



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

FINDING AND REASONS

Inquiry No. NQ-2009-003

Hot-rolled Carbon Steel Plate and
High-strength Low-alloy Steel Plate

*Finding issued
Tuesday, February 2, 2010*

*Reasons issued
Wednesday, February 17, 2010*

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

**THE DUMPING OF HOT-ROLLED CARBON STEEL PLATE AND
HIGH-STRENGTH LOW-ALLOY STEEL PLATE ORIGINATING IN
OR EXPORTED FROM UKRAINE**

FINDING

The Canadian International Trade Tribunal, pursuant to section 42 of the *Special Import Measures Act*, has conducted an inquiry to determine whether the dumping 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) up to and including 3.0 inches (76.0 mm) inclusive (with all dimensions being plus or minus allowable tolerances contained in the applicable standards, e.g. ASTM standards A6/A6M and A20/A20M), originating in or exported from Ukraine; excluding 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.

Further to the issuance by the President of the Canada Border Services Agency of a final determination dated January 4, 2010, that these goods have been dumped, and pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that the dumping of these goods has not caused injury but is threatening to cause injury to the domestic industry.

Ellen Fry
Ellen Fry
Presiding Member

Serge Fréchette
Serge Fréchette
Member

Stephen A. Leach
Stephen A. Leach
Member

Dominique Laporte
Dominique Laporte
Secretary

The statement of reasons will be issued within 15 days.

Place of Hearing: Ottawa, Ontario
Dates of Hearing: January 5 to 7 and January 12, 2010

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STATEMENT OF REASONS

1. The Canadian International Trade Tribunal (the Tribunal), pursuant to section 42 of the *Special Import Measures Act*,¹ has conducted an inquiry to determine whether the dumping of hot-rolled carbon steel plate and high-strength low-alloy (HSLA) 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) up to and including 3.0 inches (76.0 mm) (with all dimensions being plus or minus allowable tolerances contained in the applicable standards, e.g. ASTM² standards A6/A6M and A20/A20M), originating in or exported from Ukraine, excluding 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.³

2. On July 6, 2009, the President of the Canada Border Services Agency (CBSA), following a complaint filed by Essar Steel Algoma Inc. (Essar Algoma), initiated an investigation into whether the subject goods had been dumped. The complaint was supported by Evraz Inc. NA Canada (Evraz) and SSAB Central Inc. (SSAB), two other domestic producers of carbon steel plate.

3. On July 7, 2009, 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 injury or retardation or was threatening to cause injury. On September 4, 2009, the Tribunal made a preliminary determination that there was a reasonable indication that the dumping of the subject goods had caused injury.

4. On October 5, 2009, the CBSA issued a preliminary determination that the subject goods had been dumped, that the margin of dumping was not insignificant and that the volume of dumped goods was not negligible.⁴

5. On October 6, 2009, the Tribunal issued a notice of commencement of inquiry.⁵ As part of its inquiry, the Tribunal requested domestic mills, importers, service centres and foreign producers of carbon steel plate to complete questionnaires. From these questionnaires, the Tribunal collected information for three full years, January 1, 2006, to December 31, 2008, and two interim periods, January 1 to June 30, 2008 (interim period 2008) and the corresponding period in 2009 (interim period 2009). The Tribunal also requested that purchasers of carbon steel plate complete a questionnaire on market characteristics.

6. In its notice of commencement of inquiry, the Tribunal invited parties to file evidence and submissions on whether structural steel plate, HSLA steel plate and pressure vessel quality (PVQ) steel plate, which are three categories of carbon steel plate, constituted separate classes of goods. The Tribunal received submissions from Essar Algoma, Evraz and SSAB in support of a single class of goods.

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

2. American Society for Testing and Materials.

3. Hot-rolled carbon steel plate and HSLA steel plate produced domestically or imported from countries other than Ukraine and meeting this product description will be hereinafter referred to as “carbon steel plate”. Hot-rolled carbon steel plate and HSLA steel plate originating in or exported from Ukraine and meeting this product description will be hereinafter referred to as “the subject goods”.

4. Tribunal Exhibit NQ-2009-003-01A, Administrative Record, Vol. 1 at 8.

5. C. Gaz. 2009.I.3189.

7. In addition, the Tribunal requested 28 purchasers of carbon steel plate to complete a questionnaire on classes of goods. The Tribunal received 14 replies.
8. On November 6, 2009, the Tribunal informed the parties that it had determined that structural steel plate, HSLA steel plate and PVQ steel plate constituted a single class of goods and that, accordingly, it would conduct its injury analysis on that basis.
9. On December 9, 2009, on the basis of the replies to the importers and service centres' questionnaire, the Tribunal requested four service centres that domestically produce carbon steel plate by cutting to length carbon steel plate from coil to complete a producers' questionnaire. These service centres are Alliance Steel Corporation (Alliance Steel), Coilex Inc. (Coilex), Russel Metals Inc. (Russel Metals) and Samuel, Son & Co., Limited (Samuel).
10. On December 10, 2009, the Tribunal requested Essar Algoma, Evraz, SSAB, Alliance Steel, Coilex, Russel Metals and Samuel to update their information pertaining to production, domestic and export sales, inventories, capacity, capacity utilization, employment, hours worked, wages and average unit cost of major materials used in the production of carbon steel plate for the period from July 1 to October 31, 2009, and the corresponding period in 2008.
11. The Tribunal's period of inquiry (POI) covers three full years, 2006 to 2008, as well as interim period 2008 and interim period 2009. These are the most recent periods for which reasonably complete information was available.
12. On January 4, 2010, the CBSA issued a final determination of dumping.
13. A hearing, with public and *in camera* testimony, was held in Ottawa, Ontario, from January 5 to 7 and on January 12, 2010. Essar Algoma and Evraz filed written submissions and documentary evidence, presented witnesses and made arguments in support of a finding of injury or, alternatively, a finding of threat of injury. SSAB filed witness statements and documentary evidence and presented witnesses in support of a finding of injury. No parties opposed a finding of injury or threat of injury.
14. Mr. Denis Boiteau, of Samuel, Mr. David J. Halcrow, of Russel Metals, Mr. Christopher W. Poulter, of Salzgitter Mannesmann International (Canada) Inc., and Mr. Fernando Ferreira, of Wirth Steel (Wirth), appeared as Tribunal witnesses during the hearing.
15. The record of this inquiry consists of all Tribunal exhibits, including the record of the preliminary injury inquiry (PI-2009-002), replies to questionnaires, public and protected versions of the pre-hearing staff report and its addendum, requests for information and replies to requests for information, witness statements, all other exhibits filed by parties and the Tribunal throughout the inquiry, and the transcript of the hearing. All public exhibits were made available to the parties. Protected exhibits were made available only to counsel who had filed an undertaking with the Tribunal in respect of confidential information.
16. The Tribunal issued its finding on February 2, 2010.

RESULTS OF THE CBSA'S INVESTIGATION

17. On January 4, 2010, the CBSA determined that 100 percent of the subject goods released into Canada from April 1, 2008, to March 31, 2009, were dumped at an estimated weighted average margin of dumping of 19.1 percent, when expressed as a percentage of the export price. The CBSA concluded that the overall margin of dumping was not insignificant.⁶

PRODUCT

Product Description

18. Most carbon steel plate is characterized as either structural steel plate or PVQ steel plate.

19. The terms "structural" and "PVQ" refer to the usual end uses for those types of carbon steel plate. Both types of carbon steel plate are produced to meet specific chemical and mechanical specifications. PVQ steel plate is intended for use in vessels required to hold their contents under pressure. It has more demanding specifications than structural steel plate and, if thicker than 1.5 inches (38.10 mm), it is usually heat-treated, while structural steel plate tends not to be heat-treated.

20. HSLA steel is carbon steel with alloying elements added. The selection of the particular combination of alloying elements depends on the desired properties of the steel, e.g. greater resistance to atmospheric corrosion, improved weldability or higher strength. HSLA steel generally costs more than carbon steel by weight. Unlike the terms "structural steel plate" and "PVQ steel plate", the term "HSLA steel plate" indicates chemical composition rather than end use. Structural steel plate and PVQ steel plate can be made from either carbon steel or HSLA steel.

21. The Canadian Standards Association (CSA) standards covered by the product definition represent different grades within the broad standard "G40.21", which covers steel for general construction purposes.

22. The ASTM A36M/A36 standard is equivalent to the CSA G40.21, grade 300W/44W, standard. This is the most common standard of structural steel plate sold in Canada. The most common standard of PVQ steel plate sold in Canada is ASTM A516M/A516, grade 70, and the most common standards of HSLA steel plate sold in Canada are A242M/A242 and A572M/A572, grade 50. Another ASTM standard of HSLA steel plate is A588M/A588. Even though plate made to these last three standards is considered HSLA steel plate, it has structural end uses.⁷

Production Process

23. Carbon steel plate is refined pig iron. Integrated producers make pig iron by combining iron ore, coke, limestone and oxygen, and superheating the mixture in a blast furnace. The ensuing liquefied pig iron is combined with scrap metal and additional oxygen in a basic oxygen furnace. Mini-mills produce molten carbon steel in electric arc furnaces. The basic raw material used by mini-mills is scrap metal rather than virgin iron ore.

6. Tribunal Exhibit NQ-2009-003-04A, Administrative Record, Vol. 1 at 9.

7. Tribunal Exhibit NQ-2009-003-33.03, Administrative Record, Vol. 1.4 at 19.

24. In both integrated and mini-mill production, the molten carbon steel is poured from a ladle into the tundish of a continuous slab caster. From the tundish, it flows into the mould of the caster to cool and to form a slab. The slab continues to move through the caster, cooling as it progresses, until it exits the caster, when it is cut to length with a torch.

25. The slab is then either placed in inventory or immediately transferred to a reheat furnace where it is heated to a uniform rolling temperature. The carbon steel plate is rolled to its final gauge in a series of rolling mills, levelled, identified and inspected for conformance to thickness tolerances and surface requirements. The carbon steel plate is then either formed directly into rectangular shapes (this carbon steel plate is referred to as “discrete plate”) or coiled and later unwound and cut into lengths (this carbon steel plate is referred to as “cut-to-length carbon steel plate from coil”).

26. Heat-treated plate is manufactured in the manner described above. However, after rolling, it is placed in a heat furnace (charged), re-heated to a uniform temperature, removed from the furnace and allowed to cool.

27. Service centres do not produce discrete plate. However, they produce cut-to-length carbon steel plate from coil. They buy coils from various steel mills and cut them to length on their cut-to-length lines, which unwind the coil, put it through various levellers to make it flat and shear the strip to the desired length.

Product Applications

28. The most common applications for carbon steel plate are shipbuilding and repairs, rail cars, pressure vessels, oil and gas storage tanks, heavy construction machinery, agricultural equipment, bridges and industrial and high-rise buildings.

DOMESTIC PRODUCERS

29. The Tribunal requested seven producers of carbon steel plate in Canada to complete a producers’ questionnaire. It received complete replies from the three domestic mills, i.e. Essar Algoma, Evraz and SSAB, and incomplete replies from the four service centres, i.e. Alliance Steel, Coilex, Russel Metals and Samuel (the service centre producers).⁸

Essar Algoma

30. Essar Algoma, located in Sault Ste. Marie, Ontario, was incorporated in 1992 as Algoma Steel Inc. In 2002, the company was re-organized pursuant to the *Companies’ Creditors Arrangement Act*.⁹ In June 2007, Algoma Steel Inc. became part of Essar Steel Holdings Limited as a wholly owned subsidiary of Algoma Holdings B.V. In 2008, the company was renamed “Essar Steel Algoma Inc.”.

31. Essar Algoma is a vertically integrated primary iron and steel producer. It produces carbon steel plate and other products on two mills. On its 166-inch plate mill, Essar Algoma produces carbon steel plate in widths from 24 inches (610 mm) to 152 inches (3,860 mm) and in thicknesses from 0.25 inch (6.35 mm)

8. For greater clarity, in this text, the term “domestic mills” refers to Essar Algoma, Evraz and SSAB, and the term “service centre producers” refers to Alliance Steel, Coilex, Russel Metals and Samuel, which domestically produce carbon steel plate by cutting to length carbon steel plate from coil.

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

to 3.0 inches (76 mm), as well as reduced slabs. On its 106-inch wide strip mill, Essar Algoma produces carbon steel plate in widths from 48 inches (1,219 mm) to 98 inches (2,489 mm) and in thicknesses from 0.187 inch (4.75 mm) to 0.50 inch (12.7 mm), as well as hot-rolled sheet.¹⁰

Evrax

32. Evrax's predecessor, IPSCO Inc., was incorporated in 1956 and commenced production of flat-rolled steel, including carbon steel plate, in Canada in 1960. In July 2007, IPSCO Inc. was purchased by SSAB of Sweden. Subsequently, in June 2008, Evrax Group S.A. purchased a number of operations from SSAB of Sweden. This included the plate, hot-rolled sheet and strip mill (plate mill) in Regina, Saskatchewan, and the cut-to-length sheet and plate (CTL) mill in Surrey, British Columbia.

33. In 2008, the name "IPSCO Inc." was changed to "Evrax Inc. NA Canada" and the name of its wholly owned subsidiary, IPSCO Canada Inc., was changed to "Evrax Inc. NA Canada West". In 2009, Evrax Inc. NA Canada West was amalgamated into Evrax Inc. NA Canada.

34. Evrax produces carbon steel plate, skelp¹¹ and plate in coil form at its plate mill, and plate in coil form used in the manufacture of pipe at its CTL mill. Other products manufactured by Evrax include oil country tubular goods, line pipe, standard pipe, hollow structural sections, and alloy sheet and plate.

35. Evrax produces discrete plate in widths ranging from 48 inches (1,219 mm) to 72 inches (1,829 mm) and in thicknesses ranging from 0.365 inch (9.27 mm) to 4.25 inches (108 mm). It also produces cut-to-length carbon steel plate from coil in widths up to 96 inches (2,438 mm) and in thicknesses ranging from 0.075 inch (1.90 mm) to 0.5 inch (12.7 mm).¹²

SSAB

36. In July 2007, SSAB acquired all of the assets of IPSCO Inc. and subsequently divested a number of its Canadian assets while retaining the Toronto, Ontario, operation (now SSAB Central Inc.) and several manufacturing locations in the United States.

37. In June 2008, SSAB Central Inc. became a wholly owned subsidiary of SSAB of Sweden. SSAB Central Inc. operates a facility in Toronto, where it produces cut-to-length carbon steel plate from coil in widths ranging from 48 inches (1,219 mm) to 72 inches (1,829 mm) and in thicknesses ranging from 0.187 inch (4.75 mm) to 0.5 inch (12.7 mm). It is however capable of producing cut-to-length carbon steel plate from coil in widths up to 96 inches (2,438 mm) and in thicknesses up to 0.75 inch (19 mm).¹³

10. Tribunal Exhibit NQ-2009-003-20.2 (protected), Administrative Record, Vol. 4 at 111-16; Tribunal Exhibit NQ-2009-003-RI-01A (protected) at 2, Administrative Record, Vol. 10; *Transcript of Public Hearing*, Vol. 1, 5 January 2010, at 7.

11. Iron or steel rolled or forged into narrow strips and ready to be made into pipe or tubing by being bent and welded.

12. Manufacturer's Exhibit B-03 at para. 3, Administrative Record, Vol. 11.

13. *Transcript of Public Hearing*, Vol. 1, 5 January 2010, at 98-99; Tribunal Exhibit NQ-2009-003-20.01 (protected), Administrative Record, Vol. 4 at 3.

Service Centre Producers

38. Alliance Steel, Coilex, Russel Metals and Samuel produce cut-to-length carbon steel plate from coil in widths up to 72 inches (1,829 mm) and in thicknesses up to 0.5 inch (12.7 mm).¹⁴ Because their raw material is hot-rolled coil, they are limited to these maximum widths and thicknesses in their production of carbon steel plate.

39. Alliance Steel was incorporated in 1956. It is a flat-rolled steel service centre that specializes in light gauge material.

40. Coilex is a wholesale service centre that was incorporated in 2003. In addition to carbon steel plate, Coilex cuts to length sheet from coil.

41. The only carbon steel plate that Alliance Steel and Coilex sell in the Canadian market is cut-to-length carbon steel plate that they produce domestically from coil.

42. Russel Metals has been in operation since 1929 as the successor corporation of Federal Grain Limited. In 2002, Russel Metals amalgamated with A.J. Forsyth and Company Limited, a subsidiary of Canadian Service Centre operations. Russel Metals wholly owns Wirth, an importer, wholesaler/distributor of carbon steel plate.

43. Samuel was founded in 1855. It has warehouses and processing equipment in major cities across Canada.

44. Both Russel Metals and Samuel sell in the Canadian market cut-to-length carbon steel plate that they produce domestically from coil and discrete plate that they import. They do not, however, import discrete plate from Ukraine.

IMPORTERS, PURCHASERS AND FOREIGN PRODUCERS

45. The Tribunal requested 37 potential importers of carbon steel plate to complete an importers and service centres' questionnaire. Of the 16 replies that it received, 12 were complete and 4 were incomplete. The Tribunal also received 6 letters from firms that indicated that they were unable to complete the questionnaires or were not the importers of record.

46. The Tribunal requested 28 companies identified as potential purchasers of carbon steel plate to complete a purchasers' questionnaire on market characteristics. In addition to 7 complete replies, the Tribunal received 4 letters from firms that indicated that they were unable to complete the questionnaire or were not purchasers of carbon steel plate.

47. The Tribunal requested 24 potential producers/exporters of carbon steel plate in Ukraine to complete a foreign producers' questionnaire. It received 1 complete reply from PJSC Azovstal Iron and Steel Works (Azovstal) and 6 letters from firms that indicated to the Tribunal that they were not producers of carbon steel plate.

14. *Transcript of Public Hearing*, Vol. 1, 5 January 2010, at 14, 75, 79.

DISTRIBUTION CHANNELS

48. Domestic mills sell carbon steel plate either directly to end users, such as large fabricators and original equipment manufacturers, or to service centres that may resell carbon steel plate in standard sizes and grades to end users or that may offer custom cutting services to end users. Domestic mills also compete with service centres for some accounts.

49. Service centres sell cut-to-length carbon steel plate from coil that they produce domestically and/or carbon steel plate that they purchase domestically or from offshore sources through distribution channels similar to those of the domestic mills.

50. Carbon steel plate originating outside Canada is imported by either large end users or service centres, or through agents, brokers, wholesalers or distributors that sell to end users or service centres.

ANALYSIS

51. The Tribunal is required, pursuant to subsection 42(1) of *SIMA*, to inquire as to whether the dumping of the subject goods has caused injury or retardation or is threatening to cause injury, with “injury” being defined, in subsection 2(1), as “. . . material injury to a domestic industry”. In this regard, “domestic industry” is defined in subsection 2(1) by reference to the domestic production of “like goods”.

52. Accordingly, the Tribunal must first determine what constitutes “like goods”. It can then determine what constitutes the “domestic industry” for purposes of its injury analysis.

53. Finally, the Tribunal will determine whether the dumping of the subject goods has caused injury to the domestic industry. Should the Tribunal arrive at a finding of no injury, it will then determine whether there exists a threat of injury.¹⁵ Because the domestic industry already exists, the Tribunal will not consider the question of retardation.¹⁶

54. In conducting its injury analysis, the Tribunal will also examine other factors alleged to have an impact on the domestic industry to ensure that any injury caused by such factors is not attributed to the effects of the dumping of the subject goods.

Like Goods and Classes of Goods

55. Given that the Tribunal must determine whether the dumping of the subject goods has caused, or is threatening to cause, injury to the domestic producers of like goods, the Tribunal must determine which domestically produced goods, if any, constitute like goods in relation to the subject goods.

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

...

(a) goods that are identical in all respects to the other goods, or

(b) in the absence of any goods described in paragraph (a), goods the uses and other characteristics of which closely resemble those of the other goods.

15. Injury and threat of injury are distinct findings; the Tribunal is not required to make a finding relating to threat of injury under subsection 43(1) of *SIMA* unless it first makes a finding of no injury.

16. Subsection 2(1) of *SIMA* defines “retardation” as “. . . material retardation of the establishment of a domestic industry”.

57. When goods are not identical in all respects to other goods, the Tribunal typically considers a number of factors to determine “likeness”, such as the physical characteristics of the goods (e.g. their composition and appearance), their market characteristics (such as substitutability, pricing, distribution channels and end uses) and whether the goods fulfill the same customer needs.¹⁷

58. In its preliminary injury inquiry, the Tribunal found that the goods produced in Canada were “like goods” in relation to the subject goods. The evidence adduced during the final injury inquiry in relation to the relevant factors and the parties’ submissions both support the Tribunal’s preliminary finding on this issue. In particular, the Tribunal heard evidence that carbon steel plate produced domestically and the subject goods are in direct competition in the marketplace, are readily substitutable products, are sold through the same distribution channels and are manufactured to the same specifications.¹⁸ At the hearing, Essar Algoma also submitted that, in many previous injury inquiries and expiry reviews involving nearly identical goods, the Tribunal consistently found that imported carbon steel plate and carbon steel plate produced by the domestic industry were like goods. It submitted that the Canadian carbon steel plate market has not changed in this respect since earlier inquiries and that, accordingly, domestically produced carbon steel plate constitutes like goods in relation to the subject goods.¹⁹

59. On the basis of the evidence before it, the Tribunal sees no reason to depart from its preliminary determination. The Tribunal is of the opinion that carbon steel plate produced domestically competes directly with, has similar end uses as and can be substituted for the subject goods. Accordingly, for the purposes of this injury inquiry, the Tribunal finds that domestically produced carbon steel plate, of the same specifications as the subject goods, constitutes like goods in relation to the subject goods.

60. On the issue of classes of goods, the Tribunal, in its statement of reasons for its preliminary injury inquiry, stated as follows:

23. However, the Tribunal is of the view that there is evidence on the record which indicates that there may be more than one class of goods. The question as to whether there could exist more than one class of goods is an issue that will need to be fully addressed during an inquiry under section 42 of *SIMA*, if the CBSA concludes, in its preliminary determination, that the subject goods have been dumped. Consequently, the Tribunal will collect data on three potential classes of goods and will also ask for submissions from parties on that issue. These potential classes of carbon steel plate are: (1) structural quality; (2) HSLA; and (3) pressure vessel quality. . . .

61. As indicated above, on November 6, 2009, after having considered the evidence on the record and received submissions, the Tribunal informed the parties of its finding that structural steel plate, HSLA steel plate and PVQ steel plate constituted a single class of goods and that, accordingly, it would conduct its injury analysis on that basis.

62. In addressing the issue of classes of goods, the Tribunal examined, as it typically does, whether the goods that would be included in potential separate classes of goods constitute like goods in relation to each other.²⁰ Following this approach, the Tribunal considered whether there were sufficient differences between structural steel plate, HSLA steel plate and PVQ steel plate, based on an analysis of the above-noted factors for determining “likeness”, to justify separating those goods into different classes.

17. See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at 8; *Oil and Gas Well Casing* (10 March 2008), NQ-2007-001 (CITT) at 7; *Mattress Innerspring Units* (24 November 2009), NQ-2009-002 (CITT) at 6.

18. *Transcript of Public Hearing*, Vol. 1, 5 January 2010, at 11-12.

19. *Transcript of Public Hearing*, Vol. 4, 12 January 2010, at 330-31.

20. See, for example, *Certain Fasteners* (7 January 2005), NQ-2004-005 (CITT) at 11; *Thermoelectric Containers* (11 December 2008), NQ-2008-002 (CITT) at 7-8.

63. The Tribunal notes that it received no submissions supporting the existence of three separate classes of goods in this inquiry. Essar Algoma and Evraz submitted that there are important similarities between structural steel plate, HSLA steel plate and PVQ steel plate. They submitted that these three categories of carbon steel plate have identical or closely resembling physical characteristics, method of manufacture, composition and market characteristics and that they fulfill closely resembling customer needs or end uses. They further submitted that structural steel plate, HSLA steel plate and PVQ steel plate are different grades or specifications of carbon steel plate across a spectrum or along a continuum within a single class of like goods, as was the case in other Tribunal inquiries in which it was found that steel products made to varying grades with different strengths or properties constituted a single class of goods.

64. The evidence generally confirms the domestic mills' submissions in this regard. In particular, the majority of responses from purchasers of carbon steel plate to the questionnaire on classes of goods sent by the Tribunal in order to collect information as to the substitutability of the different types of carbon steel plate indicate that the three categories of carbon steel plate are comprised of goods with (i) similar composition and (ii) similar channels of distribution.²¹ In terms of customer needs and end uses, while there is evidence that structural steel plate, HSLA steel plate and PVQ steel plate are not fully substitutable in particular end uses,²² many questionnaire respondents indicated that goods of the three categories have similar applications or general end uses.²³

65. In the Tribunal's opinion, the fact that structural steel plate, HSLA steel plate and PVQ steel plate may not always be fully substitutable in certain end uses is not, in itself, a sufficient basis for determining that there is more than one class of goods. In this regard, the Tribunal accepts the domestic mills' argument that the goods within the scope of this inquiry fall, at various points, along a continuum of like goods and that there can be substitutability downward on the continuum, i.e. a higher-grade product can be a substitute for a lower-grade product.

66. Therefore, on balance, the Tribunal is satisfied that, while they are not perfectly substitutable goods, structural steel plate, HSLA steel plate and PVQ steel plate should be considered as a single class of goods for purposes of this inquiry.

Domestic Industry

67. The Tribunal must now consider which domestic producers constitute the domestic industry. Subsection 2(1) of *SIMA* defines "domestic industry" as follows:

... the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods except that, where a domestic producer is related to an exporter or importer of dumped or subsidized goods, or is an importer of such goods, "domestic industry" may be interpreted as meaning the rest of those domestic producers.

21. Tribunal Exhibits NQ-2009-003-31.02 to NQ-2009-003-31.06, Administrative Record, Vol. 5.3 at 31-32, 54-55, 68-69, 82-83, 102-103 respectively; Tribunal Exhibits NQ-2009-003-31.08 to NQ-2009-003-31.16, Administrative Record, Vol. 5.3 at 119-20, 132-34, 148-49, 162-63, 176-77, 191-92, 205-206, 219-20, 237-38 respectively.

22. Specifically, PVQ steel plate has different and specialty applications, as its name indicates. Since PVQ grades are generally stronger than structural or HSLA grades, PVQ steel plate cannot generally be replaced by structural steel plate or HSLA steel plate.

23. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2009-003-06, Administrative Record, Vol. 1.1 at 91.

68. Seven companies reported domestic production of carbon steel plate during the POI. These are the three domestic mills, i.e. Essar Algoma, Evraz and SSAB, and the four service centre producers, i.e. Alliance Steel, Coilex, Russel Metals and Samuel. Together, these firms produce almost all of the known production of like goods. Consequently, the Tribunal finds that these seven producers, i.e. the three domestic mills and the four service centre producers, constitute the domestic industry for the purpose of its injury analysis.

69. However, as discussed earlier, there is incomplete information on the record concerning the service centre producers.²⁴ For this reason, the Tribunal's injury and threat of injury analyses with respect to prices, financial information and related economic indicia will focus primarily on the domestic mills. However, the materiality of any injury or threat of injury will be assessed in relation to the total production of like goods of the domestic industry.

70. In this regard, the Tribunal notes that, during the POI, the combined production of the domestic mills accounted for well over half of the total domestic production of like goods.²⁵ Therefore, in terms of volume of production, the collective production of the domestic mills constitutes a major proportion of the total domestic production of like goods. Nonetheless, where appropriate, the Tribunal will discuss the evidence regarding the impact of the subject goods on the service centre producers and, as discussed above, will assess the materiality of any injury caused by the dumping against the domestic industry's production of like goods as a whole.

INJURY

General Considerations

71. Subsection 37.1(1) of the *Special Import Measures Regulations*²⁶ prescribes that, in determining whether the dumping of goods has caused material injury to the domestic industry, the Tribunal is to consider the volume of dumped goods, their effect on the price of the like goods in the domestic market and the resulting 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 directs the Tribunal to consider other factors not related to the dumping to ensure that any injury caused by these other factors is not attributed to the dumped imports.

72. After having considered all relevant factors, the Tribunal will examine whether any injury suffered by the domestic industry during the POI is "material", as contemplated by section 42 of *SIMA*. In this regard, the Tribunal notes that *SIMA* does not define the term "material". However, the Tribunal considers that both the extent of injury during the relevant time frame and the timing and duration of the injury are relevant considerations in determining whether any injury is "material".

Volume of Imports of Dumped Goods

73. Pursuant to paragraph 37.1(1)(a) of the *Regulations*, in conducting its injury analysis, the Tribunal will consider the volume of the dumped goods and, in particular, whether there has been a significant increase in the volume of imports of the dumped goods, either in absolute terms or relative to the production or consumption of the like goods.

24. The service centre producers manufacture, as indicated previously, cut-to-length carbon steel plate from coil in widths up to 72 inches (1,829 mm) only.

25. *Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-06A, Administrative Record, Vol. 1.1 at 202, 204.

26. S.O.R/84-927 [*Regulations*].

74. The Tribunal notes that Essar Algoma, in its evidence, referred to 65,000 tonnes of imported carbon steel plate from Ukraine that entered the Canadian market in the second half of 2004.²⁷ Essar Algoma characterized that shipment as the starting point of the injury caused to the domestic industry by the subject goods. However, in its injury analysis, the Tribunal cannot consider information that covers a period that precedes its POI, because its record does not include the necessary market information from years outside its POI. Additional market information would be required in order to put the volume of imports from Ukraine in 2004 into its proper context. The Tribunal also notes that the imports from Ukraine referred to by Essar Algoma include carbon steel plate that falls outside of the scope of this injury inquiry, as they include goods in thicknesses up to 4.0 inches (101.6 mm).²⁸

75. The evidence indicates that, in absolute terms, the volume of imports of the subject goods decreased by 31 percent from 2006 to 2007 and increased by 38 percent from 2007 to 2008. However, the net effect from 2006 to 2008 was a volume of imports of the subject goods that decreased by 4 percent. When comparing interim period 2009 to interim period 2008, the volume of imports of the subject goods decreased by 72 percent.²⁹ Essar Algoma submitted that this decrease is a result of the filing of its complaint with the CBSA, the issuance of the CBSA's preliminary determination of dumping and the Tribunal's commencement of its inquiry.³⁰ The Tribunal is of the view that the global recession in the fourth quarter of 2008 and in interim period 2009³¹ is also likely to have played a role in the significant decrease in imports.

76. As a percentage of total imports, the volume of imports of the subject goods was small throughout the POI. From 2006 to 2008, it represented significantly less than 10 percent of total imports entering the Canadian market. Compared to full year 2008, the share of total imports captured by imports of the subject goods in interim period 2008 was even smaller. That trend continued in interim period 2009 when that share decreased further to its smallest share of the POI.³²

77. In each period of the POI, the ratio of the volume of imports of the subject goods to the volume of production of like goods³³ was as small as, and fluctuated in the same manner as, the share of the total volume of imports captured by imports of the subject goods. The ratio of the volume of imports of the subject goods to the volume of production of like goods declined by 7 percentage points from 2006 to 2008 and by 47 percentage points between interim period 2008 and interim period 2009.³⁴

27. Manufacturer's Exhibit A-02, attachment 1, Administrative Record, Vol. 11; *Transcript of Public Hearing*, Vol. 1, 5 January 2010, at 31; *Transcript of In Camera Hearing*, Vol. 1, 5 January 2010, at 40.

28. *Certain Hot-rolled Carbon Steel Plate* (17 May 2004), RR-2003-001 (CITT) at 2.

29. *Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-06A, Administrative Record, Vol. 1.1 at 205; *Protected Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-07A (protected), Administrative Record, Vol. 2.1 at 205.

30. *Transcript of Public Hearing*, Vol. 1, 5 January 2010, at 52.

31. *Ibid.* at 93, 100; *Transcript of In Camera Hearing*, Vol. 1, 5 January 2010, at 25.

32. *Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-06A, Administrative Record, Vol. 1.1 at 205; *Protected Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-07A (protected), Administrative Record, Vol. 2.1 at 205.

33. As indicated previously, production data, unless otherwise specified, always pertain to the domestic industry's production of like goods as a whole.

34. *Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-06A, Administrative Record, Vol. 1.1 at 202, 205; *Protected Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-07A (protected), Administrative Record, Vol. 2.1 at 205.

78. In each period of the POI, the ratio of the volume of imports of the subject goods to the consumption of the like goods (i.e. the volume of domestic sales of like goods in the Canadian market) was not much larger than relative to the production of like goods. It increased by less than 1 percentage point from 2006 to 2008, and decreased by 49 percentage points between interim period 2008 and interim period 2009.³⁵

79. Imports of the subject goods captured only a very small share of the Canadian market throughout the POI. That share was relatively constant over the POI, showing the same trends as the proportion of total imports, domestic production of like goods and domestic sales of like goods, as discussed above.³⁶

80. Basing its conclusion on the foregoing, the Tribunal considers that there was no significant increase in the volume of imports of the subject goods, either in absolute terms or relative to the production or consumption of like goods, over the POI.

Effects of Dumped Imports on Prices

81. Pursuant to paragraph 37.1(1)(b) of the *Regulations*, the Tribunal will consider the effect of the dumped goods on the price of like goods and, in particular, whether the dumped goods have significantly undercut or depressed the price of like goods, or suppressed the price of like goods by preventing the price increases for those like goods that would otherwise likely have occurred.

82. Essar Algoma submitted that, throughout the POI, with the exception of late 2008 when prices of carbon steel plate were falling in the Canadian market due to the global recession, the subject goods were consistently priced lower than the like goods. Essar Algoma added that, in its view, this price pressure from the subject goods caused price depression and price suppression to the domestic mills. One of the four service centre producers submitted that it was also injured by imports of the subject goods in the form of price depression and price suppression.³⁷

83. The domestic mills alleged that, late in 2008, the global recession caused a significant reduction in the demand for steel, which led to a collapse of the Canadian carbon steel plate market late in 2008 and into 2009.

84. The domestic mills argued that carbon steel plate is a commodity product that is fungible and for which price is usually the principal factor that dictates purchasing decisions.

85. As indicated above in the discussion of “like goods”, the Tribunal heard testimony during the hearing that domestically produced carbon steel plate is substitutable for the subject goods. There are however some limitations in this regard, as discussed below.³⁸

86. Responses to the purchasers’ questionnaire on market characteristics tend to corroborate the view that price is a major factor that dictates purchasing decisions. The lowest price was rated as “very important” and “one of the most important factors” in purchasing decisions of all questionnaire respondents.

35. *Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-06A, Administrative Record, Vol. 1.1 at 208; *Protected Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-07A (protected), Administrative Record, Vol. 2.1 at 205.

36. *Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-06A, Administrative Record, Vol. 1.1 at 202, 205, 208; *Protected Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-07A (protected), Administrative Record, Vol. 2.1 at 205, 208, 210.

37. *Transcript of Public Hearing*, Vol. 2, 6 January 2010, at 170-71.

38. *Transcript of Public Hearing*, Vol. 1, 5 January 2010, at 12, 69.

Furthermore, all questionnaire respondents reported that they usually purchased the lowest-price product, and each of these respondents, save one, indicated that a price difference of between 5 percent and 15 percent would make it switch suppliers.³⁹

87. Several witnesses testified that the subject goods are generally priced lower than the like goods when comparing offers of carbon steel plate with the same standards, sizes and grades, i.e. CSA G40.21, grade 44W, structural steel plate standard, to the same customer and within the same time frame.⁴⁰ However, the Tribunal also heard from witnesses that this price differential is generally a reflection of the lower quality and product limitations of the subject goods, the longer (and sometimes uncertain) delivery times that customers must face when purchasing the subject goods and the changes in market prices during the period between the product being ordered and the product being delivered.⁴¹

88. To counteract these non-price factors, witnesses indicated that purchasers are generally willing to pay a premium of up to CAN\$60/tonne to CAN\$80/tonne to buy the better quality like goods rather than the subject goods.⁴²

89. There are two main mills in Ukraine that export carbon steel plate to Canada—JSC Ilyich Iron & Steel Works, Mariupol (Ilyich) and Azovstal. Because, generally, Ilyich has been the primary source of the subject goods over the POI, the testimony concerning lower-priced and lower-quality subject goods generally focussed on the Ilyich product. Witnesses testified that, overall, Azovstal does not have the quality problems of Ilyich.⁴³ Accordingly, it is reasonable to conclude that its carbon steel plate is higher priced.

90. The Tribunal heard testimony that low price offers of imports of the subject goods become known very quickly throughout the carbon steel plate market across Canada.⁴⁴ Purchasers of domestically produced carbon steel plate (even one purchaser that purchases very little imported product) use these low price offers as negotiation leverage with domestic mills.⁴⁵ However, the degree to which these efforts are successful in achieving a lower price is variable. Furthermore, witnesses testified that a volume as little as 100 tonnes of

39. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2009-003-06, Administrative Record, Vol. 1.1 at 101-103, 114, 117.

40. *Transcript of Public Hearing*, Vol. 1, 5 January 2010, at 72, 77; *Transcript of In Camera Hearing*, Vol. 1, 5 January 2010, at 11-13, 41-42, 66.

41. *Transcript of Public Hearing*, Vol. 1, 5 January 2010, at 42; *Transcript of Public Hearing*, Vol. 2, 6 January 2010, at 194; *Transcript of Public Hearing*, Vol. 3, 7 January 2010, at 208-211, 214-15, 231, 237, 250; *Transcript of Public Hearing*, Vol. 4, 12 January 2010, at 302-304; *Transcript of In Camera Hearing*, Vol. 1, 5 January 2010, at 78; *Transcript of In Camera Hearing*, Vol. 2, 6 January 2010, at 93-96, 98, 135-36; *Transcript of In Camera Hearing*, Vol. 4, 12 January 2010, at 185-86 ; *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2009-003-06, Administrative Record, Vol. 1.1 at 100.

42. *Transcript of Public Hearing*, Vol. 2, 6 January 2010, at 161-62, 180-81; *Transcript of Public Hearing*, Vol. 3, 7 January 2010, at 209, 262-65; *Transcript of In Camera Hearing*, Vol. 2, 6 January 2010, at 91-92, 105-106, 133-35.

43. The quality problems of carbon steel plate produced in Ukraine are discussed further in paragraph 92. *Transcript of Public Hearing*, Vol. 4, 12 January 2010, at 303; *Transcript of In Camera Hearing*, Vol. 2, 6 January 2010, at 97-98, 135; *Transcript of In Camera Hearing*, Vol. 4, 12 January 2010, at 185-87, 195.

44. *Transcript of Public Hearing*, Vol. 1, 5 January 2010, at 128-29; *Transcript of Public Hearing*, Vol. 2, 6 January 2010, at 169-70, 190-91; *Transcript of Public Hearing*, Vol. 4, 12 January 2010, at 320-21; *Transcript of In Camera Hearing*, Vol. 2, 6 January 2010, at 131-32.

45. *Transcript of Public Hearing*, Vol. 2, 6 January 2010, at 190-91, 196-97; *Transcript of Public Hearing*, Vol. 3, 7 January 2010, at 225; *Transcript of In Camera Hearing*, Vol. 1, 5 January 2010, at 64; *Transcript of In Camera Hearing*, Vol. 2, 6 January 2010, at 93-94, 100, 127.

the subject goods offered at an average price of as little as CAN\$20/tonne to CAN\$30/tonne lower than the domestically produced carbon steel plate can have an impact on the Canadian carbon steel plate market because customers know that the small tonnage is part of a much larger shipment.⁴⁶

91. The Tribunal does not consider that the impact of low price offers of imports of the subject goods on price is generally as great, where the impact is indirect, as where there is direct competition on price to sell the same product.

92. There are several circumstances in which the impact of the subject goods on price is indirect. First, there is very little carbon steel plate in widths other than 96 inches (2,438 mm), HSLA steel plate or PVQ steel plate from Ukraine seen in the Canadian market. Therefore, there is little direct competition with domestically produced carbon steel plate in widths other than 96 inches (2,438 mm), HSLA steel plate or PVQ steel plate. As a result, the impact of the price of the subject goods on the prices of HSLA steel plate and PVQ steel plate is indirect. Second, virtually no subject goods are sold in the western Canadian market; hence, they do not compete with the like goods in that market. Therefore, the impact of the price of the subject goods on the price of the like goods in the western Canadian market is indirect and likely confined to influencing the price at the boundary between Eastern Canada and Western Canada. Third, the service centre producers do not generally compete in the same part of the product range (in terms of widths and thicknesses) as the subject goods; hence, any effect of the price of the subject goods on the prices of the service centre producers is indirect.⁴⁷ Fourth, there are quality limitations concerning the subject goods which make them inappropriate for some applications.⁴⁸ To the extent that these quality limitations mean that the subject goods do not compete with the like goods, the impact of the subject goods on price would be indirect.

93. In this context, the Tribunal will now consider which data are the most appropriate to analyze the relative pricing of the subject goods and the like goods, and the impact of the prices of the subject goods on the prices of the like goods.

94. Essar Algoma argued that a comparison of the average unit selling prices of the subject goods and those of the like goods, as provided in Table 23 of the pre-hearing staff report⁴⁹ was not the most accurate price comparison, due to possible variations in product mix. Differences in product mix may mask the true price differential between comparable products. In this instance, the evidence indicates that the like goods

46. *Transcript of Public Hearing*, Vol. 1, 5 January 2010, at 12-13, 68, 88, 132; *Transcript of In Camera Hearing*, Vol. 2, 6 January 2010, at 89-90.

47. *Transcript of Public Hearing*, Vol. 1, 5 January 2010, at 40-42, 93-94, 127, 129; *Transcript of Public Hearing*, Vol. 3, 7 January 2010, at 251-52; *Transcript of Public Hearing*, Vol. 4, 12 January 2010, at 278-79, 303, 320; *Transcript of In Camera Hearing*, Vol. 3, 7 January 2010, at 154, 165; Tribunal Exhibit NQ-2009-003-23.18 (protected), Administrative Record, Vol. 6 at 273, 277, 280; Tribunal Exhibit NQ-2009-003-23.21 (protected), Administrative Record, Vol. 6B at 67.16, 67.18, 67.20.

48. The quality limitations of the subject goods include their surface condition over a certain thickness and their lack of suitability for more stringent, higher-end applications. *Transcript of Public Hearing*, Vol. 3, 7 January 2010, at 208-211, 237; *Transcript of In Camera Hearing*, Vol. 1, 5 January 2010, at 98.

49. *Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-06A, Administrative Record, Vol. 1.1 at 214; *Protected Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-07A (protected), Administrative Record, Vol. 2.1 at 214.

include a portion of seconds⁵⁰ that command lower average selling prices in the market than prime carbon steel plate, whereas seconds are not present among the subject goods.⁵¹

95. For this reason, the Tribunal accepts Essar Algoma's argument that the average unit selling prices of the domestic mills should be adjusted upwards to remove sales of seconds in order to provide a better basis of comparison with prices of imports of the subject goods.

96. However, the Tribunal notes that Essar Algoma's testimony on the percentage of total sales volume that its seconds represent is inconsistent with the actual volumes of seconds provided in its calculations. It also notes that Essar Algoma was the only domestic mill that provided a quantification of the price reduction applicable in selling seconds.⁵² On the basis of the overall testimony of the three domestic mills, the Tribunal considers that the impact of the volume percentage and of the price of seconds on the average unit selling prices of the domestic mills should be somewhat less than that submitted by Essar Algoma. The Tribunal also considers that the average unit selling prices of the domestic mills should be adjusted downward somewhat to allow for a comparison of carbon steel plate of equivalent quality, given the quality limitations of the subject goods, as discussed above. Taking these factors into account, the Tribunal made an estimated adjustment to the average unit selling prices of the domestic mills that will be referred to, in the remainder of the text, as the Tribunal's "adjusted price estimates".⁵³ It is these adjusted price estimates that the Tribunal will use in its comparison of the average unit selling prices of the domestic mills to the average unit selling prices of the subject goods.

97. Given the differences between the like goods of the service centre producers and the subject goods, as indicated above, the Tribunal was unable to make any meaningful price adjustment to improve the comparison between the average unit selling prices of the service centre producers and those of the subject goods.⁵⁴

98. The Tribunal also notes that testimony indicates that a larger proportion of the subject goods than of the like goods tends to be at the lower end of the market (i.e. at a base price, ASTM A36/44W, 96 inches [2,438 mm], structural steel plate), which indicates that the average unit selling prices of the subject goods would be somewhat higher (or the average unit selling prices of the like goods somewhat lower) in a price comparison of equivalent product mix.⁵⁵ However, the Tribunal did not have the data necessary to estimate an appropriate amount for such an adjustment.

50. Seconds are defined by the domestic mills as carbon steel plate that either does not accurately meet the chemistry of physical properties, standards or quality of prime carbon steel plate or does not meet the dimensions ordered by the customer.

51. *Transcript of Public Hearing*, Vol. 1, 5 January 2010, at 16-17, 39, 111-12; *Transcript of In Camera Hearing*, Vol. 1, 5 January 2010, at 3-4.

52. Manufacturer's Exhibit A-10 (protected), Administrative Record, Vol. 12; *Transcript of Public Hearing*, Vol. 1, 5 January 2010, at 43, 89-90, 94-96, 110-11, 138-39; *Transcript of In Camera Hearing*, Vol. 1, 5 January 2010, at 47.

53. To allow for the quality limitations of the subject goods, the Tribunal used an amount that was in the same range as the price differential that purchasers testified would normally make them buy the subject goods instead of the like goods, when both products are comparable. Manufacturer's Exhibit A-10 (protected), Administrative Record, Vol. 12; *Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-06A, Administrative Record, Vol. 1.1 at 214; *Protected Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-07A (protected), Administrative Record, Vol. 2.1 at 214; *Transcript of Public Hearing*, Vol. 2, 6 January 2010, at 162, 180; *Transcript of In Camera Hearing*, Vol. 2, 6 January 2010, at 91-92.

54. *Transcript of Public Hearing*, Vol. 1, 5 January 2010, at 14, 69, 74-75, 79.

55. *Ibid.* at 40-41, 93-94.

99. The Tribunal also considered Essar Algoma's submission that another reliable price comparison was the average of the specific transaction prices and offers reported by its customers that it recorded in the import activity reports⁵⁶ that it chose to file with the Tribunal. The Tribunal does not consider this to be a valid basis for calculating the average differential between the prices of the subject goods and those of the like goods for the year. The injury allegations filed for a particular year did not necessarily cover the entire year and covered only a limited number of transactions; hence, they may not cover the key price fluctuations in that year.⁵⁷ Furthermore, Essar Algoma's calculations of the average unit selling prices for the year are a simple average of the prices recorded in the injury allegations for that year and, hence, do not take into account the fact that some price levels last for different periods of time than others. In addition, even though Essar Algoma indicated that its injury allegations were representative, the Tribunal cannot assess the validity of the methodology that Essar Algoma used to select them, since Essar Algoma did not provide its methodology. The Tribunal also notes that there is always a possibility that the prices recorded were not reported accurately by their sources.

100. The Tribunal also examined the pricing information that it gathered for specific "benchmark" products that are representative of the product range. However, due to the extremely limited information that it received on other products, its analysis of the pricing information for the benchmark products will be limited to ASTM A36M/A36, grade 44W, structural steel plate. This type of carbon steel plate is by far the most common type of carbon steel plate produced in Canada, imported and consumed in the Canadian market (hereinafter "the benchmark product").⁵⁸ The information for the benchmark product is quarterly data from the third quarter of 2007 to the second quarter of 2009.

101. The Tribunal also considered how world prices affect prices in the Canadian market, as carbon steel plate is a globally traded commodity. The Tribunal accepts the domestic mills' proposition that Canada and the United States are in effect a single market for carbon steel plate in North America and that producers in Ukraine are likely to determine relative volume of North American and EU exports depending on where its carbon steel plate commands the highest price (taking into account shipping costs) at a given period in time.

102. However, the Tribunal did not consider, in its price comparison, Essar Algoma's estimates of the average unit selling prices of imports of the subject goods based on data from Iron and Steel Statistics Bureau Limited (ISSB Limited). These prices are export prices to which Essar Algoma added estimates for importers' freight, other expenses and profit based on four offers made in 2008. The Tribunal did not have sufficient data to enable it to test the accuracy of the ISSB Limited data or Essar Algoma's estimates and, accordingly, was unable to accept the accuracy of the estimated average unit selling prices, which differ considerably from other sources of pricing information.⁵⁹

56. Import activity reports record commercial intelligence that the domestic mills collect from customers.

57. Manufacturer's Exhibit A-03 (protected) at paras. 61-64, 66, 68, 70-74, confidential attachment 1 at 7-10, 13-18, Administrative Record, Vol. 12; Manufacturer's Exhibit A-04 at paras. 61-64, 66, 68, 70-74, Administrative Record, Vol. 11.

58. *Transcript of Public Hearing*, Vol. 1, 5 January 2010, at 40-41; *Transcript of Public Hearing*, Vol. 3, 7 January 2010, at 207-208, 250-51; *Transcript of Public Hearing*, Vol. 4, 12 January 2010, at 304; *Transcript of In Camera Hearing*, Vol. 3, 7 January 2010, at 165.

59. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2009-003-06, Administrative Record, Vol. 1.1 at 88; *Transcript of In Camera Hearing*, Vol. 1, 5 January 2010, at 8-10; Tribunal Exhibit NQ-2009-003-17 (single copy) (protected), confidential attachment 9, protected record of Preliminary Injury Inquiry No. PI-2009-002.

103. Furthermore, the Tribunal, in its price comparison, did not consider sales of carbon steel plate at common accounts, as very little information on sales from imports of the subject goods to customers also served by the domestic mills was provided to the Tribunal.⁶⁰

104. On the basis of the foregoing sources of pricing information, the Tribunal will examine the prices of imports of the subject goods and their impact on the prices of like goods on a year-to-year basis.

2006

105. A comparison of world prices for carbon steel plate reveals that the North American price was on average about CAN\$50/tonne higher than the EU price.⁶¹ Except for the month of May, when prices were at par, the U.S. price compared to the Canadian price was, on a month-to-month basis, between CAN\$17/tonne and CAN\$105/tonne higher than the Canadian price.⁶²

106. In the Canadian market, the average unit selling price of the subject goods was more than CAN\$100/tonne lower than both the Tribunal's adjusted price estimates of the average unit selling price of the domestic mills and the average unit selling price of the service centre producers.⁶³ Although Essar Algoma was the only member of the domestic industry to file injury allegations with the Tribunal for 2006, its import activity reports for specific offers and transactions for January, March and June confirm price undercutting in amounts also in excess of CAN\$100/tonne.⁶⁴

107. On the basis of the foregoing, the Tribunal considers that there was significant price undercutting in 2006. However, the absence of comparative figures for 2005 and of pricing for the benchmark product for 2006 makes it difficult to quantify the impact of this price undercutting on the prices of the domestic mills and the service centre producers.

108. Although there was insufficient evidence on the record for the Tribunal to examine the allegation of price suppression, the Tribunal considers that, given the large price differential between the subject goods and the like goods of the domestic mills and the service centre producers, and the fact that they both had scope to raise their prices before reaching a level that was uncompetitive with U.S. prices, it is reasonable to conclude that, in 2006, the price of the subject goods depressed the prices of the domestic mills and the service centre producers. In the case of the service centre producers, the price suppression would have been an indirect impact, given the fact that they do not manufacture the same product range as that offered by the subject goods.

60. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2009-003-07 (protected), Administrative Record, Vol. 2.1 at 149, 151, 153, 155, 157.

61. Tribunal Exhibit NQ-2009-003-39.05 (single copy), Administrative Record, Vol. 7 at 37, 39, 41, 43, 45, 47, 49, 51, 53, 55, 57, 59.

62. *Ibid.*

63. *Protected Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-07A (protected), Administrative Record, Vol. 2.1 at 214.

64. Manufacturer's Exhibit A-03 (protected) at paras. 61-63, confidential attachment 1 at 7-9, Administrative Record, Vol. 12; Manufacturer's Exhibit A-04 at paras. 61-63, Administrative Record, Vol. 11.

2007

109. The price of carbon steel plate in the EU market, on a month-to-month basis, was consistently higher than that in the North American market, which, according to the testimony of witnesses and the data on historical world transaction prices, is unusual for the carbon steel plate market.⁶⁵ On average, for the year, the EU price was CAN\$92/tonne higher than the North American price, or CAN\$87/tonne higher than the Canadian price and CAN\$98/tonne higher than the U.S. price.⁶⁶ In the first four months of the year, the U.S. price continued to be higher than the Canadian price by a range of CAN\$3/tonne to CAN\$113/tonne.⁶⁷ For the remainder of the year, that trend changed, and the Canadian price was higher than the U.S. price by a range of CAN\$11/tonne to CAN\$95/tonne.⁶⁸

110. From 2006 to 2007, imports from the United States increased their sales volume in the Canadian market by 54 percent and their market share by 16 percentage points. These gains were at the expense of both the domestic mills and imports of the subject goods.⁶⁹

111. Comparing 2007 to 2006, the sales volume of the subject goods decreased by 31 percent, while their average unit selling price increased by 9 percent. The average unit selling price of the subject goods was essentially at par with the Tribunal's adjusted price estimates of the average unit selling price of the domestic mills and similar to the average unit selling price of the service centre producers (or slightly higher if the lower product mix of the subject goods is taken into account). However, the domestic mills and the service centre producers saw their average unit selling prices decrease by 7 percent and 3 percent, respectively, in 2007. Furthermore, during that year, the average unit selling price of the domestic mills decreased at a rate slightly faster than the rate at which their unit cost of goods sold increased.⁷⁰ The Tribunal was unable to make the same analysis with respect to the average unit selling price and unit cost of goods sold of the service centre producers, as they provided incomplete financial information to the Tribunal.

112. In the last two quarters of 2007, the average unit selling prices for the benchmark product of the domestic mills and of the subject goods indicate that imports of the subject goods were slightly higher priced than the domestic mills' product. A comparison of the average unit selling price for the benchmark product of the service centre producers and that of the subject goods shows that the service centre

65. Manufacturer's Exhibit A-01 (protected), tab 7, Administrative Record, Vol. 12; Tribunal Exhibit NQ-2009-003-39.06 (single copy), Administrative Record, Vol. 7 at 62, 64, 66, 68, 70, 72, 74, 76, 78, 80, 82, 84.

66. Tribunal Exhibit NQ-2009-003-39.06 (single copy), Administrative Record, Vol. 7 at 62, 64, 66, 68, 70, 72, 74, 76, 78, 80, 82, 84.

67. *Ibid.*

68. The Tribunal heard testimony that the European Union is the most appealing and largest market for Ukrainian producers of carbon steel plate because it is the market in which they can achieve their highest returns because of its proximity. Tribunal Exhibit NQ-2009-003-39.06 (single copy), Administrative Record, Vol. 7 at 62, 64, 66, 68, 70, 72, 74, 76, 78, 80, 82, 84; *Transcript of Public Hearing*, Vol. 1, 5 January 2010, at 36-38.

69. *Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-06A, Administrative Record, Vol. 1.1 at 208-210; *Protected Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-07A (protected), Administrative Record, Vol. 2.1 at 208.

70. *Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-06A, Administrative Record, Vol. 1.1 at 209, 215; *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2009-003-07 (protected), Administrative Record, Vol. 2.1 at 70; *Protected Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-07A (protected), Administrative Record, Vol. 2.1 at 208, 214.

producers' like goods were lower priced than the subject goods.⁷¹ However, as indicated above, this price comparison is not very meaningful, given the product differences between the like goods produced by the service centre producers and the subject goods.

113. Essar Algoma and SSAB provided injury allegations and import activity reports with respect to the subject goods. These injury allegations indicate that the price at which imports of the subject goods were either sold or offered at specific accounts was lower than the price of the domestic mills' like goods. However, these injury allegations covered only the months of March, September and October and, hence, may not be representative of relative pricing throughout the year.⁷² No injury allegations were provided by either Evraz or the service centre producers.

114. The Tribunal considers that continued price undercutting by the subject goods, in the first four months of 2007, may have been a significant cause of the price depression and price suppression experienced during that period. Price suppression manifested itself in the inability of domestic mills to recover, in their average unit selling price, the cost increase of raw materials and other parts of their unit cost of goods sold that they should normally have been able to recover had it not been for the presence of the subject goods.⁷³

115. However, in the Tribunal's view, this situation changed starting in May when the Canadian price of carbon steel plate rose above that of the United States. Given the evidence that the carbon steel plate market is a North American market, the fact that Canadian and U.S. prices are essentially the same, and the important presence of imports of carbon steel plate from the United States in the Canadian market, the Tribunal considers that the lower U.S. prices limited the ability of the domestic mills and the service centre producers to raise and/or maintain their prices. This is particularly so in light of the significant increases in volume and market share by imports from the United States in 2007 over 2006.⁷⁴ Therefore, regardless of the price level of imports of the subject goods, the domestic mills did not have scope to raise their price to cover their increased cost of goods sold and would have had difficulty maintaining their existing price level.

116. The Tribunal was not in a position however to compare the selling price of the service centre producers to their cost of goods sold and determine if they suffered price suppression in 2007 at the expense of imports of the subject goods, as the service centre producers filed incomplete financial information with the Tribunal.

117. In summary, the Tribunal considers that the price depression suffered by the domestic mills and the service centre producers and the price suppression felt by the domestic mills in the first four months of 2007 may well have been caused by the subject goods. However, for the remainder of the year, the Tribunal considers that the subject goods caused little or no price-based injurious effects.

71. *Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-06A, Administrative Record, Vol. 1.1 at 222; *Protected Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-07A (protected), Administrative Record, Vol. 2.1 at 222.

72. Tribunal Exhibit NQ-2009-003-20.01 (protected), Administrative Record, Vol. 4 at 99; Manufacturer's Exhibit A-03 (protected) at paras. 64, 66, 68, confidential attachment 1 at 10, 13, 14, Administrative Record, Vol. 12; Manufacturer's Exhibit A-04 at paras. 64, 66, 68, Administrative Record, Vol. 11.

73. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2009-003-06, Administrative Record, Vol. 1.1 at 65; *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2009-003-07 (protected), Administrative Record, Vol. 2.1 at 70.

74. *Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-06A, Administrative Record, Vol. 1.1 at 208-210; *Protected Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-07A (protected), Administrative Record, Vol. 2.1 at 210.

2008

118. A comparison of world prices for carbon steel plate reveals that, in the first four months of the year, the EU price continued to be higher than the North American price, but, starting in May and continuing until the end of the year, the trend was reversed.⁷⁵ The U.S. price was, for about half of the year (February to July), lower than the Canadian price and, for the other half (January, August to December), higher than the Canadian price.⁷⁶

119. Overall, this was a good year for the domestic mills and the service centre producers, even though the Canadian market was negatively impacted by the global recession that started in the fourth quarter of 2008.⁷⁷ Both the Tribunal's adjusted price estimates of the average unit selling price of the domestic mills and the average unit selling price of the service centre producers were lower than the average unit selling price of the subject goods; however, they increased by 34 percent and 28 percent, respectively, from 2007. This increase in the Tribunal's adjusted price estimates of the average unit selling price of the domestic mills was more than sufficient to cover the total amount of the increase in the unit cost of goods sold of the domestic mills from 2006 to 2008, including the significant company-specific cost increases in 2007 and 2008 that they would not normally have been expected to cover.⁷⁸ As was the case for 2006 and 2007, there was not enough information on the record for the Tribunal to compare the average unit selling price of the service centre producers to their unit cost of goods sold for 2008.

120. Only Essar Algoma and SSAB filed injury allegations against the subject goods for 2008. Essar Algoma submitted one import activity report for each of the months of May, July, September and October. SSAB submitted two import activity reports, one for September and one for October.⁷⁹ While these import activity reports indicate that there were individual sales of the subject goods at lower prices than those of the domestic mills, the Tribunal is of the view that the price differentials for these particular offers/transactions were in amounts that could be accounted for by non-price factors. The Tribunal also notes that there appear to have been some supply issues for the domestic mills during 2008, as evidenced by the transfer of some domestically produced carbon steel plate from internal processing to the merchant market, the capacity increase of the domestic mills and the increase in the volume of higher-priced imports of the subject goods in the Canadian market in 2008.⁸⁰ These apparent supply issues could have been responsible for the increase in sales of the subject goods.

75. Tribunal Exhibit NQ-2009-003-39.07 (single copy), Administrative Record, Vol. 7 at 87, 89, 91, 93, 95, 97, 99, 101, 103, 105, 107, 109.

76. *Ibid.*

77. *Transcript of Public Hearing*, Vol. 1, 5 January 2010, at 93, 100; *Transcript of In Camera Hearing*, Vol. 1, 5 January 2010, at 25.

78. *Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-06A, Administrative Record, Vol. 1.1 at 214-15; *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2009-003-07 (protected), Administrative Record, Vol. 2.1 at 70, 159-61; *Protected Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-07A (protected), Administrative Record, Vol. 2.1 at 214.

79. Tribunal Exhibit NQ-2009-003-20.01 (protected), Administrative Record, Vol. 4 at 100-101; Manufacturer's Exhibit A-03 (protected) at paras. 70-73, confidential attachment 1 at 14-17, Administrative Record, Vol. 12; Manufacturer's Exhibit A-04 at paras. 70-73, Administrative Record, Vol. 11.

80. *Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-06A, Administrative Record, Vol. 1.1 at 209; *Protected Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-07A (protected), Administrative Record, Vol. 2.1 at 202, 208, 214, 226.

121. Furthermore, although as indicated above, the injury allegations suggest that there was probably some price undercutting in specific offers or sales, the Tribunal does not consider that, for the year as a whole, there was price undercutting or resulting price-based injurious effects by the subject goods.

122. First, as discussed above, it is not clear to what extent these injury allegations are representative of offers and transactions for the year as a whole.

123. Second, the average unit selling prices for the benchmark product in 2008 show that, in two of four quarters, the average unit selling price of imports of the subject goods was below that of the domestic mills. For these two quarters, the Tribunal is of the view that the magnitude of these price differentials can be accounted for by non-price factors. While the average unit selling prices for the benchmark product of the service centre producers were consistently lower than those of imports of the subject goods,⁸¹ as indicated above, this comparison is not likely to be meaningful due to product differences.

124. Accordingly, the Tribunal does not consider that imports of the subject goods depressed or undercut the prices of the domestic mills or service centre producers, nor did they suppress the prices of the domestic mills in 2008.

Interim period 2009

125. A comparison of world prices for carbon steel plate reveals that, in the first five months of interim period 2009, the EU price continued to be lower than the North American price before increasing slightly above the North American price in June.⁸² The U.S. price was higher than the Canadian price for three months of interim period 2009 (February to April) and the Canadian price was higher than the U.S. price for the other three months of interim period 2009 (January, May and June).⁸³

126. This was an unusual time for the Canadian market because of the global recession, which continued in interim period 2009. The Tribunal accepts the domestic mills' submissions that it was also an unusual time due to the small volume of subject goods that entered the Canadian market as a result of the chill caused by the filing of Essar Algoma's complaint with the CBSA and the commencement of the Tribunal's injury inquiry.

127. For interim period 2009, the Tribunal's adjusted price estimates of the average unit selling price of the domestic mills and the average unit selling price of the service centre producers were lower than the average unit selling price of the subject goods. The Tribunal's adjusted price estimates of the average unit selling price of the domestic mills and the average unit selling price of the service centre producers reached their lowest level of the entire POI. Comparing interim period 2009 to interim period 2008, while the adjusted average unit selling price of the domestic mills decreased by 12 percent, the average unit selling price of the service centre producers decreased by 17 percent and that of the subject goods declined by 10 percent. That 12 percent reduction in the average unit selling price of the domestic mills left them unable

81. *Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-06A, Administrative Record, Vol. 1.1 at 222; *Protected Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-07A (protected), Administrative Record, Vol. 2.1 at 222.

82. Tribunal Exhibit NQ-2009-003-39.08 (single copy), Administrative Record, Vol. 7 at 112, 114, 116, 118, 120, 122.

83. *Ibid.*

to recover the significant increase in their unit cost of goods sold.⁸⁴ However, the Tribunal is of the view that almost all the increase in the unit cost of goods sold of the domestic mills was caused by a 42 percent loss in sales volume that cannot be attributed to the subject goods for the reasons provided above. The Tribunal was unable to determine whether the service centre producers were in position to cover their unit cost of goods sold with their depressed average unit selling price because they submitted incomplete financial information to the Tribunal for interim period 2009.

128. For the three months of interim period 2009 when Canadian prices were higher than U.S. prices, the Tribunal considers that U.S. prices would have limited the domestic mills' and the service centre producers' ability to increase and maintain their prices, regardless of the pricing of the subject goods. The decrease in demand due to the global recession would have increased the pressure to keep prices low.

129. With respect to the domestic industry's injury allegations for 2009, only one was submitted by Essar Algoma and one by SSAB.⁸⁵ The Tribunal does not consider that these injury allegations can be representative of offers and transactions for the entire interim period. The injury allegation submitted by SSAB was for January, a month when, as indicated above, the U.S. price would have limited the domestic mills' ability to maintain and increase prices.

130. With respect to sales of the benchmark product, the Tribunal observes that the average unit selling prices of the domestic mills and the service centre producers were lower than the average unit selling price of the subject goods in the first and second quarters of 2009. While the price differentials were small in the first quarter of 2009, they were significant in the second quarter.⁸⁶

131. On the basis of the foregoing, the Tribunal does not consider that the subject goods depressed, undercut or suppressed the prices of the domestic mills or the service centre producers in interim period 2009.

Conclusion

132. In summary, the Tribunal concludes that, in 2006, the subject goods depressed the prices of the domestic mills and the service centre producers and that, in the first four months of 2007, they may have depressed the prices of the domestic mills and the service centre producers and suppressed the prices of the domestic mills. However, for the remainder of the POI, i.e. from May 2007 to June 2009, the Tribunal finds that the subject goods did not significantly erode, depress, undercut or suppress the prices of the domestic industry.

84. *Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-06A, Administrative Record, Vol. 1.1 at 209, 214-15; *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2009-003-07 (protected), Administrative Record, Vol. 2.1 at 70; *Protected Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-07A (protected), Administrative Record, Vol. 2.1 at 208, 214.

85. Tribunal Exhibit NQ-2009-003-20.01 (protected), Administrative Record, Vol. 4 at 105; Manufacturer's Exhibit A-03 (protected) at para. 74, confidential attachment 1 at 18, Administrative Record, Vol. 12; Manufacturer's Exhibit A-04 at para. 74, Administrative Record, Vol. 11.

86. *Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-06A, Administrative Record, Vol. 1.1 at 222; *Protected Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-07A (protected), Administrative Record, Vol. 2.1 at 222.

Impact of Dumped Imports on the Domestic Industry

133. Pursuant to paragraph 37.1(1)(c) of the *Regulations*, the Tribunal will now consider the impact of the dumped goods in light of all relevant economic factors and indices that have a bearing on the state of the domestic industry.

134. The domestic mills submitted that sales of the subject goods resulted in lost sales and market share, a deterioration of their financial performance at the gross margin level, an underutilization of their production capacity, and a reduction in their employment and productivity. One of the four service centre producers claimed that, as low-priced imports of the subject goods drove down overall market prices, it suffered injury in the form of price erosion and price suppression, which resulted in lost sales, a devaluation of its inventory, and reduced revenues and gross margins.⁸⁷

Domestic Sales and Market Share

135. As discussed above, the subject goods did not gain sales volume or market share over the POI.

136. In 2006, the volume of imports of low-priced subject goods was at its highest level of the entire POI. Despite this, the domestic mills were able to sell their second largest volume, and the service centre producers, their largest volume, of like goods during the POI.⁸⁸ The Tribunal does not have any data for 2005 for comparison purposes, but, as indicated above, in light of the price undercutting and price depression caused by low-priced imports of the subject goods, the Tribunal considers it reasonable to conclude that the domestic mills lost some sales at the expense of imports of the subject goods in 2006. Given the fact that the service centre producers generally sell a product that is different from the subject goods, it is unlikely that they lost any sales to subject goods.

137. In 2007, while the overall market demand increased by 5 percent, sales volumes by the domestic mills and the service centre producers decreased by 4 percent and 23 percent respectively. In comparison, the sales volume of imports of the subject goods decreased by 31 percent and that of imports from the United States increased by 54 percent. This gain in sales volume of imports from the United States translated into a 16 percentage point increase in market share at the expense of the domestic mills, the service centre producers and the subject goods.⁸⁹ Therefore, it is clear that, in 2007, imports of the subject goods were not responsible for any lost sales volume or market share by the domestic industry.

138. In 2008, the domestic mills increased their sales volume by 9 percent and their market share to reach their highest levels of the POI. The service centre producers increased their sales volume by 3 percent and their market share nominally. These gains were made at the expense of imports from the United States and other non-subject countries. The domestic mills and the service centre producers were able to gain market share even though the overall market shrank by 7 percent. Although the subject goods increased their sales volume by 41 percent in 2008, it was less than that in 2006. Their market share increased only minimally, regaining the 2006 level. There was no loss of sales by the domestic mills that, in the Tribunal's

87. *Transcript of Public Hearing*, Vol. 2, 6 January 2010, at 170-71.

88. *Protected Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-07A (protected), Administrative Record, Vol. 2.1 at 208.

89. *Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-06A, Administrative Record, Vol. 1.1 at 209-210; *Protected Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-07A (protected), Administrative Record, Vol. 2.1 at 208, 210.

view, could be reasonably attributable to the subject goods, given the data on sales volume and market share and the fact that, as discussed above, the Tribunal does not consider that there was price undercutting by the subject goods in 2008.⁹⁰

139. In interim period 2009, the sales volume of the domestic mills and the service centre producers decreased by 42 percent and 47 percent, respectively, compared to interim period 2008, while the sales volume of imports of the subject goods declined by 69 percent to almost nothing. However, despite a lack of demand and a depressed Canadian market, the domestic mills and the service centre producers managed to capture market shares that were very similar to those achieved in 2008.⁹¹ In addition, as discussed above, the Tribunal does not consider that there was price undercutting in interim period 2009 that might lead to lost sales volume or market share. Therefore, it is clear that there was no loss of domestic sales or market share at the hands of the subject goods in interim period 2009.

140. Essar Algoma submitted that, had it not been for imports of the subject goods, the domestic mills could have increased their sales volume by a percentage of imports of the subject goods proportionate to the domestic mills' market share.⁹² While the Tribunal considers, as discussed earlier, that imports of the subject goods probably had a negative impact on the domestic mills' sales volume in 2006, it does not agree with Essar Algoma's underlying assumption. In the Tribunal's view, Essar Algoma cannot assume that, in the absence of imports of the subject goods, the domestic mills would have captured that much market share, given the competitive position of product from other countries, particularly the United States, and the desire by some market participants to have an offshore source available.⁹³

141. In summary, the Tribunal is of the view that the price undercutting in 2006 probably caused the domestic mills to lose sales volume and market share. For the remainder of the POI, any losses of sales volume and market share to sales of the subject goods were caused by other factors.

Financial Results

142. The year 2006 was, for the domestic mills, the second most profitable year of the entire POI, at the gross margin aggregate level, after 2008, and the most profitable one, at the net income level, both on an aggregate and a per-unit basis. However, this profitability does not necessarily preclude the domestic mills from being injured if they were less profitable than they would have been in the absence of the subject goods. The evidence indicates that, in 2006, the domestic mills were less profitable than they would have been in the absence of the subject goods because they suffered a loss of sales volume and unit sales revenue due to the price undercutting and price depression caused by the subject goods.⁹⁴

90. *Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-06A, Administrative Record, Vol. 1.1 at 208-210, 214; *Protected Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-07A (protected), Administrative Record, Vol. 2.1 at 208-210, 214.

91. *Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-06A, Administrative Record, Vol. 1.1 at 209; *Protected Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-07A (protected), Administrative Record, Vol. 2.1 at 208, 210.

92. Manufacturer's Exhibit A-05 (protected) at paras. 7-20, confidential attachment 4, Administrative Record, Vol. 12; Manufacturer's Exhibit A-06 at paras. 7-20, Administrative Record, Vol. 11.

93. *Transcript of Public Hearing*, Vol. 2, 6 January 2010, at 151, 165, 171; *Transcript of Public Hearing*, Vol. 3, 7 January 2010, at 225.

94. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2009-003-07 (protected), Administrative Record, Vol. 2.1 at 70.

143. In 2007, the domestic mills' profitability, at the gross margin level, on an aggregate and a per-unit basis, decreased from that in 2006; however, they managed to remain profitable. Their cost of goods sold was increasing, but they were not able to raise their average unit selling price to cover this higher unit cost of goods sold. At the net income level, the domestic mills reported negative returns both on an aggregate and a per-unit basis.⁹⁵ However, the Tribunal notes that a significant portion of the cost increases reflected in the returns at both the gross margin and net income levels appears to be types of company-specific costs that would not normally be expected to be recovered in price increases.⁹⁶ As discussed above, in the Tribunal's view, any negative returns reported by the domestic mills in the first four months of the year may well have been due to the price depression and price suppression caused by the subject goods. However, for the remainder of the year, the Tribunal considers that the subject goods caused little or no injurious effect to the financial results of the domestic mills.

144. The year 2008, especially the first six months, was very profitable for the domestic mills. For 2008 as a whole, even though the global recession started in the fourth quarter, the domestic mills were able to improve significantly their profitability from 2007 at the gross margin level, both on an aggregate and a per-unit basis. At the net income level, the domestic mills were able to turn their loss into a gain, both on an aggregate and a per-unit basis. In interim period 2008, the domestic mills achieved, on a per-unit basis, their highest gross margin and second largest net income of the POI, after 2006. As discussed above, they increased their average unit selling price significantly from 2007, allowing them to cover their increased unit cost of goods sold, including company-specific increases that they would not normally expect to cover, and cover increases from 2006 to 2007 that they had been unable to cover in 2007.⁹⁷ The Tribunal does not consider that imports of the subject goods had any injurious effects on the domestic mills' financial results, as they did not depress, undercut or suppress the prices of the domestic mills in 2008.

145. Starting in late 2008, the global recession caused a significant reduction in the demand for steel, which led to a collapse of the Canadian carbon steel plate market late in 2008 and in interim period 2009. In interim period 2009, the domestic mills saw their worst financial performance of the entire POI. They recorded a negative return at the gross margin level, both on an aggregate and a per-unit basis. They also saw their largest loss of the entire POI at the net income level, both on an aggregate and a per-unit basis. This poor financial performance by the domestic mills was a result of having their lowest average unit net selling price and highest unit cost of goods sold of the POI. These results were undoubtedly influenced significantly by the domestic mills' largest loss of sales volume of the POI, which decreased by 42 percent from interim period 2008.⁹⁸ However, the Tribunal does not consider that the negative results reported by the domestic mills in interim period 2009 were the result of the price undercutting, price depression or price suppression caused by the subject goods.

146. With respect to the service centre producers, the Tribunal heard testimony from one service centre producer that, in reaction to low-priced imports of the subject goods, it had to sell its product at lower prices, which resulted in reduced revenues and margins at some points during the POI.⁹⁹ However, the same service centre producer and two others also testified that they were profitable over the POI, except for 2009

95. *Ibid.*

96. *Ibid.* at 159-61.

97. *Ibid.* at 70, 159-61.

98. *Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-06A, Administrative Record, Vol. 1.1 at 209; *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2009-003-07 (protected), Administrative Record, Vol. 2.1 at 70; *Protected Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-07A (protected), Administrative Record, Vol. 2.1 at 208.

99. *Transcript of Public Hearing*, Vol. 2, 6 January 2010, at 170-71; *Transcript of In Camera Hearing*, Vol. 2, 6 January 2010, at 111.

due to the recession.¹⁰⁰ Furthermore, as mentioned previously, the service centre producers did not compete directly with imports of the subject goods during the POI due to the difference in product range. Finally, as indicated above, the service centre producers did not provide the Tribunal with complete financial information to use in its analysis.

Capacity Utilization, Employment and Productivity

147. Comparing 2007 to 2006, both the production capacity and capacity utilization of the domestic mills decreased slightly. However, in 2008, the domestic mills increased their production capacity significantly and, despite this, were able to achieve a capacity utilization rate of 32 percent, which was only 2 percentage points lower than that of 2007. Indeed, the sales data appear to indicate that the domestic mills transferred some of their carbon steel plate production from internal processing to sales on the merchant market in 2008. From interim period 2008 to interim period 2009, while the domestic mills' capacity was constant, their utilization rate decreased by half from 40 percent, the highest utilization rate of the entire POI, to 20 percent, the lowest utilization rate of the entire POI.¹⁰¹

148. The production capacity of the service centre producers increased in every period of the POI, save interim period 2009. Their utilization rate decreased by 5 percentage points in 2007 over 2006 and increased by 2 percentage points in 2008. In interim period 2008, the capacity utilization rate of the service centre producers was at 38 percent, and, in interim period 2009, it was at 25 percent, their lowest capacity utilization rate of the entire POI.¹⁰²

149. Given the Tribunal's conclusion that, as discussed above, the subject goods had an injurious effect on the domestic mills in 2006 and, potentially, in the first four months of 2007, the Tribunal considers that the subject goods may have contributed to the minimal decrease in capacity utilization and capacity utilization rate that the domestic mills experienced in 2007.

150. With respect to employment, the data on the record show that the domestic mills increased their direct employment by 13 percent in 2007 over 2006 and by 10 percent in 2008 over 2007. In interim period 2009, direct employment decreased by 37 percent over interim period 2008.¹⁰³ The employment of the service centre producers decreased by 10 percent in 2007 over 2006, remained stable in 2008 and then decreased by 11 percent in interim period 2009.¹⁰⁴ Accordingly, the Tribunal does not consider that the domestic mills suffered any injurious effect on their employment at the hands of the subject goods during the POI. Given the fact that the service centre producers do not compete directly with the subject goods due to their product range, it is unlikely that their decreases in employment were a result of imports of the subject goods.

100. *Transcript of Public Hearing*, Vol. 3, 7 January 2010, at 227; *Transcript of In Camera Hearing*, Vol. 1, 5 January 2010, at 88-89, 109, 138-39.

101. *Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-06A, Administrative Record, Vol. 1.1 at 202; *Protected Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-07A (protected), Administrative Record, Vol. 2.1 at 202, 208, 226.

102. *Addendum to Pre-hearing Staff Report*, Tribunal Exhibit NQ-2009-003-06B, Administrative Record, Vol. 1.1 at 298; *Protected Addendum to Pre-hearing Staff Report*, Tribunal Exhibit NQ-2009-003-07B (protected), Administrative Record, Vol. 2.1 at 303.

103. *Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-06A, Administrative Record, Vol. 1.1 at 223; *Protected Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-07A (protected), Administrative Record, Vol. 2.1 at 224.

104. *Addendum to Pre-hearing Staff Report*, Tribunal Exhibit NQ-2009-003-06B, Administrative Record, Vol. 1.1 at 290; *Protected Addendum to Pre-hearing Staff Report*, Tribunal Exhibit NQ-2009-003-07B (protected), Administrative Record, Vol. 2.1 at 295.

151. The domestic mills' productivity, in terms of tonnes per employee and tonnes per hour worked, decreased by 12 percent each in 2007 over 2006, while their production decreased by 2 percent and their sales in the Canadian market decreased by 4 percent. In 2008, the domestic mills' productivity decreased by 4 percent in terms of tonnes per employee, but increased by 17 percent in terms of tonnes per hour worked. At the same time, their production and sales in the Canadian market increased by 8 percent and 9 percent respectively. In interim period 2009, with the significant reduction in demand in the Canadian carbon steel plate market, the domestic mills' productivity, in terms of tonnes per employee and tonnes per hour worked, decreased by 20 percent and 56 percent respectively, and their production and sales in the Canadian market declined by 49 percent and 42 percent respectively.¹⁰⁵ However, the evidence does not link the decline in productivity to the injurious effects of the subject goods in the first four months of 2007.

152. The service centre producers' productivity, in terms of both tonnes per employee and tonnes per hour worked, increased in every year from 2006 to 2008, for a total gain of 11 percent and 20 percent respectively. In interim period 2009, during the economic downturn, their productivity decreased by 33 percent in terms of tonnes per employee and by 21 percent in terms of tonnes per hour worked.¹⁰⁶ Because imports of the subject goods did not take sales from the service centre producers, as discussed above, they had no injurious effect on the service centre producers' productivity during the POI.

Other Indicators

153. Paragraph 37.1(1)(c) of the *Regulations* prescribes that the Tribunal consider certain other factors, in addition to those discussed above, in its assessment of the impact of the dumped goods on the domestic industry. These factors include actual or potential decline in return on investment, negative effects on cash flow, inventories, wages, growth or the ability to raise capital, and the magnitude of the margin of dumping in respect of the dumped goods.

154. The Tribunal considers that the price depression and price suppression caused by the subject goods during the POI probably negatively affected the domestic mills' cash flow. However, the Tribunal is of the view that any negative effect experienced by the domestic mills on this factor at the hands of imports of the subject goods was confined to 2006 and the first four months of 2007.

155. Investments by the domestic mills more than doubled in 2007 over 2006 before decreasing in 2008 to a level that exceeded the investments made in 2006. The domestic mills' projection for the full year 2009 was to invest at almost the same rate as that in 2006.¹⁰⁷ The Tribunal therefore considers that imports of the subject goods did not have any injurious effects on the domestic mills' investments. With respect to the service centre producers' investments during the POI, the Tribunal has insufficient evidence to determine any impact of the subject goods.

105. *Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-06A, Administrative Record, Vol. 1.1 at 202-203, 208-209, 224; *Protected Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-07A (protected), Administrative Record, Vol. 2.1 at 208, 225.

106. *Addendum to Pre-hearing Staff Report*, Tribunal Exhibit NQ-2009-003-06B, Administrative Record, Vol. 1.1 at 297; *Protected Addendum to Pre-hearing Staff Report*, Tribunal Exhibit NQ-2009-003-07B (protected), Administrative Record, Vol. 2.1 at 302.

107. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2009-003-07 (protected), Administrative Record, Vol. 2.1 at 81.

156. Essar Algoma submitted that it had to write down its inventory during the POI due to the impact of the subject goods on overall market pricing. The evidence indicates that the value of the domestic mills' inventory fluctuated throughout the POI, as did raw material costs.¹⁰⁸ The Tribunal considers that any inventory write-downs during 2006 and the first four months of 2007 would have been attributable at least partially to decreases in raw material costs and could also have been attributable partially to imports of the subject goods.

157. One service centre producer argued that it suffered a devaluation of its inventory due to the impact of the subject goods on overall market pricing. However, there is not enough information on the record for the Tribunal to assess any such devaluation, including the extent to which it affected domestically produced as opposed to imported product.¹⁰⁹

158. Wages of domestic mills' employees directly involved in the production of carbon steel plate decreased by only 2 percent from 2006 to 2007, then increased by 20 percent from 2007 to 2008, to reach their highest level of the POI, and finally decreased by 37 percent from interim period 2008 to interim period 2009.¹¹⁰ Wages of service centre producers' employees directly involved in the production of carbon steel plate decreased by 8 percent from 2006 to 2007 and then increased by 4 percent in 2008, to reach almost the level achieved in 2006. In interim period 2009, their wages decreased by 14 percent.¹¹¹ The Tribunal notes that the decrease in wages of both the domestic mills' employees and the service centre producers' employees in 2007 was small. The evidence does not indicate any linkage between the decrease in wages and the injurious impact of the subject goods during the period in which the Tribunal considers that this injurious impact occurred.

159. With respect to the magnitude of the margin of dumping, the CBSA estimated a weighted average margin of dumping of 19.1 percent, when expressed as a percentage of the export price.¹¹² In the Tribunal's view, the magnitude of this margin is not necessarily a measure of the level of any injurious effects that may have occurred during the POI and does not add anything to the analysis of relative pricing done above.

Materiality

160. The Tribunal will now determine whether these injurious effects of imports of the subject goods are "material", as contemplated in the definition of "injury" under *SIMA*. As indicated above, the Tribunal considers that both the extent of injurious effects during the relevant time frame and the timing and duration of the injurious effects are relevant considerations in determining whether the injurious effects are "material".

108. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2009-003-06, Administrative Record, Vol. 1.1 at 65; *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2009-003-07 (protected), Administrative Record, Vol. 2.1 at 190-91.

109. *Transcript of Public Hearing*, Vol. 2, 6 January 2010, at 171; *Transcript of In Camera Hearing*, Vol. 2, 6 January 2010, at 110.

110. *Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-06A, Administrative Record, Vol. 1.1 at 223; *Protected Pre-hearing Staff Report* revised 29 December 2009, Tribunal Exhibit NQ-2009-003-07A (protected), Administrative Record, Vol. 2.1 at 224.

111. *Addendum to Pre-hearing Staff Report*, Tribunal Exhibit NQ-2009-003-06B, Administrative Record, Vol. 1.1 at 290; *Protected Addendum to Pre-hearing Staff Report*, Tribunal Exhibit NQ-2009-003-07B (protected), Administrative Record, Vol. 2.1 at 295.

112. Tribunal Exhibit NQ-2009-003-04A, Administrative Record, Vol. 1 at 76.30.

161. As discussed above, the Tribunal concludes that, in 2006 and the first four months of 2007, imports of the subject goods had injurious effects on the domestic mills in the form of price depression, price undercutting, price suppression, lost sales, loss of market share, reduced profitability and negative impact on cash flow and capacity utilization, and, on the service centre producers, in the form of price depression.

162. The Tribunal considers that, as discussed earlier, there were several factors at play in this time frame that limited these injurious effects. These factors include limitations on quality, product range and geographical availability of the subject goods, longer (and sometimes uncertain) delivery times for the subject goods and circumstances in which the impact of the subject goods on domestic production was indirect.

163. Essar Algoma submitted an estimate of the financial magnitude of the injurious effects of the subject goods.¹¹³ This estimate appears to assume that the injurious effects of imports of the subject goods were experienced by the three domestic mills equally, on prices for all sales of all products, even parts of the product range not sourced in Ukraine, in all geographical locations (even in Western Canada, although the subject goods were not sold there), throughout all calendar years and that the injurious effects experienced by the three domestic mills throughout the POI were caused entirely by imports of the subject goods. As discussed in the analysis above, the Tribunal does not agree with these assumptions. Therefore, the Tribunal does not consider that Essar Algoma's estimate is a reliable indicator of the magnitude of the injury.

164. The Tribunal's injury analysis has focused primarily on injury to the domestic mills on their sales in the Canadian market. *SIMA* requires the Tribunal to assess the materiality of this injury in relation to the total domestic production by the domestic industry, i.e. production by both the domestic mills and the service centre producers, for sales in the domestic market, export sales and internal consumption. The Tribunal notes that the domestic sales by the domestic mills accounted for close to 50 percent of the total domestic industry's production throughout the POI.¹¹⁴ Therefore, the domestic sales of the domestic mills constitute a large proportion of the total production of the domestic industry.

165. The Tribunal will now consider the timing and duration of the injurious effects, as indicated above. As mentioned previously, the Tribunal considers that the subject goods caused injurious effects only in 2006 and potentially in the first four months of 2007. In the Tribunal's view, the subject goods did not cause injurious effects in the period of over two years from May 2007 to the end of the POI. The injurious effects of imports of the subject goods could have been significant in relation to the domestic production in the context of the period in which they occurred. However, the Tribunal does not consider that these injurious effects constitute material injury as contemplated by section 42 of *SIMA*, given that they occurred over a period of only 16 months during the POI and ceased more than two years before the end of the POI.

Conclusion

166. On the basis of the foregoing analysis, the Tribunal finds that the dumping of the subject goods has not caused injury to the domestic industry.

113. Manufacturer's Exhibit A-05 (protected) at paras. 5-29, confidential attachments 2-4, Administrative Record, Vol. 12; Manufacturer's Exhibit A-06 at paras. 5-29, Administrative Record, Vol. 11.

114. *Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-06A, Administrative Record, Vol. 1.1 at 202; *Protected Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-07A (protected), Administrative Record, Vol. 2.1 at 208.

THREAT OF INJURY

167. Having found that the dumping of the subject goods has not caused injury, the Tribunal must now consider whether they are threatening to cause injury. Subsection 37.1(2) of the *Regulations* prescribes factors to be taken into account for the purposes of the Tribunal's analysis concerning threat of injury. Subsection 2(1.5) of *SIMA* provides that a finding of threat of injury cannot be made unless the circumstances in which the dumping and subsidizing of the goods would cause injury are clearly foreseen and imminent.

168. In conducting its analysis of threat of injury, the Tribunal typically considers a time frame of 18 to 24 months from the date of its finding. In the present case, the Tribunal will focus on the period covering the balance of 2010 and 2011, to the extent of the information on the record.

169. The factors prescribed by subsection 37.1(2) of the *Regulations* are as follows:

- (a) the nature of the subsidy in question and the effects it is likely to have on trade;¹¹⁵
- (b) whether there has been a significant rate of increase of dumped or subsidized goods imported into Canada, which rate of increase indicates a likelihood of substantially increased imports into Canada of the dumped or subsidized goods;
- (c) whether there is sufficient freely disposable capacity, or an imminent, substantial increase in the capacity of an exporter, that indicates a likelihood of a substantial increase of dumped or subsidized goods, taking into account the availability of other export markets to absorb any increase;
- (d) the potential for product shifting where production facilities that can be used to produce the goods are currently being used to produce other goods;
- (e) whether the 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 and are likely to increase demand for further imports of the goods;
- (f) inventories of the goods;
- (g) the actual and potential negative effects on existing development and production efforts, including efforts to produce a derivative or more advanced version of like goods;
- (g.1) the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods;
- (g.2) evidence of the imposition of anti-dumping or countervailing measures by the authorities of a country other than Canada in respect of goods of the same description or in respect of similar goods; and
- (h) any other factors that are relevant in the circumstances.

Significant Rate of Increase of Dumped Goods

170. The Tribunal first examined the rate of increase of dumped goods imported into Canada during the POI. As discussed above in the injury analysis, there was not a significant rate of increase of dumped goods over the POI, either in absolute or in relative terms.

115. This factor is not applicable, as this inquiry only concerns the dumping of the subject goods.

Freely Disposable Capacity of an Exporter

171. The domestic mills submitted that the production of carbon steel plate in Ukraine is, and has been in the recent past, export-oriented and that Ukraine possesses large freely disposable capacity.¹¹⁶ The evidence indicates that Ukraine has a steel plate production capacity of approximately 5.5 million tonnes.¹¹⁷ During the 2006-2008 period, more than 3 million tonnes of carbon steel plate were sold in export markets each year, on average.¹¹⁸ This large volume of exports (approximately three times the size of the Canadian market) appears to indicate that Ukraine is export-oriented. This conclusion appears to be consistent with the evidence that the overall size of the home market for steel in Ukraine is small.¹¹⁹

172. The evidence also indicates that Ukrainian producers reduced production in response to the decrease in demand due to the global recession. The evidence shows that, as of June 2009, the steel capacity utilization in Ukraine was less than 60 percent.¹²⁰ While these data cover a wider range of products than the subject goods, the Tribunal believes that it is likely to be a good general indicator of the recent capacity utilization for the subject goods.

173. To help steel producers maintain their competitiveness¹²¹ in times of decreased demand,¹²² Ukrainian authorities enacted measures to limit certain costs.¹²³ These measures, together with significant decreases in the cost of raw materials, allowed producers to reduce their production costs by more than 50 percent between August 2008 and May 2009.¹²⁴

174. The evidence shows that domestic demand is forecast to improve over the next two years¹²⁵ as the global recession ends, although demand in North America is expected to recover more slowly than in the rest of the world.¹²⁶ In 2010, as discussed below, prices in North America are forecast to be well over US\$100/tonne higher than in Europe.¹²⁷ Ukrainian producers will be well positioned to increase carbon steel plate exports significantly in response to the increased demand, given their large available capacity, export orientation and current cost structure. Given the large differential between forecast North American and EU prices, it is likely that Ukrainian producers will target North America for a significant increase in sales.

116. Manufacturer's Exhibit A-01 (protected), confidential attachment 12, Administrative Record, Vol. 12; Manufacturer's Exhibit B-03, tab 10 at 56, Administrative Record, Vol. 11; *Transcript of Public Hearing*, Vol. 1, 5 January 2010, at 34-36, 115-18, 122-23; *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2009-003-07 (protected), Administrative Record, Vol. 2.1 at 85.

117. *Transcript of Public Hearing*, Vol. 1, 5 January 2010, at 115-17. The witness estimated plate capacity in Ukraine at 6.1 million English tons. This figure has been converted to metric tonnes by the Tribunal. The witness's estimate is based on a statement of reasons issued by the CBSA in *Certain Hot-rolled Carbon Steel Plate* and on recent data found on the Ukrainian government's Web site.

118. Manufacturer's Exhibit A-02, attachment 14 at 1, Administrative Record, Administrative Record, Vol. 11.

119. Manufacturer's Exhibit B-03, tab 7 at 49, Administrative Record, Vol. 11.

120. *Ibid.* at 47.

121. Tribunal Exhibit NQ-2009-003-39.12, Administrative Record, Vol. 1A at 0.7.

122. Manufacturer's Exhibit A-02, attachments 10, 13, Administrative Record, Vol. 11; Manufacturer's Exhibit B-03, tab 8 at 53-54, tab 9 at 55, tab 10 at 56, Administrative Record, Vol. 11; *Transcript of Public Hearing*, Vol. 1, 5 January 2010, at 140.

123. These included a moratorium on raising gas, electricity and railway tariffs for steel and iron ore manufacturers. Tribunal Exhibit NQ-2009-003-39.12, Administrative Record, Vol. 1A at 0.7.

124. Manufacturer's Exhibit B-03, tab 7 at 50, Administrative Record, Vol. 11.

125. Manufacturer's Exhibit A-01 (protected), confidential attachment 7, Administrative Record, Vol. 12; *Transcript of Public Hearing*, Vol. 2, 6 January 2010, at 197-98.

126. Tribunal Exhibit NQ-2009-003-39.13, Administrative Record, Vol. 1A at 0.25-0.26.

127. Manufacturer's Exhibit A-01 (protected), confidential attachment 7, Administrative Record, Vol. 12.

175. The Tribunal notes the continuing interest of Ukrainian producers in the North American market, as evidenced by their continuing exports to the United States and Canada over the POI¹²⁸ and their existing distribution network. As the United States and Mexico currently have in place anti-dumping measures against Ukraine, in the absence of a trade measure, Canada would remain the only market in North America capable of absorbing significant amounts of Ukraine's excess capacity. Furthermore, two major importers testified that they are ready to source again from Ukraine if not constrained by anti-dumping measures.¹²⁹

Potential for Product Shifting

176. There were no arguments made that there is a potential for product shifting, whereby production facilities that can be used to produce the subject goods are currently being used to produce other goods. The evidence does not indicate that this factor is likely to be significant.

Prices of Imported Subject Goods Likely to Have a Significant Suppressive or Depressive Effect

177. The domestic mills submitted that the pricing model used by importers of the subject goods is to undercut the prices of the mills, which pressures the mills to reduce their prices to make sales.

178. The Tribunal's analysis concerning injury, above, indicates that very different market behaviours were shown during the POI. In 2006, the prices of the subject goods were set much lower than the prices of the competing like goods, causing the domestic mills to lose sales and suffer price erosion. In 2007, the price differential disappeared as the year progressed, as importers increased the prices of the subject goods and the domestic mills lowered their prices, suffering some price suppression and price depression in the process. In 2008 and during interim period 2009, the subject goods were more expensive than the domestic mills' like goods. For their part, the service centre producers sold their like goods at prices that were generally lower than the domestic mills' prices during the POI.¹³⁰

179. The question is which period of the POI is most indicative of what would happen to prices if the subject goods were not constrained by anti-dumping measures.

180. The Tribunal examined the price differentials between North America and the European Union in order to answer this question. This is because it is reasonable to expect that exports of the subject goods will come to Canada in significant quantities if the price differentials with the European Union are high enough to overcome the higher freight rates to transport carbon steel plate to North America. The Tribunal notes that, in 2007, the only year of the POI when EU prices were, on a month-to-month basis, consistently higher than North American prices, exports of the subject goods to Canada decreased.

181. As noted previously, the price differentials between North America and the European Union varied over the POI. In 2006, the North American price was, on average, about CAN\$50/tonne higher than the EU price. In 2007, on average, the EU price was CAN\$92/tonne higher than the North American price. In the first four months of 2008, the EU price continued to be higher than the North American price, but, starting in May and continuing until the end of the year, the trend was reversed. In the first five months of interim period 2009, the EU price continued to be lower than the North American price, before increasing slightly above the North American price in June.

128. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2009-003-06, Administrative Record, Vol. 1.1 at 86.

129. *Transcript of Public Hearing*, Vol. 3, 7 January 2010, at 246, 248-49; *Transcript of Public Hearing*, Vol. 4, 12 January 2010, at 291; *Transcript of In Camera Hearing*, Vol. 3, 7 January 2010, at 163; *Transcript of In Camera Hearing*, Vol. 4, 12 January 2010, at 204.

130. *Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-06A, Administrative Record, Vol. 1.1 at 214; *Protected Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-07A (protected), Administrative Record, Vol. 2.1 at 214.

182. In 2010, as in 2006, carbon steel plate prices in North America are forecast to be higher than in the European Union. For 2010 and 2011, as indicated above, this price differential is estimated to be well over US\$100/tonne, a significantly larger differential than in 2006.¹³¹ On the basis of the foregoing, the Tribunal considers that, in the absence of anti-dumping measures, the period of the POI that is most likely to provide an indicator of the market behaviour over the next 24 months is 2006. In 2006, the subject goods undercut the prices of the like goods significantly. In the Tribunal's view, this is likely to occur again over the next 24 months in the absence of anti-dumping measures, causing significant price depression to the domestic mills and less significant price depression to the service centre producers. It is also likely to cause significant lost sales, considering the amount of excess capacity of the subject goods available, as discussed above. The result will likely be significant injurious effects on profitability, cash flow, capacity utilization and, potentially, employment.

Inventories, Existing Development and Production Efforts

183. There were no arguments made that, in the absence of anti-dumping measures, the subject goods would have an impact on inventories or on existing development and production efforts. The evidence does not indicate that this factor is likely to be significant for either the domestic mills or the service centre producers.

Magnitude of the Margin of Dumping

184. As indicated previously, the CBSA determined that 100 percent of the subject goods released into Canada from April 1, 2008, to March 31, 2009, were dumped at an estimated weighted average margin of dumping of 19.1 percent, when expressed as a percentage of the export price. The Tribunal is of the view that the magnitude of this margin is significant, but not necessarily a reliable measure of the level of any injurious effects that the subject goods may have on the domestic industry.

Imposition of Anti-dumping Measures by Another Country

185. The Tribunal notes that carbon steel plate from Ukraine is covered by existing trade measures by U.S. and Mexican authorities.¹³² This indicates to the Tribunal a propensity by Ukrainian producers to dump the subject goods and to dump these goods in North America particularly.

Other Factors

186. As discussed above, the United States has a significant presence in the Canadian marketplace, accounting for between 33 percent and 49 percent of all sales, in volume, during the POI. However, its average unit selling price was, for most of the POI, significantly higher than that of imports of the subject goods.¹³³ Consequently, the Tribunal is of the view that this does not indicate that the role of imports from the United States in the Canadian market would be likely to render the injury by the subject goods non-material.

131. Manufacturer's Exhibit A-01 (protected), confidential attachment 7, Administrative Record, Vol. 12.

132. Manufacturer's Exhibit B-03, tab 17 at 75, Administrative Record, Vol. 11; Tribunal Exhibit NQ-2009-003-39.10, Administrative Record, Vol. 1 at 128.

133. *Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-06A, Administrative Record, Vol. 1.1 at 210, 214; *Protected Pre-hearing Staff Report*, revised 29 December 2009, Tribunal Exhibit NQ-2009-003-07A (protected), Administrative Record, Vol. 2.1 at 214.

187. Finally, the domestic mills submitted that, with regard to two products, there were instances in the past where importers of Ukrainian carbon steel plate had circumvented existing injury findings.¹³⁴ The Tribunal is not persuaded by this submission, first, because the domestic mills did not provide direct evidence of the alleged circumvention for either product and second, because, for one product, the alleged circumvention appears to concern carbon steel plate imported from the Republic of Korea, not Ukraine.¹³⁵

Conclusion

188. The Tribunal must now consider whether, in light of these factors, there is a threat of injury to the domestic industry.

189. As indicated above, Ukraine possesses a large unused capacity, is export-oriented, has shown a continuing interest in the Canadian market¹³⁶ and has demonstrated a propensity to dump carbon steel plate in North America. The subject goods benefit from an existing distribution network in Canada, and importers are ready to source again from Ukraine if not constrained by anti-dumping measures. Furthermore, using 2006 as the most likely indicator of market behaviour over the next 24 months, the subject goods would likely come to Canada at prices that would significantly undercut the price of like goods and take significant sales away from the domestic mills.

190. The domestic mills submitted that the forecast state of the market in 2010 and 2011 is not very positive and that, consequently, they are vulnerable to injury.¹³⁷ As indicated above, the evidence shows that domestic demand is forecast to improve¹³⁸ as the global recession ends, although demand in North America is expected to recover more slowly than in the rest of the world.¹³⁹ This means that there are likely to be some continuing limitations on domestic demand over the next 24 months that could intensify price-based competition with the subject goods.

191. The domestic mills estimated that, for 2010 and 2011, it would cost them tens of millions of dollars if the subject goods are allowed to return without the protection of an injury finding.¹⁴⁰ Although the Tribunal does not consider that it has the evidence necessary to assess the accuracy of this estimate, it is nonetheless of the view that the domestic mills' profitability is going to be negatively impacted to a significant extent in the absence of an anti-dumping measure.

134. The two products are a specialty cold-weather, HIC-tested product and plate that exceeded by less than 1 mm the thickness covered by a finding. For the first product, the domestic mills submitted that, after the Tribunal granted an exclusion for this product (*Certain Hot-rolled Carbon Steel Plate* [17 May 1994], NQ-93-004 [CITT]), which had been imported until then in small volumes and at higher prices, substantial volumes were imported into Canada and sold at prices that competed with less expensive structural steel plate. In the second instance, it was submitted that, in order to avoid the imposition of anti-dumping duties, carbon steel plate with a thickness of 102 mm was imported; had it been 101.6 mm thick or less, it would have been covered by the finding in *Certain Hot-rolled Carbon Steel Plate* (27 June 2000), NQ-99-004 (CITT). *Transcript of Public Hearing*, Vol. 1, 5 January 2010, at 44-45.

135. In this regard, see *Macsteel International (Canada) Limited v. Commissioner of the Canada Customs and Revenue Agency* (16 January 2003), AP-2001-012 (CITT). This is the only instance in which an alleged circumvention was examined by the Tribunal. *Transcript of Public Hearing*, Vol. 1, 5 January 2010, at 44-45.

136. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2009-003-06, Administrative Record, Vol. 1.1 at 86.

137. *Transcript of Public Hearing*, Vol. 1, 5 January 2010, at 27.

138. Manufacturer's Exhibit A-01 (protected), confidential attachment 7, Administrative Record, Vol. 12; *Transcript of Public Hearing*, Vol. 2, 6 January 2010, at 197-98.

139. Tribunal Exhibit NQ-2009-003-39.13, Administrative Record, Vol. 1A at 0.25-0.26.

140. Manufacturer's Exhibit A-05 (protected) at paras. 30-36, confidential attachment 5, Administrative Record, Vol. 12; Manufacturer's Exhibit A-06 at paras. 30-36, Administrative Record, Vol. 11.

192. With regard to the service centre producers, the likely effect of a return of dumped carbon steel plate in the market would be some price depression, which would be less significant than for the domestic mills because it is indirect. As discussed above in relation to the issue of injury, the Tribunal does not have sufficient evidence to assess whether there would be any likely effect in terms of a reduction in the value of their inventories.

193. As discussed above in the injury analysis, domestic sales by the domestic mills accounted for close to 50 percent of the total production by the domestic industry during the POI. Therefore, significant injury to the domestic mills on their sales of like goods is likely to be material in the context of total domestic production.

194. In summary, based on its analysis of the above-noted factors, the Tribunal is of the view that the dumping of the subject goods in the next 24-month period is likely to cause significant price depression, lost sales and reduced profitability to the domestic mills. There would also likely be injury in the form of reduced cash flow and reduced capacity utilization. In addition, there could be injury in the form of reduced employment. There will also be a smaller, indirect price depression effect on the service centre producers. The magnitude of the total injury would be material in the context of domestic production as a whole and would be clearly foreseen and imminent.

CONCLUSION

195. Pursuant to subsection 43(1) of *SIMA*, the Tribunal hereby finds that the dumping of the subject goods has not caused injury but is threatening to cause injury to the domestic industry.

Ellen Fry
Ellen Fry
Presiding Member

Serge Fréchette
Serge Fréchette
Member

Stephen A. Leach
Stephen A. Leach
Member