



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Dumping and Subsidizing

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## DETERMINATION AND REASONS

Preliminary Injury Inquiry  
No. PI-2009-002

Hot-rolled Carbon Steel Plate and  
High-strength Low-alloy Steel Plate

*Determination issued  
Friday, September 4, 2009*

*Reasons issued  
Friday, September 18, 2009*

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

**THE DUMPING OF HOT-ROLLED CARBON STEEL PLATE AND  
HIGH-STRENGTH LOW-ALLOY STEEL PLATE ORIGINATING IN OR  
EXPORTED FROM UKRAINE**

**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 the evidence 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 inch (4.75 mm) up to and including 3.0 inches (76.0 mm) inclusive (with all dimensions being plus or minus allowable tolerances contained in the applicable standards, e.g. ASTM standards A6/A6M and A20/A20M), originating in or exported from Ukraine; 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) has caused injury or retardation or is threatening to cause injury.

This preliminary injury inquiry is pursuant to the notification, on July 6, 2009, that the President of the Canada Border Services Agency had initiated an investigation 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 there is evidence that discloses a reasonable indication that the dumping of the above-mentioned goods has caused injury.

Ellen Fry  
Ellen Fry  
Presiding Member

Serge Fréchette  
Serge Fréchette  
Member

Stephen A. Leach  
Stephen A. Leach  
Member

Susanne Grimes  
Susanne Grimes  
Acting Secretary

The statement of reasons will be issued within 15 days.

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## STATEMENT OF REASONS

### BACKGROUND

1. On July 6, 2009, following a complaint filed on May 26, 2009, by Essar Steel Algoma Inc. (Essar Algoma), the President of the Canada Border Services Agency (CBSA) initiated an investigation into the alleged injurious dumping of hot-rolled carbon steel plate and high-strength low-alloy (HSLA) 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 inch (4.75 mm) up to and including 3.0 inches (76.0 mm) inclusive (with all dimensions being plus or minus allowable tolerances contained in the applicable standards, e.g. ASTM standards A6/A6M and A20/A20M), originating in or exported from Ukraine; 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) (the subject goods).<sup>1</sup>
2. On July 7, 2009, the Canadian International Trade Tribunal (the Tribunal) issued a notice of commencement of preliminary injury inquiry.
3. The complaint is supported by two other domestic producers, Evraz Inc. NA Canada (Evraz) and SSAB Central Inc. (SSAB).
4. The complaint is opposed by the Ministry of Economy of Ukraine in Canada (MEU), which represents the interests of Ukrainian producers and exporters.
5. Azovstal Iron & Steel Works, a producer and exporter of the subject goods, was a party to the preliminary injury inquiry but did not make a submission to the Tribunal.
6. On August 4, 2009, after reviewing the information on the record, which generally covered the period from January 1, 2006, to December 31, 2008, the Tribunal decided to request information up to March 31, 2009, from Essar Algoma, Evraz and SSAB.<sup>2</sup> The Tribunal received replies to its request for information from the three domestic producers. Consequently, for the purposes of making its determination of 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, the Tribunal considered the period from January 1, 2006, to March 31, 2009, as the period of inquiry for its preliminary injury inquiry.
7. On September 4, 2009, pursuant to subsection 37.1(1) of the *Special Import Measures Act*,<sup>3</sup> the Tribunal determined that there was evidence that disclosed a reasonable indication that the dumping of the subject goods had caused injury.

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1. Hot-rolled carbon steel plate and HSLA steel plate produced domestically or imported from countries other than Ukraine that meet this product description will be hereinafter referred to as “carbon steel plate”. Carbon steel plate of this description and originating in or exported from Ukraine will be hereinafter referred to as the “subject goods”.
2. Administrative Record, Vol. 1 at 378-99, Vol. 2 at 206-229.
3. R.S.C. 1985, c. S-15 [*SIMA*].

## **CBSA'S DECISION TO INITIATE AN INVESTIGATION**

8. The CBSA was of the opinion that there was evidence that the subject goods had been dumped, as well as evidence that disclosed a reasonable indication that the dumping of the subject goods had caused injury or was threatening to cause injury. Accordingly, pursuant to subsection 31(1) of *SIMA*, the CBSA initiated an investigation on July 6, 2009.

9. In coming to its decision to initiate an investigation, the CBSA used information with respect to the volume of dumped goods for the period from April 1, 2008, to March 31, 2009.

10. The CBSA was of the view that the subject goods were dumped, with an estimated overall weighted average margin of dumping of 4.1 percent, when expressed as a percentage of the export price.

11. The CBSA estimated that the subject goods accounted for 6.3 percent of carbon steel plate imported into Canada from April 1, 2008, to March 31, 2009. As a result, the CBSA was of the opinion that the estimated volume of dumped goods was not negligible and that the estimated overall weighted average margin of dumping was not insignificant.<sup>4</sup>

## **SUBMISSIONS ON INJURY**

### **Complainant and Domestic Producers in Support of the Complaint**

12. The complainant, Essar Algoma, submitted that the dumping of the subject goods had caused injury to the domestic industry. In support of its allegations, Essar Algoma provided evidence of increased volumes of dumped goods, a reduction in market share, lost sales, discounted sales, price depression, underutilization of production capacity and declines in financial performance.

13. In addition, Essar Algoma submitted that the dumping of the subject goods was threatening to cause injury to the domestic industry. It submitted that the resurgence of imports of carbon steel plate into the Canadian market from Ukraine and other countries that were no longer subject to a Tribunal finding<sup>5</sup> was cogent evidence of a threat of injury. Essar Algoma also submitted, concerning threat of injury, that producers in Ukraine have a propensity to dump carbon steel plate in the U.S. market and that there is a grim forecast for carbon steel plate pricing and consumption in the North American market for the next four years.<sup>6</sup>

14. Evraz and SSAB indicated to the CBSA that they supported the complaint; however, they did not file submissions with the Tribunal.

### **Entity Opposed to the Complaint**

15. The MEU submitted that imports of the subject goods had not caused injury and were not threatening to cause injury to the domestic industry in the form of increased volume of imports, underutilization of production capacity, a decline in shipments and a deterioration of the domestic industry's financial performance, as alleged by Essar Algoma. Rather, it submitted that other factors, such as the significant volume of imports from the United States and the People's Republic of China (China) at low selling prices and the global economic crisis, could be the cause of the injury to the domestic industry.

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4. Administrative Record, Vol. 1 at 352-53.

5. *Certain Hot-rolled Carbon Steel Plate and High-strength Low-alloy Plate* (17 May 2004), RR-2003-001 (CITT) [Plate II]; *Certain Hot-rolled Carbon Steel Plate* (27 June 2005), RR-2004-004 (CITT) [Plate IV].

6. Administrative Record, Vol. 1 at 58-59, Vol. 2 at 104, 106.

16. The MEU submitted that Essar Algoma failed to provide sufficient, complete and substantiated evidence to establish a reasonable indication that imports of the subject goods were the cause of the injury or a threat of injury to the domestic industry.

## ANALYSIS

### Legislative Framework

17. The Tribunal's mandate in a preliminary injury inquiry is set out in subsection 34(2) of *SIMA*, which requires the Tribunal to determine whether the evidence discloses a reasonable indication that the dumping of the subject goods has caused injury or retardation or is threatening to cause injury. In making its determination, the Tribunal takes into account the factors prescribed in section 37.1 of the *Special Import Measures Regulations*.<sup>7</sup>

18. Subsection 2(1) of *SIMA* defines "injury" as "...material injury to a domestic industry" and "retardation" as "...material retardation of the establishment of a domestic industry". It also defines "domestic industry" as "...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 except that, where a domestic producer is related to an exporter or importer of dumped or subsidized goods, or is an importer of such goods, 'domestic industry' may be interpreted as meaning the rest of those domestic producers". Therefore, the Tribunal must identify the like goods and the domestic industry that produces those goods before addressing the issues of injury, retardation or threat of injury.

### Like Goods and Classes of Goods

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

- (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.

20. In deciding the issues of like goods and classes of goods, the Tribunal typically considers a number of factors, including the physical characteristics of the goods (such as composition and appearance), their market characteristics (such as substitutability, pricing, distribution channels and end uses) and whether the goods fulfill the same customer needs.<sup>8</sup>

21. In view of the evidence on the record in relation to these factors, the Tribunal finds, in the context of this preliminary injury inquiry, that carbon steel plate produced in Canada are "like goods" to the subject goods.

22. Concerning the question of classes of goods, Essar Algoma submitted that, based on the evidence on the record and the Tribunal's reasons in previous injury inquiries and expiry reviews involving nearly identical goods, there is one class of goods in this inquiry.<sup>9</sup> The Tribunal notes that no arguments to the contrary were received during this preliminary injury inquiry. Accordingly, for the purposes of determining whether there is a reasonable indication of injury, the Tribunal will consider carbon steel plate as comprising a single class of goods.

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7. S.O.R./84-927.

8. See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at para. 48.

9. Administrative Record, Vol. 3, Reply Submission of Essar Algoma at para. 13.

23. However, the Tribunal is of the view that there is evidence on the record which indicates that there may be more than one class of goods. The question as to whether there could exist more than one class of goods is an issue that will need to be fully addressed during an inquiry under section 42 of *SIMA*, if the CBSA concludes, in its preliminary determination, that the subject goods have been dumped. Consequently, the Tribunal will collect data on three potential classes of goods and will also ask for submissions from parties on that issue. These potential classes of carbon steel plate are: (1) structural quality; (2) HSLA; and (3) pressure vessel quality. The Tribunal has also requested the CBSA to collect separate information on the dumping of these three potential classes of goods.

### **Domestic Industry**

24. In its decision to initiate the investigation, the CBSA indicated that Essar Algoma, Evraz and SSAB accounted for the vast majority of the total domestic production of like goods and that the remainder of the domestic production was accounted for by Canadian steel service centres that cut carbon steel plate to length from coils. While there is no information on the record to indicate the amount of like goods produced by these steel service centres, the evidence indicates that their production is likely minimal.<sup>10</sup>

25. Accordingly, on the basis of the evidence on the record of this preliminary injury inquiry, the Tribunal finds that, in terms of volume of production, Essar Algoma, Evraz and SSAB account for a major proportion of the total domestic production of like goods and, thus, are considered to constitute the domestic industry.

### **Volume of Dumped Goods**

26. Essar Algoma submitted that, since the Tribunal rescinded its orders against Ukraine in Plate II and Plate IV, significant quantities of low-priced subject goods have reappeared on the Canadian market.

27. The MEU submitted that the small volumes of imports of the subject goods that entered the Canadian market and the shipment difficulties associated with the distance separating the two countries clearly demonstrate the lack of interest of Ukrainian producers in the Canadian market.

28. The Tribunal's estimates of the volume of imports are based on Essar Algoma's complaint, Statistics Canada data and data from the most recent expiry review on carbon steel plate.<sup>11</sup> These data indicate that the volume of imports from Ukraine decreased by 51 percent in 2007 over 2006, but increased by 45 percent in 2008 over 2007. Over the period from 2006 to 2008, the volume of imports from Ukraine decreased by 29 percent. Over the same period, the ratio of the volume of dumped goods relative to the volume of domestic production decreased from 10 percent to 6 percent, and the ratio of the volume of dumped goods relative to the total sales volume of the domestic industry decreased from 15 percent to 10 percent.<sup>12</sup> These results are similar to, and follow the same trend as, the complainant's estimates, which were considered reasonably accurate by the CBSA.

29. Based on the foregoing, the Tribunal concludes that, although there were some fluctuations in the volume of imports from Ukraine, both in absolute terms and relative to the domestic production and sales of like goods, during the period of inquiry, there was no net increase and no significant increase in the volume of imports from Ukraine, at either level.

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10. Administrative Record, Vol. 1 at 349, Vol. 2 at 207, 213.

11. *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate* (8 January 2009), RR-2008-002 (CITT) [Plate V].

12. Administrative Record, Vol. 2 at 42, 208, 219, 224.



### Effect on the Price of Like Goods

30. Essar Algoma submitted that the subject goods have caused the domestic industry to lose orders and reduce its average unit selling price to retain customers. It also submitted that, for some portions of the period of inquiry, the average unit selling price of the subject goods was significantly lower than its average unit selling price. To illustrate the negative effect that the competition of the subject goods had on its selling prices during the period of inquiry and to substantiate its allegations of price undercutting, price depression and lost sales, Essar Algoma provided specific import activity reports for 2007 and 2008. These reports are analyzed in detail below as part of the Tribunal's micro price analysis.

31. Essar Algoma submitted that, in an attempt to remain competitive with the subject goods, the domestic industry lost significant revenues from 2006 to 2008.<sup>13</sup>

32. The Tribunal's estimates of the prices of carbon steel plate are derived from information provided by the domestic producers, Statistics Canada data and data from Plate V.

33. The Tribunal reviewed the pricing evidence on the record of the preliminary injury inquiry at both the macro and micro levels. The macro analysis reveals that, in 2006, the average unit selling price of imports of the subject goods in the Canadian market was 15 percent lower than the average unit selling price of like goods. When comparing 2007 to 2006, the average unit selling price of imports from Ukraine increased by 7 percent, but remained 3 percent lower than the average unit selling price of like goods. During this time frame, the domestic industry's average unit selling price fell by 6 percent.

34. From 2007 to 2008, the average unit selling prices of the like goods and the subject goods increased by 34 percent and 67 percent respectively. Over the period of inquiry, average unit selling prices in the Canadian market fluctuated. However, when comparing 2006 to 2008, the average unit selling price of the like goods increased by 26 percent, while that of the subject goods increased by 78 percent. In 2008, imports from Ukraine were sold on the Canadian market at an average unit price that was 19 percent higher than that of the like goods.<sup>14</sup>

35. The Tribunal notes that a comparison of the total average unit selling prices of the domestic industry and those of importers of the subject goods is not always the best approach to determine the effect of the dumped imports on the price of the like goods in the Canadian market due to the issue of product mix. Consequently, the Tribunal considered the limited micro pricing data on the record, which consisted of Essar Algoma's specific injury allegations. Essar Algoma submitted that, in September 2007 and November 2008, it had to significantly reduce its price at specific accounts in order to secure business because of the competition from low-priced imports of the subject goods. Essar Algoma indicated that, in February 2008, it lost an order to imports of the subject goods which were priced well below its offered price. Essar Algoma indicated that, in May and July 2008, the amount of undercutting by imports of the subject goods was even greater at two different accounts.<sup>15</sup> The CBSA's estimates of normal values and export prices for 2008 support the complainant's allegations that some prices for the subject goods were lower than the price of like goods in the Canadian market.<sup>16</sup>

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13. Administrative Record, Vol. 2 at 32, 112.

14. Administrative Record, Vol. 2 at 208, 219, 224, Vol. 2.1 at 40-41.

15. Administrative Record, Vol. 2 at 30-31, 44-48.

16. Administrative Record, Vol. 2 at 191, 208, 219, 224.

36. Based on the foregoing analyses, the Tribunal is of the view that the pricing information on the record shows some evidence of a causal link between the injury suffered by the domestic industry and the presence of the subject goods in the Canadian market. This injury took the form of price undercutting, price depression and lost sales.

### **Impact on the Domestic Industry**

37. Essar Algoma submitted that its depressed pricing and lower volumes shipped as a result of the competition from the subject goods translated into a deterioration of its financial performance both at the gross margin and net income levels during the period from 2006 to 2008, and especially in the fourth quarter of 2008, and an underutilization of the domestic industry's production capacity. Essar Algoma submitted that its declining financial performance is a reliable indicator of the impact that imports of the subject goods have had on the revenues of the entire domestic industry during the period of inquiry.

38. The Tribunal notes that the evidence on the record of this preliminary injury inquiry shows a reduction in domestic production and a decline in domestic sales between 2006 and 2007. The evidence also shows a severe deterioration in the domestic industry's financial performance, at both the gross margin and net income levels, over the period of inquiry.<sup>17</sup>

39. The evidence indicates that, in 2007, the domestic industry was unable to increase its average unit selling price to recover the increase in its average unit cost of goods sold. In fact, in an attempt to be more competitive with the subject goods, the domestic industry reduced its average unit selling price, but saw an increase in its unit cost of goods sold. In 2008, even though, on a consolidated basis, Essar Algoma and SSAB were able to increase their average unit selling price to recover the increase in their average unit cost of goods sold, they registered a larger revenue loss. In the first quarter of 2009, Essar Algoma and SSAB were unable to recover their average unit cost of goods sold which, in turn, translated into a negative financial performance, both at the gross margin and net income levels.<sup>18</sup>

40. With respect to the domestic industry's underutilization of its capacity for carbon steel plate, the Tribunal notes that it remained fairly stable during 2006 and 2007, and decreased slightly during the first quarter of 2008.<sup>19</sup>

41. Although no evidence was provided concerning other injury factors, such as employment, productivity, return on investments, cash flow, wages, growth and the ability to raise capital, the Tribunal is of the view that the decrease in profitability over the period of inquiry would reasonably be expected to have a negative impact on the domestic industry's cash flow and ability to raise capital.

42. Based on the foregoing, the Tribunal is satisfied that the evidence on the record of the preliminary injury inquiry provides a reasonable indication that the dumping of the subject goods impacted negatively on the state of the domestic industry and, consequently, has caused injury to the domestic industry.

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17. Administrative Record, Vol. 2 at 208, 219, 224.

18. Data for 2006 and 2007 comprise financial information from the three domestic producers, while data for 2009 consist of Essar Algoma's and SSAB's financial information. Administrative Record, Vol. 2 at 208, 219, 224.

19. Estimates on production capacity utilization are derived from the complaint and Plate V data. Administrative Record, Vol. 2 at 108, Vol. 2.1 at 52, 124-25.

**Other Factors**

43. The MEU submitted that non-dumping factors, such as the significant volume of imports from the United States and China at low selling prices in the Canadian market and the global economic crisis, could be causing injury to the domestic industry.

44. The Tribunal is of the opinion that the limited evidence on the record of the preliminary injury inquiry regarding the impact that any of these other factors might have had on the domestic industry is not sufficient to negate its conclusion that there is a reasonable indication that the dumping of the subject goods has caused injury. The Tribunal is of the view that it is only in the context of an inquiry under section 42 of *SIMA* that it will be in a position to fully assess the magnitude of these non-dumping factors and their impact on the domestic industry.

**CONCLUSION**

45. Based on the foregoing analysis, the Tribunal is of the view that there is evidence that discloses a reasonable indication that the dumping of the subject goods has caused injury to the domestic industry.

Ellen Fry  
Ellen Fry  
Presiding Member

Serge Fréchette  
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Member

Stephen A. Leach  
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