

Ottawa, Monday, October 27, 1997

Inquiry No.: NQ-97-001

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

**CERTAIN HOT-ROLLED CARBON STEEL PLATE ORIGINATING IN OR EXPORTED
FROM MEXICO, THE PEOPLE'S REPUBLIC OF CHINA, THE REPUBLIC OF
SOUTH AFRICA AND THE RUSSIAN FEDERATION**

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 of a preliminary determination of dumping dated June 27, 1997, and of a final determination of dumping dated September 25, 1997, 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 inches (+/- 610 mm) to 152 inches (+/- 3,860 mm) inclusive, and thicknesses from 0.187 inches (+/- 4.75 mm) to 4 inches (+/- 101.6 mm) inclusive, originating in or exported from Mexico, the People's Republic of China, the Republic of South Africa and the Russian Federation, but excluding plate for use in the manufacture of pipe and tube (also known as skelp); plate in coil form; plate having a rolled, raised figure at regular intervals on the surface (also known as floor plate); and plate produced to ASTM specifications A515 and A516M/A516, grade 70, in thicknesses greater than 3.125 inches (+/- 79.3 mm).

Pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that the dumping in Canada of the aforementioned goods has not caused material injury to the domestic industry, but is threatening to cause material injury to the domestic industry.

Charles A. Gracey

Charles A. Gracey
Presiding Member

Dr. Patricia M. Close

Dr. Patricia M. Close
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.

Place of Hearing: Ottawa, Ontario
Dates of Hearing: September 16 and 23 to 26, 1997
Date of Finding: October 27, 1997
Tribunal Members: Charles A. Gracey, Presiding Member
Dr. Patricia M. Close, Member
Robert C. Coates, Q.C., Member
Director of Research: Peter Welsh
Lead Researcher: W. Douglas Kemp
Economist: Ihn Uhm
Statistician: Margaret Saumweber
Counsel for the Tribunal: John L. Syme
Shelley Rowe
Registration and Distribution Officer: Gillian E. Burnett

Participants:

Lawrence L. Herman
Y.K. Anne Kim
for Stelco Inc.

(Domestic Producer)

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

(Parties Supporting Domestic Producer)

Richard S. Gottlieb
Darrel H. Pearson
Peter E. Kirby
Jeffery D. Jenkins
Peter Collins
for Wirth Limited

Richard S. Gottlieb
Peter Collins
for Russel Metals Inc.

(Importer/Purchaser)

CORRIGENDUM
TO THE FINDING OF OCTOBER 27, 1997¹

Ottawa, Monday, June 21, 1999

Inquiry No.: NQ-97-001

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

**CERTAIN HOT-ROLLED CARBON STEEL PLATE ORIGINATING IN OR
EXPORTED FROM MEXICO, THE PEOPLE'S REPUBLIC OF CHINA, THE
REPUBLIC OF SOUTH AFRICA AND THE RUSSIAN FEDERATION**

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 of a preliminary determination of dumping dated June 27, 1997, and of a final determination of dumping dated September 25, 1997, 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 inches (+/- 610 mm) to 152 inches (+/- 3,860 mm) inclusive, and thicknesses from 0.187 inches (+/- 4.75 mm) to 4 inches (+/- 101.6 mm) inclusive, originating in or exported from Mexico, the People's Republic of China, the Republic of South Africa and the Russian Federation, but excluding plate for use in the manufacture of pipe and tube (also known as skelp); plate in coil form; plate having a rolled, raised figure at regular intervals on the surface (also known as floor plate); and plate produced to ASTM specifications A515 and A516M/A516, grade 70, in thicknesses greater than 3.125 inches (+/- 79.3 mm).

Pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that the dumping in Canada of the aforementioned goods originating in or exported from the People's Republic of China, the Republic of South Africa and the Russian Federation has not caused material injury to the domestic industry, but is threatening to cause material injury to the domestic industry.

1. This corrigendum is made following a remand by the Binational Panel in Canadian Secretariat File No. CDA-97-1904-02 on May 19, 1999, concerning its review of the original finding in Inquiry No. NQ-97-001 and the requirement for a separate finding respecting the goods from Mexico.

In accordance with subsection 43(1.01) and pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that the dumping in Canada of the aforementioned goods originating in or exported from Mexico has not caused material injury to the domestic industry, but is threatening to cause material injury to the domestic industry.

Patricia M. Close

Patricia M. Close
Presiding Member

Anita Szlazak

Anita Szlazak
Member

Arthur B. Trudeau

Arthur B. Trudeau
Member

Michel P. Granger

Michel P. Granger
Secretary

Ottawa, Monday, November 10, 1997

Inquiry No.: NQ-97-001

**CERTAIN HOT-ROLLED CARBON STEEL PLATE ORIGINATING IN OR EXPORTED
FROM MEXICO, THE PEOPLE'S REPUBLIC OF CHINA, THE REPUBLIC OF
SOUTH AFRICA AND THE RUSSIAN FEDERATION**

Special Import Measures Act - Whether the dumping of the above-mentioned goods has caused material injury or retardation to the domestic industry or is threatening to cause material injury to the domestic industry.

DECISION: The Canadian International Trade Tribunal hereby finds 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, in cut lengths, in widths from 24 inches (+/- 610 mm) to 152 inches (+/- 3,860 mm) inclusive, and thicknesses from 0.187 inches (+/- 4.75 mm) to 4 inches (+/- 101.6 mm) inclusive, originating in or exported from Mexico, the People's Republic of China, the Republic of South Africa and the Russian Federation, but excluding plate for use in the manufacture of pipe and tube (also known as skelp); plate in coil form; plate having a rolled, raised figure at regular intervals on the surface (also known as floor plate); and plate produced to ASTM specifications A515 and A516M/A516, grade 70, in thicknesses greater than 3.125 inches (+/- 79.3 mm) has not caused material injury to the domestic industry, but is threatening to cause material injury to the domestic industry.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	September 16 and 23 to 26, 1997
Date of Finding:	October 27, 1997
Date of Reasons:	November 10, 1997
Tribunal Members:	Charles A. Gracey, Presiding Member Dr. Patricia M. Close, Member Robert C. Coates, Q.C., Member
Director of Research:	Peter Welsh
Lead Researcher:	W. Douglas Kemp
Economist:	Ihn Uhm
Statistician:	Margaret Saumweber
Counsel for the Tribunal:	John L. Syme Shelley Rowe
Registration and Distribution Officer:	Gillian E. Burnett

Participants:

Lawrence L. Herman
Y.K. Anne Kim
for Stelco Inc.

(Domestic Producer)

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

(Parties Supporting Domestic Producer)

Richard S. Gottlieb
Darrel H. Pearson
Peter E. Kirby
Jeffery D. Jenkins
Peter Collins
for Wirth Limited

Richard S. Gottlieb
Peter Collins
for Russel Metals Inc.

(Importer/Purchaser)**Witnesses:**

Lyle Dymont
General Manager
Ferrostaal Metals Ltd.

Denis Boiteau
Sales Manager - Plate
Stelco Inc.

Wayne K. Bassett
President
Samuel, Son & Co., Limited

Derek M. de Korte
Manager
Government Affairs & Statistics
Algoma Steel Inc.

Donald K. Belch
Director - Government Relations
Stelco Inc.

Rob Cernick
Accountant - Plate Mill
Stelco Inc.

Domenic Vannelli
General Manager - Sales
Samuel & Son & Co. (Quebec) Ltd.

Robert W. Dionisi
Manager
Plate & Structural Sales
Algoma Steel Inc.

R.A. Clark
General Supervisor
Accounting Control
Algoma Steel Inc.

Glenn A. Gilmore
Trade Supervisor
IPSCO Inc.

Gonzalo Campos Cervera
International Operations Manager
Altos Hornos de Mexico

Doug Thompson
President
Wirth Limited

S.R. Taube
Senior Vice-President, C.O.O.
Ontario General Lines Division
Samuel Plate Sales

Bi Zhichao
Chief Vice-President and
Senior Economist
Angang Group International Trading Corp.

Zhang Zhen An
Export Division Manager, Engineer
Foreign Economy and Trade Dept.
Shanghai Pudong Iron & Steel (Group)
Co., Ltd.

Edward M. Siegel Jr.
President and Chief Executive Officer
Russel Metals Inc.

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

Malcolm I. Suttill
General Sales Manager
Highveld Steel and Vanadium Corporation Limited

Juan Castillo Ramirez
Manager of Government Relations
(Gte. de Relaciones Gubernamentales)
Grupo Acerero del Norte

Larry Reimer
Senior Vice-President
Wirth Limited

Frederick J. Potter
Western Canada Sales Manager
Algoma Steel Inc.

Jiang Haijun
Director Engineer
Metallurgical Products Corp., Flat Product Division
Angang Group International Trading Corp.

Zhou Feng
Foreign Economy and Trade Dept.
Shanghai No. 3 Steel Works

R.G. Todd
Director, Purchasing and Inventory Management
Russel Metals Inc.

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Canadian International Trade Tribunal
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333 Laurier Avenue West
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Ottawa, Ontario
K1A 0G7

Ottawa, Monday, November 10, 1997

Inquiry No.: NQ-97-001

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

**CERTAIN HOT-ROLLED CARBON STEEL PLATE ORIGINATING IN OR EXPORTED
FROM MEXICO, THE PEOPLE'S REPUBLIC OF CHINA, THE REPUBLIC OF
SOUTH AFRICA AND THE RUSSIAN FEDERATION**

TRIBUNAL: CHARLES A. GRACEY, Presiding Member
DR. PATRICIA M. CLOSE, Member
ROBERT C. COATES, Q.C., Member

STATEMENT OF REASONS

BACKGROUND

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 (the Deputy Minister) of a preliminary determination² dated June 27, 1997, and of a final determination³ dated September 25, 1997, respecting the dumping of certain hot-rolled carbon steel plate and high strength low alloy plate (carbon steel plate) originating in or exported from Mexico, the People's Republic of China (China), the Republic of South Africa (South Africa) and the Russian Federation (Russia), as defined in the Tribunal's finding.

On March 7, 1997, counsel for Wirth Limited (Wirth), a Canadian importer of carbon steel plate, referred to the Tribunal the question of whether the evidence before the Deputy Minister disclosed a reasonable indication that the dumping of the subject goods had caused injury or retardation or was threatening to cause injury. On April 7, 1997, the Tribunal rendered an advice under section 37 of SIMA that there was a reasonable indication that the dumping of certain carbon steel plate originating in or exported from Mexico, China, the Republic of Poland (Poland), South Africa and Russia had caused material injury or was threatening to cause material injury to the domestic industry.

On June 27, 1997, 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 carbon steel plate. Respondents provided production, financial, import, sales, pricing and market information, as well as other information relating to carbon steel plate, for the period from January 1, 1994, to March 31, 1997. From the replies to the questionnaires and other sources, the Tribunal's research staff prepared public and protected pre-hearing staff reports. Prior to the public hearing, parties submitted and replied to interrogatories with respect to matters relevant to the inquiry.

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1. R.S.C. 1985, c. S-15.
 2. *Canada Gazette* Part I, Vol. 131, No. 28, July 12, 1997, at 1955.
 3. *Ibid.* No. 41, October 11, 1997, at 3235.
 4. *Supra* note 2 at 1956.

The record of this inquiry consists of all Tribunal exhibits, including the public and protected replies to questionnaires, all exhibits filed by the parties throughout the inquiry, including interrogatories and replies thereto, and 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 filed a declaration and undertaking with the Tribunal.

Public and *in camera* hearings were held in Ottawa, Ontario, on September 16 and September 23 to 26, 1997. Stelco Inc. (Stelco), Algoma Steel Inc. (Algoma) and IPSCO Inc. (IPSCO), domestic producers of carbon steel plate, were represented by counsel at the hearing. Wirth and Russel Metals Inc. (Russel), a steel service centre, were also represented by counsel at the hearing. Samuel Plate Sales (Samuel), a division of Samuel, Son & Co., Limited, a steel service centre, appeared on behalf of the domestic industry.

Witnesses appeared for exporters of the subject goods. In addition, Wirth subpoenaed a witness for a major steel service centre that appeared at the hearing. The Tribunal subpoenaed witnesses for two importers that had not responded to the Tribunal's questionnaire. The Tribunal subsequently withdrew one of the subpoenas after the importer completed the Tribunal's questionnaire.

During the course of the inquiry, the Tribunal issued decisions with respect to five motions filed by parties. They concerned the schedule for the hearing, the filing of responses to interrogatories, the disclosure of confidential information in the pre-hearing staff report, the disclosure of confidential account names in the domestic industry's evidence of injury allegations and the quashing of a subpoena.⁵

The Tribunal issued its finding on October 27, 1997.

RESULTS OF THE DEPUTY MINISTER'S INVESTIGATION

On December 27, 1996, Stelco filed a complaint with the Department of National Revenue (Revenue Canada) concerning the alleged injurious dumping of certain carbon steel plate originating in or exported from Mexico, China, Poland,⁶ South Africa and Russia. Algoma and IPSCO supported Stelco's complaint. On February 13, 1997, the Deputy Minister initiated a dumping investigation.

The Deputy Minister's investigation covered shipments of carbon steel plate from the named countries to Canada during the period from January 1 to December 31, 1996. On September 25, 1997, the Deputy Minister issued a final determination of dumping. In the investigation, normal values for carbon steel

5. Motions with which the Tribunal dealt during the inquiry:

- (1) Motion concerning the quashing of a subpoena issued by Gottlieb & Pearson. Tribunal decision in a letter dated September 22, 1997.
- (2) Motion concerning the disclosure of confidential information in the domestic industry's evidence. Tribunal decision in a letter dated September 22, 1997.
- (3) Motion concerning the disclosure of confidential information in the pre-hearing staff report. Tribunal decision in a letter dated September 15, 1997.
- (4) Motion concerning the filing of responses to interrogatories. Tribunal decision in a letter dated September 18, 1997.
- (5) Motion concerning the schedule presented by the Tribunal for the hearing, and requesting that a domestic manufacturer complete the filed interrogatories. Tribunal decision in a letter dated September 19, 1997.

6. On June 27, 1997, the Deputy Minister terminated the investigation with respect to the subject goods from Poland.

plate of Mexican origin were determined under the provisions of section 15 of SIMA, where there were profitable sales of like goods to more than one domestic customer. Where there were insufficient acceptable sales of like goods, normal values were determined pursuant to the provisions of paragraph 19(b) of SIMA, based on the aggregate of the cost of production plus a reasonable amount for selling, administrative and all other costs and profit.

For carbon steel plate exported to Canada from South Africa, normal values were determined under the provisions of section 15 of SIMA, based on the weighted average price of like goods sold in South Africa to customers that were at the same trade level and that purchased similar quantities as the importer in Canada.

Normal values for carbon steel plate of Russian or Chinese origin were established by ministerial specification on the basis of the average normal value found for like goods in three surrogate countries.

Export prices for Mexico and South Africa were determined pursuant to section 24 of SIMA, based on the lesser of the exporter's sale price adjusted for freight, port handling and export packing charges and of the importer's purchase price adjusted for freight, port handling and export packing charges. For China and Russia, export prices were determined pursuant to section 24 of SIMA, based on actual import data available to Revenue Canada.

The following table provides the percentage of goods dumped and the weighted average margin of dumping as a percentage of the normal value for goods imported from each of the named countries.

<p style="text-align: center;">TABLE 1</p> <p style="text-align: center;">RESULTS OF FINAL DETERMINATION OF DUMPING</p> <p style="text-align: center;">(January 1 to December 31, 1996)</p>		
Country	Quantity of Goods Dumped (%)	Weighted Average Margin of Dumping (% of normal value)
Mexico	100	26.2
South Africa	100	18.1
China	100	27.3
Russia	100	25.2

Source: Department of National Revenue, *Final Determination of Dumping and Statement of Reasons*, September 25, 1997, Tribunal Exhibit NQ-97-001-4, Administrative Record, Vol. 1 at 110.1.

PRODUCT

Carbon steel plate is made from steel slabs which may be produced in a basic oxygen furnace from molten steel or in an electric arc furnace from molten steel, using steel scrap as the raw material. The slab is charged into a reheat furnace for reheating to a rolling temperature of 2,250 to 2,300°F. Upon attaining the required temperature, it exits the furnace and enters the first rolling mill, where it is reduced in thickness to

an interim range of 3 to 6 inches. The slab then moves to a finishing stand where it is rolled to its final plate width and thickness. At this point, heavier gauge plate is generally finished as discrete plate, while lighter gauge plate may be further reduced and then coiled to become plate in coil form.

After being rolled to final dimensions, discrete plate is flattened and cut to finished ordered size. After it is cut, it is inspected for surface and edge imperfections.

Plate in coil form can be cut to length and sold as carbon steel plate. This plate is available in most carbon and high-strength low-alloy grades, specifications and qualities. It is generally available in dimensions of up to 72.0 inches wide and 0.5 inches thick, but may be as wide as 96.0 inches.

Carbon steel plate is manufactured to meet certain Canadian Standards Association (CSA) and/or American Society for Testing and Materials (ASTM) specifications. The most common specification for plate in Canada is CSA G40.21, grade 44W. This covers the majority of plate produced in Canada and imported from the named countries.

CSA G40.21 refers to structural quality steel and pressure vessel quality (PVQ) steel. Specification A36/44W specifically refers to standard general purpose weldable structural steel. Structural quality steel is intended for general structural applications, such as bridges, buildings, transportation equipment, machined parts and miscellaneous end uses. Structural quality steel is usually made to meet specific chemical composition limits and certain mechanical properties. However, it may be manufactured to chemical composition limits only.

ASTM specifications A285, A515 and A516 are the three most common specifications for PVQ plate. PVQ plate is intended for applications in pressure vessels, such as boilers, and other critical applications. This plate requires additional testing, as compared to structural quality plate.

DOMESTIC STEEL MILLS

Stelco

Stelco is the second largest Canadian producer of carbon steel plate. It is an integrated steel company producing flat-rolled steel, bars and rods, as well as wire, wire products, pipes and tubes. It first produced carbon steel plate in 1941 on a 110-inch plate mill. This mill was replaced in 1965 by a 148-inch mill which is currently in use at Stelco's Hilton Works. Stelco sells the bulk of its plate, most of which is discrete plate, in Ontario and Quebec.

Stelco has announced an \$85 million modernization project to improve and expand its plate mill's production capabilities. Construction of the new mill commenced in the summer of 1997, and the new mill is expected to be fully operational by the end of 1998. Stelco expects that the fully automated plate-rolling facility will double current plate capacity, generate substantial improvements in yield and product quality and reduce costs. It will also expand the product line to include wide, light gauge discrete and coiled plate.

Algoma

Algoma manufactures a broad range of steel products, primarily serving Canada's construction, transportation and energy industries. It is the largest manufacturer of carbon steel plate in Canada, producing

both discrete plate and plate cut from coil. It produces discrete plate on its 166-inch plate mill and coiled plate on its 106-inch wide strip mill. It cuts to length the coiled plate on its finishing line.

Algoma is a large supplier of carbon steel plate in the Ontario market, while it has the predominant share of the market in Quebec and the Atlantic provinces. With its subsidiaries, Algoma is a vertically integrated primary iron and steel producer. Algoma operates a major steelworks at Sault Ste. Marie, Ontario, and an iron ore mine and auxiliary facilities at Wawa, Ontario. In addition, through a subsidiary, Algoma has an equity interest in an iron ore mine and pelletizing facility located in the United States.

IPSCO

IPSCO is the third largest carbon steel plate producer in Canada. It commenced operations in 1957 with the completion of construction of an electric resistance welding pipe mill in Regina, Saskatchewan. In 1960, it commenced production of its own flat-rolled steel, including the steel plate which is the subject of this inquiry. Since that time, IPSCO has expanded its manufacturing capabilities through acquisition and construction in both Canada and the United States and is currently in the process of constructing a flat-rolled steel manufacturing facility in Montpelier, Iowa.

IPSCO produces hot-rolled sheet and plate, hollow structural sections, line pipe, standard pipe, piling pipe, oil country tubular goods and water well casing. IPSCO makes discrete plate and coiled plate in Regina. The coiled plate is cut to length at locations in Western Canada and in the United States. It sells most of its carbon steel plate in Western Canada, but also exports significant quantities to the United States.

IPSCO is currently planning to build a 320,000-tonne/annum plate processing facility in Scarborough, Ontario, and it plans on building a similar 70,000- to 90,000-tonne coil processing facility in Regina to replace an existing cut-to-length facility. The new facility will cut plate as wide as 96 inches, as opposed to the maximum 72 inches that the current Regina facility can cut.

IMPORTERS AND EXPORTERS

There are many importers of carbon steel plate in Canada. However, according to Statistics Canada, three importers currently account for the majority of the carbon steel plate imported into Canada from the named countries. Wirth accounts for virtually all of the plate imported from China, Mexico and South Africa. Canadian Klockner and Ferrostaal Metals Ltd. (Ferrostaal) account for most of the plate imported from Russia.

Wirth is a wholly owned subsidiary of Russel, a large Canadian steel service centre. Wirth imports flat-rolled and structural steel into Canada and the United States. The firm sells its products primarily to steel service centres across North America.

Canadian Klockner is a wholly owned subsidiary of Kloeckner Stahl-Und Metallhandel GMBH of Duisburg, Germany. It has been operating as a steel trader in Canada since 1967, marketing a full range of steel products imported from various parts of the world. It sells carbon steel plate mainly in the Toronto, Ontario, and Montréal, Quebec, areas.

Ferrostaal is a steel trading company, with its head office in Germany. The firm deals only in steel, which it imports from a number of countries, including countries named in this inquiry. It sells the steel at a negotiated price to buyers in Canada.

MARKETING AND DISTRIBUTION

Domestic steel mills sell carbon steel plate either as discrete plate or as plate cut from coil. Steel service centres are the mills' largest customers, but the mills also sell directly to manufacturers and fabricators. Importers sell carbon steel plate mainly to smaller steel service centres. The steel service centres generally purchase carbon steel plate and other steel products from both domestic mills and importers and resell standard cut-to-length sizes and grades of plate, as well as plate that they cut from coil, to smaller steel service centres and fabricators. The service centres also offer other custom cutting services.

Samuel and Russel, two of the largest domestic steel service centres, appeared at the hearing. Both are full-line steel service centres with processing facilities that include the ability to process flat plate from coiled plate which they sell across Canada.

POSITION OF PARTIES

Domestic Producers

Counsel for the domestic producers argued that, from late 1995 through the first part of 1997, the dumping of carbon steel plate from the named countries eroded and suppressed the industry's prices. As a result, the industry was unable to institute price increases to cover rising costs, despite the fact that the market was in an expansionary phase.

Counsel for the domestic producers submitted that this case is a continuation of an opportunistic pattern of source switching by the major importing companies, identical to that seen in plate cases as far back as 1983. In every case, importers of dumped product would circumvent an injury finding by beginning to import low-priced carbon steel plate from a new group of exporting countries, thereby keeping the impact of dumped imports in the marketplace.

Dealing with the question of a causal link between the dumped prices and injury suffered by the industry, counsel for the domestic producers submitted that there is an incontrovertible connection between the downward trend in pricing and growing volumes of dumped imports, arguing that importers could not sell at the prices that they have received without buying dumped product. Counsel added that Wirth would not have been able to achieve its stated goal of selling its product at a 5 percent discount to domestic prices if it had to sell undumped carbon steel plate imported from the same sources.

On a regional basis, counsel for the domestic producers submitted that the incidence of price suppression is greater in Central Canada due to the greater incidence of lower-priced Russian product entering that market. In the west, on the other hand, counsel recognized that British Columbia represents a very small percentage of either Stelco's or Algoma's total sales, but rejected suggestions that intra-industry competition in the west drove prices down, submitting that the evidence showed that dumped imports were the cause of falling prices in that region as well.

Turning to Stelco's allegations of injury, counsel for the domestic producers accepted that the evidence relating to decisions to reduce prices at certain accounts often does not provide a perfect match with competitive offers of imported product at those same accounts. Further, it was the industry's position that importers do not sell product to Samuel, the industry's largest customer, rather they sell to Samuel's customers or even to the trade level below that. When Samuel's customers begin seeking concessions from Samuel, Samuel must, in turn, seek concessions from the domestic industry. It was the industry's position

that the Tribunal must assess the offers in light of the volumes and price levels of dumped imports, suggesting that such an assessment would lead to a conclusion favourable to the industry.

Counsel for the domestic producers argued that selling dumped plate stocked on the docks, in the absence of price lists, is destabilizing and exacerbates the effects of the dumping. With reference to the testimony of the witnesses for Wirth and for Ferrostaal, counsel noted that importers operate without published price books and are able to sell low volumes of plate off the docks without having to charge the extras that the industry must charge on the basis of its price book.⁷

Counsel for the domestic producers went on to submit that the Tribunal should only be considering one class of goods in this case. Accepting that there may be different product categories, it was argued that there is only one class of goods geared to a base price. To that end, counsel argued that PVQ steel is not a class of goods separate from structural quality steel.

With respect to plate cut from coil, counsel for the domestic producers argued that it is not clear whether plate cut from coil is carbon steel plate as defined in this inquiry. It was submitted that plate cut from coil cannot comprise the full range of plate thicknesses as defined by the Deputy Minister. Also, very little plate cut from coil is 96 inches wide, the width of most discrete plate made by the industry.

Responding to suggestions that the industry was allocating its production, counsel for the domestic producers submitted that the mills may not be able to meet all customer demands at times, but that this does not constitute allocating production. Rather, it signifies the mills' attempts to ensure that all customers receive the product that they need.

Concerning future injury, counsel for the domestic producers acknowledged that the industry is currently healthy. However, because the steel industry is cyclical, counsel submitted that times will get worse and that a drop in price of as little as one dollar per hundredweight could make a huge difference in inventory valuation. Counsel added that Wirth's policy of not maintaining a price list, and selling in the market at 5 percent below the domestic price, is a policy that depends on access to dumped goods and that thereby poses a continuing threat of injury.

Compounding the threat of injury, counsel for the domestic producers submitted that expected capacity increases in both Canada and the United States would contribute to the increased vulnerability of the industry in the future. Counsel also referred to the fact that exporters in each of the named countries now face, or are likely to face, anti-dumping measures in their major export markets, leaving the Canadian market as a desirable destination for their carbon steel plate.

Finally, counsel for the domestic producers submitted that each of the ingredients needed to demonstrate an imminent and foreseeable threat of injury is currently present in the market. Similar patterns of dumping are evident in this inquiry as in previous inquiries, the importers have similar motives, the product is the same, and there is both excess export capacity and a propensity to dump in the named countries. All of these factors lead to the conclusion that there is clearly a foreseeable risk of future injury if anti-dumping duties are not imposed.

7. *Transcript of Public Hearing*, Vol. 4, September 25, 1997, at 609 and 673-74.

Importer/Purchaser

Counsel for the importer and purchaser agreed that this inquiry involves price erosion, but submitted that the erosion was caused by a substantial price reduction by Stelco in the fourth quarter of 1995, closely followed by a price reduction by Algoma in the first quarter of 1996. According to counsel, Stelco's price reduction was driven by a need to fill its factory in the fourth quarter of 1995, largely due to a substantial decline in its skelp sales. As a result, it had to sell the extra volume of plate at reduced prices. Counsel also submitted that, in the same time frame, Stelco was offering low prices through a subsidiary in order to expand into the western market.

Counsel for the importer and purchaser also suggested that there is no logic to the allegation of price erosion when, during a period of substantial import penetration in the market, Stelco was raising prices nearly every two or three months. In fact, counsel argued, in the last quarter of 1995 when Stelco reduced its prices, Wirth's prices were higher than those of Stelco, and Wirth had to follow Stelco's prices down.

In terms of Stelco's allegations of injury, counsel for the importer and purchaser submitted that there was no direct evidence adduced at the hearing of actual price competition with respect to any particular customer and maintained that there is a discontinuity in the evidence between dates of imports and dates on which the business was booked, especially any business that was pre-booked.

To that end, counsel for the importer and purchaser suggested that the mere presence of dumped goods in the marketplace is not sufficient to prove that dumping caused material injury to the industry and indicated that there must be more proof of causation. In this instance, imports entering in 1994 and 1995 were not found to have been dumped, and there is no evidence that these goods were the cause of price erosion. According to counsel, factors other than dumping were responsible for any injury that the industry was suffering. In particular, Stelco had not expected a particularly large fall in orders for skelp in the last quarter of 1995 and had to replace the shortfall in orders with increased sales of plate. Consequently, a large low price offer to another of Stelco's customers was needed to reduce its inventory. Compounding matters, counsel submitted, plate sales were slow at that time, as the market anticipated more capacity coming on stream in the United States.

Furthermore, according to counsel for the importer and purchaser, the domestic industry was experiencing a considerable degree of competition from exporters in countries other than the named countries. To this end, counsel referred to a number of Stelco's call reports concerning highly competitive offers from companies in the United States. Today, however, demand has increased, and Algoma and Stelco have to offer US material to supply the demand.

On the topic of sales of plate off the dock, counsel for the importer and purchaser suggested that it is unlikely that 1,000 tonnes of plate for sale off the dock can affect the price levels of companies that sell 200,000 to 400,000 tonnes of plate a year.

With respect to the question of plate cut from coil, counsel for the importer and purchaser submitted that sales of this plate by the domestic steel service centres were competing with the industry's sales of discrete plate. According to counsel, plate cut from coil by the steel service centres is offered in the marketplace at prices below those of ex-mill plate. To the extent that Stelco does not produce plate in 3/16- to 1/2-inch sizes, counsel submitted that sales of carbon steel plate in this range of thicknesses are not injurious to the domestic industry.

Finally, with respect to the industry's position that increased capacity in Canada and the United States would contribute to the industry's vulnerability, counsel for the importer and purchaser submitted that increased capacity in the North American market will make it a less desirable destination for steel from the named countries because, after the increased capacity is in place, the domestic supply of steel will exceed domestic demand.

ANALYSIS

Pursuant to section 42 of SIMA, as amended by the *World Trade Organization Agreement Implementation Act*,⁸ the Tribunal is required to "make inquiry ... as to whether the dumping or subsidizing of the goods [to which the preliminary determination applies] ... has caused injury or retardation or is threatening to cause injury."⁹ The term "injury" is defined in subsection 2(1) of SIMA as "material injury to a domestic industry." "Domestic industry" is defined, subject to certain exceptions, as "the domestic producers as a whole of the like goods or those ... whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods."

In arriving at its decision, the Tribunal must, therefore, determine which domestically produced goods are "like goods" to the subject goods. Subsequently, the Tribunal must identify the domestic producers of the like goods that make up the "domestic industry." The Tribunal must then determine whether the domestic industry has suffered material injury and, if so, whether there is a causal link between the material injury and the dumping of the subject goods. It was not alleged in this inquiry that the domestic industry has suffered retardation. In the event that the Tribunal makes a finding of no injury, it must go on to consider the evidence relating to threat of injury and make a finding in respect of that question.

Like Goods

The Deputy Minister defined the subject goods as certain hot-rolled carbon steel plate originating in or exported from Mexico, China, South Africa and Russia. The Deputy Minister specifically excluded certain steel products from the subject goods, including plate in coil form, skelp and plate produced to ASTM specifications A515 and A516M/A516, grade 70, in thicknesses greater than 3.125 inches.¹⁰

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

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

As noted earlier, carbon steel plate is produced to meet various specifications. The evidence in this inquiry indicates that, for each specification, carbon steel plate produced domestically competes with, has the same end uses as and can be substituted for the subject goods, as defined by the Deputy Minister. Therefore,

8. S.C. 1994, c. 47.

9. For a more detailed discussion of the Tribunal's views on the impact of the amendments to SIMA, see *Caps, Lids and Jars Suitable for Home Canning, Whether Imported Separately or Packaged Together, Originating in or Exported from the United States of America*, Inquiry No. NQ-95-001, *Finding*, October 20, 1995, *Statement of Reasons*, November 6, 1995, at 8-10.

10. *Final Determination of Dumping and Statement of Reasons*, Tribunal Exhibit NQ-97-001-4, Administrative Record, Vol. 1 at 110.1-110.48; and Tribunal Exhibit NQ-97-001-5 (protected), Administrative Record, Vol. 2 at 22.1-22.23.

the Tribunal is of the view that all domestically produced carbon steel plate, including PVQ plate and plate cut from coil, is “like goods” to the subject goods.

Domestic Industry

Having decided that the like goods in this inquiry are domestically produced carbon steel plate, the Tribunal must consider which producers constitute the domestic industry. Subparagraph 42(1)(a)(i) of SIMA provides that the Tribunal shall inquire into whether the dumping of the goods to which the preliminary determination applies has caused injury or is threatening to cause injury. The term “injury” is defined in subsection 2(1) of SIMA as “material injury to a domestic industry.” The term “domestic industry” is defined in subsection 2(1), in part, as follows:

“domestic industry” means, other than for the purposes of section 31 and subject to subsection (1.1), the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods.

Stelco, IPSCO and Algoma are the primary producers of like goods in Canada. Their production represents at least 80 percent of total domestic production.¹¹ As such, the Tribunal is of the view that they clearly represent a major proportion of the total domestic production of carbon steel plate. In conducting its analysis of injury and threat of injury in this inquiry, the Tribunal has considered the effect of dumped imports on Stelco, Algoma and IPSCO.¹²

Injury

Subsection 37.1(1) of the *Special Import Measures Regulations*¹³ (the Regulations) prescribes the factors that the Tribunal may consider when determining whether a domestic industry is being materially injured by dumped imports. These factors include the volume of the dumped goods, the margins of dumping and their effect on prices in the domestic market for like goods and the consequent impact that these imports have on the state of the domestic industry.

When examining the impact of the imports, the Tribunal considers relevant economic factors, as outlined in the Regulations, including actual or potential declines in output, sales, market share, profits, return on investments and utilization of industrial capacity and actual or potential negative effects on cash flow, employment and the ability to raise capital.

11. *Protected Pre-Hearing Staff Report*, August 18, 1997, Tribunal Exhibit NQ-97-001-7 (protected), Administrative Record, Vol. 2 at 47; and *Protected Pre-Hearing Staff Report*, revised September 20, 1997, Tribunal Exhibit NQ-97-001-7C (protected), Administrative Record, Vol. 2 at 131.21.

12. The Tribunal notes that certain of the steel service centres purchase plate in coil form and cut it to length. In response to a questionnaire sent to various purchasers of carbon steel plate in Canada, the steel service centres provided the Tribunal with information regarding their purchases of carbon steel plate. Steel service centres that cut plate from coil were also requested to provide the volumes and values of their sales of carbon steel plate cut from coil. These data are reflected in Table 2. For purposes of its injury and threat analysis, the Tribunal did not consider the effect which the dumped goods had on the steel service centres.

13. SOR/95-26, December 20, 1994, *Canada Gazette* Part II, Vol. 129, No. 1 at 80.

TABLE 2
DOMESTIC CARBON STEEL PLATE MARKET

	1994	1995	1996	<u>Jan. 1 to Mar. 31</u>	
				1996	1997
Market Share (%)					
Producers					
Discrete	56	57	55	55	55
Cut-to-Length	<u>10</u>	<u>11</u>	<u>16</u>	<u>13</u>	<u>14</u>
Subtotal	67	69	70	69	69
Steel Service Centres					
Cut-to-Length	<u>20</u>	<u>18</u>	<u>18</u>	<u>19</u>	<u>18</u>
Total Domestic Production	87	86	88	88	87
Importers					
Subject Countries	5	7	7	8	8
Other Countries	<u>8</u>	<u>6</u>	<u>5</u>	<u>4</u>	<u>5</u>
Total Imports	<u>13</u>	<u>14</u>	<u>12</u>	<u>12</u>	<u>13</u>
Total Market	100	100	100	100	100
Unit Price (\$/tonne)					
Producers					
Discrete	615	710	673	673	662
Cut-to-Length	657	750	715	722	680
Average Unit Price	622	717	683	682	666
Steel Service Centres					
Cut-to-Length	575	635	586	597	623
Average Domestic Unit Price	611	700	663	663	657
Importers					
Subject Goods	621	654	622	675	610
Total Imports	654	736	755	740	750
Average Market Unit Price	616	705	674	673	669

Source: *Public Pre-Hearing Staff Report*, August 18, 1997, Tribunal Exhibit NQ-97-001-6, Administrative Record, Vol. 1 at 111-219; *Public Pre-Hearing Staff Report*, revised August 29, 1997, Tribunal Exhibit NQ-97-001-6A, Administrative Record, Vol. 1 at 220-31; *Public Pre-Hearing Staff Report*, revised September 18, 1997, Tribunal Exhibit NQ-97-001-6B, Administrative Record, Vol. 1 at 232-38; and *Public Pre-Hearing Staff Report*, revised September 20, 1997, Tribunal Exhibit NQ-97-001-6C, Administrative Record, Vol. 1 at 239-42;

Note: Percentages may not add due to rounding.

In the three full years from 1994 to 1996, the market increased from about 750,000 tonnes to nearly 880,000 tonnes.¹⁴ Most of the growth occurred in 1995, when volumes grew by 16 percent. However, the

14. *Protected Pre-Hearing Staff Report*, revised September 20, 1997, Tribunal Exhibit NQ-97-001-7C (protected), Administrative Record, Vol. 2 at 131.21.

volume of the market rose only marginally in 1996, then grew somewhat faster in the first quarter of 1997. From 1994 to 1996, the industry increased its market share from 67 to 70 percent. In the first quarter of 1997, industry sales accounted for 69 percent of the market.

The Tribunal had before it extensive information pertaining to the pricing of plate products in the domestic market and, particularly, the pricing and volume of individual sales of plate.¹⁵ The Tribunal paid careful attention to this pricing information, particularly because the industry's allegations of injury related to eroded and suppressed prices and their effects on the industry's bottom line.

The Tribunal's review of prices revealed three major phases in price trends between the beginning of 1994 and the first quarter of 1997. In 1995, average transaction prices in the plate market increased significantly over 1994, growing by 14 percent from \$616 to \$705/tonne, while the industry's prices rose 15 percent from \$622 to \$717/tonne. The changes in the industry's average transaction prices reflected three increases in book prices during 1994 and 1995.¹⁶ By the middle of 1995, the industry was selling close to book prices.¹⁷

However, the industry's transaction prices began to weaken late in 1995, and prices dropped further in the first quarter of 1996. In the first quarter of 1996, Stelco lowered its prices by 6 percent,¹⁸ and the industry followed. Although its transaction prices increased in the second quarter of 1996, Stelco was only able to increase them marginally and was not able to get its prices back to where they had been at the end of 1995.¹⁹

The industry argued that it was being injured due to the effects of price erosion and price suppression and that these factors were having a material impact on the industry's margins and bottom lines. In particular, a witness for Stelco testified that, beginning in the second quarter of 1996, Stelco had attempted on several occasions to increase prices, but had been unsuccessful.²⁰

On the basis of this evidence and of its review of selling prices for carbon steel plate, the Tribunal is satisfied that, since the end of 1995, the industry's prices have been both eroded and suppressed. Despite the fact that the domestic industry's unit costs gradually increased during 1996 and into the first quarter of 1997,²¹ the industry was unable to increase its prices to cover these rising costs.

In the Tribunal's view, the industry's inability to raise its prices to cover increasing costs has had a growing negative impact on its financial performance, particularly on its gross margins and net revenue. During the period, gross margins declined from 25 percent of sales in 1995 to 18 percent in 1996. In the first quarter of 1997, it dropped even further to 14 percent.

15. *Protected Pre-Hearing Staff Report*, August 18, 1997, Tribunal Exhibit NQ-97-001-7 (protected), Administrative Record, Vol. 2 at 23-131.

16. Manufacturer's Exhibit A-2 (protected) at 37, Administrative Record, Vol. 14.

17. *Transcript of Public Hearing*, Vol. 2, September 23, 1997, at 205.

18. *Protected Pre-Hearing Staff Report*, revised September 20, 1997, Tribunal Exhibit NQ-97-001-7C (protected), Administrative Record, Vol. 2 at 131.23.

19. Manufacturer's Exhibit A-2 (protected), Tab 3, Administrative Record, Vol. 14.

20. *Transcript of In Camera Hearing*, Vol. 1, September 23, 1997, at 69.

21. *Public Pre-Hearing Staff Report*, August 18, 1997, Tribunal Exhibit NQ-97-001-6, Administrative Record, Vol. 1 at 168.

TABLE 3
FINANCIAL PERFORMANCE
DOMESTIC STEEL PLATE INDUSTRY
PERCENT OF SALES VALUE

	1994	1995	1996	<u>Jan. 1 to Mar. 31</u>	
				1996	1997
Gross Margin	18	25	18	17	14
Net Income Before Taxes	12	20	12	11	7

Source: *Public Pre-Hearing Staff Report*, August 18, 1997, Tribunal Exhibit NQ-97-001-6, Administrative Record, Vol. 1 at 167.

Throughout the period, the industry's general, selling and administrative and financial expenses remained stable at about 5 to 6 percent of net sales.²² The cumulative impact of falling gross margins and relatively stable expenses caused net income to drop from 20 percent of net sales in 1995 to 7 percent in the first quarter of 1997. In the Tribunal's opinion, the combined impact of falling net unit sale prices and growing costs has put downward pressure on the industry's gross margins and net revenues.

In the Tribunal's view, this downward pressure and the industry's inability to raise its prices in 1996 and 1997 have clearly been injurious to the domestic industry. However, the Tribunal is of the view that, to date, the injury suffered by the industry has not been for such a duration or to such an extent as to constitute "material injury" within the meaning of SIMA.

Threat of Material Injury

Having found that the domestic industry has not been materially injured, the Tribunal must consider whether there is a threat of injury and, if so, whether there is a causal link between the dumped imports and any threat of injury. In considering these questions, the Tribunal is guided by subsection 37.1(2) of the Regulations, which prescribes factors for the purposes of determining whether the dumping of goods is threatening to cause injury.

The following factors are relevant to this inquiry: whether there has been a significant rate of increase of dumped carbon steel plate in Canada; whether there is sufficient freely disposable capacity, or an imminent substantial increase in the capacity of exporters in the subject countries, that indicates a likelihood of a substantial increase in exports of dumped goods, taking into account the availability of other export markets to absorb any increase; whether the goods are entering the domestic market at prices that are likely to have a significant depressing or suppressing effect on the price of like goods; and other relevant factors.

Paragraph 37.1(3)(a) of the Regulations prescribes additional factors for determining whether there is a causal relationship between the dumping of any goods and the threat of injury. These factors include the following: (i) the volumes and prices of undumped goods; (ii) contraction in demand; (iii) changes in patterns of consumption; (iv) trade-restrictive practices of, and competition between, foreign and domestic producers;

22. *Public Pre-Hearing Staff Report*, August 18, 1997, Tribunal Exhibit NQ-97-001-6, Administrative Record, Vol. 1 at 167.

(v) developments in technology; and (vi) export performance and productivity of the domestic industry. In addition, paragraph 37.1(3)(b) prescribes the following: whether any factors other than the dumping of the goods has caused injury or retardation or is threatening to cause injury. The Tribunal must determine whether there is a causal relationship between the dumping of the goods and the threat of material injury and must ensure that injury caused by other factors is not attributed to the dumped imports.

Finally, the Tribunal notes that, in making a finding of threat of material injury to the domestic industry, subsection 2(1.5) of SIMA requires that the “circumstances in which the dumping or subsidizing of [the subject] goods would cause injury [must be] clearly foreseen and imminent.”

The Tribunal, first of all, examined the extent to which there had been growth in imports from the named countries, both individually and cumulatively, and considered what the trends in imports would be in the absence of anti-dumping duties. The Tribunal notes that, in 1996, the Deputy Minister’s period of investigation, all of the imports from the four named countries were found by the Deputy Minister to be dumped, at margins ranging from 18.1 to 27.3 percent.²³

Wirth is the main importer of carbon steel plate into Canada from three of the four named countries: China, Mexico and South Africa. Total sales volumes of imports of carbon steel plate from these three countries increased in each of the years from 1994 to 1996. Moreover, imports from the same countries were nearly 60 percent greater in the first quarter of 1997 than they were in the first quarter of 1996.²⁴ On an annualized basis, import volumes of carbon steel plate from these three countries in 1997 were more than double the volumes imported in 1994 from these countries.

Canadian Klockner and Ferrostaal were the main importers of carbon steel plate from Russia. The volume of sales of imports of carbon steel plate from Russia grew by 45 percent in 1995 over 1994 and declined by a lesser percentage in 1996.²⁵ Imports from Russia in the first quarter of 1997 continued to decline somewhat. However, data for April and May 1997 show that, in these two months, the volumes of carbon steel plate imported from Russia exceeded those of any quarter since 1994.²⁶

The substantial cumulative increase in import volumes of carbon steel plate from the named countries from 1994 to the first quarter of 1997 and the fact that imports continued, and even increased, following the initiation of the investigation by the Deputy Minister and up to the Tribunal’s inquiry indicate to the Tribunal that it is likely that the subject countries will continue to export to Canada. In the Tribunal’s view, these circumstances are clearly foreseen and imminent.

The Tribunal then reviewed the capacity of the named countries to continue to export and even to increase their exports of carbon steel plate to Canada. There was considerable evidence adduced at the hearing that the capacity of the mills to produce carbon steel plate in the subject countries is several times that

23. *Final Determination of Dumping and Statement of Reasons*, Tribunal Exhibit NQ-97-001-4, Administrative Record, Vol. 1 at 110.1-110.48; and Tribunal Exhibit NQ-97-001-5 (protected), Administrative Record, Vol. 2 at 22.1-22.23.

24. *Protected Pre-Hearing Staff Report*, August 18, 1997, Tribunal Exhibit NQ-97-001-7 (protected), Administrative Record, Vol. 2 at 52.

25. *Protected Pre-Hearing Staff Report*, revised September 20, 1997, Tribunal Exhibit NQ-97-001-7C (protected), Administrative Record, Vol. 2 at 131.21.

26. Manufacturer’s Exhibit A-1, Tab 1, Administrative Record, Vol. 13.

of the domestic producers and that freely disposable capacity in these mills and, in particular, in China and Russia is extensive.²⁷

The Tribunal heard testimony from witnesses for four exporters that have exclusive distribution relationships with Wirth: Altos Hornos de Mexico (AHMSA) in Mexico, Highveld Steel and Vanadium Corporation Limited (Highveld) in South Africa and Angang Group International Trading Corp. and Shanghai No. 3 Steel Works in China.

In regard to Mexico, the evidence shows that, between 1994 and 1996, domestic sales of carbon steel plate from Mexico nearly doubled.²⁸ The witness for the AHMSA stated that the firm was the only Mexican producer of carbon steel plate. He stated that AHMSA's capacity utilization is high and noted that, as the economy in Mexico improves, domestic demand for carbon steel plate will absorb most of that capacity and that exports will decline. However, the Tribunal notes that Canada was, in 1996, Mexico's largest export market for the subject goods.²⁹ Moreover, Mexico has been subject to anti-dumping duties in the United States since 1993,³⁰ thereby making Canada an even more attractive export market, as it is one of its most proximate markets.

Witnesses for two of the producers in China indicated that their companies have high capacity utilization rates and that their exports to Canada represented a small proportion of their total exports. Moreover, one of the producers indicated that exports of carbon steel plate relative to other goods were declining. However, the Tribunal notes that these are not the only two producers of the subject plate in China,³¹ nor are they the only producers that have dumped the subject plate in Canada.³²

While sales of imports from China dropped substantially in 1996 over 1995,³³ they increased significantly in the first quarter of 1997 over the first quarter in 1996. With the substantial, freely disposable steel-making capacity currently existing in China, as reported in public industry figures,³⁴ Canada is likely to be an increasingly important export market. The Tribunal notes that exports of Chinese carbon steel plate are currently subject to anti-dumping duties in Indonesia.³⁵ Further, should the proceedings currently underway

27. Manufacturer's Exhibit A-1, Tab 9, Iron and Steel Works of the World at 73-103 and 381-404, Administrative Record, Vol. 13A.

28. *Protected Pre-Hearing Staff Report*, revised September 20, 1997, Tribunal Exhibit NQ-97-001-7C (protected), Administrative Record, Vol. 2 at 131.21.

29. Importer's Exhibit D-10 (protected), Tab 6, Annex I, Administrative Record, Vol. 16.

30. U.S. International Trade Commission Investigation Nos. 701-TA-319-328 (Final) and 731-TA-573-579, 581-587 (Final), Publication 2664, August 1993, Vol. I, Determination and Views of the Commission at 211.

31. *Transcript of Public Hearing*, Vol. 4, September 25, 1997, at 618; and *Final Determination of Dumping and Statement of Reasons*, Schedule A, Tribunal Exhibit NQ-97-001-4, Administrative Record, Vol. 1 at 110.14.

32. *Final Determination of Dumping and Statement of Reasons*, Schedule A, Tribunal Exhibit NQ-97-001-4, Administrative Record, Vol. 1 at 110.14.

33. *Protected Pre-Hearing Staff Report*, revised September 20, 1997, Tribunal Exhibit NQ-97-001-7C (protected), Administrative Record, Vol. 2 at 131.21.

34. Manufacturer's Exhibit A-1, Tab 9, Iron and Steel Works of the World at 73-103, Administrative Record, Vol. 13A.

35. Manufacturer's Exhibit A-1, Tab 10, Metal Bulletin, May 1, 1997, Administrative Record, Vol. 13A.

in the United States³⁶ result in the imposition of anti-dumping duties on imports from China, Canada is likely to become an even more attractive market.

The witness for Highveld gave evidence that the mill is running at almost full capacity and that this situation has remained relatively constant with no plans for expansion. The Tribunal notes that, while its capacity utilization has been high, Highveld has continued to have a supply of carbon steel plate available for export to Canada.

In addition, there is another South African producer of the subject plate, ISCOR Ltd., which, at present, has only exported marginal volumes to Canada,³⁷ but which is involved in anti-dumping proceedings in the United States,³⁸ along with Highveld, and which, according to public industry figures, has substantial capacity for the production of the subject plate.³⁹ The Tribunal is, therefore, persuaded that Canada will continue to be an attractive export market for Highveld and may well become an important export market for ISCOR Ltd., which has the capacity to produce and the orientation to export to North America.

With respect to imports of the subject plate from Russia, the evidence before the Tribunal is that there are nine Russian mills that exported plate to Canada during Revenue Canada's period of investigation.⁴⁰ Information on the record from a public industry source indicates that huge excess capacity for steel in Russia and falling internal demand have created pressure to increase exports.⁴¹

Moreover, Russian plate exports are currently subject to quantitative restrictions applied by the European Union⁴² and are the subject of anti-dumping proceedings in the United States⁴³ and Mexico.⁴⁴ Russian plate exports are also subject to anti-dumping duties in Indonesia⁴⁵ and Thailand.⁴⁶ In the Tribunal's

36. U.S. International Trade Commission Investigation No. 731-TA-753-756 (Preliminary), Publication 3009, December 1996. The Tribunal notes that the U.S. Department of Commerce signed suspension agreements with China, Russia, Highveld and ISCOR Ltd. on October 24, 1997. Notwithstanding these agreements, the U.S. Department of Commerce completed its investigations: See *Notice of the U.S. Department of Commerce Final Determination of Sales at Less than Fair Value* signed on October 24, 1997. The U.S. International Trade Commission's investigations are ongoing: See *Notice of Revised Schedule for Investigations Nos. 731-TA-753-756 (Final)* published in 62 FR 44287, August 20, 1997.

37. Tribunal Exhibit NQ-97-001-16.3D (protected), Administrative Record, Vol. 6 at 46.24 and 46.25.

38. U.S. International Trade Commission Investigation No. 731-TA-753-756 (Preliminary), Publication 3009, December 1996.

39. Manufacturer's Exhibit A-1, Tab 9, Iron and Steel Works of the World at 415-17, Administrative Record, Vol. 13A.

40. *Final Determination of Dumping and Statement of Reasons*, Schedule A, Tribunal Exhibit NQ-97-001-4, Administrative Record, Vol. 1 at 110.15.

41. Manufacturer's Exhibit A-1, Tab 5, World Steel Dynamics, Paine Webber, "Russian Steel: Not to be Underestimated," Monitor Report, April 1997, Administrative Record, Vol. 13.

42. Manufacturer's Exhibit A-1, Tab 15, European Union Press Release, "EU Commission and Russia Reach New Deal on Steel," Brussels, April 8, 1997, Administrative Record, Vol. 13A.

43. U.S. International Trade Commission Investigation No. 731-TA-753-756 (Preliminary), Publication 3009, December 1996.

44. Manufacturer's Exhibit A-1, Tab 10, Reuters Press Release, April 8, 1997, Administrative Record, Vol. 13A.

45. Manufacturer's Exhibit A-1, Tab 10, Metal Bulletin, May 1, 1997, Administrative Record, Vol. 13A.

46. Manufacturer's Exhibit A-1, Tab 11, International Trade Reporter, January 8, 1997, at 66, Administrative Record, Vol. 13A.

view, such restrictions on Russian plate exports are and will continue to be factors forcing Russian producers to seek out other export markets. Large exports of Russian plate to Canada in the spring of 1997 tend to confirm the Russian mills' interest in the Canadian market.⁴⁷

In the Tribunal's view, the preceding analysis shows that exporters in the named countries clearly have the capacity to continue, and even to increase, their exports to Canada. Moreover, the conditions that exporters in each of the countries now face, or may face, in major export markets, as a result of anti-dumping or other measures limiting their access, are likely to create an incentive to divert their exports of carbon steel plate to markets without such restrictions, such as Canada.

Having determined that dumped imports from the named countries are likely to continue and may even increase, the Tribunal turned to the question of whether they are likely to constitute a threat of injury to the domestic industry. In so doing, the Tribunal assessed the extent to which there has been a causal link between the dumped imports and the price erosion, price suppression and the consequent negative impact on the domestic industry's financial performance and whether, if there was, it is likely to continue in the future.

A key question in the Tribunal's analysis was whether dumped imports, or other factors, have caused the downward pressure on the industry's prices since the latter part of 1995 and, if so, whether the dumped imports are likely to continue to impact prices in the absence of anti-dumping duties. The Tribunal commenced its analysis by comparing the prices of imported and domestic carbon steel plate during the period from 1994 to 1997.

Between 1994 and 1995, the rate of increase of import prices was less than the rate at which the industry's prices were rising.⁴⁸ In 1996, the price of both imported and domestic carbon steel plate declined by about the same amount, but, in the first quarter of 1997, the price of imports fell at a considerably faster rate, thereby widening the gap between the two. Moreover, these average price data and the data compiled from Wirth and Ferrostaal's invoices for sales in 1996 and 1997 indicate that the prices at which these firms sold carbon steel plate in the market were generally below the average price at which domestically produced plate was sold in the domestic market.⁴⁹ This fact is consistent with Wirth's policy of underselling the prices of domestically produced plate by a set percentage.

Looking to the immediate future, it is of particular note that, from the second quarter of 1996 through 1997, import prices declined and that the gap between import prices and domestic industry prices became wider.

Counsel for the importer and purchaser argued that factors other than dumped imports caused the decline in the domestic industry prices. In fact, counsel argued that it was the domestic industry, and more

47. Manufacturer's Exhibit A-1, Tab 1, Administrative Record, Vol. 13.

48. *Public Pre-Hearing Staff Report*, revised September 20, 1997, Tribunal Exhibit NQ-97-001-6C, Administrative Record, Vol. 1 at 242.

49. Tribunal Exhibit NQ-97-001-48 (single copy — protected), Administrative Record, Vol. 10 at 1-285 and Vol. 10A at 1-127; Tribunal Exhibit NQ-97-001-48D (single copy — protected), Administrative Record, Vol. 10A at 128-93; and Tribunal Exhibits NQ-97-001-RI-4A, NQ-97-001-RI-4C and NQ-97-001-RI-4.1A (single copies — protected), Administrative Record, Vols. 12.3A-12.3H.

specifically Stelco, the acknowledged price leader,⁵⁰ that caused the price erosion from 1995 onward and, hence, any injury suffered by the industry.

In considering counsel for the importer and purchaser's argument that Stelco was the cause of the price erosion, the Tribunal undertook a quarter by quarter comparative review of Stelco's selling prices of structural steel plate with those of Wirth and Ferrostaal.⁵¹ These two importers accounted for the bulk of sales of imports of carbon steel plate from the subject countries. Because almost all of their imports consisted of structural steel plate, the Tribunal compared the prices of sales of these imports with the prices of Stelco's sales of structural steel plate. The Tribunal notes also that, during 1996, the crucial period of its review, the Deputy Minister found all imports from the subject countries to be dumped.

The Tribunal's review of the information confirms that, after softening in late 1995 and being below book prices, domestic carbon steel plate prices declined sharply in the first quarter of 1996. However, at the same time, the prices of dumped imports were moving in the other direction.⁵² Thus, the Tribunal finds Wirth's view of what happened in the market in late 1995 and the first quarter of 1996 to be plausible and supported by the evidence. Moreover, Stelco itself recognizes that it probably overreacted to what it considered to be pricing pressures exerted by imports from the named countries in the latter part of 1995 and in the first quarter of 1996.⁵³

On balance, taking into account all of the evidence in this matter, the Tribunal is of the opinion that the industry contributed to the drop in prices in the first quarter of 1996. However, the Tribunal's review shows that, although domestic prices did increase somewhat after the first quarter of 1996, they did not reach the levels that had prevailed at the end of 1995.⁵⁴ Subsequently, domestic industry prices followed a downward trend into 1997. Contrary to what occurred in the first quarter of 1996, there is no evidence that would lead the Tribunal to conclude that the industry caused this steady erosion of prices. The industry witness testified that, on several occasions in 1996 and early 1997, the industry tried to increase its prices. It was only in August 1997, two months after the preliminary determination of dumping, that the industry was able to increase prices in the market.⁵⁵ The Tribunal is persuaded that this downward price trend was caused by the continued dumping of low-priced carbon steel plate in the marketplace.

To be satisfied that a relatively small volume of imports can have a significant impact on prices in the market, the Tribunal typically looks for evidence of actual direct competition in the market between the domestic industry and importers of the dumped product. In this case, the domestic industry's injury allegations included documentation that dumped imports were being sold to many customers in the market, evidence which was largely corroborated by the Tribunal's review of actual selling invoices. These invoices also showed that the domestic producers competed with imports, through their major customers, the steel

50. *Transcript of Public Hearing*, Vol. 2, September 23, 1997, at 329.

51. Manufacturer's Exhibit A-2 (protected), Tab 13, Administrative Record, Vol. 14; Tribunal Exhibit NQ-97-001-48 (single copy — protected), Administrative Record, Vol. 10 at 1-285 and Vol. 10A at 1-127; Tribunal Exhibit NQ-97-001-48D (single copy — protected), Administrative Record, Vol. 10A at 128-93; and Tribunal Exhibits NQ-97-001-RI-4A, NQ-97-001-RI-4C and NQ-97-001-RI-4.1A (single copies — protected), Administrative Record, Vols. 12.3A-12.3H.

52. *Protected Pre-Hearing Staff Report*, revised September 20, 1997, Tribunal Exhibit NQ-97-001-7C (protected), Administrative Record, Vol. 2 at 131.26.

53. *Transcript of In Camera Hearing*, Vol. 1, September 23, 1997, at 71.

54. *Protected Pre-Hearing Staff Report*, revised September 20, 1997, Tribunal Exhibit NQ-97-001-7C (protected), Administrative Record, Vol. 2 at 131.23.

55. Manufacturer's Exhibit A-2 (protected), Tab 13, Administrative Record, Vol. 14.

service centres.⁵⁶ Finally, they showed that Wirth has a relatively large customer base in the Canadian carbon steel plate market. In the Tribunal's opinion, the majority of domestic carbon steel plate buyers were well aware of the prices offered by Wirth. In this regard, witnesses for Samuel testified that they counted on the domestic mills to make them fully competitive with imports in the marketplace.

On the basis of this evidence and the testimony of witnesses for Wirth that the company always priced relatively close to the domestic industry, counsel for Wirth argued that dumped imports were not the cause of price erosion. The Tribunal heard considerable testimony on how importers in general, and Wirth in particular, do business in the Canadian market for carbon steel plate. What the Tribunal has drawn from this evidence is that, even though an importer may intend to base its prices on the domestic industry's prevailing prices, this practice may in fact have a negative impact on market prices. While domestic producers generally price product for delivery within a relatively short time frame, rarely exceeding a month, importers, in contrast, sell their product at today's prices for delivery in up to six months. The evidence shows that the largest importers often pre-sold much of the plate that they imported from the named countries. Since the imported plate often takes three to six months to arrive in Canada after the price has been arranged,⁵⁷ this price essentially becomes the negotiating base in the market, unless there are subsequent sales at even lower prices. As a result, the existence of these future sales tends to prolong the period that any particular dumped price can influence, and exert pressure on, market prices. This, in turn, tends to frustrate any attempts by the domestic industry to raise its prices and could even cause further price erosion.

The Tribunal's review of prices corroborates this view. The Tribunal noted earlier that prices of dumped imports in the first quarter of 1996 were above domestic prices at that time. These prices were close to the domestic prices that prevailed in late 1995. Import prices in the second quarter of 1996, having been established on the basis of low domestic prices in the first quarter of 1996, were lower and moving downwards from industry prices. The Tribunal believes that this lack of synchrony in pricing can make it difficult or even impossible for the domestic industry to increase prices, even in the strong plate market that prevailed in 1996 and 1997. Because it is difficult, if not impossible, to forecast what prices will be at the time of delivery, the Tribunal does not see how an importer can price above prices in the market at the time that it makes a commitment to buyers. On the other hand, because an importer is selling low-priced dumped goods, it has the flexibility to lower prices if, at the time of delivery, there has been a further price decline in the market.⁵⁸

Taking into account these considerations, the Tribunal concludes that the pressures exerted on prices by the low-priced dumped imports have made it difficult for the industry, or any one company in the industry, to move prices back up. The Tribunal is of the view that, in the absence of anti-dumping duties, these pressures will continue and the domestic industry is likely to continue to suffer price erosion and price suppression, with the consequent negative effects on gross margins and net revenues. The Tribunal is persuaded that these downward pressures are clearly foreseen and imminent and that the industry cannot continue to sustain such downward pressure on its gross margins and net revenues indefinitely without suffering material injury.

56. Tribunal Exhibit NQ-97-001-48 (single copy — protected), Administrative Record, Vol. 10 at 1-285 and Vol. 10A at 1-127; Tribunal Exhibit NQ-97-001-48D (single copy — protected), Administrative Record, Vol. 10A at 128-93; and Tribunal Exhibits NQ-97-001-RI-4A, NQ-97-001-RI-4C and NQ-97-001-RI-4.1A (single copies — protected), Administrative Record, Vols. 12.3A-12.3H.

57. *Transcript of In Camera Hearing*, Vol. 3, September 25, 1997, at 306.

58. *Transcript of Public Hearing*, Vol. 4, September 25, 1997, at 626.

In addition, the Tribunal is of the opinion that further increases in the volume of dumped imports could have a negative impact on the domestic industry's ability to maintain its market share. The industry witnesses testified that, in early 1996, the industry had to lower its prices to avoid losing market share to dumped imports from the named countries. The data in this inquiry show that the industry was successful in maintaining its market share and that increasing dumped imports displaced undumped imports from other countries. Faced with further increases in imports from the named countries, the industry could find itself in a position where it has to reduce its prices further or, where failing to do so, it would risk losing sales to dumped imports. In such a situation, the effects of price erosion and price suppression could be exacerbated by higher costs because of reduced production volumes.

Counsel for the importer and the purchaser argued that other factors, such as sales of plate cut from coil by steel service centres, imports from the United States and the investment plans of the domestic producers to increase substantially their capacity, have affected, and will continue to affect, the performance of the domestic industry.

In addressing the argument concerning the steel service centres' sales of plate cut from coil, the Tribunal turned to the considerable amount of evidence on the record concerning the volumes and values of sales of both discrete plate and plate cut from coil. There was much argument that plate cut from coil is a rapidly developing segment of the carbon steel plate market and that it is displacing discrete plate produced by the major domestic firms. In fact, counsel for the importer and purchaser noted that Stelco has undertaken a major investment, motivated, in part, by the need to service the market for plate cut from coil.

With respect to the question of the impact of sales of plate cut from coil by the steel service centres on the industry's sales of discrete plate, the Tribunal finds that, while the share of the market accounted for by the industry's sales of discrete plate dropped marginally from a peak of 57 percent in 1995 to a low of 55 percent in 1996 and the first quarter of 1997, the industry's sales of plate cut from coil increased considerably, much of which was at the expense of the steel service centres.⁵⁹

The Tribunal recognizes that the steel service centres were selling plate cut from coil at prices that were lower than domestic mills' prices for either discrete plate or even plate that they, themselves, cut from coil. However, the Tribunal agrees with the testimony that it heard that it is the narrower width that explains the price differential and that plate cut from coil competes in a narrow segment of the market.⁶⁰ Given the evidence of relatively stable prices for domestic plate cut from coil by the steel service centres, combined with the fact that the product competes in a relatively narrow segment of the market, the Tribunal is led to the conclusion that the prices of plate cut from coil by the steel service centres have had, and are likely to continue to have, little impact on the average prices of carbon steel plate in the market.

With respect to the impact of competition with carbon steel plate exported from mills in the United States, the Tribunal notes that the import volumes from the United States of the subject plate in 1996 were lower than in previous years and were substantially below import volumes from the four named countries.⁶¹ However, although imports from the United States increased in the first quarter of 1997 and there was

59. *Protected Pre-Hearing Staff Report*, revised September 20, 1997, Tribunal Exhibit NQ-97-001-7C (protected), Administrative Record, Vol. 2 at 131.21.

60. *Transcript of Public Hearing*, Vol. 2, September 23, 1997, at 344.

61. *Protected Pre-Hearing Staff Report*, revised September 20, 1997, Tribunal Exhibit NQ-97-001-7C (protected), Administrative Record, Vol. 2 at 131.21.

evidence that imports from the United States of the subject plate will increase in the second half of 1997 into 1998, the evidence indicates that these imports are supplying shortfalls in domestic production and are being imported at prices at, or above, import prices for the subject plate from the four named countries.⁶²

The evidence before the Tribunal does not suggest that the price levels for imports from the United States are likely to change in the foreseeable future. Moreover, the evidence reveals that the prices for this steel are very close to Stelco's book prices that came into effect in August 1997.⁶³ Furthermore, the Tribunal observes that these prices are significantly higher than prices for similar product in the market prior to the Deputy Minister's preliminary determination of dumping.

In addition, the Tribunal heard a considerable amount of testimony concerning IPSCO's new mill in Montpelier and that any exports would likely be at the prevailing prices in Canada and, therefore, would not likely affect prices in the Canadian market.⁶⁴ Moreover, in response to questions on whether some of the production will be exported to Canada, witnesses testified that the plant was being built primarily to serve the US market.⁶⁵

Finally, counsel for the importer and purchaser argued that new capacity, particularly in the domestic market, will cause a decline in prices in Canada which will make the domestic market unattractive to exporters in the named countries. In contrast, the industry argued that the same new capacity will make it vulnerable to dumped imports. There is much evidence on the record about the new capacity that the domestic industry is planning to create for producing carbon steel plate in Canada and when this new capacity is expected to come on stream.⁶⁶ Based on this evidence and testimony, the Tribunal is satisfied that the domestic producers have made formal commitments to invest in additional capacity, and one producer has actually started production.

For purposes of its review of the facts, the Tribunal considered it important to examine both the size of the new capacity that the three domestic mills are planning and when they expect to bring it on stream. Algoma's new capacity is scheduled to be operational by the end of 1997. In response to questions, witnesses for Algoma testified that its new strip mill may, once it is fully operational, free up the capacity of another mill to produce various plate products by as much as 80,000 tonnes. To the extent that the additional capacity may be used to produce carbon steel plate, the Tribunal is not convinced that, taking into account current market conditions, this new capacity is likely to have a significant impact on the Canadian market for carbon steel plate.

In contrast, the planned capacity increases for Stelco and IPSCO involve potential additions to supply which are as much as 10 times that of Algoma. However, both Stelco's new Hilton Works plate operation and IPSCO's plate processing facility in Scarborough are not planned to be fully operational before the end of 1998. Although these planned capacity increases are significant compared to the size of the

62. *Protected Pre-Hearing Staff Report*, revised September 20, 1997, Tribunal Exhibit NQ-97-001-7C (protected), Administrative Record, Vol. 2 at 131.21.

63. *Transcript of In Camera Hearing*, Vol. 3, September 25, 1997, at 317-18.

64. *Transcript of In Camera Hearing*, Vol. 2, September 24, 1997, at 146.

65. *Transcript of In Camera Hearing*, Vol. 2, September 24, 1997, at 148.

66. *Protected Pre-Hearing Staff Report*, August 18, 1997, Tribunal Exhibit NQ-97-001-7 (protected), Administrative Record, Vol. 2 at 92; and *Transcript of Public Hearing*, Vol. 2, September 23, 1997, at 243, and Vol. 3, September 24, 1997, at 447 and 519.

Canadian market, the Tribunal notes that the dates for the start of operations are planning targets that may be missed for major projects of this kind. The Tribunal notes, in this regard, that Algoma's new strip facility is behind schedule and that IPSCO's new mill in Iowa is more than a year late in its schedule.

It is difficult for the Tribunal to project the nature or degree of impact that capacity which may come on stream in late 1998 or early 1999 is likely to have on the market, particularly on the prices at which carbon steel plate is sold in that market. Further, the evidence before the Tribunal clearly indicates that there may be significant swings in demand over time for the different products produced in a plate mill, such as plate skelp used for the manufacture of pipelines, and that not all of the new capacity would likely be used for the production of carbon steel plate.

More generally, the demand for carbon steel plate and other products will depend largely on the general performance of the economy at the time that the capacity comes on stream, and there is no evidence on the record forecasting what those conditions may be. Even if the Tribunal were in a position to forecast that the new capacity would become an "other factor" having a negative impact on carbon steel plate prices, the Tribunal considers that the continued dumping of carbon steel plate from the named countries would, nonetheless, threaten to cause material injury to the domestic industry.

REQUEST FOR EXCLUSION

On September 26, 1997, the last day of the hearing in this inquiry, the Tribunal received a letter dated September 19, 1997, from the Alberta Pressure Vessel Manufacturers' Association (APVMA), which states, in part, that "its members can see no reason for any injury finding which the Tribunal may make in this case to apply to specifications of PVQ plate which were excluded from the [Tribunal's previous finding in Inquiry No. NQ-92-007]."⁶⁷ In that letter, the APVMA points out that the Deputy Minister's preliminary determination leading to this inquiry appears to exclude only "plate produced to ASTM specification A515 and A516M/A516, grade 70, in thicknesses greater than 3.125 inches," while the Tribunal's finding in Inquiry No. NQ-92-007 excluded "subject plate made to ASTM specification A515 and A516M/A516, grade 70, of any thickness." The APVMA also pointed out that its members had not seen any significant offerings of PVQ plate from the named countries which would justify its participation in this inquiry.

Further to the Tribunal's letter dated October 2, 1997, inviting parties to make submissions concerning the APVMA's letter, the Tribunal received submissions from counsel for Stelco and from counsel for Algoma and IPSCO in opposition to any exclusion of PVQ plate from an injury finding. The opposition by Stelco, Algoma and IPSCO was based, in large measure, on the fact that they produce and sell PVQ plate, of specifications A515 and A516, grade 70, up to 3.125 inches thick.

The Tribunal's discretion to grant exclusions has been recognized by the courts.⁶⁸ The Tribunal has consistently maintained that exclusions will only be granted where the basis for an exclusion has been adequately demonstrated.

The Tribunal is not persuaded that the exclusion of PVQ plate made to ASTM specifications A515 and A516M/A516, grade 70, up to 3.125 inches thick is warranted. In this regard, the Tribunal notes that the

67. Tribunal Exhibit NQ-97-001-51, Administrative Record, Vol. 1A at 139.

68. *Hitachi Limited v. The Anti-dumping Tribunal*, [1979] 1 S.C.R. 93; and *Sacilor Aciéries v. The Anti-dumping Tribunal* (1985), 9 C.E.R. 210 (F.C.A.), Court File No. A-1806-83, June 27, 1985.

domestic industry opposed the exclusion on the basis that the domestic industry currently produces carbon steel plate to these specifications.⁶⁹

CONCLUSION

Pursuant to subsection 43(1) of SIMA, the Tribunal finds that the dumping in Canada of carbon steel plate originating in or exported from Mexico, China, South Africa and Russia has not caused material injury to the domestic industry, but that the dumping in Canada of the aforementioned goods from the named countries is threatening to cause material injury to the domestic industry. The threat of material injury is in the form of price erosion and suppression, net margin reductions and reduced profitability and is clearly foreseen and imminent.

Charles A. Gracey

Charles A. Gracey
Presiding Member

Dr. Patricia M. Close

Dr. Patricia M. Close
Member

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.
Member

69. Tribunal Exhibit NQ-97-001-53.1, Administrative Record, Vol. 1A at 144-45; and Tribunal Exhibit NQ-97-001-53.2, Administrative Record, Vol. 1A at 148-50.