



Ottawa, Tuesday, August 12, 2003

Preliminary Injury Inquiry No. PI-2003-002

IN THE MATTER OF a preliminary injury inquiry, under subsection 34(2) of the *Special Import Measures Act*, respecting:

**THE DUMPING OF CERTAIN HOT-ROLLED CARBON STEEL PLATE AND
HIGH-STRENGTH LOW-ALLOY STEEL PLATE ORIGINATING IN OR
EXPORTED FROM BULGARIA, THE CZECH REPUBLIC AND ROMANIA**

PRELIMINARY DETERMINATION OF INJURY

The Canadian International Trade Tribunal, under the provisions of subsection 34(2) of the *Special Import Measures Act*, has conducted a preliminary injury inquiry into whether there is evidence that discloses a reasonable indication that the dumping of hot-rolled carbon steel plate and high-strength low-alloy steel plate not further manufactured than hot-rolled, heat-treated or not, in cut lengths in widths from 24 inches (+/- 610 mm) to 152 inches (+/- 3,860 mm) inclusive and in thicknesses from 0.187 inches (+/- 4.75 mm) to 5.25 inches (+/- 133 mm) inclusive, originating in or exported from Bulgaria, the Czech Republic and Romania, excluding plate produced to American Society for Testing and Materials (ASTM) specifications A515 and A516M/A516 Grade 70 in thicknesses greater than 3.125 inches (+/- 79.3 mm), universal mill plate, plate for use in the manufacture of pipe and plate having a rolled, raised figure at regular intervals on the surface (also known as floor plate), has caused injury or retardation or is threatening to cause injury.

This preliminary injury inquiry is pursuant to the notification, on June 13, 2003, by the Commissioner of the Canada Customs and Revenue Agency, that an investigation had been initiated into the alleged injurious dumping of the above-mentioned goods.

Pursuant to subsection 37.1(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby determines that the evidence discloses a reasonable indication that the dumping of the above-mentioned hot-rolled carbon steel plate has caused injury to the domestic industry.

Richard Lafontaine
Richard Lafontaine
Presiding Member

Zdenek Kvarda
Zdenek Kvarda
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.

Date of Determination: August 12, 2003
Date of Reasons: August 27, 2003

Tribunal Members: Richard Lafontaine, Presiding Member
Zdenek Kvarda, Member
James A. Ogilvy, Member

Director of Research: Peter Welsh

Research Manager: Douglas Kemp

Statistician: Marie-Josée Monette

Counsel for the Tribunal: Michèle Hurteau
Roger Nassrallah

Assistant Registrar: Gillian E. Burnett

Registrar Support Officer: Ingrid Navas

Participants:

for Ronald C. Cheng
Benjamin P. Bedard
Paul D. Conlin
Algoma Steel Inc.

for Dalton Albrecht
IPSCO Inc.

for Lawrence L. Herman
Craig S. Logie
Stelco Inc.

for Donald J. Goodwin
Evgeny Pavlenko
Wirth Steel and Vitkovice Steel A.S.

Lubka Voucheva
Embassy of Bulgaria

Menelaos Tassopoulos
Stomana Industry S.A.

Witnesses:

Glenn A. Gilmore
Trade Supervisor
IPSCO Inc.

Robert A. Clark
Manager
Trade and Audit
Algoma Steel Inc.

Mark Mittleman
Manager
Plate Products
Algoma Steel Inc.

Donald K. Belch
Director–Government Relations
Stelco Inc.

Fernando Ferreira
Product Manager–Flat Rolled Products
Wirth Steel

Alan Bromley
President
Plate Sales Division
Samuel Plate Sales

Todd Beacom
Corporate Purchasing Manager
Anchor Lamina Inc.

J.E.M. Braid
Senior Research Scientist
CANMET Materials Technology
Laboratory
Minerals and Metals Sector
Department of Natural Resources



Ottawa, Wednesday, August 27, 2003

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**THE DUMPING OF CERTAIN HOT-ROLLED CARBON STEEL PLATE AND
HIGH-STRENGTH LOW-ALLOY STEEL PLATE ORIGINATING IN OR
EXPORTED FROM BULGARIA, THE CZECH REPUBLIC AND ROMANIA**

TRIBUNAL: RICHARD LAFONTAINE, Presiding Member
ZDENEK KVARDA, Member
JAMES OGILVY, Member

STATEMENT OF REASONS

BACKGROUND

On August 12, 2003, pursuant to subsection 37.1(1) of the *Special Import Measures Act*,¹ the Canadian International Trade Tribunal (the Tribunal) issued a preliminary determination of injury relating to the dumping of hot-rolled carbon steel plate and high-strength low-alloy steel plate not further manufactured than hot-rolled, heat-treated or not, in cut lengths in widths from 24 inches (+/- 610 mm) to 152 inches (+/- 3,860 mm) inclusive and in thicknesses from 0.187 inches (+/- 4.75 mm) to 5.25 inches (+/- 133 mm) inclusive, originating in or exported from Bulgaria, the Czech Republic and Romania, excluding plate produced to American Society for Testing and Materials (ASTM) specifications A515 and A516M/A516 Grade 70 in thicknesses greater than 3.125 inches (+/- 79.3 mm), 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).

This inquiry was commenced following the initiation, on June 13, 2003, by the Commissioner of the Canada Customs and Revenue Agency (the Commissioner), of an investigation into the alleged dumping of the above-mentioned goods.

On June 16, 2003, the Tribunal issued a notice of commencement of preliminary injury inquiry.² On June 19, 2003, after a review of the record provided by the Commissioner showing that the current production of plate in Canada was limited to thicknesses of up to 3.0 inches, the Tribunal requested the parties to make submissions concerning the current status and plans by domestic producers for the production and sale of carbon steel plate in thicknesses greater than 3.0 inches and to provide evidence and argument on the physical and economic substitutability between carbon steel plate in thicknesses greater than 3.0 inches and other plate subject to the inquiry. At the same time, the Tribunal issued questionnaires to domestic producers and importers of carbon steel plate requesting a breakdown, by thickness, of their sales of carbon steel plate from domestic production and from imports.

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

2. C. Gaz. 2003.I.2049.

On July 18, 2003, the Tribunal decided to hold a hearing, taking into account the submissions and questionnaire responses received. That hearing, with public and *in camera* testimony, was held in Ottawa, Ontario, on July 28, 2003. Its purpose was to allow the Tribunal to hear testimony and argument on the current status and plans by the domestic producers for the production and sale of carbon steel plate in thicknesses greater than 3.0 inches and on the physical and economic substitutability between carbon steel plate in thicknesses greater than 3.0 inches and other plate subject to the inquiry, as well as whether the prices of thicker imported steel plate are likely to have an impact on the pricing of like goods of lesser thicknesses.

Algoma Steel Inc. (Algoma), IPSCO Inc. (IPSCO) and Stelco Inc. (Stelco) made submissions and were represented by counsel. Wirth Steel (Wirth), an importer, also made submissions and was represented by counsel. The Government of Bulgaria made a submission, and a representative of that government appeared at the hearing.

Representatives of a large steel service centre and an end user, Samuel Plate Sales and Anchor Lamina Inc., respectively, and a research scientist from the Department of Natural Resources appeared as Tribunal witnesses.

ANALYSIS

The Tribunal's mandate, in a preliminary injury inquiry, is set out under subsection 34(2) and section 37.1 of *SIMA*, which require the Tribunal to determine whether there is evidence that discloses a reasonable indication that the dumping of the subject goods has caused injury or retardation or is threatening to cause injury. "Injury" is defined in *SIMA* as "material injury to a domestic industry". "Domestic industry" means the domestic producers as a whole of the "like goods" or whose collective production constitutes a "major proportion" of the total domestic production of the like goods. Accordingly, the Tribunal finds that Algoma, IPSCO and Stelco constitute the domestic industry.

Jurisdictional Matters

In addition to the question of whether there is a reasonable indication of injury, the issues before the Tribunal in this case are: whether, under subsection 34(2) of *SIMA*,³ the Tribunal has authority to gather more information and evidence on the different thicknesses of plate; whether there is more than one class of like goods; and whether the Tribunal has the authority, in a preliminary injury inquiry, to grant a request for exclusion for plate in thicknesses greater than 2.75 inches made by Wirth pursuant to paragraph 35(1)(b).⁴ In this case, the Tribunal was of the view that, given Stelco's decision to idle its plate mill, Wirth's request

3. Subsection 34(2) of *SIMA* reads as follows: "The Tribunal shall, without delay, after receipt by the Secretary under subparagraph (1)(a)(i) of a notice of an initiation of an investigation, make a preliminary inquiry (which need not include an oral hearing) into whether the evidence discloses a reasonable indication that the dumping or subsidizing of the goods has caused injury or retardation or is threatening to cause injury."

4. Paragraph 35(1)(b) of *SIMA* states in part:

35. (1) The Commissioner shall act under subsection (2) and the Tribunal shall act under subsection (3) if, at any time before the Commissioner makes a preliminary determination under subsection 38(1) in respect of goods of a country or countries,

(b) the Tribunal comes to the conclusion in respect of some or all of the goods that the evidence does not disclose a reasonable indication that the dumping or subsidizing of the goods has caused injury or retardation or is threatening to cause injury.

for an exclusion and the question of physical and economic substitutability between the different thicknesses of plate, an oral hearing into the matter was warranted. The Tribunal was of the view that a short focussed hearing would allow it to better examine the underlying reasons for Stelco's decision, as well as the domestic industry's plans with respect to the production of plate in thicknesses greater than 3.0 inches.

With respect to the issue of the Tribunal's authority under subsection 34(2) of *SIMA*, Stelco argued that the Tribunal had embarked on a mini-inquiry, gathering new evidence, and that it was very close to exceeding its jurisdiction under section 34. That section, in Stelco's submission, provides that the Tribunal can only determine whether there is a reasonable indication of injury, which is less of a standard to meet than having to determine whether there is a *prima facie* case. Moreover, the term "of the goods" in section 34 refers to the goods as defined by the Commissioner. Stelco argued that, in a preliminary injury inquiry, the evidence provided to the Tribunal is the information and material that has been submitted from the Commissioner pursuant to paragraph 34(1)(b) and does not include new evidence.

With respect to the issue of class of goods, the domestic industry submitted that the Commissioner initiated the investigation with respect to one class of subject goods of thicknesses from 0.187 inches to 5.25 inches, of various grades, and had not differentiated the subject goods by thickness of plate. The domestic industry argued that the evidence indicated that the subject goods are identical to the like goods and that no rationale exists, based on the conditions of the domestic plate market, to justify dividing the single class of goods from 0.187 inches to 5.25 inches, in all grades, into six thickness classes, as done by the Tribunal in its questionnaire. The domestic industry argued that the evidence before the Tribunal was that the subject goods are produced using the same methods and the same distribution channels and that they are not sold in six classes nor do buyers require or purchase the subject goods in those six classes. Plate has the same chemical and physical attributes that do not change with the thickness of the product.

Algoma argued that section 34 of *SIMA* is a permissive provision which authorizes the Tribunal to establish classes of goods which would divide the original definition contained in the Commissioner's initiation of an investigation. Algoma submitted that, if the Tribunal was convinced by conclusive evidence at the preliminary injury inquiry stage that there was more than one class of goods, then there may be a valid reason to collect the data and to inquire into whether there was injury to more than one class of goods, such as in thicknesses from 0.187 inches up to and including 4.0 inches and in thicknesses greater than 4.0 inches to 5.25 inches. However, in Algoma's view, a determination of no injury, using a section 42 standard, would be premature based on the evidence contained in the record of the present preliminary injury inquiry. Algoma also argued that paragraph 35(1)(b) provides the Tribunal with wide discretion to determine the scope of the preliminary injury inquiry. However, in Algoma's submission, the facts in this case do not permit dividing the subject goods into separate classes of goods.

IPSCO argued that an exclusion request, such as the one made by Wirth, should be dealt with at the injury inquiry stage, in the fullness of a hearing when all the evidence is heard and not in a preliminary injury inquiry. Moreover, the industry submitted that there is and will be production of plate in thicknesses of 2.75 inches and greater. The evidence shows that Stelco has produced plate in thicknesses greater than 3.0 inches to 5.25 inches. Algoma and IPSCO have provided evidence that they are producing or will soon be producing plate in thicknesses of 3.25 inches and that they soon plan to produce plate in thicknesses of up to 4.0 inches. Finally, the domestic industry argued that, if a product exclusion were granted, this could cause the retardation of production by IPSCO of plate in thicknesses of up to 4.0 inches and of Algoma's continuing development of its range sizes, and jeopardize Stelco's plans to resume production of like goods. Algoma argued that the Tribunal has discretion to grant an exclusion request at the preliminary injury

inquiry but that, on the facts of this case, it would be inappropriate for the Tribunal to grant an exclusion based only on whether there is production of like goods by the domestic industry.

Wirth argued that the evidence supported a request for exclusion of plate in thicknesses of 2.75 inches and greater, given the different pricing depending on the thickness range of plate. Wirth also argued that the evidence shows that Stelco has idled its plate mill and cannot offer thick plate. Moreover, Stelco has produced profile slabs and not plate. Finally, the domestic industry has not provided any definitive evidence of production or production plans to produce plate in thicknesses greater than 3.0 inches.

It is clear that paragraph 35(1)(b) of *SIMA* provides that the Tribunal may come to the conclusion that the evidence does not disclose a reasonable indication that the dumping of some or all of the goods has caused injury. In this regard, the Tribunal notes that, in its reply submissions, Algoma indicates that the Tribunal has a wide discretion to determine the scope of its preliminary determination of injury. In argument, Algoma further stated that the Tribunal's jurisdiction under section 34 is clear. The provision is a permissive one. It is one, Algoma submitted, under which the Tribunal has taken on the jurisdiction to create classes of goods and to divide the original definition contained in the Commissioner's initiation of an investigation. According to Algoma, the Tribunal has the ability to do that. Algoma also argued that paragraph 35(1)(b) provides the Tribunal with the authority to make exclusions at this stage. The Tribunal agrees.

The Tribunal must now determine which domestically produced goods are like goods to the subject goods. The question that was raised at the hearing was whether domestically produced thicker plate was similar to the subject goods. The Tribunal is of the view that the domestic industry produces substantially the same goods as the subject goods and that they are, therefore, like goods to the subject goods. The Tribunal is also of the opinion that, based on the evidence on the record at this time, there is one class of like goods. The goods have, for instance, physical characteristics, channels of distribution and manufacturing processes that closely resemble each other, although their characteristics may vary slightly depending on end use or application. Moreover, the evidence indicated that the domestic industry produces the like goods using the same methods, uses the same distribution channels and does not sell the goods by class, and that buyers do not require or purchase the subject goods in different classes. The Tribunal is also of the view, based on the evidence on the record, that there may be a price relationship between different thicknesses of plate within the same class, such that the price for one thickness may affect the price for another thickness.

The Tribunal is of the view that it is conceivable that, in a preliminary injury inquiry, it could grant exclusions in exceptional circumstances, such as when the evidence clearly establishes the absence of recent or imminent production of like goods for reasons unrelated to dumping. The Tribunal is also of the view that the evidence on the record was clearly insufficient for it to do so in this instance. Moreover, the Tribunal notes that it is incumbent upon the requester of the exclusion to satisfy the Tribunal that the granting of such an exclusion was justifiable at this stage. It failed to do so.

Finally, the Tribunal accepts that the "reasonable indication" standard referred to in sections 34 and 35 of *SIMA* is clearly not as onerous as the one required in an inquiry under section 42 or 76, where causality of injury would be established on the basis of a preponderance of evidence.

Injury

The Tribunal notes that the evidence provided by the Commissioner shows that, during the Commissioner's period of investigation, nearly all the goods reviewed appeared to have been dumped and

the estimated volume of dumped goods from each of the named countries was greater than the negligibility threshold of 3 percent.

In its complaint to the CCRA, Algoma, supported by IPSCO and Stelco, submitted that imports of the subject goods have caused and threaten to cause material injury to the domestic industry in the form of reduced market share, lost sales, price erosion, price suppression, underutilization of plate production capacity and poor financial performance. In support of the complaint, Stelco provided evidence of lost sales that, according to Stelco, could have provided the volume of sales necessary to avoid the idling of its plate mill.

The Government of Bulgaria submitted that the domestic producers' share of the carbon steel plate market has been in decline since 2000 and that the share of all importers was increasing. On the issue of a threat of injury, the submission noted that the subject goods exported from Bulgaria have not been subject to any anti-dumping actions recently. With respect to negligibility, the submission stated that, in 2002, Bulgarian exports totalled less than 10,000 tonnes and that, compared to the total volume of plate imported into Canada, this was negligible. With respect to the submission by the Government of Bulgaria, the Tribunal notes that there is no other evidence on the record that would lead the Tribunal to reach a different decision from that of the Commissioner.

Turning to the question of injury, the Tribunal is of the view that there is evidence that dumped imports from the named countries may have contributed to weaknesses in several of the areas covered by the standard economic indicators of injury, as well as being part of the cause of the idling of Stelco's plate mill. The evidence on the record indicates that, from 2001 through March 31, 2003, competition between the subject goods and the like goods led to a corresponding loss of sales of the latter and that the share of the market held by dumped imports grew steadily, increasing by 6.1 percentage points. Although non-subject imports also increased after 2000, the subject goods captured nearly 20 percent more market share during that period and, in the Tribunal's view, in the absence of dumping, many of the industry's sales that were allegedly lost to dumped goods, and much of the corresponding lost market share, would have remained with the industry.

Moreover, there is evidence on the record that suggests that the prices at which the subject goods were sold both suppressed and eroded domestic prices and, thereby, put downward pressure on industry margins and profitability. According to the evidence filed by Algoma, domestic prices remain below their 1998 levels, when several other countries were dumping carbon steel plate in Canada. Furthermore, the evidence indicates that Algoma has only been able to realize part of the price increases that it announced in 2002. To this end, both Algoma and Stelco provided evidence that the availability of low-priced imports from the named countries has put strong downward pressure on the Canadian industry's prices of steel plate, with the result that both reported declining sales volumes, rising unit costs and falling profit margins.

The evidence also indicates that, although the industry has continued to make capital investments in its production facilities in order to reduce costs and increase its international competitiveness, its plate production capacity remains significantly underutilized.

The domestic industry submitted that subject goods had been sold at uniform prices per tonne, a practice that would allow dumped prices for plate in thicker dimensions to be used to average down prices in the lesser thicknesses. With respect to the alleged impact of this bundled or package pricing, the Tribunal is of the opinion that the evidence on the record does not adequately support the industry's submissions and

testimony to the effect that this alleged practice is likely to cause injury. The Tribunal is unable, at this time, to conclude that such occurrences took place with respect to the subject goods. In this connection, it is also not clear to the Tribunal whether the named countries produce or export plate in thicknesses greater than 4.0 inches.

Having regard to the foregoing facts, the Tribunal is of the view that the evidence on the record discloses a reasonable indication that the dumping of the subject carbon steel plate has caused injury to the domestic industry.

With respect to the question of retardation, the Tribunal notes that retardation is defined in *SIMA* as material retardation of the establishment of a domestic industry. Given that there is already production of like goods in Canada, the retardation of any potential additional production would not, in the Tribunal's view, qualify as retardation under the provisions of *SIMA*.

With respect to Stelco's decision to idle its plate mill, the Tribunal heard some evidence that a decline in the demand for skelp (non-subject plate destined for the production of pipe) may have been an underlying factor leading to that decision. In the Tribunal's view, low demand for skelp may have contributed to Stelco's decision, but there was no evidence that it was the only factor. Should the Tribunal conduct an injury inquiry under section 42 of *SIMA*, this factor will need to be examined further.

Richard Lafontaine
Richard Lafontaine
Presiding Member

Zdenek Kvarda
Zdenek Kvarda
Member

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Member