



Ottawa, Friday, January 10, 2003

Expiry Review No. RR-2001-006

IN THE MATTER OF an expiry review, under subsection 76.03(3) of the *Special Import Measures Act*, of the findings made by the Canadian International Trade Tribunal on October 27, 1997, in Inquiry No. NQ-97-001, concerning:

CERTAIN HOT-ROLLED CARBON STEEL PLATE ORIGINATING IN OR EXPORTED FROM MEXICO, THE PEOPLE'S REPUBLIC OF CHINA, THE REPUBLIC OF SOUTH AFRICA AND THE RUSSIAN FEDERATION

ORDERS

The Canadian International Trade Tribunal, under the provisions of subsection 76.03(3) of the *Special Import Measures Act*, has conducted an expiry review of its findings made on October 27, 1997, in Inquiry No. NQ-97-001, concerning certain hot-rolled carbon steel plate originating in or exported from Mexico, and originating in or exported from the People's Republic of China, the Republic of South Africa and the Russian Federation.

Pursuant to paragraph 76.03(12)(b) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby continues its finding made on October 27, 1997, in Inquiry No. NQ-97-001, concerning certain hot-rolled carbon steel plate originating in or exported from the People's Republic of China, the Republic of South Africa and the Russian Federation.

Pursuant to paragraph 76.03(12)(a) and subsection 76.04(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby rescinds its finding made on October 27, 1997, in Inquiry No. NQ-97-001, concerning certain hot-rolled carbon steel plate originating in or exported from Mexico.

Patricia M. Close
Patricia M. Close
Presiding Member

Zdenek Kvarda
Zdenek Kvarda
Member

James A. Ogilvy
James A. Ogilvy
Member

Michel P. Granger
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Secretary

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**CERTAIN HOT-ROLLED CARBON STEEL PLATE ORIGINATING IN OR
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REPUBLIC OF SOUTH AFRICA AND THE RUSSIAN FEDERATION**

Special Import Measures Act—Whether to rescind or continue, with or without amendment, the findings made by the Canadian International Trade Tribunal on October 27, 1997, in Inquiry No. NQ-97-001.

Place of Hearing: Ottawa, Ontario
Dates of Hearing: November 18 and 19, 2002
Date of Orders and Reasons: January 10, 2003

Tribunal Members: Patricia M. Close, Presiding Member
Zdenek Kvarda, Member
James A. Ogilvy, Member

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(Domestic Producers)

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IN THE MATTER OF an expiry review, under subsection 76.03(3) of the *Special Import Measures Act*, of the findings made by the Canadian International Trade Tribunal on October 27, 1997, in Inquiry No. NQ-97-001, concerning:

CERTAIN HOT-ROLLED CARBON STEEL PLATE ORIGINATING IN OR EXPORTED FROM MEXICO, THE PEOPLE'S REPUBLIC OF CHINA, THE REPUBLIC OF SOUTH AFRICA AND THE RUSSIAN FEDERATION

TRIBUNAL: PATRICIA M. CLOSE, Presiding Member
ZDENEK KVARDA, Member
JAMES A. OGILVY, Member

STATEMENT OF REASONS

BACKGROUND

This is an expiry review, under subsection 76.03(3) of the *Special Import Measures Act*,¹ of the findings made by the Canadian International Trade Tribunal (the Tribunal) on October 27, 1997, in Inquiry No. NQ-97-001, concerning certain hot-rolled carbon steel plate (carbon steel plate) originating in or exported from Mexico, and originating in or exported from the People's Republic of China (China), the Republic of South Africa (South Africa) and the Russian Federation (Russia).²

On February 11, 2002, the Tribunal issued a notice of expiry review³ to all known interested parties. As part of the expiry review, the Tribunal sent questionnaires to Canadian producers, importers and exporters/foreign producers of carbon steel plate. These questionnaires and the replies thereto formed part of the records of both the Canada Customs and Revenue Agency (CCRA) and the Tribunal.

On February 12, 2002, the Commissioner of the CCRA (the Commissioner) initiated an investigation to determine whether the expiry of the Tribunal's findings was likely to result in the continuation or resumption of dumping of carbon steel plate from Mexico, China, South Africa and Russia (the subject countries).

On February 13, 2002, the Tribunal revised its notice of expiry review to reflect changes relating to CCRA's portion of the investigation.

1. R.S.C. 1985, c. S-15 [hereinafter SIMA].
2. On June 21, 1999, pursuant to section 77.016 of SIMA, the Tribunal issued a corrigendum to its October 27, 1997, finding in order to issue a separate finding for Mexico. This corrigendum was made following a remand by the Binational Panel in Canadian Secretariat File No. CDA-97-1904-02 on May 19, 1999, concerning its review of the Tribunal's original finding and regarding the requirement for a separate finding respecting the goods from Mexico.
3. C. Gaz. 2002.I.425.

On May 2, 2002, the Tribunal announced the postponement of its inquiry due to the fact that the Canadian industry, importers, exporters and the Tribunal itself were involved in a safeguard investigation of a broad range of steel products, including carbon steel plate.

On June 11, 2002, the Commissioner concluded his investigation and determined, pursuant to subsection 76.03(7) of SIMA, that the expiry of the findings was likely to result in the continuation or resumption of dumping of carbon steel plate from Mexico, China, South Africa and Russia.⁴

On August 30, 2002, the Tribunal began its inquiry, pursuant to subsection 76.03(10) of SIMA, to determine whether the expiry of the findings was likely to result in material injury to the domestic industry. As part of this process, the Tribunal sent out questionnaires on market characteristics to producers, importers and purchasers of carbon steel plate.

To update the information already on the record, the Tribunal requested additional information from the three domestic producers of carbon steel plate in Canada, i.e. Algoma Steel Inc. (Algoma), IPSCO Inc. (IPSCO) and Stelco Inc. (Stelco), and from one importer of carbon steel plate from the subject countries, i.e. Wirth Steel, a general partnership (Wirth), covering the first six months of 2001 and 2002. Furthermore, the Tribunal requested that the only foreign producer that participated in the hearing, Altos Hornos de Mexico, S.A. de C.V. (AHMSA), respond to an amended exporters' expiry review questionnaire.

The record of this expiry review consists of: the testimony heard during the public and *in camera* hearings held in Ottawa, Ontario, on November 18 and 19, 2002; all relevant documents, including the CCRA's *Protected Expiry Review Report* and *Statement of Reasons*, with supporting documentation; the protected and public replies to the expiry review questionnaires; the Tribunal's requests for information; and the public and protected pre-hearing staff reports from Inquiry No. NQ-97-001 and this expiry review. 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.

Algoma, IPSCO and Stelco were represented by counsel at the hearing. They submitted evidence and made arguments in support of a continuation of the findings.

AHMSA was also represented by counsel at the hearing. It argued that Mexico should not be cumulated with the other subject countries and that the Tribunal should make a finding of no likelihood of injury. In the alternative, AHMSA requested a country exclusion.

PRODUCT

The product that is the subject of this expiry review is defined as hot-rolled carbon steel plate and high-strength low-alloy (HSLA) plate not further manufactured than hot-rolled, heat-treated or not, in cut lengths, in widths from 24 in. (+/- 610 mm) to 152 in. (+/- 3,860 mm) inclusive, and thicknesses from 0.187 in. (+/- 4.75 mm) to 4.0 in. (+/- 101.6 mm) inclusive.

4. On January 15, 2002, the CCRA issued new normal values as a result of a re-investigation. Specific normal values were determined for one exporter in Russia, one exporter in South Africa and all exporters in China. Due to the lack of cooperation by other exporters in the re-investigation, specific normal values were not determined for the remaining exporters in Russia and South Africa or for the exporter in Mexico. Given these circumstances, an advance over the export price was used to determine the normal values for these exporters.

Specifically excluded from the definition of the subject carbon steel plate are: 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); and plate produced 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. (+/- 79.3 mm).⁵

Carbon steel plate is made by hot-rolling ingots or semi-finished slabs into rectangular shapes or coils. While details may vary from mill to mill, the process by which carbon steel plate is produced is essentially the same for all producers and entails the following processes: heating the slabs/ingots, descaling, rolling, levelling, cutting to size, inspecting and testing. Subsequently, the plate may be heat-treated, which may include annealing, normalizing, stress relieving, quenching, tempering or combinations of these treatments.

Carbon steel plate formed into rectangular shapes is referred to as “discrete plate”. Lighter gauge carbon steel plate may be coiled and subsequently cut-to-length. This is referred to as “plate cut-to-length from coil”. Carbon steel plate is manufactured to meet certain CSA International (CSA) and/or ASTM specifications. CSA specification G40.21 refers to both structural and PVQ plate. CSA specification 44W refers to structural plate only. ASTM specifications A283M/A283 and A36M/A36 include structural plate; A572M/A572, A588M/A588 and A242M/A242 comprise HSLA plate; and A515M/A515 and A516M/A516 comprise PVQ plate.

Structural plate is used in the production of rail cars, heavy construction machinery, agricultural equipment, automobile and truck parts and ships, in ship repair and in the construction of bridges, industrial buildings and highrise buildings. HSLA plate is used where both strength and savings in weight are needed. PVQ plate is used in the manufacture of sealed containers, such as gas storage tanks, capable of holding their contents under pressure.

DOMESTIC PRODUCERS

Algoma, IPSCO and Stelco account for the majority of the carbon steel plate produced in Canada. Certain steel service centres also produce plate cut-to-length from coil.

Algoma

Algoma, located in Sault Ste. Marie, Ontario, was incorporated on June 1, 1992. It acquired all the assets and some of the liabilities of the former Algoma Steel Corporation, Limited. On January 29, 2002, the company was further re-organized under a Plan of Arrangement and Reorganization.

Algoma is a vertically integrated primary iron and steel producer. It produces carbon steel plate and other products, such as hot-rolled sheet, cold-rolled sheet, welded wide flange and unfinished parts. These products primarily serve Canada’s construction, transportation and energy industries.

Algoma produces structural, HSLA and PVQ grades of carbon steel plate in thicknesses up to 2.75 in. and in widths up to 152 in. on its 166-in. plate mill and 106-in. wide strip mill. The installation of the Direct Strip Production Complex (DSPC) in 1997 has freed up capacity for carbon steel plate on Algoma’s plate mill complex.

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

IPSCO

IPSCO, located in Regina, Saskatchewan, was incorporated in 1956 under the name of Prairie Pipe Manufacturing Co. Ltd. It commenced operations in 1957 and, in 1960, it started production of flat-rolled steel, including carbon steel plate. Since that time, IPSCO has expanded its manufacturing capabilities through acquisition and plant construction in both Canada and the United States. In addition to carbon steel plate, IPSCO manufactures oil country tubular goods, line pipe, standard pipe, hollow structural sections, and alloy sheet and plate.

IPSCO produces structural and HSLA grades of carbon steel plate, in discrete form, at its primary steel mill in Regina, in thicknesses from 0.375 in. to 3 in. and in widths from 40 in. to 76 in. It produces plate cut-to-length from coil in Regina and Surrey, British Columbia, in thicknesses from 0.1875 in. to 0.5 in. and in widths from 48 in. to 96 in.

In 1999, IPSCO began operating the first combination 4-Hi 96-in. wide temper level mill, cut-to-length line in Canada in its Toronto, Ontario, facility. In this facility, it produces plate cut-to-length from coil in thicknesses from 0.1875 in. to 0.75 in. and in widths from 48 in. to 96 in.

Stelco

Stelco, located in Hamilton, Ontario, was established in 1910 as the Steel Company of Canada Ltd. It is an integrated steel company that produces flat-rolled steel, bars and rods, as well as wire, wire products, and pipes and tubes.

In 1997, Stelco announced an \$85 million modernization project to improve and expand the capability of the Hilton Works plate mill and to include production of heavy gauge coil. Construction of Stelco's 4-Hi reversing finishing mill (Steckel mill) was completed over the period 1997 to 2001 and is now operational.

Stelco produces structural and HSLA grades of carbon steel plate in thicknesses from 0.1875 in. to 5.5 in. and PVQ plate in thicknesses from 0.1875 in. to 3.125 in. on its 148-in. plate mill. In addition, Stelco can produce plate cut-to-length from coil in its Steckel mill in thicknesses from 0.125 in. to 0.625 in. and in widths of up to 120 in.

IMPORTERS AND EXPORTERS

As part of this expiry review, Wirth, located in Montréal, Quebec, an importer of the subject goods, responded to the questionnaire. In addition to importing carbon steel plate from the subject countries, Wirth imports other steel products, including floor plate, sheets, coils, I-beams, wide flange beams, bearing piles, channels, pipe and light rails from various countries. It sells its products directly to steel service centres across North America. Replies were also received from two importers of carbon steel plate from non-subject countries, i.e. Salzgitter Trade Inc. and Balli Klockner Canada Ltd.

With respect to exporters' participation, only two exporters replied to the questionnaire: AHMSA, located in Monclova, Coahuila, Mexico, and Highveld Steel and Vanadium Corporation Limited (Highveld), located in Witbank, Mpumalanga, South Africa.

AHMSA, the only producer of carbon steel plate in Mexico, was founded in 1942. It is a fully integrated producer of carbon steel plate and other flat steel products, such as hot-rolled coil, cold-rolled coil and tinplate, as well as of long steel products, such as heavy and light structural sections, wire rod and reinforcing bar. In AHMSA's domestic market, its products serve primarily the manufacturing, construction, petroleum, packaging and home appliance industries.

Highveld, which has been in operation since the early 1960s under different company names, is a producer of iron and steel products. It operates two iron plants, a steel plant, a structural mill, a plate mill, and a hot-reversing strip mill that produces carbon steel plate and sheet in coil.

MARKETING AND DISTRIBUTION

Domestic Product

Algoma, IPSCO and Stelco sell carbon steel plate directly to end users (larger fabricators and original equipment manufacturers) or to steel service centres/distributors. Steel service centres may resell standard plate sizes and grades or may offer custom cutting services to their customers. A significant portion of Canadian mill shipments of carbon steel plate is sold to end users through steel service centres.

Imported Product

Importers of carbon steel plate sell their products in a variety of ways. Some importers utilize sales agents or a dedicated sales force to contact customers. Others respond to customer enquiries and source product when they receive a request or learn of an available quantity and seek orders from customers for that quantity of plate. Some sales are made directly to end users; however, most of the importers' sales of carbon steel plate are to steel service centres.

PAST PROCEEDINGS

SIMA Cases

Since 1992, the Tribunal has conducted four inquiries pursuant to section 42 of SIMA concerning similar plate products, each resulting in the imposition of either anti-dumping measures or both anti-dumping and countervailing measures against imports from different named countries. The measures resulting from three of the four inquiries are still in force. The four plate cases are known as Plate I, whose finding is no longer in force, Plate II, Plate III, which is the subject of this expiry review, and Plate IV.

Plate I

On May 6, 1993, in Inquiry No. NQ-92-007, the Tribunal found that dumped imports from Belgium, Brazil, the Czech Republic, Denmark, the Federal Republic of Germany (Germany), Romania, the United Kingdom and the former Yugoslav Republic of Macedonia (Macedonia) were injuring the production of plate in Canada. At the same time, the Tribunal found that the dumped imports from the United States were not injuring the production of plate in Canada. On May 5, 1998, in Review No. RR-97-006, the Tribunal

concluded that there was no likelihood of resumed dumping from the named countries and, therefore, rescinded its finding.⁶

Plate II

On May 17, 1994, in Inquiry No. NQ-93-004, the Tribunal found that dumped imports from Italy, the Republic of Korea (Korea), Spain and Ukraine were injuring the production of plate in Canada. On May 17, 1999, in Review No. RR-98-004, the Tribunal issued an order continuing its finding. This order is scheduled to expire in May 2003.

Plate IV

On June 27, 2000, in Inquiry No. NQ-99-004, the Tribunal found that dumped imports from Brazil, Finland, India, Indonesia, Thailand and Ukraine and subsidized imports from India, Indonesia and Thailand had caused material injury to the domestic industry. This finding is scheduled to expire in June 2005.

Canadian Safeguard Inquiry

On March 21, 2002, the Tribunal was directed by the Governor in Council to conduct a safeguard inquiry into the importation into Canada of certain steel goods, including carbon steel plate.⁷

On July 4, 2002, the Tribunal determined that carbon steel plate was being imported into Canada from all sources in such increased quantities since the beginning of 1996, and under such conditions, as to be a principal cause of serious injury to domestic producers of like or directly competitive goods. As to Canada's North American free trade partners, the Tribunal determined, pursuant to subsection 20.01(2) of the *Canadian International Trade Tribunal Act*,⁸ that carbon steel plate imported from the United States accounted for a substantial share of total imports of goods of the same kind and that, alone, it contributed importantly to the serious injury. With regard to Mexico, the Tribunal determined, pursuant to subsection 20.01(2) of the CITT Act, that carbon steel plate imported from that country neither accounted for a substantial share of total imports nor contributed importantly to the serious injury.

On August 19, 2002, the Tribunal provided its recommendations to the Governor in Council on the most appropriate remedy available. The Canadian Government is currently reviewing the Tribunal's recommendations.

POSITIONS OF PARTIES

Domestic Industry

The domestic industry submitted that the findings should be continued. If they were not, the likely volume of dumped goods from the subject countries, likely to be at the lowest price in the market, would materially injure the domestic industry.

6. This review was conducted prior to the coming into force, on April 15, 2000, of the amendments to SIMA that bifurcated the review process. At the time of this review, the Tribunal made determinations on both the likelihood of resumed dumping and the likelihood of injury caused by resumed dumping.

7. The carbon steel plate subject to this safeguard inquiry was referred to as "discrete plate" and was defined as follows: flat-rolled carbon and alloy steel discrete plate, including floor-patterned plate, but excluding clad plate, PVQ plate over 3.125 in. (+/- 79.3 mm) thick and other plate over 5 in. (+/- 127 mm) thick.

8. R.S.C. 1985 (4th Supp.), c. 47 [hereinafter CITT Act].

In addressing this threat of injury, the domestic industry argued that it was currently in a vulnerable state, which would be exacerbated if the findings were rescinded. It submitted that its vulnerability is due to the price suppression, price erosion, low capacity utilization rates and reduced profitability that it has experienced, even with the findings in place. This has been caused by low-priced imports and other factors, such as high production costs and the general economic conditions in Canada. The domestic industry argued that any recent improvement in pricing had not removed its vulnerability, as carbon steel plate prices were only as high as they were at the time of the findings and they are falling in the fourth quarter of 2002. Further, the domestic industry stated that the demand for carbon steel plate in the domestic market is currently weak and that there are no large projects anticipated in the near future that would give rise to significant demand. In addition, the domestic industry indicated that there are limited opportunities to export carbon steel plate. As a further point on the question of vulnerability, the domestic industry argued that renewed dumping from the subject countries, already found to be likely by the CCRA, would threaten investments made by the domestic industry in new production facilities and might cause one or more producers to stop production of carbon steel plate.

The domestic industry further submitted that “conditions of competition” for the purposes of subsection 76.03(11) of SIMA involve an assessment of the competition that exists among the goods produced by the subject countries, as well as with the like goods. Moreover, cumulation is a “goods based” issue and does not involve a broader assessment of whether a specific exporter competes directly with domestic producers. Further, the domestic industry argued that subsection 76.03(11) permits the Tribunal to examine the conditions of competition wherever that competition takes place and that the Tribunal is not necessarily limited to examining the conditions of competition that exist in the domestic market. For instance, the same conditions of competition are evident in the Mexican market, given that the Mexican producer is considering bringing anti-dumping actions against Chinese and Russian plate. Consequently, the domestic industry maintained, the conditions of competition are similar for all four countries and, therefore, their imports into Canada should be cumulated, including those of Mexico. The domestic industry added that, should Mexico wish to participate in the Canadian market, it could do so by applying for normal values.

Further, addressing the price factor covered by section 37.1 of the *Special Import Measures Regulations*,⁹ the domestic industry argued that, given that carbon steel plate is a commodity product, price is a key element in buying decisions made by purchasers in the Canadian market. This being the case, imports from the subject countries will have to be priced at or below the lowest price in the market to obtain a sale. This would cause price erosion, price suppression or loss of volume for the domestic industry.

As for the volumes of imports, the domestic industry argued that, given the overcapacity in the subject countries, especially China and Russia, expected volumes would be substantial. As for the likely volumes of South African exports to Canada, the domestic industry pointed to the fact that, when the devalued rand virtually eliminated the effect of the anti-dumping duties then in place, South Africa shipped significant volumes of carbon steel plate to Canada. As for Mexico, based on AHMSA’s testimony regarding an interest in entering the Canadian market, the domestic industry maintained that Mexico will likely export in the near term, and in volumes higher than those exported prior to the findings. But, even if the volumes were not substantial, the domestic industry argued that a mere boatload from any subject country could destabilize the price in the domestic market.

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

The domestic industry also referred to the business practice of certain distributors and brokers that “scour the globe looking for cheap sources of supply” and “source switch” every time a finding is put in place by the Tribunal that results in anti-dumping duties on existing sources. The domestic industry contended that, at present, it is being injured by low-priced product from various countries not subject to the findings, most notably Romania.

The domestic industry, however, argued that imports of carbon steel plate from the United States had not injured the domestic industry. Although large volumes of carbon steel plate from the United States are present in the Canadian market, the domestic industry noted that the United States is part of the integrated North American steel market and that U.S. carbon steel plate is sold at stable and non-disruptive prices.

The domestic industry submitted that the subject countries have a clear record of unfair trading into Canada. It referred to the fact that, in 1997, the subject countries were found to be dumping by very high margins and that all imports from those countries were dumped. Further, several of the subject countries are subject to anti-dumping and/or safeguard actions in respect of carbon steel plate and related carbon steel products in the United States and other markets, such that exports of goods from the subject countries are likely to be diverted to Canada. In this context, it was argued that Mexico was currently subject to a 20.34 percent dumping margin in the United States.

In addition, the domestic industry noted that the Canadian Government has not announced the adoption of any safeguard measure for carbon steel plate and argued that it would be inappropriate to speculate about the impact that such a measure might have on the domestic market for like goods. It did argue, however, that just because the Tribunal did not find that Mexico had contributed to the surge of imports in the safeguard determinations did not imply that Mexico could not be a threat in the future.

AHMSA

AHMSA submitted that, for the purposes of the Tribunal’s injury analysis, Mexico should not be cumulated with the other subject countries and that the Tribunal should make a finding of no likelihood of injury with respect to goods imported from Mexico. In the alternative, AHMSA requested a country exclusion.

In support of its position that Mexico should not be cumulated, AHMSA stated that it does not intend to use the same channels of distribution as those used by producers in the other subject countries. Rather, it intends to sell directly to industrial clients. Unlike suppliers in the other subject countries, AHMSA is part of the North American steel market, with transportation costs to Canada that are low in comparison with the other countries. Unlike the others, Mexico, through its sole producer of the subject goods, AHMSA, does not have a history of exporting. It is not likely to export in such volumes and prices as to injure the domestic industry, as it does not intend to destroy the market and be the “Romania of the NAFTA producers”.

AHMSA argued that the difficulties faced by the domestic industry are unrelated to imports from the subject countries and submitted that the findings under review have not provided the domestic industry with any protection from injury. AHMSA argued that a finding that provides no benefit to the domestic industry should be allowed to expire.

Among the factors affecting Canadian production, AHMSA noted the large volume of U.S. carbon steel plate exports to Canada. Imports of U.S. carbon steel plate into Canada, AHMSA observed, account for more than 60 percent of the imports and are price competitive with Canadian steel. At the same time, there is substantial unused capacity in U.S. mills.

AHMSA maintained that there is no proof that the U.S. safeguard action has caused a diversion of carbon steel plate to Canada. Regardless, AHMSA is not subject to this action, and the safeguard action will not result in diversion of the subject goods from Mexico.

ANALYSIS

As noted earlier, the Commissioner made a determination on June 11, 2002, pursuant to subsection 76.03(7) of SIMA, that the expiry of the findings concerning carbon steel plate from Mexico, and from China, South Africa and Russia, is likely to result in the continuation or resumption of dumping. Consequently, the Tribunal is required, pursuant to subsection 76.03(10) of SIMA, to determine whether the expiry of the findings is likely to result in injury or retardation to the domestic industry.

Like Goods

Subsection 2(1) of SIMA defines “like goods”, in relation to 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.

In considering the issue of like goods, the Tribunal typically looks at a number of factors, including the physical characteristics of the goods. The evidence indicates that, for each specification, the domestic industry’s carbon steel plate is produced according to standards that are similar to the subject goods and that these products are substitutable. While evidence provided by Stelco suggests that plate cut-to-length from coil does not compete in the same market as discrete plate,¹⁰ the Tribunal notes that the evidence on the record clearly indicates that plate cut-to-length from coil competes directly with the narrower widths and smaller thicknesses of discrete plate in the Canadian market.¹¹

Therefore, the Tribunal concludes that carbon steel plate produced by the domestic industry, defined in the same manner as the subject goods, constitutes like goods to the subject goods.

Domestic Industry

The domestic industry is defined in section 2 of SIMA as the “domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods except that, where a domestic producer is related to an exporter or importer of dumped or subsidized goods, or is an importer of such goods, ‘domestic industry’ may be interpreted as meaning the rest of those domestic producers”. The Tribunal’s analysis of likelihood of injury has focussed on the domestic producers that participated in the hearing. These domestic producers’ collective production of the like goods constitutes a major proportion of the total domestic

10. Manufacturer’s Exhibit A-05, paras. 72-78, Administrative Record, Vol. 11.

11. *Transcript of Public Hearing*, Vol. 1, 18 November 2002, at 40-41, 122-23; Manufacturer’s Exhibit C-06 (protected), Attach. 3, 5, Administrative Record, Vol. 12B.

production of the like goods. Therefore, these domestic producers constitute the domestic industry for the purpose of this expiry review.

Cumulation

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 that are imported into Canada or between the subject goods and the like goods. In the event that the Tribunal determines that it would not be appropriate to cumulate 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.

In this regard, the Tribunal finds that it would be appropriate to cumulate the goods from China, South Africa and Russia in its analysis of likelihood of injury. The goods from these countries are likely to be similar in terms of price, quality and mode of transportation and are sold through the same distribution channels.¹² The manner in which the goods will compete in the Canadian market will be indistinguishable from one source country to another, such that the Tribunal is of the view that a single injury assessment of the goods from these countries, on a cumulated basis, is appropriate.

The Tribunal has determined, however, that it would not be appropriate to cumulate the goods produced in Mexico with the goods of the other subject countries for the purpose of this inquiry. The Tribunal finds that the conditions of competition are likely to differ between the exports of Mexican carbon steel plate and those of the other three subject countries. As for the competition with the like goods, the Tribunal is persuaded by AHMSA’s testimony that AHMSA will complement Canadian production and will likely compete directly with imports from the United States.

In coming to this conclusion, the Tribunal does not accept the argument from the domestic industry that, if the goods are indistinguishable, there are no differences in the conditions of competition. Fungibility is a characteristic of commodity products; it is not determinative of the question of the conditions of competition. In the Tribunal’s view, conditions of competition refer to how the goods compete in the marketplace. They compete on the basis of such market criteria as the channels of distribution, the clients to whom the product is sold, the price at which it is sold and, in this case, the mode of transportation, which can affect the size of the shipments and the delivery times, by which the imports enter the country. These four conditions of competition will distinguish Mexican carbon steel plate in the Canadian market from that of China, South Africa and Russia. Much of the carbon steel plate from the other three countries is likely to be sold by brokers to service centres, will arrive by ship and will likely be a basic quality, low-priced product. AHMSA, however, testified that it intends to sell directly to end users, will ship by rail and will aim to complement Canadian production.¹³

As a general proposition, the Tribunal finds that the argument made by both AHMSA and the domestic industry, that the North American market for like goods has become integrated, is compelling.¹⁴

12. *Transcript of Public Hearing*, Vol. 1, 18 November 2002, at 32-33, 109, 136-37.

13. *Transcript of Public Hearing*, Vol. 1, 18 November 2002, at 148-49; *Transcript of Public Hearing*, Vol. 2, 19 November 2002, at 222; *Transcript of In Camera Hearing*, Vol. 2, 19 November 2002, at 85.

14. The domestic industry, in making this assertion in argument, was referring to the Canada-U.S. market in particular. Nevertheless, the Mexican market is also part of the North American market, albeit at a more nascent state.

Because of the *North American Free Trade Agreement*,¹⁵ shared border accords, preferential tariff treatments, improvements in transportation services, regionalized production, marketing strategies and increased cross-border investment, North America is becoming increasingly integrated. The steel industry, in particular, has, in many ways, become an integrated industry across the Canada-U.S. border, with ties to the Mexican market beginning to appear. The fact that the only carbon steel plate that is exported by the domestic industry is destined to United States and to Mexico evidences this trend.¹⁶

This integration impacts on the manner in which goods originating in North America and sold by steel companies compete within North America, as compared to other exporting nations, particularly in respect of distribution channels, clients, timing and volume of imports. In particular, North American carbon steel plate sold by the producers can be shipped by rail to end users as required. According to the domestic industry, the integration of the U.S. and Canadian economies distinguishes goods from the United States from those from other exporting nations.¹⁷ In the Tribunal's view, this argument also applies to Mexico, although it is acknowledged that the degree of integration between Mexico and Canada is at a far earlier point in its development than that between Canada and the United States.

The Tribunal accepts the argument made by AHMSA that it intends to take advantage of this increasingly integrated North American market. AHMSA testified that, in the event that the finding against Mexico is rescinded, it intends to market its carbon steel plate directly to end users by developing long-term relationships with end users in the Canadian market.

The Tribunal does not envisage that AHMSA will undercut the lowest prices in the Canadian market in order to make a sale. First, AHMSA has the long-term strategy of a responsible player in the increasingly integrated North American steel market. Second, the relatively higher prices of carbon steel plate in the Mexican market, compared with the prices in the Canadian market, for the period from 2001 to the end of the first six months of 2002,¹⁸ indicate to the Tribunal that AHMSA, although likely to dump, as determined by the Commissioner, will not sell into the Canadian market at the low import prices currently seen in the Canadian market. Conversely, the cumulated countries would likely sell to Canada at this lowest price in the market, if the finding were rescinded, in order to gain market share and reduce excess capacity in the home markets. Mexico, unlike the cumulated countries, has more demand than supply in the home market and does not have the same history of exporting or of dumping.

AHMSA is also in a position to take advantage of its relatively close proximity to Canada. AHMSA, unlike offshore exporters, but similar to its U.S. counterparts, will be able to use rail transportation rather than ships, giving it increased flexibility to transport smaller quantities of steel with shorter lead times.

Therefore, the Tribunal concludes that it is not appropriate to cumulate goods from Mexico with those from the other subject countries.

15. 32 I.L.M. 289 (entered into force 1 January 1994) [hereinafter NAFTA].

16. Tribunal Exhibits RR-2001-006-14.01 (protected), Administrative Record, Vol. 4 at 37, RR-2001-006-14.02 (protected), Administrative Record, Vol. 4B at 19-20, RR-2001-006-14.03 (protected), Administrative Record, Vol. 4F at 17, 19-21; Tribunal Exhibit RR-2001-006-13.03A, Administrative Record, Vol. 3E at 199, 223; *Transcript of Public Hearing*, Vol. 1, 18 November 2002, at 113-14.

17. *Transcript of Public Hearing*, Vol. 1, 18 November 2002, at 41, 69-70, 130; Manufacturer's Exhibit C-03, para. 6, Tab 1, Administrative Record, Vol. 11B.

18. *Protected Pre-hearing Staff Report*, revised (13 November 2002), Tribunal Exhibit RR-2001-006-06A (protected), Administrative Record, Vol. 2A at 270; *Pre-hearing Staff Report*, revised (13 November 2002), Tribunal Exhibit RR-2001-006-05A, Administrative Record, Vol. 1A at 177.

Likelihood of Injury

Subsection 37.2(2) of the Regulations enumerates a number of factors that the Tribunal may consider in addressing the question of likelihood of injury. The various factors that the Tribunal considers relevant in this expiry review are subsumed for this case under the following headings: Likely Volumes of Dumped Carbon Steel Plate; Likely Prices of Dumped Carbon Steel Plate; Likely Effects of Dumped Carbon Steel Plate on the Domestic Industry; and Other Relevant Factors. In its analysis of these factors, the Tribunal considered the likely performance of both the foreign producers and the domestic industry. The likely effects that would result from a continuation or resumption of dumping from China, South Africa and Russia (the cumulated countries) are assessed first on a cumulative basis. The considerations pertaining to Mexico are dealt with separately at the end of the “Analysis” section.

Likely Volumes of Dumped Carbon Steel Plate from the Cumulated Countries

The Tribunal notes that, during the period from January 1999 to the end of the first six months of 2002, imports from the cumulated countries captured only between 0.3 and 2.5 percent of the Canadian market, with South Africa representing the majority of those imports in 2001 and 2002.¹⁹ South African imports of carbon steel plate into Canada had all but ceased after the finding. However, in the second half of 2000, those imports began to increase and became significant by 2001, at a time when the South African rand was severely devalued. While the normal values had afforded protection to the Canadian industry for a period of time, the rapid devaluation of the rand allowed South African producers to resume selling to Canada at non-dumped prices. The re-investigation of the normal values conducted by the CCRA resulted in the determination of significantly higher normal values. If these normal values had been in place in 2001, imports from South Africa could not have remained competitive in the Canadian marketplace without dumping and would have been much smaller, in the Tribunal’s view. As a consequence of the CCRA’s re-investigation, there were no imports from South Africa during the first six months of 2002.²⁰ The Tribunal is of the opinion that this is an indication that, if the finding were rescinded, South African producers would participate in the Canadian market by shipping significant volumes of carbon steel plate at dumped prices. The Tribunal believes that the situation is not significantly different for the other cumulated countries.

The Tribunal is aware that the large production capacity of the cumulated countries includes capacity to manufacture both subject and non-subject carbon steel plate using the same equipment. When the cumulated countries’ home markets for carbon steel plate weaken, they can sell a higher proportion of their production into export markets and/or switch their production to other carbon steel plate products or, in some cases, to hot-rolled sheet or coil.²¹ Data on the record indicate that, subsequent to the finding, there was a shift in export patterns by exporters in the cumulated countries from subject to non-subject plate.²² Hence, the channels of distribution are in place and ready to be used to import significant quantities of subject carbon steel plate, should the finding be rescinded.

19. *Pre-hearing Staff Report*, revised (13 November 2002), Tribunal Exhibit RR-2001-006-05A, Administrative Record, Vol. 1A at 170, 172.

20. *Pre-hearing Staff Report*, revised (13 November 2002), Tribunal Exhibit RR-2001-006-05A, Administrative Record, Vol. 1A at 164.

21. Tribunal Exhibit RR-2001-006-26.02 (protected), Administrative Record, Vol. 6.2 at 18; Manufacturer’s Exhibit B-03, para. 26, Administrative Record, Vol. 11A.

22. Manufacturer’s Exhibit B-03, paras. 21-22, Administrative Record, Vol. 11A.

Similarly, the Tribunal is of the view that producers in the cumulated countries that have been restricted from exporting hot-rolled sheet to Canada following the Tribunal's findings in Inquiry Nos. NQ-98-004 and NQ-2001-001²³ could switch their production back to carbon steel plate. Furthermore, the Tribunal is of the opinion that there is no reason to assume that the export growth by the cumulated countries that was evidenced in the Tribunal's most recent data will not continue.²⁴ The information provided by Highveld corroborates this statement. It suggests that the company's carbon steel plate production is increasingly destined for export markets.²⁵

Conditions in world steel markets are also relevant in evaluating the likelihood of substantial import volumes of carbon steel plate entering the Canadian market from the cumulated countries. According to the evidence, there is an overwhelming oversupply of finished steel in many major markets worldwide, including the cumulated countries. In 2001, world steel demand fell by 4 percent over 2000 and, in 2002, the downturn in demand is continuing and could decline by a further 5 percent by the end of the year. Projections for 2003 indicate a supply overhang of finished steel of over 100 million tonnes.²⁶ The Tribunal is of the view that weak conditions in the cumulated countries' home markets, especially in Russia and South Africa, create a further incentive for foreign producers to seek out export markets.²⁷

Furthermore, carbon steel plate producers around the world, including producers in the cumulated countries, have been faced with increasing restrictions on export sales of plate and similar hot-rolled products. The Tribunal notes that anti-dumping measures are currently in force in the United States against China, South Africa and Russia, and in the European Union against China and South Africa. In addition, Russian flat products, including plate, are subject to import quotas in the European Union.²⁸ The United States and the European Union have also both recently imposed safeguard measures in respect of, among other products, carbon steel plate: China and Russia are subject to the U.S. safeguard measures, and China and South Africa are subject to the E.U. safeguard measures.²⁹

Given the circumstances described above, the Tribunal has little doubt that, if the finding is rescinded, exporters of potentially significant volumes of carbon steel plate from the cumulated countries will see Canada as an attractive market. The Tribunal notes that, in 2000, China, South Africa and Russia, combined, exported 4 million tonnes of plate to various major export markets, which is more than four times the size of the Canadian market.³⁰ Even if only a fraction of those exports were subject goods and were

23. *Certain Flat Hot-rolled Carbon and Alloy Steel Sheet Products* (2 July 1999) (CITT); *Certain Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (17 August 2001) (CITT).

24. *Pre-hearing Staff Report*, revised (13 November 2002), Tribunal Exhibit RR-2001-006-05A, Administrative Record, Vol. 1A at 211-14.

25. *Protected Pre-hearing Staff Report*, revised (13 November 2002), Tribunal Exhibit RR-2001-006-06A (protected), Administrative Record, Vol. 2A at 210.

26. Manufacturers' Exhibits A-03, paras. 19-21, Administrative Record, Vol. 11, C-03, paras. 18-21, Administrative Record, Vol. 11B.

27. The Tribunal recognizes that China's home market is stronger than those of South Africa and of Russia. Although China is still a net importer, it is becoming a much more export-dependent country, having increased its plate exports by close to 96 percent from 1998 to 2000. *Pre-hearing Staff Report*, revised (13 November 2002), Tribunal Exhibit RR-2001-006-05A, Administrative Record, Vol. 1A at 212.

28. *Pre-hearing Staff Report*, revised (13 November 2002), Tribunal Exhibit RR-2001-006-05A, Administrative Record, Vol. 1A at 217; Tribunal Exhibit RR-2001-006-32.07, Administrative Record, Vol. 1.03 at 474, 492; Manufacturer's Exhibit B-01, paras. 45, 48, 49, Administrative Record, Vol. 11A.

29. Manufacturer's Exhibit B-01, paras. 52-54, Administrative Record, Vol. 11A.

30. *Pre-hearing Staff Report*, revised (13 November 2002), Tribunal Exhibit RR-2001-006-05A, Administrative Record, Vol. 1A at 170, 214.

diverted to the Canadian market, the Tribunal is of the view that the resulting import volumes would be significant in relation to the size of the Canadian market and would be potentially devastating for an industry that is vulnerable.

The Tribunal also notes that imports have a long-established presence in the Canadian market. During the period from January 1999 to the end of the first six months of 2002, imports from the United States represented between 17 and 21 percent of the Canadian market, while offshore sources represented between 6 percent and 14 percent of the Canadian market.³¹ The specific offshore foreign suppliers have changed from time to time. However, as certain countries disappeared from the Canadian market following anti-dumping and countervailing measures, others entered to take their place. The current offshore sources that have effectively replaced the export countries subject to Canadian anti-dumping duties include Bulgaria, the Czech Republic, Hungary, Japan, Poland, Romania and Chinese Taipei.³²

While the sources of imported product have changed over time, many of the brokers and distributors that bring carbon steel plate into the Canadian market have not. The evidence shows that some of the brokers and distributors that were active in importing carbon steel plate from the cumulated countries prior to the application of anti-dumping duties in 1997 are now importing the product from one or more of the new sources cited above.³³ In so doing, they provide an import distribution network in Canada for offshore goods that can supply the Canadian market with carbon steel plate from other sources. The Tribunal is convinced that, if the finding against the cumulated countries is rescinded, this distribution network will likely revert to former suppliers in the cumulated countries and import significant quantities of dumped goods to service Canadian customers.

For these reasons, the Tribunal is of the opinion that, if the finding is rescinded, the volume of dumped goods from China, South Africa and Russia is likely to be significant.

Likely Prices of Dumped Carbon Steel Plate from the Cumulated Countries

It has been established in this case, as in earlier cases, that carbon steel plate is a commodity product and, as with most commodities, it is price sensitive. As such, purchasers in Canada are not prepared to pay much of a premium for domestically produced carbon steel plate.³⁴ In these circumstances, market prices, especially when large volumes enter the market at any one time, trend towards the lowest price offerings available, and suppliers of carbon steel plate, be they domestic producers or importers, have little choice but to adjust their prices or forgo sales of basic carbon steel plate.³⁵

The Tribunal is of the view that the nature of the activities of the traditional importers of carbon steel plate, specifically the tendency of brokers and distributors to search out the cheapest source of basic carbon steel plate, is a major factor that contributes to the presence of low-priced imports in the Canadian market. Source switching seems to be common practice for some of these importers to ensure that they can

31. *Pre-hearing Staff Report*, revised (13 November 2002), Tribunal Exhibit RR-2001-006-05A, Administrative Record, Vol. 1A at 170, 172.

32. *Transcript of Public Hearing*, Vol. 1, 18 November 2002, at 35, 54, 71-73; Manufacturers' Exhibits A-03, para. 36, A-07, Tab 2 at 1-3, Administrative Record, Vol. 11, B-02 (protected), paras. 36-52, Administrative Record, Vol. 12A.

33. Manufacturers' Exhibits A-03, paras. 31-37, Administrative Record, Vol. 11, A-08 (protected), Tab 1 at 3, 6, 9, 10, 13-16, 18, Administrative Record, Vol. 12, B-02 (protected), paras. 36-52, Administrative Record, Vol. 12A.

34. *Transcript of Public Hearing*, Vol. 1, 18 November 2002, at 35, 36, 137-38.

35. Manufacturers' Exhibits A-01, para. 64, A-05, paras. 48-54, 60, Administrative Record, Vol. 11; *Transcript of Public Hearing*, Vol. 1, 18 November 2002, at 23-24.

offer the lowest price product available in the world.³⁶ In some instances, brokers or distributors conclude a purchase with a foreign producer, at a specified price, for delivery up to four or five months later.³⁷ That price becomes the target price in the Canadian market for that period of time.³⁸

The domestic industry also faces low-priced competition from other offshore suppliers of carbon steel plate. The value for duty for imports from offshore countries such as Bulgaria and Romania has been as much as 40 percent lower than the domestic industry's average price. Evidence on the record indicates that, in July 2002, Romanian plate entered the Canadian market at \$335/tonne. Bulgarian imports were shipped to Canada in September 2002 at \$486/tonne.³⁹ In comparison, the industry's average price for the first six months of 2002 was \$569/tonne. It is the Tribunal's opinion that the cumulated countries would have to meet or improve on these prices in order to compete with offshore countries to regain market share in the Canadian market.

Thus, the Tribunal considers it likely that, if the finding against China, South Africa and Russia is rescinded, imports from these countries will be priced as low as, or lower than, the lowest prices in the market. In the Tribunal's opinion, the renewed presence of these high-capacity producers in the Canadian market will further dim the prospects for any meaningful rebound in prices needed by the domestic industry to become profitable in the near term. Consequently, these low-priced imports will lead to further price suppression, price erosion and lost volume.

Likely Effects of Dumped Carbon Steel Plate from the Cumulated Countries on the Domestic Industry

The Tribunal notes that the current state of the domestic carbon steel plate industry cannot be described as healthy. When comparing the most recent periods for which data are available, which are the first six months of 2001 and the first six months of 2002, the domestic industry's sales in the Canadian market fell by 14 percent in a market that shrank by 9 percent. Even though the domestic industry's sales represented 73 percent of the market and imports from the subject countries captured only 1 percent of the Canadian market in the first six months of 2002, imports from non-subject offshore countries doubled their share in the Canadian market from 3 percent in the first six months of 2001 to 6 percent in the same period in 2002.⁴⁰ Some of the industry's sales loss can be attributable to the fact that some domestic producers chose to "walk away" from business rather than make sales at prices that were not profitable.⁴¹

The weak market conditions that prevailed during the latter part of the review period are persisting. Early projections indicate that the demand in the major consuming sectors of carbon steel plate, such as for the production of railcars, ships, off-highway vehicles and heavy construction machinery, will show signs of limited recovery before the end of 2003 and that the Canadian carbon steel plate market will remain flat, at

36. Manufacturer's Exhibit B-03, para. 17, Administrative Record, Vol. 11A; Tribunal Exhibit RR-2001-006-19.07, Administrative Record, Vol. 5 at 101.

37. Tribunal Exhibit RR-2001-006-19.09, Administrative Record, Vol. 5 at 179-80; *Transcript of Public Argument*, 19 November 2002, at 19-21.

38. *Transcript of Public Hearing*, Vol. 1, 18 November 2002, at 71-72, 139.

39. Manufacturers' Exhibits A-01, para. 106, A-03, para. 36, A-07, Tab 2 at 1-3, Administrative Record, Vol. 11; *Pre-hearing Staff Report*, revised (13 November 2002), Tribunal Exhibit RR-2002-006-05A, Administrative Record, Vol. 1A at 177; *Transcript of Public Hearing*, Vol. 1, 18 November 2002, at 31, 35.

40. *Pre-hearing Staff Report*, revised (13 November 2002), Tribunal Exhibit RR-2001-006-05A, Administrative Record, Vol. 1A at 170-72.

41. Manufacturers' Exhibits A-01, para. 64, Administrative Record, Vol. 11, A-06 (protected), paras. 52-54, Administrative Record, Vol. 12; *Transcript of Public Hearing*, Vol. 1, 18 November 2002, at 24, 80, 85-86.

best, over the next 12 to 18 months.⁴² Weak market conditions impact on the average price of carbon steel plate in the Canadian market. The declining average import prices with which domestic producers had to compete resulted in the negative returns realized during the period of review. Indeed, it is the Tribunal's opinion that, in the absence of the finding, this downward pressure on prices will be exacerbated and will prevent the domestic industry from realizing the sustainable price increases necessary to return to a profitable position.

From a financial standpoint, the domestic industry's profitability during the period of review was on a downward spiral in terms of net income. Its operating profit per tonne was eroded, and its financial results basically reflect the general state of the North American steel market, with industry net losses increasing every year. During the first six months of 2002, the domestic industry lost \$25.5 million.⁴³ These losses are being generated because, at current sales volumes, average price levels and average costs, the domestic industry is unable to achieve positive gross margins, let alone positive net margins.

While it is true that the domestic industry was able to gain some benefits from the Tribunal's injury findings in 1997, the Tribunal points out that those benefits were short-lived. The industry fared reasonably better in 1999, as domestic prices were at their highest level of the review period at \$622/tonne. In 2000 and 2001, the domestic industry attempted, on numerous occasions, to increase its prices, but was unable to realize the full amount of those increases. In 2000, the average domestic price decreased to \$615/tonne and, in 2001, it fell to \$558/tonne.⁴⁴ While the average domestic price increased to \$569/tonne in the first six months of 2002, which is much lower than its level at the time of the 1997 finding,⁴⁵ prices fell by \$66/tonne in the fourth quarter of 2002.⁴⁶ According to the domestic industry, the price recovery in early 2002 was due, in part, to the safeguard action taken in the United States and the safeguard inquiry in Canada.⁴⁷ Another factor that made the average price recover in 2002 is product mix between the high-volume, low-priced A36/44W carbon steel plate and the small-volume, higher value-added carbon steel plate.⁴⁸

Furthermore, prior to and during 1999, the first year of the review period, the domestic producers made significant investments in new production facilities and technological enhancements to existing facilities. Three major events impacted domestic production of carbon steel plate in the past five years. First, Algoma installed its DSPC in 1997.⁴⁹ Second, IPSCO introduced its new temper level mill in 1999.⁵⁰ Third, Stelco completed the construction of its Steckel mill in 2001.⁵¹ As a result, practical capacity for carbon

42. Manufacturer's Exhibit B-03, paras. 63-67, Administrative Record, Vol. 11A; *Transcript of Public Hearing*, Vol. 1, 18 November 2002, at 38-39.

43. *Pre-hearing Staff Report*, revised (13 November 2002), Tribunal Exhibit RR-2001-006-05A, Administrative Record, Vol. 1A at 183.

44. *Pre-hearing Staff Report*, revised (13 November 2002), Tribunal Exhibit RR-2001-006-05A, Administrative Record, Vol. 1A at 177.

45. *Pre-hearing Staff Report*, revised (13 November 2002), Tribunal Exhibit RR-2001-006-05A, Administrative Record, Vol. 1A at 177; *Certain Hot-rolled Carbon Steel Plate* (27 October 1997), NQ-97-001 (CITT) at 11.

46. *Transcript of Public Hearing*, Vol. 1, 18 November 2002, at 38.

47. *Transcript of Public Hearing*, Vol. 1, 18 November 2002, at 43-44.

48. Manufacturer's Exhibit A-01, para. 56, Administrative Record, Vol. 11.

49. Tribunal Exhibit RR-2001-006-32.12 (single copy exhibit), Administrative Record, Vol. 1.05 at 41.

50. Tribunal Exhibit RR-2001-006-13.03A, Administrative Record, Vol. 3E at 82, 104.

51. Tribunal Exhibit RR-2001-006-13.01, Administrative Record, Vol. 3 at 68; *Transcript of Public Hearing*, Vol. 1, 18 November 2002, at 105-106.

steel plate production amounted to 2.3 million tonnes per year during the 1999-2001 period.⁵² While these investments have increased capacity and potential product range, they have also added to the vulnerability of the domestic industry.

The Tribunal is of the view that, plagued by the low-cost imports from other offshore countries in the Canadian market, the domestic industry will find it difficult to recoup its investment and make additional capital investments, if it cannot achieve sustainable price increases. In light of the above, the Tribunal recognizes the current vulnerable condition of the domestic industry and the challenges that it will face in the coming years to attain a reasonable level of profitability. Should the finding be rescinded for the cumulated countries, the domestic industry will have little, if any, chance of recouping its investments.

Given the likely volumes and likely prices of imports from the cumulated countries if the finding is rescinded, and in view of the vulnerable state of the domestic industry, caused not only by the competition with imports from offshore, non-subject countries, the cost structure of the domestic industry and the economic conditions in Canada, the Tribunal is convinced that, if the finding against the cumulated countries is rescinded, the resumed dumping will likely result in material injury to the domestic industry.

Other Relevant Factors

The Tribunal also reviewed, as part of this expiry review, other factors that may affect the domestic industry in the foreseeable future. These are: i) competition with imports from offshore, non-subject countries; ii) cost structure of the domestic industry; and iii) economic conditions in Canada.

i) Competition with Imports from Offshore, Non-subject Countries

The Tribunal believes that, because structural plate is such a basic steel product, the domestic industry can always expect to face low-priced import competition. As each developing country begins to industrialize and build a steel industry, carbon steel plate is the first product to be exported. As previously noted, the Tribunal has made injury findings in four cases respecting the importation of similar hot-rolled carbon steel plate from 22 countries. It is evident that, following each of the Tribunal's injury findings, brokers and distributors in Canada continued to search for the lowest-cost supply of carbon steel plate. Historic import statistics show that, following Tribunal injury findings, new countries started to export carbon steel plate to Canada.

A compelling example of competition from offshore, non-subject countries is evidenced by the fact that, following the rescission of the finding in Plate I in 1998, Romania re-entered the Canadian market in 2000 and increased its share of imports from 0 percent in 1999 to 6 percent in 2001.⁵³ In addition, the Tribunal observes that the lowest-cost carbon steel plate currently in the Canadian market comes largely from Romania.⁵⁴

Despite this ongoing injury to the domestic industry by new low-priced sources of supply, the Tribunal is convinced that the likelihood of injury is still apparent, should the finding be rescinded. The

52. *Pre-hearing Staff Report*, revised (13 November 2002), Tribunal Exhibit RR-2001-006-05A, Administrative Record, Vol. 1A at 162.

53. *Pre-hearing Staff Report*, revised (13 November 2002), Tribunal Exhibit RR-2001-006-05A, Administrative Record, Vol. 1A at 168.

54. Manufacturer's Exhibit A-07, Tab 2 at 1-3, Administrative Record, Vol. 11.

cumulated countries, comprising 32 percent of global plate production⁵⁵ and with a history of injurious dumping, pose, in the Tribunal's view, a large threat to the domestic industry over and above that of the current low-priced imports.

ii) Cost Structure of the Domestic Industry

The Tribunal concluded above that the vulnerable state of the industry was exacerbated by its recent investments. Along with these investments came increased costs for the domestic industry. The domestic industry testified that, in its initial plans, it projected certain volumes of sales of carbon steel plate that did not materialize. As a result, the new, higher fixed costs associated with the large investments were carried by a much smaller than anticipated volume of production and the resulting cost per unit reached an untenable high of \$647/tonne in 2001.⁵⁶

The Tribunal recognizes that this is not a volume issue alone and that, in order to recover financially, the domestic industry needs to be able to achieve sustainable price increases. In this respect, the Tribunal notes that prices in the Canadian market are below the level attained in 1997, notwithstanding that the domestic industry argued that prices reached that level. The domestic industry could have expected to realize higher prices, had other countries not begun to sell into the Canadian market at low prices.

iii) Economic Conditions in Canada

The Tribunal acknowledges that the economic conditions in the Canadian market have affected the domestic industry producing carbon steel plate. In the recent safeguard inquiry,⁵⁷ the Tribunal heard that 1998 was characterized by strong demand in the oil and gas, capital equipment manufacturing and automotive sectors and resulted in an unprecedented growth in the domestic market for carbon steel plate. In 1999, however, the demand for carbon steel plate contracted, and there was a slowdown of capital goods construction.⁵⁸

In late 2000 and through 2001, the economic activity in North America slowed down. The demand for carbon steel plate softened, as manufacturing industries curtailed their activities.⁵⁹ The market for carbon steel plate dropped by 32,000 tonnes in 2001, a decline of 4 percent from 2000. In this softening market, domestic producers initially attempted to counter the effects of contraction by dropping their prices in an effort to recoup some of the market share that they had lost. This resulted in an increase of the domestic industry's market share from 69 percent in 1999 to 74 percent in 2001.⁶⁰ However, the domestic industry paid for this increase with reduced profits. The year 2002 was no different, as demand for carbon steel plate continued to be weak and was reflective of the soft market conditions in the major consuming sectors of plate.⁶¹ In Western Canada, the agricultural industry and the oil and gas sector were slow in 2002, and the domestic industry indicated that, in its view, limited opportunities are forecast in those sectors for 2003. The

55. *Pre-hearing Staff Report*, revised (13 November 2002), Tribunal Exhibit RR-2001-006-05A, Administrative Record, Vol. 1A at 214.

56. *Pre-hearing Staff Report*, revised (13 November 2002), Tribunal Exhibit RR-2001-006-05A, Administrative Record, Vol. 1A at 184.

57. *Safeguard Inquiry into the Importation of Certain Steel Goods* (August 2002), GC-2001-001 (CITT).

58. Tribunal Exhibit RR-2001-006-32.12 (single copy exhibit), Administrative Record, Vol. 1.05 at 51-52.

59. *Transcript of Public Hearing*, Vol. 1, 18 November 2002, at 14-15, 38-39, 142-43.

60. *Pre-hearing Staff Report*, revised (13 November 2002), Tribunal Exhibit RR-2001-006-05A, Administrative Record, Vol. 1A at 170-72.

61. *Transcript of Public Hearing*, Vol. 1, 18 November 2002, at 31; Manufacturer's Exhibit C-03, paras. 11-12, Administrative Record, Vol. 11B.

only activity that was showing some promise was the demand created by the oilsands projects, but, with the Kyoto Protocol, this activity has come to a standstill.⁶² Faced with continued weak demand, one domestic producer changed its pricing strategy and decided to maintain prices instead of following prices down during the first six months of 2002.⁶³ The result was lost sales and market share in the first six months of 2002 compared to 2001.

The Tribunal is of the view that demand conditions in the domestic market have, and will continue to have, an impact on the domestic industry. Nevertheless, these conditions are likely to be cyclical; yet, if the finding against the cumulated countries were rescinded, at this time, the result would likely be immediate material injury to the domestic industry with little chance of recovery in the foreseeable future.

In conclusion, the Tribunal is of the view that these factors have, and may continue to have, an impact on the future performance of the domestic industry. However, the Tribunal is persuaded that the negative impact caused by these factors adds only to the vulnerability of the domestic industry and does not detract from the material injury to the domestic industry that would result from the rescission of the finding against the cumulated countries.

Mexico

Unlike the producers in the cumulated countries that did not appear in these proceedings, AHMSA, the only producer of carbon steel plate in Mexico, submitted a short brief and appeared at the Tribunal hearing. AHMSA also responded to the Tribunal's request for information.

Compared to China, South Africa and Russia, Mexico has the smallest production capacity of carbon steel plate and the highest capacity utilization rate. Its production capacity is smaller than that of two of the three domestic producers.⁶⁴ Furthermore, AHMSA is different from the producers in the cumulated countries in that it is not an offshore producer and benefits from shorter and more flexible delivery times and conditions compared to its offshore competitors. The Tribunal recognizes that Mexico is part of an integrated North American market, even though Mexico's integration into that market is at a much earlier stage of development than that of the United States and Canada.

According to evidence on the record, carbon steel plate consumption in Mexico was fairly constant at about 675,000 tonnes in 1999 and 2000. However, in 2001, due to adverse developments and general economic and international steel industry conditions, consumption fell to 582,000 tonnes. As information for the full year 2002 was not available at the time of the hearing, projections were for a carbon steel plate consumption of 652,000 tonnes, which is an increase of 12 percent over 2001. Further, Mexico's real output growth is gaining momentum and is expected to reach 4.0 percent in 2003.⁶⁵ However, AHMSA submitted that its production capacity for carbon steel plate cannot supply the entire Mexican market. Mexico has to rely on imports to fulfil its demand. AHMSA provided evidence that it forecasts an increase in its home

62. *Transcript of Public Hearing*, Vol. 1, 18 November 2002, at 38-39.

63. Manufacturers' Exhibits A-01, para. 64, A-05, paras. 48-54, 60, Administrative Record, Vol. 11.

64. *Protected Pre-hearing Staff Report*, revised (13 November 2002), Tribunal Exhibit RR-2001-006-06A (protected), Administrative Record, Vol. 2A at 162; Tribunal Exhibit RR-2001-006-RI-01A (protected) at 25, Administrative Record, Vol. 10.

65. Tribunal Exhibit RR-2001-006-RI-01 at 18, Administrative Record, Vol. 9; Manufacturer's Exhibit C-03, Tab 9, Administrative Record, Vol. 11B.

market sales in both 2003 and 2004, thereby leaving very limited volumes of carbon steel plate available for export.⁶⁶

Unlike China, South Africa and Russia, Mexico does not have a history of exporting any significant volumes of carbon steel plate. AHMSA only turned to exports when Mexico was facing extreme pressures after its 1994 exchange rate crisis. AHMSA submitted that, besides the Canadian market, to which it has not exported carbon steel plate since 1998,⁶⁷ it exported only small volumes of carbon steel plate to two other countries during the period 1999-2001. Evidence shows that AHMSA's sales of carbon steel plate in these two markets during the period from January 1999 to the end of the first six months of 2002 were above the domestic industry's average price, with one exception for which AHMSA provided an explanation during the *in camera* hearing.⁶⁸ According to information submitted by the domestic industry, AHMSA's imports into the United States in 2001 amounted to 6,500 tonnes or less than 1 percent of total imports into the United States. The average CIF value⁶⁹ of those imports was over \$1,100/tonne, which is twice the CIF value of imports into the United States from any of the cumulated countries.⁷⁰ In the Tribunal's view, according to this evidence, AHMSA sells its products at high prices. The record shows that, in 2001 and at the end of the first six months of 2002, AHMSA's average selling price in Mexico was higher than the average selling price of carbon steel plate by the domestic industry in Canada.⁷¹

Unlike imports of plate from the cumulated countries, plate imports from Mexico are subject to anti-dumping duties only in Canada and the United States. In the United States, AHMSA's normal values are currently under review, and the United States International Trade Commission has made a preliminary finding of 0 percent margin of dumping. This review is expected to be final by mid-March 2003, and it should be noted that the preliminary results may change.⁷² Furthermore, unlike China and Russia, Mexico is not subject to the safeguard measures put in place in the United States.

66. Tribunal Exhibit RR-2001-006-RI-01A (protected) at 18, Administrative Record, Vol. 10; *Transcript of Public Hearing*, Vol. 2, 19 November 2002, at 232.

67. AHMSA testified that it was not aware of the small volume of Mexican carbon steel plate imported into Canada in 2001, which might have been sold through a distributor. *Transcript of Public Hearing*, Vol. 2, 19 November 2002, at 216-17; Tribunal Exhibit RR-2001-006-RI-01 at 15, Administrative Record, Vol. 9.

68. *Pre-hearing Staff Report*, revised (13 November 2002), Tribunal Exhibit RR-2001-006-05A, Administrative Record, Vol. 1A at 177; *Protected Pre-hearing Staff Report*, revised (13 November 2002), Tribunal Exhibit RR-2001-006-06A (protected), Administrative Record, Vol. 2A at 270; Tribunal Exhibit RR-2001-006-RI-01A (protected) at 25, 34, Administrative Record, Vol. 10; *Transcript of In Camera Hearing*, Vol. 2, 19 November 2002, at 100-101.

69. Value of all figures calculated on a cost, insurance and freight basis.

70. The product that Mexico exported to the United States does not precisely meet the definition of the subject goods in this expiry review. Consequently, the information provided by the domestic industry is substantially different from the information provided by AHMSA; however, the two sets of figures show a similar trend. Manufacturer's Exhibit A-07, Tab 12, Administrative Record, Vol. 11; *Protected Pre-hearing Staff Report*, revised (13 November 2002), Tribunal Exhibit RR-2001-006-06A (protected), Administrative Record, Vol. 2A at 269-70.

71. *Pre-hearing Staff Report*, revised (13 November 2002), Tribunal Exhibit RR-2001-006-05A, Administrative Record, Vol. 1A at 177; *Protected Pre-hearing Staff Report*, revised (13 November 2002), Tribunal Exhibit RR-2001-006-06A (protected), Administrative Record, Vol. 2A at 270.

72. The last review of Mexico's anti-dumping duties was on September 13, 2002, while the last review of its countervailing duties was on March 13, 2001. AHMSA is currently subject to an 11.68 percent net subsidy rate. Tribunal Exhibit RR-2001-006-RI-01 at 11, Administrative Record, Vol. 9.

Turning to AHMSA's suggested carbon steel plate exports to Canada of between 30,000 and 35,000 tonnes during the 2003-2005 period, the Tribunal is of the view that this tonnage is not likely to be achieved in the foreseeable future because AHMSA has yet to develop a client base in Canada. Therefore, AHMSA's estimate of a much smaller volume is much more realistic,⁷³ in the Tribunal's opinion, because the company will need time to build long-term relationships with customers. However, even if AHMSA is successful in exporting this tonnage to Canada over the next few years, the Tribunal believes that imports from Mexico will likely compete with imports from the United States in the Canadian market, and these volumes will likely be no more harmful than the close to 40,000-tonne increase of U.S. carbon steel plate in 2000 over 1999. The domestic industry qualified this U.S. increase in imports as not being disruptive because U.S. pricing is at, or above, the Canadian market price.⁷⁴ Furthermore, in the Tribunal's view, when compared to the volume of imports of between 150,000 and 190,000 tonnes from the United States, which captured close to 20 percent of the Canadian market during the 1999-2001 period, a volume of 30,000 tonnes is not large.⁷⁵

AHMSA testified that it is looking to complement the Canadian market by selling carbon steel plate into Canada in a way similar to that of the United States. The Tribunal feels that, notwithstanding the likely dumping by AHMSA, it will compete against U.S. carbon steel plate at prices at, or above, the Canadian market price. Mexico will not be a price leader, but rather a price taker. The Tribunal is persuaded by AHMSA's statement because of the nature of the integrated North American market and the fact that, as time moves on, Mexico's increasing involvement in this integrated market is logical and expected. In this respect, the Tribunal sees Mexico competing with the United States for a share of the Canadian market. This is a sign of an increasingly integrated North American market.

The Tribunal is convinced by the testimony that it heard from AHMSA that the company is interested in forming long-term relationships with Canadian end users of carbon steel plate products. AHMSA testified that it does not want to sell to brokers or distributors in Canada. The Tribunal is persuaded by this statement because, during the *in camera* hearing, it heard AHMSA explain that, before entering the Canadian market, it wants to explore similar types of relationships to the ones that it currently has with various industrial end-use companies in Mexico.

On the whole, the Tribunal finds that AHMSA's case for relief from the present finding is cogent, credible and supported by evidence. Although the Commissioner has found a likelihood of resumed dumping from Mexico, the Tribunal is convinced that such dumped imports from Mexico will not be injurious to the domestic industry. The Tribunal accepts that Mexico will export certain volumes of carbon steel plate to Canada over the next few years, using similar practices and channels of distribution to those used by U.S. exporters. In fact, the Tribunal sees Mexico competing with the United States for end users of carbon steel plate in Canada. Therefore, the Tribunal finds that, if the finding against Mexico is rescinded, the resumption of dumping of carbon steel plate from that country is not likely to result in material injury to the domestic industry.

73. *Transcript of In Camera Hearing*, Vol. 2, 19 November 2002, at 84-86.

74. *Pre-hearing Staff Report*, revised (13 November 2002), Tribunal Exhibit RR-2001-006-05A, Administrative Record, Vol. 1A at 164, 175, 177; Manufacturer's Exhibit C-01 at 4, Administrative Record, Vol. 11B; *Transcript of Public Hearing*, Vol. 1, 18 November 2002, at 41.

75. *Pre-hearing Staff Report*, revised (13 November 2002), Tribunal Exhibit RR-2001-006-05A, Administrative Record, Vol. 1A at 164, 170, 172.

CONCLUSION

Based on the foregoing analysis and rationale, the Tribunal, pursuant to paragraph 76.03(12)(b) of SIMA, hereby continues its finding made on October 27, 1997, in Inquiry No. NQ-97-001, concerning certain hot-rolled carbon steel plate originating in or exported from China, South Africa and Russia, and, pursuant to paragraph 76.03(12)(a) and subsection 76.04(1) of SIMA, hereby rescinds its finding made on October 27, 1997, in Inquiry No. NQ-97-001, concerning certain hot-rolled carbon steel plate originating in or exported from Mexico.

Patricia M. Close

Patricia M. Close
Presiding Member

Zdenek Kvarda

Zdenek Kvarda
Member

James A. Ogilvy

James A. Ogilvy
Member