



OTTAWA, September 6, 2019

SC-OCTG 1 2019 SP

STATEMENT OF REASONS

SCOPE RULING – CERTAIN SEAMLESS CASING AND OIL COUNTRY TUBULAR GOODS

INSULATED TUBING AND VACUUM INSULATED TUBING Western Alliance Tubulars Ltd.

Pursuant to subsection 66(1) of the *Special Import Measures Act*, the Canada Border Services Agency made a scope ruling on September 6, 2019, that insulated tubing and vacuum insulated tubing are not subject to the Canadian International Trade Tribunal's orders issued on November 28, 2018 in Expiry Review No. RR-2017-006 and March 2, 2015 in Expiry Review No. RR-2014-003, concerning the dumping and subsidizing of certain seamless casing and oil country tubular goods originating in or exported from China.

Cet *Énoncé des motifs* est également disponible en français.
This *Statement of Reasons* is also available in French.

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SUMMARY OF EVENTS

[1] On April 11, 2019, the Canada Board Services Agency (CBSA) received an Application for a scope ruling from Western Alliance Tubulars Ltd. (Western Alliance) as to whether insulated tubing (IT) and vacuum insulated tubing (VIT) are subject to the Canadian International Trade Tribunal's (CITT's) orders issued on November 28, 2018 in Expiry Review RR-2017-006 and March 2, 2015 in Expiry Review No. RR-2014-003, concerning the dumping and subsidizing of certain seamless casing and oil country tubular goods (OCTG) originating in or exported from China.¹

[2] The Application for the scope ruling was complete and met all requirements under the *Special Import Measures Act* (SIMA) to warrant the initiation of a scope proceeding. The Applicant provided arguments and evidence in support of its position that IT/VIT from China are subject to the CITT's orders.

[3] On May 10, 2019, pursuant to subsection 63(8) of SIMA, the CBSA initiated a scope proceeding with respect to the goods that are the subject of the Application.

[4] The administrative record for this scope proceeding closed on July 4, 2019.

[5] On July 29, 2019, the CBSA issued the Statement of Essential Facts (SEF) which contained its preliminary assessment that IT/VIT are not subject to the CITT's orders in respect of certain seamless casing and OCTG from China.

[6] The CBSA received comments on the SEF from the Canadian producer of IT/VIT, two producers of OCTG and one importer of IT/VIT on August 6, 2019. The CBSA also received a response to the comments on the SEF from one of the Canadian producers of OCTG on August 13, 2019.

[7] On the basis of the information available on the record and the consideration of the relevant factors contained in section 54.6 of the *Special Import Measures Regulations* (SIMR), as well as other relevant factors, on September 6, 2019, pursuant to subsection 66(1) of SIMA, the CBSA made a scope ruling that the goods that are the subject of the Application, namely IT/VIT, are not subject to the CITT's orders in respect of certain seamless casing and OCTG from China.

¹ Exhibits 1 (PRO) and 2 (NC) – Application for Scope Ruling from Western Alliance Tubulars Ltd.

DESCRIPTION OF THE GOODS THAT ARE THE SUBJECT OF THE APPLICATION

[8] The goods in question in this scope proceeding, IT and VIT, are known as insulated steam injected tubing and oil production tubing products, including double-walled tubing, with or without insulation, which are used for thermal-enhanced oil recovery of extremely viscous crude oils. IT/VIT are used in steam injection wells in Steam Assisted Gravity Drainage (SAGD) operations in the Oil Sands and also in Cyclic Steam Stimulation (CSS) in heavy oil fields.

[9] SAGD operations have a well pair consisting of steam injection and production wells. IT/VIT can be used in both the steam injection and production wells in place of American Petroleum Institute (API) 5CT casing and tubing.² In CSS operations, IT/VIT can be used both for steam injection and oil production in place of API 5CT casing and tubing. The use of IT/VIT can result in a significant reduction of water volume requirements when used in steam injection applications.

[10] IT/VIT can also be used in conventional deep oil producing wells in place of API 5CT casing and tubing. The product assists the oil in maintaining temperatures above 80 degrees Fahrenheit to avoid paraffin and wax deposition which causes the production well to plug.³

[11] Western Alliance requested that the CBSA consider whether IT/VIT from China are subject to the CITT's orders concerning certain seamless casing and certain OCTG (OCTG 1) from China.

THE CITT'S ORDERS

Background

[12] On February 7, 2008, the CBSA made a final determination of dumping and subsidizing in respect of certain seamless casing originating in or exported from China. Subsequently, on March 10, 2008, in Inquiry No. NQ-2007-001, the CITT found that the dumping and subsidizing of certain seamless casing originating in or exported from China were threatening to cause injury to the domestic industry. On March 11, 2013 in Expiry Review No. RR-2012-002 and again on November 28, 2018 in Expiry Review RR-2017-006, the CITT continued its finding in respect of these goods.

[13] On February 22, 2010, the CBSA made a final determination in respect of dumping and subsidizing of certain OCTG originating in or exported from China. Subsequently, on March 23, 2010, in Inquiry No. NQ-2009-004 the CITT found that the dumping and subsidizing of OCTG originating in or exported from China caused injury to the Canadian domestic industry.⁴ On March 2, 2015 in Expiry Review No. RR-2014-003, the CITT continued its finding in respect of these goods.

² American Petroleum Institute (API). This is the recognized industry specification for oil and gas well casing and tubing.

³ Exhibit 2 (NC) – Application for Scope Ruling from Western Alliance Tubulars, page 4.

⁴ Excluding pup joints, seamless or welded, heat-treated or not heat-treated, (in lengths of up to 3.66 m). The CITT did not find injury, threat of injury or retardation of OCTG coupling stock originating in or exported from China.

Description of the Subject Goods

[14] For the purpose of this scope proceeding, the goods that are subject to the CITT orders (“subject goods”) are respectively defined as:

“Seamless carbon or alloy steel oil and gas well casing, whether plain end, beveled, threaded or threaded and coupled, heat-treated or non-heat-treated, meeting American Petroleum Institute (API) specification 5CT, with an outside diameter not exceeding 11.75 inches (298.5 mm), in all grades, including proprietary grades, originating in or exported from China;”⁵

and

“Oil country tubular goods, made of carbon or alloy steel, welded or seamless, heat-treated or not heat-treated, regardless of end finish, having an outside diameter from 2 ¾ inches to 13 ¾ inches (60.3 mm to 339.7 mm), meeting or supplied to meet API specification 5CT or equivalent standard, in all grades, excluding drill pipe and excluding seamless casing up to 11 ¾ inches (298.5 mm) in outside diameter, originating in or exported from China.”⁶

[15] For additional information on the subject goods, please refer to the CITT’s *Order and Statement of Reasons* in Expiry Review No. RR-2017-006⁷ and Expiry Review No. RR-2014-003⁸ and the CBSA’s *Statement of Reasons* respecting the seamless casing and OCTG 1 final determinations.

INTERESTED PARTIES

Applicant

[16] The name and address of the Applicant is as follows:

Western Alliance Tubulars Ltd.
9510-56 Avenue NW,
Edmonton, Alberta T6E 5W7

[17] Western Alliance is a privately held Indigenous reseller of IT/VIT, located in Edmonton, Alberta, Canada with the Moosomin First Nation being a major shareholder. Western Alliance maintains an active operating interest and 49% unexercised equity option in Victoria International Tubular Corporation (Victoria)⁹. According to the administrative record and the CBSA’s research, Victoria is the sole producer of IT/VIT that is marketed and sold by Western Alliance.

⁵ This case is referred to as “Seamless Casing.”

⁶ This case is referred to as “OCTG 1.” The definition also excludes: Pup-joints, welded or seamless, heat-treated or not heat-treated, in lengths of up to 3.66m (12 feet) and Coupling stock.

⁷ CITT Orders and Reasons – Seamless Casing Expiry Review. <http://www.citt-tcce.gc.ca/en/node/8456>

⁸ CITT Orders and Reasons – OCTG 1 Expiry Review. <http://www.citt-tcce.gc.ca/en/node/7290>

⁹ Exhibit 2 (NC) – Application for Scope Proceeding from Western Alliance Tubulars Ltd.; Page 3.

[18] A copy of the non-confidential version of the scope ruling Application filed by Western Alliance is available on the CBSA's Listings of Exhibits website at <https://www.cbsa-asfc.gc.ca/sima-lmsi/sp-pp/scoctg12019/scoctg12019-ex-eng.html>

[19] CBSA officers met company officials from both Western Alliance and Victoria and visited the production facilities of IT/VIT on June 13, 2019 in Edmonton, Alberta. Additional information relevant to this scope proceeding was provided by Western Alliance at the meeting¹⁰ and before the closing of the record.¹¹ CBSA officers were also provided with a tour of the Western Alliance and Victoria production facility, where Victoria provided a demonstration of the manufacturing process of IT/VIT.

Canadian Industry

[20] At the initiation of the scope proceeding, the CBSA identified Victoria as the only Canadian producer of IT/VIT, based on information contained in the Application and the CBSA's own research.

[21] In respect of seamless casing and OCTG, producers in Canada include Tenaris Canada (Tenaris), Evraz Inc. NA Canada (Evraz) and Welded Tube of Canada (Welded Tube).

[22] The CBSA sent a Producer Request for Information (RFI) to each of these parties and received a submission from Tenaris.¹²

Importers

[23] At the initiation of the scope proceeding, the CBSA identified 42 known importers of seamless casing and OCTG based on the CBSA's most recent expiry review investigations concerning these goods, and information available through the monitoring of import activity.

[24] The CBSA sent an Importer RFI to all known importers of seamless casing and OCTG. The CBSA received responses from five importers, namely, ANDMIR Group Canada Inc. (ANDMIR)¹³, Continental Steel Corporation (Continental Steel)¹⁴, Exceed (Canada) Oilfield Equipment Inc. (Exceed)¹⁵, Hallmark Tubulars Ltd. (Hallmark Tubulars)¹⁶ and Imex Canada (Imex)¹⁷.

¹⁰ Exhibits 35 (PRO) and 36 (NC) – Information provided by Western Alliance in response to CBSA's site visit; and Exhibits 37 (PRO) and 38 (NC) – Attachments to information provided by Western Alliance in response to CBSA's site visit.

¹¹ Exhibits 39 (PRO) and 40 (NC) – Further information relevant to the scope proceeding submitted by Western Alliance.

¹² Exhibits 14 (PRO) and 15 (NC) – Response to Producer RFI from Tenaris Canada.

¹³ Exhibit 26 (NC) – Response to Importer RFI from ANDMIR.

¹⁴ Exhibits 31 (PRO) and 32 (NC) – Response Importer RFI from Continental Steel.

¹⁵ Exhibits 27 (PRO) and 28 (NC) – Response to Importer RFI from Exceed.

¹⁶ Exhibits 18 (NC) – Response to Importer RFI from Hallmark Tubulars.

¹⁷ Exhibits 16 (PRO) and 17 (NC) – Response to Importer RFI from Imex Canada.

[25] The CBSA also received a submission concerning the scope proceeding that was not a direct response to the importer RFI from Major Pipe & Supply Ltd.¹⁸

Exporters and/or Foreign Producers

[26] At the initiation of the scope proceeding, the CBSA identified 27 known and potential exporters and/or producers of subject goods based on information from the most recent expiry reviews concerning the like goods and the CBSA's ongoing monitoring of export activity.

[27] The CBSA sent an Exporter RFI to all known exporters and/or producers. The CBSA received a submission from three exporter/producers of the goods subject to the Application, namely, Golden Ring Industrial Ltd. (Golden Ring),¹⁹ Tianjin Pipe Corporation (TPCO)²⁰ and Zibo Freet Thermal Tech Co., Ltd. (Zibo).²¹

Requests for Extensions

[28] Several parties requested an extension to respond to their respective RFIs. The CBSA reviewed each request; however, extensions were not granted to any of the parties because the reasons for making the requests did not constitute unforeseen circumstances or unusual burdens. The CBSA informed the parties that submissions received after the RFI response deadline would only be taken into consideration if time and resources allow. All responses received by the CBSA before the closing of the record were taken into consideration for purposes of making the scope ruling.

SCOPE PROCEEDING PROCESS

[29] At the initiation of the scope proceeding, a notice concerning the initiation of the scope proceeding and RFIs were sent to all known and potential interested parties. The Applicant was also invited to provide additional information relevant to the scope proceeding. Information and arguments received as part of the responses received are summarized in the *Positions of the Parties* section below.

[30] On July 29, 2019, based on the available information on record, the CBSA issued the SEF which contained its preliminary assessment that IT/VIT are not subject to the CITT's orders in respect of certain seamless casing and certain OCTG from China.

[31] On August 6, 2019, subsequent to the publication of the SEF, the Canadian producer of IT/VIT (Western Alliance), two Canadian producer of OCTG (Evraz and Tenaris) and an importer of IT/VIT (Exceed) provided comments on the SEF. On August 13, 2019, one of the Canadian producers of OCTG (Tenaris) provided a response to the comments. Comments received are summarized in the *Comments on CBSA's Preliminary Assessment* section below.

¹⁸ Exhibits 20 (PRO) and 21 (NC) – Submission from Major Pipe and Supply Ltd.

¹⁹ Exhibits 24 (PRO) and 25 (NC) – Response to Producer/Exporter RFI from Golden Ring.

²⁰ Exhibit 19 (NC) – Response to Producer/Exporter RFI from TPCO.

²¹ Exhibits 29 (PRO) and 30 (NC) – Response to Producer/Exporter RFI from Zibo.

POSITIONS OF THE PARTIES

Parties Contending that the Goods in Question are Subject to the CITT Orders

[32] In addition to the information and arguments contained in Western Alliance's application, the CBSA received responses to its RFI from interested parties contending that the goods in question are subject to the CITT orders, namely Hallmark Tubulars and Tenaris.

[33] The details of the information and arguments submitted by the applicant and each of these interested parties are available in the SEF issued on July 29, 2019. The information and arguments are summarized below:

- IT/VIT is considered OCTG and used as OCTG in the field;
- IT/VIT meets the API 5CT specification; and
- IT/VIT can be disassembled into its original basic API 5CT casing and tubing.

IT/VIT is considered OCTG and used as OCTG in the field

[34] Parties argued that both industry and IT/VIT manufacturers consider IT/VIT to be classified as OCTG because it substitutes for casing and tubing, both are used downhole in oil and gas wells to facilitate extraction of oil.

[35] Parties explained that IT/VIT may be used in conventional deep oil producing wells in place of bare API 5CT casing and tubing, but particularly in steam injection wells in SAGD operations in the Oil Sands and also in CSS in heavy oil fields.

[36] Parties stated that IT/VIT falls within the dimensional requirements of the product definitions for seamless casing and OCTG 1.

[37] Lastly, parties contended that IT/VIT is functionally interchangeable with conventional non-insulated OCTG tubing because it can be used in place of non-insulated tubing to carry fluids or gases through the well the same way that non-insulated tubing does.

IT/VIT meets the API 5CT specification

[38] Parties argued that IT/VIT is made to API 5CT or equivalent specifications due to the fact that both the inner and outer tube of IT/VIT used in oil and gas production wells are made to API 5CT specifications, including diameters, wall thickness dimensions and grades, as well as other governing specifications.

[39] Parties also contended that the insulation and outer pipe do not detract from the API 5CT characteristics of the inner casing and tubing.

IT/VIT can be disassembled into its original basic API 5CT casing and tubing components

[40] Parties argued that IT/VIT imported from China can be easily disassembled into its original API 5CT casing and tubing components.

[41] Parties stated that IT/VIT can be imported without a connection on either end and that conversion of the material into standard OCTG would only require a saw cut on both ends to release the vacuum. The inner tube could then slide out from within the outer tube, which would result in two pieces of tubular goods manufactured to API 5CT specifications.

[42] Lastly, parties contended that because IT/VIT does not have its own tariff classification number, there is no way of determining the amount of IT/VIT being imported into Canada that could be transformed in basic API 5CT casing and tubing.

Parties Contending that the Goods in Question are Not Subject to the CITT Orders

[43] The CBSA received responses to its RFI from interested parties contending that the goods in question are not subject to the CITT orders, namely ANDMIR, Continental Steel, Exceed, Golden Ring, General Energy Recovery Inc., Imex, TPCO, and Zibo.

The details of the information and arguments submitted by each of these interested parties are available in the SEF issued on July 29, 2019. The information and arguments are summarized below:

- IT/VIT is different in form and function from OCTG and does not meet the API 5CT specification;
- IT/VIT is not an economically feasible substitute for OCTG in a conventional well; and
- IT/VIT cannot be easily disassembled into its original basic API 5CT casing and tubing components.

IT/VIT is different in form and function from OCTG and does not meet the API 5CT specification

[44] Parties argued that IT/VIT is different in form and function than traditional OCTG products and that IT/VIT is not supplied to meet equivalent API 5CT specifications and/or enhanced proprietary standards.

[45] Parties contended that IT/VIT technology was developed for very specific applications and not to be used as general casing and tubing downhole. In Canada, IT/VIT is primarily used in SAGD and CSS operations to make wells more efficient and reduce the amount of steam required to produce bitumen.

[46] Lastly, parties explained that although there is no standard under API for IT/VIT, there is Chinese Standard SY/T5324-2013 which is associated with the IT/VIT manufacturing process.

IT/VIT is not an economically feasible substitute for OCTG in a conventional well

[47] Parties argued that it is not economically feasible to use IT/VIT in place of API 5CT tubing in a conventional well where no steam injection is required.

[48] Parties explained that OCTG is merely parts of components in IT/VIT and that the manufacturing process of IT/VIT is much more complex than that of OCTG, resulting in a higher overall production cost.

IT/VIT cannot be easily dismantled into its original basic API 5CT casing and tubing components

[49] Parties argued that the possibility of disassembly of IT/VIT is not as simple as stated in Western Alliance's application.

[50] Parties explained that once the IT/VIT is cut and separated, various processes would be required in order to prepare the product for resale, which would be both time and labour intensive. As such, based on all the costs involved in the manufacturing of IT/VIT, there would be a larger financial deficit from disassembling the IT/VIT to make API 5CT casing or tubing.

[51] Furthermore, parties indicated that the post IT/VIT product would also require testing by an API certified facility before it could be resold as tubing and casing.

COMMENTS ON CBSA'S PRELIMINARY ASSESSMENT

[52] As previously indicated, following the publication of the SEF, Western Alliance²², Evraz²³, Tenaris²⁴ and Exceed²⁵ provided comments with respect to the SEF on August 6, 2019.

[53] Exceed agreed with the CBSA's preliminary assessment and noted that, in making the preliminary assessment of whether the goods in question are subject to the CITT's orders, the CBSA's method of assessment was consistent with their point of view.

[54] Western Alliance, Evraz and Tenaris disagreed with the CBSA's preliminary assessment and had different views regarding the factors used by the CBSA in making its decision. A summary of key arguments made by these parties is provided below:

- Physical Characteristics of the Goods, Including Composition
- Technical Specifications of the Goods;
- Uses of the Goods;
- Original Intent of CBSA's Product Definitions; and
- Other Comments.

²² Exhibit 46 (PRO) – Comment to the Statement of Essential Facts from Western Alliance Tubulars Ltd.

²³ Exhibit 42 (NC) – Comment to the Statement of Essential Facts on behalf of EVRAZ Inc. NA Canada.

²⁴ Exhibit 44 (PRO) – Comment to the Statement of Essential Facts from Tenaris Canada.

²⁵ Exhibit 43 (NC) – Comment to the Statement of Essential Facts from Exceed Canada.

Physical Characteristics of the Goods, Including Composition

[55] Tenaris and Western Alliance argued that IT/VIT should be classified as a higher grade of OCTG, which meets the CITT's OCTG product definition as specified by the inclusion of "equivalent standard, in all grades."²⁶

[56] Tenaris and Western Alliance explained that the scope of the subject goods in the OCTG orders extends beyond API 5CT to include proprietary grades manufactured as substitutes for OCTG, which would result in the inclusion of IT/VIT as a proprietary grade.

[57] Western Alliance stated that the composition of IT was not mentioned in the CBSA's preliminary analysis. They explained that IT can be double wall pipe and that the only difference between double wall IT pipe and API 5CT tubing is the welds that hold the double wall IT pipe together.

CBSA's Response

[58] The CBSA does not disagree that the two pipes that form part of the IT/VIT met the API 5CT specification before they were further processed. However, once the pipes are welded together and other affixed parts such as stabilizer/seal rings, insulation liners, vacuum valves, bowl protectors etc.²⁷ are added, the finished product is no longer API 5CT tubing or casing, but rather an altogether different further processed good beyond the "equivalent standards"²⁸ or "proprietary grades"²⁹ of OCTG defined in the CITT's orders.

Technical Specifications of the Goods

[59] Western Alliance argued that IT/VIT is not mentioned by API because API does not list proprietary grades within its specifications.

[60] Tenaris stated that the additional characteristics of IT/VIT when compared to OCTG do not negate compliance with API 5CT due to the fact that there is no provision within API 5CT that prohibits the addition of insulation around tubing.

[61] Tenaris concluded that IT/VIT's compliance with Chinese Standard SY/T5324-2013 is not indicative of non-compliance with API 5CT. Compliance with Chinese Standard SY/T5324-2013 should result in IT/VIT's inclusion within the scope of the CITT's orders due to the fact that it meets "equivalent standards."

²⁶ Exhibit 46 (PRO) – Comment to the Statement of Essential Facts from Western Alliance Tubulars Ltd.

²⁷ Exhibit 2 (NC) – Application for Scope Ruling from Western Alliance Tubulars Attachments, 1, 2, and 4; and Exhibit 26 (NC) – Response to Importer RFI from ANDMIR, page 3.

²⁸ CITT Orders and Reasons, paragraph 8 – OCTG 1 Expiry Review <http://www.citt-tcce.gc.ca/en/node/7290>

²⁹ CITT Orders and Reasons, paragraph 11 – OCTG 1 Expiry Review <http://www.citt-tcce.gc.ca/en/node/7290>

CBSA's Response

[62] The CBSA maintains its position that IT/VIT does not meet nor is it supplied to meet the API 5CT specification. As previously stated, IT/VIT is no longer API 5CT tubing or casing but rather an altogether different further processed good beyond the “equivalent standards” or “proprietary grades” of OCTG defined in the CITT's orders.

[63] The fact that China created its own standard for IT/VIT, SY/T5324-2013, further supports the CBSA's position that IT/VIT is a different good.

Uses of the Goods

[64] Western Alliance argued that IT/VIT is not designed to compete with standard OCTG, but to compete with enhanced or proprietary grades of OCTG used in SAGD and CSS applications.

CBSA's Response

[65] While IT/VIT and standard OCTG are both used in SAGD and CSS applications, IT/VIT is not OCTG as defined in the CITT orders as it is combined with multiple other components and further processed to create a different product, with a particular and distinct use, beyond API 5CT OCTG.

[66] In addition to API 5CT OCTG, “IT/VIT is used as a heat insulation and steam injection tool for heavy oil and super heavy oil”.³⁰ In terms of benefits, “[t]he use of IT/VIT reduces the steam needed per barrel of oil produced, reduces the CO₂ production and protects the cemented well casing from catastrophic failures.”³¹

[67] As IT/VIT attracts a much higher price than standard OCTG, an end-user would not simply purchase IT/VIT over standard OCTG without having made an economic decision which considers the financial benefits of using IT/VIT over API 5CT OCTG. As stated by Golden Ring, “no company would use VIT in place of regular OCTG in wells where there is no steam injection, as it would be too expensive. The idea that VIT is used in the field would only be true if it were financially practical, and at more than twice the price of regular OCTG its use in a conventional well would not be reasonable.”³²

³⁰ Exhibit 30 (NC) – Response to Exporter RFI from Zibo FREET Thermal Tech Co., Ltd.

³¹ Exhibit 17 (NC) – Response to Importer RFI from Imex; Question SP4.

³² Exhibit 25 (NC) – Response to RFI Golden Ring Industrial Ltd.; Question SP4.

[68] IT/VIT is used specifically when particular SAGD and CSS well environment factors are present and where the economic benefits of using IT/VIT outweigh its price premium. Therefore, IT/VIT used in SAGD and CSS applications and enhanced or proprietary grades of OCTG do not compete directly from a functional or economic perspective.

[69] As stated by Imex, “IT/VIT is not substitutable with API tubing/casing. VIT technology evolved in the face of challenges posed in the thermal recovery of oil from heavy oil and oil sand. IT/VIT is used as a tool to reduce heat losses to the oil reservoir and to guarantee the structural integrity of the cased and cemented wells. Both functions are essential to ensure an environmentally sustainable production of oil from these oil reservoirs. The use of IT/VIT reduces the steam needed per barrel of oil produced, reduces the CO₂ production and protects the cemented well casing from catastrophic structural failures. Therefore, to equate typical OCTG to VIT would be an unjustifiable, unproductive measure.”³³

Original Intent of CBSA’s Product Definitions

[70] Western Alliance argued that the original intent of the OCTG and seamless casing CITT orders were to include proprietary grades of OCTG, which would result in the inclusion of IT/VIT.

[71] Tenaris stated that the CITT orders should be interpreted in a way that accommodates technological advancements and market changes, and not in way that limits a CITT order based on what was known at the time the CITT order was issued.

CBSA’s Response

[72] The CBSA agrees that technological advancements and market changes may be taken into consideration when interpreting orders. However, this does not impact the CBSA’s current ruling on IT/VIT subjectivity due to the fact that IT/VIT is a different, further processed good.

Other Comments

[73] Tenaris and Western Alliance stated that IT/VIT imported from China can be split into two lengths of API 5CT pipe at a relatively low cost. The two pipes could then be resold as standard API 5CT casing and/or tubing, circumventing anti-dumping and countervailing measures regarding certain seamless casing and OCTG from China.

CBSA’s Response

[74] Concerns regarding the importation and splitting of IT/VIT for purposes of the resale of API 5CT tubing or casing fall outside the parameters of a scope proceeding and were not considered as part of the CBSA’s analysis. Should any interested party have evidence of this practice, an anti-circumvention complaint may be filed with the CBSA pursuant to section 72 of SIMA.

³³ Exhibit 17 (NC) – Importer RFI from Imex; Question SP4.

CBSA'S ANALYSIS

[75] As summarized above, many comments received contended that the goods in question are subject to the CITT's orders. However, after considering the comments and arguments raised by Western Alliance, Evraz, and Tenaris, the CBSA maintains its preliminary assessment.

[76] In making a scope ruling under subsection 66(1) of SIMA, subsection 66(6) provides that the CBSA shall take into account any prescribed factors as well as any other factor that is considered relevant in the circumstances. A copy of the factors prescribed in section 54.6 of the SIMR is found in the **Appendix**.

[77] Accordingly, the CBSA considered the following factors in making its scope ruling:

- The physical characteristics of the goods, including their composition;
- The technical specifications of the goods; and
- The uses of the goods.

Physical Characteristics of the Goods, Including Composition

[78] The respective product definitions for this scope proceeding use the terms "seamless casing" and "oil country tubular goods" (OCTG). Seamless casing is a subset of OCTG. The terms have inherent meaning and are recognized by the industry to refer to oil and gas well casing and tubing, the properties of which are described in the API 5CT specification. As noted by numerous respondents to this scope proceeding, the API 5CT specification makes no mention of IT/VIT.

[79] Given that IT/VIT consists of one pipe inserted into another which are then welded together, with the finished product also composed of other affixed inputs such as stabilizer/seal rings, insulation liners, vacuum valves, bowl protectors etc.,³⁴ the resulting product holds different physical properties. The composition of the resulting product is significantly different from standard API 5CT casing and tubing.

Technical Specifications of the Goods

[80] IT/VIT is not made to nor supplied to meet API 5CT. Although the two pipes which comprise IT/VIT may be produced to meet this standard (or equivalent) as required by the seamless casing and OCTG 1 product definitions, information provided on the record demonstrates that finished IT/VIT neither meets nor is it supplied to meet API 5CT. That specification also does not make any reference to IT/VIT and information submitted from multiple parties demonstrates that IT/VIT has its own specification in China, namely, SY/T5324-2013.

[81] While proprietary grades of casing and tubing fall within the respective CITT definitions of seamless casing and OCTG 1, information on the record demonstrates that IT/VIT is not a

³⁴ Exhibit 2 (NC) – Application for Scope Ruling from Western Alliance Tubulars, Attachments 1, 2 and 4; and Exhibit 26 (NC) – Response to Importer RFI from ANDMIR, page 3.

proprietary grade of casing and tubing, but a different further processed good beyond what is defined in the CITT's orders.

Uses of the Goods

[82] IT/VIT has no feasible use in standard drilling operations. In Canada, IT/VIT is only used in specialized drilling operations, such as SAGD and CSS wells. IT/VIT must also be used in an existing bored well that has been cemented with casing. That is, the IT/VIT is not a replacement for the casing component of a drilling operation. Therefore, while the dimensions (i.e. outside diameter) of the input tube to an IT/VIT product may fit seamless casing sizes, functionally, it is not seamless casing as it is combined with multiple other components to create a different product, with a particular and distinct use, beyond API 5CT OCTG.

[83] The ability of certain goods to compete with or substitute for other similar goods is a key consideration of the CITT when examining whether certain goods should be excluded from a product definition. This in large part led to the exclusion of coupling stock from the OCTG 1 product definition.³⁵ A similar conceptual consideration applies here, as cost considerations make it unlikely that there would be substitutability between IT/VIT and standard OCTG.

[84] The intended use of a product is also a key consideration of the CITT when examining product exclusions, notwithstanding similarities in product. Although distinctions between coupling stock and standard seamless casing is largely an issue of wall thickness, the CITT determined in OCTG 1 that:

“Coupling stock, in itself, is not intended for direct use downhole; rather, it requires further processing to respond to the needs of industry. In addition, the extra thickness of coupling stock means that it is more expensive. As a consequence, the Tribunal is of the view that coupling stock is generally not substitutable for and, thus, does not compete with casing and tubing.”³⁶

[85] While considerations for product exclusion versus subjectivity of goods under a scope proceeding are different exercises, there are similarities when contemplating the use of the good at issue. This is especially true as it relates to how realistic or feasible it is to substitute IT/VIT for the scope of goods commonly understood to be covered by the product definition, which in this case are OCTG casing and tubing covered by the API 5CT specification.

³⁵ Canadian International Trade Tribunal (CITT) Findings and Reasons OIL COUNTRY TUBULAR GOODS, Inquiry No. NQ-2009-004, April 7, 2010, paragraph 240.

http://www.citt-tcce.gc.ca/en/dumping/inquiry/findings/archive_nq2j004_e#P588_111056

³⁶ Canadian International Trade Tribunal (CITT) Findings and Reasons OIL COUNTRY TUBULAR GOODS, Inquiry No. NQ-2009-004, April 7, 2010, paragraph 77.

http://www.citt-tcce.gc.ca/en/dumping/inquiry/findings/archive_nq2j004_e#P588_111056

SCOPE RULING

[86] On the basis of the information on the administrative record and having considered the relevant factors contained in section 54.6 of the SIMR and other relevant factors, on September 6, 2019, the CBSA made a scope ruling pursuant to subsection 66(1) of SIMA that IT/VIT are not subject to the CITT's orders issued on November 28, 2018 in RR-2017-006 and March 2, 2015 in RR-2014-003 concerning the dumping and subsidizing of certain seamless casing and OCTG from China.

FUTURE ACTION

[87] Pursuant to subsection 66(4) of SIMA, this scope ruling takes effect on September 6, 2019.

[88] Pursuant to section 69 of SIMA, this scope ruling is binding with respect to any determination or re-determination made in respect of any goods to which the scope ruling applies that are released on or after the date it is made.

[89] Pursuant to subsection 66(7) of SIMA, a scope ruling made under subsection 66(1) is final and conclusive, subject to further appeal. Pursuant to subsection 61(1.1) of SIMA, a scope ruling may be appealed to the CITT by any interested person as defined in subsection 52.3(1) of the SIMR. The notice of appeal must be filed in writing with the CBSA and the CITT within 90 days after the day the scope ruling was made. A decision made by the CITT may be further appealed to the Federal Court of Appeal.

INFORMATION

[90] This *Statement of Reasons* is available through the CBSA's website at the address below. For further information, please contact the officers identified as follows:

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Darryl Larson
Director
Anti-dumping and Countervailing Investigations
Trade and Anti-dumping Programs Directorate

APPENDIX – PRESCRIBED FACTORS IN SIMR

The SIMR section 54.6 provides the following:

54.6 For the purpose of subsection 66(6) of the Act, the President may take the following factors into account in making a scope ruling:

- (a) in all cases,
 - (i) the physical characteristics of the goods in respect of which the scope proceeding has been initiated, including their composition,
 - (ii) their technical specifications,
 - (iii) their uses,
 - (iv) their packaging, including any other goods contained in the packaging, along with the promotional material and documentation concerning the goods in respect of which the scope proceeding has been initiated, and
 - (v) their channels of distribution;
- (b) for a ruling as to whether goods in respect of which the scope proceeding has been initiated are of the same description as goods to which an order of the Governor in Council or an order or finding of the Tribunal applies,
 - (i) the description of the goods referred to in that order or that order or finding,
 - (ii) in the case of an order or finding of the Tribunal, the reasons for the order or finding, and
 - (iii) any relevant decision by the Tribunal, the Federal Court of Appeal, the Supreme Court of Canada, or a panel under Part I.1 or II of the Act;
- (c) for a ruling as to whether goods in respect of which the scope proceeding has been initiated are of the same description as goods to which an undertaking applies,
 - (i) the description of the goods referred to in the preliminary determination of dumping or subsidizing and in the undertaking, and
 - (ii) the reasons for the preliminary determination; and
- (d) if the basis for a ruling referred to in paragraph (b) or (c) is whether goods in respect of which the scope proceeding has been initiated originate in a country that is subject to the applicable order, finding or undertaking or originate in a third country,
 - (i) the production activities undertaken in the third country in respect of the goods and undertaken in the subject country in respect of goods from which the goods are produced,
 - (ii) the nature of the goods when they were exported from the third country and of goods from which the goods are produced when they were exported from the subject country, and
 - (iii) the costs of production of the goods incurred in the third country.