



Ottawa, Thursday, May 6, 1993

Inquiry No.: NQ-92-007

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

CERTAIN HOT-ROLLED CARBON STEEL PLATE AND HIGH-STRENGTH LOW-ALLOY PLATE, HEAT-TREATED OR NOT, ORIGINATING IN OR EXPORTED FROM BELGIUM, BRAZIL, THE CZECH REPUBLIC, DENMARK, THE FEDERAL REPUBLIC OF GERMANY, ROMANIA, THE UNITED KINGDOM, THE UNITED STATES OF AMERICA AND THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

FINDINGS

The Canadian International Trade Tribunal, under the provisions of section 42 of the *Special Import Measures Act*, has conducted an inquiry following the issuance by the Deputy Minister of National Revenue for Customs and Excise of a preliminary determination of dumping dated January 6, 1993, and of a final determination of dumping¹ dated April 5, 1993, respecting the importation into Canada of hot-rolled carbon steel plate and high-strength low-alloy plate not further manufactured than hot-rolled, heat-treated or not, in cut lengths, in widths from 24 in. (610 mm) to 152 in. (3,860 mm) inclusive, and thicknesses from 0.187 in. (4.75 mm) to 4.0 in. (101.6 mm) inclusive as follows:

- plate made to CSA specifications: G40.21, grades 230G/33G, 260W/38W, 300W/44W, 350W/50W, 350A/50A, 350AT/50AT, 400W/60W, 260WT/38WT, 300WT/44WT, 350WT/50WT and 400WT/60WT, or equivalent specifications in either CSA or other recognized designation systems or standards;
- plate made to ASTM specifications: A283M/A283, grades A, B, C and D, A36M/A36, A572M/A572, grades 42, 50, 60 and 65, A588M/A588, A242M/A242, Types 1 and 2, A515 and A516M/A516, grade 70, or equivalent specifications in either ASTM or other recognized designation systems or standards;
- excluding plate for use in the manufacture of pipe and tube (also known as "skelp"), plate in coil form and universal mill plate,

originating in or exported from Belgium, Brazil, the Czech Republic, Denmark, the Federal Republic of Germany, Romania, the United Kingdom, the United States of America and the former Yugoslav Republic of Macedonia.

1. On April 5, 1993, the Deputy Minister of National Revenue for Customs and Excise terminated the portion of the investigation respecting the subject goods originating in or exported from the Slovak Republic.

Pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that the dumping into Canada of hot-rolled carbon steel plate and high-strength low-alloy plate not further manufactured than hot-rolled, heat-treated or not, originating in or exported from Belgium, Brazil, the Czech Republic, Denmark, the Federal Republic of Germany, Romania, the United Kingdom and the former Yugoslav Republic of Macedonia, has caused, is causing and is likely to cause material injury to the production in Canada of like goods, excluding:

- (i) subject plate exceeding 3.125 in. (79.375 mm) in thickness;
- (ii) subject plate made to ASTM specifications A515 and A516M/A516, grade 70, of any thickness. For greater certainty, this exclusion specifically includes the following plate made to ASTM A516 specifications which meet one or more of the following specifications:
 - plate required to meet NACE standard TM 0284/87, using the solution specified in TM 01-77/86, at the following levels: CLR 10% or less, CTR 5% or less and CSR 2% or less;
 - plate greater than 2.5 in. in thickness required to meet impact testing in the transverse orientation at -50°F under ASTM A370, to meet or exceed 25 ft-lb on average and 20 ft-lb on individual specimens;
 - plate greater than 2.5 in. in thickness required to meet the ultrasonic evaluation standards of ASTM/ASME SA-577 and/or SA-578;
 - plate required to meet the following carbon equivalents as per ASME SA-20:
 - a) carbon equivalent equal to or less than 0.40 for plate equal to or less than 1.5 in. in thickness; or
 - b) carbon equivalent equal to or less than 0.42 for plate greater than 1.5 in. in thickness; or
 - c) carbon equivalent equal to or less than 0.42, with maximum hydrogen and oxygen contents of 2 parts per million and 10 parts per million respectively, for plate equal to or less than 1.5 in. in thickness;
 - plate 112 in. or greater in width with a total pattern weight in excess of 25,000 lbs;
- (iii) subject plate supplied to or purchased by the Hibernia Management and Development Company Ltd. (HMDC) for purposes of construction of offshore facilities forming part of the Hibernia Project as follows:
 - plate manufactured by Dillinger Hüttenwerke, being Types IP, IIP and VP plate, made in accordance with specifications contained in document No. CM-E-V-S-MOO-GS-030.0 issued by HMDC and dated September 23, 1991;

- plate manufactured by Fabrique de Fer de Charleroi consisting of 887.09 metric tons of Type II steel and 1026.74 metric tons of Type X steel, made in accordance with document no. CM-E-V-S-MOO-GS-030.0, dated September 23, 1991, and document no. CM-E-V-S-MOO-GS-036.0, dated September 23, 1991, issued by HMDC;
- plate consisting of Type II steel for use in construction of Module M20 and GBS Mechanical Outfitting Requirements and for derrick construction, manufactured by any of the above-named producers, made in accordance with the said document no. CM-E-V-S-MOO-GS-030.0.

In accordance with subsection 43(1.1) of the *Special Import Measures Act*, with respect to the aforementioned goods of the United States of America, the Canadian International Trade Tribunal finds that, pursuant to subsection 43(1) of the *Special Import Measures Act*, the dumping into Canada of the goods originating in or exported from the United States of America has not caused, is not causing and is not likely to cause material injury to the production in Canada of like goods (Member Fraleigh dissenting in part).

John C. Coleman

John C. Coleman
Presiding Member

Sidney A. Fraleigh

Sidney A. Fraleigh
Member

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.
Member

Michel P. Granger

Michel P. Granger
Secretary

The statement of reasons will be issued within 15 days.

Inquiry No.: NQ-92-007

Place of Hearing: Ottawa, Ontario
Dates of Hearing: April 5 to 19, 1993

Date of Finding: May 6, 1993

Tribunal Members: John C. Coleman, Presiding Member
Sidney A. Fraleigh, Member
Robert C. Coates, Q.C., Member

Director of Research: Marcel J.W. Brazeau
Project Leader: W. Douglas Kemp
Research Officers: Douglas J. Allen
Peter Rakowski
Simon Glance

Statistical Officer: Nynon Burroughs

Counsel for the Tribunal: Hugh J. Cheetham

Registration and Distribution Officer: Margaret J. Fisher

Participants:

for Ronald C. Cheng
Gregory O. Somers
Algom Steel Inc.
(Complainant)

and Ipsco Inc.
(Manufacturer)

for Lawrence L. Herman
William R. Hearn
Stelco Inc.
(Manufacturer)

for Peter Clark
John Haime
British Steel Canada Inc. (BSC)
(Importer)

for Simon V. Potter
Denis Gascon
Aciers Francosteel Canada Inc.
A.G. der Dillinger Hüttenwerke
(Importer/Exporter)

Chris Hines
C.J. Michael Flavell, Q.C.
Geoffrey C. Kubrick
Paul Lalonde
James McIlroy
for Bethlehem Steel Export Corporation
USX Corporation

(Exporters)

Richard S. Gottlieb
for Oregon Steel Mills, Inc.

(Exporter)

Donald J. Goodwin
Paul K. Lepsoe
for Preussag Stahl AG

(Exporter)

Peter E. Kirby
for Fabrique de Fer de Charleroi S.A.
Fabrique de Fer de Charleroi (USA) Inc.

(Exporter/Agent)

G.P. (Patt) MacPherson
for Alberta Pressure Vessel Manufacturers'
Association

(Trade Association)

John M. Gurley
for Metalexportimport, S.A.

(Exporter)

Kenneth Besharah
for Usinas Siderurgicas de Minas Gerais S.A.
(USIMINAS)

(Exporter)



Ottawa, Friday, May 21, 1993

Inquiry No.: NQ-92-007

**CERTAIN HOT-ROLLED CARBON STEEL PLATE AND HIGH-STRENGTH
LOW-ALLOY PLATE, HEAT-TREATED OR NOT, ORIGINATING IN
OR EXPORTED FROM BELGIUM, BRAZIL, THE CZECH REPUBLIC,
DENMARK, THE FEDERAL REPUBLIC OF GERMANY, ROMANIA, THE
UNITED KINGDOM, THE UNITED STATES OF AMERICA AND THE FORMER
YUGOSLAV REPUBLIC OF MACEDONIA**

Special Import Measures Act - Whether the dumping of the above-mentioned goods has caused, is causing or is likely to cause material injury to the production in Canada of like goods.

DECISION: The Canadian International Trade Tribunal has found that the dumping in Canada of certain carbon steel plate from Belgium, Brazil, the Czech Republic, Denmark, the Federal Republic of Germany, Romania, the United Kingdom and the former Yugoslav Republic of Macedonia has caused, is causing and is likely to cause material injury to the production in Canada of like goods. Furthermore, the Tribunal has found that the dumping in Canada of certain carbon steel plate from the United States of America has not caused, is not causing and is not likely to cause material injury to the production in Canada of like goods (Member Fraleigh dissenting in part).

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	April 5 to 19, 1993
Date of Findings:	May 6, 1993
Date of Reasons:	May 21, 1993
Tribunal Members:	John C. Coleman, Presiding Member Sidney A. Fraleigh, Member Robert C. Coates, Q.C., Member
Director of Research: Project Leader:	Marcel J.W. Brazeau W. Douglas Kemp
Research Officers:	Douglas J. Allen Peter Rakowski
Economist:	Simon Glance
Statistical Officer:	Nynon Burroughs
Counsel for the Tribunal:	Hugh J. Cheetham
Registration and Distribution Officer:	Margaret J. Fisher

Participants:

Ronald C. Cheng
Gregory O. Somers
for Algoma Steel Inc.

(Complainant)

and IPSCO Inc.

(Manufacturer)

Lawrence L. Herman
William R. Hearn
for Stelco Inc.

(Manufacturer)

Peter Clark
John Haime
for British Steel Canada Inc.

(Importer)

Simon V. Potter
Denis Gascon
for Francosteel Canada Inc.
A.G. der Dillinger Hüttenwerke

(Importer/Exporter)

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Geoffrey C. Kubrick
Paul Lalonde
James McIlroy
for Bethlehem Steel Export Corporation
USX Corporation

(Exporters)

Richard S. Gottlieb
for Oregon Steel Mills, Inc.

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Donald J. Goodwin
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for Preussag Stahl AG

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for Peter E. Kirby
Fabrique de Fer de Charleroi S.A.
Fabrique de Fer de Charleroi (USA) Inc.

(Exporter/Agent)

for G.P. (Patt) MacPherson
Alberta Pressure Vessel Manufacturers'
Association

(Trade Association)

for John M. Gurley
Metalexportimport, S.A.

(Exporter)

for Kenneth Besharah
Usinas Siderurgicas de Minas Gerais S.A.
(USIMINAS)

(Exporter)

Witnesses:

Ian E. Williams, P. Eng.
General Manager
Plate, Tubular and Shape Product Sales
Algoma Steel Inc.

R.A. (Bob) Clark
General Supervisor
Accounting Control
The Algoma Steel Corporation, Limited

Robert W. Witty, P. Eng.
Manager
Quality Engineering
(Steelworks)
Algoma Steel Inc.

P. Murray Williamson
General Manager - Sales & Marketing
Steel Mills Products Division
IPSCO Inc.

E.J. (Ed) Tiefenbach
Vice-President and Controller
IPSCO Inc.

Glenn A. Gilmore
Trade Supervisor
IPSCO Inc.

Hugh A. Krentz, P. Eng.
President
Canadian Institute of Steel Construction

J.E.M. Braid B.A.Sc., Ph.D.
Head, Fabrication & NDE Section
Metals Technology Laboratories
Canada Centre for Mineral and Energy
Technology
CANMET
Energy, Mines and Resources Canada

William R. Cooper
Purchasing Manager
Canron
Eastern Structural Division

S.R. (Sig) Taube
Vice-President & General Manager
Samuel Plate Sales

George R. Bereziuk
Assistant Sales Manager - Plate Sales
Stelco Inc.

Robert Charles Matteson
Accountant - Plate Mill
Stelco Inc.

A.T. (Al) Brannon
President
Brannon Steel

Constantin Zaharia
Manager
Planning & Economical Orientation
Iron and Steel Works
"SIDEX" S.A.

Thomas E. Kinley
Vice-President
British Steel Canada Inc.

Gerald C. Brown
Manager of Sales
Bethlehem Steel Export Co. of
Canada Ltd.

John J. Connelly
President
United States Steel International, Inc.

Hugo G. Martin
Director of Purchasing
Wilkinson Steel and Metals
A Division of Premetalco Inc.

Steve Shaw
Vice-President
Executive Director
Samuel & Fils & Cie (Québec) Ltée

Donald K. Belch
Director - Government Relations
Stelco Inc.

J. (Jim) A. Anderson
Sales Manager - Plate Sales
Stelco Inc.

J.S. (John) Baker
Divisional Accounting Supervisor -
Plate & Strip
Hilton Works
Stelco Inc.

Ion Mladin
Dipl. Engineer
Export Steel Flat Products
Dept. 11
Metalexportimport, S.A.

Cristina Stroe
Chef. Dept. Price
Metalexportimport, S.A.

Larry R. Mosser
Marketing Manager
Bethlehem Steel Export Corporation

Ann Jacques
Bethlehem Steel Export Co. of
Canada Ltd.

T.H.E. Jones
President
Noracor
Metals & Materials Inc.

G.J. Lozinski
Chairman
Terra Nova Steel, Inc.

Edward J. Hepp, Jr.
Vice-President
Marketing
Oregon Steel Mills, Inc.

L. Ray Adams, Jr.
Vice-President and Chief Financial
Officer
Oregon Steel Mills, Inc.

Serge George Vinograd
Executive Vice-President
Fabrique de Fer de Charleroi (USA) Inc.

James R. Yates
President/Executive Director
Francosteel Canada Inc.

Klaus Thomas
Director of Sales
Preussag Handel

Address all communications to:

Secretary
Canadian International Trade Tribunal
20th Floor
Journal Tower South
365 Laurier Avenue West
Ottawa, Ontario
K1A 0G7



Ottawa, Friday, May 21, 1993

Inquiry No.: NQ-92-007

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**CERTAIN HOT-ROLLED CARBON STEEL PLATE AND HIGH-STRENGTH
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OR EXPORTED FROM BELGIUM, BRAZIL, THE CZECH REPUBLIC,
DENMARK, THE FEDERAL REPUBLIC OF GERMANY, ROMANIA, THE
UNITED KINGDOM, THE UNITED STATES OF AMERICA AND THE FORMER
YUGOSLAV REPUBLIC OF MACEDONIA**

TRIBUNAL: JOHN C. COLEMAN, Presiding Member
SIDNEY A. FRALEIGH, Member
ROBERT C. COATES, Q.C., Member

STATEMENT OF REASONS

CONDUCT OF THE INQUIRY

The Canadian International Trade Tribunal (the Tribunal), under the provisions of section 42 of the *Special Import Measures Act*¹ (SIMA), has conducted an inquiry following the issuance by the Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister) of a preliminary determination of dumping dated January 6, 1993, and of a final determination of dumping² dated April 5, 1993, respecting the importation into Canada of hot-rolled carbon steel plate and high-strength low-alloy plate not further manufactured than hot-rolled, heat-treated or not, in cut lengths, in widths from 24 in. (610 mm) to 152 in. (3,860 mm) inclusive, and thicknesses from 0.187 in. (4.75 mm) to 4.0 in. (101.6 mm) inclusive as follows:

- plate made to CSA specifications: G40.21, grades 230G/33G, 260W/38W, 300W/44W, 350W/50W, 350A/50A, 350AT/50AT, 400W/60W, 260WT/38WT, 300WT/44WT, 350WT/50WT and 400WT/60WT, or equivalent specifications in either CSA or other recognized designation systems or standards;
- plate made to ASTM specifications: A283M/A283, grades A, B, C and D, A36M/A36, A572M/A572, grades 42, 50, 60 and 65, A588M/A588, A242M/A242, Types 1 and 2, A515 and A516M/A516, grade 70, or equivalent specifications in either ASTM or other recognized designation systems or standards;

-
1. R.S.C. 1985, c. S-15.
 2. On April 5, 1993, the Deputy Minister of National Revenue for Customs and Excise terminated the portion of the investigation respecting the subject goods originating in or exported from the Slovak Republic.

- excluding plate for use in the manufacture of pipe and tube (also known as "skelp"), plate in coil form and universal mill plate,

originating in or exported from Belgium, Brazil, the Czech Republic, Denmark, the Federal Republic of Germany, Romania, the United Kingdom, the United States and the former Yugoslav Republic of Macedonia (the subject goods). The Deputy Minister's investigation into dumping covered importations of the subject goods between October 1, 1991, and June 30, 1992, for all countries with the exception of the United States. For the United States, the period of investigation covered shipments of the subject goods made from January 1 to June 30, 1992.

The notices of preliminary and final determinations of dumping were published in Part I of the January 23 and April 17, 1993, editions of the Canada Gazette, respectively. The Tribunal's notice of commencement of inquiry issued on January 11, 1993, was published in Part I of the January 23, 1993, edition of the Canada Gazette.

As part of the inquiry, the Tribunal sent detailed questionnaires to Canadian manufacturers and importers of the subject goods, requesting production, financial, import and market information, as well as other information, covering the period from 1989 to 1992. From the replies to the questionnaires and other sources, the Tribunal's research staff prepared public and protected pre-hearing staff reports.

The record of this inquiry consists of all Tribunal exhibits, including the public and protected replies to questionnaires, all exhibits filed by the parties at the hearing, as well as the transcript of all proceedings. All public exhibits were made available to the parties. Protected exhibits were made available only to independent counsel who had given undertakings.

A pre-hearing conference was held in Ottawa, Ontario, on March 22, 1993, as well as public and *in camera* hearings which were held from April 5 to April 8, April 13 to April 16 and on April 19, 1993. The complainant, Algoma Steel Inc. (Algoma), as well as Stelco Inc. (Stelco) and IPSCO Inc. (IPSCO), that supported the complaint, were represented by counsel at the hearing, as were numerous exporters and importers.

On May 6, 1993, the Tribunal issued a finding that the dumping of certain carbon steel plate originating in or exported from Belgium, Brazil, the Czech Republic, Denmark, the Federal Republic of Germany, Romania, the United Kingdom and the former Yugoslav Republic of Macedonia has caused, is causing and is likely to cause material injury to the production in Canada of like goods. The Tribunal also found that the dumping of certain carbon steel plate originating in or exported from the United States has not caused, is not causing and is not likely to cause material injury to the production in Canada of like goods (Member Fraleigh dissenting in part).

Certain products, such as plate exceeding 3.125 in. (79.375 mm) in thickness and plate made to ASTM specifications A515 and A516M/A516, grade 70, were excluded from the injury finding. This finding also excluded certain specialized grades of plate imported by the Hibernia Management and Development Company Ltd. (HMDC) and by members of the Alberta Pressure Vessel Manufacturers' Association (APVMA).

INTRODUCTION

This is the third inquiry into the dumping of carbon steel plate in Canada in the last 10 years. On December 7, 1983, the Anti-dumping Tribunal found injury from imports of certain carbon steel plate from Belgium, Brazil, Czechoslovakia, the Federal Republic of Germany, France, the Republic of South Africa, the Republic of Korea, Romania, Spain and the United Kingdom (Inquiry No. ADT-10-83). Subsequently, on January 26, 1984, the Anti-dumping Tribunal found injury from imports of certain carbon and alloy steel plate from the Netherlands (Inquiry No. ADT-13-83). In October 1985, the Department of National Revenue (Revenue Canada) accepted an undertaking from exporters of carbon plate from the German Democratic Republic (the GDR). On September 16, 1988, the Canadian Import Tribunal reviewed the injury findings and excluded all grades of universal mill plate on the grounds that this plate was not manufactured in Canada (Review No. R-10-88). On May 1, 1990, the Tribunal rescinded the injury findings in Inquiry Nos. ADT-10-83 and ADT-13-83, as amended in Review No. R-10-88 (Review No. RR-89-006). On July 7, 1990, Revenue Canada allowed the undertaking with the GDR to expire.

The current investigation involves a somewhat narrower range of products than that in the 1983 case, but covers products from six of the countries involved in that inquiry, namely, Belgium, Brazil, the Czech Republic, the Federal Republic of Germany, Romania and the United Kingdom.

PRODUCT

Steel is refined pig iron. Integrated steel manufacturers produce steel by combining iron ore, coke, limestone and oxygen, and by super heating the mixture in a blast furnace. The resultant hot metal (pig iron) is then combined with scrap metal and more oxygen in either a basic oxygen furnace (BOF) or an open hearth furnace to produce molten steel. Mini-mills, unlike the integrated manufacturers, produce molten steel in electric arc furnaces (EAF) using scrap metal as the raw material. In the EAF, a current is delivered from one graphite electrode through the scrap metal and into one or more other electrodes. The heat generated by the resistance of the scrap metal, along with the heat radiated by the electric arc, changes the steel to a molten state. Open hearth furnaces are used less today than the BOF and the EAF because their size and lack of speed make them less efficient.

At this point, in both integrated and mini-mill steel production, the molten steel is poured from a ladle to the tundish of a continuous slab caster³ where it flows into the caster's molds. Here, it cools and forms the slab. The slab continues to move through the caster, cooling as it goes, until it exits the caster where it is cut to length with a torch.

Next, the slab is charged into a reheat furnace, for reheating to a rolling temperature of 2,250-2,300°F. Upon attaining the required temperature, it is rolled to its

3. Although slabs may be cast from ingots, the continuous strand caster is the more modern of the two methods. It also provides economies not available through the ingot route. Canadian mills now use the strand casting technique to produce their slabs.

final plate width and thickness. At best, current rolling techniques can reduce a slab's thickness on a 3:1 ratio. Consequently, a standard 12-in. slab is required to produce a 4-in. plate.

After rolling, the plate is levelled, identified and inspected for conformance to thickness tolerances and surface requirements. The plate is then tested to ensure that it meets the order requirements.

Subject Goods

For purposes of this inquiry, carbon steel plate is defined as:

hot-rolled carbon steel plate and high-strength low-alloy plate not further manufactured than hot-rolled, heat-treated or not, in cut lengths, in widths from 24 in. (610 mm) to 152 in. (3,860 mm) inclusive, and thicknesses from 0.187 in. (4.75 mm) to 4.0 in. (101.6 mm), inclusive as follows:

- plate made to CSA specifications: G40.21, grades 230G/33G, 260W/38W, 300W/44W, 350W/50W, 350A/50A, 350AT/50AT, 400W/60W, 260WT/38WT, 300WT/44WT, 350WT/50WT and 400WT/60WT, or equivalent specifications in either CSA or other recognized designation systems or standards;
- plate made to ASTM specifications: A283M/A283, grades A, B, C and D, A36M/A36, A572M/A572, grades 42, 50, 60 and 65, A588M/A588, A242M/A242, Types 1 and 2, A515 and A516M/A516, grade 70, or equivalent specifications in either ASTM or other recognized designation systems or standards;
- excluding plate for use in the manufacture of pipe and tube (also known as "skelp⁴"), plate in coil form and universal mill plate.

Plate Market Sectors

Steel plate has become the optimum material for a wide variety of products. Ships, buildings, bridges, storage tanks and pressure vessels all contain, to some degree, carbon steel plate. Since carbon steel plate can be made to many different physical and chemical specifications, it meets the requirements of numerous applications.

Carbon Steel Plate

Steel is considered to be carbon steel when no minimum content is specified for aluminum, chromium, cobalt, columbium, nickel, titanium, molybdenum, tungsten, vanadium, zirconium or any other element added to obtain a desired alloying effect, when the specified minimum copper does not exceed 0.40 percent or when the maximum content specified for any of the following elements does not exceed the percentages noted: manganese 1.65, copper 0.60 and silicon 0.60.

4. According to the industry, none of the specifications shown in the product definition apply to skelp.

High-Strength Low-Alloy Plate

High-strength low-alloy (HSLA) steel comprises a specific group of steels with chemical compositions specially developed to impart higher mechanical property values, improved weldability, toughness and, in certain of these steels, materially greater resistance to atmospheric corrosion than is obtainable from conventional carbon structural steels of equal strength. HSLA plate is generally intended for applications where savings in weight can be effected by reason of its greater strength.

Heat-Treated (Normalized) Plate

Normalized (heat-treated) plate is plate that has been heat-treated in a furnace to homogenize and refine the grain structure. The purpose of the procedure is to improve the steel's ability to resist brittle fracture at low service temperatures.

Normalized plate is often specified for bridge girder flange plates, where the plate thickness is relatively high and/or when the service temperature is very low. Other structures that commonly contain normalized carbon steel plate include ice breakers, exterior crane runway girders and other dynamically loaded structures. Some pressure vessels also require that normalized plate be used for their fabrication. Such an instance would be when ASTM A516 pressure vessel steel is used, and the plate thickness is in excess of 1.5 in., or when notch toughness properties have been specified by the vessel designer, the specifications automatically require that the plate be normalized.

Specifications

The subject goods are produced to meet certain Canadian Standards Association (CSA) and American Society for Testing and Materials (ASTM) specifications in two major subgroups, structural quality steel and pressure vessel quality (PVQ) steel. The most common specification for plate in Canada is CSA G40.21, grade 300W/44W (44W), a general-purpose weldable structural steel intended for general structural applications such as bridges, buildings and transportation equipment, for machined parts and for miscellaneous end uses. This type of plate constitutes the vast majority of plate produced in Canada and imported from the subject countries. It is usually made to meet specific chemical composition limits and certain mechanical properties, and is readily available from many sources.

PVQ plates are intended for use in pressure vessels required to hold their contents at pressures from full vacuum to 1,050 psi and for other critical purposes. PVQ plates require additional testing over those of structural quality steel and are only available from a limited number of mills, due to the specific requirements of fabricators and end users in terms of chemical restrictions, requirements for hydrogen-induced cracking (HIC) testing,⁵ vacuum degassing and the like. Two mills supplying the bulk of the Canadian demand for such plate are located in Germany. The most common ASTM specifications for the subject PVQ plate are ASTM A515 and ASTM A516, grade 70.

5. The hydrogen-induced cracking test is used to test steel for pressure vessels to determine the susceptibility of the steel to cracking in a hydrogen environment. This test is typically used in petrochemical refineries where the feedstock has a high hydrogen sulphide content.

THE DOMESTIC INDUSTRY

The Canadian carbon steel plate industry consists of three producers - Algoma, Stelco and IPSCO. Algoma and Stelco manufacture the subject goods using blast furnaces and continuous casters, while IPSCO uses an EAF and continuous casting technology to manufacture carbon plate. Algoma and Stelco market the majority of their production in Ontario and Quebec, while IPSCO sells most of its product in British Columbia and the Prairies.

Well over 90 percent of domestic production is regular plate, and mostly 44W structural plate. The rest is mostly heat-treated pressure vessel ASTM A515 and A516 plate. Over two thirds of domestic production is sold through service centres that either resell standard cut-to-length sizes and grades or offer custom-size cutting services. The balance goes directly from the mills to fabricators and/or end users.

Algoma was incorporated on June 1, 1992. The new firm acquired all of the assets and some of the liabilities of its predecessor, The Algoma Steel Corporation, Limited. It is 60-percent employee owned, with the remaining 40 percent of its shares held by former debt holders. The firm is a vertically integrated steel producer that operates a major steelworks in Sault Ste. Marie, Ontario. It produces flat-rolled products, including plate, both regular and heat-treated, sheet and strip, as well as structural, rail and tubular products.

Stelco is also a vertically integrated producer of a broad range of steel products, including the subject goods which are manufactured at Hilton Works in Hamilton, Ontario. It produces heat-treated plate through a subsidiary, CHT Steel Company Inc., in Richmond, Ontario.

IPSCO is located in Regina, Saskatchewan. It produces a wide variety of steel products, including the subject goods. It is a much smaller producer of carbon plate than either Algoma or Stelco, which account for over 80 percent of domestic production of the subject goods and 100 percent of the production of heat-treated plate.

In terms of the goods subject of this inquiry, Algoma produces plate up to 153 in. wide and generally up to 2 3/4 in. thick on its 166-in. plate mill and 106-in. hot strip mill in Sault Ste. Marie. Stelco produces plate up to 140 in. wide and up to 3 1/8 in. thick at its hot strip mills in Hamilton. IPSCO now produces carbon plate up to 72 in. wide and 2 in. thick on a reversing roughing mill and a reversing Steckel mill in Regina.

RESULTS OF THE DEPUTY MINISTER'S INVESTIGATIONS

On August 24, 1992, the Deputy Minister initiated an investigation into the alleged injurious dumping of certain hot-rolled carbon steel plate and high-strength low-alloy plate originating in or exported from Belgium, Brazil, the Czech and Slovak Federal Republic, Denmark, the Federal Republic of Germany, Romania, the Republic of Slovenia, the United Kingdom, the United States and the former Yugoslav Republic of Macedonia. On September 8, 1992, the Deputy Minister initiated an investigation into the alleged injurious dumping of certain hot-rolled heat-treated carbon steel plate and high-strength low-alloy plate originating in or exported from the same countries. On January 6, 1993,

the Deputy Minister, under section 38 of the *Special Import Measures Regulations*,⁶ joined the two investigations, terminated the investigation with respect to the subject goods from the Republic of Slovenia, and made a preliminary determination of dumping with respect to the balance of the subject goods.

On April 5, 1993, the Deputy Minister terminated the investigation with respect to the subject goods from the Slovak Republic and made a final determination of dumping with respect to the balance of the goods, including those from the Czech Republic.

Revenue Canada's period of investigation covered shipments of the subject goods made from October 1, 1991, to June 30, 1992, from all countries with the exception of the United States. For the United States, the period of investigation covered shipments made from January 1 to June 30, 1992. Due to the larger, less frequent shipments from countries other than the United States, a longer period of investigation was required to ensure that a representative sample of importations from all countries was reviewed.

During its investigation, Revenue Canada identified 12 exporting mills in 8 countries (other than the United States) that were shipping to 17 importers, most of which were distributors. For the United States, 6 mills and 37 other exporters were found to be shipping the subject goods to some 70 importers, most of which were service centres, fabricators or end users.

Except for Fabrique de Fer de Charleroi S.A. (Charleroi) in Belgium and A.G. der Dillinger Hüttenwerke (Dillinger) in Germany, the exporters from countries other than the United States were determined to be dumping most of their exports at margins in excess of 20 percent. With respect to exports from the United States, the 6 mills investigated were found to be dumping between 64 and 100 percent of their exports at margins of between 4.6 and 53.8 percent. Oregon Steel Mills, Inc. (Oregon Steel), the largest U.S. exporter to Canada in 1992, was found to be dumping 83 percent of its shipments at a weighted margin of 10 percent. All exports from the United States, other than those from the 6 identified mills, were subjected to an 11.5-percent duty.

POSITION OF PARTIES

Industry

Counsel for Algoma argued that the evidence in this matter must be assessed "en masse," while counsel for Stelco invited the Tribunal to look at the "total picture." In their view, the Tribunal should not focus on detailed questions relating to lost sales and the pricing of individual firms. They claimed that the effects of dumped prices offered on a large volume of imports from many countries, by many exporters/importers and at varying trade levels, have caused domestic price levels to deteriorate to such a degree that the domestic industry has been materially injured.

According to counsel, the historical relationships between the Canadian steel market and the international steel market lend themselves to a finding of material injury. In a world market characterized by falling demand and considerable overcapacity, the

6. SOR/84-927, November 22, 1984, Canada Gazette Part II, Vol. 118, No. 25 at 4286.

dumping in the Canadian steel market, already weakened by the recession, is materially injurious. The import distribution system in Canada facilitates the movement of imports and encourages off-the-dock⁷ disruptive selling, thereby exacerbating the effects of dumping.

Counsel argued that the Canadian market for plate was fiercely competitive on the basis of price and that significant volumes of dumped carbon steel plate had severely eroded prices in the domestic market. Because domestic and offshore carbon steel plate are fungible products, price is the overriding factor, and small amounts of penetration by dumped imports can be damaging in a declining market.

Counsel for the industry submitted that market prices had fallen in competition with the dumped imports, and considerable market share was taken by the dumping countries. During 1989-90, dumped imports, initially from countries not covered by earlier findings, increased at the expense of the industry's sales. Then, in 1991, the share of imports shifted to the exporting countries freed from anti-dumping restraints in May 1990. As a result, manufacturers' sales volumes dropped, and the industry's financial performance deteriorated.

Counsel for Algoma referred to evidence quantifying the degree of injury that Algoma had suffered because of the dumped imports. This evidence clearly showed a difference in the return to Algoma on sales of carbon steel plate as compared to the return on sales of quench and tempered alloy plate, a non-subject flat-rolled product which is less price sensitive and not affected by dumping. Counsel argued that the difference between the returns on sales reflected Algoma's policy of discounting carbon steel plate to try to maintain market share in the face of intensifying price pressures from dumped plate. Counsel submitted that this policy was not a result of the strike at Algoma and Stelco in the second half of 1990 and not due to price competition with other domestic producers. Counsel stated that the most vigorous price competition takes place with respect to sales of 44W plate, which account for over 75 percent of industry shipments.

Counsel for Stelco pointed to the evidence of Samuel & Fils & Cie (Québec) Ltée (Samuel), a major domestic steel centre, to the effect that the market for plate is a commodity market. Price levels are established in a purely competitive manner, and, given similar volumes, service and availability, the lowest price in the market usually becomes the base price. In the latter part of 1990, the domestic base price was set on the basis of East European offers. Once that price level had been established, the service centres negotiated contracts with the Canadian mills, as well as with the reliable foreign suppliers, at that price level.

Counsel argued that, during the strike in 1990, prices should have stabilized or firmed somewhat, as domestic supplies became scarce. Instead, as dumped imports flowed in to fill the vacuum created by the strike, prices in the marketplace dropped further. It was not until 1992, with the announcement of the dumping investigations, that prices finally began to stabilize.

7. Refers to sales of imports directly from the dock where landed, and generally not committed for sale prior to importation.

A major concern of the industry was that, if heat-treated plate were exempted from a finding of injury, the exporting mills would substitute heat-treated plate for non-heat-treated plate. It was the industry's position that, since many offshore mills have low-cost heat-treating technology and heat-treated plate can be used in all applications calling for structural plate, the exporting mills would substitute heat-treated plate for non-heat-treated plate. On these grounds, counsel for Algoma submitted that there should be no exclusions for heat-treated plate, even if the Tribunal considers exclusions for specific grades or testing requirements such as HIC testing.

Another area of concern for the industry related to exclusions on the basis of physical and chemical composition of the plate. Counsel argued that the industry could produce the full range of plate as defined by the Deputy Minister. Nevertheless, counsel were prepared to agree to the list of exclusions that the industry had reviewed with APVMA and HMDC prior to the commencement of the hearing.

On the question of foreign producer exclusions, counsel for Stelco argued that such exclusions should only be granted in the narrowest of circumstances and only when the products supplied by these manufacturers could not be produced by the Canadian industry.

With respect to U.S. exporters, counsel submitted that USX Corporation (USX), Bethlehem Steel Export Corporation (Bethlehem) and Oregon Steel, that appeared at the hearing and argued that their share of the market had dropped significantly in 1992, deserved no special consideration. The aggregate share of imports of these three firms grew steadily over the 1989-92 period, as did that of a number of other firms in the United States that are shipping to Canada and that were not represented at the hearing. Counsel for the Canadian manufacturers argued that the Tribunal must come to a decision with respect to all imports from the United States.

On the question of intra-industry price competition, counsel acknowledged that there was strong competition between Algoma and Stelco, but observed that such competition was to be expected. With respect to the price competition generated by IPSCO, counsel noted that IPSCO's plate has certain width and thickness limitations which must be factored into the ultimate price charged to the purchaser.

On the question of future injury, counsel for the industry submitted that, if the United States imposes an anti-dumping duty on imports of carbon plate, Canada will become the repository for dumped carbon plate previously destined for the U.S. market. Counsel submitted that, on the basis of this fact and the other evidence before it, the Tribunal should find past, present and future injury as a result of the dumping of the subject goods.

Importers and Exporters

The importers and exporters submitted that import penetration during the period under review was largely the result of factors other than dumping. Imports did not show significant growth until 1990, the year that Algoma and Stelco's production was curtailed for about three months while the two firms were on strike. This period was immediately followed by an extensive furnace reline at Stelco which curtailed a significant

volume of its production for several more months in 1991. Moreover, a significant portion of imported carbon plate was of grades and specifications not made by the domestic producers.

Counsel for British Steel Canada Inc. (BSC) submitted that work stoppages at Algoma and Stelco not only disrupted supplies while the strike and furnace reline were ongoing, but created uncertainty about the industry before and after the strike, leaving some steel buyers reluctant to purchase product from domestic mills. At the same time, the high value of the Canadian dollar and high interest rates depressed the market for steel plate. A considerable number of firms in Ontario, which used carbon plate as an input, either closed or moved their production facilities to the United States, thereby reducing the demand for plate. Counsel for BSC alluded to these factors in rejecting the submission of counsel for Algoma that BSC had taken advantage of the rescission of earlier findings to resume dumping. BSC had only increased its plate sales in Canada when there was uncertainty in the marketplace about the availability of supplies from Canadian mills. When the domestic mills returned to the market, BSC returned to its normal sales levels, and the domestic producers regained their historical market share.

Counsel noted that IPSCO, which in 1991 began producing the subject goods in a highly efficient and low-cost mini-mill, showed steadily increasing production volumes and sales. IPSCO soon became a significant focal point of price competition and a formidable competitor in Western Canada, where BSC had been a traditional and significant supplier.

Counsel for Bethlehem argued that production volumes had increased at each domestic mill. As a result, there is no evidence of reduced capacity utilization. The industry is producing at the pre-recession levels of 1989. Even if the industry had 100 percent of the market, it would be producing at less than a 50-percent rate of utilization. Furthermore, both IPSCO and Stelco are manufacturing considerable volumes of skelp on the same mills used to produce the subject goods.

Counsel for some of the major exporters and importers also contended that the products that they ship to Canada, such as heat-treated and PVQ plate, are not supplied by the domestic producers to the specifications required by fabricators and end users. The imported product, being of a higher quality and carrying a higher price per net ton, could not be causing injury to the domestic mills. Counsel for Francosteel Canada Inc. (Francosteel) and Dillinger submitted that neither Algoma nor Stelco has suffered injury from imports of heat-treated plate. For example, the market for PVQ plate is concentrated in Western Canada to service the oil and gas industry. Algoma and Stelco do not have a strong presence there, and IPSCO does not produce heat-treated plate.

Although the industry maintained that heat-treated plate could be substituted for all non-heat-treated applications, counsel for Francosteel and Dillinger argued that this was not a viable alternative, as the cost would not justify the substitution. They pointed to the evidence of one of the Tribunal's expert witnesses who had testified that, in over 30 years in the business, he had never heard of PVQ plate being substituted for structural steel plate. Counsel for Dillinger, which exports heat-treated and PVQ plate nearly exclusively, submitted that no evidence was adduced that its exports of

heat-treated or PVQ plate were materially affecting domestic production. The selling price of Dillinger's plate has always been higher than that of domestic heat-treated plate, and Dillinger does not face any domestic competition for its plate.

On the question of pricing, counsel for the importers submitted that a number of factors are influencing the domestic price of carbon steel plate. While the world price is dropping steadily, due largely to the depressed international market, exchange rate fluctuations and intra-industry price competition have also had a considerable impact. With respect to heat-treated and PVQ plate, many counsel submitted that any price erosion for heat-treated and PVQ plate could not be attributed to the price of imported plate because imported plate prices have always been above domestic prices. Any downward trend in the prices of domestic carbon steel plate is a reflection of a worldwide price decrease driven by a reduced demand for steel.

Counsel for the importers argued that both Stelco and Algoma had aggressive pricing strategies to regain lost market share after the 1990 strike and the 1991 furnace reline at Stelco. As Algoma and Stelco reduced their prices and cut their margins to capture share in the shrinking market, the internal competition so generated reduced both sales and revenues for the domestic mills. Counsel argued that losses resulting from such tactics could not be attributed to imported carbon steel plate. In addition, counsel for BSC submitted that Stelco and Algoma offer package pricing involving both subject and non-graded plate products. The record indicates that such pricing packages lead to inventory averaging. Counsel suggested that this has the ultimate effect of lowering the price of the more expensive graded plate.

With respect to the western Canadian market, counsel for Oregon Steel argued that IPSCO is the price leader in that area. He noted that a comparison of Oregon Steel's prices and IPSCO's prices, in Canadian dollars, demonstrates that IPSCO's prices followed exchange rate swings and stayed in a range below that of Oregon Steel.

Counsel argued that Canadian and world steel prices were now firming and that, therefore, there was no likelihood of injury. The most damaging factors for the domestic mills had been their minimum tonnage requirements, their refusal to deal with new entrants in the market, their inability to supply certain qualities of the subject plate and their limited sales in Western Canada.

Counsel for Bethlehem and USX contended that the evidence supports the fact that Algoma's problems are self-inflicted. It has lost staggering amounts of money over the last five years and has had losses in seven of the last nine years. They argued that it was difficult to accept that Algoma had been materially injured by alleged dumping, at least from the United States.

Although counsel for the U.S. firms agreed that the recession has also been a significant factor independent of dumping, they argued that economic indicators suggested that the recession is now ending. Counsel suggested that, as the market rebounds, the expanding U.S. market will absorb more steel, and the likelihood of continued dumping in Canada of plate from the United States becomes more remote.

In any case, counsel argued, USX and Bethlehem were not disruptive forces in the market, the average prices of U.S. product were much higher than average Canadian prices, and there were no allegations of lost sales to USX or Bethlehem. The

United States had a small and declining market share during the period of alleged injurious dumping. Bethlehem and USX had exported some product to Canada, but it has generally been in dimensions that the Canadian industry could not normally produce. It would take the Canadian manufacturers considerable time and money to adjust mill casters and rollers to produce these larger sizes. Such adjustments would entail considerable production losses of standard goods, making it unprofitable for the domestic industry to meet small orders for thick plate, such as that purchased by some of the large steel service centres.

Furthermore, according to counsel, Bethlehem and USX were small players in the Canadian market, and there was no supportable evidence of price erosion or lost accounts arising out of sales to Canada by these firms. In support of this allegation, certain evidence adduced at the hearing established that USX and Bethlehem sell to niche markets. Samuel, for example, only imported, from the United States, product that is "very specific and client related."

Counsel for USX argued that Algoma had made many references to price erosion with respect to a 1988 peak-year price list. Comparing the depressed 1991-92 prices to this 1988 price list only demonstrated the overall market collapse in the steel plate market and showed nothing about the effects of dumping. According to counsel, increases in domestic production led to falling prices in an already depressed market. These price declines, therefore, amounted to self-injury. Furthermore, Algoma's admission concerning its healthy price competition with Stelco, and IPSCO's admission that it followed rising import prices in 1992, suggested that competition within the Canadian industry played a strong part in the injurious price movements.

Counsel for Preussag Stahl AG (Preussag) reiterated many of the points raised by other counsel for exporters and importers and pointed to the fact that most heat-treated plate sold in Canada is PVQ plate. Preussag ships only PVQ plate from its mill in Germany. Counsel also submitted that these products are sold on the basis of quality rather than price.

Counsel for Usinas Siderurgicas de Minas Gerais S.A. (USIMINAS) claimed that the industry did not provide significant evidence of price erosion. The documentation which Canadian firms had submitted dealt only with price offerings in general terms. He noted that Algoma and Stelco initiated significant price cuts in the latter part of 1991 and early 1992. This caused imports to be no longer competitive, and volumes fell. At the same time, Canadian plate exports rose substantially, suggesting that the Canadian industry was more concerned with maintaining high production volumes than trying to protect prices.

The Danish steel producer, Det Danske Stølvalseværk A/S (DDS), indicated its intention to participate in this inquiry as a party through a notice of appearance from Mr. Per Krogh Jensen, Sales Director, received by the Tribunal by facsimile on February 4, 1993. Subsequently, DDS received copies of all public documents filed with the Tribunal. No representative of DDS appeared before the Tribunal at the hearing nor did DDS file any documents with the Tribunal during the course of the hearing. Prior to the release of the Tribunal's finding, the Danish Ministry of Industry, through its

embassy in Ottawa, filed a document with the Tribunal, which the Tribunal considered to be primarily in the nature of argument. This document was circulated to all other parties, and they were asked to comment on it. The Tribunal received these comments and gave the document the weight that it felt was appropriate.

Requests For Exclusions

Several importers and exporters requested that they be excluded from any injury finding by the Tribunal. Counsel for each importer and/or exporter raised various arguments depending on the nature of the exclusion requested.

Counsel for BSC submitted that there should be exclusions for all subject plate over 3.125 in. in thickness and all vacuum degassed plate on the basis that these are not produced by the domestic industry. They also requested an exclusion for BSC itself on the basis that there had not been a significant increase in its imports over the period in question and that it had acted in a responsible manner in the Canadian market.

Counsel for Bethlehem and USX argued that an exclusion is in order in situations where there is no particular evidence of injury by an individual company or country, that the margins of dumping in question are modest and that there is evidence that differentiates the behaviour of the producer from the situation in the market being examined. They submitted that the evidence shows that such is the situation with respect to each of their clients specifically, and to the United States generally.

Counsel for Dillinger and Francosteel requested an exclusion for specialized plate and producers of such plate on the basis that much of this plate is not produced by, or not readily available from, the domestic industry and that, with respect to Dillinger, there is no evidence of it contributing to any injury that may have been suffered by the domestic mills. In regard to the first request, counsel also referenced evidence relating to the limited production capabilities of the domestic producers in regard to thickness. Finally, counsel also suggested that, based on the evidence, an exclusion for vacuum degassed plate would be appropriate.

Counsel for Oregon Steel first requested that heat-treated plate be excluded from any injury finding. In addition, he suggested that imports of the subject plate from his client into Alberta and British Columbia be excluded, as the evidence shows that these goods are not contributing to injury, if any has been suffered.

Counsel for Charleroi requested an exclusion for his client on the basis that the evidence shows that Charleroi is a niche player in the Canadian market that only sells in the high end of the market with respect to very specialized plate. Counsel also indicated that Charleroi sells to HMDC for the Hibernia Project represents much of the steel that Charleroi is likely to export to Canada. Finally, counsel noted that the dumping assessment made against his client is based on the sale of two plates to HMDC.

Counsel for APVMA and HMDC requested exclusions for specific products listed in agreements reached with Algoma and Stelco prior to the commencement of the hearing. These exclusions were based on evidence that the products set out in each of the agreements were not produced, or not readily available, from domestic production.

ECONOMIC INDICATORS

The following table summarizes key economic indicators, except for pricing which is done separately.

ECONOMIC INDICATORS - DOMESTIC MARKET				
	1989	1990	1991	1992
Production (000 n/t)	393	315	316	452
Apparent Market (000 n/t)	486.0	443.4	439.5	400.1
% Increase (decrease)		(9)	(1)	(9)
Market Share (%)				
- Domestic Producers	77.3	66.5	64.9	80.5
- Total Subject Imports	18.0	30.9	34.0	18.3
- U.S. imports	2.6	10.8	8.5	5.0
- All Other Subject Imports	15.4	20.1	25.5	13.3
- Non-Subject Imports	4.8	2.6	1.2	1.1
Exports (000 n/t)	17.0	23.2	23.8	123.0
Industry Domestic Sales				
- n/t (000)	376	295	285	322
- \$ (million)	234.2	172.6	149.2	143.6
Industry Net Income (%)	17	3	(6)	(11)
Industry Employment	657	862	605	791
Capacity (000 n/t)	970.8	1,070.8	1,070.8	1,070.8
Utilization (%)	40	29	29	41
n/t = Net ton.				

Domestic production fell by 20 percent in 1990, remained at the same level in 1991, then climbed to a 4-year high in 1992, largely due to expanded production for the export market.

The apparent market fell steadily, by some 18 percent, from 1989 to 1992. During this period, the domestic producers' market share slipped from 77 to 65 percent in 1991, then rebounded to over 80 percent in 1992. Total subject imports went from 18 percent of market share in 1989 to 34 percent in 1991, then fell back to 18 percent in 1992.

Industry domestic sales, in volume terms, fell by 24 percent from 1989 to 1991, then grew by 13 percent in 1992. In value terms, however, they experienced a steady and steep decline over the 4-year period, resulting in substantial financial losses in 1991 and 1992.

PRICING INDICATORS

The following table shows a number of average prices for regular plate derived from data submitted to the Tribunal during the course of the inquiry.

PRICE INDICATORS - DOMESTIC MARKET - REGULAR PLATE				
	(\$/net ton)			
	1989	1990	1991	1992
<u>Selling Prices</u>				
Industry	615	579	516	440
Total Subject Imports	581	531	519	500
U.S. Imports	635	595	613	607
Subject Imports - Other Countries	575	496	482	455
<u>Landed Prices</u>				
U.S. Imports	415	546	550	551
Other Subject Countries' Imports	547	473	451	426

From 1989 to 1992, the average price of domestic producers' sales of the subject regular carbon plate (mostly 44W), which accounted for over 90 percent of sales during the review period, declined steadily from \$615 per net ton in 1989 to \$440 per net ton in 1992, a reduction of about 28 percent.

On average, selling prices of all the subject imports of regular plate dropped by about 14 percent, falling from \$581 to \$500 per net ton. Selling prices of U.S. imports dropped from \$635 per net ton in 1989 to \$595 per net ton in 1990, concurrent with a dramatic rise in volume, then increased to over \$600 per net ton in both 1991 and 1992. At the same time, sales prices of imports from the other subject countries dropped by 21 percent, from \$575 per net ton in 1989 to \$455 per net ton in 1992. The price of imports also exhibited mixed trends based on source and product mix. PVQ plate was the most expensive variety of the subject goods. Average prices of steel plate from the United States were generally the highest. Landed prices of regular plate from all sources other than the United States dropped from \$547 per net ton to \$426 per net ton, a decline of over 22 percent from 1989 to 1992.

The Tribunal conducted a pricing survey which examined purchases of both 44W structural plate and ASTM A516 PVQ plate by service centres, fabricators and end users. The results of this survey showed that, on average, the price of 44W imported from all the named countries was lower than that of the domestically manufactured product in 1991. However, in 1992, the gap became narrower. In the case of ASTM A516 plate, the survey indicated that, as was the case for 44W plate, the prices of both imported and domestic plate fell in 1992. However, unlike the situation with

44W plate, the price of imported ASTM A516 plate was found to exceed domestic plate prices, in both years, and in some cases, by a wide margin, confirming the position that the majority of imported ASTM A516 plate is a higher-priced PVQ plate.

PRELIMINARY ISSUE: MOTION TO EXCLUDE CERTAIN COUNSEL

Counsel for Stelco brought a motion at the pre-hearing conference requesting an order excluding counsel who are on the Chapter 19 roster of panelists under the *Canada - United States Free Trade Agreement*⁸ (the FTA) from appearing at this inquiry. Counsel submitted that such individuals are, at once, both judges on appeals of Tribunal findings and counsel before the Tribunal. This, they argued, brings the fairness of the Tribunal's inquiry into question. The Tribunal heard argument from counsel on both sides, as well as from counsel for the Attorney General of Canada who appeared to oppose the motion. After considering the arguments, the Tribunal ruled that the issue raised in the motion was fundamental to the structure of Chapter 19 of the FTA, but that the Tribunal's legislation did not give it jurisdiction to grant the relief being sought.

REASONS FOR DECISION

Section 42 of SIMA requires the Tribunal to determine whether the dumping of the subject goods, as found by the Deputy Minister, has caused, is causing or is likely to cause material injury to the production in Canada of like goods. In arriving at its decision in this case, the Tribunal first has to determine whether the domestic producers constitute a major proportion of the total domestic production of like goods. Second, the Tribunal must determine whether the evidence reveals that there are subcategories of like goods in this inquiry. Third, the Tribunal has to determine whether the evidence before it establishes that Canadian producers have suffered from, or are threatened with, material injury, and whether there is a causal link between the material injury suffered and the dumping of the subject goods. Finally, the Tribunal addresses requests for exclusions.

Domestic Industry

Pursuant to paragraph 42(3)(a) of SIMA, the Tribunal must take fully into account paragraph 1, Article 4 of the GATT Anti-Dumping Code⁹ (the Code), which sets out the definition of domestic industry. Paragraph 1, Article 4 provides that:

In determining injury the term "domestic industry" shall be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products.

The Tribunal finds this requirement is met because the complainant and the other domestic producers appearing in support of the complainant account for all of the domestic production of carbon steel plate.

8. *Canada Treaty Series*, 1989, No. 3 (C.T.S.), signed on January 2, 1988.

9. *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade*, signed in Geneva on April 12, 1979.

Like Goods

Prior to the pre-hearing conference, certain counsel for exporters and importers asked the Tribunal to subdivide the subject goods into product categories, such as heat-treated and non-heat-treated plate, and structural and PVQ plate. At the pre-hearing conference, the Tribunal ruled that it would hear evidence on this matter at the hearing and reserved the right to define product categories for purposes of its injury determination, based on the nature of the evidence adduced at the hearing. The Tribunal also requested that the Deputy Minister provide separate margins of dumping for the following possible categories of subject plate: heat-treated and non-heat-treated plate, and, if possible, structural and PVQ plate. Prior to the hearing, the Tribunal advised the parties that the Deputy Minister had responded to the Tribunal's request by providing separate weighted average margins of dumping for heat-treated and non-heat-treated plate but had indicated that he could not provide separate margins of dumping for structural and PVQ plate.

Subsection 2(1) of SIMA defines "like goods" in relation to the imported subject goods as:

- (a) goods that are identical in all respects to the other goods, or*
- (b) in the absence of any goods described in paragraph (a), goods the uses and other characteristics of which closely resemble those of the other goods.*

In the opinion of the Tribunal, heat-treated and non-heat-treated plate are not identical because, as discussed above, the evidence indicates that the heat-treating process gives to heat-treated plate certain strength characteristics which non-heat-treated plate does not have. In considering whether the uses and characteristics of plate in the proposed subcategories closely resemble each other, the Tribunal notes that heat-treated plate is substitutable for non-heat-treated plate in all applications, although this is not a common occurrence. As the goods in these proposed subcategories are substitutable in certain circumstances, the Tribunal finds that they closely resemble each other within the meaning of paragraph (b) of the definition of "like goods" and, therefore, the like goods in this inquiry should not be broken down into these subcategories. Furthermore, the Tribunal considers evidence relating to the distinctiveness of imported PVQ plate in context of possible exclusions from an injury finding. This is discussed in detail below.

Material Injury

Analysis of Market Indicators

The inquiry commenced with an examination of the effects that the aggregate imports from all of the named countries had on the industry's performance. In assessing injury to the domestic producers, the Tribunal is of the view that, although total demand for carbon plate is insensitive to price, the demand for the product of any single producer is, to a large degree, highly price sensitive. Carbon steel plate is generally considered to be a commodity product, and plate produced at different mills in different countries, given the same specifications, is generally hard to differentiate. Consequently, product quality is not normally a decisive factor in choosing a particular supplier. For most of the steel service centres, which account for about 65 percent of the domestic trade in carbon plate, price is by far the overriding factor. Fabricators and end users, on the other hand, buy plate in much smaller quantities for use in their operations and, hence, the quick delivery of plate made to varying specifications is also an important consideration.

The considerable global overcapacity to produce carbon plate and the need for steel producers to keep their mills loaded to cover their heavy overhead costs lead, at the best of times, to global oversupply and to significant international price competition. These pressures are aggravated in times of economic recession, as demand for all steel products falls, regardless of price. Steel plate prices began to decline steadily in Canada and elsewhere in late 1989 as the recession took hold. The evidence suggests that the Canadian plate market was particularly affected by these trends.

The Tribunal examined trends in domestic shipments and in the volumes and values of all carbon steel plate imported into Canada from both subject and non-subject countries for the period from 1989 to 1992, inclusive. The focus, however, was on the period from 1990 to 1992, given the anti-dumping findings already in place against most of the subject countries until early 1990. It also looked at trends in the buying and selling prices of this imported product as compared to the selling prices of domestically produced carbon plate and studied changes in the industry's financial performance, as well as in a number of other economic indicators to determine whether the Canadian industry had suffered any injury.

The demand for carbon steel plate in Canada declined significantly between 1989 and 1992. Sales dropped 18 percent, from about 486,000 net tons in 1989 to about 400,000 net tons in 1992. At the same time, the apparent value of the market plunged 39 percent, from about \$299 million to about \$184 million. Traditionally, the domestic mills have accounted for about 80 percent of this market. During the four years examined by the Tribunal, the industry's share fell from 77 percent, in 1989, to about 65 percent, in both 1990 and 1991, all to the benefit of imports from the subject countries, before returning to a level of just over 80 percent in 1992.

In late 1990, the year that the industry suffered a major loss in market share, Algoma and Stelco, the two domestic mills accounting for the majority of domestic production, were involved in strikes that lasted more than three months and that created uncertainty in the market for weeks, if not months, before and after the strikes. During that year, imports from the subject countries, particularly the United States, significantly increased their share of the domestic market to almost 31 percent, a gain of 13 percentage points over the previous year.

In 1991, as demand continued to weaken, the domestic industry experienced a further slight contraction, both in the volume of its shipments and in its share of the market. Although the supply of domestic product was affected somewhat by a major furnace reline at Stelco's Hilton Works in the early part of the year, the Tribunal observes that, throughout the remainder of the year, subject imports from offshore suppliers continued to be landed at increasingly lower prices and greater volumes.

In 1992, Algoma, Stelco and IPSCO exhibited solid gains, both in the volumes of their relative production and in market share. These gains returned the industry to its more traditional market share of about 80 percent. While the industry regained all of the share that it had lost to the subject countries, it was only able to do so by undercutting the dumped prices in the market. The Tribunal considers that the continuing decline in the unit price of plate imports from most of the subject countries exerted strong downward price pressures on the domestic mills, particularly on Algoma and Stelco.

Most of the carbon steel plate sold in Canada is structural plate. In 1992, this type of steel represented over 80 percent of the steel sold domestically. In this large segment of the market, the three domestic producers are the principal suppliers. During the

period under examination, the industry's share of regular plate, of which the great majority is structural, fell from about 80 percent in 1989 to 68 percent in 1991, returning to a peak of just over 82 percent in 1992.¹⁰

During the four-year period examined, the average selling price of regular carbon plate imported from all of the named countries, including the United States, dropped by an average of 14 percent. This compares with the 22-percent drop in the price of regular plate imported from countries other than the United States. The price of plate imported from the United States, on the other hand, dropped by only 4 percent.

As demand deteriorated and prices fell, the industry's financial performance worsened, from a net profit of 17 percent on sales of \$234 million in 1989 to a net loss of 11 percent on sales of \$144 million in 1992. A portion of these losses must be attributed to weak demand in the market and the resulting competition for market share among the domestic mills. Production stoppages at Algoma and Stelco also affected the Canadian industry's market share in late 1990 and early 1991. However, the persistence throughout 1991 of the severe drop in the domestic industry's market share, even after the effects of these stoppages had passed, is explained by the continued presence of low or dumped prices of subject imports from offshore. While the domestic industry recovered market share in 1992 by adopting aggressive pricing policies, this gain was only at the expense of even greater financial losses.

Analysis of U.S. Imports

As the Tribunal's deliberations progressed, it became clear to a majority of the Tribunal that the circumstances relating to the imports from the United States were significantly different from those respecting imports from the other subject countries. These differences persuaded the Tribunal that, for the purposes of this case, the evidence relating to these differences should be considered fully, and possible injury from the United States should, if necessary, be considered separately from injury from other sources.

The Tribunal wishes to make clear that, in proceeding in this manner, it has not interpreted subsection 43(1.1) of SIMA, which requires a separate finding with respect to the United States, to mean that a separate examination of goods originating in the United States must also be undertaken in cases where the class of goods defined by the Deputy Minister includes goods from the United States and other countries. The Tribunal thus reaffirms its statements in the *Polyphase Induction Motors*¹¹ case on this matter. The Tribunal notes that, if the evidence relating to any other named exporting country had set it apart distinctly from the others, the Tribunal would have also considered a separate examination and finding on injury with respect to that country.

As the inquiry progressed, the Tribunal noted that the trends in the volumes and prices of U.S. and other subject imports were not exhibiting the same behaviour. U.S. imports began falling in 1991, while those from other subject countries continued to rise. Meanwhile, the prices of plate imports from the United States were on the

10. A portion of regular plate is used in pressure vessel applications. This appears to account for about 7 percent of the total market.

11. *Polyphase Induction Motors Originating in or Exported from Brazil, France, Japan, Sweden, Taiwan, the United Kingdom and the United States of America*, Inquiry No. CIT-5-88, April 28, 1989.

upswing. They were already much higher than either domestic prices or those of most of the other imports.

In 1989, sales from U.S. imports stood at just under 13,000 net tons and accounted for 2.6 percent of the Canadian market for carbon plate. In 1990, their volumes nearly quadrupled to slightly more than 48,000 net tons, or about 11 percent of the domestic market, as their average prices fell from \$671 per net ton to \$609 per net ton. In 1990, Bethlehem, USX, Lukens Steel Co. and Oregon Steel accounted for more than 85 percent of the imports from the United States, nearly half of which were destined for Western Canada. A considerable volume of these imports were in the kinds and types of plate generally supplied by the domestic mills and, to a significant extent, by offshore suppliers to Western Canada. The Tribunal believes that most of the increase in plate imports from the United States filled a void in the Canadian marketplace created by the prolonged strikes at Algoma and Stelco, and the market uncertainties which preceded and followed the strikes.

In 1991, U.S. imports, on average, became slightly more expensive, rising to \$619 per net ton. At the same time, they lost over 2 percentage points of market share, falling by 22 percent to 37,400 net tons. The four largest U.S. exporters continued to account for over 60 percent of imports from the United States into Canada, but the proportion that was destined for Western Canada grew significantly.

In 1992, U.S. imports fell to 20,000 net tons as their average prices increased to \$629 per net ton. Accompanying this sharp drop in volume, the United States lost another 3.5 percentage points of market share, accounting for 5 percent of total market demand for the year. However, by the fourth quarter of 1992, they accounted for less than 4 percent of the market, having declined steadily for five consecutive quarters. By this time, the declining imports from the four large U.S. mills accounted for about 40 percent of total U.S. imports. As U.S. exports dropped, in aggregate, the exports of these four firms dropped likewise, falling to about 20 percent of their 1990 volume. The decline in U.S. imports was particularly noticeable in Western Canada where Oregon Steel was now competing head on with IPSCO's significantly lower prices and expanded product range. The remaining 60 percent of U.S. exports were shipped to Canada from over 35 sources to a large number of importers, most of which were service centres, fabricators and end users.

The Tribunal recognizes that the U.S. share of the Canadian market was slightly higher in 1992 than in 1989. This can be explained, in part, by the increasing integration of the North American steel market, spurred by FTA tariff reductions and business relationships developed when the two major Canadian mills were not supplying the market in the latter half of 1990. The Tribunal also observes that the increase in the U.S. share of the Canadian market corresponds, in part, to a loss in market share of exporting countries not subject to the Deputy Minister's final determination of dumping.

Based on the information contained in the Statement of Reasons accompanying the Deputy Minister's final determination of dumping, some 70 parties were identified as importers of the subject goods from the United States during the period of investigation from January to June of 1992. There is a comparatively large number of sellers and buyers in the steel plate trade between the United States and Canada, compared to the situation with other subject exporting countries. This suggests that the particular Canadian demand that much of the imports from the United States are now supplying is for small lots of plate with particular dimensions and specifications. This conclusion is supported by importers' responses to the Tribunal's questionnaire and by testimony at

the hearing. The evidence of Bethlehem and USX is that they are niche players in the Canadian market. Moreover, the evidence of a major Canadian steel service centre was that its U.S. imports are very specific and client related. It would appear that a significant proportion of plate imports from the United States involves relatively small quantities, particular physical and chemical characteristics, and prompt availability. The relatively high prices of U.S. plate also support the conclusion that U.S. exporters are meeting special needs and, on this basis rather than on price, have been able to build longer run market share. The Tribunal considers that the demand for most imports of plate from the United States is derived from the demand for the final products made by the fabricators and end users and is, therefore, tied much more closely to economic conditions than to any price considerations.

In this vein, the Tribunal notes that the average margins of dumping for U.S. imports found by the Deputy Minister were, for the most part, significantly lower than those found for imports from other sources. For exporters, other than the six identified mills, the anti-dumping duty to be collected in the event of a positive finding was set by the Deputy Minister at 11.5 percent of the export price. This, in the Tribunal's view, would not deter buyers of the types and sizes of plate not available from domestic sources from continuing to source their requirements in the United States. It is the Tribunal's opinion that U.S. carbon steel plate exports, entering Canada under the conditions and price levels noted, are necessary to fill a stable and almost structural type of demand that the domestic mills do not service.

With respect to future injury, the Tribunal, while it recognizes the excess production capacity of U.S. mills, finds no evidence on the record to suggest that U.S. plate exporters are likely to behave in an injurious manner in the Canadian carbon plate market. The Tribunal observes that the average landed prices of plate imported from offshore suppliers is below the Canadian mill-gate price, and the addition of anti-dumping duties would make this plate uncompetitive. On the other hand, U.S. plate prices have been well above Canadian mill prices. U.S. plate is generally being purchased for reasons other than price. Because of this, the addition of anti-dumping duties to already low margins of dumping would have little effect on demand for these products. The Tribunal notes that, in addition to the evidence on pricing and import volume patterns, there is no persuasive evidence with respect to excess inventories that would lead the Tribunal to conclude that injurious dumping from the United States is likely in the near future. Furthermore, the Tribunal heard evidence that the U.S. plate market was beginning to firm, as the economic recovery proceeded in the United States.

For these reasons, the Tribunal finds that dumped imports of the subject goods from the United States have not caused, are not causing and are not likely to cause material injury to the production in Canada of like goods. In addition to its introductory comments in this regard, the Tribunal is of the view that it is within the spirit of the Code to consider separately a specific country when it is clearly evident that circumstances are such that separate consideration is required.

Analysis of Other Subject Imports

Imports from countries named by Revenue Canada other than the United States, as a group, displayed quite a different pattern of behaviour during the period under review than did U.S. imports, particularly in terms of volumes and prices. In 1989, these countries held about 15 percent of the market. In 1990, all of the countries, except Romania, increased their shipments to Canada and gained nearly 5 percentage points of market share. Of particular relevance, in the Tribunal's view, was that while volumes

of plate imported from all of the subject countries were increasing, the prices of these other countries' imports were falling. The average selling price of regular plate from these countries dropped 21 percent, from \$575 per net ton in 1989 to \$455 per net ton in 1992.

Throughout the period under review, imports from these countries, except for Germany, which supplied large volumes of PVQ plate, consisted mostly of 44W structural plate, which is in direct competition with the largest volume items produced by each of the three domestic producers.

The Tribunal has no doubt that a good portion of the increased imports from all the named sources in 1990 went to fill the gap created by the strikes at Algoma and Stelco. What is more significant to the Tribunal, however, is the trend in imports after 1990, when the strikes were over.

In 1991, imports from the offshore subject countries continued to grow, increasing their share to nearly 26 percent of the market. This increase came at the expense of sales of both domestic plate and plate imported from the United States. As prices continued to fall in the domestic market, the price of Canadian plate dropped substantially, but still remained at a level somewhat above the average price of this imported product.

The Tribunal received considerable evidence pertaining to pricing trends through testimony at the hearing and by way of the Tribunal's pricing questionnaire. The evidence relating to the purchasing habits of two large Canadian steel service centres demonstrated that, for the most part, the price of offshore plate, which has generally been in decline for the last few years, was the basis upon which these firms negotiated plate prices with the domestic mills. An officer of one of the large steel service centres explained to the Tribunal that it was the practice of his firm to hold quarterly negotiations with the domestic mills to determine the price at which that mill would supply his firm for the following quarter. He indicated that he always used the price offered for offshore plate, for the previous quarter, as the general price level that he would seek from the domestic mill(s). The pricing data supplied by the major steel service centres generally supported this testimony.

At the hearing, testimony from Canadian manufacturers and distributors singled out offshore suppliers as being the driving force behind the declining prices in the Canadian marketplace. There was considerable testimony from both sides as well as concerning the impact of off-the-dock sales of relatively large quantities of subject goods imported from various subject countries on an irregular basis and at very low prices. The Tribunal considers that, in aggregate, these imports were sufficient to exert constant downward pressure on domestic prices.

This conclusion is supported by a comment in a study by PaineWebber to the effect that steel prices in Western Europe have fallen to extreme lows due to a lack of demand, overcapacity and price competition from Eastern European and CIS Steel mills, which are regularly offering steel on the world export market at bargain prices. The report goes on to note that this is particularly true for slabs, long products and plate. The study states that offerings by the Eastern European and CIS steelmakers are a factor driving down prices on the German/French border as well as on the world steel market. Of particular interest in the PaineWebber study is its finding that international spot prices for carbon steel plate showed that Canadian plate prices fell much more rapidly than international prices, particularly in 1991 and 1992.

The Tribunal is of the opinion that, in the wake of the constant downward price pressure from the subject imports, domestic mills had no choice but to meet these prices, or face even greater losses in market share with additional financial losses from lower plant loading. This conclusion is supported by evidence of the disruptive effect of large shipments of commodity-grade plate arriving from offshore exporters, some of it being sold off-the-dock. In the fragile market for plate, which has been experienced in the last few years, such shipments can govern the market.

In 1992, these offshore subject imports declined in both absolute and relative terms. Their average prices continued to slide, although they were actually overtaken, on average, by falling domestic prices. The Tribunal believes that the domestic mills assumed price leadership in 1992 in a desperate attempt to win back market share and to lower their average costs of production. As a result of this fierce competition for market share, the industry's financial performance deteriorated over the period, falling steadily from a profitable position in 1989 to significant losses in 1992.

In summary, the Tribunal finds a significant decline in the financial performance of the domestic industry and the existence of price erosion in the marketplace during 1991 and 1992. The price erosion was responsible, to a large degree, for this financial decline, which accelerated even as the domestic industry has lowered its prices to maintain market share. The Tribunal finds that the magnitude of this injury is such that the domestic industry has been, and is being, materially injured.

Causality

The Tribunal must next consider whether there is a causal link between the material injury experienced by the domestic producers of like goods and the dumped imports.

The Tribunal is satisfied that there is a direct correlation between the injury suffered by the domestic industry and the dumping of the subject goods from the subject countries, other than the United States. This injury manifested itself primarily in the form of price erosion in 1991 and 1992 and the consequent substantial financial losses incurred by the industry in its attempts to compete with low-priced dumped imports in order to regain and maintain market share. The Tribunal considers that the severe price declines in the Canadian market that the domestic industry confronted during these years resulted from low-priced imports from these other countries. The continued presence of these low-priced and dumped imports has helped prevent both a recovery in domestic prices and an improvement in the financial performance of the domestic industry.

The evidence shows that structural plate, generally, and 44W plate, in particular, are traded as a commodity. Once a price level has been established for these plate products, transactions take place at that price. The Tribunal heard consistent evidence from steel service centre witnesses from both Eastern and Western Canada that pricing was established on the basis of various offshore offers. This testimony included evidence to the effect that other suppliers also had to meet these prices if they wished to sell in the Canadian market.

This conclusion is reinforced by information in the Tribunal staff's pricing analysis. Evidence in this study, corroborated by testimony from representatives of major steel service centres, revealed that decreases in the prices of domestic offers tended to follow decreases in import price offerings. Furthermore, the data show that this "leapfrogging"

effect was exacerbated by irregular flows of imports, frequently in large quantities, from a number of different sources. For instance, in the last quarter of 1991, sales from dumped imports of regular plate from Belgium were 11,607 net tons. This amount represents about 33 percent of subject import sales or almost 12 percent of the total plate market in that quarter, notwithstanding that regular plate from Belgium accounted for only 3.4 percent of subject imports in 1991. The average price per net ton of these dumped imports was \$442 compared to a domestic average price per net ton of \$491. In the first quarter of 1992, dumped imports from Brazil were 9,252 net tons. This amount represents roughly 40 percent of subject import sales or 9 percent of the total plate market in that quarter, notwithstanding that regular plate from Brazil accounted for only 4 percent of the subject imports in 1992. The average price per net ton of these dumped imports was \$460 compared to an average domestic price per net ton of \$467. Finally, the pricing data in the PaineWebber study, previously referred to, also support the Tribunal's conclusions, as they show that, in a period of low prices in other comparable international steel plate markets, prices in Canada fell more rapidly than in these other markets.

The Tribunal notes that, in his final determination, the Deputy Minister found that, with the exception of only two named importers, virtually 100 percent of subject imports from countries other than the United States were dumped at weighted average margins of between 23 and 53 percent.¹² The Tribunal is convinced that, in the market for a commodity product such as steel plate, percentage margins of this size eroded prices in the Canadian market for the subject goods and, thus, contributed to the material injury suffered by the domestic industry. For these reasons, the Tribunal finds that the dumping of the subject imports has caused and is causing material injury to the production in Canada of like goods.

The Tribunal has considered carefully the argument that the injury to the domestic industry was self-inflicted as a result of its own pricing strategies. The Tribunal is convinced that, when the domestic mills assumed price leadership in 1992, this was done in an attempt to win back market share in the face of the continued presence of low-priced and dumped imports.

With respect to the future, the Tribunal is of the opinion that if anti-dumping duties were not imposed, then the subject countries, other than the United States, would continue dumping. The Tribunal observes that this is the second inquiry into the injurious dumping of carbon steel plate involving those subject countries other than Denmark and the former Yugoslav Republic of Macedonia. As noted above, the 1983 injury findings were rescinded in 1990. Within three years of that decision, however, dumping from these countries has resumed at significant margins. This record clearly suggests to the Tribunal that, in the absence of an injury finding, the dumping found by the Deputy Minister is likely to continue in the near future.

Also, as discussed above, the manner in which many of these countries have sold, and continue to sell, into the Canadian market has an immediate, destabilizing impact on pricing in that marketplace. This tendency is reinforced by the continued excess capacity in the steel industry worldwide, which, as the PaineWebber study indicates, shows no sign of abating. The Tribunal is of the opinion that, if anti-dumping duties are not put in place, these practices will be continued and their downward pressure on prices

12. The Tribunal observes that the two exceptions, Dillinger and Charleroi, are exporters of specialized plate, most of which is excluded from the injury finding.

will remain a dominant feature of the Canadian steel plate market. The Tribunal finds, therefore, that the dumping of the subject imports is likely to cause material injury to the production in Canada of like goods.

Requests for Exclusions

As noted above, counsel for the importers and exporters requested exclusions on the basis of product specifications, producers, countries and certain agreements reached between particular end users and the domestic industry. In this regard, the Tribunal notes that it has a discretion which has been recognized, in the past, by the courts.¹³ Further, the Binational Panel under Article 1904 of the FTA re-affirmed this discretion in its decision in *Certain Dumped Integral Horsepower Induction Motors*.¹⁴ The Tribunal has previously indicated that it will only grant exclusions in circumstances where the case for an exclusion has been adequately demonstrated. The Tribunal is persuaded that, in this case, such circumstances have been so demonstrated in three respects.

First, with respect to the issue of the availability of thick plate from domestic producers, the Tribunal found the testimony of the industry members themselves particularly useful. Although the slab casting technology used by the industry is capable of making carbon steel plate to a thickness of 4 in., the evidence on the record was that the thickest plate made by any domestic mill on a "normal" basis is 3 1/8 in. thick. The reason for this appears to be the cost associated with producing thicker plate. Witnesses from the domestic industry explained that, in order to roll slabs that are larger than average, a number of settings in the rolling line would have to be changed to accommodate such slabs. It is clear to the Tribunal that the extra costs associated with this procedure would make the rolling of such plate expensive. In view of the limited demand for thicker plate, evidence that this plate is not normally sold by domestic producers, and evidence of specific tenders for such plate on which the domestic industry declined to bid, the Tribunal is of the view that plate over 3.125 in. thick is not readily available from domestic production and, therefore, should be excluded from the finding.

The Tribunal next considers the evidence relating to the two specifications in the class of goods defined by the Deputy Minister which are PVQ plate, that is, plate made to ASTM specifications A515 and A516M/A516, grade 70. It is clear from the evidence that Algoma and Stelco are the only domestic producers of plate made to these specifications. The Tribunal is persuaded that the evidence also shows that neither firm competes in the higher value-added portion of the market where restricted chemistry and specialized testing are required by end users that buy this plate. In other words, the Tribunal is satisfied that much of the subject PVQ plate that is entering Canada satisfies a demand for a higher-value specialty product that the domestic industry does not produce. Further, the Tribunal is of the view that this exclusion will assist domestic fabricators and end users in remaining competitive in the increasingly open market for products such as pressure vessels, without detriment to the domestic industry, as indicated by their agreement to certain specific end-user exclusions to which the Tribunal now turns.

13. *Hitachi Limited v. The Anti-dumping Tribunal*, [1979] 1 S.C.R. 93; *Sacilor Aciéries v. The Anti-dumping Tribunal* (1985), 9 C.E.R. 210 (F.C.A.).

14. Article 1904 Binational Panel, *Certain Dumped Integral Horsepower Induction motors, One Horsepower (1 HP) to Two Hundred Horsepower (200 HP) Inclusive, with Exceptions Originating in or Exported from the United States of America*, 4 T.C.T. 7065, September 11, 1991.

Finally, the Tribunal finds persuasive the evidence relating to two agreements for exclusions reached through discussions between counsel for the domestic industry and counsel for APVMA and HMDC. In accordance with the Tribunal's previous practice with respect to such agreements, the Tribunal will only act upon them if they are supported by cogent evidence on the record. In this regard, the Tribunal notes that the two end users in question filed material that indicated that the products set out in the agreements were not available from domestic production. This material was not challenged by the domestic industry. In addition, the Tribunal points out that, for the most part, the products involved are types of PVQ plate covered by the previous exclusions that have been granted.

CONCLUSION

In light of the foregoing, the Tribunal finds, for the reasons given above, that the dumping in Canada of hot-rolled carbon steel plate and high-strength low-alloy plate not further manufactured than hot-rolled, heat-treated or not, from Belgium, Brazil, the Czech Republic, Denmark, the Federal Republic of Germany, Romania, the United Kingdom and the former Yugoslav Republic of Macedonia has caused, is causing and is likely to cause material injury to the production in Canada of like goods, excluding:

- (i) subject plate exceeding 3.125 in. (79.375 mm) in thickness;
- (ii) subject plate made to ASTM specifications A515 and A516M/A516, grade 70, of any thickness. For greater certainty, this exclusion specifically includes the following plate made to ASTM A516 specifications which meet one or more of the following specifications:
 - plate required to meet NACE standard TM 0284/87, using the solution specified in TM 01-77/86, at the following levels: CLR 10% or less, CTR 5% or less and CSR 2% or less;
 - plate greater than 2.5 in. in thickness required to meet impact testing in the transverse orientation at -50°F under ASTM A370, to meet or exceed 25 ft-lb on average and 20 ft-lb on individual specimens;
 - plate greater than 2.5 in. in thickness required to meet the ultrasonic evaluation standards of ASTM/ASME SA-577 and/or SA-578;
 - plate required to meet the following carbon equivalents as per ASME SA-20:
 - a) carbon equivalent equal to or less than 0.40 for plate equal to or less than 1.5 in. in thickness; or
 - b) carbon equivalent equal to or less than 0.42 for plate greater than 1.5 in. in thickness; or
 - c) carbon equivalent equal to or less than 0.42, with maximum hydrogen and oxygen contents of 2 parts per million and 10 parts per million respectively, for plate equal to or less than 1.5 in. in thickness;

- plate 112 in. or greater in width with a total pattern weight in excess of 25,000 lbs;
- (iii) subject plate supplied to or purchased by HMDC for purposes of construction of offshore facilities forming part of the Hibernia Project as follows:
- plate manufactured by Dillinger Hüttenwerke, being Types IP, IIP and VP plate, made in accordance with specifications contained in document No. CM-E-V-S-MOO-GS-030.0 issued by HMDC and dated September 23, 1991;
 - plate manufactured by Fabrique de Fer de Charleroi consisting of 887.09 metric tons of Type II steel and 1026.74 metric tons of Type X steel, made in accordance with document no. CM-E-V-S-MOO-GS-030.0, dated September 23, 1991, and document no. CM-E-V-S-MOO-GS-036.0, dated September 23, 1991, issued by HMDC;
 - plate consisting of Type II steel for use in construction of Module M20 and GBS Mechanical Outfitting Requirements and for derrick construction, manufactured by any of the above-named producers, made in accordance with the said document no. CM-E-V-S-MOO-GS-030.0.

In accordance with subsection 43(1.1) of SIMA, with respect to the aforementioned goods from the United States, the Tribunal finds that, under subsection 43(1) of SIMA, the dumping in Canada of the goods originating in or exported from the United States has not caused, is not causing and is not likely to cause material injury to the production in Canada of like goods (Member Fraleigh dissenting in part).

John C. Coleman
John C. Coleman
Presiding Member

Robert C. Coates, Q.C.
Robert C. Coates, Q.C.
Member

DISSENTING OPINION OF MEMBER FRALEIGH

I agree with my colleagues on those aspects of the findings and reasons that deal with the countries named in the preliminary determination of dumping other than the United States. However, my understanding of the evidence and the manner in which that evidence should be analyzed make me unable to join in their finding that the dumping of the subject goods originating in or exported from the United States has not caused, is not causing and is not likely to cause material injury to the production in Canada of like goods. With respect to the United States, I believe that my colleagues and I disagree in two respects. First, I would not have considered the evidence relating to the United States prior to making a determination about material injury, to domestic production, from dumped imports considered "en masse." Second, I am not persuaded that the evidence with respect to the United States leads to the conclusions that my colleagues have reached, for the reasons given below.

As has been the practice of the Tribunal in the past, I began my deliberations by considering the dumped imports "en masse" and analysing their cumulative impact on domestic production. As noted by the Tribunal in the *Polyphase Induction Motors* case, dumping inquiries are "first and foremost, focussed on the dumping of a class of goods whatever their origin."¹⁵ For the reasons given in the body of our statement of reasons, I was persuaded that the domestic industry had suffered injury, that such injury was material and that dumping from the subject countries was a cause of that material injury. I believe that it is only after reaching this stage in our deliberations that we should have considered whether there were circumstances relating to a specific country, company or product that would allow us to consider whether we should exercise our discretion to grant exclusions. This approach is, again, consistent with the comments of the Tribunal in the *Polyphase Induction Motors* case, when it stated that applying the principle of cumulation

*does not mean, however, that the Tribunal will always find, in the case of a positive finding, against all named countries. There could well be specific reasons why imports from specific sources might be excluded. However, it is only after the cumulative effect of the dumped goods from all subject countries has been analysed that exclusions, if any, can be envisaged.*¹⁶

There are instances, in previous cases, where countries that have been found to be dumping have been excluded from a finding. In my view, such exclusions have only been granted where the volume of such imports has been considered *de minimis* or the margin of dumping and percentage of goods dumped have been low or *de minimis*. Obviously, this is not the case here, as the United States is significantly the largest exporter of the subject goods to Canada. Further, the subject imports from the United States were found to have been dumped in substantial quantities and, therefore, were a major part of the issue before us.

Having determined that the dumping of the subject imports, from all the named countries, has caused, is causing and is likely to cause material injury to the production in Canada of like goods, I would then have gone on to consider any evidence that may be relevant to the issue of exclusions. In my view, to be fair to all the named countries, we should first consider product exclusions. As noted, I am in agreement with the

15. *Supra*, note 11 at 12.

16. *Ibid.*

exclusions that we have granted in the body of our reasons for decision. In addition, I am persuaded that these exclusions would be sufficient to address most of the differences that appear in the pricing information for the United States and the other subject countries. More specifically, in my opinion, the evidence reveals that a significant portion of the subject imports from the United States were higher-priced goods of a thickness greater than 3.125 in.

Sidney A. Fraleigh
Sidney A. Fraleigh
Member