



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Expiry Review RR-2021-006

Concrete Reinforcing Bar

*Order and reasons issued
Thursday, February 2, 2023*

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IN THE MATTER OF an expiry review, pursuant to subsection 76.03(3) of the *Special Import Measures Act*, of the finding made by the Canadian International Trade Tribunal on May 3, 2017, in inquiry NQ-2016-003, concerning:

**CERTAIN CONCRETE REINFORCING BAR ORIGINATING IN OR
EXPORTED FROM THE REPUBLIC OF BELARUS, THE SEPARATE
CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU, THE
HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S
REPUBLIC OF CHINA, JAPAN, THE PORTUGUESE REPUBLIC AND THE
KINGDOM OF SPAIN**

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 its finding made on May 3, 2017, in inquiry NQ-2016-003, concerning the dumping of hot-rolled deformed steel concrete reinforcing bar in straight lengths or coils, commonly identified as rebar, in various diameters up to and including 56.4 millimetres (mm), in various finishes, excluding plain round bar and fabricated rebar products, originating in or exported from the Republic of Belarus, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (excluding those goods exported by Feng Hsin Steel Co., Ltd.), the Hong Kong Special Administrative Region of the People's Republic of China, Japan, the Portuguese Republic and the Kingdom of Spain. The Tribunal's finding also excludes 10 mm diameter (10M) rebar produced to meet the requirements of CSA G30 18.09 (or equivalent standards) that is coated to meet the requirements of epoxy standard ASTM A775/A 775M 04a (or equivalent standards) in lengths from 1 foot (30.48 cm) up to and including 8 feet (243.84 cm).

Pursuant to paragraph 76.03(12)(b) of SIMA, the Tribunal continues, without amendment, its finding in respect of the aforementioned goods.

Georges Bujold
Georges Bujold
Presiding Member

Peter Burn
Peter Burn
Member

Eric Wildhaber
Eric Wildhaber
Member

Place of Hearing: Ottawa, Ontario
Dates of Hearing: November 21 to 23, 2022

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STATEMENT OF REASONS

INTRODUCTION

[1] The Canadian International Trade Tribunal, pursuant to subsection 76.03(3) of the *Special Import Measures Act*¹ (SIMA), has conducted an expiry review of its finding made on May 3, 2017, in inquiry NQ-2016-003,² concerning the dumping of certain concrete reinforcing bar, commonly referred to as rebar, originating in or exported from the Republic of Belarus (Belarus), the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei), the Hong Kong Special Administrative Region of the People's Republic of China (Hong Kong), Japan, the Portuguese Republic (Portugal) and the Kingdom of Spain (Spain) (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 unless the Tribunal initiates an expiry review before that date. The finding in this case was scheduled to expire on May 2, 2022.

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

PROCEDURAL BACKGROUND

[4] The Tribunal issued its notice of expiry review on March 29, 2022. Consequently, on March 30, 2022, the Canada Border Services Agency (CBSA) initiated an expiry review investigation to determine whether the expiry of the finding was likely to result in the continuation or resumption of dumping of the subject goods.

[5] On August 26, 2022, the CBSA determined, pursuant to paragraph 76.03(7)(a) of SIMA, that the expiry of the finding was likely to result in the continuation or resumption of dumping of the subject goods.³

[6] Following the CBSA's determination, the Tribunal began its portion of the expiry review on August 29, 2022, pursuant to subsection 76.03(10) of SIMA, to determine whether the expiry of the finding was likely to result in injury to the domestic industry.

[7] The period of review (POR) for this expiry review covers three full calendar years from January 1, 2019, to December 31, 2021, as well as the interim period of January 1, 2022, to June 30, 2022 (interim 2022). For comparative purposes, information was also collected for the period of January 1, 2021, to June 30, 2021 (interim 2021).

[8] The Tribunal sent questionnaires to known domestic producers and certain known importers of rebar meeting the product definition, as well as to known foreign producers of the subject goods.

¹ R.S.C., 1985, c. S-15. SIMA was amended by the *Budget Implementation Act, 2022, No. 1*, S.C. 2022, c. 10 (BIA 2022), which came into force on June 23, 2022. Pursuant to the transitional provision in section 211 of the BIA 2022, this expiry review is conducted under SIMA as it read before June 23, 2022.

² *Concrete Reinforcing Bar* (3 May 2017), NQ-2016-003 (CITT) [*Rebar II*].

³ Exhibit RR-2021-006-03.A at 1.

The Tribunal received 5 replies to the domestic producers' questionnaire, 11 replies to the importers' questionnaire, and 3 replies to the foreign producers' questionnaire.⁴

[9] Using the questionnaire responses and other information on the record, staff of the Secretariat to the Tribunal prepared its investigation report. Final revised public and protected versions of the investigation report, which included newly received information from a number of importers, were placed on the record on November 7, 2022.⁵

[10] Domestic producers Gerdau Ameristeel Corporation (Gerdau), AltaSteel Inc. (AltaSteel), ArcelorMittal Long Products Canada, G.P. (ArcelorMittal) and Max Aicher (North America) Ltd. (MANA) (collectively, the Domestic Producers), as well as the United Steelworkers (USW), filed submissions, witness statements and other evidence in support of the continuation of the finding; foreign producers Celsa Atlantic, S.L. and Nervacero, S.A. (collectively Celsa) filed submissions and other evidence opposing the continuation of the finding.

[11] On October 26, 2022, AltaSteel and ArcelorMittal jointly filed requests for information (RFIs) directed to Celsa. Having considered the RFIs and noting that Celsa did not object, the Tribunal issued directions to the parties regarding the RFIs. In accordance with those directions, Celsa replied to the RFIs on November 9, 2022.

[12] Additionally, Group Celsa—comprised of Compania Espanola de Laminacion S.L. (CELSA), Celsa Atlantic S.L. and Nervacero S.A.—requested a product exclusion. Gerdau, AltaSteel, ArcelorMittal and MANA replied to the product exclusion request on November 1, 2022. Group Celsa responded to those replies on November 9, 2022.

[13] On November 4, 2022, the parties requested that the Tribunal hold an in-person hearing. On November 10, 2022, the Tribunal granted the parties' request. An in-person hearing with public and *in camera* sessions was held on November 21, 22 and 23, 2022.

PRODUCT

Product definition

[14] The subject goods are defined as:

Hot-rolled deformed steel concrete reinforcing bar in straight lengths or coils, commonly identified as rebar, in various diameters up to and including 56.4 millimeters, in various finishes, excluding plain round bar and fabricated rebar products, originating in or exported from the Republic of Belarus, Chinese Taipei, the Hong Kong Special Administrative Region of the People's Republic of China, Japan, the Portuguese Republic and the Kingdom of Spain. Also excluded is 10 mm diameter (10M) rebar produced to meet the requirements of CSA G30 18.09 (or equivalent standards) that is coated to meet the requirements of epoxy

⁴ Exhibit RR-2021-006-05.A at 9–15. In response to a request from AltaSteel and ArcelorMittal, the Tribunal asked Acierco KSE Inc. (including its related associated companies 11625748 Canada Inc., 13424464 Canada Inc., and 8096783 Canada Inc.) and Mitsui & Co. (Canada) Ltd. to complete importer questionnaires and return them to the Tribunal; Exhibit RR-2021-006-26. The former filed importer questionnaires for its three related companies, and the latter did not respond.

⁵ Exhibit RR-2021-006-05.A; Exhibit RR-2021-006-06.A (protected).

standard ASTM A775/A 775M 04a (or equivalent standards) in lengths from 1 foot (30.48 cm) up to and including 8 feet (243.84 cm).⁶

[15] The *Rebar II* finding excludes subject goods originating in or exported from Chinese Taipei as exported by Feng Hsin Steel Co., Ltd.⁷

Additional product information

[16] The CBSA provided the following additional product information in its statement of reasons concerning its expiry review determination:⁸

[21] For further clarity, the subject goods include all hot-rolled deformed bar, rolled from billet steel, rail steel, axle steel, low alloy-steel and other alloy steel that does not comply with the definition of stainless steel.

[22] Uncoated rebar, sometimes referred to as black rebar, is generally used for projects in non-corrosive environments where anti-corrosion coatings are not required. On the other hand, anti-corrosion coated rebar are used in concrete projects that are subjected to corrosive environments, such as road salt. Examples of anti-corrosion coated rebar are epoxy or hot-dip galvanized rebar.

[23] The subject goods include uncoated rebar and rebar that has a coating or finish applied. Fabricated rebar products are generally engineered using Computer Automated Design programs, and are made to the customer's unique project requirements. The fabricated rebar products are normally finished with either a protective or corrosion-resistant coating. Rebar that is simply cut-to-length is not considered to be a fabricated rebar product excluded from the definition of subject goods.

[17] Rebar produced in Canada must meet the National Standard of Canada CSA G30.18:21, *Carbon steel bars for concrete reinforcement* (CSA Standard), prepared by the Canadian Standards Association operating as the CSA Group.⁹

[18] Rebar is made from steel billets. In a vertically integrated steel production facility,¹⁰ these billets are formed when steel scrap is melted in an electric arc furnace and further processed in a ladle arc-refining unit. The molten steel is then continuously cast and cut to length into rectangular billets. The steel billets are then hot rolled into various sizes of rebar, which are cut to length as straight bars or wound into coils to meet customer requirements. Deformations to the bar are made during the rolling process in order to improve the adherence of the bar when it is set into concrete.¹¹ Once rebar is rolled to the correct diameter, it is cut in straight lengths, coiled or spooled. Domestic

⁶ *Rebar II* at para. 21.

⁷ At para. 231.

⁸ Exhibit RR-2021-006-03.A.

⁹ Exhibit RR-2021-006-B-05 at para. 33. This fact is undisputed, and the actual CSA standard is set out in Exhibit RR-2021-006-31.04.B (protected) at 29–53.

¹⁰ ArcelorMittal, Gerdaul and AltaSteel each submitted that they produce their own steel billets from scrap metal, which are then used to produce various steel products, including rebar. Exhibit RR-2021-006-A-01 at para. 16; Exhibit RR-2021-006-B-01 at paras. 22–23. These facts are undisputed.

¹¹ Exhibit RR-2021-006-A-01 at para. 16; Exhibit RR-2021-006-B-01 at paras. 22–23.

production is primarily in straight lengths of 6, 10, 12 and 18 metres, but rebar lengths can be cut to customer requirements.¹² Coiled rebar is also produced in Canada.¹³

[19] Rebar is primarily used to reinforce concrete and masonry structures, enhancing the compressional and tensional strength of concrete and preventing the concrete from cracking during curing or following changes in temperature. Rebar fabricators cut, bend and form rebar into various lengths and shapes for use in civil engineering projects (e.g. bridges and dams), commercial projects (e.g. hospitals and office buildings), residential projects (e.g. condos), etc. If the rebar is coiled, it has to be uncoiled before a fabricator can cut and bend it.¹⁴

LEGAL FRAMEWORK

[20] Subsection 76.03(10) of SIMA requires the Tribunal to determine whether the expiry of the finding is likely to result in injury to, or retardation of, a domestic industry.¹⁵ If the Tribunal determines that injury is likely, it must continue the finding with or without amendment; if it determines that no injury is likely, the Tribunal must rescind the finding.¹⁶

[21] The Tribunal must make several findings before it analyzes the likelihood of injury. Specifically, the Tribunal must consider which 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”. Where the subject goods originate in or are exported from two or more countries, as is the case here, the Tribunal must also consider whether it is appropriate to make an assessment of the cumulative effect of the dumping of the subject goods.¹⁷

LIKE GOODS AND CLASSES OF GOODS

[22] To determine whether resumed or continued dumping of the subject goods is likely to cause material injury to the domestic producers of like goods, the Tribunal 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 more than one class of goods within the subject goods and the like goods.¹⁸

¹² Exhibit RR-2021-006-B-03 at para. 31; Exhibit RR-2021-006-D-03 at para. 9.

¹³ Exhibit RR-2021-006-C-03 at paras. 87–89; Exhibit RR-2021-006-C-05 at paras. 24–25; Exhibit RR-2021-006-C-11 at para. 14; Exhibit RR-2021-006-30.01A at 12; Exhibit RR-2021-006-30.04.B at para. 3; *Transcript of Public Hearing* at 14, 41, 55.

¹⁴ Exhibit RR-2021-006-A-01 at paras. 19, 47–49, 58; Exhibit RR-2021-006-B-01 at para. 16; Exhibit RR-2021-006-B-05 at paras. 6, 25, 139; RR-2021-006-30.04B at para. 31. These facts are undisputed.

¹⁵ Subsection 2(1) of SIMA defines “injury” as “material injury to a domestic industry” and “retardation” as “material retardation of the establishment of a domestic industry”. There is an established domestic industry in this expiry review, so there is no issue regarding a likelihood of retardation.

¹⁶ Subsection 76.03(12) of SIMA.

¹⁷ Subsection 76.03(11) of SIMA.

¹⁸ If the Tribunal determines 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).

[23] 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.

[24] 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 (e.g. composition and appearance) and their market characteristics (e.g. substitutability, pricing, distribution channels, end uses and whether the goods fulfil the same customer needs).¹⁹ In deciding the issue of classes of goods, the Tribunal typically considers whether goods potentially included in separate classes of goods constitute “like goods” in relation to each other.²⁰ If they do, they will be regarded as comprising a single class of goods.²¹

[25] Celsa argued that there are three classes of goods and that domestically produced straight and coiled rebar is not like spooled rebar exported to Canada by Celsa. Celsa’s evidence primarily consists of several support letters from fabricators. Celsa did not call those fabricators as witnesses; therefore, they were not subject to cross-examination. In contrast, the domestic industry’s evidence relevant to these issues was more thorough and included sworn testimony, so the Tribunal has given it more weight as reflected below.

[26] Gerdau, AltaSteel, ArcelorMittal, and MANA argued that domestically produced rebar is like goods in relation to the subject goods, and there is one class of goods. The USW did not address this issue.

[27] After considering the above factors, the Tribunal finds that domestically produced rebar is like goods to the subject goods, and there is a single class of goods. Indeed, since 1999, the Tribunal has repeatedly found that domestically produced rebar is “like” the subject goods and that there is a single class of goods.²² Nothing before the Tribunal in the present expiry review warrants departing from those findings.

[28] Regarding like goods, the Tribunal has previously found, on the basis of the above factors and where the subject goods were described in the same way as in the present expiry review, that rebar produced in Canada that is of the same description as the subject goods is like goods in relation to the subject goods.²³ Therefore, the Tribunal finds that domestically produced rebar constitutes like goods in relation to the subject goods (including subject goods that are spooled).

¹⁹ See e.g. *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) [*Copper Pipe Fittings*] at para. 48.

²⁰ *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) [*Aluminum Extrusions NQ*] at para. 115; see also *Polyisocyanurate Thermal Insulation Board* (11 April 1997), NQ-96-003 (CITT) [*Thermal Insulation Board*] at 10.

²¹ *Aluminum Extrusions NQ* at para. 115; see also *Thermal Insulation Board* at 10.

²² See *Concrete Reinforcing Bar* (9 January 2015), NQ-2014-001 (CITT) [*Rebar I*] at paras. 47, 79; *Rebar II* at para. 45; *Concrete Reinforcing Bar* (4 June 2021), NQ-2020-004 (CITT) [*Rebar III*] at paras. 27–30; *Concrete Reinforcing Bar* (2 July 2021), NQ-2020-005 (CITT) [*Rebar IV*] at paras. 27–29; *Concrete Reinforcing Bar* (14 October 2020), RR-2019-003 (CITT) [*Rebar I Expiry Review*] at para. 33. See also *Safeguard Inquiry into the Importation of Certain Steel Goods* (3 April 2019), GC-2018-001 (CITT) at 52–53, where the Tribunal found that domestically produced rebar was “like or directly competitive goods” to the subject imported rebar.

²³ See e.g. *Rebar IV* at paras. 27–28.

[29] Regarding classes of goods, Celsa attempted to distinguish between straight, coiled and spooled rebar. However, Celsa's contention that there is more than one class of goods is not supported by the evidence. In terms of physical characteristics, all straight, coiled and spooled rebar must meet the same CSA Standard, which sets out technical specifications and quality standards.²⁴ The evidence indicates that all three types of rebar have the same basic production process (i.e. being rolled from a billet)²⁵ and have essentially the same appearance (although there may be superficial differences such as markings).²⁶ The evidence also indicates that the underlying physical characteristics of rebar exist after it is rolled from a billet,²⁷ and neither cutting nor coiling (which includes spooling) changes those characteristics.²⁸

[30] In terms of market characteristics, straight, coiled and spooled rebar are substitutable products, have the same end use and fulfil the same customer needs. There is evidence that fabricators view coiled and spooled rebar as interchangeable products (with spooled rebar considered to be differently packaged coiled rebar but otherwise the same).²⁹ Construction companies and others using rebar on job sites do not distinguish between straight, coiled and spooled rebar.³⁰ For example, witness Desmarais testified that fabricators consider spooled rebar to be the same product as coiled rebar.³¹ Contrary to Celsa's submissions, the evidence indicates that all rebar, whether straight, coiled or spooled, can be used in off-site processing by fabricator customers before being sold to construction companies. Spooled rebar is not the only type of rebar that is subject to off-site manipulation.³²

[31] The evidence indicates that straight, coiled and spooled rebar can all be cut, bent and formed by fabricators,³³ and the choice of which to use is based on customer preference.³⁴ As for equipment to fabricate or process rebar, the evidence indicates that specialized machinery is not necessarily required to process spooled rebar. For example, coiled rebar can be processed on the same equipment as spooled rebar.³⁵ Contrary to Celsa's arguments and its evidence in the form of support letters from

²⁴ Exhibit RR-2021-006-B-05 at para. 33. This fact is undisputed, and the actual CSA Standard is set out in Exhibit RR-2021-006-31.04.B (protected) at sections 1, 4.1. See also *Transcript of Public Hearing* at 40, 52, 79.

²⁵ Exhibit RR-2021-006-30.03.A at 53, 59. The Danieli spooler technology mentioned by Celsa is neither required nor unique to produce spooled rebar. *Transcript of Public Hearing* at 55, 68; Exhibit RR-2021-006-C-12 (protected) at para. 13. In any event, an additional production step or slightly different manufacturing technique is not determinative. See e.g. *Rebar I* at paras. 62–63; *Rebar I Expiry Review* at para. 155; *Galvanized Steel Wire* (20 August 2013), NQ-2013-001 (CITT) at para. 47.

²⁶ Exhibit RR-2021-006-C-11 at 12.

²⁷ *Transcript of Public Hearing* at 42, 61; Exhibit RR-2021-006-30.01.A at para. 6; Exhibit RR-2021-006-30.04.B at para. 22.

²⁸ *Transcript of Public Hearing* at 40, 68; Exhibit RR-2021-006-30.01.A at paras. 8, 10; Exhibit RR-2021-006-30.04.B at para. 36.

²⁹ Exhibit RR-2021-006-31.04.B (protected) at 81, 83. Celsa describes spooled rebar as “corrugated steel coils produced in the rolling mill ... and subsequently tightly spooled”; Exhibit RR-2021-006-F-01 at para. 59. Other evidence supports this description in terms of coiled rebar being spooled (i.e. tightly wound instead of loosely coiled) at the packaging stage. See e.g. Exhibit RR-2021-006-31.03.A (protected) at 59, as referenced in Exhibit RR-2021-006-30.03.A at para. 29.

³⁰ Exhibit RR-2021-006-C-11 at paras. 24, 26–28; *Transcript of Public Hearing* at 55, 68; Exhibit RR-2021-006-13.03.A at 6; *Rebar II* at para. 224.

³¹ *Transcript of Public Hearing* at 56.

³² Exhibit RR-2021-006-B-03 at para. 30; Exhibit RR-2021-006-A-06 (protected) at para. 14.

³³ Exhibit RR-2021-006-30.04.B at para. 36.

³⁴ *Ibid.* at para. 37; *Transcript of Public Hearing* at 146.

³⁵ Exhibit RR-2021-006-30.04.B at 12, 19; Exhibit RR-2021-006-31.04.B (protected) at 81, 83.

fabricators, testimony from witnesses at the hearing and other evidence adduced by the Domestic Producers indicates that even older fabrication machinery can be adjusted to run spools, which rebuts Celsa's evidence.

[32] The preponderance of the evidence indicates that other market characteristics (e.g. pricing and distribution channels) for straight, coiled and spooled rebar are very similar.³⁶ Witnesses at the hearing were unanimous that imported spooled rebar competes with domestically produced straight and coiled rebar.³⁷ On balance, the evidence shows that straight, coiled and spooled rebar are interchangeable.

[33] The Tribunal recognizes that fabricators may realize "efficiencies" in using coiled (including spooled) rebar, and there may be a perception that spooled rebar is of higher quality. However, neither efficiencies nor perceived quality differences are sufficient to render domestically produced rebar unlike Celsa's spooled rebar.³⁸

[34] Celsa's arguments are premised on the view that straight, coiled and spooled rebar are distinguishable because they may not always be fully substitutable for each other, given customer preferences. However, this is insufficient for the Tribunal to conclude that there are multiple classes of goods. As the Tribunal has stated previously:

The fact that the subject goods include various product specifications serving different end uses does not preclude the Tribunal from finding a single class of goods. Goods can belong to the same class even if they come in numerous varieties, including different grades and specifications for end use, which may not be fully substitutable for each other. The Tribunal typically does not subdivide goods into separate classes of goods based on narrow distinctions or mere customers' preference for a specific type of product.³⁹

[Footnotes omitted]

[35] In light of the foregoing, the Tribunal finds that domestically produced rebar (within the specifications of the subject goods) is like goods in relation to the subject goods and that there is a single class of goods.

DOMESTIC INDUSTRY

[36] 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

³⁶ *Rebar II* at paras. 44, 69; *Rebar III* at para. 46; Exhibit RR-2021-006-B-05 at 47; Exhibit RR-2021-006-16.06.B at 5. Exhibit RR-2021-006-C-03 at para. 17.

³⁷ *Transcript of Public Hearing* at 19, 67, 87, 88, 126–127.

³⁸ *Transcript of Public Hearing* at 25, 40, 52, 79, 146.

³⁹ *Corrosion-Resistant Steel Sheet* (21 February 2019), NQ-2018-004 (CITT) [*COR I*] at para. 29. Similarly, in *Rebar I* at para. 74, the Tribunal stated that, "while coated rebar and uncoated rebar are not fully substitutable across the entire spectrum of end uses, they nevertheless fall within the same continuum of goods and are, under the right circumstances, sufficiently substitutable for one another to justify the consideration of a single class of goods."

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.

[Emphasis in original]

[37] Therefore, the Tribunal must determine whether there is a likelihood of injury to domestic producers as a whole or those domestic producers whose production represents a major proportion of the total production of like goods.⁴⁰

[38] During the POR, there were five known domestic producers of rebar in the Canadian market: Gerdau, ArcelorMittal, AltaSteel, MANA and Ivaco Rolling Mills 2004 L.P. (Ivaco).⁴¹ As these producers accounted for all known domestic production of like goods over the POR, they constitute the domestic industry for the purposes of this expiry review.

[39] The Tribunal notes that, while it received questionnaire responses from all five domestic producers, Ivaco's response was incomplete, as it did not provide its financial results or information pertaining to some of the other performance indicators normally considered by the Tribunal as part of its likelihood of injury analysis. However, given that the collective production of the like goods by the other four domestic producers accounted for nearly all known domestic production,⁴² the Tribunal considers that the performance of these four producers is reasonably representative of the state of the entire domestic industry.

CUMULATION

[40] Pursuant to subsection 76.03(11) of SIMA, the Tribunal must assess the cumulative effect of the dumping of the subject goods from more than one country if it is satisfied that such an assessment would be appropriate, taking into account the conditions of competition between the subject goods of each of those countries or between those goods and the like goods of domestic producers.

[41] In considering conditions of competition, the Tribunal typically considers a range of factors, including the degree to which the subject goods from each country are interchangeable with the subject goods from the other countries or with the like goods; the presence or absence of sales of (or offers to sell) goods into the same geographic markets; the existence of common or similar distribution channels; and differences in the timing of the arrival of the subject goods from each country and of those from the other countries and of the availability of like goods supplied by the domestic industry.⁴³ This list is not exhaustive, and no single factor is determinative.⁴⁴

⁴⁰ "Major proportion" has been interpreted to mean an important or significant proportion of the total domestic production of the like goods (and not necessarily a majority of these goods): *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.

⁴¹ Exhibit RR-2021-006-05 at 8; Exhibit RR-2021-006-03.A at para. 31; Exhibit RR-2021-006-A-01 at para. 14; Exhibit RR-2021-006-B-01 at para. 20.

⁴² Exhibit RR-2021-006-06.A (protected) at Table 9.

⁴³ *Copper Pipe Fittings* at para. 73; *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (13 May 2022), RR-2021-001 (CITT) [*Steel Sheet and Strip*] at para. 47.

⁴⁴ *Copper Pipe Fittings* at para. 73; *COR I* at para. 45.

[42] In an expiry review, conditions of competition are assessed prospectively with a focus on the situation if a finding expires.⁴⁵ Therefore, a lack of subject imports into Canada while a finding is in place (which is not surprising) is not conclusive; a cumulated injury analysis presupposes future competition between subject goods from different countries and the like goods of domestic producers.⁴⁶ However, there have been circumstances where the Tribunal has found that subject goods from a country are not likely to be present in the Canadian market (or present only in negligible quantities) if a finding expires and thus decided not to cumulate the effect of the dumping of the subject goods from that country.⁴⁷

[43] Celsa argued, in part, that “[s]ubsection 42(3) of SIMA requires the Tribunal to assess the cumulative effects of dumping of subject goods imported into Canada from more than one subject country if it is satisfied that (1) **the margin of dumping in respect of the goods** from each of the subject countries is not minimal and **the volumes of dumped goods** from each of the subject countries are not negligible ...” [bold in original].⁴⁸

[44] In terms of conditions of competition, Celsa argued that the spooled rebar subject goods from Spain do not compete on the same trade level with straight and coiled rebar from the other subject countries, nor with domestically produced like goods. Celsa submitted that, unlike straight and coiled rebar, the spooled rebar subject goods from Spain would only be sold to certain distributors and fabricators. Celsa also submitted that subject countries other than Spain and Portugal do not supply spooled rebar. Celsa further submitted that its economic growth and actual export markets suggest that subject goods imported from Spain “are not destined” to be significant in Canada if the finding is rescinded.⁴⁹ Finally, Celsa argued that, pursuant to the preamble of the Joint Interpretative Instrument on the Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union and its Member States, the Tribunal “should be mindful that the degree of the international and legal obligations between Spain and Canada are embodied on commitments of ‘free and fair trade’ in which economic activity should take place within a ‘framework of clear and transparent regulation’.”⁵⁰

[45] Gerdau, AltaSteel, ArcelorMittal, and MANA submitted that the Tribunal should cumulate the effect of the dumping of the subject goods from all subject countries. They argued that subsection 42(3) of SIMA does not apply to expiry reviews; therefore, any insignificant margins of dumping or negligible volumes of subject goods over the POR should not be taken into account in deciding whether to cumulate under subsection 76.03(11).

⁴⁵ *Oil Country Tubular Goods* (30 December 2020), RR-2019-006 (CITT) [*OCTG*] at paras. 42, 53.

⁴⁶ *OCTG* at para. 53.

⁴⁷ *OCTG* at para. 53.

⁴⁸ Exhibit RR-2021-006-F-01 at para. 121. Subsection 42(3) of SIMA provides that, “[i]n making or resuming its inquiry under subsection (1), the Tribunal shall make an assessment of the cumulative effect of the dumping or subsidizing of goods to which the preliminary determination applies that are imported into Canada from more than one country if the Tribunal is satisfied that (a) the margin of dumping or the amount of subsidy in relation to the goods from each of those countries is not insignificant and the volume of the goods from each of those countries is not negligible”.

⁴⁹ Celsa also argued that differences in macroeconomic structures and policies between the subject countries (e.g. Belarus, Hong Kong and Chinese Taipei) and Spain show that the latter has completely distinct conditions of competition and should not be cumulatively assessed with the other subject countries.

⁵⁰ Exhibit RR-2021-006-F-01 at para. 180.

[46] In terms of conditions of competition, Gerdau, AltaSteel and ArcelorMittal submitted that the subject goods and domestic goods are interchangeable, domestic rebar is comparable to the subject goods in non-price factors, and subject and domestic like goods are sold across Canada through the same distribution channels. AltaSteel and ArcelorMittal also argued that the Tribunal must do a cumulative assessment because Celsa's evidence does not prove that, if the finding expires, the subject goods from Spain will only have a negligible presence in the Canadian market. Gerdau, AltaSteel, ArcelorMittal and MANA further argued that neither the market conditions of the subject countries nor the economic relationship between Canada and the European Union, as demonstrated by CETA, are relevant to whether the Tribunal should assess the cumulative effect of the dumping of the subject goods from the subject countries, including Spain. In their view, there is no evidence that these factors would affect the conditions of competition for rebar in Canada. The USW did not address cumulation.

[47] In the injury inquiry which led to the finding, the Tribunal assessed the cumulative effect of the dumping of the subject goods from all the subject countries.⁵¹ In the Tribunal's view, a cumulative assessment is also appropriate in the context of the present expiry review.

[48] The Tribunal begins by considering Celsa's arguments based on paragraph 42(3)(a) of SIMA. This provision applies only to injury inquiries, which are distinct from expiry reviews conducted pursuant to section 76.03.⁵² In an expiry review, the Tribunal must make a cumulative assessment if it is satisfied that such an assessment would be appropriate, taking into account the conditions of competition between the goods. There are no requirements for margins of dumping not to be insignificant or for volumes of subject goods not to be negligible.⁵³ The absence of such requirements simply reflects the fact that the price discipline imposed by a finding and the imposition of anti-dumping duties often results in a cessation of imports of subject goods. As stated above, the focus in an expiry review is on the situation if a finding expires.

[49] Turning to the conditions of competition, the Tribunal finds that Celsa has not established that the relevant conditions have changed since the *Rebar II* finding was put in place. Moreover, the evidence indicates that, in the near to medium term, the conditions of competition are likely to remain similar between the subject goods and the domestic like goods, and between the subject goods from all subject countries, if the finding is rescinded. Together, this suggests that cumulation continues to be appropriate.

[50] Rebar is a commodity product sold primarily on the basis of price and it is interchangeable regardless of country of origin or type.⁵⁴ Domestic producers' and importers' questionnaire responses in this expiry review indicate that the subject goods and domestically produced like goods have the same channels of distribution.⁵⁵ All subject imports arrive by the same method of transportation (ocean vessel); many importers purchase from offshore exporters and from domestic producers; subject imports and like goods are sold in the same period and there are imports offered year-round; and importers and domestic producers sell rebar across Canada and they had a presence in the same

⁵¹ *Rebar II* at para. 55.

⁵² *Carbon Steel Welded Pipe* (25 July 1996), RR-95-002 (CITT) at 9.

⁵³ *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (18 August 2006), RR-2005-002 (CITT) at para. 52.

⁵⁴ Exhibit RR-2021-006-B-03 at paras. 34, 48; Exhibit RR-2021-006-C-03 at paras. 13, 17; Exhibit RR-2021-006-C-05 at para. 3; *Transcript of Public Hearing* at 19.

⁵⁵ Exhibit RR-2021-006-B-05 at para. 126; Exhibit RR-2021-006-C-03 at para. 17; Exhibit RR-2021-006-16.05 at 5; Exhibit RR-2021-006-16.06B at 5; Exhibit RR-2021-006-16.09.A at 5; Exhibit RR-2021-006-16.13 at 5.

markets and at similar trade levels during the POR.⁵⁶ Celsa's overview of its straight and coiled (including spooled) rebar production indicates that it produces rebar capable of competing in Canada with other imported rebar and the domestic like goods.⁵⁷ There is also evidence that imported spooled rebar would compete with the domestic industry's straight rebar in the Canadian market.⁵⁸

[51] Regarding Celsa's contention that subject countries other than Spain and Portugal do not produce or export spooled rebar, the evidence reveals that there are producers of spooled rebar in other subject countries such as Japan and Taiwan.⁵⁹ As well, Celsa is not the only Spanish rebar producer.

[52] The Tribunal recalls that it is the conditions of competition in Canada once the subject goods are imported that are in issue, not the conditions of competition in the subject countries.⁶⁰ The Tribunal agrees with the Domestic Producers that Canada's relationship with the European Union and the existence of a free trade agreement are irrelevant to this expiry review because there is no evidence that these factors would impact the conditions of competition for rebar in Canada. Similarly, there is no evidence that macroeconomic policy distinctions between subject countries impact the conditions of competition for rebar sold in the Canadian market.

[53] In summary, the evidence reveals that there are no meaningful differences in the expected conditions of competition in Canada between the spooled rebar from Spain and the subject goods from the other subject countries or the domestic like goods. The Tribunal finds that Celsa's arguments purporting to distinguish between spooled rebar from Spain and subject rebar imported into Canada from other subject countries or domestically produced like goods are not supported by the evidence. Therefore, the Tribunal finds that the conditions of competition for rebar in Canada are such that it must cumulate the effect of the dumping of rebar from Spain.

[54] For the issue of whether the subject goods are likely to be present in the Canadian market (or to be present only in negligible quantities) if the *Rebar II* finding expires, the evidence indicates that exports from Spain destined for Canada are likely to resume in more than negligible quantities in the near to medium term if the finding expires. Celsa's claim in this regard, based on the assertion that "Spain is forecasting economic growth coupled with its geographic positioning at the heart of significant potential and actual export markets [in Europe]", is belied by the evidence provided by the Domestic Producers concerning the current and forecast conditions in Spain's economy and rebar market. The evidence suggests that market conditions in Spain and Europe will actually encourage Spanish producers and exporters to export meaningful quantities of rebar to an important market like Canada if the finding expires.⁶¹ Celsa's product exclusion request is also indicative of a vested interest to export rebar to the Canadian market. As well, there is evidence that Nervacero maintains

⁵⁶ Exhibit RR-2021-006-B-01 at 16; Exhibit RR-2021-006-B-05 at 47; Exhibit RR-2021-006-C-03 at 6; Exhibit RR-2021-006-16.06.B at 3.

⁵⁷ Exhibit RR-2021-006-F-01 at para. 8.

⁵⁸ See e.g. Exhibit RR-2021-006-30.03.A at para. 44, referencing witness Desmarais's confidential statement of evidence; Exhibit RR-2021-006-31.04.B (protected) at paras. 31–39, at 81.

⁵⁹ Exhibit RR-2021-006-B-05 at paras. 134–135; Exhibit RR-2021-006-30.03.A at para. 28; Exhibit RR-2021-006-B-05 at 73, 75, 80–81.

⁶⁰ *OCTG* at para. 50, citing *Cold-Rolled Steel* (21 December 2019), NQ-2018-002 (CITT) at para. 41; *COR I* at para. 48.

⁶¹ Exhibit RR-2021-006-A-01 at paras. 77–83; Exhibit RR-2021-006-B-01 at paras. 257–287, 319–347.

an interest in the Canadian market and that its volume of exports to Canada is likely to grow without the finding in place.⁶²

[55] Regarding imports of subject goods from the other subject countries, the evidence suggests that they are likely to be present in more than negligible quantities in the Canadian market if the finding expires. Even imports from Belarus are likely to reappear in the Canadian market in more than negligible quantities. At the hearing, the witness for MANA indicated that imports from Belarus remain a concern for the domestic industry (despite now being subject to a 35% tariff).⁶³

[56] In summary, the evidence shows that the subject goods are likely to be present in more than negligible quantities and compete in the Canadian market with the domestic like goods if the finding expires. Consequently, the Tribunal is satisfied that it is appropriate to make an assessment of the cumulative effect of the dumping of the subject goods from all subject countries and will do so for the purpose of considering whether the expiry of the finding is likely to result in injury.

LIKELIHOOD OF INJURY ANALYSIS

[57] An expiry review is forward-looking.⁶⁴ 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.⁶⁵

[58] There is no presumption of injury in an expiry review; findings must be based on positive evidence. In the context of an expiry review, positive evidence includes evidence based on past facts that tend to support forward-looking conclusions.⁶⁶

[59] To assess the likelihood of injury, the Tribunal typically focuses on circumstances that can reasonably be expected to exist in the near to medium term, which is generally considered to be a period of up to 24 months from the date on which the order or finding would be rescinded.⁶⁷ In the absence of arguments and evidence suggesting that this timeframe would be inappropriate in the circumstances of this expiry review, the Tribunal chooses to focus its analysis on the next 24 months.

[60] Subsection 37.2(2) of the *Special Import Measures Regulations*⁶⁸ (Regulations) lists factors that the Tribunal may consider in assessing the likelihood of injury in cases where the CBSA has

⁶² Exhibit RR-2021-006-B-05 at paras. 110–113.

⁶³ Exhibit RR-2021-006-03.A at para. 113; Exhibit RR-2021-006-B-01 at para. 90; *Transcript of Public Hearing* at 143. The CBSA published revised Customs Notice 22-02 on March 11, 2022, which advised that entitlement to the Most-Favoured-Nation tariff was withdrawn effective March 2, 2022, from goods originating in Russia or Belarus; Exhibit RR-2021-006-B-01 at 293–294.

⁶⁴ *Certain Dishwashers and Dryers* (9 May 2005), RR-2004-005 (CITT) at para. 16.

⁶⁵ *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 RR*] at para. 21.

⁶⁶ *Thermoelectric Containers* at para. 14; *Aluminum Extrusions RR* at para. 21.

⁶⁷ *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate* (31 October 2019), RR-2018-007 (CITT) at para. 42; *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate* (10 November 2020), RR-2019-004 (CITT) at para. 34; and *Carbon Steel Screws* (2 September 2020), RR-2019-002 (CITT) [*Carbon Steel Screws*] at para. 133.

⁶⁸ SOR/84-927.

determined that the expiry of an order or finding is likely to result in continued or resumed dumping. The factors that the Tribunal considers relevant in this expiry review are discussed below.

Changes in market conditions

[61] To assess the likely volumes and prices of the subject goods and their impact on the domestic industry if the finding expires, the Tribunal will first consider changes in international and domestic market conditions that occurred during the POR and that are likely to occur over the next 24 months.⁶⁹ These developments provide general context for the Tribunal's analysis and are likely to occur whether the finding is continued or rescinded.

International market conditions

[62] The evidence on record shows that the global economy has experienced significant volatility and instability due, at least in part, to uneven global economic recovery from the COVID-19 pandemic, global inflation, the ongoing Russia-Ukraine war, an economic slowdown in China and supply chain disruptions. According to the International Monetary Fund, global growth was expected to slow from 6.0% in 2021 to 3.2% in 2022 and 2.7% in 2023.⁷⁰

[63] The COVID-19 pandemic has posed significant challenges for global supply chains, as multiple lockdowns around the world impacted the flow of raw materials and goods. Other pressures on global supply chains, including shortages of semiconductor chips, rising energy costs and higher interest rates, have also had a negative impact on industrial activity. It is unlikely that the supply bottleneck will dissipate completely despite slowing demand, given the continuation of the Russia-Ukraine war and pandemic containment measures in China.⁷¹ Indeed, China's economic slowdown and its COVID-19 policy have added to global supply chain disruptions. The situation in China is expected to continue to weigh heavily on global trade and activity, considering its importance to both global demand and the global supply chain.⁷²

[64] As global inflation remains high, central banks across the world continue to tighten monetary policy. The World Bank reports the likelihood of a global recession in 2023, with a series of financial crises in emerging markets and developing economies.⁷³ The situation in Ukraine continues to destabilize the global economy, leading to an energy crisis in Europe and increases in the cost of living. However, labour markets remain strong across most advanced economies with unemployment rates at lows not seen in decades.⁷⁴

[65] Global excess steel capacity remains a chronic issue as the gap between global capacity and production has remained elevated over the past several years. The Organisation for Economic Co-operation and Development (OECD) notes that global steelmaking excess capacity is likely to

⁶⁹ See paragraph 37.2(2)(j) of the Regulations.

⁷⁰ According to the International Monetary Fund, this is the weakest growth profile since 2001 except for the global financial crisis and the acute phase of the COVID-19 pandemic. The World Bank states that the global economy is in its steepest slowdown following a post-recession recovery since 1970. See Exhibit RR-2021-006-A-07 at 39; Exhibit RR-2021-006-D-05 at 12, 47.

⁷¹ Exhibit RR-2021-006-A-07 346, 451; Exhibit RR-2021-006-D-05 at 73.

⁷² Exhibit RR-2021-006-A-07 at 4-6, 13, 36, 40, 46, 51, 62; Exhibit RR-2021-006-D-05 at 73.

⁷³ Exhibit RR-2021-006-D-05 at 46-47.

⁷⁴ Exhibit RR-2021-006-A-07 at 446; Exhibit RR-2021-006-B-01 at 1055.

continue to grow over the coming years.⁷⁵ According to the OECD Steel Committee, capacity growth is driven by continued investments particularly in the Middle East and Southeast Asia and, if foreseen projects are realized, global steelmaking capacity would increase by 6.6% over its 2021 levels.⁷⁶

[66] CRU data indicates that global rebar consumption grew by approximately 4% between 2019 and 2021, then declined to below 2019 levels in 2022. Low growth is anticipated for 2023 and 2024, with volumes not reaching pre-pandemic levels until 2024.⁷⁷

Domestic market conditions

[67] While the Canadian economy started to recover from the effects of the pandemic with strong housing markets, high commodity prices and easing of COVID-19 restrictions, economic growth is now showing signs of slowing. This is largely due to the impact of high inflation and tighter financial conditions on consumption and housing activity.⁷⁸

[68] Although the evidence on record indicates that Canada's inflation reached a 40-year high in 2022, it has been more moderate than in most industrial countries, with a rate 2.6 percentage points lower than the OECD average (7.6% in July versus 10.2% across the OECD).⁷⁹ Inflation eased in July 2022 to 7.6% from 8.1% in June and further slowed to 6.9% in September 2022. Inflation is forecast to average 3.8% in Canada in 2023⁸⁰ and return to the 2.0% target rate by the end of 2024.⁸¹ Global factors, such as the Russia-Ukraine war (which has further pushed up food and gasoline prices and tradable goods prices, including high freight costs), remain the largest drivers of rising prices. While the outlook in Canada is better than in Europe or China, growth will be impacted by global factors and the fight against inflation.⁸²

[69] Canadian producers expect demand for rebar in Canada to remain flat, at best, in the coming years.⁸³ However, a softening demand seems more likely, considering interest rate hikes and a potential recession in Canada, both of which impact residential and commercial construction. The Canada Mortgage and Housing Corporation forecasts a continued downturn in the Canadian housing market, more in line with historical averages, by late 2023 or early 2024. Similarly, the Bank of

⁷⁵ Exhibit RR-2021-006-A-07 at 348; Exhibit RR-2021-006-B-01 at 586.

⁷⁶ Exhibit RR-2021-006-A-07 at 348. It appears that this increase in capacity is anticipated through the end of 2024. Immediately before its 6.6% over 2021 capacity increase projection, the OECD Steel Committee states, “[T]he gap between global capacity and production has remained elevated over the past several years, stabilising at a level of 544.1 mmt in 2021. The latest OECD analysis suggests that excess capacity is likely to continue growing, with a total of 88.5 million metric tonnes (mmt) of capacity underway for completion, while an additional 73.3 mmt are in the planning stages for the 2022-24 period.”

⁷⁷ Exhibit RR-2021-006-B-02 (protected) at 253.

⁷⁸ Exhibit RR-2021-006-A-07 at 454–455.

⁷⁹ *Ibid.*; Exhibit RR-2021-006-B-01 at 1043; Exhibit RR-2021-006-E-09 at 35–36.

⁸⁰ Exhibit RR-2021-006-A-07 at 440, 574; Exhibit RR-2021-006-B-01 at 1044.

⁸¹ Similarly, Scotia Bank's September 2022 Forecast Tables indicate that the inflation was approximately 7.6% in July and will average 3.8% next year. See Exhibit RR-2021-006-A-07 at 454–455; Exhibit RR-2021-006-B-01 at 1044.

⁸² Exhibit RR-2021-006-A-07 at 429, 455; Exhibit RR-2021-006-B-01 at 1043–1044, 1051, 1055.

⁸³ Exhibit RR-2021-006-A-05 at para. 30; Exhibit RR-2021-006-C-03 at paras. 22–24; Exhibit RR-2021-006-D-03 at paras. 27–29; *Transcript of Public Hearing* at 20, 70.

Canada indicates that higher mortgage rates have resulted in the housing market pulling back, with residential construction (including renovations) also predicted to drop over the next year.⁸⁴

Conclusion on market conditions

[70] The evidence indicates that global economic conditions will be unstable over the next 24 months. Economic indicators suggest the global economy is heading toward a recession. The evidence also indicates that demand for rebar in Canada and elsewhere is softening. Additionally, the worldwide market for rebar is projected to be headed for more difficult times; it is not likely to experience much growth, if any. The Tribunal concludes that these foreseeable challenging market conditions will leave the domestic industry vulnerable to any dumping of the subject goods over the next 24 months.

Likely import volume of the subject goods if the finding expires

[71] To determine whether expiry of the finding is likely to result in injury, the Tribunal may consider whether there is likely to be a significant increase in the volume of imports of the dumped goods.⁸⁵

[72] The Tribunal's assessment of the likely volume of imports of the subject goods encompasses the likely performance of the foreign industry, the potential for the 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 in respect of goods of the same description or similar goods, and whether measures adopted by other jurisdictions are likely to cause a diversion of the subject goods to Canada.⁸⁶

[73] The Domestic Producers and the USW argued that, if the finding is rescinded, there will likely be a significant increase in the volume of imports of the subject goods. The Domestic Producers submitted that there are several factors that would lead to this result, including domestic and global economic conditions; weak demand for rebar in the subject countries and their primary export markets; excess capacity and export orientation of foreign producers; foreign producers' continued interest in the Canadian market; trade restrictive measures in multiple markets, which increases the risk of diversion of rebar to Canada and consequent increased imports of subject goods; and Canadian importers' demonstrated history of switching import sources for rebar.

[74] In response, Celsa argued that if the finding is rescinded, there will not be a likely increase in the volume of imports of the subject goods, because: the demand for rebar will remain high in Europe; Spain in particular is undergoing a strong economic recovery, which means its domestic demand will not weaken; high energy prices in Spain are negatively impacting rebar production and has resulted in most Spanish rebar producers increasing their selling prices; global excess steel capacity declined in 2021 compared to 2020; Canada is not one of Spain's main export markets, and

⁸⁴ Exhibit RR-2021-004-A-07 at 440, 464, 480–481.

⁸⁵ Subsection 37.2(2) of the Regulations provides, in part: "In making a determination under subsection 76.03(10) of the Act, the Tribunal may consider (a) the likely volume of the dumped or subsidized goods if the order or finding is allowed to expire, 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".

⁸⁶ See paragraphs 37.2(2)(a), (d), (f), (h) and (i) of the Regulations.

Spanish rebar exporters are focused on the European market; and there are no other trade measures affecting exports of the subject goods from Spain.⁸⁷

[75] The Tribunal notes that most of Celsa's arguments are made in respect of subject goods exported from Spain only and, therefore, address only a discrete portion of the cumulatively assessed subject goods being examined by the Tribunal in this expiry review. The Tribunal addressed the inherent shortcomings of this approach in *Rebar III*, and the Tribunal adopts the same view in the present matter.⁸⁸ In summary, once it has decided to proceed with an analysis of the cumulative effect of the dumping of the subject goods from all subject countries, the Tribunal cannot consider the discrete impact of imports from individual subject countries. The volume of imports from *all* subject countries must be considered together.

[76] For the reasons that follow, the Tribunal finds that the expiry of the finding would likely result in a significant increase in the volume of imports of the subject goods in the next 24 months.

[77] CRU data show that the subject countries have excess rebar capacity that could supply the Canadian market several times over. The Canadian market in 2021 was approximately 11% of the excess capacity forecast for the subject countries for 2023 and 2024. Indeed, Chinese Taipei, Japan and Spain are forecast to have a combined excess capacity of approximately 14 million tonnes in 2023 and 2024.⁸⁹ These facts indicate that the subject countries' excess capacity is forecast to continue to far exceed the size of the Canadian market, which is expected to remain flat at best over the next 24 months.

[78] In addition, the European Commission recently reported that there is substantial unused capacity in Belarus.⁹⁰ Moreover, it is generally recognized that facilities producing other long products can be used to produce rebar,⁹¹ which more than notionally means that even greater excess capacity exists than what is reported in CRU data.

[79] The Tribunal finds that there is significant excess capacity in the subject countries that will continue to exist over the next 24 months. Undeniably, that excess capacity is of an amount several times the size of the Canadian market. The ramping up of production of even a small portion of it would suffice to satisfy the entirety of the Canadian market and, as examined below, be difficult to resist at dumped prices for a sizable portion of purchasers.

[80] The Tribunal also finds that the subject countries' production already exceeds their domestic consumption. The Tribunal notes that the subject countries' domestic markets appear unable to absorb any excess capacity in the near to medium term. CRU data indicate that the cumulative

⁸⁷ Celsa also submitted that there is no prospective propensity to dump rebar that can be attributed to Spanish export practices or Spanish exporters. However, the CBSA has already determined that the expiry of the finding is likely to result in the continuation or resumption of dumping of the subject goods from all subject countries, including Spain. Exhibit RR-2021-006-03.A at para. 163.

⁸⁸ *Rebar III* at para. 47, at note 42.

⁸⁹ Exhibit RR-2021-006-B-01 at 88, at Table 35; Exhibit RR-2021-006-B-02 (protected) at 243, 252–253, 256–257; Exhibit RR-2021-006-05.A at Table 14. The Tribunal is of the view that the forecast excess capacity is conservative, as data are not available to calculate capacity utilization for every subject country.

⁹⁰ Exhibit RR-2021-006-B-01 at 302.

⁹¹ See *Rebar III* at para. 50, where the Tribunal acknowledges that rebar, as a basic form of long product, can be manufactured on production lines making a range of long products.

production in Chinese Taipei, Japan, Spain and “[o]ther CIS” countries exceeds consumption in those countries, and the situation is forecast to remain the same in 2023 and 2024.⁹²

[81] The Tribunal remarks, as well, that there is a production imperative in the rebar industry. As examined in other associated proceedings, the industry worldwide possesses a systemic “incentive to maintain a high level of production and capacity utilization in order to achieve economies of scale and reduce average costs.”⁹³ In short, producers seek to “produce at high levels to maintain throughput”.⁹⁴ There is no evidence before the Tribunal indicating that the situation is different in this expiry review. The Tribunal finds that rebar producers in the subject countries have a production imperative which may drive them to increase exports rather than reduce production.

[82] The Tribunal also finds that the evidence on the record indicates that rebar producers in the subject countries are export oriented. For example, Japan’s rebar exports more than doubled in 2021 and remained high in the first eight months of 2022.⁹⁵ The sole producer of rebar in Belarus exports up to 85% of its steel production.⁹⁶ The export activities collated from the foreign producers’ responses to the Tribunal’s questionnaire confirm the extent of their reliance on export sales.⁹⁷

[83] The Tribunal finds that the subject countries’ export orientation will likely continue over the next 24 months. Not only has rebar historically been exported from the subject countries, but there is also evidence that such exports will continue. Construction is a key driver for rebar demand, and there is evidence of flat to modest construction growth in the subject countries,⁹⁸ which can prompt rebar producers to maintain and pursue additional markets. Overall, the construction outlook is somewhat mixed for the subject countries, with the forecast construction growth in the next 24 months being modest at best, as growth is expected to be hampered by challenging economic conditions in the subject countries.

[84] Evidence regarding rebar consumption in the subject countries indicates that consumption in Chinese Taipei is projected to decrease in 2023, followed by a slight increase projected for 2024 (although this would be to a level below that of 2021).⁹⁹ Consumption in Japan is projected to increase but would be below 2019 levels.¹⁰⁰ Consumption in Spain is expected to increase but would remain below 2021 levels.¹⁰¹ CRU data indicate that the consolidated consumption in Chinese Taipei, Japan, Spain and the “[o]ther CIS” region is expected to increase by approximately 6% in 2023 and

⁹² Exhibit RR-2021-006-B-02 (protected) at 252, 253, 256, 257.

⁹³ *Rebar I* at paras. 225–226.

⁹⁴ *Rebar IV* at para. 167.

⁹⁵ Exhibit RR-2021-006-B-02 (protected) at 461.

⁹⁶ Exhibit RR-2021-006-B-01 at 310.

⁹⁷ Exhibit RR-2021-006-05.A at Table 5, Exhibit RR-2021-006-06.A at tables 41, 42.

⁹⁸ Japan is only expected to see a 0.8% annual growth rate to 2026 (Exhibit RR-2021-006-A-07 at 1738), while the rate for Portugal is 1.7% (Exhibit RR-2021-006-B-01 at 715). Forecasts for Spain indicate annual construction output growth of approximately 2–4% until 2026, remaining below pre-pandemic levels. Exhibit RR-2021-006-A-07 at 604–605; Exhibit RR-2021-006-A-07 at 577–579. Construction in Chinese Taipei is expected to grow at an annual average rate of 5.3% until 2026 (Exhibit RR-2021-006-B-01 at 513–515), and construction in Hong Kong is forecast to grow at an average annual growth rate of 2.2% until 2026 (Exhibit RR-2021-006-A-07 at 1544).

⁹⁹ Exhibit RR-2021-006-B-02 (protected) at 252.

¹⁰⁰ *Ibid.*

¹⁰¹ *Ibid.* at 253.

8% in 2024, but this follows a decline of approximately 18% in 2022.¹⁰² Together, the evidence indicates that, despite a possible future increase in consumption in the subject countries, demand will remain below pre-pandemic levels.

[85] On balance, given the extent of the excess production capacity of rebar mills in the subject countries, and the inability of their domestic markets to absorb even existing production output, the Tribunal does not consider that the forecast small growth in construction (even if it materializes) could absorb the excess capacity to the extent that it would mitigate exports. Therefore, the Tribunal finds that the export orientation of rebar producers in the subject countries is likely to continue over the next 24 months.

[86] The Tribunal notes that it has previously found that, where there is excess capacity, a production imperative and export orientation, together with weak demand or oversupply in the subject home country, producers may seek to export goods that cannot be sold in the home market.¹⁰³ Similarly, given the existence of those circumstances in this expiry review, the Tribunal finds that exporters in the subject countries will likely export rebar in the next 24 months.

[87] The Tribunal believes it is necessary to recall that Canada was an important export market for the subject countries prior to the finding.¹⁰⁴ To this day, despite the finding, the subject goods have maintained a presence in the Canadian market during the POR.¹⁰⁵ Although they were a small proportion of total imports into Canada during that period, these imports indicate that, even with the finding in place, exporters in the subject countries maintained an interest in the Canadian market.

[88] Foundational to how attractive the Canadian market truly is to foreign producers is the fact that rebar prices in the Canadian market are higher relative to prices in markets in the subject countries, as well as in certain non-subject countries. The fact that Canadian prices tend to move with United States (U.S.) prices contributes to this enduring appeal.¹⁰⁶ In addition, of course, as reflected in CRU data, U.S. prices are consistently and considerably higher than those in other tracked markets.¹⁰⁷ Additionally, the evidence shows that prices in the subject countries are expected to decrease over the next 24 months, prices in the “CIS region” are projected to decrease from 2022 to 2024, and prices in China’s rebar market—a key export market for Hong Kong—are predicted to drop from 2022 to 2024 to a level close to its 2019 level.¹⁰⁸ CRU predicts that there will be a decline in prices in Asian rebar markets in 2023–2024.¹⁰⁹ Rebar prices are also beginning to drop in southern Europe (Italy and Spain) after experiencing higher pricing in 2021 and early 2022.¹¹⁰ In sum, the Tribunal finds that rebar prices in Canada are significantly higher than in other markets and are likely to remain higher over the next 24 months.

[89] There is also evidence that Canada is an attractive market because the subject countries face challenges in other important export markets. For example, traditional export markets for Belarus, such as Russia and Poland, saw a decline in demand in 2022 and a forecast decline in 2023 (with a

¹⁰² *Ibid.* at 252, 253.

¹⁰³ *Rebar I* at paras. 225–226.

¹⁰⁴ Exhibit RR-2021-006-B-01 at 426, 562.

¹⁰⁵ Exhibit RR-2021-006-06.A (protected) at Table 12.

¹⁰⁶ Exhibit RR-2021-006-C-04 (protected) at para. 28.

¹⁰⁷ Exhibit RR-2021-006-B-02 (protected) at 261.

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.* at 723, 766–767.

possible small increase in 2024).¹¹¹ Further, the European Union has imposed sanctions on Belarus that will impact its exports of rebar.¹¹² Additionally, CRU data forecast that rebar demand in the “European Union 27 + UK” region is expected to experience low growth in 2023 and 2024, following a contraction in 2022, but will remain below 2021 demand.¹¹³ Two of Chinese Taipei’s key export markets, South Korea (which is also a top export market for Japan) and Australia, faced a decline in demand in 2022 and 2023, with only small growth in demand expected in 2024.¹¹⁴ China, a key export market for rebar produced in Hong Kong, is expected to see a decline in rebar consumption through 2024.¹¹⁵ The evidence further indicates that Hong Kong also faces competition in its key export markets from other sources, as resellers in the Persian Gulf region are also focused on the Asian market.¹¹⁶

[90] Additionally, trade measures on rebar in other jurisdictions have limited the subject goods’ export opportunities.¹¹⁷ Exporters of those goods would be keen on finding buyers in a Canadian market with no trade measures in place, particularly since subject country exporters already have established Canadian distribution networks with a broad customer base.¹¹⁸

[91] The domestic industry has been in a campaign to tackle the adverse impact of unfairly traded imports of this commodity product for years. Rebar products from 12 other countries are already the subject of trade remedy measures in Canada.¹¹⁹ One consequence of such measures, to the extent that there are fewer dumped imports from those countries entering the market, is reduced competition with dumped goods in the Canadian market, which contributes to the attractiveness of the Canadian rebar market.

[92] The Tribunal finds that the Canadian market is, and will continue to be, attractive to exporters in the subject countries. Trade measures on the subject goods in other jurisdictions would only increase this attractiveness if the finding were to expire.

Conclusion on likely import volume

[93] For these reasons, the Tribunal finds that if the finding expires, there will likely be a significant increase in the volume of subject goods into Canada over the next 24 months.

¹¹¹ *Ibid.* at 253, 255, 263, 489–92; Exhibit RR-2021-006-B-01 at 453.

¹¹² Exhibit RR-2021-006-B-01 at 378–379, 417. As explained in the cumulation section above, Canada also maintains sanctions on Belarus, but imports of the subject goods from Belarus remain a concern for the domestic industry.

¹¹³ Exhibit RR-2021-006-B-02 (protected) at 253.

¹¹⁴ *Ibid.* at 252–253.

¹¹⁵ *Ibid.* at 254.

¹¹⁶ Exhibit RR-2021-006-D-06 (protected) at 6.

¹¹⁷ Exhibit RR-2021-006-B-01 at 810; Exhibit RR-2021-006-A-07 at 1860–1863.

¹¹⁸ In the original inquiry, the Tribunal found that “large end users/fabricators and distributor/purchasers have distribution networks and locations across Canada, which allow them to distribute the subject imports throughout the country.” *Rebar II* at para. 70.

¹¹⁹ China, Korea, Turkey (*Rebar I Expiry Review*), Algeria, Egypt, Indonesia, Italy, Malaysia, Singapore, Vietnam (*Rebar III*), Oman, Russia (*Rebar IV*).

Likely price effect of the subject goods if the finding expires

[94] The Tribunal will now consider, if the finding is allowed to expire, whether the resumption or continuation of dumping of the subject goods is likely to significantly undercut the prices of like goods, depress those prices or suppress them by preventing increases in those prices that would likely have otherwise occurred.¹²⁰ In this regard, the Tribunal distinguishes the price effects of the subject goods from any price effects that would likely result from other factors.

[95] The Domestic Producers argued that, if the finding is rescinded, it is likely that there will be significant price undercutting, price depression and price suppression. The USW and the Domestic Producers submitted that, if the finding is rescinded, the subject goods would need to compete with low-priced non-subject imports to secure sales in Canada, resulting in increased price undercutting by the subject goods. Gerdau argued that the ability and tendency of subject country exporters to undercut prices in Canada, and their need to compete with low-priced imports from non-subject countries that undercut domestic prices in Canada, combined with an increase in raw material costs, means that there is a significant likelihood that subject imports would depress and suppress domestic rebar prices in Canada.

[96] Celsa argued that, over the last four calendar years (which includes the POR), prices have not been undercut by the subject goods imported from Spain. It contended that undercutting was caused primarily by non-subject goods from China, Korea and Turkey. Celsa also argued that the spread between rising scrap metal prices and diminishing rebar prices that led to an injury finding in the *Rebar II* inquiry no longer existed.¹²¹

[97] Again, the majority of Celsa's arguments are premised on distinguishing the subject goods exported from Spain from other subject goods (and non-subject goods). The Tribunal reiterates its decision to assess the cumulative effect of the dumping of the subject goods from all subject countries. In *Rebar III*, the Tribunal considered that, because it was cumulating the effect of dumped subject goods from all subject countries, submissions pertaining to the discrete price effects of imports from individual subject countries were legally irrelevant. Therefore, in its analysis below, the Tribunal considers the prices of subject imports from all subject countries together.

Price undercutting

[98] The Tribunal has previously found that rebar is a commodity product that trades on price.¹²² As well, the Tribunal has previously considered factoring in a domestic price premium of \$30/tonne when comparing the price of imported subject and non-subject goods to the price of like goods.¹²³ Witnesses Sondgeroth and Mueller, however, indicated that domestic prices are expected to match import prices and that sometimes customers are unwilling to pay any price premium for domestically produced goods.¹²⁴ Gerdau submitted that it would be reasonable and appropriate for the Tribunal to find that domestically produced rebar no longer carries a price premium but, should it decide to factor in a price premium, the \$30/tonne used previously remains a maximum reasonable estimate.

¹²⁰ Paragraph 37.2(2)(b) of the Regulations.

¹²¹ *Rebar II* at para. 138.

¹²² *Rebar III* at para. 66.

¹²³ *Rebar I* at paras. 139–141; *Rebar II* at paras. 98, 114; *Rebar III* at para. 69; *Rebar IV* at para. 85.

¹²⁴ Exhibit RR-2021-006-A-05 at para. 12; Exhibit RR-2021-006-A-06 (protected) at para. 12; *Transcript of Public Hearing* at 81–83.

The Tribunal finds that the evidence does not establish that domestically produced rebar still carries a price premium. In fact, the statements of witnesses indicating that customers are now reluctant to pay any price premium are corroborated by other evidence, including responses to the producers' questionnaire provided by MANA, ArcelorMittal and AltaSteel.¹²⁵ Based on the above, the Tribunal concludes that, on the facts of this case, it is not necessary to factor in a domestic price premium as part of its price undercutting analysis.

[99] The subject goods were present in limited volumes in the Canadian market during the POR. There is evidence of such imports from Chinese Taipei, Portugal and Spain. As reported in the investigation report, the selling price of imports of the subject goods undercut that of the domestic like goods in one period at the beginning of the POR. Although those prices are not the best indicator of what prices may be in the absence of the finding,¹²⁶ at a minimum they suggest that, in the absence of the price discipline imposed by the finding, prices of imports of the subject goods could likely significantly undercut domestic pricing.

[100] The Tribunal is of the view that it is more useful to consider the selling prices of imports from non-subject countries, because the subject goods would have to compete with those other imports to gain sales and market share.¹²⁷ The investigation report shows that the average selling price of non-subject goods imported by domestic producers and importers undercut prices of domestically produced goods in 2019 and in interim 2022. When looking at the different groupings of imported non-subject goods, there are at least two instances of price undercutting for each of the following two groups: countries with "rebar with measures in place"; and "Peru, Philippines, Thailand and United Arab Emirates". There was undercutting from at least one of these groups in every period except interim 2021. There was no price undercutting from sales of imports from the United States or from "all other countries" when considering the average selling price of imports by domestic producers and importers.¹²⁸

[101] The evidence indicates that certain non-subject imports are the low-price leaders in the Canadian market.¹²⁹ As explained above, the average selling price of non-subject imports undercut prices of domestically produced goods in several periods during the POR, and the prices of non-subject imports were undercutting domestic prices in the most recent period of the POR (during interim 2022). The evidence also indicates that, at the end of the POR, the low-price leaders were exporters from non-subject countries, including but not limited to Thailand and the United Arab Emirates.¹³⁰ This evidence, from the investigation report,¹³¹ is supported by account-specific evidence submitted by ArcelorMittal and AltaSteel, showing instances of price undercutting by non-subject imports, including from Thailand and the United Arab Emirates, in 2021 and 2022.¹³²

¹²⁵ Exhibit RR-2021-006-13.02 at 8; Exhibit RR-2021-006-13.05 at 8; Exhibit RR-2021-006-13.06.B at 7.

¹²⁶ *Steel Sheet and Strip* at para. 175.

¹²⁷ The Tribunal has found previously that minimal subject imports during the POR "limits the relevance of price comparisons between the subject goods and like goods" and therefore "it is more useful to consider the selling prices of imports from non-subject countries." *Steel Sheet and Strip* at para. 175.

¹²⁸ Exhibit RR-2021-006-06.A (protected) at Table 26.

¹²⁹ *Ibid.*; *Transcript of Public Hearing* at 19; *Transcript of In Camera Hearing* at 22–23.

¹³⁰ Exhibit RR-2021-006-06.A (protected) at Table 26; *Transcript of Public Hearing* at 19.

¹³¹ Exhibit RR-2021-006-06.A (protected) at Table 26.

¹³² Exhibit RR-2021-006-B-03 at 48–53; Exhibit RR-2021-006-B-04 (protected) at paras. 58–65, at 45–58, 72–85; Exhibit RR-2021-006-C-06 (protected) at 19–41, at para. 21.

[102] ArcelorMittal and AltaSteel submitted evidence to demonstrate the potential for price undercutting by the subject goods on a landed-in-Canada price basis.¹³³ Witness Wegiel provided an analysis comparing the most recent 2022 landed-in-Canada pricing for subject goods from each of the subject countries¹³⁴ to ArcelorMittal's prices. The results indicate that the prices of imports from the subject countries would undercut ArcelorMittal's prices in both Eastern and Western Canada by a significant margin.¹³⁵ Specifically, witness Wegiel testified that this analysis results in price undercutting from the subject countries ranging from \$60/tonne to \$500/tonne in some recent months of 2022.¹³⁶ This amount of undercutting, when expressed as a percentage of ArcelorMittal's prices, exceeds the level of price undercutting found to exist in the *Rebar II* inquiry.¹³⁷ Indeed, even cutting the results, in percentage terms, of ArcelorMittal's analysis of likely price undercutting by half to be more conservative would still amount to significant likely price undercutting by the subject goods in the absence of the finding. Gerdau submitted a similar analysis with a similar conclusion, using United Nations Comtrade export data converted to Canadian dollars (adjusted to add ocean freight, an importer markup and Canadian delivery costs).¹³⁸ The Tribunal finds the third-party data analyzed by ArcelorMittal, AltaSteel and Gerdau credible and reliable, as it was taken from recognized third-party sources, and finds the analyses submitted thereon well founded and accepts their conclusion of likely price undercutting.

[103] The Tribunal finds that, as a commodity product that competes on the basis of price, the subject goods would need to compete with low-priced non-subject goods in order to obtain sales in Canada. The Tribunal further finds that, given those circumstances, if the finding is rescinded, the prices of the subject goods are likely to significantly undercut the prices of the like goods.

Price depression

[104] There is evidence that price undercutting by the subject goods would likely result in price depression.¹³⁹

[105] Witnesses for ArcelorMittal expect that market pricing for rebar would be reduced by \$60/metric tonne if the finding were rescinded and the subject goods had to compete with low-priced non-subject goods.¹⁴⁰

[106] Witnesses for Gerdau stated that importers in Canada are known to seek out the lowest-priced sources of rebar, as reflected in the source-switching that has occurred after SIMA measures were put in place for specific countries, followed by the imposition of further SIMA measures.¹⁴¹ Canadian

¹³³ Exhibit RR-2021-006-C-08 (protected) at paras. 97–103.

¹³⁴ *Ibid.* at 155–156.

¹³⁵ *Ibid.* at paras. 97–103.

¹³⁶ *Transcript of Public Hearing* at 30.

¹³⁷ Exhibit RR-2021-006-C-08 (protected) at para. 100; Exhibit RR-2021-006-09.E (protected) at Table 46.

¹³⁸ Witnesses for Gerdau presented an analysis comparing estimates of delivered selling prices of subject goods (except for Chinese Taipei) with Gerdau's selling prices for select months of 2022. The witnesses stated that delivered selling prices of subject goods would undercut Gerdau's delivered selling prices if the finding were rescinded, even if a price premium of \$30/tonne is taken into account. Exhibit RR-2021-006-A-03 at paras. 45–48; Exhibit RR-2021-006-A-04 (protected) at paras. 45–48, at 49–56; Exhibit RR-2021-006-A-05 at para. 15; Exhibit RR-2021-006-A-06 (protected) at para. 10.

¹³⁹ Exhibit RR-2021-006-16.05 at 11.

¹⁴⁰ Exhibit RR-2021-006-C-04 at para. 78.

¹⁴¹ Exhibit RR-2021-006-A-05 at paras. 18–25; Exhibit RR-2021-006-A-06 (protected) at paras. 22–25.

rebar importers' long-standing source-switching behaviour is well established.¹⁴² The Tribunal has previously found that the importers "are sophisticated market players that are willing and able to quickly secure alternative sources of low-priced rebar".¹⁴³ Witness testimony and other evidence indicate that the importers are likely to continue their source-switching behaviour, which would likely cause a race to the bottom and lead to significant downward pressure on the price of the like goods.¹⁴⁴ The Tribunal finds that the importers will continue to seek the lowest-priced sources for rebar over the next 24 months and, if the finding is rescinded, this behaviour will likely result in downward pressure on domestic prices.

[107] The Tribunal finds that, if the finding is rescinded, the subject goods will likely lead to price depression for the like goods because the domestic producers will need to lower prices to compete on the basis of price with the subject goods that are entering the market at low prices.

Price suppression

[108] Gerdau argued that price undercutting by the subject goods would make it difficult for the domestic producers to raise their prices to cover rises in scrap costs or to maintain its margin targets. Gerdau submitted that, although the price of scrap (the main raw material used in rebar production) is anticipated to fall in the next 12–24 months, the price of scrap remains extremely volatile, following price fluctuations in 2022. Gerdau submitted that increased use of electric-arc furnaces by the North American steel industry, with scrap as the major input, suggests that there will be continued demand for scrap, which will likely put upward pressure on raw material costs.

[109] The Tribunal notes that, if the subject goods undercut and depress the price of the like goods, it stands to reason that there will also be price suppression if input costs rise. However, there is little cogent evidence on the record regarding projections in cost trends. As a result, the Tribunal is unable to conclude that rescinding the finding would likely suppress domestic prices by preventing increases in those prices that would likely have otherwise occurred.

Conclusion on likely price effect

[110] The Tribunal concludes that, if the finding is rescinded, the dumping of the subject goods is likely to cause price undercutting and price depression, but not price suppression, over the next 24 months.

Likely impact of the subject goods on the domestic industry

[111] The Tribunal will now assess the likely impact of the likely volume and price effect of the subject goods on the domestic industry if the finding expires, taking into consideration the recent performance of the domestic industry.¹⁴⁵ In this analysis, the Tribunal distinguishes the likely impact of the subject goods from the likely impact of any other factors affecting or likely to affect the domestic industry.¹⁴⁶ The Tribunal recalls its decision to assess the cumulative effect of the dumping of the subject goods from all subject countries. That decision means that the Tribunal's analysis

¹⁴² *Rebar II* at para. 83; *Rebar IV* at para. 55.

¹⁴³ *Rebar IV* at para. 55.

¹⁴⁴ *Transcript of Public Hearing* at 16, 17, 67, 88; Exhibit RR-2021-006-16.06.B at 10; Exhibit RR-2021-006-A-05 at paras. 18–22; Exhibit RR-2021-006-A-06 (protected) at 18–20; Exhibit RR-2021-006-C-03 at para. 5.

¹⁴⁵ Subsection 37.2(2) of the Regulations.

¹⁴⁶ Paragraph 37.2(2)(k) of the Regulations.

below considers the impact of the cumulative effect of dumped subject goods from all subject countries on the domestic industry. Therefore, Celsa's arguments on the likely impact of subject goods imported from Spain are not assessed separately.

[112] The parties that support continuing the finding submitted that the domestic industry has struggled and will continue to struggle to compete with low-priced imports from non-subject countries. These parties also submitted that they are particularly vulnerable in the current and near-term economic climate. The sources of this vulnerability are the slowdown in construction brought on by the rapid rise in interest rates and significant inventories held by fabricators following supply disruptions related to the COVID-19 pandemic. The USW emphasized that injury to the domestic producers will negatively affect jobs, pensions and the union's bargaining position.

[113] Celsa submitted that the domestic industry will not be injured by imports of the subject goods from Spain. Celsa considered that the domestic industry's "pessimistic" forecasts were at odds with investments to increase capacity and efficiency, high-capacity utilization rates and falling scrap metal prices.

Recent performance of the domestic industry

[114] During the POR, the domestic industry's production volumes remained flat from 2019 to 2020 and increased significantly in 2021 before returning to 2019–2020 levels in interim 2022. Most of the domestic production was destined for the Canadian market during the POR, and volumes followed the same trend as those for total production. This trend was mainly driven by production for domestic sales, which accounted for most of the domestic industry's total production. Production for export sales grew substantially over the POR, but it represents a very small portion of total domestic production.¹⁴⁷ Domestic sales of like goods closely followed domestic production, with inventories remaining flat over the POR.¹⁴⁸ The volume of export sales of like goods more than tripled between 2019 and 2020 but then remained stable in subsequent periods of the POR.¹⁴⁹

[115] The domestic industry's reported practical plant capacity remained stable over the POR. Since practical plant capacity remained relatively flat throughout the POR, capacity utilization rates followed the broad production trends discussed above with respect to capacity utilization for the goods in issue, as well as for goods produced on the same equipment.¹⁵⁰

[116] The domestic industry's market share held by sales of like goods trended downward over the POR from a high of 58% in 2019 to a low of 46% in the interim 2022 period.¹⁵¹ This lost market share primarily accrued to non-subject countries with measures in place and the "new" sources for low-priced rebar imports, namely Peru, the Philippines, Thailand and the United Arab Emirates.¹⁵²

[117] Direct employment for the production of like goods experienced year-over-year increases of approximately 10% in both 2020 and 2021 but declined by 19% between interim 2021 and interim 2022. Despite the increases in the number of employees in 2020 and 2021, aggregate hours worked

¹⁴⁷ Exhibit RR-2021-006-05.A at Table 38; Exhibit RR-2021-006-06.A (protected) at Table 37.

¹⁴⁸ Exhibit RR-2021-006-05.A at Table 15; Exhibit RR-2021-006-06.A (protected) at tables 27, 38.

¹⁴⁹ Exhibit RR-2021-006-05.A at Table 38

¹⁵⁰ *Ibid.* at Table 37.

¹⁵¹ *Ibid.* at Table 16.

¹⁵² The Tribunal notes that some of the increase in market share of countries with measures in place may be the result of a delay by the CBSA in updating normal values.

and wages paid were relatively stable between the full-year periods and decreased somewhat in the interim 2022 period.

[118] The domestic industry's financial performance with respect to domestic sales saw declines in 2020 and remained relatively flat in 2021, before improving significantly in interim 2022 (which was its highest level of profitability over the POR).¹⁵³

[119] The domestic industry submitted, and the Tribunal accepts, that the industry's positive financial performance in interim 2022 stems from the confluence of temporary external factors¹⁵⁴ and from the domestic industry's success in identifying and seeking measures against dumped rebar. These events allowed the domestic industry to temporarily pass on significant price increases to its customers.¹⁵⁵ However, other factors tend to suggest that the domestic industry's situation deteriorated toward the end of the POR.¹⁵⁶

[120] For the reasons below, the Tribunal finds that, if the finding is rescinded, the domestic industry will likely be materially injured by the resumed or continued dumping of the subject goods.

Likely performance of the domestic industry

[121] The Tribunal finds that the evidence shows that the domestic industry remains sensitive to declining demand and vulnerable to pricing pressure. While indicators show that the domestic industry's performance improved since the finding was put in place,¹⁵⁷ and it is recovering from the impact of imports subject to other Tribunal rebar findings, this recovery is fragile and may be short-lived if the finding expires. In that event, the subject goods will likely significantly undercut the domestic producers' sales prices and that, as a result, domestic pricing will likely be significantly depressed, which in turn will likely lead to a significant negative impact on the domestic industry's revenues and profits.

[122] AltaSteel/ArcelorMittal and Gerdau provided a data model showing the impact that certain levels of price depression,¹⁵⁸ caused by the subject goods, would cause, absent the finding, when applied to expected performance (the model was run on past performance as another point of comparison).¹⁵⁹ The Tribunal finds that the "but for" scenarios are conservative and credible. The pricing model is based on foreign importers undercutting the domestic market by \$60/tonne, which represents a price reduction of 4.64% over the interim 2022 selling price of rebar. In view of the evidence on the likely price effect of imports of the subject goods, and evidence that price undercutting far above these values took place over the POR,¹⁶⁰ the analysis completed using this value presents reasonable estimates of the significant adverse impact that the expiry of the finding

¹⁵³ Exhibit RR-2021-006-06.A (protected) at tables 32, 33.

¹⁵⁴ These included but were not limited to significant increases in the market price of steel, disruptions in the global movement of goods, the war in Ukraine and work stoppages related to the ongoing COVID-19 pandemic.

¹⁵⁵ *Transcript of Public Hearing* at 14–16; Exhibit RR-2021-006-A-01 at paras. 150–160

¹⁵⁶ *Transcript of Public Hearing* at 15, 69; Exhibit RR-2021-006-C-05 at paras. 10–11.

¹⁵⁷ Exhibit RR-2021-006-06.A (protected) at tables 32, 33.

¹⁵⁸ ArcelorMittal and AltaSteel submitted a joint case brief; however, only ArcelorMittal provided the Tribunal with a model to illustrate the impact of price undercutting on its continued operations.

¹⁵⁹ Exhibit RR-2021-006-B-02 (protected) at para. 392; Exhibit RR-2021-006-C-04 (protected) at 48–49; *Transcript of In Camera Hearing* at 5, 26, 28–29, 56; Exhibit RR-2021-006-A-04 (protected) at para. 50.

¹⁶⁰ Exhibit RR-2021-006-B-01 at paras. 7, 353–356; Exhibit RR-2021-006-C-03 at para. 78; Exhibit RR-2021-006-C-05 at paras. 21–22.

would have on the domestic industry's financial performance. The confidential information on the record in this regard establishes that this would amount to material injury in the form of lost revenues and reduced profitability.

[123] As such, the Tribunal finds that the domestic industry would find itself in a difficult financial position without the finding in place, even before any potential sales volume losses are considered, as a result of low-priced imports and soft demand. To the extent that the domestic industry resists price declines, particularly in market conditions where customers are constantly searching for the lowest possible price, it is likely to lose sales volumes to the subject goods. Lost sales would likely lead to reduced production volumes and a compounding negative effect on the domestic industry's capacity utilization, profitability and operations. In turn, this would exacerbate the challenging situation already expected due to the weaker forecast market demand in the near term. Such an outcome is likely to result in material injury to the domestic industry in the form of reduced production, fewer sales and consequential loss of market share.

[124] The USW submitted that, if the finding expires, the subject goods will have an injurious effect on employment and wages. The evidence from witnesses for the USW corroborates the Domestic Producers' evidence that current crewing levels in their facilities would be put at risk.

[125] The USW argued that the term "employment" in the Regulations should be construed broadly to include the terms and conditions of employment, including pensions, benefits, training and safety measures, and that the likely negative impact of the importation of the subject goods on such factors should be taken into account by the Tribunal. The USW submitted that this interpretation is consistent with the spirit of recent amendments to SIMA.¹⁶¹ Insofar as the Tribunal's conclusion is that the expiry of the finding would likely have an adverse impact on employment even on a more limited construction of the term "employment", the Tribunal does not need to make a pronouncement on this issue in the circumstances of this case.

[126] The Tribunal finds that the reduced profitability and output likely to be caused by the subject goods would also likely lead to decreases in capacity utilization and employment. It would also likely jeopardize the domestic industry's significant recent, ongoing and planned investments. The evidence indicates that the domestic producers' ability to attract capital from their parent companies would be at risk if the subject goods were allowed to re-enter the Canadian market in large volumes at low prices. This is supported by cogent evidence from domestic producer witnesses speaking to the impact that rescinding the finding would have for each of these factors.¹⁶²

[127] As for Celsa's argument that the domestic industry's pessimistic forecasts are at odds with the industry's many investments, including those made to increase capacity and efficiency, the

¹⁶¹ The BIA 2022 amended subsection 2(11) of SIMA to require the Tribunal to take into account, in its assessment of the likelihood of injury, any impacts on workers employed in the domestic industry. However, as explained in note 1 of these reasons, the amendments do not apply to this expiry review. Nevertheless, the Tribunal wishes to acknowledge the evidence of impact on workers provided by the witnesses for the USW.

¹⁶² Exhibit RR-2021-006-A-03 at paras. 32, 39; *Transcript of Public Hearing* at 66; Exhibit RR-2021-006-A-04 (protected) at paras. 40, 41; Exhibit RR-2021-006-C-03 at paras. 91–92; Exhibit RR-2021-006-B-02 (protected) at para. 391; Exhibit RR-2021-006-D-03 at para. 31.

Tribunal considers that the domestic industry acted rationally by using periods of recovery to make investments in their operations.¹⁶³

[128] The Tribunal finds that the foregoing information indicates that rescinding the finding would likely result in material injury to the domestic industry over the next 24 months.

[129] In terms of factors other than dumping that could cause injury¹⁶⁴ in the next 24 months, the Tribunal finds that there is an insufficient evidentiary basis to conclude that any likely future injury would be due to such other factors to any material extent. The Tribunal recognizes that the domestic industry is likely to face less favourable market conditions in the near to medium term. However, those conditions tend to affect all competitors in the domestic market; any injury likely to be caused by the subject goods would be beyond any injury caused by the unfavourable market conditions. In other words, the Tribunal finds that, even if the domestic industry faces difficult market conditions in the next 24 months, the evidence indicates that the domestic industry's already vulnerable situation would be materially worse if the finding were rescinded.

[130] Having accounted for the likely impact of factors other than dumping, the Tribunal finds that the 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 REQUEST

[131] The Tribunal received one request to exclude a product from any order continuing the finding. Group Celsa seeks an exclusion for "Hot-Spoiled Deformed Bar in Tight Spool Drums of Nominal Weight of 3MT or more (per spool)"¹⁶⁵ (hot-spoiled rebar). The product is trademarked "CelsaMax®" in the European Union.¹⁶⁶ For the reasons that follow, the Tribunal denies the request.

General principles and relevant factors

[132] SIMA implicitly authorizes the Tribunal to grant exclusions from the scope of an order or finding.¹⁶⁷ Exclusions are an extraordinary remedy that may be granted at the Tribunal's discretion (i.e. when the Tribunal finds that such exclusions will not cause injury to the domestic industry).¹⁶⁸ The rationale for exclusions in expiry reviews is that, despite a general conclusion that all products

¹⁶³ Exhibit RR-2021-006-A-03 at para. 30; Exhibit RR-2021-006-C-04 (protected) at paras. 86, 89; Exhibit RR-2021-006-D-04 (protected) at para. 8; Exhibit RR-2021-006-06.A (protected) at Table 37, at schedules 29, 32, 35, 41.

¹⁶⁴ Paragraph 37.2(2)(k) of the Regulations provides that the Tribunal may consider "any other factor pertaining to the current or likely behaviour or state of the domestic or international economy, market for goods or industry as a whole or in relation to workers or individual producers, exporters, brokers or traders."

¹⁶⁵ Exhibit RR-2021-006-28.01; Exhibit RR-2021-006-RI-06 at 3; *Transcript of Public Hearing* at 276.

¹⁶⁶ Exhibit RR-2021-006-RI-06 at 3.

¹⁶⁷ *Photovoltaic Modules and Laminates* (25 March 2021), RR-2020-001 (CITT) [*Photovoltaic Modules and Laminates*] at paras. 128–129; *Hot-rolled Carbon Steel Plate* (13 March 2020), RR-2019-001 (CITT) [*Steel Plate*] at paras. 163–165; *Carbon Steel Screws* at para. 222.

¹⁶⁸ *Carbon Steel Screws* at para. 222; *Photovoltaic Modules and Laminates* at para. 128; *Steel Plate* at para. 163. See also the Tribunal's *Guidelines on product exclusion requests*.

covered by an order are likely to cause injury to the domestic industry, there may be certain products captured by the definition of the subject goods that are not likely to cause injury.¹⁶⁹

[133] The party requesting the exclusion must prove that, if the specific goods were excluded from the Tribunal's order or finding, they would not likely cause injury to the domestic industry.¹⁷⁰ If the domestic industry does not present sufficient evidence to rebut the evidence filed by the requester, the exclusion may be granted.¹⁷¹ Ultimately, the Tribunal must determine whether it will exercise its discretion to grant product exclusions on the basis of its assessment of the totality of the evidence.

[134] To determine whether an exclusion is likely to result in injury to the domestic industry, the Tribunal typically considers several factors, including whether the domestic industry produces goods that are identical to, substitutable for or that compete with the products for which exclusions are requested, whether it is an "active supplier" of identical or substitutable products, and whether it has the capability to produce such products.¹⁷²

[135] Where the domestic industry does not produce products that are identical to those for which exclusions are requested, this does not automatically lead to the Tribunal granting an exclusion.¹⁷³ The Tribunal has previously found that such automaticity would "undermine the purpose of *SIMA* and the protection associated with it in cases where the domestic industry produces substitutable or competing products (i.e. like goods) that are likely being injured by dumped or subsidized goods that are the object of the proposed exclusion" [italics in original].¹⁷⁴

[136] Instead, where the domestic industry does not produce identical products, the Tribunal must consider whether the domestic industry produces substitutable or competing products.¹⁷⁵ In this regard, the Tribunal has stated:¹⁷⁶

Accordingly, a key question that must be answered by the Tribunal in deciding whether to grant product exclusions is *whether the domestic industry manufactures substitutable products that, while they may not have all the attributes of the products for which exclusions are requested, still compete with those products, have the same end use and fulfil most of the same general customer needs. If these conditions are met, the Tribunal should deny requests for product exclusions, as granting them is likely to cause injury to the domestic industry.* In other words, an important intent of the statute is to protect the domestic production of like goods, a concept which, as previously noted, is broader than the notion of identical products.

[Emphasis added]

¹⁶⁹ *Photovoltaic Modules and Laminates* at para. 128; *Steel Plate* at para. 163.

¹⁷⁰ *Photovoltaic Modules and Laminates* at para. 129; *Steel Plate* at para. 165. See also the Tribunal's *Guidelines on product exclusion requests*.

¹⁷¹ *Carbon Steel Screws* at para. 224.

¹⁷² *Carbon Steel Screws* at para. 227; *Photovoltaic Modules and Laminates* at para. 131; *Steel Plate* at para. 164.

¹⁷³ *Aluminum Extrusions* RR at para. 235.

¹⁷⁴ *Aluminum Extrusions* RR at para. 235.

¹⁷⁵ *Aluminum Extrusions* RR at para. 234.

¹⁷⁶ *Aluminum Extrusions* RR at para. 236.

[137] The Tribunal's practice is to refuse to grant exclusions for products that are substitutable for, or compete with, goods produced by the domestic industry.¹⁷⁷ In the Tribunal's view, imports of such products are likely to cause injury if they are excluded from the scope of an order or finding.¹⁷⁸

Analysis of the exclusion request

[138] Applying these well-established principles to the facts of this case, the Tribunal is not persuaded by Group Celsa's submissions that the conditions for granting an exclusion for hot-spoiled rebar are met.

[139] In *Rebar II*, the Tribunal considered Group Celsa's claim that its hot-spoiled rebar (i.e. CelsaMax®) had unique characteristics and could not be substituted by straight length and coil rebar produced in Canada; the Tribunal found that the claim was not supported by the evidence.¹⁷⁹ Group Celsa's exclusion request in this expiry review is very similar to the one it made in *Rebar II*,¹⁸⁰ and there is no new evidence before the Tribunal showing that an exclusion for hot-spoiled rebar would not injure the domestic injury.

[140] The Tribunal recognizes that domestic straight and coiled rebar are not identical to spoiled rebar. However, the fact that the domestic industry does not produce goods that are identical to hot-spoiled rebar is not determinative. The issue is whether the domestic industry produces goods that are substitutable, compete with each other, have the same end use, and generally fulfil the same customer needs.¹⁸¹

[141] The evidence on the record in this expiry review confirms that straight, coiled and spoiled rebar (which includes CelsaMax® hot-spoiled rebar¹⁸²) are substitutable because they have essentially the same physical characteristics, compete with each other, have the same end use, and generally fulfil the same customer needs. The Tribunal has already found that domestically produced rebar constitutes like goods in relation to the subject goods (including subject goods that are spoiled) and that there is one class of goods. In these circumstances, in accordance with the Tribunal's approach in *Aluminum Extrusions RR*, the Tribunal finds that granting the requested product exclusion is likely to cause injury to the domestic industry.

[142] Therefore, the Tribunal denies Group Celsa's product exclusion request.

¹⁷⁷ *Aluminum Extrusions RR* at paras. 234–236.

¹⁷⁸ *Aluminum Extrusions RR* at paras. 234–236.

¹⁷⁹ *Rebar II* at para. 224.

¹⁸⁰ ArcelorMittal and AltaSteel provided a copy of Group Celsa's product exclusion request in *Rebar II*, together with a comparison of Group Celsa's description of its hot-spoiled rebar in that request with its current product exclusion description in this expiry review; Exhibit RR-2021-006-31.03.A (protected) at 6, 30–34. The Tribunal reviewed the elements of the two product exclusion requests. The descriptions of the hot-spoiled rebar in those requests are strikingly similar (including the identification of the trademark "CelsaMax®"), with only inconsequential minor differences; the product at issue in both exclusion requests is the same. The rationales underpinning Group Celsa's exclusion requests in *Rebar II* and in this expiry review are also similar.

¹⁸¹ *Aluminum Extrusions RR* at paras. 235–236.

¹⁸² Celsa's revised version of its replies to the RFIs confirms that CelsaMax® (i.e. hot-spoiled rebar) is a spoiled rebar product; Exhibit RR-2021-006-RI-06.B.

CONCLUSION

[143] Pursuant to paragraph 76.03(12)(b) of SIMA, the Tribunal continues, without amendment, the finding in respect of certain concrete reinforcing bar originating in or exported from Belarus, Chinese Taipei, Hong Kong, Japan, Portugal and Spain.

Georges Bujold

Georges Bujold
Presiding Member

Peter Burn

Peter Burn
Member

Eric Wildhaber

Eric Wildhaber
Member