



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Dumping and Subsidizing

## ORDER AND REASONS

Expiry Review No. RR-2003-001

Certain Hot-rolled Carbon Steel  
Plate and High-strength Low-alloy  
Plate Originating in or Exported  
From Italy, the Republic of Korea,  
Spain and the Ukraine

*Order and reasons issued  
Monday, May 17, 2004*

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IN THE MATTER OF an expiry review, under subsection 76.03(3) of the *Special Import Measures Act*, of the order made by the Canadian International Trade Tribunal on May 17, 1999, in Review No. RR-98-004, continuing, without amendment, its finding made on May 17, 1994, in Inquiry No. NQ-93-004, concerning:

**CERTAIN HOT-ROLLED CARBON STEEL PLATE AND HIGH-STRENGTH  
LOW-ALLOY PLATE ORIGINATING IN OR EXPORTED FROM ITALY, THE  
REPUBLIC OF KOREA, SPAIN AND THE UKRAINE**

**ORDER**

The Canadian International Trade Tribunal, pursuant to subsection 76.03(3) of the *Special Import Measures Act*, has conducted an expiry review of its order made on May 17, 1999, in Review No. RR-98-004, continuing, without amendment, its finding made on May 17, 1994, in Inquiry No. NQ-93-004, concerning certain hot-rolled carbon steel plate and high-strength low-alloy plate not further manufactured than hot-rolled, heat-treated or not, in cut lengths, originating in or exported from Italy, the Republic of Korea, Spain and the Ukraine.

Pursuant to subparagraph 76.03(12)(a)(ii) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby rescinds its order concerning the above-mentioned goods.

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Ellen Fry  
Presiding Member

Pierre Gosselin  
Pierre Gosselin  
Member

Patricia M. Close  
Patricia M. Close  
Member

Susanne Grimes  
Susanne Grimes  
Acting Secretary

Place of Hearing: Ottawa, Ontario  
Dates of Hearing: March 1 and 2, 2004

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## STATEMENT OF REASONS

### BACKGROUND

1. This is an expiry review, pursuant to subsection 76.03(3) of the *Special Import Measures Act*,<sup>1</sup> of the order made by the Canadian International Trade Tribunal (the Tribunal) on May 17, 1999, in Review No. RR-98-004 (the order), continuing, without amendment, its finding made on May 17, 1994, in Inquiry No. NQ-93-004 (the finding), concerning certain hot-rolled carbon steel plate and high-strength low-alloy plate not further manufactured than hot-rolled, heat-treated or not, in cut lengths (plate), originating in or exported from Italy, the Republic of Korea (Korea), Spain and the Ukraine (the subject goods).

2. As part of these proceedings, on July 23, 2003, the Tribunal issued a notice of expiry review<sup>2</sup> to known interested parties. In addition, the Tribunal and the Canada Customs and Revenue Agency (CCRA) sent questionnaires to Canadian producers, importers, exporters and foreign producers of plate. These questionnaires and the replies thereto form part of the Tribunal's record.

3. On July 24, 2003, the CCRA initiated an investigation to determine whether the expiry of the order was likely to result in the continuation or resumption of dumping of the subject goods.

4. On November 20, 2003, the CCRA concluded its investigation and determined, pursuant to subsection 76.03(7) of *SIMA*, that the expiry of the order was likely to result in the continuation or resumption of dumping of the subject goods.

5. On November 21, 2003, the Tribunal began its inquiry, pursuant to subsection 76.03(10) of *SIMA*, to determine whether the expiry of the order was likely to result in injury or retardation to the domestic industry. As part of this process, the Tribunal sent questionnaires on market characteristics to domestic producers, importers and purchasers of plate. The Tribunal also sent supplementary questionnaires to domestic producers and importers, seeking additional information for the third quarters of 2002 and 2003, thereby completing the information for the CCRA's period of review, which was from January 1, 2000, to June 30, 2003. Further, domestic producers, importers and purchasers were asked to authorize the transfer of their questionnaire responses and related correspondence in *Carbon Steel Plate*<sup>3</sup> to the record of the current expiry review.

6. The record of these proceedings consists of: the testimony heard during the public and *in camera* portions of the hearing (collectively, the hearing) held in Ottawa, Ontario, on March 1 and 2, 2004; relevant documents, including the CCRA's protected expiry review investigation report, statement of reasons, index of background information and related documents; the protected and public replies to the expiry review questionnaires; the order and the finding; the notice of expiry review; the public and protected pre-hearing staff reports prepared for Review No. RR-98-004, as well as those prepared for these proceedings; and the public pre-hearing staff report and market characteristics portion of the protected pre-hearing staff report prepared for *Carbon Steel Plate*. All public exhibits were made available to interested parties, while protected exhibits were provided only to counsel who had filed a declaration and undertaking with the Tribunal in respect of confidential information.

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

2. C. Gaz. 2003.I.2415.

3. *Hot-rolled Carbon Steel Plate* (9 January 2004), NQ-2003-002 (CITT) [*Carbon Steel Plate*].

7. Algoma Steel Inc. (Algoma), IPSCO Inc. (IPSCO) and Stelco Inc. (Stelco) were represented by counsel at the hearing. They submitted evidence and made arguments in support of a continuation of the order.

8. Tribunal witnesses from BMO Nesbitt Burns (Nesbitt), an investment firm, and from Russel Metals Inc. (Russel), a steel service centre, also testified at the hearing.

## **PRODUCT**

### **Product Definition and Description**

9. The goods subject to the expiry review are defined as hot-rolled carbon steel plate and high-strength low-alloy plate not further manufactured than hot-rolled, heat-treated or not, in cut lengths, in widths from 24 in. (610 mm) to 152 in. (3,860 mm) inclusive, and in thicknesses from 0.187 in. (4.75 mm) to 4 in. (101.6 mm) inclusive, originating in or exported from Italy, Korea, Spain and the Ukraine.

10. Specifically excluded from the definition of the goods subject to this expiry review are: plate for use in the manufacture of pipe and tube (also known as skelp); plate in coil form; universal mill plate; plate made to American Society for Testing and Materials (ASTM) specifications A515 and A516M/A516, grade 70 (also known as pressure vessel quality [PVQ] plate) in thicknesses greater than 3.125 in. (79.375 mm); and PVQ plate in any thickness that meets certain technical specifications. The appendix provides the complete definition of the subject goods.

11. Plate is categorized by different qualities, which refer to the suitability of the steel for its intended purpose and its integrity. The two qualities of plate that are relevant to this expiry review are structural quality and PVQ. In Canada, the most common specifications of structural quality plate and of PVQ plate are ASTM A36M/A36<sup>4</sup> and ASTM A516M/A516, grade 70, respectively.

### **Production Process**

12. Algoma and Stelco produce liquid steel using blast furnaces and basic oxygen furnaces (integrated mills). IPSCO produces liquid steel by melting scrap in electric arc furnaces (mini-mills). While details may vary from mill to mill, the process by which plate is produced from liquid steel in Canada is essentially the same for all producers and entails producing and heating a slab, which is then descaled, rolled, levelled, cut to size, inspected and tested. Heat-treated plate is manufactured in a similar manner. However, after rolling, it is charged in a furnace, reheated to a uniform temperature, removed from the furnace and allowed to cool.

13. Plate formed directly into rectangular shapes is referred to as “discrete plate” and may be produced in any thickness covered by the product definition. Plate can also be produced from a coil of steel that is subsequently cut into plate lengths. This is referred to as “plate from coil”, and such plate is produced only in lesser thicknesses, generally up to a maximum of 0.75 in.

### **Product Applications**

14. The most common applications for plate are the production of rail cars, oil and gas storage tanks, heavy construction machinery, agricultural equipment, bridges, industrial buildings, high-rise office towers, automobile and truck parts, ships and pressure vessels.

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4. Generally considered equivalent to CSA International (CSA) specification G40.21, grade 300W/44W.

## DOMESTIC PRODUCERS

15. Algoma, IPSCO and Stelco have accounted for the majority of the plate (discrete plate and plate from coil) produced in Canada in the past. Stelco's plate mill has been idle since April 2003. Certain steel service centres also produce plate from coil acquired from a primary producer.

### Algoma

16. Algoma, located in Sault Ste. Marie, Ontario, was incorporated on June 1, 1992, under the Ontario *Business Corporations Act*.<sup>5</sup> It acquired all the assets and some of the liabilities of The Algoma Steel Corporation Limited. On January 29, 2002, the company was further re-organized under a plan of arrangement and reorganization pursuant to the *Companies' Creditors Arrangement Act*.<sup>6</sup>

17. Algoma is a vertically integrated primary iron and steel producer of goods such as hot-rolled sheet, cold-rolled sheet and welded wide flanges and unfinished parts.

18. Algoma produces discrete plate in widths up to 152.0 in. and in thicknesses up to 3.5 in.<sup>7</sup> on its 166-in. plate mill. In addition, it produces plate from coil in widths up to 96.0 in. and in thicknesses up to 5/8 in. on its 106-in. wide strip mill. Algoma also uses these production lines to manufacture other goods, such as hot-rolled sheet and coil.

### IPSCO

19. IPSCO, located in Regina, Saskatchewan, was incorporated in 1956 under the name of Prairie Pipe Manufacturing Co. Ltd. and commenced operations in 1957. Since that time, IPSCO has expanded its manufacturing capabilities through acquisition and plant construction in both Canada and the United States. IPSCO manufactures products such as oil country tubular goods, standard pipe, line pipe, alloy sheet and hollow structural sections.

20. IPSCO produces discrete plate in widths up to 76.00 in. and in thicknesses up to 4.25 in.<sup>8</sup> at its steelworks in Regina. It produces plate from coil, in widths up to 96.00 in. and in thicknesses up to 0.75 in., at its facilities in Regina; Surrey, British Columbia; and Toronto, Ontario. IPSCO also produces on these production lines a range of other cut-to-length products and plate not subject to this expiry review.

### Stelco

21. Stelco, located in Hamilton, Ontario, was established in 1910 as Steel Company of Canada Limited. It is a vertically integrated steel company that produces goods such as flat-rolled steel, bars and rods, wire, wire products, and pipes and tubes.

22. Stelco has produced discrete plate in widths up to 140.00 in. and in thicknesses up to 5.25 in. at its Hilton Works facility. Stelco's plate from coil was typically in widths up to 72.00 in. and in thicknesses up to 0.25 in.; however, it could be produced in other dimensions. Stelco produced skelp, as well as non-subject alloy plate, on these production lines.

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5. R.S.O. 1990, c. B.16.

6. R.S.C. 1985, c. C-36 [CCAA].

7. *Transcript of Public Hearing*, Vol. 1, 1 March 2004 at 72.

8. *Ibid.* at 70.



23. In April 2003, Stelco idled its Hamilton plate mill. On January 29, 2004, Stelco applied for and obtained a court order under the *CCAA* to initiate a court-supervised restructuring process.

### **FOREIGN PRODUCERS**

24. There are a number of foreign producers of plate in the subject countries; however, the Tribunal did not receive any data from them in response to the expiry review questionnaires. Zaporizhstal Iron & Steel Works JSC, a Ukrainian steel producer, indicated that it did not produce rolled steel products for export to Canada and that practically none of the rolled products included in the product definition could be produced on its equipment. The Arcelor group (including Aceralia Corporation Siderurgica S.A. [Aceralia], a Spanish steel producer and Arcelor International Canada Inc. [Arcelor Canada], an importer) indicated that it had not imported Spanish plate into Canada in recent years and that Aceralia did not foresee exporting plate to Canada in the near future.

25. Other plate producers in the subject countries include: in Italy, Ilva SpA and Ferriera Valsider SpA; in Korea, Pohang Iron & Steel Co., Ltd. (POSCO) and Dongkuk Steel Mill Co.(Dongkuk), Ltd.; and in the Ukraine, Met Zavod Azovstal and JSC Ilyich Iron & Steel Works.

### **IMPORTERS**

26. There are a large number of plate importers in Canada; however, only Wirth Steel, A General Partnership (Wirth), responded to the expiry review questionnaires. Several other importers authorized the transfer of their responses in *Carbon Steel Plate* to the record of this expiry review, i.e. Accucut Profile & Grinding Ltd., Arcelor Canada, CPP Custom Plate & Profiles, Dollard Steel Inc., Ferrostaal Metals, Novosteel Canada, Russel, Salzgitter Trade, Samuel Plate Sales, and Wilkinson Steel & Metals. Together with IPSCO and Wirth, these importers accounted for over 50 percent of the total plate imports from all sources during the period of review.

### **PRODUCT DISTRIBUTION**

27. The major portion of domestic plate is marketed to end users through steel service centres, with the balance being sold directly to end users. The steel service centres resell plate in standard sizes and grades, as well as offer custom cutting and finishing services. The channels of distribution for imported plate are similar to those for domestic plate, with both steel service centres and end users directly importing products. In addition, there are steel brokers and traders that resell imported plate to steel service centres and end users.

### **SUMMARY OF PAST PROCEEDINGS**

#### **Finding**

28. On May 17, 1994, the Tribunal found that the dumping in Canada of the subject goods had caused, was causing and was likely to cause material injury to the production in Canada of like goods.

## Order

29. On May 17, 1999, the Tribunal determined that there was a likelihood of resumed dumping by the subject countries and that the domestic industry was likely to suffer injury as a result; therefore, it continued the finding.<sup>9</sup>

## POSITIONS OF THE PARTIES

### Domestic Industry's Position

30. Stelco submitted to the Tribunal that its Chief Restructuring Officer had indicated that, in the current planning toward restructuring, the idle plate mill would likely not be part of the continuing operation, which Stelco interpreted to mean that the plate mill would be permanently closed. The domestic industry submitted that, for any retrospective aspect of the Tribunal's review, it was appropriate to include Stelco as part of the domestic plate industry. However, with regard to the Tribunal's prospective examination of the likelihood of injury, the domestic industry submitted that the Tribunal should consider the domestic plate industry to exclude Stelco. In making reference to the fact that Stelco no longer produces like goods, the domestic industry contended that Stelco's exit from the market is the best evidence of the domestic industry's vulnerability to injury from dumped imports. In answer to a question from the Tribunal, the domestic industry stated that the steel service centres that produce plate from coil could be included as part of the domestic industry.

31. The domestic industry argued that, taking into account the conditions of competition, it is appropriate to assess the cumulative effects of the likelihood of resumed dumping from all four subject countries. According to the domestic industry, the subject goods compete among themselves and with the like goods because they are physically interchangeable, share the same channels of distribution, i.e. traders, have the same customers, i.e. steel service centres, and use the same mode of transportation, i.e. ocean shipping.

32. The domestic industry argued that the evidence before the Tribunal clearly demonstrates that, in the absence of the order, dumped imports, particularly from Korea and the Ukraine, would be present in significant volumes in the Canadian market and would cause injury to an already vulnerable industry. In looking at the likelihood of injury, the domestic industry submitted that the following factors are relevant and should be examined by the Tribunal: the excess capacity in the subject countries; the presence of low-priced imports from other offshore sources; the continued active presence of traders in the Canadian market; the weak performance of the domestic industry and its declining market share over the past several years; and the current volatility of the world market.

33. The domestic industry submitted that the subject countries have a propensity to dump in significant quantities and submitted that they currently have enormous unused capacity, more than sufficient to supply the entire Canadian market. The domestic industry noted the near absence of imports from the subject countries in the Canadian market during the period of review and submitted that it is indicative of their inability to participate in the Canadian market at fairly traded prices. It also noted that no producer from any subject country was represented before the Tribunal at the hearing. The domestic industry referred to the fact that the scope of injury findings concerning plate from the Ukraine was expanded (i.e. thicknesses from 4.00 in. to 5.25 in. and low-carbon PVQ plate) in *Hot-rolled Carbon Steel Plate*,<sup>10</sup> claiming that this was

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9. This review was conducted prior to the coming into force of the amendments to *SIMA* on April 15, 2000.

10. *Hot-rolled Carbon Steel Plate* (27 June 2000), NQ-99-004 (CITT).

evidence of the Ukraine's willingness to circumvent the order and continue to supply the Canadian market at dumped prices.

34. The domestic industry submitted that there are injury findings, in the United States, concerning plate from all four subject countries. Further, the domestic industry noted that there are injury findings, in other jurisdictions, concerning related steel products from two of the subject countries. It also contended that allowing the order to expire would undermine the finding concerning hot-rolled sheet from the Ukraine in *Hot-rolled Steel Sheet*.<sup>11</sup>

35. The domestic industry submitted that traders are ready to turn to any country not covered by injury findings as a source of cheap plate for the Canadian market and pointed to recent developments with regard to low-priced plate from Australia and Poland that had been offered in the domestic market at prices that were 5 to 20 percent below domestic prices.

36. The domestic industry argued that it was vulnerable to injury from resumed dumping and submitted that the remaining two plate producers were in a perilous state. The domestic industry submitted that it had experienced price suppression, as well as declining sales volumes and revenues, in the past several years and that it had been unable to recover to 1998 levels of profitability. The domestic industry emphasized that its performance in the last quarter of 2003 and in January 2004 had deteriorated from its performance earlier in 2003, which, it argued, suggested increasing vulnerability. It pointed to its underutilization of plate capacity as further evidence of its vulnerability.

37. The domestic industry noted that its share of the Canadian plate market had declined in recent years and attributed this to dumped imports. However, it submitted that the increase in plate imports from the United States was in response to falling production at Stelco and represented gap fillers for particular sizes and grades and that the imports had not been injurious.

38. With regard to the future, the domestic industry submitted that the current flat demand for plate in the domestic market would continue during the next 18 to 24 months. Further, it contended that, even if recently announced price increases were fully realized, prices would then be only as high as they were in 1998. The domestic industry claimed that, in fact, because of rapidly increasing input costs, price increases might result in no improvement in margins.

39. The domestic industry also referred to the economic growth of the People's Republic of China (China), its consumption of steel products, its large volume of imports and its rapidly increasing capacity, and argued that an inevitable slowdown of the Chinese economy will have a devastating effect on global prices for plate and will trigger a flood of imports into North America, which is the only other premium price market open to imports.

## ANALYSIS

40. On November 20, 2003, the CCRA made a determination that, pursuant to subsection 76.03(7) of *SIMA*, the expiry of the order was likely to result in the continuation or resumption of dumping. As a consequence, the Tribunal is required, pursuant to subsection 76.03(10), to determine whether the expiry of the order is likely to result in injury or retardation to the domestic industry. Given that the domestic industry

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11. *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (17 August 2001), NQ-2001-001 (CITT) [*Hot-rolled Steel Sheet*].

did not argue that the expiry of the order would likely result in retardation, the Tribunal focused its analysis on the likelihood of injury.

### Like Goods

41. 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.

42. In considering the issue of like goods, the Tribunal typically looks at a number of factors, including the physical characteristics of the goods (such as appearance), their method of manufacture, their market characteristics (such as substitutability, pricing and distribution) and whether the domestic goods fulfill the same customer needs as the imported goods. Based on the evidence, the Tribunal is of the opinion that the domestic industry produces substantially the same goods as the subject goods and does so in the same way. Plate produced domestically, for the most part, competes with the subject goods, has the same end uses and can be substituted for them. Therefore, the Tribunal finds that the domestic goods have uses and other characteristics which closely resemble those of the subject goods and, thus, that they are like goods to the subject goods.

### Domestic Industry

43. Having decided that the like goods in this expiry review are domestically produced plate, the Tribunal must consider which producers constitute the domestic industry.

44. The term “domestic industry” is defined in subsection 2(1) of *SIMA*, in part, as follows:

“domestic industry” means . . . 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.

45. Until April 2003, the domestic producers of plate were the three steel mills, Algoma, IPSCO and Stelco, and certain steel service centres that produce plate from coil. It is estimated that the latter accounts for only about 10 to 15 percent of the domestic production of plate.<sup>12</sup> Stelco’s plate mill was idled in April 2003<sup>13</sup> and, according to the testimony of its witness at the hearing, Stelco has interpreted a statement by its Chief Restructuring Officer to mean that the plate mill would be permanently closed.<sup>14</sup>

46. Therefore, the Tribunal finds that Algoma, IPSCO, Stelco and the steel service centres constituted the domestic industry for the purposes of this expiry review until April 2003, after which Algoma, IPSCO and the steel service centres have constituted the domestic industry.

47. The Tribunal’s analysis of the likelihood of injury has focused on the domestic mills that were represented at the hearing. When conducting its analysis, the Tribunal took into account Stelco’s performance until its plate mill was idled. However, for purposes of its analysis of industry performance

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12. Tribunal Exhibit RR-2003-001-06 (protected), Administrative Record, Vol. 2A at 22; Tribunal Exhibit RR-2003-001-06C (protected), Administrative Record, Vol. 2A at 133.

13. *Transcript of Public Hearing*, Vol. 1, 1 March 2004 at 32.

14. *Ibid.* 34-35.

after April 2003, and its assessment of whether the expiry of the order would likely result in injury to the domestic industry, the Tribunal did not include Stelco in its analysis.

### Cumulation

48. Subsection 76.03(11) of *SIMA* provides that, for the purpose of its determination, the Tribunal shall make an assessment of the cumulative effect of the dumping of the subject goods “that are imported into Canada from more than one country if the Tribunal is satisfied that an assessment of the cumulative effect would be appropriate taking into account the conditions of competition” between the subject goods themselves or between the subject goods and the like goods. In the event that the Tribunal determines that it would not be appropriate to cumulate the effect of the dumping of the subject goods from any subject country, based on its assessment of the conditions of competition of those goods, the Tribunal is required to conduct a separate injury analysis for that country.

49. In this regard, the domestic industry submitted that none of the exceptional circumstances that led the Tribunal not to cumulate in past cases were present here. It submitted that the four subject countries have competed and will continue to compete with the like goods that it produces. The domestic industry also pointed out that two of the subject countries, to varying degrees, have continued to participate in the Canadian market since the last review and that competition takes place with the same customers and through the same distribution channels as prior to the finding.

50. Based on the information on the record concerning conditions of competition, the Tribunal finds that it is appropriate to cumulate the effect of the dumping of the subject goods from all four subject countries in its analysis of likelihood of injury. The evidence shows that the subject goods are fungible with the like goods and as among the subject goods from the four subject countries. The evidence also indicates that the subject goods would service the same geographical markets and the same type of customers as the like goods. Korean plate would likely be sold primarily in western markets<sup>15</sup> and would compete with IPSCO’s domestically produced plate. The subject goods would be offered through similar channels of distribution.

### Likelihood of Injury

51. In making its assessment of the likelihood of injury, the Tribunal has consistently taken the view that the focus must be on circumstances that can reasonably be expected to exist in the near to medium term, generally 18 to 24 months, as opposed to more remote circumstances.<sup>16</sup>

52. Subsection 37.2(2) of the *Special Import Measures Regulations*<sup>17</sup> enumerates a number of factors that the Tribunal may consider in addressing the question of likelihood of injury in cases where the CCRA has determined that there is a likelihood of resumed or continued dumping if the order is allowed to expire. The Tribunal considered these factors and found all of them to be relevant in this case, except the potential negative effects of the dumped goods on existing development and production efforts.<sup>18</sup> The domestic

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15. *Ibid.* at 224.

16. *Preformed Fibreglass Pipe Insulation* (17 November 2003), RR-2002-005 (CITT) at 11; *Prepared Baby Foods* (28 April 2003), RR-2002-002 (CITT) at 8; *Solder Joint Pressure Pipe Fittings* (16 October 1998), RR-97-008 (CITT) at 10.

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

18. Paragraph 37.2(2)(g) of the *Regulations* states: “the Tribunal may consider . . . the potential negative effects of the dumped or subsidized goods on existing development and production efforts, including efforts to produce a derivative or more advanced version of like goods”.

industry did not argue that this factor was significant and, in the Tribunal's view, the evidence did not so indicate.

### Changes in International and Domestic Market Conditions<sup>19</sup>

53. The significant changes that have recently taken place in international and domestic market conditions for plate<sup>20</sup> are key to the Tribunal's assessment of the likelihood of injury.

54. With regard to current developments in the global market, a Tribunal witness noted: "Steel industry dynamics . . . are undergoing a radical change, something that we have never seen before".<sup>21</sup>

55. The evidence indicated that, unlike the situation in the past, Asia, not North America, is the premier market for plate, being the world's largest and currently, the highest-priced steel market.<sup>22</sup> The predominance of Asia in world steel markets is a phenomenon that has emerged over the past five years. In this regard, there was testimony of an unprecedented shipment in 2003 of steel from the United States to China, which represented a reversal in the long-standing direction of trade flows.<sup>23</sup>

56. The evidence on the record shows that China's production and consumption of steel continues to grow at a considerable rate.<sup>24</sup> China is unable to supply all its demands for steel and, as one witness stated, is a "huge net importer of steel".<sup>25</sup> In this regard, the Tribunal notes that, even in 2002, China was the world's largest plate importer.<sup>26</sup>

57. In the past several months, particularly since the beginning of the fourth quarter of 2003, growth in global demand for plate has accelerated in an unprecedented fashion.<sup>27</sup> China's voracious demand for plate is putting pressure on other markets, where demand is also growing. China's shipbuilding industry, a major user of plate, is booming, as it grew by nearly 50 percent from 2002 to 2003, and is almost fully booked

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19. Paragraph 37.2(2)(j) of the *Regulations* states: "the Tribunal may consider . . . any changes in market conditions domestically or internationally, including changes in the supply of and demand for the goods, as well as any changes in trends and in sources of imports into Canada".

20. The evidence on the record obtained from third-party sources with respect to "plate" production, consumption and prices in both the subject and non-subject countries, including trade publications and national and international statistics, may refer to plate that is not identical in every respect to the product that is the subject of this expiry review, i.e. it may include a somewhat different range of dimensions or it may encompass different alloys; nonetheless, the Tribunal considers the information on such plate to be highly relevant to this expiry review.

21. *Transcript of Public Hearing*, Vol. 1, 1 March 2004 at 135.

22. Manufacturer's Exhibit A-03, Tab 17, Administrative Record, Vol. 11; *Transcript of Public Hearing*, Vol. 1, 1 March 2004 at 136-38, 194, 200, 201; Tribunal Exhibit RR-2003-001-64.08 (protected), Administrative Record, Vol. 2 at 289.

23. *Transcript of Public Hearing*, Vol. 1, 1 March 2004 at 152, 192.

24. Manufacturer's Exhibit A-03, Tabs 8 and 13, Administrative Record, Vol. 11; Tribunal Exhibit RR-2003-001-65A (protected), Administrative Record, Vol. 2 at 308, 324; *Transcript of Public Hearing*, Vol. 1, 1 March 2004 at 20, 30, 82, 136.

25. *Transcript of Public Hearing*, Vol. 1, 1 March 2004 at 136.

26. Tribunal Exhibit RR-2003-001-59.01, Administrative Record, Vol. 1 at 221.

27. Tribunal Exhibit RR-2003-001-59.06, Administrative Record, Vol. 1 at 320.11; Tribunal Exhibit RR-2003-001-60A (protected), Administrative Record, Vol. 2 at 267; Tribunal Exhibit RR-2003-001-65A (protected), Administrative Record, Vol. 2 at 299, 306, 312.

through late 2006.<sup>28</sup> Further, other relevant segments of the Chinese economy, such as construction, are also expanding rapidly, as the country continues to industrialize.<sup>29</sup>

58. In Korea, the documentary evidence on the record indicates that, although investment in construction is expected to decrease over the next year,<sup>30</sup> its shipyards have enough work to keep them busy for the next 2 1/2 years, even without any new orders.<sup>31</sup> This means that Korean demand for plate should remain strong in the near to medium term. Likewise, one of the Tribunal's witnesses noted that "global demand for shipping is huge" and that the Japanese and the Koreans are major manufacturers of vessels, which should keep "the plate markets in Asia, both Japan and Korea fairly busy for the next couple of years."<sup>32</sup>

59. Additionally, the Tribunal notes that increased expenditures on infrastructure and construction are forecast for a number of economies, including India, the Middle East and the 2004 European Union accession countries,<sup>33</sup> which should result in an increased demand for plate in those markets in the near to medium term.

60. A further phenomenon affecting the global market is the shortage of steel inputs, such as scrap, coke, iron and slabs.<sup>34</sup> In December 2003, a trade publication forecast that there were "no signs to the end of global shortage in raw materials for 2004".<sup>35</sup> In January 2004, one of the major Korean plate producers, Dongkuk, reportedly reduced its output due to a shortage of slabs.<sup>36</sup> A Tribunal witness gave evidence at the hearing that "[c]oke availability is huge issue. . . for a number of US producers."<sup>37</sup>

61. In the Tribunal's view, this shortage has undoubtedly been a major cause of the unprecedented increases in steel input costs. The Tribunal heard from one witness that iron ore and metallurgical coal had both increased in price by 20 percent in the last 12 to 18 months, while the "escalation of scrap prices is beyond comprehension".<sup>38</sup> Documentary evidence on the record corroborates the dramatic rise in the cost of steel-making inputs.<sup>39</sup>

62. As well, there is currently a scarcity of ocean-going vessels to transport plate and raw materials. A witness for the domestic industry noted that "all the boats are tied up shipping scrap and other raw materials

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28. Tribunal Exhibit RR-2003-001-64.05 (protected), Administrative Record, Vol. 2 at 283.

29. Tribunal Exhibit RR-2003-001-59.01, Administrative Record, Vol. 1 at 227; Tribunal Exhibit RR-2003-001-64.04 (protected), Administrative Record, Vol. 2 at 281; Tribunal Exhibit RR-2003-001-65A (protected), Administrative Record, Vol. 2 at 320-21.

30. Tribunal Exhibit RR-2003-001-59.06, Administrative Record, Vol. 1 at 320.12.

31. Tribunal Exhibit RR-2003-001-65A (protected), Administrative Record, Vol. 2 at 309.

32. *Transcript of Public Hearing*, Vol. 1, 1 March 2004 at 149.

33. Tribunal Exhibit RR-2003-001-65A (protected), Administrative Record, Vol. 2 at 312, 320, 321, 324; Tribunal Exhibit RR-2003-001-60A (protected), Administrative Record, Vol. 2 at 267.

34. Manufacturer's Exhibit A-03, Tabs 5, 6 and 8, Administrative Record, Vol. 11; Tribunal Exhibit RR-2003-001-65A (protected), Administrative Record, Vol. 2 at 303, 306, 322 and 324.

35. Tribunal Exhibit RR-2003-001-65A (protected), Administrative Record, Vol. 2 at 322.

36. Tribunal Exhibit RR-2003-001-64.04 (protected), Administrative Record, Vol. 2 at 281.

37. *Transcript of Public Hearing*, Vol. 1, 1 March 2004 at 154.

38. *Ibid.* at 154-56.

39. Tribunal Exhibit RR-2003-001-60A (protected), Administrative Record, Vol. 2 at 260-61. Manufacturer's Exhibit A-03, Tabs 5, 6 and 8, Administrative Record, Vol. 11; Tribunal Exhibit RR-2003-001-64.04 (protected), Administrative Record, Vol. 2 at 281; Tribunal Exhibit RR-2003-001-65A (protected), Administrative Record, Vol. 2 at 304, 328; *Transcript of Public Hearing*, Vol. 1, 1 March 2004 at 16.

over to China”.<sup>40</sup> As a result, the cost of ocean freight, the principal mode of transporting plate, has “skyrocketed” over the past year.<sup>41</sup>

63. Finally, with regard to international market conditions, the Tribunal notes the testimony of one witness as to the substantial degree of consolidation that has taken place in the global steel industry and the fact that Western steel companies have made investments in mills in former Soviet bloc countries.<sup>42</sup> These are trends that the Tribunal considers could contribute to greater stability, in the future, in global plate markets, in that decisions to increase production or add capacity might be made more on the basis of economically rational criteria than on the basis of other considerations that encourage dumping.

64. As to changes in the domestic market, the Tribunal notes that Stelco’s plan not to recommence plate production alters significantly the nature of the domestic industry. First, total domestic plate-making capacity has become significantly smaller with the removal of Stelco’s capacity. In addition, the remaining domestic industry has fewer players in intra-industry competition and has lost its reputedly highest-cost producer,<sup>43</sup> facts which potentially will have a significant positive impact on the financial robustness of the domestic industry.

65. In summary, the Tribunal concludes that circumstances in both the global and domestic plate markets are significantly different than they were at the time of the last review of the finding; indeed, the Tribunal is of the view that conditions have changed substantially over the last few months because of the trends noted above in the global demand for plate and input costs and because of the resolution of the uncertainty concerning whether Stelco would resume plate production.

#### **Likely Volumes of Dumped Imports<sup>44</sup>**

66. The recent surge in global demand for plate in markets outside North America, as described above, has led to substantial shortages of supply across many markets.

67. For example, in January 2004, in East Asia, there was “a severe shortage of material [that] show[s] no signs of weakening any time soon”.<sup>45</sup> Due to the strong demand from the Asian shipbuilding sector, in which Korea is a large player, major steel mills in the region have cut back the production of construction plate, restricting supplies of that type of plate to areas such as the Middle East.<sup>46</sup>

68. The evidence also indicated that Ukrainian plate is in short supply. For example, in December 2003, it was reported that the plate supply from the Ukraine was “tight” and that “Leman Commodities, who sells on a monthly basis out of its Donetsk steel mills, [was] finding orders [order books] filled within the first few days of the month”.<sup>47</sup> A few months later, in February 2004, buyers in the Middle East were described

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40. *Transcript of Public Hearing*, Vol. 1, 1 March 2004 at 20-21.

41. Manufacturer’s Exhibit A-03, Tab 5, Administrative Record, Vol. 11; Tribunal Exhibit RR-2003-001-64.07 (protected), Administrative Record, Vol. 2 at 287.

42. *Transcript of Public Hearing*, Vol. 1, 1 March 2004 at 132, 133, 137, 171.

43. *Ibid.* at 210.

44. Paragraph 37.2(2)(a) of the *Regulations* states: “the Tribunal may consider . . . the likely volume of the dumped or subsidized goods if the order or finding is allowed to expire, and, in particular, whether there is likely to be a significant increase in the volume of imports of the dumped or subsidized goods, either in absolute terms or relative to the production or consumption of like goods”.

45. Tribunal Exhibit RR-2003-001-64.04 (protected), Administrative Record, Vol. 2 at 281.

46. Tribunal Exhibit RR-2003-001-60A (protected), Administrative Record, Vol. 2 at 267.

47. Tribunal Exhibit RR-2003-001-65A (protected), Administrative Record, Vol. 2 at 309.



as having “substantial difficulties” in purchasing Ukrainian plate, “which [had] been a staple of supply for recent years, citing diversion to China and Asia.”<sup>48</sup> Also in February 2004, the Black Sea plate market was described as “crazy . . . [with] no plate available to book”.<sup>49</sup>

69. Likewise, early in 2004, a European plate producer was quoted as making the following claim: “we have too many orders”.<sup>50</sup> Similar shortages are cited in the evidence with respect to plate from the Russian Federation.<sup>51</sup> Further, the evidence indicates that, in response to demand in Asia, “[e]ven Indonesian suppliers have slowed shipments to traditional European destinations . . . and have been completely absent from the Middle East market”.<sup>52</sup>

70. The Tribunal considers that the shortages of plate for export when combined with the shortages of steel inputs and ocean shipping and their associated cost increases, are impediments that will constrain the volume of dumped plate available for shipment to Canada.

71. The domestic industry argued that, whatever the current market conditions for plate, when demand from China slows down, which it must inevitably, “there is going to be a lot of excess steel . . . looking for a home around the world”<sup>53</sup> and that, consequently, if the order is rescinded, dumped plate from the subject countries will be exported in large volumes to Canada.

72. As to predicting when the “China bubble will burst”, the steel industry analyst who appeared as a Tribunal witness stated that he would be hard-pressed to find an expert who did not believe that Chinese demand would eventually slow down, but that the debate concerned the timing and extent of any slowdown.<sup>54</sup> He expressed the view that demand in China could continue on its current path for the next two years, barring major unexpected events simply because “[i]t has so much momentum behind it, that unless something comes out and radically changes it, it will probably carry it”.<sup>55</sup>

73. Based on the evidence, the Tribunal considers that, even if demand in China were to experience a significant downturn in the near to medium term, demand for plate would likely continue to be strong in other important markets, such as Korea and various developing country markets that are in the process of building up their infrastructure.

74. The Tribunal notes that China continues to add to its plate capacity; for example, there are at least 1.5 million tonnes of new capacity scheduled for late this year or 2005 at the Baosteel facility in China.<sup>56</sup> However, in view of the strong global demand for plate, especially in Asia, the Tribunal does not anticipate that such capacity additions will substantially impact the dynamics in the marketplace in the near to medium term.

75. Thus, in summary, given the strength of demand around the world, the shortage of global supply, the inelasticity of global supply, due to the shortages and cost of inputs and ocean shipping, and the fact that

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48. Tribunal Exhibit RR-2003-001-60A (protected), Administrative Record, Vol. 2 at 267.

49. Tribunal Exhibit RR-2003-001-64.07 (protected), Administrative Record, Vol. 2 at 287.

50. Tribunal Exhibit RR-2003-001-64.09 (protected), Administrative Record, Vol. 2 at 291.

51. Tribunal Exhibit RR-2003-001-64.07 (protected), Administrative Record, Vol. 2 at 287.

52. Tribunal Exhibit RR-2003-001-60A (protected), Administrative Record, Vol. 2 at 267.

53. *Transcript of Public Hearing*, Vol. 1, 1 March 2004 at 21-22.

54. *Ibid.* at 144-147, 189.

55. *Ibid.* at 200.

56. Tribunal Exhibit RR-2003-001-15.03, Administrative Record, Vol. 3C at 372; Tribunal Exhibit RR-2003-001-64.04 (protected), Administrative Record, Vol. 2 at 281.

other global markets have become more attractive than the North American market, the Tribunal does not foresee the likelihood of significant volumes of dumped plate from the subject countries entering the Canadian market in the near to medium term.

### Likely Prices of Dumped Imports<sup>57</sup>

76. In recent months, global prices for plate have risen dramatically, increasing by over 20 percent from October 2003 to February 2004 and by 8 percent in January 2004 alone, in what must be characterized as a “sellers market”.<sup>58</sup> In Korea, plate was reportedly sold at a delivered price of US\$525 per tonne in February 2004,<sup>59</sup> compared to prices of US\$450-455 per tonne only one month earlier.<sup>60</sup> The Tribunal notes that plate prices, generally, in East Asia, have recently reached 30-year highs.<sup>61</sup> Similarly, basic grades of plate of Russian and Ukrainian origin, FOB Black Sea, have also seen record highs, respectively at US\$380-400 per tonne and US\$390-410 per tonne,<sup>62</sup> with signs of further increases.<sup>63</sup>

77. As long as global demand continues to outweigh supply, which the evidence before the Tribunal indicated is expected to be the case, plate prices should remain high, albeit not necessarily at the current peaks.

78. The domestic industry argued that the continued presence of traders in the domestic market would ensure that large volumes of dumped plate from the subject countries would find their way to Canada in the absence of the order. The Tribunal does not doubt that there are traders active in the Canadian market that import plate from many sources. However, given the current conditions in global plate markets described above, the Tribunal does not accept the domestic industry’s contention that traders would be eager to sell plate into the Canadian market at prices below the high world levels. In this regard, the Tribunal notes that it appears from the evidence on the record that domestic plate prices (exclusive of surcharges) are less than average global prices for plate at this point in time.<sup>64</sup>

79. In other words, the Tribunal is of the view that any imports of plate into Canada from the subject countries following the expiry of the order would likely be at prevailing world prices. Given the fact that North America is not currently the premium plate market and the “arbitrage”<sup>65</sup> that occurs in the global

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57. Paragraph 37.2(2)(b) of the *Regulations* states: “the Tribunal may consider . . . the likely prices of the dumped or subsidized goods if the order or finding is allowed to expire and their effect on the prices of like goods, and, in particular, whether the dumping or subsidizing of goods is likely to significantly undercut the prices of like goods, depress those prices, or suppress them by preventing increases in those prices that would likely have otherwise occurred”.

58. Tribunal Exhibit RR-2003-001-05D, Administrative Record, Vol. 1A at 142-44.

59. Tribunal Exhibit RR-2003-001-64.08 (protected), Administrative Record, Vol. 2 at 289.

60. Tribunal Exhibit RR-2003-001-64.04 (protected), Administrative Record, Vol. 2 at 281.

61. *Ibid.*

62. Tribunal Exhibit RR-2003-001-64.07 (protected), Administrative Record, Vol. 2 at 287.

63. *Ibid.*

64. Tribunal Exhibit RR-2003-001-05D, Administrative Record, Vol. 1A at 142-44; Tribunal Exhibit RR-2003-001-60A (protected), Administrative Record, Vol. 2 at 263; *Transcript of In Camera Hearing*, Vol. 1, 1 March 2004 at 2-4, 65-66. The Tribunal used an exchange rate of 1.30 to convert plate prices from U.S. dollars to Canadian dollars and assumed an average shipping cost of US\$60/tonne for offshore plate to land in Canada. See *Transcript of Public Hearing*, Vol. 1, 1 March 2004 at 123, 124; Tribunal Exhibit RR-2003-001-64.07 (protected), Administrative Record, Vol. 2 at 287.

65. In this context, “arbitrage” refers to the phenomenon that, other things being equal, plate will tend to be purchased in lower-priced markets and shipped to higher-priced markets, as long as the price in the latter covers the purchase cost plus transportation.

market, the Tribunal does not consider that traders would have a significant incentive to sell plate into the domestic market at low prices when world price levels are currently so high.

80. The Tribunal is of the opinion that, although imports from the subject countries during the period of review were almost all found to be dumped,<sup>66</sup> the volumes are too small to lead to any inferences about future pricing.

81. The domestic industry submitted that plate imports from Australia and Poland would soon be entering Canada at prices below prevailing domestic prices,<sup>67</sup> which, following an expiry of the order, would force dumped imports from the subject countries to also land at low prices in order to be competitive and regain market share. The evidence on the record does not persuade the Tribunal that this would be the case. The Tribunal has difficulty understanding why, in view of current global market conditions, the subject countries would follow or lead prices of plate from other sources down in the Canadian market, when they could obtain better prices by selling their product in other countries. As noted above, although the North American market was previously the premium plate market in the world and generally commanded the highest prices, the situation has changed, and now Asia must be considered the premium market for plate.

82. In summary, the Tribunal concludes that prices of dumped imports from the subject countries into Canada would not likely be significantly lower, in the near to medium term, than the high world prices that are expected to continue for plate generally.

### **Likely Effects of Dumped Imports on the Domestic Industry and Likely Performance of the Domestic Industry<sup>68</sup>**

83. The domestic industry argued that it was vulnerable to injury from resumed dumping, claiming that it had experienced price suppression and declining sales volumes and revenues in the past several years and that it now needed a period of stability and protection from renewed dumping to recover from that past injury.

84. The Tribunal's task in this expiry review is to determine whether resumed dumping of the subject goods would likely result in injury in the future, that is, in the near to medium term. The Tribunal acknowledges that the domestic industry has suffered past injury from low-priced dumped imports from a variety of sources; however, the Tribunal is of the view that, in the near to medium term, the dumping of the subject goods is not likely to cause material injury.

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66. Tribunal Exhibit RR-2003-001-03, Administrative Record, Vol. 1 at 138; Tribunal Exhibit RR-2003-001-06B (protected), Administrative Record, Vol. 2A at 128.

67. Manufacturer's Exhibit A-06 (protected), para. 23, Administrative Record, Vol. 12; Manufacturer's Exhibit B-02 (protected), para. 28, Administrative Record, Vol. 12; *Transcript of Public Hearing*, Vol. 1, 1 March 2004 at 113-14; *Transcript of In Camera Hearing*, Vol. 1, 1 March 2004 at 5-7, 22.

68. Paragraph 37.2(2)(e) of the *Regulations* states: "the Tribunal may consider . . . the likely impact of the dumped or subsidized goods on domestic industry if the order or finding is allowed to expire, having regard to all relevant economic factors and indices, including any potential decline in output, sales, market share, profits, productivity, return on investments or utilization of production capacity, and any potential negative effects on cash flow, inventories, employment, wages, growth or the ability to raise capital". Paragraph 37.2(2)(c) states: "the Tribunal may consider . . . the likely performance of the domestic industry, taking into account that industry's recent performance, including trends in production, capacity utilization, employment levels, prices, sales, inventories, market share, exports and profits".

85. There was a consensus among witnesses that overall demand for plate in Canada is likely to remain relatively flat, in the near to medium term, in the absence of any large-scale infrastructure projects.<sup>69</sup> One Tribunal witness suggested that demand might increase by 3 to 4 percent.<sup>70</sup> Nonetheless, the Tribunal notes that the domestic industry's prices, excluding input surcharges, have increased significantly in the last several months and that further increases are projected in the future.<sup>71</sup> In fact, taking into account the announced price increases, domestic prices are now close to and, in some cases, will soon exceed the peak prices achieved in 1998,<sup>72</sup> which levels the domestic industry claims are necessary in order for it to be profitable.<sup>73</sup> Given the global shortage of plate, domestic prices are likely to remain high in the near to medium term.

86. Witnesses for the domestic industry expressed concern about the impact of the current high input costs.<sup>74</sup> However, the evidence indicated that increased input costs are a global rather than exclusively a North American phenomenon.<sup>75</sup> Accordingly, the Tribunal does not expect that input costs will cause the Canadian market to become more attractive to the subject countries by causing domestic prices to become significantly higher than world prices. Similarly, the Tribunal does not expect that input costs will have a detrimental effect on the profit margins of Canadian producers to a significantly greater extent than is experienced by plate producers globally.

87. The domestic industry's mills are not exclusively for plate production,<sup>76</sup> but are capable of manufacturing other products, e.g. hot-rolled sheet, coils and skelp, and each manufacturer must choose the products that are to be manufactured with the available quantity of liquid steel. As a witness for Algoma noted: "we can choose to produce plate or sheet products on similar equipment . . . [a]t times when the profitability of plate is not as good as the sheet products, we can choose to put some of our capacity into sheet versus plate."<sup>77</sup> Likewise, a witness for IPSCO stated that it "can decide whether the liquid steel becomes coiled product or . . . discrete plate".<sup>78</sup>

88. Technically speaking, the domestic industry is operating at significantly less than full utilization of its plate capacity.<sup>79</sup> However, in the Tribunal's view, the evidence indicates that, in practical terms, the domestic industry is in fact operating the plate portion of its mills at "full capacity," i.e. it has chosen not to increase the output of plate to meet current demand, but rather has decided to use its facilities to produce greater proportions of non-like goods.

89. The witness for Russel claimed that, although Algoma still had available capacity to produce plate, the company had opted recently to produce more hot-rolled sheet instead because of the price difference

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69. *Transcript of Public Hearing*, Vol. 1, 1 March 2004 at 10-11, 24, 214.

70. *Ibid.* at 142, 176.

71. *Ibid.* at 10, 24-25; *Transcript of In Camera Hearing*, Vol. 1, 1 March 2004 at 2-4.

72. *Transcript of Public Hearing*, Vol. 1, 1 March 2004 at 25, 27; *Transcript of In Camera Hearing*, Vol. 1, 1 March 2004 at 3-4.

73. *Transcript of Public Hearing*, Vol. 1, 1 March 2004 at 9-10, 24-26; *Transcript of In Camera Hearing*, Vol. 1, 1 March 2004 at 4.

74. *Transcript of Public Hearing*, Vol. 1, 1 March 2004 at 12, 13, 16; *Transcript of In Camera Hearing*, Vol. 1, 1 March 2004 at 60-61.

75. Tribunal Exhibit RR-2003-001-59.06, Administrative Record, Vol. 1 at 320.11; *Transcript of Public Hearing*, Vol. 1, 1 March 2004 at 12, 13, 154, 156, 157.

76. *Transcript of Public Hearing*, Vol. 1, 1 March 2004 at 40, 42, 43, 48.

77. *Ibid.* at 40.

78. *Ibid.* at 43.

79. Tribunal Exhibit RR-2003-001-05, Administrative Record, Vol. 1A at 47.

between sheet and plate.<sup>80</sup> Likewise, he claimed that much of the capacity at IPSCO's Regina plate mill had recently gone toward the production of a large skelp order instead of plate.<sup>81</sup> He also contended that, since the start of 2004, the domestic mills had restricted the amount of plate that they had sold to Russel<sup>82</sup> and that Russel could sell more plate than it was able to obtain from domestic producers.<sup>83</sup>

90. In other words, despite the market presenting opportunities to sell more plate, the domestic industry is opting to sell other products, such as hot-rolled sheet and skelp. This strategy means that plate sales volume and revenues are less than they might have been and unit costs of plate production are probably greater than they might have been. In this regard, the Tribunal notes that Algoma and IPSCO only picked up a portion of Stelco's business following the idling of its plate mill in April 2003.<sup>84</sup> Much of the remaining volume, and indeed some of its market share, was taken up by U.S. plate at prices that the domestic industry considered to be non-injurious.<sup>85</sup>

91. Given the above circumstances, the Tribunal foresees that, if the order is permitted to expire, the domestic industry should nonetheless be increasingly profitable in the near to medium term.

### **Likely Performance of the Foreign Industry and Potential of Foreign Producers to Produce Goods in Other Facilities<sup>86</sup>**

92. The domestic industry argued that the expiry of the order would result in significant volumes of the subject goods being exported to Canada at dumped prices because of the large unused capacity in the subject countries and their dependence on exports.

93. In terms of the capacity of the subject countries to supply plate, the evidence indicates that, collectively, the four countries can produce a volume of plate that is many times the size of the Canadian market.<sup>87</sup> However, the Tribunal observes that, individually, Spain has a lesser plate capacity than Canada, while Italy's capacity is not dissimilar to that of the domestic industry.<sup>88</sup>

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80. *Transcript of Public Hearing*, Vol. 1, 1 March 2004 at 215-16, 226.

81. *Ibid.* at 226-27.

82. *Ibid.* at 225-26.

83. *Ibid.* at 219.

84. *Ibid.* at 36, 219-20; *Transcript of In Camera Hearing*, Vol. 1, 1 March 2004 at 10, 18-20.

85. Tribunal Exhibit RR-2003-001-05, Administrative Record, Vol. 1A at 29; Tribunal Exhibit RR-2003-001-06 (protected), Administrative Record, Vol. 2A at 30; *Transcript of Public Hearing*, Vol. 1, 1 March 2004 at 36-37; *Transcript of In Camera Hearing*, Vol. 1, 1 March 2004 at 10.

86. Paragraph 37.2(2)(d) of the *Regulations* states: "the Tribunal may consider . . . the likely performance of the foreign industry, taking into account that industry's recent performance, including trends in production, capacity utilization, employment levels, prices, sales, inventories, market share, exports and profits". Paragraph 37.2(2)(f) states: "the Tribunal may consider . . . the potential for the foreign producers to produce the goods in facilities that are currently used to produce other goods".

87. Tribunal Exhibit RR-2003-001-05C, Administrative Record, Vol. 1A at 136-39; Tribunal Exhibit RR-2003-001-06 (protected), Administrative Record, Vol. 2A at 29.

88. Tribunal Exhibit RR-2003-001-05C, Administrative Record, Vol. 1A at 136, 138; Tribunal Exhibit RR-2003-001-06 (protected), Administrative Record, Vol. 2A at 47.

94. The Tribunal notes that there have been only modest increases in plate capacity in the subject countries since the last review, including at Ukraine's Alchevsk Iron and Steel Works (35,000 tonnes)<sup>89</sup> and at Italy's Palini e Bertoli (200,000 tonnes)<sup>90</sup> and Trameal mill (40,000 tonnes).<sup>91</sup>

95. However, the Tribunal is of the view that it is not the absolute level of capacity *per se* that is significant, rather, the critical consideration is whether capacity in the subject countries will be used to export dumped goods to Canada.<sup>92</sup> In this case, the Tribunal is of the view that, in the near to medium term, the subject countries will use their capacity to produce plate to satisfy either their own domestic demands or, as discussed above, the high demand in other markets. The current global shortage of plate means that mills in the subject countries are likely operating at "full capacity" in practical terms, having chosen not to produce more plate due to shortages or costs of inputs and/or shipping or decisions to produce more profitable products on the plate production line, or for other reasons.

96. As to the dependence of the subject countries on exports of plate, the Tribunal observes that, in fact, in 2001, the last year for which data are on the record, only the Ukraine exported more plate than it consumed domestically.<sup>93</sup> Thus, three of the four subject countries do not appear to be heavily dependent on export markets to sell their plate. Furthermore, as discussed above, export markets other than Canada are likely to continue to be more attractive to the subject countries. In this regard, the Tribunal notes that, even in 2002, China was among the top five destinations for plate from three of the subject countries, i.e. Korea, Italy and the Ukraine.<sup>94</sup>

97. Finally, in the Tribunal's view, the evidence does not support the domestic industry's contention that, if the order were to expire, the Ukraine<sup>95</sup> would switch productive capacity from hot-rolled sheet to plate in order to avoid anti-dumping measures<sup>96</sup> and re-enter the Canadian market. The Tribunal observes that global prices for hot-rolled steel are also increasing significantly,<sup>97</sup> and it is not persuaded that mills in the Ukraine would forgo opportunities in global hot-rolled markets to export plate to Canada.

98. Accordingly, the Tribunal is not convinced that the performance of the foreign industry and its potential to switch production from other goods to the subject goods would make it likely that significant volumes of the subject goods would be dumped in Canada if the order were permitted to expire.

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89. Tribunal Exhibit RR-2003-001-64.02 (protected), Administrative Record, Vol. 2 at 277.

90. Tribunal Exhibit RR-2003-001-64.03 (protected), Administrative Record, Vol. 2 at 279.

91. Tribunal Exhibit RR-2003-001-64.01 (protected), Administrative Record, Vol. 2 at 275.

92. *Oil and Gas Well Casing* (4 July 2001), RR-2000-001 (CITT) at 13-14.

93. These data are from World Steel Dynamics and 2001 is the last year available. Tribunal Exhibit RR-2003-001-05C, Administrative Record, Vol. 1A at 136-39.

94. *Ibid.*

95. Canada has no finding covering hot-rolled sheet from Italy, Korea and Spain.

96. See *Hot-rolled Steel Sheet*.

97. Tribunal Exhibit RR-2003-001-05D, Administrative Record, Vol. 1A at 142-44.

**Anti-dumping Measures on Plate and Similar Goods in Other Jurisdictions and Likelihood of Diversion**<sup>98</sup>

99. The domestic industry argued that the propensity of the subject countries to dump, as evidenced by their past conduct, indicated that they would likely dump plate in significant volumes in Canada in the future. The Tribunal notes that, for three of the four subject countries, namely, Italy, Korea and Spain, anti-dumping measures concerning plate exist only in one country, the United States, and that these measures are all at least four years old.<sup>99</sup> With respect to Korea, the Tribunal notes that, in February 2004, Australia determined that plate from POSCO had been dumped, the investigation against Dongkuk having been terminated; however, as of the date of the hearing, there has been no determination of whether the dumping has caused injury, and no anti-dumping measures had been imposed.<sup>100</sup> The Ukraine faces quota and minimum price restrictions in the United States, which were recently renewed,<sup>101</sup> and an injury finding in the Republic of South Africa.<sup>102</sup>

100. The Tribunal is not persuaded that the small number of injury findings on plate in other jurisdictions is indicative that the subject countries would dump in Canada in significant volumes in the near to medium term, especially in view of the fact that the global situation concerning supply and demand for plate is significantly different from the situation at the time when these measures were put in place.

101. Nor does the Tribunal consider it likely that the expiry of the order will lead to significant volumes of dumped plate being diverted to Canada from other markets because any product that was displaced at the time when these findings were put in place would have long since found other destinations. In the unlikely event that any diversion did occur, it would not likely occur to Canada, but to the more attractive markets discussed above.

102. The Tribunal is cognizant that there are a number of injury findings by various countries on other steel products from the subject countries.<sup>103</sup> In particular, it observes that there are six findings concerning hot-rolled sheet or coil from the Ukraine and one finding concerning such products from Korea. In the Tribunal's view, these findings on other steel products are not necessarily evidence of a propensity on the part of the subject countries to dump plate.

103. The Tribunal also considered the domestic industry's argument that the increase in the volume of Ukrainian low-carbon PVQ plate following the order was indicative of a propensity to dump on the part of the Ukraine. Even if the Tribunal were to regard the behaviour of Ukrainian mills in 1999 as evidence that

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98. Paragraph 37.2(2)(h) of the *Regulations* states: "the Tribunal may consider . . . evidence of the imposition of anti-dumping or countervailing measures by the authorities in a country other than Canada in respect of goods of the same description or in respect of similar goods". Paragraph 37.2(2)(i) states: "the Tribunal may consider . . . whether measures taken by the authorities in a country other than Canada are likely to cause a diversion of the dumped or subsidized goods into Canada".

99. Tribunal Exhibit RR-2003-001-05C, Administrative Record, Vol. 1A at 135. Anti-dumping and countervailing measures against Italy and Korea were implemented in 2000, while those against Spain have been in place since 1993, having been renewed in 2000.

100. Tribunal Exhibit RR-2003-001-59.05, Administrative Record, Vol. 1 at 320.6.

101. Tribunal Exhibit RR-2003-001-05C, Administrative Record, Vol. 1A at 135. The measures were first put in place in 1997 and were renewed in 2003.

102. Tribunal Exhibit RR-2003-001-05E, Administrative Record, Vol. 1A at 146. The Tribunal notes that, in the sunset review concerning plate from the Ukraine, Indonesia found no injury in 2003 (World Trade Organization, Semi-Annual Report under Article 16.4 of the Agreement - Indonesia, G/ADP/N/105/IDN, 21 August 2003).

103. Manufacturer's Exhibit B-01, para. 88, Administrative Record, Vol. 11.

the Ukraine has a major propensity to dump, it is not convinced that the Ukraine would, in fact, resume dumping plate in Canada in significant volumes in the near to medium term, given the previously described global conditions.

104. As to the fact that there have been relatively few imports from the subject countries since the last review, the Tribunal considers that this could be due to any number of factors, including interest in other markets rather than an inability to compete at undumped prices. With respect to the fact that foreign producers did not participate in the expiry review, the Tribunal notes that, pursuant to Article 6.2 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*,<sup>104</sup> failure to participate in proceedings cannot be prejudicial to interested parties and, therefore, the Tribunal has not drawn any negative inference from the foreign producers' lack of participation.

105. Accordingly, the Tribunal is not convinced that the past dumping behaviour of the subject countries or the possibility that the subject goods would be diverted to Canada from other markets make it likely that significant volumes of the subject goods would be dumped in Canada if the order were permitted to expire.

#### **Likely Effects of Other Factors<sup>105</sup>**

106. The Tribunal also considered other factors, unrelated to dumping, that might affect the domestic industry in the near to medium term.

107. The Tribunal notes that, over the past three years, plate imports from the United States increased their share of the declining domestic market, capturing 27 percent of the Canadian market in 2002, from 21 percent in 2000. This trend continued in the first 9 months of 2003.<sup>106</sup> The domestic industry submitted that plate imports from the United States were not problematic, since they were priced at or above prevailing market prices. Further, it contended that the increased volumes in 2002 and 2003 merely filled the void created by Stelco's falling production and eventual departure.<sup>107</sup> The Tribunal notes that the increase in plate imports from the United States could also reflect the appreciation in the relative value of the Canadian dollar over the past 18 months and the increasing competitiveness of U.S. plate.

108. In either case, to the extent that imports from the United States take sales away from the domestic industry and do not merely complement domestic production, the domestic industry could face higher unit costs because of lower sales volume, which, in turn, could negatively impact its profitability.

109. Moreover, the witness for Russel suggested that a continuing appreciation in the value of the Canadian dollar would make domestic manufacturers that use plate less competitive when exporting their end products to the United States<sup>108</sup> and, hence, would result in decreased Canadian demand for plate.

110. In the Tribunal's view, however, the evidence does not indicate that the effects of these factors are likely to significantly detract from the positive outlook facing the domestic plate industry, as outlined above.

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104. 15 April 1994, online: World Trade Organization <[http://www.wto.org/english/docs\\_e/legal\\_e/final\\_e.htm](http://www.wto.org/english/docs_e/legal_e/final_e.htm)>.

105. Paragraph 37.2(2)(k) of the *Regulations* states: "the Tribunal may consider . . . any other factors relevant in the circumstances."

106. Tribunal Exhibit RR-2003-001-05, Administrative Record, Vol. 1A at 29; Tribunal Exhibit RR-2003-001-06 (protected), Administrative Record, Vol. 2A at 30.

107. *Transcript of Public Hearing*, Vol. 1, 1 March 2004 at 36; *Transcript of In Camera Hearing*, Vol. 1, 1 March 2004 at 9-10.

108. *Transcript of Public Hearing*, Vol. 1, 1 March 2004 at 214-15.



**CONCLUSION**

111. Based on the foregoing, the Tribunal does not consider that the expiry of the order would likely result in material injury to the domestic industry in the near to medium term. Therefore, the Tribunal, pursuant to subparagraph 76.03(12)(a)(ii) of *SIMA*, hereby rescinds the order concerning certain hot-rolled carbon steel plate and high-strength low-alloy plate not further manufactured than hot-rolled, heat-treated or not, in cut lengths, originating in or exported from Italy, Korea, Spain and the Ukraine.

Ellen Fry

Ellen Fry  
Presiding Member

Pierre Gosselin

Pierre Gosselin  
Member

Patricia M. Close

Patricia M. Close  
Member

## APPENDIX PRODUCT DEFINITION

Hot-rolled carbon steel plate and high-strength low-alloy plate not further manufactured than hot-rolled, heat-treated or not, in cut lengths, in widths from 24 in. (610 mm) to 152 in. (3,860 mm) inclusive, and in thicknesses from 0.187 in. (4.75 mm) to 4 in. (101.6 mm) inclusive as follows:

- plate made to CSA specifications: G40.21, grades 230G/33G, 260W/38W, 300W/44W, 350W/50W, 350A/50A, 350AT/50AT, 400W/60W, 260WT/38WT, 300WT/44WT, 350WT/50WT and 400WT/60WT, or equivalent specifications in either CSA or other recognized designation systems or standards
- plate made to ASTM specifications: A283M/A283, grades A, B, C and D, A36M/A36, A572M/A572, grades 42, 50, 60 and 65, A588M/A588, A242M/A242, Types 1 and 2, A515 and A516M/A516, grade 70, or equivalent specifications in either ASTM or other recognized designation systems or standards

but excluding:

- plate for use in the manufacture of pipe and tube (also known as skelp)
- plate in coil form
- universal mill plate
- plate made to ASTM specifications A515 and A516M/A516, grade 70, in thicknesses greater than 3.125 in. (79.375 mm)
- plate made to ASTM specification A516M/A516, grade 70, which also meets one or more of the following specifications:
  - (i) plate required to meet NACE standard TM 0284/87, using the solution specified in TM 01-77/86, at the following levels: CLR 10% or less, CTR 5% or less and CSR 2% or less;
  - (ii) plate greater than 2.5 in. (63.5 mm) in thickness required to meet impact testing in the transverse orientation at -50°F under ASTM A370, to meet or exceed 25 ft-lb on average and 20 ft-lb on individual specimens;
  - (iii) plate greater than 2.5 in. (63.5 mm) in thickness required to meet the ultrasonic evaluation standards of ASTM/ASME SA-577 and/or SA-578;
  - (iv) plate at least 112 in. (2,844 mm) in width with a total pattern weight in excess of 25,000 lbs;
  - (v) plate required to meet the following carbon equivalent as per ASME 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) in thickness

originating in or exported from Italy, Korea, Spain and the Ukraine.