



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

DETERMINATION AND REASONS

Preliminary Injury Inquiry
No. PI-2013-003

Hot-Rolled Carbon Steel Plate

*Determination issued
Monday, November 4, 2013*

*Reasons issued
Tuesday, November 19, 2013*

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

HOT-ROLLED CARBON STEEL PLATE ORIGINATING IN OR EXPORTED FROM THE FEDERATIVE REPUBLIC OF BRAZIL, CHINESE TAIPEI, THE KINGDOM OF DENMARK, THE REPUBLIC OF INDONESIA, THE ITALIAN REPUBLIC, JAPAN AND THE REPUBLIC OF KOREA

PRELIMINARY DETERMINATION OF INJURY

The Canadian International Trade Tribunal, pursuant to 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 thicknesses from 0.187 inches (+/-4.75 mm) up to and including 3.0 inches (76.2 mm) (with all dimensions being plus or minus allowable tolerances contained in the applicable standards), but excluding plate for use in the manufacture of pipe and tube (also known as skelp); plate in coil form, plate having a rolled, raised figure at regular intervals on the surface (also known as floor plate), originating in or exported from the Federative Republic of Brazil, Chinese Taipei, the Kingdom of Denmark, the Republic of Indonesia, the Italian Republic, Japan, and the Republic of Korea has caused injury or is threatening to cause injury.

This preliminary injury inquiry follows the notification, on September 5, 2013, 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 or is threatening to cause injury to the domestic industry.

Jason W. Downey
Jason W. Downey
Presiding Member

Serge Fréchette
Serge Fréchette
Member

Ann Penner
Ann Penner
Member

Dominique Laporte
Dominique Laporte
Secretary

The statement of reasons will be issued within 15 days.

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STATEMENT OF REASONS

BACKGROUND

1. On September 5, 2013, following a complaint filed on July 15, 2013, 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 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 thicknesses from 0.187 inches (+/-4.75 mm) up to and including 3.0 inches (76.2 mm) (with all dimensions being plus or minus allowable tolerances contained in the applicable standards) (carbon steel plate or plate), but excluding plate for use in the manufacture of pipe and tube (also known as skelp); plate in coil form, plate having a rolled, raised figure at regular intervals on the surface (also known as floor plate), originating in or exported from the Federative Republic of Brazil (Brazil), Chinese Taipei, the Kingdom of Denmark (Denmark), the Republic of Indonesia (Indonesia), the Italian Republic (Italy), Japan, and the Republic of Korea (Korea) (the subject goods).
2. On September 6, 2013, the Canadian International Trade Tribunal (the Tribunal) issued a notice of commencement of preliminary injury inquiry.¹
3. Two domestic producers of plate, Evraz Inc. NA Canada (Evraz) and SSAB Central Inc. (SSAB), filed letters with the CBSA indicating support of Essar Algoma's complaint.² Evraz is a party to this proceeding, but did not file any arguments. SSAB is not a party to this proceeding.
4. The complaint is opposed by Nippon Steel & Sumimoto Metal Corporation, JFE Steel Corporation, Kobe Steel, Ltd. and Nisshin Steel Co., Ltd. (collectively, Nippon Steel et al.) and Usinas Siderurgicas de Minas Gerais S.A. (USIMINAS)
5. Other participants to this preliminary injury inquiry that did not file submissions are the Delegation of the European Union to Canada, Edmonton Exchanger, the Embassy of Brazil in Ottawa and Hanwa Canada Corporation.
6. On October 9, 2013, after reviewing the information on the record, the Tribunal issued requests for information (RFIs) from Evraz and SSAB, including data regarding their domestic plate production, sales and financial information. The Tribunal also requested information of these producers and Essar Algoma, to the extent that it was known to them, regarding the estimated plate production by steel service centres. The Tribunal received replies to its RFIs from Essar Algoma, Evraz and SSAB on October 16, 2013.
7. On November 4, 2013, pursuant to subsection 37.1(1) of the *Special Import Measures Act*,³ the Tribunal determined that there was evidence that disclosed a reasonable indication that the dumping of the subject goods had caused injury or was threatening to cause injury to the domestic industry.

1. C. Gaz. 2013.I.2133.

2. Exhibit PI-2013-003-02.01, Vol. 1, Att. 4.

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 September 5, 2013.

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 January 1, 2012, to March 31, 2013 (POI).

10. The CBSA estimated the margins of dumping and the volumes of dumped goods for each of the subject countries as follows:

CBSA's Dumping Estimates		
Country	Estimated Margin of Dumping (as a percentage of export price)	Estimated Volume of Dumped Goods (as a percentage of total imports)
Brazil	19.65	3.17
Chinese Taipei	4.29	0.26
Denmark	2.82	1.18
Indonesia	6.85	1.83
Italy	2.70	2.56
Japan	6.59	1.18
Korea	3.01	10.41
Total		21

11. The CBSA was of the opinion that the estimated margins of dumping were not insignificant and that the estimated volumes of dumped goods were not negligible.⁴

SUBMISSIONS ON INJURY AND THREAT OF INJURY

Essar Algoma and Domestic Producers in Support of the Complaint

12. Essar Algoma submitted that the dumping of the subject goods had caused injury to the domestic industry. In support of its injury allegations, Essar Algoma provided evidence of increased volumes of dumped goods, a reduction in its market share, lost sales, price depression, price suppression and undercutting by the subject goods, reduced production, overcapacity and declines in its financial performance over the POI.

13. In addition, Essar Algoma submitted that the dumping of the subject goods was also threatening to cause injury to the domestic industry. In support of its arguments on threat of injury, Essar Algoma indicated that the domestic plate industry is and will be particularly vulnerable to the effects of the dumped goods because of the weak global outlook and the continuing effects of the global economic crisis, including weakened demand and an increase in the cost of raw materials.

4. Exhibit PI-2013-003-05, Vol. 1E at 16.

14. Essar Algoma submitted that weak economic conditions in the subject countries, the imperative to protect large capital investments by maintaining production volumes as long as producers can cover their marginal cost of production and the fact that the Canadian pricing of plate tends to be higher than other export markets provide incentives for increased volumes of dumped goods to be imported into Canada by the subject countries.

15. An additional concern raised in Essar Algoma's submissions is the production overcapacity of Chinese plate producers and the competitive pressure of low-priced Chinese plate exports on the producers of the subject goods in both their domestic markets and their traditional export markets. This creates an added incentive for the producers of the subject goods to pursue markets such as Canada, where existing trade remedies against Chinese plate minimize that competitive pressure.

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

Parties Opposed to the Complaint

17. The parties opposed to the complaint, Nippon Steel et al. and USIMINAS, submitted that imports of the subject goods have not caused injury and do not threaten to cause injury to the domestic industry, as alleged by Essar Algoma.

18. Rather, USIMINAS's submissions focused on a number of factors, other than the dumped goods, that it believes have had an impact on the domestic producers, including the global recession and, in particular, the contraction in demand for plate, competition from U.S. plate and Essar Algoma's own importation of low-priced plate from India. USIMINAS urged the Tribunal to make a negative preliminary injury finding, largely on the grounds that there is insufficient evidence of a causal link between the injury alleged by the domestic industry and the dumped goods, thus terminating the investigation at the preliminary injury inquiry stage.

19. Nippon Steel et al. argued that the subject goods from Japan should be considered separately from the subject goods from the other subject countries because the conditions of competition applicable to Japanese goods are distinct. They argued that, when a separate analysis is conducted with respect to Japanese plate, the dumping does not disclose a reasonable indication of injury or threat of injury.

ANALYSIS

Legislative Framework

20. 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 or subsidizing of the [subject] goods has caused injury or retardation or is threatening to cause injury."

21. The “reasonable indication” standard that applies in a preliminary injury inquiry is lower than the evidentiary threshold that applies in final injury inquiries under section 42 of *SIMA*. The evidence in question need not be “. . . conclusive, or probative on a balance of probabilities”⁵ Nevertheless, simple assertions are not sufficient and must be supported by relevant evidence.⁶

22. In this case, Essar Algoma alleged that the dumping of the subject goods had caused injury and threatened to cause injury to Canadian producers of like goods. No allegations were submitted with regard to the subsidizing of the subject goods, nor were any allegations made in respect of retardation.

23. In its preliminary injury determination, the Tribunal takes into account the factors prescribed in section 37.1 of the *Special Import Measures Regulations*,⁷ including the import volumes of the dumped goods, the effect of the dumped goods on the price of like goods, the resulting economic impact of the dumped goods on the domestic industry and, if injury or threat of injury is found to exist, whether a causal relationship exists between the dumping of the goods and the injury or threat of injury.

24. However, before examining the allegations of injury and threat of injury, the Tribunal must identify the like goods and the domestic industry that produces those goods. This preliminary analysis is required because subsection 2(1) of *SIMA* defines “injury” as “. . . material injury to a domestic industry” and “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”

Like Goods and Classes of Goods

25. The CBSA defined the subject goods as 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 thicknesses from 0.187 inches (+/-4.75 mm) up to and including 3.0 inches (76.2 mm) (with all dimensions being plus or minus allowable tolerances contained in the applicable standards), but excluding plate for use in the manufacture of pipe and tube (also known as skelp); plate in coil form, plate having a rolled, raised figure at regular intervals on the surface (also known as floor plate), originating in or exported from Brazil, Chinese Taipei, Denmark, Indonesia, Italy, Japan, and Korea. The Tribunal must conduct its preliminary injury inquiry on the basis of this product definition.

26. In order to assess whether the evidence discloses a reasonable indication that the dumping of the subject goods has caused injury or is threatening to cause injury to the domestic producers of like goods, the Tribunal must first define the scope of the like goods in relation to the subject goods. It may also consider whether the subject goods constitute one or more classes of goods.

5. *Ronald A. Chisholm Ltd. v. Deputy M.N.R.C.E.* (1986), 11 CER 309 (FCTD).

6. Article 5 of the World Trade Organization (WTO) *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* requires investigating authorities to examine the accuracy and adequacy of the evidence provided in a dumping complaint to determine whether there is sufficient evidence to justify the initiation of an investigation, to reject a complaint or terminate an investigation as soon as the investigating authority is satisfied that there is not sufficient evidence of dumping or injury. Article 5 also specifies that simple assertions that are not substantiated with relevant evidence cannot be considered sufficient to meet the requirements of the article.

7. S.O.R./84-927 [*Regulations*].

27. Subsection 2(1) of the *SIMA* defines “like goods”, in relation to 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 characteristics of which closely resemble those of the other goods.

28. In deciding the issue 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.⁸

29. The evidence indicates that domestically produced plate competes directly with, has similar end uses as and can be substituted for the subject goods. Moreover, there is evidence on the record that domestically produced plate is sold through the same distribution channels and, in many cases, to the same customers as the subject goods. In terms of physical characteristics, the evidence on the record indicates that the same primary input materials are used for both domestically produced carbon steel plate and the subject goods, and both undergo similar manufacturing processes. Accordingly, the Tribunal finds, in the context of this preliminary inquiry, that carbon steel plate produced in Canada is like goods in relation to the subject goods.

30. Concerning the question of classes of goods, Essar Algoma submitted that, on the basis of 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 preliminary injury inquiry.⁹ The Tribunal notes that no arguments to the contrary or evidence that would justify the Tribunal proceeding on the basis of separate classes of goods 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.

Domestic Industry

31. In its decision to initiate the investigation, the CBSA indicated that Essar Algoma, Evraz and SSAB accounted for almost all known Canadian production of like goods and that the remainder of domestic production was accounted for by Canadian steel service centres that cut carbon steel plate to length from coils.¹⁰

32. In its complaint, Essar Algoma provided data on its production. As noted above, the Tribunal issued RFIs to Essar Algoma, Evraz and SSAB in order to better estimate the production of the rest of the domestic industry over the POI. While there is limited information on the record to indicate the amount of like goods produced by domestic steel service centres, the evidence indicates that their production is likely minimal.¹¹

8. See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at para. 48; *Bacteriological Culture Media* (31 May 1996), NQ-95-004 (CITT) at 9-10; *Thermal Insulated Board* (11 April 1997), NQ-96-003 (CITT) at 9-10; *Fasteners* (7 January 2005), NQ-2004-005 (CITT) at paras. 60-75; *Cross-linked Polyethylene Tubing* (29 September 2006), NQ-2006-001 (CITT) at paras. 45-47.

9. Exhibit PI-2013-003-02.01, Vol. 1 at paras. 40-43.

10. Exhibit PI-2013-003-05, Vol. 1E at para. 39.

11. *Ibid.*

33. Accordingly, on the basis of the evidence on the record, the Tribunal finds that, in terms of the 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 for the purposes of this preliminary injury inquiry.

Cumulation

34. In the context of a final injury inquiry under section 42 of *SIMA*, subsection 42(3) provides that the Tribunal must make a cumulative assessment of the injurious effects of dumped and subsidized goods that are imported into Canada if the Tribunal is satisfied that certain conditions are met. Specifically, the Tribunal must be satisfied that the margin of dumping or the amount of subsidy in relation to the goods from each of the countries is not insignificant,¹² that the volume of goods imported into Canada from any of those countries is not negligible¹³ and that an assessment of the cumulative effect of the subject goods would be appropriate, taking into account the conditions of competition between the goods from any of the named countries, the other dumped goods and the like goods.

35. While subsection 42(3) of *SIMA* deals with final injury inquiries, the Tribunal considers that it would be inconsistent not to cumulate the subject goods in a preliminary injury inquiry when the evidence available appears to justify cumulation.¹⁴

36. With respect to the first condition for cumulation under subsection 42(3) of *SIMA*, the Tribunal notes the CBSA's determination that the margins of dumping in relation to the goods from all subject countries, as well as the volume of imports from each country, were not insignificant or negligible.¹⁵

37. In the context of a preliminary injury inquiry, the Tribunal relies on the estimates of volumes and margins of dumping provided by the CBSA, including the CBSA's assessment of whether the volumes and margins are negligible or insignificant respectively. Accordingly, the Tribunal is satisfied that the first condition under subsection 42(3) of *SIMA* is met.

38. The second requirement that the Tribunal must consider in determining whether or not cumulation is appropriate are the conditions of competition between the goods from the subject countries, the other dumped goods and the like goods.

39. With respect to this requirement, Nippon Steel et al. submitted that Japanese plate should not be cumulated with other subject goods, as to do so would be inappropriate. In particular, Nippon Steel et al. argued that the average price of Japanese plate was well above the average price of the other subject goods and the price of like goods. Moreover, it argued that Japanese plate is purchased on the basis of its unique characteristics and high quality, in addition to the importance of long-term relationships between Japanese suppliers and Canadian end users.

12. Subsection 2(1) of *SIMA* defines "insignificant" as meaning, in relation to a margin of dumping, "... a margin of dumping that is less than two per cent of the export price of the goods".

13. Subsection 2(1) of *SIMA* defines "negligible" as meaning "... in respect of the volume of dumped goods of a country, (a) less than three per cent of the total volume of goods that are released into Canada from all countries and that are of the same description as the dumped goods, except that (b) where the total volume of dumped goods of three or more countries, each of whose exports of dumped goods into Canada is less than three per cent of the total volume of goods referred to in paragraph (a), is more than seven per cent of the total volume of goods referred to in paragraph (a), the volume of dumped goods from any of those countries is not negligible".

14. See, for example, *Corrosion-resistant Steel Sheet* (2 February 2001), PI-2000-005 (CITT) at 4, 5.

15. Exhibit PI-2013-003-05, Vol. 1E at 15-16.

40. In reply, Essar Algoma submitted that price alone should not be sufficient for decumulation. Moreover, Essar Algoma explained that the price differential between Japanese plate and the other subject goods was because Japanese plate tends to be of a higher grade than the other subject goods.

41. In determining whether it would be appropriate to make an assessment of the cumulative effect of the subject goods from Brazil, Chinese Taipei, Denmark, Indonesia, Italy, Japan and Korea on the domestic industry, the Tribunal must consider the conditions of competition in the Canadian marketplace between these countries, as well as between the subject goods and like goods. In making this assessment, the Tribunal typically considers the following factors:¹⁶ the degree to which the subject goods from each subject country are “fungible” with the subject goods from the other subject countries; whether the subject goods from only one subject country are present in a specific geographical market; the existence of common or similar channels of distribution; differences in the timing of the arrival of imports from a subject country and those of the other subject countries; and the availability of like goods supplied by the domestic industry.

42. The evidence on the record suggests that the subject goods and like goods are used in the same types of applications, including the production of rail cars, oil and gas storage tanks, heavy machinery, agricultural equipment, bridges, industrial buildings, high-rise office towers, automobile and truck parts, ships and barges, and pressure vessels. The evidence also indicates that the subject goods from all the subject countries and the like goods have the same technical characteristics and meet the same technical specifications and that, when the goods meet industry standards, the only differentiating factor is price. There is no evidence on the record of any differences between the subject goods from any of the subject countries and the like goods in terms of distribution channels or end users.¹⁷

43. With respect to the conditions of competition, no evidence provided to date has convinced the Tribunal that any of the subject goods are anything other than fungible or that any of the other conditions of competition between the subject goods and the like goods differ to such an extent that would justify decumulation of the effects of the subject goods from Japan. Therefore, the Tribunal is satisfied that an assessment of the cumulative effect of the subject goods from all sources is appropriate in this preliminary injury inquiry.

44. On the basis of the foregoing, the Tribunal will now examine whether the evidence discloses a reasonable indication of injury or threat of injury, taking into account the factors prescribed in section 37.1 of the *Regulations*.

Volume of Dumped Goods

45. Essar Algoma submitted that substantial volumes of the subject goods were imported during the POI. Nippon Steel et al. argued that only a small volume of the subject goods were imported from Japan and that this volume decreased over the POI. Likewise, USIMINAS of Brazil argued that only a small volume of the subject goods were imported from Brazil over the POI and pointed out that this volume was significantly less than non-subject imports of plate from the United States.

46. During a preliminary injury inquiry, the Tribunal relies on the volume data estimated by the CBSA, as supplemented by the information on the record. Further, the Tribunal must consider the CBSA’s determination that volumes of imports from the subject countries were not negligible.

16. See, for example, *Certain Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (17 August 2001), NQ-2001-001 (CIIT) at 16.

17. Exhibit PI-2013-003-05, Vol. 1E at 9.

47. The Tribunal observed that, on the basis of the import data estimates provided by the CBSA, the total volume of imports of the subject goods rose steadily and significantly, tripling over the POI.¹⁸

48. Although imports from the United States (a non-subject country) dominated the import market during the POI, the subject countries' share of total imports also increased significantly over this same period of time, more than doubling between 2010 and 2012.¹⁹

49. The Tribunal also considered the volume of the subject goods relative to domestic production and consumption of like goods. Over the POI, the ratio of the volume of the subject goods relative to the volume of domestic production more than tripled. A similar pattern is observed when comparing the ratio of the volume of the subject goods relative to the total sales volume of the domestic industry.²⁰

50. On the basis of the foregoing, the Tribunal concludes that, during the POI, the volume of imports of the subject goods increased significantly in absolute terms and relative to both the volume of domestic production and domestic consumption of the domestically produced goods.

Effect on Price of Like Goods

51. In its complaint, Essar Algoma argued that the subject goods captured market share at the expense of the domestic industry by aggressively undercutting prices. It submitted that the subject goods were the lowest-priced plate products on the Canadian market by a significant margin over the entire POI. Moreover, it argued that it was forced to substantially reduce its selling price in order to compete with the subject goods, notwithstanding increased costs, all of which resulted in substantial losses on its domestic sales of like goods.

52. The Tribunal notes that the average unit import prices of carbon steel plate from the subject countries were consistently lower than the domestic industry's average unit selling prices over the POI. Prices were also lower than the average unit import prices of carbon steel plate from the non-subject countries available on the Canadian market. Accordingly, a comparison of the average unit import prices of the subject goods to the average unit selling prices of the like goods shows a reasonable indication of significant price undercutting in each period of the POI, with undercutting margins ranging from 15 to 19 percent.²¹ The anecdotal evidence provided by Essar Algoma also supports its argument that prices of like goods have been undercut by prices of the subject goods in specific instances.²²

53. Essar Algoma argued that its selling prices declined between 2011 and 2012 because of the presence of low-priced subject imports in the Canadian market. The Tribunal observes that the domestic industry's average unit selling prices did in fact decline between 2011 and 2012. The average unit import

18. Exhibit PI-2013-003-03.02 (protected), Vol. 2A at 16, 57.

19. *Ibid.*

20. *Ibid.* at 12, 57, 58; Exhibit PI-2013-003-03.01 (protected), Vol. 2 at 132; Exhibit PI-2013-003-02.01, Vol. 1 at 143; Exhibit PI-2013-003-RI-01A (protected), Vol. 2A at Annex A; Exhibit PI-2013-003-RI-03A (protected), Vol. 2A at Annex A.

21. Exhibit PI-2013-003-03.02 (protected), Vol. 2A at 57-58; Exhibit PI-2013-003-RI-03A (protected), Vol. 2A at 128; Exhibit PI-2013-003-RI-01A (protected), Vol. 2A at 122; Exhibit PI-2013-003-03.01 (protected), Vol. 2, Att. 24 at 132.

22. Exhibit PI-2013-003-03.01 (protected), Vol. 2, Att. 25.

prices of the subject goods also declined during this same period, but were consistently lower than the average unit selling prices of the like goods.²³ Accordingly, there is a reasonable indication of price depression in 2012.

54. Turning to the issue of price suppression, the Tribunal compared the total average unit cost of goods sold and the average unit selling prices of the like goods. The comparison suggests that there was price suppression in 2012. While the domestic industry's average selling price increased in 2011 and declined thereafter, the domestic industry's average costs of goods sold increased in both 2011 and 2012.²⁴ There is a reasonable indication that the domestic industry was unable to raise its selling prices to recover these increased costs in 2012.

55. On the basis of the foregoing analysis, 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 suppression and price depression.

Impact on the Domestic Industry

56. As part of its analysis under paragraph 37.1(1)(c) of the *Regulations*, the Tribunal considers the impact of the dumped goods on the state of the domestic industry. In particular, it takes into account factors such as actual or potential declines in output, sales, market share, profits, productivity, return on investment, capacity utilization, actual or potential negative effects on cash flow, inventories, employment, wages and various other economic factors that are relevant under the circumstances.

57. Essar Algoma submitted that it lost significant volumes of sales and market share to the subject goods. Even when Canadian consumption levels recovered from the lows of 2009, the return of the market was captured almost entirely by the subject goods.

58. Essar Algoma also argued that it was forced to reduce its selling price of like goods in order to compete with the subject goods, the impact of which could be seen in its negative financial results.

59. The evidence on the record indicates that the total annual Canadian production of like goods was fairly steady between 2010 and 2012, although it decreased slightly over the POI.²⁵

60. There is evidence on the record that appears to support allegations that the subject imports captured sales during the period of market recovery following 2009. During the POI, the Tribunal estimates that the apparent market increased significantly in 2011 and then slightly contracted in 2012. However, the increase in the size of the apparent market and the increase in sales volumes of the domestic industry pale in comparison to the tripling of sales of the subject goods recorded over the same period.²⁶

23. Exhibit PI-2013-003-03.02 (protected), Vol. 2A at 31, 57-58; Exhibit PI-2013-003-RI-03A (protected), Vol. 2A at 128; Exhibit PI-2013-003-RI-01A (protected), Vol. 2A at 122; Exhibit PI-2013-003-03.01 (protected), Vol. 2, Att. 24 at 132.

24. *Ibid.*; Exhibit PI-2013-003-RI-03A (protected), Vol. 2A at 128; Exhibit PI-2013-003-RI-01A (protected), Vol. 2A at 122.

25. Exhibit PI-2013-003-02.01, Vol. 1 at 143; Exhibit PI-2013-003-RI-03A (protected), Vol. 2A at 128; Exhibit PI-2013-003-RI-01A (protected), Vol. 2A at 122, PI-2013-003-03.01 (protected), Vol. 2 at 132.

26. Exhibit PI-2013-003-03.02 (protected), Vol. 2A at 57-58; Exhibit PI-2013-003-RI-03A (protected), Vol. 2A at 128; Exhibit PI-2013-003-RI-01A (protected), Vol. 2A at 122.

61. Moreover, although sales of imported carbon steel plate from non-subject countries increased in sales volumes in 2011, the gains were not nearly as substantial as those by the subject goods. Sales of non-subject goods declined in 2012, whereas the sales volumes of the subject goods continued to grow.²⁷

62. In terms of market share, the evidence on the record indicates that the subject goods accounted for a small but growing portion of the total estimated apparent market during the POI. From 2010 to 2012, the market share of the subject goods grew, while the market share held by both domestic producers and non-subject country importers declined.²⁸ These preliminary data seem to validate the allegations of Essar Algoma that imports from the subject countries captured substantial market share over the POI at the expense of the domestic industry.

63. In the Tribunal's view, the evidence on the record supports Essar Algoma's argument that its financial performance was negatively affected over the POI.²⁹

64. Essar Algoma argued that its capacity utilization declined significantly over the POI, which had a negative impact on the company's performance because fixed costs needed to be allocated over a smaller volume of production. All this resulted in higher costs of production on a per tonne basis. In the Tribunal's view, the evidence indicates that there were modest declines in its overall capacity utilization over the POI; however, capacity utilization concerning plate production remained fairly steady.³⁰

65. On the basis of the foregoing, and noting that the "reasonable indication" standard applicable in a preliminary injury inquiry is lower than the evidentiary threshold that applies in final injury inquiries under section 42 of *SIMA*, the Tribunal finds that the evidence discloses a reasonable indication that the dumping of the subject goods has caused injury to the domestic industry.

Other Factors

66. USIMINAS submitted that any injury alleged by the domestic industry can be attributable to several factors other than the dumped subject goods. In particular, it alleged that declines in the price of like goods were induced by the recession and not by the subject goods. It also noted that domestic demand for plate was suppressed because of the fact that plate prices in Canada are similar to U.S. prices, given the integrated nature of the North American market. Further, USIMINAS argued that plate imported from non-subject countries, namely, from the United States and India, negatively impacted the domestic industry.³¹ It is also suggested that intra-industry competition may have a role to play in the subpar performance of the domestic industry.

67. The Tribunal is of the view that the factors raised by USIMINAS may have had an impact on the domestic industry. However, it is trite law that dumping may be found to be a cause of injury even if there are, at the same time, other relevant contributing factors. There are often numerous factors that contribute to the injury sustained by a domestic industry.³²

27. Exhibit PI-2013-003-03.02 (protected), Vol. 2A at 57-58.

28. *Ibid.* at 12, 57-58; Exhibit PI-2013-003-RI-03A (protected), Vol. 2A at 128; Exhibit PI-2013-003-RI-01A (protected), Vol. 2A at 122.

29. Exhibit PI-2013-003-03.01 (protected), Vol. 2, Att. 24 at 132.

30. *Ibid.*, Att. 26 at 157.

31. Exhibit PI-2013-003-07.01, Vol. 3 at 7, 12, 15.

32. *Sacilor Acières v. Anti-dumping Tribunal* (1985), 60 N.R. 371 (F.C.A.). See, also, *Infasco Division of Ifastgroupe and Company LP v. Canada* (Canadian International Trade Tribunal), 2006 FCA 130 (CanLII).

68. The Tribunal is of the view that the limited evidence on the record of the preliminary injury inquiry regarding the impact of any of these 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.

Threat of Injury

69. Turning to the issue of threat of injury, Essar Algoma's submissions focused on the significant increase in the volume of dumped goods imported into Canada, the projected production capacity and market conditions in the subject countries and in China, persistent weakness in global economic growth and the global market for plate, the export orientation of producers in the subject countries and the existence of anti-dumping measures in other jurisdictions that make Canada a more appealing destination for the subject goods. It argued that these factors would cause further declines in production, capacity utilization, employment, market share, prices, operating income and returns on investment.

70. USIMINAS disputed the threat of injury allegations and submitted that they were speculative and not supported by cogent evidence.

71. In addition, Nippon Steel et al. took issue with Essar Algoma's contention that Japanese plate was threatening to cause injury to the domestic industry because of the potential for diversion from the United States due to anti-dumping duties on Japanese plate in the United States. Nippon Steel et al. pointed out that the finding by the United States International Trade Commission has since been revoked. Nippon Steel et al. also referenced the low volumes of plate imports from Japan and the relatively high prices of Japanese plate, compared to the prices of the other subject goods, as an indicator that Japanese plate was not threatening to cause injury.

72. The Tribunal notes that the evidence on the record confirms that global economic growth slowed over the POI and that a slow, uneven recovery is forecast.³³ The global market for plate remains weak, with overcapacity expected to characterize the market in many countries. Global excess plate capacity could in turn suppress future plate prices, resulting in higher export volumes as producers seek to sell excess production in global markets. Considering that demand for plate in Canada is expected to continue to grow, albeit at a potentially lesser rate than in the past, the Tribunal considers that there is a reasonable indication that producers of the subject goods will remain interested in increasing their sales in the Canadian market. The fact that anti-dumping measures have been imposed by a number of other countries against imports of carbon steel plate from the subject countries is another factor that the Tribunal has considered in determining whether there is a reasonable indication of threat of injury to the domestic industry by the subject goods.³⁴

73. Considering the Tribunal's finding above that it is appropriate to cumulatively assess the impact of the subject goods, the Tribunal has taken into account whether there is evidence that discloses a reasonable indication that the dumping of the subject goods, taken as a whole, is threatening to cause injury to the domestic industry.

33. Exhibit PI-2013-003-03.01A (protected), Vol. 2.01 at 12.

34. Exhibit PI-2013-003-02.01, Vol. 1 at 88-91.

74. The Tribunal is not satisfied that submissions from USIMINAS and Nippon Steel et al. sufficiently negate Essar Algoma's evidence regarding the threat of injury to the domestic industry. Accordingly, the Tribunal finds that the evidence discloses a reasonable indication that the dumping of the subject goods is threatening to cause injury to the domestic industry.

CONCLUSION

75. On the basis of the foregoing analysis, the Tribunal finds that the evidence discloses a reasonable indication that the dumping of the subject goods has caused injury or is threatening to cause injury.

Jason W. Downey
Jason W. Downey
Presiding Member

Serge Fréchette
Serge Fréchette
Member

Ann Penner
Ann Penner
Member