Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Dumping and Subsidizing

FINDING AND REASONS

Inquiry No. NQ-2013-005

Hot-rolled Carbon Steel Plate

Finding issued
Tuesday, May 20, 2014

Reasons issued
Wednesday, June 4, 2014

Canada

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IN THE MATTER OF an inquiry, pursuant to section 42 of the *Special Import Measures Act*, respecting:

THE DUMPING OF HOT-ROLLED CARBON STEEL PLATE AND HIGH-STRENGTH LOW-ALLOY STEEL PLATE ORIGINATING IN OR EXPORTED FROM THE FEDERATIVE REPUBLIC OF BRAZIL, CHINESE TAIPEI, THE KINGDOM OF DENMARK, THE REPUBLIC OF INDONESIA, THE ITALIAN REPUBLIC, JAPAN AND THE REPUBLIC OF KOREA

FINDING

The Canadian International Trade Tribunal, pursuant to the provisions of section 42 of the *Special Import Measures Act*, has conducted an inquiry to determine whether 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 thicknesses from 0.187 inches (+/–4.75 mm) up to and including 3.0 inches (76.2 mm) (with all dimensions being plus or minus allowable tolerances contained in the applicable standards), but excluding plate for use in the manufacture of pipe and tube (also known as skelp); plate in coil form, plate having a rolled, raised figure at regular intervals on the surface (also known as floor plate), originating in or exported from the Federative Republic of Brazil, Chinese Taipei, the Kingdom of Denmark, the Republic of Indonesia, the Italian Republic, Japan, and the Republic of Korea has caused injury or is threatening to cause injury.

This inquiry is pursuant to the issuance by the President of the Canada Border Services Agency of a preliminary determination dated January 17, 2014, that the aforementioned goods originating in or exported from the Federative Republic of Brazil, Chinese Taipei, the Kingdom of Denmark, the Republic of Indonesia, the Italian Republic, Japan, and the Republic of Korea have been dumped.

On April 17, 2014, the President of the Canada Border Services Agency made a final determination that the aforementioned goods originating in or exported from the Federative Republic of Brazil, the Kingdom of Denmark, the Republic of Indonesia, the Italian Republic, Japan, and the Republic of Korea have been dumped. In addition, the President of the Canada Border Services Agency terminated the investigation regarding the dumping of the aforementioned goods originating in or exported from Chinese Taipei.

Pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that the dumping in Canada of the aforementioned goods originating in or exported from the Federative Republic of Brazil, the Kingdom of Denmark, the Republic of Indonesia, the Italian Republic, Japan, and the Republic of Korea has not caused injury but is threatening to cause injury to the domestic industry.

Furthermore, the Canadian International Trade Tribunal hereby excludes the goods described in the attached appendix from its threat of injury finding.

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Presiding Member

Daniel Petit
Daniel Petit
Member

Ann Penner
Ann Penner
Member

Gillian Burnett
Gillian Burnett
Secretary

The statement of reasons will be issued within 15 days.

APPENDIX

PRODUCTS EXCLUDED FROM THE FINDING

- Hot-rolled carbon steel plate and high-strength low-alloy plate, made to any steel specification or grade, that is greater than 2.75 inches (70 mm) in thickness and 72 inches in width.

- Hot-rolled carbon steel plate in grade A516-70 normalized (heat-treated) with a thickness of 2.75 inches and of width greater than 72 inches.

- Hot-rolled carbon steel plate manufactured to:

  ASME SA-516/SA-516M or ASTM A-516/A-516M
  ASME SA-285/SA-285M or ASTM A-285/A-285M
  ASME SA-299/SA-299M or ASTM A-299/A-299M
  ASME SA-537/SA-537M or ASTM A-537/A-537M
  ASME SA-515/SA-515M or ASTM A-515/A-515M
  ASME SA-841/SA-841M or ASTM A-841/A-841M

  which is both vacuum-degassed while molten and has a sulfur content of less than 0.005 percent.

- Hot-rolled carbon steel plate manufactured to:

  ASME SA-516/SA-516M or ASTM A-516/A-516M
  ASME SA-285/SA-285M or ASTM A-285/A-285M
  ASME SA-299/SA-299M or ASTM A-299/A-299M
  ASME SA-537/SA-537M or ASTM A-537/A-537M
  ASME SA-515/SA-515M or ASTM A-515/A-515M

  that is made by a process that includes vacuum degassing while molten and is normalized (heat-treated).

- Hot-rolled carbon steel plate manufactured to:

  ASME SA-516/SA-516M or ASTM A-516/A-516M
  ASME SA-285/SA-285M or ASTM A-285/A-285M
  ASME SA-299/SA-299M or ASTM A-299/A-299M
  ASME SA-537/SA-537M or ASTM A-537/A-537M
  ASME SA-515/SA-515M or ASTM A-515/A-515M

  that is normalized (heat-treated) and has a sulfur content of less than 0.005 percent.

- Hot-rolled carbon steel plate manufactured to:

  ASME SA-516/SA-516M or ASTM A-516/A-516M
  ASME SA-285/SA-285M or ASTM A-285/A-285M
  ASME SA-299/SA-299M or ASTM A-299/A-299M
  ASME SA-537/SA-537M or ASTM A-537/A-537M
  ASME SA-515/SA-515M or ASTM A-515/A-515M

  that is normalized (heat-treated) where the plate thickness is greater than 2.67 inches or where the plate dimensions are greater than the dimensions in the following table:

Order Gauge	1.250		1.375		1.500		1.625		1.750	
Order Width	MIN	MAX	MIN	MAX	MIN	MAX	MIN	MAX	MIN	MAX
40	438	512	398	465	365	426	336	393	311	363
42	383	511	348	464	319	425	294	392	272	363
44	366	510	333	463	305	424	281	391	260	362
46	351	509	319	462	292	423	269	391	249	361
48	337	508	306	462	280	423	258	390	239	361
50	323	507	294	461	269	422	248	389	229	360
52	311	506	283	460	259	422	239	389	221	360
54	300	506	272	460	249	421	230	388	216	359
56	289	505	263	459	241	421	222	388	214	359
58	280	505	254	459	232	420	214	387	214	358
60	270	504	245	458	225	420	216	387	215	358
62	262	504	238	458	217	419	214	387	216	358
64	254	503	230	457	215	419	216	386	216	357
66	246	503	223	457	216	418	214	386	216	357
68	239	502	217	456	215	418	216	386	216	357
70	232	942	216	456	215	418	216	385	216	357
72	226	942	216	948	216	948	215	945	215	945
74	219	942	216	948	215	945	215	945	215	945
76	214	942	215	945	215	945	215	945	215	945
78	215	945	215	945	215	945	215	945	215	945
80	214	942	215	945	215	945	215	945	215	945
82	214	942	215	945	215	945	215	945	215	945
84	214	816	215	742	215	681	215	630	215	583
86	215	817	215	744	215	682	215	630	215	584
88	216	808	215	736	215	675	215	630	215	578
90	216	798	215	720	215	660	215	610	215	565
92	216	774	215	704	215	646	215	597	215	553
94	216	758	215	690	215	633	215	584	215	541
96	215	742	215	676	215	620	215	572	215	530
98	215	730	215	662	215	607	215	561	215	520
100	216	713	215	649	215	595	215	550	215	509
102	215	699	215	636	215	584	215	539	215	500
104	216	686	215	630	215	572	215	530	215	492
106	216	673	215	613	215	562	215	519	215	482
108	216	661	215	601	215	551	215	509	215	473
110	216	649	215	590	215	541	215	500	215	465
112	216	638	215	580	215	532	215	493	215	456
114	215	630	215	570	215	523	215	484	215	448
116	215	616	215	560	215	514	215	476	215	440
118	216	605	215	551	215	505	215	457	215	433
120	215	595	215	541	215	498	215	450	215	425
122	216	586	215	533	215	490	215	452	215	418
124	215	561	215	510	215	482	215	445	215	411
126	216	553	215	502	215	462	215	426	215	394
128	215	544	215	496	215	455	215	419	215	388

Order Gauge	1.250		1.375		1.500		1.625		1.750	
Order Width	MIN	MAX	MIN	MAX	MIN	MAX	MIN	MAX	MIN	MAX
130	216	536	215	489	215	448	215	413	215	382
132	216	532	215	481	215	441	215	407	215	376
134	215	520	215	474	215	434	215	401	215	371
136	216	512	215	467	215	428	215	395	215	365
138	216	505	215	460	215	422	215	389	215	360
140	216	500	215	454	215	416	215	383	215	355
142	216	488	215	444	215	406	215	375	215	347
144	216	476	215	432	215	396	215	365	215	338
146	216	472	215	429	215	393	215	362	215	335
148	216	472	215	429	215	393	215	362	215	335
150	216	469	215	426	215	390	215	360	215	333
152	216	463	215	421	215	385	215	355	215	329

Order Gauge	1.875		2.000		2.250		2.500		2.750	
Order Width	MIN	MAX	MIN	MAX	MIN	MAX	MIN	MAX	MIN	MAX
40	290	339	272	318	241	282	217	253	217	229
42	253	338	238	317	215	281	214	252	217	229
44	242	337	227	317	215	280	216	252	217	228
46	232	337	218	316	215	280	216	251	217	228
48	222	336	214	316	216	280	216	251	217	228
50	214	336	214	315	216	279	216	251	217	227
52	214	335	216	315	216	279	216	250	217	227
54	214	335	216	314	216	278	216	250	217	227
56	214	334	216	314	216	278	216	250	217	226
58	215	334	216	313	216	278	216	249	217	226
60	215	334	216	313	216	277	216	249	217	226
62	215	333	216	313	216	277	216	249	217	226
64	215	333	216	313	216	277	216	249	217	266
66	215	333	216	312	216	277	216	248	217	225
68	215	332	216	312	216	276	216	248	217	225
70	215	332	216	312	216	276	216	248	217	225
72	215	945	216	948	216	872	216	798	216	716
74	215	945	216	948	216	850	216	767	216	698
76	215	945	216	948	216	832	216	747	216	680
78	215	945	216	910	216	809	216	732	216	664
80	215	945	216	888	216	798	216	712	216	648
82	215	795	216	798	216	632	216	632	216	632
84	215	544	216	512	216	450	216	405	216	368
86	215	545	216	512	216	451	216	406	216	368
88	215	539	216	507	216	452	216	406	216	369

Order Gauge	1.875		2.000		2.250		2.500		2.750	
Order Width	MIN	MAX	MIN	MAX	MIN	MAX	MIN	MAX	MIN	MAX
90	215	530	216	498	216	441	216	397	216	360
92	215	516	216	487	216	432	216	388	216	352
94	215	505	216	477	216	422	216	380	216	345
96	215	497	216	467	216	414	216	372	216	337
98	215	486	216	457	216	405	216	364	216	330
100	215	477	216	448	216	397	216	357	0	0
102	215	467	216	439	216	389	216	350	0	0
104	215	458	216	430	216	381	216	343	0	0
106	215	449	216	422	216	374	216	336	0	0
108	215	441	216	414	216	367	216	330	0	0
110	215	433	216	406	216	360	216	233	0	0
112	215	425	216	399	216	354	0	0	0	0
114	215	417	216	392	216	347	0	0	0	0
116	215	410	216	385	216	341	0	0	0	0
118	215	403	216	379	216	335	0	0	0	0
120	215	396	216	372	216	330	0	0	0	0
122	215	390	216	356	216	260	0	0	0	0
124	215	383	216	360	0	0	0	0	0	0
126	215	367	216	345	0	0	0	0	0	0
128	215	361	216	339	0	0	0	0	0	0
130	215	356	216	334	0	0	0	0	0	0
132	215	359	216	329	0	0	0	0	0	0
134	215	345	216	324	0	0	0	0	0	0
136	215	340	216	319	0	0	0	0	0	0
138	215	335	216	293	0	0	0	0	0	0
140	215	330	0	0	0	0	0	0	0	0
142	215	323	0	0	0	0	0	0	0	0
144	215	315	0	0	0	0	0	0	0	0
146	215	312	0	0	0	0	0	0	0	0
148	0	0	0	0	0	0	0	0	0	0
150	0	0	0	0	0	0	0	0	0	0
152	0	0	0	0	0	0	0	0	0	0

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	April 22-25 and 28, 2014
Tribunal Members:	Pasquale Michaele Saroli, Presiding Member Daniel Petit, Member Ann Penner, Member
Associate Director, Trade Remedies Investigations:	Greg Gallo
Senior Trade Remedies Investigations Officers:	Nadine Cabana Josée St-Amand
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Importers/Exporters/Others	**Counsel/Representatives**
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JFE Steel Corporation Kobe Steel, Ltd. Nippon Steel & Sumitomo Metal Corporation NISSHIN STEEL Co., Ltd.	Martin G. Masse Jonathan O'Hara Amanda Vanderlee Neil Campbell
Salzgitter Mannesmann International (Canada) Inc.	Jonathan Adkins
Usinas Siderurgicas de Minas Gerais S.A. (USIMINAS)	Peter Clark Renée Clark Andrew DiCapua

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Alberta Pressure Vessel Manufacturers' Association	Victoria Bazan
Carbon Steel Profiles Limited	James McNair
Dongkuk Steel Pohang Iron & Steel Co. (POSCO)	Greg Kanargelidis Zachary Silver
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STATEMENT OF REASONS

INTRODUCTION

1. The purpose of this inquiry[1] is to determine whether the dumping of certain hot-rolled carbon steel plate and high-strength low-alloy steel plate (the subject goods) originating in or exported from 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) has caused or is threatening to cause injury to the domestic steel plate industry.

2. This inquiry stems from a complaint filed on July 15, 2013, by Essar Steel Algoma Inc. (Essar Algoma) and the decision of the President of the Canada Border Services Agency (CBSA) on September 5, 2013, to initiate a dumping investigation.

3. The decision to initiate the investigation triggered the initiation of a preliminary injury inquiry by the Canadian International Trade Tribunal (the Tribunal) on September 6, 2013, which culminated in the determination of the Tribunal on November 4, 2013, that the evidence disclosed a reasonable indication that the dumping of the subject goods had caused or was threatening to cause injury.

4. On November 29, 2013, the CBSA decided to extend the 90-day period for its preliminary determination on the issue of dumping to 135 days, due to the complexity and novelty of the issues involved.

5. On January 17, 2014, the CBSA made a preliminary determination of dumping, resulting in the imposition of provisional anti-dumping duties on the subject goods and the commencement of this inquiry. On January 20, 2014, the Tribunal issued a notice of commencement of inquiry.[2]

6. On April 17, 2014, the CBSA made a final determination of dumping against Brazil, Denmark, Indonesia, Italy, Japan and Korea but terminated its investigation against Chinese Taipei. Consequently, as of that date, the Tribunal confined its inquiry to the subject goods from the countries to which the CBSA's final determination applies (the subject countries).

7. If the Tribunal determines that such dumping has caused or is threatening to cause material injury to the domestic industry producing like goods in relation to the subject goods, then the CBSA will impose definitive anti-dumping duties on imports of the subject goods.

8. The Tribunal's period of inquiry (POI) was from January 1, 2010, to September 30, 2013. On this basis, on January 20, 2014, the Tribunal sent requests to complete questionnaires to domestic producers, importers, service centres, purchasers and foreign producers of steel plate. Using the questionnaire replies, Statistics Canada import data and data from the CBSA, staff prepared public and protected versions of the staff report that were distributed, along with the questionnaire replies, to those parties that filed a notice of participation in the inquiry.[3] Parties filed case briefs and evidence in response.

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1. The inquiry is conducted pursuant to section 42 of the *Special Import Measures Act*, R.S.C., 1985, c. S-15 [*SIMA*].
2. C. Gaz. 2014.I.168.
3. All public exhibits were made available to the parties. Protected exhibits were made available only to counsel who had filed the required declaration and confidentiality undertaking with the Tribunal in respect of confidential information.

9. Of the parties supporting a determination of injury or threat thereof, only Essar Algoma, of Sault Ste. Marie, Ontario, participated fully in the inquiry. EVRAZ Inc. NA Canada, of Regina, Saskatchewan, (EVRAZ), also a participant, provided a response to the producers' questionnaire and participated in the Tribunal's product exclusion and request for information (RFI) processes. SSAB Americas (SSAB), a non-participant, provided a response to the producers' questionnaire, participated in the Tribunal's RFI process and provided a witness who testified at the hearing.

10. The foreign parties opposed to a determination of injury or threat thereof included Nippon Steel & Sumitomo Metal Corporation, JFE Steel Corporation, Kobe Steel, Ltd. and NISSHIN STEEL Co., Ltd. (collectively, the Japanese producers); Usinas Siderurgicas de Minas Gerais S.A. (USIMINAS), a Brazilian producer of the subject goods; Pohang Iron & Steel Co. (POSCO) and Dongkuk Steel (Dongkuk), Korean producers of the subject goods (collectively, the Korean producers); ILVA S.p.A. (ILVA), an Italian producer of the subject goods; and China Steel Corporation, a producer of the subject goods in Chinese Taipei.

11. Domestic parties opposed to a determination of injury or threat thereof included the Alberta Pressure Vessel Manufacturers' Association (APVMA), a group of companies that import pressure vessel quality (PVQ) steel plate, and Salzgitter Mannesmann International (Canada) Inc., an importer of the subject goods.

12. Additional participants in this inquiry included Hanwa Canada Corporation (Hanwa), the Embassy of Brazil and the Embassy of Japan. Hanwa provided a response to the importers' and service centres' questionnaire and participated in the Tribunal's RFI process. The Embassy of Japan made a brief statement in closing argument, but the involvement of the embassies in this inquiry was otherwise limited.

13. Carbon Steel Profiles Limited participated only in the Tribunal's product exclusion process. Acier Wirth Steel (Wirth) participated in the Tribunal's product exclusion process, provided a response to the importers' and service centres' questionnaire and provided a witness who testified at the hearing.

14. On March 20, 2014, the parties submitted to the Tribunal RFIs directed at the other parties, as well as to EVRAZ and Hanwa. As some parties objected to certain of the RFIs, the Tribunal issued directions to the parties on March 28, 2014, as to which of the RFIs required responses. Complete responses were received by April 4, 2014, and placed on the record of the proceedings.[4]

15. The Tribunal held a hearing, which included public and *in camera* sessions, in Ottawa, Ontario, from April 22 to 25, 2014, with closing arguments made on April 28, 2014.

16. A number of exclusion requests were submitted by the parties opposed to a finding of injury, many of which were agreed to by Essar Algoma and accepted by the Tribunal. The remaining contentious exclusion requests were dealt with by way of a series of expedited hearings on April 25, 2014, wherein the parties involved presented evidence and argument on the merits of each of the exclusion requests.

17. The Tribunal notes that certain developments shortly before the hearing commenced necessitated adjustments to particular data in the staff report. The first of these developments was the CBSA's termination of its dumping investigation in respect of goods originating in or exported from Chinese Taipei.[5] The second was the discovery of an error in the data from a domestic producer and that producer's

4. Exhibit NQ-2013-005-RFI-01, Vol. 9.
5. Exhibit NQ-2013-005-04, Vol. 1 at 111.8.

correction of same.[6] In order to minimize inconvenience to the other participants, the Tribunal immediately notified the parties to the proceedings of this development, identified the affected tables and distributed revised tables containing the required adjustments.[7]

18. The Tribunal issued its finding on May 20, 2014.

RESULTS OF THE CBSA'S INVESTIGATION

19. The CBSA's period of investigation with respect to the alleged dumping was from January 1, 2012, to March 31, 2013. On April 17, 2014, the CBSA made the following determinations:

- 100 percent of the subject goods originating in or exported from Brazil had been dumped by a margin of 29.0 percent, when expressed as a percentage of the export price;
- 100 percent of the subject goods originating in or exported from Denmark had been dumped by a margin of 59.7 percent, when expressed as a percentage of the export price;
- 100 percent of the subject goods originating in or exported from Indonesia had been dumped by a margin of 59.7 percent, when expressed as a percentage of the export price;
- 100 percent of the subject goods originating in or exported from Italy had been dumped by a margin of 59.7 percent, when expressed as a percentage of the export price;
- 100 percent of the subject goods originating in or exported from Japan had been dumped by a margin of 59.7 percent, when expressed as a percentage of the export price; and
- 100 percent of the subject goods originating in or exported from Korea had been dumped by a margin of 29.2 percent, when expressed as a percentage of the export price.[8]

20. For the above-noted countries, the CBSA concluded that the overall margins of dumping were not insignificant.[9]

21. On April 17, 2014, the CBSA terminated its dumping investigation in respect of the subject goods originating in or exported from Chinese Taipei on the basis that the margin of dumping of 1.5 percent, when expressed as a percentage of the export price, was insignificant.[10]

PRODUCT

Product Definition

22. The CBSA defined the subject goods as follows:

> 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 thicknesses from 0.187 inches (+/–4.75 mm) up to and including 3.0 inches (76.2 mm) (with all dimensions being plus or minus allowable tolerances contained in the applicable standards), but excluding plate for use in the manufacture of pipe and tube (also known as

6. Exhibit NQ-2013-005-11.01D, Vol. 3 at 26.6.
7. Exhibit NQ-2013-005-07E (protected), Vol. 2.1A at 1-66.
8. Exhibit NQ-2013-005-04, Vol. 1 at 111.20.
9. *Ibid*.
10. Pursuant to subsection 2(1) of *SIMA*, a margin of dumping of less than 2 percent of the export price is defined as insignificant.

> skelp); plate in coil form, plate having a rolled, raised figure at regular intervals on the surface (also known as floor plate), originating in or exported from the Federative Republic of Brazil, Chinese Taipei, the Kingdom of Denmark, the Republic of Indonesia, the Italian Republic, Japan, and the Republic of Korea.[11]

23. The subject goods include steel plate containing alloys greater than required by recognized industry standards, provided the steel does not meet recognized industry standards for alloy-grade steel plate.[12]

Product Information

24. Hot-rolled carbon steel plate is manufactured to meet certain Canadian Standards Association (CSA) and/or American Society for Testing and Materials (ASTM) specifications or equivalent specifications. In the ASTM specifications, for instance, specification A36M/A36 comprises structural steel plate; specification A572M/A572 comprises high-strength low-alloy steel plate; and specification A516M/A516 comprises PVQ steel plate. ASTM standards, such as A6/A6M and A20/A20M, recognize permissible variations for dimensions. CSA specification G40.21 covers steel for general construction purposes.

25. The subject goods are used in a number of applications, the most common of which are the production of rail cars, oil and gas storage tanks, heavy machinery, agricultural equipment, bridges, industrial buildings, high-rise office towers, automobile and truck parts, ships and barges, and pressure vessels.[13]

26. While details may vary from mill to mill, the process by which certain hot-rolled carbon steel plate is produced in Canada is essentially the same for all producers and entails the following:

- slab production
- heating slabs before rolling
- descaling
- rolling
- levelling
- cutting to size
- inspection and testing
- shipping.[14]

27. In both integrated and mini-mill production, the molten steel is poured from a ladle into the tundish of a continuous strand caster. From the tundish, it flows into the caster moulds to cool and to form a 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. The slab is then either placed in inventory or immediately transferred to a reheat furnace where it is heated to a uniform rolling temperature. The plate is rolled to its final gauge in a series of rolling mills, leveled, identified and inspected for conformance to thickness tolerances and surface

11. In these reasons, references to the subject goods do not include goods originating in or exported from Chinese Taipei, based on the fact that the dumping investigation against this country was terminated.
12. Exhibit NQ-2013-005-04A, Vol. 1 at 111.29.
13. Exhibit NQ-2013-005-06, Vol. 1.1 at 17.
14. Exhibit NQ-2013-005-11.02, Vol. 3 at 40.

requirements. The plate is then either formed directly into rectangular shapes or coiled and later unwound and cut into lengths. The former is known as "discrete plate" and the latter as "plate from coil" or "cut-to-length plate".[15]

28. Plate may be sold directly to distributors, end users or service centres, which may resell standard cut-to-length sizes and grades, or which offer custom cutting services.

LEGAL FRAMEWORK

29. The Tribunal is required, pursuant to subsection 42(1) of *SIMA*, to inquire as to whether the dumping of the subject goods has caused injury or retardation or is threatening to cause injury, with "injury" being defined, in subsection 2(1), as "material injury to a domestic industry". In this regard, "domestic industry" is defined in subsection 2(1) by reference to the domestic production of "like goods".

30. Accordingly, the Tribunal must first determine what constitutes "like goods". Once that determination has been made, the Tribunal must determine what constitutes the "domestic industry" for purposes of its injury analysis.

31. Given that the subject goods originate in or are exported from more than one country, the Tribunal must also determine whether the conditions are met for a cumulative assessment of the effect, on the domestic industry, of the dumping of the subject goods from all the subject countries.

32. The Tribunal can then assess whether the dumping of the subject goods has caused material injury to the domestic industry.[16] Should the Tribunal arrive at a finding of no material injury, it will determine whether there exists a threat of material injury to the domestic industry.[17] As a domestic industry is already established, the Tribunal will not need to consider the question of retardation.[18]

33. In conducting its analysis, the Tribunal will also examine other factors that might have had an impact on the domestic industry to ensure that any injury or threat of injury caused by such factors is not attributed to the effects of the dumping.

LIKE GOODS AND CLASSES OF GOODS

34. In order for the Tribunal to determine whether the dumping of the subject goods has caused or is threatening to cause 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.[19]

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15. Exhibit NQ-2013-005-01A, Vol. 1 at 27.
16. The Tribunal will proceed to determine the effect of the dumping of the subject goods on the domestic industry for individual countries or for the cumulated countries, as appropriate.
17. Injury and threat of injury are distinct findings; the Tribunal is not required to make a finding relating to threat of injury pursuant to subsection 43(1) of *SIMA* unless it first makes a finding of no injury.
18. Subsection 2(1) of *SIMA* defines "retardation" as "material retardation of the establishment of a domestic industry".
19. Should the Tribunal determine that there is more than one class of goods in this inquiry, 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.).

Like Goods

35. 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 goods described in paragraph (*a*), goods the uses and other characteristics of which closely resemble those of the other goods.

36. Essar Algoma contended that the plate produced by the domestic industry constitutes "like goods" in relation to the subject goods. In support of this contention, Essar Algoma relied on an excerpt of the Tribunal's most recent decision on carbon steel plate:

> 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. 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.*[20]
>
> [Footnote omitted, emphasis added]

37. In deciding the issue of like goods when goods are not identical in all respects to the other goods, the Tribunal typically considers 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, end uses and whether the goods fulfill the same customer needs).[21]

38. The domestic industry produces substantially the same range of plate products as the subject goods.[22] The domestic industry uses essentially the same general manufacturing processes as are used in the production of the subject goods, even though the equipment used to produce steel plate may vary from mill to mill.[23]

39. Leaving aside for the moment the issue of dumping, the factors that determine the relative pricing of foreign-produced plate products are similar to those that go into the pricing of comparable domestically produced plate. The evidence before the Tribunal indicated that plate pricing is largely demand-driven.[24] The cost of raw materials, in particular iron ore, is another important factor that goes into pricing of both

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20. *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate* (7 January 2014), RR-2013-002 (CITT) [*Carbon Steel Plate*].
21. See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at para. 48.
22. As elaborated further in the product exclusions section of these reasons, Essar Algoma acknowledges, and the Tribunal accepts, that there are certain dimensions and types of plate that the domestic industry does not produce. For example, the domestic industry does not produce hot-rolled carbon steel plate in thicknesses beyond 2.75 inches in widths greater than 72 inches.
23. Exhibit NQ-2013-005-A-01 at para. 12, Vol. 11.
24. *Transcript of Public Hearing*, Vol. 1, 22 April 2014, at 100.

domestically produced goods and the subject goods.[25] In addition, it is common for price premiums to be charged on both domestically produced goods and the subject goods for certain extras (such as normalizing),[26] for impact-testing,[27] for certain grades and sizes[28] and for products that are required to be certified.[29] In terms of market characteristics, domestically produced goods and the subject goods generally fulfil the same customer needs,[30] compete directly with each other[31] and rely on the same channels of distribution.[32]

40. On the basis of the above considerations, the Tribunal is of the view that the subject goods and domestically produced hot-rolled carbon steel plate products of the same description are like goods.

Classes of Goods

41. The Tribunal will next consider whether there is more than one class of goods. In addressing the issue of classes of goods, the Tribunal typically examines whether goods potentially comprising separate classes of goods constitute "like goods" in relation to each other, in which case they will be regarded as comprising a single class of goods.[33]

42. The Korean producers submitted that there are two distinct classes of goods: structural steel plate (e.g. specification A36M/A36) and PVQ steel plate (e.g. specification A516M/A516). In support of this position, it was submitted:

- that structural steel plate and PVQ steel plate undergo somewhat different production processes, with the PVQ steel plate made by the Korean producers being vacuum-degassed and desulfurized in order to remove impurities;[34]
- that the resulting reduction in impurity levels in PVQ steel plate gives it different physical and chemical characteristics;[35]
- that there is a $150-$200 per tonne differential between the selling prices of structural steel plate and PVQ steel plate;[36]

25. *Ibid.* at 30, 106.
26. *Ibid.* at 56.
27. *Transcript of Public Hearing*, Vol. 2, 23 April 2014, at 210.
28. *Transcript of Public Hearing*, Vol. 1, 22 April 2014, at 65.
29. *Ibid.* at 104.
30. *Transcript of Public Hearing*, Vol. 5, 28 April 2014, at 486-87; Exhibit NQ-2013-005-11.03, Vol. 3A at 199; Exhibit NQ-2013-005-11.02, Vol. 3 at 29; Exhibit NQ-2013-005-11.01, Vol. 3 at 7; as compared to Exhibit NQ-2013-005-20.02A, Vol. 5.2 at 60; Exhibit NQ-2013-005-20.04, Vol. 5.2 at 67; Exhibit NQ-2013-005-20.06, Vol. 5.2 at 130; Exhibit NQ-2013-005-20.07, Vol. 5.2 at 157; Exhibit NQ-2013-005-20.09, Vol. 5.2 at 196.
31. Exhibit NQ-2013-005-A-01 at paras. 27, 54, Vol. 11; Exhibit NQ-2013-005-A-03 at para. 34, Vol. 11; *Transcript of In Camera Hearing*, Vol. 1, 22 April 2014, at 50.
32. *Transcript of Public Hearing*, Vol. 1, 22 April 2014, at 22, 48, 71, 105.
33. See, for example, *Unitized Wall Modules* (27 November 2013), NQ-2013-002 (CITT) at para. 26; *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) at para. 115; *Thermal Insulation Board* (11 April 1997), NQ-96-003 (CITT) at 10.
34. Exhibit NQ-2013-005-H-03 at para. 7, Vol. 13; Exhibit NQ-2013-005-G-03 at para. 4, Vol. 13; *Transcript of Public Hearing*, Vol. 2, 23 April 2014, at 247-48.
35. Exhibit NQ-2013-005-G-01 at para. 21, Vol. 13; *Transcript of Public Hearing*, Vol. 5, 28 April 2014, at 554-55.
36. Exhibit NQ-2013-005-G-01 at para. 21, Vol. 13; *Transcript of Public Hearing*, Vol. 2, 23 April 2014, at 249; POSCO and Dongkuk's Aid to Argument (protected) at tab A, Tables 2 and 3, Vol. 18A; *Transcript of Public Hearing*, Vol. 5, 28 April 2014, at 557.

- that structural steel plate and PVQ steel plate are not substitutable and serve different customer needs[37], the impurities in structural steel plate making it unsuitable for manufacturing pressure vessels;
- that the bulk of PVQ steel plate is produced to the A516/70 specification;[38]
- that, unlike structural steel plate that may be cut from coil, PVQ steel plate can only be produced from discrete plate;[39]
- that the testing of PVQ steel plate must be performed on a per-plate basis, whereas the testing of structural steel plate is usually performed on a per-heat basis;[40]
- that PVQ steel plate is generally required to be made to a 3:1 reduction ratio; and[41]
- that there was no evidence of trade in dual-certified structural steel plate.[42]

43. During the hearing, the witness for Wirth acknowledged the possibility of using higher-grade PVQ steel plate in lower-grade structural applications, but he testified that the cost differential would make it impractical to substitute PVQ steel plate that has been normalized for a structural steel plate application.[43] There was also testimony to the effect that PVQ steel plate is a much higher grade of material and made to much higher standards than a structural grade.[44] Nonetheless, the witness for Samuel, Son & Co., Limited (Samuel) indicated that, in his experience, customers have in fact ordered dual-certified structural steel plate and PVQ steel plate.[45]

44. The testimony of the witness for Samuel indicated that A516/70, which is the basic specification for PVQ applications, is produced in the same plate mill as structural grades, such as A36, 44W or A572 Grade 50. He described the recipe for these products as "more or less the same" and identified the primary difference as being in mechanical properties, such as yield, tensile strength and elongation.[46] He also indicated that, on the whole, the composition and physical appearance of A516/70 and 44W are essentially the same and that what characterizes certain plate as PVQ is that it undergoes additional testing and processing in the mill.[47]

45. In Inquiry No. NQ-2009-003,[48] the Tribunal, in finding that structural steel plate and PVQ steel plate should be considered a single class of goods, stated that ". . . the fact that structural steel plate . . . and PVQ steel plate may not always be fully substitutable in certain end uses is not, in itself, a sufficient basis for determining that there is more than one class of goods."[49] In this regard, the Tribunal accepted the argument of the domestic mills that ". . . the goods within the scope of this inquiry fall, at various points,

37. Exhibit NQ-2013-005-G-01 at para. 21, Vol. 13; *Transcript of Public Hearing*, Vol. 5, 28 April 2014, at 558.
38. *Transcript of Public Hearing*, Vol. 5, 28 April 2014, at 555; *Transcript of Public Hearing*, Vol. 1, 22 April 2014, at 53.
39. *Transcript of Public Hearing*, Vol. 1, 22 April 2014, at 125, Exhibit NQ-2013-005-K-03 at para. 4, Vol. 13A.
40. *Transcript of Public Hearing*, Vol. 2, 23 April 2014, at 193, 157.
41. *Transcript of Public Hearing*, Vol. 2, 23 April 2014, at 176-77.
42. *Transcript of Public Hearing*, Vol. 5, 28 April 2014, at 559.
43. *Transcript of Public Hearing*, Vol. 3, 24 April 2014, at 280.
44. *Transcript of Public Hearing*, Vol. 4, 25 April 2014, at 338.
45. *Transcript of Public Hearing*, Vol. 2, 23 April 2014, at 158.
46. *Ibid.* at 156.
47. *Ibid.* at 157.
48. *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate* (2 February 2010) (CITT).
49. *Ibid.* at para. 65.

along a continuum of like goods and that there can be substitutability downward on the continuum, i.e. a higher-grade product can be a substitute for a lower-grade product."[50]

46. In the Tribunal's view, the same reasoning applies in the present case. Therefore, while it may be the case that PVQ steel plate and structural steel plate are not fully interchangeable with one another across the range of potential end uses, the Tribunal finds no basis to depart from its previously stated view that structural steel plate and PVQ steel plate are simply different variations of plate that fall along a continuum within a single class of goods.[51]

47. Although not identical, structural steel plate and PVQ steel plate have similar physical characteristics, similar methods of manufacture and largely fulfill similar customer needs and end uses. While there was evidence that one would generally not, for safety and other reasons, use structural steel plate in place of PVQ steel plate,[52] there is evidence to suggest that PVQ steel plate could be used in place of structural steel plate in some applications.

48. Therefore, notwithstanding the above-noted differences between structural steel plate and PVQ steel plate and the fact that they are not perfectly substitutable across the full range of potential end-use applications, the Tribunal is satisfied that structural steel plate and PVQ steel plate are variations of plate that fall along a continuum of products that constitute a single class of goods.

DOMESTIC INDUSTRY

49. Subsection 2(1) of *SIMA* defines "domestic industry" as follows:

> . . . 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 except that, where a domestic producer is related to an exporter or importer of dumped or subsidized goods, or is an importer of such goods, "domestic industry" may be interpreted as meaning the rest of those domestic producers.

50. The Tribunal must therefore determine whether there has been injury, or whether there is a threat of injury, to the domestic producers as a whole or those domestic producers whose production represents a major proportion of the total production of like goods.

51. Essar Algoma submitted that the domestic industry is comprised of itself, EVRAZ and SSAB.[53] The Tribunal recalls that all three of these entities were treated as domestic plate producers in *Carbon Steel Plate*.[54]

52. At the hearing, USIMINAS took issue with the composition of the domestic industry, submitting that SSAB's production of cut-to-length plate should not be characterized as production in Canada.[55] However, the testimony of the witness for Samuel suggested that to describe a steel service centre's

50. *Ibid.*
51. *Ibid.*
52. *Transcript of Public Hearing*, Vol. 2, 23 April 2014, at 193. The witness for Wirth indicated that using structural steel plate for PVQ applications would not be "impossible" but would be complicated. See, also, *Transcript of Public Hearing*, Vol. 1, 22 April 2014, at 87.
53. Exhibit NQ-2013-005-A-01 at para. 30, Vol. 11.
54. At para. 28.
55. *Transcript of Public Hearing*, Vol. 5, 28 April 2014, at 623; *Transcript of Public Hearing*, Vol. 3, 24 April 2014, at 266.

operations as being simply one of cutting to length would be a mischaracterization. In fact, service centres also burn, bevel, process, drill, roll, form, strap and pickle, transforming something that is not a plate product (coil) into a product that can be certified as plate.[56]

53. Notwithstanding the fact that the service centres' production processes differ to some extent from those of Essar Algoma or EVRAZ, the Tribunal notes that service centres produce and sell the same plate products on the Canadian market, to the same end users, for essentially the same applications.[57] Accordingly, the Tribunal finds that it is appropriate to include steel service centres, including SSAB, within the scope of the domestic industry.

54. There being minimal domestic production of like goods by parties other than Essar Algoma, EVRAZ and SSAB,[58] the Tribunal finds that Essar Algoma, EVRAZ and SSAB collectively represent a major proportion of total domestic production and, thus, can be considered to comprise the domestic industry for the purposes of the present injury analysis.

CUMULATION

55. Subsection 42(3) of *SIMA* directs the Tribunal to make an assessment of the cumulative effect of the dumping and subsidizing of the subject goods if it is satisfied that the margin of dumping or the amount of subsidy in relation to the goods from each of the subject countries is not insignificant, the volumes of dumped and subsidized goods from each subject country is not negligible, and cumulation is appropriate taking into account conditions of competition between the goods of each country or between them and the like goods.

Margins of Dumping and Volume of Dumped Goods

56. As noted above, the margins of dumping in relation to the subject goods from Brazil, Denmark, Indonesia, Italy, Japan and Korea are not insignificant, as they are all greater than 2 percent of the export price. The margin of dumping in relation to the subject goods from Chinese Taipei was determined to be 1.5 percent of the export price and, therefore, insignificant. As such, the effect of the dumping of the subject goods from Chinese Taipei will not be cumulated with the effect of the dumping of the subject goods from the remaining subject countries.

57. Under subsection 2(1) of *SIMA*, "negligible" is defined as meaning a volume of dumped goods that is less than 3 percent of the total volume of imports of subject and non-subject goods meeting the product description and released into Canada; this, however, is subject to an exception. When there are three or more countries, each of whose exports constitutes less than 3 percent of imports into Canada by volume, but where the total volume of imports from those countries combined is greater than 7 percent, the volume of dumped goods of any of those countries will not be considered negligible.

58. The information provided by the CBSA indicates that the volumes of dumped imports from Brazil and Korea are each greater than 3 percent and are therefore not negligible.

59. According to the CBSA, the volumes of dumped goods from Denmark, Indonesia, Italy and Japan are all, individually, less than the 3 percent threshold. However, the CBSA has determined that the total

56. *Transcript of Public Hearing*, Vol. 2, 23 April 2014, at 147-48.
57. *Ibid.* at 153; see, also, *Transcript of In Camera Hearing*, Vol. 1, 22 April 2014, at 119.
58. Exhibit NQ-2013-005-07 (protected), Table 38, Vol. 2.1.

volume of imports from these countries is 7.9 percent, placing it above the 7 percent combined threshold set out in the definition of "negligible" in subsection 2(1) of *SIMA*.[59]

60. The Japanese producers argued that the CBSA erred in its calculation of the volume of dumped imports for three reasons.

61. First, the Japanese producers argued that the Tribunal should evaluate negligibility on the basis of the 12 months prior to the initiation of the investigation (October 2012 to September 2013), rather than over the CBSA's 15-month period of investigation (January 2012 to March 2013). They submitted that using the most recent available information (that is not distorted by any market changes that have taken place as a result of the initiation of an investigation) would allow the Tribunal to base its negligibility analysis on the most accurate and representative import volumes.[60] In addition, they claimed that using this time period would be more consistent with Canada's international obligations.[61] The Japanese producers claimed that the use of their proposed time period would result in the total imports of the countries that individually fall below the 3 percent threshold also falling below the collective threshold of 7 percent.[62] In the same vein, USIMINAS argued that, if negligibility is assessed on the basis of the 12 months prior to the initiation of the investigation, Brazil's volume of dumped imports falls below the 3 percent threshold.[63]

62. Second, the Japanese producers argued that the imports of low sulfur vacuum-degassed PVQ steel plate should be excluded from the volume of dumped goods, since the domestic industry consented to an exclusion request for this product, having admitted that these goods are non-injurious.[64] The Japanese producers submitted that, if these imports are excluded, the total imports from the six countries fall even further below the negligibility threshold when assessed over their suggested 12-month period.[65]

63. Third, the Japanese producers argued that it is not appropriate to include any non-dumped import transactions in the volume of dumped goods. They based this argument on the definition of "dumped" in subsection 2(1) of *SIMA* and argued that, though the legislation allows for the margin of dumping to be based on an average of all transactions, the legislation does not similarly permit that all goods exported by a producer with a positive margin of dumping be considered "dumped" goods.[66] Thus, they submitted that the Tribunal should reduce the volume of dumped goods by an estimated adjustment factor, based on the

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59. Exhibit NQ-2013-005-04A, Vol. 1 at 111.43.
60. Exhibit NQ-2013-005-C-01 at para. 25, Vol. 13.
61. In making this argument, the Japanese producers referred to the *Recommendation Concerning the Time-period to Be Considered in Making a Determination of Negligible Import Volumes for Purposes of Article 5.8 of the Agreement* adopted by the WTO Committee on Anti-Dumping Practices (G/ADP/10). This recommendation sets out three acceptable time frames for examining negligibility:
    (a) the period of data collection for the dumping investigation; or
    (b) the most recent 12 consecutive months prior to initiation for which data are available; or
    (c) the most recent 12 consecutive months prior to the date on which the application was filed, for which data are available, provided that the lapse of time between the filing of the application and the initiation of the investigation is no longer than 90 days.

    This document also requires that Members notify their preferred methodology to the Committee and, if a Member chooses to depart from its notified methodology, that it use one of the other two recommended periods and provide an explanation in its reasons.
62. Exhibit NQ-2013-005-C-02 (protected) at para. 32, Vol. 14.
63. Exhibit NQ-2013-005-J-01 at para. 34, Vol. 13A.
64. Exhibit NQ-2013-005-C-01 at paras. 34-36, Vol. 13.
65. *Ibid.* at para. 39.
66. *Ibid.* at paras. 43, 47-49.

confidential 2012 month-by-month analysis of export price and normal value, from the volume of the subject imports of the six countries discussed above.[67]

64. *SIMA* does not provide any explicit guidance on the time frame over which negligibility is to be assessed. In this connection, the Tribunal's long-standing practice has been to make this assessment on the basis of the CBSA's period of investigation; in fact, in 2003, Canada notified the WTO Committee on Anti-Dumping Practices that it would normally use the period of investigation for the dumping investigation to make the negligibility determination.[68] While the CBSA's period of investigation often corresponds to the 12-month period prior to the filing of the application for which data are available, this is not always the case.

65. Neither *SIMA* nor Canada's international obligations prevent the Tribunal from choosing a period other than the CBSA's period of investigation, such as the 12 months prior to the initiation of the investigation, to examine negligibility. The Japanese producers suggested that the data in this case are distorted by "market patterns which occur in the first quarter of the year" and exchange rate fluctuations, but they did not provide any further details to substantiate how exactly these factors may have affected the import volumes such as to render them unsuitable for the negligibility analysis.

66. Moreover, the Japanese producers' suggested time frame extends beyond the period over which the CBSA has determined that goods were being dumped, which is problematic given that the definition of negligibility requires that the volume of *dumped* goods be compared to the volume of total imports. Given that the CBSA's period of investigation covered January 1, 2012, to March 31, 2013, choosing a different period could be considered tantamount to a finding, absent an investigation and determination by the CBSA that goods imported into Canada between March and September 2013 were dumped.

67. In response to similar such arguments, the Tribunal has previously held as follows:

> . . . the definition of the term "negligible" in subsection 2(1) of SIMA refers to the volume of "dumped" goods from a named country. In the Tribunal's view, it is only appropriate to use [the Tribunal's own] import numbers in making a determination as to "negligibility" for purposes of subsection 42(3) of SIMA when those numbers coincide with a period that either is the same as or falls within the Deputy Minister's period of investigation. In *Refined Sugar*, the Tribunal had information on a full calendar year basis that fell within the Deputy Minister's period of investigation. This is not the case in the present inquiry. The Tribunal notes that, if it used calendar year 1997, the import data for one quarter of that year would fall outside the period during which the Deputy Minister calculated margins of dumping.[69]

68. As indicated above, the period that the Japanese producers urged the Tribunal to use in assessing whether the negligibility threshold is met in this case extends six months beyond the CBSA's period of investigation.

69. On the basis of the foregoing considerations, the Tribunal is not satisfied that the circumstances of this inquiry warrant the selection of a time frame that differs from the CBSA's period of investigation. Accordingly, the Tribunal is of the view that the most appropriate period for the assessment of negligibility is the 15-month period of January 2012 to March 2013.

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67. *Ibid.* at para. 53.
68. G/ADP/N/100/CAN (28 January 2003).
69. *Stainless Steel Round Bar* (4 September 1998), NQ-98-001 (CITT) at 13.

70. With respect to the Japanese producers' second argument, the Tribunal notes that the negligibility of the volumes of the subject goods is assessed, as a threshold matter, prior to the injury analysis. While the domestic industry has consented to the request for the exclusion of low sulfur vacuum-degassed PVQ steel plate, the exclusion of otherwise subject goods from the scope of an injury finding only occurs once a finding of injury or threat of injury is made.

71. With respect to the Japanese producers' third argument, subsection 42(6) of *SIMA* states that, "[f]or the purposes of this section, the volume of dumped . . . goods from a country is deemed to include the volume of goods of the country that are of the same description and are the subject of a sale for export to Canada." *SIMA* therefore explicitly directs the Tribunal to include the volumes of all export sales to Canada of goods of the same description as the subject goods in its analyses under section 42, which includes the negligibility determinations required by subsections 42(3) and (4.1).

72. As determined by the CBSA, the volumes of dumped imports from Brazil and Korea are each greater than 3 percent and, therefore, are both not negligible.[70] The combined volume of dumped goods from Denmark, Indonesia, Italy and Japan being above the prescribed 7 percent threshold, the volume of dumped goods from each of those countries is also not negligible.[71] In this regard, the Tribunal's own calculations of the volume of imports from the subject countries, based on the data provided by the questionnaire respondents regarding the subject goods and non-subject goods, confirm that the negligibility thresholds are met.[72]

Conditions of Competition

73. Having determined that the margins of dumping are not insignificant and that the volumes of dumped goods are not negligible, the Tribunal will next assess whether it is appropriate to consider the cumulative effect of the subject goods on the basis of the conditions of competition between the goods of the subject countries and the like goods.

74. Relevant factors relating to the conditions of competition could include interchangeability, quality, pricing, distribution channels, modes of transportation, timing of arrivals and geographic dispersion.[73]

75. Essar Algoma submitted that plate is a commodity product, as recently found by the Tribunal in *Carbon Steel Plate*,[74] and that the subject goods are interchangeable with each other and the like goods. It argued that the subject goods are all shipped to Canada using the same mode of transportation, are distributed in the same regions within Canada and are present in the Canadian market throughout the year. Further, the subject goods and like goods are sold through the same distribution channels to the same customers.[75]

76. The Japanese producers submitted that the goods that they export to Canada largely consist of low sulfur vacuum-degassed plate, which, they claimed, are not interchangeable and do not compete with the like goods. In addition, the Japanese producers submitted that imports from Japan are much higher-priced

70. Exhibit NQ-2013-005-04A, Vol. 1 at 111.43.
71. *Ibid.*
72. Exhibit NQ-2013-005-07A (protected), Table 47, Vol. 2.1.
73. See, for example, *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (17 August 2001), NQ-2001-001 (CITT) at 16; see, also, *Waterproof Footwear* (25 September 2009), NQ-2009-001 (CITT) at note 28.
74. *Carbon Steel Plate* at para. 32.
75. Exhibit NQ-2013-005-A-01 at paras. 36-41, Vol. 11.

than both the like goods and the other subject imports.[76] The Japanese producers also argued that imports from Japan do not compete in the same geographic regions as the domestic industry, since the vast majority of Japanese goods are sold to customers in Western Canada.[77]

77. While Essar Algoma did not object to the exclusion of low sulfur vacuum-degassed plate, it disputed the claim that such product is not interchangeable with the like goods. It added that the price of the Japanese goods is not sufficiently high to justify decumulation. With respect to geographic competition, Essar Algoma submitted that it does compete in Western Canada, as do imports from the other subject countries.[78]

78. After considering the evidence and submissions on this point, the Tribunal is satisfied that the same conditions of competition exist between the subject goods, and between the subject goods and the like goods. The evidence indicates that the goods of each subject country and the like goods are largely interchangeable.[79] Moreover, the subject goods and the like goods compete with each other on similar considerations of quality and price, and rely on similar channels of distribution.[80]

79. Further, although there was some debate about Essar Algoma's presence in Western Canada,[81] there is evidence on the record indicating that Essar Algoma does in fact have customers and sales in that region[82] and that, indeed, both the subject goods and the like goods are present throughout Canada.

80. With respect to the arguments put forth by the Japanese producers in support of their call for the decumulation of plate from Japan on the basis of it being vacuum-degassed, the Tribunal accepts Essar Algoma's arguments that, notwithstanding the fact that vacuum-degassed plate is not produced in Canada, it can and does compete with PVQ steel plate that is not vacuum-degassed.[83] In this regard, it is uncontroverted that Essar Algoma is a significant producer of PVQ steel plate.[84] Furthermore, there is evidence on the record that Japanese producers have begun to supply more "bread-and-butter" types of vacuum-degassed steel plate, as described at the hearing in reference to standard grades of structural steel plate.[85] Accordingly, the Tribunal finds that there is insufficient basis for the decumulation of the effects of dumping by the Japanese producers.

81. On the basis of the foregoing analysis, the Tribunal considers it appropriate to make a cumulative assessment of the effects of the dumping of the subject goods from all the remaining subject countries.

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76. Exhibit NQ-2013-005-C-01 at paras. 58-66, Vol. 13.
77. *Transcript of Public Hearing*, Vol. 5, 28 April 2014, at 539-40.
78. *Ibid.* at 642.
79. *Transcript of Public Hearing*, Vol. 1, 22 April 2014, at 13; *Transcript of Public Hearing*, Vol. 2, 23 April 2014, at 151.
80. *Transcript of Public Hearing*, Vol. 2, 23 April 2014, at 148, 151, 153, 155.
81. *Transcript of Public Hearing*, Vol. 5, 28 April 2014, at 600.
82. Exhibit NQ-2013-005-A-15 at para. 11, Vol. 11C.
83. *Transcript of Public Hearing*, Vol. 5, 28 April 2014, at 489.
84. *Transcript of the Public Record*, Vol. 1, 22 April 2014, at 22; Exhibit NQ-2013-005-07E (protected), Tables 80, 81, Vol. 2.1A.
85. *Transcript of Public Hearing*, Vol. 5, 28 April 2014, at 489-90, 541-42; Exhibit NQ-2013-005-07E (protected), Tables 70, 72, Vol. 2.1A.

INJURY ANALYSIS

82. Subsection 37.1(1) of the *Regulations* prescribes that, in determining whether the dumping and subsidizing have caused material injury to the domestic industry, the Tribunal is to consider the volume of the dumped and subsidized goods, their effect on the price of like goods in the domestic market and their resulting impact on the state of the domestic industry. Subsection 37.1(3) also directs the Tribunal to consider whether a causal relationship exists between the dumping and subsidizing of the goods and the injury on the basis of the factors listed in subsection 37.1(1), and whether any factors other than the dumping and subsidizing of the goods have caused injury. As subsidizing is not an issue in the current proceeding, the Tribunal will examine these factors in relation to dumping only.

Import Volume of Dumped Goods

83. Paragraph 37.1(1)(*a*) of the *Regulations* directs the Tribunal to consider the volume of the dumped goods and, in particular, to consider whether there has been a significant increase in the volume, either in absolute terms or relative to the production or consumption of the like goods.

84. Essar Algoma submitted that substantial volumes of the subject goods were imported into Canada during the POI. The opposing parties argued that the volume of the subject goods imported during the POI was minimal when viewed in the light of the volume of imports from non-subject countries, particularly imports from the United States, and when the volume of imports by the domestic industry itself was considered. In response to these arguments, Essar Algoma countered that even small volumes of the subject goods can have a significant negative impact on the pricing of plate in the Canadian market, which can, in turn, drive down gross margins and net income.[86]

85. In absolute terms, the apparent volume of imports of the subject goods almost tripled between 2010 and 2012, before declining substantially in the 2013 interim period (January to September 2013) as compared to the same period in 2012.[87]

86. The Tribunal notes however that, within this aggregate picture, imports of the subject goods by the individual subject countries did not move in unison but, instead, followed different trajectories over the POI. The Tribunal further notes that import volumes during the 2013 interim period indicate a complete, or virtually complete, cessation of imports of the subject goods from certain subject countries.[88]

87. The apparent volume of imports of the subject goods relative to the volume of production of like goods also more than tripled between 2010 and 2012; however, in the 2013 interim period, this ratio fell to a level that was approximately 4 percentage points above 2010 levels.[89]

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86. Exhibit NQ-2013-005-A-13 at para. 23, Vol. 11C.
87. Exhibit NQ-2013-005-07E (protected), Table 40, Vol. 2.1A.
88. Exhibit NQ-2013-005-07E (protected), Tables 39-41, Vol. 2.1A; Exhibit NQ-2013-005-14.13, Vol. 5 at 167; Exhibit NQ-2013-005-14.09, Vol. 5 at 130; Exhibit NQ-2013-005-C-01 at paras. 2, 33, 76, Vol. 13; Exhibit NQ-2013-005-C-02 (protected) at para. 76, Vol. 14; Exhibit NQ-2013-005-I-01 at para. 29, Vol. 13; Exhibit NQ-2013-005-I-02 (protected) at para. 29, Vol. 14; Exhibit NQ-2013-005-J-01 at paras. 8, 16, 56, Vol. 13A; Exhibit NQ-2013-005-J-03, tabs 13, 14, Vol. 13A.
89. Exhibit NQ-2013-005-07E (protected), Table 39, Vol. 2.1A; Exhibit NQ-2013-005-07 (protected), Table 38, Vol. 2.1.

88. The apparent volume of imports of the subject goods relative to the domestic consumption of like goods also more than tripled between 2010 and 2012, before falling to about 4 percentage points above 2010 levels in the 2013 interim period.[90]

89. Imports of the subject goods increased as a percentage share of total apparent imports into Canada of goods of the same description as the subject goods during the POI. Specifically, they increased steadily and significantly between 2010 and 2012, before falling somewhat in the 2013 interim period. In the 2013 interim period, imports of the subject goods remained slightly higher than they had been in 2010.[91]

90. Moreover, sales of the subject goods increased as a percentage share of the Canadian apparent market for goods of the same description as the subject goods. The percentage share of the Canadian apparent market captured by the subject goods in 2010 grew by approximately 5 percentage points in 2011 and by a further 4 percentage points in 2012, before declining by approximately 4 percentage points in the 2013 interim period, compared with the same period in 2012. The Tribunal notes that the increase in the market share of sales of the subject goods was largely attributable to an increased volume of imports by one particular importer of the subject goods.[92]

91. By contrast, the domestic industry's share of the Canadian apparent market followed an essentially opposite path, decreasing by approximately 5 percentage points in 2011 and decreasing again slightly in 2012, before rebounding in the 2013 interim period.[93]

92. On the basis of the above analysis, the Tribunal finds that there was a significant increase in the volume of the subject imports over the POI, both in absolute terms and relative to the production and consumption of the like goods.

Price Effects of Dumped Goods

93. Paragraph 37.1(1)(*b*) of the *Regulations* directs the Tribunal to consider the effects of the dumped goods on the price of the like goods and, in particular, whether the dumped goods significantly undercut the price of the like goods, depressed the price of the like goods or suppressed the price of the like goods by preventing price increases for those like goods that would otherwise likely have occurred.

94. Essar Algoma alleged that there has been significant price undercutting, price depression and price suppression caused by the dumping of the subject goods. In particular, Essar Algoma argued that there was a substantial difference between the selling prices of the subject goods and the like goods, and that this gap increased over the POI.[94] Essar Algoma also claimed that it was forced to substantially lower its price in order to compete with the subject goods and that it suffered lost sales even after lowering its price.[95] Moreover, Essar Algoma submitted that, despite increased cost pressures in recent years, it could not raise its prices because of the pricing pressures exerted by the subject goods on the Canadian market.[96]

95. Opposing parties challenged the evidence adduced by Essar Algoma in support of its claims of significant price undercutting, price depression and price suppression, as well as in support of its lost sales

90. Exhibit NQ-2013-005-07E (protected), Tables 39, 48, Vol. 2.1A.
91. *Ibid.*, Tables 39-41.
92. *Ibid.*, Table 50, Schedule 5.
93. *Ibid.*
94. Exhibit NQ-2013-005-A-01 at para. 57, Vol. 11.
95. *Ibid.* at para. 76.
96. *Ibid.* at paras. 85-88.

allegations, arguing that the evidence fell short of establishing the necessary causal link between the subject goods, any alleged price effects and the overall performance of the domestic industry. Moreover, certain parties argued that the prices of the subject goods from certain named countries were actually higher than those of the like goods, which they submitted undermined Essar Algoma's arguments that the subject goods exerted pricing pressures on the domestic industry. Finally, certain opposing parties argued that few or no price effects are seen when the data are analyzed along the lines of trade levels and benchmark products.

Price Undercutting

96. Essar Algoma's contention that plate is a commodity product that essentially trades on price is not in dispute.[97] This, of course, presupposes that the competing plate meets the dimensional, metallurgical and other specifications of the customer.

97. An aggregate level analysis indicates that the subject goods have not significantly undercut the prices of the like goods. Although some undercutting occurred during the POI, the difference in the average selling price of the like goods as compared to the subject goods was modest in both 2010 and 2012. Although the gap in selling prices increased somewhat during the 2013 interim period, it was not of a magnitude that the Tribunal would generally consider being significant. Moreover, in 2011, the average price of sales from domestic production was actually lower than the average selling price of the subject goods.[98]

98. An examination that accounts for trade levels also indicates that price undercutting has been minimal. With respect to sales to distributors, the prices of sales of the subject goods very slightly undercut those of sales of the like goods in 2011 and 2012.[99] When sales to end users are examined, the only instance of undercutting of the sale price of the like goods by the subject goods occurred in the 2013 interim period. In fact, in all other periods of the POI, prices of the subject goods sold to end users were considerably higher than those of the like goods.[100]

99. Importantly, the domestic producers' own sales from imports from the United States, at the aggregate level, were consistently the price leaders in the market and were frequently the price leaders when the subject countries were disaggregated. However, at the aggregate level, the subject goods consistently undercut the unit values of non-producer imports from the United States.[101] At the distributor level, the domestic producers' own sales of imports from the United States were also the price leaders except in 2011 and the 2012 interim period. At the end user level, domestic plate imports from the United States were price leaders except in 2012 and the 2012 interim period.

100. In addition, the Tribunal identified a total of three benchmark products and collected data on domestic sales and imports of these products to two different trade levels (distributors and end users) in order to assess direct competition between the like goods and the subject goods.[102] The Tribunal's

97. Exhibit NQ-2012-005-A-01 at paras. 42, 50, Vol. 11.
98. Exhibit NQ-2013-005-07E (protected), Schedule 9, Table 54, Vol. 2.1A.
99. *Ibid.*, Table 57.
100. *Ibid.*, Table 59.
101. *Ibid.*, Schedule 9.
102. Benchmark product 1: discrete structural steel plate ASTM A36M/A36 (CSA G40.21, Grade 300W/44W) - 96 inches wide x 0.375 inch to 2.00 inches thick, Exhibit NQ-2013-005-07E (protected), Tables 70-73, Vol. 2.1A; benchmark product 2: discrete high-strength low-alloy steel plate ASTM A572M/A572, Grade 50 (CSA G40.21, Grade 50W) - 96 inches wide x 0.375 inch to 2.00 inches thick, Exhibit NQ-2013-005-07E (protected), Tables 74-77, Vol. 2.1A; benchmark product 3: discrete PVQ steel plate ASTM A516M/A516, Grade 70 -

benchmark products analysis showed that, between the fourth quarter of 2011 and the third quarter of 2013, there was price undercutting in five of the eight periods for benchmark product 1 (sales to distributors)[103] and for three of eight periods for each of the other benchmark products (benchmark product 2 - sales to distributors, and benchmark product 3 – sales to distributors and end users).[104] In this regard, there was no price undercutting between the third quarter of 2012 and the first quarter of 2013 for any of the benchmark products. On the other hand, all benchmark products showed price undercutting in the second quarters of 2012 and 2013. In short, there was an indication of price undercutting in 14 of 32 total quarterly points of comparison, with the annual average level of price undercutting for each of the three benchmark products ranging from 3 percent to 5 percent.

101. For the three benchmark products with sales at the distributor level, the Tribunal notes that the unit values of sales from imports from the United States, by either the domestic producers or other importers, showed more instances of price undercutting, for each benchmark product, than the unit values of sales of imports from the subject countries.[105]

102. In assessing price undercutting, the Tribunal notes Mr. Rory Brandow's acknowledgement that "... there exists a premium on domestically produced plate compared to imported plate"[106] and that "[g]enerally speaking, the domestic premium in Canada is approximately $80/MT."[107] Indeed, when one factors in the domestic premium that customers are prepared to pay for the like goods in order to avoid the attendant risks of offshore sourcing, price undercutting substantially disappears. Given the level of integration between steel producers in Canada and the United States, the well-established transportation links between the two countries and the proximity of several U.S. mills to Canadian customers, the Tribunal accepts the view that the domestic premium actually operates on a North American basis.[108]

103. Essar Algoma adds however that the inclusion of lower-priced secondary material ("seconds") in the total sales of like goods by domestic producers has had a downward skewing effect on the average domestic price of the primary material that actually competes with the subject goods.[109]

104. Therefore, in order to isolate, with greater precision, the *de facto* advantage enjoyed by domestic producers in the Canadian market, the Tribunal adjusted domestic unit values by (1) removing the volume of seconds from the total volume of sales of the like goods by the domestic producers that indicated their volumes of seconds, (2) increasing unit values by an amount considered to be representative of the downward skewing of prices resulting from the inclusion of seconds in those sales and (3) then deducting the $80/MT domestic premium from the unit values of all like goods (i.e. the three main producers and service centres). This effectively eliminates any price undercutting by the subject goods at the aggregate level, although there remain instances where a particular subject country remains the *de facto* price leader.

105. Further to Essar Algoma's claim that it competes not only with imported products being offered by importers/distributors at the resale level but also, on occasion, with direct import offerings to customers by

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96 inches wide x 0.375 inch to 2.00 inches thick, Exhibit NQ-2013-005-07E (protected), Tables 78-81, Vol. 2.1A. The staff report shows sales of benchmark products 1 and 2 at the distributor levels and sales of benchmark product 3 at both the distributor and end user levels.

103. Exhibit NQ-2013-005-07E (protected), Table 70, Vol. 2.1A.
104. *Ibid.*, Tables 74, 78, 79.
105. *Ibid.*, Tables 70, 74, 78.
106. Exhibit NQ-2013-005-A-05 at para. 19, Vol. 11.
107. *Ibid.*
108. Exhibit NQ-2013-005-J-05 at para. 48, Vol. 13A.
109. Exhibit NQ-2013-005-A-01 at para. 59, Vol. 11.

foreign mills,[110] the Tribunal also compared the unit values of sales from domestic production to import unit values from the subject countries, which yielded more significant levels of price undercutting by the subject goods. However, once unit values of sales from domestic production are adjusted for the domestic premium and the effect of "seconds", the levels of price undercutting by the subject goods over the POI falls slightly. If the values of sales from domestic production are adjusted for the domestic premium only, the levels of price undercutting by the subject goods over the POI are even lower, with no price undercutting in 2011.

106. Essar Algoma submitted however that there are several other factors that can result in an inaccurate or incomplete picture when comparing average prices and that, therefore, examples of direct (i.e. head-to-head) price competition with imports from the subject countries constitutes the best evidence of adverse prices effects.[111] To this end, Essar Algoma referred to a series of import activity reports (IARs) prepared by field representatives purporting to establish adverse price effects attributable to the subject goods. In reviewing these IARs, the Tribunal found them to be generally wanting in key details, such as delivery price, base price, delivery location and company to whom the goods were offered, as well as volume offered and sold by the foreign competitor and the domestic industry, and the name of the foreign competitor, with not much in the way of corroborating evidence on the written record.[112] Moreover, in at least one instance, the IAR appeared to involve a plate specification which the witness for the foreign producer confirmed was in fact not produced by its mill.[113]

107. In this regard, the Tribunal finds it curious that Essar Algoma was unable to provide reliable contemporaneous records in support of its IARs. Given the frequency of price quotations, the specifications and other considerations that factor into a price quotation and the importance of this intelligence-gathering work to the ongoing operational viability of a plate mill, the Tribunal finds the evidence of the witnesses for Essar Algoma that it is all "done verbally",[114] which was confirmed by the witness for Samuel,[115] somewhat surprising.

108. Despite Essar Algoma's submission that, in at least one case, its pricing intelligence, as reflected in the IAR, was very accurate and that this indicated the general reliability of the IARs,[116] the Tribunal cannot infer from this one example alone that all the IARs are equally reliable. In light of these considerations, the Tribunal can only ascribe limited weight to this evidence.

109. On the basis of the foregoing analysis, the Tribunal finds that the prices of the subject goods have not significantly undercut those of sales of the like goods.

Price Depression

110. With respect to price depression, Essar Algoma claimed that it was forced to substantially reduce its prices in order to compete with the dumped goods and that, even when it was able to offer a lower price, it

110. *Ibid.* at paras. 54, 61.
111. *Ibid.* at para. 66.
112. Exhibit No. NQ-2013-005-A-06 (protected), tabs 3-22, Vol. 12.
113. *Transcript of Public Hearing*, Vol. 2, 23 April 2014, at 217.
114. *Transcript of Public Hearing*, Vol. 1, 22 April 2014, at 79.
115. *Transcript of Public Hearing*, Vol. 2, 23 April 2014, at 207-208.
116. *Transcript of Public Hearing*, Vol. 5, 28 April 2014, at 493-95; Essar Algoma's Aid to Argument (protected), tab 7, Vol. 18; *Transcript of In Camera Hearing*, Vol. 3, 24 April 2014, at 182.

still lost sales.[117] The opposing parties, again, take issue with the evidence provided by Essar Algoma in support of these allegations.

111. The Tribunal observes that unit values of sales from domestic production tracked in the same general direction as those for sales of the subject goods over the POI, with the year-to-year percentage changes being within one percentage point of each other.[118]

112. On a trade level basis, the unit values of the like goods and the subject goods for both sales to distributors and sales to end users again moved in the same direction (albeit not necessarily by the same amount), with the notable exception of 2011, for sales to end users, where the average unit value of sales of the like goods increased, while that of the subject goods decreased.[119]

113. The Tribunal was unable to draw any clear conclusions from its benchmark products analysis at either the distributor or end-user level,[120] with the value of sales from domestic production and sales of the subject goods sometimes increasing and decreasing in tandem, while at other times moving in different directions. The Tribunal did however calculate the price change of sales from domestic production over the eight quarters (i.e. fourth quarter of 2011 to third quarter of 2013) of data available for each benchmark product and found that the unit value of sales from domestic production for every set of unit values declined by at least 20 percent. In this connection, the greatest decline occurred in respect of sales of benchmark product 3 to end users.[121]

114. Of note is the fact that, while the cost of goods sold (COGS) declined during the 2013 interim period, the unit value of sales from domestic production from the three main domestic producers declined by more than twice that amount. This erosion of unit value (despite the decrease in the COGS), which coincided with a decline in the size of the Canadian apparent market for plate, may explain how the three main domestic producers were able to increase their percentage share of the domestic market in the 2013 interim period relative to 2012, albeit at reduced gross margins.[122]

115. The Tribunal notes however that the unit values of importers' sales from imports from the United States and the unit values of domestic producers' sales from imports from the United States exhibited the most dramatic percentage decline in 2012 and in the 2013 interim period respectively.[123] Moreover, in terms of price leaders, the Tribunal notes that, at the aggregated level, the domestic producers' sales from imports from the United States generally represented the lowest prices in the market.[124]

116. The apparent correlation in the unit values of sales from domestic production and from the subject goods is indicative of price erosion. However, given the inability to draw clear conclusions from the benchmark products analysis and the sharp declines in both 2012 and the 2013 interim period in the unit values of imports from the United States, the Tribunal is unable to conclude from the evidence on the record that the subject goods caused significant price depression.[125]

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117. Exhibit NQ-2013-005-A-01 at para. 76, Vol. 11.
118. Exhibit NQ-2013-005-07E (protected), Table 55, Schedule 10, Vol. 2.1A.
119. *Ibid.*, Tables 58, 60.
120. *Ibid.*, Tables 70, 74, 78, 79.
121. *Ibid.*, Table 79.
122. Exhibit NQ-2013-005-07 (protected), Table 92, Vol. 2.1; Exhibit NQ-2013-005-07E (protected), Schedules 3, 5, 7, Vol. 2.1A.
123. Exhibit NQ-2013-005-07E (protected), Schedule 10, Vol. 2.1A.
124. *Ibid.*, Schedule 9.
125. *Ibid.*, Tables 57, 59, 70, 71, 74, 75, 78, 79, Schedules 9, 10.

Price Suppression

117. There was no indication of price suppression in 2011. Indeed, the aggregate unit value of sales from domestic production from the three main domestic producers increased substantially from 2010 to 2011, while the COGS increased by a minimal amount over the same period.[126]

118. The evidence does indicate the occurrence of some price suppression in 2012, when the aggregate unit value of sales from domestic production decreased despite an increase in the COGS.[127] However, the Tribunal does not find that the subject goods caused significant price suppression.

Resultant Impact on the Domestic Industry

119. Paragraph 37.1(1)(*c*) of the *Regulations* requires the Tribunal to consider the resulting impact of the dumped goods on the state of the domestic industry and, in particular, all relevant economic factors and indices that have a bearing on the state of the domestic industry.[128]

120. Essar Algoma argued that the impact of the subject goods has been significant and, specifically, has negatively affected the sales, pricing, market share, revenues, gross margins and profits, production and capacity utilization of the domestic industry. In contrast, the parties opposed to a finding of injury in this case generally argued that, if the domestic industry had indeed suffered injury, the injury was not material within the meaning of *SIMA* or was the direct result of factors other than the dumping of the subject goods. Other factors cited by the opposing parties included the high volumes of imports from the United States,[129] lags in Essar Algoma's productivity when compared to its domestic competitors,[130] the costs associated with transporting plate within Canada, supply issues and the high costs of raw materials.[131]

Production and Sales

Production

121. Essar Algoma argued that the subject goods have had a significant impact on the production levels of like goods by the domestic industry.[132] However, Essar Algoma also acknowledged that its production levels remained relatively constant quarter over quarter.[133] In fact, Mr. Robert A. Clark testified that production levels remained steady even when Essar Algoma faced difficulties obtaining raw materials.[134]

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126. *Ibid.*, Table 55; Exhibit NQ-2013-005-07 (protected), Table 92, Vol. 2.1.
127. Exhibit NQ-2013-005-07E (protected), Table 55, Vol. 2.1A; Exhibit NQ-2013-005-07 (protected), Table 92, Vol. 2.1.
128. Such factors and indices include (i) any actual or potential decline in output, sales, market share, profits, productivity, return on investments or the utilization of industrial capacity, (ii) any actual or potential negative effects on cash flow, inventories, employment, wages, growth or the ability to raise capital, (ii.1) the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods, and (iii) in the case of agricultural goods, including any goods that are agricultural goods or commodities by virtue of an Act of Parliament or of the legislature of a province, that are subsidized, any increased burden on a government support programme.
129. Exhibit NQ-2013-005-I-01 at para. 31, Vol. 13; Exhibit NQ-2013-005-G-01 at paras. 25, 33, Vol. 13; Exhibit NQ-2013-005-K-01 at paras. 9, 15, 18-19, 41, Vol. 13A; Exhibit NQ-2013-005-J-01 at paras. 9, 64-66, Vol. 13A.
130. Exhibit NQ-2013-005-I-01 at para. 41, Vol. 13.
131. Exhibit NQ-2013-G-01 at para. 60, Vol. 13; Exhibit NQ-2013-005-J-01 at para. 10, Vol. 13A; Exhibit NQ-2013-005-J-03 at 7, 9, 18, Vol. 13A; Exhibit NQ-2013-005-J-05 at para. 24, Vol. 13A; *Transcript of Public Hearing*, Vol. 1, 22 April 2014, at 15-16, 30, 41-42.
132. Exhibit NQ-2013-005-A-01 at para. 111, Vol. 11.
133. *Transcript of Public Hearing*, Vol. 1, 22 April 2014, at 32.
134. *Ibid.* at 15-17.

When a short supply situation arose in the first quarter of 2014, Essar Algoma responded by making downward adjustments to production levels on ". . . the sheet side of the business . . ." rather than in regard to the production of like goods.[135]

122. Upon examination of the evidence provided by the domestic industry, the Tribunal finds that, while there were some production declines between 2010 and 2012, production declined only to a limited degree.[136] In particular, total domestic production of like goods by the three main domestic producers (Essar Algoma, Evraz and SSAB) declined by 3 percent in 2011 and by a further 1 percent in 2012.[137]

123. In the first nine months of 2013, however, aggregate domestic production levels of like goods increased. In fact, production by Essar Algoma, Evraz and SSAB increased by 6 percent in the 2013 interim period, as compared to the 2012 interim period.[138]

124. On the basis of the foregoing, the Tribunal is unable to conclude that the subject goods had a negative impact on the domestic industry's production levels of like goods over the POI.

Sales

125. Essar Algoma argued that it lost sales to imports of the subject goods,[139] as its overall sales levels declined over the POI, with the exception of sales to its customers in the wind tower business.[140] As noted above, the witnesses for Essar Algoma pointed to a number of IARs in support of the claim that sales were lost to the subject goods.[141]

126. However, parties opposed to a finding of injury strongly disputed Essar Algoma's allegations of lost sales, noting deficiencies in the IARs and taking the position that these did not contain probative evidence to support Essar Algoma's claims. In their view, the IARs contained no evidence that offers materialized into sales of the subject goods or that the volumes noted were ever actually sold. Likewise, they submitted that the IARs often failed to adequately document the supplier or subject country to which sales were allegedly lost, the quantities involved and/or the prices at which goods were sold.[142]

127. Opposing parties also identified a number of other factors to explain why the domestic industry lost sales over the POI, including high levels of low-priced imports from the United States, higher delivery and freight costs for customers in Western Canada, higher input costs for plate, quality issues, raw material shortages and supply problems during the winters.[143]

128. The Tribunal notes that sales from domestic production actually increased over the POI. Although sales from domestic production were stagnant in 2011, they increased by 4 percent in 2012 and then by a

135. *Ibid.* at 98-99.
136. Exhibit NQ-2013-005-07 (protected), Table 38, Vol. 2.1.
137. Exhibit NQ-2013-005-06, Table 38, Vol. 1.1.
138. *Ibid.*
139. Exhibit NQ-2013-005-A-01 at para. 4b), Vol. 11; *Transcript of Public Hearing*, Vol. 5, 28 April 2014, at 498.
140. Exhibit NQ-2013-005-A-03 at 27-30, Vol. 11; *Transcript of Public Hearing*, Vol. 1, 22 April 2014, at 11; Exhibit NQ-2013-005-A-04 (protected) at 27, Vol. 12.
141. Exhibit NQ-2013-005-A-06 (protected), tabs 3-22, Vol. 12; *Transcript of Public Hearing*, Vol. 1, 22 April 2014, at 45, 59-63.
142. *Transcript of Public Hearing*, Vol. 1, 22 April 2014, at 61, 90; *Transcript of In Camera Hearing*, Vol. 1, 22 April 2014, at 45-46, 56-66.
143. *Transcript of In Camera Hearing*, Vol. 1, 22 April 2014, at 3-4; *Transcript of Public Hearing*, Vol. 5, 28 April 2014, at 572-73, 605, 624-25.

further 9 percent in the 2013 interim period.[144] The Tribunal recognizes that, in 2010-2012, while sales from domestic production remained steady and even increased, increased sales did not keep pace with the growth in the domestic apparent market.[145] However, during the 2013 interim period, sales from domestic production increased by 9 percent, while the total apparent market declined by 14 percent.[146]

129. In contrast, while sales from the subject countries increased over the course of the POI, sales levels in relation to the subject goods decreased in the 2013 interim period.[147]

130. As explained earlier, the IARs, being lacking in key information and uncorroborated by contemporaneous records, are not persuasive either as to the fact, or pervasiveness, of lost sales over the POI. Specifically, they do not indicate whether a sale was ultimately made and/or to whom and/or at what price. Indeed, even the witness for Essar Algoma acknowledged that he was not certain whether Essar Algoma actually lost business based on the information contained in many of the IARs.[148] Given these deficiencies, any conclusions drawn by the Tribunal on the issue of sales lost to the subject goods would be largely of a speculative nature.

131. Moreover, the Tribunal also agrees with the opposing parties that the alleged lost sales in the IARs could be attributable to a wide range of factors, particularly considering the high levels of imports from the United States. The APVMA, for example, demonstrated that sales for the two most common grades of plate were lost not to the subject countries but to imports from the United States.[149]

132. Indeed, the domestic producers themselves conceded that some of the supposed lost sales were lost to U.S. competitors, given the integration of the North American industry for plate and the ease with which the like goods crossed back and forth over the Canada-United States border.[150] Mr. Denis Boiteau indicated that Samuel purchased a great deal of plate from the United States over the past several years because of the fact that it is easy to move plate across the border and because the price of U.S. hot-rolled coils was such that there was little advantage to be gained in purchasing coil from offshore sources.[151]

133. Mr. Robert Clark, one of the witnesses for Essar Algoma, went as far as acknowledging that Essar Algoma does not prepare IARs for the U.S. mills because they are treated similarly to domestic competitors. Accordingly, it does not consider sales lost to U.S. competitors on the same footing as sales lost to offshore producers, including those in the subject countries.[152]

134. In light of the above, the Tribunal finds that the dumping of the subject goods has not had a significant negative impact on actual or potential domestic sales volumes.

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144. Exhibit NQ-2013-005-06E, Table 49, Vol. 1.1A.
145. Exhibit NQ-2013-005-07E (protected), Tables 48-49, Vol. 2.1A.
146. *Ibid.*, Table 49.
147. *Ibid.*, Tables 48-50.
148. *Transcript of Public Hearing*, Vol. 1, 22 April 2014, at 62; *Transcript of In Camera Hearing*, Vol. 1, 22 April 2014, at 46.
149. *Transcript of Public Hearing*, Vol. 5, 28 April 2014, at 592-94.
150. *Transcript of Public Hearing*, Vol. 1, 22 April 2014, at 51, 71-72, 83-85, 127; *Transcript of Public Hearing*, Vol. 2, 23 April 2014, at 169.
151. *Transcript of Public Hearing*, Vol. 2, 23 April 2014, at 169-70, 190.
152. *Transcript of Public Hearing*, Vol. 1, 22 April 2014, at 85; *Transcript of In Camera Hearing*, Vol. 1, 22 April 2014, at 25-26.

Market Share

135. As noted above, while sales from domestic production remained steady and even increased, sales from domestic production did not keep pace with the growth in the domestic apparent market.[153] Furthermore, sales of the subject goods almost tripled between 2010 and 2012, but then declined in 2013.[154]

136. In this way, domestic producers lost market share between 2010 and 2012, while the market share of the subject countries increased.[155] However, domestic producers were able to recapture some market share in 2013, as imports of both the subject goods and non-subject goods declined.[156]

137. It should be noted that a certain percentage of imports from the subject countries during this time period were of goods that the domestic industry does not produce in Canada (e.g. vacuum-degassed low sulfur). This arguably weakens the assertion made by the domestic producers that they were injured by rising levels of the subject goods, given that imports of the subject goods must be considered in the context of the entire market.[157]

138. Accordingly, the Tribunal finds that the dumped goods caused a decline in the domestic industry's market share, but only to a limited degree.

Profitability

139. Although there was some variability amongst individual domestic producers in terms of profitability over the POI, as a whole, the domestic industry experienced a net loss in 2010, a small profit in 2011, and net losses in 2012 and 2013.[158]

140. Essar Algoma attributed its losses to the subject goods and rising costs,[159] while noting that its overall financial situation and production levels may have been buffered by its sales to wind tower customers.[160] Moreover, Mr. Boiteau testified that inventories of the domestic industry were devalued somewhat as lower-priced plate from various offshore sources (subject and non-subject countries) entered Canada.[161]

141. Domestic producers also explained that prices were significantly higher in 2011, a factor that minimized losses and allowed marginal profits to be made. Demand, prices and profits rose in 2011, as the market showed signs of recovery from the 2008 global recession. Prices then fell again in 2012 and 2013, as demand weakened and profits declined.[162]

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153. Exhibit NQ-2013-005-07E (protected), Table 48, Vol. 2.1A.
154. *Ibid.*
155. *Ibid.*, Tables 48, 50.
156. *Ibid.*
157. *Transcript of Public Hearing*, Vol. 5, 28 April 2014, at 587.
158. Exhibit NQ-2013-005-A-13 at paras. 126-27, Vol. 11C; Exhibit NQ-2013-005-07 (protected), Table 92, Vol. 2.1.
159. Exhibit NQ-2013-005-A-03 at para. 20, Vol. 11; Exhibit NQ-2013-005-A-01 at paras. 81-84, Vol. 11.
160. Exhibit NQ-2013-005-A-01 at paras. 95-98, Vol. 11; Exhibit NQ-2013-005-A-03 at paras. 27-30, Vol. 11.
161. *Transcript of Public Hearing*, Vol. 2, 23 April 2014, at 194; *Transcript of In Camera Hearing*, Vol. 2, 23 April 2014, at 140.
162. *Transcript of Public Hearing*, Vol. 1, 22 April 2014, at 10, 100-102; *Transcript of Public Hearing*, Vol. 3, 24 April 2014, at 269-75; Exhibit NQ-2013-005-J-04A (protected) at 11, 17, Vol. 8B; Exhibit NQ-2013-005-07E (protected), Table 54, Vol. 2.1A.

142. Mr. Ernest Reimer, a witness from the Edmonton Exchanger Group of Companies who testified on behalf of the APVMA, noted that spending began to rebound in 2010 as the energy sector recovered. He also indicated that 2011 was therefore a "big expansion" year for the market, explaining why sales, prices and profits increased for domestic producers during this time, after which point the market in 2012 and 2013 seemed to settle.[163]

143. On the basis of the evidence, the Tribunal finds that the domestic industry faced difficulties in terms of profitability over the POI. Taken as a whole, its financial position could aptly be characterized as "precarious" to paraphrase one of its witnesses.[164]

144. Indeed, the domestic producers suffered their most significant losses in 2010, while regaining modest profitability in 2011. The domestic industry also posted losses in 2012 and the 2013 interim period, even though there is some evidence that the domestic industry began to fare better in the initial part of 2013 than it had in the corresponding period of 2010.[165]

145. The Tribunal is of the view that there are a number of factors that contributed to the domestic industry's underwhelming financial performance during the POI. While the subject goods may have had some impact on profitability, the impact of the subject goods on the domestic industry's profitability is limited.

146. Net losses did not begin with the arrival of the increased imports of the subject goods into Canada. In fact, the domestic industry has had difficulties and has required protection from dumped steel imports from various countries over an extended period of time.[166] Moreover, the domestic industry faced its greatest losses in 2010, the year in which there were the fewest imports from the subject countries. In contrast, the domestic industry experienced its highest level of profitability in 2011, a year in which imports (from both subject and non-subject countries) grew by 23 percent.[167]

147. As will be discussed more fully below, high costs associated with freight and transportation, exchange rate fluctuations, supply issues, high costs of raw materials and large volumes of relatively cheaper imports from non-subject countries undoubtedly contributed to the domestic industry's net losses during the POI.

Productivity and Capacity Utilization

148. Essar Algoma argued that the subject goods negatively impacted capacity utilization and production over the entire POI.[168] Opposing parties alleged that Essar Algoma's poor performance could be explained by the fact that it lagged behind other domestic producers in terms of productivity.[169]

149. Evidence before the Tribunal indicates that productivity for the industry as a whole remained steady between 2010 and 2012, notwithstanding an increase in 2011 and decline back down to 2010 levels in 2012.

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163. *Transcript of Public Hearing*, Vol. 3, 24 April 2014, at 310-11.
164. *Transcript of In Camera Hearing*, Vol. 1, 22 April 2014, at 7.
165. Exhibit NQ-2013-005-A-13 at paras. 126, 127, Vol. 11C.
166. *Transcript of In Camera Hearing*, Vol. 1, 22 April 2014, at 28.
167. Exhibit NQ-2013-005-07E (protected), Table 40, Vol. 2.1A; Exhibit NQ-2013-005-07 (protected), Table 92, Vol. 2.1.
168. Exhibit NQ-2013-005-A-01 at para. 111, Vol. 11.
169. Exhibit NQ-2013-005-I-01 at para. 41, Vol. 13.

Productivity declined further in 2013 and remained at a lower level than in 2010.[170] Therefore, the Tribunal finds that the subject goods may have had an impact on productivity, but only to a limited degree, over the POI.

150. Turning to capacity utilization, the evidence indicates that the Canadian and U.S. plate industries have substantial capacity to produce a wide range of goods.[171] The APVMA argued that the substantial capacity has extended too far, causing a low capacity utilization rate and significant excess supply.[172]

151. Given that practical plant capacity and capacity utilization remained flat over the POI for the industry as a whole, the Tribunal cannot conclude that the subject goods caused an actual decline in the utilization of industrial capacity.[173]

Investments

152. Essar Algoma argued that it was required to defer capital investments because of the impact of the subject goods.[174] However, other domestic producers, including some service centres, did not defer investments over the POI. In fact, these other domestic producers expanded, acquired and upgraded their facilities, capabilities and production lines.[175] In terms of future investments, certain producers projected increased investments in 2014-2015, even though they predicated these increases on cash flow and whether there would be a finding of injury in this case.[176]

153. The Tribunal recognizes the declining rate at which domestic producers invested over the POI. Total investments for the domestic producers declined sharply from 2010 to 2011, increasingly slightly in 2012, before declining again in 2013.[177] Nevertheless, as noted above and as will be explained more fully below, the Tribunal cannot conclude that declining rates of investments were attributable to the subject goods in the Canadian market.

Cash Flow

154. In regard to cash flow, Essar Algoma acknowledged that it had problems with cash flow over the POI, but also conceded that these problems were the result of pension plan funding requirements and the costs of raw materials, as opposed to the subject goods.[178]

155. Moreover, Mr. Clark, a witness for Essar Algoma, testified that cash flow problems are not unique to Canadian producers.[179] The domestic industry introduced a report from McKinsey which demonstrated that, of 72 steel producers from around the world, 56 percent operated with a negative cash flow in 2012.

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170. Exhibit NQ-2013-005-07B (protected), Table 101, Vol. 2.1.
171. *Transcript of Public Hearing*, Vol. 2, 23 April 2014, at 165-66; Exhibit NQ-2013-005-07B (protected), Table 102, Vol. 2.1.
172. Exhibit NQ-2013-005-K-02 (protected) at paras. 19-22, 28, Vol. 14A; Exhibit NQ-2013-005-K-01 at para. 28, Vol. 13A; *Transcript of Public Hearing*, Vol. 5, 28 April 2014, at 586, 604-606.
173. Exhibit NQ-2013-005-07B (protected), Table 102, Vol. 2.1.
174. Exhibit NQ-2013-005-A-01 at para. 4, Vol. 11.
175. *Transcript of Public Hearing*, Vol. 2, 23 April 2014, at 162-63; *Transcript of In Camera Hearing*, Vol. 2, 23 April 2014, at 142.
176. *Transcript of In Camera Hearing*, Vol. 1, 22 April 2014, at 72; Exhibit NQ-2013-005-A-04 (protected) at para. 43, Vol. 12.
177. Exhibit NQ-2013-005-07B (protected), Table 103, Vol. 2.1.
178. *Transcript of Public Hearing*, Vol. 1, 22 April 2014, at 28-29.
179. *Ibid.* at 33.

156. Therefore, taking these factors into account, the Tribunal cannot conclude that the domestic industry's cash flow problems were caused by the subject goods over the POI.

Inventories

157. The evidence on the record indicates that total inventories for domestic producers fluctuated over the POI and increased in 2013.[180] As inventories fluctuated, the composition of importers' inventories would have changed as well,[181] as offshore imports grew in proportion to North American goods during the POI. These offshore imports, however, came from a wide range of countries above and beyond the subject countries alone, including Russia and Turkey.[182]

158. On the basis of the foregoing, the Tribunal is unable to find that inventories were negatively impacted by the subject goods.

Employment and Wages

159. In terms of employment levels, the opposing parties suggested that the domestic industry's employment levels did not correspond to an industry that had been injured by the subject goods; in fact, they argued that there was a general trend towards improvement in employment figures.

160. The Tribunal agrees. Employment levels for some domestic producers remained relatively steady over the POI,[183] even though other producers saw their employment levels fluctuate to a limited degree. On the whole, however, total employment levels increased during the 2013 interim period.[184]

161. Similarly, wages remained steady over the POI and even increased in 2013.[185]

162. Therefore, once again, the Tribunal does not find that the subject goods had an adverse impact on the domestic industry in terms of employment and wages.

Factors Other than the Dumping

163. Paragraph 37.1(3)(*b*) of the *Regulations* directs the Tribunal to consider whether any factors other than the dumping of the subject goods have caused injury, on the basis of (i) the volumes and prices of imports of like goods that are not dumped, (ii) a contraction in demand for the goods or like goods, (iii) any change in the pattern of consumption of the goods or like goods, (iv) trade-restrictive practices of, and competition between, foreign and domestic producers, (v) developments in technology, (vi) the export performance and productivity of the domestic industry in respect of like goods, and (vii) any other factors that are relevant in the circumstances.

180. Exhibit NQ-2013-005-07 (protected), Table 104, Vol. 2.1.
181. *Transcript of Public Hearing*, Vol. 2, 23 April 2014, at 179, 186-87.
182. Exhibit NQ-2013-005-20.07, Vol. 5.2 at 165; Exhibit NQ-2013-005-14.13, Vol. 5 at 167; Exhibit NQ-2013-005-07 (protected), Table 105, Vol. 2.1.
183. *Transcript of In Camera Hearing*, Vol. 1, 22 April 2014, at 102-103.
184. Exhibit NQ-2013-005-07 (protected), Table 98, Vol. 2.1; *Transcript of In Camera Hearing*, Vol. 1, 22 April 2014, at 69.
185. Exhibit NQ-2013-005-07 (protected), Table 100, Vol. 2.1.

Volumes and Prices of Imports from Non-subject Countries

164. Essar Algoma acknowledged that it imported goods of the same description as the subject goods from non-subject sources, such as its affiliate in India, in order to complement its own production.[186] However, Essar Algoma submitted that plate from India had been imported at prices similar to its own domestic prices.[187]

165. During the hearing, there was testimony concerning large-volume shipments from India and Russia of steel plate of the same description as the subject goods, at prices comparable to those of the subject goods, with some of this imported plate having been purchased by certain domestic importers. It was further claimed that these imports had a damaging effect on the domestic industry.[188]

166. Data on the Tribunal's record confirm that the total volume of imports of goods of the same description as the subject goods from non-subject countries other than the United States, over the POI, was not insignificant.[189] The information on the record indicates however that the unit values of imports from non-subject countries other than the United States over the POI were significantly higher than those of sales from domestic production in 2010. This gap narrowed through the rest of the POI, when the unit values of the imports from non-subject countries, other than the United States, were slightly higher than the unit values of the sales from domestic production, except in 2012, when the unit values of non-subject imports other than from the United States undercut the unit values of sales from domestic production by a slight margin.[190]

167. In addition, the unit values of sales from imports from non-subject countries were consistently higher than those of sales from domestic production over the POI. Here again, the gap between the two sets of unit values was at its highest in 2010, declined in 2011 and 2012 and increased again in the 2013 interim period.[191]

168. Similarly, data on the record show that, over the POI, the unit values of imports from non-subject countries other than the United States were more than 9 percent higher than the unit values of imports from the subject countries. The difference was higher in 2010 and then decreased for the rest of the POI to rebound in the 2013 interim period.

169. Available data on benchmark products and common accounts also indicate that the unit values of sales from non-subject imports were generally higher than those from domestic production and imports from the subject countries. An exception to this general observation were sales of high-strength low-alloy steel plate at the distributor trade level, where unit values of imports from non-subject countries were lower in four of the quarters.[192] At the end-user trade level, unit prices for sales of imports of high-strength

186. *Transcript of Public Hearing*, Vol. 1, 22 April 2014, at 17, 95-96.
187. *Ibid.* at 17; Exhibit NQ-2013-005-A-13 at para. 259, Vol. 11C; *Transcript of In Camera Hearing*, Vol. 1, 22 April 2014, at 5-6; Exhibit NQ-2013-005-A-14 (protected) at para. 259, Vol. 12.
188. *Transcript of Public Hearing*, Vol. 1, 22 April 2014, at 116; *Transcript of Public Hearing*, Vol. 2, 23 April 2014, at 158-59, 195, 204; *Transcript of Public Hearing*, Vol. 3, 24 April 2014, at 291-92; *Transcript of In Camera Hearing*, Vol. 2, 23 April 2014, at 129-30, 135, 143; *Transcript of In Camera Hearing*, Vol. 3, 24 April 2014, at 178; Exhibit NQ-2013-005-14.13 at 167, Vol. 5.
189. Exhibit NQ-2013-005-07E (protected), Table 39, Vol. 2.1A.
190. *Ibid.*, Tables 45, 54.
191. *Ibid.*, Table 54.
192. *Ibid.*, Table 74.

low-alloy steel plate from non-subject countries were also lower than the unit values of sales from domestic production, except in the third quarter of 2013.[193]

170. Domestic producers did however import significant volumes of plate from the United States, with several parties pointing to these imports as a major cause of injury, both in terms of volume and price, which is not attributable to the dumping of the subject goods.[194] Essar Algoma submitted that, despite U.S. dominance in the market due to cross-border integration, the Tribunal has recognized in previous flat steel product cases that the blame for injury rests with imports from elsewhere.[195] Essar Algoma also argued that the subject goods have been the price leaders in the Canadian market and have captured market share at a much greater rate than both the domestic industry and suppliers of non-subject goods.[196]

171. There were several different opinions expressed during the course of the hearing regarding the impact of U.S. prices in the Canadian market.[197] However, as described above, the Tribunal's own analysis of the data on the record indicates that the domestic producers' imports from the United States were often the low-price leaders in the Canadian market during the POI. This conclusion holds even in light of the uncontroverted fact that North America represents an integrated market, with Canadian prices generally tracking the U.S. Midwest price for plate,[198] and when the North American risk mitigation premium is taken into account.[199]

Freight Costs

172. The APVMA submitted that Essar Algoma is simply poorly situated to compete against Asian plate suppliers in Western Canada (Alberta and British Columbia) because of significant freight costs.[200] However, as noted above, there is evidence on the record that shows that Essar Algoma has in fact made significant sales in that region, even though some of the witnesses for Essar Algoma conceded that freight costs can affect sales[201]

Other Factors

173. In addition, Essar Algoma has been beset by corporate operational issues that have made it less profitable than might otherwise have been the case. For example, the APVMA indicated that it has experienced serious quality issues with plate ordered from Essar Algoma starting in September 2010.[202]

193. *Ibid.*, Table 75.
194. Exhibit NQ-2013-005-G-01 at para. 59, Vol. 13; Exhibit NQ-2013-005-J-01 at paras. 9, 18-19, Vol. 13A; Exhibit NQ-2013-005-K-01 at para. 37, Vol. 13A.
195. Exhibit NQ-2013-005-A-13 at paras. 26-27, Vol. 11C.
196. *Ibid.* at paras. 53, 56.
197. See *Transcript of Public Hearing*, Vol. 1, 22 April 2014, at 119: *Transcript of Public Hearing*, Vol. 2, 23 April 2014, at 150-52; *Transcript of Public Hearing*, Vol. 3, 24 April 2014, at 263-64.
198. *Transcript of Public Hearing*, Vol. 1, 22 April 2014, at 35, 83, 88, 119; *Transcript of Public Hearing*, Vol. 2, 23 April 2014, at 152-53, 169, 171.
199. *Transcript of Public Hearing*, Vol. 1, 22 April 2014, at 76, 92, 95, *Transcript of Public Hearing*, Vol. 2, at 151; *Transcript of Public Hearing*, Vol. 3, 24 April 2014, at 289, 294, 297; Exhibit NQ-2013-005-J-05 at para. 48, Vol. 13A; Exhibit NQ-2013-005-A-05 at para. 19, Vol. 11.
200. *Transcript of Public Hearing*, Vol. 5, 28 April 2014, at 600.
201. Exhibit NQ-2013-005-A-15 at para. 11, Vol. 11C; *Transcript of Public Hearing*, Vol. 1, 22 April 2014, at 50; *Transcript of Public Hearing*, Vol. 2, 23 April 2014, at 211; *Transcript of In Camera Hearing*, Vol. 1, 22 April 2014, at 11.
202. Exhibit NQ-2013-005-K-03 at paras. 6-7, Vol. 13A; Exhibit NQ-2013-005-K-04 (protected), tab 2, Vol. 14A; *Transcript of Public Hearing*, Vol. 3, 24 April 2014, at 304.

Even though the problem has since been corrected, the Tribunal has no doubt that this resulted in lost sales and that Essar Algoma sustained some damage to its reputation.[203]

174. There is also evidence on the record indicating that Essar Algoma incurred relatively high contracted costs for its raw materials, specifically iron ore pellets, for a portion of the POI, which resulted in a higher COGS and, thus, lower profit margins. Indeed, in a press release issued in June of 2011, Essar Algoma itself attributed the net loss that it had suffered for the fiscal year ending March 31, 2011, primarily to its higher raw material prices.[204] Essar Algoma also testified that, in late 2013 and early 2014, due to inadequate raw material inventory advance planning,[205] it had to pay an additional premium to bring in iron ore pellets by rail, instead of by vessel over the Great Lakes, which were blocked by ice.[206]

175. Further, there is evidence on the record that Essar Algoma produces a higher volume of secondary material than do its foreign competitors.[207] Since Essar Algoma must generally offer this secondary material at a discount over primary material in order to dispose of it,[208] it stands to reason that its larger incidental production of seconds would render it less profitable than its competitors.

176. Additionally, there was testimony indicating a communication problem between Essar Algoma's sales staff and its production staff with respect to Essar Algoma's capability to produce certain plate products, which, the Tribunal believes, likely resulted in missed sales opportunities.[209]

177. On a related note, according to testimony from the APVMA, the domestic industry's inability to meet customer demands for vacuum-degassed plate has also cost them sales opportunities.[210]

178. Finally, with respect to profitability, Essar Algoma testified that it had had cash flow problems resulting in part from high legacy costs and the need to make up the deficit in Essar Algoma's defined benefit pension plan.[211] USIMINAS argued that this had a significant negative impact on gross margins.[212] The Tribunal agrees that this likely had a deleterious effect on Essar Algoma's profitability.

179. It is the Tribunal's view that the confluence of the foregoing other factors—including the domestic industry's own imports of significant volumes of price-leading steel plate from the United States, operational issues within Essar Algoma (i.e. relating to product quality; the higher incidence of "seconds" in the production of primary steel plate, relative to other plate producers, the apparent disconnect between sales staff and the mill floor as to production capabilities, which apparently led to the declining of orders that the

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203. *Transcript of Public Hearing*, Vol. 3, 24 April 2014, at 306-309, 312; Exhibit NQ-2013-005-K-03 at para. 8, Vol. 13A.
204. *Transcript of Public Hearing*, Vol. 1, 22 April 2014, at 41-42; *Transcript of In Camera Hearing*, Vol. 1, 22 April 2014, at 40-41; Exhibit NQ-2013-005-07 (protected), Table 97, Schedules 35, 38, Vol. 2.1; Exhibit NQ-2013-005-G-01 at para. 60, Vol. 13.
205. *Transcript of Public Hearing*, Vol. 1, 22 April 2014, at 43-44.
206. *Ibid.* at 98-99, 108.
207. *Transcript of In Camera Hearing*, Vol. 1, 22 April 2014, at 36; *Transcript of In Camera Hearing*, Vol. 2, 23 April 2014, at 159; Exhibit NQ-2013-005-12.02A (protected), Vol. 4B at 3.
208. *Transcript of Public Hearing*, Vol. 1, 22 April 2014, at 94.
209. *Transcript of Public Hearing*, Vol. 4, 25 April 2014, at 365, 373-75, 377, 473; *Transcript of In Camera Hearing*, Vol. 4, 25 April 2014, at 207-210.
210. *Transcript of Public Hearing*, Vol. 3, 24 April 2014, at 307.
211. *Transcript of Public Hearing*, Vol. 1, 22 April 2014, at 28-29.
212. *Transcript of Public Hearing*, Vol. 5, 28 April 2014, at 624; Exhibit NQ-2013-005-J-01 at para. 10, Vol. 13A; Exhibit NQ-2013-005-J-03, tab 5, Vol. 13A.

company, in fact, could have filled and relatively high contracted costs of raw materials) and other cash flow problems unrelated to the dumping of the subject goods—contributed significantly to the injury sustained by the domestic industry during the POI.

Causation and Materiality

180. The fact of coincidental dumping of the subject goods and injury to the domestic industry is not, in and of itself, sufficient to establish causality. Having considered the other factors that have caused injury to the domestic industry, the Tribunal must determine whether the dumping of the subject goods has, *in and of itself*, caused material injury to the domestic industry; that is to say, the Tribunal must assess whether, despite the losses suffered by the domestic industry that may be attributable to other factors, the dumping of the subject goods is, in itself, a *cause* of material injury.[213]

181. *SIMA* does not define the term "material". However, both the extent of injury during the relevant time frame and the timing and duration of the injury are relevant considerations in determining whether any injury caused by the subject goods is "material".[214]

182. Having regard to such considerations as the growth in the volume of the subject goods over the POI, the evidence of some price suppression in 2012 and the fact that, even after adjusting for the North American premium, there remained sporadic instances where the subject goods from a particular country were the price leader in the Canadian market, the Tribunal is of the view that the dumping of the subject goods did have an adverse effect on the domestic industry.[215]

183. The Tribunal finds however that the dumping of the subject goods was not, in and of itself, a cause of "material" injury. In this respect, although the volumes of subject goods during the POI did increase significantly between 2010 and 2012 and their presence on the Canadian market appeared to have some impact on the price of the like goods, the Tribunal would not characterize these adverse price effects as having been "significant" for the reasons already discussed at length above. Nor, for reasons already provided, does the Tribunal find the evidence submitted by the domestic industry in support of its specific allegations of lost sales to be sufficient or persuasive. Furthermore, as already noted, there are a myriad of other factors, including the domestic industry's own purchases and sales of low-priced non-subject imports from the United States, which together contributed significantly to the domestic industry's difficulties over the POI, with the injury from these other factors not being attributable to the effects of the dumping of the subject goods. In short, while the dumping of the subject goods no doubt had some injurious effect on the domestic industry, such injury did not attain, in the Tribunal's view, a level of significance that rendered it "material", within the intended meaning of that term in *SIMA*.

Threat of Injury

184. Having found that the dumping of the subject goods has not caused material injury to the domestic industry, the Tribunal must now consider whether the dumping of the subject goods is threatening to cause

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213. *Silicon Metal* (19 November 2013), NQ-2013-003 (CITT) at para. 111.
214. The Tribunal suggested, in *Certain Hot-rolled Carbon Steel Plate* (27 October 1997), NQ-97-001 (CITT) at 13, that the concept of materiality could entail both temporal and quantitative dimensions, "[h]owever, the Tribunal is of the view that, to date, the injury suffered by the industry has not been *for such a duration* or *to such an extent* as to constitute 'material injury' within the meaning of SIMA" [emphasis added].
215. *Transcript of Public Hearing*, Vol. 3, 24 April 2014, 296-97; Exhibit NQ-2013-005-07E (protected), Tables 39, 57, 59, Schedule 9, Vol. 2.1A; Exhibit NQ-2013-005-J-05 at para. 48, Vol. 13A; Exhibit NQ-2013-005-A-05 at para. 19, Vol. 11.

material injury. The Tribunal is guided in its consideration of this question by subsection 37.1(2) of the *Regulations*, which prescribes factors to be taken into account for the purposes of its threat of injury analysis.[216] Also of relevance is subsection 2(1.5) of *SIMA*, which indicates that a threat of injury finding cannot be made unless the circumstances in which the dumping of the goods would cause injury are clearly foreseen and imminent. Further, subsection 37.1(3) of the *Regulations* directs the Tribunal to consider whether a causal relationship exists between the dumping of the goods and the threat of injury on the basis of the factors listed in subsection 37.1(2) of the *Regulations*, and whether any factors other than the dumping of the goods are threatening to cause injury.

Time Frame

185. In assessing the threat of injury, the Tribunal typically considers a time frame of 12 to 18 months, and no more than 24 months, beyond the date of its finding. The Tribunal is not necessarily bound by this time frame, as each case is unique. In the circumstances, the Tribunal considers it appropriate to focus on the next 24 months.

Disposable Capacity and Likelihood of Increased Dumped Goods

186. The chronic global overcapacity situation, with the estimated excess capacity in the subject countries being greater than 30 to 40 times the Canadian apparent market, is a significant problem for the plate industry.[217] Excess reversing mill capacity alone is 7 to 9 times larger than the Canadian apparent market.[218] Global plate capacity is forecast to continue to increase over the next 24 months,[219] continuing to be a major problem that impacts the profitability of the global steel industry.[220]

187. Turning, more specifically, to the export capacity of the subject countries and their ability to ramp up their exports of the subject goods to Canada, the evidence indicates that the subject countries have significant excess capacity, which is expected to increase following several planned expansions.[221] In

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216. Subsection 37.1(2) of the *Regulations* reads as follows: "For the purposes of determining whether the dumping or subsidizing of any goods is threatening to cause injury, the following factors are prescribed: (*a*) the nature of the subsidy in question and the effects it is likely to have on trade; (*b*) whether there has been a significant rate of increase of dumped or subsidized goods imported into Canada, which rate of increase indicates a likelihood of substantially increased imports into Canada of the dumped or subsidized goods; (*c*) whether there is sufficient freely disposable capacity, or an imminent, substantial increase in the capacity of an exporter, that indicates a likelihood of a substantial increase of dumped or subsidized goods, taking into account the availability of other export markets to absorb any increase; (*d*) the potential for product shifting where production facilities that can be used to produce the goods are currently being used to produce other goods; (*e*) whether the goods are entering the domestic market at prices that are likely to have a significant depressing or suppressing effect on the price of like goods and are likely to increase demand for further imports of the goods; (*f*) inventories of the goods; (*g*) the actual and potential negative effects on existing development and production efforts, including efforts to produce a derivative or more advanced version of like goods; (*g.1*) the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods; (*g.2*) evidence of the imposition of anti-dumping or countervailing measures by the authorities of a country other than Canada in respect of goods of the same description or in respect of similar goods; and (*h*) any other factors that are relevant in the circumstances."
217. Exhibit NQ-2013-005-A-01 at para. 149, Vol. 11; Exhibit NQ-2013-005-A-04 (protected) at paras. 44-48, Vol. 12.
218. *Transcript of Public Hearing*, Vol. 5, 28 April 2014, at 504.
219. Exhibit NQ-2013-005-A-03 at 16, Vol. 11; Exhibit NQ-2013-005-A-09 (protected), tab 3 at 137-38, Vol. 8.
220. Exhibit NQ-2013-005-A-07, tab 11, Vol. 11A.
221. Exhibit NQ-2013-005-A-01 at paras. 188-89, 206, 221-22, 234, 252, 264, Vol. 11; Exhibit NQ-2013-005-A-07, tab 11 at 125, Vol. 11A; *Transcript of Public Hearing*, Vol. 5, 28 April 2014, at 637.

particular, Brazil's plate production is expected to increase significantly between 2014 and 2016, more than doubling in 2015.[222] With the addition of a new plate production line and a new plate facility in Indonesia, plate production in that country is also expected to increase significantly. It is expected that much of this steel plate production will be dedicated to overseas sales.[223]

188. It is well established that, in capital goods and commodity product industries where there are high fixed costs, there is an incentive to maintain a high level of production and capacity utilization, in order to achieve economies of scale and reduce average costs. It is generally recognized that this production imperative is also operative in the steel industry. In this connection, as long as prices are above the marginal cost of production, a firm may lower its average costs by producing more product. In the face of weak demand or oversupply, a firm may try to export its production beyond the level that clears the domestic market.[224] Even if price was less than total average cost, as long as price covered variable cost and made a contribution to fixed costs, it would be feasible to export.

189. Another factor that plays into this analysis is China's excess capacity. Although China is not a subject country, there is evidence that its plate exports exert pressure on the plate industries within the subject countries, posing challenges to their ability to compete in their own domestic markets. This creates a domino effect whereby producers in the subject countries must turn to other markets in which to sell their goods. As indicated above, Chinese plate producers aggressively pursued regional export markets and will likely continue to do so. This strategy may acquire added impetus by virtue of the fact that recovery in the Chinese market for steel plate is not expected to be as robust as had been previously anticipated.[225] Accordingly, as Chinese plate exporters expand their sales into other Asian markets, other Asian plate producers will in turn seek out other markets in which to sell their own plate products.

190. Certain Korean producers appear to have recently employed a market diversification strategy. In particular, the Tribunal heard testimony that Korean plate producers will generally look to foreign markets when demand softens in the Korean market for plate and in other markets in which Korean steel plate generally competes. Of particular note is that shipbuilding orders are at relatively low levels, in comparison to the past 10-year period.[226] Given the importance of the shipbuilding industry as a customer for Korean plate, declines in this industry are expected to have a continuing impact on Korean producers and provide an incentive to them to rely more heavily on foreign markets to absorb their excess production. In fact, it appears that one of the reasons that the Korean plate industry has maintained some strength is its reliance on export markets for plate.[227]

191. The behaviour of certain subject producers in the Canadian market can aptly be characterized as opportunistic. The testimony of the witness for USIMINAS, for example, indicated that the entry into and exit from the Canadian market by USIMINAS largely depends on the prevailing prices at the time. Moreover, re-entry into the market following such an exit may be done with relative ease.[228] Mr. Boiteau,

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222. Exhibit NQ-2013-005-A-01 at paras. 188-89, Vol. 11.
223. *Ibid.* at paras. 217-22.
224. *Transcript of Public Hearing*, Vol. 5, 28 April 2014, at 579-80, 646-48; Exhibit NQ-2013-005-A-01 at para. 150, Vol. 11.
225. Exhibit NQ-2013-005-A-09 (protected) at 185, Vol. 8; Exhibit NQ-2013-005-A-08 (protected), Attachment 18 at 22, Vol. 8.
226. Exhibit NQ-2013-005-A-07, Attachment 14 at 137-38, Vol. 11A; *Transcript of Public Hearing*, Vol. 2, 23 April 2014, at 224-25.
227. *Transcript of Public Hearing*, Vol. 2, 23 April 2014, at 225-26, 241-42.
228. *Transcript of Public Hearing*, Vol. 3, 24 April 2014, at 296-97; *Transcript of In Camera Hearing*, Vol. 2, 23 April 2014, at 146; *Transcript of In Camera Hearing*, Vol. 3, 24 April 2014, at 183-84.

the witness for Samuel, noted that domestic importers also exhibit opportunistic behaviour by searching the world to find the best price for material and importing to Canada.[229]

192. Given such considerations as the fact that plate tends to fetch a higher price on the Canadian market than elsewhere,[230] and the projected growth in certain areas that rely on plate, including housing construction and certain consumer product sectors,[231] Canada is likely to be an attractive market for exporters over the next 24 months.

193. Moreover, maritime shipping rates are expected to remain low. This factor, particularly when considered in conjunction with the production imperative in the plate industry, will be conducive to foreign producers exporting excess plate production.[232]

Likely Price Effects and Performance of the Domestic Industry

194. As noted above, that adverse price effects, particularly price suppression, were evident in the latter part of the POI.[233]

195. A renewed recovery in Canadian plate prices in the fourth quarter of 2013 carried over into 2014. However, more recently, the price increases have stalled on relatively flat demand growth, and views on the prospects for growth for the balance of 2014 and for 2015 are divided. Plate prices may have already peaked for 2014, though producers are attempting to raise prices.[234] On this basis, while the plate market has shown signs of recovery in early 2014, prices are beginning to flatten, and it is anticipated that longer-term recovery may be more modest than originally envisioned.[235]

196. The Tribunal agrees with the domestic industry that, as prices recover over the next 24 months, opportunistic behaviour on the part of foreign producers will likely impede the ability of the domestic industry to maintain sales, realize better margins and improve its current financial situation.

197. On the basis of the foregoing analysis, the Tribunal is of the view that there is a clearly foreseen and imminent threat of material injury within the next 24 months.

CONCLUSION

198. In light of the above considerations, the Tribunal finds that the dumping of the subject goods has not caused injury but is threatening to cause material injury to the domestic industry.

EXCLUSIONS

199. The Tribunal received a total of 18 requests to exclude products from its finding from the Japanese producers, Dongkuk, POSCO, ILVA, Salzgitter Mannesman, the APVMA, Wirth and Carbon Steel Profiles

229. *Transcript of Public Hearing*, Vol. 2, 23 April 2014, at 155.
230. Exhibit NQ-2013-005-A-01 at para. 290, Vol. 11; Exhibit NQ-2013-005-A-09 (protected) at 182, Vol. 8.
231. Exhibit NQ-2013-005-A-07 at 82, Vol. 11A; Exhibit NQ-2013-005-A-01 at paras. 280-81, Vol. 11.
232. Exhibit NQ-2013-005-A-01 at para. 295, Vol. 11; *Transcript of Public Hearing*, Vol. 2, 23 April 2014, at 199-200.
233. Exhibit NQ-2013-005-07 (protected), Table 92, Vol. 2.1; Exhibit NQ-2013-005-07E (protected), Tables 45, 55, Schedule 9, Vol. 2.1A.
234. *Transcript of Public Hearing*, Vol. 1, 22 April 2014, at 12, 15, 82-83, 118; *Transcript of Public Hearing*, Vol. 5, 28 April 2014, at 635-36.
235. *Transcript of Public Hearing*, Vol. 1, 22 April 2014, at 14-15.

Limited. These exclusion requests can generally be divided into three categories: requests based on thickness and width, requests based on impact testing and requests based on material chemistry properties, such as vacuum degassing, normalization and low-sulfur content.

200. The domestic industry consented to 10 of these requests (as written or with minor modifications that were accepted by the requesters) conceding that it did not produce these particular plate products.

201. Essar Algoma either objected outright, or proposed further modifications, to the remaining eight exclusion requests on the basis that it could produce identical or substitutable products. The APVMA requested that the Tribunal proceed by way of an oral hearing on these outstanding exclusion requests.[236]

202. The Tribunal agreed that, in this case, it would be beneficial to hear *viva voce* evidence and to provide an opportunity to parties to cross-examine witnesses. An expedited oral hearing was therefore held, with the Tribunal directing the parties and counsel to restrict their submissions to the four common issues, discussed below.

203. In Inquiry No. NQ-2004-001,[237] the Tribunal summarized its views on the matter of product exclusions as follows:

> . . . *The fundamental principle is that the Tribunal will grant product exclusions only when it is of the view that such exclusions will not cause injury to the domestic industry*. The Tribunal has granted product exclusions for particular products in circumstances when, for instance, the domestic industry does not produce those particular products. The Tribunal also considers factors such as whether there is any domestic production of substitutable or competing goods, whether the domestic industry is an "active supplier" of the product or whether it normally produces the product or whether the domestic industry has the capability of producing the product.
>
> [Footnotes omitted, emphasis added]

204. The onus is on the requester to demonstrate that imports of the specific goods, for which exclusion from the scope of a finding is requested, are not injurious to the domestic industry, despite the general conclusion that the dumping of the goods has caused injury or is threatening to cause injury.

205. However, as noted in a recent Tribunal expiry review decision, there is also an evidentiary burden on the domestic industry to file evidence in order to rebut the evidence filed by the requester, and a failure to do so may result in the exclusion being granted.[238] Ultimately, the Tribunal must determine whether it will exercise its discretion to grant product exclusions on the basis of its assessment of the totality of the evidence on the record.[239]

206. The Tribunal will now address each of the product exclusion requests that it received from each of the requesters indicated above. As several of the requests mutually agreed to by the domestic industry and the requesting parties overlapped, the domestic industry suggested consolidated wording for these exclusions. The Tribunal has accepted the proposed wording, with certain modifications to more accurately reflect the production capabilities of the domestic industry. The parties agreed on, and the Tribunal therefore grants, the following exclusions:

- hot-rolled carbon steel plate and high-strength low-alloy plate, made to any steel specification or grade, that is greater than 2.75 inches (70 mm) in thickness and 72 inches in width;

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236. Exhibit NQ-2013-005-32.01, Vol. 1.3A at 7-8.
237. *Certain Stainless Steel Wire* (30 July 2004) (CITT) at para. 96.
238. *Aluminum Extrusions* (17 March 2014), RR-2013-003 (CITT) at para. 194.
239. *Ibid.* at para. 195.

- hot-rolled carbon steel plate in grade A516-70 normalized (heat-treated) with a thickness of 2.75 inches and of width greater than 72 inches;

- hot-rolled carbon steel plate manufactured to:

  ASME SA-516/SA-516M or ASTM A-516/A-516M
  ASME SA-285/SA-285M or ASTM A-285/A-285M
  ASME SA-299/SA-299M or ASTM A-299/A-299M
  ASME SA-537/SA-537M or ASTM A-537/A-537M
  ASME SA-515/SA-515M or ASTM A-515/A-515M
  ASME SA-841/SA-841M or ASTM A-841/A-841M

  which is both vacuum-degassed while molten and has a sulfur content of less than 0.005 percent.

Issue No. 1

207. The parties were asked to address the issue of whether smaller plate that is welded together is an acceptable substitute for larger plate meeting the following specifications:

- hot-rolled carbon steel plate manufactured to:

  ASME SA-516/SA-516M or ASTM A-516/A-516M
  ASME SA-285/SA-285M or ASTM A-285/A-285M
  ASME SA-299/SA-299M or ASTM A-299/A-299M
  ASME SA-537/SA-537M or ASTM A-537/A-537M
  ASME SA-515/SA-515M or ASTM A-515/A-515M

  that is normalized (heat-treated) where the plate thickness is greater than 2.67 inches or where the dimensions are greater than the dimensions in the table appended to the finding.

208. The APVMA, as the requesting party, submitted that Essar Algoma does not make PVQ steel plate with dimensions greater than those provided in the table appended to the finding, which is a size chart published by Essar Algoma in 2008.[240] In support of this submission, the APVMA provided correspondence from Essar Algoma in which its sales representatives replied to purchase order inquiries noting these dimensional limitations.[241] The APVMA further explained that PVQ steel plate of greater thickness and size is often required by pressure vessel manufacturers.[242]

209. In addition, the APVMA submitted that it believes that Essar Algoma cannot make PVQ steel plate thicker than 2.67 inches, because Essar Algoma is unable to roll slabs greater than 8 inches thick. Because of the 3:1 reduction ratio required by the specification standards for PVQ steel plate, 2.67 inches would be the maximum thickness that Essar Algoma could produce.[243] The APVMA also provided evidence that Essar Algoma had declined purchase orders for 2.75-inch PVQ steel plate because of this requirement.[244]

210. Essar Algoma conceded that it did not make PVQ steel plate in these specifications to a thickness greater than 2.67 inches, but objected to the request to exclude plate outside the dimensions in the table

240. Exhibit NQ-2013-005-24.02, Vol. 1.3 at 15-16, 21-22. Table 1 provides a grid of the maximum and minimum lengths that Essar Algoma produces for a given combination of thickness and width (all of which are in inches).
241. Exhibit NQ-2013-005-25.02 (protected), Vol. 2.3 at 51, 84, 92, 99.
242. *Transcript of Public Hearing*, Vol. 4, 25 April 2014, at 333.
243. Exhibit NQ-2013-005-24.02, Vol. 1.3 at 21.
244. Exhibit NQ-2013-005-25.02 (protected), Vol. 2.3 at 60, 102, 108.

appended to the finding, which was submitted by the APVMA in its product exclusion request.[245] In this regard, Essar Algoma submitted that it could produce a substitutable product by providing plate in smaller dimensions, which could then be welded together by the customer.[246] Essar Algoma provided evidence that it had made offers of this nature to its customers.[247] At the hearing, a witness for Essar Algoma also commented that the table appended to the finding was out of date, but was unable to provide an updated version.[248]

211. At the hearing, the witnesses for the APVMA testified that extra welding is not acceptable to its customers, since it decreases the life span of the pressure vessel and presents an engineering safety issue, because the welds are more susceptible to corrosion.[249] Although there had been occasions where, due to an urgent need, APVMA customers had accepted the welding of smaller plate, the APVMA testified that this was not the normal practice and was strictly due to special circumstances.[250] In addition, the APVMA stated that additional welding adds a major amount to their costs, as well as a significant amount of time to their proposed schedule for producing the pressure vessel.[251] Also with respect to costs, the APVMA noted that cutting smaller PVQ steel plate to the appropriate size before welding it together would result in a significant amount of wastage, which becomes cost prohibitive.[252]

212. Further, Essar Algoma confirmed in response to questioning by the Tribunal that it does not offer to weld the plate for its customers or to send it to a third-party service provider for welding.[253] The APVMA confirmed that it is responsible for the further processing and, thus, does not consider Essar Algoma to be providing a substitutable product.[254]

213. The Tribunal does not consider smaller plate—as it leaves the mill—to be a substitute for PVQ steel plate in larger dimensions, as it requires further processing by the customer (i.e. welding and cutting) before it can fulfill its intended application.

214. Moreover, while the customer, by welding the plate together, might achieve dimensional equivalency to the PVQ steel plate specification, it will not necessarily achieve the equivalent engineering safety standard, it being uncontested that welds are more susceptible to corrosion and, hence, to potential failure under high pressure stress.[255]

215. The Tribunal recalls that, in certain instances, it has refused to grant exclusions solely on the basis that further processing was required to meet the customers' specifications.[256] For example, in Inquiry No. NQ-2008-003, the Tribunal stated as follows:

> 347. Many product exclusion requests were made on the basis that the domestic producers were not capable of fully fabricating and finishing extrusions in accordance with the requester's demands

245. Exhibit NQ-2013-005-26.01, Vol. 1.3 at 180.
246. *Ibid.* at 181.
247. Exhibit NQ-2013-005-27.01 (protected), Vol. 2.3 at 126-34.
248. *Transcript of Public Hearing*, Vol. 4, 25 April 2014, at 341-42, 345, 347.
249. *Ibid.* at 327-28, 337-39.
250. *Ibid.* at 337.
251. *Ibid.* at 329.
252. *Ibid.* at 330.
253. *Ibid.* at 349.
254. *Ibid.* at 331-32.
255. *Ibid.* at 327-28, 338-39.
256. *Aluminum Extrusions* (17 March 2009) (CITT) at para. 347; *Carbon Steel Welded Pipe* (11 December 2012), NQ-2012-003 (CITT) at para. 177.

> and that these operations had to be outsourced to third parties. As stated earlier, *the Tribunal considers products that are sent to finishers and fabricators, and then returned to the domestic producers, as part of the domestic production of the extruders*. The Tribunal is of the view that such practice, on its own, does not constitute a valid basis upon which to grant a product exclusion.
>
> [Footnote omitted, emphasis added]

216. It is not the case that the domestic industry would be sending its smaller plate to a further processor for welding and cutting to required dimensions so as to provide the steel plate to the customer in a substitutable form. Instead, the customer is being asked to bear the substantial burden of undertaking the further processing required to render the product usable in PVQ plate applications. The significant nature of this burden further differentiates this case from instances where the additional finishing requirement was a relatively minor additional step that did not alter the fundamental substitutability of the goods produced by the domestic industry for those being imported.[257]

217. On the basis the foregoing considerations, the requested exclusion is granted.

Issue No. 2

218. The parties were asked to address the feasibility of the domestic industry producing and the likelihood that the domestic industry will be an active supplier of plate meeting the following specifications:

- hot-rolled carbon steel plate manufactured to:

  ASME SA-516/SA-516M or ASTM A-516/A-516M
  ASME SA-285/SA-285M or ASTM A-285/A-285M
  ASME SA-299/SA-299M or ASTM A-299/A-299M
  ASME SA-537/SA-537M or ASTM A-537/A-537M
  ASME SA-515/SA-515M or ASTM A-515/A-515M

  that is normalized (heat-treated) and has a sulfur content of less than or equal to 0.005 percent.

219. The APVMA, as the requesting party, submitted that the domestic industry could not meet this material chemical requirement and, in this connection, provided evidence that Essar Algoma had declined purchase orders on the basis that it could only guarantee a maximum sulfur content of 0.007 percent.[258]

220. Essar Algoma consented to an exclusion for "less than 0.005 percent" but objected to "equal to 0.005 percent",[259] on the basis that it had recently adapted its practices so that it could guarantee a maximum sulfur content of 0.005 percent, but not less.[260] Further, the witnesses for Essar Algoma testified that they had received inquiries and responded to customers that they could now guarantee a maximum sulfur content of 0.005 percent, although they had not yet received any purchase orders as a result of those inquiries.[261]

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257. *Carbon Steel Welded Pipe* (11 December 2012), NQ-2012-003 (CITT) at para. 177.
258. Exhibit NQ-2013-005-24.02, Vol. 1.3 at 26; Exhibit NQ-2013-005-25.02 (protected), Vol. 2.3 at 92, 98, 110, 116, 119, 124.
259. Exhibit NQ-2013-005-26.01, Vol. 1.3 at 182.
260. Exhibit NQ-2013-005-27.01 (protected), Vol. 2.3A at 67; *Transcript of Public Hearing*, Vol. 4, 25 April 2014, at 373-74.
261. *Transcript of Public Hearing*, Vol. 4, 25 April 2014, at 375-76.

221. The Tribunal accepts the sworn testimony of the witnesses for Essar Algoma that, as of early 2014, the mill can guarantee a maximum 0.005 percent level of desulfurization for the PVQ steel specifications set out above.[262]

222. The Tribunal has found in past cases that, where the domestic industry has provided evidence of a firm intention to begin producing a product, an exclusion should not be granted for that product.[263] Essar Algoma testified that it is capable of supplying, and intends to supply, PVQ steel plate with a guaranteed maximum sulfur content equal to 0.005 percent in the immediate future. This portion of the exclusion request is therefore denied.

223. However, since the domestic industry consented to an exclusion for PVQ steel plate with a sulfur content of less than 0.005 percent, the following exclusion is granted:

- hot-rolled carbon steel plate manufactured to:

  ASME SA-516/SA-516M or ASTM A-516/A-516M
  ASME SA-285/SA-285M or ASTM A-285/A-285M
  ASME SA-299/SA-299M or ASTM A-299/A-299M
  ASME SA-537/SA-537M or ASTM A-537/A-537M
  ASME SA-515/SA-515M or ASTM A-515/A-515M

  that is normalized (heat-treated) and has a sulfur content of less than 0.005 percent.

Issue No. 3

224. The parties were asked to address the feasibility and likelihood of the domestic industry producing PVQ plate from imported vacuum-degassed and normalized slab and, in particular, of being an active supplier of plate that meets the following specifications:

- hot-rolled carbon steel plate manufactured to:

  ASME SA-516/SA-516M or ASTM A-516/A-516M
  ASME SA-285/SA-285M or ASTM A-285/A-285M
  ASME SA-299/SA-299M or ASTM A-299/A-299M
  ASME SA-537/SA-537M or ASTM A-537/A-537M
  ASME SA-515/SA-515M or ASTM A-515/A-515M

  that is made by a process that includes vacuum degassing while molten (vacuum-degassed plate) and is normalized (heat-treated)

- ASME SA-516/SA-516 and/or ASTM A-516/A-516M that is manufactured by a process that includes vacuum degassing whilst in molten form, is normalized and has a maximum sulphur content of 0.005 percent

- vacuum-degassed and hot-rolled carbon steel plate for PVQ.

225. The requesting parties are, respectively, APVMA, Salzgitter Mannesmann and Dongkuk. All three submitted that the domestic industry cannot produce normalized, vacuum-degassed PVQ steel plate, as it

262. *Ibid.* at 372, 375-76.
263. *Waterproof Footwear and Bottoms* (8 December 2000), NQ-2000-004 (CITT) at 18.

lacks the equipment to do so in Canada.[264] In this respect, the APVMA provided evidence that Essar Algoma had declined purchase orders on the basis that it does not produce normalized vacuum-degassed plate in Canada,[265] although, in some cases, it offered to provide such plate from its affiliate in India.[266]

226. Essar Algoma submitted that it is capable of producing normalized, vacuum-degassed plate if it imports vacuum-degassed slab from which to roll the plate.[267] Essar Algoma submitted that vacuum-degassed slabs are readily available in the marketplace and that it has made inquiries about purchasing such slabs.[268]

227. APVMA members testified that, while they have had some discussions with Essar Algoma about purchasing vacuum-degassed plate rolled from imported slabs starting in 2007, nothing came of this dialogue.[269] They added however that they had purchased vacuum-degassed plate from the Essar Algoma mill in India.[270]

228. At the hearing, the witness for Dongkuk testified that, in his experience as the representative of one of the biggest slab purchasers in the world, slabs are not widely available for purchase because that would imply that the steel mill was maintaining an undesirable imbalance between its slab production capacity and its production capacity for higher value-added downstream products such as steel plate, i.e. the mill would be producing more slab than it could use in-house.[271] He also testified that established long-term relationships with suppliers are very important when attempting to arrange to purchase slabs.[272] Moreover, this witness indicated that he has never purchased a slab from any region in North America, nor heard of any for sale from North American production.[273]

229. The witness for Dongkuk further testified that the entire slab would have to conform to the same thickness and other specifications (e.g. degassed only—or degassed and low sulfur—or other), which would limit the types of plate that could be rolled from one slab.[274] Therefore, in order to meet the range of customer requirements for different thicknesses, widths, specifications, etc., Essar Algoma would be required to maintain a large inventory of slabs,[275]which would be impractical.

230. Given (1) the inability to produce different grades of plate from the same vacuum-degassed slab, (2) the need to maintain large inventories of such slabs in order to meet different customer specifications, and (3) the fact that such slabs are not easy to procure on the open market, as the value chain is not normally broken at the slab stage of production, the Tribunal finds that it would be commercially unfeasible and, therefore, unlikely that the domestic industry would import normalized, vacuum-degassed slabs for the production of such plate products.

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264. Exhibit NQ-2013-005-24.02, Vol. 1.3 at 20; Exhibit NQ-2013-005-24.05, Vol. 1.3 at 119; Exhibit NQ-2013-005-24.06, Vol. 1.3 at 133.
265. Exhibit NQ-2013-005-25.02 (protected), Vol. 2.3 at 70, 116, 120.
266. *Ibid.* at 34, 48-49, 95.
267. Exhibit NQ-2013-005-26.01, Vol. 1.3 at 179.
268. *Ibid.* at 177; *Transcript of Public Hearing*, Vol. 4, 25 April 2014, at 419.
269. *Transcript of Public Hearing*, Vol. 4, 25 April 2014, at 393-94.
270. *Ibid.* at 394-95.
271. *Ibid.* at 405-406.
272. *Ibid.*
273. *Ibid.* at 406.
274. *Ibid.* at 403-404.
275. *Ibid.* at 404.

231. Indeed, witnesses for Essar Algoma confirmed that they had not received any responses to their inquiries regarding the purchase of vacuum-degassed slabs,[276] that there was no definite plan in place to do so[277] and that no feasibility study or test runs had been undertaken.[278] There was also some discussion of logistical issues and, specifically, the fact that the lead times to source and import slabs could be several months.[279]

232. On the basis of the foregoing commercial and technical considerations, the Tribunal concludes that it is unlikely that the domestic industry will produce normalized, vacuum-degassed plate from imported vacuum degassed slab. While the witnesses for Essar Algoma confirmed that Essar Algoma is technically capable of rolling this plate if the required slabs are acquired,[280] the evidence that it will in fact be able to import such slab is unconvincing. Furthermore, there is evidence on the record that, instead of making the necessary investment to begin supplying this product itself, Essar Algoma has instead been seeking to fulfill this market need with imported plate from its affiliate in India.

233. As noted above, the Tribunal has previously found that an exclusion is not warranted where the domestic industry has shown a firm intention to begin production of the product that is the subject of the exclusion request. Conversely, the Tribunal has found that, where the domestic industry has chosen not to produce a product, or has not made the investments necessary for it to begin doing so, an exclusion would not be injurious.[281] Unlike other situations where the Tribunal has denied an exclusion request on the basis that the domestic industry is capable of producing a product, this is not a case where the necessary materials are already in the possession of the domestic industry or readily available with minimal capital investment, such as purchasing or creating custom-made tools and dies.[282]

234. Essar Algoma submitted that granting this exclusion request would raise circumvention issues, as vacuum-degassed plate can be used in PVQ applications that do not require vacuum degassing.[283] Since the price premium for vacuum degassing is low, this substitution would not be cost-prohibitive.[284] However, the APVMA argued that the vacuum-degassed PVQ steel plate that it requires must be normalized, and the substantial price premium for normalization makes this unlikely.[285]

235. Therefore, the following exclusion is granted:

- hot-rolled carbon steel plate manufactured to:

  ASME SA-516/SA-516M or ASTM A-516/A-516M
  ASME SA-285/SA-285M or ASTM A-285/A-285M
  ASME SA-299/SA-299M or ASTM A-299/A-299M
  ASME SA-537/SA-537M or ASTM A-537/A-537M
  ASME SA-515/SA-515M or ASTM A-515/A-515M

  that is made by a process that includes vacuum degassing while molten and is normalized (heat-treated).

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276. *Ibid.* at 426.
277. *Ibid.* at 428.
278. *Ibid.* at 428, 393-94.
279. *Ibid.* at 424-25.
280. *Ibid.* at 417.
281. *Waterproof Footwear and Bottoms* at 16; *Certain Stainless Steel Wire* at para. 104; *Carbon Steel Welded Pipe* (20 August 2008), NQ-2008-001 (CITT) at para. 139.
282. *Fasteners* (7 January 2005), NQ-2004-005 (CITT) at para. 215; *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) at para. 341.
283. *Transcript of Public Hearing*, Vol. 4, 25 April 2014, at 400-401, 420.
284. *Ibid.* at 420.
285. *Ibid.* at 393, 454.

Issue No. 4

236. The parties were asked to address the feasibility of the domestic industry producing, and the likelihood that the domestic industry will be an active supplier of, plate that meets the following specifications:

- high-strength low-alloy plate/hot-rolled carbon steel plate, impact tested (i.e. Charpy V-Notch Impact Test) at -45C (-50 F) with guaranteed minimum average absorbed energy values of 27 joules (20 ft. lb.), with a nominal thickness equal or greater than 0.875 inch that fully meets the steel specification standard of:

- dual grade ASTM A572 grade 50/CSA G40.20/21 grade 350WT* Category 4, or

- triple grade ASTM A572 grade 50/CSA G40.20/21 grade 350W*/grade 350WT* Category 4, or

- single grade CSA G40.20/21 grade 350 WT* Category 4

*product is also commonly described using the imperial Canadian standards grade classification of 50W and 50WT instead of 350W and 350WT respectively

- high-strength low-alloy plate/hot-rolled carbon steel plate, impact tested at -45C (-50 F) with guaranteed minimum average absorbed energy values of 27 joules (20 ft. lb.), with a nominal thickness of 0.875 inch and greater that fully meets the requirements of:

- dual grade ASTM A572 grade 50/CSA G40.20/21 grade 350WT* Category 4, or

- triple grade ASTM A572 grade 50/CSA G40.20/21 grade 350W*/grade 350WT* Category 4, or

- single grade CSA G40.20/21 grade 350 WT* Category 4

*product is also commonly described using the imperial Canadian standards grade classification of 50W and 50WT instead of 350W and 350WT respectively

- high-strength low-alloy plate/hot-rolled carbon steel plate with Charpy V-Notch Impact Test.

237. Salzgitter Mannesmann and the Korean producers, as the requesting parties, submitted that the domestic industry does not produce steel plate meeting these specifications.[286] In support of its request, Salzgitter Mannesman submitted evidence that Essar Algoma had refused a purchase order for plate meeting these specifications on the basis that the maximum thickness that it could produce was 0.787 inch and that the order did not meet its minimum order requirement of 180 tonnes.[287] With respect to the latter, the witness for Salzgitter Mannesmann submitted that this type of plate was a niche product and that it would be unlikely that it would be able to meet this minimum order requirement.[288]

286. Exhibit NQ-2013-005-24.05 , Vol. 1.3 at 123; Exhibit NQ-2013-005-24.06, Vol. 1.3 at 139; Exhibit NQ-2013-005-24.07, Vol. 1.3 at 154.
287. *Transcript of Public Hearing*, Vol. 4, 25 April 2014, at 462; Exhibit NQ-2013-005-25.05 (protected), Vol. 2.3A at 32.
288. *Transcript of Public Hearing*, Vol. 4, 25 April 2014, at 460-62.

238. At the hearing, one of the witnesses for Essar Algoma explained that for it to produce plate meeting these specifications in thicknesses greater than 0.787 inch requires normalization, which makes Essar Algoma's price for the product non-competitive due to the premium for normalization.[289] With respect to the minimum order requirement, the witness for Essar Algoma clarified that this applies to all types of steel, but becomes more problematic if the specification is not one that is commonly requested. If it happened to have multiple orders for this specification, it could accept smaller orders and combine them into one heat.[290]

239. The Tribunal accepts the sworn testimony of Mr. Daniel Bradley that Essar Algoma produces and sells the Category 4 product in a dimension over 0.875 inch thick,[291] which is corroborated by evidence on the record showing sales of plate meeting the specification.[292]

240. Regarding the refusal of Essar Algoma to supply the small volume requested, the Tribunal has previously held that the minimum order requirements of mills are not unreasonable and do not constitute a basis for exclusion.[293]

241. Therefore, these exclusion requests are denied.

CONCLUSION

242. Pursuant to subsection 43(1) of *SIMA*, the Tribunal finds that the dumping in Canada of the subject goods originating in or exported from Brazil, Denmark, Indonesia, Italy, Japan and Korea has not caused injury but is threatening to cause injury to the domestic industry.

243. Furthermore, the Tribunal excludes the goods described in the appendix from its threat of injury finding.

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Presiding Member

Daniel Petit
Daniel Petit
Member

Ann Penner
Ann Penner
Member

289. *Ibid.* at 466.
290. *Ibid.* at 468-73.
291. *Ibid.* at 463-64.
292. Exhibit NQ-2013-005-RI-01A (protected), Table 11, Vol. 10.
293. *Certain Stainless Steel Wire* at para. 111; *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) at para. 370.