



Ottawa, Friday, January 9, 2004

**Inquiry No. NQ-2003-002**

IN THE MATTER OF an inquiry, under section 42 of the *Special Import Measures Act*,  
respecting:

**CERTAIN HOT-ROLLED CARBON STEEL PLATE AND HIGH-  
STRENGTH LOW-ALLOY STEEL PLATE ORIGINATING IN  
OR EXPORTED FROM THE REPUBLIC OF BULGARIA, THE  
CZECH REPUBLIC AND ROMANIA**

**FINDING**

The Canadian International Trade Tribunal, under the provisions of section 42 of the *Special Import Measures Act*, has conducted an inquiry to determine whether the dumping in Canada of hot-rolled carbon steel plate and high-strength low-alloy steel plate not further manufactured than hot-rolled, heat-treated or not, in cut lengths in widths from 24 inches (+/-610 mm) to 152 inches (+/-3,860 mm) inclusive and in thicknesses from 0.187 inch (+/-4.75 mm) to 5.25 inches (+/-133 mm) inclusive, originating in or exported from the Republic of Bulgaria, the Czech Republic and Romania, excluding plate produced to American Society for Testing and Materials (ASTM) specifications A515 and A516M/A516 Grade 70 in thicknesses greater than 3.125 inches (+/-79.3 mm), universal mill plate, plate for use in the manufacture of pipe and plate having a rolled, raised figure at regular intervals on the surface (also known as floor plate), has caused injury or retardation or is threatening to cause injury to the domestic industry.

This inquiry is pursuant to the issuance by the Commissioner of the Canada Customs and Revenue Agency of a preliminary determination dated September 11, 2003, and of a final determination dated December 9, 2003, that the aforementioned goods have been dumped and that the margins of dumping of the goods are not insignificant.

Pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that the dumping in Canada of the aforementioned goods has caused material injury to the domestic industry. The following goods are excluded: hot-rolled carbon steel plate and high-strength low-alloy steel plate in thicknesses greater than 4.0 inches.

Richard Lafontaine

Richard Lafontaine  
Presiding Member

Zdenek Kvarda

Zdenek Kvarda  
Member

James A. Ogilvy

James A. Ogilvy  
Member

Michel P. Granger

Michel P. Granger  
Secretary

The statement of reasons will be issued within 15 days.

Place of Hearing: Ottawa, Ontario  
Dates of Hearing: December 8 to 10, 2003  
Date of Finding: January 9, 2004

Tribunal Members: Richard Lafontaine, Presiding Member  
Zdenek Kvarda, Member  
James A. Ogilvy, Member

Directors of Research: Peter Welsh  
Réal Roy

Lead Researcher Douglas Kemp

Economist: Eric Futin

Statisticians: Lise Lacombe  
Rhonda Heintzman

Counsel for the Tribunal: Roger Nassrallah

Assistant Registrar: Gillian E. Burnett

Registrar Officer: Ingrid Navas

**Participants:**

Ronald C. Cheng  
Paul D. Conlin  
for Algoma Steel Inc.

Dalton Albrecht  
for IPSCO Inc.

Lawrence L. Herman  
Craig S. Logie  
for Stelco Inc.

**(Domestic Producers)**

Donald J. Goodwin  
Evgeny Pavlenko  
for Vitkovice Steel, a.s.  
Accucut Profile & Grinding Ltd.  
Wirth Steel, A General Partnership  
Les Aciers Transbec (1997) Ltée  
Russel Metals Inc.  
Anchor Lamina Inc.  
Acier Leroux Inc.  
Border Steel Ltd.  
Carbon Steel Profiles Limited

Lubka Voucheva  
Embassy of the Republic of Bulgaria

**(Importers/Exporter/Others)**



Ottawa, Friday, January 23, 2004

**Inquiry No. NQ-2003-002**

**CERTAIN HOT-ROLLED CARBON STEEL PLATE AND  
HIGH-STRENGTH LOW-ALLOY STEEL PLATE  
ORIGINATING IN OR EXPORTED FROM THE REPUBLIC OF  
BULGARIA, THE CZECH REPUBLIC AND ROMANIA**

**DECISION**

The Canadian International Trade Tribunal hereby finds that the dumping in Canada of the aforementioned goods has caused material injury to the domestic industry. The following goods are excluded: hot-rolled carbon steel plate and high-strength low-alloy steel plate in thicknesses greater than 4 inches.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	December 8 to 10, 2003
Date of Finding:	January 9, 2004
Date of Reasons:	January 23, 2004
Tribunal Members:	Richard Lafontaine, Presiding Member Zdenek Kvarda, Member James A. Ogilvy, Member
Directors of Research:	Peter Welsh Réal Roy
Lead Researcher	Douglas Kemp
Economist:	Eric Futin
Statisticians:	Lise Lacombe Rhonda Heintzman
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Border Steel Ltd.  
Carbon Steel Profiles Limited

Lubka Voucheva  
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**(Importers/Exporter/Others)****Witnesses:**

Paul LeGendre  
Manager  
Service Centres  
Algoma Steel Inc.

Mark Mittleman  
Manager  
Plate Products  
Algoma Steel Inc.

Derek de Korte  
Product Manager  
Marketing & Product Development  
Algoma Steel Inc.

Robert A. Clark  
Manager  
Trade & Audit  
Algoma Steel Inc.

David J. Halcrow  
Vice-President, Purchasing  
Russel Metals Inc.

Donald Belch  
Director—Government Relations  
Stelco Inc.

Alan Bromley  
President  
Plate Sales Division  
Samuel Plate Sales

Jeffery J. Moskaluk  
General Manager—Steel Products  
IPSCO Ontario Inc.

Glenn A. Gilmore  
Trade Supervisor  
IPSCO Inc.

Michal Baštinský  
Marketing Manager  
Vítkovice Steel, a.s.

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ORIGINATING IN OR EXPORTED FROM THE REPUBLIC OF  
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TRIBUNAL: RICHARD LAFONTAINE, Presiding Member  
ZDENEK KVARDA, Member  
JAMES A. OGILVY, Member

**STATEMENT OF REASONS**

**BACKGROUND**

The Canadian International Trade Tribunal (the Tribunal), under the provisions of section 42 of the *Special Import Measures Act*,<sup>1</sup> has conducted an inquiry to determine whether the dumping in Canada of hot-rolled carbon steel plate and high-strength low-alloy steel plate not further manufactured than hot-rolled, heat-treated or not, in cut lengths in widths from 24 inches (+/-610 mm) to 152 inches (+/-3,860 mm) inclusive and in thicknesses from 0.187 inch (+/-4.75 mm) to 5.25 inches (+/-133 mm) inclusive, originating in or exported from the Republic of Bulgaria (Bulgaria), the Czech Republic and Romania, excluding plate produced to American Society for Testing and Materials (ASTM) specifications A515 and A516M/A516 Grade 70 in thicknesses greater than 3.125 inches (+/-79.3 mm), universal mill plate, plate for use in the manufacture of pipe and plate having a rolled, raised figure at regular intervals on the surface (also known as floor plate) (the subject goods), has caused injury or retardation or is threatening to cause injury to the domestic industry.

On June 13, 2003, the Commissioner of the Canada Customs and Revenue Agency (the Commissioner), following a complaint filed by Algoma Steel Inc. (Algoma), initiated an investigation into whether imports of the subject goods were being dumped. On June 16, 2003, pursuant to subsection 34(2) of *SIMA*, the Tribunal issued a notice advising interested parties that it had initiated a preliminary injury inquiry to determine whether the evidence disclosed a reasonable indication that the dumping of the subject goods had caused material injury or retardation or was threatening to cause material injury to the domestic industry. On August 12, 2003, pursuant to subsection 37.1(1), the Tribunal determined that the evidence disclosed a reasonable indication that the dumping of the subject goods had caused injury to the domestic industry.

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1. R.S.C. 1985, c. S-15 [*SIMA*].

On September 11, 2003, the Commissioner issued a preliminary determination of dumping with respect to the subject goods. The Commissioner was satisfied, as a result of this preliminary investigation, that the subject goods had been dumped, that the margins of dumping were not insignificant and that the volume of dumped goods was not negligible.<sup>2</sup>

On September 12, 2003, the Tribunal issued a notice of commencement of inquiry.<sup>3</sup> As part of the inquiry, the Tribunal sent questionnaires to domestic producers, importers, purchasers and foreign producers. From the replies to the questionnaires and other sources, the Tribunal's research staff prepared public and protected pre-hearing staff reports.

On December 9, 2003, the Commissioner issued a final determination that the subject goods had been dumped and that the margins of dumping were not insignificant.<sup>4</sup>

A hearing with public and *in camera* testimony was held in Ottawa, Ontario, from December 8 to 10, 2003. The domestic producers, Algoma, Stelco Inc. (Stelco) and IPSCO Inc. (IPSCO), made submissions and were represented by counsel at the hearing. One exporter, Vitkovice Steel, a.s. (Vitkovice), and the following importers and users, Wirth Steel, A General Partnership (Wirth), Accucut Profile & Grinding Ltd. (Accucut), Les Aciers Transbec (1997) Ltée (Transbec), Russel Metals Inc. (Russel), Anchor Lamina Inc. (Anchor Lamina), Acier Leroux Inc. (Leroux), Border Steel Ltd. (Border) and Carbon Steel Profiles Limited (Carbon Steel Profiles), also made submissions, including requests for product exclusions, and were represented by counsel at the hearing.

The record of this inquiry consists of all Tribunal exhibits, including the public and protected replies to questionnaires, requests for information and replies thereto, witness statements and all exhibits filed by the parties throughout the inquiry, the transcript of the hearing and the full record of the preliminary injury inquiry. All public exhibits were made available to the parties. Protected exhibits were made available only to counsel who had filed a declaration and confidentiality undertaking with the Tribunal in respect of confidential information.

The Tribunal issued its finding on January 9, 2004.

## **RESULTS OF THE COMMISSIONER'S INVESTIGATION**

The Commissioner's investigation covered imports of the subject goods from April 1, 2002, to March 31, 2003. The Commissioner was satisfied that the subject goods had been dumped and that the margins of dumping were not insignificant.

The dumping investigation revealed that all the subject goods released into Canada during the Commissioner's period of investigation were dumped by weighted average margins of dumping, expressed as a percentage of the export price, ranging from 52.6 percent to 74.6 percent.

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2. Canada Customs and Revenue Agency, *Preliminary Determination of Dumping and Statement of Reasons*, 11 September 2003, Tribunal Exhibit NQ-2003-002-01, Administrative Record, Vol. 1 at 11.

3. C. Gaz. 2003.I.2866.

4. Canada Customs and Revenue Agency, *Final Determination of Dumping and Statement of Reasons*, 9 December 2003, Tribunal Exhibit NQ-2003-002-04, Administrative Record, Vol. 1 at 70.1.



## PRODUCT

For the purposes of this inquiry, the subject goods are defined as hot-rolled carbon steel plate and high-strength low-alloy steel plate not further manufactured than hot-rolled, heat-treated or not, in cut lengths in widths from 24 inches (+/-610 mm) to 152 inches (+/-3,860 mm) inclusive and in thicknesses from 0.187 inch (+/-4.75 mm) to 5.25 inches (+/-133 mm) inclusive, originating in or exported from Bulgaria, the Czech Republic and Romania, excluding plate produced to ASTM specifications A515 and A516M/A516 Grade 70 in thicknesses greater than 3.125 inches (+/-79.3 mm), universal mill plate, plate for use in the manufacture of pipe and plate having a rolled, raised figure at regular intervals on the surface (also known as floor plate).

### Production Process

Algoma and Stelco produce liquid steel using blast furnaces and basic oxygen furnaces. IPSCO produces liquid steel by melting scrap in electric arc furnaces. While details may vary from mill to mill, the process by which hot-rolled carbon steel plate and high-strength low-alloy steel plate (plate) are produced from liquid steel in Canada is essentially the same for all producers and entails producing a slab, heating the slab, descaling it, rolling it, levelling it, cutting it to size, inspecting it and testing it. Plate may be heat-treated, which may include annealing, normalizing, stress relieving, quenching, tempering or combinations of these treatments.

Plate made directly into rectangular shapes is referred to as “discrete plate”. Plate may also be produced by taking steel in coil form, uncoiling and flattening it, and cutting it to length.

### Product Applications

Plate can be used in a number of applications, the most common being in the production of rail cars, oil and gas storage tanks, heavy construction machinery, agricultural equipment, bridges, industrial buildings, highrise office towers, automobile and truck parts, and pressure vessels and in shipbuilding and repairs.

## DOMESTIC PRODUCERS

### Algoma

Algoma is located in Sault Ste. Marie, Ontario. It was incorporated on June 1, 1992, under the Ontario *Business Corporations Act*,<sup>5</sup> acquiring all the assets and some of the liabilities of The Algoma Steel Corporation Limited. On January 29, 2002, Algoma was re-organized under the *Companies' Creditors Arrangement Act*<sup>6</sup> and the Ontario *Business Corporations Act*.

Algoma operates a major steelworks in Sault Ste. Marie. It is a vertically integrated primary iron and steel producer and currently has the capacity to produce about 2.1 million tonnes of finished steel products annually. Among the products that Algoma produces are plate, hot-rolled sheet, cold-rolled sheet, welded wide flange and unfinished parts.

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5. R.S.O. 1990, c. B-16.

6. R.S.C. 1985, c. C-36.

## **IPSCO**

IPSCO was incorporated in 1956 under the name of Prairie Pipe Manufacturing Co. Ltd. and commenced operations in 1957 with the completion of construction of an electric resistance weld pipe mill in Regina, Saskatchewan. In 1959, IPSCO acquired the assets of Interprovincial Steel Corp. Ltd. and, in 1960, commenced production of flat-rolled steel, including like goods.

IPSCO has since expanded its manufacturing capabilities through acquisition and plant construction. It manufactures discrete plate at its steel mill in Regina. IPSCO produces cut-to-length plate from coil in Regina, Surrey, British Columbia, and Toronto, Ontario. IPSCO's plant in Toronto has the first four-high temper level cut-to-length line in Canada. This line is designed to improve the flatness and physical properties of the steel and can produce plate from coil in widths of up to 96 inches and in thicknesses ranging from 0.187 inch to 0.75 inch. IPSCO also produces other steel products, such as oil-country tubular goods, line pipe, standard pipe, hollow structural sections, and alloy sheet and plate.

## **Stelco**

Stelco was established in 1910 as the Steel Company of Canada Ltd. It is an integrated steel company that produces flat-rolled steel, bars and rods, wire, wire products, pipes and tubes. Stelco first produced plate in 1941 on a 110-inch plate mill in Hamilton, Ontario. This mill was replaced in 1965 by a 148-inch plate mill. In April 2003, the Hamilton plate mill was idled.

## **IMPORTERS AND EXPORTERS**

During the preliminary stage of the Commissioner's investigation, the Canada Customs and Revenue Agency (CCRA) confirmed that eight firms imported plate from the subject countries.

During the Tribunal's period of inquiry (i.e. January 1, 2000, to June 30, 2003), Wirth, Arcelor International Canada, Novosteel Canada, Salzgitter Trade and Ferrostaal Metals accounted for much of the steel imported from the subject countries. In addition, IPSCO, Samuel, Russel and CPP Custom Plate & Profiles accounted for considerable volumes of plate imported into Canada from non-subject countries.

## **MARKETING AND DISTRIBUTION**

Plate may be sold directly to end users or to service centres. The service centres may resell plate in standard sizes and grades, or they may offer custom cutting services. A major portion of Canadian mill shipments of plate is marketed to end users through service centres. The balance of Canadian mill shipments is sold directly to end users.

## **POSITIONS OF PARTIES**

### **Domestic Producers**

The domestic producers submitted that the collective plate production of Algoma, IPSCO and Stelco represents like goods produced in Canada and that, therefore, these three companies constitute the domestic industry for the purposes of *SIMA*. In respect of the product definition, the domestic producers made reference to some of the Tribunal's past plate inquiries in support of their position that like goods have included, and should include in this case, plate up to and including 5.25 inches in thickness.

With respect to cumulation, the domestic producers argued that the Tribunal ought to cumulate the injurious impact of the dumped plate from all three subject countries. They submitted that the subject goods competed between themselves and that there was clear evidence from Algoma and IPSCO that they competed with like goods and that, thus, an assessment of the cumulative effect is appropriate in this case. Specifically with respect to the Czech Republic, the domestic producers contended that Vitkovice has provided no evidence that suggests that the Czech product did not compete with the other subject goods or the goods produced by the domestic producers.

The domestic producers submitted that the Canadian market continues to suffer from the effects of low-priced dumped imports, resulting in price erosion, price suppression and lost volumes, which, in turn, have led to lower gross margins.

The domestic producers submitted that the Tribunal ought to consider the period of time from 1998 to 2003, which, they contended, demonstrates trends in the Canadian market arising from the issuance and rescission of various anti-dumping orders involving previous and present dumping countries and, thus, provides the proper context for this inquiry.

The domestic producers submitted that there has been a significant decline in the size of the Canadian market and that the 2003 market will be the smallest during the entire six-year period. They also submitted that their market share over that period also declined steadily, but that they were able to curb some of that decline through price discounting. Specifically, they submitted that their market share declined somewhat in 2001 and then declined substantially in 2002, whereas the subject countries' market share increased from 1 percent in 2001 to 8 percent in 2002. However, they acknowledged that the subject countries themselves lost market share in 2001 to imports from the Republic of South Africa (South Africa) that, though covered by a Canadian anti-dumping order, enjoyed a significant holiday from normal value enforcement due to favourable currency fluctuations in 2000 and 2001.

The domestic producers contended that the subject countries replaced the countries named in earlier cases as the principal cause of material injury to the domestic industry from 2000 to 2003. Furthermore, they submitted that the subject countries and those named in earlier cases used injuriously dumped pricing to gain market share. They noted that, in *Carbon Steel Plate*,<sup>7</sup> the Tribunal indicated that the value for duty for imports from offshore suppliers other than the named countries, particularly Bulgaria and Romania, was 40 percent lower than the domestic producers' average price. They also contended that the pricing of the subject countries was comparable to or below the pricing of the countries named in earlier cases in late 1999 and early 2000, just after the latter countries exited the market as a result of the Tribunal's injury finding.

The domestic producers submitted that the evidence supported the testimony of their witnesses that they were unable to benefit from the anticipated relief from the Tribunal's most recent finding<sup>8</sup> because the importers had already turned to the subject countries and that, therefore, they were not able to increase their previously discounted prices because of the continued pressure from low-priced imports. However, in 2002, in hopes that the Canadian Government would implement safeguard measures similar to those adopted by the United States, Algoma, it was submitted, decided that the eroded and suppressed pricing of plate had continued for too long and was no longer sustainable, which led it to implement a price increase. The domestic producers submitted that this price increase was only partially realized, as dumped imports from the subject countries surged in volume to capture an 8 percent market share in 2002.

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7. *Certain Hot-rolled Carbon Steel Plate* (10 January 2003), RR-2001-006 (CITT).

8. *Certain Hot-rolled Carbon Steel Plate* (27 January 2000), NQ-99-004 (CITT).

With respect to import pricing, the domestic producers submitted that the evidence indicates that, during the period that the Commissioner found the subject countries to have been dumping at significant margins, each of the subject countries, at different times, had lower pricing than the domestic producers and, in fact, caused the resultant domestic producers' price discounting and erosion. It was also submitted that Algoma and IPSCO have been unable to wholly stop the discounting, despite Stelco's withdrawal from the market and the Commissioner's preliminary determination, because dumped imports from the subject countries, which were imported into Canada just prior to the imposition of the provisional duties, are still available in the Canadian market.

With respect to causation, the domestic producers argued that the participation in price declines when utilizing dumped import prices, even if one did not lead prices downwards, means that one causes injury to domestic production.<sup>9</sup> Furthermore, they stated that dumping does not have to be the only cause of injury to find that the subject countries have materially injured the domestic industry. In this context, the domestic producers submitted that it is clear that the Romanian exports have been the most significant cause of the injury, but that the Czech and Bulgarian exports were also both in the market and contributed to the price erosion and suppression suffered by the domestic producers. In this regard, IPSCO submitted that the testimony of its witnesses linked the effect of the offers of dumped imports to the eroded and suppressed prices of the domestic producers.

The domestic producers also argued that it is important to note that the injury is not attributable to economic recession, labour disruptions, plant problems or fluctuations in the Canadian dollar. Rather, the injury is directly attributable to the volume of imports from the subject countries at high dumping margins, which caused substantial erosion in domestic price levels, continued price suppression and reductions in sales volumes, particularly at the end of 2002 and the beginning of 2003. In this context, the domestic producers argued that there is ample evidence of a direct and immediate correlation between increased dumped imports and the price erosion to establish a causal link between the two.

With respect to imports from the United States, the domestic producers noted that they were not found by the Commissioner to have been dumped and that, in any event, they did not precipitate the price declines, discounting and erosion, and, therefore, the U.S. pricing was not the cause of the material injury. Furthermore, the domestic producers submitted that the evidence on the record indicated that the U.S. and Canadian marketplaces are essentially the same. With respect to IPSCO's imports from the United States, it submitted that IPSCO's Canadian sales office makes the sales at prevailing Canadian market prices, in Canadian dollars, and that a decision is then made with respect to which IPSCO mill will produce the plate. On this basis, the domestic producers contended that the imports from the United States have not been disruptive.

With respect to the imports from the Czech Republic, the domestic producers submitted that the evidence suggests that close to 50 percent of them consisted of either thin gauge (i.e. less than 3/8 inch) or thick gauge plate, defined by IPSCO, in this instance, as greater than 2 inches, which should command a premium based on the evidence provided by the witnesses. Furthermore, they argued that the higher average price of the imports from the Czech Republic was attributable to this premium, but that the premium did not fully reflect the premium that this gauge of plate normally receives. In this context, it was Stelco's position that, although Wirth was a more astute trader than its competitors, with respect to obtaining good prices for its plate, it still underpriced the domestic producers and, thus, caused injury.

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9. *Ibid.*

With respect to threat of injury, the domestic producers argued that any threat of injury must be assessed against the backdrop of a Canadian market that is in a very weakened state, which was best exemplified by the idling of the Stelco plate mill. In this context, they submitted that: (1) there has been a significant rate of increase in dumped goods in Canada; (2) the subject countries have sufficient disposable capacity to produce the subject goods, have the potential to shift product and are export oriented; (3) the subject goods are entering the domestic market at prices that are likely to have a significant depressing or suppressing effect on the price of like goods; (4) the subject countries carry significant inventories; and (5) the magnitude of the margin of dumping is sufficiently high. Based on these factors, the domestic producers submitted that the subject countries pose an imminent threat of injury.

With respect to the requests for product exclusion, the domestic producers submitted that the conditions that must be satisfied for a product exclusion have not been satisfied. The Tribunal has extensive evidence that indicates that the domestic producers have the capability to produce the thicker gauge plate and that they have produced and sold such product in the past. In this context, the domestic producers referred to the Tribunal's decision in *Rebar*,<sup>10</sup> in which the Tribunal stated that there are no requirements in *SIMA* for the domestic industry to supply the totality of the market. They also pointed out that the thicker plate is also available from non-subject countries.

### **Vitkovice**

Vitkovice opposed an injury finding. It submitted that the effect of the imports from the Czech Republic should not be cumulated with that of the imports from Bulgaria and Romania, on the basis that the imports from the Czech Republic did not compete with them on price. In this context, it submitted that, for almost the entire period of inquiry, the imports from the Czech Republic were priced into the Canadian market at a level that was higher than the imports from Bulgaria and Romania and the domestic like goods and, thus, did not cause injury or threaten to cause injury to domestic production.

Vitkovice submitted that, if the Tribunal does cumulate the effect of the imports from the Czech Republic, it ought to terminate that portion of its inquiry on the basis that the volumes of imports from the Czech Republic are negligible, since certain volumes were re-exported to the United States and, thus, not released in the Canadian market.

Vitkovice argued that there is no causal link to any price competition between the Canadian producers and the imports from the Czech Republic because there is no evidence that the Canadian producers were forced to reduce their price levels to compete with the imports from the Czech Republic. Furthermore, it argued that, without such a causal link, there can be no case for price suppression directly or indirectly caused by those imports.

Vitkovice argued that there was a lack of price-related injury on three levels: micro (i.e. the specific injury allegation level), intermediate (i.e. structural plate A36/W44) and macro (i.e. Czech pricing versus the price of other plate in the market). It noted that there were no allegations of any sort with respect to it regarding pricing, offers, import penetration or off-the-dock sales. It also noted that Algoma was the sole domestic producer to submit any specific allegations regarding imports from the Czech Republic. It contended that any price declines in 2003 are attributable to competition between Algoma and IPSCO for clients that were traditionally Stelco's clients before it was forced to idle its mill and, thus, not attributable to the prices of the imports from the Czech Republic.

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10. *Certain Concrete Reinforcing Bar* (12 January 2000), NQ-99-002 (CITT).

With respect to threat of injury, Vitkovice submitted that the Czech product is not readily available for export to Canada. Furthermore, it is high-priced and, therefore, does not pose a threat in the foreseeable future.

### **Parties requesting exclusions**

Vitkovice, Wirth, Accucut, Transbec, Russel, Anchor Lamina, Leroux, Border and Carbon Steel Profiles requested product exclusions for plate in thicknesses greater than 3 inches on the basis of lack of production of similar products by the domestic producers. Vitkovice also submitted that there was a lack of evidence of injury due to sales of thick plate.

### **ANALYSIS**

Pursuant to section 42 of *SIMA*, the Tribunal is required to make inquiry as to whether the dumping or subsidizing of the goods to which the preliminary determination applies has caused injury or retardation or is threatening to cause injury. “Injury” is defined in subsection 2(1) as “material injury to a domestic industry”. Injury and threat of injury are distinct findings, and the Tribunal does not need to make a finding relating to threat under subsection 43(1) unless it first makes a finding of no injury.

### **Like Goods and Class of Goods**

Subsection 2(1) of *SIMA* defines “like goods”, in relation to any other goods, as:

- (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.

In considering the issue of like goods, the Tribunal typically looks at a number of factors, including the physical characteristics of the goods (such as appearance), their method of manufacture, their market characteristics (such as substitutability, pricing and distribution) and whether the domestic goods fulfill the same customer needs as the imported goods. For the purposes of this inquiry, the Tribunal is of the opinion that the domestic industry produces substantially the same goods as the subject goods and does so in the same way. Plate produced domestically, for the most part, competes with the subject goods, has the same end uses and can be substituted for them. Therefore, the Tribunal finds that the domestic like goods have uses and other characteristics which closely resemble those of the subject goods and thus, that they are like goods to the subject goods.

In considering whether there is one class or more than one class of goods, the Tribunal typically looks at the same factors as above and applies them to the like goods. For the purposes of this inquiry, the Tribunal determines that there is one class of like goods, on the basis that the physical characteristics, channels of distribution and manufacturing processes of the goods closely resemble one another, although their characteristics may vary slightly depending on such features as dimensions, pricing, end use and application.

## Domestic Industry

The term “domestic industry” is defined in subsection 2(1) of *SIMA*, in part, as follows:

“domestic industry” means, other than for the purposes of section 31 and subject to subsection (1.1), 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.

Algoma, Stelco and IPSCO account for the majority of the domestic production of the like goods.<sup>11</sup> The Tribunal is therefore of the view that they clearly constitute a major proportion of the total domestic production of the like goods. Consequently, for purposes of this inquiry, the Tribunal will consider the effect of dumped imports on Algoma, Stelco and IPSCO.

## Cumulation

Pursuant to subsection 42(3) of *SIMA*, the Tribunal shall, when conducting an inquiry under subsection 42(1), make an assessment of the cumulative effect of the dumping or subsidizing of the goods that are imported into Canada from more than one country if it is satisfied that the following conditions are met:

- (a) the margin of dumping or the amount of the 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; and
- (b) an assessment of the cumulative effect would be appropriate taking into account the conditions of competition between goods to which the preliminary determination applies that are imported into Canada from any of those countries and
  - (i) goods to which the preliminary determination applies that are imported into Canada from any other of those countries, or
  - (ii) like goods of domestic producers.

Taking into consideration the relevant provisions of *SIMA* and basing its finding on the Commissioner’s final determination of dumping, the Tribunal finds that the margins of dumping in relation to the imports from each of the subject countries are not insignificant.<sup>12</sup> Therefore, the first condition under paragraph 42(3)(a) has been met.

Paragraph 42(3)(a) of *SIMA* contains an additional requirement, i.e. that the volume of the goods from each of the countries not be negligible. Subsection 2(1) defines “negligible”, in part, as follows:

“negligible” means, in respect of the volume of dumped goods of a country,

- (a) less than three per cent of the total volume of goods that are *released* into Canada from all countries and that are of the same description as the dumped goods. [Emphasis added]

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11. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2003-002-07A, Administrative Record, Vol. 1.1A at 20.

12. Subsection 2(1) of *SIMA* defines the term “insignificant”, in part, to mean, “in relation to a margin of dumping, a margin of dumping that is less than two per cent of the export price of the goods”.

Subsection 2(1) of *SIMA* defines the term “release” to mean :

in respect of goods, to authorize the removal of the goods from a customs office, sufferance warehouse, bonded warehouse or duty free shop for use in Canada.

Vitkovice argued that the Tribunal ought to terminate its inquiry, pursuant to subsection 42(4.1) of *SIMA*, with respect to the imports from the Czech Republic, on the basis that those imports were negligible. It submitted that, since a portion of the imports from the Czech Republic was re-exported to the United States, the remaining volume in Canada was below the 3 percent negligibility threshold. Vitkovice submitted that it should be the sales in the market that are considered in injury inquiries and not imports that are re-exported.<sup>13</sup> It further submitted that the re-exported goods do not compete with Canadian producers for market share in Canada.<sup>14</sup> In support of its argument, it referred to Canada’s duty drawback rules and submitted that, because anti-dumping duties are refundable when dumped imports are exported from Canada, this signifies that these imports do not cause injury to domestic production. Furthermore, it submitted that the Tribunal’s decision in respect of the imports from Saudi Arabia in *Hot-rolled Sheet and Strip*<sup>15</sup> supports Vitkovice’s point that the imports had to compete with the Canadian production in order to cause injury.

The Tribunal is not convinced by Vitkovice’s argument in this regard. First, a clear distinction can be made between the imports from Saudi Arabia in *Hot-rolled Sheet and Strip* and the current imports from the Czech Republic. The imports from the Czech Republic were, in fact, released into Canada, whereas the imports from Saudi Arabia were not.<sup>16</sup> In this context, the Tribunal, in *Hot-rolled Sheet and Strip*, stated:

The Tribunal notes that the volume of dumped goods from Saudi Arabia reported by the Commissioner relates to subject goods which were determined by the Commissioner to have been sold to a Canadian importer during the Commissioner’s period of investigation, *but not released into Canada during that period.*<sup>17</sup> [Emphasis added]

Furthermore, there is clear evidence in the present inquiry that the imports from the Czech Republic competed with the domestic like goods, whereas, in *Hot-rolled Sheet and Strip*, the Tribunal found that:

there is no evidence that would indicate that the subject goods from Saudi Arabia have ever truly competed in Canada with the subject goods from the other subject countries or with like goods produced by domestic producers. Saudi Arabia has had no historic presence in the Canadian market for the subject goods.<sup>18</sup>

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13. *Transcript of Public Argument*, 10 December 2003 at 127.

14. *Ibid.*

15. *Certain Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (17 August 2001), NQ-2001-001 (CITT).

16. The import data provided by the CCRA relate only to *released* import volumes. Paragraph 22 of the Commissioner’s final determination of dumping states: “The dumping investigation involved all of the subject goods *released* into Canada from customs control during the period of April 1, 2002, to March 31, 2003.” [Emphasis added]

17. *Certain Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (17 August 2001), NQ-2001-001, *Statement of Reasons* at 15 (CITT).

18. *Ibid.* at 18.



The Tribunal finds that the release of the imports from the Czech Republic constituted their entry into the market, placing them in a position to compete with the goods produced domestically and, therefore, that the volume of the re-exported imports ought to be considered in the negligibility calculation.

For the purposes of the negligibility percentage calculation, the Tribunal typically relies on country-specific import data from the Commissioner for the numerator and on data gathered through its inquiry for the total volume of imports into Canada from the subject and non-subject countries for the denominator. For the reasons discussed above, the Tribunal sees no reason to deviate from its typical practice and finds that the volume of dumped goods from each of the three subject countries is not negligible, thus satisfying the second criterion under paragraph 42(3)(a) of *SIMA*.

In determining whether it would be appropriate to make an assessment of the cumulative effect of the subject goods on the domestic industry, the Tribunal considered the conditions of competition in the Canadian marketplace between goods from each of the three countries, as well as between these goods and the like goods.

In considering the conditions of competition between these goods, the Tribunal typically considers the following factors: the degree to which the subject goods from each subject country are interchangeable with goods from the other subject countries; the presence or absence of sales or offers to sell in the same geographical markets of imports from different subject countries and of the domestic like goods; the existence of common or similar channels of distribution; and differences in the timing of the arrival of imports from a subject country and of those from the other subject countries, and of the availability of like goods supplied by the domestic industry.<sup>19</sup> As the Tribunal has previously stated, it recognizes that there may be other factors that it could consider in deciding whether or not the exports of a particular country should be cumulated and that no single factor may be determinative.<sup>20</sup>

The domestic industry argued that the Tribunal should cumulate the injurious impact of the dumped imports of plate from all three subject countries. By reference to the Tribunal's recent decision in *Carbon Steel Plate*, it delineated four conditions of competition which it contended were applicable to the present case: channels of distribution; the clients to whom the product is sold; the price at which it is sold; and the mode of transportation, which affects the size of shipments and delivery times. Furthermore, the domestic industry submitted that the subject goods clearly compete between themselves and that there was also clear evidence from Algoma and IPSCO that the subject goods compete with the like goods. For these reasons, the domestic industry is of the opinion that an assessment of the cumulative effect is appropriate in this case.

On the other hand, Vitkovice submitted that the effect of the imports from the Czech Republic should not be cumulated with the effect of the imports from any other subject country. In the same vein, it argued that the dumped goods from the Czech Republic should subsequently be found to be non-injurious. It noted that there have been no boatload or off-the-dock sales of imports from the Czech Republic, whereas there have been such sales of Romanian goods. It contended that the prime factor that was considered in cumulating the imports from subject countries in past cases was that the goods from each country compete with each other for market share on the basis of price. Under this line of argument, it submitted that this factor is not present in this case and that the Tribunal should therefore not cumulate the effect of the imports from the Czech Republic sold in Canada with the effect of the imports from Romania and Bulgaria. It also

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19. See *Hot-rolled Sheet and Strip*.

20. *Ibid.*, *Statement of Reasons* at 16.

argued that the Tribunal should not cumulate, on the basis that the sales of the imports from the Czech Republic are negligible under the terms of *SIMA*.<sup>21</sup>

Based on the evidence on the record, the Tribunal is convinced by the arguments presented by the domestic industry and determines that the conditions of competition for the subject goods are similar to those for the like goods and also similar among themselves. In this context, it finds that, with respect to the channels of distribution, the imports from the subject countries are primarily, if not exclusively, sold through brokers/traders, and, thus, the channels of distribution are the same. With respect to the mode of transportation, the Tribunal finds that it was the same for all the subject imports, given that all the imports arrive by ship and are then broken into smaller quantities and sold. With regard to price, it finds that the imports are primarily basic grades, albeit in different thicknesses, that are typically sold below current market prices for that grade or thickness. The Tribunal is also of the opinion that the evidence demonstrates, for the most part, that the goods are interchangeable.

Specifically, with respect to the assessment of the conditions of competition between the subject goods themselves, the Tribunal notes that, at the resale level, the imports from the Czech Republic generally do not compete on price with the imports from Romania and Bulgaria. However, the Tribunal finds that the unit import value for imports from the Czech Republic was not significantly higher than that of the imports from the other subject countries in 2000 and the first halves of 2002 and 2003. Given that the Tribunal is of the opinion that the other conditions of competition between the subject goods themselves are also similar, it determines that, upon having conducted an assessment of the conditions of competition, cumulating the effects of the subject goods is appropriate.

## **Injury**

Section 37.1 of the *Special Import Measures Regulations*<sup>22</sup> prescribes certain factors that the Tribunal may consider in determining whether the dumping of goods has caused material injury to the domestic industry. These factors include the volume of dumped goods, their effect on prices in the domestic market for like goods and the impact of the dumped goods on the domestic industry, including actual or potential declines in domestic sales, market share, profits and financial performance. Subsection 37.1(3) also requires the Tribunal to consider other factors not related to the dumping to ensure that any injury caused by those other factors is not attributed to the dumped imports.

## **State of the Market and Domestic Industry**

The Tribunal notes that, between 1992 and 2000, dumped plate was the subject of four dumping investigations by the CCRA and its predecessor and, subsequently, four injury inquiries by the Tribunal.<sup>23</sup> In each of these cases, following the Tribunal's finding of injury and the imposition of anti-dumping duties, the major importers moved to new sources of supply.

In the present case, the importers that, at one time, had imported from countries named in the earlier inquiries turned to the Czech Republic and Romania, two of the countries found to be dumping in 1993, and

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21. *Transcript of Public Argument*, 10 December 2003 at 130.

22. S.O.R./84-927.

23. Tribunal Exhibit NQ-2003-002-06A, Administrative Record, Vol. 1.1A at 23-24.

to Bulgaria for their supply of plate. Upon investigation by the CCRA, these imports were found to be dumped in Canada, at margins ranging from 52.6 percent to 74.6 percent.<sup>24</sup>

The Tribunal examined developments in the market for plate in Canada for the period from 2000 to June 2003. Key indicators for the market are summarized in the table at page 15. During the Tribunal's period of inquiry, domestic production of plate dropped by about 145,000 tonnes, or nearly 21 percent, and continued to decline in the first half of 2003 when compared with the first half of 2002. The domestic market for plate declined by over 100,000 tonnes, or nearly 13 percent, between 2000 and 2002, and continued to decline in the first half of 2003.<sup>25</sup> Although the data collected by the Tribunal covered a period up to June 2003, the Tribunal heard testimony that the Canadian market demand for plate in 2003 was the lowest that it had been for the last nine years.<sup>26</sup> Looking into 2004, demand is expected to continue to be weak in industries that use plate, such as shipbuilding, resource-based mining, forestry and off-highway vehicle production.<sup>27</sup> Moreover, due to the recent strengthening of the Canadian dollar, domestic manufacturers that export finished goods primarily to the United States will see demand for their products decline and, as a result, plate consumption by those manufacturers will likely also decline.<sup>28</sup>

In a shrinking market, the domestic industry's sales dropped at a faster rate than the overall market declined and, as a result, the domestic industry's market share fell from 73 percent in 2000 to 62 percent in 2002, and to 59 percent during the first half of 2003.

The volume of dumped imports of the subject goods increased from less than 25,000 tonnes in 2000 to more than 51,000 tonnes in 2002.<sup>29</sup> In a market that was in steady decline,<sup>30</sup> these imports quickly became a significant competitive factor, quadrupling their share of the market from 2 percent in 2000 to 8 percent by 2002.<sup>31</sup> In the first half of 2003, however, imports from the subject countries remained stable, holding the same 4 percent market share as they did in the first half of 2002, while the domestic industry's market share dropped by 5 percentage points.

The domestic producers' average price with regard to sales from domestic production declined from \$617/tonne in 2000 to \$558/tonne in 2001, then increased to \$613/tonne in 2002. During the first half of 2003, the price with regard to sales from domestic production increased from \$568/tonne to \$649/tonne.<sup>32</sup> The average selling price of imports from the subject countries declined by about 10 percent in 2001, from \$537/tonne to \$478/tonne, then increased to \$512/tonne in 2002. During the first half of 2003, the average price of the subject imports rose to \$538/tonne from \$527/tonne in the first half of 2002. Except for the first half of 2003, the average prices of non-subject imports were at levels above the prices of both domestically produced goods and the subject imports. In the first half of 2003, the average price of non-subject imports fell to \$642/tonne, a price marginally below that of the average price of domestically produced plate, but still well above the average price of the subject imports.

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24. Tribunal Exhibit NQ-2003-002-04, Administrative Record, Vol. 1 at 70.16.

25. Tribunal Exhibit NQ-2003-002-06A, Administrative Record, Vol. 1.1A at 34.

26. *Transcript of Public Hearing*, Vol. 1, 8 December 2003 at 16.

27. *Ibid.*

28. *Ibid.*

29. Tribunal Exhibit NQ-2003-002-06A, Administrative Record, Vol. 1.1A at 29.

30. *Ibid.* at 34.

31. *Ibid.* at 35.

32. *Ibid.* at 41.

The Tribunal also reviewed relative changes in quarterly price data for sales of ASTM A36/44W structural plate from the third quarter of 2001 through the second quarter of 2003.<sup>33</sup> ASTM A36/44W is the most common specification for structural quality plate sold in Canada.<sup>34</sup> According to the evidence, the pricing of plate grades essentially begins at grade A36/44W, and pricing of other grades increases from there. Moreover, according to the domestic industry, when a low price offer is made on A36/44W grade plate, it has a downward “cascading” effect on pricing of all other grades.<sup>35</sup>

Over the eight quarters for which pricing data were obtained, the average prices for domestic and imported ASTM A36/44W plate followed similar trends, with the subject plate having the lowest overall prices and plate imported from other countries having the highest overall prices. On average, prices increased in the period examined. The producers increased their price from \$560/tonne in the first quarter of 2001 to a high of \$669/tonne in the third quarter of 2002, before declining to \$625/tonne in the second quarter of 2003. The price of imports from the subject countries increased from less than \$500/tonne to nearly \$700/tonne, and imports from other countries grew from \$560/tonne to a high of \$739/tonne in the first quarter of 2003, before falling to \$627/tonne in the second quarter of 2003.

The financial performance of the domestic industry was negative throughout the Tribunal’s period of inquiry. In a deteriorating market for plate, the domestic industry was never able to sell its plate at a price that would deliver a positive return at the gross profit level. Even in the first half of 2003, when unit sales prices reached their highest level in the period, and unit costs were lower than they had been in much of the period of inquiry, the domestic industry’s gross margin remained negative. In fact, in this atmosphere of deteriorating prices and falling sales, Stelco decided, in the first quarter of 2003, to suspend its production of plate rather than continue to produce and sell at a loss.

In summary, it is clear from the evidence that the domestic industry has suffered a significant deterioration in the form of falling production, reduced market share, suppressed and eroded prices, idled capacity, and negative financial performance. The Tribunal must now determine whether the dumping has caused all or part of this deterioration and, if so, whether the effects of the dumping, in and of themselves, constitute material injury.

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33. Tribunal Exhibit NQ-2003-002-07A (protected), Administrative Record, Vol. 2.1A at 65.

34. Tribunal Exhibit NQ-2003-002-06A, Administrative Record, Vol. 1.1A at 18.

35. Manufacturer’s Exhibit A-04, para. 31, Administrative Record, Vol. 11.

<b>Key Market and Industry Performance Indicators</b>					
	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>Jan.-June 2002</b>	<b>Jan.-June 2003</b>
<b>Production (tonnes)</b>	696,886	670,755	552,334	321,679	272,818
<b>Apparent Imports (tonnes)</b>					
Subject Countries	24,784	22,252	51,556	21,198	15,649
Non-subject Countries	213,155	227,178	224,818	129,865	141,010
<b>Apparent Market (tonnes)</b>	832,565	817,781	726,095	406,939	360,947
<b>Apparent Market (\$000)</b>	516,362	471,158	454,728	245,440	231,802
<b>Market Share (% volume)</b>					
Domestic Industry					
Sales from Production	73	72	62	64	59
Imports					
Subject Countries	2	1	8	4	4
Non-subject Countries	25	27	30	31	37
<b>Average Prices (\$/unit)–(market)</b>					
Domestic Industry					
Sales from Production	617	558	613	568	649
Imports					
Subject Countries	537	478	512	527	538
Non-subject Countries	638	628	685	687	642
<b>Practical Plant Capacity (tonnes)</b>	4,686,922	4,835,922	4,932,922	2,471,961	2,501,461
<b>Capacity Utilization (%)</b>					
Certain Plate	15	14	11	13	11
Other Products <sup>1</sup>	60	61	66	66	63
Total	75	75	78	79	73
<b>Financial–Domestic Industry (% of sales)</b>					
Gross Margin	(4)	(21)	(9)	(7)	(3)
Operating income	(14)	(36)	(16)	(16)	(9)

I. Produced on common equipment.  
Source: Tribunal Exhibit NQ-2003-002-06A, Administrative Record, Vol. 11A at 117.

### Effects of the Dumping

Against this background, the domestic industry submitted that the accelerating volumes of dumped imports from the subject countries have materially injured it<sup>36</sup> The domestic industry claims that the prices at which dumped plate is being sold are eroding and suppressing its price levels and that, as a result, its sales volumes and overall financial performance are declining.<sup>37</sup> Moreover, the domestic industry argued, it was unable to recover its costs and earn a profit as a result of the price erosion and price suppression in the market that began in 2001, and worsened in 2002 and early 2003, as imports of dumped plate strengthened their position in the domestic market.<sup>38</sup> Similarly, the domestic industry argued, aggressive offerings of

36. *Ibid.*, para.20.

37. Manufacturer's Exhibit A-02, para. 3, Administrative Record, Vol. 11.

38. Manufacturer's Exhibit B-01, para. 4, Administrative Record, Vol. 11.

imported plate have created a reluctance on the part of its customers to hold inventory, and announced price increases have been met with significant resistance.<sup>39</sup>

The domestic producers further argued that there is a clear causal connection between the dumped imports and their lost sales volumes, reduced market share, eroded prices, continued price suppression and reduced profits. The domestic producers also indicated that the dumping had a negative impact on their returns on investment, growth, ability to raise capital, cash flow and wages.<sup>40</sup>

Vitkovice argued that other factors, such as intra-industry competition and low-priced imports from the United States, led to the domestic industry's decline in performance.

The Tribunal notes that the subject countries' share of the market dropped from 2 percent in 2000 to 1 percent in 2001,<sup>41</sup> however, testimony at the hearing explained that this was a one-time aberration due largely to a sharp increase in imports from South Africa. According to the evidence, the rapid rise in imports from South Africa occurred as a result of particularly beneficial exchange rate fluctuations.<sup>42</sup> In 2002, following a re-investigation by the CCRA and a determination of significantly higher normal values for South Africa,<sup>43</sup> imports from South Africa dropped off,<sup>44</sup> total imports from other countries moved back to their 2000 levels,<sup>45</sup> and the subject countries increased their market share significantly.<sup>46</sup>

The Tribunal recognizes that the demand for plate is highly price sensitive and that a few thousand tonnes of dumped plate can affect prices of plate throughout the domestic market.<sup>47</sup> Plate is a commodity product and, given the same specifications, plate produced at a domestic mill is physically indistinguishable from and fully interchangeable with imported plate. Given these circumstances, the Tribunal is conscious of the fact that price is paramount in the purchasing decision.<sup>48</sup>

A witness for a major steel service centre testified that dumped price offerings of plate by foreign mills to Canadian steel service centres are typically passed on to the steel centres' customers, thus eroding Canadian market pricing and devaluing existing inventories.<sup>49</sup> Describing a particular situation in 2002 wherein dumped imports were offered in the market at less than the price that his company was paying for plate from a domestic producer, the witness indicated that such offerings contributed, and continue to contribute, to his firm's receiving discounted pricing on the plate that it purchases from the domestic producer.<sup>50</sup>

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39. Manufacturer's Exhibit C-03, para. 10, Administrative Record, Vol. 11.

40. Tribunal Exhibit NQ-2003-002-10.01 (protected), Administrative Record, Vol. 4 at 10; Tribunal Exhibit NQ-2003-002-10.02 (protected), Administrative Record, Vol. 4 at 127; Tribunal Exhibit NQ-2003-002-10.03 (protected), Administrative Record, Vol. 4A at 8.

41. Tribunal Exhibit NQ-2003-002-06A, Administrative Record, Vol. 1.1A at 35.

42. Manufacturer's Exhibit A-04, para. 18, Administrative Record, Vol. 11; *Transcript of Public Hearing*, Vol. 1, 8 December 2003 at 87.

43. Tribunal Exhibit NQ-2003-002-43, Administrative Record, Vol. 1C at 24.

44. *Ibid.* at 164.

45. Tribunal Exhibit NQ-2003-002-06A, Administrative Record, Vol. 1.1A at 35.

46. *Ibid.*

47. *Transcript of Public Hearing*, Vol. 1, 8 December 2003 at 143.

48. Manufacturer's Exhibit A-08, para. 5, Administrative Record, Vol. 11; *Transcript of Public Hearing*, Vol. 1, 8 December 2003 at 11.

49. Manufacturer's Exhibit A-08, para. 6, Administrative Record, Vol. 11.

50. *Ibid.*, para. 11.

A witness for the domestic producers corroborated this statement. According to this witness, dumped price offerings have a destabilizing effect in the market.<sup>51</sup> In 2001, his firm introduced significant price reductions for its plate, as it followed down the rapidly decreasing prices of the dumped imports.<sup>52</sup> In the first part of 2002, the domestic industry was successful in its initial attempts to increase its prices, which peaked in the third quarter of 2002 at their highest point since 1998. In the fourth quarter of 2002, however, prices began to erode once again, both in reaction to the arrival of boatloads of the subject plate and to the fact that customers had overbuilt their inventories in anticipation of growth in the market.<sup>53</sup>

Similarly, the Tribunal heard testimony that one producer had increased its published prices, between September 2001 and July 2002, to levels where its sales of A36/44W standard structural plate were close to being profitable.<sup>54</sup> However, due to the availability of the dumped subject goods in the market in the latter half of 2002, the firm's customers refused to purchase plate at the higher published levels, and its prices were eroded.<sup>55</sup>

Although the domestic industry announced price increases in 2003, it remains unclear if these increases will be sustainable. In a market where demand has remained flat, the impact of large volumes of dumped goods imported at very low prices in 2002 has forced the domestic industry to maintain its low prices to keep the subject goods from entering Canada.<sup>56</sup>

In the Tribunal's opinion, it is clear that the domestic industry had to increase its prices to cover its costs. However, all such efforts were hindered by the presence of dumped plate in the market. In light of this, the Tribunal is of the view that, in the absence of dumped prices in the marketplace, Algoma, IPSCO and Stelco would have had significantly higher revenues, thus reducing considerably the domestic industry's operating losses.

The Tribunal observes that, in 2002, when the subject imports expanded their market share substantially to account for 8 percent of the market, average prices in the marketplace also rose. However, prices did not rise uniformly. While the domestic industry augmented its prices by about 10 percent, and the prices of imports from other countries rose by 9 percent, the prices of imports from the subject countries increased by only 7 percent, thereby becoming relatively lower than the prices of both domestic plate and imports from other countries, particularly the United States.<sup>57</sup> In the Tribunal's view, the rapid increase in market share accounted for by the subject goods was accomplished by selling dumped plate at prices considerably lower than the prices obtained by either the domestic producers or importers of plate from other countries.<sup>58</sup>

Moreover, the Tribunal's examination of quarterly prices for A36/44W structural plate disclosed that, on average, prices rose for domestically produced plate and for imports from the subject and other countries.<sup>59</sup> However, plate imported from non-subject countries continually sold for the highest average prices, while the subject goods sold for the lowest average prices. Plate produced by the domestic industry sold at prices that were generally lower than those for plate imported from countries not subject to this inquiry, but considerably higher than the price of plate imported from the subject countries.

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51. Manufacturer's Exhibit C-03, para. 24, Administrative Record, Vol. 11.

52. *Ibid.*, para. 11.

53. *Ibid.*

54. Manufacturer's Exhibit A-05, para. 44, Administrative Record, Vol. 11.

55. *Ibid.*, para. 45.

56. Manufacturer's Exhibit C-03, para. 13, Administrative Record, Vol. 11.

57. Tribunal Exhibit NQ-2003-002-06A, Administrative Record, Vol. 1.1A at 41.

58. *Ibid.* at 117.

59. Tribunal Exhibit NQ-2003-002-07A (protected), Administrative Record, Vol. 2.1A at 65.

The Tribunal also notes that, coinciding with the escalating volumes of plate imported from the subject countries, there was a considerable and growing volume of plate coming into the Canadian market from the United States. Two of the major importers of plate from the United States, IPSCO and Samuel Plate Sales (Samuel),<sup>60</sup> attended the hearing and provided evidence concerning the increase in imports from the United States. The Tribunal heard testimony that IPSCO considers the North American market to be an integrated market.<sup>61</sup> According to the evidence, IPSCO optimizes its production of plate in North America by supplying a Canadian order for plate from any one of its U.S. facilities or from one of its four Canadian facilities.<sup>62</sup> Regardless of the source of the steel, the buyer pays the prevailing Canadian price for the product.<sup>63</sup> Moreover, the Tribunal heard that, although there is a significant presence of U.S. plate in the Canadian market, it is neither destabilizing nor disruptive in that, on average, U.S. pricing is at or above Canadian market prices and is not contributing to price suppression in the Canadian market.<sup>64</sup>

With respect to imports by Samuel, the Tribunal heard that, until recently, Samuel imported some plate from the United States, but purchased most of its plate requirements domestically from both IPSCO and Stelco. According to the evidence, Stelco supplied about 50 percent of Samuel's total purchases.<sup>65</sup> When Stelco idled its plant in 2003, Samuel was forced to go to the United States to offset the shortfalls that occurred.<sup>66</sup> According to the evidence, the price for the main type of plate that Samuel imported from the United States was generally a little higher than the Canadian price<sup>67</sup> and significantly higher than the price for plate from the subject countries.<sup>68</sup>

In the Tribunal's opinion, the evidence in this inquiry pertaining to imports of plate from the United States strongly suggests that such imports compete in the marketplace in much the same fashion as the domestic producers compete with each other. In fact, plate imported by IPSCO in Canada from IPSCO in the United States competes on precisely the same basis as plate produced by IPSCO in Canada.

Based on the foregoing evidence and testimony, the Tribunal is of the opinion that the substantial volumes and very low prices of dumped plate from Bulgaria, the Czech Republic and Romania caused material injury to the domestic producers in the form of price erosion, price suppression and reduced profitability. In the Tribunal's view, the very low prices associated with the dumped subject goods forced average plate prices down to levels where the domestic producers were unable to cover their costs. Even when the domestic producers were able to raise their prices, the prices of the dumped goods restrained them from going higher, thereby preventing the domestic producers from selling their plate profitably.

The Tribunal next reviewed the effects of other factors to ensure that it did not attribute to the dumped imports any injury caused by these other factors.

### **Other Factors**

In its examination of other factors that might have affected the domestic industry's performance, the Tribunal looked at the impact of world pricing, domestic market conditions and producer-customer relationships.

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60. Tribunal Exhibit NQ-2003-002-10.01 (protected), Administrative Record, Vol. 4 at 13; Tribunal Exhibit NQ-2003-002-16.05 (protected), Administrative Record, Vol. 6 at 95.

61. *Transcript of Public Hearing*, Vol. 2, 9 December 2003 at 297-99.

62. *Ibid.* at 298.

63. *Ibid.* at 280.

64. *Ibid.* at 298-99; Tribunal Exhibit NQ-2003-002-06A, Administrative Record, Vol. 1.1A at 41.

65. *Transcript of Public Hearing*, Vol. 2, 9 December 2003 at 243.

66. *Ibid.* at 264-65.

67. Tribunal Exhibit NQ-2003-002-06A, Administrative Record, Vol. 1.1A at 65.

68. *Transcript of Public Hearing*, Vol. 2, 9 December 2003 at 273.



### World Pricing

The Tribunal is aware that trends in world prices may influence domestic price movements in other countries, but the correlation is never perfect.<sup>69</sup> In fact, the evidence shows that, at times, an international spot price may be as much as \$100/tonne lower than a domestic spot price and that, at other times, it may be at the same level or higher. In this regard, the Tribunal is of the opinion that domestic prices are not entirely immune to world prices and accepts that part of the decline in prices seen during the period of inquiry may be attributable to world price movements.

### Domestic Market Conditions

It is clear that demand fell in the domestic plate market over the past three years and that the size of the plate market in 2003, in terms of volume, was the lowest that it has been for the last nine years.<sup>70</sup> The Tribunal heard that the pipe industry is flat and that the major plate-consuming industries are all forecast to be weak in 2004. In the Tribunal's opinion, a portion of the injury sustained by the domestic industry is likely attributable to the domestic market conditions.

### Producer-customer Relationships

The Tribunal heard evidence that the domestic industry may have forfeited some business in the aftermath of the idling of Stelco's plate mill.<sup>71</sup> Samuel, a large plate user, found that it had to go to the United States to replace the plate that it had previously purchased from Stelco<sup>72</sup> because, in its view, Algoma's production levels and customer relationships prevented it from being a viable supplier.<sup>73</sup> Moreover, at that time, Stelco was the only domestic producer that was supplying plate in thicknesses greater than 3 inches and, in the absence of such plate from Stelco, purchasers had to go to the United States or other offshore sources for supply. However, although the domestic industry may have lost some sales as a result of the idling, the Tribunal is of the opinion that the idling does not account for a significant part of the injury sustained prior to the spring of 2003 or thereafter.

## **Conclusion**

Having reviewed the effects of the dumped goods and other factors on the domestic producers, the Tribunal concludes that the dumping in Canada of the subject goods has caused material injury to the domestic industry. The Tribunal is of the opinion that dumped imports gained significant sales volume and market share during its period of inquiry, particularly in 2002 and the first half of 2003, at the expense of the domestic industry. In 2001, in an attempt to compete with the subject goods, domestic producers dropped their average prices from levels that were already unprofitable, thereby more than quadrupling their losses at the gross margin level. In 2002 and 2003, domestic producers were able to increase their prices somewhat, but the constant downward pressure exerted on them by the subject goods did not permit them to increase their prices enough to cover their costs, and they continued to suffer financial losses, as well as sustain further reductions in their market share.

In the Tribunal's view, the domestic industry's steady loss in sales volume and market share to the dumped goods, accompanied by deteriorating financial performance, constitutes material injury.

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69. Tribunal Exhibit NQ-2003-002-38.04, Administrative Record, Vol. 1 at 301.

70. Tribunal Exhibit NQ-2003-002-06A, Administrative Record, Vol. 1.1A at 34.

71. *Transcript of Public Hearing*, Vol. 2, 9 December 2003 at 264.

72. *Ibid.*

73. *Ibid.* at 265.

## REQUESTS FOR EXCLUSIONS

Several requests for product exclusions were received by the Tribunal from Vitkovice, Wirth, Accucut, Leroux, Anchor Lamina, Border, Carbon Steel Profiles, Transbec and Russel (jointly referred to as the requesters). The majority of the requests were for the following product: hot-rolled steel plate in thicknesses greater than 3 inches, fully certified to grades CSA G40.21-44W, ASTM A36 and AISI C1045 (tariff item Nos. 7208.51.99.93, 7208.51.99.94 and 7208.51.99.95). Russel also requested a product exclusion for specification A514.<sup>74</sup>

The domestic industry generally opposed all the requests and submitted that the Tribunal should not grant them on the basis that the domestic industry has the capability to produce and sell either an identical or a similar product. Algoma and IPSCO both contended that they have not traditionally sold the product in thicknesses greater than 3 inches because the market had previously been well served by Stelco. They submitted that, in light of the idling of the Stelco plate mill, they both have expanded their product range and will be able to supply the market. IPSCO argued that, if the Tribunal grants the requests for exclusion, it will suffer injury to its current production of like goods and also hamper its expansion. For its part, Stelco opposed almost all the requests for similar reasons as those put forward by IPSCO and Algoma; however, it did not oppose the request for specification A514 filed by Russel, since this specification is a pressure vessel quality (PVQ) grade that Stelco does not produce in thicknesses greater than 3 inches.<sup>75</sup>

The requesters submitted that plate in thicknesses greater than 3 inches is not being produced by the domestic industry and that, therefore, a product exclusion should be granted. They submitted that IPSCO may have the capability to make plate in thicknesses greater than 3 inches, but chooses not to do so. They also submitted that there is no evidence that Algoma has attempted to obtain thick plate business and questioned if it is serious about this business. With regard to Stelco, they submitted that it is clear that Stelco is not about to re-enter the plate business without a significant increase in prices in the Canadian market. Lastly, they contended that the testimony from the witnesses for Algoma and IPSCO indicated that there was no evidence of injury due to sales of thick plate on the market. They did not provide any specific argument with respect to A514, i.e. the PVQ specification for which an exclusion was requested by Russel.

The Tribunal's practice with respect to product exclusions is reflected in the following excerpt from *Hot-rolled Sheet Products*:<sup>76</sup>

In the past, the Tribunal has granted product exclusions in exceptional circumstances when, for instance, the domestic industry does not produce the product. The Tribunal also considers factors such as whether there is any domestic production of substitutable or competing goods, whether the domestic industry is an "active supplier" of the product or whether it normally produces the product.  
[Footnotes omitted]

Therefore, a product exclusion may be warranted if the Tribunal is satisfied that the domestic industry does not produce the product in issue, does not produce a substitutable product and is not an "active supplier" of the product in issue.

With respect to Algoma, the Tribunal believes that it will, in the near term, produce plate up to and including 4 inches.<sup>77</sup> The Tribunal notes that Algoma is currently producing 3 1/2-inch plate on a trial basis

74. Tribunal Exhibit NQ-2003-002-36.05, Administrative Record, Vol. 1 at 102.

75. Tribunal Exhibit NQ-2003-002-39.03, Administrative Record, Vol. 1 at 256.

76. *Certain Flat Hot-rolled Carbon and Alloy Steel Sheet Products* (2 July 1999), NQ-98-004, *Statement of Reasons* at 33 (CITT).

77. *Transcript of Public hearing*, Vol. 1, 8 December 2003 at 59.

and that the evidence and testimony indicate that it does not intend to produce plate in thicknesses greater than 4 inches.

With respect to IPSCO, the Tribunal is of the opinion that the evidence indicates that it has produced plate up to 4 inches in the past, but that it is mainly interested in the 3/16-to-3-inch range of plate, although it has produced higher-valued low-alloy non-like plate in thicknesses greater than 3 inches. In this regard, the Tribunal notes that IPSCO currently has an order to produce 4 1/4-inch alloy plate, but notes that this is non-like plate that was ordered on a trial basis, and that the evidence does not indicate that IPSCO has the capability of producing this product in commercial volumes.

With respect to Stelco, the Tribunal is of the opinion that it has the capability to produce plate in thicknesses greater than 3 inches, but notes that the market conditions for both like and non-like goods are unlikely to change sufficiently for Stelco to restart its plate mill in the near future.

The Tribunal notes that the evidence indicates that the market for non-like goods, particularly skelp (i.e. plate used in the manufacture of pipe), produced on the same equipment as the like goods, is not promising according to Stelco. In this context, testimony from the witness for Stelco indicated that pipeline projects, such as the Mackenzie Delta pipeline project, are a number of years away.

With respect to general market conditions for the overall steel industry, the evidence indicates that there are 200 million tonnes of excess steel capacity in the world according to the Organisation for Economic Co-operation and Development.<sup>78</sup> Moreover, the Tribunal notes that, according to Algoma, the oversupply problem is probably going to become worse, as there is an excess supply situation in North America. In other words, the evidence suggests that the supply of all steel products (i.e. like and non-like goods) will be greater than demand in the near future.

Furthermore, the Tribunal also notes that Algoma is of the view that demand for plate products in 2004 will be similar to that in 2003, which, it submitted, was the lowest demand in the last nine years. Also, IPSCO made reference to a *World Steel Dynamics* forecast<sup>79</sup> of an increase of only US\$13, from US\$324 to US\$337, for the average price of plate up to the year 2010. Moreover, Algoma indicated that such an exclusion would not cause it any injury.

The Tribunal also notes that IPSCO indicated that granting the product exclusion might have a negative effect on the domestic industry, in that the excluded goods might be sold at a lower price to maintain normal value pricing on the subject goods. However, IPSCO acknowledged it had no evidence on the record to support this allegation.

In support of its position, the domestic industry referred to *Rebar*, in which the Tribunal did not grant the requested exclusions on the grounds that the domestic industry was capable of producing the product. The domestic industry highlighted that the Tribunal, in that inquiry, indicated that there are no requirements in *SIMA* for the domestic industry to supply the totality of the market's needs. In this context, the Tribunal notes that *Rebar* can be distinguished from the present case on the basis that the request for an exclusion in that case relied on the fact that there was an insufficient volume of the product in issue (i.e. 10M rebar) being produced by the domestic industry. In the present case, no subject plate in thicknesses greater than 4 inches is being produced.

For these reasons, the Tribunal grants the product exclusion for plate in thicknesses greater than 4 inches in thickness.

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78. *Ibid.* at 23.

79. Tribunal Exhibit NQ-2003-002-38.04, Administrative Record, Vol. 1 at 291.

With respect to the request to grant a country exclusion to the Czech Republic, the Tribunal determines that there are no exceptional circumstances that warrant such an exclusion in this case. First, as discussed above, the volumes of imports from the Czech Republic released into Canada are not negligible. Secondly, these imports are at prices similar to imports from the other subject countries and compete with the like goods at dumped prices. Thirdly, Vitkovice is not the only producer of the subject plate in the Czech Republic, and very little information was provided in respect of the second Czech producer, except that it was apparently a small producer of plate and apparently exported only to nearby markets. The Tribunal further notes that the importer of the subject plate from the Czech Republic is not importing it exclusively from that country. Therefore, the Tribunal is satisfied that a country exclusion is not warranted for the Czech Republic.

## CONCLUSION

In light of the foregoing, the Tribunal is of the view that the dumping in Canada of plate originating in or exported from Bulgaria, the Czech Republic and Romania has caused material injury to the domestic industry. The following goods are excluded: plate in thicknesses greater than 4 inches.

Richard Lafontaine  
Richard Lafontaine  
Presiding Member

Zdenek Kvarda  
Zdenek Kvarda  
Member

James A. Ogilvy  
James A. Ogilvy  
Member