Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Dumping and Subsidizing

DETERMINATION AND REASONS

Preliminary Injury Inquiry
No. PI-2013-002

Circular Copper Tube

Determination issued
Monday, July 22, 2013

Reasons issued
Tuesday, August 6, 2013

Canada

TABLE OF CONTENTS

PRELIMINARY DETERMINATION OF INJURY i

STATEMENT OF REASONS 1
- BACKGROUND 1
- CBSA'S DECISION TO INITIATE INVESTIGATIONS 1
- SUBMISSIONS ON INJURY AND THREAT OF INJURY 2
  - GLC 2
  - Parties Opposed to the Complaint 2
- ANALYSIS 3
  - Legislative Framework 3
  - Like Goods and Classes of Goods 4
  - Domestic Industry 6
  - Cumulation 6
  - Volume of Dumped and Subsidized Goods 8
  - Effect on the Price of Like Goods 9
  - Impact on the Domestic Industry 11
  - Other Factors 12
  - Threat of Injury 12
- CONCLUSION 13

IN THE MATTER OF a preliminary injury inquiry, pursuant to subsection 34(2) of the *Special Import Measures Act*, respecting:

CIRCULAR COPPER TUBE ORIGINATING IN OR EXPORTED FROM THE FEDERATIVE REPUBLIC OF BRAZIL, THE HELLENIC REPUBLIC, THE PEOPLE'S REPUBLIC OF CHINA, THE REPUBLIC OF KOREA AND THE UNITED MEXICAN STATES

PRELIMINARY DETERMINATION OF INJURY

The Canadian International Trade Tribunal, pursuant to the provisions of subsection 34(2) of the *Special Import Measures Act*, has conducted a preliminary injury inquiry into whether the evidence discloses a reasonable indication that the dumping of circular copper tube with an outer diameter of 0.2 inch to 4.25 inches (0.502 centimetre to 10.795 centimetres), excluding industrial and coated or insulated copper tube, originating in or exported from the Federative Republic of Brazil, the Hellenic Republic, the People's Republic of China, the Republic of Korea and the United Mexican States, and the subsidizing of the above-mentioned goods originating in or exported from the People's Republic of China have caused injury or retardation or are threatening to cause injury.

This preliminary injury inquiry follows the notification, on May 22, 2013, that the President of the Canada Border Services Agency had initiated investigations into the alleged injurious dumping and subsidizing of the above-mentioned goods.

Pursuant to subsection 37.1(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby determines that there is evidence that discloses a reasonable indication that the dumping and subsidizing of the above-mentioned goods have caused injury or are threatening to cause injury to the domestic industry.

Jason W. Downey
Jason W. Downey
Presiding Member

Serge Fréchette
Serge Fréchette
Member

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Member

Dominique Laporte
Dominique Laporte
Secretary

The statement of reasons will be issued within 15 days.

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STATEMENT OF REASONS

BACKGROUND

1. This preliminary injury inquiry concerns a complaint filed by Great Lakes Copper Inc. (GLC), a domestic producer of copper tube.

2. GLC alleged that the dumping of circular copper tube with an outer diameter of 0.2 inch to 4.25 inches (0.502 centimetre to 10.795 centimetres), excluding industrial and coated or insulated copper tube (the subject goods), originating in or exported from the Federative Republic of Brazil (Brazil), the Hellenic Republic (Greece), the People's Republic of China (China), the Republic of Korea (Korea) and the United Mexican States (Mexico), and the subsidizing of the subject goods originating in or exported from China have caused or are threatening to cause material injury to the domestic industry.

3. The President of the Canada Border Services Agency (CBSA) initiated dumping and subsidizing investigations in respect of the subject goods on May 22, 2013. On May 23, 2013, the Canadian International Trade Tribunal (the Tribunal) commenced this preliminary injury inquiry.[1]

4. A distributor of building and plumbing supplies in Canada, 4361814 Canada Inc. o/a Noble Trade (Noble), a foreign producer of the subject goods, Paranapanema S.A. (Paranapanema) of Brazil, and the Representative Office – Ministry of Economy of Mexico in Canada (Ministry of Economy) filed submissions opposing the complaint.

5. Other participants to this preliminary injury inquiry that did not file submissions are BMI Canada, the Delegation of the European Union to Canada, the Government of the Federative Republic of Brazil and Halcor S.A. of Greece.

6. On July 22, 2013, pursuant to subsection 37.1(1) of the *Special Import Measures Act*,[2] the Tribunal determined that there was evidence that disclosed a reasonable indication that the dumping and subsidizing of the subject goods had caused injury or were threatening to cause injury.

CBSA'S DECISION TO INITIATE INVESTIGATIONS

7. In accordance with subsection 31(1) of *SIMA*, the CBSA was of the opinion that there was evidence that the subject goods had been dumped and subsidized, as well as evidence that disclosed a reasonable indication that the dumping and subsidizing had caused injury or were threatening to cause injury to the domestic industry. Accordingly, the CBSA initiated dumping and subsidizing investigations on May 22, 2013.

8. The CBSA's period of investigation with respect to the alleged dumping and subsidizing of the subject goods was from January 1, 2012, to February 28, 2013.

9. The CBSA estimated the margins of dumping and the volumes of dumped goods for each of the subject countries as follows:[3]

1. C. Gaz. 2013.I.1302.
2. R.S.C. 1985, c. S-15 [*SIMA*].
3. Tribunal Exhibit PI-2013-002-05, Administrative Record, Vol. 1E at 52.

CBSA's Dumping Estimates		
Country	**Estimated Margin of Dumping (as a percentage of export price)**	**Estimated Volume of Dumped Goods (as a percentage of total imports)**
Brazil	7.6	4.8
Greece	7.1	3.1
China	7.5	18.3
Korea	9.2	25.9
Mexico	5.9	4.2

10. With respect to the alleged subsidizing, the CBSA was of the view that the subsidized goods represented 15.4 percent of total imports during the period of investigation, with an estimated overall amount of subsidy equal to 4 percent, expressed as a percentage of the export price of the subject goods.[4]

11. The CBSA was of the opinion that the estimated margin of dumping and amount of subsidy were not insignificant and that the estimated volumes of dumped goods and subsidized goods were not negligible.[5]

SUBMISSIONS ON INJURY AND THREAT OF INJURY

GLC

12. In support of its claim that the dumping and subsidizing of the subject goods had caused injury, GLC provided evidence of increased volumes and market share of imports of the subject goods, lost sales, reduced "gross spread"[6] per pound, price undercutting, depression and suppression, and reduced capacity utilization, employment, revenue, gross margin and profits. GLC emphasized allegations of price undercutting and price depression, as evidenced from the prices of benchmark products at specific customer accounts.

13. GLC argued, in the alternative of a finding of injury, that there is a reasonable indication that the dumping and subsidizing of the subject goods are threatening to cause injury, on the basis of alleged increased import volumes of the subject goods, high production capacity in the subject countries relative to the Canadian market, declining domestic demand in the subject countries, probable and significant depressing or suppressing effects of the subject goods on the prices of like goods, and certain anti-dumping measures in other jurisdictions which would make Canada a more appealing destination.

Parties Opposed to the Complaint

14. Noble argued that the complaint did not disclose a reasonable indication that the dumping and subsidizing of the subject goods had caused injury or were threatening to cause injury. In particular, Noble submitted that the evidence shows healthy domestic production and a stable market share. Noble also argued, among other things, that there is no causal link between the dumping and subsidizing of the subject goods and any injury, because, *inter alia*, the increase in the volume of imports of the subject goods

4. *Ibid.* at 59.
5. *Ibid.* at 52, 59.
6. GLC equates gross spread to its revenue minus discounts, rebates and the cost of copper, which is passed through to customers.

occurred at the expense of imports from non-subject countries and because other factors, including the unavailability of GLC products at certain times, copper theft and competition from cross-linked polyethylene (PEX) tubing, explain the declines in GLC's sales. Noble added that there is no reasonable indication of threat of injury for the same reasons.

15. Paranapanema argued that the complaint against Brazil does not disclose a reasonable indication of injury and should be terminated because volumes of imports of the subject goods from Brazil were negligible. Paranapanema also alleged a conflict of interest on the part of counsel for GLC. This allegation was treated as a separate motion under subrule 24(1) of the *Canadian International Trade Tribunal Rules*[7] for an order disqualifying counsel for GLC; the Tribunal dismissed the motion on July 3, 2013.

16. The Ministry of Economy argued that the complaint does not establish that the domestically produced goods are like goods in relation to the subject goods and that the subject goods constitute several classes of goods. The Ministry of Economy further took issue with the accuracy of GLC's and the CBSA's calculations of import volumes, effects on prices and market shares, and their impact on the questions relating to cumulation, injury and financial performance. The Ministry of Economy suggested that market contraction and inefficiencies in the domestic industry may be the cause of any injury. Finally, the Ministry of Economy submitted that there is no reasonable indication that the subject goods are threatening to cause injury to the domestic industry.

ANALYSIS

Legislative Framework

17. The Tribunal's mandate in a preliminary injury inquiry is set out in subsection 34(2) of *SIMA*, which requires the Tribunal to determine "... whether the evidence discloses a reasonable indication that the dumping or subsidizing of the [subject] goods has caused injury or retardation or is threatening to cause injury."

18. In the present case, GLC alleged that the dumping and subsidizing have caused injury or are threatening to cause injury. No allegations were submitted with regard to retardation.

19. The "reasonable indication" standard that applies in a preliminary injury inquiry is lower than the evidentiary threshold that applies in final injury inquiries under section 42 of *SIMA*. The evidence in question need not be "... conclusive, or probative on a balance of probabilities ...."[8] Nevertheless, simple assertions are not sufficient and must be supported by relevant evidence.[9]

20. In making its preliminary determination, the Tribunal takes into account the injury and threat of injury factors that are prescribed in section 37.1 of the *Special Import Measures Regulations*,[10] including the

7. S.O.R./91-499.
8. *Ronald A. Chisholm Ltd. v. Deputy M.N.R.C.E.* (1986), 11 CER 309 (FCTD).
9. Article 5 of the World Trade Organization (WTO) *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* and Article 11 of the WTO *Agreement on Subsidies and Countervailing Measures* require an investigating authority to examine the accuracy and adequacy of the evidence provided in a dumping and subsidizing complaint to determine whether there is sufficient evidence to justify the initiation of an investigation, to reject a complaint or terminate an investigation as soon as the investigating authority is satisfied that there is not sufficient evidence of either dumping or subsidizing, or injury to justify proceeding with the case and not to consider unsubstantiated assertions as sufficient evidence.
10. S.O.R./84-927 [*Regulations*].

import volumes of the dumped and subsidized goods, the effects of the dumped or subsidized goods on the price of like goods, the resulting economic impact of the dumped or subsidized goods on the state of the domestic industry, and—if injury or threat of injury is found to exist—whether a causal relationship exists between the dumping or subsidizing of the goods and the injury or threat of injury.

21. However, before examining the allegations of injury and threat of injury, the Tribunal must identify the domestically produced goods that are like goods in relation to the subject goods and the domestic industry that produces those goods. This preliminary analysis is required because subsection 2(1) of *SIMA* defines "injury" as "material injury to a domestic industry" and "domestic industry" as ". . . 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 . . . ."

Like Goods and Classes of Goods

22. The CBSA defined the subject goods as circular copper tube of certain dimensions, excluding industrial and coated or insulated copper tube, originating in or exported from Brazil, Greece, China, Korea and Mexico, and the Tribunal must conduct its preliminary injury inquiry on the basis of this product definition.

23. In order to assess whether the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury or are threatening to cause injury to the domestic producers of like goods, the Tribunal must first define the scope of the like goods in relation to the subject goods. It may also consider whether the subject goods constitute one or more classes of goods.

24. GLC submitted that it manufactures a full line of copper tube with standard industry diameters of the same description as the subject goods. GLC argued that imported and domestically produced copper tube constitute a single class of goods because they are made from the same input material through a similar manufacturing process.

25. GLC submitted that, taking into account the usual factors in relation to the physical and market characteristics of copper tube, the subject goods and the like goods constitute a single class of goods. In particular, GLC underlined that all copper tube has a similar appearance and technical requirements, with the exception of additional cleanliness requirements imposed for air conditioning and refrigeration (ACR) tubes.

26. With respect to the manufacturing process, GLC submitted that the same methods are used for all copper tube and that, in any event, to the extent that the manufacturing processes used in other countries differ slightly, the Tribunal has previously pointed out that little or no weight should be given to this factor.

27. GLC also submitted that all copper tube has the same general use of conveying gases and liquids, and is sold through the same distribution channels, wholesalers and retailers competing as one-stop sources for all copper tube.

28. Finally, while GLC acknowledged that not all copper tube is perfectly interchangeable, it submitted that ACR tubes can be substituted for plumbing tubes (but not vice versa) and that artificially low-priced ACR tubes accelerate that substitution.

29. The Ministry of Economy commented that GLC's claim that the domestically produced goods are "like goods" was not substantiated by evidence or further explanation, and noted in particular that there was

no analysis of whether the production processes of the domestic goods and subject goods of the same description were similar in Mexico, Canada and the other countries.

30. Further, the opposing parties submitted that copper tube should be divided into several classes of goods. The Ministry of Economy pointed out that the complaint and the CBSA's statement of reasons for its decision to initiate investigations explicitly acknowledge that copper tube is produced to a variety of standards, sizes and grades that correspond to different applications and distribution streams. The Ministry of Economy submitted that, for example, air conditioning copper tube is typically an engineered product, while plumbing copper tube is a commodity that competes with plastic tubing. Noble submitted, without detailed discussion, that the subject goods should be divided into separate classes according to ASTM specifications.

31. 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 characteristics of which closely resemble those of the other goods.

32. In determining the like goods and whether there is one or more classes of 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).[11]

33. GLC submitted a product brochure consistent with its claim that it produces copper tube in all the standard diameters, but largely did not explicitly address the issue of like goods in its complaint.[12]

34. However, from the information on the record, the Tribunal was able to note that circular copper tube is typically produced to certain common ASTM standards worldwide. The Tribunal also notes that circular copper tube produced to these ASTM standards share certain important characteristics, including being seamless and made of copper, and having a circular cross section.

35. Most importantly, it is clear that the marketplace also demands from both the subject goods and the domestically produced goods certain minimal ASTM requirements depending on end uses. In that context, the subject goods and the like goods appear to compete head-to-head in what largely seems to be a commodity market. Also, while circular copper tube meeting varying ASTM standards may not at this time appear perfectly substitutable, there is some evidence of downward substitutability of higher standard product for lower standard applications. In large part, this was not challenged by parties opposing.[13]

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11. See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) [*Copper Pipe Fittings*] at para. 48.
12. Tribunal Exhibit PI-2013-002-02.01, Administrative Record, Vol. 1 at 82.
13. The Ministry of Economy suggested possible differences in the production processes of the like goods and the subject goods; however, the Tribunal notes that, in determining like goods and classes of goods, the focus is on the characteristics of the products themselves and not on how they are obtained and, as such, production process is typically not considered a most useful indicator of likeness between products. *Copper Pipe Fittings* at para. 53. This approach is consistent with the WTO Appellate Body's decision in *United-States—Safeguard Measure on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia* (2001), WTO Docs. WT/DS177/AB/R, WT/DS178/AB/R at para. 94 (Appellate Body Report), where it held that the focus should be on the products, not on how they were produced.

36. Accordingly, in the context of this preliminary injury inquiry, the Tribunal is of the view that it is reasonable to conclude that copper tube produced in Canada that is of the same description as the subject goods constitutes like goods in relation to the subject goods.

37. With respect to the issue of classes of goods, the issue before the Tribunal is whether there are sufficient differences between the various types of copper tube that comprise the subject goods and the like goods to justify separating them into different classes.

38. The Tribunal notes that GLC's complaint included little evidence, and only brief argument, in favour of its position that there is one class of goods. The bulk of the evidence and argument that it made on this subject came in its reply to the submissions of parties opposed. The time constraints associated with these proceedings did not allow the Tribunal to afford parties opposed the opportunity to file sur-replies to what amounted to rebuttal evidence by GLC.

39. The Tribunal cannot at this stage rely on GLC's scant complaint submissions to make a definitive pronouncement on this issue, however interesting its reply evidence and submissions may have been. Conversely, on their face, the arguments made in support of multiple classes of goods by the parties opposed to a positive finding in this preliminary injury inquiry were not entirely without merit, although not entirely compelling at this juncture.

40. Ultimately, the mis-synchronization of submissions by GLC is unfortunate because it forces the Tribunal to continue to examine the issue of classes of goods and to tailor its questionnaires accordingly, perhaps to no avail.[14] Chief among the consequences of this is a potential increased burden on questionnaire respondents and possibly lower rates of completion. Domestic producers seeking anti-dumping and countervailing measures should comprehensively address the typical "like goods" and "classes of goods" factors so that these matters can be fully responded to by parties opposing and resolved by the Tribunal at the preliminary injury inquiry stage, whenever possible, as should have been the case here.

41. For these reasons, the Tribunal finds that the issue of classes of goods merits further consideration, should the CBSA make a preliminary determination of dumping or subsidizing. In that circumstance, the Tribunal will seek further submissions on an expedited basis from the parties on the issue of classes of goods. The Tribunal therefore asks the CBSA to collect separate information in respect of three potential classes of goods, being plumbing, air conditioning/refrigeration and medical gas copper tube.

Domestic Industry

42. GLC claimed to be the only domestic producer of like goods. This was accepted by the CBSA and was not contested by the opposing parties. Therefore, the Tribunal finds that GLC represents the domestic industry.

Cumulation

43. In the context of a final injury inquiry under section 42 of *SIMA*, subsection 42(3) provides that the Tribunal must make a cumulative assessment of the injurious effects of dumped and subsidized goods that are imported into Canada if the Tribunal is satisfied that certain conditions are met. Specifically, the

14. In this respect, the Tribunal notes that the United States International Trade Commission concluded that, after extensive submissions on the issue, goods similar to, if not wider in breadth than, the subject goods constituted a single class of goods. See *Seamless Refined Copper Pipe and Tube from China and Mexico* (November 2010), Investigation Nos. 731-TA-1174-1175 (Final) (USITC).

Tribunal must be satisfied that the margin of dumping or the amount of subsidy in relation to the goods from each of the countries is not insignificant,[15] that the volume of goods imported into Canada from any of those countries is not negligible,[16] and that an assessment of the cumulative effect of the subject goods would be appropriate, taking into account the conditions of competition between the goods from any of the named countries, the other dumped or subsidized goods, and the like goods.

44. While subsection 42(3) of *SIMA* deals with final injury inquiries, the Tribunal considers that it would be inconsistent not to cumulate the subject goods in a preliminary injury inquiry when the evidence available appears to justify cumulation.[17]

45. With respect to the first condition for cumulation under subsection 42(3) of *SIMA*, the Tribunal notes again that the CBSA determined that the margins of dumping and the amount of subsidy in relation to the goods from all the subject countries, as well as the volume of imports from each country, were not insignificant or negligible.[18]

46. However, the Ministry of Economy and Paranapanema took issue with the CBSA's determination that the margins of dumping and the volume of imports from Mexico and Brazil, respectively, were not negligible or insignificant.

47. The Ministry of Economy argued that the import data are overestimated because it may include non-subject goods and because it treats all the subject goods as a single class of goods. The Ministry of Economy therefore argued that it is impossible to properly assess whether imports from Mexico were negligible or the margin of dumping insignificant.

48. Paranapanema similarly submitted that imports of the subject goods from Brazil were small and that the investigation against it should be terminated on this basis, arguing that publically available statistics for imports from Brazil to Canada were 3 percent in 2012 and 0.0311 percent in 2011.

49. The Ministry of Economy and Paranapanema essentially argued that the CBSA erroneously determined that the volumes of imports from Mexico and Brazil were not negligible and their margins of dumping not insignificant.

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15. Subsection 2(1) of *SIMA* defines "insignificant" as meaning, in relation to a margin of dumping, "a margin of dumping that is less than two per cent of the export price of the goods" and in relation to an amount of subsidy, "an amount of subsidy that is less than one per cent of the export price of the goods." In addition, pursuant to section 41.2 of *SIMA* and paragraph 10 of Article 27 of the World Trade Organization *Agreement on Subsidies and Countervailing Measures*, 7 April 2011, online: World Trade Organization <http://www.wto.org/English/docs_e/legal_e/final_e.htm> [*Subsidies Agreement*], in the case of a product from a developing country, an amount of subsidy is "insignificant" when it is less than 2% of the export price.
16. Subsection 2(1) of *SIMA* defines "negligible" as meaning, ". . . in respect of the volume of dumped goods of a country, (a) less than three per cent of the total volume of goods that are released into Canada from all countries and that are of the same description as the dumped goods". In addition, Article 27.10 of the *Subsidies Agreement* provides, in relation to goods from a developing country, that the import volume of subsidized goods is considered negligible when it is less than 4% of the total volume of like goods exported to Canada from all countries.
17. See, for example, *Corrosion-resistant Steel Sheet* (2 February 2001), PI-2000-005 (CITT) at 4, 5.
18. Tribunal Exhibit PI-2013-002-05, Administrative Record, Vol. 1E at 52, 59.

50. In the context of a preliminary injury inquiry, the Tribunal can only rely on the estimates of volumes and margins of dumping and amount of subsidy provided by the CBSA. Under the scheme of *SIMA*, the determination of the margins of dumping and the amount of subsidy—and, accordingly, of whether they are insignificant—is the responsibility of the CBSA.

51. As for the determination of volumes, sections 35 and 38 and subsection 42(4.1) of *SIMA*, read together, make clear that, while the Tribunal determines volumes at the final injury inquiry stage, that task lies with the CBSA prior to the making of the CBSA's preliminary determination, which period includes the stage of the preliminary injury inquiry before the Tribunal. In the context of the present proceeding, the Tribunal will therefore rely on the volume estimates provided by the CBSA.

52. Accordingly, as the CBSA estimated that the margins of dumping and the amount of subsidy of the goods in issue were not insignificant and that the volumes of imports of the subject goods were not negligible in respect of any of the subject countries, the Tribunal is also satisfied that the first condition for cumulation under subsection 42(3) of *SIMA* is met.

53. With respect to the second requirement, the Ministry of Economy submitted that it should not be cumulated with the other countries in the absence of an analysis of the conditions of competition between the subject goods from Mexico and the other subject goods and the like goods. However, the Ministry of Economy did not make any submissions at this stage regarding the nature of those conditions of competition.

54. The Tribunal is of the view that no evidence on the record at this stage indicates that the conditions of competition differ between the subject goods from different sources and between the subject goods and the like goods. Therefore, the Tribunal is satisfied that an assessment of the cumulative effect of the subject goods from all sources is appropriate in this preliminary injury inquiry.[19]

55. On the basis of the foregoing, the Tribunal will now examine whether the evidence discloses a reasonable indication of injury or threat of injury, taking into account the factors prescribed in section 37.1 of the *Regulations*.

Volume of Dumped and Subsidized Goods

56. GLC submitted that the import volumes of the subject goods increased by 144 percent between 2010 and 2012, which corresponded to an increase in the market share of the subject goods from 10 to 27 percent over the same period.

57. The Ministry of Economy questioned the accuracy of GLC's and the CBSA's calculation of the volumes of imported goods, arguing that the methodology was either flawed or insufficiently explained. The Ministry of Economy submitted that, in any event, the CBSA data show that volumes of imports of subject goods from Mexico are negligible and declining.

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19. The Tribunal is also satisfied that it is appropriate in this case to follow its usual approach to cross-cumulate the effects of the dumped goods with those of the subsidized goods. The Tribunal's longstanding view is that, when assessing injury to the domestic industry caused by the dumped and subsidized goods, it is not realistically possible to isolate the effects caused by dumping from those caused by subsidizing, as they are too closely intertwined. See, for example, *Seamless Carbon or Alloy Steel Oil and Gas Well Casing* (10 March 2008), NQ-2007-001 (CITT) at paras. 75-77; *Copper Rod* (28 March 2007), NQ-2006-003 (CITT) at 8; *Copper Pipe Fittings* at para. 72; *Certain Grain Corn* (7 March 2001), NQ-2000-005 (CITT) at 14.

58. As stated above, during a preliminary injury inquiry, the Tribunal relies on volume data estimated by the CBSA, as supplemented by the information on the record. Further, the Tribunal must consider the CBSA's determination that volumes of imports from all the subject countries were not negligible.

59. The Tribunal observed, on the basis of the import data estimates provided by the CBSA, that the total volume of imports of the subject goods increased steadily, and significantly, in absolute terms from 2010 to 2012,[20] while, relative to the total imports on the Canadian market, the share held by the subject goods increased from 23 percent in 2010 to 56 percent in 2012.[21] In contrast, the share of imports from non-subject countries relative to total imports decreased from 77 percent to 44 percent from 2010 to 2012.

60. The Tribunal also considered the volume of imports of the subject goods relative to the domestic production and consumption of like goods. Both comparisons show imports of the subject goods increasing appreciably from 2010 to 2012 in relative terms. Specifically, when expressed as a percentage of domestic production, the volume of imports of the subject goods increased by 16 percentage points from 2010 to 2012. When expressed as a percentage of domestic consumption, the volume of imports of the subject goods increased by 34 percentage points from 2010 to 2012.[22]

61. On the basis of the above, the evidence discloses a reasonable indication that, from 2010 to 2012, the volume of imports of the subject goods increased significantly in the absolute sense and relative to both the volume of domestic production and domestic consumption of the domestically produced goods.

Effect on the Price of Like Goods

62. GLC submitted that the prices of the subject goods had undercut the prices of the like goods, as evidenced by 20 documented instances of lost sales at certain customer accounts. GLC added that, despite inherent limitations in Statistics Canada data, which do not provide breakouts per diameter of imported copper tube, which affects prices, the landed prices of the subject goods consistently undercut GLC's unit net delivered selling prices.

63. GLC also alleged that the average unit selling values for its top 20 benchmark products declined by 9 percent in 2012, accompanied by a 13 percent decrease in what it calls its "gross spread". GLC attributed this alleged price depression to the large volume of the subject goods that entered the Canadian market.

64. Finally, GLC submitted that it suffered price suppression in terms of a decline between 2010 and 2012 of its "gross spread" minus its plant costs. In this regard, GLC explained that, since the cost of copper is always passed through to the customer, a producer's performance is measured by the amount that it can charge for fabrication (manufacturing costs plus an amount for profit).

65. Noble argued that GLC's evidence does not demonstrate price suppression and, in particular, that the information about pricing and "gross spread" is not correlated with the market price of copper or the prices of imports from non-subject countries.

66. The Ministry of Economy submitted that the complaint does not provide reliable data on which price undercutting could be assessed.

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20. Tribunal Exhibit PI-2013-002-03.02 (protected), Administrative Record, Vol. 2A at 19.
21. Tribunal Exhibit PI-2013-002-05, Administrative Record, Vol. 1E at 49.
22. Tribunal Exhibit PI-2013-002-03.01 (protected), Administrative Record, Vol. 2 at 20; Tribunal Exhibit PI-2013-002-03.02, Administrative Record, Vol. 2A at 17, 19.

67. The Tribunal referred to import unit values of the subject goods, as estimated from available CBSA data, noting, however, that these values are not directly comparable to the domestic producer's selling prices, as they do not include delivery costs to Canada, or an additional markup applied by distributors prior to selling the goods, and the fact that they do not account for product mix.

68. The Tribunal notes that the import unit values of the subject goods were generally lower than the selling prices of the domestically produced goods.[23] The Tribunal does however recognize that this gap between the import unit values of the subject goods and the selling prices of domestic goods may likely overestimate[24] the actual undercutting of the selling prices of the domestic goods by the selling prices of the subject goods.

69. In light of the limitations precluding an effective comparison of prices at the aggregate level, the Tribunal considered other pricing information on the record. The Tribunal examined GLC's lost sales allegations, which showed the difference between GLC's quoted price per foot and the price per foot quoted by exporters in the subject countries. On this basis, which, in the Tribunal's view, constitutes the best evidence at this juncture, the Tribunal observed consistent and significant undercutting of GLC's quoted price per foot by the subject goods.[25]

70. With respect to GLC's allegation of price depression, the Tribunal notes that the unit selling prices of GLC's top 20 benchmark products followed the same trends from 2010 to 2012 as the unit values of imports generally and, in particular, the subject goods from all subject countries to the exclusion of one.[26]

71. At the same time, the Tribunal observed that the decrease in unit values of the subject goods in 2012 was significantly greater than the decrease in GLC's unit selling price and that the presence of significant volumes of low-priced imports may have exerted further downward pressure on GLC's prices.

72. Turning to price suppression, the Tribunal observed from GLC's income statement that the comparison between the total unit material costs of goods and the unit selling prices indicates a certain degree of price suppression from 2010 to 2012.[27]

73. On the basis of the foregoing,[28] the Tribunal finds that the evidence on the record discloses a reasonable indication that the dumping and subsidizing of the subject goods have resulted in price undercutting, price depression and price suppression.

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23. Tribunal Exhibit PI-2013-002-03.02 (protected), Administrative Record, Vol. 2A at 19, 20.
24. In general, import unit values do not include an amount for profit. Therefore, the import unit values of the subject goods are likely lower than their respective selling values and, accordingly, the gap between the unit value of the subject goods and the domestic selling prices may overestimate the degree of price undercutting.
25. Tribunal Exhibit PI-2013-002-03.01 (protected), Administrative Record, Vol. 2 at 118-244.
26. Tribunal Exhibit PI-2013-002-03.02 (protected), Administrative Record, Vol. 2A at 19; Tribunal Exhibit PI-2013-002-03.01 (protected), Administrative Record, Vol. 2 at 51-54.
27. Tribunal Exhibit PI-2013-002-03.01 (protected), Administrative Record, Vol. 2 at 56.
28. The Tribunal notes GLC's contention that the "true degree" of price undercutting, depression and suppression is evidenced by the evolution of GLC's "gross spread" over time and by comparing its "gross spread" to that of the subject goods. While the Tribunal recognizes that a downward trend in GLC's "gross spread" per pound may illustrate declining profitability, demonstrating price undercutting, depression and suppression, *SIMA* normally requires looking at unit sales prices of the like goods and comparing them to the unit sales prices of comparable subject products. The Tribunal used this latter, traditional approach for the purposes of this preliminary injury inquiry.

Impact on the Domestic Industry

74. GLC claimed that the resulting impact of the dumping and subsidizing of the subject goods on the state of the domestic industry is material injury in the form of lost sales, worsening financial performance, and declining capacity utilization and employment.

75. Noble submitted that there was no reasonable indication of material injury, given that domestic production is healthy and that GLC's market share remained unchanged. According to Noble, the increased import volumes of the subject goods in recent years have had no impact on the domestic industry, but, rather, have displaced imports of copper tube from non-subject countries. Noble argued that it had purchased higher volumes of the like goods from GLC in 2012 than in 2011 or 2010 and that it has been able to resell these purchases in the Canadian market. Noble added that there is no causal link between the alleged dumping and subsidizing and the decline in gross margins on domestic sales, capacity utilization or employment.

76. The Tribunal first observed that neither GLC's total production of copper tube nor its market share worsened significantly from 2010 to 2012.[29]

77. However, the Tribunal noticed, on the basis of the evidence available at this preliminary stage, that, although GLC has to date been able to keep its total production and market share relatively stable, other injury factors point to deterioration in the health of the domestic industry.

78. In particular, the evidence reveals that, between 2010 and 2012, there was a decrease in domestic sales of the like goods, which outpaced the overall contraction experienced by the Canadian market during the same period.[30] When the Tribunal considers the fact that the subject goods steadily increased their share of the Canadian market from 2010 to 2012, by 17 percentage points, while the market share of imports from non-subject countries decreased by 16 percentage points in the same period,[31] there is a reasonable indication that the decrease in domestic sales of the like goods by GLC was due to the significant increase in volume of the low-priced subject goods.

79. The Tribunal also observed from GLC's lost sales allegations at 20 customer accounts that the domestic industry lost significant sales between 2010 and 2012, resulting in an overall decline of its sales volumes of 17 percent,[32] as well as an overall decline in sales values.[33] In addition, as the 20 specific lost sales documented by GLC also evidence significant degrees of price undercutting by the subject goods,[34] the Tribunal finds a reasonable indication that, for the purposes of this preliminary injury inquiry, this loss of sales occurred due to the competition from the low-priced subject goods.

29. Tribunal Exhibit PI-2013-002-08.01, Administrative Record, Vol. 3 at para. 19; Tribunal Exhibit PI-2013-002-02.01, Administrative Record, Vol. 1 at 42-43; Tribunal Exhibit PI-2013-002-03.01 (protected), Administrative Record, Vol. 2 at 20.
30. Tribunal Exhibit PI-2013-002-03.01 (protected), Administrative Record, Vol. 2 at 45; Tribunal Exhibit PI-2013-002-03.02 (protected), Administrative Record, Vol. 2A at 19.
31. Tribunal Exhibit PI-2013-002-03.01 (protected), Administrative Record, Vol. 2 at 45; Tribunal Exhibit PI-2013-002-03.02 (protected), Administrative Record, Vol. 2A at 19.
32. Tribunal Exhibit PI-2013-002-03.01 (protected), Administrative Record, Vol. 2 at 46-49.
33. *Ibid.* at 46.
34. *Ibid.* at 49, 118-246.

80. The Tribunal also examined GLC's income statements for copper tube and observed that GLC's financial performance in the Canadian market declined each year from 2010 to 2012, both in terms of gross margin and net income.[35]

81. Finally, the Tribunal noted apparent reductions in capacity utilization and employment over the same period. In particular, between 2010 and 2012, GLC made significant capital expenditures to increase production efficiencies and reduce costs. Even though production capacity increased in 2011, it was underutilized throughout the period, as evidenced by stable production volumes. In addition, GLC had to lay off 45 employees in 2012, most of whom were directly involved in the production of copper tube and most of whom have not returned to work since that time.[36]

82. On the basis of the foregoing, and noting that the "reasonable indication" standard applicable in a preliminary injury inquiry is lower than the evidentiary threshold that applies in final injury inquiries under section 42 of *SIMA*, the Tribunal finds that the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury to the domestic industry.

Other Factors

83. Noble submitted that any injury suffered by the domestic industry may have been caused by consumers' switch to PEX tubing in lieu of copper tube for plumbing applications and by the occurrence of copper theft.

84. The Ministry of Economy submitted that the contraction in the Canadian market, rather than the increase in imports of the subject goods, has caused injury to the domestic industry. The Ministry of Economy also submitted that the alleged injury could be due to relative inefficiencies in the Canadian industry.

85. GLC responded that the market shift to PEX tubing occurred over 15 years ago and is thus irrelevant to the current allegations of injury. Further, GLC submitted that copper theft has not been a problem at its facilities. GLC added that the impact of other factors, including the contraction in the Canadian market for copper tube, is unsupported by evidence at this stage and would be better assessed in the context of a full inquiry under section 42 of *SIMA*.

86. The Tribunal is of the view that the factors raised by the Ministry of Economy and Noble may have had an impact on the domestic industry. However, for the purposes of this preliminary injury inquiry, the limited evidence on the record regarding the impact of these other factors is insufficient to negate the Tribunal's conclusion that the overall evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury. The Tribunal will be in a position to fully probe these other factors and their relative importance in the context of an inquiry under section 42 of *SIMA*.

Threat of Injury

87. Turning to the issue of threat of injury, GLC's evidence focused on data concerning the significant rate of increase in the volumes of dumped and subsidized goods imported into Canada, the projected production capacity and the market conditions in the subject countries, the fact that the subject goods are entering Canada at prices that are likely to have a significant depressing or suppressing effect on the price of

35. *Ibid.* at 55-56.
36. *Ibid.* at 57.

the like goods and the existence of anti-dumping or countervailing measures in other jurisdictions which make Canada a more appealing destination for the subject goods.

88. The Ministry of Economy disputed these allegations and submitted that they were speculative and not supported by cogent evidence. Noble stated that the complaint does not disclose a reasonable indication of threat of injury for the same reasons that it discloses no reasonable indication of injury.

89. As stated above, the Tribunal is of the view that there is a reasonable indication that the dumping and subsidizing of the subject goods have already caused injury to the domestic industry. In addition, however, the Tribunal considers that the rapid and convincing rate of increase in the volumes of the subject goods, and the equally rapid substitution of the subject goods for imports from non-subject countries over the period of investigation, may be indicative of a situation where the subject goods will increase their market share at the expense of the domestic industry and exacerbate other already reasonably demonstrated indicia of injury.

90. In particular, while it appeared that, over the period of investigation, the domestic industry may have been able to mitigate part of the impact of the increased presence of the subject goods, perhaps because of its export performance, it will remain to be seen in the context of a final injury inquiry under section 42 of *SIMA* whether such a context is sustainable for the domestic industry.

91. On balance, considering that GLC's claim is supported by relevant evidence and noting again that the "reasonable indication" standard that applies in a preliminary injury inquiry is lower than the evidentiary threshold that applies in a final injury inquiry under section 42 of *SIMA*, the Tribunal concludes that the evidence on the record discloses a reasonable indication that the dumping and subsidizing of the subject goods are threatening to cause injury.

CONCLUSION

92. On the basis of the foregoing analysis, the Tribunal finds that the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury or are threatening to cause injury.

Jason W. Downey
Jason W. Downey
Presiding Member

Serge Fréchette
Serge Fréchette
Member

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Member