



Ottawa, Tuesday, May 17, 1994

Inquiry No.: NQ-93-004

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 ITALY,
THE REPUBLIC OF KOREA, SPAIN AND THE UKRAINE**

FINDING

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 17, 1994, and of a final determination of dumping dated April 15, 1994, 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 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;

but excluding:

- plate for use in the manufacture of pipe and tube (also known as "skelp");
- plate in coil form;
- universal mill plate;
- plate made to ASTM specifications A515 and A516M/A516, grade 70, in thicknesses greater than 3.125 in. (79.375 mm); and
- plate made to ASTM specification A516M/A516, grade 70, which also meets one or more of the following specifications:
 - (i) 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;

- (ii) plate greater than 2.5 in. (63.5 mm) 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;
- (iii) plate greater than 2.5 in. (63.5 mm) in thickness required to meet the ultrasonic evaluation standards of ASTM/ASME SA-577 and/or SA-578;
- (iv) plate 112 in. (2,844 mm) or greater in width with a total pattern weight in excess of 25,000 lbs;
- (v) plate required to meet the following carbon equivalent as per ASME SA-20:
 - . carbon equivalent equal to or less than 0.40 for plate equal to or less than 1.5 in. (38.1 mm) in thickness; or
 - . carbon equivalent equal to or less than 0.42 for plate greater than 1.5 in. (38.1 mm) in thickness; or
 - . 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. (38.1 mm) in thickness,

originating in or exported from Italy, the Republic of Korea, Spain and the Ukraine.

Pursuant to subsection 43(1) of the *Special Import Measures Act*, the Tribunal hereby finds that the dumping in Canada of the aforementioned goods, originating in or exported from Italy, the Republic of Korea, Spain and the Ukraine, has caused, is causing and is likely to cause material injury to the production in Canada of like goods. The Tribunal also finds that the requirements of paragraph 42(1)(b) of the *Special Import Measures Act* with respect to massive dumping have not been met.

Charles A. Gracey
Charles A. Gracey
Presiding Member

Anthony T. Eyton
Anthony T. Eyton
Member

Lise Bergeron
Lise Bergeron
Member

Michel P. Granger
Michel P. Granger
Secretary

The statement of reasons will be issued within 15 days.

Inquiry No.: NQ-93-004

Place of Hearing: Ottawa, Ontario
Dates of Hearing: April 18 to 22, 1994

Date of Finding: May 17, 1994

Tribunal Members: Charles A. Gracey, Presiding Member
Anthony T. Eyton, Member
Lise Bergeron, Member

Director of Research: Selik Shainfarber
Research Manager: Rose Ritcey

Economist: Simon Glance

Statistical Officer: Robert Larose

Counsel for the Tribunal: Hugh J. Cheetham

Registration and Distribution Officer: Pierrette Hébert

Participants:

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

Ronald C. Cheng
Gregory O. Somers
Jonathan A. Blakey*
for Algoma Steel Inc.
IPSCO Inc.

(Manufacturers)

Donald J. Goodwin
N.J. (Nick) Schultz
Jennifer Peterkin
for Canadian Klöckner

Donald J. Goodwin
for ILVA LAMINATI PIANI s.r.l.
Ensidesa

(Importer/Exporters)

* Indicates that he did not attend the hearing.



Ottawa, Wednesday, June 1, 1994

Inquiry No.: NQ-93-004

**CERTAIN HOT-ROLLED CARBON STEEL PLATE AND
HIGH-STRENGTH LOW-ALLOY PLATE, HEAT-TREATED OR NOT,
ORIGINATING IN OR EXPORTED FROM ITALY,
THE REPUBLIC OF KOREA, SPAIN AND THE UKRAINE**

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 hereby finds that the dumping in Canada of certain hot-rolled carbon steel plate and high-strength low-alloy plate, heat-treated or not, originating in or exported from Italy, the Republic of Korea, Spain and the Ukraine has caused, is causing and is likely to cause material injury to the production in Canada of like goods.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	April 18 to 22, 1994
Date of Finding:	May 17, 1994
Date of Reasons:	June 1, 1994
Tribunal Members:	Charles A. Gracey, Presiding Member Anthony T. Eyton, Member Lise Bergeron, Member
Director of Research:	Selik Shainfarber
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for Algoma Steel Inc.
IPSCO Inc.

(Manufacturers)

Donald J. Goodwin
N.J. (Nick) Schultz
Jennifer Peterkin
for Canadian Klöckner
A Division of Klöckner Namasco
Corporation

Donald J. Goodwin
for ILVA LAMINATI PIANI s.r.l.
ENSIDESA

(Importer/Exporters)

* Indicates that he did not attend the hearing.

Witnesses:

Donald K. Belch
Director - Government Relations
Stelco Inc.

J.D. Wellwood
Sales Manager - Plate Sales
Stelco Inc.

R.C. (Bob) Matteson, CMA
Accountant Plate Mill
Plate and Strip Division
Stelco Inc.

Mark A. Nucci
Sales Representative - Coated Sheets
Stelco Inc.

Mike E. Burnet
Sales Representative
Sheet and Plate, Eastern Region
Stelco Inc.

Steven Shaw
Vice-President and Director General
Samuel & Son & Co. (Quebec) Ltd.

Jeff Eisen
President
Pemco Steel Sales Limited

R.A. (Bob) Clark
General Supervisor
Accounting Control
Algoma Steel Inc.

Glenn A. Gilmore
Trade Supervisor
IPSCO Inc.

Christopher W. Poulter
President
Preussag Handel Canada Corporation

Heinz-Juergen Wiecken
Vice-President and General Manager
Canadian Klöckner
A Division of Klöckner Namasco
Corporation

Ian E. Williams, P.Eng.
General Manager
Plate and Shape Product Sales
Algoma Steel Inc.
Derek M. de Korte
Manager - Marketing
Algoma Steel Inc.

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

Bruce J. Allan
General Manager
Steel Services Canada Inc.

Address all communications to:

Secretary
Canadian International Trade Tribunal
Standard Life Centre
333 Laurier Avenue West
15th Floor
Ottawa, Ontario
K1A 0G7



Ottawa, Wednesday, June 1, 1994

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TRIBUNAL: CHARLES A. GRACEY, Presiding Member
ANTHONY T. EYTON, Member
LISE BERGERON, 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 dumping² dated January 17, 1994, and of a final determination of dumping³ dated April 15, 1994, 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 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;

but excluding:

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

1. R.S.C. 1985, c. S-15.

2. Canada Gazette Part I, Vol. 128, No. 5, January 29, 1994, at 580-81.

3. *Ibid.*, No. 18, April 30, 1994, at 2382-83.

- universal mill plate;
- plate made to ASTM specifications A515 and A516M/A516, grade 70, in thicknesses greater than 3.125 in. (79.375 mm); and
- plate made to ASTM specification A516M/A516, grade 70, which also meets one or more of the following specifications:
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 - . 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. (38.1 mm) in thickness,

originating in or exported from Italy, the Republic of Korea, Spain and the Ukraine.

On January 24, 1994, the Tribunal issued a notice of commencement of inquiry.⁴ As part of the inquiry, the Tribunal sent detailed questionnaires to Canadian manufacturers, importers and purchasers of the subject goods, requesting production, financial, import and market information, as well as other information, covering the period from January 1, 1991, to December 31, 1993. From the replies to the questionnaires and other sources, the Tribunal staff prepared public and protected pre-hearing staff reports.

4. *Supra*, note 2 at 594-96.

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.

Public and *in camera* hearings were held in Ottawa, Ontario, from April 18 to April 22, 1994. The complainants, Stelco Inc. (Stelco), Algoma Steel Inc. (Algoma) and IPSCO Inc. (IPSCO), were represented by counsel at the hearing. The importer, Canadian Klöckner, A Division of Klöckner Namasco Corporation (Klöckner), and the exporters, ILVA LAMINATI PIANI s.r.l. and ENSIDESSA, were also represented by counsel at the hearing.

On May 17, 1994, the Tribunal issued a finding that the dumping in Canada of certain hot-rolled carbon steel plate and high-strength low-alloy plate, heat-treated or not, originating in or exported from Italy, the Republic of Korea, Spain and the Ukraine, has caused, is causing and is likely to cause material injury to the production in Canada of like goods.

PRODUCT

Product Definition

The product that is the subject of this inquiry is described by the Deputy Minister in the preliminary determination of dumping as certain hot-rolled carbon steel plate and high-strength low-alloy plate, heat-treated or not, originating in or exported from Italy, the Republic of Korea, Spain and the Ukraine.

Steel is considered to be carbon steel when the manganese content does not exceed 1.65 percent, the silicon and copper contents do not exceed 0.60 percent, and no minimum content is specified for any alloying elements, such as aluminum, chromium, columbium, molybdenum, nickel and vanadium. If there is a minimum level specified for the content of copper, it must be less than 0.40 percent.

High-strength low-alloy (HSLA) steel is carbon steel with small quantities of alloying elements added. The selection of the particular combination of alloying elements depends on the desired properties of the steel, e.g. greater resistance to atmospheric corrosion, improved weldability or higher strength. HSLA steel generally costs more than carbon steel by weight, but can offer savings because of its greater strength.

Plate is categorized by different "qualities," which refer to the suitability and integrity of the steel for its intended purpose. In the case of the subject goods, the two most common qualities are structural quality and pressure vessel quality (PVQ). Structural quality plate is intended for general applications, such as bridges, buildings, transportation equipment and machined parts. It is usually produced to meet specific chemical composition limits and certain mechanical properties. PVQ plate is intended for use in pressure vessels required to hold their contents at pressures from full vacuum to 1,050 psi and is of higher strength than structural quality plate.

Heat-treated or normalized plate is heated in a furnace to homogenize and refine the grain structure in order to improve the steel's ability to resist brittle fracture at low service temperatures. PVQ plate, particularly that thicker than 1.5 in., is usually heat-treated, while structural quality plate tends not to be heat-treated.

The 11 Canadian Standards Association (CSA) specifications listed in the product definition represent different grades within the broad specification G40.21 that covers steel for general construction purposes. Grades 230G/33G, 260W/38W and 300W/44W are structural quality plate, while the remaining 8 CSA specifications are HSLA plate. None of the 11 CSA specifications listed in the product definition is PVQ plate.

Of the seven American Society for Testing and Materials (ASTM) specifications listed in the product definition, A283M/A283, grades A, B, C and D, and A36M/A36 are structural quality plate; A572M/A572, grades 42, 50, 60 and 65, A588M/A588 and A242M/A242, Types 1 and 2, are HSLA plate; and A515 and A516M/A516, grade 70, are PVQ plate.

The ASTM specification A36M/A36 is considered to be generally equivalent to the CSA specification G40.21, grade 300W/44W and, together, these are the two most common specifications of structural quality plate sold in Canada.⁵ The most common specification of PVQ plate sold in Canada is the ASTM specification A516M/A516, grade 70.

Production Process

Steel is refined pig iron. Integrated steel producers manufacture steel by combining iron ore, coke, limestone and oxygen and by superheating the mixture in a blast furnace. The resultant hot metal (pig iron) is then combined with scrap metal and more oxygen in a basic oxygen furnace to produce molten steel. Mini-mills, on the other hand, produce molten steel in electric arc furnaces (EAF) using scrap metal as the raw material.

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 strand caster, where it flows into the caster's molds to cool and form a 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. The slab is then either placed in inventory or immediately transferred to a reheat furnace, where it is heated to a uniform rolling temperature of approximately 2,250-2,300°F. The plate is then rolled to its final gauge in a series of rolling mills before being levelled, identified and inspected for conformance to thickness tolerances and surface requirements.

Heat-treated plate is manufactured in the same manner as above, but, after rolling, it is charged into a reheat furnace, heated to a uniform temperature of approximately 1,650°F, removed from the furnace and allowed to cool.

THE DOMESTIC INDUSTRY

The Canadian carbon steel plate industry consists of three producers: Algoma, IPSCO and Stelco. IPSCO is a smaller producer of carbon steel plate than either Algoma or Stelco, which together account for approximately three quarters of the domestic production of the subject goods.

5. Throughout this statement of reasons, "A36/44W" refers to structural quality plate that is manufactured to either the ASTM specification A36M/A36 or the CSA specification G40.21, grade 300W/44W.

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. Algoma is approximately 60-percent employee owned, with the remaining 40 percent of its shares being held by former creditors. The company manufactures a variety of flat-rolled steel products, including plate, sheet and strip, as well as structural, rail and tubular products at its plant in Sault Ste. Marie, Ontario.

IPSCO is located in Regina, Saskatchewan. Originally incorporated in 1956 as Prairie Pipe Manufacturing Ltd., the company produces a wide variety of steel products, including oil country tubular goods, line pipe, standard pipe, hot-rolled sheet and strip, as well as carbon steel plate. Primary production, i.e. melting, casting and rolling, of the subject goods takes place at the Regina plant, with "heavy plate" (thicker than 0.5 in.) being produced on the Regina plate finishing mill. Thinner gauge plate is first coiled and then transferred to a cut-to-length line, either at the Regina plant or at a separate facility in North Vancouver, British Columbia.

Stelco was established in 1910 and is a vertically integrated producer of a broad range of steel products, including flat-rolled steel, bars and rods, wire and wire products and pipes and tubes. The subject goods are manufactured at Hilton Works in Hamilton, Ontario. Heat-treating of plate takes place at a wholly owned subsidiary, CHT Steel Company Inc., in Richmond, Ontario.

Algoma and Stelco manufacture the subject goods using basic oxygen furnaces, while IPSCO is a mini-mill that uses an EAF to manufacture carbon steel plate.

IPSCO manufactures a more limited range of the subject goods than does either Stelco or Algoma, producing structural quality plate only up to 72 in. wide and 2 in. thick. In comparison, both Stelco and Algoma manufacture plate 96 in. wide and over, as well as PVQ plate. Stelco produces thicker plate than does Algoma, i.e. up to 4 in. thick for structural plate and up to 3.125 in. thick for PVQ plate, while Algoma's maximum thickness is 2.750 in. for all qualities of plate.

The vast majority of Algoma's and Stelco's sales are in Ontario and Quebec, with those of IPSCO being concentrated in the Prairies and British Columbia.

RESULTS OF THE DEPUTY MINISTER'S INVESTIGATION

The period of investigation selected by the Deputy Minister was April 1, 1993, to September 30, 1993.

Only ENSIDESA, the Spanish producer, provided the Deputy Minister with a complete submission. However, since the subject goods were sold at a loss in the Spanish domestic market, normal values were determined on the basis of the aggregate of production costs and amounts for administrative and selling costs and profits. In the final determination of dumping, the Deputy Minister found that 100 percent of the subject goods exported from Spain had been dumped, at an average weighted margin of dumping of 38.2 percent expressed as a percentage of normal value. At the time of the final determination of dumping, the majority of the PVQ plate that had been imported from Spain was found not to be subject goods.

The Ukraine was deemed to have a state-controlled economy and, therefore, normal values were estimated based on the normal values of plate exported from Belgium, Denmark and the United Kingdom in Tribunal Inquiry No. NQ-92-007,⁶ and plate exported from Spain in the current case. During the period of investigation, 100 percent of the subject goods exported from the Ukraine were found to have been dumped, at an average weighted margin of dumping of 39.1 percent.

Exporters in Korea and Italy did not provide the Deputy Minister with submissions, and, therefore, normal values were determined on the basis of export prices plus an amount equal to the highest margin of dumping found during the period of investigation. In the final determination of dumping, all the plate exported from Italy and Korea was found to have been dumped, at an average weighted margin of dumping of 44.5 percent.

SUMMARY OF THE POSITION OF THE PARTIES

Domestic Industry

Counsel contended that this case was clearly one of attempted circumvention by importers of the Tribunal's findings in Inquiry No. NQ-92-007 and suggested that they are involved in a game of "cat and mouse." The testimony of the witness for Klöckner was referred to as evidence of how importers seek out the cheapest possible source of product to import into Canada and of their readiness to shift sources to achieve this goal.

Domestic plate and imported plate were described as being interchangeable commodity products, which led to the domestic market being fiercely price-competitive. Therefore, counsel contended, even small volumes of dumped plate could disrupt the market and erode prices. Moreover, the nature of the product encourages off-the-dock selling, a particularly destabilizing practice which exacerbates the effects of dumping.

Counsel urged the Tribunal to focus its analysis on the economic indicators relating to the second and third quarters of 1993, as the effects of the subject imports were most clearly reflected during that period. While the domestic market grew substantially in the third quarter of 1993, all of the growth was taken up by imports, with the domestic industry receiving no portion of the increased volume of sales. Throughout 1993, despite the Tribunal's finding of material injury in Inquiry No. NQ-92-007, the domestic industry was unable to fully realize the price increases that it announced because of the presence of the subject imports.

Counsel submitted that there was uncontroverted evidence before the Tribunal of lost sales and widespread price discounting, including numerous examples of discounts to particular customers on specific transactions which had been granted in an effort to meet competition from the dumped imports. Furthermore, the sales invoices for imported

6. *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, May 6, 1993, Statement of Reasons, May 21, 1993. The Tribunal found that, subject to certain exclusions, dumped imports from the named countries, with the exception of the United States, had caused, were causing and were likely to cause material injury to the production in Canada of like goods.

plate corroborated the evidence of price erosion and lost sales submitted by the domestic industry. Counsel claimed that, contrary to the contentions of importers that they had priced their product at, or just slightly below, domestic prices, there were a number of instances in which importers had clearly underpriced domestic producers. For the most part, importers sell plate at the same price, regardless of volume, whereas the domestic industry grants volume discounts for larger sales and charges additional amounts for small-volume orders.

Counsel argued that, even if importers meet increased domestic prices with dumped product, but in so doing suppress domestic prices, material injury can result. Counsel pointed to the reasoning of the Tribunal in *Cold-Rolled Sheet*⁷ and of the Anti-dumping Tribunal in *Soda Ash*⁸ and argued that similar reasoning should apply even though prices in the current case are increasing, while, in the former cases, they were falling.

With regard to the exclusion of structural plate thicker than 3.125 in. in Inquiry No. NQ-92-007, counsel for Stelco submitted that the Tribunal had erred in interpreting the facts with respect to the maximum slab reduction ratio and that, according to the evidence, Stelco uses 9.45-in. slabs to manufacture plate up to 4 in. thick. Counsel also referred to the evidence submitted by Stelco in this case regarding its sales in 1993 of structural plate thicker than 3.125 in.

Turning to future injury, according to counsel, the importers and the exporters in the current inquiry were engaged in "opportunistic dumping." Imports from the four subject countries essentially took over the price-suppressive effects of dumped imports from the eight countries found to be causing material injury in Inquiry No. NQ-92-007. Furthermore, counsel pointed to the substantial capacity to manufacture plate in each of the subject countries. In light of the foregoing, counsel submitted that, but for the Deputy Minister's prompt action, the subject countries would have continued to injuriously dump in the Canadian market and would have continued to do so in the future, in the absence of a finding of material injury.

The submissions of counsel with respect to massive dumping and the request made for a direction to the Deputy Minister under section 46 of SIMA are discussed later in this statement of reasons.

Importers and Exporters

Counsel argued that the classic case of price suppression "stands on two legs." First, there must be account-by-account evidence showing that imports are leading prices downward, resulting in a destabilized market. Second, market data must show the domestic industry maintaining or increasing market share against imports by cutting its prices. Inquiry No. NQ-92-007 was described as fitting this classic model. In the current inquiry, however, the evidence showed that, in 1993, prices were rising as the domestic industry increased its market share. Imports were not leading prices down in a

7. *Certain Cold-Rolled Steel Sheet Originating in or Exported from the Federal Republic of Germany, France, Italy, the United Kingdom and the United States of America*, Inquiry No. NQ-92-009, Finding, July 29, 1993, Statement of Reasons, August 13, 1993.

8. *Commercial Grade Sodium Carbonate, Commonly Known as Soda Ash, Originating in or Exported from the United States of America*, Inquiry No. ADT-7-83, Finding and Statement of Reasons, July 7, 1983.

destructive spiral. Rather, imports were following domestic prices up, much to the profit of the importers. Counsel argued that Stelco was the price leader and that imports, in following domestic price strategies, could not be causing price suppression.

Counsel submitted that prices for domestic plate rose following the Tribunal's findings in Inquiry No. NQ-92-007. In fact, domestic prices rose by an average of \$60 per net ton from the fourth quarter of 1992 to the fourth quarter of 1993. This represented an increase of approximately 14 percent. Accordingly, counsel concluded that the theory of the domestic industry's case must be that prices did not rebound high enough. Counsel asked the Tribunal to recall that a witness for Stelco had testified that a 15-percent increase in plate prices would have been reasonable and that, in light of this comment, a price increase of more than 14 percent can hardly be seen as evidence of price suppression.

Counsel noted that the domestic industry had made comparisons between the prices of plate and other steel products to attempt to show that the subject goods were lagging in price. This evidence did not provide the Tribunal with a clear picture of whether plate prices were underperforming or outperforming those of the other steel products, since there was very little evidence of what was happening in the end-use markets for the products used in the comparison. The observed price differences reflected the fact that there is a limit to what end users will pay for steel and that this limit is determined by conditions in end-use markets. Counsel also submitted that resistance from large buyers at the steel service centres prevented domestic producers from increasing prices as quickly as they wished.

Counsel contended that some of the pricing data collected by the Tribunal staff may have underestimated the value of imports because they included sales between trading companies. The trade level where competition between domestic producers and importers occurred was at steel service centres. Looking at this trade level, import prices were, in fact, higher. It was stated that another factor which confused price comparisons was determining which domestic price list would be relevant to a particular transaction. According to counsel, it was the domestic price list in effect at the time of the import sale that was applicable, not some announced future increased price list. Comparing imports against price lists in effect at the time of sale (and not delivery) would show that imports were not underpricing like goods.

Counsel noted that much of the pricing data before the Tribunal were based on average prices. Counsel contended that the focus of the Tribunal's price analysis should not be on average prices, but on sales of A36/44W, since this grade makes up the overwhelming amount of the imports. Such an analysis would show that the subject imports were not underpricing domestic product made to this specification.

Counsel further noted that the Tribunal had been presented with specific circumstances where domestic producers either had refused to sell to certain end users or where they could not supply the volume of plate originally ordered. In other words, there were supply shortages in the market, and supply allocation procedures were in effect. This was a reflection of a strong market and of an industry producing to capacity.

With respect to IPSCO, counsel claimed that, because IPSCO faces so little competition in its product range, it continues to be able to directly pass on to its customers increased input costs. Although IPSCO claimed to be following the pricing lead of the eastern plate producers, in fact, within the western Canadian market, IPSCO's low cost structure allowed it to lead prices.

ECONOMIC INDICATORS

Table 1 summarizes some of the key economic indicators in this inquiry.

The Canadian market for carbon steel plate grew by 6 percent in 1993, compared to 1992. However, the performance of the market was uneven in 1993, with growth in the second half being more robust than in the first half. In fact, from the first quarter to the second quarter of 1993, the domestic market shrank by 9 percent.

During 1993, sales by the domestic industry also exhibited an uneven trend, falling by 11 percent from the first to the second quarter, remaining essentially flat in the third quarter, before recovering by 17 percent in the final quarter of the year. The domestic industry accounted for a steadily diminishing proportion of the growing market from the first to the third quarter of 1993, with its share declining from 90 percent at the beginning of the year to only 75 percent in the third quarter. The share of the market held by the domestic industry rose to 86 percent in the fourth quarter of 1993.

Table 1 CARBON STEEL PLATE Economic Indicators							
	1991	1992	1993	1993			
				Q1	Q2	Q3	Q4
Market (net tons)							
Sales of Domestic Product	285,064	322,191	362,333	95,265	84,351	84,342	98,375
Sales from Subject Countries	4,271	3,911	36,852 ⁽¹⁾	3,822	6,841	19,265	6,924
Sales from NQ-92-007 Countries	113,301	51,859	18,444	6,059	2,038	4,401	5,945
Sales from Other Countries	50,805	27,395	11,039	954	3,461	3,807	2,820
Apparent Market	453,441	405,356	428,668	106,100	96,691	111,815	114,064
% Change	-	(11)	6	-	(9)	16	2
Market Share (%)							
Domestic Producers	63	80	85	90	87	75	86
Subject Countries	1	1	9	4	7	17	6
NQ-92-007 Countries	25	13	4	6	2	4	5
Other Countries	11	7	3	1	4	3	3
Industry Financial Results (\$ million)							
Revenue from Domestic Sales	149.2	143.6	171.9				
Cost of Goods Sold	137.3	143.1	154.7		Not Available		
Net Profit (Loss) Before Taxes	(9.4)	(15.7)	2.8				
Industry Financial Results (\$ per net ton)							
Unit Sales Revenue	523	446	474				
Unit Cost of Goods Sold	482	444	427		Not Available		
Unit Net Profit (Loss)	(33)	(49)	8				
Notes:							
1. In the final determination of dumping, approximately 3,600 net tons of PVQ plate exported from Spain during the period of investigation, which had initially been considered to be subject goods, were found to be non-subject goods (public transcript, Vol. 3, April 20, 1994, at 447.) However, the Tribunal does not have amended questionnaire responses from importers that would allow it to adjust the import sales data as originally given in the staff report. In any event, if the import sales data were adjusted to remove the approximately 3,600 net tons of non-subject Spanish goods, there would be relatively little change in the basic import trends and magnitudes shown above. For example, if one third of the tonnage were removed from each of the last three quarters of 1993, import market shares would fall by approximately 1 percent in each of the three quarters.							
Numbers may not add up due to rounding.							
Source: Tribunal Exhibits, Vol. 1, <u>Tribunal Staff Report</u> , Table 16 at 112 and Schedule 7 at 14.							

Prior to 1993, imports from the four subject countries were not a significant factor in the domestic market, accounting for only 1 percent of the market. In 1993, however, imports from these countries rose to a level of 36,852 net tons, reaching a peak of over 19,000 net tons in the third quarter. Imports from the subject countries accounted for 9 percent of the market in 1993, with their share climbing to 17 percent in the third quarter. From 1992 to 1993, imports from the countries named in Inquiry No. NQ-92-007 declined significantly, and their share of the market fell from 13 percent to 4 percent over the two years.

In both 1991 and 1992, the domestic industry suffered net losses on sales of the subject goods, with losses deepening from \$9.4 million to \$15.7 million over the two years, as unit revenues declined faster than the unit cost of goods sold. The domestic industry's financial performance recovered somewhat in 1993, as unit revenues rose and the unit cost of goods sold fell, leading to a modest profit of \$2.8 million on total revenues of \$171.9 million.

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 the present inquiry, 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 which goods are like goods to the imported subject goods in this inquiry. Third, the Tribunal must 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.

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 Code,⁹ 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 that this requirement is met because the domestic producers participating in this inquiry account for all of the domestic production of the subject carbon steel plate.

Like Goods

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

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

*(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.*

According to the evidence, for a given specification, the carbon steel plate produced by the domestic industry competes with, has the same end uses as, and can be substituted for the imported subject goods. Therefore, the Tribunal is of the opinion that domestically produced carbon steel plate constitutes like goods to the imported subject goods.

Characteristics of the Canadian Plate Market

The following paragraphs describe certain characteristics of the domestic plate market that the Tribunal believes are important in defining the appropriate context in which to assess the effects of dumping on the production of like goods in Canada.

Carbon steel plate is a commodity product and, once it meets a particular specification, is considered interchangeable, regardless of where it is manufactured. Because plate is a commodity product, price is the single most important factor influencing the decision to purchase plate from a given source. Extensive evidence was adduced at the hearing that the demand for carbon steel plate is extremely price sensitive, with even small differences in price being sufficient to induce purchasers to switch sources. The Tribunal's witness, a representative of Samuel & Son & Co. (Quebec) Ltd., a large Quebec steel service centre, testified that plate accounts can be lost for as little as \$0.10/cwt.^{10,11} Similarly, a witness for Stelco testified that differences of more than \$10 per net ton (i.e. \$0.50/cwt) would lead customers to switch from domestic producers to offshore sources.¹² This latter amount was also indicated by the witness for Pemco Steel Sales Limited (Pemco), a medium-sized steel service centre in Pembroke, Ontario.¹³

In a commodity market, over time, prices tend toward the same level, with the lowest-priced product effectively establishing the floor price in the market.¹⁴ Consequently, imports of dumped plate can have a significant and an immediate impact on prevailing prices in the domestic market. As noted by the Tribunal's witness, there are very few secrets in the industry and, when imported plate is landed in Canada at dumped prices, prices in the domestic market come under pressure "almost overnight."¹⁵ As further explained by the witness for Pemco, "if the published price of a particular [domestic] mill was \$0.30/lb., the minute product comes in at \$0.28/lb., everyone is selling

10. In the carbon steel plate industry, prices for plate are presented in terms of both dollars per net ton and dollars per hundredweight (cwt). To convert from net tons to hundredweight, divide the net tons by 20, and to convert from hundredweight to net tons, multiply the hundredweight by 20.

11. Public transcript, Vol. 2, April 19, 1994, at 279. (The public and protected transcripts are found at Vols. 13, 13A, 14 and 14A of the Tribunal's record. References in this statement of reasons are to the transcript volumes within the above-noted volumes.)

12. Public transcript, Vol. 1, April 18, 1994, at 219-20 and 237.

13. Public transcript, Vol. 2, April 19, 1994, at 324.

14. *Ibid.* at 342-43.

15. *Ibid.* at 278-80.

based on a \$0.28/lb. selling price.¹⁶ Furthermore, imported plate need not be landed in large volumes to negatively affect prices in the domestic market. According to the Tribunal's witness, "when 1,000 tons [of plate] hits the dock, it can adversely affect the pricing of, let's say, inventory [in] service centres in Montréal [of] 30,000 tons."¹⁷

A witness for the industry characterized the domestic carbon steel plate industry as an oligopoly.¹⁸ This type of market structure was described in *Gypsum Board*,¹⁹ wherein the Tribunal concluded that the major domestic producers of this commodity product tended to follow each other's pricing policies very closely, with price increases or decreases announced by one producer being generally matched in short order by the remaining producers. Furthermore, since prices moved in tandem, price was generally not seen as an effective instrument to win market share from a domestic competitor.

The Tribunal is of the view that similar considerations apply in the present inquiry. The list prices of Stelco and Algoma, the national plate producers, tend to be the same and, for the most part, to move up and down together.²⁰ For example, on February 9, 1993, Algoma announced a set of price increases for its Ontario and Quebec customers effective March 14, 1993, and one day later, Stelco announced virtually the same pricing structure, also effective March 14, 1993.²¹ Further, the Tribunal is of the view that the evidence shows that competition among domestic plate producers is based largely on service, reliability and other factors, since domestic producer prices tend to track each other.²²

In the case of IPSCO, the testimony was that changes in its prices tend to follow those announced by Stelco and Algoma, with the company's objective being to maintain its prices at approximately \$20 to \$25 per net ton below those of the two eastern producers.²³ According to a witness for IPSCO, the company finds it necessary to price its 72-in.-wide plate at such a discount in order to offset additional fabrication costs (e.g. more welding) for customers who would otherwise use 96-in.-wide plate.²⁴

Turning now to the importers in the present inquiry, the Tribunal notes that, for the most part, they maintain relatively small operations in Canada, which are staffed by only a few employees. Further, the majority of importers in the present inquiry do not maintain stocking facilities in Canada, nor do they undertake the same functions as steel

16. *Ibid.* at 343.

17. *Ibid.* at 280.

18. Public transcript, Vol. 1, April 18, 1994, at 98.

19. Canadian International Trade Tribunal, *Gypsum Board Originating in or Exported from the United States of America*, Inquiry No. NQ-92-004, Statement of Reasons, February 4, 1993, at 10.

20. From time to time, Algoma and Stelco issue price lists giving a base price for common grades of plate (e.g. A36/44W), with extra charges for other grades, including PVQ, "grade volume allowances" for large volume purchases and "item extras" for small-volume purchases.

21. Manufacturers' questionnaires, Vol. 3B at 174-79; and Vol. 3.1 at 20-22 and 31-32.

22. See, for instance, protected transcript, Vol. 1, April 18, 1994, at 32-33.

23. Public transcript, Vol. 3, April 20, 1994, at 435 and 438.

24. *Ibid.* at 436.

service centres, e.g. cut plate to length. Accordingly, importers are able to operate with much lower overheads than either the domestic producers or the major steel service centres.

A common marketing approach for importers that testified at the hearing was to seek commitments from customers to purchase plate and then to place an order on a foreign mill when they believed that they had a sufficient volume to warrant importing a "boat-load," approximately 3,000 to 4,000 net tons. While the boat was en route to Canada, they tried to conclude sales based on these commitments, with any plate remaining for sale when the boat landed being sold off-the-dock or being transferred in one lot to another distributor, usually at very low prices. The witness for Preussag Handel Canada Corporation testified that a significant proportion of the Spanish plate imported into the Vancouver market was not presold to specific customers before it was landed in Canada.²⁵

The practice of off-the-dock selling, and of what can be termed "on-the-water" selling, can have a destabilizing effect on the domestic market. First, the availability of plate in small quantities, at the same price as that domestic producers would generally charge for larger orders, restricts the ability of domestic producers to maintain their pricing structure in the market.²⁶ Furthermore, as long as such stocks of plate are available for immediate delivery at prevailing prices, it is difficult for domestic producers to take orders for future deliveries at increased prices.

The Tribunal notes that importers can and do play an important role in the plate market, for example, by providing an alternative or secondary source of supply and by sometimes servicing accounts that domestic producers chose not to service for reasons such as poor credit worthiness, uneconomic volumes or a desire not to establish too many distributors in a particular region. However, sales of dumped imports to accounts that domestic producers do not service can, nonetheless, have a negative impact on the prices that they are able to charge their existing customers. According to the evidence, customers of the domestic producers made use of their competitors' purchases of dumped imports to negotiate lower prices for themselves.²⁷

The market for plate in Canada is cyclical in nature, with increases and decreases following expansions and contractions in the economy as a whole. From a peak in 1989, the market for steel plate declined until 1993. During this period, the domestic industry experienced poor financial returns on the subject goods, with successively larger losses being sustained in 1991 and 1992. In 1993, the market began to rebound, especially in the second half of the year, creating the conditions for a return to profitability by the industry.

Causation

Effects of the Subject Imports on Domestic Prices in 1993

The Tribunal notes that imports of plate from the four subject countries were essentially absent from the domestic market until late in the fourth quarter of 1992.

25. Public transcript, Vol. 3, April 20, 1994, at 486.

26. Public transcript, Vol. 1, April 18, 1994, at 55.

27. See, for instance, protected transcript, Vol. 2, April 19, 1994, at 205.

The appearance of increased volumes of plate from the subject countries coincides with the announcement of an investigation by the Deputy Minister in the fall of 1992, leading to Inquiry No. NQ-92-007. The volume of imports from the subject countries surged in 1993, increasing substantially in each of the first three quarters, peaking in the third quarter, with more than one half of the total year's imports occurring in this three-month period. The dramatic increase in imports from the subject countries accelerated following the finding of material injury in Inquiry No. NQ-92-007 in May 1993. In the fourth quarter of 1993, coincident with growing anticipation²⁸ in the market of the initiation of the present investigation by the Deputy Minister, import volumes from the four subject countries began to retreat.

Given this rise and fall of the subject imports during 1993, especially during the second half of the year, the Tribunal considers that this is the time period during which dumped imports would have had their most significant effects on domestic prices. Hence, this period is the focus of the Tribunal's examination.

List Prices and Average Realized Plate Prices

Counsel for Klöckner submitted that, from November 1992 to April 1994, the domestic industry had achieved substantial increases in both list prices and realized prices, with estimates of the magnitude of the increases varying from 15 to 25 percent. The Tribunal notes, however, that when one focuses specifically on 1993, the picture which emerges is one of only modest increases in both list prices and realized prices from the beginning to the end of the year, with no increases during the period when dumped imports were at their peak.

In 1993, the first increase in list prices was announced in early February, to become effective in mid-March. This increase raised base prices by \$1.00/cwt in the Ontario and Quebec markets, which represented an increase of 4.3 percent on the then prevailing base price of \$23.00/cwt for A36/44W plate, 5/16 in. to 1 1/2 in. thick.²⁹ No price increases were instituted by either Stelco or Algoma in the second quarter of 1993. Finally, at the beginning of September 1993, a second price increase of \$0.75/cwt was announced, to become effective later that month in the case of Algoma and in mid-October in the case of Stelco. This second increase raised plate prices by a further 3.1 percent, to \$24.75/cwt.

In total, therefore, during all of 1993, there were two list price increases which raised Stelco and Algoma list prices by only \$1.75/cwt, or by 7.6 percent, in their major markets of Ontario and Quebec.³⁰

List price increases of this order of magnitude seem modest to the Tribunal, given how deeply prices had fallen from their peak 1989 level of \$32.00/cwt. The Tribunal considers that the first price increase in March 1993 largely reflected the withdrawal of

28. Manufacturer's Exhibit B-5, Attachments 1 and 2, Vol. 9A.

29. This range of products represents the "bread-and-butter" products for the industry and was used as a benchmark at the hearing by both the domestic industry and the importers and the exporters.

30. In percentage terms, list price increases in Ontario and Quebec in 1993 were more than those in British Columbia, approximately the same as those in the Maritimes and less than those in the Prairies.

the subject imports in Inquiry No. NQ-92-007 in the period leading up to the findings in May 1993. Similarly, the September-October price increase coincides with the retreat of the imports from the subject countries from the domestic market, as knowledge spread in the market about the domestic industry's concern with imports from new sources and the looming possibility of further anti-dumping action being launched. Between these two periods, i.e. from May to September 1993, when dumped imports were at their peak, the domestic industry was able to institute no price increases, despite the fact that demand was growing.

In the Tribunal's opinion, the above events establish a clear correlation between the effects of the dumped imports and the domestic industry's ability to raise prices. When dumped imports were entering the market in large volumes, the domestic industry was not able to raise prices. In comparison, when dumped imports either had an insignificant presence in the market or were withdrawing from it, the domestic industry was able to raise prices.

Looking at average realized prices, the Tribunal sees the same pattern of modest increases during 1993, with essentially flat prices in the second and third quarters. More particularly, the domestic industry provided the Tribunal with detailed quarterly sales information for 53 individual customer accounts, including the 10 largest accounts for each producer, covering at least half of each producer's total plate sales. For 36 of the 53 individual accounts, average revenues increased by less than \$1.75/cwt from the first quarter to the fourth quarter of 1993.³¹ From the first quarter to the fourth quarter of 1993, average revenues for these accounts increased by only 6 percent, with a decrease of 1 percent in the third quarter of the year. For two of the three domestic producers, average revenues for the accounts analyzed increased by only 4 percent over the first nine months of 1993 while, for the third producer, the increase amounted to only 1 percent.

A similar trend is seen in the average domestic prices of A36/44W plate in the Quebec and Ontario markets, where prices rose by 3 and 6 percent, respectively, from the first to the last quarter of 1993, with a third-quarter decrease of 5 percent in the Quebec market. The Tribunal notes that the Quebec market is highly price-sensitive because Montréal is a major port of entry for plate into Eastern Canada. Finally, average domestic prices for all the subject goods increased by only 2 percent from the first to the last quarter of 1993, from \$487 to \$498 per net ton, respectively, with the increase in the second half of the year amounting to less than 1 percent and prices actually falling marginally in the third quarter.

Price Undercutting

Domestic producers filed a series of market intelligence reports prepared by sales staff in various regions, clearly documenting the evolution of the import surge in 1993 and providing detailed information on projected and actual shipment dates, volumes and prices, as well as on the likely purchasers of the imported plate. The accuracy of the

31. Tribunal staff analysis of data contained in Manufacturers' questionnaires (protected): Vol. 4 at 153-202 and 255-64; Vol. 4B at 111-20, 143-46 and 153-56; and Vol. 4A at 96-115.

reports submitted by the domestic industry was substantiated by the witness for Klöckner who agreed that the information with regard to imports from the Ukraine was, for the most part, correct.³²

The domestic industry also presented numerous examples of specific transactions where plate was sold at prices below the prevailing price list in order to meet competition from dumped imports.³³ Stelco submitted copies of several invoices showing the amount of such allowances or discounts that were granted to specific customers, i.e. "import competitive allowances."³⁴ Stelco provided evidence that, in 1993, company policy was that all plate sales were to be at list prices, unless otherwise approved in writing by the sales manager.³⁵ Customer invoices were required to show whenever a discount from the list price was granted and the reason for that discount. When an import-competitive allowance was granted on a one-time basis, then a "special-price advice" was forwarded to the invoicing department. Import-competitive allowances that were granted for longer periods of time, say, several quarters, were based on an "internal price list," which gave the reduced prices to be charged to a particular customer.³⁶

The Tribunal also found evidence in 47 sales invoices filed by various importers and purchasers before and during the hearing that the subject imports were underpricing domestic plate.³⁷ Tribunal staff compared the actual prices at which the imported plate was sold to what the same customer would have paid to purchase plate from either of the two major plate producers, using the list prices in effect on the day that the import sales invoice was dated. In calculating what the domestic price would have been, all applicable delivery costs, grade volume allowances and item extras were taken into consideration.

The analysis showed that, in 36 of the 47 cases, the price of imported plate was less than the corresponding price of domestic plate. Underpricing was found for each of the subject countries for which sales invoices were analyzed. In all but 5 cases where imports were found to underprice domestic plate, the amount of the underpricing was greater than \$0.50/cwt. The underpricing took a number of different forms, such as the failure of import prices to account for the fact that the industry charged item extras for small quantities of a particular gauge and grade of plate. However, in the majority of cases where there was underpricing, the delivered base price of the imported plate was less than the delivered base price of the domestic plate, before taking into account the item extras.

The results of the staff's analysis of invoices of imported plate are corroborated by witnesses for the importers and the exporters. For example, the witness for Klöckner testified that it was his marketing strategy to better domestic producer prices.³⁸

32. Public transcript, Vol. 4, April 21, 1994, at 634-35.

33. See, for example, Manufacturer's Exhibits A-8 and A-16 (protected), Vol. 10; and Exhibit B-2 (protected) at 20-21, Vol. 10A.

34. Manufacturer's Exhibit A-8 (protected), Vol. 10.

35. Manufacturer's Exhibit A-3 at 3, Vol. 9.

36. Public transcript, Vol. 1, April 18, 1994, at 46-47.

37. Importer's/Exporter's Exhibit D-2 (protected), Vol. 12; Exhibit E-2 (protected), Appendix V, Vol. 12; Exhibit F-3 (protected), Vol. 12-A; purchasers' questionnaires, Vol. 8.1 (protected) at 157.3-157.49; and single-copy exhibits (protected), Vol. 17, Exhibit 38.

38. Public transcript, Vol. 4, April 21, 1994, at 624-38.

Furthermore, witnesses for the importers and the exporters testified that it was not their policy to adhere to the specific pricing structure of the domestic industry and that, in particular, they either did not apply item extras for small-volume orders or did so only to a limited extent.³⁹

The witness for Klöckner also testified that, in his estimation, he had to price his products to compete with a blended price of prime material and lower-priced carbon max 33⁴⁰ to steel service centres.⁴¹ In the Tribunal's opinion, this practice clearly amounted to underpricing of the domestic producers' prices for prime material. Even if importers felt compelled to compete with a blended price paid by some steel service centres, this is not a justification for selling prime material at dumped prices in Canada. Furthermore, the Tribunal accepts the evidence of its own witness, as well as witnesses for Pemco and the domestic industry, that the markets for carbon max 33 and prime plate are separate and distinct.⁴²

Price Suppression

The domestic industry has claimed that not only was it unable to consistently achieve even the modest increases in the list prices that it instituted in 1993 but also that dumped imports prevented domestic list prices from being higher than they were. In the Tribunal's view, the proposition that domestic list prices could have been higher than they were, in the absence of the dumped imports, is, by its very nature, a difficult proposition to evaluate. Nonetheless, the Tribunal finds that the evidence in this case allows it to draw reasonable inferences on the matter.

As described earlier, the situation in 1993 was one of an expanding domestic market, with demand in the second half of the year being particularly robust. Further, the finding of material injury in Inquiry No. NQ-92-007 resulted in a substantial decrease in imports from the eight countries against which a finding of material injury was made. As well, the depreciating Canadian dollar and strong demand in the United States made plate imports from the United States relatively uncompetitive in the domestic market. In short, in 1993, the domestic industry was well positioned to raise plate prices in the face of expanding demand, in a market in which it had few other competitors other than dumped imports from the subject countries. Given these circumstances, there is ample reason to believe that, in 1993, if imports from the subject countries had been priced higher by amounts approaching the dumping margins found by the Deputy Minister, domestic producers would have been able to raise prices to a greater extent than they did in 1993. In particular, the Tribunal believes that the domestic industry would have been able to increase prices at least to some extent during May to September 1993, when no price increase was recorded.

39. *Ibid.* at 639; and public transcript, Vol. 3, April 20, 1994, at 460.

40. Plate that does meet CSA or ASTM specifications is referred to as carbon max 33, secondary plate or non-prime plate. Such plate is sold for non-critical end-use applications, with less demanding physical properties and is excluded from the definition of the subject goods.

41. Public transcript, Vol. 4, April 21, 1994, at 650-51.

42. Public transcript, Vol. 1, April 18, 1994, at 40; and public transcript, Vol. 2, April 19, 1994, at 291-92, 325 and 349-50.

Counsel for Klöckner argued that shutting out imports would give the industry market control and that such conditions are not to be used as a benchmark in assessing price suppression. The Tribunal considers that the relevant issue is what prices would be under "fair" trading conditions, i.e. those that would exist in the absence of dumping.

The Tribunal finds other evidence in the record to support the proposition that domestic plate prices could have been higher in 1993, if not for the price-suppressive effects of the dumped imports. First, an index of carbon steel plate prices published by Statistics Canada shows that 1993 prices were still considerably less than what they had been, on average, from 1986 to 1993. As well, in 1993, plate prices in the United States were higher than those in Canada, which represented a reversal of the pattern that had existed from 1990 to the middle of 1992.⁴³ In this connection, the Tribunal notes that, in 1992, an anti-dumping action was launched in the United States which resulted in a finding of material injury in August 1993 against many of the named countries.⁴⁴ Finally, the selling prices of plate from other non-subject countries, including plate from the United States, were generally higher than those of domestic plate in 1993.

The question of how much higher domestic plate prices could have been in the absence of dumped imports, given the particular market conditions that existed in 1993, is one which the Tribunal believes cannot be answered with precision. Nonetheless, the Tribunal finds it instructive to note that, between January and April 1994, as imports from the subject countries retreated from the domestic market, domestic prices rose by \$2.25/cwt.⁴⁵ In other words, in that one quarter, domestic plate prices rose by more than they had during all of 1993. While continued strong demand for plate was a factor in this increase, the Tribunal also sees this as some indication of pressures to increase prices which had been building in the market, especially during the second half of 1993, but which, effectively, were suppressed by the dumped imports.

In conclusion, in assessing the effects of the dumped imports on domestic prices, the Tribunal finds that, during 1993, the relevant time period in which to assess the effects of the dumped imports on domestic prices, the domestic industry instituted price increases amounting to only 7.6 percent. Further, the Tribunal notes that the industry was not able to realize even these modest increases in the market, as actual domestic prices remained essentially flat throughout most of 1993, even as demand began to increase in the second half of the year. According to the evidence, imports were underpricing domestic plate list prices by amounts that were not negligible. Lastly, the Tribunal is of the view that domestic prices could have been higher than they were in 1993 and would have been higher if not for the presence of the dumped imports from the subject countries.

43. Importer's Exhibit D-2 (protected) at 11, Vol. 12.

44. U.S. International Trade Commission, *Certain Flat-Rolled Carbon Steel Products from Argentina, Australia, Austria, Belgium, Brazil, Canada, Finland, France, Germany, Italy, Japan, Korea, Mexico, the Netherlands, New Zealand, Poland, Romania, Spain, Sweden, and the United Kingdom*, Inv. Nos. 701-TA-319-32, 334, 336-42, 344, and 347-53 (Final) and 731-TA-573-79, 581-92, 594-97, 599-609, and 612-19 (Final), Volume I: Determinations and Views of the Commission, Pub. 2664, August 1993.

45. Manufacturers' questionnaires, Vol. 3.1 at 55-90; and Vol. 3B at 181-92.

Material Injury

Having found a causal link between the dumped imports and domestic prices, the Tribunal must determine if the injury sustained by the domestic industry was material. In this context, the Tribunal considers that the economic indicators given in Table 1 clearly show the extent to which conditions in the domestic industry in 1993 were being negatively affected by surging imports from the subject countries. During the first three quarters of 1993, while the domestic market grew by 5 percent, the domestic industry experienced a 15-percentage-point decline in market share. Imports from the subject countries captured virtually all of the growth in the market, as their share of the market more than quadrupled from the first quarter to the third quarter of 1993. In other words, far from being able to retain its relative share of a growing market during the first nine months of 1993, the domestic industry saw its position in the market significantly eroded at the expense of imports from the subject countries. The market level evidence showing the domestic industry's loss of sales and market share to imports is corroborated by evidence of specific customer accounts where sales were lost to imports.⁴⁶

In the Tribunal's opinion, these volume and market share losses were materially injurious, and would have been far more severe had it not been for the initiation of this anti-dumping action in October 1993.

The Tribunal further notes that the industry's financial performance remained weak throughout 1993. Despite growing demand, the domestic industry was scarcely able to generate a positive return on plate sales, and net profits amounted to less than 2 percent of sales. This is hardly the result that would have been expected in light of the improved market conditions to which witnesses for both the domestic industry and the importers and the exporters testified.

The Tribunal considers that the poor financial performance of the domestic industry did not stem from the cost side of its operations. According to the evidence, from 1991 to 1993, industry average unit costs declined, reflecting ongoing efforts to improve productivity and competitiveness. Rather, the industry's financial problems were clearly driven by average unit revenues which were too low to generate adequate returns. Accordingly, based on the evidence submitted in the present inquiry, the Tribunal is of the opinion that, in 1993, the dumped imports caused revenues to be lower than they otherwise could have been by an amount that is material.

In coming to the above conclusion, the Tribunal notes that, in 1993, the industry's profitability was highly sensitive to even small changes in prices. For example, if the price increases that were achieved in 1994 could have been implemented at the beginning of the third quarter of 1993, then industry revenues would have been approximately 6 percent higher, and industry profits before taxes would have been nearly five times greater, with unit profits rising from \$8 to \$40 per net ton.

The Tribunal examined the allegations of supply allocation that were made against the domestic industry by witnesses for the importers and the exporters. The Tribunal is persuaded by the testimony of industry witnesses that there was no supply allocation

46. Manufacturers' Exhibit A-6 (protected), Appendix G, Vol. 10; and Exhibit B-3 (protected) at 19, 22, 26 and 27, Vol. 10A.

in 1993, in the sense that fixed volumes of plate were not allocated to particular customers, as was done in the 1960s.⁴⁷ Moreover, the Tribunal's witness testified that his steel service centre had not been on supply allocation in 1993.⁴⁸ It was acknowledged, however, that plate supplies did tighten in the fourth quarter of 1993 and in the first quarter of 1994 as the plate market improved.

The Tribunal also examined allegations that domestic producers had refused to sell plate to particular customers. The domestic industry provided evidence, *in camera*, of what the Tribunal sees as valid business reasons for not selling to the accounts in question, including earlier losses incurred as a result of the financial instability or failure of certain of the firms.

The Tribunal notes the contention of counsel for the importers and the exporters that any price erosion, price suppression or shifts in market share were caused by intra-industry competition. In the Tribunal's opinion, the evidence does not substantiate this claim. The Tribunal considers that the evidence establishes that, in 1993, the market strategies of the domestic producers were driven primarily by their respective responses to the dumped imports rather than by considerations of intra-industry competition. In this context, the Tribunal notes that Algoma chose not to lower its prices to meet competition from imports until the third quarter of 1993, losing market share in the process, while Stelco adopted a policy of attempting to respond to import prices sooner in 1993 in order to defend its market share.

With respect to the future, the Tribunal is of the opinion that, in the absence of anti-dumping duties, the subject imports would continue to inflict material injury on the domestic industry. The Tribunal notes the rapidity with which imports entered and exited the domestic market in 1993, events which coincided, in the first instance, with the initiation of the investigation leading to Inquiry No. NQ-92-007 and, in the latter instance, with the launching of the present inquiry. The Tribunal further notes the ability of the dumped imports to capture significant market share over a short period of time. The significant rate of increase of dumped imports and their quick retreat from the domestic market indicate to the Tribunal that, in the absence of a finding of material injury, it is likely that substantially larger importations from the subject countries will occur. Moreover, the Tribunal believes that the price-suppressive effects of the dumped imports would continue in the absence of a finding of material injury.

The Tribunal also notes that the past behaviour of importers and exporters in the present inquiry suggests a propensity to sell dumped product in the Canadian market. Plate is a product that has a long history of trade actions in Canada, beginning with *Carbon Steel Plate*,⁴⁹ in which the Anti-dumping Tribunal found injury from imports of

47. Public transcript, Vol. 1, April 18, 1994, at 48-50.

48. Public transcript, Vol. 2, April 19, 1994, at 283.

49. Anti-dumping Tribunal, *Carbon Steel Plate, Including High Strength Low Alloy Plate; and Alloy Steel Plate, Both not Further Manufactured than Hot-Rolled or Heat Treated, and Whether or not Coiled or with Rolled Surface Pattern, but Excluding Wheel Rim Base Sections, Carbon and Alloy Tool Steel, Stainless Steel, Mold Steel, Flanged or Dished Plate, Fabricated or Coated Plate, High Speed Steel, Plate for Saws and Plate Clad with Stainless Steel, Originating in or Exported 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, Finding, December 7, 1983.

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. Less than a year later, the Anti-dumping Tribunal found injury from imports of certain carbon and alloy steel plate from the Netherlands. More recently, of course, there was a finding of material injury against eight countries in Inquiry No. NQ-92-007. The Tribunal notes that many of the same exporting mills and importers, including some of those involved in the present inquiry, have appeared repeatedly in the anti-dumping cases that have come before it and its predecessors.

The Tribunal considered other evidence with respect to the question of future injury. As was the case in Inquiry No. NQ-92-007, in the present inquiry, the manner in which the subject countries sell plate in the domestic market has an immediate, destabilizing impact on pricing. There was considerable evidence adduced at the hearing that the capacity of the mills in the subject countries is several times that of the domestic producers and that excess capacity in these mills is extensive.⁵⁰ This situation is reinforced by the continued excess capacity in the steel industry throughout the world. Another factor noted by the Tribunal is that, according to the testimony of several witnesses, the domestic plate market may already be softening, and demand in the second quarter of 1994 may not be as robust as it was in the first quarter.⁵¹

The Tribunal finds, therefore, that the dumping of the subject goods is likely to cause material injury to the production in Canada of like goods.

Finally, with respect to the issue of product exclusions, the Tribunal wishes to note that, although not requested by any of the importers, it does not find that the evidence in this inquiry supports a decision to exclude the "thicker" structural quality plate that was excluded in Inquiry No. NQ-92-007. More specifically, it appears to the Tribunal that, in this case, Stelco was able to bring forward significant amounts of evidence about its sales of plate thicker than 3.125 in., which may not have been before the Tribunal in Inquiry No. NQ-92-007, as almost all of this evidence relates to sales in 1993. The Tribunal is also of the view that the evidence in the present inquiry shows that PVQ plate imported from the subject countries competes directly with domestically manufactured PVQ plate.

Massive Dumping

In argument, counsel for the domestic industry submitted that, in addition to finding material injury in the present inquiry, the Tribunal should also find, pursuant to section 5 and paragraph 42(1)(b) of SIMA, that there has been a massive importation of the subject goods and thus provide for the imposition of retroactive duties against these importations.

50. Public transcript, Vol. 1, April 18, 1994, at 27 and 243; and public transcript, Vol. 4, April 21, 1994, at 556, 611 and 616.

51. Public transcript, Vol. 1, April 18, 1994, at 48; and public transcript, Vol. 2, April 19, 1994, at 232.

In its statement of reasons in *Photo Albums*,⁵² the Tribunal set out the elements which have to be present in a case in order for it to invoke paragraph 42(1)(b) of SIMA.

(a) *there has occurred a considerable importation of like goods,*

(b) *that were dumped,*

(c) *which dumping has caused material injury (or would have caused material injury except for the application of anti-dumping measures),*

(d) *material injury has been caused by reason of the fact that dumped goods*

(i) constitute a massive importation into Canada, or

(ii) form part of a series of importations into Canada, which in the aggregate are massive and have occurred within a relatively short period of time, and

(e) *it appears necessary to the Tribunal that duty be assessed on the imported goods in order to prevent the recurrence of that material injury;*

or

(f) *the importer of the dumped goods was or should have been aware that the exporter was practising dumping and*

(g) *that the dumping would cause material injury, and*

(h) *material injury has been caused by reason of the fact that the dumped goods*

(i) constitute a massive importation into Canada, or

(ii) form part of a series of importations into Canada that in the aggregate are massive and have occurred within a relatively short period of time, and

(i) *it appears necessary to the Tribunal that duty be assessed on the imported goods in order to prevent the recurrence of that material injury.*

Counsel for Algoma argued that the volume of imports from the subject countries in 1993 amounted to a "considerable importation" as required by the statute and, indeed, constituted a massive importation. Counsel pointed out that imports from the subject countries grew from 1 percent of the total imports in 1991 and 1992 to nearly 9 percent in 1993, peaking at over 17 percent in the third quarter of 1993. These trends, counsel submitted, clearly establish the rapidity of the market penetration by imports from the subject countries in 1993. Counsel drew the Tribunal's attention to the finding in *Photo Albums* as support for finding massive dumping in these circumstances. Counsel further submitted that the Tribunal should consider the timing of the acceleration of the

52. Canadian International Trade Tribunal, *Photo Albums With Self-Adhesive Leaves, Imported Together or Separated, and Self-Adhesive Leaves, Originating In Or Exported From Indonesia, Thailand and the Philippines*, Inquiry No. NQ-90-003, Statement of Reasons, January 17, 1991, at 13-14.

subject imports in relation to the initiation of the investigation by the Deputy Minister. Finally, counsel referred to the fact that average prices of imports from the subject countries fell in 1993, relative to what they were in 1991.

With respect to the intentions of the importers in purchasing plate from the subject countries, counsel made reference to the testimony of the witness for Klöckner, who described his need to find low-priced sources of plate to survive. The other importers in this case were said to have switched to the subject countries following the Tribunal's finding of material injury in Inquiry No. NQ-92-007, and counsel argued that they either knew or were completely indifferent to the fact that the prices of the subject country imports were at dumped levels.

In response, counsel for Klöckner submitted that the pattern of imports from the subject countries from 1991 to 1993 did not reflect a massive importation. Counsel noted that, during the course of 1993, the market share of imports dropped significantly, while that of the domestic industry increased. With respect to the intentions of importers, counsel submitted that there was no evidence that they knew, or should reasonably have known, that they were practising injurious dumping. In fact, counsel argued that, to the extent that importers were aware that they were dumping, they believed that they were engaged in non-injurious dumping.

In the Tribunal's opinion, the imposition of retroactive duties under paragraph 42(1)(b) of SIMA is not justified in the present inquiry because the conditions set out in that paragraph have not been met.

The Tribunal is of the view that, while the dumped imports were considerable in 1993, the actual volume of these imports was not large enough to be termed "massive" and thus warrant the imposition of this exceptional measure. The Tribunal notes that, by the time of the initiation of this action in October 1993, the domestic industry's market share had begun to recover. In fact, by the end of the fourth quarter of 1993, the domestic industry's market share had almost returned to what it had been in the first quarter of 1993 and, for the year as a whole, the domestic industry's market share increased. This contrasts with *Photo Albums*, where the domestic industry did not recover the significant loss in market share suffered as a result of the presence of dumped imports in the period before and during the Deputy Minister's investigation.

In circumstances such as the above, the Tribunal does not consider that there was a "massive importation" or "series of importations ... that in the aggregate are massive" as required by SIMA. Furthermore, there is no evidence that any Canadian importers of the subject goods stockpiled carbon steel plate following the initiation of the Deputy Minister's investigation and in anticipation of a preliminary determination of dumping. The Tribunal is also of the view that the evidence does not support a conclusion that the importers were or should have been aware that exporters were practising dumping and that such dumping would cause material injury. Therefore, the Tribunal finds that it is not necessary to take action under paragraph 42(1)(b) of SIMA to prevent a recurrence of material injury.

CONCLUSION

In light of the foregoing, the Tribunal concludes that the dumping of certain hot-rolled carbon steel plate and high-strength low-alloy plate, heat-treated or not, originating in or exported from Italy, the Republic of Korea, Spain and the Ukraine, has

caused, is causing and is likely to cause material injury to the production in Canada of like goods.

REQUEST FOR A REFERENCE TO THE DEPUTY MINISTER

In argument, counsel for the domestic industry requested that the Tribunal, under section 46 of SIMA, direct the Deputy Minister to cause an investigation to be initiated respecting the dumping of the subject goods originating in or exported from Mexico, Russia and Bulgaria.

The relevant portions of section 46 of SIMA read as follows:

46. Where, during an inquiry referred to in section 42 respecting the dumping ... of goods to which a preliminary determination under this Act applies, the Tribunal is of the opinion that

(a) there is evidence that goods the uses and other characteristics of which closely resemble the uses and other characteristics of goods to which the preliminary determination applies have been or are being dumped ..., and

(b) the evidence discloses a reasonable indication that the dumping ... referred to in paragraph (a) has caused, is causing or is likely to cause material injury ... ,

the Tribunal, by notice in writing setting out the description of the goods first mentioned in paragraph (a), may direct the Deputy Minister to cause an investigation to be initiated respecting the dumping ... of such goods.

The Tribunal is of the view that, in order to warrant a direction to the Deputy Minister, the evidence in a particular case must show the following: (i) the imports from the named countries must be goods that compete with, or are substitutable for, the subject goods; (ii) these goods must "have been or are being" imported into Canada, i.e. there must be actual imports from the named countries; and (iii) these goods must be dumped in Canada. In addition, the evidence relating to these goods must disclose a reasonable indication that the dumping of these goods has caused, is causing or is likely to cause material injury to the production in Canada of like goods.

The evidence in the record relating to Mexico includes a report from the Export Import Permits Bureau of the Department of Foreign Affairs and International Trade.⁵³ This report indicates that, in the first quarter of 1994, imports of Mexican "Carbon Steel and HSLA Cut Plate" accounted for 40 percent of the imports set out therein. The report also indicates that the imports from Mexico had an average price of \$375 per ton. One of the witnesses for the importers also testified that there were only limited volumes of Mexican plate available for export and that, recently, he had been unable to obtain Mexican product for delivery in the second quarter of 1994.⁵⁴

The Tribunal notes that it is not possible to determine from the report itself whether the imports recorded include the subject goods and, if so, what portion of the goods are the subject goods. It is also not possible to determine from the report alone whether the data comprise all imports of "Carbon Steel and HSLA Cut Plate" or whether there are other imports not subject to permit requirements. It is also not clear whether

53. Manufacturer's Exhibit A-23, Vol. 9.

54. Public transcript, Vol. 3, April 20, 1994, at 454.

the prices per ton recorded in the report are landed prices or F.O.B. prices or whether the goods are priced on some other basis. The Tribunal notes that, on a monthly basis, the average prices for the goods vary significantly. This may occur because the imports recorded represent different types of plate products. However, as this document was not tested at the hearing, there is no way of knowing. Finally, as no evidence relating to home market prices was presented, it is not possible to determine whether the prices of Mexican plate set out in the report might be dumped prices.

Consequently, the Tribunal is of the opinion that the evidence before it is insufficient to support a conclusion that Mexican steel plate has been or is presently being dumped in the Canadian market. The Tribunal, therefore, declines to direct the Deputy Minister to investigate these goods.

With respect to Russia, the evidence included testimony of a witness, on behalf of an importer, that he had entered into a contract for the subject goods from Russia, for delivery some time later this year.⁵⁵ However, this witness and other witnesses were not fully confident of the arrival of the shipment. With respect to Bulgaria, the Tribunal heard evidence of Bulgaria being a possible new source for imports and of offerings of Bulgarian plate being made in Southern Ontario.⁵⁶ In the absence of evidence of actual importations of Russian or Bulgarian product into Canada, the Tribunal will not direct the Deputy Minister to investigate alleged dumping from these countries.

Charles A. Gracey

Charles A. Gracey
Presiding Member

Anthony T. Eyton

Anthony T. Eyton
Member

Lise Bergeron

Lise Bergeron
Member

55. Public transcript, Vol. 4, April 21, 1994, at 611-12.

56. Public transcript, Vol. 2, April 19, 1994, at 353.