



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Expiry Review No. RR-2013-002

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

*Order issued
Tuesday, January 7, 2014*

*Reasons issued
Wednesday, January 22, 2014*

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IN THE MATTER OF an expiry review, pursuant to subsection 76.03(3) of the *Special Import Measures Act*, of the order made by the Canadian International Trade Tribunal on January 8, 2009, in Expiry Review No. RR-2008-002, continuing, without amendment, its finding made on January 9, 2004, in Inquiry No. NQ-2003-002, concerning:

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

ORDER

The Canadian International Trade Tribunal, pursuant to subsection 76.03(3) of the *Special Import Measures Act*, has conducted an expiry review of its order made on January 8, 2009, in Expiry Review No. RR-2008-002, continuing, without amendment, its finding made on January 9, 2004, in Inquiry No. NQ-2003-002, concerning the dumping of hot-rolled carbon steel plate and high-strength low-alloy steel plate not further manufactured than hot-rolled, heat-treated or not, in cut lengths in widths from 24 inches (+/-610 mm) to 152 inches (+/-3,860 mm) inclusive and in thicknesses from 0.187 inch (+/-4.75 mm) to 4 inches (+/-101.6 mm) inclusive, originating in or exported from the Republic of Bulgaria, the Czech Republic and Romania, excluding plate produced to American Society for Testing and Materials specifications A515 and A516M/A516 Grade 70 in thicknesses greater than 3.125 inches (+/-79.3 mm), universal mill plate, plate for use in the manufacture of pipe and plate having a rolled, raised figure at regular intervals on the surface (also known as floor plate).

Pursuant to paragraph 76.03(12)(b) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby continues its order in respect of the aforementioned goods.

Serge Fréchette
Serge Fréchette
Presiding Member

Stephen A. Leach
Stephen A. Leach
Member

Daniel Petit
Daniel Petit
Member

Dominique Laporte
Dominique Laporte
Secretary

The statement of reasons will be issued within 15 days.

Place of Hearing: Ottawa, Ontario
Date of Hearing: November 12, 2013

Tribunal Members: Serge Fr chet, Presiding Member
Stephen A. Leach, Member
Daniel Petit, Member

Research Director: Randolph W. Heggart

Research Manager: Shiu-Yeu Li

Senior Research Officer: Rhonda Heintzman

Research Officers: Nenad Nevajda
Marie-Jos e Monette

Research Assistant: Matthew Stancek

Counsel for the Tribunal: Elysia Van Zeyl

Acting Manager, Registrar Programs and Services: Lindsay Vincelli

Registrar Officer: Ekaterina Pavlova

Registrar Support Officer: Rosemary Hong

PARTICIPANTS:**Domestic Producers**

Essar Steel Algoma Inc.

Evraz Inc. NA Canada

SSAB Central Inc.

Counsel/RepresentativesPaul D. Conlin
Drew Tyler
Anne-Marie Oatway
Linden DalesChristopher J. Kent
Christopher J. Cochlin
Andrew M. Lanouette
Marc McLaren-Caux
Hugh Seong Seok LeePaul D. Conlin
Drew Tyler
Anne-Marie Oatway

WITNESSES:

Robert A. Clark
Manager—Trade
Essar Steel Algoma Inc.

Mike Mayberry
Assistant General Manager
Northern Business Unit
SSAB Americas

Rory Brandow
Director of Sales—Canada
Essar Steel Algoma Inc.

Glenn Gilmore
Trade Supervisor
SSAB Americas

Please address all communications to:

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

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

STATEMENT OF REASONS

INTRODUCTION

1. This is an expiry review, pursuant to subsection 76.03(3) of the *Special Import Measures Act*¹ of an order made by the Canadian International Trade Tribunal (the Tribunal) on January 8, 2009, in Expiry Review No. RR-2008-002, continuing, without amendment, its finding made on January 9, 2004, in Inquiry No. NQ-2003-002, concerning the dumping of hot-rolled carbon steel plate and high-strength low-alloy steel plate (carbon steel plate) not further manufactured than hot-rolled, heat-treated or not, in cut lengths in widths from 24 inches (+/-610 mm) to 152 inches (+/-3,860 mm) inclusive and in thicknesses from 0.187 inch (+/-4.75 mm) to 4 inches (+/-101.6 mm) inclusive, originating in or exported from the Republic of Bulgaria (Bulgaria), the Czech Republic and Romania, excluding plate produced to American Society for Testing and Materials (ASTM) specifications A515 and A516M/A516 Grade 70 in thicknesses greater than 3.125 inches (+/-79.3 mm), universal mill plate, plate for use in the manufacture of pipe and plate having a rolled, raised figure at regular intervals on the surface (also known as floor plate) (the subject goods).
2. The Tribunal initiated this expiry review on April 24, 2013. It notified the Canada Border Services Agency (CBSA) and sent letters to known domestic producers, importers, foreign producers and exporters requesting that they complete expiry review questionnaires. The Tribunal's period of review (POR) is from January 1, 2010, to June 30, 2013.
3. On April 25, 2013, the CBSA initiated its investigation to determine whether the expiry of the Tribunal's order was likely to result in the continuation or resumption of dumping.
4. On August 22, 2013, the CBSA determined, pursuant to paragraph 76.03(7)(a) of *SIMA*, that the expiry of the order was likely to result in the continuation or resumption of dumping of the subject goods.
5. Following the CBSA's determination, on August 23, 2013, the Tribunal commenced its part of the expiry review to determine, pursuant to subsection 76.03(10) of *SIMA*, whether the expiry of the order was likely to result in injury or retardation.
6. The Tribunal held a hearing with public and *in camera* testimony in Ottawa, Ontario, on November 12, 2013. During the hearing, the Tribunal heard oral arguments in support of a continuation of the order from Essar Steel Algoma Inc. (Essar Algoma), a domestic producer, as well as testimony from the following four witnesses: Mr. Robert A. Clark, Manager—Trade, Essar Algoma; Mr. Rory Brandow, Director of Sales—Canada, for Essar Algoma; Mr. Glen Gilmore, Trade Supervisor, SSAB Americas; and Mr. Mike Mayberry, Assistant General Manager, Northern Business Unit, SSAB Americas.
7. No parties provided submissions or made arguments in opposition to a continuation of the order, nor did the Tribunal receive any requests for product exclusions.
8. The record of this proceeding consists of all relevant documents filed or accepted for filing by the Tribunal, including the following: the CBSA's protected expiry review report, public statement of reasons, index of background information and related documents; written Tribunal communications; the Tribunal's notice of expiry review; the protected and public replies to the expiry review questionnaires; the public and protected staff reports prepared for this expiry review and revisions thereto; witness statements and other exhibits; and the exhibit list and Tribunal's order, statement of reasons and public and protected staff reports

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

prepared for Expiry Review No. RR-2008-002 and revisions thereto. Public exhibits were made available to interested parties, while protected exhibits were provided only to counsel who had filed a declaration and undertaking with the Tribunal in respect of the protection of confidential information.

PRODUCT

Product Definition

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

Product Information

10. Carbon steel plate is categorized by different qualities which refer to the suitability and integrity of steel for its intended purpose. In the case of subject goods, the two most common qualities are structural quality and pressure vessel quality (PVQ). Structural quality carbon steel plate is intended for general applications such as bridges, buildings, transportation equipment and machined parts. PVQ carbon steel plate is intended for use in pressure vessels required to hold their contents under pressure and is of higher quality than structural carbon steel plate. High-strength low-alloy steel is carbon steel with certain alloying elements added. It generally costs more than plain carbon steel by weight, but can offer savings because of its superior qualities.

11. Steel is produced in an integrated production process by combining iron ore, coke, limestone and oxygen, and by superheating the mixture in a blast furnace, then combining the resultant hot metal (pig iron) with scrap metal and more oxygen in a basic oxygen furnace to produce molten steel. Mini-mills, unlike the integrated manufacturers, produce molten steel in electric arc furnaces (EAF) using scrap metal as the raw material. In the EAF, a current is delivered from one graphite electrode through the scrap metal and into one or more other electrodes. The heat generated by the resistance of the scrap metal, along with the heat radiated by the EAF, changes the steel to a molten state.

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

13. Next, the slab is either placed in inventory or transferred to a reheat furnace where it is heated to a uniform rolling temperature. Upon attaining the required temperature, it is rolled to its final plate width and thickness. After rolling, the plate is levelled, identified and inspected for conformance to thickness tolerances and surface requirements. The plate is then tested to ensure that it meets the order requirements.

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

PRELIMINARY MATTERS

15. The Tribunal notes that no parties provided submissions or made arguments in opposition to a continuation of the order. Pursuant to Article 6.2 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*,² failure by a party to participate in proceedings shall not be prejudicial to that party's case. Therefore, the Tribunal has not drawn any negative inference from the importers' and foreign producers' lack of participation in the expiry review process.³ This approach is consistent with the Tribunal's past practice.⁴

16. In light of the absence of parties opposed to the continuation of the order, the Tribunal was particularly vigilant in its assessment of the information contained on the record in order to ensure that its determinations were based on positive, accurate evidence and involved an objective examination of all the factors that are relevant to the likelihood of an injury determination. In this respect, Tribunal staff conducted a rigorous review of all questionnaire replies to ensure that they were complete, that inconsistencies were addressed and errors corrected, that the data reconciled and were reasonable and that any anomalies were explained.

17. For example, in the replies to questionnaires, certain amounts with respect to financial expenses raised concerns. As such, Tribunal staff followed up with the questionnaire respondents in order to address those concerns. Additional enquiries and exchanges of information occurred between Tribunal staff and the respondents. Revisions were received and reasonable explanations for the anomalies were provided.

LEGAL FRAMEWORK

18. The Tribunal is required, pursuant to subsection 76.03(10) of *SIMA*, to determine whether the expiry of the order in respect of the subject goods is likely to result in injury or retardation.⁵

19. The Tribunal is also required, pursuant to subsection 76.03(12) of *SIMA*, to make an order either rescinding the order made in Expiry Review No. RR-2008-002, if it determines that its expiry is unlikely to result in injury, or continuing the order, with or without amendment, if it determines that its expiry is likely to result in injury.

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

2. 15 April 1994, 1868 U.N.T.S. 201 (entered into force 1 January 1995) [*Antidumping Agreement*], available at <http://www.wto.org/english/docs_e/legal_e/19-adp_01_e.htm>.

3. The Tribunal notes that *SIMA* is to be applied, insofar as possible, in a manner consistent with Canada's international treaty obligations, including the *Antidumping Agreement*. See *Németh v. Canada (Justice)*, 2010 SCC 56, [2010] 3 SCR. 281 at para. 34 and cases cited therein.

4. See *Carbon Steel Welded Pipe* (3 June 2005), RR-2004-003 (CITT) at para. 34; *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Plate* (17 May 2004), RR-2003-001 (CITT) at para. 104; *Seamless Carbon or Alloy Steel Oil and Gas Well Casing* (11 March 2013), RR-2012-002 (CITT) at paras. 52-53.

5. Subsection 2(1) of *SIMA* defines "injury" as "material injury to a domestic industry" and "retardation" as "material retardation of the establishment of a domestic industry" [emphasis added]. Given that there is currently an established domestic industry, the issue of whether the expiry of the order is likely to result in retardation does not arise in this expiry review.

Like Goods

21. In order for the Tribunal to determine whether the resumed or continued dumping of the subject goods is likely to cause material injury to the domestic producers of like goods, it must determine which domestically produced goods, if any, constitute like goods in relation to the subject goods. The Tribunal must also assess whether there is, within the subject goods and the like goods, more than one class of goods.⁶

22. Subsection 2(1) of SIMA defines “like goods” in relation to any other goods as follows: “. . . (a) goods that are identical in all respects to the other goods, or (b) in the absence of any [such] goods, . . . goods the uses and other characteristics of which closely resemble those of the other goods.”

23. In considering what goods constitute like goods, the Tribunal typically looks at a number of factors, including the physical characteristics of the goods (such as composition and appearance) and their market characteristics (such as substitutability, pricing, distribution channels, ends uses and whether they fulfil the same customer needs). In considering whether there is more than one class of goods, the Tribunal typically looks at the same factors as above and applies them to the like goods.

24. The undisputed evidence on the record in this expiry review indicates that the domestic industry produces substantially the same goods as the subject goods and that it does so using the same or very similar manufacturing processes as are used in respect of the subject goods. Moreover, carbon steel plate produced domestically and the subject goods compete with one another, rely on the same distribution channels and have the same end uses. In Inquiry No. NQ-2003-002, the Tribunal found that carbon steel plate produced in Canada by the domestic producers constituted like goods in relation to the subject goods and that carbon steel plate comprised a single class of goods.⁷ The Tribunal did not vary its approach in Expiry Review No. RR-2008-002.

25. In the course of this expiry review, no evidence was submitted that would warrant a departure from this conclusion. Accordingly, the Tribunal is satisfied that the carbon steel plate produced by Essar Algoma, Evraz Inc. NA Canada (Evraz) and SSAB Central Inc. (SSAB) is like goods in relation to the subject goods and that it comprises a single class of goods.

Domestic Industry

26. The domestic industry is defined in subsection 2(1) of SIMA as the “. . . domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods”

27. The Tribunal must determine whether there is a likelihood of injury to the domestic producers as a whole or to those domestic producers whose production represents a major proportion of the total production of like goods.

6. Should the Tribunal determine that there is more than one class of goods in this expiry review, it must conduct a separate injury analysis and make a decision for each class that it identifies. See *Noury Chemical Corporation and Minerals & Chemicals Ltd. v. Pennwalt of Canada Ltd. and Anti-dumping Tribunal*, [1982] 2 F.C. 283 (F.C.).

7. Inquiry No. NQ-2003-002 at 8.

28. There are currently three domestic producers of carbon steel plate: Essar Algoma, Evraz and SSAB. The evidence before the Tribunal indicates that these three domestic producers account for the vast majority of total domestic production of like goods in Canada⁸ and, as such, the Tribunal will consider them to constitute the domestic industry for the purpose of this expiry review.

Cumulation

29. Subsection 76.03(11) of *SIMA* provides that, for the purposes of its determination, the Tribunal shall make an assessment of the cumulative effect of the dumping of goods “. . . that are imported into Canada from more than one country if the Tribunal is satisfied that an assessment of the cumulative effect would be appropriate taking into account the conditions of competition . . .” between the goods imported into Canada from any of those countries and the goods from any other of those countries or between those goods and the like goods.

30. In considering whether the conditions of competition are such that a cumulative assessment is appropriate, the Tribunal typically considers the following factors: the degree to which the goods from each subject country are interchangeable with the subject goods from the other subject countries or with the like goods; the presence or absence of sales of imports from different subject countries and of the like goods into the same geographical markets, or the presence or absence of offers to sell such goods; the existence of common or similar channels of distribution; differences in the timing of the arrival of imports from a subject country and of those from the other subject countries, and of the availability of like goods supplied by the domestic industry. No single factor may necessarily be determinative and, in some cases, there may be other relevant factors that go into an analysis of the conditions of competition.⁹

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

32. The evidence indicates that carbon steel plate is a commodity product and that, as a commodity, carbon steel plate imported from a subject country is interchangeable with carbon steel plate from the other subject countries and with the like goods. Carbon steel plate arrives in Canada from all the subject countries by the same mode of transportation, namely, by ocean vessel. Both the subject goods and the like goods participate in the same channels of distribution (e.g. brokers and service centres). For these reasons, the Tribunal is of the view that the subject goods compete with one another and with the like goods.

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

LIKELIHOOD OF INJURY ANALYSIS

34. At the outset of this analysis, the Tribunal notes that this expiry review was unopposed. As a result, there was no evidence submitted to challenge the arguments advanced by the domestic industry. The Tribunal strives to be as thorough as possible in its own examination of the evidence and questioning of witnesses. This is particularly important in cases where there are no parties opposing the domestic industry.

8. Exhibit RR-2013-002-05, Vol. 1.1 at 19. Service centres that cut plate from coil account for the remaining volume of the domestic production of like goods.

9. *Structural Tubing* (22 December 2008), RR-2008-001 (CITT) at para. 40.

35. In making its assessment of likelihood of injury, the Tribunal has decided to focus its analysis on the circumstances that can reasonably be expected to prevail over the next 12 to 18 months. The Tribunal is of the view that this period of time is appropriate in this case, taking into account the fact that the market can evolve rapidly and the difficulties associated with projecting further into the future with a reasonable degree of certainty.

36. Subsection 37.2(2) of the *Special Import Measures Regulations*¹⁰ lists the factors that the Tribunal may consider in determining whether the expiry of the order is likely to result in material injury to the domestic industry. The factors that the Tribunal considers relevant in this expiry review are discussed in detail below.

Changes in International and Domestic Market Conditions

37. In order to assess the likely volumes and prices of the subject goods and their impact on the domestic industry if the order is allowed to expire, the Tribunal will first consider changes in international and domestic market conditions.¹¹

International Market Conditions

38. The global financial crisis that started in 2008 resulted in a serious economic downturn affecting most industries around the world, including the Canadian carbon steel plate industry. Although it appears that there has been some recovery since the lows of 2008, the global economy is slow to return to its previous state. As a result, the international market for carbon steel plate is characterized by overcapacity, weak demand and, consequently, low prices. These circumstances are apparent in the economies of both North America and Europe and, more specifically, in the domestic economies of the subject countries.

39. Over the POR, it appears that the global economy slowed down. After reaching a peak in 2010,¹² annual world GDP growth decreased to 3.1 percent in 2012 and 2.8 percent in 2013, according to the Monetary Policy Report released by the Bank of Canada in October 2013.¹³ According to this report, growth is expected to increase to 3.4 percent in 2014 and 3.6 percent in 2015.¹⁴

40. The Bank of Canada also anticipates accelerated growth in the United States through 2015. It appears that the European economy is in the process of making a modest recovery, while China's economic growth is levelling off.¹⁵

41. In the United States, the performance of the economy has been lacklustre, with marginal economic growth at 2.8 percent in 2012 and 1.5 percent in 2013, largely due to the country-wide housing crisis.¹⁶ It is anticipated that the housing market will strengthen somewhat, which should lead to modest growth in the U.S. economy, approximately 2.5 percent in 2014 and 3.3 percent in 2015.¹⁷

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

11. See paragraph 37.2(2)(j) of the *Regulations*.

12. Exhibit RR-2013-002-16.02B (protected), Vol. 2.01A at 95.

13. Exhibit RR-2013-002-A-10 at 1, Vol. 11B.

14. *Ibid.*

15. Exhibit RR-2013-002-A-10 at 1-7, Vol. 11B.

16. Exhibit RR-2013-002-A-10 at 1, Vol. 11B; Exhibit RR-2013-002-28.10, Vol. 1A at 37. According to the Advance Estimate of the U.S. Department of Commerce published on November 7, 2013, the U.S. economy, in the third quarter of 2013, grew at an annualized rate of 2.8 percent.

17. Exhibit RR-2013-002-A-10 at 1, Vol. 11B.

42. The European Union, a key export market for carbon steel plate from the subject countries, recorded consistently slower growth rates than those of the United States during the same period, in all likelihood influenced by the EU debt crisis. The evidence indicates that the economy in the eurozone declined in 2012 and is expected to decline further in 2013 before resuming marginal growth in 2014 and 2015.¹⁸

43. According to the International Monetary Fund, the economies of the three subject countries share the characteristics of the European economy, recording subpar and occasionally negative growth rates throughout the POR and expecting subpar growth rates in 2014 and 2015.¹⁹

44. China is a key player in terms of carbon steel plate production, consumption and exports. The evidence indicates that its economy will continue to grow faster than other major economies. However, it is forecast that China's GDP growth will slow down to just below 7.5 percent in 2014 and 2015.²⁰

45. Turning to the global outlook for the steel industry in light of the slow global economic recovery, an Ernst & Young report characterizes the demand for steel as sluggish and notes that it is unlikely to improve significantly in 2013. Though the authors of the report remark that there has been a slight increase in the demand for steel products, the global percentage of excess capacity is greater at the present time than it was in 2012, largely as a result of the continued growth in new steel-making facilities in developing countries.²¹ Indeed, the report notes that the most significant issue in the steel sector is overcapacity.

46. The Chairman of the OECD Steel Committee has noted that "... excess capacity is one of the biggest challenges facing the steel industry today"²² and that the current level of global excess capacity "... could take many years to work off."²³ There is currently a global overcapacity associated with the steel production in general that specifically includes carbon steel plate production.²⁴

47. As global carbon steel plate capacity and production are forecast to increase from 2013 through to 2017,²⁵ the subject countries will likely be forced to rely on export markets to absorb their production increases, especially given the current weak demand for carbon steel plate in their home markets.²⁶

48. Of particular concern from a global perspective are overcapacity and excess production in the steel industry. The problems associated with China's recent and continuing increase in carbon steel plate production capacity were discussed by Mr. Clark at the hearing,²⁷ where he stated that China has 250 million metric tonnes of overcapacity. This overcapacity was recognized by the Tribunal in a recent expiry review of a carbon steel plate order involving China.²⁸ In particular, the Tribunal noted that the excess capacity of Chinese reversing mills had increased by approximately 1,000 percent between 2008 and 2012, and represented over 66 percent of global reversing mill capacity by 2012.²⁹

18. *Ibid.*

19. Exhibit RR-2013-002-28.05, Vol. 1A at 21.

20. Exhibit RR-2013-002-A-10 at 1, Vol. 11B.

21. Exhibit RR-2013-002-A-09, tab 2 at 5, Vol. 11A.

22. Exhibit RR-2013-002-A-01 at para. 40, Vol. 11.

23. *Ibid.* at para. 39.

24. *Ibid.* at para. 32.

25. Exhibit RR-2013-002-A-02 (protected) at para. 44, Vol. 12.

26. *Ibid.* at para. 52; Exhibit RR-2013-002-A-01 at para. 52, Vol. 11.

27. *Transcript of Public Hearing*, Vol. 1, 12 November 2013, at 21.

28. *Hot-rolled Carbon Steel Plate* (8 January 2013), RR-2012-001 (CITT).

29. *Ibid.* at para. 73.

49. Essar Algoma submitted evidence that indicates that Chinese carbon steel plate producers are also challenged by lacklustre overseas sales which have led to price reductions.³⁰ For this reason, Essar Algoma expects that China will be increasingly aggressive in marketing and export sales of carbon steel plate.

Domestic Market Conditions

50. The evidence indicates that recovery following the 2008 recession is losing steam in Canada, with economic growth slowing during the POR. Recent GDP figures published in October 2013 by the Bank of Canada suggest that Canada's level of economic activity is lower than what was anticipated in July 2013. In particular, initial forecasts suggested that Canada's real GDP would grow at a rate of 2.7 percent in 2014 and 2.7 percent in 2015; however, these forecasts were recently revised downwards to 2.3 percent and 2.6 percent respectively.³¹

51. Mr. Brandow testified that, as was evident in the first half of 2013, the Canadian carbon steel plate market is in a period of sustained weakness. He indicated that, on a volume basis, the market declined by approximately 25 percent in the first half of 2013, as compared to the first half of 2012. Furthermore, he submitted that price declines, which were experienced in both 2012 and 2013, were primarily attributable to this weak demand and import pricing pressures.³² Mr. Brandow also indicated that these soft market conditions are expected to continue in 2014. His testimony was corroborated by Mr. Mayberry, who noted that he anticipates a very modest 2 percent growth in 2014.³³

52. A substantial portion of the submissions by Essar Algoma discussed the impact that certain new carbon steel plate imports are having on the Canadian carbon steel plate market. On July 15, 2013, Essar Algoma filed a complaint with the CBSA regarding the dumping of carbon steel plate from seven countries: the Federative Republic of Brazil (Brazil), Chinese Taipei, the Kingdom of Denmark (Denmark), the Republic of Indonesia (Indonesia), the Italian Republic (Italy), Japan and the Republic of Korea (Korea). In its complaint, Essar Algoma argues that, among other things, carbon steel plate imports from these seven countries have gained significant market share, thereby exerting pricing pressures on the domestic industry and placing the domestic industry in a vulnerable position. Further adding to the concerns of the domestic industry is the appearance of carbon steel plate imports from the Russian Federation and the United Mexican States.³⁴

53. Mr. Brandow testified that Canadian carbon steel plate pricing has been and remains at much lower levels than in the past, noting that the CRU Midwest spot pricing, which is typically a good indicator of the pricing on the Canadian market, fell by 25 percent in 2012 alone. Although there was a slight improvement in pricing in 2013, Mr. Brandow indicated that pricing has not been this low since the first quarter of 2010, when the industry was just starting to emerge from the financial crisis of 2008.³⁵ In this regard, the Tribunal notes that, during the POR, the average selling price of carbon steel plate in the Canadian market declined between 2011 and 2012 and, in comparing the first six months of 2012 and the first six months of 2013, the selling price declined by nearly 15 percent.³⁶

30. Exhibit RR-2013-002-A-08 (protected) at tab 13, Vol. 2.01C.

31. Exhibit RR-2013-002-A-10 at 12, Vol. 11B.

32. *Transcript of Public Hearing*, Vol. 1, 12 November 2013, at 11-13.

33. *Ibid.* at 55.

34. *Ibid.* at 18-19.

35. *Ibid.* at 11.

36. Exhibit RR-2013-002-05A, Table 24, Vol. 1.1.

Likely Volumes of Dumped Goods

54. Paragraph 37.2(2)(a) of the *Regulations* directs the Tribunal to consider the likely volume of the dumped goods if the order is allowed to expire and, in particular, whether there is likely to be a significant increase in the volume of imports of the dumped or subsidized goods, either in absolute terms or relative to the production or consumption of like goods.

55. The Tribunal's assessment of the likely volumes of dumped imports encompasses the likely performance of the foreign industry, the potential for foreign producers to produce goods in facilities that are currently used to produce other goods, evidence of the imposition of anti-dumping and/or countervailing duties in other jurisdictions, and whether measures adopted by other jurisdictions are likely to cause a diversion of the subject goods to Canada.

56. Essar Algoma has argued that there is a production imperative in the carbon steel plate industry. It argues that, when domestic demand is insufficient to absorb excess supply, carbon steel plate producers seek to optimize plant operations by pursuing sales in export markets.³⁷ Essar Algoma submitted that, if the order is rescinded, significant volumes of dumped goods are likely to be imported from the subject countries, taking into account the weak domestic demand in the subject countries and in their traditional export markets, combined with the production imperative in the steel industry and the overcapacity of the producers in the subject countries, which will drive them to seek new markets for carbon steel plate.³⁸ Moreover, it is the position of Essar Algoma that countries such as China will force the subject countries out of their traditional markets.³⁹

Evidence on Likely Volumes

57. The subject countries' economies are characterized by weak market conditions and soft domestic demand for carbon steel plate.⁴⁰ Forecasts indicate that the market conditions for carbon steel plate, particularly in Europe, have been weak and are expected to remain so in the near term, as the major industries that consume carbon steel plate are expected to remain subdued.⁴¹ Moreover, experts note that the global carbon steel plate market remains sluggish, with buyers only purchasing the required quantities at any given time, due to the possibility of further declining prices.⁴² Confidence in the marketplace also continues to be affected by the eurozone crisis.⁴³

58. In particular, reports indicate that Bulgaria is plagued by slow and declining growth, which is particularly apparent in the construction industry.⁴⁴ The construction industry in the Czech Republic is also showing signs of struggle and is expected to remain weak.⁴⁵ Moreover, apparent carbon steel plate consumption in Romania is forecast to contract in 2013.⁴⁶

37. Exhibit RR-2013-002-A-01 at paras. 67-70, Vol. 11.

38. Exhibit RR-2013-002-A-03 at paras. 2(d), 10-11, 14-16, Vol. 11.

39. *Ibid.* at para. 19.

40. Exhibit RR-2013-002-A-01 at paras. 98, 109, 115, Vol. 11.

41. Exhibit RR-2013-002-A-08 (protected), tab 4 at 41, Vol. 2.01C.

42. *Ibid.*, tab 4 at 36.

43. Exhibit RR-2013-002-A-09 at 8, Vol. 11A.

44. Exhibit RR-2013-002-A-01 at para. 98, Vol. 11; Exhibit RR-2013-002-A-09, tab 29 at 3, Vol. 11A.

45. Exhibit RR-2013-002-A-01 at para. 105, Vol. 11.

46. *Ibid.* at para. 115; Exhibit RR-2013-002-A-08 (protected), tab 4 at 41, Vol. 2.01C.

59. At the same time, producers of the subject goods are facing increased competition in their domestic markets, largely from Chinese suppliers of carbon steel plate. The problems discussed above in regard to China's significant carbon steel plate production capacity appears to pose challenges for carbon steel plate producers in the subject countries that have struggled to compete with low-priced imports from China.⁴⁷

60. Europe is an important region for Chinese exports, China having exported approximately 5.1 million tonnes of steel to the European Union in 2011.⁴⁸ Reports indicate that steelmakers from this region will likely face greater competition from Chinese suppliers, particularly as demand in China wanes.⁴⁹ Reports also indicate that Chinese suppliers are finding overseas sales subdued, leading to offers of price reductions by Chinese mills, and anticipate further discounting.⁵⁰ Moreover, exports of low-priced steel products from China are expected to continue to impact global producers, in some cases imposing a ceiling on domestic prices and rendering some producers in importing regions unable to compete.

61. To the extent that Chinese carbon steel plate is expected to become prevalent in the subject countries' markets, producers in the subject countries, which already rely heavily on exports to help offset some of their fixed costs when faced with overcapacity and insufficient domestic demand for carbon steel plate,⁵¹ will likely seek to increase export sales, particularly to new markets in which they may be free from competition with Chinese carbon steel plate.

62. In terms of production, the evidence on the record indicates that the subject countries produce far more carbon steel plate than is consumed domestically. Bulgaria does not appear to have a particularly robust domestic market for carbon steel plate, considering that the majority of the carbon steel plate produced in Bulgaria is exported.⁵² Similar circumstances exist in Romania and the Czech Republic, whereby production far outpaces domestic consumption, leading to a reliance on export sales.⁵³

63. The carbon steel plate sectors in the subject countries have significant excess capacity, particularly when compared to the size of the apparent market for carbon steel plate in Canada. Mr. Clark testified that the three subject countries have approximately 8.7 million tonnes of capacity, 5.5 million of which is excess capacity, and pointed to CRU forecasts projecting slight increases in production by each of the subject countries.⁵⁴ These figures support the view that the subject countries have the capability of producing a very large quantity of the subject goods, a quantity that is five to six times larger than the total apparent market for carbon steel plate in Canada.⁵⁵

64. The subject goods also face challenges, notably weak demand, in their traditional export markets. The Republic of Turkey (Turkey) has been an important export market for the subject goods,⁵⁶ largely due to its shipbuilding industry and its proximity to the subject countries. However, due to a global downturn in the shipbuilding industry, demand for the subject goods in this important export market has declined

47. *Transcript of Public Hearing*, Vol. 1, 12 November 2013, at 21-22.

48. Exhibit RR-2013-002-A-09, Attachment 2 at 26-27, Vol. 11A.

49. *Ibid.*

50. Exhibit RR-2013-002-A-08 (protected), Attachment 13 at 96, Vol. 2.01C; Exhibit RR-2013-002-A-01 at para. 54, Vol. 11.

51. *Transcript of Public Hearing*, Vol. 1, 12 November 2013, at 21, 80.

52. *Ibid.* at 22.

53. *Ibid.* at 23.

54. *Ibid.* at 24.

55. *Ibid.* at 25.

56. Exhibit RR-2013-002-05, Tables 64, 74, Vol. 1.1.

significantly.⁵⁷ The Tribunal heard testimony by Mr. Clark that shipbuilding declined, on a global level, roughly by half between 2008 and 2011, and the forecasts, particularly with respect to Turkey, indicate that this low level of activity is likely to persist into 2014 and beyond.⁵⁸

65. The evidence suggests that producers in the subject countries have struggled to maintain export volumes. In particular, the data indicate that, collectively, producers in the subject countries lost approximately 150,000 metric tonnes of exports to their traditional markets between 2011 and 2013.⁵⁹ Bulgaria's exports in 2013 were 26 percent below 2011 levels and 15 percent below 2012 levels.⁶⁰ Likewise, export volumes from the Czech Republic showed that 2012 and 2013 volumes were below that of 2011.⁶¹ While the volume of exports from Romania showed an increase between 2011 and 2012, a significant decline is apparent when comparing the interim periods of 2012 and 2013.⁶²

66. The problems discussed above in regard to China's significant carbon steel plate production capacity have likely posed challenges for carbon steel plate producers in the subject countries that have struggled to compete with low-priced imports from China in international markets, as well as in their own domestic markets.⁶³

Tribunal Findings

67. The Tribunal accepts the argument that there is a production imperative to maintain high capacity utilization rates when it comes to the production of carbon steel plate, which creates an incentive to rely on export markets to absorb any excess production.⁶⁴ At the present time, a significant volume of the carbon steel plate produced in the subject countries is destined for export markets.⁶⁵ Given the circumstances discussed above, the Tribunal is of the view that the producers of the subject goods will likely seek to maintain their export focus over the course of the next 12 to 18 months. Moreover, considering that producers in the subject countries have traditionally relied quite heavily on exports, the Tribunal is of the view that they will likely be in pursuit of new export markets in an attempt to replace their lost volumes.⁶⁶

68. During the hearing, the Tribunal noted that, notwithstanding the absence of anti-dumping duties on the subject goods in the United States, producers in the subject countries do not appear to have actively pursued sales in the U.S. market. As an explanation for this seeming lack of interest, Mr. Clark described several affiliations between U.S. carbon steel plate producers and exporters in the subject countries and concurred that sister organizations would not likely want to create problems by competing with one another in a given market.⁶⁷

57. Exhibit RR-2013-002-A-01 at paras. 90-97, Vol. 11.

58. *Transcript of Public Hearing*, Vol. 1, 12 November 2013, at 22.

59. Exhibit RR-2013-002-05, Tables 64, 69, 74, Vol. 1.1.

60. *Ibid.*, Table 64.

61. *Ibid.*, Table 69.

62. *Ibid.*, Table 74.

63. *Transcript of Public Hearing*, Vol. 1, 12 November 2013, at 21-22.

64. See *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate* (8 January 2009), RR-2008-002 (CIIT) at paras. 70, 71, 74. There is no evidence on the record warranting a departure in this expiry review from the Tribunal's previous finding.

65. *Transcript of Public Hearing*, Vol. 1, 12 November 2013, at 21; Exhibit RR-2013-002-05, Tables 64, 69, 74, Vol. 1.1.

66. *Transcript of Public Hearing*, Vol. 1, 12 November 2013, at 21.

67. *Ibid.* at 46-47.

69. The Tribunal is of the view that producers in the subject countries are likely to be drawn to the North American market in the event that the order is rescinded, given the relatively higher pricing that can be obtained for carbon steel plate⁶⁸ and the fact that, in Canada, the subject goods will not need to compete with imports of Chinese plate.⁶⁹ The fact that international ocean freight prices steadily declined over the POR provides an additional incentive for the subject countries to export to North America.⁷⁰

70. It is also worth noting that the Canadian market is not unfamiliar to producers in the subject countries. Although the subject goods were virtually absent from Canada during the POR, the Tribunal notes that, prior to the imposition of anti-dumping duties, imports from the subject countries were not negligible and, as the Tribunals' reasons in the original finding indicate, imports from the subject countries held a share of approximately 8 percent of the market.⁷¹ As such, the channels of distribution and end users within Canada would be reasonably well known to these producers in the subject countries.

71. Though there were virtually no imports of the subject goods during the POR, the Tribunal is of the view, with reference to the export prices of the subject goods, that the subject goods are likely to enter Canada at low prices in the event that the order is rescinded. As discussed in further detail below, the prices of the subject goods are likely to align closely with the prices of other sources of supply over the next 12 to 18 months.

72. For the above reasons and taking into account the fact that the subject goods were virtually absent from the Canadian marketplace during the POR, the Tribunal is of the view that the volume of the subject goods that would enter Canada if the order is rescinded is likely to be significant.

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

73. The Tribunal must consider, if the order is allowed to expire, whether the dumping of the subject goods is likely to significantly undercut the prices of the like goods, depress those prices or suppress them by preventing increases in those prices that would likely have otherwise occurred.⁷²

74. At the outset, the Tribunal notes, as indicated above in the section on cumulation, that carbon steel plate meeting the definition of the subject goods is a commodity product and, assuming carbon steel plate meets the desired specification, that price is the most important factor driving a customer's purchasing decision.⁷³

75. Essar Algoma argued that, if the order is rescinded and if the subject goods are permitted to re-enter the Canadian marketplace free of anti-dumping duties, the price at which they will likely need to compete is that at which the goods imported by Brazil, Chinese Taipei, Denmark, Indonesia, Italy, Japan and Korea are sold on the Canadian market.⁷⁴ It is argued that selling the subject goods at prices that are competitive with these low-priced imports will be necessary in order for producers in the subject countries to regain sales and market share in Canada.

68. Exhibit RR-2013-002-A-03 at paras. 27-36, Vol. 11.

69. *Hot-rolled Carbon Steel Plate*.

70. Exhibit RR-2013-002-28.06, Vol. 1A at 23.

71. Inquiry No. NQ-2003-002 at 5.

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

73. *Transcript of Public Hearing*, Vol. 1, 12 November 2013, at 12.

74. *Ibid.* at 26.

76. As previously noted, there is currently an injury inquiry involving carbon steel plate being dumped by the seven countries mentioned above. Essar Algoma argued that the presence of these low-priced imports in the Canadian marketplace is already exerting significant pricing pressure on the domestic industry and that to re-open the market to the subject goods that will also be priced at similar levels, will further compound the current competitive challenges experienced by the domestic industry.⁷⁵

77. Mr. Brandow testified that the carbon steel plate sold by the above-mentioned non-subject countries tends to undercut the like goods by \$110 to \$146, or more, per metric tonne. Accordingly, it is argued that the subject goods would have to be competitively priced in order to regain sales and market share in Canada that were held by imports from these non-subject countries.⁷⁶

78. There is limited data upon which to compare the prices of imports of the subject goods into Canada with the prices of non-subject goods and like goods, due to the absence of carbon steel plate imports from the subject countries during the POR.

79. However, Mr. Brandow's testimony on the likely pricing of the subject goods is corroborated by the International Steel Statistics Bureau data. The export prices of the subject goods from Bulgaria and Romania are consistently lower than the average import prices by non-subject countries with significant import volumes of carbon steel plate into Canada.⁷⁷ Moreover, the prices of non-subject carbon steel plate are almost always lower than the price of the like goods produced by the domestic industry.⁷⁸

80. For the reasons indicated above, the Tribunal finds that there would likely be price undercutting if the order is allowed to expire.

81. The Tribunal also finds that price depression is also likely to occur if the order is allowed to expire. To the extent that the subject goods would re-enter the Canadian market at low prices, the domestic industry will likely need to respond by lowering its prices in an effort to maintain existing sales levels.

82. A witness for Essar Algoma testified that it has been trying to implement a price increase of \$33 per metric tonne on carbon steel plate for several weeks, but has encountered significant resistance to this price increase from its larger customers.⁷⁹ Mr. Mayberry also echoed the frustration of Essar Algoma in relating SSAB's failure to raise its prices.⁸⁰ The domestic industry's inability to pass along a price increase to their customers is evidence that they are already experiencing price suppression due to the low prices of carbon steel plate in the Canadian market, which is likely to be exacerbated by imports from the subject countries if the order is allowed to expire.

83. In light of the inability of domestic producers to increase their selling prices, in the context of rising costs and the presence of lower-priced imports, the Tribunal also finds that there would likely be price suppression if the order is allowed to expire.

75. *Ibid.* at 15-17.

76. *Ibid.* at 17, 26.

77. *Ibid.* at 22-24; Exhibit RR-2013-002-A-03 at tab 3, Vol. 11; Exhibit RR-2013-002-05, Tables 64, 66, 68-69, 71, 73-74, 76, 78, Vol. 1.1; Exhibit RR-2013-002-05A, Table 23, Vol. 1.1.

78. Exhibit RR-2013-002-05A, Table 23, Vol. 1.1. The exception is in 2010, when the price of the like goods produced by the domestic industry was lower than that of non-subject imports. The subject goods were largely absent from the Canadian market during the POR.

79. *Transcript of Public Hearing*, Vol. 1, 12 November 2013, at 14.

80. *Ibid.* at 69.

84. Due to the timing of this expiry review, Essar Algoma's arguments and the Tribunal's analysis on pricing are somewhat speculative because the question of whether the subject goods will compete with the imports from the seven sources listed above over the next 12 to 18 months will, to some extent, depend on the results of the injury inquiry involving those seven named countries. To the extent that anti-dumping duties are ultimately imposed on those seven countries, presumably resulting in either higher pricing for these goods in the Canadian marketplace or, perhaps, their complete absence from the Canadian marketplace should producers be unable or unwilling to sell into Canada at undumped prices, may mean that the subject goods will not need to compete at the low pricing levels established by those imports. However, the Tribunal finds it inappropriate to try to predict how that proceeding will ultimately unfold. The Tribunal can only base its conclusions on facts that are known, and what is known to the Tribunal at this stage is that prices of imports from seven non-subject countries are low and that, as a result, the subject goods would likely have to compete against those prices.

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

85. The Tribunal will assess the likely impact of the above volumes and prices on the domestic industry if the order is rescinded, taking into consideration the likely performance of the domestic industry if the order is continued.⁸¹

86. The Tribunal is of the view that the domestic industry is likely to be injured by the subject goods if the order is rescinded, taking into account the likely volumes of the subject goods and the likely prices of those subject goods.

87. The domestic industry experienced a small but steady decrease in the production of carbon steel plate throughout the POR.⁸²

88. Essar Algoma submitted that low-priced carbon steel plate from non-subject countries has taken a considerable part of the Canadian market share in the past few years. Moreover, the inability of the domestic producers to compete with these lower-priced imports is evident through their loss of market share and poor financial results.⁸³

89. While sales from domestic production increased marginally between 2010 and 2012, the domestic producers appear to have lost market share to non-subject imports. During the interim periods of 2012 and 2013, although sales increased somewhat, selling prices dropped.⁸⁴

90. Exports by the domestic industry declined between 2010 and 2012 and continued to decline during the interim periods of 2012 and 2013.⁸⁵

91. The domestic industry's gross margin and net income before taxes improved from 2010 to 2011, but then deteriorated for the remainder of the POR.⁸⁶

81. See paragraphs 37.2(2)(c), (e) and (g) of the *Regulations*.

82. Exhibit RR-2013-002-05, Table 7, Vol. 1.1.

83. Exhibit RR-2013-002-A-01 at para. 143, Vol. 11.

84. Exhibit RR-2013-002-05A, Tables 18, 24, Vol. 1.1.

85. Exhibit RR-2013-002-05, Table 26, Vol. 1.1.

86. Exhibit RR-2013-002-06 (protected), Table 49, Vol. 2.1.

92. The number of persons employed by the domestic industry decreased between 2010 and 2011, but then increased for the remainder of the POR.⁸⁷

93. Essar Algoma submitted that its continued success depends on its ability to support the investment that it requires to sustain and improve its operations in Canada. According to Essar Algoma, it is required to demonstrate to its parent company that the Canadian market is worth supporting through further capital investments.⁸⁸ Total investments by the domestic industry decreased in value during the POR, before a projected increase for 2014.⁸⁹

94. When the domestic industry's performance during the POR in this expiry review is compared to the performance during the POR in the previous expiry review, the Tribunal notes that there have been declines in production, domestic and export sales, and market share. The selling prices from domestic production were constant between the previous expiry review and the current expiry review. There has been a significant contraction in the capacity utilization rates with respect to the like goods, as well as other products. The financial position of the domestic producers deteriorated between the previous expiry review and the current expiry review with respect to gross margins and net income.

95. Due to the absence of the subject goods during the POR, there is no direct evidence of price erosion or price depression caused by the subject goods. However, on the basis of the comparable prices of non-subject goods in the Canadian market and the export prices of the subject goods in other export markets, the Tribunal finds that, if the order is rescinded, the subject goods will likely cause similar price erosion or depression.

96. As previously noted, there is uncontested testimony that Essar Algoma and SSAB experienced price suppression due to their inability to pass along a price increase to their customers.

97. The above-noted issues will only exacerbate the domestic industry's condition, given the soft market conditions that are forecast to continue into 2015.

98. If the order is rescinded, the Tribunal is of the view that the domestic industry will experience further lost sales, decreased revenues, reduced levels of production and increased costs of production. This will only further exacerbate the financial difficulties of the domestic industry. For these reasons, the Tribunal finds that rescinding the order will likely cause material injury to the domestic industry.

Factors Other Than Dumping

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

100. There is no evidence on the record that factors unrelated to dumping could adversely affect the domestic industry and, not surprisingly, given the lack of opposition, the Tribunal did not receive any submissions in this regard.

87. Exhibit RR-2013-002-05, Table 55, Vol. 1.1.

88. Exhibit RR-2013-002-A-01 at para. 160, Vol. 11.

89. Exhibit RR-2013-002-06 (protected), Table 59, Vol. 2.1.

101. The Tribunal notes that the domestic industry has benefitted from a number of injury findings over a number of years involving plate imports from a wide range of countries.⁹⁰ Despite the remedial effect of the above-noted trade measures against dumped and subsidized products originating in numerous countries, the domestic industry is not in good shape, as noted in argument by the domestic industry.⁹¹

102. The Tribunal notes that there may be a number of factors that affect the domestic industry's performance that have little to do with dumping. While the evidence in this case does not allow the Tribunal to analyze factors other than dumping that could adversely affect the domestic industry, in future similar inquires, the Tribunal may require parties to present evidence and make submissions on this point, for example, how the restructuring and consolidation of the global steel industry has impacted the domestic industry in terms of investment and production decisions.

103. In summary, while the Tribunal recognizes that the domestic industry has other challenges, on the basis of the evidence in this case, it does not consider that any injury resulting from these challenges has any bearing on the potential injury attributable to the likely volumes and prices of dumped goods from the subject countries that are expected to enter the Canadian market if the finding is rescinded.

CONCLUSION

104. In conclusion, on the basis of its review of the evidence on the record and taking into account the arguments and evidence put forth by the domestic industry, the Tribunal finds that the expiry of the order will likely cause material injury to the domestic industry.

105. On the basis of the foregoing analysis, and pursuant to paragraph 76.03(12)(b) of *SIMA*, the Tribunal hereby continues its order in respect of the subject goods.

Serge Fréchette
Presiding Member

Stephen A. Leach
Member

Daniel Petit
Member

90. *Hot-rolled Carbon Steel Plate* (4 November 2013), PI-2013-003 (CITT); *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate* (2 February 2010), NQ-2009-003 (CITT); Inquiry No. NQ-2003-002; *Hot-rolled Carbon Steel Plate* (27 June 2000), NQ-99-004 (CITT); *Hot-rolled Carbon Steel Plate* (27 October 1997), NQ-97-001 (CITT); *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Plate, Heat-treated or not* (17 May 1994), NQ-93-004 (CITT); *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Plate, Heat-treated or not* (6 May 1993), NQ-92-007 (CITT).

91. *Transcript of Public Hearing*, Vol. 1, 12 November 2013, at 100.