CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Tuesday, June 27, 2000

Inquiry No.: NQ-99-004

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

THE DUMPING IN CANADA OF CERTAIN HOT-ROLLED CARBON STEEL PLATE ORIGINATING IN OR EXPORTED FROM BRAZIL, FINLAND, INDIA, INDONESIA, THAILAND AND UKRAINE, AND THE SUBSIDIZING OF CERTAIN HOT-ROLLED CARBON STEEL PLATE ORIGINATING IN OR EXPORTED FROM INDIA, INDONESIA AND THAILAND

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 Commissioner of the Canada Customs and Revenue Agency of a preliminary determination dated February 28, 2000, and of a final determination dated May 29, 2000, respecting the dumping in Canada of certain hot-rolled carbon steel plate originating in or exported from Brazil, Finland, India, Indonesia, Thailand and Ukraine, and the subsidizing of certain hot-rolled carbon steel plate originating in or exported from India, Indonesia and Thailand.

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 Brazil, Finland, India, Indonesia, Thailand and Ukraine, and the subsidizing of the aforementioned goods originating in or exported from India, Indonesia and Thailand have caused material injury to the domestic industry.

Richard Lafontaine
Richard Lafontaine
Presiding Member

Peter F. Thalheimer
Peter F. Thalheimer
Member

James A. Ogilvy
James A. Ogilvy
Member

Michel P. Granger
Michel P. Granger
Secretary

The Statement of Reasons will be issued within 15 days.

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Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	May 24 to 26, 2000 May 29 and 30, 2000
Date of Finding:	June 27, 2000
Tribunal Members:	Richard Lafontaine, Presiding Member Peter F. Thalheimer, Member James A. Ogilvy, Member
Director of Research:	Sandy Greig
Lead Researcher:	Simon Glance
Researcher:	Manon Carpentier
Economist:	Ihn Ho Uhm
Statisticians:	Julie Charlebois Joël J. Joyal Marijke Daalderop Nahed Minawi
Counsel for the Tribunal:	Michèle Hurteau John Dodsworth
Registrar Officer:	Pierrette Hébert

Participants:

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	Lawrence L. Herman Daniel B. Green Craig S. Logie
for	Stelco Inc.
	Dalton J. Albrecht James Warnock Laura J. Stoddard
for	IPSCO Inc.
	(Domestic Producers)
	Peter Clark Chris Hines Sean Clark
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Peter Clark
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Greg A. Tereposky
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Pos. M. Hutabarat
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Republic of Indonesia

Jansen Welly
for PT Gunung Raja Paksi

Osamu Umejima
Stéphane P. DesLauriers
for PT Gunawan Dianjaya Steel

(Exporters/Others)

CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Wednesday, July 12, 2000

Inquiry No.: NQ-99-004

THE DUMPING IN CANADA OF CERTAIN HOT-ROLLED CARBON STEEL PLATE ORIGINATING IN OR EXPORTED FROM BRAZIL, FINLAND, INDIA, INDONESIA, THAILAND AND UKRAINE, AND THE SUBSIDIZING OF CERTAIN HOT-ROLLED CARBON STEEL PLATE ORIGINATING IN OR EXPORTED FROM INDIA, INDONESIA AND THAILAND

Special Import Measures Act - Whether the dumping in Canada and the subsidizing of the above-mentioned goods have caused material injury or retardation or are threatening to cause material injury to the domestic industry.

DECISION: The Canadian International Trade Tribunal hereby finds that the dumping in Canada of certain hot-rolled carbon steel plate originating in or exported from Brazil, Finland, India, Indonesia, Thailand and Ukraine, and the subsidizing of certain hot-rolled carbon steel plate originating in or exported from India, Indonesia and Thailand have caused material injury to the domestic industry.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	May 24 to 26, 2000 May 29 and 30, 2000
Date of Finding:	June 27, 2000
Date of Reasons:	July 12, 2000
Tribunal Members:	Richard Lafontaine, Presiding Member Peter F. Thalheimer, Member James A. Ogilvy, Member
Director of Research:	Sandy Greig
Lead Researcher:	Simon Glance
Researcher:	Manon Carpentier
Economist:	Ihn Ho Uhm
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Counsel for the Tribunal:	Michèle Hurteau John Dodsworth
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	Roger Nassrallah
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	Pos. M. Hutabarat
	Rita P.S. Algamar
	Hendy Sulistiowati
for	Ministry of Industry and Trade Republic of Indonesia
	Jansen Welly
for	PT Gunung Raja Paksi

Osamu Umejima
Stéphane P. DesLauriers
for PT Gunawan Dianjaya Steel

(Exporters/Others)

Witnesses:

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Trade and Audit
Algoma Steel Inc.

Robert W. Dionisi
General Manager
Service Centre & Fabrication Sales
Algoma Steel Inc.

Derek de Korte
Marketing
Algoma Steel Inc.

Donald K. Belch
Director - Government Relations
Stelco Inc.

Denis Boiteau
Sales Manager, Plate
Hilton Works
Stelco Inc.

J.P. (John) Ormond
Divisional Accountant
Plate and Strip Division
Stelco Inc.

Dominic Vannelli
Vice-President
General Line Product
Samuel & Fils & Cie (Québec) Ltée

Glenn A. Gilmore
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CANADIAN INTERNATIONAL TRADE TRIBUNAL | TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Wednesday, July 12, 2000

Inquiry No.: NQ-99-004

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

THE DUMPING IN CANADA OF CERTAIN HOT-ROLLED CARBON STEEL PLATE ORIGINATING IN OR EXPORTED FROM BRAZIL, FINLAND, INDIA, INDONESIA, THAILAND AND UKRAINE, AND THE SUBSIDIZING OF CERTAIN HOT-ROLLED CARBON STEEL PLATE ORIGINATING IN OR EXPORTED FROM INDIA, INDONESIA AND THAILAND

TRIBUNAL: RICHARD LAFONTAINE, Presiding Member
PETER F. THALHEIMER, Member
JAMES A. OGILVY, Member

STATEMENT OF REASONS

BACKGROUND

The Canadian International Trade Tribunal (the Tribunal), under the provisions of section 42 of the *Special Import Measures Act*,[1] has conducted an inquiry following the issuance by the Commissioner of the Canada Customs and Revenue Agency (the Commissioner) of a preliminary determination[2] dated February 28, 2000, and of a final determination[3] dated May 29, 2000, respecting the dumping in Canada of certain hot-rolled carbon steel plate (hereinafter carbon steel plate) originating in or exported from Brazil, Finland, India, Indonesia, Thailand and Ukraine, and the subsidizing of carbon steel plate originating in or exported from India, Indonesia and Thailand.

On November 13, 1999, pursuant to paragraph 34(1)(*b*) of SIMA, the Steel Authority of India Limited (SAIL) referred to the Tribunal the question of whether the evidence before the Deputy Minister of National Revenue (now the Commissioner) disclosed a reasonable indication that the dumping and subsidizing of carbon steel plate originating in or exported from India had caused material injury or were threatening to cause material injury to the domestic industry. On the basis of the information before it, the Tribunal concluded, on December 14, 1999, pursuant to section 37 of SIMA, that the evidence disclosed a reasonable indication that the dumping of carbon steel plate originating in or exported from Brazil, Finland, India, Indonesia, Thailand and Ukraine, and the subsidizing of carbon steel plate originating in or exported from India, Indonesia and Thailand had caused material injury or were threatening to cause material injury to the domestic industry.

On February 29, 2000, the Tribunal issued a notice of commencement of inquiry.[4] The notice invited persons to notify the Tribunal by March 14, 2000, whether they intended to make representations on the

1. R.S.C. 1985, c. S-15 [hereinafter SIMA].
2. C. Gaz. 2000.I.737.
3. C. Gaz. 2000.I.1915.
4. C. Gaz. 2000.I.738.

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question of public interest, if the Tribunal made a finding of injury or threat of injury. No requests to make representations on the public interest question were received.

As part of its inquiry, the Tribunal sent detailed questionnaires to Canadian producers, importers, purchasers and foreign producers/exporters of carbon steel plate. Respondents provided production, financial, import, export, sales, pricing and market information, as well as other information relating to carbon steel plate, for the period from January 1, 1997, to December 31, 1999, the Tribunal's period of inquiry. From the replies to the questionnaires and other sources, the Tribunal's research staff prepared public and protected pre-hearing staff reports. Parties submitted, and replied to, requests for information with respect to matters relevant to the inquiry, in accordance with directions from the Tribunal. A Tribunal member visited the facilities of Algoma Steel Inc. (Algoma), Stelco Inc. (Stelco) and IPSCO Ontario Inc. to view the production process. A memorandum describing the visits was prepared and distributed to counsel.

The record of this inquiry consists of all Tribunal exhibits, including the public and protected replies to the questionnaires, the requests for information and the replies thereto, all public and protected exhibits filed by the parties throughout the inquiry and the transcripts of the hearing. All public exhibits were made available to the parties. Protected exhibits were made available only to counsel who had filed a declaration and undertaking with the Tribunal in respect of the use, disclosure, reproduction, protection and storage of confidential information on the record of the proceedings, as well as the disposal of such confidential information at the end of the proceedings or in the event of a change of counsel.

Public and in camera hearings were held in Ottawa, Ontario, from May 24 to 26, 2000, and on May 29 and 30, 2000. The three domestic producers of carbon steel plate, Algoma, Stelco and IPSCO Inc. (IPSCO), as well as exporters of the subject goods from Brazil – Usinas Siderúrgicas de Minas Gerais S/A (USIMINAS) and Companhia Siderúrgica Paulista (COSIPA), Ukraine – Azovstal Iron & Steel Works (Azovstal), India – SAIL, and Indonesia – PT Gunawan Dianjaya Steel (Gunawan), were represented by counsel at the hearing. The Tribunal heard testimony from witnesses for the domestic producers, as well as from representatives from Gunawan, the Ministry of Industry and Trade – Republic of Indonesia, and PT Gunung Raja Paksi (PTGRP).

The Tribunal issued its finding on June 27, 2000.

RESULTS OF THE COMMISSIONER'S INVESTIGATION

The Commissioner's dumping and subsidy investigation covered all the subject goods released into Canada during the period from July 1, 1998, to June 30, 1999, the Commissioner's period of investigation. The Commissioner was satisfied that the subject goods were dumped and subsidized, that the margins of dumping and the amounts of subsidy were not insignificant and that the volumes of dumped and subsidized goods were not negligible.

Table 1 shows the percentage of goods dumped and the weighted average margins of dumping, by country and exporter, expressed as a percentage of the normal value. The dumping investigation revealed that virtually all the subject goods released into Canada during the Commissioner's period of investigation were dumped by weighted average margins ranging from 14.9 to 57.6 percent.

Table 1
Results of the Final Determination of Dumping
(July 1, 1998, to June 30, 1999)

Country/Exporter	Quantity of Goods Dumped (%)	Margin of Dumping Range[1] (%)	Weighted Average Margin of Dumping[2] (%)
Brazil			
COSIPA	100	24.5 to 48.1	40.3
USIMINAS	100	24.6 to 36.3	30.8
Finland			
All exporters	100		57.6
India			
SAIL	85.6	1.3 to 28.4	14.9
Indonesia			
PT Krakatau Steel	100	10.1 to 26.5	15.0
Gunawan	100	16.0 to 48.6	27.6
Thailand			
LPN Plate Mill Public Company Limited (LPN)	100	24.1 to 57.6	32.0
Other exporters in Thailand	100		57.6
U.S. exporters of LPN goods	100		57.6
Ukraine			
All exporters	100		57.6
All Countries	97.6		39.6

1. Expressed as a percentage of the normal value for the dumped goods only.
2. Expressed as a percentage of the total normal value for all imported goods (dumped and non-dumped).

Source: Canada Customs and Revenue Agency, *Final Determination of Dumping and Subsidizing* and *Statement of Reasons*, 29 May 2000, Tribunal Exhibit NQ-99-004-4, Administrative Record, Vol. 1 at 163.049.

Table 2 shows the percentage of goods subsidized and the amounts of subsidy, by country and exporter, per metric ton. The subsidy investigation revealed that all the subject goods exported to Canada from India, Indonesia and Thailand during the Commissioner's period of investigation were subsidized.

Table 2

Results of the Final Determination of Subsidizing

(July 1, 1998, to June 30, 1999)

Country/Exporter	Quantity of Goods Subsidized (%)	Amount of Subsidy (per metric ton)
India[1]		
SAIL	100	1,738 rupees
Indonesia[1]		
PT Krakatau Steel	100	757,728 rupiahs
Gunawan	100	1,166,167 rupiahs
Thailand[1]		
LPN	100	1,860 bahts
U.S. vendor of LPN goods	100	1,860 bahts

1. The average exchange rate during the Commissioner's period of investigation, expressed in Canadian dollars, was $0.03546, $0.00017 and $0.03978 for the Indian rupee, the Indonesian rupiah and the Thai baht respectively.

Source: Canada Customs and Revenue Agency, *Final Determination of Dumping and Subsidizing* and *Statement of Reasons*, 29 May 2000, Tribunal Exhibit NQ-99-004-4, Administrative Record, Vol. 1 at 163.051.

PRODUCT

Product Definition

The product that is the subject of the Tribunal's inquiry is defined as:

hot-rolled carbon steel plate and high-strength low-alloy steel plate (HSLA 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:

– in thicknesses from 0.187 in. (+/- 4.75 mm) to 5.25 in. (+/- 133 mm) inclusive, excluding plate produced to American Society for Testing & Materials (ASTM) specifications A515 and A516M/A516 Grade 70 in thicknesses greater than 3.125 in. (+/- 79.3 mm), originating in or exported from Brazil, Finland, India, Indonesia and Thailand,

– in thicknesses from 4.0 in. (+/- 101 mm) to 5.25 in. (+/- 133 mm) inclusive, excluding plate produced to ASTM specifications A515 and A516M/A516 Grade 70, originating in or exported from Ukraine,

– in thicknesses from 0.187 in. (+/- 4.75 mm) to 3.125 in. (+/- 79.3 mm) inclusive originating in or exported from Ukraine, produced to ASTM specifications A515 and A516M/A516 Grade 70 which meet the following carbon equivalent as per American Society of Mechanical Engineers (ASME) specification 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)[5] in thickness,

excluding universal mill plate, plate for use in the manufacture of pipe and plate having a rolled, raised figure at regular intervals on the surface (also known as floor plate), originating in or exported from Brazil, Finland, India, Indonesia, Thailand and Ukraine.

For greater clarity, the Canadian Standards Association (CSA) specifications covered by the product definition represent different grades within the broad specification G40.21 that covers steel for general construction purposes.

In the ASTM, specifications A283M/A283 and A36M/A36 include structural plate; specifications A572M/A572, A588M/A588 and A242M/A242 include HSLA plate; and specifications A515M/A515 and A516M/A516 include pressure vessel quality (PVQ) plate. ASTM specification A36M/A36 is considered to be equivalent to CSA specification G40.21 Grade 300W/44W, and, together, these are the most common specifications of structural quality plate sold in Canada. The most common specification of PVQ plate sold in Canada is ASTM A516M/A516 Grade 70.

Production Process

While details may vary from mill to mill, the production process for carbon steel plate is essentially the same for all producers and entails heating the slabs/ingots, descaling, rolling, levelling, cutting to size, inspecting and testing. Carbon steel plate may be heat-treated, which may include annealing, normalizing, stress relieving, quenching, tempering or combinations of these treatments.

Carbon steel plate made into rectangular shapes is referred to in the steel industry as “discrete plate”. Lighter gauge plate may be coiled and subsequently cut to length, at which time it is referred to as “plate cut from coil”.

Product Application

Structural plate can be used in a number of applications, such as in the production of rail cars, oil and gasoline tanks, heavy construction machinery, agricultural equipment and automobile and truck parts, and in highrise buildings, shipbuilding and repairs.

PVQ plate is used in the production of sealed containers capable of holding their contents, such as industrial gases and propane, under pressure.

5. For ease of reading, all further references to the thicknesses and widths of the subject plate or to the dimensions of the different mills on which carbon steel plate is produced will be made using imperial measurements only.

DOMESTIC PRODUCERS

The three domestic mills, Algoma, Stelco and IPSCO, account for the majority of the carbon steel plate produced in Canada. Certain steel service centres also produce carbon steel plate that is cut to length from plate in coil form.

Algoma

Algoma, located in Sault Ste. Marie, Ontario, is currently the largest carbon steel plate producer in Canada. It was incorporated on June 1, 1992, under the Ontario *Business Corporations Act*.[6] Algoma acquired all the assets and some of the liabilities of The Algoma Steel Corporation Limited.

Algoma is a vertically integrated primary iron and steel producer that makes, among other things, plate and hot-rolled sheet in Sault Ste. Marie. In addition, Algoma has an equity interest in an iron ore mine and pelletizing facility located in Ishpeming, Michigan. It produces carbon steel plate up to 152 in. wide and 2 ¾ in. thick on its 166-in. plate mill and 106-in. hot strip mill. The installation of the new Direct Strip Production Complex (DSPC) in 1997 has freed up capacity for carbon steel plate on Algoma's plate mill complex.

Stelco

Stelco, located in Hamilton, Ontario, is the second largest carbon steel plate producer in Canada. It was established in 1910 as the Steel Company of Canada Ltd. Stelco is an integrated steel company that produces flat-rolled steel, bars and rods, wire, wire products, as well as pipes and tubes. Stelco first produced carbon steel plate in 1941 on a 110-in. plate mill. This mill was replaced in 1965 by the 148-in. plate mill that is currently in use at Hilton Works in Hamilton.

In 1989, Stelco acquired CHT Steel Company Inc. in Richmond Hill, Ontario, which is a heat-treating facility for various types of carbon steel plate. On March 18, 1997, Stelco announced an $85-million modernization project to improve and expand the capability of the Hilton Works plate mill and to include production of heavy gauge coil. The construction phase of this upgrade was completed in February 1999. Commissioning of the various new pieces of equipment was continuing as of March 2000. Steckeling trials were conducted in February and March 2000 and are expected to continue for several more months. Coil produced on this new Steckel mill can be from $^{1}/_{8}$ in. to $^{5}/_{8}$ in. thick and up to 120 in. wide.

IPSCO

IPSCO, located in Regina, Saskatchewan, was incorporated in 1956 under the name of Prairie Pipe Manufacturing Company Ltd. It commenced operations in 1957 with the completion of construction of an electric resistance weld pipe mill in Regina. In 1959, IPSCO acquired the assets of Interprovincial Steel Corp. Ltd. and, in 1960, it commenced production of its own flat-rolled steel, including carbon steel plate. Since that time, it has expanded its manufacturing capabilities through acquisitions and plant construction in both Canada and the United States.

IPSCO's Canadian operations are divided into three operating units: Raw Materials and Coil Processing, Canadian Steel Mill Products and Tubular Products. The first two operating units manufacture

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

and sell carbon steel plate. Products manufactured by IPSCO include hot-rolled sheet and plate, hollow structural sections, line pipe, standard pipe, piling pipe, oil country tubular goods (OCTG), waterwell casing and OCTG casing.

IPSCO, through one of its subsidiaries, IPSCO Ontario Inc., began operating a new facility in January 1999, in Toronto, Ontario. The IPSCO Ontario Inc. Temper Leveled Coil (TLC) line, representing the first four-high temper level cut-to-length line in Canada, is designed to improve flatness and physical properties and can produce plate from a coil in widths of up to 96 in. and in thicknesses ranging from 0.10 in. to 0.75 in.

EXPORTERS

Responses to the Tribunal's foreign producers' questionnaire were received from seven companies: USIMINAS, COSIPA, Azovstal, SAIL, Gunawan, Companhia Siderúrgica Nacional and LPN. The first five companies were represented by counsel during the Tribunal's hearing. In addition, the representative from PTGRP made representations during the Tribunal's hearing.

USIMINAS was founded in April 1956. In January 1958, the state of Minas Gerais in Brazil formed a joint venture with Japanese partners and the participation of state capital. In October 1991, USIMINAS was privatized. USIMINAS's only production facility, the Intendente Câmara Plant located in Ipatinga, Minas Gerais, which is a coke integrated steel mill capable of producing carbon steel plate, began operations on October 26, 1962. Plate produced by USIMINAS includes: (1) weldable plate for structures, machines, ships, offshore platforms, pipelines, pressure vessels and boilers, and truck framework; (2) plate for low-temperature work; (3) weldable plate of high-abrasion resistance and high-atmospheric corrosion resistance; (4) extra thick plate; and (5) floor plate.

COSIPA, located in São Paulo, Brazil, was established on November 23, 1953, as a private company. In 1961, COSIPA became a government-controlled company. On November 18, 1963, it commenced its industrial operations with a hot strip mill, followed by a cold strip mill on October 3, 1964. COSIPA officially started to operate as an integrated steel plant on March 31, 1965. In August 1993, COSIPA returned to private ownership.

Azovstal, located in Mariupol, Donetsk Region, Ukraine, an integrated steel producer, was founded as a state-owned company in 1933. On January 15, 1993, as part of the economic reforms in Ukraine, it was transformed into a leaseholding company by resolution of the workforce. In 1996, Azovstal evolved into a joint-stock company. Its plate-rolling mill was put into operation in 1973, producing plate for both the domestic and export markets. Azovstal produces a range of iron and steel semi-finished and finished products, including square billets, slabs, angles, beams and channels, railroad rails, rail chairs and rail finish plate.

SAIL, located in New Dehli, India, the largest integrated steel producer in India, was founded as a government-controlled company on January 24, 1973. Products manufactured by SAIL include wide and heavy plate, galvanized and corrugated sheet, semi-finished products and hot-rolled and cold-rolled coil and sheet. Currently, SAIL manages four integrated steel plants, three special steel plants and four subsidiary companies. Carbon steel plate is produced in three of SAIL's main steel plants, the Bhilai, the Rourkela and the Bokaro steel plants.

Gunawan, located in Tandes, Surabaya, Indonesia, was established in 1989 as a privately held limited liability company and started to produce carbon steel plate that same year. It only produces cut-to-length carbon steel plate in thicknesses ranging from 0.32 in. to 2.76 in., in widths between 48 in. and 108 in. and in lengths from 96 in. to 480 in.

PTGRP, located in west Java, Indonesia, is a newly established firm that produces carbon steel plate. It started its commercial operations in January 2000.

IMPORTERS

According to the responses that the Tribunal received to its importers' and short form importers' questionnaires, the large importers of the subject plate during the Tribunal's period of inquiry include: Canadian Klöckner — Klöckner Steel Trade Corporation (Klöckner), Dollard Steel Co. (Dollard), Macsteel International (Canada) Ltd., Salzgitter Trade Inc., Thyssen Canada Limited and World Metals Corporation. Importers of carbon steel plate are, for the most part, sellers of steel products, such as trading companies and brokers. These importers generally sell to the same type of customers as do the domestic mills, that is, fabricators and steel service centres.

MARKETING AND DISTRIBUTION

Domestic Product

The Canadian producers sell carbon steel plate directly to either fabricators or steel service centres. Steel service centres distribute carbon steel plate to end users and other smaller steel service centres. Sales to steel service centres represent the largest portion of the Canadian plate market. The Canadian mills sell to their customers either on a freight prepaid (delivered) basis or free on board (FOB) the Canadian mill, whichever the customer prefers. The Canadian mills market their products, including carbon steel plate, through sales forces that contact their respective customers on a regular basis.

Imported Product

Importers of carbon steel plate also sell to fabricators and steel service centres. Importers sell their products in a variety of ways. Some importers utilize sales agents or a dedicated sales force to contact customers. Others respond to customer enquiries and source the products when they receive a request or seek orders from customers when they learn of an available quantity of carbon steel plate. Some importers ship the products directly to their customers from the source mill, while others sell FOB the unloading dock in Canada.

POSITION OF PARTIES

Domestic Producers

The domestic producers submitted that the dumping in Canada and the subsidizing of the subject goods have caused and threaten to cause material injury to the domestic industry in the form of lost sales and market share, price erosion, price suppression and reduced revenues and profitability.

The domestic producers argued that the only explanation for the significant price erosion and suppression of like goods in Canada is the dumping and subsidizing of the subject goods. To confirm this

conclusion, the domestic producers reviewed: (1) the volume of imports of the subject goods; (2) the pricing of imports of the subject goods; (3) the prices of benchmark products sold by the producers and the importers on an account-by-account basis; and (4) the producers' allegations of the subject goods being offered and sold on an account-by-account basis. The detailed pricing information, in the domestic producers' view, showed that the dumped imports were undercutting their prices and leading to lost sales, price erosion and price suppression.

The domestic producers argued that the named countries rapidly escalated their participation in the Canadian market. One of the producers indicated that imports from the named countries increased from some 24,000 net tons in 1997 to almost 149,000 net tons during the Commissioner's period of investigation.

The domestic producers argued that the loss of sales and market share became noticeable to them towards the end of the third quarter of 1998, just when they were beginning to benefit from the injury finding in Inquiry No. NQ-97-001.[7] But by then, they argued, Canadian importers and international steel trading houses had already turned to the named countries for low-priced dumped and subsidized product.

The domestic producers argued that their initial reaction was to maintain prices, even if it meant a loss in market share and volumes, since discounting prices to some accounts affects their prices across the board. However, the domestic producers argued that, by the fourth quarter of 1998, they began sector-wide discounting in order to meet the pricing by the named countries. They did this even if it meant a loss of revenues from reduced pricing on overall volumes of shipments of like goods.

The domestic producers argued that their price declines appeared on sales from the third quarter of 1998 through to the fourth quarter of 1999. IPSCO pointed to the evidence of the witness from Samuel & Fils & Cie (Québec) Ltée (Samuel), who described this drop in prices as unprecedented. For structural plate, the price decline on producer sales cumulatively was 18 percent over the period, and 27 percent for PVQ plate. The level of pricing of the subject goods and the like goods in the Canadian market is currently below that in 1998 and even substantially below that in 1995. In 1997, the price of the subject imports was $18 per net ton less than the price for the domestic product. By 1999, that gap had widened to $71 per net ton in favour of the imports. One of the producers submitted that the financing terms offered by importers made the importers' prices even more attractive.

Algoma, Stelco and IPSCO all claimed financial injury as a result of the dumped and subsidized imports. Algoma argued that the price and revenue erosion had affected the domestic producers' ability to finance capital investments so as to maintain and improve their highly capital-intensive production activities. Stelco submitted that, had the prices not deteriorated as a result of the dumped and subsidized goods from the named countries, the domestic producers would have been profitable in 1999 instead of losing money.

With respect to the issue of causation, reference was made to the evidence of the witness from Samuel, whose testimony was that the dumped and subsidized pricing from the named countries caused the volume and price declines suffered by the domestic producers. His evidence was that a few thousand, even a few hundred, tons of dumped imports can drive prices down. The domestic producers also pointed to evidence presented by their witnesses on commercial intelligence that, in their view, demonstrates that the subject goods compete with the like goods.

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7. *Certain Hot-rolled Carbon Steel Plate*, *Finding* (27 October 1997), *Statement of Reasons* (10 November 1997) (CITT).

The domestic producers rebutted the exporters' arguments that the injury suffered by the domestic producers was caused by factors other than dumping.

The domestic producers argued that there is no evidence to substantiate that the pricing of carbon steel plate cut from coil by steel service centres precipitated the market price declines. Evidence of the pricing by steel service centres indicated that that pricing is consistent with domestic mill pricing during the Tribunal's period of inquiry. IPSCO argued that its cut-to-length production at its Toronto plant did not cause the injury, noting that production was limited in 1999.

The domestic producers argued that the injury did not result from imports of carbon steel plate from non-subject countries, as alleged by the exporters. In fact, imports from non-subject countries declined between 1997 and 1999. The domestic producers submitted that injury was not caused by imports from the United States, since the price of U.S. plate was either above or at Canadian domestic mill prices and was substantially higher than the price of the subject goods.

Further, the domestic producers argued that the injury to the domestic producers did not occur due to an inability of the domestic producers to supply carbon steel plate. Had there been a lack of supply of carbon steel plate from domestic sources, one would expect that imports from the named countries would have commanded a price premium. However, the domestic producers argued that the evidence indicates that prices of imports of dumped goods from the named countries were lower than domestic producer prices. The domestic producers also argued that inventory increases during 1998 and Algoma's available unutilized capacity suggest that there was no inability to supply.

Other arguments made by the domestic producers on causation were that: (1) the relative selling prices of seconds did not change over the Tribunal's period of inquiry and, therefore, could not have affected the pricing of their prime product; (2) the burden of corporate costs, such as the Stelco plant investment and Algoma's DSPC borrowing costs, was not a drag on domestic producers' financial results on like goods; (3) the decline in the apparent market was the result of destocking; and (4) while there is competition in the domestic market, it was not the domestic competition that drove prices down. The prices of the domestic producers followed the prices of the subject imports downward.

With respect to the threat of injury, the domestic producers argued that, between 1997 and 1998, imports of the subject goods quadrupled. Further, the goods entering the domestic market are at prices that are likely to have a significant depressing or suppressing effect on the price of like goods in 2000 and 2001, should there be a finding of no injury.

The domestic producers submitted that the domestic market would continue to be fragile in 2000 and 2001, as both demand and pricing for carbon steel plate would continue to be weak. Algoma pointed to the evidence of one of its witnesses that showed that imports of carbon steel plate from Romania and Poland were at prices below those of the named countries in the fourth quarter of 1999. Imports from the named countries would have to continue to enter the Canadian market at dumped and subsidized prices in order to compete with these goods. There is significant capacity available in the named countries, which could more than supply the Canadian market. Further, the domestic producers will not be able to mitigate the damage caused by the dumped and subsidized goods by exporting, since there is overcapacity in the production of carbon steel plate in the United States and worldwide.

On the issue of subsidies, the domestic producers argued that there was no evidence to suggest that any of the programs that were identified by the Commissioner in his investigation have been terminated.

The domestic producers pointed to evidence of trade actions in the United States and Mexico concerning the subject goods, which indicates that five of the six countries are significantly constrained in export activities in the rest of North America. If there were a finding of no injury, Canada would remain the only open North American market for certain named countries.

The domestic producers argued that the effects of dumping by the subject countries should be cumulated. Even when dumped imports from certain sources are small and cannot be found to have contributed significantly to the plight of the domestic producers when considered separately, it is their cumulative impact, combined with all other imports, which is to be assessed in considering the question of material injury.

Regarding the period for considering cumulation, the domestic producers argued that it is appropriate for the Tribunal to make the calculation using the same period as that used by the Commissioner. The domestic producers argued that the Tribunal has never considered expanding the period to include imports outside the Commissioner's period of investigation.

The domestic producers argued that there was no evidence to support the various requests for exclusions. They argued that producer exclusions were likened, in previous cases, to providing those specific exporters a licence to dump. With respect to Friede Goldman Newfoundland Ltd. (Friede Goldman), it was argued that it is unclear whether an exclusion was requested, but that, in any case, the evidence of the domestic producers was that they could make the steel plate required by that company.

Exporters

USIMINAS and COSIPA

USIMINAS and COSIPA argued that imports of the subject goods from Brazil did not cause injury to the domestic producers. There were other causes of the injury to the domestic producers, unrelated to dumped goods from Brazil.

Prices in the Canadian market for carbon steel plate, in their view, are established by the prices available from and transmitted by competition from the United States, which is also the largest single external source of carbon steel plate. USIMINAS and COSIPA argued that there is evidence on the record that reflects the close correlation of Canadian spot pricing to U.S. spot pricing. There is no similar persuasive evidence, they argued, with respect to imports from the subject countries, and certainly not with respect to imports from Brazil.

Further, USIMINAS and COSIPA argued that the domestic producers were affected by the contraction in demand in 1999. They submitted that the Canadian producers have been competing with each other, based on price, to secure volume and market share, and that this activity was intense in 1999, particularly with the reentry of Stelco into the market and IPSCO's entry into the market in Eastern Canada. USIMINAS and COSIPA argued that other factors have affected the economic performance of the domestic producers. These include: productivity problems associated with the commissioning of new mills, a resultant increase in the availability of non-prime product and investments in new technology, creating a new lower-cost industry.

With respect to the threat of injury, it was argued that the domestic producers did not provide any evidence of investments in increased capacity for rolling cut-to-length plate by either USIMINAS or

COSIPA. Moreover, USIMINAS and COSIPA argued that the impact of the Asian crisis and other economic dislocations have been resolved, such that normal trading patterns will resume. As such, excess production which, during the crisis, might have been shipped to Canada will be sold in their traditional markets. Finally, in their view, if there is a threat of future price suppression, it will be found in the decisions of North American producers to invest in additional lower-cost capacity in a relatively stagnant market.

Azovstal

Azovstal urged the Tribunal to find that the domestic producers have not suffered material injury due to the importation of the subject goods. In the alternative, it asked that the Tribunal find that there is no material injury caused by exports from Ukraine in respect of the two classes of goods defined for Ukraine.

Azovstal argued that the Tribunal should make the negligibility calculation using import data over the period during which the domestic producers have alleged that the injury occurred, which, in this case, was during 1999. Azovstal argued that Ukraine's participation in the Canadian market in 1999 was negligible.

Azovstal also argued that its prices were not harmful to the domestic producers. The account-specific allegations made by the domestic producers against Ukraine, in its view, did not establish that the alleged injury was caused by the dumping of carbon steel plate from Ukraine. Any injury to the domestic producers was caused not by the named countries but by non-named countries. Azovstal observed that prices of carbon steel plate from the United States are lower than those of the domestic producers and follow exactly the same pattern as prices in the Canadian market. In making the price comparisons between the imported and domestic products, however, Azovstal questioned whether there were product mix issues involved. It questioned how, in the case of a commodity product, the difference in prices could be possible without all the sales going to the lowest bidder.

Azovstal argued that there was a shortage of steel plate in Canada in 1998 caused, in part, by production problems that impaired the domestic producers' ability to supply the market and that affected their cost structures. Imports did move into the market in 1998, and it was clear that the Canadian producers were not in a position to really meet that demand in 1998. Exports from Ukraine peaked in 1998. Azovstal submitted, however, that Ukraine was moving out of the market by the time the domestic producers alleged that they began suffering injury.

Azovstal argued that this inquiry, as it pertains to Ukraine, involves two separate classes of goods from that country: A36/44W structural plate in excess of 4.0 in. and A516 PVQ plate made to certain special specifications. The subject goods exported from Ukraine constitute separate classes of goods, argued Azovstal, because there is already a finding in place against plate from Ukraine.

Azovstal argued that there are no allegations made by the domestic producers concerning injury caused by the A36/44W product over 4.0 in. Therefore, there is no evidence on the record to support any claim of injury with respect to structural plate in excess of 4.0 in. from Ukraine.

Azovstal argued that the plate entering Canada meets chemical and physical requirements in excess of those required to meet the product exclusion in Inquiry No. NQ-93-004.[8] It questioned why, if the

8. *Certain Hot-rolled Carbon Steel Plate, Finding* (17 May 1994), *Statement of Reasons* (1 June 1994) (CITT) [hereinafter Plate II].

purpose of selling plate to Canada was to sell to the regular A516 market, the Ukrainian producers would go to the extra trouble of meeting additional requirements not needed to get the plate into the country. There is, in Azovstal's opinion, an ongoing need in the Canadian market for specialized steel with special chemistries. Moreover, in Azovstal's view, there were not, as evidenced by information from a third party, huge sales of low-carbon plate at low prices.

Regarding the threat of injury, Azovstal argued that the fact that it has entered into voluntary export restraints with respect to the United States and Europe is evidence of efforts by Ukrainian exporters to sell in the global markets in a non-disruptive manner. As such, Ukraine has not demonstrated a propensity to dump. The Asian market has rebounded, providing an alternative outlet for steel for Ukraine.

SAIL

SAIL argued that India should not be cumulated with the other subject countries for the purposes of the Tribunal's assessment of injury. A separate finding should be made for India, and that finding should be one of "no injury". In the alternative, the Tribunal should grant SAIL a producer exclusion.

SAIL argued that the Tribunal, in assessing negligibility, is not restricted to the Commissioner's period of investigation. In examining negligibility, SIMA expressly contemplates that the Commissioner can go outside his own period of investigation. The Commissioner does so to consider the potential volume of dumped imports. SAIL submitted that the Tribunal's negligibility analysis should be as broad as its analysis of injury and causation.

Further, SAIL argued that "conditions of competition" means more than the fact that the subject goods compete with the like goods. SAIL argued that the expression "conditions of competition" should include all relevant factors upon which competition can depend. SAIL cited three specific conditions of competition that should be applied by the Tribunal in this case: (1) the timing of pricing and selling decisions; (2) the aggressiveness of pricing; and (3) the nature of payment terms by exporters, including trade credit financing.

SAIL argued that these conditions of competition, particularly the timing of pricing and selling decisions, fundamentally distinguish imports of the subject goods from India from imports of the subject goods from the other named countries.

SAIL advanced arguments as to why dumped imports of the subject goods from India did not injure the domestic producers. In its view, the primary effect of imports from India was to take market share in 1998. However, the loss of market share to imports from India did not amount to material injury to the domestic producers. Moreover, price declines were not material in 1998, and the domestic producers were in a good financial position. Supply problems for the domestic producers left the door open for imports from all countries, including the United States.

In respect of 1999, SAIL argued that some plate imported from India in 1998 was sold by importers from inventory at a loss in 1999 into the Canadian market. However, the price effect of those sales, in its view, cannot be attributed to the dumping and subsidizing of the subject goods. The price effect from dumping and subsidizing is set when the exporter negotiates its price with the importer.

With respect to the threat of injury, SAIL argued that it was the only imminent and foreseeable exporter of the subject goods from India to Canada. In 1998 and 1999, SAIL had excess capacity and had

considerable exports all over the world. Further, there was a demand for imports in Canada, yet SAIL chose not to sell into Canada after July 24, 1998.

Gunawan

Gunawan supported the argument presented by the exporters and requested that the Tribunal make a finding of no injury. Gunawan submitted that the domestic producers' performance in 1999 was caused by their own actions, as well as by the domestic producers' non-subject products unrelated to this investigation.

On the issue of the threat of injury, Gunawan submitted that the Indonesian economy is growing stronger and that domestic demand is increasing. Gunawan expects that its production capacity will be fully consumed by domestic and Asian customers.

PTGRP

PTGRP argued that it could not have caused injury to the domestic producers. In fact, it argued that, since it only very recently started commercial operations, it did not export to Canada prior to or during the Tribunal's period of inquiry. Further, PTGRP argued that it posed no threat of injury to the domestic producers, since its production would be sold in its domestic and Asian markets.

PTGRP also requested an exclusion from an injury finding, if one should be made.

Government of Indonesia

Representatives from the Government of Indonesia appeared before the Tribunal to discuss Indonesian policies in the steel industry. Although the Asian crisis affected domestic demand for steel plate products in 1997 and 1998, Indonesia has responded effectively to the Asian crisis. As a result, domestic demand for steel plate will increase, and Indonesian steel producers will not export as much as they did during the crisis.

The Government of Indonesia also stated that exports of hot-rolled products can only increase when the national currency is depreciated. Although one of the immediate tools that the Government of Indonesia used to address the Asian crisis was to devalue its currency, it intends to stabilize the exchange rate of its currency, as it is beneficial to the entire country. Exports decline when the rupiah appreciates in value.

PRELIMINARY MATTERS

Prior to the hearing, the Tribunal ruled on preliminary matters, a number of which were addressed in the opening statement at the outset of the hearing.

Right of Cross-examination by Counsel for the Exporters

Counsel for the domestic producers raised concerns regarding the fact that counsel for USIMINAS, COSIPA and Azovstal had provided witness statements, but that no witnesses would appear at the hearing. In their view, there had been an apparent blurring of the lines between the witness statements and counsel submissions, in that they incorporated argument, statements of evidence and documentary evidence. Counsel for the domestic producers argued that, as appearing parties, the exporters had to present witnesses to introduce evidence and to contest the domestic producers' request for an injury finding. Moreover, they

argued that the rules of evidence require that evidence can only be tabled through witnesses who affirm the evidence. Counsel for the exporters cannot act as both counsel and witness, and, therefore, counsel cannot introduce evidence. Further, none of the exporters' positions and arguments could be tested by counsel for the domestic producers or by the Tribunal, while, at the same time, witnesses for the domestic producers would be subject to cross-examination by opposing counsel. In the absence of witnesses, counsel for the domestic producers requested that the material filed by the exporters be removed from the record and that counsel for the exporters be restricted in their cross-examination and argument. To proceed otherwise would create an unfortunate precedent, if no consequences were attached to a refusal of a party to provide witnesses.

Azovstal argued that there was little point in bringing witnesses, given the views of counsel for the domestic producers that *viva voce* evidence was irrelevant and that the filing of documents was preferable. Azovstal noted that the Tribunal routinely relies on documentary evidence which is not supported by witnesses at the hearing or which is supported by hearsay evidence.

USIMINAS and COSIPA referred to the *Canadian International Trade Tribunal Rules*[9] which envisage that the Tribunal may request that any party file submissions and other written materials. The Rules of Procedure do not limit the request to parties that choose to send witnesses. Parties have a right to be represented only by counsel and not to send witnesses. Where documentation on the record is not supported by a witness, the Tribunal has given such evidence the weight that it considers appropriate. It has not been Tribunal practice to strike pleadings from the record or to exclude parties from the hearing.

SAIL argued that there is no obligation to present evidence orally and that, under the World Trade Organization (WTO) agreements,[10] there is no obligation for a party to attend a meeting, and the failure to attend shall not be prejudicial to a party's case. Accordingly, the exporters have the right to present all the evidence and argument in writing, as well as present evidence orally, should they chose to do so. Further, the WTO agreements clearly provide that interested parties have a full opportunity to defend their interests, including, in SAIL's submission, the right to retain counsel to test the evidence of the domestic producers. The issue raised by counsel for the domestic producers goes to weighing the evidence.

On May 17, 2000, the Tribunal ruled that it would allow the briefs submitted by the exporters to remain on the record as filed. Further, the Tribunal noted that, while some exporters did not produce witnesses, they continued to be parties to the proceeding and that their counsel would be given the opportunity to cross-examine witnesses for the domestic producers. The Tribunal also noted that, while there is no requirement that a party produce a witness to support its submissions, it is important to note that the weight given to the submissions may well be impacted. At the outset of the hearing, the Tribunal reminded counsel that cross-examination is not a licence to introduce new facts, not already on the record, for the purported purpose of contradicting a witness's evidence. The Tribunal indicated to counsel that it will give any untested facts or evidence, however they may be introduced, the weight that they deserve.

The Tribunal is of the view that there should be some means to test evidence and believes that one of the most effective ways to achieve this is through cross-examination. The Tribunal notes that cross-examination by parties[11] greatly assists the Tribunal in assessing the evidence and coming to its

9. S.O.R./91-499 [hereinafter Rules of Procedure].
10. *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* and the *Agreement on Subsidies and Countervailing Measures*, signed at Marrakesh, 15 April 1994.
11. "[P]arty" as defined under rule 2 of the Rules of Procedure.

conclusions. To limit cross-examination by parties would not, in the Tribunal's view, be helpful to the process. Consequently, in the present case, the Tribunal gave counsel for the exporters full rights to cross-examine the witnesses for the domestic producers. The fact that the exporters chose not to appear as witnesses should not prevent their counsel from exercising those rights. Further, the Tribunal agrees with counsel for the exporters that there is no obligation on any party to call witnesses. The Tribunal notes the concerns raised by counsel for the domestic producers regarding the lack of witnesses from the exporter side, which disallowed them their right to cross-examine witnesses and to test the evidence. The Tribunal is not persuaded that this is a valid reason, in these circumstances, to curtail the right of counsel for the exporters to cross-examine the domestic producers' witnesses. However, the Tribunal is concerned that there were few witnesses for the exporters (save for the Indonesian witnesses) to provide the Tribunal with the best possible evidence, and it regrets the position taken by the exporters. As it stated previously, the Tribunal can only give evidence provided by a party, unsupported by oral testimony, the weight that it considers appropriate in the circumstances.

Subpoenas to Klöckner and to Dollard

On March 27, 2000, the Tribunal informed representatives from Klöckner and from Dollard that the information requested in the importers' questionnaire had not been received.[12] In its letters, the Tribunal informed the parties that, for it to carry out its statutory mandate, it must collect data from importers and producers. In the case of Klöckner, the Tribunal's staff was unable to reach the designated company official, while, in the case of Dollard, the company official stated that he was unable to complete the questionnaire in a reasonable time frame. The questionnaires were sent out on February 29, 2000, and responses were due by March 20, 2000. The Tribunal urged both Klöckner and Dollard to provide the requested information by April 3, 2000, thereby avoiding further action by the Tribunal.

On April 27, 2000, the Tribunal advised Klöckner and Dollard that it would be issuing subpoenas to officials of both companies to attend the hearing and give testimony on matters in respect of which they were knowledgeable. The Tribunal was of the opinion that the information requested was essential for this inquiry, in view of the significant role that each company played as an importer of the subject goods. Further, the Tribunal indicated that the companies could choose to submit the requested information by May 1, 2000. If the information were received, the Tribunal indicated that it might not be necessary for the officials to attend the hearing personally; however, that would only be determined once the Tribunal had had an opportunity to review whatever information was provided.

On May 3, 2000, the Tribunal advised officials of Klöckner and of Dollard that subpoenas would be served on them for their attendance at the hearing and that each would be required to bring documentation containing the information which was outlined in the letters and in the subpoenas.[13] On May 19, 2000, the Tribunal informed officials of Klöckner and of Dollard, as well as counsel of record, that, as they had provided the information requested by the Tribunal, it was withdrawing its subpoenas.

At the hearing, the Tribunal stated that the purpose of the subpoenas was to secure information that it considered necessary for it to conduct a full and thorough investigation in this case. The Tribunal was satisfied that both Klöckner and Dollard had provided the information requested. During argument, Stelco

12. The Tribunal sent a similar letter to Acier Leroux Inc., Russel Metals Inc. and A.J. Forsyth and Company Limited.
13. Tribunal Exhibits NQ-99-004-15.8.3 and NQ-99-004-15.1.4, Administrative Record, Vol. 3 at 112.10 and 67.5 respectively.

raised concerns about the last-minute cancellation of the subpoenas. It indicated that it had been preparing for an opportunity to question these importers, who were important given the absence of any exporter witnesses. It submitted that the surprise last-minute decision by the Tribunal to withdraw the subpoenas prejudiced its ability to obtain important factual material.

The Tribunal notes the concerns raised by Stelco in this matter. However, the Tribunal wishes to emphasize that it used the subpoenas only as a mechanism to obtain information that it considered important to its inquiry. The Tribunal prefers that those who receive questionnaires provide answers to them voluntarily and that questionnaire information be on the record and incorporated into the staff report, prior to the hearing. The Tribunal does not favour having to use the extraordinary measure of sending subpoenas to recalcitrant companies to achieve its purpose. Further, it was made quite clear to all parties, including counsel of record, in the Tribunal's letter of April 27, 2000, that the representatives from both Klöckner and Dollard could avoid attending the hearing if they provided the information requested and if that information was satisfactory to the Tribunal. The Tribunal is mindful that this would not impede any counsel of a party the right to also serve subpoenas, on the same parties, if counsel felt that there were important factual issues to be addressed. Given that both Klöckner and Dollard provided the requested information and that the Tribunal was satisfied with the information, the Tribunal was of the view that the subpoenas had outlived the purpose for which they had been issued.

ANALYSIS

Pursuant to section 42 of SIMA, the Tribunal is required to make inquiry as to whether the dumping or subsidizing of the goods to which the preliminary determination applies has caused injury or retardation or is threatening to cause injury. "Injury" is defined in subsection 2(1) of SIMA as "material injury to a domestic industry". Injury and threat of injury are distinct findings, and the Tribunal does not need to make a finding relating to both under subsection 43(1) unless it first makes a finding of no injury.[14]

Like Goods

The Commissioner defined the subject goods as certain hot-rolled carbon steel plate originating in or exported from Brazil, Finland, India, Indonesia, Thailand and Ukraine. The Commissioner specifically excluded certain carbon steel products from the subject goods, including universal mill plate, plate for use in the manufacture of pipe, 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 in. from Brazil, Finland, India, Indonesia and Thailand and greater than 4.0 in. from Ukraine.[15]

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.

14. The Tribunal has taken this position since *Caps, Lids and Jars*, *Finding* (20 October 1995), *Statement of Reasons* (6 November 1995), NQ-95-001 (CITT) at 8-10.
15. Plate produced to ASTM specifications A515 and A516M/A516 Grade 70, from 3.126 in. to 3.999 in., originating in or exported from Ukraine was excluded by the Deputy Minister of National Revenue from the definition of the subject goods in Plate II.

As described in the section entitled "Product", carbon steel plate is produced to meet various specifications. The evidence 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 Commissioner. Therefore, the Tribunal is of the view that all domestically produced carbon steel plate as described in the Commissioner's definition of the subject goods, including structural plate, PVQ plate, discrete plate and plate cut from coil, is "like goods" to the subject goods.

Class of Goods

The product definition for Ukraine is more restrictive than that for the other countries, since there is already a finding in place against Ukraine in respect of carbon steel plate. The product definition for Ukraine in the present case is limited to: (1) plate in thicknesses from 4.0 in. to 5.25 in. inclusive, excluding plate produced to ASTM specifications A515 and A516M/A516 Grade 70; and (2) plate in thicknesses from 0.187 in. to 3.125 in. inclusive made to ASTM specifications A515 and A516M/A516 Grade 70 meeting certain carbon equivalents as per ASME SA-20 (low-carbon plate).

Azovstal pointed to the fact that the product definition, as it relates to Ukraine in this case, was not part of the previous finding of injury against Ukraine in Plate II. Therefore, Azovstal argued that the product definition, as it relates to goods originating in or exported from Ukraine, constitutes two separate classes of goods. As such, in Azovstal's view, there should be separate evidence of injury and separate findings with respect to these two classes of goods.

In its submissions, Stelco argued that the subject goods comprise a single class of goods. Stelco argued that industry price lists show that it is industry practice to establish a base price for standard A36/44W plate, with other products requiring higher value-added treatment, such as PVQ, priced as grade extras to this base price. Therefore, the fact that prices for all plate are geared to a base price list by the industry evidences that there is a single class of goods.

Although the Tribunal is not bound by the Commissioner's definition of class of goods, the Tribunal notes that the Commissioner identified only one class of goods and provided margins of dumping and amounts of subsidy with respect to that one class of goods as defined. Further, in the Tribunal's view, the fact that the product definition, in this case, is more expansive than that in Plate II does not, in and of itself, substantiate the argument that the additional products constitute a separate class of goods or separate classes of goods.

In considering the issue of class of goods, the Tribunal typically looks at the physical characteristics of the goods, such as appearance, their method of manufacture and composition, their market characteristics, such as substitutability, pricing and distribution channels, and whether the goods fulfil the same customer needs.

It is clear to the Tribunal that, generally, there are different end uses for plate of different thicknesses and/or specifications. That being said, all plate is subject to common methods of production and has similar market characteristics, such as pricing structures and channels of distribution. In this regard, the Tribunal notes evidence adduced at the hearing that indicated that the price of plate with a particular thickness or specification, such as PVQ, is derived from the base price set for standard structural plate. Specific dollar amount extras are then charged for different thicknesses and chemical or mechanical properties. The Tribunal is of the view that plate meeting a particular specification can be substituted in applications

requiring less demanding specifications. Such substitution is more likely to happen when this plate is being offered at prices that are competitive with those of other plate.

Therefore, the Tribunal finds that there is one class of goods for the purposes of this inquiry.

Domestic Industry

In determining what constitutes the "domestic industry", the Tribunal must consider 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.

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

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

Algoma, Stelco and IPSCO represent about 90 percent of the total domestic sales from domestic production of like goods.[16] As such, the Tribunal is of the view that they clearly represent a major proportion of the total domestic production of carbon steel plate. Therefore, in conducting its analysis of injury in this inquiry, the Tribunal has considered the effect of dumped and subsidized imports on Algoma, Stelco and IPSCO.[17]

Cumulation

Subsection 42(3) of SIMA provides the Tribunal with discretion to cumulate imports from the subject countries when making its assessment of injury, provided certain conditions are met. Subsection 42(3) states:

> In making or resuming its inquiry under subsection (1), the Tribunal may make an assessment of the cumulative effect of the dumping or subsidizing of goods to which the preliminary determination applies that are imported into Canada from more than one country if
>
> (*a*) the margin of dumping or the amount of the subsidy in relation to the goods from each of those countries is not insignificant and the volume of the goods from each of those countries is not negligible; and
>
> (*b*) an assessment of the cumulative effect would be appropriate taking into account the conditions of competition between goods to which the preliminary determination applies that are imported into Canada from any of those countries and
>
> (i) goods to which the preliminary determination applies that are imported into Canada from any other of those countries, or
>
> (ii) like goods of domestic producers.

16. *Public Pre-hearing Staff Report*, revised 26 May 2000, Tribunal Exhibit NQ-99-004-6B, Administrative Record, Vol. 1A.1 at 235.
17. The Tribunal notes that certain steel service centres purchase plate in coil form and cut it to length. Steel service centres that cut plate from coil were requested to provide the volumes and values of their sales of carbon steel plate cut from coil.

In light of the foregoing and taking into consideration the related provisions of SIMA, and based on the Commissioner's final determination of dumping and subsidizing and additional data on the record, the Tribunal finds that the margin of dumping and amount of subsidy in relation to the goods from each of the subject countries are not insignificant. Further, the Tribunal finds that the volume of goods from each of the subject countries is not negligible. For the purposes of the negligibility calculation, the Tribunal has relied upon import data pertaining to the Commissioner's period of investigation. The Tribunal used the Commissioner's volume of imports (dumped, non-dumped and subsidized) for the subject countries, but relied upon its own data over the Commissioner's period of investigation for the non-subject countries. On that basis, the Tribunal then determined negligibility by calculating, for each subject country, its proportion of dumped or subsidized goods compared with the total volume of imports from all sources during that period. In this respect, the Tribunal's calculations clearly indicate that the volume of imports from each of the subject countries is not negligible.

The exporters argued that the Tribunal should not use the Commissioner's period of investigation in determining negligibility and that it would be more appropriate to use 1999 when injury was alleged to have occurred.

The Tribunal is of the view that it has the discretion to determine the time period to use in its negligibility calculation. While the Tribunal is not required to use the Commissioner's period of investigation, it may do so if it determines that the data for that period are the most reliable data available. The Tribunal typically has used the same period and, on occasion, a shorter period.

In the present circumstances, the Tribunal is of the view that the Commissioner's data pertaining to imports of dumped, non-dumped and subsidized goods, as well as the Tribunal's own import data for the non-subject countries collected during the same period as the Commissioner's period of investigation, are the most reliable data available. Therefore, the Tribunal is of the view that it is appropriate to use those data for the purposes of the negligibility calculation. The Tribunal notes that this approach is consistent with previous Tribunal decisions.[18]

Before determining whether it will cumulate, the Tribunal must also consider the conditions of competition between imports of the subject goods from any of the subject countries and imports from any of the other subject countries or the like goods of domestic producers.

SAIL argued that, in considering whether to cumulate, the Tribunal has traditionally used the same analysis for "conditions of competition" as it does in determining "like goods", that is, that the subject goods compete with the like goods of domestic producers. SAIL argued that this approach effectively renders the phrase "conditions of competition" meaningless. In SAIL's submission, the expression "conditions of competition" in subsection 42(3) of SIMA refers to all relevant factors upon which competition can depend and such factors will vary from case to case. SAIL argued that, in the present case, the Tribunal should look at three specific "conditions of competition" when assessing the appropriateness of cumulating imports of the

18. See *Certain Cold-rolled Steel Sheet Products*, *Finding* (27 August 1999), *Statement of Reasons* (13 September 1999), NQ-99-001 (CITT) at 16 [hereinafter *Cold-rolled Steel Sheet*]; and *Certain Flat Hot-rolled Carbon and Alloy Steel Sheet Products*, Finding (2 July 1999), *Statement of Reasons* (19 July 1999), NQ-98-004 (CITT) at 21. See, also, *Refined Sugar*, *Findings* (6 November 1995), *Statement of Reasons* (21 November 1995), NQ-95-002 (CITT) at 20; and *Stainless Steel Round Bar*, *Finding* (4 September 1998), *Statement of Reasons* (21 September 1998), NQ-98-001 (CITT) at 12 and 13 [hereinafter *Stainless Steel Round Bar*].

subject goods from India in its injury analysis. These are the timing of pricing and selling decisions, the aggressiveness of pricing and the nature of payment terms by exporters, including trade credit financing.

With respect to the timing of pricing and selling decisions, SAIL argued that this is the most important consideration for competition. SAIL noted that it entered the Canadian market in late 1997, because there was a premium in the Canadian market, and exited the market near the end of 1998, when this premium dissipated. In contrast, imports from the other subject countries continued to enter the market throughout 1999.

With respect to the aggressiveness of pricing, SAIL argued that, when it entered the Canadian market towards the end of 1997, prices in Canada were such that SAIL was able to export at prices above the fully allocated cost estimates of the Canada Customs and Revenue Agency (CCRA). It continued to sell into Canada until July 24, 1998, at which time prices in Canada had declined to an extent such that SAIL could no longer export at a profit. Therefore, SAIL contended, it was not pricing aggressively in the Canadian market, since it was selling the subject goods above its fully allocated costs of production.

Finally, with respect to the nature of payment terms by exporters, including trade credit financing, SAIL noted that witnesses for the domestic producers viewed financing as very important and that preferential credit terms and the timing of the payment for imports could make importers more price competitive. SAIL submitted that the nature of its payment terms[19] distinguished Indian imports into Canada of the subject goods from imports into Canada of the subject goods from the other subject countries and from the like goods.

In light of the above factors, SAIL argued that Indian imports into Canada of the subject goods are, therefore, fundamentally different from imports into Canada of the subject goods from the other subject countries, as well as from the like goods. As such, imports of the subject goods from India should not be cumulated with those from the other subject countries, but, instead, should be the subject of a separate finding.

In response to SAIL's argument regarding the timing of its last sale into Canada, the domestic producers argued that the date that the Tribunal must take into account is the date of release of the goods into Canada, which was much later than the date of the last sale. Further, the date of release from customs is not necessarily the date of sale or offer by the importer, particularly where the goods remain on the docks for a substantial period.[20] The effects of the dumping can only be measured, in the domestic producers' view, when the goods enter into commerce, and the dumped and subsidized goods from India were put into commerce in Canada well into 1999.

The Tribunal is not persuaded by the argument put forward by SAIL regarding conditions of competition. In considering conditions of competition, the Tribunal has typically considered whether the imports of the subject goods from a specific country compete with those from the other subject countries or with the like goods of the domestic producers.[21] The Tribunal's analysis, in this regard, should not be confused with its "like goods" analysis, in which the Tribunal endeavours to ascertain those goods that are "identical" to the subject goods or goods that "the uses and other characteristics . . . closely resemble" the

19. For the payment terms, see Tribunal Exhibit NQ-99-004-RI-7A (protected) at 5-6, Administrative Record, Vol. 10.6.
20. *Transcript of Public Argument*, Vol. 1, 30 May 2000, at 252.
21. *Cold-rolled Steel Sheet*, *supra* note 18 at 16.

subject goods.[22] While the Tribunal may refer to the existence of competition in ascertaining "like goods", it is only one of several factors that are considered in this regard. Further, in ascertaining like goods, the Tribunal does not consider the issue of competition between the subject goods from the subject countries. Moreover, it is important to identify that the purpose and scope of the Tribunal's analysis of like goods are substantially different from the purpose and scope of its analysis of "conditions of competition".

Further, the Tribunal does not agree that the three "factors" that SAIL suggests that the Tribunal consider as "conditions of competition" establish that imports of the subject goods from India should not be cumulated. The Tribunal does not agree that the timing of sales by SAIL to the domestic market was, in fact, fundamentally different from the timing of sales by the other subject countries. The subject goods from India were imported concurrently with the subject goods from the other subject countries throughout 1998 and competed with one another and with domestically produced like goods during that period. Moreover, the subject goods from SAIL imported in 1998 were subsequently sold into the Canadian market from inventory, such that this competition continued into 1999.

Contrary to the position taken by SAIL, it is the Tribunal's view that SAIL's pricing was, in fact, "aggressive", in that its goods were dumped and subsidized by a significant amount and sold at prices that substantially undercut domestic prices.[23] Further, although there was some evidence that the nature of payment terms and trade credit financing offered by SAIL may have differed somewhat from those offered by specific exporters and domestic producers, the evidence did not show that they differed from all of them. In any case, the Tribunal is of the view that this factor is not sufficient, in and of itself, for the Tribunal to conclude that it would be inappropriate to cumulate in this case.

The Tribunal is of the view that imports of the subject goods from all the subject countries, including India, compete with imports from each of the subject countries, as well as with the like goods of the domestic producers. Imports of the subject goods from the subject countries are, for a given specification, fungible among themselves, as well as with the like goods. Therefore, the Tribunal is of the view that an assessment of the cumulative effect of the dumping and subsidizing of the subject goods from all the subject countries is appropriate in these circumstances.

Further, the Tribunal is of the view that it is not possible to isolate the effects caused by the dumping on one hand from the effects caused by the subsidizing on the other. The domestic producers have been affected by the pricing of the imports of the subject goods from the subject countries. The price of the subject goods from these countries is attributable, in part, to dumping and, in part, to subsidizing; however, the effects of dumping and subsidizing are so closely intertwined that it is impossible to unravel them in order to allocate specific or discrete portions to the dumping and subsidizing.[24]

Therefore, in the following analysis, the Tribunal has assessed together the cumulative effect of the dumped and subsidized goods from the subject countries.

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22. Subsection 2(1) of SIMA.
23. See Tables 1 and 2 of these reasons; Tribunal Exhibit NQ-99-004-34A, Administrative Record, Vol. 1 at 179; and *Protected Pre-hearing Staff Report*, revised 26 May 2000, Tribunal Exhibit NQ-99-004-7B (protected), Administrative Record, Vol. 2A.1 at 237.
24. See *Black Granite Memorials and Black Granite Slabs*, *Order* and *Statement of Reasons* (19 July 1999), RR-98-006 (CITT) at 12-13.

Injury

In an inquiry conducted pursuant to section 42 of SIMA, the Tribunal must determine whether the dumping or subsidizing of the goods has caused injury to the domestic industry. Subsection 37.1(1) of the *Special Import Measures Regulations*[25] prescribes certain factors that the Tribunal may consider in determining whether a domestic industry has been materially injured by dumped imports. These factors include the volume of dumped or subsidized goods and their effect on prices for like goods in the domestic market and the consequent impact of these imports on a number of economic factors, such as actual or potential declines in output, sales, market share and profits. Subsection 37.1(3) of the SIMA Regulations also requires the Tribunal to consider other factors to ensure that any injury caused by these other factors is not attributed to the dumped or subsidized imports.

State of the Market and Industry

The Tribunal examined the developments in the market for carbon steel plate in Canada. Key performance indicators for the Canadian carbon steel plate market are summarized in Table 3. The apparent market grew to over 1 million net tons in 1998, an increase of 11 percent over 1997 levels. However, in 1999, the market dropped to approximately 918,000 net tons, a decline of 14 percent from 1998 levels and of 5 percent from 1997 levels.

Despite the overall increase in the apparent market in 1998, sales by domestic producers for domestic consumption declined, resulting in a loss of market share from 68 percent in 1997 to 55 percent in 1998. In the contracting market of 1999, the domestic producers recovered 11 of the 13 percentage points of market share lost during 1998. The volume of sales of the domestic producers remained at about 51,000 net tons, or 8 percent, below 1997 levels.

Imports from the subject countries increased by approximately 133,000 net tons between 1997 and 1998, an increase of 480 percent. When the overall market contracted in 1999, imports from the subject countries declined as well, falling by almost 91,000 net tons, yet remaining just over 150 percent higher than 1997 levels. In 1998, imports from non-subject countries increased by over 96,000 net tons and then declined by almost 124,000 net tons in 1999, more than 14 percent below 1997 levels.

The domestic producers' average prices for sales from domestic production increased from $619 per net ton in 1997 to $647 per net ton in 1998 and then fell to $566 per net ton in 1999. The average selling prices of imports from the subject countries declined by just over 3 percent in 1998, from $604 per net ton to $585 per net ton, and declined by a further 15 percent to $495 per net ton in 1999. Average prices for sales of imports from non-subject countries followed a similar trend to domestic producers' prices and remained above the prices of the domestic producers throughout the Tribunal's period of inquiry.

Looking in more detail at carbon steel plate price trends in Canada, the Tribunal examined the quarterly price movements of prime quality structural plate and PVQ plate. Structural plate represents the largest single category of plate sales in the Canadian market. The Tribunal also notes that the price of PVQ plate is related to the price of structural plate. In this regard, the Tribunal heard testimony that demonstrated that prices for PVQ plate were typically built up from a base price for structural plate, with

25. S.O.R./84-927 [hereinafter SIMA Regulations].

specific dollar amount extras for grade, dimension, testing and other product features.[26] Thus, as the transaction prices for the base structural plate product are adjusted to prevailing market conditions, prices for PVQ plate are also adjusted.

The Tribunal's review of quarterly prices for prime quality structural plate[27] sold by the domestic producers revealed an increase in net selling prices from $658 per net ton in the first quarter of 1998 to $676 per net ton in the second quarter of that year. Prices in the third quarter of 1998 remained essentially stable, averaging $671 per net ton, but declined in each subsequent quarter, reaching a low of $570 per net ton in the fourth quarter of 1999. For prime quality PVQ plate,[28] the domestic producers' prices increased by 5 percent from the first quarter of 1998 to the second quarter of 1998. The prices for PVQ plate then declined in each subsequent quarter, falling by 22 percent by the third quarter of 1999, before increasing by 2 percent in the fourth quarter of 1999.

The financial performance of the domestic producers deteriorated over the Tribunal's period of inquiry.[29] In 1998, the reduction in sales volume was partially offset by the increase in average selling prices; however, that increase was not enough to prevent a 7 percent decline in net sales revenue from the previous year. The combination of reduced sales volumes and significantly lower average selling prices in 1999 led to an additional 10 percent decline in net sales revenue, for a cumulative decline of over 16 percent since 1997. In addition to reduced revenues, the domestic producers experienced increases in the unit costs of goods sold, as well as financial expenses in both 1998 and 1999. The combination of these factors led to a decline in operating income of 28 percent in 1998. In 1999, the deteriorating financial performance led to negative gross margins and a loss in operating income of over $44 million.

In summary, it is clear from the evidence that the domestic producers have suffered a significant deterioration in performance in the form of lost sales volumes and market share, price erosion and reduced profits. The Tribunal must now determine whether the dumping and subsidizing have caused all or part of this deterioration and, if so, whether the effects of the dumping and subsidizing, in and of themselves, constitute material injury.

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26. Tribunal Exhibit NQ-99-004-9.1, Administrative Record, Vol. 3 at 58-70; Tribunal Exhibit NQ-99-004-9.2, Administrative Record, Vol. 3A at 25-102; Tribunal Exhibit NQ-99-004-9.3, Administrative Record, Vol. 3B at 18-78; and *Transcript of Public Hearing*, Vol. 1, 24 May 2000, at 113-16.
27. *Public Pre-hearing Staff Report*, revised 26 May 2000, Tribunal Exhibit NQ-99-004-6B, Administrative Record, Vol. 1A.1 at 238.
28. *Protected Pre-hearing Staff Report*, revised 18 May 2000, Tribunal Exhibit NQ-99-004-7A (protected), Administrative Record, Vol. 2A.1 at 87.
29. *Public Pre-hearing Staff Report*, 18 April 2000, Tribunal Exhibit NQ-99-004-6, Administrative Record, Vol. 1A at 64-65.

Table 3
Key Market and Industry Performance Indicators

	1997	1998	1999
Apparent Market			
Volume (net tons)	963,239	1,066,573	918,376
Percent Increase (decrease)		11	(14)
Value ($000)	601,494	697,947	518,924
Percent Increase (decrease)		16	(26)
Market Share (%)			
Domestic Producers	68	55	66
Steel Service Centres	8	7	7
Subject Countries	3	12	10
Non-Subject Countries	21	26	17
Imports (net tons)			
Subject Countries	27,436	159,945	69,411
Non-Subject Countries	190,444	286,784	162,960
Production (net tons)	717,902	694,780	681,062
Average Prices ($/net ton)			
Domestic Producers	619	647	566
Steel Service Centres	644	666	572
Subject Countries	604	585	495
Non-Subject Countries	637	699	601
Total Market	624	654	565
Financial - Domestic Sales			
Net Sales ($000)	389,522	362,256	325,649
Gross Margin ($000)	54,968	55,143	(12,172)
Operating Income	33,258	23,965	(44,416)
Capacity (net tons)	2,583,720	2,354,920	2,574,320
Total Product Utilization Rate (%)	87	72	57

Note: Data for one importer were revised. Tribunal Exhibit NQ-99-004-16.8B (protected), Administrative Record, Vol. 6A at 2-310 shows that the summary data included non-subject structural and PVQ plate. For each type of plate, the volume and value summary data were reduced by the proportion of non-subject to total plate reported in the invoices.

Source: *Public Pre-hearing Staff Report*, 18 April 2000, Tribunal Exhibit NQ-99-004-6, Administrative Record, Vol. 1A at 56 and 64; *Public Pre-hearing Staff Report*, revised 18 May 2000, Tribunal Exhibit NQ-99-004-6A, Administrative Record, Vol. 1A.1 at 26, 31-34 and 120; *Public Pre-hearing Staff Report*, revised 26 May 2000, Tribunal Exhibit NQ-99-004-6B, Administrative Record, Vol. 1A.1 at 235 and 236; and Tribunal Exhibit NQ-99-004-16.8B (protected), Administrative Record, Vol. 6A at 2-310.

Effects of the Dumping and Subsidizing

The domestic producers argued that there is a clear causal connection between the lost sales volumes, reduced market share, eroded prices and reduced profits experienced by them and the dumped and

subsidized imports. The exporters, however, argued that a number of other factors led to the decline in performance. In addressing these conflicting views, the Tribunal carefully assessed the large volume of information submitted by the parties, as well as the evidence and testimony adduced during the hearing.

The Tribunal is of the view that the demand for carbon steel plate from any single supplier is, to a large degree, highly price sensitive. Carbon steel plate is generally considered to be a commodity product, and plate produced at different mills in different countries, given the same specifications, is physically indistinguishable and virtually fully interchangeable. This means that purchasers have a marked tendency to switch from one supplier to another on the basis of price alone. It also means that, over time, prices from all suppliers in the market will converge on the lowest-priced offerings. Suppliers that do not respond to the lower-price offering run a high risk of losing their market share.

A witness for the domestic producers provided compelling evidence on this matter. It was noted that 90 percent of plate consumers view the domestic and imported products as interchangeable.[30] Furthermore, relatively small volumes of low-priced product can have a significant impact on market prices.[31] Even after the inventory of the low-priced product is depleted, buyers will not admit that that price is no longer available, perpetuating the lower-price level longer than would otherwise be the case.[32]

Evidence before the Tribunal also indicated that the marketing practices of the importers of the subject goods were highly destabilizing.[33] A common practice for importers is to seek commitments from customers to purchase plate and then to place an order with a foreign mill. Importers then fill up the ship with additional plate in order to minimize the ocean freight costs.[34] While the shipment is en route to Canada, importers try to conclude sales for these commitments. Any remaining plate is then sold "off-the-dock".

The Tribunal notes that total imports from the subject countries in 1997 represented only 3 percent of the apparent market. In 1998, imports from the subject countries surged to 12 percent of an expanded market for carbon steel plate in Canada. This significant increase in market share was achieved by selling dumped and subsidized subject plate at prices substantially below the domestic producers' and non-subject countries' selling prices.[35] The Tribunal recognizes that almost 100 percent of the goods imported during the Commissioner's period of investigation from the subject countries were found to be dumped at significant margins and, in the case of India, Indonesia and Thailand, 100 percent of the goods imported were subsidized by significant amounts.

According to the evidence, domestic producers did not respond immediately to the growing availability of dumped and subsidized imports in 1998. Witnesses for the domestic producers submitted that, in early 1998, price increases and/or reductions in discounts were being put into effect until the third quarter

30. *Transcript of Public Hearing*, Vol. 2, 25 May 2000, at 394.
31. *Transcript of Public Hearing*, Vol. 2, 25 May 2000, at 395.
32. *Transcript of Public Hearing*, Vol. 2, 25 May 2000, at 395-96.
33. *Transcript of Public Hearing*, Vol. 1, 24 May 2000, at 36; Manufacturer's Exhibit A-4 at 9, Administrative Record, Vol. 11; Manufacturer's Exhibit B-1 at 20, Administrative Record, Vol. 11.1; Manufacturer's Exhibit B-7 at 5, Administrative Record, Vol. 11.1; and Manufacturer's Exhibit C-4 at 3, Administrative Record, Vol. 11.2A.
34. *Transcript of Public Hearing*, Vol. 1, 24 May 2000, at 137.
35. See Table 3 of these reasons.

of that year.[36] In the third quarter of 1998, the domestic producers were inundated with information about low-priced imports from the subject countries, and they had to start to react.[37] Toward the end of the third quarter, published domestic producers' prices would no longer hold, and they, therefore, began offering increased discounts off list prices to meet competition from the dumped and subsidized imports. Witnesses for the domestic producers testified that they did not react quickly enough in the fourth quarter of 1998 and lost significant market share as a result.[38]

Thus, while the domestic market for carbon steel plate was growing due to strong demand in the oil and gas, railcar, shipbuilding and, to some extent, agricultural sectors, the domestic producers lost both volume and market share. The evidence and testimony put forward in this case left the Tribunal with no doubt that the loss in sales volume and decline in market share suffered by the domestic producers in 1998 were caused primarily by the sales of dumped and subsidized imports of carbon steel plate from the subject countries. It is clear, however, that imports from non-subject countries, in particular the United States, also gained volume and market share during this period.

In 1999, downstream demand for carbon steel plate began to contract. Plate requirements in the agricultural, shipbuilding and oil and gas sectors began to decline.[39] Competition for sales of plate became increasingly fierce with subject import selling prices declining. Moreover, in late 1998, the domestic producers changed their strategy in order to stop the loss of volume and market share and began meeting the competitive pricing of the subject goods.

The detailed pricing data[40] gathered through Tribunal questionnaires support the domestic producers' contentions as to the timing of price reductions in the market. An analysis[41] of the data on the weighted average selling prices of prime quality structural plate revealed that the domestic producers' selling prices were maintained in the second and third quarters of 1998. Prices then began to decline in the fourth quarter and continued to do so throughout 1999. Average selling prices of the subject imports remained below the domestic producers' prices in 1998 and fell even further below the domestic producers' prices in 1999. This evidence clearly indicates to the Tribunal that the subject import prices were pulling the domestic producers' prices down, starting in the fourth quarter of 1998. This evidence is also consistent with the information on average unit values based on the total apparent market. A general pattern of price undercutting by the subject countries for sales of PVQ plate, mostly from Ukraine, is also apparent.

36. Manufacturer's Exhibit A-4 at 7, Administrative Record, Vol. 11; and Manufacturer's Exhibit B-5 at 5, Administrative Record, Vol. 11.1.
37. *Transcript of Public Hearing*, Vol. 1, 24 May 2000, at 69.
38. *Transcript of Public Hearing*, Vol. 1, 24 May 2000, at 69, and Vol. 2, 25 May 2000, at 349.
39. *Transcript of Public Hearing*, Vol. 1, 24 May 2000, at 168, and Vol. 3, 26 May 2000, at 468.
40. *Protected Pre-hearing Staff Report*, revised 18 May 2000, Tribunal Exhibit NQ-99-004-7A (protected), Administrative Record, Vol. 2A.1 at 87; *Public Pre-hearing Staff Report*, revised 26 May 2000, Tribunal Exhibit NQ-99-004-6B, Administrative Record, Vol. 1A.1 at 238; and Tribunal Exhibit NQ-99-004-16.8B (protected), Administrative Record, Vol. 6A at 2-310. The Tribunal relied on the latter exhibit for the quarterly distribution of sales. See also the note to Table 3 of these reasons.
41. Data on the weighted average selling prices of prime quality structural plate represented 67 percent and 75 percent of total plate sales in Canada in 1998 and 1999 respectively.

To the extent that importers built up inventories of dumped and subsidized imports in 1998, which were then liquidated in 1999, additional downward pressure was placed on domestic prices.[42] The record shows that some importers even found it necessary to sell the subject goods in 1999 at prices that were below the cost of landing them in Canada in 1998. SAIL argued that the fact that the Indian goods were subsequently sold in Canada at a loss is unrelated to the dumping. In this case, the Tribunal cannot agree. Inventory overhangs, and the importers' need to sell the subject goods in order to avoid even higher losses resulting from carrying costs, can create volatile and unstable pricing situations. The effects of the dumping and subsidizing are felt by the domestic producers whether the goods are in inventory and offered for sale or whether they are actually sold. In the Tribunal's view, the pricing in Canada of the Indian plate in 1999 and the resultant lost sales incurred by the domestic producers are direct effects of the dumped and subsidized imports from India and the other subject countries.

The efforts of the domestic producers in late 1998 and in 1999 to stem the loss of volume and market share to the dumped and subsidized imports through price reductions were only partially successful. Compared to 1997, sales of dumped and subsidized imports in 1999 increased by over 150 percent, and their market share increased from 3 to 10 percent. In comparison, the overall volume of sales in the market was down. Both the domestic producers and non-subject countries lost volume and market share.

Based on the foregoing evidence and testimony, the Tribunal concludes that the dumping and subsidizing of carbon steel plate from the subject countries have caused injury to the domestic industry in the form of lost sales, lost market share, price erosion and reduced profitability.

In its review of the injurious effects of the dumping and subsidizing of the subject goods on the domestic industry, the Tribunal found the evidence submitted by the domestic producers in the form of specific account injury allegations, where tested through cross-examination, to be generally unreliable. Therefore, on the whole, the Tribunal did not find this evidence compelling. However, the Tribunal was persuaded by the broad range of evidence arising from the aggregate indicators of overall market behaviour and industry performance together with the information on pricing and sales submitted in response to the Tribunal's questionnaires and other evidence provided at the hearing.

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

Other Factors

Exporters of carbon steel plate argued that there were factors other than the dumping and subsidizing that caused injury to the domestic producers. The Tribunal notes that, in any inquiry, there are almost always other factors present.

Domestic Supply Constraints

The Tribunal heard evidence from exporters that, as a result of a series of plant shutdowns by Stelco, slab production capacity constraints at Algoma and a shift in production to other higher-margin products during 1998, carbon steel plate production constraints opened the door for imports.

42. Manufacturer's Exhibit C-2 at 2, Administrative Record, Vol. 11.2; and *Transcript of Public Hearing*, Vol. 2, 25 May 2000, at 355, 379 and 410.

Stelco experienced a series of shutdowns during 1998, which affected its production capacity. A witness for Stelco provided evidence about the long and difficult process of installing the new Steckel mill.[43] The Tribunal also notes that Stelco's evidence indicates that it made significant efforts to maintain production during the construction and commissioning of the new mill.[44] Evidence before the Tribunal also suggests that Stelco acted to minimize the disruption to supply by importing plate in order to help better serve its customers during the anticipated shutdowns.[45] Moreover, the surge in imports from the subject countries greatly exceeded any supply shortfall that Stelco may have experienced.

In the Tribunal's opinion, although the volume of imports by Stelco may not have been sufficient to fully cover the lost production, particularly given the unanticipated difficulties in completing the installation of the new mill, there existed sufficient excess capacity within the domestic industry to serve the domestic market. For the domestic producers as a whole, the capacity utilization rate in 1998 for machinery and equipment used in the production of carbon steel plate was 72 percent.[46] As the Tribunal heard from the witnesses for Algoma, it was able to service the market throughout the Tribunal's period of inquiry and did whatever it could in terms of meeting the demand for carbon steel plate.[47] In this regard, the Tribunal notes evidence adduced at the hearing that indicated that, in 1998, Algoma had reached its production capacity for slab, but that it was able to purchase its additional requirements on the open market. Even though this represented a higher cost for slab than from internal production, market conditions were such as to warrant paying the higher price for slab.[48]

Data gathered through the Tribunal's questionnaires do not support the exporters' argument that capacity utilization shifted to the production of other products in 1998.[49] Only one domestic producer realized an increase in the production of other goods on the same machinery and equipment as carbon steel plate. Utilization rates for the other producers declined in 1998, and all mills experienced declines in their capacity utilization in 1999.

On the basis of the foregoing, the Tribunal is not convinced that shutdowns by Stelco, slab supply constraints experienced by Algoma or a shift toward the production of other goods created a production shortfall sufficient to warrant the surge in imports from the subject countries that occurred in 1998.

New Production Facilities and Efficiency Enhancements

Exporters argued that investments in new production facilities and technological enhancements to existing facilities were creating a new lower-cost industry.[50] The lower-cost structure is driving down prices and is causing older, traditional mills to be supplanted.[51] Exporters and the Tribunal also explored the impact

43. *Transcript of Public Hearing*, Vol. 2, 25 May 2000, at 250.
44. *Transcript of Public Hearing*, Vol. 2, 25 May 2000, at 251; and *Transcript of In Camera Hearing*, Vol. 2, 25 May 2000, at 162-63.
45. *Transcript of Public Hearing*, Vol. 2, 25 May 2000, at 284-85.
46. Includes the production of other goods using the same machinery and equipment. *Public Pre-hearing Staff Report*, 18 April 2000, Tribunal Exhibit NQ-99-004-6, Administrative Record, Vol. 1A at 56.
47. *Transcript of Public Hearing*, Vol. 1, 24 May 2000, at 66.
48. *Transcript of Public Hearing*, Vol. 1, 24 May 2000, at 108-109.
49. *Public Pre-hearing Staff Report*, 18 April 2000, Tribunal Exhibit NQ-99-004-6, Administrative Record, Vol. 1A at 56.
50. *Transcript of Public Argument*, Vol. 1, 30 May 2000, at 135-136.
51. *Transcript of Public Argument*, Vol. 1, 30 May 2000, at 136.

of the plant and equipment investments made by the domestic producers on the financial performance reported for domestic sales of like goods.

A substantial volume of evidence regarding changes in plate production capacity in Canada, the United States and other regions in the world was available to the Tribunal. Much of the evidence adduced during the hearing related to North American production capacity and the lower-cost structure that it may represent.

The Tribunal explored the impact of Algoma's new DSPC on plate production.[52] It is clear from the witnesses' testimony that the new facility does not add production capacity to the plate market. However, the Tribunal understands that the commissioning of the DSPC will enable greater utilization of existing mill capacity for the production of plate. The Tribunal also notes that Algoma's facilities for making iron and steel are shared between plate production and hot-rolled strip produced at the DSPC. In this regard, evidence was adduced that Algoma expected to complete enhancements to its facilities for making iron and steel by increasing its capacity by approximately 200,000 net tons by August 2000.[53] This additional capacity will also help service a recent expansion of Algoma's heat-treated plate production capacity.[54]

IPSCO invested in a new temper level mill in Toronto, which eliminates the non-uniform residual stresses often found in conventional cut-to-length lines.[55] The new line, which was not in full production in 1999, provides IPSCO with additional plate capacity and a presence in the market in Eastern Canada.

The installation of Stelco's new Steckel mill will add approximately 400,000 net tons of capacity for the production of plate and coil for the Canadian market.[56] Witnesses for Stelco were asked about the impact of the new investment on their cost structure. In their opinion, the new technology would lower plate costs by approximately $50 per net ton.[57] It was submitted that Stelco had been operating with an old mill and that the investment in new technology and production facilities was necessary to remain competitive and in business. Beyond the cost advantage, the investment allowed Stelco to improve its gauge thicknesses, thickness tolerances and product range.[58]

In the United States, IPSCO's Montpelier mill, with a rated capacity of about 1 to 1.2 million net tons per year, is still experiencing equipment problems.[59] Its Alabama facility, which is rated at about 1.25 million net tons per year, is still six to eight months away from completion.[60] The Nucor facility, with a rated capacity of 1.2 million net tons per year, is only expected to start coming on stream at the end of the year 2000.[61] In total, about 4 million net tons per year are being added to the North American production base.[62] Most of this capacity has yet to come on stream and is largely located in the United States.

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52. *Transcript of Public Hearing*, Vol. 1, 24 May 2000, at 178-80.
53. *Transcript of Public Hearing*, Vol. 1, 24 May 2000, at 59.
54. *Transcript of Public Hearing*, Vol. 1, 24 May 2000, at 181-82.
55. *Transcript of Public Hearing*, Vol. 3, 26 May 2000, at 427.
56. *Transcript of Public Hearing*, Vol. 1, 24 May 2000, at 44.
57. *Transcript of Public Hearing*, Vol. 2, 25 May 2000, at 274.
58. *Transcript of Public Hearing*, Vol. 2, 25 May 2000, at 275.
59. *Transcript of Public Hearing*, Vol. 1, 24 May 2000, at 46, and Vol. 3, 26 May 2000, at 454.
60. *Transcript of Public Hearing*, Vol. 1, 24 May 2000, at 46, and Vol. 3, 26 May 2000, at 454.
61. *Transcript of Public Hearing*, Vol. 1, 24 May 2000, at 45-46.
62. *Transcript of Public Hearing*, Vol. 1, 24 May 2000, at 53.

According to witnesses for the domestic producers, the new capacity investments in Canada and the United States are just starting to come on stream and, therefore, have not had an impact on domestic prices.[63] A witness for Algoma testified that, upon initiation of the investigation by the CCRA, the domestic producers were able to implement a reduction in their discounts from list prices, suggesting that the new capacity was not having a suppressing effect on prices.[64]

In light of the above, the Tribunal is not convinced that investments in new production facilities or efficiency enhancements have had a significant impact on the domestic market for carbon steel plate over the Tribunal's period of inquiry.

Increases in Costs and Financial Expenses

The Tribunal explored the impact of Algoma's new DSPC on plate production costs.[65] In response to questions from the Tribunal, a witness for Algoma indicated that the increase in financial expenses reported by Algoma was related to the construction of the DSPC. Since the cost of the DSPC is unrelated to the production of like goods, the Tribunal did not attribute Algoma's increased financial expenses to the dumped and subsidized goods.

In cross-examination, the exporters also questioned the increased cost of goods sold for like goods reported by Stelco. A witness for Stelco noted that the cost of goods sold increased primarily as a result of problems associated with the commissioning of the new Steckel mill.[66] The Tribunal did not attribute these cost increases to the dumped and subsidized imports.

Intra-industry Competition

Exporters argued that, following Stelco's production difficulties relating to the installation of the new Steckel mill, it aggressively attempted to buy back the market share that it lost during 1998 by lowering prices.[67] The commissioning of IPSCO's new TLC line in Toronto was also argued to be a new source of competition which caused the injury to the domestic producers of carbon steel plate.

The Tribunal is of the view that Stelco's production difficulties in 1998 resulted in vigorous intra-industry competition in 1999. However, the Tribunal notes that, during that year, the domestic producers as a whole were forced to compete with the very low-priced imports of the subject goods from the subject countries. This evidence is consistent at the macro level, as well as in the product category pricing information gathered through questionnaires.[68] Evidence adduced at the hearing indicated that the domestic

63. *Transcript of Public Hearing*, Vol. 1, 24 May 2000, at 57-58; and *Transcript of In Camera Hearing*, Vol. 2, 25 May 2000, at 108-109.
64. *Transcript of Public Hearing*, Vol. 1, 24 May 2000, at 58.
65. *Transcript of Public Hearing*, Vol. 1, 24 May 2000, at 178-80.
66. Manufacturer's Exhibit B-1 at 33, Administrative Record, Vol. 11.1; and *Transcript of In Camera Hearing*, Vol. 2, 25 May 2000, at 127 and 129.
67. *Transcript of Public Argument*, Vol. 1, 30 May 2000, at 132.
68. *Protected Pre-hearing Staff Report*, revised 18 May 2000, Tribunal Exhibit NQ-99-004-7A (protected), Administrative Record, Vol. 2A.1 at 87; *Protected Pre-hearing Staff Report*, revised 26 May 2000, Tribunal Exhibit NQ-99-004-7B (protected), Administrative Record, Vol. 2A.1 at 237 and 239; and Tribunal Exhibit NQ-99-004-16.8B (protected), Administrative Record, Vol. 6A at 2-310. The Tribunal relied on the latter exhibit for the quarterly distribution of sales. See also the note to Table 3 of these reasons.

producers try to compete primarily on service, deliveries, customer service and other non-price factors.[69] The greatest source of price pressure is related to offers for offshore product.[70]

With respect to IPSCO's Toronto facility, there is no doubt, in the Tribunal's mind, that this represents a new source of lower-cost competition in the Canadian market. However, the evidence indicates that, although this facility was completed in January 1999, production of cut-to-length plate was limited.[71]

The Tribunal does not doubt that intra-industry competition is vigorous. It also recognizes that Stelco would have been interested in recapturing any volumes lost during the installation of its new line. However, it is clear that domestic selling prices throughout the Tribunal's period of inquiry remained above those of the subject imports[72] and that the declining prices of the domestic producers were largely, if not primarily, in response to the low prices of the subject imports.

Impact of U.S. Pricing

Finally, the Tribunal heard argument that the real cause of declining prices in the Canadian market were developments in the world market for carbon steel plate and, in particular, in the U.S. market. Brazilian exporters argued that the North American plate market was a single market and that Canadian prices were bound to follow U.S. spot prices for plate. In this connection, the evidence shows that eastern U.S. spot prices and eastern Canadian spot prices followed a similar trend over the Tribunal's period of inquiry. However, at various times during this period, Canadian spot prices, expressed in U.S. dollars, were either above or below the U.S. spot prices. The relationship between the western U.S. spot price and the western Canadian spot price is more varied. In the Tribunal's opinion, this variability between Canadian and U.S. prices is accounted for by differences in local demand and supply conditions, such as the relative health of the local economies and competition from offshore imports.

It is evident that the Canadian market for carbon steel plate is not and cannot be insulated from price developments in the United States or the rest of the world. The Tribunal is not convinced, contrary to the position put forward by the Brazilian exporters, that the price erosion experienced by the domestic producers, particularly in 1999, was fully caused by U.S. or world spot market pricing. In the Tribunal's view, the price erosion was caused largely, if not primarily, by the very low prices of the dumped imports. While the Tribunal acknowledges that spot pricing is a useful indicator of North American and world trends, it believes that the appropriate basis for comparison in the present case is actual pricing in the Canadian market. The Tribunal has no doubt that, without the dumped and subsidized imports, prices in the Canadian market would have been significantly higher, particularly in 1999.

Conclusion

Having reviewed the effects of the dumped and subsidized goods and the effects of other factors on the domestic producers, the Tribunal concludes that the dumping in Canada and the subsidizing of the subject goods have caused material injury to the domestic industry. The Tribunal is of the view that the dumped and subsidized imports gained significant sales volume and market share in 1998 and 1999 at the expense of the domestic producers. In an effort to regain sales volume and market share that were lost in

69. *Transcript of Public Hearing*, Vol. 1, 24 May 2000, at 174.
70. *Transcript of Public Hearing*, Vol. 1, 24 May 2000, at 174-75 and 351.
71. Manufacturer's Exhibit C-7 (protected) at 4, Administrative Record, Vol. 12.2.
72. See Table 3 of these reasons.

late 1998 and in 1999, the domestic producers continued to reduce transaction prices in order to meet the lower prices of the subject imports. Together, the loss in sales volume and market share and the price erosion resulted in a deterioration of the domestic producers' financial performance. The combined effects of the dumping and subsidizing of the subject goods, in the Tribunal's view, constitute material injury.

REQUESTS FOR EXCLUSIONS

As noted earlier, some exporters requested producer, country and product exclusions. It is well established that the Tribunal has discretion to allow exclusions under subsection 43(1) of SIMA.[73] It is only in exceptional circumstances that the Tribunal has granted such exclusions.

Producer and Country Exclusions

SAIL from India and PTGRP from Indonesia requested producer exclusions. SAIL also requested a country exclusion on behalf of India.

SAIL and India

SAIL submitted that, in the event of a finding of injury or of threat of injury by the Tribunal on imports from India, it be granted a producer exclusion on the basis that it acted reasonably and responsibly in selling the subject goods into the Canadian market. SAIL relied on the arguments that it made on conditions of competition as alternative arguments for the exclusion request.

The domestic producers did not agree that SAIL should be granted an exclusion. They rejected SAIL's argument that it was not SAIL that caused material injury to the domestic producers, but rather other producers, as well as other importers and exporters. SAIL should not be excluded from an injury finding, they submitted, as it participated in the spiralling down of prices in both 1998 and 1999.[74] The domestic producers argued that there was no evidence to support SAIL's request for a producer exclusion on the basis that it acted reasonably and responsibly in selling into the Canadian market. They submitted that there was no evidence as to how SAIL sold into the Canadian market other than it sold through trading companies.[75]

With respect to a country exclusion, the domestic producers argued that the Tribunal only grants such exclusions where a country has satisfied a list of factors set out by the Tribunal, such as in the case of Argentina in *Cold-rolled Steel Sheet*.[76] They further submitted that there is no evidence in this case that India has satisfied any of those factors, nor is there any evidence of self-imposed restrictions on the volume of exports, of availability of other export markets or of the existence of other incentives that make the resurgence of the dumped imports at injurious levels much less likely.[77]

The Tribunal has carefully reviewed the arguments and has concluded that there are no compelling reasons and no exceptional circumstances that would convince it to grant a producer exclusion to SAIL or a

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73. *Certain Cold-rolled Steel Sheet Originating in or Exported from the United States of America (Injury) (United States* v. *Canada)* (1994), CDA-93-104-09 (Ch.19 Panel) at 54. See, also, *Sacilor Aciéries* v. *Anti-dumping Tribunal* (1985), 9 C.E.R. 210 (CA).
74. *Transcript of Public Argument*, Vol. 1, 30 May 2000, at 22-23.
75. *Transcript of Public Argument*, Vol. 1, 30 May 2000, at 92.
76. *Transcript of Public Argument*, Vol. 1, 30 May 2000, at 280-81; and *Cold-rolled Steel Sheet*, *supra* note 18.
77. *Transcript of Public Argument*, Vol. 1, 30 May 2000, at 92.

country exclusion to India. The Tribunal reiterates the position that it took in *Cold-rolled Steel Sheet*, where it was of the view that the simultaneous existence of certain factors could be the source of exceptional circumstances which would justify an exclusion for a given producer or country.[78] In that case, the Tribunal was of the view that no single one of these factors, by itself, would normally be sufficient to support the existence of exceptional circumstances. In its view, a combination of some or all of these factors was usually necessary. In this case, except for stopping its exports to Canada in 1998, no other factors apply to SAIL.

Taking the above factors into consideration, the Tribunal notes, with respect to imports from India, that SAIL is the only exporter of the subject goods to Canada.[79] The evidence shows that SAIL had little or no exports to Canada in 1997, but that there was a surge of imports in 1998 of the subject goods from SAIL into Canada. While the last arrival in Canada of the subject goods from SAIL was in the last quarter of 1998, the evidence clearly indicates that the subject goods from SAIL were being sold in Canada in 1999.

Based on the evidence before it, the Tribunal is not convinced that SAIL acted reasonably and responsibly by reason alone of leaving the Canadian market when it did. The Tribunal is of the view that SAIL left the Canadian market when it did to avoid injury to itself rather than to avoid disruption to the domestic producers.

The Tribunal is also not persuaded that SAIL was not pricing "aggressively" as it alleges. The evidence shows that, although the selling price for carbon steel plate from India was above that for carbon steel plate from a number of the other subject countries, it was far below the selling prices of imports from non-subject countries and those of the domestic producers in 1998 and 1999.[80] The Tribunal is also convinced that, in this case, the dumping and subsidizing at a significant amount was tantamount to "aggressive" pricing. Moreover, the Tribunal is not persuaded by SAIL's argument that the price effect of the subject goods from India, some of which were in inventories in 1999 and sold in the Canadian market at a loss, cannot be attributed to the dumping and subsidizing of the subject goods. But for the dumping and subsidizing, these goods would not have been in the Canadian market. The fact that SAIL was pricing "aggressively" and that the subject goods were in the Canadian market during 1999 were factors which contributed to the price erosion of the like goods.

In the Tribunal's view, exclusions are granted where it is considered that the imports from a country or a producer have not injured the domestic producers. That is not the case here. Moreover, in reviewing the list of factors elaborated in *Cold-rolled Steel Sheet*, the Tribunal does not find that SAIL has provided sufficient evidence which would support the existence of exceptional circumstances. Consequently, the Tribunal does not grant a producer exclusion, nor does it grant a country exclusion in this case.

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78. Such factors include: (1) a low volume of exports in comparison to the total volume of dumped and non-dumped imports; (2) the price of the dumped goods in comparison with the price of other dumped goods; (3) the effect on domestic prices for like goods of the weighted average margin of dumping; (4) the market segment in which most or all of the dumped goods are sold; (5) the conditions of sales regarding the dumped goods; (6) whether the exports remain significantly lower than those of the other cumulated countries or producers; (7) evidence of self-imposed restrictions on the volume of exports; (8) the availability of other export markets; and (9) the existence of other incentives, whether business-oriented or economic, that makes the resurgence of the dumped imports at injurious levels much less likely.
79. *Transcript of Public Argument*, Vol. 1, 30 May 2000, at 231.
80. *Protected Pre-hearing Staff Report*, revised 26 May 2000, Tribunal Exhibit NQ-99-004-7B (protected), Administrative Record, Vol. 2A.1 at 237; and Tribunal Exhibit NQ-99-004-16.8B (protected), Administrative Record, Vol. 6A at 2-310. See the note to Table 3 of these reasons.

PTGRP

PTGRP made its request for exclusion at the hearing. The witness for PTGRP testified that as PTGRP was not an exporter during the Commissioner's period of investigation, it should not be included in an injury finding. The witness also testified that PTGRP posed no threat of injury to the Canadian market, given PTGRP's limited capacity in comparison to the domestic and regional demand for consumption. The witness testified that regional demand would come from Asia because it is a closer market and because of the conducive trade environment and the imminent economic recovery in that region.[81]

The domestic producers responded that there was no basis in law to justify the request for exclusion, particularly a producer exclusion which would give that exporter, and not other exporters from the same subject country, a licence to dump and, in this case, to export the subsidized subject goods. PTGRP has not provided any evidence as to why it should be excluded. The fact that it has certain natural markets closer to it than the Canadian market has not prevented other companies in those same markets from exporting to the Canadian market.

The Tribunal finds that there are no exceptional circumstances which would allow for a producer exclusion in the case of PTGRP. While the Tribunal notes that this exporter has recently started commercial operations and has not engaged in dumping activities with respect to the Canadian market, the Tribunal does not have sufficient knowledge of the commercial practices of PTGRP or of the corporate relationships between that producer and other producers to grant such an exclusion. Moreover, the evidence indicates that PTGRP produces goods that are similar to those produced by other Indonesian producers and which would not be readily distinguishable from those other goods. Therefore, in the absence of information on the commercial practices of PTGRP and in light of the evidence that the other two producers from Indonesia exported a large volume of dumped and subsidized product to the Canadian market, the Tribunal is not prepared to grant an exclusion to PTGRP. However, the Tribunal reminds PTGRP that it may seek the Commissioner's assistance to establish normal values.

Product and Country Exclusions

Azovstal of Ukraine and Friede Goldman, a shipbuilder in Newfoundland, each requested a product exclusion. Azovstal also requested a country exclusion on behalf of Ukraine. Typically, the Tribunal grants a product exclusion where it is convinced that the product is not or cannot be manufactured by the domestic producers or if the product is not substitutable for a product which is manufactured by the domestic producers.

Azovstal

Azovstal requested that the Tribunal not make an injury finding with respect to the goods from Ukraine which were excluded in Plate II or, alternatively, that the speciality products be excluded from an injury finding on the grounds, among others, that Azovstal's pricing of low-carbon equivalent steel did not move below Stelco's book price for such products. At the hearing, Azovstal requested a country exclusion for Ukraine.

Azovstal submitted that there was evidence before the Tribunal that A516 PVQ plate exported by it has special chemistries.[82] In its argument, it indicated that special chemistries include normalized heat-treated plate for bridge girder flange plate and for use in other structures such as ice breakers and exterior crane

81. *Transcript of Public Hearing*, Vol. 4, 29 May 2000, at 538.
82. *Transcript of Public Argument*, Vol. 1, 30 May 2000, at 167.

runway girders. This plate may necessitate additional testing due to specific requirements by end users, such as high impact or Charpy testing, all of which add costs to the price of the plate. Azovstal argued that the Ukrainian steel being exported to Canada is meeting the chemical and physical requirements in excess of those required to meet the Deputy Minister of National Revenue's exclusion in Plate II. Further, if the purpose is to sell Ukrainian plate into the regular A516 market in Canada, there is no need to meet the additional requirements as it has.[83] Therefore, there is a market and an ongoing need in the Canadian market for steel with specialized chemistries.[84]

Finally, Azovstal argued that the exports from Ukraine to Canada decreased dramatically. Moreover, Ukrainian exporters have voluntarily restrained their exports, and there is evidence of efforts to sell in the world markets in a non-disruptive manner.[85] This shows that they are acting as responsible competitors in the international market and that their decision to dramatically reduce exports to the Canadian market is consistent with this view.[86]

The domestic producers disputed Azovstal's claim that there exists a difference between standard A516 Grade 70 and low-carbon A516 Grade 70, as the low-carbon plate is substitutable for the standard A516 Grade 70. The pricing in Canada of the low-carbon equivalent A516 Grade 70 is based on the price of grade 44W plate. If the price of grade 44W declines, so does the price of the A516 Grade 70. One of the domestic producers also argued that the low-carbon equivalent A516 Grade 70 is a more specialized, low-demand product which should command a higher price than the standard A516 Grade 70. When the price of imported PVQ, low-carbon equivalent is substantially lower than the price of domestic PVQ plate, for which the imported product is a substitute, and its pricing is below the price of structural grade plate, the result is a significant downward pressure on other grades of plate, including 44W. To suggest that the sales of the imported low-carbon equivalent A516 Grade 70 from Ukraine have no impact on the domestic producers' sales of PVQ plate and other plate is false, in the domestic producers' view.

The domestic producers alleged that the PVQ plate which is being imported from Ukraine and sold for standard PVQ plate applications is the plate which is the subject of the Deputy Minister of National Revenue's exclusion in Plate II. The exclusion from that finding was intended to cover a very limited application, some 1,000 net tons, which was not being served by domestic producers. As a result, they submitted, more than 20,000 net tons of Ukrainian low-carbon PVQ product were exported to the Canadian market in 1998. The pricing of these imports was below not only that of low-carbon and standard PVQ plate but that of domestic structural plate.

The Tribunal has carefully reviewed all the evidence before it and finds that there is insufficient evidence to grant a product exclusion to Azovstal or to grant a country exclusion to Ukraine. In addition, the Tribunal finds that there are too many unanswered questions to permit it to grant the exclusions at this time. For example, it is not clear to the Tribunal why specialized low-carbon PVQ plate is being sold into the Canadian market at such low prices, generally below the price of domestic PVQ plate and often below the price of domestic structural plate. [87] It is also unclear as to the applications for which this specialized steel was being used.

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83. *Transcript of Public Argument*, Vol. 1, 30 May 2000, at 175.
84. *Transcript of Public Argument*, Vol. 1, 30 May 2000, at 170.
85. *Transcript of Public Argument*, Vol. 1, 30 May 2000, at 190.
86. *Transcript of Public Argument*, Vol. 1, 30 May 2000, at 191.
87. *Protected Pre-hearing Staff Report*, revised 18 May 2000, Tribunal Exhibit NQ-99-004-7A (protected), Administrative Record, Vol. 2A.1 at 87; *Protected Pre-hearing Staff Report*, revised 26 May 2000, Tribunal Exhibit NQ-99-004-7B (protected), Administrative Record, Vol. 2A.1 at 239; and Tribunal Exhibit NQ-99-004-16.8B (protected), Administrative Record, Vol. 6A at 2-310. The Tribunal relied on the latter exhibit for the quarterly distribution of sales. See also the note to Table 3 of these reasons.

Friede Goldman

In its letter to the Tribunal,[88] Friede Goldman indicated that it had difficulty finding domestic steel plate that could meet the requirements for the "offshore market". In particular, the domestic producers do not stock certain specifications or grades of specialized plate, nor are they geared or able to ramp up for the types of offshore development taking place in Eastern Canada. When it requested a bid on steel plate that met specific specifications from the domestic producers, none of them were familiar with the specifications. When the same request was made to offshore producers, two European respondents had the goods available for shipping.

The domestic producers submitted that the evidence clearly demonstrated that, although they do not stock this particular plate, they are able and willing to make the plate at the specific grades with the requisite Charpy impact tests. They stated that an exclusion should not be granted simply to provide a purchaser with a more timely delivery of the goods as opposed to normal mill delivery times.

The Tribunal is of the view that it is unclear whether Friede Goldman did, in fact, request a product exclusion. Moreover, there is some evidence from the domestic producers that they could manufacture some or all of the requested products. Accordingly, the Tribunal will not grant a product exclusion.

CONCLUSION

For the preceding reasons, the Tribunal concludes that the dumping in Canada of carbon steel plate originating in or exported from Brazil, Finland, India, Indonesia, Thailand and Ukraine, and the subsidizing of carbon steel plate originating in or exported from India, Indonesia and Thailand have caused material injury to the domestic industry.

Richard Lafontaine
Richard Lafontaine
Presiding Member

Peter F. Thalheimer
Peter F. Thalheimer
Member

James A. Ogilvy
James A. Ogilvy
Member

88. Tribunal Exhibit NQ-99-004-29.1, Administrative Record, Vol. 1 at 163.2.