



Ottawa, Tuesday, May 5, 1998

Review No.: RR-97-006

IN THE MATTER OF a review, under subsection 76(2) of the *Special Import Measures Act*, of the finding made by the Canadian International Trade Tribunal on May 6, 1993, in Inquiry No. NQ-92-007, concerning:

**CERTAIN HOT-ROLLED CARBON STEEL PLATE AND HIGH-STRENGTH  
LOW-ALLOY PLATE, HEAT-TREATED OR NOT, ORIGINATING IN OR  
EXPORTED FROM BELGIUM, BRAZIL, THE CZECH REPUBLIC,  
DENMARK, THE FEDERAL REPUBLIC OF GERMANY, ROMANIA,  
THE UNITED KINGDOM AND THE FORMER YUGOSLAV REPUBLIC OF  
MACEDONIA**

**ORDER**

The Canadian International Trade Tribunal, under the provisions of subsection 76(2) of the *Special Import Measures Act*, has conducted a review of its finding made on May 6, 1993, in Inquiry No. NQ-92-007.

Pursuant to subsection 76(4) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby rescinds the above-mentioned finding.

Charles A. Gracey

Charles A. Gracey  
Presiding Member

Pierre Gosselin

Pierre Gosselin  
Member

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.  
Member

Michel P. Granger

Michel P. Granger  
Secretary

The Statement of Reasons will be issued within 15 days.



Ottawa, Wednesday, May 20, 1998

Review No.: RR-97-006

**CERTAIN HOT-ROLLED CARBON STEEL PLATE AND HIGH-STRENGTH  
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THE UNITED KINGDOM AND THE FORMER YUGOSLAV REPUBLIC OF  
MACEDONIA**

*Special Import Measures Act* - Whether to rescind or continue, with or without amendment, the finding made by the Canadian International Trade Tribunal on May 6, 1993, in Inquiry No. NQ-92-007.

Place of Hearing: Ottawa, Ontario  
Dates of Hearing: April 20 to 23, 1998  
  
Date of Order: May 5, 1998  
Date of Reasons: May 20, 1998  
  
Tribunal Members: Charles A. Gracey, Presiding Member  
Pierre Gosselin, Member  
Robert C. Coates, Q.C., Member  
  
Director of Research: Peter Welsh  
  
Researcher: W. Douglas Kemp  
  
Economist: Ihn Uhm  
  
Statistician: Margaret Saumweber  
  
Counsel for the Tribunal: Hugh J. Cheetham  
Shelley Rowe  
  
Registration and Distribution Officer: Claudette D. Friesen  
  
**Participants:** Ronald C. Cheng  
Gregory O. Somers  
Benjamin P. Bedard  
for Algoma Steel Inc.  
IPSCO Inc.

Lawrence L. Herman  
Y.K. Anne Kim  
for Stelco Inc.

**(Domestic Producers)**

Denis Gascon  
for Francosteel Canada Inc.  
AG Der Dillinger Hüttenwerke

Peter Clark  
Sean Kirby  
Yannick Beauvalet  
for British Steel Canada Inc.

Christopher Hines  
Alia Tayyeb  
for USIMINAS

Peter E. Kirby  
for Charleroi (USA) Inc.

Donald Goodwin  
Dawn L. Miller  
for Thyssen Canada Limited  
Metalexportimport S.A.

Richard S. Gottlieb  
Hynek Zikovsky  
Jesse Goldman  
Peter Collins  
for Vitkovice, a.s.

**(Importers/Exporters/Others)**

**Witnesses:**

Robert W. Dionisi  
General Manager  
Plate and Shape Product Sales  
Algoma Steel Inc.

Derek M. de Korte  
Manager  
Plate and Structural Sales  
Algoma Steel Inc.

R.A. (Bob) Clark  
General Supervisor  
Accounting Control  
Algoma Steel Inc.

P. Murray Williamson  
General Manager – Sales and Marketing  
Steel Mill Products Division  
IPSCO Saskatchewan Inc.

Glenn A. Gilmore  
Trade Supervisor  
IPSCO Inc.

David J. Green  
General Manager  
IPSCO Ontario Inc.

Donald K. Belch  
Director – Government Relations  
Stelco Inc.

Denis Boiteau  
Sales Manager – Plate  
Stelco Inc.

J.S. (John) Baker  
Divisional Accountant  
Plate and Strip Division  
Stelco Inc.

Rob Cernick  
Accountant – Plate Mill  
Stelco Inc.

R.W. (Randy) Cousins  
Industrial Products & Steel Analyst  
Nesbitt Burns

Wayne Bassett  
President  
Samuel, Son & Co., Limited

Georges Chartrand  
Vice-President – Sales  
Mill Sales, North America  
and General Manager  
British Steel Canada Inc.

Daniel Desjardins  
Vice-President, Sales  
Francosteel Canada Inc.

Klaus Heller  
Director  
AG der Dillinger Hüttenwerke

Serge George Vinograd  
Executive Vice-President  
Charleroi (USA)

Juergen Marschall  
Senior Vice-President  
Thyssen Canada Limited

Ladislav Král  
Deputy Commercial Director  
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Ottawa, Wednesday, May 20, 1998

Review No.: RR-97-006

IN THE MATTER OF a review, under subsection 76(2) of the *Special Import Measures Act*, of the finding made by the Canadian International Trade Tribunal on May 6, 1993, in Inquiry No. NQ-92-007, concerning:

**CERTAIN HOT-ROLLED CARBON STEEL PLATE AND HIGH-STRENGTH  
LOW-ALLOY PLATE, HEAT-TREATED OR NOT, ORIGINATING IN OR  
EXPORTED FROM BELGIUM, BRAZIL, THE CZECH REPUBLIC,  
DENMARK, THE FEDERAL REPUBLIC OF GERMANY, ROMANIA,  
THE UNITED KINGDOM AND THE FORMER YUGOSLAV REPUBLIC OF  
MACEDONIA**

TRIBUNAL: CHARLES A. GRACEY, Presiding Member  
PIERRE GOSSELIN, Member  
ROBERT C. COATES, Q.C., Member

**STATEMENT OF REASONS**

**BACKGROUND**

This is a review, under subsection 76(2) of the *Special Import Measures Act*<sup>1</sup> (SIMA), of the finding made by the Canadian International Trade Tribunal (the Tribunal) on May 6, 1993, in Inquiry No. NQ-92-007,<sup>2</sup> concerning certain hot-rolled carbon steel plate and high-strength low-alloy plate, heat-treated or not (the subject goods), originating in or exported from Belgium, Brazil, the Czech Republic, Denmark, the Federal Republic of Germany, Romania, the United Kingdom and the former Yugoslav Republic of Macedonia.

Pursuant to subsection 76(2) of SIMA, the Tribunal initiated a review of its finding and issued a notice of review<sup>3</sup> on November 20, 1997, and a notice of change of date of public hearing<sup>4</sup> on January 15, 1998. These notices were forwarded to all known interested parties.

As part of this review, the Tribunal sent questionnaires to Canadian manufacturers, importers and purchasers of the subject goods. From the replies to these questionnaires and other sources, the Tribunal's research staff prepared public and protected pre-hearing staff reports.

The record of this review consists of all relevant documents, including the finding in Inquiry No. NQ-92-007, the notice of review, the notice of change of date of public hearing, public and confidential replies to the questionnaires, interrogatories and replies thereto, and the transcript of the proceedings. All

1. R.S.C. 1985, c. S-15, as amended by S.C. 1994, c. 47.
2. *Findings*, May 6, 1993, *Statement of Reasons*, May 21, 1993.
3. *Canada Gazette* Part I, Vol. 131, No. 48, November 29, 1997, at 3646.
4. *Ibid.*, Vol. 132, No. 4, January 24, 1998, at 123.

public exhibits were made available to interested parties, while protected exhibits were provided only to independent counsel who had filed a declaration and confidentiality undertaking with the Tribunal.

Public and *in camera* hearings were held in Ottawa, Ontario, on April 20 to 23, 1998.

During the review, the Tribunal denied a motion to include in the review consideration of certain products which the Tribunal had excluded from its original finding.<sup>5</sup>

The domestic manufacturers, Algoma Steel Inc. (Algoma), IPSCO Inc. (IPSCO) and Stelco Inc. (Stelco), were represented by counsel at the hearing. Counsel submitted evidence and made arguments in support of continuing the finding.

AG der Dillinger Hüttenwerke (Dillinger), Francosteel Canada Inc. (Francosteel), British Steel Canada Inc. (BSC), USIMINAS, Charleroi (USA) Inc. (Charleroi), Thyssen Canada Limited (Thyssen Canada) and Vitkovice, a.s. (Vitkovice) were also represented by counsel at the hearing. Counsel submitted evidence and made arguments in support of rescinding the finding. Metalimportexport S.A., a Romanian exporter, and SIDEX S.A. Galati (SIDEX), a Romanian steel mill, submitted information on their respective firms, but did not attend the hearing.

#### **SUMMARY OF THE INJURY FINDING IN INQUIRY NO. NQ-92-007**

On January 11, 1993, the Tribunal, under the provisions of section 42 of SIMA, commenced an inquiry<sup>6</sup> respecting the importation into Canada of hot-rolled carbon steel plate and high-strength low-alloy plate not further manufactured than hot-rolled, heat-treated or not, in cut lengths, in widths from 24 in. (610 mm) to 152 in. (3,860 mm) inclusive, and thicknesses from 0.187 in. (4.75 mm) to 4.0 in. (101.6 mm) inclusive as follows:

- plate made to Canadian Standards Association (CSA) specifications: G40.21, grades 230G/33G, 260W/38W, 300W/44W, 350W/50W, 350A/50A, 350AT/50AT, 400W/60W, 260WT/38WT, 300WT/44WT, 350WT/50WT and 400WT/60WT, or equivalent specifications in either CSA or other recognized designation systems or standards;
- plate made to American Society for Testing and Materials (ASTM) specifications: A283M/A283, grades A, B, C and D, A36M/A36, A572M/A572, grades 42, 50, 60 and 65, A588M/A588, A242M/A242, Types 1 and 2, A515 and A516M/A516, grade 70, or equivalent specifications in either ASTM or other recognized designation systems or standards;
- excluding plate for use in the manufacture of pipe and tube (also known as “skelp”), plate in coil form and universal mill plate,

originating in or exported from Belgium, Brazil, the Czech Republic, Denmark, the Federal Republic of Germany (Germany), Romania, the United Kingdom, the United States of America (the United States) and the former Yugoslav Republic of Macedonia.

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5. Order, December 12, 1997, *Reasons for Decision*, December 29, 1997.

6. *Supra* note 3, Vol. 127, No. 4, January 23, 1993, at 217.

On May 6, 1993, the Tribunal found, with certain exceptions, that the dumping from all the named countries, except the United States, had caused, was causing and was likely to cause material injury to the production in Canada of like goods. The Tribunal excluded from its finding the following plate<sup>7</sup> imported from the other eight countries:

- (i) subject plate exceeding 3.125 in. (79.375 mm) in thickness;
- (ii) subject plate made to ASTM specifications A515 and A516M/A516, grade 70, of any thickness. For greater certainty, this exclusion specifically included plate made to ASTM A516 specifications which met several particular specifications;
- (iii) certain subject plate supplied to or purchased by the Hibernia Management and Development Company Ltd. from Dillinger and Fabrique de Fer de Charleroi (FaFer) for purposes of construction of offshore facilities forming part of the Hibernia Project.

The Tribunal found that, although total demand for carbon steel plate is insensitive to price, the demand for the product of any single producer is, to a large degree, highly price sensitive. The considerable global overcapacity to produce carbon steel plate existing at that time and the need for steel producers to keep their mills loaded to cover their heavy overhead costs led to global oversupply and to significant international price competition. These pressures were aggravated by the economic recession, during which the demand for all steel products fell, regardless of price.

The demand for carbon steel plate in Canada declined significantly between 1989 and 1992, dropping 18 percent over the period. At the same time, the apparent value of the market declined 39 percent, from about \$299 million to about \$184 million. Historically, the domestic mills accounted for about 80 percent of the domestic market. During the four years examined by the Tribunal, the industry's share fell from 77 percent, in 1989, to about 65 percent, in both 1990 and 1991, all to the benefit of imports from the subject countries, before returning to a level of just over 80 percent in 1992.

In late 1990, the year that the industry suffered a major loss in market share, Algoma and Stelco, the two domestic mills which accounted for the majority of domestic production, were involved in strikes that lasted more than three months. This created uncertainty in the market for weeks, if not months, before and after the strikes. In 1991, as domestic demand continued to weaken, the domestic industry experienced a further slight contraction due to a major furnace reline at Stelco's Hilton Works in the early part of the year.

In 1992, Algoma, Stelco and IPSCO returned to their more traditional market share of about 80 percent. While the industry regained all of the share that it had lost to the subject countries, it was only able to do so by undercutting the dumped prices in the market. The Tribunal considered that the continuing decline in the unit price of plate imports from most of the subject countries exerted strong downward price pressures on the domestic mills, particularly on Algoma and Stelco.

## **PRODUCTS**

The products that are the subject of this review are described as hot-rolled carbon steel plate and high-strength low-alloy steel plate (HSLA) not further manufactured than hot-rolled, heat-treated or not, in a

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7. A full description of the product exclusions is set out in the Tribunal's injury finding in Inquiry No. NQ-92-007, *supra* note 2.

range of lengths, widths and thicknesses. HSLA steel generally costs more than carbon steel by weight, but can offer savings because of its greater strength. Heat-treated or normalized plate is heated in a furnace to homogenize and refine the grain structure in order to improve the steel's ability to resist brittle fracture at low service temperatures.

### **Production Process**

Plate may be rolled from a slab (discrete plate) or cut from plate in coil form (plate cut from coil). Discrete plate may be made in all thicknesses covered by the product definition. Plate cut from coil currently has a maximum thickness of  $\frac{3}{4}$  in.

At Algoma and Stelco, discrete plate is rolled from slabs that are heated in continuous slab-heating furnaces integral to the mills. The slab exits the furnace and enters the first rolling mill where it receives its first shape transformation and is reduced to an interim thickness range of 3 to 6 in. The plate then moves to a finishing stand where the slab is rolled to its final plate width and thickness. The plate is then flattened/levelled and cut to ordered size.

At Algoma, lighter plate is initially sent to the 166-in. plate mill that acts as a breakdown mill. The plate is then sent to the 106-in. wide strip mill where it is reduced to its final thickness and then coiled. The coil is sent to a finishing line where it is uncoiled, levelled and cut to length.

At IPSCO, steel slabs are processed through a reheat furnace where they are brought to a uniform rolling temperature prior to entering the rolling mill. In the rolling mill, the slabs are reduced in thickness to the required gauge by passing through a 2-high reversing slabbing mill and a 4-mill where it is levelled, cooled and cut to length. Thinner gauge material is coiled and sent to a cut-to-length line where it is converted (cut) to plate and tested.

Some of the plate sold in the market is cut to length from plate in coil form at the larger steel service centres. Some fabricators cut plate from coil for use in their own operations.

Mills that produce the carbon steel plate that is the subject of this review also produce other plate products. These include plate that the Tribunal excluded from its original finding. In addition, mills can produce plate to many other specifications such as shipbuilding plate, which was not investigated by the Deputy Minister of National Revenue (the Deputy Minister). Mills also produce skelp which is used in the production of pipe.

Carbon steel plate is used in a variety of manufacturing and construction applications, such as in rail cars, oil and gas storage tanks, industrial buildings, heavy machinery, and shipbuilding and repairs.

### **DISTRIBUTION AND MARKETING**

The majority of domestic mill and importer shipments are marketed through steel service centres. Steel centres process the plate for end users and may, in some instances, fulfil a "just-in-time" supply function for manufacturers. Some importers do not inventory steel plate and generally pre-sell their orders before they arrive in Canada. Others act as master stocking distributors of plate, selling the product directly to service centres and large end users. Some importers obtain plate from trading companies and subsequently offer it to the industrial buyers on a spot basis.



## **DOMESTIC PRODUCERS**

Three domestic mills account for most of the hot-rolled carbon steel plate produced in Canada.

### **Algoma Steel Inc.**

Algoma is the largest carbon steel plate producer in Canada. With its subsidiaries, Algoma is a vertically integrated primary iron and steel producer having a present capacity to produce and process approximately 2.1 million tonnes of raw steel annually. In terms of finished products, the firm's annual capacity is approximately 1.8 million tonnes. Algoma operates a major steelworks at Sault Ste. Marie, Ontario, and an iron ore mine and pelletizing facility located in the United States. Its product range includes flat-rolled sheet and plate, structural shapes, seamless tubular products and various semi-finished products.

Algoma is currently making major changes to its carbon steel plate-making process. In October 1997, Algoma announced that it had successfully rolled its first coil on its new Direct Strip Production Complex (DSPC).<sup>8</sup> The DSPC is a state-of-the-art thin slab caster and hot strip mill, which is expected to be in commercial operation by mid-1998. Algoma expects the DSPC to have annual production volumes in the range of about 1.5 million tonnes. As the volume of production on the DSPC grows, Algoma plans on shifting production from its 106-in. wide strip mill, which it expects to close by mid-1998.

The new mill will allow Algoma to increase significantly its production of carbon steel plate. Witnesses for Algoma testified that no decision had been taken on what part of the increased production would consist of the plate products that are the subject of this review. They also testified that the new capacity would be brought on stream as needed to meet demand in the Canadian market for carbon steel plate.

### **Stelco Inc.**

Stelco is the second largest producer of carbon steel plate. The company is an integrated steel company producing flat-rolled steel, bars and rods, as well as wire, wire products and pipes and tubes. Stelco currently produces plate on a 148-in. plate mill at Hilton Works, Hamilton, Ontario.

Stelco is currently implementing an \$85 million modernization project to improve and expand the capability of its plate mill and to include the production of coiled plate.<sup>9</sup> The approach to upgrading the mill involves retaining and utilizing the main equipment of the present facility and adding new equipment which will enhance the capacity. Stelco indicated that work on this project is proceeding on schedule and that initial operation is expected to commence in the third quarter of 1998. Witnesses for Stelco testified that no decision had been taken on the plate product mix from the expanded mill and that new capacity would be brought on stream as needed to meet demand in the Canadian market.

### **IPSCO Inc.**

IPSCO produces discrete carbon steel plate and carbon steel plate in coil form at its Steel Division in Regina, Saskatchewan. It also processes plate from coil at facilities in Surrey, British Columbia, and St. Paul,

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8. Tribunal Exhibit RR-97-006-44, Administrative Record, Vol. 1 at 190.

9. *Transcript of Public Hearing*, Vol. 2, April 21, 1998, at 255.

Minnesota. IPSCO's product line includes hot-rolled sheet and plate, hollow structural sections, line pipe, standard pipe, piling pipe, oil country tubular goods (OCTGs), water well casing and OCTG casing.

IPSCO is currently building an Advanced Steel Coil Processing Centre in Scarborough, Ontario.<sup>10</sup> At a capital cost of \$24 million, the new centre will be able to convert up to 350,000 tons of steel coil into cut sheets and plates, in widths up to 96 in. and thicknesses up to  $\frac{3}{4}$  in.<sup>11</sup> It expects to be processing plate from coil toward the end of 1998. IPSCO plans to purchase coil for processing in its Ontario facility from local producers, to utilize imports when appropriate and to supplement these purchases with steel from its own facilities in both Montpelier, Iowa, and Regina. Witnesses for IPSCO testified that the production of the new facility would meet market requirements not currently satisfied by other producers.

### **EXPORTERS AND IMPORTERS**

The Deputy Minister's investigation in 1992 identified 12 carbon steel plate producing mills in the named countries, as well as 17 importers of carbon steel plate from the named countries.

The Tribunal had evidence before it regarding all of the foreign mills, in general, and, in particular, information relating to eight of these mills that had accounted for a significant amount of the exports of carbon steel plate to Canada investigated by the Deputy Minister in 1992. Dillinger, a German mill dedicated to the production of carbon steel slabs and carbon steel plate, is associated with the Usinor group. It is currently the largest producer of carbon steel plate in the European Union. Thyssen Krupp Stahl (Thyssen), the second largest producer of carbon steel plate in Germany, has not sold any plate products in Canada for several years. Det Danske Stalvalsevaerk A.S. (DDS) is the sole producer of carbon steel plate in Denmark. FaFer is one of two mills producing carbon steel plate in Belgium. It concentrates its plate production in "niche" markets, especially shipbuilding steel plate grades. British Steel plc (British Steel), formerly a government-owned operation privatized in 1988, is the sole British producer of carbon steel plate. Vitkovice, a state-run mill until being privatized in 1992, is a producer of carbon steel plate in the Czech Republic. USIMINAS is a privately owned steel producer in Brazil. SIDEX is a steel producer in Romania.

Four of the importers that accounted for a significant amount of carbon steel plate imports in 1992 also appeared at the hearing. Francosteel, a wholly owned subsidiary of Sollac (which is associated with the Usinor group), is the sole Canadian importer of the subject carbon steel plate from Dillinger and DDS. BSC, a wholly owned subsidiary of British Steel, is responsible for the marketing of British Steel's carbon steel plate and other steel products in Canada and the United States. Thyssen Canada, a wholly owned subsidiary of Thyssen, has actively traded carbon steel plate as well as other steel products in Canada. Charleroi, a wholly owned subsidiary of FaFer, distributes products manufactured by FaFer in North, Central and South America.

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10. Tribunal Exhibit RR-97-006-42, Administrative Record, Vol. 1 at 184.

11. Carbon steel sheet is similar to plate but is thinner. In *Certain Flat Hot-Rolled Carbon Steel Products Originating in or Exported from the Federal Republic of Germany, France, Italy, New Zealand, the United Kingdom and the United States of America*, Canadian International Trade Tribunal, Inquiry No. NQ-92-008, Finding, May 31, 1993, Statement of Reasons, June 15, 1993, carbon steel sheet was described as being produced in widths of over 12 in. to 96 in. (304.8 mm to 2,438.4 mm) and in thicknesses of 0.0449 in. to 0.2299 in. (1.140 mm to 5.839 mm). Carbon steel sheet can be sold in coils or cut lengths.

## **POSITION OF PARTIES**

### **Parties in Favour of a Continuation of the Finding**

Counsel for the domestic producers argued that there is a likelihood of resumed dumping of the subject steel plate from the subject countries if the finding in Inquiry No. NQ-92-007 is rescinded and that such dumping is likely to cause material injury to the domestic industry.

On the question of whether there was a likelihood that the subject countries would resume dumping if the finding were rescinded, counsel for Algoma and IPSCO submitted that past behaviour is the best indicator of future behaviour and of a propensity to dump. As a preliminary point, counsel submitted that the evidence from the exporters before the Tribunal does not cover all exporting mills from all of the subject countries.

It was submitted by counsel for Algoma and IPSCO that there is overcapacity in the subject countries and that even 1 percent of the exports of over 6 million tonnes<sup>12</sup> from those countries could seriously injure the domestic industry. Moreover, counsel submitted that availability of other markets to absorb exports from the subject countries is limited. Counsel referred to injury findings against the subject countries in the European Union, Argentina and Mexico. Counsel also referred to the fact that only three of the subject countries are not covered by similar injury findings in the United States: the Czech Republic, the former Yugoslav Republic of Macedonia and Denmark. Counsel noted that of those three countries, the Czech Republic and the former Yugoslav Republic of Macedonia have exported large volumes to the United States at prices below the comparable pricing in Canada.<sup>13</sup>

Counsel for Algoma and IPSCO submitted that an important factor in considering whether there is a likelihood of resumed dumping is the competitiveness of exporters for the subject and non-subject plate and the maintenance by exporters of commercial interests. Counsel cited a manufacturer's exhibit submitted by Algoma,<sup>14</sup> which is a compilation of various tables and schedules from the pre-hearing staff report in this review and that of the original inquiry (Inquiry No. NQ-92-007). They submitted that Manufacturer's Exhibit A-7 shows the following: (1) the subject countries maintained active commercial interests in the Canadian market for plate by exporting significant volumes of the non-subject plate to Canada since the finding; (2) that subject plate exports were readily converted by the dumping exporters to non-subject plate exports after the finding; and (3) the subject countries dumped the non-subject plate when they could not dump the subject plate as demonstrated by the fact that the 1997 prices for the non-subject plate are very close to 1992 prices, which were dumped prices. Counsel further submitted that, since the original finding, UK and German producers have not only dumped related flat-rolled steels, such as hot-rolled, cold-rolled and galvanized steel in Canada, but are also currently dumping wide flange shapes.<sup>15</sup>

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12. *Public Pre-Hearing Staff Report*, February 26, 1998, Tribunal Exhibit RR-97-006-5, Appendix VIII, Administrative Record, Vol. 1 at 156.103.

13. Manufacturer's Exhibit A-2 at 20, Administrative Record, Vol. 11. Citing, as its source, the American Iron & Steel Institute Plate Summit Materials, February 17, 1998.

14. Manufacturer's Exhibit A-7, Administrative Record, Vol. 11.

15. Manufacturer's Exhibit A-5 (protected), Administrative Record, Vol. 12.

Counsel for Algoma and IPSCO submitted that Belgium, Brazil, the Czech Republic, Germany, Romania and the United Kingdom previously resumed dumping after the Tribunal's order<sup>16</sup> rescinding the previous injury finding made by the Anti-dumping Tribunal, which covered the subject steel plate from those countries although they had said that they were not likely to resume dumping. In counsel's view, the countries subject to the injury finding in Inquiry No. NQ-92-007 concerning the subject steel plate will resume dumping to compete with new sources of imports, such as Indonesia, India and Slovakia, just as they did in 1990 to compete with Denmark and Yugoslavia.

Counsel for Algoma and IPSCO also submitted that there is a propensity from importers to seek steel plate at dumped prices and source-switch. In particular, counsel submitted that Thyssen Canada imported plate in the 1983 case, sought and obtained the rescission in Review No. RR-89-006 and then imported dumped goods in 1992. Counsel referred to information which they argued shows that there are price pressures from Indian plate, including quotes and sales of imports by Thyssen Canada. Counsel remarked that Francosteel was found to have imported dumped goods in all of the other major flat-rolled steel cases in 1993 and 1994, such as cold-rolled, hot-rolled, galvanized, as well as plate in the 1992 case. Finally, counsel referred to information which they argued indicates that Preussag Handel Canada Corp. (Preussag) has offered to sell Indian plate and that Wirth Limited and Dollard Steel Company have offered to sell Indonesian plate, at prices below Algoma's book prices.<sup>17</sup>

In addressing the issue of vulnerability of the domestic industry to resumed dumping, counsel for Algoma and IPSCO submitted that injury does not have to be uniform amongst domestic producers for the Tribunal to be able to find that the domestic industry is likely to be injured by resumed dumping. Counsel submitted that if the Tribunal views one of the domestic producers not to be vulnerable, or conversely, views one major producer among several to be vulnerable, that is sufficient to find that the domestic industry, as a whole, is vulnerable to resumed dumping.

Counsel for Algoma and IPSCO anticipated arguments that the domestic industry is injuring itself through the addition and improvement of subject and non-subject steel plate and other non-subject, flat-rolled steel production capacity. However, counsel submitted that, in a review, the Tribunal must not look at the past structure and capacity of the industry, rather, it should consider the industry as it finds it and assess its vulnerability to resumed dumping on the capacity existing at the time of the review or in the immediate future. Moreover, counsel submitted that even if there are price declines in the Canadian market, partially and naturally resulting from increased availability of the subject steel plate, they will be the result of normal market forces that domestic producers expect from fair domestic price competition. In counsel's view, the domestic producers have continued to invest in the subject goods to reduce costs, and resumed dumping is a threat to a return on those investments.

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16. *Certain Carbon and Alloy Steel Plates Originating in or Exported from Belgium, Brazil, Czechoslovakia, the Federal Republic of Germany, France, the Republic of South Africa, the Republic of Korea, Romania, Spain, the United Kingdom and the Netherlands*, Review No. RR-89-006, *Order and Statement of Reasons*, May 1, 1990.

17. Manufacturer's Exhibit A-3 (protected), Administrative Record, Vol. 12.

In the view of counsel for Algoma and IPSCO, the same reasons that led the Tribunal to rule, in 1997, that continued dumping from Mexico, China, South Africa and Russia threatened injury<sup>18</sup> exist today. This similarity, they submitted, warrants a decision that resumed dumping by the countries subject to the injury finding in Inquiry No. NQ-92-007 also threatens injury. Counsel submitted that the injury finding in Inquiry No. NQ-92-007 should be continued so that the benefits of the injury finding in Inquiry No. NQ-97-001 accrue to the domestic industry.

Counsel for Algoma and IPSCO highlighted several factors which, they submitted, threaten to materially injure the domestic industry. In particular, they submitted that the commodity nature of the subject carbon steel plate is such that purchasing decisions are guided principally by price. Moreover, high capacity utilization is required by any producer to maintain or lower costs of production. Counsel submitted that Canadian producers are currently underutilizing capacity and that there is uncertainty about future demand in Canada in light of the Asian economic problems and the expectation that demand and pricing will decline in the near term.

Counsel for Stelco associated themselves with the arguments of counsel for Algoma and IPSCO. Counsel for Stelco also noted that their oral argument was complemented by the written argument found in Stelco's brief and reply submissions. Counsel proceeded to highlight certain critical elements of the case, which they identified as: (i) the impact of the Asian financial crisis; (ii) the capacity in Canada, Europe and Brazil; (iii) the continued presence of carbon steel plate from the named countries in both Canada and the United States; and (iv) the economics of international steel trade.

Prior to discussing these specific issues, counsel for Stelco submitted that the standard that the Tribunal should apply to the two fundamental questions before it, in a review, was whether the evidence "reasonably demonstrated" a likelihood of renewed dumping and injury. Put differently, whether there is a reasonable possibility of resumed dumping and injury. With regard to the second question, likelihood of injury, counsel submitted that this is a product-specific issue. It is not a question to be considered in context of the condition of the whole industry, but rather in context of likelihood of injury to the production of the particular products being considered by the Tribunal. Finally, in this regard, counsel emphasized the absence of evidence and testimony from "key" parties, i.e. exporters and importers not participating in the review, as well as deficiencies in the evidence of those exporters and importers that did appear at the hearing. These issues were the subject of extensive discussion in Stelco's written submissions and, in particular, in its reply brief.

With respect to the Asian financial crisis, counsel for Stelco submitted that it is a real crisis which is happening now. They submitted that notwithstanding qualifications and cautious assessments in the extensive materials on this issue in the record, the overwhelming abundance of these materials suggests that the crisis is having, and will have, a profound effect on international steel trade, in general, and, in particular, on trade in plate. Counsel highlighted the fact that almost half of the total world steel consumption is located in Asia, including China.

Counsel for Stelco next considered the issue of capacity. They submitted that the capacity additions by the Canadian producers should be seen as the result of an industry improving production processes and

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18. *Certain Hot-Rolled Carbon Steel Plate Originating in or Exported from Mexico, the People's Republic of China, the Republic of South Africa and the Russian Federation*, Inquiry No. NQ-97-001, Finding, October 27, 1997, *Statement of Reasons*, November 10, 1997.

efficiencies. In other words, a classic example of an industry taking advantage of an anti-dumping finding to improve its methods and the quality of its product. They also noted that the new capacity will be able to produce not only plate, but also skelp and plate in coil form. In terms of Europe, counsel noted that almost half of the production of the named countries was exported in 1996 and that certain reports showed that Europe will need to assume or absorb 11 million tons of extra steel capacity in the next two years. With regard to Brazil, counsel submitted that the evidence shows that USIMINAS will have 400,000 tonnes of capacity available by September of this year and that it is unclear as to where this product will go.

With respect to the activities of the named countries since the finding, counsel for Stelco submitted that there was specific evidence of dumping of the subject goods from Belgium. More importantly, perhaps, was evidence relating to the continued presence of the subject countries in the Canadian market since the finding. In fact, in 1996, the non-subject plate from the named countries represented 26 percent of all plate imports. In addition, there is evidence of imports of significant amounts of other flat-rolled steel products from these countries. Many of the mills in these countries operate through trading houses that have international connections, and these trading houses will obtain steel from wherever they can find it, import it and sell it at the best possible price. To illustrate this point, counsel referred to a specific example relating to plate from India that was discussed with the witness for Thyssen Canada. As well, this method of operation was related to the tendency of importers to source-switch and discussed by the Tribunal in previous plate decisions.

Counsel for Stelco next discussed the economics of international steel trade and the testimony of the steel analyst who appeared at the hearing. The analyst stated that steel companies operate by keeping their operations running as close to capacity as possible and that they have to do this to make a return on fixed costs. Steel is produced for local markets, but if you can move marginal tons in other markets when local markets turn down, a steel producer will do so. Therefore, counsel submitted, if European demand drops only slightly, there will be a need to export plate from Europe. Furthermore, plate in third markets sells at low prices, as demonstrated by the price of plate from the Czech Republic and the former Yugoslav Republic of Macedonia entering the US market, two sources not covered by the 1993 US plate finding.

Turning to the likelihood of injury, counsel for Stelco again submitted that this issue must be considered in the context of domestic production of plate and not whether the Canadian steel industry, as a whole, is vulnerable. They noted that, in dealing with commodity products, revenues can be affected at the high end as well as the low end of a cycle. In this regard, counsel referred to the testimony of the witness for Samuel, Son & Co., Limited.

### **Parties in Favour of a Rescission of the Finding**

#### Francosteel Canada Inc. and AG Dillinger Hüttenwerke

Counsel for Francosteel and Dillinger submitted that there was no likelihood of resumed dumping from Germany or Denmark. However, even if the Tribunal determines that there is a likelihood of resumed dumping, there is no likelihood of injury.

Counsel for Francosteel and Dillinger submitted that the determination of likelihood of resumed dumping should not be based on conjecture and that the Tribunal should focus on circumstances in the next year or two and place considerably less weight on the possibility of dumping sometime later.

Counsel for Francosteel and Dillinger submitted that, since the finding, there have been fundamental changes in the market conditions in Canada as well as in the European Union and Western Europe. Forecasts for the European economy are all good for 1998 and 1999. The plate market and prices are strong and rising in Europe. To suggest that the effects of the Asian financial crisis on Europe would lead to a resumption of dumping of plate in Canada would be speculation or conjecture.

Counsel for Francosteel and Dillinger submitted that Dillinger, Thyssen, Preussag and DDS are all operating their plate mills at full capacity. In addition, there has been consolidation and privatization in the European steel industry, and producers in Germany and Denmark do not target North America or Canada for their sales of plate. Counsel submitted that there is no history of dumping for plate and steel products with respect to Denmark. In the case of Germany, there have been no anti-dumping findings relating to plate since 1992-93.

Counsel for Francosteel and Dillinger also submitted that there was no likelihood of injury even if the Tribunal determined there was a likelihood of resumed dumping. Counsel submitted that the only "black cloud" on the horizon was the additions to capacity to be made by the Canadian producers, which are very likely to disrupt prices in the Canadian market.

#### Thyssen Canada Limited

Counsel for Thyssen Canada submitted that the finding should be rescinded. In the 1990 plate review, exporters demonstrated a reduction in excess capacity and a focus on domestic markets. At the time, the Canadian industry's performance was strong in all respects, as it is today. The key issue facing the domestic industry now is additions to capacity, which will lead to lower prices and competition from US mills. Five years is long enough to alter their market conditions sufficiently to eliminate any justification for continuing a finding.

Counsel for Thyssen Canada submitted that the domestic industry's evidence relating to a likelihood of resumed dumping did not stand up to scrutiny, nor did the theoretical threat of the Asian financial crisis. Exporters and importers had demonstrated that there was no likelihood of resumed dumping. The witness for Thyssen Canada stated several times that Thyssen's capacity is basically supplying demand in Germany and the rest of the European Union.

#### British Steel Canada Inc.

Counsel for BSC submitted that the industry is robust, healthy, expanding and becoming increasingly cost efficient. In addition, the Canadian economic situation and prospects are excellent, and even the industry expects the subject plate market to continue to grow. They submitted that, as findings are made at the trough of the cycle, they should be eliminated when there is an upturn. In addition, counsel observed the relationship between prices in Canada and the United States, taking account of supply and demand for plate in each country.

Counsel for BSC submitted that British Steel and other European producers are busy supplying the European market and that European plate export prices are higher than in the European market. There is no example of underselling the non-subject plate by BSC. Moreover, British Steel was found to be dumping "a long time ago." As regards the Asian financial crisis, British Steel exports little plate to Asia. More generally, British Steel is the only producer of the subject plate in the United Kingdom; it sells only through

BSC and does not sell on consignment. Furthermore, BSC does not sell off the docks and has not shifted sources for the subject goods.

Counsel for BSC submitted that there is no prospect of injurious dumping from Europe or the United Kingdom. Counsel submitted that the finding should be rescinded and, in the alternative, that it be rescinded for the United Kingdom.

#### Charleroi (USA) Inc.

Counsel for Charleroi submitted that, in a dumping case, an exporter of small volume, like FaFer, with low dumping margins can simply be caught with larger exporters from several countries. FaFer is not a producer that depends on large volume and can operate profitably when not producing at capacity.

Counsel for Charleroi submitted that, if the finding were continued, it should be amended to exclude FaFer or, alternatively, to exclude all plate over 112 in. and plate that is shotblasted and prime-painted. If such an exclusion was not granted, counsel requested an exclusion for FaFer for those named plates.

#### Vitkovice, a.s.

Counsel for Vitkovice submitted that the underlying legal question for a review is whether the finding should be continued and, if so, whether it should be continued in whole or in part. Counsel submitted that the 1983 anti-dumping case cited with respect to Vitkovice is too remote to be of any consideration in terms of a likelihood of injurious dumping. In addition, the Czech Republic, in 1992, was effectively a communist country with practices quite different from those of the modern Czech Republic. Furthermore, Vitkovice imports would have been negligible under current legislation. Vitkovice has not been involved in any other anti-dumping cases in North America. Vitkovice's capacity for plate is not significant. In addition, prices of imports from the Czech Republic would be very close to those of plate imported from the United States. With respect to the Asian financial crisis and Japan, there is very little hard evidence that it is going to have any impact on Vitkovice.

Counsel for Vitkovice noted that domestic industry prices are close to 1988 levels and that the domestic industry is a lot more efficient today. The finding should not be continued if the domestic industry cannot meet demand. There is absolutely no basis on which Vitkovice is of any threat to either dump or cause injury. If the finding is not rescinded, Vitkovice should be excluded.

#### USIMINAS

Counsel for USIMINAS submitted that there was no likelihood of resumed dumping of carbon steel plate from Brazil. USIMINAS is running at capacity with a current lead time for export sales of six months. Other major pipeline projects in Latin America will replace the current Brazil-Bolivia Gas Line Project. USIMINAS is not an export-oriented mill as its already large domestic/export split is shifting to more shipments to the domestic market. Brazilian domestic prices are, on average, 15 to 20 percent higher than were international spot prices at the end of 1997 and the beginning of 1998.<sup>19</sup> Growth in industrial production of over 5 percent, in mining of over 7 percent and in civil construction of almost 9 percent led the Brazilian economy to growth of over 3 percent in 1997. Growth is forecast to continue in 1998. The Asian financial crisis has not had the expected negative impact on Brazil.

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19. Manufacturer's Exhibit C-1B.2, Administrative Record, Vol. 11B.1.



Counsel for USIMINAS noted that Companhia Siderúrgica Paulista (COSIPA) was not a big enough exporter to have been required by the Department of National Revenue (Revenue Canada) to respond to the questionnaire at the outset of Inquiry No. NQ-92-007. Counsel submitted that exports have declined as a share of COSIPA's total sales.<sup>20</sup>

### **ECONOMIC INDICATORS**

When the injury finding in Inquiry No. NQ-92-007 came into effect, imports of the subject goods from the named countries disappeared from the market. The following table shows the major economic indicators for the carbon steel plate market for the period from 1994 to 1997. From 1994 to 1997, Canadian domestic mills and many exporters and importers benefited from strong growth in the Canadian economy, as the domestic market for carbon steel plate grew steadily, increasing by about one third.

Up to and including 1996, the domestic producers shared the growth with the importers, and relative market shares remained stable. In 1997, although the demand for steel plate in North America had reached record levels,<sup>21</sup> imported plate, some of which was imported by the domestic producers, captured an additional 5 percentage points of market share. While imports from other sources grew marginally in 1997, imports from the United States more than tripled.<sup>22</sup> These imports met a shortfall in production of domestic carbon steel plate, particularly in the second half of 1997. This shortfall can be attributed in part to down time at certain domestic mills relating to upgrades put in place during the year.

While the demand for steel was increasing in the domestic market, the unit prices for both domestic and imported carbon steel plate were also rising, with especially marked increases in the last two quarters of 1997. A witness for the domestic industry confirmed that there had been several increases in steel plate prices in 1997, continuing into the first quarter of 1998.<sup>23</sup> Although the industry's financial performance in the first three quarters of 1997 was lower than it had been in the period from 1994 to 1996, carbon steel plate prices grew at a faster rate than domestic producers' costs, and the domestic industry's financial performance had improved by the fourth quarter of 1997.

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20. Manufacturer's Exhibit C-1B, Tab 5 at 10, Administrative Record, Vol. 11B.1.

21. Importer's Exhibit F-42 at 2, Administrative Record, Vol. 13B.

22. *Public Pre-Hearing Staff Report*, February 26, 1998, Tribunal Exhibit RR-97-006-5, Administrative Record, Vol. 1 at 156.33.

23. *Transcript of Public Hearing*, Vol. 2, April 21, 1998, at 333-36.

**Table 1**  
**ECONOMIC INDICATORS**  
**(1994-97)**

	1994	1995	1996	1997	1997			
					Q1	Q2	Q3	Q4
<b>Domestic Production</b>								
Tonnes	563,435	661,003	686,745	675,179	180,226	168,885	176,366	149,701
Percentage Change		17	4	-1		-6	4	-15
<b>Imports</b>								
Tonnes	107,520	99,830	96,492	165,321	35,747	50,953	41,596	37,026
Percentage Change		-7	-3	71		43	-18	-11
<b>Exports</b>								
Tonnes	39,514	33,228	70,107	65,608	16,839	16,712	14,529	17,528
Percentage Change		-16	111	-6		-1	-13	21
<b>Market</b>								
Tonnes	605,283	703,822	720,915	797,832	207,061	211,067	205,126	174,578
Percentage Change		16	2	11		2	-3	-15
<b>Industry Financial</b>								
Gross Margin (\$000)	52,535	92,793	66,402	53,764	13,807	12,426	13,416	14,115
Percentage of Net Sales	21	27	20	16	16	16	15	19
<b>Market Share</b>								
Industry	69	71	71	64	67	57	66	66
Steel Service Centres	17	15	15	15	15	16	15	14
Total Domestic	86	86	86	79	82	74	81	79
Subject Countries	0	0	0	0	0	0	0	0
Non-Subject Countries	14	14	14	21	18	26	19	21
<b>Market: Unit Value</b>								
Industry	638	727	695	698	682	691	704	716
Steel Service Centres	637	693	629	643	646	647	648	627
Total Domestic	637	721	683	687	676	681	694	701
Subject Countries	0	0	0	0	0	0	0	0
Non-Subject Countries	612	655	613	650	608	616	695	705

Sources: Replies to Tribunal review questionnaires and Statistics Canada import data.

## **ANALYSIS**

Section 76 of SIMA provides that, on completion of a review, the Tribunal shall rescind or continue an order or finding, with or without amendment. In making this decision, the Tribunal deals with two fundamental questions. First, it determines whether there is a likelihood of resumed dumping if the finding is rescinded. If the Tribunal finds that there is a likelihood of resumed dumping, it then determines whether such dumping is likely to cause material injury to the domestic industry. Prior to addressing these questions, the Tribunal will deal with two matters raised in argument, which impact on the Tribunal's analysis of these questions.

Counsel for Algoma and IPSCO raised two questions relating to the Tribunal's practice in reviews: (i) the application of the principle of cumulation; and (ii) the application of the "clearly foreseen and imminent" standard.

With respect to cumulation, counsel for Algoma and IPSCO related this concept to what they suggested were two points of law covering the vulnerability requirement in reviews. They highlighted the following statement from the Tribunal's decision in the *Carbon Steel Pipe* review: "the Tribunal is satisfied that its cumulative assessment of the threat of dumping in review proceedings is consistent with SIMA and the [World Trade Organization *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*<sup>24-25</sup>," (the Agreement). Counsel submitted that this statement speaks to the application of cumulation to the threat of dumping issue.

Counsel for Stelco submitted that the legal rule of cumulation is to be applied in reviews and, thus, all the named countries should be considered as if the subject goods came from a single source and should not be considered "*seriatim*." Counsel submitted that, in the *Carbon Steel Pipe* review, the Tribunal clearly cumulated the effects of potential dumping from the subject countries, as a whole, with respect to both the likelihood of resumed dumping and the likelihood of injury.

Counsel for various importers and exporters and, in particular, counsel for Francosteel and Dillinger made submissions on this matter. They submitted that, while cumulation may be expressly provided for in subsection 42(3) of SIMA, it is not provided for in section 76. Furthermore, while it is provided for in Article 3 of the Agreement, it is not provided for in Article 11, the article that relates to reviews. Therefore, there is no legislative authority for applying cumulation in reviews. Counsel also submitted that, as amendments to section 76 of SIMA proposed in Bill C-35, presently before the House of Commons, will now provide for cumulation in reviews, it follows that section 76 does not currently allow for it. If section 76 did so provide, there would be no need for the amendment.

In the alternative, counsel for various importers and exporters submitted that, if the Tribunal finds that cumulation does apply in reviews, it should find it to apply only to the second question the Tribunal asks itself in a review, namely, whether there is a likelihood of injury if dumping resumes. In support of the view that cumulation cannot apply to the question of likelihood of resumed dumping, counsel referred to a past practice of the Tribunal, which, they submitted, shows that the Tribunal has never applied cumulation to the question of likelihood of resumed dumping. In this regard, counsel referred to the *Women's Leather Boots and Shoes*<sup>26</sup> and *Waterproof Rubber Footwear* reviews.<sup>27</sup>

In the Tribunal's view, it is clear from the wording of subsection 42(3) of SIMA that the requirements of that subsection, relating to making a cumulative assessment of the effects of dumping, apply

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24. As signed in Marrakesh on April 15, 1994.

25. *Certain Carbon Steel Welded Pipe Originating in or Exported from Argentina, India, Romania, Taiwan, Thailand, Venezuela and Brazil*, Review No. RR-95-002, *Order and Statement of Reasons*, July 25, 1996, at 8.

26. *Women's Leather Boots and Shoes Originating in or Exported from Brazil, the People's Republic of China and Taiwan; Women's Leather Boots Originating in or Exported from Poland, Romania and the [former] Yugoslavia; and Women's Non-Leather Boots and Shoes Originating in or Exported from the People's Republic of China and Taiwan*, Canadian International Trade Tribunal, Review No. RR-94-003, *Order*, May 2, 1995, *Statement of Reasons*, May 16, 1995.

27. *Certain Waterproof Rubber Footwear Originating in or Exported from Czechoslovakia, Poland, the Republic of Korea, Taiwan, Hong Kong, Malaysia, Yugoslavia and the People's Republic of China*, Canadian International Trade Tribunal, Review No. RR-97-001, *Order and Statement of Reasons*, October 20, 1997.

only to inquiries conducted under section 42. Section 76 contains no parallel provision to subsection 42(3). The Tribunal interprets this to mean that, under the present form of SIMA, it is not required to cumulate in a review under section 76. However, the Tribunal is not persuaded that this means that the Tribunal cannot cumulate in a review.

An appropriate analogy for the possible application of the principle of cumulation in reviews is section 42 of SIMA as it was prior to the addition of subsection 42(3). Prior to the introduction of subsection 42(3), the Tribunal and its predecessors had a long practice of considering the cumulative or aggregate effects of dumping in an injury inquiry under section 42. The reasons for this practice have been discussed by the Tribunal in many cases and, in particular, in its decision in the *Polyphase Induction Motors* case.<sup>28</sup> It is important to note that this practice evolved within the Tribunal's discretion in conducting an injury inquiry under section 42. As such, it cannot be said to have been required by law or properly characterized as a legal rule.<sup>29</sup>

In the same manner, the Tribunal is of the view that it has the discretion to cumulate in a section 76 review, in appropriate circumstances. This does not mean that the Tribunal must cumulate with respect to both fundamental questions it deals with in a review. An examination of previous review decisions by the Tribunal shows that it has cumulated in a number of reviews. This has primarily been done in context of the question of likelihood of injury. The Tribunal notes that, in a number of cases, including *Women's Leather Boots and Shoes* and *Waterproof Rubber Footwear*, it has not applied cumulation to the issue of likelihood of resumed dumping, based on the nature of the evidence before it in a particular case. For the reasons discussed below, the Tribunal is of the view that, in this case, a country-by-country analysis of the question of likelihood of resumed dumping is generally appropriate.

Finally, in this regard, the Tribunal is of the view that the particular statement in the Tribunal's *Statement of Reasons* in the *Carbon Steel Pipe* review referred to by counsel for Algoma and IPSCO must be read in the context of previous statements made in those reasons. Prior to that statement, the Tribunal had outlined the arguments of the parties participating in that review. Both parties were discussing whether the Tribunal could consider the "cumulative effects" of the threat of dumping in a review proceeding. In the Tribunal's view, the statement "effects of the threat of dumping" clearly indicates that a likelihood of dumping had already been found and, thus, the statement relates to the effects or impact of a resumption of dumping. The subsequent statement by the Tribunal should, therefore, be understood to relate to applying cumulation in the context of the question of likelihood of injury.

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28. *Polyphase Induction Motors Originating in or Exported from Brazil, France, Japan, Sweden, Taiwan, the United Kingdom and the United States of America*, 1T.T.R. 58, Inquiry No. CIT-5-88, *Finding*, April 28, 1989, *Statement of Reasons*, May 12, 1989. See also, *Certain Corrosion-Resistant Steel Sheet Products, Originating in or Exported from Australia, Brazil, France, the Federal Republic of Germany, Japan, the Republic of Korea, New Zealand, Spain, Sweden, the United Kingdom and the United States of America*, Canadian International Trade Tribunal, Inquiry No. NQ-93-007, *Finding*, July 29, 1994, *Statement of Reasons*, August 15, 1994.

29. See *Certain Hot-Rolled Carbon Steel Plate and High-Strength Low-Alloy Plate, Heat-Treated or Not, Originating in or Exported from the U.S.A.*, Article 1904 Binational Panel, Secretariat File No. CDA-93-1904-6, *Memorandum Opinion and Order*, December 20, 1994, at 28-31.

With respect to the “clearly foreseen and imminent” standard, the Tribunal reiterates its statement in the *Gypsum Board* review,<sup>30</sup> that there is no parallel provision to subsection 2(1.5) of SIMA with respect to reviews under section 76. This does not mean, however, that the test in a review is so different from that for the threat of injury that the Tribunal can ignore evidence relating to these questions in the near or medium term and consider only more remote evidence. The Tribunal adopts its statements in the *Gypsum Board* review with respect to the probative value of evidence in the near and medium term in reviews and has given more weight to forecasts and other evidence to the end of 1999 than to forecasts and evidence beyond that time.

### **Likelihood of Resumed Dumping**

In addressing whether there is a likelihood of resumed dumping in a review, the Tribunal typically considers a number of factors relating to market conditions in the named country or countries, Canada and other markets for the subject goods. These factors have included: (i) the volume of exports of each country to Canada; (ii) sales to other export markets; (iii) marketing practices of exporters and importers; (iv) the economic situation in the domestic markets of exporting countries; (v) developments in the supply and demand for steel; (vi) foreign mills’ capacities to make carbon steel plate; (vii) the levels and trends in their carbon steel plate prices; and (viii) the existence of anti-dumping findings relating to the subject goods in other markets. As noted above, in reviews of orders or findings involving several countries, where the factors and/or circumstances affecting exports of the subject goods are different from country to country, and significant portions of the evidence in the Tribunal’s record are country specific, the Tribunal has examined the likelihood of resumed dumping on a country-by-country basis. The Tribunal is of the view that these circumstances exist in this review; however, there are certain issues that may transcend country borders and could have a wider impact on some or all of the named countries. In this case, two such issues warrant consideration, namely, the Asian financial crisis and the conditions in the EU market. As a result, the Tribunal will first consider these issues before considering each of the named countries individually.

#### Asian Financial Crisis

The domestic industry, supported in part by the testimony of a steel analyst appearing on Stelco’s behalf, submitted that the financial problems in Asia will result in falling demand in Asia, which will contribute to a surplus of steel worldwide. In time, the resulting oversupply problem will spread to European and South American markets, causing producers in those regions to look for other markets where they can sell their surplus steel production, likely at low prices. The industry argued that, in the absence of a continuation of the Tribunal’s finding, this surplus steel production will ultimately put downward pressure on Canadian prices.

The witness for USIMINAS testified, however, that the problems in Asia have not had much of an effect on the Brazilian market. He stated that he expects that, in 1998, the Brazilian economy will grow by about 1.5 percent.<sup>31</sup> He also stated that the measures the Brazilian government has taken to counteract the effects of the Asian financial crisis have helped Brazil withstand any impact there may have been.

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30. *Gypsum Board, Composed Primarily of a Gypsum Core, with Paper Surfacing Bonded to the Core, Originating in or Exported from the United States of America*, Review No. RR-97-004, *Order and Statement of Reasons*, January 19, 1998, at 13-14.

31. *Transcript of Public Hearing*, Vol. 3, April 22, 1998, at 742.

The Tribunal also heard testimony from the witness for Dillinger, the largest carbon steel plate manufacturer in the European Union, as to his perception of the impact of the Asian financial crisis on the plate market in Germany and Europe. In his view, the Asian financial crisis has had little impact on the European plate market, largely because the only plate mills in Asia that can produce and export the subject plate are located in South Korea, Japan and Indonesia. It was his impression that Dillinger's European customers require timely delivery of very specific volumes and qualities of plate, and these firms cannot rely on bulk tonnages imported from Asia.<sup>32</sup>

Moreover, the witness for Dillinger explained that, despite the Asian financial crisis, Dillinger continues to supply its customers in Asia. He indicated that, although these customers have cut their demand, this has not had a large impact on Dillinger's total turnover. Further, the witness added that he does not expect the problems in Asia to have any effect, in the future, on the market for steel plate in Europe, largely because prices in Southeast Asia have reached their low point and there still is not much plate arriving in Europe from that region. He did indicate, however, that should the Asian mills dump large tonnages of plate in the European Union, then the mills in the European Union would likely launch an anti-dumping action.<sup>33</sup>

There are many documents and articles in the record concerning the possible effects of the Asian financial crisis on the European markets for carbon steel plate. Of note in these articles is the wide array of views as to what impact the crisis has actually had on the European steel markets or, more importantly, what impact the crisis is likely to have on those markets. Exemplifying the differences of views on this matter,<sup>34</sup> one steel trader suggested that lower prices could be expected while another trader, quoted in the same article, predicted that the European market would not be affected.

Having considered the evidence relating to this issue, the Tribunal notes that despite all of the dire predictions, little has happened in the European or Brazilian markets to suggest that significant amounts of low-priced steel plate might be headed for Canada as a result of the financial problems in Asia. In addition, the Tribunal is cognizant of the extensive efforts, both multilateral and national, that have been made to mitigate the effects of the crisis in each of the affected countries.

The Tribunal is not persuaded by the evidence before it that developments in Asia are likely to have such a significant impact on the European or South American market that they would lead to a diversion of plate to North America at dumped prices. Furthermore, it is open to both European and Brazilian steel producers to take actions against any increase in imports of the subject goods into their domestic markets. Such actions could offset any potential effects of the crisis.

#### Market Conditions in the European Union

The Tribunal has already noted that there are several factors to be considered in determining if there is a likelihood of resumed dumping. These factors differ from one named country to another and will be considered from the perspective of each of the named countries. However, four of the named countries are member states of the European Union. Their primary market for carbon steel plate is a single market where current and prospective economic conditions are a key determinant of supply, demand and prices of carbon steel plate for the mills in each of the countries. In addition, global policy for the EU member states on steel and carbon steel plate-making capacity are determined at the level of the European Union. Accordingly, prior

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32. *Transcript of Public Hearing*, Vol. 3, April 22, 1998, at 592-95.

33. *Ibid.*

34. Manufacturer's Exhibit C-16, Administrative Record, Vol. 11B.3.

to addressing these countries individually, the Tribunal will consider recent and prospective developments in the economy of the European Union, in general, and in its steel and carbon steel plate markets, in particular.

The record of this review contains evidence concerning the current state of the economy of the European Union, including economic forecasts and forecasts for the steel market. Evidence was also presented citing recent price increases and a high rate of capacity utilization. For example, recent OECD economic forecasts predict continuing economic growth in all of the EU countries and continued strong growth in the demand for steel products.<sup>35</sup> The evidence shows that market conditions in the European Union today are considerably different than they were in the original inquiry.<sup>36</sup>

The witness for Dillinger testified that the EU plate market is doing very well. The year 1997 was excellent, and the market conditions that helped make it so strong are forecast to continue, at least until the end of 1999. Major construction industries in the European Union, such as the shipbuilding and machine building industries, are booked into the middle of 1999. The Tribunal heard testimony to the effect that demand from the carbon steel plate using industries is so strong that steel producers in the European Union cannot satisfy this demand.<sup>37</sup> In fact, some evidence was offered that certain EU producers had attempted to source the non-subject plate from Canadian producers.<sup>38</sup>

In the strong EU market, with mills booked well forward, prices have been on the rise. The January 29, 1998, edition of *World Steel Dynamics* commented that:

The plate market in Continental Europe is tight. (Note: In terms of world steel spot export prices, heavy plate has been the strongest performer, moving up another 4.2% to [US]\$500 per tonne, after gaining about the same from [US]\$460 to [US]\$480 per tonne earlier this year).<sup>39</sup>

The witness for Dillinger confirmed this perception, indicating that Dillinger had increased its prices once in the first quarter of 1998 and once in the second quarter of 1998, and has announced a third increase for the third quarter of 1998, which it is already charging on forward sales.<sup>40</sup>

The stated goal of the European Union is to reduce steel-making capacity in the European Union. In this regard, many state-owned firms have been privatized. These include ILVA (Riva), British Steel and Usinor. According to the witness for Dillinger, total reduction in the capacity in these firms meets the European Union's target of reducing capacity by 19 million tonnes.<sup>41</sup> The witness for Dillinger added, however, that Forges de Clabecq, S.A. (Clabecq), a state-subsidized mill located in Belgium, that had been closed by the government, had recently been re-opened under the ownership of a privately held trading company, Defercor. This has resulted in the addition of about a half million tonnes of carbon steel plate

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35. Importer's Exhibits E-8 and E-14, Administrative Record, Vol. 13A.

36. In its *Statement of Reasons* in Inquiry No. NQ-92-007, *supra* note 2 at 22, the Tribunal commented on the state of the European market as follows:

steel prices in Western Europe have fallen to extreme lows due to a lack of demand, overcapacity and price competition from Eastern European and CIS [Commonwealth of Independent States] Steel mills, which are regularly offering steel on the world export market at bargain prices.

37. *Transcript of Public Hearing*, Vol. 3, April 22, 1998, at 590.

38. Importer's Exhibit F-1 (protected) at 6-7, Administrative Record, Vol. 14B.

39. Manufacturer's Exhibit C-1C, Tab 5 at 8, Administrative Record, Vol. 11B.2.

40. *Transcript of Public Hearing*, Vol. 3, April 22, 1998, at 591.

41. *Transcript of Public Hearing*, Vol. 3, April 22, 1998, at 622-23.

capacity to the EU market.<sup>42</sup> The Tribunal notes that, while the addition of the Clabecq capacity will have some impact on the European Union's effort at rationalizing steel-making capacity, the net reductions to the European Union's capacity have been considerable.

Another factor that had a significant impact on the EU steel market, in the time leading up to Inquiry No. NQ-92-007, was the presence in the market of significant price pressures from Eastern European steel mills. As noted by PaineWebber at that time, steel mills in countries such as Russia and the CIS regularly offered carbon steel plate on the export market at bargain prices.<sup>43</sup> Today, the EU countries are protected from such prices through bilateral agreements such as those with Russia and the Ukraine that limit the tonnages either country can export to EU countries.<sup>44</sup>

The preceding suggests to the Tribunal that the combined effects of the strong economic conditions, both current and prospective, the coordinated efforts to reduce steel and carbon steel plate capacities and the bilateral agreements with Russia and Ukraine have created very favourable conditions in the European Union's carbon steel plate market. This is particularly the case with respect to price levels, which have been increasing and are expected, at a minimum, to remain firm.

### Germany

Dillinger, Preussag and Thyssen are the only German mills that have the capacity to produce the subject goods.<sup>45</sup> The evidence on the record indicates that, of these three firms, Dillinger is the largest plate producer, both in Germany and in the European Union. In 1997, the subject carbon steel plate accounted for 23 percent of its sales,<sup>46</sup> all of which consisted of steel plate.

The uncontroverted evidence on the record is that the German carbon steel plate industry as a whole has increased its rate of capacity utilization since the finding. The witness for Dillinger testified that all German plate mills are running at full capacity, supplying a demand for carbon steel plate in the European Union that is particularly strong.<sup>47</sup>

The witness for Dillinger, which only produces heavy plate on the basis of specific orders from clients, also testified that Dillinger has no plans on expanding either its capacity or the production of the subject goods.<sup>48</sup> Moreover, the evidence before the Tribunal is that, neither Thyssen, which has closed three of its four plate mills,<sup>49</sup> nor Preussag currently has capacity available for export to Canada.<sup>50</sup>

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42. *Transcript of Public Hearing*, Vol. 3, April 22, 1998, at 626.

43. *Supra* note 2 at 22.

44. *Transcript of Public Hearing*, Vol. 3, April 22, 1998, at 595.

45. Tribunal Exhibit RR-97-006-RI-5I (protected), Administrative Record, Vol. 10D at 55.

46. Importer's Exhibit E-3 (protected), par. 36, Administrative Record, Vol. 14A.

47. *Transcript of Public Hearing*, Vol. 3, April 22, 1998, at 588-89 and 592.

48. Tribunal Exhibit RR-97-006-RI-4A (protected), Administrative Record, Vol. 10C at 6.

49. *Transcript of Public Hearing*, Vol. 3, April 22, 1998, at 689-90.

50. *Transcript of Public Hearing*, Vol. 3, April 22, 1998, at 640.



Although Dillinger ships the majority of its exports to other EU countries,<sup>51</sup> it has continued to export steel plate to Francosteel in Canada, but only in those types and qualities of plate that were excluded from the finding.<sup>52</sup>

Counsel for the domestic producers argued that data in Table 4 of the pre-hearing staff report demonstrate that Dillinger had switched from exporting the subject goods to exporting non-subject goods. In the Tribunal's opinion, the evidence does not support this position. Rather, the evidence shows that, even before the finding, almost all of Francosteel's imports were composed of the higher quality and thicker plates that were excluded.<sup>53</sup> In addition, the imports referred to may have included other plate products not investigated by Revenue Canada in 1991 and 1992.

In the Tribunal's view, the evidence shows that the market for plate in Germany is buoyant. As indicated in replies to interrogatories, current and prospective capacity utilization rates are at very high levels, and prices in the European Union and export markets are rising. The Tribunal is aware that, although the volume of German plate has grown in the Canadian market since the finding, its share of total imports of carbon steel plate has remained relatively stable.

The Tribunal notes that Germany was found to be dumping plate and other flat-rolled steel products in the United States in the early 1990s. In the Tribunal's opinion, the severely depressed market conditions for steel in North America at that time, which reflected a worldwide downturn in steel demand, make the circumstances under which those findings were made quite different than the circumstances German producers are facing in the near and medium term in relation to both the European Union and Canada. Therefore, the Tribunal is not persuaded that the existence of these findings made in the early years of this decade helps demonstrate a likelihood of resumed dumping. The Tribunal notes that anti-dumping findings made in the United States in the early 1990s also apply to the United Kingdom, Belgium, Romania and Brazil. For the same reasons as just discussed in the context of the German producers, the Tribunal is also not persuaded that these findings help demonstrate a likelihood of resumed dumping from these countries.

In addition, there is evidence indicating that, in 1995, Germany was found to be dumping cold-rolled steel sheet in Argentina and, in 1996, to be dumping cold-rolled steel sheet in Mexico.<sup>54</sup> The Tribunal notes that the products found to have been dumped in Argentina and Mexico are significantly different from those at issue in this review, and the Tribunal is not persuaded that, in current and forecasted market conditions in Germany and the European Union, they are a good indicator of Germany's likely exporting activities with respect to the subject plate.

For these reasons, the Tribunal is not persuaded that there is a likelihood of resumed dumping from Germany.

#### United Kingdom

British Steel is the only mill in the United Kingdom that has exported the subject goods to Canada. The firm's capacity to produce carbon steel plate has remained stable, at 1 million tonnes a year, since 1994, although its utilization rate rose steadily from 1994 to 1997 as market conditions became better both in the

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51. Tribunal Exhibit RR-97-006-RI-4A (protected), Administrative Record, Vol. 10C at 5-6.

52. *Transcript of Public Hearing*, Vol. 3, April 22, 1998, at 613.

53. Importer's Exhibit E-3 (protected), par. 4, Administrative Record, Vol. 14A.

54. Manufacturer's Exhibit B-1 at 18-22, Administrative Record, Vol. 11A.

United Kingdom and in the European Union. Despite these rising utilization rates, British Steel is not planning any additions to its capacity.<sup>55</sup>

Since the firm was privatized in 1988, it has successfully reduced its capacity, in line with EU initiatives. Today, increased demand, in combination with reduced capacity, has increased British Steel's utilization rate to about 90 percent.<sup>56</sup> The evidence indicates that approximately 75 percent of the firm's sales are made in the European Union and the United Kingdom, which are now the focus of British Steel's marketing activities.<sup>57</sup>

BSC's witness testified that the firm has invested a considerable amount of money upgrading its steel plants and has steadily become more efficient. As a result of this rationalization, British Steel is now a low-cost and profitable producer of carbon steel plate, a product in high demand in the EU market.

Although the Tribunal notes that British Steel was found to be dumping steel products in the US market in the early 1990s, it is of the opinion that this was part of the same market environment that caused it to dump in Canada in this case. As noted above, much has changed since then and, in the Tribunal's view, British Steel is now selling its carbon steel plate in a robust market that is expected to remain buoyant at least for the next few years. Having reduced its capacity in line with EU initiatives, British Steel finds itself in the enviable position of low-cost production at high rates of utilization, and sales at high prices.

For these reasons, the Tribunal is not persuaded that there is a likelihood of resumed dumping from the United Kingdom.

### Belgium

Two mills produce the subject goods in Belgium: FaFer and Clabecq. The latter did not participate in the review, but there is evidence on the record that indicates that it originally was a state-subsidized mill which was closed, privatized and then re-opened as a subsidiary of a trading company. It has a capacity of about 1 million tonnes to produce slabs and plate, divided relatively equally between the two products.<sup>58</sup>

The product that FaFer exported was steel that no Canadian mill could supply, and it was ultimately granted an exclusion for those goods. Furthermore, the evidence is that the steel FaFer exports to Canada is primarily special, premium-priced, shipbuilding plate that is pre-sold on a contractual basis.<sup>59</sup>

The evidence indicates that FaFer became involved in the investigation leading to Inquiry No. NQ-92-007 on the basis of two plates shipped to Canada for the Hibernia Project.<sup>60</sup> All of that plate was subsequently excluded from the injury finding in Inquiry No. NQ-92-007. Furthermore, despite FaFer's small overhead,<sup>61</sup> evidence was presented that it has been reducing the percentage of the subject goods it

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55. Tribunal Exhibit RR-97-006-RI-6, Administrative Record, Vol. 9E at 24.

56. Importer's Exhibit F-5 (protected), Administrative Record, Vol. 14B.

57. Importer's Exhibit F-2, par. 11, Administrative Record, Vol. 13B.

58. *Transcript of Public Hearing*, Vol. 3, April 22, 1998, at 626.

59. Exporter's Exhibit H-1, Administrative Record, Vol. 13D.

60. *Transcript of Public Hearing*, Vol. 3, April 22, 1998, at 675.

61. *Transcript of Public Hearing*, Vol. 3, April 22, 1998, at 659.

makes because its plant was not built to produce standard plate. In fact, the firm's main interests lie in making plate wider than 100 in.<sup>62</sup>

The evidence indicates that FaFer does not have any plans to expand either its capacity or its utilization rate with respect to the subject goods.<sup>63</sup> The witness for Charleroi indicated that, if FaFer cannot sell plate at a profit, it will withdraw from the market.<sup>64</sup> As an example, the witness for Charleroi referred to the fact that FaFer's share of the stainless steel plate market dropped from 40 percent to less than 5 percent because the American mills were competing on price and FaFer was unwilling to drop its prices.<sup>65</sup>

In the Tribunal's opinion, the possible resumption of dumping by Clabecq raises more questions than does a resumption of dumping by FaFer. However, as discussed above, there have been considerable changes since the Tribunal's injury finding in Inquiry No. NQ-92-007, both in terms of the market conditions in the European Union and Canada, as well as in the structure of Clabecq itself, which suggest to the Tribunal that it is unlikely that either FaFer or Clabecq will resume dumping the subject plate in Canada if the finding is rescinded.

The Tribunal is of the view that the very good market for carbon steel plate in the European Union will likely absorb the plate that Clabecq produces, and the fact that the firm is now a private entity is likely to ensure that it will sell its plate with an aim to making a profit. In the Tribunal's opinion, this suggests that, in the near and mid term, Clabecq is likely to focus its marketing efforts on the European market, where it can obtain high prices.

The evidence indicates that Belgium was found to have dumped cold-rolled steel sheet in Argentina in 1996. Insofar as the dumping occurred in goods other than the subject plate, the Tribunal is not persuaded that such evidence provides a reliable indicator of Belgium's exporting activities with respect to the Canadian market, particularly under current and forecasted market conditions.

For these reasons, the Tribunal is not persuaded that there is a likelihood of resumed dumping from Belgium.

#### Denmark

The evidence indicates that DDS plans on fully utilizing its capacity of about 500,000 tonnes a year in both 1998 and 1999.<sup>66</sup> The evidence also indicates that DDS is not named in any other dumping actions in other jurisdictions.

It is clear to the Tribunal that DDS is benefiting from a strong EU carbon steel plate market. Demand and prices are both high, and there is little sign that this situation will change significantly in the near future. Moreover, the Tribunal is persuaded that DDS is not oriented toward selling its carbon steel plate in other countries at low prices, as evidenced by the fact that it is not named in any of the dumping findings in other jurisdictions that were noted at the hearing, especially in those that relate to the early 1990s. In addition,

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62. *Transcript of Public Hearing*, Vol. 3, April 22, 1998, at 682.

63. Tribunal Exhibit RR-97-006-RI-8, Administrative Record, Vol. 9G at 24.

64. *Transcript of Public Hearing*, Vol. 3, April 22, 1998, at 658.

65. *Transcript of Public Hearing*, Vol. 3, April 22, 1998, at 660.

66. Tribunal Exhibit RR-97-006-RI-5I (protected), Administrative Record, Vol. 10D at 56-57.

even though DDS has maintained a presence in the Canadian market with non-subject goods, its share of total plate imports in Canada has remained relatively constant.

For these reasons, the Tribunal is not persuaded that there is a likelihood of resumed dumping from Denmark.

### The Czech Republic

Vitkovice has a capacity for making plate of about 726,000 tonnes. In the Tribunal's view, the evidence indicates that Vitkovice has no plans to expand either its capacity or its production of the subject goods.<sup>67</sup> Nova Hut, another possible producer of carbon steel plate in the Czech Republic, was identified during the review. However, this firm was not investigated by Revenue Canada, and there is no evidence that it has exported carbon steel plate to Canada.

The witness for Vitkovice testified that, although Vitkovice had improved the quality of its product in the mid-1990s, the poor economy in the Czech Republic led it to increase its exports. When the Czech economy improved in 1997, increased domestic demand allowed the mill to increase its utilization rate from 80 percent to virtually full utilization. Given the continuing strength of the Czech market, Vitkovice expects to continue producing at virtually full capacity as demand in the Czech Republic is forecast to continue to increase.

The evidence indicates that Vitkovice's main export markets are Germany, Italy, France, Croatia and the United States.<sup>68</sup> It has not exported the subject goods to Canada since the finding and, in fact, it exported only very small amounts of the subject goods to Canada in 1992, the year before the finding. The Tribunal notes also that there is no finding with respect to the subject plate against the Czech Republic in the United States.<sup>69</sup> According to an article in the *International Steel Review*,<sup>70</sup> the shortage of carbon steel plate in the European Union has permitted Vitkovice to increase prices by 2 percent in both the Czech and Slovak markets.

Evidence on the record indicates that the Czech Republic was found, in 1992 and 1997, to be dumping certain steel pipe and tubes in the European Union.<sup>71</sup> In the Tribunal's view, the products found to have been dumped are significantly different from those at issue in this review, and the findings do not persuade the Tribunal that there is a likelihood of resumed dumping of the subject plate in Canada. More importantly, the Tribunal is of the view that Vitkovice and other possible Czech producers are likely to continue to benefit from the strength of their own market and the European carbon steel plate market and are not likely to have the subject plate available for exports to Canada.

For these reasons, the Tribunal is not persuaded that there is a likelihood of resumed dumping from the Czech Republic.

### Romania

The record in this review contains a considerable amount of information about only one Romanian producer, SIDEX. Two other mills were identified as possible producers of carbon steel plate: CSR and Laminorul. CSR is an integrated steel mill with plate-making capacity of 130,000 tonnes. Laminorul is a

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67. Tribunal Exhibit RR-97-006-RI-11 (protected), Administrative Record, Vol. 10J at 5.

68. *Ibid.* at 4.

69. *Transcript of Public Hearing*, Vol. 1, April 20, 1998, at 145.

70. Importer's Exhibit E-3A (single copy), Tab 3 at 4-5, Administrative Record, Vol. 13A.1.

71. *Supra* note 54.

small rolling-mill operation. There is no evidence before the Tribunal that either mill has exported carbon steel plate to Canada. Furthermore, there is no evidence of what types of plate either produces. SIDEX had the capacity to produce approximately 2 million tonnes of carbon steel plate in 1997.<sup>72</sup> There is evidence that indicates that SIDEX has no plans to increase either its production capacity or the production of carbon steel plate. In fact, according to the evidence provided in SIDEX' response to interrogatories, it utilized about 85 percent of its capacity in both 1996 and 1997, and cuts to its overall production capacity are planned.<sup>73</sup> About 40 percent of the mill's sales in 1997 consisted of the subject goods. Over one third of SIDEX' exports were sold in the European Union, while most of the remainder was sold in the Middle East and in Asia.

The Tribunal observes that, although many of the named countries have maintained a commercial presence in the Canadian market in the form of sales of the non-subject plate, sales of Romanian non-subject plate have been virtually non-existent.<sup>74</sup> In addition to the previous discussion about US anti-dumping findings against Romania, the Tribunal notes that there is evidence that indicates that Romania was found to be dumping certain steel pipe and tubes in the European Union in 1991 and 1997.<sup>75</sup> The Tribunal notes that the products found to have been dumped in the European Union are significantly different from those at issue in this review, and the Tribunal is not persuaded that they are a good indicator of Romania's export activities with respect to the subject plate. In the Tribunal's view, the evidence shows that Romanian mills have a relative lack of interest in the Canadian market for carbon steel plate, likely because the economies in its major export markets in Europe are doing well.

For these reasons, the Tribunal is not persuaded that there is a likelihood of resumed dumping from Romania.

#### The former Yugoslav Republic of Macedonia

The former Yugoslav Republic of Macedonia has not been a major factor in the domestic plate market, for either the subject or non-subject goods, since the early 1990s, and no steel mills or exporters from the former Yugoslav Republic of Macedonia participated in the review. There have been no imports of carbon steel plate from the former Yugoslav Republic of Macedonia since the injury finding in Inquiry No. NQ-92-007. The evidence also indicates that the former Yugoslav Republic of Macedonia exports significant amounts of carbon steel plate to the United States and is not subject to any anti-dumping findings in that country.

The Tribunal finds that it has limited meaningful data on the production and sale of carbon steel plate in the former Yugoslav Republic of Macedonia. The Tribunal notes that little other evidence was adduced during the review nor were there any exporters from the former Yugoslav Republic of Macedonia at the hearing. The evidence available is that there is one producer of carbon steel plate, Rudnici i Zelezera Skopje, which produces a broad range of steel products, including sheet, beams and plate.

The Tribunal notes from the evidence<sup>76</sup> that the former Yugoslav Republic of Macedonia was found to have dumped various steel products, including steel plate, in the European Union during the years 1988 to 1992. Insofar as the dumping occurred in the late 1980s and early 1990s, largely in goods other than the subject plate, the Tribunal is not persuaded that such evidence provides a reliable indicator of the exporting

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72. Tribunal Exhibit RR-97-006-RI-10 (protected), Administrative Record, Vol. 10I at 15.

73. Exporter's Exhibit J-1, Attach. 3, Administrative Record, Vol. 13F.

74. *Public Pre-Hearing Staff Report*, February 26, 1998, Tribunal Exhibit RR-97-006-5, Administrative Record, Vol. 1 at 156.30.

75. *Supra* note 54.

76. *Ibid.*

activities of the former Yugoslav Republic of Macedonia with respect to the subject plate and, more particularly, its exporting activities with respect to the Canadian market, under market conditions that exist today.

For these reasons, the Tribunal is not persuaded that there is a likelihood of resumed dumping from the former Yugoslav Republic of Macedonia.

### Brazil

The evidence indicates that the Brazilian economy grew by 3 percent in 1997, and forecasts are for continued growth in 1998. During 1997, steel sales, especially those of flat-rolled steels, grew by 13 percent.<sup>77</sup> Much of this increase came as the result of strong growth in the industrial, mining and civil construction sectors in Brazil, sectors which are major markets for carbon steel plate. At the same time, the volume of flat steel products exported from Brazil dropped by nearly 17 percent. Despite this increase in production and drop in exports, the Brazilian steel industry was unable to satisfy domestic demand, and the volume of imports more than doubled.<sup>78</sup>

Of the three Brazilian companies identified at the initiation of Revenue Canada's investigation leading to the Tribunal's original inquiry (Inquiry No. NQ-92-007), namely, USIMINAS, COSIPA and CSN, only USIMINAS was found to be shipping the subject goods during the period of investigation. With 4.2 million tonnes of capacity to produce crude steel, USIMINAS is the third largest steel producer in Latin America.

USIMINAS owns nearly 50 percent of COSIPA, one of the other Brazilian companies identified by Revenue Canada. COSIPA's capacity to produce crude steel is approximately 3.9 million tonnes. According to the evidence, COSIPA was privatized in 1993.<sup>79</sup> The majority of COSIPA's exports of plate are directed to Asia and the United States. There is no evidence on the record of COSIPA having sold the subject carbon steel plate in the Canadian market since the rescission of the Tribunal's injury finding in Inquiry No. ADT-10-83.

The evidence demonstrated that USIMINAS benefited largely from the growth in the economy as revenues grew by 13 percent. With respect to sales of carbon steel plate, which represent about one-quarter of USIMINAS' sales, the evidence shows that heavy plate sales have grown significantly, and USIMINAS is fully utilizing its capacity.<sup>80</sup> USIMINAS currently has a six-month contract to produce about 400,000 tonnes of heavy plate for a Brazilian pipe manufacturer for the Brazil-Bolivia Pipeline Project. This volume represents nearly one half of USIMINAS' total plate production.<sup>81</sup> According to the witness for USIMINAS, the firm is booked for the rest of this year and expects to be fully booked for some time after that, supplying gas line projects they are in the process of bidding on. In addition, the Tribunal notes that approximately 85 percent of USIMINAS' sales were in the domestic market at prices which were, on average, 15 to 20 percent higher than international spot prices,<sup>82</sup> while about 15 percent of its sales were exported mostly to countries such as the United States, Japan, Argentina, Korea, Chile and Malaysia.

The Tribunal observes that there is evidence indicating that Brazil was found to have dumped certain steel products in the European Union in 1992, in Argentina in 1995 and in Mexico during the years 1992 to 1995. Insofar as the dumping occurred largely in goods other than the subject plate, the Tribunal is not persuaded that such evidence provides a reliable indicator of Brazil's exporting activities with respect to the

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77. Exporter's Exhibit G-4, Administrative Record, Vol. 13C.

78. *Ibid.*

79. Manufacturer's Exhibit C-1B, Tab 5, Administrative Record, Vol. 11B.1.

80. Tribunal Exhibit RR-97-006-RI-7B (protected), Administrative Record, Vol. 10F at 8.

81. *Transcript of Public Hearing*, Vol. 3, April 22, 1998, at 762.

82. *Supra* note 19.

subject plate and, more particularly, its exporting activities with respect to the Canadian market, under the market conditions that exist today in Brazil. In the case of the dumping of plate in coil form in Mexico, the Tribunal is not persuaded that this evidence is sufficient to indicate a likelihood of resumed dumping of the subject plate from Brazil.

Under these conditions, the Tribunal is persuaded that, even if USIMINAS does not supply the specific gas line projects that were referred to, demand in Brazil is likely to be sufficient to absorb most of USIMINAS' production. While there is a possibility that some extra Brazilian plate-making capacity might free up for a period of time, the Tribunal is not persuaded that this will have any significant impact on the availability of Brazilian plate internationally. With respect to COSIPA, the primary evidence is that it is operating in the same strong market as USIMINAS. Although CSN was identified as a possible producer of carbon steel plate, there is no evidence of its activities in the Canadian market with respect to carbon steel plate.

For these reasons, the Tribunal is not persuaded that there is a likelihood of resumed dumping from Brazil.

In light of the foregoing, the Tribunal concludes that there is no likelihood of resumed dumping from the named countries. Given this conclusion, it is not necessary for the Tribunal to consider the second fundamental question in a review regarding likelihood of injury.

## **CONCLUSION**

For these reasons, the Tribunal hereby rescinds its finding concerning certain hot-rolled carbon steel plate and high-strength low-alloy plate, heat-treated or not, originating in or exported from Belgium, Brazil, the Czech Republic, Denmark, Germany, Romania, the United Kingdom and the former Yugoslav Republic of Macedonia.

Charles A. Gracey

Charles A. Gracey  
Presiding Member

Pierre Gosselin

Pierre Gosselin  
Member

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.  
Member