



Ottawa, Monday, May 17, 1999

Review No.: RR-98-004

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 17, 1994, in Inquiry No. NQ-93-004, concerning:

**CERTAIN HOT-ROLLED CARBON STEEL PLATE AND HIGH-STRENGTH
LOW-ALLOY PLATE ORIGINATING IN OR EXPORTED FROM ITALY,
THE REPUBLIC OF KOREA, SPAIN AND THE UKRAINE**

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 17, 1994, in Inquiry No. NQ-93-004.

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

Pierre Gosselin
Pierre Gosselin
Presiding Member

Peter F. Thalheimer
Peter F. Thalheimer
Member

Richard Lafontaine
Richard Lafontaine
Member

Michel P. Granger
Michel P. Granger
Secretary

The Statement of Reasons will be issued at a later date.



Ottawa, Tuesday, May 25, 1999

Review No.: RR-98-004

**CERTAIN HOT-ROLLED CARBON STEEL PLATE AND HIGH-STRENGTH
LOW-ALLOY PLATE ORIGINATING IN OR EXPORTED FROM ITALY,
THE REPUBLIC OF KOREA, SPAIN AND THE UKRAINE**

Special Import Measures Act — Whether to rescind or continue, with or without amendment, the finding made by the Canadian International Trade Tribunal on May 17, 1994, in Inquiry No. NQ-93-004.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	March 29 to April 1, 1999
Date of Order:	May 17, 1999
Date of Reasons:	May 25, 1999
Tribunal Members:	Pierre Gosselin, Presiding Member Peter F. Thalheimer, Member Richard Lafontaine, Member
Director of Research:	Peter Welsh
Research Manager:	Tom Geoghegan
Researcher:	Martin Giroux
Economists:	Ihn Uhm Perpetua Katepa-Kalala
Statistical Officers:	Margaret Saumweber Joël Joyal Lise Lacombe
Counsel for the Tribunal:	Gilles B. Legault Michèle Hurteau
Registration and Distribution Officer:	Gillian E. Burnett

Participants:

Ronald C. Cheng
Gregory O. Somers
Benjamin P. Bedard
for Algoma Steel Inc.

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

Dalton Albrecht
James Warnock
for IPSCO Inc.

(Domestic Manufacturers)

Donald J. Goodwin
Dawn L. Miller
for Aceralia Productos Largos
Dongkuk Steel Mill Co., Ltd.
Pohang Iron & Steel Co., Ltd.

C.J. Michael Flavell, Q.C.
Geoffrey C. Kubrick
Alan Diner
for Azovstal Iron & Steel Works

(Importers/Exporters/Other Parties)**Witnesses:**

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

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

Donald K. Belch
Director - Government Relations
Stelco Inc.

Denis Boiteau
Sales Manager - Plate
Stelco Inc.

J.P. (John) Ormond
Divisional Accountant
Plate and Strip Division
Stelco Inc.

Domenic Vannelli
General Sales Manager
Samuel & Son & Co. (Quebec) Ltd.

Glenn A. Gilmore
Trade Supervisor
IPSCO Inc.

P. Murray Williamson
General Manager - Sales and Marketing
Canadian Steel Mill Operations
IPSCO Saskatchewan Inc.

David J. Green
General Manager
IPSCO Ontario Inc.

Alexander A. Fomenko
Deputy Financial Director for Foreign
Trade Relations
Azovstal Iron & Steel Works

Sara Amalia Robles Arias
Chief, Commercial Sector
Heavy Plate
Aceralia Productos Largos

Jong-Hyung Cho
Trade Affairs Team
Export Dept. I
Pohang Iron & Steel Co., Ltd.

Kim Jin-Han
Trade Affairs Team
Export Dept. I
Pohang Iron & Steel Co., Ltd.

J. Chang
Assistant Manager
Trade Affairs Team
Dongkuk Steel Mill Co., Ltd.

D.H. Kim
Team Manager
Trade Affairs Team
Dongkuk Steel Mill Co., Ltd.

C.H. Kim
Branch Manager
Dongkuk International, Inc.

Address all communications to:

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

Ottawa, Tuesday, May 25, 1999

Review No.: RR-98-004

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 17, 1994, in Inquiry No. NQ-93-004, concerning:

**CERTAIN HOT-ROLLED CARBON STEEL PLATE AND HIGH-STRENGTH
LOW-ALLOY PLATE ORIGINATING IN OR EXPORTED FROM ITALY,
THE REPUBLIC OF KOREA, SPAIN AND THE UKRAINE**

TRIBUNAL: PIERRE GOSSELIN, Presiding Member
PETER F. THALHEIMER, Member
RICHARD LAFONTAINE, Member

STATEMENT OF REASONS

BACKGROUND

This is a review, under subsection 76(2) of the *Special Import Measures Act*¹ (SIMA), of the finding made by the Canadian International Trade Tribunal (the Tribunal) on May 17, 1994, in Inquiry No. NQ-93-004,² concerning certain hot-rolled carbon steel plate and high-strength low-alloy plate not further manufactured than hot-rolled, heat-treated or not, in cut lengths, originating in or exported from Italy, the Republic of Korea (Korea), Spain and the Ukraine.

Pursuant to subsection 76(2) of SIMA, the Tribunal initiated a review of its finding and issued a notice of review³ on November 24, 1998. This notice was forwarded to all known interested parties.

As part of this review, the Tribunal sent questionnaires to Canadian manufacturers, importers, purchasers and foreign manufacturers of carbon steel plate. From the replies to these questionnaires and other sources, the Tribunal's research staff prepared public and protected pre-hearing staff reports. In addition, the record of this review consists of all relevant documents, including the finding in Inquiry No. NQ-93-004, the notice of review, public and confidential replies to the questionnaires, interrogatories and replies thereto, and the transcript of the proceedings. All 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, from March 29 to April 1, 1999.

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

1. R.S.C. 1985, c. S-15, as amended by S.C. 1994, c. 47.
2. *Finding*, May 17, 1994, *Statement of Reasons*, June 1, 1994.
3. *Canada Gazette* Part I, Vol. 132, No. 49, December 5, 1998, at 3251.

Azovstal Iron & Steel Works (Azovstal), Pohang Iron & Steel Co., Ltd. (Posco), Dongkuk Steel Mill Co., Ltd. (Dongkuk) and Aceralia Productos Largos (Aceralia) were also represented by counsel at the hearing. Counsel submitted evidence and made arguments in support of a rescission of the finding.

SUMMARY OF THE INJURY FINDING IN INQUIRY NO. NQ-93-004

On January 17, 1994, the Tribunal, under the provisions of section 42 of SIMA, commenced an inquiry 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 in. (101.6 mm) inclusive as follows:

plate made to 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 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;

but excluding:

- plate for use in the manufacture of pipe and tube (also known as “skelp”);
- plate in coil form;
- universal mill plate;
- plate made to ASTM specifications A515 and A516M/A516, grade 70, in thicknesses greater than 3.125 in. (79.375 mm); and
- plate made to ASTM specification A516M/A516, grade 70, which also meets one or more of the following specifications:
 - (i) plate required to meet NACE standard TM 0284/87, using the solution specified in TM 01-77/86, at the following levels: CLR 10% or less, CTR 5% or less and CSR 2% or less;
 - (ii) plate greater than 2.5 in. (63.5 mm) in thickness required to meet impact testing in the transverse orientation at -50°F under ASTM A370, to meet or exceed 25 ft.-lb. on average and 20 ft.-lb. on individual specimens;
 - (iii) plate greater than 2.5 in. (63.5 mm) in thickness required to meet the ultrasonic evaluation standards of ASTM/ASME SA-577 and/or SA-578;
 - (iv) plate 112 in. (2,844 mm) or greater in width with a total pattern weight in excess of 25,000 lbs.;
 - (v) plate required to meet the following carbon equivalent as per ASME SA-20:
 - carbon equivalent equal to or less than 0.40 for plate equal to or less than 1.5 in. (38.1 mm) in thickness; or
 - carbon equivalent equal to or less than 0.42 for plate greater than 1.5 in. (38.1 mm) in thickness; or

- carbon equivalent equal to or less than 0.42, with maximum hydrogen and oxygen contents of 2 parts per million and 10 parts per million respectively, for plate equal to or less than 1.5 in. (38.1 mm) in thickness,

originating in or exported from Italy, the Republic of Korea, Spain and the Ukraine.

On May 17, 1994, the Tribunal found that dumped imports from Italy, Korea, Spain and the Ukraine had caused, were causing and were likely to cause material injury to the production in Canada of like goods.

The domestic producers were Algoma, Stelco and IPSCO. Counsel for the domestic industry contended that this case was clearly one of attempted circumvention by importers of the Tribunal's finding of material injury in Inquiry No. NQ-92-007⁴ (Plate I).

The Tribunal noted that imports of carbon steel plate from the four subject countries were essentially absent from the domestic market until late in the fourth quarter of 1992. The appearance of increased volumes of carbon steel plate from the subject countries coincided with the announcement of an investigation that the Deputy Minister of National Revenue (the Deputy Minister) initiated, on his own initiative, in the fall of 1992, on carbon steel plate exported from other countries, leading to Inquiry No. NQ-92-007. The volume of imports from the subject countries surged in 1993, increasing substantially in each of the first three quarters, peaking in the third quarter, with more than one half of the total year's imports occurring in this three-month period. The dramatic increase in imports from the subject countries accelerated following the findings of material injury in Inquiry No. NQ-92-007 in May 1993. In the fourth quarter of 1993, coincident with a growing anticipation in the Canadian market of the initiation of another investigation by the Deputy Minister on carbon steel plate, import volumes from the four subject countries began to retreat.

A number of factors led to the Tribunal's finding that dumped imports had caused and threatened to cause injury. The Tribunal found that carbon steel plate was a commodity product, with price being the single most important factor influencing the decision to purchase carbon steel plate from a given source. The Tribunal noted that, in a commodity market, over time, prices tended toward the same level. Consequently, imports of dumped carbon steel plate could have a significant and immediate impact on prevailing prices in the domestic market.

A common marketing approach for importers was to seek commitments from customers to purchase carbon steel plate and then to place an order with a foreign mill when they believed that they had a sufficient volume to warrant importing a "boat-load," approximately 3,000 to 4,000 net tons. While the boat was en route to Canada, they tried to conclude sales based on these commitments, with any carbon steel plate remaining for sale when the boat landed being sold off-the-dock or being transferred in one lot to another distributor, usually at very low prices. This practice had a destabilizing effect on the domestic market. First, the availability of carbon steel plate in small quantities, at the same price as the one that domestic producers would generally charge for larger orders, restricted the ability of domestic producers to maintain their pricing structure in the market. Furthermore, as long as such stocks of carbon steel plate were available for

4. *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, the United States of America and the former Yugoslav Republic of Macedonia, Findings*, May 6, 1993, *Statement of Reasons*, May 21, 1993. These findings were rescinded by the Tribunal in *Review No. RR-97-006, Order*, May 5, 1998, *Statement of Reasons*, May 20, 1998.

immediate delivery at prevailing prices, it was difficult for domestic producers to take orders for future deliveries at increased prices.

The Tribunal noted that importers could and did play an important role in the carbon steel plate market, for example, by providing an alternative or secondary source of supply and by sometimes servicing accounts that domestic producers chose not to service for reasons such as poor credit worthiness, uneconomic volumes or a desire not to establish too many distributors in a particular region. However, the Tribunal found that sales of dumped imports to accounts that domestic producers did not service nonetheless had a negative impact on the prices that the domestic producers were able to charge their existing customers. According to the evidence, customers of the domestic producers made use of their competitors' purchases of dumped imports to negotiate with the domestic producers for lower prices.

PRODUCTS

Product Definition

The products that are the subject of this review are certain 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. to 152 in. inclusive, and thicknesses from 0.187 in. to 4 in. inclusive (carbon plate), originating in or exported from Italy, Korea, Spain, and the Ukraine.

Steel is considered to be carbon steel when the manganese content does not exceed 1.65 percent, the silicon and copper contents do not exceed 0.60 percent, and no minimum content is specified for any alloying elements, such as aluminum, chromium, columbium, molybdenum, nickel and vanadium. If there is a minimum level specified for the copper content, it must be less than 0.40 percent.

High-strength low-alloy (HSLA) steel is carbon steel with small quantities of alloying elements added. The selection of the particular combination of alloying elements depends on the desired properties of the steel, e.g. greater resistance to atmospheric corrosion, improved weldability or higher strength. HSLA steel generally costs more than carbon steel by weight, but can offer savings because of its greater strength.

The product definition for this review is similar to the product definition for Inquiry No. NQ-97-001⁵ (Plate III) concerning dumped imports from Mexico, the People's Republic of China (China), the Republic of South Africa and the Russian Federation, but is different from the product definition for Review No. RR-97-006 (Plate I) concerning dumped imports from Belgium, Brazil, the Czech Republic, Denmark, the Federal Republic of Germany, Romania, the United Kingdom and the former Yugoslav Republic of Macedonia. The major difference is that, in the Plate I inquiry, the Tribunal excluded from its findings carbon steel plate in thicknesses greater than 3.125 in., as well as pressure vessel quality (PVQ) plate of any thickness.

Production Process

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

5. *Certain Hot-rolled Carbon Steel Plate, Finding*, October 27, 1997, *Statement of Reasons*, November 10, 1997.

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 ranging from 3 in. to 6 in. The slab then moves to a finishing stand where it is rolled to its final plate width and thickness. The plate is then leveled and cut to length.

At Algoma, lighter plate is initially sent to the 166-in. plate mill that functions 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 slab mill and a 4-high reversing Steckel mill, where the plate is leveled 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 carbon plate sold in the market is cut to length from coil at the larger steel service centres. Some fabricators cut carbon plate from coil for use in their own operations.

Carbon plate is manufactured to meet certain Canadian Standards Association and/or American Society for Testing and Materials specifications. The most common specification for carbon plate in Canada is CSA G40.21, grade 300W/44W which is a structural quality steel. CSA G40.21, grade 350W/50W is the most popular specification for HSLA plate, while ASTM A516M/A516 grade 70 is the most common specification for PVQ plate.

DOMESTIC PRODUCERS

Three domestic steel mills produce carbon plate.

Algoma

Algoma is currently the largest carbon plate producer in Canada. Incorporated on June 1, 1992, under the Ontario *Business Corporations Act*,⁶ Algoma acquired all of the assets and some of the liabilities of The Algoma Steel Corporation, Limited. Algoma is approximately 26 percent employee owned, with the remaining shares held by other investors.

Algoma, with its subsidiaries, is a vertically integrated primary iron and steel producer, having a present capacity to produce approximately 2.5 million tons of raw steel annually. Expressed in terms of finished steel products, the annual capacity is approximately 2.2 million tons. Algoma operates a major steel works in Sault Ste. Marie, Ontario. In addition, through a subsidiary, Algoma has an equity interest in an iron ore mine and pelletizing facility located in the United States.

6. R.S.O. 1990, c. B-16.

Algoma manufactures a broad range of steel products primarily serving Canada's construction, transportation and energy industries. These products include flat-rolled sheet and plate and various semi-finished products.⁷ The installation of the new Direct Strip Production Complex in 1997 has freed up capacity for carbon steel plate on Algoma's plate mill complex. It had also been used for the production of hot-rolled steel sheet.

Stelco

Stelco is the second largest domestic producer of carbon plate. Stelco was established in 1910 as the Steel Company of Canada Ltd. The company is an integrated steel company which, with its affiliates, produces flat-rolled steel, bars and rods, as well as wire, wire products and pipes and tubes. Stelco first produced carbon plate in 1941 on a 110-in. plate mill. This mill was replaced in 1965 by the 148-in. plate mill which is currently in use at Hilton Works, Hamilton, Ontario.

In 1989, Stelco acquired CHT Steel Company Inc. in Richmond Hill, Ontario, a heat-treating facility for various types of carbon plate. Stelco is currently proceeding with an \$85 million modernization project to improve and expand the capability of the plate mill and to include production of coiled plate. Initial operations are scheduled to start in mid-1999.

IPSCO

IPSCO was incorporated in 1956 under the name of Prairie Pipe Manufacturing Co. Ltd. It commenced operations in 1957 with the completion of construction of an electric resistance weld pipe mill in Regina, Saskatchewan. In 1959, the company acquired the assets of Interprovincial Steel Corp. Ltd. and, in 1960, it commenced production of flat-rolled steel, including the carbon plate that is the subject of this review. Since that time, IPSCO has expanded its manufacturing capabilities through acquisition and construction in both Canada and the United States. IPSCO's new facility in Toronto, Ontario, will be capable of cutting carbon plate from coil. Operations commenced recently.

IPSCO has three operating divisions: Raw Materials and Coil Processing Division, Steel Division and Tubular Products Division. Both the Raw Materials and Coil Processing Division and the Steel Division manufacture and sell carbon plate. Products produced by IPSCO include hot-rolled sheet and plate, hollow structural sections, line pipe, standard pipe, piling pipe, OCTG tubing, waterwell casing and OCTG casing.

The vast majority of Algoma's and Stelco's sales are in Ontario and Quebec, while IPSCO's sales are concentrated in the Prairies and British Columbia.

EXPORTERS AND IMPORTERS

The Tribunal had evidence before it regarding all of the foreign mills, in general, and, in particular, information relating to four mills that had accounted for a significant amount of the exports of carbon steel plate to Canada investigated by the Deputy Minister in 1993. There are two large Korean producers of carbon plate: Posco and Dongkuk. Posco is the second largest producer of steel in the world. The vast majority of Posco's sales are made in Korea. Major export markets include Japan, Southeast Asia, China and

7. *The Globe and Mail* on February 3, 1999, reported that Algoma had announced that it will close two of its steel mills and discontinue making seamless tubular steel products and structural steel shapes.

the United States. Dongkuk has been engaged in the production and sale of steel products in domestic and overseas markets. Export markets include Japan, the United States, Europe and Southeast Asia.

There are three major producers of carbon plate in the Ukraine. Azovstal's exports of carbon plate represent the vast majority of total exports of carbon plate by the Ukraine to Canada. Major markets for export sales include the United States, Taiwan and the Federal Republic of Germany. Aceralia is the sole Spanish producer of carbon plate. Major markets for export sales include Mexico and the United Kingdom. In the Tribunal's original inquiry, ILVA LAMINATI PIANI s.r.l. was the sole Italian producer and exporter of carbon plate. In mid-1997, IRITECNA purchased ILVA LAMINATI PIANI s.r.l. and subsequently sold its carbon plate production facilities to third parties.

The five largest importers of carbon steel plate into Canada are: Wirth Limited, Aciers Francosteel Canada Inc., Canadian Klockner, Ferrostaal Metals Ltd and Salzgitter Trade, Inc. (formerly Preussag Handel Canada Corp.). According to Statistics Canada, for the last three years, these five importers have accounted for approximately 50 percent of the carbon plate imported into Canada. There are also a large number of small importers of carbon plate, many of which import small volumes of carbon plate from the United States.

POSITION OF PARTIES

Parties in Favour of a Continuation of the Finding

Counsel for the domestic producers submitted that there is a likelihood of resumed dumping of carbon steel plate from the subject countries if the finding is rescinded and that such dumping is likely to cause material injury to the domestic industry.

As a preliminary point, counsel for the domestic producers submitted that the exporters' evidence before the Tribunal does not cover Italy and all exporting steel mills in the Ukraine. Counsel also submitted that the Tribunal should apply the principle of cumulation in this review when assessing both the likelihood of resumed dumping and the likelihood of injury.

Counsel for the domestic producers submitted that there is an unprecedented crisis in the global steel industry. There has been a huge drop in global steel demand, including demand for the subject goods, that has shifted enormous quantities of steel onto global markets and that will lead to a resumption of dumping from the subject countries. Counsel highlighted the consequences of the Asian crisis: negative gross domestic product (GDP) growth rates in many Asian countries; low expected rates of economic recovery in Asia; and the substantial increases in exports from Asian countries to other markets, particularly from Korea to the United States. According to counsel, demand in the European Union is softer, particularly in Italy and Spain, as increased imports from Asia have disrupted their steel markets. Counsel argued that the manufacturing and construction sectors in both Asia and Europe are very weak. Counsel for IPSCO submitted that the Ukraine's capacity utilization was approximately 44 percent in 1997, while domestic consumption had declined by 35 to 40 percent. Counsel for IPSCO further submitted that the Tribunal should note that Italian steel production capacity utilization was 73 percent in 1997, well below the average in the European Union.

Counsel for the domestic producers submitted that there are import restrictions in place against exports of carbon plate from some of the subject countries. There are injury findings against exports of carbon plate from the Ukraine to India, Indonesia and Mexico. Exports from the Ukraine are also subject to a suspension agreement in the United States and a quota restriction in the European Union. An injury finding is

in place against Spain in the United States. Also, recent US anti-dumping proceedings on plate with respect to a number of countries, including Korea and Italy, could also result in restricted access to the US market for exporters in these countries.

Counsel for the domestic producers submitted that producers in the subject countries have maintained active commercial interests in the Canadian market. Counsel for Algoma submitted that they have not been able to compete in the Canadian market under the normal value regime. According to counsel for Algoma, this has been proved by the Ukrainian exporter, Azovstal, shifting to exports of non-subject goods to Canada after the injury finding. Counsel for Algoma argued that these non-subject plate exports were sold at prices lower than those for the subject goods in order to circumvent the intent of the finding. Counsel for Stelco submitted that 20,000 tons of non-subject plate from the Ukraine were exported to Canada in 1998. The bulk of those shipments consisted of high added-value PVQ plate made to special carbon equivalents. According to counsel for Stelco, this plate was for standard commercial plate applications and was sold at significantly lower prices than those of standard Canadian PVQ plate. As well, counsel for Algoma submitted that the Korean exporters have announced their intention of resuming sales to Canada if the finding is rescinded. Counsel for Algoma submitted that this means that these exporters cannot comply with the normal value regime.

Counsel for Stelco and IPSCO submitted that many of the mills in the subject countries operate through trading houses that have international connections. These trading houses obtain steel from wherever they can find it, import it and then sell it at the best possible price. Counsel for the domestic producers submitted that there is significant overcapacity for carbon steel plate in the named countries and that even a minor percentage of the present volume of exports from the named countries would seriously injure domestic production. Moreover, counsel submitted that the availability of other markets to absorb exports from the subject countries is limited. Counsel for Algoma submitted that the current state of price competition means that Canadian market prices for the subject goods are already low and that the subject countries would have to resume dumping in Canada if they hoped to compete with the prices from the emerging dumping countries such as Indonesia, India and Thailand.

Counsel for Algoma anticipated opposing 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. Addressing the issue of added capacity in Canada, counsel for Stelco submitted that only Stelco has added capacity. Algoma has freed up existing capacity with its new strip mill complex, and the IPSCO facility does not represent new steel-making capacity, but rather a service centre. Counsel for Stelco submitted that the Canadian mills plan and build for the Canadian and regional markets in North America. They are not export oriented.

In addressing the issue of the vulnerability of the domestic industry to resumed dumping, counsel for Algoma 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 only one significant domestic producer is vulnerable and may be, therefore, more vulnerable than others, that is sufficient to find that the domestic industry, as a whole, is vulnerable to resumed dumping. Counsel highlighted several areas which, they submitted, demonstrate vulnerability to resumed dumping. Those factors included current Canadian market conditions, resumed price pressures from imports into Canada by

the Plate I countries and the current anti-dumping action in the United States that could lead to diversion to Canada of dumped subject plate. Vulnerability also arises because of the commodity nature of the subject goods. It is exacerbated by low Canadian market demand, low gross margins, low average unit prices, high inventory levels and underutilization of domestic production capacity. In addition, export opportunities for the domestic producers are limited.

Counsel for IPSCO submitted that the domestic industry is already suffering injury from imports. The likely volumes of imports from the subject countries will be quite significant because of the demonstrated ability of the exporters from the named countries to increase production very quickly. Finally, counsel reminded the Tribunal that, if dumping occurs, the domestic industry in general, and IPSCO in particular, will suffer material injury because of the recent sharp erosion in domestic prices and the consequential effect on its financial performance.

Parties in Favour of a Rescission of the Finding

Counsel for Azovstal, Posco, Dongkuk and Aceralia submitted that there was no likelihood of resumed dumping from Korea, Spain and the Ukraine. However, even if the Tribunal determines that there is a likelihood of resumed dumping, counsel submitted that there is no likelihood of injury.

Ukraine

Counsel for Azovstal submitted, as a preliminary matter, that the evidence of witnesses under oath is worth more than pages of extracts from documents which cannot be tested in the absence of their authors. On the question of cumulation, counsel submitted that the Tribunal should analyze the question of likelihood of resumed dumping on a country-by-country basis.

Counsel for Azovstal submitted that the Ukraine has reached agreements in two of its major steel markets, the United States and the European Union, that enable the Ukraine to export a reasonable amount of product and, in the case of the European Union, significant quantities of a particular product. Counsel submitted that these agreements mean that the Ukraine has a good steady revenue-producing source of purchases from those two major markets and a number of other countries to which the Ukraine can export. Counsel submitted that these agreements, combined with a reasonable level of capacity utilization for domestic use, will enable Azovstal to do well vis-à-vis volume of sales without selling huge quantities of product to Canada, which it never has done.

Counsel for Azovstal submitted that, to understand the extent to which dumping would be a factor in order to compete, it is important to look at three of the biggest markets for Azovstal: the United States, the European Union and India. To obtain an order of magnitude of how Azovstal prices to North America, counsel asked the Tribunal to compare the price reference levels established by the U.S. Department of Commerce with Canadian prices. Counsel submitted that the European Union did not impose any particular pricing constraint on steel from the Ukraine, nor in fact did it cut the amount of plate shipped. Turning to India, the dumping margin for Azovstal was 8 percent and is not one that creates trouble for Azovstal.

Counsel for Azovstal submitted that its exports to Canada have very particular specifications. Counsel submitted that an exclusion is an exclusion and that it cannot be affected by what end use is made of the product. Counsel submitted that pricing and volume of non-subject goods sold to Canada are not consistent with injurious dumping and were not causing price problems in the Canadian market.

Counsel for Azovstal submitted that the current state of and pricing in the Canadian plate market actually make Canada a less attractive place to send Ukrainian steel, except in the case of value-added material where a premium can be earned for specialty steel. Counsel also submitted that the domestic industry has added capacity at a time of unprecedented difficulties in the global steel market.

Counsel for Azovstal submitted that the company is not interested in the basic bread-and-butter material that the Canadian industry is producing and in which it specializes. If the finding is rescinded, it is likely that Azovstal will continue to supply specialty needs, as required by certain users.

Counsel for Azovstal submitted that an important question relating to the vulnerability of the Canadian industry relates to its present and future financial situation. Counsel submitted that the Canadian steel industry is doing very well with regards to plate, despite some significant competition from the United States and other countries.

Korea and Spain

Counsel for Posco, Dongkuk and Aceralia submitted that Canada has international obligations in respect of sunset clause reviews. Counsel referred to Article 11.1 of the World Trade Organization (WTO) *Agreement on Implementation of Article VI of GATT 1994*⁸ (WTO Anti-dumping Agreement) that Canada is obliged to follow.

Counsel for Posco, Dongkuk and Aceralia submitted that the present market situations are different from those of five years ago. They submitted that this case comes at a time when the demand for carbon plate in North America has been strong and is expected to get stronger.

Counsel for Posco and Dongkuk submitted that Korea and Japan are the traditional markets for Korea. They submitted that, while the Korean economy was very weak throughout 1998, numerous documents on the record confirm that both the Korean economy and the Korean steel industry are expected to improve in 1999.

Counsel for Posco and Dongkuk recognized that Korean mills have been selling various steel products to Canada and the United States and that the volume of those shipments increased in 1998. Counsel indicated, however, that Korea does not have to dump its product in the Canadian market. Counsel gave the example of Korean corrosion-resistant product being sold at normal values and mentioned that Korea was not named in the two recent Revenue Canada dumping cases concerning hot-rolled steel sheet and cold-rolled steel sheet. Counsel submitted that there are no other anti-dumping measures against carbon plate exported from Korea.

Counsel for Posco and Dongkuk submitted that Korea has idled many of its steel mills and done away with plans for additions. Counsel mentioned that, although Posco and Dongkuk have added capacity, the evidence showed that production will not be increased unless warranted by demand and prices. Counsel submitted that Posco and Dongkuk have no plans to export carbon plate to Canada.

Counsel for the Korean and Spanish producers submitted that, if imports have 40 percent of the Canadian market for the subject goods and foreign mills can sell their product into the Canadian marketplace, this is only due to competitiveness. The fact that the Korean mills are low-cost producers and are competitive

8. Signed at Marrakesh on April 15, 1994.

without dumping should not be held against them. They also submitted that Korean steel management has changed, adopting a new philosophy of steel mill management, and that, today and in the future, there is a willingness to cut production in the face of declining markets and declining prices.

Counsel for Posco, Dongkuk and Aceralia submitted that the domestic mills have added new capacity, creating a situation of massive oversupply in the Canadian marketplace. Counsel submitted that the downward pressure that this expansion places on prices within the Canadian market is fully recognized by the domestic mills.

Counsel for Aceralia quoted a report of the Organization for Economic Co-operation and Development (OECD) that forecast that net exports from the European Union will continue to decline as a result of the continuing growth in internal demand and increasing prices. Counsel submitted that a recent anti-dumping filing by the European Union against plate from several low-cost countries will result in increased demand and prices for Spanish plate.

Counsel for Aceralia submitted that the European Union is Aceralia's market. Aceralia shipped less than a total of 1,200 tons to the United States in the last four years. Counsel submitted that the levels of pricing demonstrate an unwillingness on the part of Spain to dump. Counsel submitted that Aceralia, the only carbon plate producer in Spain, does not intend to increase its capacity utilization. Counsel submitted that there has been no other anti-dumping measure taken against Spain in the last five years.

Counsel for Aceralia contended that Aceralia sold the subject goods to Canada at prices in excess of normal values. Counsel submitted that, when the prices in Canada dropped, Aceralia chose to sell to other customers at acceptable margins or to cut back its production.

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.

Before entering into the crux of the analysis with respect to the likelihood of resumed dumping, the Tribunal finds it important to address the argument supporting the application of the principle of cumulation to that analysis. This argument is based on recent Tribunal decisions in which that argument was also raised.⁹ In the Tribunal's view, a close reading of its decision in *Certain Carbon Steel Welded Pipe* shows that the Tribunal assessed a number of factors that were relevant to all named countries. However, this is not to say that the Tribunal applied "cumulation" to these countries. In the Plate I review, the Tribunal said that its statement in *Certain Carbon Steel Welded Pipe*, which, allegedly, allowed cumulation with respect to the issue of likelihood of resumed dumping, was taken out of context. The Tribunal also concluded that the panel

9. *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; and *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*, Review No. RR-97-006, *Order*, May 5, 1998, *Statement of Reasons*, May 20, 1998, at 15.

in *Certain Carbon Steel Welded Pipe* had already found that the likelihood of resumed dumping existed when it made that statement. Thus, in Plate I, the Tribunal said that the panel's statement in *Certain Carbon Steel Welded Pipe* must be "understood to relate to applying cumulation in the context of the question of likelihood of injury."¹⁰ The Tribunal seems to have put this issue further to rest in Review No. RR-97-007.¹¹ The Tribunal, in addressing the arguments of counsel for Algoma and Ispat Sidbec Inc., concluded as follows:

the Tribunal [in *Certain Hot-rolled Carbon Steel Plate*] held that it has the discretion to cumulate in a review under section 76 in appropriate circumstances and that it has done so in the past in numerous cases. A review of these cases revealed, however, that this has primarily been done in the context of the question of the likelihood of injury. The Tribunal did not refer to a single case where it, or any of its predecessors, had applied cumulation to the issue of the likelihood of dumping.¹² (Emphasis added)

Finally, the acceptance of the principle of cumulation in Canada, its ultimate codification in Article 3 of the WTO Anti-dumping Agreement, its recognition in section 42 of SIMA and its treatment in section 76.03 of Bill C-35,¹³ which is not yet in force, but which received Royal Assent on March 25, 1999, all confirm that cumulation is a principle that clearly applies with respect to the second issue in a SIMA expiry review.

Likelihood of Resumed Dumping

In examining whether there is a likelihood of resumed dumping, the Tribunal may consider a broad range of factors. In this review, the Tribunal considered the following factors with respect to each of the four named countries: (i) economic conditions and how they have affected the carbon plate market; (ii) how the economics of steel production affect steel producers; (iii) imports into Canada of carbon plate while the finding has been in place; (iv) whether producers have demonstrated an export orientation for carbon plate and other steel products to Canada and other markets; (v) the availability of excess carbon plate capacity utilization and the extent to which producers may be dependent on export markets; and (vi) anti-dumping and other measures against imports of carbon plate in other jurisdictions.

The Tribunal first observed how global economic and carbon plate market developments have affected each of the four named countries. The Asian crisis started in late 1997. Its effects on markets outside Asia were only felt some time later. There is evidence on the record that, in 1998, there was a decline in the GDP in Asia, particularly in countries such as Korea and Japan. There was testimony by witnesses, as well as other evidence, that suggested that economic conditions could be turning around.¹⁴ However, although the evidence may suggest a bottoming of the effects of the crisis, it does not suggest any strong recovery in Asia

10. *Ibid.*, *Certain Hot-rolled Carbon Steel Plate*, *Statement of Reasons* at 16.

11. *Certain Cold-reduced Flat-rolled Sheet Products of Carbon Steel (Including High-strength Low-alloy Steel) Originating in or Exported from the Federal Republic of Germany, France, Italy, the United Kingdom and the United States of America*, *Order and Statement of Reasons*, July 28, 1998.

12. *Ibid.*, *Statement of Reasons* at 13.

13. *An Act to amend the Special Import Measures Act and the Canadian International Trade Tribunal Act*, S.C. 1999, c. 12.

14. Tribunal Exhibit RR-98-004-RI-5A (protected), Administrative Record, Vol. 10.4 at 37; Manufacturer's Exhibit B-10, Tab 3 at 3, Administrative Record, Vol. 11.1B; Manufacturer's Exhibit C-5, Tab 5 at 5 and 6, Administrative Record, Vol. 11.2; and *Transcript of Public Hearing*, Vol. 3, March 31, 1999, at 532-34.

in the near future.¹⁵ The evidence also points to a slowing down of economic growth in the European Union compared with levels reached 18 months earlier, as well as continuing weakness in the economies of Eastern Europe, particularly the Ukraine and the Russian Federation.¹⁶

Economic developments, particularly in Asia, have had a dramatic effect on demand for steel, and particularly carbon plate, not only in Asia but also in other major world markets.¹⁷ Evidence on the record shows that the level of excess steel capacity in the world has increased since 1997 and that excess capacity is forecast to continue to be high in the near future.¹⁸ Although there is no evidence on the record concerning carbon plate capacity in the world, the record contains data showing that several producers in the named countries have significant excess carbon plate capacity.¹⁹ In addition, other data show that there have been significant price declines for carbon plate in the past year.²⁰ The last two years have also been marked by major shifts in trade flows of carbon plate. In the case of Korea, weak domestic demand led to large increases in exports of carbon plate in 1998.²¹ For the Ukraine, continued weak demand in Eastern Europe created pressure to maintain carbon plate export levels and resulted in a constant search for new markets.²² For the two named countries in the European Union, the main constraints on producers of carbon plate were weakening demand and new competition from imports in the European Union attributable, for the most part, to developments in the Asian and Eastern European carbon plate markets.²³ It is clear to the Tribunal that, taking into account expected economic trends, current conditions in carbon plate markets are likely to continue in the near term. In the Tribunal's opinion, this will mean that opportunities for increasing rates of capacity utilization are likely to be limited for producers in each of the four named countries.

Recent developments in trade and prices in the carbon plate market suggest that, when faced with weak demand, producers will endeavour to maintain high levels of plant loading. According to reports produced by firms which track steel production and markets,²⁴ steel producers, when faced with declining

15. *Ibid.*

16. Tribunal Exhibit RR-98-004-11.1, Administrative Record, Vol. 3 at 232-33; Manufacturer's Exhibit B-1, Tab 2 at 3, 4 and 5, Administrative Record, Vol. 11.1A; Manufacturer's Exhibit B-1, Tab 9, Administrative Record, Vol. 11.1A; and *Transcript of Public Hearing*, Vol. 1, March 29, 1999, at 220-22.

17. Tribunal Exhibit RR-98-004-RI-6A (protected), Administrative Record, Vol. 10.5 at 30-35; Manufacturer's Exhibit B-5, Tab 2 at 2, Administrative Record, Vol. 11.1A; Tribunal Exhibit RR-98-004-11.3, Administrative Record, Vol. 3B at 58-61; and Manufacturer's Exhibit B-1 Tab 3 at 3, Administrative Record, Vol. 11.1.

18. Manufacturer's Exhibit B-1, Tab 9, Administrative Record, Vol. 11.1A; Tribunal Exhibit RR-98-004-11.3, Administrative Record, Vol. 3B at 58; and Manufacturer's Exhibit B-1, Tab 3 at 3, Administrative Record, Vol. 11.1.

19. *Protected Pre-hearing Staff Report*, revised March 23, 1999, Tribunal Exhibit RR-98-004-6B (protected), Administrative Record, Vol. 2 at 150; Tribunal Exhibit RR-98-004-RI-6A (protected), Administrative Record, Vol. 10.5 at 59; Tribunal Exhibit RR-98-004-RI-4A (protected), Administrative Record, Vol. 10.3 at 51; and Tribunal Exhibit RR-98-004-RI-5B (protected), Administrative Record, Vol. 10.4 at 19.

20. *Public Pre-hearing Staff Report*, February 17, 1999, Tribunal Exhibit RR-98-004-5, Administrative Record, Vol. 1 at 170, 171, 188.42, 188.43 and 188.44.

21. Manufacturer's Exhibit B-1, Tab 2 at 5, Administrative Record, Vol. 11.1; *Transcript of Public Hearing*, Vol. 3, March 31, 1999, at 537 and 538; and Tribunal Exhibit RR-98-004-RI-6A (protected), Administrative Record, Vol. 10.5 at 59.

22. *Transcript of In Camera Hearing*, Vol. 2, March 30, 1999, at 169-72; and Manufacturer's Exhibit B-1, Tab 9 at 1-2, Administrative Record, Vol. 11.1A.

23. Manufacturer's Exhibit B-1, Tab 2 at 2 and 3, Administrative Record, Vol. 11.1A; and Exporter's Exhibit D-2 at 1, Administrative Record, Vol. 13.

24. Manufacturer's Exhibit B-1, Tab 9, Administrative Record, Vol. 11.1A.

demand, have little choice but to maximize production if they are to make a contribution to high fixed costs, even if it means selling at lower prices. Steel mills are capital intensive with high fixed costs. In order to recover fixed expenses, steel mills must run at high levels of production capacity. When home market demand drops, producers will search out foreign markets to maintain capacity utilization to ensure that these fixed costs are recovered. The Tribunal heard testimony from two witnesses for the foreign producers which indicated that, when demand for steel declined, they would cut production and reduce their exports.²⁵ The Tribunal does not dispute this testimony, but, as already noted, the evidence regarding recent developments shows that this has not occurred. Given the excess carbon plate capacity which currently exists and the need to keep plants operating at optimum levels, the Tribunal considers that the foreign producers are likely to continue to be driven by what might be called the “economics” of steel production.²⁶

Ukraine

Collectively, Ukrainian mills have the capacity to produce 4 million tonnes of carbon plate. Azovstal, one of the largest of the Ukrainian plate producers, appeared at the hearing. Excluding Azovstal, the four remaining Ukrainian producers account for about 2.8 million tonnes of plate capacity.²⁷

The Tribunal notes that producers in the Ukraine showed a strong interest in the Canadian market over the period of review (from 1996 to 1998). Although Azovstal has not shipped any subject plate to Canada since the finding, it sold non-subject plate in Canada.²⁸ The majority of Azovstal’s shipments consisted of carbon plate with a low carbon content for PVQ applications.²⁹ In 1998, its shipments of non-subject PVQ plate represented a significant proportion of market requirements that are estimated to have been about 75,000 tonnes.³⁰ These sales of premium quality plate were made at prices below the domestic producers’ selling prices of PVQ plate.³¹ Moreover, the evidence strongly suggests that the imported PVQ plate found uses in less demanding applications. The witness for Azovstal testified that Azovstal sold its product to traders and did not seek to determine what the final use of the product might be.³² The company has also been offering plate in a thickness of 4 1/16 in. to its Canadian customers, which is just beyond the 1993 product exclusion of over 4 in. in thickness.³³ The Tribunal notes that, in 1998, the firm’s sales of non-subject plate to the Canadian market were close to four times the volume of the carbon plate that it sold to the Canadian market at the time of the 1993 inquiry.³⁴ All of this suggests that Azovstal could not compete in the subject carbon plate market at normal values and chose instead to be active in the non-subject plate

25. *Transcript of Public Hearing*, Vol. 2, March 30, 1999, at 449, and Vol. 3, March 31, 1999, at 512 and 513.

26. Manufacturer’s Exhibit B-1 at 65 and 68, Administrative Record, Vol. 11.1.

27. *Transcript of Public Hearing*, Vol. 2, March 30, 1999, at 326 and 327; and Tribunal Exhibit RR-98-004-30.5C (protected), Administrative Record, Vol. 6.4 at 82.

28. Exporter’s Exhibit G-6 (protected), Administrative Record, Vol. 14.1.

29. *Ibid.*

30. *Transcript of Public Hearing*, Vol. 1, March 29, 1999, at 219.

31. Exporter’s Exhibit G-6 (protected), Administrative Record, Vol. 14.1; and *Protected Pre-hearing Staff Report*, revised February 24, 1999, Tribunal Exhibit RR-98-004-6A (protected), Administrative Record, Vol. 2 at 140.

32. *Transcript of Public Hearing*, Vol. 2, March 30, 1999, at 330.

33. Exporter’s Exhibit G-6 (protected), Administrative Record, Vol. 14.1.

34. *Transcript of Public Hearing*, Vol. 2, March 30, 1999, at 332; and Exporter’s Exhibit G-6 (protected), Administrative Record, Vol. 14.1.

market where no anti-dumping restrictions were in place. During the review period, other Ukrainian producers shipped the subject plate to Canada. These imports were assessed anti-dumping duties.³⁵

All Ukrainian producers of carbon plate have been faced with very weak demand in their domestic market, as well as in their principal export market, the Russian Federation. As already noted, the outlook for these markets remains depressed. The collapse in demand in Asia has also severely affected exports of carbon plate from the Ukraine to these markets.³⁶ However, the witness for Azovstal indicated that, despite the weaknesses in its domestic and export markets, the company was able to maintain its export volumes by finding new export markets for plate, as well as by offering a wider product range, including shipbuilding plate.³⁷ In 1998, the firm's export sales represented 54 percent of its total production.³⁸ Azovstal and other Ukrainian exporters shipped large volumes of carbon plate to other export markets in order to keep their plants operating at acceptable levels.³⁹ However, these exports resulted in numerous trade complaints by producers in foreign markets. In 1997, Ukrainian exporters accepted a suspension agreement in the United States after having quickly and substantially penetrated that market. This agreement established minimum prices and quotas which reduced Ukrainian exports from 627,000 tons in 1996 to a maximum of 158,000 tonnes annually.⁴⁰ In 1998, Ukrainian exporters entered into an agreement with the European Union which limited their exports of carbon steel plate to approximately 110,000 tonnes in 1999.⁴¹ These same exporters have also been named in findings of injurious dumping in Mexico, India and Indonesia.⁴² These trade measures and restraint agreements, taken together, have led to an overriding effort by producers of carbon plate in the Ukraine to maintain or increase exports by constantly seeking new markets, a fact which was reflected in testimony by the witness for Azovstal.

The Tribunal considers that, given excess carbon plate capacity in the Ukraine, limited home and export market opportunities, Ukrainian producers' activities in other export markets and measures in place in those markets against carbon plate exports from the Ukraine, the changing geographical structure of their exports, as well as their continuing strong interest in the Canadian market and apparent inability to compete in the Canadian carbon plate market at normal values, there is a likelihood of a resumption of dumping of carbon plate by the Ukraine, if the finding is rescinded.

35. *Protected Pre-hearing Staff Report*, February 17, 1999, Tribunal Exhibit RR-98-004-6 (protected), Administrative Record, Vol. 2 at 23.

36. Manufacturer's Exhibit B-1, Tab 9, Administrative Record, Vol. 11.1A.

37. *Transcript of In Camera Hearing*, Vol. 2, March 30, 1999, at 169-72.

38. Tribunal Exhibit RR-98-004-30.5C (protected), Administrative Record, Vol. 6.4 at 82.

39. Manufacturer's Exhibit B-1, Tab 13, Administrative Record, Vol. 11.1A; Tribunal Exhibit RR-98-004-11.3, Administrative Record, Vol. 3B at 123; and Tribunal Exhibit RR-98-004-11.1, Administrative Record, Vol. 3 at 232-33.

40. Exporter's Exhibit G-5, Administrative Record, Vol. 13.1; and Manufacturer's Exhibit B-1, Tab 5 at 1, Administrative Record, Vol. 11.1A.

41. Manufacturer's Exhibit B-13, Administrative Record, Vol. 11.1B.

42. *Public Pre-hearing Staff Report*, revised March 24, 1999, Tribunal Exhibit RR-98-004-5C, Administrative Record, Vol. 1 at 188.51 and 188.52.

Korea

Posco and Dongkuk are the two main Korean producers of carbon plate.⁴³ In 1997, their total carbon plate capacity was about 3.6 million tonnes. In 1998, an additional net 2 million tonnes in plate capacity⁴⁴ were brought on stream at the time when the effects of the Asian crisis on carbon plate demand were deepening.⁴⁵ In 1998, Korean capacity for the production of carbon plate stood at 5.6 million tonnes.⁴⁶ Witnesses for both firms indicated that Posco and Dongkuk would not dump if the finding were rescinded. In addition, given present economic conditions in Korea, it was submitted that the volume of plate shipped to Canada would not be significant.⁴⁷

The Tribunal notes that enforcement data provided by the Department of National Revenue (Revenue Canada) show that there were imports of the subject plate from Korea during 1994, 1995 and as late as 1997.⁴⁸ These imports were subject to an export advance of 80 percent.⁴⁹ Witnesses for the Korean producers submitted that, because of the devaluation of the won, exports of carbon plate to Canada would not be dumped. They provided an example of a domestic price for carbon plate and the estimated costs of shipping to Canada.⁵⁰ The Tribunal notes that the purpose of a review is not to substitute itself for Revenue Canada in the calculation of normal values. Even if the Tribunal were mandated to undertake such calculations, the information submitted could not provide a basis for determining a normal value for which Revenue Canada requires an exhaustive review of all domestic pricing. The Tribunal notes that the producers could have asked Revenue Canada for the determination of normal values for carbon plate exports to Canada, if they had thought that they could have been competitive in the Canadian market. Korean exporters were named in Inquiry No. NQ-93-007.⁵¹ In that case, Korean exporters obtained normal values from Revenue Canada and, as a result, were able to resume shipping into the Canadian market.⁵²

The Tribunal finds it relevant that the Korean producers decided not to request the determination of normal values for carbon plate exports to Canada, but instead made it known that product would be available in the Canadian market for July delivery in anticipation of a rescission of the finding.⁵³ This strategy indicates to the Tribunal that the Korean producers are very interested in the Canadian market, but are unlikely to be able to be competitive without dumping. Korean exporters are very active in other steel sectors in Canada,

43. *Transcript of Public Hearing*, Vol. 3, March 31, 1999, at 594.

44. *Transcript of Public Hearing*, Vol. 3, March 31, 1999, at 537 and 538; Tribunal Exhibit RR-98-004-RI-6A (protected), Administrative Record, Vol. 10.5 at 59; and Tribunal Exhibit RR-98-004-RI-5B (protected), Administrative Record, Vol. 10.4 at 19.

45. *Transcript of Public Hearing*, Vol. 3, March 31, 1999, at 556.

46. Tribunal Exhibit RR-98-004-RI-5B (protected), Administrative Record, Vol. 10.4 at 19; and Tribunal Exhibit RR-98-004-RE-6A (protected), Administrative Record, vol. 10.5 at 59.

47. Tribunal Exhibit RR-98-004-29.4, Administrative Record, Vol. 5.4 at 48.

48. *Protected Pre-hearing Staff Report*, February 17, 1999, Tribunal Exhibit RR-98-004-6 (protected), Administrative Record, Vol. 2 at 23.

49. *Ibid.*

50. Posco Aid to Argument, Administrative Record, Vol. 17.

51. *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, *Finding*, July 29, 1994, *Statement of Reasons*, August 15, 1994.

52. *Transcript of Public Hearing*, Vol. 1, March 29, 1999, at 70; and *Transcript of Public Hearing*, Vol. 3, March 31, 1999, at 585.

53. Manufacturer's Exhibit A-1 (protected), Tab A, Attachment 8A, Administrative Record, Vol. 12.

and it would not be a major undertaking to extend their activities to include carbon plate in the event that the finding were terminated.⁵⁴

The Korean economy was seriously affected by the Asian crisis, and its impact on the carbon plate market was particularly severe.⁵⁵ Domestic demand for carbon plate dropped by 35 percent in 1998.⁵⁶ Prospects for growth in the Korean economy and testimony do not point to any immediate and significant recovery in domestic demand for carbon plate.⁵⁷ This situation does not present a positive picture for Korean producers. The witnesses for the Korean producers testified that their firms would increase sales by concentrating on increasing their share of their home market.⁵⁸ The evidence shows that, in 1998, Korean producers were very successful in displacing imports of carbon plate from the Korean market, particularly imports from Japan.⁵⁹ In the Tribunal's view, efforts by Korean producers to further expand their share of the market are less likely to be successful, taking into account likely competition from Japanese producers. This, coupled with the poor prognosis for demand in their traditional export markets such as Japan and Southeast Asia, does not translate into increasing demand for Korean plate.

Because of weak domestic demand for carbon plate, Korean exports of carbon plate to the United States surged between 1997 and 1998 and represented very substantial increases over previous years. These shipments were quickly scaled down by over 300,000 tonnes with the filing of an anti-dumping complaint by US carbon plate producers in 1998.⁶⁰ The testimony of witnesses suggested that it was not the intention of the Korean producers to resume export shipments of similar amounts of carbon plate, since this had occurred to maintain plant loading and to compensate for home market conditions.⁶¹ They further explained that the cutback was the result of their more responsible approach to marketing their steel. The Tribunal is of the view that, regardless of their reasons for scaling down sales to the US market, if this policy is maintained, it is likely to free up substantial volumes of plate for sale to other export markets, including Canada.

Witnesses submitted that, in the future, the Korean producers will endeavour to manage production levels more effectively, given their excess capacity and weak demand in the Korean home market and conditions in export countries.⁶² The Tribunal does not dispute the intentions of the Korean exporters. However, taking into account Korean producers' recent activities in domestic and export markets,

54. *Transcript of Public Hearing*, Vol. 1, March 29, 1999, at 25; and *Transcript of In Camera Hearing*, Vol. 3, March 31, 1999, at 278.

55. Tribunal Exhibit RR-98-004-RI-6A (protected), Administrative Record, Volume 10.5 at 24; Manufacturer's Exhibit B-1, Tab 2 at 5, Administrative Record, Vol. 11.1; *Transcript of Public Hearing*, Vol. 3, March 31, 1999, at 537 and 538; and Tribunal Exhibit RR-98-004-RI-6A (protected), Administrative Record, Vol. 10.5 at 59.

56. Tribunal Exhibit RR-98-004-RI-6A (protected), Administrative Record, Volume 10.5 at 18.

57. *Transcript of Public Hearing*, Vol. 1, March 29, 1999, at 66, and Vol. 3, March 31, 1999, at 509, 517, 518, 532 and 573.

58. *Transcript of In Camera Hearing*, Vol. 3, March 31, 1999, at 294, 295 and 296; and *Transcript of Public Hearing*, Vol. 3, March 31, 1999, at 527.

59. Exporters' Exhibits E-1 and F-1, Annex 2, 1998 at 1 and 1997 at 1, Administrative Record, Vol. 13; Manufacturer's Exhibit C-1, Tab 7 at 25, para. 82, Administrative Record, Vol. 11.2; and Manufacturer's Exhibit B-1, Tab 2 at 4, Administrative Record, Vol. 11.1A.

60. Tribunal Exhibit RR-98-004-RI-5B (protected), Administrative Record, Volume 10.4 at 19; and Tribunal Exhibit RR-98-004-RI-6A (protected), Administrative Record, Volume 10.5 at 59.

61. Exporters' Exhibits E-1 and F-1 at 2, para. 6 and 8, Administrative Record, Vol. 13.

62. Exporters' Exhibits E-1 and F-1 at 4, para. 9 and 10, Administrative Record, Vol. 13.

the Tribunal is not convinced that they will achieve this objective. In this regard, the Tribunal notes that Korean producers maintain worldwide steel-trading operations. When market opportunities present themselves, they have sought out those markets as a means of selling steel to keep plant loading at a high level. Because of these distribution networks, Korean producers have the ability to capture a substantial share of an open market in a short period of time and then quickly retreat, if required.⁶³ This is what Korean producers did in the US market recently, and the Tribunal considers that Korean producers are likely to use the same approach in selling carbon plate in the Canadian market, if the finding is rescinded.

The Tribunal considers that, based on the high level of excess capacity for the production of carbon plate, poor market demand in Korea, weak demand in its traditional export markets and its recent export activities in the US market, there is likelihood of a resumption of dumping of carbon plate by Korea, if the finding is rescinded.

Spain

Aceralia is the sole Spanish producer of carbon plate. The firm's capacity to produce carbon plate remained unchanged during the period of review.⁶⁴ The Tribunal examined Aceralia's domestic production performance with respect to carbon plate between 1996 and 1998 and the conditions that it is facing in both its domestic and export markets. The firm made only one shipment to Canada during the review period.⁶⁵ This shipment coincided with the peak in Canadian plate prices in 1998, and the shipment was sold at normal values.⁶⁶

The witness for Aceralia submitted that the firm decided not to ship to the Canadian carbon plate market because prices were better in its home market.⁶⁷ However, the Tribunal notes that Aceralia's prices fell in Spain during the last half of 1998 and that Aceralia further lowered prices during the beginning of 1999 in order to offset a decline in domestic production at the end of 1998 and to spur domestic plate demand.⁶⁸ Current reports indicate that demand for carbon plate in the European Union weakened significantly in 1998. This has had an impact on prices, as well as on demand, for carbon plate sold by Aceralia in Europe.⁶⁹ In addition, Eurofer filed a dumping complaint with the European Commission against low-priced imports of carbon plate from China, as well as from Romania, India and Macedonia.⁷⁰ While there is some indication that plate prices may increase in Europe and Spain by mid-1999, the Tribunal also notes that, even if announced plate price increases hold, price levels will still be below those recorded during the latter part of 1998.⁷¹ As a consequence, the Tribunal has some difficulty understanding how the Canadian market would not be attractive to Aceralia, unless it cannot compete at normal values.

63. *Transcript of Public Hearing*, Vol. 3, March 31, 1999, at 538, 596 and 597; *Transcript of Public Hearing*, Vol. 1, March 29, 1999, at 25.

64. Tribunal Exhibit RR-98-004-RI-4A (protected), Administrative Record, Vol. 10.3 at 51.

65. Exporter's Exhibit D-1 at 3, Administrative Record, Vol. 13.

66. *Transcript of In Camera Hearing*, Vol. 3, March 31, 1999, at 227.

67. Exporter's Exhibit D-1 at 5, Administrative Record, Vol. 13.

68. *Ibid.*

69. Manufacturer's Exhibit B-1, Tab 2 at 3, Administrative Record, Vol. 11.1A; and Tribunal Exhibit RR-98-004-RI-4A (protected), Administrative Record, Vol. 10.3 at 51 and 52.

70. Exporter's Exhibit D-2 at 1, Administrative Record, Vol. 13.

71. Tribunal Exhibit RR-98-004-RI-4A (protected), Administrative Record, Vol. 10.3 at 11.

Testimony provided by the witness for Aceralia indicated that the company was moving its product line to the higher end of the market and was no longer selling commodity-type plate products through brokers.⁷² It was submitted that this strategy would allow the firm to increase its domestic market share, thus reducing its reliance on export markets.⁷³ This seems to be at odds with the evidence about the dumping complaint filed against imports of carbon plate from four countries, including China in particular, which is shipping low-end carbon plate to Europe.⁷⁴ It appears to the Tribunal that, if Aceralia is to benefit from this anti-dumping action, as the witness testified that it would, Aceralia would have to displace these low-end carbon plate imports.

Aceralia provided the Tribunal with data on its rate of capacity utilization for the period from 1996 to 1998. These data show that the rate of capacity utilization declined sharply in the second half of 1998, mainly as a result of a weakening of demand for carbon plate in Europe.⁷⁵ An increase in sales at reduced prices for the Spanish market led to a displacement of some imports, but did not offset a large decline in exports.⁷⁶ The witness for Aceralia testified that, in recent months, Aceralia was fully booked.⁷⁷ While recognizing that there may have been recent improvements in capacity utilization, other evidence suggests that this increase may not be sustained in the near future.⁷⁸ Given demand conditions in Spain and the European Union, the Tribunal is of the view that Aceralia will endeavour to maintain plant loading by returning to earlier levels of exports to other markets. It would, therefore, seem likely that Aceralia would seek out new export opportunities. Such efforts are likely to be facilitated, taking into account the fact that the Arbed Group,⁷⁹ a large producer and trader of commodity steel products, is now a large shareholder of Aceralia and is likely to have a strong interest in increasing Aceralia's production levels. Given relatively weak market conditions for carbon plate in most export markets and Aceralia's very limited volumes of sales to the United States since the 1993 anti-dumping measures, the Canadian carbon plate market is likely to be an attractive opportunity for expanding exports and, thus, production.

Taking into account the foregoing, it is the Tribunal's view that there is a likelihood of a resumption of dumping of carbon plate by Spain.

Italy

In conducting a review, the Tribunal cannot interpret the absence from the hearing of a foreign producer or of an importer of product from a subject country as a lack of interest in selling product in the Canadian market. In this regard, the Tribunal notes that Italy is the eighth largest steel-producing country in the world. Despite steel-making cuts and privatization of government-controlled firms, data for 1998 show that Italy remains one of the world's largest producers and exporters of flat-rolled steel.⁸⁰

72. *Transcript of Public Hearing*, Vol. 2, March 30, 1999, at 419 and 420; and *Transcript of In Camera Hearing*, Vol. 3, March 31, 1999, at 226.

73. *Transcript of Public Hearing*, Vol. 2, March 30, 1999, at 421.

74. *Transcript of Public Hearing*, Vol. 2, March 30, 1999, at 425-26.

75. Tribunal Exhibit RR-98-004-RI-4A (protected), Administrative Record, Vol. 10.3 at 51; and *Transcript of Public Hearing*, Vol. 2, March 30, 1999, at 454 and 455.

76. *Ibid.*

77. *Ibid.*

78. Manufacturer's Exhibit C-10 at 1 and 5, Administrative Record, Vol. 11.2.

79. *Transcript of Public Hearing*, Vol. 2, March 30, 1999, at 420 and 442.

80. Manufacturer's Exhibit B-10, Tab 4 at 3, Administrative Record, Vol. 11.1B.

Enforcement data provided by Revenue Canada indicate that, in 1997, there was a small shipment of Italian carbon plate by an exporter located in the United States.⁸¹ This exporter obtained from Revenue Canada a normal value for the transaction and anti-dumping duties were paid.⁸² However, aside from this transaction, for which the normal value exceeded the Canadian market price of a similar product by over \$100/tonne,⁸³ there were no other shipments of carbon plate from Italy while the finding was in place.⁸⁴ Moreover, there has been no other request to Revenue Canada for a determination of normal values for exports of carbon plate to Canada. The Tribunal notes that Italy exported other steel products to Canada⁸⁵ during the period of review, which indicates a continuing interest in the market. This could very well indicate that Italian carbon plate cannot compete in the Canadian market without resorting to dumping.

Recent reports indicate a marked slowdown in Italian steel consumption, particularly in the motor vehicle and construction sectors, both of which are major consumers of carbon plate.⁸⁶ Data published by the OECD also show that capacity utilization rates for the production of steel in Italy have been well below the average for the European Union.⁸⁷ This suggests that there is likely to be considerable surplus capacity in 1999. Carbon plate prices have also declined in Italy. According to a recent report, "The Italian mills have finally succumbed to the fierce pressure on this product and have had to concede a large price decrease to customers, bringing their level more into line with the rest of Europe. . . . There is very little order placement for commercial grade plate throughout the EU. Large quantities of unsold, imported plate overhang the market."⁸⁸

With present weak conditions in the European plate market, it is the Tribunal's view that Italian plate will seek new export markets. Italy has been selling carbon plate and was named in a dumping and subsidy complaint by US producers.⁸⁹ Were definitive measures to be applied against such exports to the United States, the Tribunal considers that there would be even greater pressure on Italian producers to find other export markets, including Canada.

The Tribunal concludes that, based on the foregoing, there is a likelihood of a resumption of dumping of carbon plate by Italy.

81. Tribunal Exhibit RR-98-004-4 (protected), Administrative Record, Vol. 2 at 3, 4 and 6.

82. *Protected Pre-hearing Staff Report*, February 17, 1999, Tribunal Exhibit RR-98-004-6 (protected), Administrative Record, Vol. 2 at 23.

83. *Protected Pre-hearing Staff Report*, February 17, 1999, Tribunal Exhibit RR-98-004-6 (protected), Administrative Record, Vol. 2 at 41.

84. *Protected Pre-hearing Staff Report*, February 17, 1999, Tribunal Exhibit RR-98-004-6 (protected), Administrative Record, Vol. 2 at 27.

85. Manufacturer's Exhibit A-1 (protected) at 9, 11, 12 and 13, Administrative Record, Vol. 12.

86. Manufacturer's Exhibit C-5, para. 26 and Tab 5, Administrative Record, Vol. 11.2; Manufacturer's Exhibit B-1, Tab 10 at 39, Administrative Record, Vol. 11.1A; and Manufacturer's Exhibit A-1 (protected), Tab A, Attachment 6 at 14 and 15, Administrative Record, Vol. 12.

87. Manufacturer's Exhibit C-5, Tab 7 at 11-12, Administrative Record, Vol. 11.2.

88. Manufacturer's Exhibit A-1 (protected), Tab A, Attachment 6 at 14 and 15, Administrative Record, Vol. 12.

89. *Public Pre-hearing Staff Report*, revised March 24, 1999, Tribunal Exhibit RR-98-004-5C, Administrative Record, Vol. 1 at 188.51 and 188.52.

Likelihood of Injury

Having found a likelihood of resumed dumping from each of the four named countries, the Tribunal then examined whether, taken together, dumped imports from the four countries would likely cause injury to the domestic industry.

In assessing the likely impact of resumed dumping on the domestic industry, the Tribunal can examine a broad range of factors. In this review, these factors included: (i) domestic market performance for carbon plate during the review period; (ii) market share held by the domestic industry, service centres and imports; (iii) price levels of domestic carbon plate compared to prices of US imports and imports from other countries; (iv) the industry's financial performance; (v) likely developments in the Canadian carbon plate market in the near future; (vi) the industry additions to carbon plate capacity and the effect of resumed dumping on the market; and (vii) the likely volumes and prices of imports from the named countries in the event of a rescission of the finding. In examining the impact of resumed dumping on the domestic industry, the Tribunal first looked at recent developments and likely prospects for the domestic industry.

The Tribunal notes that the domestic market for carbon plate expanded during the period of review. Market growth was especially apparent in 1997. However, the domestic industry did not participate in any of this market growth. Its market share declined sharply between 1996 and 1998. Market share declines were recorded in each quarter of 1998. During the fourth quarter of 1998, when the market dropped by 20 percent compared to the third quarter, the industry's market share stood at just under 50 percent.

ECONOMIC INDICATORS							
	1996	1997	1998	1998			
				Q1	Q2	Q3	Q4
Apparent Market (tonnes)	773,466	871,318	900,421	236,640	221,955	245,368	196,458
% Increase (decrease)		13	3		(6)	11	(20)
Market Share (%)							
Domestic Mills	72	62	53	54	57	53	49
Steel Service Centres	17	21	20	20	23	19	18
Imports (subject countries)	0	0	0	0	0	0	0
US Imports	1	6	13	15	15	11	11
Other Imports	11	15	25	22	20	27	32
Financial (net income) (%)							
Combined Industry	14	9	8	12	10	9	(3)
Utilization Rate (%)							
Carbon Plate	25	23	26	26	27	28	21
Other Steel Products	59	58	42	47	44	45	31
Prices - Total Producers (\$/tonne)							
	703	704	734	722	744	747	720
Prices - United States (\$/tonne)							
	760	664	707	683	707	730	720
Prices - Other Countries (\$/tonne)							
	663	624	684	663	697	691	684

Source: Replies to Tribunal's questionnaires.

Testimony and evidence provided by witnesses for the domestic producers and foreign producers indicated that there were a number of reasons for this lack of participation in the growth of the domestic market. They included the inability of some producers to supply the domestic market, increasing imports from the United States and other countries and the increasing participation in the market by steel service centres, especially in the carbon plate cut from coil segment of the market.⁹⁰

The industry's capacity utilization rate for carbon plate remained at a low level, declining significantly in the last quarter of 1998. The Tribunal also notes a sharp drop in the capacity utilization rate for other steel products produced on the same equipment as carbon plate throughout the period of review. The domestic industry's profitability as a percentage of sales of carbon plate declined from 14 to 9 percent over the review period. Quarterly data for 1998 show that the industry's profitability declined sharply between the first and third quarters and that the industry incurred a loss during the final quarter.

The domestic industry's average selling prices remained relatively firm on an annual basis over the period of review. During 1998, prices tended to decline. During the review period, the average prices of

90. *Protected Pre-hearing Staff Report*, February 17, 1999, Tribunal Exhibit RR-98-004-6 (protected), Administrative Record, Vol. 2 at 45.

imports followed essentially similar trends. However, between 1996 and 1998, prices of carbon plate imported from countries other than the United States were considerably lower than domestic prices.

The Tribunal considers the market for carbon plate to be in a fragile state at the present time. The evidence shows that domestic selling prices continued to fall during the first quarter of 1999 at a more rapid pace than they did during the last quarter of 1998.⁹¹

In examining whether a resumption of dumping would likely cause injury, the Tribunal considered factors now at play and likely to be at play in the near future. The Tribunal heard conflicting evidence on where prices for carbon plate were going. There is testimony that shows that prices are not likely to improve for the balance of 1999.⁹² There is also evidence which suggests that plate prices could recover within the next six months.⁹³ Should there be a price improvement, the timing could be affected by a number of factors, including new domestic capacity coming on stream, the liquidation of large plate inventories by the domestic producers and steel service centres, and continuing low prices of imports from other countries.⁹⁴

Counsel for the exporters submitted that large increases in domestic capacity will lead to “self-inflicted injury” as a result of intense intra-industry price competition, as each producer seeks to maximize plant loading.⁹⁵ The domestic industry is in the midst of bringing new carbon plate capacity on stream which, according to the evidence, will be “ramped up” over the next six to nine months.⁹⁶

Bringing this new capacity on stream will, however, present the industry with a number of obstacles. First, the market demand for carbon plate and other steel products produced on the same equipment remains weak. Second, price levels for plate have declined and may decline further during the balance of 1999. Third, the Tribunal considers that the additional capacity being installed by the domestic industry will also increase domestic mills’ sensitivity to price competition.

However, the Tribunal is not convinced that this new capacity will lead to a downward spiral in prices led by domestic producers. The Tribunal recognizes that the capacity additions are large. The Tribunal notes that this new capacity will enable the industry to produce higher-quality steel for customers, expand its product lines and improve its economies of scale. In addition, the Tribunal notes that the decisions to increase capacity were taken 18 months to two years ago in a strong and growing market. More importantly, the objective of large expansions in an industry’s production capacity is to anticipate increased demand over a period of time extending over several years. Also, in the case of the domestic industry, part of the increased capacity is intended to supply the market for flat-rolled products other than the goods that are the subject of

91. *Transcript of Public Hearing*, Vol. 1, March 29, 1999, at 30 and 31; and *Transcript of In Camera Hearing*, Vol. 1, March 29, 1999, at 4.

92. *Transcript of In Camera Hearing*, Vol. 1, March 29, 1999, at 5.

93. *Transcript of In Camera Hearing*, Vol. 1, March 29, 1999, at 51.

94. *Transcript of Public Hearing*, Vol. 1, March 29, 1999, at 225, 226, 235 and 236; and *Protected Pre-hearing Staff Report*, revised February 24, 1999, Tribunal Exhibit RR-98-004-6A (protected), Administrative Record, Vol. 2 at 144.

95. *Transcript of Public Hearing*, Vol. 1, March 29, 1999, at 43, 33 and 73; *Transcript of In Camera Hearing*, Vol. 2, March 30, 1999, at 138; Exporter’s Exhibit D-1, para. 9 and 10, and Exporter’s Exhibits E-1 and F-1, para. 16 and 17, Administrative Record, Vol. 13; and *Transcript of In Camera Hearing*, Vol. 1, March 29, 1999, at 58.

96. *Transcript of In Camera Hearing*, Vol. 1, March 29, 1999, at 45, 52 and 107, and Vol. 2, March 30, 1999, at 147.

the review. Finally there is evidence from all three producers that they intend to carefully manage increases in production.⁹⁷ It is based on these considerations that the Tribunal has concluded that increased production as a result of additions to domestic production capacity is unlikely to lead, by itself, to any significant further decline in domestic prices for carbon plate. Developments in the Canadian carbon plate market in 1998 support this conclusion. Faced with a weakening market and increased competition from lower-priced imports, the domestic industry absorbed a decline in its market share with a consequent decline in its rate of capacity utilization. This behaviour is quite different from that observed in the named countries when carbon plate producers were faced with unfavourable domestic market conditions in 1998, and they endeavoured to maintain capacity utilization rates either by displacing imports in their domestic markets by lowering prices or by expanding exports.

Based on the foregoing, the Tribunal considers that the market for carbon plate in Canada is likely to remain fragile in the near future. However, the Tribunal is of the view that a resumption of dumping by the named countries in a climate of already weak prices would greatly exacerbate this fragility, even in the absence of new domestic capacity, and cause further declines in prices.

The Tribunal notes that the named countries are among the largest steel exporting countries in the world. Their current combined surplus capacity for carbon plate is close to two and a half times the size of the Canadian domestic plate market.⁹⁸ Export opportunities for the subject goods are narrowing because of trade actions in other jurisdictions. The named countries have the ability to quickly move large volumes of product to new markets when opportunities present themselves. They are also able to quickly retreat from the market through their well-established distribution networks, when required. The ability to move large volumes of carbon plate to new markets was noted by the Tribunal in the original finding.⁹⁹ This behaviour remains prevalent as evidenced by the recent activities of Korean and Ukrainian producers in the US market prior to the launching of a US investigation.

It would be very easy for the named countries to resume their activities in the Canadian market in larger volumes than recorded in the original inquiry, as each country exported other steel products to Canada during the review period. As well, the Tribunal is of the view that, in order to re-enter the Canadian market, the named countries would have to quote prices which would likely be below the already depressed prices which presently exist in the Canadian market. The Tribunal considers that these prices would have to be at price levels close to or lower than those of imports from other countries. This pricing would create significant disruption in the market.

Given the commodity nature of plate, offers of cheap plate have an immediate impact on domestic producers' prices. This would, in turn, have a significant negative impact on the domestic industry's revenues and profits and would, in the Tribunal's opinion, affect the industry's ability to finance its capital improvements.

97. *Transcript of In Camera Hearing*, Vol. 1, March 29, 1999, at 45, 46, 61, 102, 107 and 108.

98. *Protected Pre-hearing Staff Report*, revised March 23, 1999, Tribunal Exhibit RR-98-004-6B (protected), Administrative Record, Vol. 2 at 150; estimated surplus capacity for all Ukrainian producers of carbon plate was estimated based on the percentage of unused capacity reported by Azovstal and for Italy, on data contained in an OECD report, Manufacturer's Exhibit C-1, Tab 7, Statistical Index at 12, Administrative Record, Vol. 11.2; Tribunal Exhibit RR-98-004-RI-5B (protected), Administrative Record, Vol. 10.4 at 19; Tribunal Exhibit RR-98-004-RI-6A (protected), Administrative Record, Vol. 10.5 at 59; and Tribunal Exhibit RR-98-004-RI-4A (protected), Administrative Record, Vol. 10.3 at 51.

99. Tribunal Exhibit RR-98-004-1, Administrative Record, Vol. 1 at 27.

On the basis of the foregoing, the Tribunal finds that a resumption of dumping by the named countries is likely to cause injury to the domestic industry.

CONCLUSION

For the foregoing reasons, the Tribunal hereby continues its finding concerning certain hot-rolled carbon steel plate and high-strength low-alloy plate not further manufactured than hot-rolled, heat-treated or not, in cut lengths, originating in or exported from Italy, Korea, Spain and the Ukraine.

Pierre Gosselin

Pierre Gosselin
Presiding Member

Peter F. Thalheimer

Peter F. Thalheimer
Member

Richard Lafontaine

Richard Lafontaine
Member