



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Expiry Review No. RR-2003-004

Certain Cold-rolled Steel Sheet
Products

*Order issued
Thursday, August 26, 2004*

*Reasons issued
Friday, September 10, 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 findings made by the Canadian International Trade Tribunal on August 27, 1999, in Inquiry No. NQ-99-001, concerning:

**CERTAIN COLD-ROLLED STEEL SHEET PRODUCTS ORIGINATING IN OR
EXPORTED FROM BELGIUM, THE RUSSIAN FEDERATION, THE SLOVAK
REPUBLIC AND TURKEY**

ORDER

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 August 27, 1999, in Inquiry No. NQ-99-001, concerning cold-reduced flat-rolled sheet products of carbon steel (including high-strength low-alloy steel), in coils or cut lengths (not painted, clad, plated or coated), in widths up to and including 80 in. (2,032 mm) and in thicknesses from 0.014 in. to 0.142 in. (0.35 mm to 3.61 mm) inclusive, originating in or exported from Belgium, the Russian Federation, the Slovak Republic and Turkey.

Pursuant to subparagraph 76.03(12)(a)(ii) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby rescinds its findings in respect of the above-mentioned products originating in or exported from Belgium, the Russian Federation, the Slovak Republic and Turkey.

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Pierre Gosselin
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Patricia M. Close
Member

James A. Ogilvy
James A. Ogilvy
Member

Hélène Nadeau
Hélène Nadeau
Secretary

The statement of reasons will be issued within 15 days.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	July 19 to 21, 2004
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STATEMENT OF REASONS

BACKGROUND

1. 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 August 27, 1999, in Inquiry No. NQ-99-001, concerning certain cold-rolled steel sheet products (cold-rolled sheet) originating in or exported from Belgium, the Russian Federation (Russia), the Slovak Republic and Turkey (the subject goods).
2. On December 9, 2003, the Tribunal issued a notice of expiry review² to all interested parties. As part of these proceedings, the Tribunal and the Canada Customs and Revenue Agency (CCRA) sent questionnaires to the Canadian producers, importers and exporters/foreign producers of cold-rolled sheet. These questionnaires and the replies thereto formed part of the expiry review records of both the CCRA and the Tribunal.
3. On December 10, 2003 the CCRA initiated an expiry review investigation to determine whether the expiry of the findings was likely to result in the continuation or resumption of dumping of the subject goods.
4. On April 7, 2004, the Canadian Border Services Agency (CBSA) (formerly the CCRA) determined that, pursuant to subsection 76.03(7) of *SIMA*, the expiry of the findings was likely to result in the continuation or resumption of dumping of the subject goods.
5. On April 8, 2004, following the CBSA's determination, the Tribunal continued its review to determine whether the expiry of the findings respecting the subject goods was likely to result in injury or retardation. The Tribunal sent letters to producers, importers and exporters/foreign producers that had filed completed expiry review questionnaires with the CBSA, reminding them that they were required to update certain information to December 2003. As well, non-responding importers were requested to verify certain import information derived from data that the importers had previously declared in customs entry documentation. Also, one large non-responding importer was requested to complete an importers' expiry review questionnaire and three exporters/foreign producers were requested to complete an exporters' expiry review questionnaire. In addition, producers, importers and purchasers were asked to complete market characteristics questionnaires posted on the Tribunal's Web site.
6. The record of these proceedings consists of the following: the testimony heard during the hearing, which had public and *in camera* components, held in Ottawa, Ontario, from July 19 to 21, 2004; all relevant documents, including the CBSA's protected *Expiry Review Report*, statement of reasons, index of background information and related documents; the protected and public replies to the expiry review questionnaires; requests for information and parties' replies provided in accordance with the Tribunal's directions; the findings; the notice of expiry review; the public and protected pre-hearing staff reports prepared for Inquiry No. NQ-99-001, as well as those prepared for these proceedings; and updated information on pricing and capacity utilization requested by the Tribunal and provided by domestic and foreign producers. 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 protected information.

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

2. C. Gaz. 2003.I.4008.

7. Three domestic producers, Dofasco Inc. (Dofasco), Stelco Inc. (Stelco) and Ispat Sidbec Inc. (Ispat), provided witnesses and were represented by counsel at the hearing. They submitted evidence and made arguments in support of a continuation of the findings.

8. Two exporters/foreign producers of cold-rolled sheet, U.S. Steel Košice, s.r.o. (USSK) of the Slovak Republic and Borçelik Çelik Sanayii ve Ticaret A.S. (Borçelik) of Turkey, were represented by counsel at the hearing, submitted evidence and made arguments in support of a rescission of the findings. One importer, Arcelor International Canada Inc. (Arcelor), was represented by counsel and made a submission in support of a rescission of the findings, but did not appear at the hearing.

PRODUCT

Product Definition and Description

9. For the purpose of this expiry review, the subject goods are defined as: cold-reduced flat-rolled sheet products of carbon steel (including high-strength low-alloy steel), in coils or cut lengths (not painted, clad, plated or coated), in widths up to and including 80 in. (2,032 mm) and in thicknesses from 0.014 in. to 0.142 in. (0.35 mm to 3.61 mm) inclusive, originating in or exported from Belgium, Russia, the Slovak Republic and Turkey.

10. For purposes of clarity, the cold-rolled sheet subject to this expiry review includes products in coil form and products cut from a coil, including cut lengths from slit coils, having a square or rectangular shape, regardless of whether the products are referred to as blanks.

11. Cold-rolled sheet is normally produced to an ASTM standard or some other international standard or to a proprietary specification. The following non-exhaustive list of cold-rolled sheet is illustrative of the types of products that meet the above-noted definition:

- commercial quality steel (ASTM A366/A366M);
- sheet for porcelain enamelling (ASTM A424/A424M, Type 1);
- structural steel (ASTM A611/A611M);
- drawing quality steel (ASTM A620/A620M, formerly ASTM A619/A619M and A620/A620M);
- deep drawing steel—special killed (ASTM A963/A963M, formerly A620/A620M);
- extra deep drawing quality sheet/interstitial free (ASTM A969/A969M, formerly A620/A620M);
- intermediate temper;
- full hard temper; and
- high-strength low-alloy steel, including:
 - ASTM A606;
 - ASTM A607/A607M, Class 1, Type 1 or equivalent;
 - ASTM A607/A607M, Class 2, Type 1 or equivalent; and
 - ASTM A715.

12. Cold-rolled steel strip made to ASTM A109/A109M, A682/A682M and A684/A684M specifications is not part of the product definition. These specifications cover cold-rolled carbon strip in cut lengths or coils that is finished to closer tolerances than cold-rolled carbon steel sheet, has a specific temper, edge and finish, and a maximum thickness of 0.2499 in. (6 mm) and is produced in widths from 1/2 in. (12.5 mm) to 23 15/16 in. (600 mm).

Production Process

13. Cold-rolled sheet is produced from hot-rolled pickled and oiled coils. Hot-rolled coil is produced by rolling an incoming 100- to 225-mm thick hot slab on a continuous strip mill. The slab is progressively reduced to a coil of the required sheet thickness. This coil is then “cold-rolled” by subjecting it to a cold reduction process on a continuous or reversing mill under tension and pressure. After cold reduction, the steel is in a highly strained condition and possesses very little ductility. It is said to be “full hard”. The amount of cold reduction varies between 40 and 80 percent. Usually, the steel is annealed at temperatures above 650°C (1,200°F) to recrystallize the highly stressed grains in the steel. The resultant product is very soft and ductile. It is then classified as being in a “dead soft” condition.

14. After the sheet is annealed, it is normally temper rolled. This process extends the strip by up to 1 percent in length. This process improves the shape of the steel sheet and gives it a proper surface finish. Temper rolling also reduces the tendency of the sheet to flute and/or undergo stretcher strain during fabrication.

15. Cold-rolled sheet is generally produced in matte, tubular bright and commercial bright finishes. Matte, the most common finish, is produced by temper rolling the cold-rolled sheet with rolls which have been roughened by mechanical or chemical means to various degrees of surface texture. Tubular bright is a moderately bright finish produced on ground rolls. It is primarily intended to be used in the manufacture of tubing where the surface is brightened by cold forming. Tubular bright is not suitable for plating. The commercial bright finish is attained by temper rolling on smooth ground rolls. With additional surface preparation, commercial bright finish can be used for plating.

Product Applications

16. The more common end products manufactured from cold-rolled sheet include household appliances, automotive and truck parts, drums and pails, tubing, strapping and office furniture. Full hard cold-rolled sheet is used as a substrate in the production of galvanized steel and tin plate. It is also used in such applications as strapping.

DOMESTIC PRODUCERS

17. There are four domestic producers of cold-rolled sheet: Dofasco of Hamilton, Ontario; Stelco of Hamilton; Ispat of Montréal, Quebec; and Algoma Steel Inc. (Algoma) of Sault Ste. Marie, Ontario.

Dofasco

18. Dofasco is an integrated steel maker whose facilities in Hamilton include three blast furnaces, three coke plants, a basic oxygen steelmaking plant, an electric arc furnace, two slab casters, a hot strip rolling mill, cold mills, galvanizing lines, two tube mills and an electrolytic tinning line. Dofasco's raw steel production in Canada in 2003 was 3.5 million tonnes. The company is the largest domestic producer of cold-rolled sheet in Canada.

19. Dofasco's facilities in Hamilton produce hot-rolled, cold-rolled, galvanized, ExtragalTM, GalvalumeTM, tin plate, chromium-coated and pre-painted flat-rolled sheet. The facilities also manufacture tubular products and ZyplexTM, a proprietary laminate.

20. Dofasco owns 50 percent of Gallatin Steel, which is located in Ghent, Kentucky, and produces hot-rolled steel products. As well, the company owns 100 percent of subsidiaries in Monterrey, Mexico, and

Marion, Ohio, that supply specialized tubing for hydroformed applications to automotive and other customers. In Canada, Dofasco has interests in a number of joint ventures for which it provides feedstock, including Baycoat Limited (Baycoat), DJ Galvanizing, Sorevco, and DoSol Galva. As well, it provides feedstock to Powerlasers, a company of which it owns 100 percent, that produces laser-welded blanks for the automotive industry. Dofasco also owns part of Quebec Cartier Mining³ and Wabush Mines, which provide iron ore pellets to Dofasco.

Stelco

21. Stelco operates integrated steel plants in Hamilton and Nanticoke, Ontario. The company's integrated steel business also includes partial ownership of Z-line Company and Baycoat. Stelco supplies these companies with cold-rolled feedstock for coating. As well, Stelco has interests in the following iron ore properties: Wabush Mines located in Newfoundland and Quebec; Tilden Mines located in Michigan, and Hibbing Taconite Company located in Minnesota. In addition to its integrated steel operations, Stelco owns two mini-mills, Norambar Inc. in Contrecoeur, Quebec, and AltaSteel in Edmonton, Alberta. Stelco also operates a number of businesses that produce manufactured goods, including Stelwire, Stelfil Ltée and Stelpipe.

22. In 2003, Stelco produced 4.6 million tonnes of semi-finished steel. The company's steel products include: hot-rolled, cold-rolled and coated sheet; bars and rod; and manufactured products.

23. The company is the second largest producer of cold-rolled sheet in Canada. Stelco's cold-rolling facilities are located at Hilton Works in Hamilton and consist of two tandem mills: a five-stand mill built in 1948, and a four-stand mill built in 1967 and upgraded from 1997 to 2000. Both mills have been modernized to meet the increasingly stringent requirements of several of Stelco's customer groups, especially those in the automotive sector.

24. On January 29, 2004, Stelco received a court order for protection against creditors in order to allow the company to initiate the restructuring of its financial position.⁴ Stelco has since received two extensions of the stay period, with the latest extension being to September 30, 2004.

Ispat

25. Ispat is owned by Ispat International N.V., which is part of the LNM Group.

26. Ispat consists of five strategic business units: Primary Operations, Flat-rolled Products, Wire Rod, Bars and Shapes, and Pipes. The company produces steel slabs at its Primary Operations unit (with electric arc and ladle furnaces) located at Contrecoeur. Ispat uses internally produced direct reduced iron as an input to its steel production.

27. Ispat manufactures both hot-rolled and cold-rolled flat products, wire rod, hot-rolled bars and reinforcing bars in coils at Contrecoeur. The company is the third largest producer of cold-rolled sheet in Canada. As well, Ispat produces special bar quality and merchant bar quality products in both rounds and flats in lengths and reinforcing bars in lengths at its facilities in Longueuil, Quebec. Finally, Ispat manufactures pipe and tube products at facilities in Montréal.

3. Dofasco disposed of its common share investment in Quebec Cartier Mining on December 31, 2003.

4. Information relating to the proceedings under the *Companies' Creditors Arrangement Act* can be found at http://www.mccarthy.ca/en/ccaa/ccaa_detailed.asp?company_id=1.

28. Ispat also has interests in several companies that manufacture steel products. This includes a 50 percent interest in Sorevco, which produces galvanized sheet. Ispat provides cold-rolled sheet feedstock to Sorevco.

Algoma

29. Algoma, with its subsidiaries, is a vertically integrated primary iron and steel producer with a present capacity to produce approximately 2.5 million tonnes of raw steel annually. Expressed in terms of finished steel products, the annual capacity is approximately 2.1 million tonnes that consist of carbon steel plate, hot-rolled sheet, cold-rolled sheet and unfinished parts. The company is the smallest producer of cold-rolled sheet in Canada. Algoma operates a major steelworks at Sault Ste. Marie.

FOREIGN PRODUCERS

30. The following companies in the subject countries provided replies to the exporters' expiry review questionnaire: Sidmar N.V. of Belgium; JSC Severstal and Novolipetsk Iron & Steel Corporation of Russia; USSK of the Slovak Republic; and Borçelik and Eregli Iron and Steel Works Co. of Turkey. All these companies are major producers of cold-rolled sheet in their respective countries.

IMPORTERS

31. Only a small volume of cold-rolled sheet was imported into Canada during the review period from two of the subject countries, Belgium and Turkey. Arcelor imported cold-rolled sheet from Belgium, and Imco International imported cold-rolled sheet from Turkey.

32. The largest volume of cold-rolled sheet imports originated in the United States, a non-subject country. The two largest importers of cold-rolled sheet from this source were General Motors and DNN Galvanizing (DNN).⁵

PRODUCT DISTRIBUTION

33. Cold-rolled sheet may be sold directly to end users or through steel service centres. A substantial portion of Canadian mill shipments of cold-rolled sheet is marketed through steel service centres, which stock standard sizes for resale in smaller quantities to end users. As well, steel service centres offer custom cutting, slitting and warehouse services. The balance of Canadian mill shipments go directly to end users that are located from coast to coast throughout Canada, including the automotive stampers.

34. Cold-rolled sheet is imported directly by steel service centres and end users. It is also imported by traders or brokers, which then sell the cold-rolled sheet to steel service centres or end users.

SUMMARY OF FINDINGS IN INQUIRY NO. NQ-99-001

35. On August 27, 1999, the Tribunal issued findings regarding the dumping in Canada of cold-rolled sheet originating in or exported from Argentina, Belgium, New Zealand, Russia, the Slovak Republic, Spain and Turkey. The Tribunal concluded that the dumping of the named goods from New Zealand and Spain had not caused material injury and was not threatening to cause material injury to the domestic industry because the respective volumes of imports from these countries were negligible. The Tribunal also found that the dumping of the named goods from Argentina, Belgium, Russia, the Slovak Republic and Turkey

5. This firm, which is now known as DJ Galvanizing, stopped importing cold-rolled sheet during 2003.

had not caused material injury to the domestic industry but was threatening to cause material injury to the domestic industry, excluding the dumping of the goods from Argentina.

36. The Tribunal found evidence of material injury to the domestic industry in 1998. The Tribunal noted that there was a loss of sales volume, price erosion and price suppression, with a reduction of almost one third in the industry's net income before taxes for cold-rolled sheet between 1997 and 1998. However, the Tribunal did not find a causal link between the domestic industry's financial troubles in 1998 and the dumped imports from the named countries.

37. The Tribunal, however, did find that the dumped imports from the named countries threatened to cause material injury. The Tribunal based its decision on: the substantial growth in imports from the cumulated countries from 1996 to 1998; the low capacity utilization rates; the importance of exports as a way of maintaining capacity utilization; trade measures in place in other countries against Russian cold-rolled steel and in Canada against Russian and Slovak hot-rolled steel sheet products; and the falling prices of the Belgian, Russian and Slovakian named goods. The Tribunal also stated that the weak conditions in world steel markets limited the availability of other export markets to absorb exports from the cumulated countries and had a depressing effect on prices. The Tribunal also noted the fragile state of the economies of the Slovak Republic and Russia and their dependency on exports to earn hard currency. The Tribunal was concerned about the export potential of Turkish companies and, in particular, the marketing practices of one of the exporters. The Tribunal was also convinced that Canada would be a target for increased exports from Belgium, as markets in Western Europe showed less strength.

POSITIONS OF THE PARTIES

Position of the Domestic Industry

38. The domestic industry argued that the record clearly indicates that it is highly vulnerable to injury caused by the resumption of low-priced imports, since these imports could only compete by undercutting the domestic industry's price. It argued that dumping does not have to be the sole cause of injury and that the domestic industry is vulnerable to injury even without resumed dumping. It submitted that the domestic market was a mature market that had incurred a significant decline since the findings under review were issued and that domestic production could supply the market with no need for offshore imports. The domestic industry also submitted that its market share was lower in this smaller market.

39. The domestic industry submitted that the capital-intensive nature of the industry requires it to participate fully in the upside of the current business cycle in order to generate enough revenue to continue investing in its facilities to maintain its competitive position. It submitted that the market was currently strong, with the North American prices being the highest in the world, but emphasized that it is a cyclical market and that the current price is a short-term phenomenon. It submitted that it suffered losses of nearly C\$190 million at the net income level from 2001 to 2003 and that there has not been any sustained period of positive return since the findings.

40. In regard to imports from the United States, the domestic industry submitted that a substantial portion consisted of larger-width exposed product for the automotive industry, not available in Canada, and that the remainder was used for automotive parts, which are sourced on a North American basis.

41. The domestic industry indicated that it was hit by a sudden and substantial increase in raw material costs, which increased its vulnerability. Certain domestic producers indicated that this increase in costs was

partially offset by implementing a raw material surcharge, but that it would not be able to realize this surcharge if low-priced imports were to surge into the domestic market.

42. The domestic industry argued that the exporters in the subject countries have a readily available distribution system, large affiliated trading houses and large third-party international steel traders. Furthermore, it argued that substantial injurious volumes of the subject goods would flow into the market if the findings were rescinded, given the nature of the goods, the propensities and capabilities of the foreign producers, the low demand for the subject goods in other markets and the high Canadian spot price. It also emphasized that the foreign producers in the subject countries have a tremendous dependency on exports and are subject to a production imperative.

43. With respect to the People's Republic of China (China), according to the domestic industry, the evidence indicates that the current demand in the Chinese domestic market is down and that imports of the cold-rolled sheet into China will fall quickly and substantially. It argued that it was clear that China was also substantially increasing its capacity to produce cold-rolled sheet and that the combination of the declining demand and the increasing capacity would lead to a massive amount of excess capacity on the market, which could easily make its way to the Canadian market. It argued that China's decline in demand means that the subject countries will no longer be able to export substantial volumes to China and that the resulting excess supply will be diverted to other markets. Furthermore, specifically with respect to Russian exports to China, the domestic industry submitted that the recent re-imposition by the Chinese government of anti-dumping duties on Russian exports of cold-rolled sheet meant that these exports would likely be diverted to Canada.

44. With respect to cumulation, the domestic industry argued that the effect of the imports from all the subject countries should be cumulated. In this regard, it argued that the factual conditions that existed in previous cases in which the Tribunal had not cumulated a specific country did not exist in this expiry review. It indicated that the Tribunal's findings stated that the subject goods competed with each other and with like goods at the same customers and were distributed through the same channels of distribution. It also argued that the Tribunal should focus on the competitive nature of the goods themselves and not on the producers of those goods.

45. One domestic producer argued that, in terms of the relevance of the CBSA's determination, the Tribunal must take great care when it accepts the CBSA's conclusion that there is a likelihood of resumed dumping but rejects the factual determinations leading up to that conclusion as nothing more than pieces of evidence that can be given whatever weight the Tribunal determines appropriate. Furthermore, it argued that the Tribunal should ensure that it is not acting as an appellate body for the CBSA.

Position of the Foreign Producers

Borçelik

46. Borçelik, the Turkish mill, pointed out that it is able to sell at normal values in the Canadian market. It argued that the domestic industry is profitable at the current prices in Canada and that the prices are going to remain high. According to Borçelik, the evidence indicates that the imports are substantially higher in price than in the past, seem to respect market values and are at a level that will allow for significant profitability for the Canadian industry. It submitted that the condition of the Canadian industry is extraordinary, in that the market will currently pay a premium over the published pricing manual.

47. With respect to the Chinese anti-dumping order against imports from Russia, Borçelik submitted that the utilization data for the Russian producers indicate that these imports have found other markets. It further submitted that the comprehensive agreement between Russia and the United States ended on July 12, 2004, which means that Russian producers are free to sell cold-rolled sheet into the U.S. market. In terms of price, it submitted that the U.S. market is booming and that, until Canadian prices rise to the level of the U.S. prices, the United States is still going to be a preferred market for importers.

48. Borçelik submitted that any imports that have been diverted away from China, due to the drop in demand, have not reached the United States, but instead went to other markets because of the growing demand in countries like Japan, Russia, India and Brazil. It submitted that the evidence indicates that there is continued growth in the Chinese market and that Chinese demand is set to increase by 15 to 20 percent and will rebound by the end of the year. Regarding Chinese capacity, it argued that the Chinese producers' shortage of the raw material inputs has meant that they cannot get their capacity online, which means that the Chinese product will be much less competitive due to its higher cost base. It submitted that there is an expanding economy worldwide, that the European market is also emerging as an attractive alternative for exporters and that better global demand is likely to offset whatever weaknesses show up in China.

49. Borçelik argued that anti-dumping protection is not intended to be permanent and that it is intended to remain in effect only as long as required to resolve the injury caused by dumping. In this regard, it submitted that the domestic industry is out of the injury phase, that the current bull market will continue for some time and that, on this basis, the Tribunal should rescind its findings.

USSK

50. USSK argued that there is not likely to be a significant increase in the volume of imports into Canada if the Tribunal rescinds its findings, especially from USSK. It submitted that the Slovak Republic's accession to the European Union means that it will be focusing on the European markets and will only export outside the European Union if that market declines, which is not likely. USSK submitted that the testimony of a domestic producer indicates that its European mills are not shipping to Canada because the European market is busy. Furthermore, USSK submitted that EU production and sales caps have compelled it to focus on maximizing profit on every sale, which moves it away from a production imperative.

51. According to USSK, the fact that its new owner, U.S. Steel Inc. (U.S. Steel), is an important participant in the North American market means that it has no interest in disrupting the Canadian market. On this basis, USSK submitted that the evidence indicates that it does not have plans to ship cold-rolled sheet to Canada, the United States or China. It highlighted the testimony of the domestic industry, indicating that the latter had not heard of USSK in the Canadian marketplace for a few years. It submitted that it does not use disruptive importers and that the trading houses that it does employ act more as facilitators than as traders that buy and sell for their own account.

52. USSK argued that it is a small mill located in a land-locked country with no intention of selling into Canada. On this basis, USSK argued that it should not be cumulated and that the Tribunal should rescind its finding against the Slovak Republic.

ANALYSIS

53. As noted earlier, the CBSA determined, on April 7, 2004, pursuant to subsection 76.03(7) of *SIMA*, that the expiry of the findings in respect of the subject goods was likely to result in the continuation or resumption of dumping. Consequently, the Tribunal is required, pursuant to subsection 76.03(10), to

determine whether the expiry of the findings is likely to result in injury or retardation to the domestic industry.

Like Goods

54. 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.

55. 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. Cold-rolled sheet 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

56. Having decided that the like goods in this expiry review are domestically produced cold-rolled sheet, the Tribunal must consider which producers constitute the domestic industry.

57. 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.

58. The evidence indicates that Dofasco, Stelco, Ispat and Algoma are the primary producers of like goods in Canada. These producers represent all or almost all of the total production of like goods. Therefore, the Tribunal finds that these producers constituted the domestic industry for the purposes of this expiry review.

Cumulation

59. 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.

60. In this regard, the domestic industry submitted that the circumstances that led the Tribunal not to cumulate in past cases were not 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 the Tribunal stated, in its original statement of reasons, that the subject goods imported from all the subject countries competed with each other and with the like goods at the same customers and were distributed through the same channels of distribution.

61. USSK argued that it should not be cumulated on the basis of differing conditions of competition, because its marketing plans indicate that it is focused on the European market and is thus not likely to compete in the Canadian market in the foreseeable future. Its recent change of ownership reinforces this argument, as its new U.S. owner is already a participant in the North American market and, therefore, USSK would not be inclined to disrupt this market. The Tribunal is of the view however that the effect of the imports of cold-rolled sheet from the Slovak Republic should be cumulated with that of the other subject countries for the purpose of the Tribunal's analysis. The Tribunal finds no reason why USSK's imports would not compete with the imports from the other subject countries under similar conditions of competition. As well, USSK's imports would also compete with domestic products under similar conditions of competition.

62. Borçelik argued, in the alternative, that its products should not be cumulated because: its imports were able to compete without dumping during the period of review; there were no other findings relating to cold-rolled sheet against it; and it was a net importer of cold-rolled sheet. The Tribunal finds none of these factors sufficient to distinguish the conditions of competition relative to the Turkish cold-rolled sheet from those that apply to the other subject countries, nor does the Tribunal find that the Turkish goods would not compete with the like goods under similar conditions of competition.

63. 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 cold-rolled sheet from all subject countries in its analysis of likelihood of injury. The evidence shows that the subject goods are interchangeable with each other and with the like goods. The evidence indicates that the subject goods would serve the same geographical markets in Canada and the same type of Canadian customers as the like goods and would be offered through channels of distribution similar to those of the like goods.

Likelihood of Injury

64. Subsection 37.2(2) of the *Special Import Measures Regulations*⁶ enumerates the factors that the Tribunal may consider in addressing the question of likelihood of injury in cases where the CBSA has determined that there is a likelihood of continued or resumed dumping if a finding is allowed to expire. The Tribunal reviewed all these factors and found them all relevant to the circumstances of this expiry review. These factors are analysed under the following four general headings: international market conditions; the likely volumes of dumped imports; the likely prices of dumped imports; and the likely impact of dumped imports on the domestic industry.

65. In making its assessment of the likelihood of injury, consistent with previous cases, the Tribunal is of the view that the focus must be on circumstances that can reasonably be expected to exist in the near and medium terms, as opposed to more remote circumstances. The period chosen by the Tribunal normally takes into account the particular circumstances and facts of the case. In this case, where the international market for cold-rolled sheet will likely have an impact on the volume of subject goods entering the Canadian market if the findings are rescinded, the Tribunal considers that it is appropriate to examine a period of up to 24 months from the expiry of the findings.⁷

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

7. *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.

International Market Conditions

66. Recent strong economic growth in Asia and, in particular, the spectacular economic growth in China have led to unprecedented demand for steel and for steelmaking raw materials. China, in its process of rapid economic development, has become the third largest consumer of steel, consuming twice as much steel as the United States, even though its economy is still only one eighth the size.⁸ Although the growth in China's gross domestic product has slowed from 9.1 percent in 2003, it is still projected by the International Monetary Fund to grow at rates of 8.5 percent in 2004 and 8 percent in 2005, growth rates similar to those recorded during the Tribunal's period of review.⁹ This projected slowing of Chinese growth, which was accompanied by a decline in steel imports in the spring of 2004, had led to concerns about a sudden glut of steel, with international markets possibly "swimming in steel", as Chinese imports of steel continued to slow down.¹⁰ The domestic producers argued that the China "bubble" would burst, leading to significant overcapacity in China and elsewhere. They submitted that, absent the demand in China, this overcapacity would ultimately target the North American market, causing substantial and injurious price declines.

67. The Tribunal notes that analysts in the specialized press and buyers no longer generally share these concerns. For example, one publication recently stated the following: "Essentially, they appear to have given up on the idea that steel prices would fall meaningfully in the second half, and have decided to go ahead with buying plans as usual."¹¹ The concerns have abated, given that the slowdown in China now appears to have been a temporary correction, as many of the major steel producers predicted.¹² Both Chinese domestic and import prices have started to rise again.¹³

68. As well, the concerns have been modified by the fact that, although steel imports into China declined by 50 percent in May 2004, world steel prices continued to rise. Cold-rolled sheet prices continued to climb in all major markets throughout the first half of 2004, despite this fall in import volumes and a fall in Chinese import prices of cold-rolled steel sheet of more than US\$50 per tonne between April and June 2004.¹⁴ U.S. sheet prices did not collapse, but have actually increased since May and remain at record levels,¹⁵ driven by raw material shortages, increased industry consolidation and increasing market demand.¹⁶ As well, European prices for cold-rolled steel sheet are at historical highs.¹⁷ Prices are forecast to increase in the European market in the second half of 2004, and prices in the U.S. market are also likely to remain at high levels in the second half of 2004.¹⁸ Industry analysts note that growing demand in other economies, notably Japan, Russia, India, Brazil and the United States, has taken up the slack caused by

8. Manufacturer's Exhibit A-05 at 48, Administrative Record, Vol. 11.

9. Tribunal Exhibit RR-2003-004-05, Administrative Record, Vol. 1A at 75.

10. Manufacturer's Exhibit B-05 at 140, 149, Administrative Record, Vol. 11A; Tribunal Exhibit RR-2003-004-35.08 (single copy exhibit), Administrative Record, Vol. 1.01 at 309; Foreign Producer's Exhibit E-04 at 1, Administrative Record, Vol. 13; and Manufacturer's Exhibit A-05 at 49, Administrative Record, Vol. 11.

11. Foreign Producer's Exhibit E-04 at 1, Administrative Record, Vol. 13.

12. Manufacturer's Exhibit A-05 at 53, Administrative Record, Vol. 11.

13. Foreign Producer's Exhibit E-08 at 1, Administrative Record, Vol. 13.

14. Tribunal Exhibit RR-2003-004-05A, Administrative Record, Vol. 1A at 164.

15. Foreign Producer's Exhibit E-04 at 2, Administrative Record, Vol. 13; Foreign Producer's Exhibit E-08 at 1, 3, Administrative Record, Vol. 13.

16. Foreign Producer's Exhibit E-08 at 3, Administrative Record, Vol. 13.

17. Manufacturer's Exhibit B-09 at 4, Administrative Record, Vol. 11A.

18. Tribunal Exhibit RR-2003-004-35.08 (single copy exhibit), Administrative Record, Vol. 1.01 at 309; Foreign Manufacturer's Exhibit E-07 at 2, Administrative Record, Vol. 13; Foreign Producer's Exhibit E-04 at 1, Administrative Record, Vol. 13.

decreased imports by China.¹⁹ The importance of steel demand in the rest of the world is seen in the figures that show that steel consumption outside China was 650 million tonnes in 2003 compared to 260 million tonnes in China.²⁰

69. The Tribunal concurs with the view of most industry analysts that growth in the rest of the world is now sufficient to take up any slack caused by another correction in the Chinese market. Authoritative forecasts predict continued economic growth in the major steel-consuming countries in 2004 and 2005.²¹ This economic growth provides the basis for arguing that the global demand for steel will not slacken, but will continue at least until the end of 2005, as has been forecast by an executive of a major European steel company.²²

70. Another indication of this increased demand for steel in other parts of the world besides China is that, despite price increases, the volume of flat-rolled steel imports entering European markets has not risen.²³ As well, in the United States, with the world's highest prices, the level of imports of steel sheet is such that the imports are not exerting significant downward pressure on prices.²⁴

71. There is currently a significant differential of US\$300 per tonne between U.S. and Chinese cold-rolled steel sheet prices.²⁵ The U.S. cold-rolled steel sheet price in the third quarter of 2004 reached a record high, at US\$838 per tonne (C\$1,108), up from US\$410 per tonne in the third quarter of 2003.²⁶ The Chinese domestic price for cold-rolled coil was between US\$592 and US\$616 per tonne in June 2004.²⁷ The Tribunal's view is that arbitrage between the markets is likely to occur and that U.S. prices are likely to moderate to a certain degree, though not necessarily or even likely down to the current Asian price. Some major Asian mills have already increased their third quarter steel prices,²⁸ and Chinese cold-rolled steel sheet prices are rising.²⁹ According to World Steel Dynamics, strong demand for steel in the United States is likely to keep U.S. prices up.³⁰ As well, imported steel offerings in the United States are at prices at or above U.S. domestic prices, as demand in that market continues to outstrip supply.³¹ Furthermore, the tight supply of steel caused by raw material and transportation service shortages is likely to minimize the chance of any major decreases in U.S. prices occurring soon.

72. The spectacular levels of demand in China and the growing demand in other major and developing markets, such as Japan, India and Brazil, have led to pressures on supplies of steelmaking raw materials, energy and transport. The demand has been so strong and the capacity to rapidly expand the supply of raw materials so limited, that this has led to significant input price increases worldwide that have been passed forward as surcharges to customers. Similarly, shipping and other services have been in short supply

19. *Ibid.*

20. *Ibid.*

21. Tribunal Exhibit RR-2003-004-05, Administrative Record, Vol. 1A at 75.

22. Manufacturer's Exhibit B-09 at 4, Administrative Record, Vol. 11A.

23. Foreign Producer's Exhibit E-07 at 1, Administrative Record, Vol. 13.

24. Foreign Producer's Exhibit E-08 at 3, Administrative Record, Vol. 13.

25. Foreign Producer's Exhibit E-08 at 2, Administrative Record, Vol. 13.

26. Foreign Producer's Exhibit E-08 at 1, Administrative Record, Vol. 13; Foreign Producer's Exhibit E-03 at 5, Administrative Record, Vol. 13.

27. Manufacturer's Exhibit, B-09 at 8, Administrative Record, Vol. 11A.

28. Foreign Producer's Exhibit E-07 at 2, Administrative Record, Vol. 13.

29. Foreign Producer's Exhibit E-08 at 1, Administrative Record, Vol. 13.

30. Foreign Producer's Exhibit E-03 at 150, Administrative Record, Vol. 13.

31. Foreign Producer's Exhibit E-04 at introduction page 1-2, Administrative Record, Vol. 13.

because of increased demand for both steel and a broad range of other commodities, and prices have risen as a result.

73. This tight supply situation shows no signs of abating in the near to medium term. Asian prices for slab have increased by US\$60 per tonne since the second quarter of 2004.³² Coke supply from Russia and Brazil has been reduced for European mills that have already sold most of their third quarter flat-rolled capacity and that may see modest price increases in quarter four of 2004.³³ European buyers of strip products that have not already ordered will find it difficult to secure supplies.³⁴

74. The tight input supply situation has affected China as well. This has led to revisions in forecasts of Chinese capacity utilization and growth. The Chinese capacity utilization is expected to decrease to 87 percent in 2005.³⁵ Nevertheless, capacity additions are still being planned and made in China. For example, in June, Jinan Iron and Steel made a share placement to raise funds for a capacity expansion for hot- and cold-rolled strip products that are still in short supply in China.³⁶ The Tribunal, however, is of the view that the capacity additions in China are not likely to alleviate in any major way the need for steel imports into that country in the near to medium term. In addition to input restraints, the usual ramping up challenges for new steel plants suggest to the Tribunal that not all capacity expansion will be in place according to plans.

75. In summary, although in the short term, imports of steel have fallen as inventories have been drawn down in response to the tightening of credit by the Chinese government,³⁷ this decline in imports into China did not have a noticeable impact on world markets because of increasing demand in such countries as Japan, Russia, India, Brazil and the United States.³⁸ An analysis of the demand and supply conditions for steel in China by a specialized industry publication indicates that there is a requirement for a significant volume of steel imports into China in the near term.³⁹ Although the expansion of China's economy may be slowing slightly in 2004, the Tribunal notes that it will still be growing at prodigious rates in 2004 and 2005. The Tribunal therefore does not concur, given the recent information at its disposal, with the CBSA's conclusion that China will soon no longer be relying on imports of cold-rolled steel sheet. Moreover, in the Tribunal's view, the shortage of inputs is likely to last into the medium term and, although there is likely to be some arbitrage between current Asian and North American prices, this does not necessarily mean a significant decrease in North American prices.

Likely Volumes of Dumped Imports

76. The Tribunal's assessment of the likely volumes of dumped imports encompasses the likely performance of the foreign industry, the potential for foreign producers to produce cold-rolled sheet on facilities currently used to produce other goods, evidence of the imposition of anti-dumping measures on cold-rolled sheet in other jurisdictions and whether the imposition of measures in other jurisdictions is likely to divert dumped cold-rolled sheet into Canada.

32. Foreign Producer's Exhibit E-07 at 2, Administrative Record, Vol. 13.

33. *Ibid.*

34. *Ibid.*

35. Manufacturer's Exhibit A-05 at 87, Administrative Record, Vol. 11; Foreign Producer's Exhibit E-03 at 122, Administrative Record, Vol. 13.

36. Manufacturer's Exhibit A-05 at 77, Administrative Record, Vol. 11.

37. Foreign Producer's Exhibit E-04 at 1, Administrative Record, Vol. 13; Tribunal Exhibit RR-2003-004-35.02 (single copy exhibit), Administrative Record, Vol. 1.01 at 14, 15.

38. Foreign Producer's Exhibit E-04 at 1, Administrative Record, Vol. 13.

39. *Ibid.*

77. Turning to the performance of the foreign industry, the Tribunal observes that the cold-rolled sheet producers in all four subject countries have been operating at a very high levels of capacity utilization, having achieved 98 percent capacity utilization in the second quarter of 2004, up from 94 percent in the fourth quarter of 2003 and the first quarter of 2004.⁴⁰ The utilization rate for all of 2003 was slightly lower at 93 percent.⁴¹ The Tribunal further notes that, while the rate of capacity utilization increased from the fourth quarter of 2003 to the second quarter of 2004, foreign producers increased the volume of production destined for further processing and reduced the volume available for sales in the open market.⁴² As well, the producers' domestic and export markets are strong, and prices are high. The volume of the foreign producers' domestic and export sales grew by 34 percent over the period of review from 2000 to 2003.⁴³ At the same time, their average selling prices increased by 17 percent⁴⁴ and, over the last 12 months, rose rapidly from C\$550 tonne to C\$825 per tonne, an increase of 50 percent.⁴⁵ The forecasts of economic growth in the home markets of the foreign producers⁴⁶ suggest to the Tribunal that increased domestic consumption is likely to be favoured and that there will be less dependence on export markets.

78. The Tribunal also considered the changed circumstances of the sole producer of cold-rolled sheet in the Slovak Republic. Since the findings, the Slovakian mill has been acquired by U.S. Steel and is known as USSK. The Tribunal accepts USSK's position that this change in ownership has brought with it a significant change in commercial strategy.⁴⁷ Whereas the previous owners dealt extensively in spot market sales, USSK's sales strategy now is to focus on contract sales to end users within a 600-kilometre radius of its mill in Košice, Slovak Republic. Also, USSK's greater emphasis on further processing, combined with the restrictions placed on the sales and production of flat products introduced with the Slovak Republic's accession to the European Union in May of 2004, reduces the incentive for the company to export to distant merchant markets such as Canada. Given these arguments, the Tribunal considers it unlikely that USSK will engage in activities of such volumes that they would disrupt the North American market.

79. With respect to each of the other three subject countries, there is nothing on the record relating to the foreign producers' investment plans and commercial strategies that would suggest a resumption of or an increase in exports to Canada. The Russian producers appear to have adopted a much more commercial approach to sales of cold-rolled sheet since 1999, and there is nothing on the record to indicate that the producers have plans to expand their capacity in Russia.⁴⁸ In the case of Belgium, there are no forecast additions to capacity in the near future.⁴⁹ Arcelor's commercial strategy focuses on value-added products, and its mills in Belgium sent a high percentage of their production of cold-rolled sheet to further processing over the review period.⁵⁰ Arcelor indicates that the increase in its exports of cold-rolled sheet from Belgium to the United States in 2004 is due to the company's efforts to rebuild sales to traditional U.S. customers that

40. Tribunal Exhibit RR-2003-004-05A, Administrative Record, Vol. 1A at 174.

41. Tribunal Exhibit RR-2003-004-05, Administrative Record, Vol. 1A at 73.

42. Tribunal Exhibit RR-2003-004-05A, Administrative Record, Vol. 1A at 174; Tribunal Exhibit RR-2003-004-06A (protected), Administrative Record, Vol. 2A at 171.

43. Tribunal Exhibit RR-2003-004-05, Administrative Record, Vol. 1A at 73.

44. *Ibid.*

45. Tribunal Exhibit RR-2003-004-05A, Administrative Record, Vol. 1A at 163.

46. Tribunal Exhibit RR-2003-004-05, Administrative Record, Vol. 1A at 75.

47. Tribunal Exhibit RR-2003-004-30.02, Administrative Record, Vol. 5.3A at 33-36, 39.

48. Tribunal Exhibit RR-2003-004-31.05 (protected), Administrative Record, Vol. 6.3E at 12, 14-16; Tribunal Exhibit RR-2003-004-31.01E, Administrative Record, Vol. 5.3 at 397-98, 403, 409, 418, 420-22.

49. Foreign Producer's Exhibit F-01, para. 74, Administrative Record, Vol. 13; Tribunal Exhibit RR-2003-004-31.03, Administrative Record, Vol. 5.3C at 75.

50. Foreign Producer's Exhibit F-01, para. 30, Administrative Record, Vol. 13.

it had prior to the U.S. steel safeguard measures that terminated on December 4, 2003.⁵¹ Arcelor also states that there are no plans to increase exports from its mills in Belgium to its handful of customers in Canada.⁵² Duferco, the only other Belgian producer, produces the vast majority of its cold-rolled sheet for downstream processing.⁵³ In the case of Turkey, its producers' exports are shipped to a wide range of markets, thus avoiding dependence on any single market.⁵⁴ Increased cold-rolled sheet capacity by Borçelik will be dedicated to downstream processing, there being no plans to increase annealing capacity for merchant market sales.⁵⁵

80. A domestic producer submitted that hot-rolled production could be diverted away from the merchant market into the production of more cold-rolled sheet. With regard to possible increased production of cold-rolled sheet through switching capacity from other products, the Tribunal concluded that there is no potential for such diversions. This would only be possible if the producers had excess capacity in their mills to roll this additional substrate, and any such increases would ultimately be dependent on the availability of cold-rolling capacity. As has already been noted, the foreign producers are operating at or near possible full capacity, making the argument moot. The producers also submitted that cold-rolled sheet production destined for further processing into coated products could be diverted into the merchant market for sale to customers. For the foreign producers to be able to do this, they would have to have the annealing and tempering capacity to convert full-hard cold-rolled sheet into fully processed cold-rolled sheet. The Tribunal considers it likely that they would have little capacity available to anneal and temper full-hard product, given the mills' current level of operation. The Tribunal also does not consider it likely that the foreign producers would want to switch product into the cold-rolled sheet merchant market that is destined for higher-valued coated goods.

81. The Tribunal's review of the available evidence on the imposition of anti-dumping measures revealed that, with respect to the exports of cold-rolled sheet from the subject countries, only exports from Russia were covered by injury findings made by jurisdictions outside of Canada. Of the 10 anti-dumping actions⁵⁶ that cover Russian cold-rolled products, 4 were taken in 1999, when Russia was in transition from a production-based economy to a market-based economy and the Asian financial crisis was in full swing.⁵⁷ The Chinese injury finding on imports of cold-rolled sheet from Russia was made in September 2003, but anti-dumping duties were not applied until January 2004.⁵⁸ The other 5 injury findings were made by developing nations. With regard to other types of measures, there are no longer any safeguard actions in place against cold-rolled sheet originating in the subject countries.

82. The Tribunal is of the view that, of all the measures currently in place, the only measure likely to cause a diversion of dumped imports of cold-rolled sheet into the Canadian market is China's finding covering imports from Russia. Russian producers export significant volumes of cold-rolled sheet to China and are China's main foreign supply source.⁵⁹ This is supported by the fact that Russian producers exceeded

51. Foreign Producer's Exhibit F-01, para. 56, Administrative Record, Vol. 13.

52. Foreign Producer's Exhibit F-01, para. 91, Administrative Record, Vol. 13; Tribunal Exhibit RR-2003-004-RI-06A (protected), Administrative Record, Vol. 10 at 1.

53. Foreign Producer's Exhibit F-01, para. 24, Administrative Record, Vol. 13.

54. Foreign Producer's Exhibit E-02, para. 37, Administrative Record, Vol. 13.

55. Tribunal Exhibit RR-2003-004-30.04, Administrative Record, Vol. 5.3F at 14.

56. In 1999 and 2002, there were dumping investigations of Russian exports to the United States, both of which resulted in findings of no material injury. See Tribunal Exhibit RR-2003-004-05, Administrative Record, Vol. 1A at 13.

57. *Ibid.*

58. Tribunal Exhibit RR-2003-004-12.17, Administrative Record, Vol. 1.2 at 321-22, 324.

59. Manufacturer's Exhibit B-09 at 8, Administrative Record, Vol. 11 A.

their annual quota of 804,261 tonnes of cold-rolled products on December 11, 2003, under the Chinese steel safeguard measures put in place on May 24, 2003, and terminated on December 26, 2003.⁶⁰ As well, Novolipetsk Iron and Steel Corporation (NLMK) and JSC Severstal (Severstal), the two major Russian producers that responded to the expiry review questionnaire, reported exporting significant volumes of cold-rolled sheet to China in 2003.⁶¹ The duty rates to be applied to NLMK's and Severstal's exports to China are 7 percent and 9 percent respectively.⁶² The Tribunal's view is that these rates are low enough to allow continued exports to China by the two producers. The Tribunal notes that NLMK has indicated that it does not consider the rate prohibitive.⁶³

83. A recent industry report indicates that exporters to China had opted to supply other markets where they could get better prices and goes on to suggest that NLMK and Severstal are not currently interested in selling into the Chinese market.⁶⁴ Magnitogorsk Iron & Steel Works (Magnitogorsk) received a more prohibitive duty rate of 18 percent.⁶⁵ However, the same industry report indicates that Magnitogorsk continued to offer cold-rolled material to China.⁶⁶ The Tribunal notes that little, if any, diversion of Russian cold-rolled sheet into the North American market has occurred, as trade statistics show only relatively small volumes of Russian cold-rolled sheet entering the North American market.⁶⁷ The Tribunal is of the view that some diversion into the North American market is likely to occur in the future, given the market's high cold-rolled sheet prices. The Tribunal believes however that diverted imports from Russia are more likely to flow into the U.S. market, given that the U.S. market is much larger than the Canadian market, that there is a shortage of imports in the U.S. market⁶⁸ and that U.S. prices are slightly higher than Canadian prices.⁶⁹ Furthermore, there are no longer any U.S. quotas on Russian steel with the expiry of the U.S.-Russia Comprehensive Steel Agreement on July 12, 2004.⁷⁰

84. Turning to the Canadian market for cold-rolled sheet, the Tribunal observes that imports from the subject countries declined from 10,800 tonnes in 2000 to 6,800 tonnes in 2003.⁷¹ The bulk of the imports were from Turkey, and almost all of those goods were exported at values that were equal to or greater than normal values.⁷² The Tribunal further notes that, in the first half of 2004, at a time when prices in the Canadian market were very high, Turkish producers chose not to export any cold-rolled sheet to Canada, and Belgian producers exported only a small volume of cold-rolled sheet to Canada.⁷³

60. Tribunal Exhibit RR-2003-004-05, Administrative Record, Vol. 1A at 13; Tribunal Exhibit RR-2003-004-13.08 (protected), Vol. 2.2A at 70.

61. Tribunal Exhibit RR-2003-004-06 (protected), Administrative Record, Vol. 2A at 147-48.

62. Tribunal Exhibit RR-2003-004-12.17, Administrative Record, Vol. 1.2 at 321.

63. Tribunal Exhibit RR-2003-004-30.01E, Administrative Record, Vol. 5.3 at 412.

64. Manufacturer's Exhibit B-09 at 8, Administrative Record, Vol. 11 A.

65. Tribunal Exhibit RR-2003-004-12.17, Administrative Record, Vol. 1.2 at 321.

66. Manufacturer's Exhibit B-09 at 8, Administrative Record, Vol. 11 A.

67. Manufacturer's Exhibit B-05 at 10-13, Administrative Record, Vol. 11A; Tribunal Exhibit RR-2003-004-05, Administrative Record, Vol. 1A at 24; Foreign Producer's Exhibit E-06 at 4-5, Administrative Record, Vol. 13.

68. Foreign Producer's Exhibit E-04 at 11, Administrative Record, Vol. 13.

69. *Transcript of Public Hearing*, Vol. 1, 19 July 2004 at 122-24; *Transcript of Public Hearing*, Vol. 2, 20 July 2004 at 231, 337, 344-45.

70. *Ibid.* at 232.

71. Tribunal Exhibit RR-2003-004-05, Administrative Record, Vol. 1A at 24.

72. Tribunal Exhibit RR-2003-004-03A, Administrative Record, Vol. 1 at 192.

73. Foreign Producer's Exhibit E-06 at 4-5, Administrative Record, Vol. 13.

85. Imports from non-subject countries also declined significantly from 737,000 tonnes in 2000 to 375,000 tonnes in 2003.⁷⁴ Imports from the United States accounted for the lion's share of non-subject imports over the period. They were fairly stable at about 400,000 tonnes from 2000 to 2002 and then dropped by about 100,000 tonnes in 2003. Imports of cold-rolled sheet from offshore countries also declined dramatically from 207,000 tonnes in 2002 to 77,000 tonnes in 2003.

86. There were a number of extraordinary events during this period that could explain this drop in imports. While neither the Tribunal's inquiry⁷⁵ in 2001 nor the safeguard inquiry⁷⁶ in 2002 ultimately led to the imposition of measures, the Tribunal believes that the two inquiries could well have cast a pall on trade, causing imports to decline.

87. In addition to the likely chilling effect of the two inquiries on the volume of imports, there are at least three other factors, in the Tribunal's view, that could have led to the significant decrease in offshore imports in the latter half of 2003. One factor is indicated by the claim by Canadian producers that they decided to match the prices of imports in the second half of 2003 in order to stem the flow of imports.⁷⁷ Another is that service centres were selling off inventories in the second half of the year and did not import cold-rolled sheet from offshore countries.⁷⁸ The third factor is the 34 percent increase in demand in China for cold-rolled sheet in 2003, resulting in a sizeable increase in China's imports from 8.6 million tonnes in 2002 to 11.5 million tonnes in 2003.⁷⁹

88. The Tribunal observes that the level of interest of foreign producers in the Canadian market has continued to decline. Import statistics for the first half of 2004 show that the volume of offshore imports in the first six months of the year is down over the same period in 2003.⁸⁰ The decline in imports has been occurring at a time when the domestic producers have raised their prices significantly,⁸¹ have been operating at high levels of capacity utilization⁸² and have had their customers on controlled order intake.⁸³ Notwithstanding that some producers have placed their customers on allocation according to their historical purchasing patterns,⁸⁴ the Tribunal believes that, if imports continue at their current low level, economic growth increases and the demand for flat-rolled products increases further, as it is forecast to do,⁸⁵ the domestic market will be in a very tight supply position.

89. Another factor contributing to the market's tightness has been the continued emphasis on further processing of cold-rolled sheet into coated sheet. According to the evidence, about one half of U.S. exports

74. Tribunal Exhibit RR-2003-004-05, Administrative Record, Vol. 1A at 24.

75. *Cold-rolled Steel Sheet Products* (9 October 2001), NQ-2001-002 (CITT).

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

77. *Transcript of Public Hearing*, Vol. 2, 20 July 2004 at 340-41.

78. *Ibid.*

79. Manufacturer's Exhibit A-05 at 184, Administrative Record, Vol. 11.

80. Foreign Producer's Exhibit E-06 at 4-5, Administrative Record, Vol. 13.

81. Tribunal Exhibit RR-2003-004-RI-01, Administrative Record, Vol. 9 at 2; Tribunal Exhibit RR-2003-004-RI-02, Administrative Record, Vol. 9 at 2-3; Tribunal Exhibit RR-2003-004-RI-03, Administrative Record, Vol. 9 at 3-11; Tribunal Exhibit RR-2003-004-06A (protected), Administrative Record, Vol. 2A at 160-61.

82. Tribunal Exhibit RR-2003-004-06 (protected), Administrative Record, Vol. 2A at 55; Tribunal Exhibit RR-2003-004-06A (protected), Administrative Record, Vol. 2A at 170; *Transcript of Public Hearing*, Vol. 1, 19 July 2004 at 38-39.

83. *Ibid.* at 29-30, 152-53, 155; *Transcript of Public Hearing*, Vol. 2, 20 July 2004 at 274-75, 284-85, 333.

84. *Transcript of Public Hearing*, Vol. 1, 19 July 2004 at 29-30; *Transcript of Public Hearing*, Vol. 2, 20 July 2004 at 284-85.

85. Tribunal Exhibit RR-2003-004-05, Administrative Record, Vol. 1A at 75; *Transcript of Public Hearing*, Vol. 1, 19 July 2004 at 103-108.

of cold-rolled sheet to Canada were related to a joint venture for the production of coated products. In 2003, National Steel went bankrupt and ceased importing cold-rolled sheet from the United States for coating at DNN, a facility that it had used jointly with Dofasco.⁸⁶ The imports were estimated to have amounted to around 200,000 tonnes per year. Dofasco has since entered into a long-term lease agreement to use all the production capacity of DNN and will be supplying substrate for that venture.

90. The Tribunal believes that relief from that current tightness in the market could be provided by imports. The evidence also shows that Stelco has some room to increase its output of cold-rolled sheet, given that more liquid steel is anticipated to be available, as Stelco rectifies its coke supply problems.⁸⁷

91. In conclusion, the strong economic growth and the high level of demand for steel products that have been experienced in global markets, including the Chinese market, are likely to continue at least until the end of 2005. Furthermore, the Chinese and other developing countries' demand for steel products is likely to remain significant in the medium term and, thus, there is not likely to be a flood of imports diverted towards other markets. China's injury finding covering imports of Russian cold-rolled steel could cause some diversion of cold-rolled imports. If this diversion of imports does occur, the imports are more likely to flow first towards the U.S. market, which is currently short of imports and is a higher-priced and larger market than the Canadian market. The Tribunal accepts that some of those diverted imports from Russia could eventually appear in the Canadian market. However, the Tribunal does not believe that the volume is likely to be significant. Also, the Tribunal does not foresee much interest on the part of producers in the other three subject countries in shipping cold-rolled sheet into the Canadian market. Imports of cold-rolled sheet from Turkey and Belgium have waned recently, at a time when prices have been very high. In the case of the Slovak Republic, the ownership and focus of the producer have changed to serving markets closer to the plant, and the producer is unlikely to attempt to serve a market to any great extent already served by its parent, U.S. Steel. The Tribunal therefore concludes that, if the findings are allowed to expire, the volume of dumped subject goods entering the Canadian market is not likely to be significant.

Likely Prices of Dumped Imports

92. Having considered the likely volume of dumped imports, the Tribunal turned its attention to examining the likely prices of such imports. The domestic industry testified that Canada's cold-rolled sheet market is closely integrated with that of the United States and that Canadian prices track closely those of the United States. U.S. steel producers continue to raise their base prices, and their profit margins are widening, despite a month-over-month increase of 19 percent in the volume of imports entering the United States.⁸⁸ Imports have had little impact on U.S. domestic market tightness or prices, as import offerings to date have been at prices at or above U.S. domestic market prices.⁸⁹ Further, many U.S. mills are undertaking plant maintenance during the second half of 2004, which is likely to constrain capacity further.⁹⁰ However, given that U.S. prices are the highest in the world, the Tribunal expects that imports, which are still entering North America at relatively low volumes, are quite likely to increase in volume, in the medium term, if not in the near term. With the increase in import volumes, the Tribunal expects that U.S. prices are likely to moderate somewhat but that they are likely to stabilize at high levels, as demand is growing in Japan,

86. *Ibid.* at 26-28, 30-31, 143-44.

87. *Transcript of Public Hearing*, Vol. 2, 20 July 2004 at 174-75, 220-21, 294-96, 300-301.

88. Foreign Producer's Exhibit E-05 at 1-2, Administrative Record, Vol. 13.

89. Foreign Producer's Exhibit E-04 at introduction page, 1-2, Administrative Record, Vol. 13.

90. Foreign Producer's Exhibit E-05 at 2, Administrative Record, Vol. 13.

Russia, India and Brazil, a significant level of continued economic growth is forecast for China, and Chinese prices have started to rise again.⁹¹

93. The Tribunal is of the view that demand will likely remain strong in Canada as well, especially in light of the tight supply situation that exists. Although the domestic industry maintained that the cold-rolled sheet market in Canada was a mature one and unlikely to grow, demand is projected to remain strong.⁹² Testimony was given that Canadian steel service centres have low inventories⁹³ and that domestic producers have customers on controlled order intake.⁹⁴ Similar to the U.S. producers, Canadian producers have continued to raise their prices, and their financial performance has shown improvement.⁹⁵ The Tribunal foresees that prices in Canada, which are close to those in the United States, are likely to be affected in a way similar to those in the United States. Increased volumes of imports are likely to be attracted to the Canadian market by high prices. These prices in turn are then likely to be moderated somewhat, but are also likely to remain at a high level.

94. In its consideration of the likely prices of dumped imports, the Tribunal reviewed a number of recent import price offerings that had been circulating in the Canadian market and submitted by the domestic producers as part of their evidence.⁹⁶ The Tribunal notes that none of the offerings concerned cold-rolled sheet from the subject countries. Also, with regard to two of the offerings, the producers specifically stated in testimony that they had not lowered their prices to respond to the offerings.⁹⁷ With regard to the other price offerings, the producers gave no indication that they had responded by lowering their prices. In only one instance did a producer indicate that buyers had made purchases in response to one of the import offerings.⁹⁸ The Tribunal also examined comparisons of the offered prices with current producers' prices. It found that the offered prices ranged anywhere from slightly less than the producers' current spot price up to C\$110 per tonne, less than the producers' current and expected selling prices.⁹⁹ The Tribunal observes that customers are currently willing to pay a significant premium (5 to 7 percent over the published spot price) to get the cold-rolled sheet that they want.¹⁰⁰ If the tight market subsides somewhat in the near to medium term, the domestic industry may well have to reduce its prices by C\$110 per tonne. This would however still leave producers' prices at historically high levels.

95. The Tribunal notes that the import pressures that eventually moderate domestic prices are likely to come from a broad range of producers located in any number of countries. It is the Tribunal's view that the moderation in prices is likely to occur whether or not the findings remain in place. General import

91. Foreign Producer's Exhibit E-04 at 1, Administrative Record, Vol. 13; Tribunal Exhibit RR-2003-004-05, Administrative Record, Vol. 1A at 75; Foreign Producer's Exhibit E-08 at 1, Administrative Record, Vol. 13.

92. *Transcript of Public Hearing*, Vol. 1, 19 July 2004 at 103-108.

93. *Ibid.* at 55, 96-97, 137-39; *Transcript of Public Hearing*, Vol. 2, 20 July 2004 at 302-303.

94. *Transcript of Public Hearing*, Vol. 1, 19 July 2004 at 29-30, 152-53, 155; *Transcript of Public Hearing*, Vol. 2, 20 July 2004 at 274-75, 284-85, 333.

95. Tribunal Exhibit RR-2003-004-RI-01, Administrative Record, Vol. 9 at 2; Tribunal Exhibit RR-2003-004-RI-02, Administrative Record, Vol. 9 at 2-3; Tribunal Exhibit RR-2003-004-RI-03, Administrative Record, Vol. 9 at 3-11; Tribunal Exhibit RR-2003-004-06B (protected), Administrative Record, Vol. 2A at 176.

96. Manufacturer's Exhibit B-06 (protected) at 1-3, Administrative Record, Vol. 12; Manufacturer's Exhibit B-08 (protected) at 1, Administrative Record, Vol. 12; Manufacturer's Exhibit C-02 (protected) paras. 15, 26-27, Administrative Record, Vol. 12.

97. *Transcript of Public Hearing*, Vol. 2, 20 July 2004 at 239, 349.

98. *Ibid.* at 347-49.

99. *Ibid.* at 184-90, 234-37, 345-46; Manufacturer's Exhibit C-02 (protected) paras. 15, 26-27, Administrative Record, Vol. 12.

100. *Transcript of Public Hearing*, Vol. 1, 19 July 2004 at 65-67, 120-22.

competition attracted by historically high prices in North America is what is likely to reduce prices, not price undercutting or price erosion or suppression caused by imports from the subject countries, if and when those countries decide to participate in the Canadian market in the absence of the findings. It was noted earlier that none of the price offerings submitted in evidence were from producers in the subject countries and that the subject countries have recently further reduced their participation in the Canadian cold-rolled sheet market. It is further noted that producers in Turkey and Belgium, subject to the current findings, have in the past sold into the Canadian market at undumped prices.

96. In summary, the Tribunal expects that North American prices for cold-rolled sheet, including those in Canada, are likely to decline somewhat from their current historical heights, as imports will eventually be attracted in larger volumes to this market. The Tribunal foresees however that, when prices do stabilize in the United States and Canada, they will more than likely still be at high levels, given the demands for cold-rolled sheet in other markets. The Tribunal believes that the moderating influence will come from general import competition and not from price undercutting or price erosion or suppression caused by the dumping of the subject goods in the absence of the findings.

Likely Impact of Dumped Imports on the Domestic Industry

97. The Tribunal next considered the likely impact of the dumped imports on the domestic industry, taking into consideration the recent performance of the domestic industry. The domestic industry argued that it has excess capacity and is able to supply domestic needs. The Tribunal notes that only Stelco argued with some conviction that it had unused capacity. Stelco's testimony was that its capacity to produce cold-rolled sheet had been restricted by front-end operations, i.e. in the production of liquid steel, by a shortage of coke and, more importantly, by the quality of coke that it had been able to purchase externally.¹⁰¹ Stelco indicated that these problems have been rectified and that it will be increasing its capacity utilization in the future. The available capacity will come from the company's five-stand cold mill, which had been kept running for the ramp-up of the upgrade of the four-stand mill.¹⁰² The four-stand mill is fully occupied in current circumstances.¹⁰³ The Tribunal notes that a witness for Stelco testified that not all this capacity would necessarily be utilized, as the company might not supply liquid steel to keep the cold-rolled sheet facilities running at 100 percent capacity.¹⁰⁴

98. Currently, Dofasco has some headroom for the production of additional full-hard cold-rolled sheet that, in turn, can be either made into coated products or sent on to the annealing and tempering facilities for the production of fully processed cold-rolled sheet for the merchant market.¹⁰⁵ However, Dofasco does not at present have capacity available to produce additional fully processed cold-rolled sheet for the merchant market, as its annealing and tempering facilities are operating at 100 percent capacity.¹⁰⁶ A witness for Dofasco testified that, if the company had additional available capacity, it could sell more fully processed cold-rolled sheet to customers.¹⁰⁷

99. With respect to other domestic producers, the Tribunal notes that Ispat recently imported cold-rolled sheet into Canada from a sister mill in Kazakhstan.¹⁰⁸ Further, a witness for Dofasco testified that Algoma is

101. *Transcript of Public Hearing*, Vol. 2, 20 July 2004 at 174-75, 220-21, 294-96, 300-301.

102. *Ibid.* at 175-76, 259-61.

103. *Ibid.* at 260-61.

104. *Ibid.* at 295-96.

105. *Transcript of Public Hearing*, Vol. 1, 19 July 2004 at 30-31.

106. *Ibid.* at 31-32.

107. *Ibid.* at 31.

108. *Transcript of Public Hearing*, Vol. 2, 20 July 2004 at 323-24.

selling all the cold-rolled sheet that it can make.¹⁰⁹ In summary, Canadian producers are operating essentially at full capacity.

100. Not only is the domestic industry operating effectively at full capacity, the Tribunal anticipates that it will continue to do so in the foreseeable future, given the tightness in the market. As a witness for Dofasco confirmed, the supply shortage of inputs is unlikely to ease in less than two years.¹¹⁰ The fact that Dofasco is planning major investments in its finishing capabilities is illustrative of these tight market conditions. The company is currently investing C\$384 million in a continuous pickle line that will increase its capacity to produce full-hard cold-rolled sheet by 10 percent, and it has plans that are scheduled to go before Dofasco's Board for approval in November 2004 to invest at least C\$150 million in annealing and tempering facilities for cold-rolled and tin mill products.¹¹¹ Further illustrative of the tightness of the market is the fact that Dofasco, Stelco and Ispat all have their customers on controlled order intake.¹¹²

101. Domestic producers have enjoyed healthy increases in their selling prices since the beginning of 2004, as evidenced by their price announcements and by the average selling prices of their sales of commercial quality cold-rolled sheet.¹¹³ A comparison of the selling prices for commercial quality cold-rolled steel before and after raw material surcharges demonstrates that a large part of the increases was due to increases in the base selling price before raw material surcharges. Both Dofasco and Stelco had announced price increases to take effect in July 2004, but neither producer had, at the time of the hearing, planned a price increase for August 2004.¹¹⁴

102. The domestic industry's financial performance is now showing the effects of the high level of capacity utilization and the strong growth in prices. In the first quarter of 2004, the industry reported a positive net income of C\$3 million, after recording a loss of C\$70 million for the whole of 2003.¹¹⁵ The financial data available for the second quarter of 2004 show that the industry's performance continues to improve.¹¹⁶ There was a further indication that there are likely to be additional improvements in financial results going into the third quarter of 2004. A witness for Stelco testified in public that the company did not make money on cold-rolled sheet in the second quarter of 2004, but went on to say that, given the level of current prices, it is anticipated that Stelco will make money on cold-rolled sheet.¹¹⁷

103. The Tribunal also considered the effects of a C\$110-per-tonne decline in the price of cold-rolled sheet on the domestic industry's financial performance. The Tribunal chose this amount because it is at the high end of the range by which recent import price offerings were lower than the industry's current prices and could be considered indicative of what might happen to prices in the near or medium term. Based on

109. *Transcript of Public Hearing*, Vol. 1, 19 July 2004 at 38-39.

110. *Ibid.* at 82, 128-29.

111. *Ibid.* at 18-19, 36, 118-19, 162-63.

112. *Ibid.* at 29-30, 152-53, 155; *Transcript of Public Hearing*, Vol. 2, 20 July 2004 at 274-75, 284-85, 333.

113. Tribunal Exhibit RR-2003-004-RI-01, Administrative Record, Vol. 9 at 2; Tribunal Exhibit RR-2003-004-RI-02, Administrative Record, Vol. 9 at 2-3; Tribunal Exhibit RR-2003-004-RI-03, Administrative Record, Vol. 9 at 3-11; Tribunal Exhibit RR-2003-004-06A (protected), Administrative Record, Vol. 2A at 160-61.

114. Tribunal Exhibit RR-2003-004-RI-01, Administrative Record, Vol. 9 at 2; Tribunal Exhibit RR-2003-004-RI-02, Administrative Record, Vol. 9 at 2; *Transcript of Public Hearing*, Vol. 1, 19 July 2004 at 50; *Transcript of Public Hearing*, Vol. 2, 20 July 2004 at 273.

115. Tribunal Exhibit RR-2003-004-05B, Administrative Record, Vol. 1A at 176; Tribunal Exhibit RR-02003-004-05, Administrative Record, Vol. 1A at 46.

116. *Transcript of In Camera Hearing*, Vol. 2, 20 July 2004 at 62-63; Tribunal Exhibit RR-2003-004-16.04E (protected), Administrative Record, Vol. 4D at 51.

117. *Transcript of Public Hearing*, Vol. 2, 20 July 2004 at 304.

recent and expected industry selling prices and the industry's most recent financial results, a price reduction of as much as C\$110 per tonne, while significant, would still provide the industry with gross margins and net profits that are significantly above the industry's best years during the period of review.¹¹⁸ Even in the case of Stelco, whose cost structure is high and higher than the industry average,¹¹⁹ its current price for cold-rolled sheet minus C\$110 per tonne would provide a price per tonne at which, a witness for Stelco testified, the company would be earning money. In short, if Stelco's financial performance remains sound in the face of a C\$110-per-tonne reduction in price, so will the industry's financial performance.

104. The domestic industry argued that an important indicator of its vulnerability to the continuation or resumption of dumping of imports is its poor financial results over the period of the review, combined with Stelco's restructuring. In particular, the industry incurred its biggest losses in the years 2001 and 2003.¹²⁰ In those two years, the volumes of imports in the Canadian market were at their lowest levels.¹²¹ The industry argued that it had to lower its prices in the second half of 2003 in order to compete with imports. However, in 2001 and 2003, average import prices were at their highest levels and, in fact, were significantly higher than domestic prices.¹²² The Tribunal finds it difficult to link the industry's poor past performance to imports in any significant way and, rather, is of the view that the weak performance by the domestic industry overall was more than likely attributable to a slump in overall demand,¹²³ a sell-off of inventory by the steel service centres and uncompetitive factors specific to at least one major producer.

105. Dofasco in particular argued that it needed continued protection so that it could fully participate in the upside of the steel market cycle, given the capital-intensive nature of the steel business and the need to continually invest. The Tribunal sees no difficulty in Dofasco continuing to be able to invest in the future as it has in the past and anticipates that it will continue to be one of the most profitable steel mills in North America.¹²⁴ The Tribunal observes that Dofasco has met or come close to the financial community's target rate of return in 7 of the last 10 years.¹²⁵ The Tribunal believes that, in the current climate, Dofasco will be able to continue to invest, as it has in the first two phases of its finishing division improvement program,¹²⁶ and that there is little potential for negative effects of dumped imports on existing development and production efforts. The Tribunal notes that one of the expected results of the finishing division investment program is a reduction in the cost of production per tonne that, in turn, will make Dofasco even more competitive.

106. Dofasco argued vulnerability to the continuation or resumption of dumping on the basis that a significant portion of Dofasco's contracts for the sale of its cold-rolled sheet are coming up for renegotiation in the fourth quarter of 2004. Dofasco is concerned that an erosion of prices might occur with an expiry of

118. *Transcript of In Camera Hearing*, Vol. 1, 19 July 2004 at 39; *Transcript of In Camera Hearing*, Vol. 2, 20 July 2004 at 61-63, 72-82, 115-16; *Transcript of Public Hearing*, Vol. 2, 20 July 2004 at 330, 345-46; Manufacturer's Exhibit C-02 (protected) paras. 26-27, Administrative Record, Vol. 12; Tribunal Exhibit RR-2003-004-06B (protected), Administrative Record, Vol. 2A at 176; Tribunal Exhibit RR-2003-004-16.04E (protected), Administrative Record, Vol. 4D at 51.

119. *Transcript of Public Hearing*, Vol. 2, 20 July 2004 at 303-304.

120. Tribunal Exhibit 2003-004-05, Administrative Record, Vol. 1A at 46.

121. *Ibid.* at 33. It is noted that import volumes in 2003 were still the lowest even after allowing for imports by DNN in 2003. See *Transcript of Public Hearing*, Vol. 1, 19 July 2004 at 28.

122. Tribunal Exhibit 2003-004-05, Administrative Record, Vol. 1A at 39.

123. *Ibid.* at 33.

124. Tribunal Exhibit RR-2003-004-15.02C, Administrative Record, Vol. 3C at 128-29; Manufacturer's Exhibit A-01, para. 5, Administrative Record, Vol. 11.

125. *Transcript of Public Hearing*, Vol. 1, 19 July 2004 at 21-22, 71, 73.

126. *Ibid.* at 18-19.

the findings and thereby exert a negative impact on the contract negotiations. The Tribunal heard testimony from one producer that spot prices are currently higher than published prices,¹²⁷ and the Tribunal expects that, although prices are likely to decline to some extent, they will remain at high levels. Further, the moderation of prices may occur in the near term or it may occur in the medium term. It is the Tribunal's view that spot prices in the fourth quarter of 2004 are more than likely to be higher than the spot prices were in 2003 when the current contracts for 2004 were negotiated. If contract prices were negotiated solely on the basis of spot prices, Dofasco's financial performance would show a marked improvement in 2005 due to contract sales, given that two thirds of the company's business is contract based.¹²⁸ Furthermore, Dofasco may have the opportunity in the negotiations to incorporate raw material surcharges in those contracts on which, to date, it has not been able to recoup the significant input cost increases.

107. In conclusion, the Tribunal does not foresee that significant volumes of dumped imports will enter the Canadian market if the findings are allowed to expire. It expects that domestic prices will moderate somewhat as the record high prices in North America attract imports. However, it is the Tribunal's view that prices in the Canadian market will stabilize at a high level. Furthermore, the Tribunal believes that the adjustment in prices is likely to occur whether or not the findings remain in place and that the imports of dumped cold-rolled sheet will not exacerbate that price correction, given the insignificant volumes that are likely to arrive in Canada from the subject countries in the near to medium term. Finally, the Tribunal finds that the continuation or resumption of dumping of the subject goods if the findings are allowed to expire is unlikely to result in injury or retardation to the domestic industry.

Other Factors

108. The foregoing analysis of the likely impact of resumed dumping on the domestic industry was based on figures that included Stelco's current cost structure. A witness for Stelco stated that there is no doubt whatsoever that the reason that the company is currently restructuring under the *Companies' Creditors Arrangement Act* is its uncompetitive cost structure.¹²⁹ The Tribunal notes that this problem is unrelated to import competition. Stelco has significant legacy costs concerning unfunded pension liabilities, other unfunded employment benefits and other cost factors that make it uncompetitive.¹³⁰ In this vein, it is noted that Stelco's 56-inch hot rolling mill in Hamilton that supplies a significant portion of the substrate for the cold rolling mill is antiquated and less efficient than the company's Lake Erie equipment.¹³¹ The higher cost hot-rolled sheet adds to the costs of production of cold-rolled sheet.¹³² There is no doubt that, when Stelco emerges from restructuring, it will be a different company. It is quite likely to be a much lower-cost producer because, if the company is unable to shed its uncompetitive cost structure, it may be difficult for it to avoid bankruptcy.¹³³ The Tribunal notes that, when Stelco reduces its costs per tonne, the comparison discussed above becomes even more favourable, as does Stelco's and the industry's financial health.

127. *Ibid.* at 120-22.

128. *Ibid.* at 64.

129. *Transcript of Public Hearing*, Vol. 2, 20 July 2004 at 303-304.

130. *Ibid.* at 221-25; *Transcript of In Camera Hearing*, Vol. 2, 20 July 2004 at 99-101.

131. *Transcript of Public Hearing*, Vol. 2, 20 July 2004 at 221-22; *Transcript of In Camera Hearing*, Vol. 2, 20 July 2004 at 119.

132. *Transcript of Public Hearing*, Vol. 2, 20 July 2004 at 223.

133. *Ibid.* at 303-304.

CONCLUSION

109. Based on the foregoing analysis and rationale, and pursuant to subparagraph 76.03(12)(a)(ii) of *SIMA*, the Tribunal rescinds its findings made on August 27, 1999, in Inquiry No. NQ-99-001, in respect of cold-rolled sheet originating in or exported from Belgium, Russia, the Slovak Republic and Turkey.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Patricia M. Close
Patricia M. Close
Member

James A. Ogilvy
James A. Ogilvy
Member