



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Expiry Review No. RR-2008-002

Hot-rolled Carbon Steel Plate and
High-strength Low-alloy Steel Plate

*Order issued
Thursday, January 8, 2009*

*Reasons issued
Friday, January 23, 2009*

TABLE OF CONTENTS

ORDER	i
STATEMENT OF REASONS	1
PRODUCT	2
Production Definition	2
Production Process	2
Product Applications	2
Marketing and Distribution	3
DOMESTIC PRODUCERS	3
Essar Algoma	3
Evraz IPSCO	3
SSAB	3
IMPORTERS AND EXPORTERS	3
SUMMARY OF PREVIOUS FINDINGS AND ORDERS	4
Plate V	4
Other Carbon Steel Plate Findings and Orders	4
ANALYSIS	5
Like Goods	5
Domestic Industry	6
Cumulation	6
Likelihood of Injury	7
Changes in Market Conditions	7
Likely Volumes of Dumped Goods	12
Likely Prices of Dumped Goods and Effects on Prices of Like Goods	15
Likely Performance of the Domestic Industry and Likely Impact of Dumped Goods on the Domestic Industry	17
Other Factors	18
CONCLUSION	19

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 January 9, 2004, in Inquiry No. NQ-2003-002, concerning:

**HOT-ROLLED CARBON STEEL PLATE AND HIGH-STRENGTH
LOW-ALLOY STEEL PLATE ORIGINATING IN OR EXPORTED FROM THE
REPUBLIC OF BULGARIA, THE CZECH REPUBLIC AND ROMANIA**

ORDER

On April 23, 2008, the Canadian International Trade Tribunal gave notice that, pursuant to subsection 76.03(3) of the *Special Import Measures Act*, it would initiate an expiry review of its finding made on January 9, 2004, in Inquiry No. NQ-2003-002, concerning hot-rolled carbon steel plate and high-strength low-alloy steel plate not further manufactured than hot-rolled, heat-treated or not, in cut lengths in widths from 24 inches (+/-610 mm) to 152 inches (+/-3,860 mm) inclusive and in thicknesses from 0.187 inch (+/-4.75 mm) to 4 inches (+/-101.6 mm) inclusive, originating in or exported from the Republic of Bulgaria, the Czech Republic and Romania, excluding plate produced to American Society for Testing and Materials (ASTM) specifications A515 and A516M/A516 Grade 70 in thicknesses greater than 3.125 inches (+/-79.3 mm), universal mill plate, plate for use in the manufacture of pipe and plate having a rolled, raised figure at regular intervals on the surface (also known as floor plate).

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 the aforementioned goods.

Ellen Fry
Ellen Fry
Presiding Member

Serge Fréchette
Serge Fréchette
Member

André F. Scott
André F. Scott
Member

Hélène Nadeau
Hélène Nadeau
Secretary

The statement of reasons will be issued within 15 days.

Place of Hearing: Ottawa, Ontario
Dates of Hearing: December 1 and 2, 2008

Tribunal Members: Ellen Fry, Presiding Member
Serge Fréchette, Member
André F. Scott, Member

Research Director: Dominique Laporte

Lead Research Officer: Gabrielle Nadeau

Research Officers: Shawn Jeffrey
John Gibberd

Statistical Research Officers: Po-Yee Lee
Julie Charlebois

Statistical Research Support Officer: Ian Delves

Counsel for the Tribunal: Jidé Afolabi

Assistant Secretary and Registrar: Susanne Grimes

Registrar Officer: Sarah MacMillan

PARTICIPANTS:**Domestic Producers**

Essar Steel Algoma Inc.

Evraz Inc. NA Canada

SSAB Central Inc.

Counsel/RepresentativesRonald C. Cheng
Peter JaroszDalton Albrecht
Tarsem Basraon
Elena BalkosDalton Albrecht
Katherine Xilinas
Krystle Ng-A-Mann
Elena Balkos

WITNESSES:

Mark Mittleman
Sales Manager, Construction and Heavy Fabrication
Essar Steel Algoma Inc.

Robert A. (Bob) Clark
Trade Consultant
Essar Steel Algoma Inc.

Derek De Korte
Marketing & Business Development
Essar Steel Algoma Inc.

R. J. (Bob) Schutzman
Director, Environmental Affairs & Trade
Evraz Canadian Operations
Evraz Inc. NA

James (Jim) P. B. Barber
General Manager—Steel Products
SSAB North American Division

James May
President
May Commodity Associates

Please address all communications to:

The Secretary
Canadian International Trade Tribunal
Standard Life Centre
333 Laurier Avenue West
15th Floor
Ottawa, Ontario
K1A 0G7

Telephone: 613-993-3595
Fax: 613-990-2439
E-mail: secretary@citt-tcce.gc.ca

STATEMENT OF REASONS

1. This is an expiry review, under subsection 76.03(3) of the *Special Import Measures Act*,¹ of the finding made by the Canadian International Trade Tribunal (the Tribunal) on January 9, 2004, in Inquiry No. NQ-2003-002, concerning hot-rolled carbon steel plate and high-strength low-alloy steel plate originating in or exported from the Republic of Bulgaria (Bulgaria), the Czech Republic and Romania (the subject goods).
2. On April 23, 2008, the Tribunal decided to initiate an expiry review and sent a notice of expiry review to known interested parties.² The Tribunal also sent letters requesting the Canadian producers, importers and exporters/foreign producers to complete expiry review questionnaires. These questionnaires and the replies thereto formed part of the Tribunal's expiry review record.
3. On April 24, 2008, the Canada Border Services Agency (CBSA) initiated an expiry review investigation to determine whether the expiry of the finding was likely to result in the continuation or resumption of dumping of the subject goods.
4. On August 21, 2008, 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 the subject goods.
5. On August 22, 2008, following the CBSA's determination, the Tribunal proceeded with its expiry review to determine, pursuant to subsection 76.03(10) of *SIMA*, whether the expiry of the finding respecting the subject goods was likely to result in injury or retardation. At the outset of the review process, the Tribunal requested that, if the CBSA found a likelihood of continued or resumed dumping, domestic producers, importers and exporters/foreign producers update their responses to questionnaires submitted to the CBSA to include data for the first six months of 2007 and 2008 and that domestic producers complete Part E of the expiry review questionnaire for producers.
6. The Tribunal held a hearing, with public and *in camera* testimony, in Ottawa, Ontario, on December 1 and 2, 2008.
7. The domestic producers, namely, Essar Steel Algoma Inc. (Essar Algoma), Evraz Inc. NA Canada (Evraz IPSCO) and SSAB Central Inc. (SSAB), submitted evidence and made arguments in support of a continuation of the finding. The three parties were represented by counsel and presented witnesses at the hearing.
8. The Tribunal invited Mr. James May of May Commodity Associates to testify at the hearing.
9. The record of these proceedings consists of the following: all relevant documents, including the CBSA's protected expiry review report, statement of reasons, index of background information and related documents; the protected and public replies to the expiry review questionnaires; the public and protected pre-hearing staff reports prepared for this expiry review; requests for information and parties' replies in accordance with the Tribunal's directions; witness statements and exhibits filed by the parties throughout the expiry review; the Tribunal's finding and notice of expiry review; and the public and protected pre-hearing staff reports prepared for Inquiry No. NQ-2003-002. All public exhibits were made available to the interested parties, while protected exhibits were provided only to counsel who had filed a declaration and undertaking with the Tribunal in respect of protected information.

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

2. C. Gaz. 2008.I.1407.

PRODUCT

Production Definition

10. The goods that are subject to this expiry review are defined as hot-rolled carbon steel plate and high-strength low-alloy steel plate (carbon steel plate) not further manufactured than hot-rolled, heat-treated or not, in cut lengths in widths from 24 inches (+/-610 mm) to 152 inches (+/-3,860 mm) inclusive and in thicknesses from 0.187 inch (+/-4.75 mm) to 4 inches (+/-101.6 mm) inclusive, originating in or exported from Bulgaria, the Czech Republic and Romania, excluding plate produced to American Society for Testing and Materials (ASTM) specifications A515 and A516M/A516 Grade 70 in thicknesses greater than 3.125 inches (+/-79.3 mm), universal mill plate, plate for use in the manufacture of pipe and plate having a rolled, raised figure at regular intervals on the surface (also known as floor plate).

Production Process

11. Essar Algoma produces steel in an integrated production process by combining iron ore, coke, limestone and oxygen, and by super heating the mixture in a blast furnace, then combining the resultant hot metal (pig iron) with scrap metal and more oxygen in a basic oxygen furnace to produce molten steel. Evraz IPSCO produces molten steel in an electric arc furnace or mini-mills using scrap metal as the raw material. SSAB does not produce molten steel and only performs cut-to-length plate operations.

12. In both integrated and mini-mill steel production, the molten steel is poured from a ladle to the tundish of a continuous-slab caster where it flows into the caster's mould. Here, it cools and forms the slab. The slab continues to move through the caster, cooling as it progresses, until it exits the caster, where it is cut to length with a torch.

13. The next step is to reheat the slab and roll it to its final width and thickness. After rolling, the carbon steel plate is levelled, identified and inspected for conformance to thickness tolerances and surface requirements. The plate is then tested to ensure that it meets the order requirements. After rolling, the plate may be heat treated. This involves reheating the plate to a uniform temperature and allowing it to cool after it is removed from the furnace.

14. Carbon steel plate can be either formed directly into rectangular shapes or coiled and later unwound and cut into lengths. The former is known as "discrete plate" and the latter as "plate from coil" or "cut-to-length plate".

15. Essar Algoma, Evraz IPSCO and SSAB, as well as some Canadian steel service centres, have the capability of cutting carbon steel plate from coils.

Product Applications

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

Marketing and Distribution

17. Carbon steel plate is sold directly to end users, such as large fabricators and original equipment manufacturers, or to service centres that may resell it in standard sizes and grades or offer custom cutting services. A major portion of Canadian mill shipments of carbon steel plate is sold to end users through service centres.

DOMESTIC PRODUCERS

18. There are currently three domestic producers of carbon steel plate: Essar Algoma of Sault Ste. Marie, Ontario; Evraz IPSCO with facilities in Regina, Saskatchewan, and Surrey, British Columbia; and SSAB with a cut-to-length facility in Scarborough, Ontario.³ The three domestic producers account for the majority of the carbon steel plate produced in Canada today. As mentioned earlier, some Canadian steel service centres also cut carbon steel plate to length.

Essar Algoma

19. Algoma Steel Inc. was incorporated on June 1, 1992, and, on January 29, 2002, the company was re-organized under a plan of arrangement and reorganization pursuant to the *Companies' Creditors Arrangement Act*.⁴ In June 2007, Algoma Steel Inc. became part of Essar Steel Holdings Limited, an Indian steelmaker, as a wholly owned subsidiary of Algoma Holdings B.V.

20. Essar Algoma is a primary iron and steel producer. It has the capacity to produce 3.4 million tonnes of raw steel annually. Its annual production in 2007, expressed in terms of finished steel production, was 2.2 million tonnes, consisting of carbon steel plate and other products, such as hot-rolled sheet, cold-rolled sheet, welded wide flanges and unfinished parts.

Evraz IPSCO

21. IPSCO Inc. was incorporated in 1956 and commenced production of carbon steel plate in Canada in 1960. In July 2007, IPSCO Inc. was purchased by SSAB of Sweden. Subsequently, on June 12, 2008, Evraz Group S.A. purchased a number of operations from SSAB of Sweden. This included the plate mill and cut-to-length plate facility in Regina and the cut-to-length plate facility in Surrey.

SSAB

22. SSAB of Sweden retained ownership of the cut-to-length plate facility in Scarborough when it sold a number of its operations to Evraz Group S.A. on June 12, 2008.

IMPORTERS AND EXPORTERS

23. The expiry review questionnaire for importers was sent to 60 potentially interested importers. Thirteen importers replied in full or in part. The Tribunal issued additional questionnaires to 17 importers. The responses to the expiry review questionnaire for importers and the additional questionnaires were used to prepare the pre-hearing staff report.

3. Stelco Inc. formerly produced carbon steel plate, but idled its Hamilton, Ontario, plate mill in April 2003 and subsequently closed the facility in June 2004. Stelco Inc. no longer produces carbon steel plate.

4. R.S.C. 1985, c. C-36.

24. The expiry review questionnaire for exporters was sent to 17 companies. A reply was received from ArcelorMittal Galati S.A. (AMG) of Romania.

SUMMARY OF PREVIOUS FINDINGS AND ORDERS

25. Since 1992, the Tribunal has conducted five inquiries concerning similar carbon steel plate products, each resulting initially in the imposition of either anti-dumping measures or both anti-dumping and countervailing measures on imports from various named countries. The cases are referred to as Plate I through Plate V. The case currently under review is referred to as Plate V. At the present time, anti-dumping and/or countervailing duty orders remain in place against the People's Republic of China (China), Bulgaria, the Czech Republic and Romania.

Plate V

26. On January 9, 2004, in Inquiry No. NQ-2003-002, the Tribunal found that dumped imports from Bulgaria, the Czech Republic and Romania had caused material injury to the domestic industry.

27. The Tribunal was of the opinion that dumped imports had gained significant sales volume and market share during the Tribunal's period of inquiry, particularly in 2002 and the first half of 2003, at the expense of the domestic industry. In 2001, in an attempt to compete with the subject goods, the domestic producers dropped their average prices from levels that were already unprofitable, thereby more than quadrupling their losses at the gross margin level. In 2002 and 2003, the domestic producers were able to increase their prices somewhat, but the constant downward pressure exerted on them by the subject goods did not permit them to increase their prices enough to cover costs, and they continued to suffer financial losses, as well as sustain further reductions in market share.

Other Carbon Steel Plate Findings and Orders

Plate I

28. On May 6, 1993, in Inquiry No. NQ-92-007, the Tribunal found that dumped imports from Belgium, Brazil, the Czech Republic, Denmark, the Federal Republic of Germany, Romania, the United Kingdom and the former Yugoslav Republic of Macedonia were injuring the domestic industry. At the same time, the Tribunal found that dumped imports from the United States were not injuring the domestic industry. On May 5, 1998, in Review No. RR-97-006, the Tribunal concluded that there was no likelihood of resumed dumping from the named countries and, therefore, rescinded its finding.

Plate II

29. On May 17, 1994, in Inquiry No. NQ-93-004, the Tribunal found that dumped imports from Italy, the Republic of Korea (Korea), Spain and the Ukraine were injuring the domestic industry. On May 17, 1999, in Review No. RR-98-004, the Tribunal issued an order continuing its finding. On May 17, 2004, in Expiry Review No. RR-2003-001, the Tribunal rescinded the order.

Plate III

30. On October 27, 1997, in Inquiry No. NQ-97-001, the Tribunal found that the dumped imports, which were defined to include goods from Mexico, had not caused material injury to the domestic industry, but were threatening to cause material injury. On January 10, 2003, in Expiry Review No. RR-2001-006, the Tribunal continued its finding concerning the dumped imports from China, the Republic of South Africa (South Africa) and the Russian Federation (Russia), but rescinded its finding with respect to Mexico.

31. On January 9, 2008, in Expiry Review No. RR-2007-001, the Tribunal was of the view that, given the current and expected conditions in the global, South African and Russian markets, goods from these sources would likely not compete either between themselves or with like goods in the Canadian market in the near term. The Tribunal, therefore, determined that it would not be appropriate to assess the cumulative effect of the dumping of goods from China, Russia and South Africa. The Tribunal found that it was likely that resumed or continued dumping from China would result in injury to the domestic industry and therefore continued its order with respect to China. The Tribunal also concluded that it was not likely that the resumed or continued dumping of goods from Russia or South Africa would result in injury to the domestic industry and therefore rescinded its order covering goods from Russia and South Africa.

Plate IV

32. On June 27, 2000, in Inquiry No. NQ-99-004, the Tribunal found that dumped imports from Brazil, Finland, India, Indonesia, Thailand and Ukraine and subsidized imports from India, Indonesia and Thailand had caused material injury to the domestic industry. On June 27, 2005, in Expiry Review No. RR-2004-004, the Tribunal rescinded its finding.

ANALYSIS

33. On August 21, 2008, the CBSA determined that, pursuant to paragraph 76.03(7)(a) of *SIMA*, the expiry of the finding was likely to result in the continuation or resumption of dumping of the subject goods. 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 or retardation, as the case may be, to the domestic industry.⁵

34. Therefore, the Tribunal is required, pursuant to subsection 76.03(12) of *SIMA*, to make an order either rescinding the finding issued in 2004, if it determines that the expiry of that finding is unlikely to result in injury, or continuing that finding, with or without amendment, if it determines that the expiry of that finding is likely to result in injury.

35. Before proceeding with its analysis concerning the likelihood of injury, the Tribunal will first determine (1) what domestically produced goods are “like goods” in relation to the subject goods, (2) what constitutes the “domestic industry” for the purposes of its analysis and (3) whether the analysis must be done separately for each subject country or cumulatively for all countries.

Like Goods

36. 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.” In considering the issue of like goods, the Tribunal typically looks at a number of factors, including the physical characteristics of the goods, their market characteristics and whether the domestic goods fulfill the same customer needs as the subject goods.

5. Subsection 2(1) of *SIMA* defines “injury” as “. . . material injury to a domestic industry” and “retardation” as “. . . material retardation of the *establishment* of a domestic industry” [emphasis added]. 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.

37. In its statement of reasons in Inquiry No. NQ-2003-002, the Tribunal stated the following:

... the domestic industry produces substantially the same goods as the subject goods and does so in the same way. Plate produced domestically, for the most part, competes with the subject goods, has the same end uses and can be substituted for them. Therefore, the Tribunal finds that the domestic like goods have uses and other characteristics which closely resemble those of the subject goods and thus, that they are like goods to the subject goods.⁶

...

38. In this expiry review, the Tribunal heard no evidence or argument that warrants departing from the conclusion on like goods reached in Inquiry No. NQ-2003-002. Accordingly, the Tribunal concludes that carbon steel plate produced by the domestic producers, defined in the same manner as the subject goods, constitutes like goods in relation to the subject goods.

Domestic Industry

39. 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 ..."

40. Essar Algoma, Evraz IPSCO and SSAB account for the vast majority of the total domestic production of like goods, and the Tribunal will consider them to constitute the domestic industry for the purpose of this expiry review.⁷

Cumulation

41. Subsection 76.03(11) of *SIMA* provides that, for the purpose of its determination, the Tribunal shall make an assessment of the cumulative effect of the dumping of goods "... that are imported into Canada from more than one country if the Tribunal is satisfied that an assessment of the cumulative effect would be appropriate taking into account the conditions of competition ..."

42. If the Tribunal is not satisfied that an assessment of the cumulative effect of the dumping of goods from more than one country would be appropriate, based on its assessment of the relevant conditions of competition, then it must assess the effects of dumping for each country separately.

43. The evidence indicates that carbon steel plate is a commodity product. As a commodity, carbon steel plate imported from each subject country is interchangeable, and the Tribunal considers this to be a strong indicator that its quality is similar. In addition, carbon steel plate from each subject country is shipped to Canada using the same mode of transportation (i.e. ocean vessel) and is distributed in Canada through the same type of distribution channel (i.e. brokers and service centres). Nothing indicates that these conditions of competition will change in the next 18 months.

6. (23 January 2004) (CITT) at 8.

7. *Protected Pre-hearing Staff Report*, Tribunal Exhibit RR-2008-002-06 (protected), Vol. 2.1 at 29; *Protected Addendum to the Pre-hearing Staff Report*, Tribunal Exhibit RR-2008-002-06A (protected), Vol. 2.1 at 135. Service centres that cut plate from coil account for the remaining volume of the domestic production of like goods.

44. Taking into account the conditions of competition discussed above, the Tribunal is satisfied that it would be appropriate to make an assessment of the cumulative effect of the dumping of carbon steel plate from Bulgaria, the Czech Republic and Romania.

Likelihood of Injury

45. Subsection 37.2(2) of the *Special Import Measures Regulations*⁸ lists the factors that the Tribunal may consider in addressing the question of likelihood of injury in cases where the CBSA has determined that there is a likelihood of continued or resumed dumping. The factors that the Tribunal considers relevant in this expiry review are discussed below.

46. In making its assessment of likelihood of injury, the Tribunal has consistently taken the view that the focus should be on circumstances that can reasonably be expected to exist in the near to medium term, which is generally 18 to 24 months from the expiration of the finding or order.⁹ The recovery from the current global recession is expected to commence in the latter part of this period, at the end of 2009.¹⁰ Demand for carbon steel plate generally follows the trends in the overall economy; however, the evidence indicates that it generally lags by about 9 to 18 months.¹¹ As a result, the recovery of demand for carbon steel plate at the end of the recession would probably not begin until about the end of 2010. An attempt to forecast the global and domestic markets for carbon steel plate for a full 24 months leads to considerable uncertainty, given the doubts concerning market behaviour during a period of recession and the time frame for the recovery of demand for carbon steel plate. Therefore, for the purposes of this expiry review, the Tribunal will focus on an 18-month period rather than on a longer period of up to 24 months.

Changes in Market Conditions

47. In coming to its view on the likely volumes and prices of the subject goods and their impact on the domestic industry if the finding were rescinded, the Tribunal first considered changes in both international and domestic market conditions, as contemplated by paragraph 37.2(2)(j) of the *Regulations*.

International Market Conditions

48. The changes in the international market conditions witnessed during the first two months of the last quarter of 2008 do not reflect the market conditions observed during the period from 2005 to the third quarter of 2008. By November 2008, it was generally acknowledged that a major global economic recession was in progress. The Organisation for Economic Co-operation and Development (OECD) indicated that many of its member states were in or on the verge of a protracted recession of a magnitude not experienced since the early 1980s. Its economic outlook for the United States forecasts that U.S. output will decline in the first half of 2009 and gradually pick up as the credit squeeze abates, the housing downturn bottoms out and monetary policy stimulus takes hold. Euro area activity will also fall over the first half of the 2009 and then gradually recover, as monetary easing gains traction and the effects of global financial market turbulence dissipate. It further indicates that the economies of major non-OECD countries, such as China, are slowing due to the combined effect of more difficult international credit conditions, earlier policy tightening, income losses due to lower commodity prices and weaker demand from OECD countries.

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

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.

10. Tribunal Exhibit RR-2008-002-28.27 (single copy exhibit), Administrative Record, Vol. 1.01B at 169.

11. *Transcript of Public Hearing*, Vol. 2, 2 December 2008, at 114-15.

According to its forecasts, growth in the OECD, generally, is likely to be negative for a number of quarters and will remain weak for the remainder of 2009. As well, for most OECD countries, a recovery to at least the growth rate experienced prior to the recession is not expected before the second half of 2010.¹²

49. The current economic environment has been reflected in the steel market. According to an article published on November 5, 2008, on Metals Place, a web site for metal traders, business and consumer confidence fell in Europe and the United States in October 2008, indicating slower growth ahead in the steel market, as consumers reduce spending and companies reduce employment levels.¹³ SSAB testified that world demand for steel was strong up until September 2008, but that, by November 2008, steel demand was off by 40 percent, that revenues could fall by 35 to 40 percent and that pre-slowdown production levels may not return until 2011.¹⁴ In an article published on November 24, 2008, the American Iron and Steel Institute wrote that steel makers were facing a harsh new reality and that dwindling orders, production cuts, layoffs and tougher times lay ahead. ArcelorMittal, the world's largest steel producer, plans to cut a third of its production in response to weaker demand and falling steel prices. China, the world's largest steel-making country, has responded to decreasing demand this year by cutting output by 20 percent.¹⁵

50. Concerning the global market for carbon steel plate in particular,¹⁶ the November edition of the *CRU Steel Plate Quarterly Report* summarizes the global plate market conditions as follows: "... During the first eight months of the year, strong demand, tight raw material fundamentals and a lack of import competition in North America and Europe allowed producers to consistently raise prices. Between December 2007 and their peaks in the third quarter [of 2008], domestic plate prices rose to unprecedented levels. However, plate prices have fallen back in all three regions since the summer A major factor behind the latest fall in prices has been weaker demand. Industrial production (IP) had already been forecast to fall over the third quarter. However, the recent worsening of the financial situation and the latest wave of banking bail-outs and stock market falls led to a further weakening of macroeconomic fundamentals through poorer consumer sentiment, decreased availability of credit and the impact of lower property values and share prices on consumer spending"¹⁷

51. To date, the significant decrease in demand for carbon steel plate worldwide has led purchasers of carbon steel plate to conserve cash in light of limited credit availability and to postpone capital investments. As well, purchasers are de-stocking and operating at minimum inventory levels in the expectation of lower prices in the future. The spot market for carbon steel plate is rapidly disappearing.¹⁸ Some producers of

12. Tribunal Exhibit RR-2008-002-28.27, Administrative Record, Vol. 1.01B at 169-71, 174.

13. Tribunal Exhibit RR-2008-002-RI-01, Administrative Record, Vol. 9 at 11.

14. *Transcript of Public Hearing*, Vol. 1, 1 December 2008, at 57-58.

15. Manufacturer's Exhibit B-05 at 4-6, Administrative Record, Vol. 11.

16. Although data in the staff report and most of the testimony of the witnesses refer to plate in accordance with the precise definition of the subject goods, there is some evidence on the record, including part of the testimony of the witnesses and information from several trade information providers (such as the *CRU Steel Plate Quarterly Report*, *MEPS International Steel Review* and *World Steel Dynamics*, and news articles from Metals Place and the American Iron and Steel Institute), which does not correspond exactly to the precise definition of the subject goods (i.e. carbon steel plate may include a somewhat broader range of dimensions, it may encompass different alloys, or it may include carbon steel plate that is intended for use in the manufacture of pipe and tube, which is expressly excluded from the definition of the subject goods). Nonetheless, the Tribunal considers the information on this broader range of carbon steel plate to be pertinent to this expiry review, as it is indicative of the relevant market trends concerning the subject goods. In instances where the reference to plate does not correspond exactly to the definition of the subject goods, the word "carbon steel plate" is used rather than "subject goods".

17. Tribunal Exhibit RR-2008-002-RI-01A (single copy exhibit) (protected), Administrative Record, Vol. 10 at 9.

18. *Transcript of Public Hearing*, Vol. 2, 2 December 2008, at 112-13.

carbon steel plate have responded to this situation by decreasing production and postponing investments.¹⁹ According to the Tribunal's witness, where production cuts have occurred in emerging economies, they have generally simply been responses to a lack of orders, but where they have occurred in mature economies, they have generally been forward-looking efforts aimed at stabilizing the market.²⁰

52. As a major producer and consumer of carbon steel plate, China is affected significantly by the current global market instability. The Tribunal's witness indicated that the Chinese carbon steel plate industry is highly fragmented, having approximately 15 to 20 medium- to large-sized producers of carbon steel plate, none of which are associated with global steel producers.²¹ Although the Tribunal's witness indicated that, as a result of the global recession, China has currently cut back production by 15 percent,²² as later explained in the "Likely Volumes of Dumped Goods" section, firms that are not globally affiliated are less likely to cut production in a proactive and concerted effort to reduce supply. The production cuts that took place in China were triggered by a slowdown in Chinese orders for carbon steel plate.²³

53. The *MEPS International Steel Review* reported in November 2008 that major customers of Chinese carbon steel plate have halted imports because of surplus inventories and poor economic conditions. One important example is the Korean shipbuilding industry. China is a large exporter of carbon steel plate to this industry and, until the middle of 2008, it has focused its production activities on shipbuilding grade carbon steel plate.²⁴ The Korean shipbuilding industry became overstocked in 2008 and had to halt plate imports from China. The seriousness of the situation in China is also illustrated by the fact that, as a result of the recession, the Chinese government decided to remove the export tax on most steel products, including carbon steel plate, effective December 1, 2008,²⁵ as part of a comprehensive initiative to keep China's economic growth steady.

54. The European Union (EU) carbon steel plate market is also affected by the global recession. The Tribunal's witness stated that the large EU carbon steel plate market, which is approximately 20 million tonnes a year, is likely to shrink by 15 percent. Essar Algoma testified that there is currently not enough demand in the EU market for producers of carbon steel plate to fill out their mills.²⁶ The *CRU Steel Plate Quarterly Report* also reported in November 2008 that the impact of the recent financial crisis has translated into the industrial production growth turning negative in most of the major EU economies during the third quarter of 2008. Demand was down by 7.6 percent in the third quarter of 2008 compared to the same period in 2007. Moreover, the industrial production growth is expected to remain negative through the first half of 2009 in most of the major EU economies, and, as a result, plate growth was forecast to remain low for much of 2009, before recovering briefly towards the end of 2009.²⁷ This drop in demand will be problematic for

19. Manufacturer's Exhibit A-01 at 61-67, 70-71, 83-84, Administrative Record, Vol. 11; Tribunal Exhibit RR-2008-002-RI-01, Administrative Record, Vol. 9 at 8-13, 16-17, 19, 25, 32, 42, 44-49.

20. *Transcript of Public Hearing*, Vol. 2, 2 December 2008, at 115-16.

21. Tribunal Exhibit RR-2008-002-28.16 (single copy exhibit), Administrative Record, Vol. 1.01A at 220; *Transcript of Public Hearing*, Vol. 2, 2 December 2008, at 98, 117, 162.

22. *Transcript of Public Hearing*, Vol. 2, 2 December 2008, at 117.

23. *Ibid.* at 118.

24. Tribunal Exhibit RR-2008-002-28.11 (single copy exhibit), Administrative Record, Vol. 1.01 at 293, 305, 318; Tribunal Exhibit RR-2008-002-28.17 (single copy exhibit), Administrative Record, Vol. 1.01B at 98; Tribunal Exhibit RR-2008-002-28.26 (single copy exhibit), Administrative Record, Vol. 1.01B at 156; *Transcript of Public Hearing*, Vol. 2, 2 December 2008, at 117-18, 162.

25. Tribunal Exhibit RR-2008-002-RI-01, Administrative Record, Vol. 9 at 30.

26. *Transcript of Public Hearing*, Vol. 1, 1 December 2008, at 20, 24, 27-28; *Transcript of Public Hearing*, Vol. 2, 2 December 2008, at 135.

27. Tribunal Exhibit RR-2008-002-RI-01A (protected), Administrative Record, Vol. 10 at 19, 20.

the producers of carbon steel plate in the subject countries, as the EU is one of their natural markets which accounted for about 37 percent of their exports in 2005 and increased to about 60 percent in 2008.²⁸ Furthermore, they will be in competition with other major plate-producing countries, such as China, that are seeking new market opportunities due to decreased demand in their normal markets.

55. Another important change that has occurred since the Tribunal's finding in 2004 is the trend in the differentials between the prices for carbon steel plate from the United States and the EU.²⁹ Although the EU price was higher than the U.S. price for most of the period of review, this has changed recently.³⁰ The Tribunal's witness stated that, at the time of the Tribunal's hearing, standard commodity carbon steel plate within the EU was priced at about US\$850 per tonne whereas the North American price³¹ was well over US\$1,000 per tonne.³² This testimony is corroborated by the November 2008 edition of the *CRU Steel Plate Quarterly Report*, which shows EU pricing being US\$300 per tonne below U.S. pricing of carbon steel plate.³³ As Canadian and U.S. prices of carbon steel plate meeting the definition of the subject goods are very similar, this means that the current EU price for the same goods is therefore significantly lower than Canadian prices.³⁴ It should be noted that the Chinese price of carbon steel plate remained the lowest price in the world during the period of review. The Tribunal's witness stated that, at the time of the hearing, standard commodity carbon steel plate from China was priced at about US\$600 to US\$650 per tonne.³⁵

56. Shipping costs have also experienced a major change in recent months. Shipping costs³⁶ had reached record highs by the middle of 2008, but since that time have fallen precipitously to levels that are by far the lowest experienced during the period of review. The fall in shipping rates is due, in large part, to the global recession, which created a reduction in shipping activities worldwide.

28. *Pre-hearing Staff Report*, Tribunal Exhibit RR-2008-002-05, Administrative Record, Vol. 1.1 at 58, 60, 62.

29. The Tribunal is of the view that the EU prices of carbon steel plate provided by the Tribunal's witness and found in the publication on the record, which cover standard grades of carbon steel plate, do correspond very closely to the prices of plate that meets the definition of the subject goods, as the latter are common-grade standard plate, of regular specifications, and exclude specialized grades of carbon steel plate. Therefore, the Tribunal will take any reference to the EU price of carbon steel plate as corresponding to the prices of plate meeting the definition of the subject goods, unless stated otherwise.

30. Based on an analysis of the *CRU Steel Plate Quarterly Report*, the German domestic price for carbon steel plate was greater than the U.S. Midwest price from the last quarter of 2006 to the second quarter of 2008 and reversed in the third quarter of 2008. Furthermore, the German domestic price for carbon steel plate is usually reflective of the EU domestic price. See Tribunal Exhibit RR-2008-002-RI-01A (protected), Administrative Record, Vol. 10 at 13.

31. When the Tribunal refers to the North American price, it includes only the price in Canada and the United States.

32. *Transcript of Public Hearing*, Vol. 2, 2 December 2008, at 108.

33. Tribunal Exhibit RR-2008-002-RI-01A (protected), Administrative Record, Vol. 10 at 13; *Transcript of Public Hearing*, Vol. 1, 1 December 2008, at 32-33.

34. As indicated by Essar Algoma, the Canadian price is very similar to the U.S. price for carbon steel plate. Furthermore, as illustrated in *MEPS International Steel Review*, the Canadian and U.S. prices for carbon steel plate follow the same trends. Thus, all references to the U.S. Midwest price for carbon steel plate will serve as a surrogate for the Canadian price. Tribunal Exhibit RR-2008-002-28.11 (single copy exhibit), Administrative Record, Vol. 1.01 at 230, 242, 254, 266, 278, 290, 302, 314; Tribunal Exhibit RR-2008-002-28.17 (single copy exhibit), Administrative Record, Vol. 1.01B at 95; Tribunal Exhibit RR-2008-002-28.24 (single copy exhibit), Administrative Record, Vol. 1.01B at 124; Tribunal Exhibit RR-2008-002-28.26 (single copy exhibit), Administrative Record, Vol. 1.01B at 153.

35. Tribunal Exhibit RR-2008-002-RI-01A (protected), Administrative Record, Vol. 10 at 13; *Transcript of Public Hearing*, Vol. 2, 2 December 2008, at 108.

36. Shipping costs are based on the Baltic Dry Index, which is a daily average of prices to ship raw materials. Tribunal Exhibit RR-2008-002-28.20, Administrative Record, Vol. 1A at 195.9-195.29.

57. In summary, worldwide market conditions significantly deteriorated in the fourth quarter of 2008. As observed above, the global market demand for plate was significantly impacted, which led, among other things, to production cuts for carbon steel plate in both the EU and China, to a significant decline in worldwide carbon steel plate prices. At the same time, there was a reversal in the relative price differentials between the EU and North America. As well, the global recession led to a major decline in global shipping rates.

Domestic Market Conditions

58. Since the Tribunal's finding in 2004, the changes in the structure of the domestic industry have resulted in all three producers becoming affiliated with global producers of carbon steel plate. The domestic producers submitted that, during the period of review, they performed relatively well. The data compiled by the Tribunal confirm this, showing that steel plate prices and demand were strong over that period, up to the third quarter of 2008.

59. According to the Bank of Montreal, the global economic slowdown has also extended to the Canadian economy. It was predicted by both the Bank of Montreal and the OECD that, as a result of the global recession, Canada would be in a recession in late 2008 and would not be expected to recover until late 2009.³⁷ As discussed below, the Canadian carbon steel plate industry is affected significantly by the conditions in the Canadian economy generally.

60. The domestic producers testified that production, shipments and average unit selling values, as well as gross margins and net profits, declined significantly in the last months of 2008.³⁸ Essar Algoma submitted that, despite increases in the beginning of 2008, the Canadian market experienced a significant decline in size in October 2008. Evraz IPSCO testified that the projected demand in Western Canada for carbon steel plate would drop in the fourth quarter of 2008 by 70 to 80 percent from what it was in the first part of 2008.

61. The domestic producers all reported that their order books are nearly empty and that, as a result, there is very little lead time between ordering and shipping. They indicated that this decline was due largely to a decrease in demand in some of the major markets, such as construction, general fabrication, railcar, shipbuilding and off-highway vehicles.³⁹ As a result, the domestic producers have had to reduce production.

62. In terms of pricing, Essar Algoma testified that, although prices continuously increased in the first 10 months of 2008, the decreased demand caused a decline in pricing for shipments in December 2008. SSAB testified that the magnitude of the price decline is forecast to be about 20 to 25 percent in 2009.⁴⁰ Finally, Essar Algoma stated that it has put in place a company-wide voluntary retirement program, which encompasses production of like goods, in order to reduce employment levels by 200 people.⁴¹

37. Tribunal Exhibit RR-2008-002-28.21, Administrative Record, Vol. 1A at 195.31-195.32; Tribunal Exhibit RR-2008-002-28.27, Administrative Record, Vol. 1.01B at 304-306.

38. *Transcript of Public Hearing*, Vol. 1, 1 December 2008, at 14-17, 58, 62-63.

39. Manufacturer's Exhibit A-03 (protected) at 16-19, Administrative Record, Vol. 12; Manufacturer's Exhibit A-04 at 16-19, 91, Administrative Record, Vol. 11; Manufacturer's Exhibit B-03 at 6-8, Administrative Record, Vol. 11; Manufacturer's Exhibit B-04 (protected) at 9, 16-17, Administrative Record, Vol. 12; Manufacturer's Exhibit C-03 at 15, Administrative Record, Vol. 11; Manufacturer's Exhibit C-06 (protected) at 4-8, Administrative Record, Vol. 12; *Transcript of Public Hearing*, Vol. 1, 1 December 2008, at 67, 73.

40. *Transcript of Public Hearing*, Vol. 1, 1 December 2008, at 14-15, 59.

41. *Ibid.* at 52; *Transcript of In Camera Hearing*, Vol. 1, 1 December 2008, at 46.

Likely Volumes of Dumped Goods

63. The Tribunal's assessment of the likely volumes of dumped imports⁴² encompasses the likely performance of the foreign industry,⁴³ potential for the foreign producers to produce goods in facilities that are currently used to produce other goods,⁴⁴ evidence of the imposition of anti-dumping measures on carbon steel plate or similar goods in other jurisdictions⁴⁵ and the likelihood of trade diversion.⁴⁶

64. The domestic producers submitted that dumping of the subject goods since the injury finding demonstrates that the subject countries are unable to compete without dumping. All three producers submitted that the importers of the subject goods have a propensity for source switching, as evidenced by the number of inquiries concerning carbon steel plate and the surge of imports returning to Canada from countries that had a finding or order against them rescinded in 2004, 2005 and 2008.⁴⁷

65. It was argued that, if the finding is rescinded, the subject countries will follow the precedent of many countries formerly covered by a finding or order and resume exporting to Canada in significant volumes at the lowest pricing available in the Canadian market. This resumption of dumping by the subject countries will occur even though the main producers in two of those countries belong to global steel producers that have affiliates in the North American market. The foreign producers will be attracted to the Canadian market due to the export dependence and the overcapacity of the main producers in the subject countries. It is the position of the domestic producers that countries such as China will force the subject countries out of their natural markets.

66. The evidence indicates that, during the period of review, the subject countries produced a large amount of carbon steel plate, with a significant volume being exported.⁴⁸ Although the Czech Republic is a significant importer, largely due to geographic reasons, all three countries are net exporters and heavily export-dependent. Exports of carbon steel plate as a percentage of total production represented approximately 75 percent for Bulgaria, 66 percent for the Czech Republic and between 50 and 60 percent for Romania. According to the evidence on the record, the main markets for these exports over the period of review have been the EU and Turkey. This can be largely explained by the subject countries being member states in the EU,⁴⁹ by the geographical proximity of these markets (which among other things involves

42. Paragraph 37.2(2)(a) of the *Regulations*.

43. Paragraph 37.2(2)(d) of the *Regulations*.

44. Paragraph 37.2(2)(f) of the *Regulations*.

45. Paragraph 37.2(2)(h) of the *Regulations*.

46. Paragraph 37.2(2)(i) of the *Regulations*.

47. For instance, after the rescission of the order and finding in Plate II and Plate IV, the Canadian market experienced increased imports from Brazil, Indonesia, Italy and the Ukraine, and they were joined by South Africa, when the order against it was rescinded in an expiry review of Plate III. Romania and the Czech Republic also followed this pattern after the rescission of the finding in Plate I. In all of these cases, in the producers' view, once the countries were free from compliance with normal value requirements, these countries made inroads into the Canadian carbon steel plate market by competing on price at the lowest market pricing then available.

48. Tribunal Exhibit RR-2008-002-12.14, Administrative Record, Vol. 1.4 at 226; Tribunal Exhibit RR-2008-002-12.15, Administrative Record, Vol. 1.4 at 281; Tribunal Exhibit RR-2008-002-12.27, Administrative Record, Vol. 1.4A at 245; Tribunal Exhibit RR-2008-002-12.30, Administrative Record, Vol. 1.01 at 124; Tribunal Exhibit RR-2008-002-28.14 (single copy exhibit), Administrative Record, Vol. 1.01A at 43-71; *Protected Pre-hearing Staff Report*, Tribunal Exhibit RR-2008-002-06 (protected), Administrative Record, Vol. 2.1 at 56; *Transcript of Public Hearing*, Vol. 2, 2 December 2008, at 101, 103-104.

49. The Czech Republic joined the EU prior to the period of review on May 1, 2004, while Romania and Bulgaria joined the EU on January 1, 2007.

lower shipping costs),⁵⁰ as well as by the large demand for carbon steel plate in Turkey's shipbuilding industry.⁵¹ Furthermore, from the end of 2006 to the first half of 2008, the subject countries had an additional incentive to export to EU countries because of the higher pricing prevailing in that market. Indeed, in the fourth quarter of 2007, EU prices were approximately 30 percent higher than North American prices.⁵²

67. The Tribunal will now examine production and capacity levels for the main producers of carbon steel plate in the subject countries. In the Czech Republic, Evraz Vítkovice Steel accounts for the majority of the plate production, with a capacity for carbon steel plate of approximately 800,000 tonnes and production in 2007 of 733,000 tonnes. Bulgaria's production is around 400,000 tonnes with Stomana Industry S.A. being the main producer of carbon steel plate, and its capacity is 400,000 tonnes. In Romania, AMG is the largest producer of carbon steel plate and represents 90 percent of the industry in that country. The Tribunal's witness estimated AMG capacity to be between 2.2 and 2.4 million tonnes and its production to be between 1.8 and 2.0 million tonnes a year.⁵³

68. The weaker global demand for plate has led to cuts in carbon steel plate production in the subject countries and could lead to further cuts over the next 18 months. To date, AMG has cut back overall steel production significantly by 30 to 50 percent in conjunction with production cuts that have taken place elsewhere amongst the ArcelorMittal family of companies.⁵⁴ The evidence does not indicate any production cuts in the Czech Republic or Bulgaria to date. The Tribunal's witness indicated that, in his view, producers in the Czech Republic may well cut production, but that producers in Bulgaria are likely to be reluctant to do so. The Tribunal's witness was of the view that producers in those two countries are likely to sell as much as possible to maximize production.⁵⁵

69. In assessing the extent to which any production cuts will materialize, the Tribunal takes into account the fact that, in its view, the major plate producers that manage their production on a global basis are more likely than other producers to cut back their production for the sake of market stability. In that regard, the Tribunal notes the evidence that Stomana Industry S.A. of Bulgaria has international affiliations, but not to the extent that would make the Tribunal consider it to be affiliated with a global steel producer, and the Czech producer, Evraz Vítkovice Steel, is part of the Evraz group, but operates independently from the other Evraz producers.⁵⁶ The global affiliations of Evraz are further discussed below.

50. The Tribunal's witness stated that the subject countries can ship a large amount of the same type of carbon steel plate to Turkey in a single shipment. *Transcript of Public Hearing*, Vol. 2, 2 December 2008, at 106.

51. Tribunal Exhibit RR-2008-002-22.02 (protected), Administrative Record, Vol. 6.1 at 20; Tribunal Exhibit RR-2008-002-28.14 (single copy exhibit), Administrative Record, Vol. 1.01A at 43-71; *Pre-hearing Staff Report*, Tribunal Exhibit RR-2008-002-05, Administrative Record, Vol. 1.1 at 58, 60, 62; *Transcript of Public Hearing*, Vol. 2, 2 December 2008, at 100, 102-106, 137-38, 164.

52. Tribunal Exhibit RR-2008-002-RI-01A (protected), Administrative Record, Vol. 10 at 13.

53. Tribunal Exhibit RR-2008-002-12.26, Administrative Record, Vol. 1.4A at 173; Tribunal Exhibit RR-2008-002-12.27, Administrative Record, Vol. 1.4A at 245; *Protected Pre-hearing Staff Report*, Tribunal Exhibit RR-2008-002-06 (protected), Administrative Record, Vol. 2.1 at 56; *Transcript of Public Hearing*, Vol. 2, 2 December 2008, at 100-104.

54. Tribunal Exhibit RR-2008-002-RI-01, Administrative Record, Vol. 9 at 9-13, 16.

55. *Transcript of Public Hearing*, Vol. 2, 2 December 2008, at 120-21.

56. *Transcript of Public Hearing*, Vol. 1, 1 December 2008, at 77-78.

70. The Tribunal's witness was of the view that, even taking into account any production cutbacks, there remains a strong production imperative in the subject countries in light of the capital-intensive nature of plate production. The Tribunal's witness was of the view that, if they can sell at prices sufficient to recoup their marginal costs, producers of the subject goods have an incentive to maintain, rather than cut back, production levels.⁵⁷

71. In the Tribunal's view, this production imperative will be very pressing over the next 18 months, as the subject countries will experience a significant loss of demand in their major markets. As noted above, the EU is currently experiencing a significant decline in demand for carbon steel plate. As well, there will likely be a severe downturn in Romania and in Bulgaria's major market, the Turkish shipbuilding industry. This is because the recession has resulted in a significant decrease in shipping activity and, hence, in the demand for new ships. Although there will likely be some lag, as current contracts are completed, this will inevitably cause a significant slowdown in shipbuilding. Furthermore, Turkey is expected to add additional capacity of 1 million tonnes of carbon steel plate in the second half of 2009. If this capacity addition goes forward despite the recession, it will also reduce the need for imports of carbon steel plate from the subject countries in this market.⁵⁸

72. In addition to experiencing decreasing demand for carbon steel plate in the subject countries' existing markets, producers in the subject countries will face increased competition from other countries within their own domestic markets and other export markets due to the pressures felt globally.

73. For instance, as discussed above, the demand for Chinese carbon steel plate is expected to decline. Although China has currently cut back production, the Tribunal is of the view that it will be unlikely to cut back production in a sustained way for the sake of market stability, given the fragmented nature of the Chinese industry and its lack of globally affiliated steel producers, as indicated above. As argued by the domestic producers, it is reasonable to assume that, given the existing anti-dumping orders in North America and the lack of demand from the Korean shipbuilding industry, China's preferred export destination for the subject goods will be the EU.⁵⁹ Although the Tribunal's witness alluded to the possibility of an anti-dumping action by the EU against China, there is no evidence supporting the assertion that Chinese exports will be dumped in the EU and no indication of whether and when, if they are dumped, any trade action would be taken or proven successful.

74. The increased competition from other plate-exporting countries will likely create a domino effect in which, in the Tribunal's view, the production imperative will increase the pressure on the subject countries to seek new markets for their carbon steel plate exports. It is reasonable to assume that, if the finding is rescinded, Canada is a likely market for the subject goods mainly for three reasons. First, foreign exporters of carbon steel plate have a propensity to target the markets with the highest prices⁶⁰ and, as discussed above, Canada will be one of these markets. Second, foreign producers will try to sell at a price sufficient to cover their marginal costs, something that the higher Canadian prices will allow. Third, because of the global recession, shipping costs are expected to remain low over the next 18 months, and this will constitute an additional incentive to export the subject goods to Canada.

57. *Transcript of Public Hearing*, Vol. 2, 2 December 2008, at 126, 130.

58. Tribunal Exhibit RR-2008-002-28.20, Administrative Record, Vol. 1A at 195.12-195.29; *Transcript of Public Hearing*, Vol. 2, 2 December 2008, at 105, 163-64.

59. *Transcript of Public Hearing*, Vol. 1, 1 December 2008, at 63-65, 78-79; *Transcript of Public Hearing*, Vol. 2, 2 December 2008, at 118-20.

60. *Transcript of Public Hearing*, Vol. 1, 1 December 2008, at 63-65, 78-79; *Transcript of Public Hearing*, Vol. 2, 2 December 2008, at 122.

75. Another factor that will come into play in making Canada an attractive destination for the subject goods is the presence of existing channels of distribution which would make it easy to switch sources. In this regard, the Tribunal notes the interest demonstrated by importers of the subject goods for the Canadian market over the period of review. Despite the presence of an anti-dumping finding against Romania and the Czech Republic, Canada was still a destination for small volumes of exports from those countries. Furthermore, AMG sought normal values in the CBSA's latest re-investigation.⁶¹ Finally, the Tribunal notes that, as submitted by Essar Algoma, importers of carbon steel plate in Canada, which have remained mostly the same in recent years, have a long history of source switching in order to find the lowest pricing available from different sources.

76. The Tribunal will now examine whether the globally affiliated steel producers in the subject countries are likely to refrain from shipping to Canada because of these affiliations if the finding is rescinded. As mentioned above, the Tribunal notes that AMG and Evraz Vitkovice Steel, the major producers in Romania and Czech Republic, are affiliated with global steel producers that also produce plate in North America. However the Tribunal is satisfied that these affiliations will not prevent them from shipping subject goods to Canada if the finding is rescinded. Concerning the main producer in the Czech Republic, the witness for Evraz IPSCO indicated that each Evraz company operates on a fully independent basis. His statement was corroborated by other evidence on the record.⁶² Accordingly, the Tribunal accepts the view that the Evraz Company in the Czech Republic will sell significant volumes of the subject goods at dumped prices in Canada regardless of its impact on Evraz ISPCO.⁶³

77. The evidence also indicates that ArcelorMittal's carbon steel plate mill in Romania produces mainly low-end commodity-grade plate, whereas ArcelorMittal's mill in the United States produces mainly higher-end plate.⁶⁴ Therefore, ArcelorMittal's mill in Romania could dump low-end commodity-grade subject goods in Canada without interfering, to any significant extent, with any shipments made to Canada by ArcelorMittal's mill in the United States. In addition, the Tribunal notes that ArcelorMittal does not own a carbon steel plate mill in Canada.⁶⁵

78. Finally, with respect to the imposition of anti-dumping or countervailing measures by other jurisdictions, the Tribunal notes that Romania is subject to an anti-dumping action by Mexico, which could indicate a propensity to dump plate in other countries.

79. In light of the above, the Tribunal is convinced that, if the finding is rescinded, there will likely be significant volumes of imports of the subject goods into Canada.

Likely Prices of Dumped Goods and Effects on Prices of Like Goods

80. In assessing the effects that the likely prices of dumped goods would have on prices of like goods, the Tribunal will examine whether the dumped goods are likely to significantly undercut, depress or suppress the prices of like goods.⁶⁶ At the outset, the Tribunal notes, as indicated above, that carbon steel plate meeting the definition of the subject goods is a commodity product and that price is therefore the primary factor driving the purchasing decision.⁶⁷

61. Tribunal Exhibit RR-2008-002-03A, Administrative Record, Vol. 1 at 167, 181; *Protected Pre-hearing Staff Report*, Tribunal Exhibit RR-2008-002-06 (protected), Administrative Record, Vol. 2.1 at 31; Manufacturer's Exhibit A-04 at 44-45, Administrative Record, Vol. 11.

62. Tribunal Exhibit RR-2008-002-RI-02A (protected), Administrative Record, Vol. 10 at 2.

63. *Transcript of Public Hearing*, Vol. 1, 1 December 2008, at 77-78.

64. *Transcript of Public Hearing*, Vol. 2, 2 December 2008, at 131-34.

65. *Ibid.* at 23.

66. Paragraph 37.2(2)(b) of the *Regulations*.

67. *Transcript of Public Hearing*, Vol. 1, 1 December 2008, at 9-10.

81. The domestic producers argued that there is a propensity for the subject countries to dump in significant volumes at price levels that are below the domestic prices and that this is sufficient to cause either serious price erosion, if the domestic producers try to match the dumped prices, or declines in domestic sales volumes, if they cannot meet those prices. Moreover, Essar Algoma submitted that the subject goods will also be priced at levels to undercut other present low-priced country pricing, which is already substantially below domestic pricing. This phenomenon was experienced in the low pricing of carbon steel plate from countries that successfully re-entered the Canadian market after a finding or order against them was rescinded.

82. In terms of the expected price of North American carbon steel plate in the next 18 months, the witness for Essar Algoma submitted that, in order for the foreign mills to maximize production, the subject countries will sell the subject goods at 20 to 30 percent below the Canadian price.⁶⁸ The domestic producers also indicated that the analysis by the *CRU Steel Plate Quarterly Report* forecast the U.S. Midwest price to continually fall from the fourth quarter of 2008 to the fourth quarter of 2009. Furthermore, the Canadian price decline will occur in a time frame when Canadian consumption is flat and then declines.⁶⁹

83. As stated previously, the evidence indicates that North American prices are higher than EU and Chinese prices. Conversely, the Tribunal's witness testified that he expected that, within the next 12 to 18 months, North American and EU prices will eventually converge. However, this does not mean that prices are expected to be identical in both markets, as even with price convergence taking place, a US\$150 per tonne variation between the EU and U.S. markets will remain, in order to take into account a price of US\$50 to US\$60 per tonne for freight and an importer discount of approximately US\$100 per tonne.⁷⁰

84. Relying on the testimony from the Tribunal's witness that the subject countries will export to Canada as long as their marginal costs are covered, the Tribunal estimated the lowest import selling prices of the subject goods into the Canadian market by taking into account the estimated marginal costs of production for carbon steel plate, shipping costs, trading group commission, as well as a 5 to 10 percent discount required by importers to cover longer lead times. In all cases, the estimated import selling prices were significantly lower than the estimated U.S. Midwest prices forecast by the *CRU Steel Plate Quarterly Report*, which is also reflective of the Canadian prices, as discussed above.⁷¹

85. Based on the foregoing, and considering the price differential between the North American and EU prices, as discussed in the "Likely Volumes of Dumped Goods" section, the Tribunal is of the view that the prices in North America are likely to be more attractive (after allowing for freight costs and importer discounts to cover longer lead times) than those in the EU for most or all of the next 18 months. The Tribunal also considers that, at any time during the 18 month period where the North American and EU prices are essentially the same, it is likely that the subject goods will be shipped to North America nonetheless, given the lack of plate demand in the EU market and the production imperative faced by mills in the subject countries, as discussed above.

86. Concerning the domestic producers' argument that the subject goods will also be priced to undercut the prices of carbon steel plate meeting the definition of the subject goods from other countries with low-priced products, the Tribunal notes that, in the finding, the price difference between the subject

68. *Ibid.* at 29.

69. Manufacturer's Exhibit A-03 (protected) at 22-23, 90, 92, Administrative Record, Vol. 12.

70. *Transcript of Public Hearing*, Vol. 2, 2 December 2008, at 140, 148.

71. Tribunal Exhibit RR-2008-002-RI-01A (protected), Administrative Record, Vol. 10 at 13; *Transcript of Public Hearing*, Vol. 2, 2 December 2008, at 148, 153-55, 160-61.

countries and the domestic industry was approximately 17 percent during the period of investigation.⁷² Furthermore, the evidence on the record on recent import activity reports from other low-priced countries showed discounts of the same magnitude. If the finding were rescinded, producers in the subject countries would have no choice but to compete with other low-cost sources to gain market share. Therefore, the Tribunal is of the opinion that producers in the subject countries will export the subject goods at prices that will significantly undercut Canadian prices, which will lead to injury through price depression.

87. Turning to the domestic producers' contention that they will experience price suppression if the subject goods are allowed to re-enter the Canadian market, all three producers submitted that, because fixed costs remain the same as production decreases, their unit costs increased in 2008 and are expected to increase further in the near to medium term, despite the fact that metallurgical and coal costs are expected to fall and scrap prices will be lower. Essar Algoma further submitted that it buys coal, ore and natural gas in U.S. dollars and that, because of the weakening of the Canadian dollar in relation to the U.S. dollar, raw material costs will go up.⁷³ If these cost increases materialize as predicted, the presence of the subject goods in the Canadian market will prevent the domestic producers from increasing prices in order to recoup their higher costs, which will result in price suppression.

88. Concerning the time needed for the prices of the subject goods to have an impact on Canadian prices, the witness for SSAB indicated that there is a lag of three months for a direct downward price reaction to occur after the introduction of low-priced offshore imports. This lag is due to these new prices not applying to existing orders and to producers not communicating their willingness to accept lower prices.⁷⁴ Furthermore, the Tribunal's witness confirmed that a shipment of between 500 and 5,000 tonnes offered in a single sale would be enough to bring the price down, as purchasers would be telling other purchasers about the latest competitive price and the latter would seek to get the best price.⁷⁵

89. Accordingly, the Tribunal concludes that, if the finding is rescinded, imports of the subject goods will enter Canada at prices that will undercut the price of the like goods and will cause price depression and suppression, within the next 18 months.

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

90. The Tribunal will now consider the likely impact that the subject goods will have on the domestic industry if the finding is rescinded, taking into consideration the domestic industry's recent performance.⁷⁶

91. The domestic producers submitted that, as a result of the downturn in the economy, they are more at risk of experiencing injury if dumping resumes. They argued that the outlook for demand in Canada for carbon steel plate from the last quarter of 2008 to 2010 is not positive and that, if the finding is rescinded, low-priced imports of the subject goods will force them to lower their prices. In turn, their profitability will further be under threat from the pressure that they are facing from the decline in the economy and imports from other low-priced countries. The evidence on the record shows that the Canadian producers increased production and sales during the period of review up until the end of the third quarter of 2008. These increases occurred as the domestic producers lost market share. As well, net profits fell between 2005 and

72. Tribunal Exhibit RR-2008-002-10A, Administrative Record, Vol. 1.3A at 41.

73. *Transcript of Public Hearing*, Vol. 1, 1 December 2008, at 18.

74. Manufacturer's Exhibit C-05 at 20, Administrative Record, Vol. 11.

75. *Transcript of Public Hearing*, Vol. 2, 2 December 2008, at 149.

76. Paragraphs 37.2(2)(c), (e) and (g) of the *Regulations*.

2007, but increased significantly in the first half of 2008 compared to the first half of 2007.⁷⁷ However, in October 2008, the market for carbon steel plate felt the impact of the global downturn. Demand for carbon steel plate declined abruptly, and prices decreased more quickly than costs, which negatively impacted the domestic producers' margins.⁷⁸ The domestic industry argued that the weaker demand has left Canadian producers in a vulnerable position.

92. In terms of capacity utilization, all three producers argued that changes in the demand for plate have caused a decline in capacity utilization rates. In their view, the presence of the subject goods will exacerbate the injury to the domestic industry, as there will be a transfer from the little demand left from domestic producers to producers from the subject countries.⁷⁹

93. As outlined above, demand in the Canadian market for the next 18 months will be weaker.⁸⁰ The Tribunal is of the view that the subject countries will need to compete aggressively for the very limited demand and, in doing so, will have to undercut the domestic prices.⁸¹ The domestic producers will be left with no other alternative but to lower their prices or keep them at a level that does not recover increased costs or they will lose sales. This will have a negative impact on their financial returns. Should the domestic producers lose additional sales, the Tribunal is of the view that they will be forced to make further cuts to production beyond what is forecast to occur as a result of the declining demand.

94. Furthermore, the Tribunal is of the view that the loss in sales volume that the domestic producers would experience if the finding were rescinded would negatively impact their financial performance, both in terms of total revenues and profits and in terms of the ability to keep unit costs at an optimum level. This, in turn, will be detrimental to the domestic producers' cash flow and their ability to raise capital.

95. In addition, the Tribunal heard that, in light of the current economic situation, the domestic industry does not anticipate any new investments within the next 18 months. The Tribunal is convinced that the negative impact on the financial results of the domestic producers will make it difficult for them to obtain a positive return on their investments and will reduce the possibility of further investments and growth in the future.

96. In summary, the Tribunal concludes that, if the finding were rescinded, the domestic industry would experience material injury to its production, sales, market share, profits, productivity, return on investments, utilization of production capacity, cash flow, employment, growth and the ability to raise capital.

Other Factors

97. Pursuant to paragraph 37.2(2)(k) of the *Regulations*, the Tribunal may consider any other factors relevant in the circumstances. Accordingly, the Tribunal reviewed certain factors unrelated to dumping that could adversely affect the domestic industry.

77. *Protected Pre-hearing Staff Report*, Tribunal Exhibit RR-2008-002-06 (protected), Administrative Record, Vol. 2.1 at 27, 34; *Protected Addendum to the Pre-hearing Staff Report*, Tribunal Exhibit RR-2008-002-06A (protected), Administrative Record, Vol. 2.1 at 135-36.

78. *Transcript of Public Hearing*, Vol. 1, 1 December 2008, at 58.

79. *Ibid.* at 49.

80. *Transcript of Public Hearing*, Vol. 2, 1 December 2008, at 115.

81. *Transcript of Public Hearing*, Vol. 1, 1 December 2008, at 84.

98. The Tribunal notes that, during the period of review, the Canadian dollar appreciated against the U.S. dollar and then remained on par with it until mid-2008 before declining significantly over a short period. While the Tribunal is cognizant that currency fluctuations could constitute an important factor affecting financial performance, it is of the view that any increase in the costs of raw materials attributable to a decline of the Canadian dollar against the U.S. dollar will likely be offset by the fact that selling prices for plate are established in U.S. dollars. The evidence does not indicate how the Canadian and U.S. dollars are likely to fluctuate over the next 18 months or to what extent the net effects of any such fluctuations on the domestic producers are likely to be positive or negative.

99. Another factor that the Tribunal views as having a potential impact on the domestic industry's performance is imports from the United States. Data indicate that, during the period from 2005 to the first half of 2008, imports of carbon steel plate from the United States meeting the definition of the subject goods increased.⁸² Nevertheless, the Tribunal is of the view that the injury caused by the subject goods is likely to be material notwithstanding any injury that could be caused by imports of carbon steel plate from the United States.

CONCLUSION

100. In view of the above, the Tribunal finds that it is likely that the resumed or continued dumping of the subject goods will result in material injury to the domestic industry. Based on the foregoing analysis, and pursuant to paragraph 76.03(12)(b) of *SIMA*, the Tribunal hereby continues its finding in respect of the subject goods.

Ellen Fry
Ellen Fry
Presiding Member

Serge Fréchette
Serge Fréchette
Member

André F. Scott
André F. Scott
Member

82. *Protected Pre-hearing Staff Report*, Tribunal Exhibit RR-2008-002-06 (protected), Administrative Record, Vol. 2.1 at 95.