employees in the domestic industry as defined for the purposes of this expiry review was stable from 2020 to 2021 but increased by 46% in 2022 and by 17% between interim periods, and hours worked followed a similar trend. Wages paid, however, declined by 15% in 2021 despite a relatively steady number of employees and hours worked. Trends reversed in the following year with wages increasing by 86% in 2022 and a further 10% between interim periods.¹⁵⁰ The domestic industry also made several investments throughout the POR and forecast continued investments in the coming months.¹⁵¹

[105] In general, the parties argued, and the Tribunal accepts, that, notwithstanding a picture of a somewhat strengthened domestic industry over the POR, any gains which have been observed are tenuous. In this connection, the Tribunal found the following arguments and related evidence to be credible and supportive of the foregoing conclusion.

[106] First, citing investigation report data, DFI argued that the majority of gains to the domestic industry's margin contribution "was generated by factory utilization for [o]ther [g]oods produced on the same equipment and not the CSWP in question", noting that CSWP production is a low percentage of producer net income compared to the other products. DFI also argued that significant

¹⁴⁴ Exhibit RR-2023-003-06 (protected) at tables 30, 31, 33; Exhibit RR-2023-003-05 at tables 30, 31, 33.

¹⁴⁵ Exhibit RR-2023-003-05-A-03 at para. 72.

¹⁴⁶ Exhibit RR-2023-003-05-C-01 at paras. 37–38. The Tribunal also considered further evidence on the domestic industry's financial performance within the following exhibits: Exhibit RR-2023-003-05 at Table 31; Exhibit RR-2023-003-06 (protected) at Table 31; Exhibit RR-2023-003-06 (protected) at Table 30; Exhibit RR-2023-003-05 at Table 30.

¹⁴⁷ Exhibit RR-2023-003-A-03 at 23–24.

¹⁴⁸ Exhibit RR-2023-003-C-01 at 14; Exhibit RR-2023-003-05 at tables 30, 35; Exhibit RR-2023-003-06 (protected) at tables 30, 35.

¹⁴⁹ Exhibit RR-2023-003-05 at Table 35; Exhibit RR-2023-003-06 (protected) at Table 35.

¹⁵⁰ Exhibit RR-2023-003-05 at Table 36.

¹⁵¹ See, for example, Exhibit RR-2023-003-C-01 at 15; Exhibit RR-2023-003-13.07 at 3; Exhibit RR-2023-003-22.02 at 5–6.

domestic excess capacity persists even with an order in place, and DFI advanced that this view is substantiated by industry capacity utilization records.¹⁵²

[107] Second, Nova, and DFI by assent,¹⁵³ provided evidence which in the Tribunal's view emphasized the vulnerability of the domestic industry to injury in the absence of the order. In this connection, Mr. Jones of Nova stated that CSWP is highly sensitive to changes in market pricing and input costs. He further asserted that evidence of Nova's "deteriorating financial performance in the most recent period" in the face of offshore imports he characterized as being "aggressive on price" illustrated the risks to the domestic industry if the order expires.¹⁵⁴ The Tribunal finds the foregoing also highlights the damaging effects of the price undercutting endured by the domestic industry during the POR. Considering market demand for CSWP generally, Nova argued that any contractions reflected in the investigation report were exaggerated in terms of actual Canadian demand, in light of evidence concerning a CSWP inventory overhang in early 2023, and that actual consumption of CSWP saw a modest increase in 2022, as shown, among other factors, by importer reports of recovery in market demand.¹⁵⁵ Nova also attributed the domestic industry's 37% increase in market share to this excess inventory, suggesting that the gains shown by domestic producers were artificial and unlikely to be maintained.¹⁵⁶

[108] Finally, considering the employment data which formed part of the record, several parties offered evidence suggesting that investigation report figures in this respect should not be considered a reliable marker of the domestic industry's overall health.¹⁵⁷

[109] Assessing the above, the Tribunal considers that the evidence presented supports the view that the order which has been in place has had taming effects on the potential for injury posed by imports of the subject goods during the POR. The data also demonstrate that low-priced competition from subject countries pertaining to the subject goods has had a negative impact on the domestic

¹⁵² Exhibit RR-2023-003-C-01 at 14; Exhibit RR-2023-003-05 at tables 12, 30, 35; Exhibit RR-2023-003-06 (protected) at tables 12, 30, 35. The Tribunal further observes that the domestic industry's reported practical plant capacity is over 1.5 million tonnes per year, while the Canadian market during the POR peaked at just 185,583 tonnes. It is therefore likely that the domestic industry would experience substantial excess capacity regardless of the outcome of the expiry review, thereby diminishing the cogency of DFI's argument in this respect.

¹⁵³ The Tribunal notes that DFI indicated that it supported the entirety of Nova's submissions. See Exhibit RR-2023-003-C-01 at 4.

¹⁵⁴ Exhibit RR-2023-003-A-03 at 20–22. In making this point, the Tribunal notes that Nova relied on investigation report data as well as its own financial reports. See also, for example: Exhibit RR-2023-003-05 at Table 14; Exhibit RR-2023-003-06 (protected) at Table 14; Exhibit RR-2023-003-05 at Table 12; Exhibit RR-2023-003-06 (protected) at Table 12.

¹⁵⁵ Exhibit RR-2023-003-A-01 at 117–118; Exhibit RR-2023-003-A-02 (protected) at 117–118; Exhibit RR-2023-003-05 at Table 13; Exhibit RR-2023-003-06 (protected) at Table 13; Exhibit RR-2023-003-A-03 at 17–18; Exhibit RR-2023-003-A-05 at 4–5; Exhibit RR-2023-003-16.03 at 12.

¹⁵⁶ In this connection, Nova observed, and the Tribunal accepts, that the Canadian market for CSWP increased from 138,005 MT in 2020 (which they characterize as lower than usual) to 162,701 MT in 2021 and to 185,583 MT in 2022. It assigned the growth in 2021 and 2022 to pent-up demand after the COVID-19 pandemic, including the construction of new distribution centres to respond to the increase in online shopping which occurred during the pandemic. It further asserted that the slowed growth observed in 2022 is a result of rising inflation and interest rates which dampened construction demand and left customers with large inventories in late 2022, ultimately impacting purchases in 2023. See Exhibit RR-2023-003-05 at Table 12; Exhibit RR-2023-003-A-05 at 4–5.

¹⁵⁷ Exhibit RR-2023-003-A-03 at 23–25; Exhibit RR-2023-003-A-04 (protected) at 23–25; Exhibit RR-2023-003-D-01 at 20–22; Exhibit RR-2023-003-D-02 (protected) at 20–22; Exhibit RR-2023-003-D-03 at 5.

industry during the same period, which, in the Tribunal's view, is a harbinger of likely worsening conditions that would prevail in an undisciplined market in terms of likely impacts on the domestic industry if the order were to expire.

Likely performance of the domestic industry if the order expires

[110] The Tribunal must ultimately assess whether the likely volume and price effects of the subject goods are likely, *in and of themselves*, to result in material injury to the domestic industry. This assessment is considered in the context of the domestic industry's recent performance¹⁵⁸ and, where relevant, takes into account the impact from other factors unrelated to the dumping and subsidizing.

[111] To this end, for reasons outlined above, the Tribunal has already found that prices of the subject goods will likely significantly undercut the prices of the like goods in the absence of the order and that prices will likely remain depressed in that context.

[112] Further, the Tribunal has determined that the expiry of the order would likely result in attracting significantly increased volumes of CSWP to Canada in the near to medium term.

[113] As to the impact on workers, the Tribunal heard credible arguments and evidence which support a finding that the labour environment would deteriorate in the absence of the order. For example, Nova suggested that the absence of a fair trading environment would likely cause the company to claw back investments; this would impact collective bargaining outcomes.¹⁵⁹ DFI projected a deteriorating labour environment within the domestic industry and deferred capital spending in the absence of the order.¹⁶⁰ Finally, the USW's witnesses submitted that the market discipline imposed by the order has been key to improvements to employment levels and employment conditions relating to the subject CSWP, and that rescission of the order poses a threat to developments in these areas.¹⁶¹

[114] The USW also submitted that the Tribunal should consider the negative impact of the rescission of the order on efforts by the domestic industry to create lower carbon versions of like goods in its injury analysis. In this connection, the USW argued that the expiry of the order could produce conditions wherein high carbon weight "dirty" CSWP from subject countries are diverted to Canada due to a shrinking global market for such goods due to, at least in part, a carbon emission trading regime implemented by the European Union.¹⁶² The Tribunal is not averse, in principle, to the prospect of such factors being relevant to its assessment under subsection 37.2(2) of the Regulations, as argued by the USW. However, in the circumstances of this case, the Tribunal was unable to assess the issue because insufficient specific evidence was provided relating to the subject goods and the

¹⁵⁸ Paragraph 37.2(2)(c) of the Regulations directs the Tribunal to examine the likely performance of the domestic industry, taking into account the industry's recent performance, including trends in production, capacity utilization, employment levels, prices, sales, inventories, market share, exports and profits.

¹⁵⁹ Exhibit RR-2023-003-A-03 at 26–28; Exhibit RR-2023-003-A-04 (protected) at 26–28; Exhibit RR-2023-003-22.02 at 9.

¹⁶⁰ Exhibit RR-2032-003-13.07A at 9, 11; Exhibit RR-2023-003-C-01 at 4.

¹⁶¹ Exhibit RR-2023-003-D-03 at 5; Exhibit RR-2023-003-D-03 at 6–9.

¹⁶² Exhibit RR-2023-003-D-01 at 33–35.

like goods and the alleged efforts of the domestic industry to actually produce lower carbon versions of like goods.¹⁶³

[115] Considering the totality of the evidence on the record, the Tribunal finds that the scenarios put forward by the parties in the absence of the order are conservative and therefore realistic. The evidence presented paints a very negative portrait in terms of decreased sales, market share, capacity utilization, gross margin, net income, and ability to raise capital and investment within the domestic industry. The evidence also establishes numerous negative impacts on workers which are likely to result from the rescission of the order, including unfavourable collective bargaining positions, diminished employment levels and hours worked, weakened wages and pensions, and diminished prospects for hiring and training.

[116] With respect to factors other than the subject goods that could cause injury to the domestic industry, the Tribunal notes the declining production of like goods for export sales and export sales volumes cited above.¹⁶⁴ Based on the data considered, the Tribunal recognizes that export performance in the near term could have a negative impact on the domestic industry. However, having accounted for the impact of this factor and ensured not to attribute its effect to the resumption of dumping and subsidizing of the subject goods, the Tribunal is satisfied that the likely injury to the domestic industry resulting from the likely impact of the subject goods in the Canadian market in and of itself supports a finding that the expiry of the order would likely result in material injury to the domestic industry.

[117] Taken together, the Tribunal's assessment is that the evidence supports a finding that the resumption of dumping and subsidizing of the subject goods will likely result, in and of themselves, in material injury to the domestic industry.

CONCLUSION

[118] On the basis of the foregoing analysis, and pursuant to paragraph 76.03(12)(b) of SIMA, the Tribunal continues its order in respect of the subject goods from Chinese Taipei, Oman, Korea, Thailand, India and the UAE.

Eric Wildhaber

Eric Wildhaber

Presiding Member

Georges Bujold

Georges Bujold

Member

¹⁶³ For example, see Exhibit RR-2023-03-D-06 at 467–575, which the Tribunal observes provides some general evidence only.

¹⁶⁴ See the Tribunal's discussion on the [Likely impact of the subject goods on the domestic industry – Recent performance of the domestic industry](#) above.

SEPARATE REASONS OF MEMBER BECKETT

[119] With respect, I do not ascribe to the approach on cumulation taken by my colleagues. I am of the view that a decumulated analysis is required as was done in RR-2017-005. I support the reasoning of the Tribunal on this issue in RR-2017-005 and as further highlighted by the Tribunal in *Rebar I Expiry Review* (RR-2019-003). Under this approach, two separate analyses are required: one assessing the likelihood of injury from the subject goods of Chinese Taipei, Korea, Thailand, Oman and the UAE (the dumping countries), and a separate analysis considering the likelihood of injury from Indian subject goods (the dumping and subsidizing country).

[120] My colleagues have conducted an analysis on subject goods from all countries and have determined to continue the order against all subject countries. I have undertaken separate analyses on the dumped countries and India. For reasons of economy and mootness, I have not provided comprehensive written reasons in this decision, as I have determined that the outcome would be the same, with the order being continued against all subject countries.

Cheryl Beckett

Cheryl Beckett

Member