Canadian International Trade Tribunal | Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Dumping and Subsidizing

ORDERS AND REASONS

Expiry Review No. RR-2005-002

Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip

Orders issued
Wednesday, August 16, 2006

Reasons issued
Friday, August 18, 2006

Canada

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IN THE MATTER OF an expiry review, under subsection 76.03(3) of the *Special Import Measures Act*, of the finding made by the Canadian International Trade Tribunal on August 17, 2001, in Inquiry No. NQ-2001-001, concerning:

THE DUMPING OF FLAT HOT-ROLLED CARBON AND ALLOY STEEL SHEET AND STRIP ORIGINATING IN OR EXPORTED FROM BRAZIL, BULGARIA, THE PEOPLE'S REPUBLIC OF CHINA, CHINESE TAIPEI, INDIA, THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA, SERBIA AND MONTENEGRO (FORMERLY THE FEDERAL REPUBLIC OF YUGOSLAVIA), SOUTH AFRICA AND UKRAINE, AND THE SUBSIDIZING OF FLAT HOT-ROLLED CARBON AND ALLOY STEEL SHEET AND STRIP ORIGINATING IN OR EXPORTED FROM INDIA

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 finding made on August 17, 2001, in Inquiry No. NQ-2001-001, concerning the dumping of flat hot-rolled carbon and alloy steel sheet and strip originating in or exported from Brazil, Bulgaria, the People's Republic of China, Chinese Taipei, India, the former Yugoslav Republic of Macedonia, Serbia and Montenegro (formerly the Federal Republic of Yugoslavia), South Africa and Ukraine, and the subsidizing of flat hot-rolled carbon and alloy steel sheet and strip originating in or exported from India.

Pursuant to paragraph 76.03(12)(*b*) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby continues its finding in respect of flat hot-rolled carbon and alloy steel sheet and strip originating in or exported from Brazil, the People's Republic of China, Chinese Taipei, India, South Africa and Ukraine.

Pursuant to subparagraph 76.03(12)(*a*)(i) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby rescinds its finding in respect of flat hot-rolled carbon and alloy steel sheet and strip originating in or exported from Bulgaria, the former Yugoslav Republic of Macedonia, and Serbia and Montenegro (formerly the Federal Republic of Yugoslavia).

Ellen Fry
Ellen Fry
Presiding Member

Meriel V. M. Bradford
Meriel V. M. Bradford
Member

Elaine Feldman
Elaine Feldman
Member

Susanne Grimes
Susanne Grimes
Acting Secretary

The statement of reasons will be issued within 15 days.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	June 19 to 22, 2006
Tribunal Members:	Ellen Fry, Presiding Member Meriel V. M. Bradford, Member Elaine Feldman, Member
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Lead Research Officer:	Martin Giroux
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Dofasco Inc.	Steven K. D'Arcy
IPSCO Inc.	Dalton Albrecht Krystle Ng-A-Mann
Mittal Canada Inc.	Gregory O. Somers Paul D. Conlin Michael O'Neill
Stelco Inc.	Lawrence L. Herman Craig S. Logie Jordan Zed

Exporters	**Counsel/Representatives**
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Mittal Steel South Africa Limited	Chris Hines Gordon LaFortune Wallis Stagg Maha Nasher

Companhia Siderúrgica Nacional – CSN Companhia Siderúrgica Paulista – COSIPA Usinas Siderúrgicas de Minas Gerais SA – USIMINAS	Peter Clark Sean Clark Ryan Clarke Stella Karami
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STATEMENT OF REASONS

BACKGROUND

1. This is an expiry review, pursuant to subsection 76.03(3) of the *Special Import Measures Act*,[1] of the finding made by the Canadian International Trade Tribunal (the Tribunal) on August 17, 2001, in Inquiry No. NQ-2001-001 (the finding), concerning the dumping of flat hot-rolled carbon and alloy steel sheet and strip (hot-rolled sheet) originating in or exported from Brazil, Bulgaria, the People's Republic of China (China), Chinese Taipei, India, the former Yugoslav Republic of Macedonia, Serbia and Montenegro (formerly the Federal Republic of Yugoslavia), South Africa and Ukraine, and the subsidizing of hot-rolled sheet originating in or exported from India.

2. On November 30, 2005, the Tribunal decided to initiate an expiry review and issued a notice of expiry review to all interested parties.[2] As part of these proceedings, the Tribunal and the Canada Border Services Agency (CBSA) sent questionnaires to Canadian producers, importers and exporters/foreign producers of hot-rolled sheet.

3. On December 1, 2005, the CBSA initiated an investigation to determine whether the expiry of the finding was likely to result in the continuation or resumption of dumping and subsidizing of hot-rolled sheet.

4. On March 30, 2006, the CBSA concluded its investigation and determined that, pursuant to subsection 76.03(7) of *SIMA*, the expiry of the finding was likely to result in the continuation or resumption of dumping of hot-rolled sheet originating in or exported from Brazil, China, Chinese Taipei, India, South Africa and Ukraine (the subject countries), and subsidizing of hot-rolled sheet originating in or exported from India, but that the expiry of the finding was unlikely to result in the continuation or resumption of dumping of hot-rolled sheet originating in or exported from Bulgaria, the former Yugoslav Republic of Macedonia, and Serbia and Montenegro (formerly the Federal Republic of Yugoslavia). Pursuant to subparagraph 76.03(12)(*a*)(i), the Tribunal is required to rescind its finding in respect of hot-rolled sheet originating in or exported from Bulgaria, the former Yugoslav Republic of Macedonia, and Serbia and Montenegro (formerly the Federal Republic of Yugoslavia).

5. The record of these proceedings consists of the following: the transcript of the testimony heard during the hearing held in Ottawa, Ontario, from June 19 to 22, 2006; all relevant documents from the CBSA, including its expiry review report, statement of reasons, index of background information and related documents; the replies to the expiry review questionnaires; requests for information and parties' replies in accordance with the Tribunal's directions; witness statements and exhibits filed by the parties; the finding; the notice of expiry review; the pre-hearing staff reports issued in Inquiry No. NQ-2001-001 (the inquiry), as well as those issued in these proceedings and all other documents filed with the Tribunal. 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.

6. Algoma Steel Inc. (Algoma), Dofasco Inc. (Dofasco), IPSCO Inc. (IPSCO) and Stelco Inc. (Stelco) were represented by counsel at the hearing. They all replied to the expiry review questionnaire and provided witnesses to support their submissions. They submitted evidence and made arguments in support of a continuation of the finding.

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1. R.S.C. 1985, c. S-15 [*SIMA*].
2. C. Gaz. 2005.1.4018.

7. Mittal Canada Inc. (Mittal Canada) (formerly Ispat Sidbec Inc.) was represented by counsel and submitted replies to the expiry review questionnaire, but did not appear at the hearing.

8. Baosteel Group Corporation (Baosteel) of China, Companhia Siderúrgica Nacional—CSN, Usinas Siderúrgicas de Minas Gerais SA—USIMINAS and Companhia Siderúrgica Paulista—COSIPA of Brazil (the Brazilian Mills), Mittal Steel South Africa Limited (Mittal South Africa) of South Africa, and Ilyich Iron and Steel Works (Ilyich) of Ukraine were represented by counsel at the hearing. They all replied to the expiry review questionnaire and made submissions in support of a rescission of the finding. Mittal South Africa provided a witness to support its position.

9. Prudential Steel Ltd. replied to the expiry review questionnaire, made a submission in support of a rescission of the finding and filed a request for a product exclusion on May 30, 2006. It withdrew its submission and product exclusion request on June 16, 2006.

10. The Tribunal invited witnesses from Samuel, Son & Co., Limited and Atlas Tube Inc. (Atlas Tube) to testify at the hearing.

11. The Tribunal invited Mr. James May, President of May Commodity Associates, to appear at the hearing as an expert witness. The Tribunal qualified Mr. May as an expert witness in international steel markets.

PRODUCT

Product Definition and Description

12. Hot-rolled sheet is defined as flat hot-rolled carbon and alloy steel sheet and strip, including secondary or non-prime material, in various widths from 0.75 in. (19 mm) and wider, and (a) for product in coil form, in thicknesses from 0.054 in. (1.37 mm) to 0.625 in. (15.88 mm) inclusive, (b) for product that is cut-to-length, in thicknesses from 0.054 in. (1.37 mm) up to but not including 0.187 in. (4.75 mm), excluding flat-rolled stainless steel sheet and strip and flat hot-rolled, cut-to-length alloy steel products containing no less than 11.5 percent manganese, in thicknesses from 0.12 in. (3 mm) to 0.19 in. (4.75 mm).

13. Hot-rolled sheet includes strip and sheet, but does not include floor plate. Strip is usually produced in widths of up to 12 in. (305 mm). Sheet is usually produced in widths greater than 12 in. Flat hot-rolled stainless steel sheet and strip are excluded from the product definition.

14. Hot-rolled sheet is normally produced to a specification of the American Society for Testing and Materials (ASTM) standard, to some other international standard or to proprietary specifications. ASTM specifications for hot-rolled sheet include, but are not limited to, A505, A506, A507, A568, A569, A570, A606, A607, A621, A622, A635, A659, A715, A749, A907, A935 and A936. Hot-rolled sheet is usually classified as either carbon-manganese or high-strength low-alloy steel and is available in several qualities and grades, which are usually reflected in the ASTM or equivalent specifications or standards.

Production Process

15. Hot-rolled sheet is rolled on a continuous strip mill[3] at temperatures above 1600°F (870°C) from an incoming hot slab up to 9 in. (229 mm) thick. The slab can be produced from steel produced in a basic oxygen furnace or an electric arc furnace. The slab is progressively reduced to a sheet of the required

3. Hot-rolled sheet is also produced in combined plate-sheet complexes.

thickness, 0.625 in. (15.88 mm) or less. The edges may be slit to remove minor edge imperfections and to provide closer width tolerances. Processing in the mill may include slitting or shearing to remove tongues and tails from the sheet. During hot rolling, surface oxide (scale) forms, which is not acceptable for some applications. This scale may be removed by acid pickling. After pickling, rinsing and drying, an oil may be applied as a temporary protection against rust.

Product Applications

16. Hot-rolled sheet is used in the automotive industry in the manufacture of frames, bumpers, wheels and some power train components. It is also used in the manufacture of sheet piling and guard rails for use in construction. As well, it is consumed by non-automotive stampers, steel fabricators and producers of agricultural and other machinery.

17. Hot-rolled sheet may be sold in the merchant market or used by domestic producers as feedstock for further internal processing into cold-rolled sheet, corrosion-resistant sheet and tubular products, including pipe, tube and hollow structural products. The hot-rolled sheet used in the manufacture of pipe and tubes is often referred to as “skelp”. When the Tribunal refers to goods in the following analysis as “finished hot-rolled sheet”, it refers to the goods available for merchant market sales. When the Tribunal refers to “hot-rolled sheet”, it refers to both finished hot-rolled sheet and the goods used for further internal processing.[4]

DOMESTIC PRODUCERS

18. Dofasco, Stelco, Algoma, IPSCO and Mittal Canada are the five producers of hot-rolled sheet in Canada. Production of hot-rolled sheet by each of the firms is destined for the domestic or export merchant markets or for further internal processing.

Dofasco

19. Dofasco, located in Hamilton, Ontario, is a fully integrated steelmaker and is the largest producer of hot-rolled sheet in Canada. It produces slabs using both the basic oxygen furnace and the electric arc furnace methods. Dofasco produces a wide range of steel products that are sold to customers in the automotive, construction, packaging, manufacturing, pipe and tube and steel distribution markets. Products manufactured by Dofasco include: flat hot-rolled sheet and flat cold-rolled sheet; galvanized and Galvalume® steel; prepainted steel; tin plate and chromium-coated steels and Zyplex™, a proprietary laminate; welded tubular products; Extragal™ for exposed automotive parts; and tailor-welded blanks.

20. Dofasco produces hot-rolled sheet on a 7-stand hot mill. Its hot mill is capable of producing hot-rolled sheet products that are up to 62 in. wide. Dofasco produces a full range of carbon and high-strength steel that contains up to 0.5 percent carbon. As part of its finishing operations, it also has three pickling lines, and oiling, coil-slitting and coil-shearing equipment.

21. On February 21, 2006, Arcelor S.A. of Luxembourg and Dofasco announced that Arcelor S.A. had acquired 88.38 percent of the common shares of Dofasco. Subsequently, Arcelor S.A. acquired the remaining common shares and now owns 100 percent of Dofasco.

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4. Steel sheet products comprise the following: hot-rolled sheet and coil; cold-rolled sheet and coil; corrosion-resistant sheet and coil. Flat-rolled steel products comprise steel sheet products and hot-rolled plate.

Stelco

22. Stelco is the second largest producer of hot-rolled sheet in Canada. Hot-rolled sheet is produced at two plants: Hilton Works, Hamilton, Ontario (Stelco Hamilton), and Lake Erie Steel Company, Nanticoke, Ontario (Stelco Lake Erie). Stelco Hamilton produces hot-rolled sheet products that are up to 56 in. wide, and Stelco Lake Erie produces hot-rolled sheet products that are up to 80 in. wide. Stelco Lake Erie produces only hot-rolled sheet, and Stelco Hamilton produces flat-rolled products, including plate, hot-rolled coil, cold-rolled sheet, galvanized sheet, and bar and rod products.

23. Stelco emerged from a restructuring under the *Companies' Creditors Arrangement Act*[5] on March 31, 2006. It had been undergoing court-supervised restructuring since January 2004. During the period of review,[6] Stelco disposed of the following subsidiary corporations: Norambar inc., AltaSteel Ltd., Stelwire Ltd., Stelfil Ltée, Stelpipe Ltd., Welland Pipe Ltd., CHT Steel Company Inc. and Camrose Pipe Company.

Algoma

24. Algoma, located in Sault Ste. Marie, Ontario, is the third largest producer of hot-rolled sheet in Canada and is a vertically integrated primary iron and steel producer. It produces raw steel and finished steel products, including carbon steel plate, hot-rolled sheet, cold-rolled sheet, welded wide flange and unfinished parts. It produces hot-rolled sheet products that are up to 63 in. wide.

IPSCO

25. IPSCO is the fourth largest producer of hot-rolled sheet in Canada. At its Regina, Saskatchewan, plant, IPSCO produces hot-rolled carbon and alloy steel in coil form in widths of up to 76 in. Cut-to-length sheet products are produced from coil in Regina and Surrey, British Columbia. A cut-to-length facility in Toronto, Ontario, concentrates on plate products. IPSCO also produces oil country tubular goods, line pipe, standard pipe, hollow structural sections, and alloy sheet and plate. In addition to its Canadian operations, IPSCO has a 100 percent interest in a number of U.S. steel-making and tube-making facilities.

Mittal Canada

26. Mittal Canada (formerly known as Ispat Sidbec Inc.) is the smallest producer of hot-rolled sheet in Canada. Hot-rolled sheet products are produced at its plant in Contrecœur, Quebec. Mittal Canada produces hot- and cold-rolled sheet, pipes, hot-rolled bars, rebar and wire rod. It also has wholly owned subsidiaries and joint ventures with associated companies, which are located in Quebec and Michigan.

FOREIGN PRODUCERS

27. Expiry review questionnaires were sent to 46 foreign producers and exporters, and 11 responses were received by the Tribunal. The responding exporters were: Angang Group Ansteel Co. Ltd. and Baosteel of China; Chung Hung Steel of Chinese Taipei; JSW Steel Limited and Steel Authority of India Ltd. of India; the Brazilian Mills and Companhia Siderúrgica de Tubarao (CST) of Brazil; Mittal South Africa of South Africa; and Ilyich of Ukraine.

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5. R.S.C. 1985, c. C-36 [*CCAA*].
6. The period of review covered in this expiry review is from January 1, 2003, to March 31, 2006.

IMPORTERS

28. Expiry review questionnaires were initially sent to 96 importers in Canada, of which 5 responded. The responding importers were: Atlas Tube, General Motors of Canada Ltd., Namasco Ltd., Prudential Steel Ltd. and Salzgitter Mannesmann International (Canada) Inc. On March 31, 2006, as a result of the limited cooperation from importers, the Tribunal sent supplementary questionnaires to 28 major importers and 19 of them replied. Imports reported by these importers and the domestic producers accounted for 67 percent of total imports of hot-rolled sheet.

PRODUCT DISTRIBUTION

Domestic Product

29. Hot-rolled sheet products are sold directly to end users, steel service centres, and pipe and tube producers. Service centres may further process the steel and supply smaller end users and contractors. These service centres may also fulfil the more immediate needs of accounts that would normally purchase directly from mills. For 2005, the distribution of producers' sales volume from production among the three market segments noted above was as follows: 36 percent to end users, 39 percent to steel service centres, and 25 percent to pipe and tube producers.

30. The price of hot-rolled sheet consists of a "base coil price" to which charges are added for a variety of features that may be specified by the customer to meet the technical requirements of the application for which the steel is intended. The important features in determining the price of hot-rolled sheet are grade, thickness, width, processing and surface finish.

Imported Product

31. Hot-rolled sheet products are imported either by traders that sell the products to end users, service centres, and pipe and tube producers, or by end users, service centres, and pipe and tube producers directly.

SUMMARY OF THE FINDING

32. In 2001, the Tribunal found in part that:

- the dumping of hot-rolled sheet originating in or exported from Brazil, Bulgaria, China, Chinese Taipei, India, the former Yugoslav Republic of Macedonia, South Africa, Ukraine and the Federal Republic of Yugoslavia, and the subsidizing of hot-rolled sheet originating in or exported from India had caused material injury to the domestic industry.

33. The Tribunal focused its injury analysis of the domestic merchant market on three sectors: end users (primarily automotive end use), pipe and tube, and service centres. It found that the influence that dumped and subsidized imports had on the end-user sector, which represented 36 percent of total domestic sales in 2000, was marginal at best. However, the Tribunal found that imports of hot-rolled sheet from Brazil, Bulgaria, China, Chinese Taipei, India, the former Yugoslav Republic of Macedonia, South Africa, Ukraine and the Federal Republic of Yugoslavia (the cumulated countries) were responsible for a significant part of the price erosion in the pipe and tube sector (25 percent of domestic sales in 2000) and most of the price erosion in the service centre sector. While there were other factors at play, it was clear that hot-rolled sheet from the cumulated countries led the prices down in both of these key sectors.

34. The Tribunal concluded that, absent the dumping and subsidizing of hot-rolled sheet from the cumulated countries, the domestic producers' market share, volume of sales and utilization of plant capacity would have been higher and that a significant portion of the price erosion suffered by the domestic producers was caused by the dumped and subsidized imports from the cumulated countries. Further, this price erosion and lost volume accounted for a significant part of the financial losses incurred by the domestic producers. The reduced profitability of sales of hot-rolled sheet also had a proportionate negative impact on cash flow and the ability to invest in expansion and maintenance projects.

ANALYSIS

35. On March 30, 2006, the CBSA determined that, pursuant to subsection 76.03(7) of *SIMA*, the expiry of the finding was likely to result in the continuation or resumption of dumping of hot-rolled sheet originating in or exported from Brazil, China, Chinese Taipei, India, South Africa and Ukraine, and subsidizing of hot-rolled sheet originating in or exported from India, but that the expiry of the finding was unlikely to result in the continuation or resumption of dumping of hot-rolled sheet originating in or exported from Bulgaria, the former Yugoslav Republic of Macedonia, and Serbia and Montenegro (formerly the Federal Republic of Yugoslavia). Consequently, the Tribunal is required, pursuant to subsection 76.03(10), to determine whether the expiry of the finding is likely to result in injury[7] or retardation,[8] as the case may be, to the domestic industry. Given that there is currently an established domestic industry, the issue of whether the expiry of the finding is likely to result in retardation does not arise in this expiry review.

36. Therefore, the Tribunal is required, pursuant to subsection 76.03(12) of *SIMA*, to make an order either rescinding the finding, if it determines that the expiry of the finding is unlikely to result in injury, or continuing the finding, with or without amendment, if it determines that the expiry of the finding is likely to result in injury.

37. In making its assessment of the likelihood of injury, the Tribunal has consistently taken the view that the focus must be on circumstances that can reasonably be expected to exist in the near to medium term, generally 18 to 24 months, as opposed to more remote circumstances.[9] In the context of the market for hot-rolled sheet, the Tribunal's expert witness hesitated to forecast beyond 18 months. The Tribunal shares the expert's concerns about the difficulty of forecasting in this instance, due to the inherent volatility of the market for hot-rolled sheet, and will therefore focus primarily on the next 18-month period.

Like Goods

38. Subsection 2(1) of *SIMA* defines "like goods" in relation to any other goods as follows: ". . . (*a*) goods that are identical in all respects to the other goods, or (*b*) in the absence of any [such] goods . . ., goods the uses and other characteristics of which closely resemble those of the other goods". The Tribunal concludes that hot-rolled sheet produced by the domestic industry constitutes like goods to the subject goods in accordance with this definition.

39. In considering the issue of like goods, the Tribunal typically looks at a number of factors, including the physical characteristics of the goods, their method of manufacture, their market characteristics and whether the domestic goods fulfill the same customer needs as the goods imported from the subject countries.

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7. Subsection 2(1) of *SIMA* defines "injury" as "material injury to a domestic industry".
8. Subsection 2(1) of *SIMA* defines "retardation" as "material retardation of the establishment of a domestic industry".
9. *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.

40. The evidence indicates that, for each specification, the domestic industry's hot-rolled sheet is produced according to standards similar to those that apply to the subject goods and that these products are substitutable. Further, the evidence shows that the domestic industry's hot-rolled sheet and the subject goods have similar market characteristics in terms of pricing and distribution, that they compete in the same markets and that they fulfill the same customer needs.

41. In addition, consistent with its reasoning in the finding, the Tribunal is of the view that hot-rolled sheet used for both merchant market sales and further internal processing is like goods to the subject goods.

Domestic Industry

42. The domestic industry is defined in subsection 2(1) 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 . . . ."

43. Therefore, since Algoma, Dofasco, IPSCO, Mittal Canada and Stelco account for 100 percent of the total domestic production of like goods, they constitute the domestic industry for the purpose of this review.

Cumulation

44. In accordance with subsection 76.03(11) of *SIMA*, the Tribunal is required to make an assessment of the cumulative effect of the dumping or subsidizing of goods from more than one country if it is satisfied that such an assessment would be appropriate, taking into account the conditions of competition between the goods imported from any of the countries and the goods from any other of those countries, or like goods of domestic producers.

45. By reason of the operation of subsection 76.03(8) of *SIMA*, if the Tribunal is satisfied that it is appropriate to cumulate, it can do so only in respect of those goods for which the CBSA determined that there was a likelihood of continued or resumed dumping (goods from Brazil, China, Chinese Taipei, India, South Africa and Ukraine) or subsidizing (goods from India).

46. In considering the conditions of competition between goods, the Tribunal typically takes into account the following factors: the degree to which the goods from each subject country are interchangeable with goods from other subject countries or with the domestic goods; the presence or absence of sales or offers to sell of imports from different subject countries and of the domestic like goods into the same geographical markets; the existence of common or similar channels of distribution; and differences in the timing of the arrival of imports from a subject country and of those from the other subject countries, and of the availability of like goods supplied by the domestic industry. The Tribunal recognizes that there may be other factors that should be considered in deciding whether the imports from a particular country should be cumulated and that no single factor may necessarily be determinative.

Position of the Domestic Producers

47. According to IPSCO, the subject goods and like goods compete with and against each other and are comparable in terms of quality and product consistency, and are sold in similar channels of distribution through traders. Algoma argued that the negligible volume test used concerning cumulation in an inquiry under section 42 of *SIMA* does not apply in an expiry review. Algoma asserted that none of the determinative factors in the few instances where the Tribunal has not cumulated is present in this case.

Position of the Foreign Producers

48. Mittal South Africa argued that South Africa should not be cumulated with the other subject countries, as there is no likelihood of shipments to Canada and because of the relationship that exists between Mittal South Africa and Mittal Canada. Ilyich submitted that Ukraine should not be cumulated with the other subject countries, as Ukraine was found to have had a share of only 1.3 percent of the total imports into Canada in 2000. It argued that Ukrainian producers have long-standing customers elsewhere; therefore, they would be unlikely to attempt to sell in Canada. Ilyich submitted that there was evidence that suggested that Ukrainian producers have a customer base in emerging markets, including the Middle East, and that it is unlikely that these producers would go into unknown markets and lose money. As well, it submitted that there was evidence that suggested that Canadian customers would not purchase non-certified products and that only one company in Ukraine, Ilyich, was capable of producing hot-rolled sheet to ASTM standards.

49. The Brazilian Mills argued that Canada is not a major export market for them and that they would not rush to enter it, should the finding be rescinded. They argued that the Brazilian economy grew by 8 percent in the first quarter of 2006, that the automotive and construction industries are picking up, that interest rates are going down and that those supporting a continuation of the finding provided no evidence to show capacity expansion in Brazil. Therefore, they argued that there was little reason to suppose that Brazil would export hot-rolled sheet to Canada. They also argued that the Brazilian Mills' shipments to Canada during the period of inquiry for the finding had been *de minimis* or insignificant.

Tribunal's Analysis

50. The evidence indicates that hot-rolled sheet is a commodity product.[10] The subject goods are produced to the same standard or specifications in each country and by each mill. Price is therefore a key driving factor in capturing sales, regardless of the source of the product. As a commodity, hot-rolled sheet imported from each subject country is interchangeable, and the Tribunal considers this to be a strong indicator that quality is similar across the subject countries. In addition, hot-rolled sheet from each subject country is shipped to Canada using the same mode of transportation (i.e. ocean vessel)[11] and is distributed in Canada through the same type of distribution channel[12] (i.e. traders and service centres). Although differences exist in the timing of the arrival of individual shipments of imports from a subject country and another subject country, and in the availability of like goods supplied by the domestic industry, imports from the subject countries nonetheless compete against each other and also against the like goods in the Canadian market.

51. The Tribunal was not persuaded by Mittal South Africa's argument, as that company did not provide evidence of any concrete plans or directives from Mittal Steel Company N.V. to support its position, nor did it provide any confirmation from Mittal Canada. Similarly, the Tribunal was not persuaded by the argument made by Ilyich regarding the production of non-certified products, given that the product definition in this expiry review includes non-certified products and that at least one Ukrainian producer is capable of producing hot-rolled sheet to ASTM standards. The Tribunal is also not convinced by the arguments that the subject countries are unlikely or unwilling to sell into the Canadian market. To the contrary, evidence was presented that Canada is a market that is likely to be attractive to imports from all the subject countries. This issue is addressed more fully in the section of these reasons entitled "Likely Volumes of Dumped and Subsidized Goods".

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10. *Transcript of Public Hearing*, Vol. 1, 19 June 2006, at 14, 172.
11. *Transcript of Public Hearing*, Vol. 2, 20 June 2006, at 417.
12. *Transcript of Public Hearing*, Vol. 1, 19 June 2006, at 14-15; *Transcript of Public Hearing*, Vol. 3, 21 June 2006, at 522.

52. The Tribunal agrees with the domestic producers that the fact that imports from some subject countries may have been present in small quantities during the period of inquiry for the finding, representing less than 3 percent of total imports, is not determinative in deciding whether to cumulate in an expiry review. During the inquiry, the Tribunal cumulated the imports from all the countries in question, as required by subsection 42(3) of *SIMA*. However, the Tribunal notes that, in an expiry review, there is no corresponding legislative requirement that needs to be addressed.

53. Taking into account the conditions of competition, as discussed above, the Tribunal is satisfied that it would be appropriate to make an assessment of the cumulative effects of the dumping and subsidizing of the subject goods.

Preliminary Issues

54. Before examining the factors that it may consider in an expiry review, the Tribunal will first deal with several preliminary issues.

Tribunal's Jurisdiction in an Expiry Review

55. Some members of the domestic industry argued that, if the Tribunal were to vary findings of fact made by the CBSA in its statement of reasons, it would in effect be exercising an appellate jurisdiction that it does not possess. The Brazilian Mills and Mittal South Africa argued that the Tribunal is not bound by the CBSA's decision, as it weighs evidence on its own and reaches its own decisions, and Ilyich supported the argument. Baosteel submitted that, while there is an overlap between the CBSA's expiry review factors and the Tribunal's expiry review factors, the Tribunal is tasked with looking at more recent and accurate information.

56. On that point, the Tribunal agrees with the foreign producers and follows the reasoning applied in *Flat Hot-rolled Carbon and Alloy Steel Sheet Products*,[13] where the Tribunal addressed this issue at length and stated the following:

> . . .
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> 68. The Tribunal clearly has no jurisdiction to review the CBSA's determination of likelihood of resumed dumping. However, it wishes to make clear that it is not bound by all the facts and opinions upon which the CBSA's determination is based, and can give them the weight it finds appropriate. Under paragraphs 37.2(1)(d) and 37.2(2)(d) of the Regulations, both the CBSA and the Tribunal may consider evidence relating to the likely performance of the foreign industry, including trends in production, capacity utilization, prices, inventories, market share, exports and profits. Given the overlap in the factors that may be considered by each body, as well as the differences in methodology employed by the CBSA and the Tribunal to gather evidence, it is very likely that the two may come to different or, in some cases, contradictory conclusions regarding some of the factors. The Tribunal has the benefit of adversarial proceedings, and questions are put directly to witnesses by way of cross-examination or questions from the Tribunal. This can help in corroborating the information collected by way of questionnaires. Further, the evidence to which the Tribunal has access is typically more recent than that available to the CBSA and may reflect changes in the industry or the marketplace since the CBSA's determination.
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> 69. Other factors, such as the likely volume of dumped or subsidized goods, and whether there is likely to be a significant increase in the volume of those goods, go to the core of the Tribunal's mandate in the context of an expiry review. For example, although the CBSA may be satisfied that

13. (30 June 2004), RR-2003-002 (CITT) at 11 [*Flat Sheet Products*].

> there is a likelihood of resumed dumping and that the imports will come to Canada at dumped prices, the Tribunal can be of the opinion that the volume of dumped imports will be insufficient to cause injury. The Tribunal is neither bound by the factual findings made by the CBSA, nor by the opinions that support its determination, except for the very determination of likelihood of resumed dumping itself or other factual determinations that rest entirely within the CBSA's jurisdiction. Such other factual determinations would include the margins of dumping and volumes of any dumped goods while a finding was in place.
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> . . .

Evidence to be Presented in the Context of an Expiry Review

57. Citing section 76.03 of *SIMA*, Baosteel submitted that the continuation of a finding is extraordinary under the act, as it is under the World Trade Organization *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*[14] (the *Agreement*). Stating further that a continuation is not intended to be pre-emptive or to respond to remote hypothetical situations, Baosteel argued that, pursuant to Article 11 of the *Agreement*, there is no presumption of injury in an expiry review and that Article 3.1 of the *Agreement* requires that positive evidence be submitted by domestic producers.

58. IPSCO replied by arguing that Article 11 of the *Agreement* does not suggest that there is a burden on the domestic industry and that, even if it were the case, that article could not override *SIMA*. Algoma pointed out that Canada chose not to adopt the wording of Article 11 of the *Agreement* into *SIMA*, while other provisions of the agreement were incorporated.

59. The Tribunal agrees with Baosteel that there is no presumption of injury in an expiry review and that its findings must be based on positive evidence, in compliance with domestic law and consistent with the requirements of the World Trade Organization.

Failure of Some Foreign Producers and Importers to Appear or to Call Witnesses

60. The domestic industry argued that the Tribunal should take into account the fact that certain importers and foreign producers of the subject goods did not participate or did not call witnesses in the expiry review. For example, Algoma pointed out that only six mills from four subject countries and three importers appeared in these proceedings and that only one witness from a producer of the subject goods testified. Baosteel took the position that it would be a denial of natural justice and a denial of Baosteel's rights under Article 6.2 of the *Agreement* if the Tribunal were to accept the domestic industry's argument that the Tribunal should draw negative inferences from the failure of some foreign producers to appear or call witnesses.

61. The Tribunal agrees with the foreign producers on this point and adopts the reasoning applied in *Corrosion-resistant Steel Sheet Products*,[15] where it stated the following:

> . . .
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> 59. . . . While *SIMA* provides interested parties the right to participate in expiry review proceedings, it does not oblige them to call witnesses. Nor does SIMA contemplate any negative implications from a party's failure to provide witnesses.

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14. 15 April 1994, online: World Trade Organization <http://www.wto.org/english/docs_e/legal_e/final_e.htm>.
15. (27 July 2004), RR-2003-003 (CITT) at 9.

> 60. This view is consistent with the Tribunal's past practice. It is also consistent with Article 6.2 of the World Trade Organization Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (applicable to expiry reviews by reference of Article 11.4), which states that, during a dumping investigation, "[t]here shall be no obligation on any party to attend a meeting, and failure to do so shall not be prejudicial to that party's case." Therefore, the Tribunal has not drawn any negative inferences from the failure of some foreign parties to call witnesses. However, as the Tribunal has stated previously, it can give evidence provided by a party, unsupported by oral testimony, only the weight that it considers appropriate in the circumstances.
>
> . . .
>
> [Footnotes omitted]

Likelihood of Injury

62. Subsection 37.2(2) of the *Special Import Measures Regulations*[16] enumerates the factors that the Tribunal may consider in addressing the question of likelihood of injury.

63. The Tribunal notes the evidence of its expert witness that, overall, the market for hot-rolled sheet follows the same trends as the market for other flat-rolled steel products and for steel generally. Given that flat-rolled steel products are comprised mainly of sheet products, trends for sheet products overall are likely to be a good indicator of trends for hot-rolled sheet in particular.

Changes in International Market Conditions

Position of the Domestic Producers

64. The domestic producers submitted that the most critical element in this expiry review is the position of China. It has developed considerable capacity over a very short time period and, as the world's largest hot-rolled sheet producer, it exercises a major influence on the global market.

65. The domestic producers further submitted that, as a result of the capacity expansion in China over the period of review, China has become a net exporter of hot-rolled sheet. This dramatic change in China's trade pattern has seriously disrupted world trade flows of the subject goods and caused producers in all of the major exporting countries to search for new markets.

66. The domestic producers argued that the evidence on the record indicates that, on a worldwide basis, the problem is not demand but supply. They submitted that the steel industry continues to be plagued by overcapacity, driven by large capacity additions, particularly increases in Chinese production, as well as capacity expansion projects in other emerging markets.

Position of the Foreign Producers

67. Baosteel submitted that the increases in China's capacity rates were a response to domestic requirements. It submitted that the Chinese Government has undertaken a restructuring and consolidation program which has been designed to prevent excess capacity, to limit excess production and to encourage the use of domestically made products within the Chinese industry.

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

68. Mittal South Africa stated that the global market has changed, particularly regarding the significant increase in steelmakers' costs, and that much larger transnational companies have a significant stake in ensuring market stability in this environment. Mittal South Africa submitted that consolidation of the global steel industry has permitted home market prices of steel to be sustained at higher levels over the market cycle.

69. The Brazilian Mills submitted that the international steel market has undergone changes since 2000, including considerable rationalization, integration and higher input costs, which discourage overproduction in soft markets.

Tribunal's Analysis

70. It is generally recognized that the market for hot-rolled sheet is a global market, albeit with some regional differences. In recent years, the industry and market have changed significantly. As discussed below, the most noteworthy developments include China's influence, due to its role as a dominant global steel producer and consumer, changes to the historical market cycle in terms of supply, demand and prices, dramatic increases in input costs and steel industry consolidation.

71. China is now the world's largest steel producer, accounting for approximately 350 million metric tonnes or 31 percent of total global crude steel output annually.[17] Over the past five years, Chinese steel production increased by 220 million metric tonnes, or 170 percent, while production in the rest of the world increased by only 54 million metric tonnes, or 7.5 percent.[18] The evidence shows that, in May 2006, steel production was 20 percent higher compared to the same month in 2005.[19] Growth in Chinese steel consumption is equally striking over this period, increasing by 180 million metric tonnes as compared to an increase of 70 million metric tonnes in all other countries combined.[20]

72. China produced 41 million metric tonnes of finished hot-rolled sheet in 2005.[21] The evidence shows that China's estimated production of finished hot-rolled sheet increased by about 15 million metric tonnes between 2003 and 2005.[22] In comparison, the evidence indicates that, during the same period, China's estimated domestic consumption of finished hot-rolled sheet grew by less than 8 million metric tonnes, indicating a much slower pace of growth.[23]

73. Until 2005, China was supplementing its domestic production of finished hot-rolled sheet with large quantities of imports (7 million metric tonnes in 2004),[24] placing it in a net importer position.[25] Imports were required because steel demand had grown at an annual rate of 18 to 20 percent over the previous five years.[26] While China was a net importer of about 25 million metric tonnes of sheet products in 2003, it was a *net importer* by only about 5 million metric tonnes of sheet products in 2005.[27] The Tribunal's expert

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17. Tribunal Exhibit RR-2005-002-13.05 (protected), Administrative Record, Vol. 2.4 at 281.
18. *Ibid*.
19. *Transcript of Public Hearing*, Vol. 2, 20 June 2006, at 490.
20. Tribunal Exhibit RR-2005-002-13.05 (protected), Administrative Record, Vol. 2.4 at 281.
21. Tribunal Exhibit RR-2005-002-16.02A (protected), Administrative Record, Vol. 4 at 223.
22. *Ibid*.
23. *Ibid*. at 222.
24. Tribunal Exhibit RR-2005-002-31.10 (single copy exhibit), Administrative Record, Vol. 1.01A at 41.
25. *Transcript of Public Hearing*, Vol. 3, 21 June 2006, at 630. In this text, import data refer to the absolute volume of imports. Net import data refer to the volume of total imports less the volume of total exports. Actual import numbers refer to the volume of imports only.
26. *Transcript of Public Hearing*, Vol. 3, 21 June 2006, at 621.
27. Tribunal Exhibit RR-2005-002-31.10 (single copy exhibit), Administrative Record, Vol. 1.01A at 27.

witness testified that, in his view, China would be a *net exporter* of finished hot-rolled sheet by the end of 2006.[28] In fact, the evidence indicates that, by the end of April 2006, China was already a net exporter of approximately 450,000 metric tonnes of finished hot-rolled sheet.[29]

74. The Tribunal notes that, as a consequence of these supply and demand disparities and fear that rates of growth are unsustainable, the Chinese Government, in late 2003 and in 2004, took a number of measures to curtail growth in the steel sector, including administrative actions such as the tightening of bank lending to steel producers, restrictions on project approvals and land-use restrictions. In July 2005, it introduced a steel policy with a range of regulatory provisions intended to direct and control the growing national steel industry, including consolidating state-owned steel companies.[30] The Tribunal observes that, despite these efforts, the evidence shows that the estimated finished hot-rolled sheet production continued to rise in 2005.

75. A second key factor in the Tribunal's analysis is how well the global market has been functioning in balancing supply and demand. The market for finished hot-rolled sheet has been cyclic in terms of supply and demand and associated price effects. As discussed below, the peaks and troughs of the market cycle became more extreme in 2004 and 2005 than in previous years, while the length of the cycle has been compressed over the last few years. The Tribunal's expert witness testified that the cycle is currently running on a 9- to 12-month basis, shorter than its historical time frame.[31] He added that there is some indication that market participants whose past behaviour in building inventory contributed to the extreme peaks and troughs are moderating their behaviour somewhat, thereby moderating the swings in the cycle.[32]

76. The swings in the market cycle caused global average export prices[33] for hot-rolled sheet to be very volatile during the period of review. In 2003, global export prices fluctuated between US$250 and US$350 per metric tonne.[34] In the third quarter of 2004, global export prices hit historical highs of about US$625 per metric tonne at the peak of the cycle.[35] This peak was caused by two main factors: (1) tight global supply due to high demand from China, coupled with a tight supply of raw materials and ocean freight vessels and limited Chinese port facilities;[36] and (2) the large increases in the cost of inputs, which steel producers could recoup with higher prices due to the tight finished hot-rolled sheet supply situation.[37] From the fourth quarter of 2004 to the middle of 2005, global export prices declined by more than 35 percent, to about

28. *Transcript of Public Hearing*, Vol. 3, 21 June 2006, at 629-30.
29. *Ibid*. at 672.
30. Tribunal Exhibit RR-2005-002-03A, Administrative Record, Vol. 1 at 224; Tribunal Exhibit RR-2005-002-13.10 (protected), Administrative Record, Vol. 2.4A at 28-29.
31. *Transcript of Public Hearing*, Vol. 3, 21 June 2006, at 604-605.
32. *Ibid*. at 555, 654-55.
33. Global average export prices for hot-rolled sheet are hereinafter referred to as global export prices.
34. Exporters' Exhibit H-01/I-01/J-01 at 54, Administrative Record, Vol. 13A.
35. *Ibid*.
36. Tribunal Exhibit RR-2005-002-31.10 (single copy exhibit), Administrative Record, Vol. 1.01A at 36; Tribunal Exhibit RR-2005-002-21.11, Administrative Record, Vol. 5.1N at 71; *Transcript of Public Hearing*, Vol. 2, 20 June 2006, at 345, 352.
37. Manufacturer's Exhibit B-02 (protected), paras. 97-100, Administrative Record, Vol. 12A; Tribunal Exhibit RR-2005-002-31.10 (single copy exhibit), Administrative Record, Vol. 1.01A at 118; *Transcript of Public Hearing*, Vol. 3, 21 June 2006, at 606; Tribunal Exhibit RR-2005-002-RI-01A (protected), Administrative Record, Vol. 10 at Annex A; Tribunal Exhibit RR-2005-002-RI-02A (protected), Administrative Record, Vol. 10 at Annex A; Tribunal Exhibit RR-2005-002-RI-03A (protected), Administrative Record, Vol. 10 at Annex A; Tribunal Exhibit RR-2005-002-RI-04A (protected), Administrative Record, Vol. 10 at Annex A; Tribunal Exhibit RR-2005-002-RI-05A (protected), Administrative Record, Vol. 10 at Annex A; *Transcript of Public Hearing*, Vol. 2, 20 June 2006, at 344; *Transcript of In Camera Hearing*, Vol. 1, 20 June 2006, at 64-65; *Transcript of Public Hearing*, Vol. 1, 19 June 2006, at 214, 284.

US$400 per metric tonne.[38] Global export prices recovered in the first half of 2006, but remain below 2004 levels.[39] In May 2006, the global export price of hot-rolled sheet was approximately US$550 per metric tonne.[40]

77. The Tribunal notes that, in terms of domestic market pricing around the world, North American hot-rolled sheet prices are significantly higher than those of other regional markets and that, within the North American market, the Canadian and U.S. prices are similar. For example, the evidence indicates that the price of hot-rolled sheet in the Canadian market in the second quarter of 2006 was CAN$760 (US$640) per metric tonne,[41] while the price in the U.S. market was at a similar level (US$652 per metric tonne).[42] In the same time frame, the average Western European price[43] was US$600 per metric tonne (6 percent lower that the Canadian price) and the Chinese price was US$536 per metric tonne (16 percent lower that the Canadian price).[44] The price differentials between the Canadian price and the price in the other markets make Canada a very attractive market for imports. According to the Tribunal's expert witness, the reason why North American prices are significantly higher than the prices found in other markets is that North America is a net importer of steel.[45]

78. The Tribunal also notes that the production of hot-rolled sheet is highly capital-intensive, with a pressing need for high utilization rates to cover high fixed costs. This creates a production imperative that encourages foreign mills to export at prices low enough to find a market for their excess production.

79. Overall, input costs for hot-rolled sheet increased significantly during the period of review.[46] Input costs started to increase significantly in 2003 and 2004, with increases continuing through 2005 and the beginning of 2006.[47]

80. The Tribunal notes that, as argued by the foreign producers, the steel industry has undergone significant restructuring and consolidation since the finding.

81. As an example, Arcelor S.A. was created in 2001 through the merger of three European steelmakers: Aceralia of Spain, Arbed of Luxembourg and Usinor of France. Overall, Arcelor S.A. is an international consortium of corporations which comprises more than 350 companies in over 60 countries.[48]

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38. Exporters' Exhibit H-01/I-01/J-01 at 54, Administrative Record, Vol. 13A.
39. *Ibid*.
40. *Ibid*.
41. *Transcript of Public Hearing*, Vol. 3, 21 June 2006, at 598.
42. Manufacturer's Exhibit B-11 (single copy exhibit) at 7, Administrative Record, Vol. 11A.
43. Includes Germany, France, Italy, Spain and United Kingdom.
44. Manufacturer's Exhibit B-11 (single copy exhibit) at 3, 7, Administrative Record, Vol. 11A; Tribunal Exhibit RR-2005-002-31.02, Administrative Record, Vol. 1.01 at 44, 58.
45. *Transcript of Public Hearing*, Vol. 3, 21 June 2006, at 640.
46. According to the expert witness, input costs are company-specific, depending on the nature of the company's operations and raw materials sourcing. For example, some companies own their own iron ore assets. *Transcript of Public Hearing*, Vol. 3, 21 June 2006, at 608-609, 657.
47. Manufacturer's Exhibit B-02 (protected), paras. 97-100, Administrative Record, Vol. 12A; Tribunal Exhibit RR-2005-002-31.10 (single copy exhibit), Administrative Record, Vol. 1.01A at 118; *Transcript of Public Hearing*, Vol. 3, 21 June 2006, at 606; Tribunal Exhibit RR-2005-002-RI-01A (protected), Administrative Record, Vol. 10 at Annex A; Tribunal Exhibit RR-2005-002-RI-02A (protected), Administrative Record, Vol. 10 at Annex A; Tribunal Exhibit RR-2005-002-RI-03A (protected), Administrative Record, Vol. 10 at Annex A; Tribunal Exhibit RR-2005-002-RI-04A (protected), Administrative Record, Vol. 10 at Annex A; Tribunal Exhibit RR-2005-002-RI-05A (protected), Administrative Record, Vol. 10 at Annex A.
48. Manufacturer's Exhibit B-01, paras. 19-20, Administrative Record, Vol. 11A.

Since its inception, Arcelor S.A. has become the largest steelmaker in the world, with revenues of about 30 billion euros in 2005.[49] Arcelor S.A. also became the world's leading producer of flat carbon steel and the leading supplier worldwide of flat carbon steel to the automotive sector. Recently, Arcelor S.A. bought Dofasco, its first flat steel manufacturing facility in North America. In the Americas, it also owns, among other companies, CST of Brazil.

82. Mittal Steel Company N.V. is another example of a major steel-producing company that has gone through significant structural change since 2001. The company has numerous global steel affiliates in Europe, the Americas, Asia and Africa,[50] including Mittal Canada and Mittal South Africa, which it acquired in 2004.[51]

83. The evidence shows that steel industry consolidation has taken place mostly in mature markets such as North America and Europe. The Tribunal's expert witness indicated that, in these markets, there are now only three major players, together with a number of smaller players.[52] However, in Asia, consolidation is only starting. The Tribunal notes that, despite the consolidation that has taken place, the top 10 producers in the world produced only 27 percent of global steel output over the last three years.[53] Although China is the world's largest steel producer, no Chinese company is among the world's top five,[54] which indicates that, in China, the steel industry has yet to undergo consolidation.

84. Industry consolidation was expected to give mills the opportunity to exercise greater production and supply restraint which would then result in less volatile pricing.[55] However, according to the Tribunal's expert witness, the impact of consolidation on global pricing has not been felt yet due to the lack of consolidation within Asia or other emerging markets where most of the growth in steel production occurred in the last three years.[56]

Changes in Domestic Market Conditions

Position of the Domestic Producers

85. The domestic producers submitted that the combination of a mature domestic market, a commodity product and several quick and sudden increases in import volumes has resulted in a very volatile domestic market for the subject goods. The domestic producers submitted that, in Canada, importers and traders continue to switch their sources of supply from countries that have become subject to trade measures to countries that are not subject to such measures. They also argued that the domestic industry's market share is now as low as it was in 2000, at the end of the period of inquiry for the finding.

86. The domestic producers argued that the present situation is different from the one prevailing in the first quarter of 2004, when prices increased to a level never seen before. The domestic producers added that, since 2004, domestic prices declined through the last quarter of 2005 by up to 50 percent. This drop in price

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49. Manufacturer's Exhibit B-01, para. 19, Administrative Record, Vol. 11A.
50. Tribunal Exhibit RR-2005-002-21.10, Administrative Record, Vol. 5.1N at 24-25.
51. Tribunal Exhibit RR-2005-002-21.07, Administrative Record, Vol. 5.1J at 11.
52. *Transcript of Public Hearing*, Vol. 3, 21 June 2006, at 647.
53. *Ibid*.
54. Tribunal Exhibit RR-2005-002-12.11, Administrative Record, Vol. 1.4 at 242; Tribunal Exhibit RR-2005-002-12.16, Administrative Record, Vol. 1.4 at 331.
55. Tribunal Exhibit RR-2005-002-04 (protected), Administrative Record, Vol. 2 at 41; *Transcript of Public Hearing*, Vol. 3, 21 June 2006, at 648.
56. *Transcript of Public Hearing*, Vol. 3, 21 June 2006, at 648.

occurred at a time when raw material costs were rising. The domestic producers further submitted that the price increases that they achieved in the second quarter of 2006 are now under pressure and likely will not be sustained into the second half of 2006.

87. The domestic producers submitted that, because of the recent consolidation in the service centre sector, large steel centres are now capable of buying boatloads of imported steel. The combination of their large inventories and their knowledge of the domestic marketplace makes them a prime target for low-priced subject goods. In addition to the softening effect on demand of recent increases in inventories at service centres, an already declining Canadian manufacturing sector is further weakening demand, particularly as some manufacturing companies move abroad.[57]

Position of the Foreign Producers

88. First, Baosteel submitted that domestic production sales and prices have been steady, if not increasing, while imports from the United States and non-subject countries increased throughout the period of review. Second, the total apparent market grew in 2004 and is growing again in 2006. Third, key macroeconomic indicators, such as Canadian employment rates and gross domestic product, show that growth is strong. Fourth, pricing in North America is strong; production of goods, which use like goods as an input, is likewise strong, and supply is tight. Fifth, capacity utilization, notwithstanding an increase in imports from the United States and the production of other goods on the same equipment, has been steady and is increasing. Sixth, the domestic industry recently invested resources to increase market share.

89. Ilyich submitted that the conditions in the Canadian market are similar to those examined in *Flat Sheet Products*, in which the Tribunal rescinded the finding with respect to hot-rolled sheet from France, Romania, the Russian Federation (Russia) and the Slovak Republic. It argued that the domestic industry's numbers demonstrate constant utilization rates and increasing prices.

90. The Brazilian Mills and Mittal South Africa submitted that the domestic industry is a different industry than at the time of the finding. Given the reorganization and consolidation that have taken place, it is now in much better financial condition.

Tribunal's Analysis

91. The Canadian market for finished hot-rolled sheet is a mature market of about 5.5 million metric tonnes per year.[58] Over the period of review, the domestic producers supplied over two thirds of the market, with imports supplying the remainder of the market. Of the domestic production of hot-rolled sheet, slightly less than half was sold on the merchant market, with some 500,000 to 600,000 metric tonnes exported. The remainder was retained by the mills for further processing into cold-rolled sheet, corrosion-resistant sheet and other products.[59] The Tribunal notes that the domestic producers' market share of the merchant market declined during the period of review from 79 percent in 2003 to 68 percent in 2005.[60]

57. *Ibid*. at 479-80, 508.
58. *Pre-hearing Staff Report*, revised 2 June 2006, Tribunal Exhibit RR-2005-002-05B, Administrative Record, Vol. 1.1 at 214.
59. *Ibid*. at 224.
60. *Ibid*. at 216.

92. During the period of review, imports from the United States were significant in the Canadian market, as were, to a lesser extent, imports from other non-subject countries. With anti-dumping and countervailing duties in place, the share of imports held by the subject countries was less than 1 percent.[61]

93. Generally, the domestic market mirrored the international market during the period of review, exhibiting very sharp peaks and troughs. Although quite volatile, this period has allowed the domestic producers to make strong financial gains, while several of them have pursued consolidation and restructuring.

94. Between 2003 and 2005, the Canadian market, like the international market, experienced strong demand and very high prices for finished hot-rolled sheet at the peaks of the market cycle. In the same time frame, Canadian producers experienced tight supplies of inputs and, overall, a large increase in input costs. These combined forces created a very unusual situation for the Canadian producers. Also during this time, the Canadian dollar strengthened significantly against most currencies, and especially the U.S. dollar against which it appreciated by approximately 32 percent,[62] which made inputs priced in U.S. dollars, as well as U.S.-priced finished hot-rolled sheet imports, relatively less expensive but made Canadian exports more expensive.

95. The market cycle peaked sharply for finished hot-rolled sheet in Canada in the third quarter of 2004, and this peak continued through to early 2005. Consequently, in 2004 and the first quarter of 2005, the Canadian producers enjoyed high average prices ranging from CAN$741 to CAN$845 per metric tonne,[63] a strong capacity utilization rate of up to 87 percent[64] and, despite high input costs, gross margins of up to 30 percent,[65] the highest seen in the industry in recent years.

96. As a result of these historically unusual high prices and tight supply, purchasers substantially increased their inventories of finished hot-rolled sheet,[66] but, by the middle of 2005, prices began to decline and fell back to a low point. By late 2005, North American finished hot-rolled sheet prices began to rise again and inventories increased slightly. Prices were continuing their upward trend into the second quarter of 2006, but stayed below the extraordinary peak of the third quarter of 2004.

97. Since the finding, the Canadian industry has experienced major changes in its corporate structure and financial situation. In 2002, Algoma was reorganized[67] pursuant to the *CCAA*. On February 21, 2006, Arcelor S.A. acquired Dofasco, which is to become the sales and marketing arm for Arcelor S.A. in North America.[68] A merger between Arcelor S.A. and Mittal International was announced recently. Stelco emerged from re-structuring under the *CCAA* on March 31, 2006, after undergoing court-supervised restructuring since January 2004.[69]

98. Similarly, as submitted by the domestic industry, there has been a consolidation in the steel service centres in North America, giving them more buying power and the ability to deal with larger tonnages than existed in the period of inquiry for the finding. These players are more knowledgeable of the possible

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61. *Ibid*. at 216, 260.
62. *Ibid*. at 328.
63. *Ibid*. at 220.
64. *Ibid*. at 238.
65. *Ibid*. at 228.
66. *Transcript of Public Hearing*, Vol. 3, 21 June 2006, at 473-74, 553-54.
67. Tribunal Exhibit RR-2005-002-15.04, Administrative Record, Vol. 3C at 5.
68. *Transcript of Public Hearing*, Vol. 1, 19 June 2006, at 162.
69. Tribunal Exhibit RR-2005-002-15.01, Administrative Record, Vol. 3 at 19.

offshore sources and have greater resources to deal with imported goods.[70] In addition, the steel centres are offering additional services to their customers (cutting, slitting, pickling, etc.) which make them a more attractive source of supply for some steel customers.

99. Finally, as submitted by the foreign producers, the Tribunal notes the recent and planned investments by certain domestic producers to improve and expand their hot-rolled sheet production with a view to reinforcing the key role that this product plays in the overall Canadian steel market. As an example, Stelco has divested itself of certain steel-making assets for other products and is in the process of completing Phase 2 of the Lake Erie upgrade in order to focus on hot-rolled sheet.[71]

Likely Volumes of Dumped and Subsidized Goods

<u>Position of the Domestic Producers</u>

100. The domestic producers submitted that producers in the subject countries experience pressure from worldwide production overcapacity. This is exacerbated by the fact that China has moved from a net importer to a net exporter position, with the result that China will export more and the other subject countries will not be able to export as much to China. With China's increased capacity and export dependence, the subject countries will likely export significant volumes to Canada if the finding is rescinded. In addition, the domestic producers submitted that the findings in trade actions worldwide restrict export markets available to the subject countries.

<u>Position of the Foreign Producers</u>

101. Baosteel argued that, as the world's largest steel consumer, China's domestic demand is fuelling any capacity additions and that this increased capacity is destined for domestic requirements. The Chinese Government has instituted reforms to the structure of its domestic steel industry so that the production of steel meets domestic needs. Baosteel argued that, by 2010, the number of Chinese steel-producing enterprises will have been significantly reduced. The top 10 steel manufacturers will account for more than 50 percent of steel production. As for Baosteel itself, it submitted that it will be among the top 10 Chinese producers. It further submitted that Chinese producers will be largely prevented from exporting in large volumes to North America due to the recent narrowing price differentials between North America and Asia.

102. The Brazilian Mills submitted that there is no Brazilian finished hot-rolled sheet available for export, as over 85 percent of Brazil's hot-rolled sheet capacity is further processed and that their focus is on their domestic market where demand is strong. Further, they submitted that Canada has never been a significant market for Brazilian product and that, since imports are likely to be negligible, they cannot be injurious. There is no evidence to substantiate the allegation that the Brazilian Mills have been dependent on the Chinese market or that there will be an increase in their capacity to produce hot-rolled sheet.

103. Ilyich argued that producers in Ukraine have long-standing customers elsewhere and, with no history of shipping hot-rolled sheet to Canada, it would be questionable to attempt to sell in Canada. Ilyich submitted that this is not likely to change, since Ukrainian producers did not increase their capacity during the period of review, and that there is no capacity addition planned for the near future. Ilyich further submitted that, based on its traditional business, forecasts of growing markets and full capacity utilization, it has no desire, ability or need to export to Canada.

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70. *Transcript of Public Hearing*, Vol. 3, 21 June 2006, at 469-73.
71. *Transcript of Public Hearing*, Vol. 1, 19 June 2006, at 42-44.

104. Mittal South Africa submitted that its primary focus is on its own domestic market and, thereafter, on Africa and other priority markets. Its priority markets do not include Canada, due in part to geographic distances. Mittal South Africa submitted that, in general, it has a policy of acting as a responsible market participant and has no interest in disrupting any market. In particular, it would not disrupt the Canadian market, given the presence of a domestic producer that is a member of the Mittal group of companies.

Tribunal's Analysis

105. The Tribunal notes that each subject country is strongly involved in steel production and ranks in the list of the top 20 steel producers by crude steel production in the world. In 2004, China was first, Ukraine seventh, Brazil eighth, India ninth, Chinese Taipei thirteenth and South Africa twentieth.[72] Collectively, the subject countries had an annual hot-rolled sheet capacity of about 110 million metric tonnes in 2004, which is about 10 times the size of Canada's hot-rolled sheet capacity.[73] As discussed below, the majority of the subject countries are highly export-oriented, and all the subject countries have export volumes of finished hot-rolled sheet that are large relative to the size of the Canadian market. Each country has trade measures against it, in both Canada and the United States.[74] Several also have other trade measures against them, as noted below.[75] Ukraine is also subject to restrictions on its exports to the European Union.[76] Thus, all the subject countries are significant exporters, but are currently restricted in the markets available for their exports of finished hot-rolled sheet. If the finding were rescinded, this would make Canada a likely export target.

106. If the finding were rescinded, importing from the subject countries would be facilitated by the significant number of traders that had established distribution networks and dealt with the subject goods during the period of inquiry for the finding and that are still doing business in Canada.[77] Importing the subject goods would also be facilitated by the consolidation of service centres, as discussed above, which has increased the ability of service centres to deal with the large boatload quantities entailed in importing the subject goods.

107. Production capacity in the international market of hot-rolled sheet, relative to demand, is another key factor likely to influence the volume of imports from all the subject countries. In 2004, global hot-rolled sheet production was about 480.0 million metric tonnes.[78] Evidence on the record indicates that, for the three major steel-producing regions,[79] nearly 13.5 million metric tonnes of hot-rolled sheet production capacity was added in 2005 and that at least 44.0 million metric tonnes is expected to be added in 2006 and 2007.[80] The three major steel-producing regions include both mature markets, such as North America and Europe, and emerging markets, such as Southeast Asia. The Tribunal's expert witness testified that mature markets are expected to see slow to flat growth in demand for finished hot-rolled sheet, while, for emerging markets, average growth in demand is expected to be 3 to 7 percent.[81]

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72. Tribunal Exhibit RR-2005-002-12.11, Administrative Record, Vol. 1.4 at 243.
73. Manufacturer's Exhibit B-01, paras. 59-60, Administrative Record, Vol. 11A; *Pre-hearing Staff Report*, revised 2 June 2006, Tribunal Exhibit RR-2005-002-05B, Administrative Record, Vol. 1.1 at 237; Tribunal Exhibit RR-2005-002-16.02A (protected), Administrative Record, Vol. 4 at 231, 233-38.
74. *Pre-hearing Staff Report*, revised 2 June 2006, Tribunal Exhibit RR-2005-002-05B, Administrative Record, Vol. 1.1 at 202.
75. *Ibid*.
76. Tribunal Exhibit RR-2005-002-13.15 (protected), Administrative Record, Vol. 2.4A at 147.
77. *Transcript of Public Hearing*, Vol. 3, 21 June 2006, at 522; Manufacturer's Exhibit E-01, paras. 34, 46, Administrative Record, Vol. 11A; Manufacturer's Exhibit B-01, paras. 77-79, Administrative Record, Vol. 11A.
78. Tribunal Exhibit RR-2005-002-12.11, Administrative Record, Vol. 1.4 at 276.
79. *Ibid*. at 275-76.
80. Tribunal Exhibit RR-2005-002-31.02 (single copy exhibit), Administrative Record, Vol. 1.01 at 46-47.
81. *Transcript of Public Hearing*, Vol. 3, 21 June 2006, at 628.

108. By comparing expected hot-rolled sheet capacity expansion and demand growth, the extent to which each region will keep pace with its demand can be predicted. North America is expected to increase capacity by 1.8 million metric tonnes and 1.2 million metric tonnes in 2006 and 2007 respectively,[82] representing growth of approximately 1.9 percent and 1.4 percent respectively.[83] Meanwhile, Europe is expected to increase capacity by 0.5 million metric tonnes and 0.3 million metric tonnes in 2006 and 2007 respectively,[84] representing growth of 0.6 percent and 0.3 percent respectively.[85] Thus, these two mature regional markets are expected to display slow growth in capacity in accordance with their expected slow growth in demand. In Southeast Asia, however, capacity is expected to increase by 23.2 million metric tonnes and 17.0 million metric tonnes in 2006 and 2007 respectively,[86] representing growth of 9.1 percent and 6.1 percent respectively.[87] At least 75 percent of Southeast Asia's capacity expansion will probably occur in China.[88] Consequently, Southeast Asia is experiencing a higher rate of capacity expansion than its demand is expected to require. Accordingly, the Tribunal is of the view that increased production capacities in this region will cause oversupply, which will affect all the subject countries. This phenomenon is discussed in greater detail below, by subject country.

109. The Tribunal also considers it very significant that, as indicated above, North America is the highest-priced market in the world for finished hot-rolled sheet and that, consequently, in the absence of the finding, Canada would be an attractive market for surplus product from the subject countries.

110. As discussed above, consolidation within the global steel industry is continuing. However, this trend has taken place primarily in mature markets and has largely left the developing world untouched. The Tribunal's expert witness testified that consolidation in emerging markets will probably take many years.[89] Even Baosteel took the position that consolidation in China would take until 2010. Consequently, the Tribunal is of the view that the ability of mills to exercise production restraint through consolidation will not be felt significantly either in the subject countries or in the global hot-rolled sheet market in general, in the next 18 months.

<u>China</u>

111. Baosteel is the only Chinese producer that fully participated in this expiry review and, despite the large number of Chinese steel-producing mills, its production represents a relatively important proportion of China's total output of finished hot-rolled sheet.[90]

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82. Tribunal Exhibit RR-2005-002-31.02 (single copy exhibit), Administrative Record, Vol. 1.01 at 46-47.
83. Tribunal Exhibit RR-2005-002-12.11, Administrative Record, Vol. 1.4 at 275-76; Tribunal Exhibit RR-2005-002-31.02 (single copy exhibit), Administrative Record, Vol. 1.01 at 46-47. These percentages were calculated by adding the capacity expansions for 2005-2007 to the 2004 production of flat hot-rolled products for each geographical region. This calculation assumes 100 percent capacity utilization in 2004.
84. Tribunal Exhibit RR-2005-002-31.02 (single copy exhibit), Administrative Record, Vol. 1.01 at 46-47.
85. *Supra* note 83.
86. Tribunal Exhibit RR-2005-002-31.02 (single copy exhibit), Administrative Record, Vol. 1.01 at 46-47.
87. *Supra* note 83.
88. Tribunal Exhibit RR-2005-002-31.02 (single copy exhibit), Administrative Record, Vol. 1.01 at 46-47.
89. *Transcript of Public Hearing*, Vol. 3, 21 June 2006, at 649.
90. Tribunal Exhibit RR-2005-002-22.11 (protected), Administrative Record, Vol. 6.1I at 15-16; Tribunal Exhibit RR-2005-002-22.05 (protected), Administrative Record, Vol. 6.1B at 38.

112. The evidence indicates that China's forecast production of finished hot-rolled sheet will increase from 60.0 million metric tonnes in 2006 to 75.0 million metric tonnes in 2007.[91] While Chinese demand for steel continues to grow at a significant rate, China will not be able to fully absorb its domestic production of hot-rolled sheet, as demonstrated by the evidence, discussed above, that the forecast excess of finished hot-rolled sheet production will increase from 2006 to 2008.[92] Accordingly, the Tribunal does not accept Baosteel's argument that production will be limited to Chinese domestic needs. Since production will likely outpace demand, China will become a net exporter of finished hot-rolled sheet of about 1.5 million metric tonnes in 2006 and of in excess of 3.0 million metric tonnes in 2007.[93] This change to a net exporter position is significant, considering that, in 2005, Chinese total exports of hot-rolled sheet were 4.7 million metric tonnes.[94] The move from net importer to net exporter translates to estimated total exports of finished hot-rolled sheet of approximately 5.0 million metric tonnes in 2006 and 6.0 million metric tonnes in 2007.[95] While China's net exports or total exports may not be significant in terms of China's overall finished hot-rolled sheet production, they are very large relative to the Canadian market.[96]

113. Baosteel submitted that the Chinese Government has instituted reforms to the structure of its domestic steel industry so that the production of steel will not exceed domestic needs. The Tribunal agrees that the Chinese Government has begun to restructure the Chinese steel sector, as well as contemplate reductions in the value added tax (VAT) rebate on exports of steel. However, for several reasons outlined below, the Tribunal believes that these changes will not have a significant impact on the export of the subject goods in the next 18 months.

114. First, the Tribunal notes that the restructuring initiatives are expected to largely affect long products rather than flat products and mills that are using older, more obsolete production methods and, therefore, would not significantly affect hot-rolled mills overall.[97] In addition, the Tribunal is of the view that, since the market is so fragmented in China,[98] it is difficult to see how such measures can be successfully implemented in the near to medium term. Finally, a number of mills are owned by different levels of government, so there may be challenges to the central government's attempts at restructuring. The Tribunal notes that, among the large players in the Chinese steel industry, Shougang is owned by the city of Beijing and that Tangshan is owned by Hebei Province.[99]

115. Concerning the potential reduction in the VAT rebate on exports of steel, the evidence shows that, while a VAT of 27 percent is levied on all Chinese production, a rebate is available if the product is exported.[100] Currently, 11 percent can be reclaimed on exports of flat products.[101] It has been rumoured that

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91. *Transcript of Public Hearing*, Vol. 3, 21 June 2006, at 631.
92. *Ibid*. at 620-21; Tribunal Exhibit RR-2005-002-16.02A (protected), Administrative Record, Vol. 4 at 222-23.
93. *Transcript of Public Hearing*, Vol. 3, 21 June 2006, at 629-32.
94. Tribunal Exhibit RR-2005-002-31.14 (single copy exhibit), Administrative Record, Vol. 1.01B at 215-90. Data in this exhibit are from the International Steel Statistics Bureau and show trade flows of finished hot-rolled sheet between the subject countries and their trading partners. These statistics are based on 6-digit codes of the *Harmonized Commodity Description and Coding System* and, therefore, may contain a small portion of non-subject goods. Tribunal Exhibit RR-2005-002-31.10 (single copy exhibit), Administrative Record, Vol. 1.01A at 27.
95. *Transcript of Public Hearing*, Vol. 3, 21 June 2006, at 676-77.
96. *Pre-hearing Staff Report*, revised 2 June 2006, Tribunal Exhibit RR-2005-002-05B, Administrative Record, Vol. 1.1 at 214.
97. *Transcript of Public Hearing*, Vol. 3, 21 June 2006, at 637.
98. Tribunal Exhibit RR-2005-002-13.10 (protected), Administrative Record, Vol. 2.4A at 29.
99. Exporters' Exhibit H-01/I-01/J-01 at 38-39, Administrative Record, Vol. 13A.
100. *Transcript of Public Hearing*, Vol. 3, 21 June 2006, at 638.
101. *Ibid*.

the Chinese Government will decrease this rebate to 5 or 8 percent, effectively making exporting more expensive, but this is yet to be confirmed.[102] The Tribunal notes that, were this to occur, making the price of Chinese exports about 3 to 6 percent higher, the differential between the resulting prices and the Canadian prices would still be sufficient to attract Chinese products into the Canadian market.[103]

116. Baosteel argued that, due to the recent narrowing of price differentials between North America and Asia, Chinese producers would largely be prevented from exporting to North America. The Tribunal notes that, as discussed above, North America is the world's highest-priced market and that the differential between North American and Chinese prices is substantial. This differential makes the Canadian market attractive to imports from China, and the evidence does not indicate that the differential is likely to decrease to an extent that would change this situation.

117. The Tribunal also heard testimony about the possible revaluation of the renminbi. The Tribunal's expert witness indicated that a large revaluation of the renminbi would be unlikely, as China is an export-oriented economy and would not undertake something that would jeopardize its export trade.[104] Consequently, the Tribunal believes that a revaluation would not significantly impact the exports of the subject goods because a significant revaluation within the next 18 months is not likely.

118. During the period of review, Asia was the main finished hot-rolled sheet export region for China, accounting for about 80 percent of exports over this period.[105] However, the Tribunal observes that Chinese exports of finished hot-rolled sheet in Asian markets decreased from 87 percent between January and the end of April 2005 to 58 percent for the same period in 2006, with the United States becoming a prime target market.[106] The Tribunal also observes that China maintained a presence in the three North American countries each year of the period of review,[107] even with anti-dumping findings against it in the Canadian and U.S. markets, demonstrating a clear continuing interest in North America.

119. In summary, China will have large amounts of finished hot-rolled sheet production available for sale in export markets in the near to medium term. In the Tribunal's view, because of the magnitude of the tonnage involved, this is likely to have an impact on the export activity of not only China but also the other subject countries, particularly in view of the fact that, over the period of review, as discussed below, China was the most important export market for India, the second most important export market for Brazil, Chinese Taipei and South Africa and the third most important export market for Ukraine. It appears likely that the expected exports by China will put strong pressure on all the other subject countries to find new export markets. Canada is likely to be an attractive export destination.

<u>Chinese Taipei</u>

120. In 2005, Chinese Taipei's estimated finished hot-rolled sheet production was approximately 3.8 million metric tonnes, which is forecast to increase to 4.1 million metric tonnes in 2008.[108] Excess

102. *Ibid.*
103. *Protected Pre-hearing Staff Report*, revised 2 June 2006, Tribunal Exhibit RR-2005-002-06B (protected), Administrative Record, Vol. 2.1 at 246, 220; *Transcript of Public Hearing*, Vol. 3, 21 June 2006, at 475, 598.
104. *Transcript of Public Hearing*, Vol. 3, 21 June 2006, at 703-704.
105. Tribunal Exhibit RR-2005-002-31.14 (single copy exhibit), Administrative Record, Vol. 1.01B at 215-90.
106. Manufacturer's Exhibit B-11 (single copy exhibit) at 13, Administrative Record, Vol. 11A.
107. Tribunal Exhibit RR-2005-002-31.14 (single copy exhibit), Administrative Record, Vol. 1.01B at 215-90.
108. Tribunal Exhibit RR-2005-002-16.02A (protected), Administrative Record, Vol. 4 at 223.

production[109] of finished hot-rolled sheet is forecast to be about 0.7 million metric tonnes every year from 2006 to 2008.[110]

121. Between 2003 and 2005, Chinese Taipei exported about 1.7 million metric tonnes of finished hot-rolled sheet.[111] In the first quarter of 2006, its exports increased by about 20 percent as compared to the first quarter of 2005.[112] Thus, exports are large and represent about 45 percent of its production of finished hot-rolled sheet, indicating that it is export-oriented to a considerable extent.

122. Over the period of review, 98 percent of Chinese Taipei's exports went to the Asian market.[113] China, in particular, has been a major trading partner for Chinese Taipei. It was the second largest export destination throughout the period of review and accounted for about 25 percent of Chinese Taipei's total exports.[114] As Chinese exports are forecast to increase, competition in the Asian markets will grow and put pressure on producers in Chinese Taipei to seek markets elsewhere. Anti-dumping measures in place in Thailand[115] may make this more difficult.

123. Based on the foregoing analysis, Canada is likely to be an attractive export destination.

<u>Brazil</u>

124. There are four Brazilian mills that produce hot-rolled sheet. The three mills that participated in these proceedings account for almost all the production of hot-rolled sheet in Brazil.[116]

125. Brazil is a large producer of hot-rolled sheet and exports a large amount of its finished products. Brazil produced approximately 5.0 million metric tonnes of finished hot-rolled sheet in 2005, and production is expected to remain at about the same level until 2008.[117] Excess production of finished hot-rolled sheet is forecast to decrease from 2006 onwards, but to remain high at approximately 0.5 to 0.6 million metric tonnes per year.[118] The Tribunal heard testimony that no additions to hot-rolled sheet capacity are planned in the near term.[119]

126. The volume of Brazilian exports of finished hot-rolled sheet increased steadily from 1.2 million metric tonnes in 2003 to 1.4 million metric tonnes in 2005.[120] Moreover, in the first quarter of 2006, the number of metric tonnes exported by Brazil was more than 2.7 times the volume of exports in the similar period of 2005.[121] However, according to the Tribunal's expert witness, this recent surge in exports was due to the Brazilian Mills' new production that was not sold in their own market because of excess inventory

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109. Excess production is the difference between estimated domestic production and estimated domestic demand.
110. Tribunal Exhibit RR-2005-002-16.02A (protected), Administrative Record, Vol. 4 at 222-23.
111. Tribunal Exhibit RR-2005-002-31.14 (single copy exhibit), Administrative Record, Vol. 1.01B at 125-68.
112. *Ibid*.
113. *Ibid*.
114. *Ibid*.
115. *Pre-hearing Staff Report*, revised 2 June 2006, Tribunal Exhibit RR-2005-002-05B, Administrative Record, Vol. 1.1 at 202.
116. Tribunal Exhibit RR-2005-002-22.06 (protected), Administrative Record, Vol. 6.1C at 38; Tribunal Exhibit RR-2005-002-22.04 (protected), Administrative Record, Vol. 6.1A at 125; Tribunal Exhibit RR-2005-002-22.05 (protected), Administrative Record, Vol. 6.1B at 28.
117. Tribunal Exhibit RR-2005-002-16.02A (protected), Administrative Record, Vol. 4 at 217.
118. *Ibid*. at 216-17.
119. *Transcript of Public Hearing*, Vol. 3, 21 June 2006, at 634.
120. Tribunal Exhibit RR-2005-002-31.14 (single copy exhibit), Administrative Record, Vol. 1.01B at 169-214.
121. *Ibid*.

that needed to be cleared.[122] The Tribunal notes that, in 2005, exports represented close to 30 percent of Brazilian production of finished hot-rolled sheet, signifying that it is export-oriented to a considerable extent.[123]

127. Over the period of review, the evidence indicates that Asia accounted for 29 percent of Brazilian exports.[124] The Tribunal notes that, while China, the most important Brazilian export destination in 2003, lost significant ground as a market for Brazilian product in 2004 and 2005, other Asian countries, such as Chinese Taipei, North Korea and Thailand, have increased their share of Brazilian exports significantly.[125] Given that China was still the third and the fifth largest market destination of Brazilian exports in 2004 and 2005 respectively, the Tribunal does not agree with the position of the Brazilian Mills that China was not a significant market during the period of review. Due to the likelihood of decreases in export opportunities to China and other Asian markets, as discussed above, the Tribunal is of the opinion that Brazil will need to seek other markets for a significant amount of its exports.

128. The Tribunal also notes that Brazil's export opportunities are limited by the anti-dumping measure in place in one of its nearby potential markets, Argentina.[126]

129. North America represented 12 percent of Brazil's exports between 2003 and 2005,[127] even though, as indicated above, Canada and the United States both have trade measures for hot-rolled sheet in place against Brazil.[128] Brazil's interest in the North American market is also demonstrated by the recent surge in its exports to Mexico, as exports of finished hot-rolled sheet increased from 7,000 metric tonnes in the first quarter of 2005 to 55,000 metric tonnes in the first quarter of 2006, representing more than half the total export of finished hot-rolled sheet to Mexico in 2005.[129]

130. Based on the foregoing analysis, the Tribunal does not agree with the Brazilian Mills' submission that Canada would be an unattractive market or that exports to Canada would be insignificant if the finding were rescinded.

India

131. In 2006, India is forecast to produce 11.0 million metric tonnes of finished hot-rolled sheet.[130] Between 2003 and 2005, Indian exports of finished hot-rolled sheet declined.[131] During that period, Indian exports represented between 10 and 18 percent of the Indian production of finished hot-rolled sheet, indicating that India is export-oriented to some extent.[132] Production is forecast to grow to 12.6 million metric tonnes in 2008, and it is forecast that, over the same time frame, domestic demand will not be able to

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122. *Transcript of Public Hearing*, Vol. 3, 21 June 2006, at 623.
123. Tribunal Exhibit RR-2005-002-31.14 (single copy exhibit), Administrative Record, Vol. 1.01B at 169-214; Tribunal Exhibit RR-2005-002-16.02A (protected), Administrative Record, Vol. 4 at 217.
124. Tribunal Exhibit RR-2005-002-31.14 (single copy exhibit), Administrative Record, Vol. 1.01B at 169-214.
125. *Ibid*.
126. *Pre-hearing Staff Report*, revised 2 June 2006, Tribunal Exhibit RR-2005-002-05B, Administrative Record, Vol. 1.1 at 202.
127. Tribunal Exhibit RR-2005-002-31.14 (single copy exhibit), Administrative Record, Vol. 1.01B at 169-214.
128. *Pre-hearing Staff Report*, revised 2 June 2006, Tribunal Exhibit RR-2005-002-05B, Administrative Record, Vol. 1.1 at 202.
129. Tribunal Exhibit RR-2005-002-31.14 (single copy exhibit), Administrative Record, Vol. 1.01B at 169-214.
130. Tribunal Exhibit RR-2005-002-16.02A (protected), Administrative Record, Vol. 4 at 225.
131. Tribunal Exhibit RR-2005-002-31.14 (single copy exhibit), Administrative Record, Vol. 1.01B at 363-418.
132. *Ibid*.; Tribunal Exhibit RR-2005-002-16.02A (protected), Administrative Record, Vol. 4 at 225.

keep pace with production. Consequently, India's excess production of finished hot-rolled sheet is expected to increase steadily, from 0.85 million metric tonnes in 2006 to 1.36 million metric tonnes in 2008.[133] This is expected despite significant infrastructure, housing and manufacturing activity. The Tribunal notes that, with this growth in demand, the Indian Government has recently adopted a National Steel Policy with the goal of tripling steel production by 2020.[134] The Tribunal also notes that India has taken action to position itself to become an important player in the global steel industry. Factors contributing to the sophistication of its steel sector include the government support extended to the industry and targeting the implementation of new technology and good management skills.[135]

132. Accordingly, despite its recent decrease in exports and lower export orientation than the other subject countries, Indian export pressure is expected to grow, and Indian exports remain very significant, accounting for a large tonnage relative to the size of the Canadian market.[136]

133. The Tribunal notes that Asia, as a whole, accounted for 47 percent of Indian exports of finished hot-rolled sheet between 2003 and 2005.[137] With 0.63 million metric tonnes exported to China in 2003, that country was by far the largest Indian export destination for that year.[138] While export volume to China decreased significantly in 2004 and 2005, China remained among the top five Indian export markets in 2005.[139] Considering the Asian market in general, the Tribunal notes that Thailand has anti-dumping measures in place against India for hot-rolled sheet.[140] Therefore, in seeking markets for its excess production, India will be subject to any pressures in Asia arising from the increased exports from China, as well as constraints on exports to Thailand.

134. The Tribunal also notes that India has shown a continuing interest in the North American market. India's exports of hot-rolled sheet to the United States accounted for 7 percent of its total exports for the period from 2003 to 2005, despite the presence of anti-dumping and countervailing measures against it.[141]

135. Based on the foregoing analysis, Canada is likely to be an attractive export destination.

South Africa

136. There are only two hot-rolled sheet producers in South Africa, Mittal South Africa and Highveld Steel Vanadium Corp. (Highveld Steel).[142] Mittal South Africa represents the vast majority of domestic production and exports. Highveld Steel is a relatively small player in South Africa, producing less than 30 percent of the total production of hot-rolled sheet. It is also a relatively minor exporter.[143]

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133. Tribunal Exhibit RR-2005-002-16.02A (protected), Administrative Record, Vol. 4 at 224-25.
134. Tribunal Exhibit RR-2005-002-31.11 (single copy exhibit), Administrative Record, Vol. 1.01A at 243.
135. *Ibid*. at 235-37.
136. *Transcript of Public Hearing*, Vol. 3, 21 June 2006, at 633.
137. Tribunal Exhibit RR-2005-002-31.14 (single copy exhibit), Administrative Record, Vol. 1.01B at 363-418.
138. *Ibid*.
139. *Ibid*.
140. *Pre-hearing Staff Report*, revised 2 June 2006, Tribunal Exhibit RR-2005-002-05B, Administrative Record, Vol. 1.1 at 202.
141. Tribunal Exhibit RR-2005-002-31.14 (single copy exhibit), Administrative Record, Vol. 1.01B at 363-418.
142. Tribunal Exhibit RR-2005-002-22.07 (protected), Administrative Record, Vol. 6.1D at 23.
143. *Transcript of Public Hearing*, Vol. 2, 20 June 2006, at 437; *Transcript of Public Hearing*, Vol. 3, 21 June 2006, at 616-17; Tribunal Exhibit RR-2005-002-04 (protected), Administrative Record, Vol. 2, at 87.

137. In 2005, South Africa's estimated finished hot-rolled sheet production was approximately 1.8 million metric tonnes, which is forecast to increase to 1.9 million metric tonnes in 2008.[144]

138. During the period of review, the evidence indicates that, as an annual average, South Africa exported more than 1 million metric tonnes of hot-rolled sheet, which represents over 55 percent of its production. Clearly, South Africa is export-oriented to a considerable extent. The Tribunal's expert witness expects that South Africa will still be a net exporter in 2006.[145]

139. During the period of review, Asia has been the major export region for South Africa, accounting for 63 percent of exports of finished hot-rolled sheet.[146] The Tribunal notes that, during this time, China was among the top three major export destinations for South Africa.[147] Thus, South African exports to China will be constrained and, as outlined above, the Tribunal believes that the important Asian market, as a whole, will be threatened by the presence of increased Chinese exports in the region.

140. Africa is the next largest export region for South Africa[148] and the evidence indicates that, after satisfying its domestic market, Africa is Mittal South Africa's[149] priority export market. The Tribunal observes that, based on data from the Organisation for Economic Co-operation and Development, African demand for finished steel increased by 7.5 percent from 2005 to 2006 and is forecast to increase by a further 5.4 percent from 2006 to 2007.[150] However, Africa accounted for only 12.0 percent of South African finished hot-rolled sheet exports over the period of review and, hence, this relatively small increase in demand in Africa is unlikely to absorb a significant volume of additional exports from South Africa in the near to medium term.[151]

141. North America was one of the regions to which South Africa exported during the period of review, even though the witness from Mittal South Africa testified that North America is not a target market, due to the geographic distance.[152] The Tribunal is of the view that the presence of exported product in North America shows a clear continuing interest in this market by South Africa.[153] Further, the Tribunal heard testimony from a Tribunal witness who indicated that, although geography is a consideration when purchasing steel, it is not a fundamental obstacle to entry into the Canadian market, provided that price and quality are sufficiently appealing.[154]

142. The witness from Mittal South Africa testified that the company operates under a marketing strategy whereby it acts responsibly in all export markets.[155] Although this marketing strategy has been in

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144. Tribunal Exhibit RR-2005-002-16.02A (protected), Administrative Record, Vol. 4 at 225.
145. *Transcript of Public Hearing*, Vol. 3, 21 June 2006, at 635.
146. Tribunal Exhibit RR-2005-002-31.14 (single copy exhibit), Administrative Record, Vol. 1.01B at 419-60.
147. *Ibid*.; *Pre-hearing Staff Report*, revised 2 June 2006, Tribunal Exhibit RR-2005-002-05B, Administrative Record, Vol. 1.1 at 254.
148. Tribunal Exhibit RR-2005-002-31.14 (single copy exhibit), Administrative Record, Vol. 1.01B at 419-60.
149. *Transcript of Public Hearing*, Vol. 2, 20 June 2006, at 432.
150. Exporter's Exhibit F-02 at 48, Administrative Record, Vol. 13.
151. Tribunal Exhibit RR-2005-002-31.14 (single copy exhibit), Administrative Record, Vol. 1.01B at 419-60.
152. *Ibid*.
153. Tribunal Exhibit RR-2005-002-22.07 (protected), Administrative Record, Vol. 6.1E at 19; *Protected Pre-hearing Staff Report*, revised 2 June 2006, Tribunal Exhibit RR-2005-002-06B (protected), Administrative Record, Vol. 2.1 at 254.
154. *Transcript of Public Hearing*, Vol. 3, 21 June 2006, at 513-14.
155. *Transcript of Public Hearing*, Vol. 2, 20 June 2006, at 431.

place since 1989, years prior to the company's purchase by Mittal Steel Company N.V.,[156] the Tribunal notes that, currently, trade measures for hot-rolled sheet against South Africa are in place not only in Canada but also in Argentina, Thailand and the United States, which were adopted during the time the responsible marketing strategy was in effect. This suggests to the Tribunal that this Mittal South Africa strategy has not been very effective.[157]

143. Based on the foregoing analysis, the Tribunal is of the view that Canada would become a target for South African exports if the finding were rescinded.

<u>Ukraine</u>

144. There are three hot-rolled sheet producers in Ukraine.[158] Ilyich, the only producer that participated in this expiry review, accounts for a major proportion of the total production of hot-rolled sheet in Ukraine.[159]

145. In 2005, Ukraine produced 5.7 million metric tonnes of finished hot-rolled sheet and is forecast to produce 6.1 million metric tonnes in 2006.[160] With an export volume of 4.4 million metric tonnes in 2005, representing more than 75 percent of its hot-rolled sheet production, Ukraine is export-oriented to a very great extent.[161]

146. Asia was Ukraine's second largest export region during the period of review, accounting for 24 percent of its total exports.[162] In 2003 and 2004, China was respectively the first and the second largest export market for Ukrainian producers. In 2005, while Ukraine's exports to China decreased significantly, they remained largely in Asia and were displaced primarily to India.[163] As discussed above, the Tribunal is of the view that countries that have exported extensively to Asia will find it increasingly difficult to sell in their traditional Asian markets.

147. The Tribunal also notes that, in addition to trade measures in Canada and the United States, Ukraine is subject to anti-dumping measures in Argentina, Mexico, Peru and Thailand that restrict the number of markets available for Ukrainian products.[164]

148. The Tribunal notes that Ukraine signed an export quota agreement with the European Union which limits its exports of finished hot-rolled sheet in this region.[165] The evidence shows that it used about 40 percent of its annual quota in the first four months of 2006, as compared to 7 percent in the same period of 2005.[166] Although the European Union was not a major export market for Ukraine during the period of

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156. *Transcript of In Camera Hearing*, Vol. 2, 21 June 2006, at 246.
157. *Ibid*.; *Pre-hearing Staff Report*, revised 2 June 2006, Tribunal Exhibit RR-2005-002-05B, Administrative Record, Vol. 1.1 at 202.
158. Tribunal Exhibit RR-2005-002-04 (protected), Administrative Record, Vol. 2, at 76.
159. Tribunal Exhibit RR-2005-002-22.09 (protected), Administrative Record, Vol. 6.1H at 10.
160. Tribunal Exhibit RR-2005-002-16.02A (protected), Administrative Record, Vol. 4 at 221.
161. *Transcript of Public Hearing*, Vol. 3, 21 June 2006, at 625; Tribunal Exhibit RR-2005-002-31.14 (single copy exhibit), Administrative Record, Vol. 1.01B at 291-362.
162. Tribunal Exhibit RR-2005-002-31.14 (single copy exhibit), Administrative Record, Vol. 1.01B at 291-362.
163. *Ibid*.
164. *Pre-hearing Staff Report*, revised 2 June 2006, Tribunal Exhibit RR-2005-002-05B, Administrative Record, Vol. 1.1 at 202.
165. Tribunal Exhibit RR-2005-002-13.15 (protected), Administrative Record, Vol. 2.4A at 147.
166. Manufacturer's Exhibit B-01, para. 70, Administrative Record, Vol. 11A.

review, this increase in exports to the European Union suggests that Ukraine is facing pressure to change its historical export patterns.[167]

149. Based on the foregoing analysis, the Tribunal is of the opinion that, contrary to Ilyich's position, Ukraine would likely export to Canada if the finding were rescinded.

Conclusion

150. Based on the foregoing analysis, the Tribunal is convinced that, if the finding were rescinded, the volume of dumped and subsidized subject goods imported into Canada would likely be significant.

Likely Prices of Dumped and Subsidized Imports

Position of the Domestic Producers

151. The domestic producers submitted that, in order for the subject countries to regain the market shares that they held prior to the finding, they would have to compete with pricing from Russia and new offshore sources. Given that the price of imports from non-subject countries is significantly below the current domestic price, the addition of the subject countries competing for market share would result in even further domestic price erosion.

152. The domestic producers further submitted that, although import prices have recovered in recent months, the forecast is that prices will fall due to the massive new production capacity in the world expected to come online in the next 18 months, particularly in China and India.

Position of the Foreign Producers

153. Baosteel submitted that the current global market for steel is on an upward trend and global prices for the subject goods, including Chinese exports, are following this same trend. As an indication, it stated that it recently announced that it will increase its prices. It further submitted that higher international pricing is reflective of the strength of the global industry. It submitted that this negates the argument that the subject countries, such as China, will dump hot-rolled sheet at injurious price levels.

154. The Brazilian Mills submitted that they are all in the business of earning profits and that there is no reason to conclude that they will try to obtain market share in Canada by drastically cutting prices.

155. Mittal South Africa submitted that it has no incentive to sell into the Canadian market at prices that would negatively impact Mittal Canada.

Tribunal's Analysis

156. The commodity nature of finished hot-rolled sheet means that price is a major element of competition and, therefore, purchasers are likely to switch from one supplier to another on the basis of price alone. Further, the Tribunal notes that the production imperative, as discussed above, means that, over time, prices from all suppliers in the market will converge at the level of the lowest price offerings. When supply exceeds demand, suppliers that do not respond to the lowest price offerings run a risk of losing volume and market share.

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167. Manufacturer's Exhibit A-05 (single copy exhibit) at 140, Administrative Record, Vol. 11.

157. The Tribunal notes that the domestic producers, Baosteel and the Brazilian Mills agree that export prices are currently experiencing an upward trend. The evidence shows that Asian, European and U.S. export prices continue to rise, and Baosteel, itself, announced that it will be raising prices by more than 10 percent.[168] However, the point of contention is how prices will change in the next 18 months.

158. The Tribunal agrees with the domestic producers that prices will fall in the next few months. Currently, global prices are relatively high, but the evidence indicates that they have already reached, or soon will reach, their peak in the cycle. The Tribunal's expert witness testified that global prices are expected to fall in the last quarter of 2006 and in the beginning of 2007,[169] this view being supported by the two other Tribunal witnesses and by steel reviews. The Tribunal's witnesses stated that they have not currently purchased imports because they forecast prices will fall in the latter part of 2006.[170] Steel reviews estimated that the current global prices of finished hot-rolled sheet reached their peak in the first half of 2006 and predicted that global demand and supply will be at such levels that global prices will decrease through the rest of 2006.[171]

159. This view is also supported by the fact that combined inventories of sheet products[172] increased to 3.6 months of stock in the first five months of 2006, while the normal level of inventories at service centres is 2.4 months of stock.[173] The evidence shows that service centres will likely sell off inventories in the second half of the year or in the first quarter of 2007.[174] The Tribunal is of the opinion that, as inventories are drawn down, the market will become oversupplied, thereby forcing a reduction in prices of finished hot-rolled sheet.

160. Regardless of whether export prices decrease, the Tribunal considers that, given the functioning of the market cycle for hot-rolled sheet, the market will be in a downswing in the next 18 months, that the subject goods will enter the Canadian market if the finding is rescinded and that their presence will result in greater price decline than would otherwise be experienced by the domestic producers.

161. As discussed above, demand in the Canadian market is expected to be relatively flat in the near to medium term. Accordingly, the domestic market is not likely to be able to absorb significant quantities of the subject goods without displacing existing sales of like goods or non-subject imports. Given that demand for finished hot-rolled sheet tends to parallel the trends in demand for other flat products, the domestic producers will probably not be able to ease this pressure by diverting production to downstream flat products.[175] Therefore, in order to gain volume and market share in a relatively flat domestic market, the subject goods will need to be sold into the Canadian market at a price lower than the price of the domestic goods or goods from non-subject countries.

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168. Exporter's Exhibit F-01, paras. 4, 56, Administrative Record, Vol. 13.
169. *Transcript of Public Hearing*, Vol. 3, 21 June 2006, at 605.
170. Manufacturer's Exhibit B-11, at 4-7, 13, Administrative Record, Vol. 11A; Exporters' Exhibit H-01/I-01/J-01 at 30, 53, Administrative Record, Vol. 13A; *Transcript of Public Hearing*, Vol. 3, 21 June 2006, at 486-87, 554, 558.
171. Manufacturer's Exhibit B-11, at 4-7, 13, Administrative Record, Vol. 11A; Exporters' Exhibit H-01/I-01/J-01 at 30, 53, Administrative Record, Vol. 13A.
172. Includes hot-rolled, cold-rolled and galvanized sheet.
173. *Transcript of Public Hearing*, Vol. 3, 21 June 2006, at 501-503.
174. *Ibid*. at 601.
175. *Ibid*. at 593-94, 657-58.

162. In the Tribunal's view, the prices of the subject goods in relation to the domestic goods will need to be low enough to hedge against expected future prices and the risk of a late delivery, as well as to provide a premium over the faster delivery time of the domestic goods. In evidence, Stelco estimated that the price of the subject goods would have to undercut the lowest domestic price by a range of CAN$20 to CAN$50 per metric tonne.[176] Furthermore, the Tribunal's witnesses testified that, in order for the subject goods to be attractive and competitive with the domestic products, such imports would have to be priced at CAN$30 to CAN$74 per metric tonne below the domestic producers' prices.[177] There was also evidence that the price of the subject goods, unlike the domestic goods, often does not include an increase to the base price to cover extras, which would increase the price differential for products with "extras".[178]

163. Moreover, imports from each subject country will need to compete on price with imports from the other subject countries and non-subject countries. Although it is not clear whether imports from non-subject countries undercut the domestic industry's average prices between 2003 and 2005, it is clear that goods from countries other than the United States did so in the first quarter of 2006. The evidence shows that, in the first quarter of 2006, the average selling price of imports from non-subject countries, excluding the United States, was 12 percent lower (CAN$80) than the domestic industry's average selling price.[179]

164. The Tribunal notes that the difficulty of assessing the degree of price undercutting is due partly to the time lag between ordering and the arrival of imports in the domestic market. For example, imports from Russia purchased in late 2005, when prices were lower, only arrived in 2006, when prices had already begun to increase.[180] However, the domestic producers' evidence indicates that, at the time of purchase, the simple placing of an order already has an effect on prices in the Canadian market. The Tribunal's witnesses testified that importers will purchase imports rather than domestically produced finished hot-rolled sheet if imports are priced lower at the time of the order, provided that the price expectations of the market at the time of delivery will not result in a loss to the importer.[181] In this context, Algoma provided evidence to support the existence of price undercutting by product from several offshore sources of finished hot-rolled sheet, even before those imports landed in Canada.[182] Once the imports are present in the Canadian market, the importer will likely sell the finished hot-rolled sheet at a price that, in order to compete with domestic finished hot-rolled sheet, will undercut current domestic prices and, hence, capture sales regardless of how the domestic and import prices compared when the goods were ordered.

165. Thus, the Tribunal agrees with the position of the domestic producers that hot-rolled sheet from each subject country would have to be at prices that are competitive with the prices of hot-rolled sheet from both the other subject countries and the non-subject countries that are already present in the Canadian market, prices that significantly undercut the prices of the domestic industry. This would in turn force the domestic industry to reduce its own prices to maintain sales volume in light of the production imperative.

166. Accordingly, the Tribunal considers it likely that, if the finding were rescinded, a downward price spiral would begin, as significant volumes of imports from the subject countries begin to be sold in Canada. The extent to which prices will be lowered will depend both on the prices already in the market and on the supply-demand balance at the particular point in the market cycle for finished hot-rolled sheet. The greater

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176. Manufacturer's Exhibit E-01, para. 37, Administrative Record, Vol. 11A.
177. *Transcript of Public Hearing*, Vol. 3, 21 June 2006, at 485-87, 552-53.
178. *Ibid*. at 489.
179. *Pre-hearing Staff Report*, revised 2 June 2006, Tribunal Exhibit RR-2005-002-05B, Administrative Record, Vol. 1.1 at 220.
180. Manufacturer's Exhibit A-04, para. 42, Administrative Record, Vol. 11.
181. *Transcript of Public Hearing*, Vol. 3, 21 June 2006, at 485-87, 557-58.
182. Manufacturer's Exhibit A-03 (protected), paras. 43-56, Administrative Record, Vol. 12.

the surplus of supply over demand, the lower the subject countries' prices will be. Since, in the absence of the current finding, the volume of imports to Canada from the subject countries is likely to increase over the next 18 months, downward price pressures would intensify over that period.

167. In addition, the Tribunal notes that, in the inquiry, although the weighted average margins of dumping as a percentage of normal values ranged from 7.7 percent to 62.9 percent, the maximum margin of dumping was high for all the subject countries, i.e. 49.4 percent for Brazil and 62.9 percent for the five other subject countries.[183] This indicates that historically, in at least some instances, subject countries were willing to charge prices that were much lower than the ones prevailing in their home markets in order to make sales in the Canadian market.

168. On the basis of the foregoing, the Tribunal is persuaded that, if the finding is rescinded, dumped and subsidized imports of the subject goods will be sold at prices that would likely undercut significantly the prices of domestic producers.

Likely Performance of the Domestic Industry and Likely Impact of Dumped and Subsidized Goods

Position of the Domestic Producers

169. The domestic producers submitted that there is persuasive evidence that they will be injured by the resumed dumping and subsidizing of the subject goods. They argued that the financial performance of the domestic industry will be much weaker in 2006 and 2007 compared to the two previous years, even without taking into account the likely injury from resumed dumping and subsidizing. They argued that the resumed dumping and subsidizing of the subject goods would exacerbate existing domestic industry vulnerability to injury from other causes.

170. The domestic producers submitted that their market share is now as low as it was during the period of inquiry for the finding. They further submitted that they are vulnerable, due to the likely flat Canadian demand in 2006 and 2007.

171. The domestic producers submitted that new investments will be negatively impacted if, as a result of the negative impact on prices of the dumped and subsidized imports, the revenue stream is reduced. They submitted that they continue to be vulnerable to renewed dumping from the subject countries, notwithstanding recent price increases.

172. The domestic producers submitted that, even by holding costs constant, if the expected price declines are exacerbated by price pressures from the subject goods, which will occur if the finding is rescinded, pre-tax earnings will fall to near zero by mid-2007.

Position of the Foreign Producers

173. All foreign producers submitted that the Canadian industry has performed exceptionally well financially and should continue to be very strong in the near to medium term.

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183. The Canada Customs and Revenue Agency (now the CBSA) determined that China was operating as a non-market economy. Therefore, China's margin of dumping used a normal value that was determined based on profitable selling prices or full costs of production and an amount for profit of goods sold domestically in Brazil, a surrogate country with a market economy. Tribunal Exhibit RR-2005-002-12.01, Administrative Record, Vol. 1.4 at 39, 56-58.

174. Baosteel further submitted that the Canadian industry has experienced sustained profitability and high volumes and values of shipments, even in the context of competitive pressure from imports from the United States. It is not plausible that the rescission of the finding would cause or threaten to cause injury to the Canadian industry.

175. In addition, Ilyich argued that, with more and more confirmation that prices are increasing in world markets and with projections of firm demand locally, the door is open for the Canadian mills' continued success. It further submitted that oil prices are reaching historical levels, which can only trigger further activity in oil and gas exploration and increase demand for pipe and tube products.

176. The Brazilian Mills submitted that the Canadian industry is stronger and in better financial shape than it was at the time of the finding and that, given these excellent results, they cannot provide any positive evidence of vulnerability.

Tribunal's Analysis

177. As previously noted by the Tribunal, the market for finished hot-rolled sheet is cyclical. In recent years, this cycle has become shorter, now lasting 9 to 12 months. Even though (in the absence of the subject goods) the peaks and troughs may, in the near to medium term, become less acute than they were in 2004 and 2005, the Tribunal believes that the cycle remains inherently volatile. The likely performance of the domestic industry in the presence of the subject goods must be examined in the context of the market cycle.

178. All parties agree that, at present, the Canadian supply and demand for finished hot-rolled sheet are close to being in balance, with domestic supply, coupled with the current level of imports, satisfying domestic demand. Domestic market conditions are currently favourable and prices are high, having steadily increased since the third quarter of 2005. As indicated above, the Tribunal is of the view that these prices are likely to attract finished hot-rolled sheet imports from the subject countries.

179. As indicated above, Canadian demand is expected to be relatively flat overall in the near to medium term. While the outlook for the oil and gas sector is very strong, the manufacturing sector in central Canada is experiencing softness with the loss of some manufacturing companies, and the automotive sector is experiencing flat to minimal growth.[184] Moreover, the upward movement of interest rates in early 2006 may dampen the growth of the construction sector.[185]

180. As discussed above, the subject countries have significant and growing volumes of finished hot-rolled sheet available for the export markets. Absent the continuation of the finding, the Tribunal believes that the subject countries will seek to export significant quantities of these excess volumes of finished hot-rolled sheet into the Canadian market, attracted by its relatively high prices. Since demand is expected to be flat, this excess supply will upset the supply and demand equilibrium currently present in the Canadian market. As a result, the Tribunal believes that significant quantities of the subject goods will compete on price with the like goods, imports from non-subject countries and imports from other subject countries, thereby causing prices to spiral downward.

181. From a financial standpoint, the domestic industry as a whole performed relatively well during the period of review, particularly in 2004 and 2005. However, the Tribunal notes that the domestic producers' gross margins in the first quarter of 2006 declined, almost reaching the level of 2003, which was the year of

184. *Transcript of Public Hearing*, Vol. 3, 21 June 2006, at 478, 481, 561.
185. *Ibid.* at 653.

weakest financial results during the period of review. If the finding were rescinded, the presence of the subject goods would further weaken the financial results for 2006. Nonetheless, given that the domestic industry increased prices throughout the second quarter of 2006 and set increased prices for the third quarter of 2006, the Tribunal considers that 2006 will likely be a profitable year overall. The Tribunal is of the view that the downward price spiral caused by the subject goods would likely have an even more significant negative impact on the domestic industry's 2007 financial returns. Because the domestic industry would have to lower its prices to compete with the subject goods, it would experience lower revenues and profits. Furthermore, it is likely that, despite lowering prices, the domestic industry would still lose sales and associated market share, capacity utilization, revenues and profits. The lost volume would also result in higher unit costs, which would decrease the domestic industry's unit profit margins and, therefore, impact on overall financial health. The Tribunal does not consider that significant price suppression is likely, given that the evidence does not indicate that a significant increase in overall domestic input costs is likely to occur over the next 18 months.

182. There was no argument and no evidence presented as to whether the subject goods would likely cause injury to the production of hot-rolled sheet for internal processing. Accordingly, as in the inquiry, the Tribunal has focused its analysis on the likely impact of the dumping and subsidizing on the production of hot-rolled sheet for the merchant market.[186] However, it has assessed materiality of the likely injury in relation to the total production of hot-rolled sheet. It is of the view that the likely injury would be material, given that, over the period of review, domestic production for the domestic merchant market accounted for approximately 45 percent of the total production and that the magnitude of the likely financial losses is large, as discussed below.

183. The Tribunal notes that, as submitted by the domestic producers, there is no legal requirement for the domestic industry to incur losses for it to be injured and that injury can happen at any point in the market cycle. The issue is whether there would be injury that is material in comparison with the situation in which the domestic industry would otherwise find itself. To assess the possible effects of lower prices caused by the subject goods, it is instructive to consider a hypothetical example, based on the domestic industry's first-quarter figures for 2006. If the domestic industry had initially lowered price levels by an average of CAN$35 per metric tonne to compete with the subject goods (a price which is near the low end of the range of price differentials that makes imports attractive) and had been able to keep its sales volume constant, this initial decrease in prices would have eliminated approximately CAN$39 million of profits for domestic market sales for the quarter (equating to CAN$156 million on an annual basis, assuming no further decreases in prices over the year). Although this hypothetical figure is substantial, in fact, it is likely to be significantly lower than the amount of the financial impact that would actually occur. In a downward price spiral, there would be a series of price reductions, which would undoubtedly be greater than CAN$35 per metric tonne in total, and the likely injury suffered as a result would be correspondingly larger. In addition, there would also be injury in the form of lost sales volume and lost market share, which would decrease total revenues and profits, both directly and indirectly, due to increased unit costs.

184. Furthermore, the Tribunal is of the view that the downward price spiral would have an impact on the domestic industry's recent and planned capital investments, whereby the various phases of current upgrades could be jeopardized and the future investments of certain domestic producers delayed. These delays would undoubtedly impact future productivity in a negative way.

186. Tribunal Exhibit RR-2005-002-01, Administrative Record, Vol. 1 at 24.

185. Accordingly, the Tribunal is convinced that, if the finding is rescinded, the domestic industry will experience injury to its production, sales, market share, profits, productivity, capacity utilization, return on investment and cash flow, which will be material.

Other Factors

<u>Position of the Foreign Producers</u>

186. Baosteel submitted that, due to the higher exchange rate, the United States became more competitive in the Canadian market, which reduced the domestic producers' market share. The Brazilian Mills submitted that currency, particularly the U.S. dollar, has been an important factor in keeping prices higher, in that, the weaker the U.S. dollar, the higher the cost to produce steel outside the United States in U.S. dollar terms.

<u>Position of the Domestic Producers</u>

187. The domestic producers submitted that, even though the exchange rate has reduced the cost of material inputs that are priced in U.S. dollars, the high exchange rate restricts the ability of the domestic industry to export product, particularly to the United States, and to realize a reasonable return on its investment. As well, a higher exchange rate attracts imports into the Canadian market because imports and internationally traded steel are generally priced in U.S. dollars.

<u>Tribunal's Analysis</u>

188. It is difficult, if not impossible, to forecast the fluctuations of the Canadian dollar against the U.S. dollar over the next 18 months.[187] The Tribunal considers that the positions of the parties relate largely to what occurred during the period of review and that the parties have presented no convincing evidence that would indicate that exchange rates are likely to be a factor that causes injury in the next 18 months.

Country Exclusions

<u>Position of the Domestic Producers</u>

189. The domestic producers submitted that the finding should be continued against all the subject countries.

<u>Position of the Foreign Producers</u>

190. The foreign producers argued that the finding should be rescinded against each of their individual countries, since the subject goods from each of them would not likely injure the domestic industry.

<u>Tribunal's Analysis</u>

191. The Tribunal only grants country exclusions under exceptional circumstances, in situations where the evidence indicates that the goods from a particular country are not likely to cause injury. Based on all the

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187. Tribunal Exhibit RR-2005-002-31.06, Administrative Record, Vol. 1 at 381. This exhibit shows exchange rate forecasts by five Canadian commercial banks. While three of them forecast a depreciation of the Canadian dollar against the U.S. dollar between the first quarter of 2006 and the end of 2007, the other two predict an appreciation of the Canadian dollar against the U.S. dollar.

preceding analysis, the Tribunal does not consider that any of the subject countries merits being the subject of a country exclusion.

CONCLUSION

192. Based on the foregoing analysis and, pursuant to paragraph 76.03(12)(*b*) of *SIMA*, the Tribunal hereby continues its finding in respect of flat hot-rolled carbon and alloy steel sheet and strip originating in or exported from Brazil, the People's Republic of China, Chinese Taipei, India, South Africa and Ukraine.

193. In addition, pursuant to subparagraph 76.03(12)(*a*)(i) of *SIMA*, the Tribunal hereby rescinds its finding in respect of flat hot-rolled carbon and alloy steel sheet and strip originating in or exported from Bulgaria, the former Yugoslav Republic of Macedonia, and Serbia and Montenegro (formerly the Federal Republic of Yugoslavia).

Ellen Fry
Ellen Fry
Presiding Member

Meriel V. M. Bradford
Meriel V. M. Bradford
Member

Elaine Feldman
Elaine Feldman
Member