

[79] Tenaris Canada's performance in the next 24 months is difficult to gauge because it is in the process of ramping up production at its Algoma facility. However, according to Tenaris Canada, if production occurs as planned, it is likely that rescission of the finding would have a negative impact on its return on investment.¹²³ Tenaris also prepared a comparative model showing the negative impact that a minor price decrease would have on its financial performance.¹²⁴ The Tribunal analyzed the models and the assumptions used, and concluded that they were cautious and reliable. Although the Tribunal did not have a comparative analysis for each domestic producer, it is satisfied that the evidence is representative of the domestic industry.

[80] The Tribunal finds that the evidence indicates that a decrease in domestic prices or domestic sales volumes (or both) would have a negative impact on the domestic industry's financial performance and investments.

Impacts on workers employed in the domestic industry

[81] In an expiry review under subsection 76.03(10), SIMA requires, through subsection 2(11), that "[i]n any assessment of injury under this Act, any impacts on workers employed in the domestic industry shall be taken into account." Furthermore, subparagraph 37.2(2)(e)(iii) and paragraph 37.2(2)(g) of the Regulations provide guidance to that effect.¹²⁵

[82] The Tribunal takes note of the Unions' submissions on the interpretation of subsection 2(11) of SIMA for the purposes of the definition of "injury" in subsection 2(1). The Tribunal considers that the circumstances of this case do not warrant an examination of that issue. The Regulations require the Tribunal to consider the potential negative effects on workers employed in the domestic industry in the assessment of whether the expiry of the finding is likely to result in injury to the domestic industry. This is an exercise consisting of ascertaining and assessing facts.

¹²³ See, for example, Exhibit RR-2022-001-B-04 at para. 14; *Transcript of Public Hearing* at 349.

¹²⁴ Exhibit RR-2022-001-B-02 (protected) at paras. 78–80.

¹²⁵ "(iii) any potential negative effects on employment levels or the terms and conditions of employment of the persons employed in the domestic industry, including their wages, hours worked, pension plans, benefits or worker training and safety; ... (g) the potential negative effects of the dumped or subsidized goods on existing development and production efforts, including effects on hiring and on efforts to produce a derivative or more advanced version of like goods"

[83] The Unions submitted that the workers employed in the domestic industry will be vulnerable over the next 18 to 24 months if the finding expires. They submitted that unfairly traded imports take work away from the workers, and severely impact employment levels and the terms and conditions of employment. The Unions gave evidence of past bargaining concessions,¹²⁶ shift reductions,¹²⁷ idling of mills,¹²⁸ and layoffs during the POR¹²⁹ as a sign of even worse times ahead if the finding were to expire. They are concerned that a rescinded finding would occur when workers are already facing decreases in real wages caused by inflation and would make future collective bargaining negotiations more challenging for workers. The Tribunal also heard evidence on how, in the Unions' view, the expiry of the finding would negatively affect worker hiring and retention,¹³⁰ and health and safety.¹³¹

[84] The current job levels, as well as terms and conditions of employment, are attributable, in part, to developments that occurred prior to the POR, and did not improve during the POR. The prospects in the event of a rescission of the finding are not positive. For example, there is evidence that when the domestic industry's orders decreased because of lost sales to dumped or subsidized subject goods, it resorted to laying off workers. This occurred during the POI for the original inquiry concerning dumped imports from Korea,¹³² and during and following the period of investigation (POI) in *Carbon and Alloy Steel Line Pipe* (the initial inquiry concerning dumped and subsidized imports from China).¹³³ As discussed above, there is evidence that subject imports during 2022 and into 2023 when normal values did not reflect market conditions have also contributed to layoff decisions. The Tribunal concludes that a similar pattern of layoffs may arise in the next 24 months if the finding is rescinded given the likelihood of increased import volumes of low-priced subject goods.

[85] Likewise, with respect to terms and conditions of employment, the Tribunal accepts the evidence provided by the Unions that a resumption of imports of dumped subject goods resulting from a rescission of the finding will likely make collective bargaining more challenging for workers, especially with respect to improvements in wages or in retirement benefits. Evraz's Camrose and Regina plants, and Tenaris Canada's plant in Sault Ste. Marie, will be in collective bargaining in the next 24 months.¹³⁴ If Evraz's plant in Red Deer does not ratify a recently concluded memorandum of agreement, it may also be engaged in collective bargaining over the next 24 months.¹³⁵ That said, collective bargaining negotiations are complex and are affected by a wide range of factors. The

¹²⁶ See, for example, the testimony of Mr. De Feyter (Exhibit RR-2022-001-E-09 at paras. 40–41); and the Algoma Tubes Inc. Collective Agreement (Exhibit RR-2022-001-E-09 at 127–212).

¹²⁷ See, for example, the testimony of Ms. Servais (*Transcript of Public Hearing* at 71); and the testimony of Mr. Day (Exhibit RR-2022-001-E-03 at paras. 14–15).

¹²⁸ See, for example, the testimony of Mr. Day (*Transcript of Public Hearing* at 54); Exhibit RR-2022-001-E-03 at paras. 17–19).

¹²⁹ See, for example, the testimony of Mr. Day (Exhibit RR-2022-001-E-03 at paras. 17–19, 23).

¹³⁰ See, for example, the testimony of Mr. Day (*Transcript of Public Hearing* at 63–64, 85–86); the testimony of Ms. Servais (*Transcript of Public Hearing* at 83–84, 88–89); and the testimony of Mr. De Feyter (*Transcript of Public Hearing* at 123–124).

¹³¹ See, for example, the testimony of Mr. De Feyter (*Transcript of Public Hearing* at 124–126; Exhibit RR-2022-001-E-09 at paras. 46–52); and the testimony of Mr. Day (Exhibit RR-2022-001-E-03 at paras. 42–44).

¹³² *Line Pipe II* at paras. 83–84.

¹³³ (29 March 2016), NQ-2015-002 (CITT) at para. 161.

¹³⁴ Testimony of Ms. Servais (*Transcript of Public Hearing* at 53); testimony of Mr. Day (*Transcript of Public Hearing* at 57); testimony of Mr. De Feyter (*Transcript of Public Hearing* at 113).

¹³⁵ Testimony of Mr. La (*Transcript of Public Hearing* at 58).

Tribunal, nevertheless, accepts that the presence of dumped subject goods may contribute to new collective agreements with lower wages and reduced retirement benefits.

Conclusion on injury to the domestic industry

[86] The Tribunal found above that if the finding expires, there would likely be price undercutting, increased import volumes of the subject goods at low prices, and price depression over the next 24 months. The Tribunal has also found that rescinding the finding would have potential negative effects on workers, including in respect of employment, and terms and conditions of employment. Finally, the Tribunal has considered the circumstances at the end of the POR when the domestic industry lost market share in 2022 following increased volumes of the subject goods sold at low prices in the domestic market at a time when certain Korean exporters were benefitting from normal values that did not reflect market conditions. Those circumstances provided a strong indication of how South Korean exporters would respond to the rescission of the finding. The Tribunal finds that taken together, these factors demonstrate that if the finding expires, the domestic industry will likely experience material injury.

[87] In terms of factors other than dumping that could cause injury to the domestic industry over the next 24 months, the parties did not expressly identify any factors. The Tribunal reviewed the record and determined that there is no evidentiary basis to conclude that any likely future injury would be due to such other factors to any material extent.

[88] The Tribunal concludes that the continuation or resumption of dumping of the subject goods would likely result, in and of itself, in material injury to the domestic industry over the next 24 months.

EXCLUSION REQUESTS

[89] The Tribunal received four requests to exclude certain products from any order continuing the finding. SSA and Cantak each sought two exclusions: one for certain slurry/tailings line pipe, and one for certain steam line pipe.¹³⁶

[90] SIMA implicitly authorizes the Tribunal to grant exclusions from the scope of an order or finding.¹³⁷ Exclusions are an extraordinary remedy that may be granted at the Tribunal's discretion (i.e., when the Tribunal is of the view that such exclusions will not cause injury to the domestic industry).¹³⁸ The rationale for exclusions in expiry reviews is that despite the general conclusion that all goods covered by an order are likely to cause injury to the domestic industry, there may be imported products within the definition of the subject goods that are not likely to cause injury.¹³⁹

¹³⁶ Exhibit RR-2022-001-042; Exhibit RR-2022-001-042.

¹³⁷ *Hetex Garn A.G. v. The Anti-dumping Tribunal*, [1978] 2 F.C. 507 (FCA); *Sacilor Aciéries v. Anti-dumping Tribunal* (1985) 9 C.E.R. 210 (CA); Binational Panel, *Induction Motors Originating in or Exported From the United States of America (Injury)* (11 September 1991), CDA-90-1904-01; Binational Panel, *Certain Cold-Rolled Steel Products Originating or Exported From the United States of America (Injury)* (13 July 1994), CDA-93-1904-09.

¹³⁸ *Carbon Steel Screws* at para. 222; *Photovoltaic Modules and Laminates* (25 March 2021), RR-2020-001 (CITT) [*Photovoltaic Modules and Laminates*] at para. 128; *Hot-rolled Carbon Steel Plate* (13 March 2020), RR-2019-001 (CITT) [*Steel Plate*] at para. 163. See also the Tribunal's *Guidelines on product exclusion requests*.

¹³⁹ *Photovoltaic Modules and Laminates* at para. 128; *Steel Plate* at para. 163.