



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Expiry Review No. RR-2014-002

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

*Order issued
Friday, January 30, 2015*

*Reasons issued
Friday, February 13, 2015*

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IN THE MATTER OF an expiry review, pursuant to subsection 76.03(3) of the *Special Import Measures Act*, of the finding made by the Canadian International Trade Tribunal on February 2, 2010, in Inquiry No. NQ-2009-003, concerning:

**HOT-ROLLED CARBON STEEL PLATE AND
HIGH STRENGTH LOW-ALLOY STEEL PLATE
ORIGINATING IN OR EXPORTED FROM UKRAINE**

ORDER

The Canadian International Trade Tribunal, pursuant to subsection 76.03(3) of the *Special Import Measures Act*, has conducted an expiry review of its finding made on February 2, 2010, in Inquiry No. NQ-2009-003 concerning the dumping of hot-rolled carbon steel plate and high-strength low-alloy steel plate not further manufactured than hot-rolled, heat-treated or not, in cut lengths in widths from 24 inches (610 mm) to 152 inches (3,860 mm) inclusive and in thicknesses from 0.187 inch (4.75 mm) up to and including 3.0 inches (76.0 mm) inclusive (with all dimensions being plus or minus allowable tolerances contained in the applicable standards, e.g. ASTM standards A6/A6M and A20/A20M), originating in or exported from Ukraine; excluding universal mill plate, plate for use in the manufacture of pipe and plate having a rolled, raised figure at regular intervals on the surface (also known as floor plate).

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

Serge Fréchette
Serge Fréchette
Presiding Member

Daniel Petit
Daniel Petit
Member

Jean Bédard
Jean Bédard
Member

The statement of reasons will be issued within 15 days.

APPENDIX

PRODUCTS EXCLUDED FROM THE ORDER

- Hot-rolled carbon steel plate and high-strength low-alloy steel plate for use in the manufacture of tube (also known as skelp).
- Hot-rolled carbon steel plate and high-strength low-alloy steel plate in coil form.
- 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 a 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	
	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

Order Gauge	1.250		1.375		1.500		1.625		1.750	
Order Width	MIN	MAX	MIN	MAX	MIN	MAX	MIN	MAX	MIN	MAX
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
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

Place of Hearing: Ottawa, Ontario
Date of Hearing: December 8, 2014

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Jean Bédard, Member

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STATEMENT OF REASONS

INTRODUCTION

1. This is an expiry review, pursuant to subsection 76.03(3) of the *Special Import Measures Act*,¹ of the finding made by the Canadian International Trade Tribunal (the Tribunal) on February 2, 2010, in Inquiry No. NQ-2009-003, concerning the dumping of hot-rolled carbon steel plate and high-strength low-alloy steel plate (collectively referred to as hot-rolled steel plate) originating in or exported from Ukraine (the subject goods).

2. The Tribunal initiated this expiry review on May 21, 2014. It notified the Canada Border Services Agency (CBSA) and sent letters to known domestic producers, importers, foreign producers and exporters requesting that they complete the Tribunal's questionnaires. The Tribunal's period of review (POR) is from January 1, 2011, to June 30, 2014.

3. On May 22, 2014, the CBSA initiated its investigation to determine whether the expiry of the Tribunal's finding was likely to result in the continuation or resumption of dumping.

4. On September 18, 2014, the CBSA determined, pursuant to paragraph 76.03(7)(a) of *SIMA*, that the expiry of the finding was likely to result in the continuation or resumption of dumping of the subject goods.

5. Following the CBSA's determination, on September 19, 2014, the Tribunal began its part of the expiry review to determine, pursuant to subsection 76.03(10) of *SIMA*, whether the expiry of the finding was likely to result in injury or retardation.

6. The Tribunal held a hearing with public and *in camera* testimony in Ottawa, Ontario, on December 8, 2014. During the hearing, the Tribunal heard oral arguments in support of a continuation of the finding from Essar Steel Algoma Inc. (Essar Algoma) and SSAB Central Inc. (SSAB), two domestic producers, as well as testimony from the following five witnesses: Ms. Laura Devoni, Manager – Marketing, Order Analysis & Processing, Essar Algoma; Mr. Robert A. Clark, Manager, Trade, Essar Algoma; Mr. Rory Brandow, Director of Sales – Canada, Essar Algoma; Mr. Glenn A. Gilmore, Trade Supervisor, SSAB Americas; and Mr. Mike Mayberry, General Manager, Northern Business Unit, SSAB Americas.

7. Metinvest International SA (Metinvest), an exporter of subject goods, and PJSC “Azovstal Iron and Steel Works” (Azovstal) and PJSC “Ilyich Iron and Steel Works of Mariupol” (Ilyich), two producers of the subject goods, opposed the continuation of the finding but did not present oral arguments or call any witnesses in support of this position at the hearing. Metinvest made nine requests for product exclusions, of which one was withdrawn. At the hearing, Metinvest cross-examined witnesses for the domestic industry and presented oral argument in support of its product exclusion requests.

PRODUCT

Product Definition

8. The goods that are subject to this expiry review are defined as 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 (with all dimensions being

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

plus or minus allowable tolerances contained in the applicable standards, e.g. ASTM standards A6/A6M and A20/A20M), originating in or exported from Ukraine; excluding universal mill plate, plate for use in the manufacture of pipe and plate having a rolled, raised figure at regular intervals on the surface (also known as floor plate).

Product Information

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

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

11. In both integrated and mini-mill steel production, the molten steel is poured from a ladle to the tundish of a continuous slab caster where it flows into the mould of the caster. There, it cools and forms 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.

12. Next, the slab is either placed in inventory or transferred to a reheat furnace where it is heated to a uniform rolling temperature. Upon attaining the required temperature, it is rolled to its final gauge. After rolling, the plate is levelled, identified and inspected for conformance to thickness tolerances and surface 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”, “cut-to-length plate” or “cut-to-length plate from coil”.

13. Hot-rolled steel plate may be sold to distributors or service centres, which may either resell standard cut-to-length sizes and grades or offer custom cutting services, or may be sold directly to end users.

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

PRELIMINARY MATTERS

15. Although Metinvest, Azovstal and Ilyich stated their opposition to the continuation of the finding, they did not provide comprehensive submissions or arguments to support this position. Pursuant to Article 6.2 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and*

Trade 1994,² failure by a party to participate in proceedings shall not be prejudicial to that party's case. Therefore, the Tribunal has not drawn any negative inference from importers', exporters' and foreign producers' lack and low level of participation in the expiry review process. This approach is consistent with the Tribunal's past practice.³

16. In light of the fact that no evidence or arguments were advanced to oppose the continuation of the finding, the Tribunal was particularly vigilant in its assessment of the information contained on the record in order to ensure that its determinations were based on positive, accurate evidence and involved an objective examination of all the factors that are relevant to the likelihood of an injury determination. In this respect, the Tribunal conducted a rigorous review of all questionnaire replies to ensure that they were reasonably complete, that inconsistencies were addressed and errors corrected, that the data reconciled and were reasonable, and that any anomalies were reasonably explained.

LEGAL FRAMEWORK

17. The Tribunal is required, pursuant to subsection 76.03(10) of *SIMA*, to determine whether the expiry of the finding in respect of the subject goods is likely to result in injury or retardation to the domestic industry.⁴

18. The Tribunal is also required, pursuant to subsection 76.03(12) of *SIMA*, to make an order either rescinding the finding in Inquiry No. NQ-2009-003, if it determines that its expiry is unlikely to result in injury, or continuing the finding, with or without amendment, if it determines that the expiry of the finding is likely to result in injury.

19. As indicated by the Tribunal in *Thermoelectric Containers*,⁵ the analytical context pursuant to which an expiry review must be adjudged often includes the assessment of retrospective evidence supportive of prospective conclusions. The requirement in an expiry review is that the Tribunal draw logical conclusions from the relevant information before it, and that information will often appropriately include the performance of the domestic and foreign industries during the POR, when anti-dumping and/or countervailing duties were in place.⁶

20. Before proceeding with its analysis of the likelihood of injury, the Tribunal must first determine what constitutes "like goods" and then determine what constitutes the "domestic industry" for the purposes of its analysis.

LIKE GOODS AND CLASSES OF GOODS

21. In order for the Tribunal to determine whether the resumed or continued dumping of the subject goods is likely to cause material injury to the domestic producers of like goods, it must determine which domestically produced goods, if any, constitute like goods in relation to the subject goods. The Tribunal

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

3. See *Carbon Steel Welded Pipe* (3 June 2005), RR-2004-003 (CITT) at para. 34; *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Plate* (17 May 2004), RR-2003-001 (CITT) at para. 104; *Seamless Carbon or Alloy Steel Oil and Gas Well Casing* (11 March 2013), RR-2012-002 (CITT) at paras. 52-53; *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate* (7 January 2014), RR-2013-002 (CITT) at paras. 15-17.

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

5. (9 December 2013), RR-2012-004 (CITT).

6. *Ibid.* at para. 14.

must also assess whether there is, within the subject goods and the like goods, more than one class of goods.⁷

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

23. 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).⁸

24. In Inquiry No. NQ-2009-003, the Tribunal found that domestically produced hot-rolled steel plate, of the same specifications as the subject goods, constituted like goods in relation to the subject goods.⁹ In addition, after considering whether structural steel plate, HSLA steel plate and PVQ steel plate were separate classes of goods, the Tribunal found that they constituted a single class of goods for the purposes of the inquiry. In the Tribunal’s view, even though the goods were not perfectly substitutable, they fell at various points along a continuum of like goods.¹⁰

25. No evidence or arguments were presented in this expiry review that warrants a departure from the Tribunal’s previous conclusions. Therefore, the Tribunal finds that domestically produced hot-rolled steel plate of the same specifications as the subject goods constitutes like goods in relation to the subject goods. It also finds that the subject goods constitute a single class of goods.

DOMESTIC INDUSTRY

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

27. The Tribunal must therefore determine whether there is a likelihood 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.¹¹

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

8. See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at para. 48.

9. Exhibit RR-2014-002-01, Vol. 1 at 18, para. 59.

10. *Ibid.* at 19, paras. 65-66.

11. The term “major proportion” means an important, serious or significant proportion of total domestic production of like goods and not necessarily a majority. See *Japan Electrical Manufacturers Assoc. v. Canada (Anti-Dumping Tribunal)*, [1982] 2 F.C. 816 (F.C.A.); *China – Anti-dumping and Countervailing Duties on Certain Automobiles from the United States* (23 May 2014), WTO Doc. WT/DS440/R, Report of the Panel at para. 7.207; *European Community – Definitive Anti-dumping Measures on Certain Iron or Steel Fasteners from China* (15 July 2011), WTO Doc. WT/DS397/AB/R, Report of the Appellate Body at paras. 411, 419, 430; *Argentina – Definitive Anti-dumping Duties on Poultry from Brazil* (22 April 2003), WTO Doc. WT/DS241/R, Report of the Panel at paras. 7.341-7.344.

28. Essar Algoma and SSAB indicated that the domestic industry is comprised of Essar Algoma, Evraz, SSAB and service centres that produce cut-to-length plate from coil.¹²

29. In Inquiry No. NQ-2009-003, the Tribunal found that the three domestic mills, Essar Algoma, Evraz and SSAB, as well as four service centres, constituted the domestic industry for the purpose of the injury analysis.¹³ However, due to incomplete information on the record with regard to the service centres, the Tribunal focussed its analysis with regard to prices, financial information and related economic indicia on the domestic mills but assessed the materiality of any injury or threat of injury in relation to the total production of like goods by the domestic industry.¹⁴

30. In this expiry review, the Tribunal sees no reason why it should take a different approach. Accordingly, the Tribunal finds that the three domestic mills and six service centres that provided production data constitute the domestic industry. However, given the incomplete information on the record regarding the service centres, and the fact that the domestic mills accounted for a major proportion of total domestic production throughout the POR, the Tribunal will focus its analysis of likely injury on the domestic mills but will assess the materiality of any likely injury on the basis of the total production of the like goods by both domestic mills and service centres.

31. In regard to the issue of whether the domestic mills represent a major proportion of total domestic production of like goods, the combined production of the domestic mills accounted for well over half of the total domestic production of like goods during the POR.¹⁵ The Tribunal recognizes that, in 2013 and 2014, Evraz sold its cut-to-length facilities to service centres, Samuel, Son & Co., Limited and Varsteel Ltd.¹⁶ Although the sale of these facilities will likely mean a decrease in Evraz's total production volumes in 2014 and in the future, the three domestic mills (excluding Evraz's cut-to-length facilities) still accounted for slightly less than 64 percent of the total domestic production of like goods in interim 2014.¹⁷ In the Tribunal's view, this amount represents a major proportion of domestic production.

LIKELIHOOD OF INJURY ANALYSIS

32. At the outset of the analysis, the Tribunal notes that this expiry review was virtually unopposed. Although two foreign producers and one exporter did express their opposition to the continuation of the Tribunal's finding, none of them submitted evidence to challenge the arguments advanced by Essar Algoma and SSAB. The Tribunal strives to be as thorough as possible in its own examination of the evidence and the questioning of the witnesses. This is particularly important in cases such as this one where there is limited participation by parties opposing the continuation of the Tribunal's finding.

33. In making its assessment of likelihood of injury, the Tribunal has decided to focus its analysis on the circumstances that can reasonably be expected to prevail over the next 12 to 18 months. In the Tribunal's view, this period of time is appropriate in this case, given the difficulties associated with projecting further into the future with a reasonable degree of certainty in such a rapidly evolving market. For example, the Tribunal observes that there was significant growth in imports from the Russian Federation (Russia) and India and a significant decrease in prices following the Tribunal's finding in Inquiry

12. Exhibit RR-2014-002-A-01 at para. 23, Vol. 11.

13. Exhibit RR-2014-002-01, Vol. 1 at 20, para. 68.

14. *Ibid.*, para. 69.

15. Exhibit RR-2014-002-05, Table 7, Vol. 1.1.

16. Exhibit RR-2014-002-15.01, Vol. 3 at 15.

17. Exhibit RR-2014-002-05, Table 7, Vol. 1.1; Exhibit RR-2014-002-06 (protected), Table 7, Vol. 2.1; Exhibit RR-2014-002-06A (protected), Table 8, Vol. 2.1.

No. NQ-2013-005¹⁸ involving hot-rolled carbon steel plate from the Federative Republic of Brazil (Brazil), the Kingdom of Denmark, the Republic of Indonesia (Indonesia), the Italian Republic, Japan and the Republic of Korea (the Plate VII countries), which suggests that exporters and importers rapidly adjust their patterns of trade in reaction to the imposition or removal of anti-dumping measures.

34. Subsection 37.2(2) of the *Special Import Measures Regulations*¹⁹ lists factors that the Tribunal may consider in determining whether the expiry of a finding is likely to result in material injury to a domestic industry. These factors include changes in international and domestic market conditions, the likely performance of the domestic industry, the likely volumes of dumped goods, the likely prices of dumped goods and their effect on prices of like goods, the likely impact of the dumped goods on the domestic industry and any other factors relevant in the circumstances.

35. The Tribunal has used various approaches in previous cases to assess any non-dumping factors affecting or likely to affect the domestic industry.²⁰ In order to better incorporate the effect of these non-dumping factors into its analysis in this case, the Tribunal will examine the likely performance of the domestic industry over the next 12 to 18 months, first, if the finding is continued and, then, if the finding is allowed to expire. However, the Tribunal will first examine changes in international and domestic market conditions, as these changes provide some general context for the Tribunal's analysis and are likely to occur whether or not the finding is continued or allowed to expire.

36. The Tribunal's analysis of the likely performance of the domestic industry if the finding is continued will take into account the industry's recent performance, including trends in production, prices, profits, market share, capacity utilization, employment levels, productivity, sales and exports. It will also take into account all relevant non-dumping factors that affected the domestic industry's performance during the POR and/or are likely to affect it over the next 12 to 18 months. These non-dumping factors may include general and industry-specific economic factors and conditions such as the likely volumes or prices of non-subject imports, changes in demand for the goods or like goods (e.g. shift to substitutable goods), changes in the pattern of consumption of the goods or like goods, trade-restrictive practices of, and competition between, foreign and domestic producers, developments in technology, the export performance and productivity of the domestic industry in respect of the like goods, and exchange rate variations.

37. The Tribunal's examination of the likely performance of the domestic industry if the finding is allowed to expire, while also taking into consideration the industry's recent performance, will include an examination of the likely volumes of dumped goods, the likely prices of dumped goods and their effect on the prices of like goods, and the likely impact of the dumped goods on the domestic industry.

38. By reaching conclusions with regard to the domestic industry's likely performance over the next 12 to 18 months if the finding is continued, the Tribunal will establish a first scenario regarding this future period. The Tribunal is convinced that, by comparing the likely performance of the domestic industry over the next 12 to 18 months with an alternative scenario where the finding is allowed to expire, keeping all

18. *Hot-rolled Carbon Steel Plate* (20 May 2014) (CITT) [Plate VII].

19. S.O.R./84-927 [Regulations].

20. See, for example, *Copper Pipe Fittings* (17 February 2012), RR-2011-001 (CITT) and *Bicycles* (7 December 2012), RR-2011-002 (CITT), where the Tribunal assessed the impact of certain other factors separately from its assessment of the domestic industry's likely performance and the likely impact of the dumped goods. This can be contrasted with the approach taken in *Hot-rolled Carbon Steel Plate* (8 January 2013), RR-2012-001 (CITT), and the most recent expiry review in *Certain Fasteners* (5 January 2015), RR-2014-001 (CITT), where the Tribunal integrated its assessment of other factors in its assessment of the domestic industry's likely performance and the impact of the dumped goods.

other factors constant, it will better be able to isolate the injury likely to be caused by the subject goods from the injury likely to be caused by other factors.

Changes in International and Domestic Market Conditions

39. The Tribunal will now consider changes in international and domestic market conditions that occurred during the POR and that are likely to occur over the next 12 to 18 months.

40. Over the POR, the global economy slowed down. Following a high of 4.1 percent growth in 2011, global GDP growth slowed in 2012 and in 2013.²¹ According to the Bank of Canada's October 2014 edition of the *Monetary Policy Report*, global GDP is expected to grow by 3.1 percent in 2014, 3.4 percent in 2015 and 3.5 percent in 2016.²²

41. In the United States, GDP growth has been moderate since 2011, with growth of 2.3 percent in 2012 and 2.2 percent in 2013. The Bank of Canada anticipates GDP growth in the United States of 2.2 percent in 2014, 2.9 percent in 2015 and 2.7 percent in 2016.²³

42. In the People's Republic of China (China), a key player in terms of plate production, consumption and exports, GDP growth slowed significantly compared with previous years. In 2012 and 2013, GDP growth was 7.7 percent, compared with 9.3 percent in 2011.²⁴ The evidence indicates that GDP growth in China is expected to remain at these reduced rates in 2014, 2015 and 2016.²⁵ Nevertheless, China's GDP growth outpaces and will continue to outpace most other countries.²⁶

43. Russia, an important export market for the subject goods, has seen a decline in GDP growth from 2011 to 2012, with growth of only 1.3 percent in 2013. Almost no growth is expected in Russia in 2014 and 2015.²⁷

44. Ukraine has barely seen any real GDP growth since 2011. There was only 0.3 percent GDP growth in 2012 and none in 2013. Forecasts for future growth rates in Ukraine vary significantly, particularly in the short term, with estimates of between -9.0 percent and 2.6 percent growth in 2014, between -3.0 percent and 3.4 percent growth in 2015, and between 3.6 percent and 4.0 percent growth in 2016.²⁸

45. Turning now to the situation of the steel industry in particular, a 2014 global steel report by Ernst & Young indicates that, in 2013, global steel demand increased by an estimated 3.2 percent compared to 2012, with a 6 percent growth recorded in China and limited growth in the rest of the world.²⁹ The report forecasted some improvement for the global steel industry, with demand growth projected to be about 3.3 percent in 2014.³⁰ However, the report also noted that excess capacity will remain the most significant

21. Exhibit RR-2014-002-05A, Table 1, Vol. 1.1.

22. *Ibid.*

23. *Ibid.*

24. *Ibid.*

25. *Ibid.*

26. Exhibit RR-2014-002-A-09, tab 11 at 2, Vol. 11A; Exhibit RR-2014-002-05A, Table 1, Vol. 1.1.

27. Exhibit RR-2014-002-05A, Table 1, Vol. 1.1.

28. *Ibid.*

29. Exhibit RR-2014-002-A-09, tab 2 at 7, Vol. 11A.

30. *Ibid.* at 9.

threat to the steel sector. Other threats include aging steel mills, rising labour costs, falling productivity, steel plants running at less than optimal capacity and unsustainably low interest rates.³¹

46. The Chairman of the OECD Steel Committee has noted that slow growth in the demand for steel will mean that "...excess capacity will probably remain high in the medium term. As a consequence, excess capacity will continue to weigh on the operating profitability of the global steel industry."³² The World Steel Association's short range outlook predicts that global apparent steel use will increase by 2 percent to 1.562 billion tonnes in 2014 and that demand will grow by another 2 percent in 2015 to reach 1.594 billion tonnes.³³

47. While global demand for plate is expected to increase in the near to medium term, production and production capacity are also forecast to increase at similar or slightly higher rates.³⁴ Given the significant oversupply of plate³⁵ and excess plate production capacity in the global steel industry,³⁶ the forecasted increases in the demand for plate will not likely translate into improved market conditions in the next 12 to 18 months.

48. As for Ukraine, it was one of the top 10 steel-producing countries and the third largest net exporting country of plate during the POR.³⁷ Ms. Devoni, a witness for Essar Algoma, indicated that the domestic plate market in Ukraine is quite small and that Ukrainian producers export 60 to 70 percent of their plate production.³⁸ Russia and the European Union are key export markets for Ukrainian plate, accounting for about 40 percent of Ukraine's exports in 2013.³⁹ However, exports to Russia declined sharply in the first seven months of 2014, partly due to disruptions caused by a military conflict in Eastern Ukraine and Russian buyers looking to domestic producers.⁴⁰ The military conflict also affected Ukrainian mills' access to raw materials and disrupted plate production, especially in the third quarter of 2014.⁴¹ The situation has improved, but this conflict will almost certainly result in lower domestic demand and will likely cause Ukrainian producers to direct even more of their production towards export markets in the near future.⁴²

49. Throughout the POR, the Canadian economy followed global economic trends with GDP growth slowing from 2.5 percent in 2011 to 1.7 percent in 2012 before slightly increasing to 2.0 percent in 2013.⁴³ A TD Bank report notes that Canada's economy enjoyed a rebound in the second quarter of 2014 but that this growth was led by exports rather than domestic demand, although domestic demand was also healthy.⁴⁴ As of October 2104, moderate growth was predicted for Canada, with GDP expected to grow by approximately 2.3 percent in 2014, 2.4 percent in 2015 and 2.3 percent in 2016.⁴⁵ These numbers do not

31. *Ibid.* at 10.

32. *Ibid.*, tab 3 at 2.

33. *Ibid.*, tab 18 at 1.

34. Exhibit RR-2014-002-A-11 (protected), tab 1 at 18, 31, 33, 50, Vol. 2.01B.

35. *Ibid.* at 14, 16, 18; Exhibit RR-2014-002-A-11A (protected) at 2, Vol. 2.01B; Exhibit RR-2014-002-A-04A (protected) at para. 5, Table 1, Vol. 12.

36. Exhibit RR-2014-002-A-04A (protected) at para. 5, Table 1, Vol. 12.

37. Exhibit RR-2014-002-12.17, Vol. 1.4B at 7; Exhibit RR-2014-002-A-11 (protected), tab 1 at 55-56, Vol. 2.01B.

38. *Transcript of Public Hearing*, 8 December 2014, at 12-13.

39. Exhibit RR-2014-002-A-11 (protected), tab 1 at 5, Vol. 2.01B; Exhibit RR-2014-002-12.17, Vol. 1.4B at 12.

40. Exhibit RR-2014-002-A-11 (protected), tab 1 at 4-5, Vol. 2.01B.

41. *Ibid.*

42. *Ibid.*, tab 9 at 2; Exhibit RR-2014-002-A-09, tab 26, Vol. 11A.

43. Exhibit RR-2014-002-05A, Table 1, Vol. 1.1.

44. Exhibit RR-2014-002-A-09, tab 15 at 1, Vol. 11A.

45. Exhibit RR-2014-002-05A, Table 1, Vol. 1.1.

necessarily take into account the impact, if any, of the very sharp decline in oil prices during the last quarter of 2014. Although some industry publications are forecasting plate consumption growth in Canada from 2014 to 2016, at the hearing, Mr. Brandow from Essar Algoma testified that he did not expect an increase in demand for plate over the next year or two.⁴⁶

Likely Performance of the Domestic Industry if the Finding is Continued

50. The Tribunal will now consider the domestic industry's likely performance over the next 12 to 18 months if the finding is continued. This analysis will establish a first scenario against which to compare the likely performance of the domestic industry if the finding is allowed to expire. The Tribunal will consider, as part of this analysis, whether there are any factors other than the dumping of the subject goods affecting or likely to affect the performance of the domestic industry in the near to medium term.

51. Essar Algoma argued that, over the POR, a sustained cost-price squeeze caused a steady deterioration in its gross margins and net income, a trend that could also be seen at the domestic mill level.⁴⁷ It maintains that it was unable to benefit financially from an increase in production following the finding in *Plate VII* or to pass along its product cost increases due to a significant increase in low-priced imports from India and Russia in 2014.⁴⁸

Production, Prices and Profits

52. As mentioned above, total domestic production grew continuously over the POR, rising by 6 percent in 2012, 5 percent in 2013 and 4 percent in interim 2014.⁴⁹ However, this growth was not uniform over the entire domestic industry: Essar Algoma and the service centres saw growth rates that were much higher than average, while Evraz experienced considerable decreases in production volumes.⁵⁰

53. Overall, the volume of domestic sales from domestic production increased modestly over the POR, while the volume of exports decreased significantly.⁵¹ Unit values of domestic sales by the domestic industry fell from \$1,032/tonne in 2011 to \$877/tonne in 2013 or a total of 15 percent before rising by 10 percent between interim 2013 and interim 2014, to \$963/tonne.⁵² Unit values of export sales from domestic production followed this same trend, falling by a total of 13 percent between 2011 and 2013 and then rising by 15 percent between interim 2013 and interim 2014, to reach their highest value of the whole POR.⁵³

54. Both at the aggregate and unit levels, the domestic mills experienced increasingly poor financial results over the POR with respect to their domestic sales from domestic production. At the aggregate level, although the domestic mills were profitable at the gross margin level in 2011 and 2012, they saw increasingly large losses in 2013 and interim 2014. At the net income level, only 2011 was profitable, with increasingly large losses in the remaining periods of the POR.⁵⁴

46. Exhibit RR-2014-002-A-11 (protected), tab 1 at 11, Vol. 2.01B; Exhibit RR-2014-002-A-11A (protected) at 1-2, Vol. 2.01B; *Transcript of Public Hearing*, 8 December 2014, at 25-27.

47. Exhibit RR-2014-002-A-01 at para. 76, Vol. 11.

48. *Ibid.* at para. 155.

49. Exhibit RR-2014-002-05, Table 7, Vol. 1.1.

50. *Ibid.*

51. Exhibit RR-2014-002-05, Tables 18, 19, 27, Vol. 1.1; Exhibit RR-2014-002-06 (protected), Table 27, Vol. 2.1.

52. Exhibit RR-2014-002-05, Tables 24, 25, Vol. 1.1.

53. *Ibid.*, Table 29; Exhibit RR-2014-002-06 (protected), Table 29, Vol. 2.1.

54. Exhibit RR-2014-002-05, Table 36, Vol. 1.1.

55. At the unit level, the net sales value for domestic sales from domestic production decreased from \$1,071/tonne in 2011 to \$863/tonne in 2013, which translates into a 19 percent decrease, only to increase by 12 percent between interim 2013 and interim 2014, from \$862/tonne to \$967/tonne. The unit cost of goods sold did not follow the same trend, increasing by 3 percent in 2012, falling by 8 percent in 2013 and then increasing by 13 percent in interim 2014 over the same period in 2013.⁵⁵ As a result of these two trends, gross margins fell from a profit of \$127/tonne in 2011 to a loss of \$45/tonne in interim 2014, and net incomes fell from \$57/tonne in profits in 2011 to \$166/tonne in losses in interim 2014.⁵⁶

56. Turning to export sales from domestic production, at the aggregate and unit levels, the net sales value and the cost to produce those goods decreased significantly between 2011 and 2013. In interim 2014, this trend changed, albeit more dramatically at the unit level. While net sales values at the aggregate level continued to decrease relative to their values in interim 2013, costs of goods sold increased. At the unit level, both the net sales value and cost of goods sold increased fairly dramatically relative to interim 2013, but the latter increased at a rate that was almost twice as large as the former. As a result, gross margins at both the aggregate and unit levels moved from a slight profit in 2011 to increasing losses during the rest of the POR. Net incomes followed a similar declining trend. In particular, at the unit level, both gross margins and net incomes were dramatically lower in interim 2014 than in any of the previous periods of the POR.⁵⁷

57. Mr. Clark explained that the increased cost of goods sold and the gross and net losses in interim 2014 were due in large part to Essar Algoma's inability to obtain iron ore pellets by vessel until mid-May of that year because of ice on Lake Superior and to its lack of inventory on the dock prior to the freeze-up because of a cash shortage.⁵⁸ His testimony also indicates that at least some of Essar Algoma's lost profits were due to it having an iron ore contract at prices much higher than those paid by its competitors and due to pension funding obligations and the structure of its balance sheet.⁵⁹ The Tribunal considers that these non-recurrent issues put the results of 2013 and interim 2014 in perspective.

58. With regard to sales in the domestic market, the Tribunal accepts Mr. Brandow's testimony that the removal of domestic content requirements for wind energy projects in Ontario, which are a significant source of business for the domestic mills, less-than-expected demand from the shipbuilding sector and uncertain demand from the oil and gas sector as a result of rapidly declining oil prices are likely to reduce domestic demand over the next 12 to 18 months.⁶⁰ Furthermore, the Tribunal accepts that both India and Russia are likely to continue to export considerable volumes of non-subject goods at prices well below those of the domestic industry.

59. In light of these weak domestic market conditions, the Tribunal considers that, if the finding is continued, the domestic industry's overall production volumes are likely to be flat at best over the next 12 to 18 months. Even though the Tribunal expects the domestic industry's export performance to improve slightly due to more favourable exchange rates, this improvement is unlikely to have a great overall effect on total production volumes, as sales in the domestic market account for the majority of the domestic industry's domestic production.

55. *Ibid.*

56. *Ibid.*

57. Exhibit RR-2014-002-06 (protected), Table 37, Vol. 2.1.

58. *Transcript of Public Hearing*, 8 December 2014, at 30-31.

59. *Ibid.* at 31-32.

60. *Ibid.* at 26-27.

60. With regard to prices, the Tribunal heard testimony indicating that prices fell in the second half of 2014 from their relatively high levels in the first half of that year.⁶¹ Witnesses attributed this decline to surging imports from India and Russia at prices from \$130/tonne to \$200/tonne below domestic prices.⁶² They predicted that prices in 2015 would likely be similar to or below those in 2014 and then would modestly increase in 2016.⁶³ Given the downward pressure already imposed on domestic prices by the recent surge in low-priced imports from India and Russia and the continued price pressure that these imports are likely to exert in the near future, the Tribunal accepts that prices in 2015 are likely to be below average 2014 prices and may recover only slightly in 2016.⁶⁴

61. With regard to profitability, Mr. Clark testified that Essar Algoma was profitable in the third quarter of 2014 and is likely to be profitable, albeit less so, in the fourth quarter of 2014.⁶⁵ He explained that Essar Algoma had dealt with the non-recurrent issues described above affecting its profitability in 2013 and the first half of 2014.⁶⁶ However, in his view, continued profitability would depend on the price of like goods going forward.⁶⁷

62. The Tribunal considers that, although the domestic mills have taken steps to improve their financial situation, their overall financial performance in the next 12 to 18 months is likely to depend largely on factors outside their control, such as demand, the price of non-subject imports and the relative prices of sales and inputs, such as iron ore. On the basis of the Tribunal's finding that prices in 2015 are likely to be similar to or below average 2014 prices, the Tribunal concludes that it is likely that the domestic mills' financial situation will be similar to or slightly below their overall performance between 2011 and 2013, which, on the whole, saw profits at the gross margin level but losses at the net income level.⁶⁸ In reaching this conclusion, the Tribunal considers that the likely decline in revenue due to falling prices would at least offset, if not outweigh, the reduced costs experienced by a major player in the domestic industry as a result of the elimination of non-recurrent issues.

Market Share

63. The domestic industry's share of the apparent market remained flat in 2011 and 2012 at approximately 40 percent, increased to 49 percent in 2013, only to drop in interim 2014 to 43 percent.⁶⁹ Although the domestic industry captured market share in 2013 from importers' non-subject imports, the domestic mills lost market share in interim 2014 to their own imports from the United States and to importers' non-subject imports from countries other than the United States.⁷⁰

64. With regard to the domestic industry's large volume of imports from the United States, Mr. Clark testified that the domestic industry views the North American market as an "integrated market" where

61. *Ibid.* at 20, 96-97; *Transcript of In Camera Hearing*, 8 December 2014, at 5-7.

62. *Transcript of Public Hearing*, 8 December 2014, at 19-20, 22, 61, 97.

63. *Ibid.* at 20, 98.

64. Exhibit RR-2014-002-A-11 (protected), tab 1 at 23, Vol. 2.01B.

65. *Transcript of Public Hearing*, 8 December 2014, at 32-33; *Transcript of In Camera Hearing*, 8 December 2014, at 2-5.

66. *Transcript of Public Hearing*, 8 December 2014, at 30-32.

67. *Ibid.* at 33.

68. Exhibit RR-2014-002-05, Table 36, Vol. 1.1.

69. *Ibid.*, Table 20.

70. *Ibid.*; Exhibit RR-2014-002-06 (protected), Tables 19, 20, Vol. 2.1.

operations on both sides of the border deal with the same customers and where approximately the same volume of flat-rolled products moves in both directions across the border.⁷¹

65. The Tribunal cannot simply ignore the fact that the domestic industry's imports from the United States have most likely displaced some domestic production. The Tribunal finds that the domestic industry still lost some market share to non-subject imports from countries other than the United States between interim 2013 and interim 2014.⁷² Furthermore, Mr. Brandow testified that approximately 136,000 tonnes of non-subject goods from India and Russia have already been imported into Canada in 2014 and that another 20,000 tonnes from India are expected to arrive shortly. He calculated this volume to represent approximately 15 to 16 percent of the total domestic market.⁷³

66. On the basis of this evidence, the Tribunal accepts that these imports have not only replaced the market share previously held by imports from the Plate VII countries but have also taken some additional market share from the domestic industry. Given the testimony regarding the large volumes of imports from Russia and India that arrived in Canada in the second half of 2014, there is a strong likelihood that the volume of imports will continue to increase in the next 12 to 18 months and that, therefore, the domestic industry's market share will at best remain the same or will more likely further erode over this period if the finding is continued.

Capacity Utilization

67. Evidence on the record indicates that the domestic mills' total capacity utilization rates were low and remained relatively flat between 2011 and 2013, at between 44 percent and 46 percent, and then declined in interim 2014 to 40 percent.⁷⁴ Within these totals, utilization rates for discrete plate and cut-to-length plate from coil remained relatively stable throughout the POR at between 20 percent and 22 percent.⁷⁵

68. Ms. Devoni testified that a 40 percent utilization rate was inefficient, given the high fixed costs in the industry.⁷⁶ Testimony by Mr. Clark indicated that one reason for this low capacity utilization may be the fact that the domestic mills have more rolling capacity than they have steel-making capacity and that, in order to use more of their rolling capacity, the domestic mills would need to either purchase slabs or increase their steel-making capacity by starting up other blast furnaces.⁷⁷

69. The Tribunal considers that the domestic mills' capacity utilization rates are likely to remain at low levels, similar to those between 2011 and 2013, in the next 12 to 18 months if the finding is continued. As mentioned above, low-priced non-subject imports are likely to continue to take market share from the domestic industry. This, coupled with a potentially stagnating if not declining market, will make it unlikely that the domestic mills will be in a position to secure the investments necessary to increase their capacity to produce slabs. This will therefore limit the ability of the domestic mills to increase their capacity utilization rates.

71. *Transcript of Public Hearing*, 8 December 2014, at 70-71.

72. Exhibit RR-2014-002-05, Table 20, Vol. 1.1; Exhibit RR-2014-002-06 (protected), Table 20, Vol. 2.1.

73. *Transcript of Public Hearing*, 8 December 2014, at 22.

74. Exhibit RR-2014-002-05, Table 47, Vol. 1.1.

75. *Ibid.*

76. *Transcript of Public Hearing*, 8 December 2014, at 13.

77. *Ibid.* at 74-75.

Employment and Productivity

70. The domestic mills' number of direct employees increased by 35 percent between 2011 and 2013 and then fell by 2 percent in interim 2014 compared to interim 2013.⁷⁸ The number of hours worked by direct employees and the wages paid by the domestic mills to their direct employees also increased between 2011 and 2013 by similar percentages. In interim 2014, the number of hours worked by these employees declined slightly relative to interim 2013 but the wages paid followed the opposite trend and increased slightly.⁷⁹ The domestic mills' productivity levels decreased slightly over the POR.⁸⁰

71. The Tribunal considers that employment and productivity are likely to remain at levels similar to or slightly lower than 2013 and interim 2014 levels in the next 12 to 18 months, if the finding is continued, on the basis that production levels are expected to be flat or slightly reduced over this period.

Likely Performance of the Domestic Industry if the Finding is Allowed to Expire

72. The Tribunal will now assess the likely performance of the domestic industry over the next 12 to 18 months if the finding is allowed to expire by assessing the likely volumes of dumped goods, the likely prices of dumped goods and their effect on prices of like goods, and the likely impact of the dumped goods on the domestic industry. In this assessment, the Tribunal will take into consideration the recent performance of the domestic industry, as discussed above. This analysis will establish a second scenario regarding the likely performance of the domestic industry and, at the same time, will compare this scenario to the first scenario established above if the finding is continued. This comparison will allow the Tribunal to distinguish the likely impact of dumped goods from that of any other factors affecting or likely to affect the domestic industry.

Likely Volumes of Dumped Goods

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

74. The Tribunal's assessment of the likely volume of dumped imports should encompass the likely performance of the foreign industry, the potential for the foreign producers to produce goods in facilities that are currently used to produce other goods, evidence of the imposition of anti-dumping measures in other jurisdictions, and whether measures adopted by other jurisdictions are likely to cause a diversion of the subject goods to Canada.⁸¹

75. Essar Algoma and SSAB argued that, if the finding is allowed to expire, the subject goods would enter the Canadian market at dumped prices and in volumes significantly above those imported into Canada in each of the three years preceding the Tribunal's finding in Inquiry No. NQ-2009-003. In support of this position, they refer to a number of factors, including considerably higher prices for hot-rolled steel plate in Canada than in the rest of the world,⁸² weak demand forecasts for plate by the shipbuilding industry and for

78. Exhibit RR-2014-002-05, Table 43, Vol. 1.1; Exhibit RR-2014-002-06 (protected), Table 43, Vol. 2.1.

79. Exhibit RR-2014-002-05, Tables 44, 45, Vol. 1.1; Exhibit RR-2014-002-06 (protected), Tables 44, 45, Vol. 2.1.

80. Exhibit RR-2014-002-06 (protected), Table 46, Vol. 2.1.

81. Paragraphs 37.2(2)(a), (d), (f), (h) and (i) of the *Regulations*.

82. Exhibit RR-2014-002-A-01 at paras. 87-91, Vol. 11; *Transcript of Public Hearing*, 8 December 2014, at 118-19.

the Commonwealth of Independent States, including Ukraine,⁸³ the highly export-dependent nature of Ukrainian producers;⁸⁴ the likelihood that the political and military crisis with Russia will continue to cause a significant decline in Ukraine's exports to Russia;⁸⁵ the limited availability of key markets, including the United States, Mexico, Brazil and Indonesia, due to anti-dumping measures against Ukrainian plate and other downstream or similar steel products;⁸⁶ and the fact that 65,000 tonnes of Ukrainian plate were imported into Canada in the first few months following the rescission of the Tribunal's order against those goods in 2004.⁸⁷

76. At the outset, the Tribunal notes that there is considerable uncertainty regarding the likely performance of the Ukrainian plate industry in the next 12 to 18 months, given the recent military conflict between Ukraine and Russia, which has affected the Ukrainian industry's overall performance and, in particular, the performance of several Ukrainian producers that have mills in or near the conflict zone. That being said, the Tribunal can only make projections about the likely situation in the next 12 to 18 months on the basis of factual considerations that are reasonable in light of the existing circumstances.

77. Evidence on the record estimates that plate production in Ukraine decreased in 2014 by 10 percent as a result of the military conflict between Ukraine and Russia, which diminished plate producers' ability to obtain input goods due to damaged transportation, power and mining infrastructure and reduced production at coke plants.⁸⁸ Nevertheless, forecasts for Ukrainian production of plate project gains of 9 percent in each of 2015 and 2016, with the increase in 2015 returning production volumes to 2013 levels.⁸⁹ These data indicate that, despite the military conflict, overall production levels have not been severely diminished and Ukrainian producers are continuing to seek markets for their production.⁹⁰

78. In addition to reducing production, the conflict resulted in a significant decrease in plate consumption in Ukraine in 2014.⁹¹ Although Ukraine's plate consumption is expected to grow between 15 percent and 25 percent in each of 2015 and 2016, this growth follows significant decreases in both 2013 and 2014. Accordingly, Ukrainian domestic consumption volumes in 2015 and 2016 are expected to remain well below their level of 2011 or 2012.⁹²

79. The Tribunal finds that there is both significant capacity and significant excess capacity for plate production in Ukraine. Evidence on the record indicates that the capacity at reversing mills alone, which are dedicated to the production of plate, remained steady at approximately 6.7 million tonnes during the POR and is forecast to remain at this level in the next 12 to 18 months.⁹³ Due to decreases in production, excess capacity at reversing mills rose from 3 million tonnes in 2011 to nearly 4 million tonnes in 2013.⁹⁴ Furthermore,

83. Exhibit RR-2014-002-A-01 at paras. 93-100, Vol. 11.

84. *Transcript of Public Hearing*, 8 December 2014, at 118.

85. Exhibit RR-2014-002-A-01 at paras. 115, 120, Vol. 11; *Transcript of Public Hearing*, 8 December 2014, at 120-21.

86. Exhibit RR-2014-002-A-01, at paras. 122-24, Vol. 11; *Transcript of Public Hearing*, 8 December 2014, at 121.

87. *Transcript of Public Hearing*, 8 December 2014, at 121.

88. Exhibit RR-2014-002-A-11 (protected), tab 1 at 4, 18, Vol. 2.01B.

89. *Ibid.* at 18.

90. *Transcript of Public Hearing*, 8 December 2014, at 14-15, 64.

91. Exhibit RR-2014-002-27.01A (protected), Vol. 2.01 at 58.

92. Exhibit RR-2014-002-A-11 (protected), tab 1 at 12, 14, 16, Vol. 2.01B.

93. Exhibit RR-2014-002-A-11 (protected), tab 1 at 29, Vol. 2.01B; *Transcript of Public Hearing*, 8 December 2014, at 12.

94. Exhibit RR-2014-002-A-11 (protected), tab 1 at 20, 29, Vol. 2.01B; Exhibit RR-2014-002-A-04 (protected), tab 3 at 2, Vol. 12.

capacity utilization rates for reversing mills were relatively low, dropping from 54 percent in 2011 to 41 percent in 2013; they are expected to remain at similarly low 2013 levels over the next 12 to 18 months.⁹⁵

80. Evidence on the record demonstrates that the plate industry in Ukraine is heavily export-oriented;⁹⁶ Ukraine was the third largest net exporter of plate during the POR⁹⁷ and exported approximately two thirds of its plate production during this period.⁹⁸ While forecasts indicate a modest 6 percent decrease in net plate exports from Ukraine in 2014, they predict that exports will bounce back to 2013 levels in 2015.⁹⁹

81. Russia has traditionally been a key export market for Ukraine with approximately 20 percent of Ukraine's plate exports being sent to Russia.¹⁰⁰ Reports indicate that the conflict with Russia significantly disrupted Ukraine's ability to export plate to Russia in 2014. In that year, Ukraine's exports to Russia were cut in half,¹⁰¹ and fractious relations between Moscow and Kiev have the potential to lead to similar reductions over the longer term.¹⁰²

82. Moreover, anti-dumping measures in place against Ukrainian plate by the United States, Mexico, Indonesia, Brazil and Thailand¹⁰³ have created barriers for Ukrainian exports in these markets and will make the Canadian market relatively more attractive, should the Tribunal's finding be allowed to expire.

83. On the basis of this evidence, the Tribunal concludes that Ukraine would likely capitalize on all available export markets, including Canada, if the finding is allowed to expire. This is supported by a public statement by Arcelor Mittal, a global steel producer with operations in Ukraine, that it will divert its domestic production to export markets because of reduced domestic demand¹⁰⁴ and by Ukrainian producers which, in their responses to questionnaires, confirmed their willingness to export small volumes of the subject goods to Canada if the finding were allowed to expire.¹⁰⁵ In addition, higher hot-rolled steel plate prices in Canada compared to most other countries would likely make the Canadian market relatively more attractive to Ukrainian exporters.

84. At the hearing, witnesses testified that 65,000 tonnes, representing 13 percent by volume of the domestic market, were imported into Canada between the rescission of the order in Expiry Review No. RR-2003-001 in May 2004 and the end of that year. They suggested that a similar situation could occur if the finding were allowed to expire in this case.¹⁰⁶ Although the Tribunal considers that it is possible that the volume of imports from Ukraine will reach such levels, it is difficult for the Tribunal to conclusively assess the likelihood that similar volumes would be imported over the next 12 to 18 months due to a lack of corroborating evidence on the record with regard to import volumes in 2004 or evidence that would help put such volumes into context.

95. Exhibit RR-2014-002-A-04 (protected), tab 3 at 2, Vol. 12.

96. Exhibit RR-2014-002-A-09, tab 28 at 2, Vol. 11A.

97. Exhibit RR-2014-002-A-11 (protected), tab 1 at 55-56, Vol. 2.01B.

98. *Transcript of Public Hearing*, 8 December 2014, at 12-13; Exhibit RR-2014-002-A-04 (protected), tab 3 at 2, Vol. 12.

99. Exhibit RR-2014-002-A-11 (protected), tab 1 at 56, Vol. 2.01B.

100. *Ibid.*, tab 1 at 5, tab 7 at 1, 4, 7, 10; *Transcript of Public Hearing*, 8 December 2014, at 120.

101. *Transcript of Public Hearing*, 8 December 2014, at 15.

102. Exhibit RR-2014-002-A-03, tab 8 at 2-3, Vol. 11; Exhibit RR-2014-002-34.12, Vol. 1A at 109; Exhibit RR-2014-002-A-09, tab 29, Vol. 11A.

103. Exhibit RR-2014-002-05, Table 2, Vol. 1.1.

104. *Transcript of Public Hearing*, 8 December 2014, at 64; Exhibit RR-2014-002-A-09, tab 26, Vol. 11B.

105. Exhibit RR-2014-002-22.02 (protected), Vol. 6.1A at 6; Exhibit RR-2014-002-22.01 (protected), Vol. 6.1 at 5.

106. *Transcript of Public Hearing*, 8 December 2014, at 18-19, 98-99.

85. Nevertheless, the Tribunal believes that the absolute volume of subject goods that would enter the domestic market is likely to be significantly greater than the small volumes suggested by the Ukrainian producers. The absolute volume is likely to reach or even exceed the annual volume of subject goods imported into Canada between 2006 and 2008, the three full years of the Tribunal's period of inquiry in Inquiry No. NQ-2009-003.¹⁰⁷ The Tribunal makes this finding on the basis that Ukraine has considerable excess capacity, faces decreased demand in its domestic market, has reduced export opportunities in a key export market and faces strong competition from other exporting countries in markets outside Canada.¹⁰⁸ Moreover, evidence on the record shows that importers shift sources of supply quickly in order to take advantage of new opportunities.¹⁰⁹ In light of the weak conditions that are likely to exist in the domestic market over the next 12 to 18 months where production volumes are likely to be flat, demand is likely to be weak and prices are likely to be lower than 2014 prices, the Tribunal concludes that this volume of subject goods is significant, both in absolute and relative terms.

Likely Prices of Dumped Goods and Their Effect on Prices of Like Goods

86. The Tribunal must consider whether, if the finding is allowed to expire, the dumping of the subject goods is likely to significantly undercut the prices of like goods, depress those prices, or suppress them by preventing increases in those prices that would likely have otherwise occurred.¹¹⁰ In this regard, the Tribunal distinguishes the price effects of the dumped goods from any price effects that would likely result from other factors affecting prices, including the price effects of imports from non-subject countries.

87. Essar Algoma and SSAB submitted that, while the finding has been in place, non-subject imports from a number of countries, most recently, Russia and India, have been sold in the Canadian market at low prices. They also argued that, if the finding is allowed to expire and if the subject goods re-enter the Canadian market without the imposition of anti-dumping duties, the price of the subject goods would likely undercut the prices of low-priced non-subject imports in the Canadian market in order to gain market share.¹¹¹

88. At the outset, the Tribunal notes that the subject goods are commodity products and that price is the most important factor driving a customer's purchasing decision, provided the products meet desired specifications.¹¹²

89. As there were almost no imports of the subject goods during the POR, there are limited data with which to compare the prices of the subject goods in Canada with the prices of non-subject imports and like goods. However, the Tribunal used other evidence on the record in order to determine the likely price effects that the subject goods are likely to have on the like goods if the finding is allowed to expire.

90. Questionnaire responses indicating the Ukrainian producers' willingness to export the subject goods to Canada show that they believe that they are capable of competing with non-subject imports in the Canadian market.¹¹³ It is reasonable to assume that the Ukrainian producers took into account the conditions

107. Exhibit RR-2014-002-06A (protected), Table 3, Vol. 2.1.

108. Exhibit RR-2014-002-A-03, tab 8 at 2-3, Vol. 11.

109. *Transcript of Public Hearing*, 8 December 2014, at 18, 54.

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

111. Exhibit RR-2014-002-A-01 at para. 139, Vol. 11; *Transcript of Public Hearing*, 8 December 2014, at 59.

112. Exhibit RR-2014-002-A-07 at para. 11, Vol. 11; Exhibit RR-2014-002-16.02 (protected), Vol. 4A at 8; Exhibit RR-2014-002-18.19, Vol. 5A at 133; Exhibit RR-2014-002-18.05A, Vol. 5 at 82.

113. Exhibit RR-2014-002-22.02 (protected), Vol. 6.1A at 6; Exhibit RR-2014-002-22.01 (protected), Vol. 6.1 at 5.

likely to exist in the Canadian market, including the presence of low-priced imports from non-subject countries, when responding to the Tribunal's question regarding likely export volumes.

91. Evidence on the record supports the view that Ukrainian producers are capable of competing with both domestic producers and foreign producers of low-priced imports. One source indicates that the transaction price of the subject goods in export markets in October 2014 was as low as \$656/tonne.¹¹⁴ Data collected from foreign producer questionnaire responses indicate a similar average export price for the subject goods in interim 2014.¹¹⁵

92. Evidence on the record shows that the average unit value of sales from production by the domestic industry was \$963/tonne in the first half of 2014.¹¹⁶ Witness testimony indicated that domestic prices fell significantly in the second half of 2014.¹¹⁷ However, even factoring in this decrease in price and the additional cost of shipping to North America, the Tribunal considers that the subject goods would almost certainly undercut the prices of like goods by a significant margin.

93. Furthermore, the Tribunal heard testimony that imports from India and Russia have generally been undercutting the prices of like goods by \$150/tonne to \$200/tonne and have entered the Canadian market at around \$700/tonne.¹¹⁸ Data collected from importers indicate a somewhat higher average price for imports from these two countries in interim 2014.¹¹⁹ In either case, the evidence regarding Ukrainian export prices indicates that, even if additional shipping costs were added, Ukrainian producers could price the subject goods at a level equal to or below non-subject imports from Russia and India. This is supported by witness testimony that the price of the subject goods in Canada is likely to be between \$670/tonne and \$680/tonne.¹²⁰ Moreover, the Tribunal heard testimony that foreign exporters or brokers seem to be willing to leave "... money on the table ...",¹²¹ i.e. not undercut at a price just below domestic prices, in order to make sales as long as they are able to achieve an acceptable margin of profit on the transaction.¹²²

94. In the Tribunal's view, the Ukrainian producers' willingness and ability to price the subject goods below the price of both like goods and low-priced non-subject goods and their strong incentive to find new markets to replace diminished domestic demand and export opportunities in Russia make it likely that they will export the subject goods to Canada at prices that undercut prices of both like goods and non-subject goods if the finding is allowed to expire.

95. During the hearing, the Tribunal heard testimony that a surge in low-priced imports from Russia and India had put downward pressure on the prices of like goods in the fourth quarter of 2014.¹²³ This has

114. Exhibit RR-2014-002-A-10 (protected), tab 34, Vol. 2.01A. This price has been converted from U.S. dollars to Canadian dollars. See, also, *Transcript of Public Hearing*, 8 December 2014, at 19.

115. Exhibit RR-2014-002-06B (protected), Table 54, Vol. 2.1.

116. Exhibit RR-2014-002-05, Table 24, Vol. 1.1.

117. *Transcript of Public Hearing*, 8 December 2014, at 33.

118. *Ibid.* at 19-20, 22-23, 97; Exhibit RR-2014-002-06A (protected), Table 25, Vol. 2.1.

119. Exhibit RR-2014-002-06A (protected), Table 25, Vol. 2.1.

120. *Transcript of Public Hearing*, 8 December 2014, at 19.

121. *Ibid.* at 106.

122. *Ibid.* at 105-108.

123. *Transcript of Public Hearing*, 8 December 2014, at 17-18, 59.

forced the domestic mills to lower their prices, as evidenced by examples provided by Essar Algoma,¹²⁴ and has caused their domestic price to drop significantly below the CRU U.S. Midwest spot price.¹²⁵

96. With respect to the subject goods, witnesses for the domestic mills testified that they expected the domestic price of like goods to decrease by an additional \$50/tonne to \$80/tonne as a result of competition from the subject goods if the finding were allowed to expire.¹²⁶

97. On the basis of this evidence, the Tribunal believes that competition between the subject goods and low-priced non-subject imports could lead to a downward price spiral, which would increase the gap between the domestic industry's prices and those of the low-priced imports. The Tribunal considers it likely that, just as it did when competing with low-priced non-subject imports, the domestic industry will need to respond by lowering its prices even further in an effort to maintain existing sales levels and market share. Accordingly, the Tribunal finds that subject imports are likely to cause price depression if the finding is allowed to expire.

98. Given these findings, the Tribunal does not consider it necessary to also address whether the subject goods are likely to cause price suppression.

Likely Impact of the Dumped Goods on the Domestic Industry

99. Essar Algoma and SSAB argued that the vulnerable position of the domestic mills indicates that, if the finding is allowed to expire, the entry of the subject goods at prices similar to or below those of low-priced non-subject imports will cause injury.¹²⁷ In particular, they pointed to the domestic mills' failure to capture market share despite the finding in *Plate VII* to suggest that they would similarly be unable to capture market share if they had to compete with the low-priced subject goods.¹²⁸ Essar Algoma and SSAB also argued that the domestic mills' current poor financial results would worsen. Mr. Clark estimated that Essar Algoma's annual earnings on like goods would decline by \$15 million to \$20 million if the finding is allowed to expire and indicated that Essar Algoma would not be able to operate profitably with such a decrease in earnings.¹²⁹

100. In addition, Essar Algoma and SSAB argued that the conditions faced by Ukrainian producers, such as low capacity utilization rates, a production imperative, soft Ukrainian and global demand for plate, strong price competition by Chinese exporters in many export markets and the recent turmoil in Ukraine, made it highly likely that the domestic industry would suffer injury if the Tribunal's finding were allowed to expire.¹³⁰

101. As discussed above, the Tribunal finds that the expiry of the finding will result in the importation of significant volumes of the subject goods at prices similar to or below those of non-subject imports from India and Russia and that such pricing will undercut and depress the prices of the like goods. In the face of lower import prices, the domestic industry would have to decide whether to reduce its prices in order to

124. Exhibit RR-2014-002-A-08 (protected) at paras. 21-45, Vol. 12.

125. *Transcript of Public Hearing*, 8 December 2014, at 17, 20, 101; *Transcript of In Camera Hearing*, 8 December 2014, at 7.

126. *Transcript of Public Hearing*, 8 December 2014, at 23, 100-101; Exhibit RR-2014-002-A-08 (protected) at para. 53, Vol. 12.

127. Exhibit RR-2014-002-A-01 at para. 165, Vol. 11.

128. *Ibid.* at paras. 147-49.

129. *Transcript of Public Hearing*, 8 December 2014, at 33; Exhibit RR-2014-002-A-02 (protected) at para. 160, Vol. 12.

130. Exhibit RR-2014-002-A-01 at para. 58, Vol. 11.

remain competitive with the floor market price or keep its prices at current levels. If it chooses the former, the domestic industry would likely suffer reduced net sales revenue on a per unit basis. If it chooses the latter, it would likely lose sales and market share and may have to reduce production volumes in response. In either case, the domestic industry would suffer a reduction in its overall profitability that would be greater than that which the domestic industry would likely experience if the finding were continued. This reduction in profitability, in turn, would likely lead to lower returns on investment and a reduced ability to make capital investments.¹³¹

102. In the context of a domestic industry that is already in a vulnerable financial position, given its collective loss of a total of \$59 million over the POR¹³² and the Tribunal's finding that the domestic industry will likely remain in such a position if the finding is continued, given the state of the marketplace, the Tribunal considers that the influx of the subject goods and the resulting downward spiral in prices will have serious consequences on the domestic industry and will weaken it even further.

103. For these reasons, the Tribunal finds that the expiry of the finding, in and of itself, is likely to cause material injury.

EXCLUSIONS

104. The Tribunal received nine requests by Metinvest to exclude products from an order continuing the finding. On December 2, 2014, Metinvest withdrew one of these requests.¹³³

105. Until recently, the Tribunal did not typically devote time during a hearing to address requests for product exclusions, but instead relied upon a "paper process". This process allowed the Tribunal to determine the number of exclusion requests filed, if any, and whether the domestic industry consented to or opposed them. This "paper process" was also the means by which the Tribunal typically gathered documentary evidence and submissions from parties necessary to dispose of the exclusion requests.

106. Consistent with these procedures, Metinvest submitted its initial requests along with its documentary evidence, Essar Algoma filed responses and documentary evidence, and Metinvest submitted replies.

107. In a number of recent cases, the Tribunal has found it beneficial to hear *viva voce* evidence and argument on the issue of product exclusions.¹³⁴ Similarly, in this expiry review, the Tribunal informed the parties that had participated in the product exclusion "paper process" that it would seek clarification of outstanding factual and legal issues relevant to the exclusion requests at the hearing and, as such, would provide the parties with the opportunity to make submissions and present oral testimony.¹³⁵

108. Before addressing the individual requests for product exclusions, it is important to outline the general principles upon which the Tribunal relies when determining whether or not to grant product exclusion requests.

131. *Transcript of Public Hearing*, 8 December 2014, at 99.

132. Exhibit RR-2014-002-05, Table 36, Vol. 1.1; *Transcript of Public Hearing*, 8 December 2014, at 128.

133. Exhibit RR-2014-002-40.01, Vol. 1.5 at 124.

134. See, for example, *Aluminum Extrusions* (17 March 2014), RR-2013-003 (CITT) [*Aluminum Extrusions Review*]; *Plate VII*.

135. Exhibit RR-2014-002-42, Vol. 1C at 2; Exhibit RR-2014-002-46, Vol. 1C at 18-19.

General Principles Concerning Product Exclusion Requests

109. Subsection 43(1) of *SIMA* gives the Tribunal the authority to grant exclusions from the scope of an order or finding.¹³⁶ As the Tribunal has repeatedly stated, exclusions are an extraordinary remedy that may be granted at the Tribunal's discretion.¹³⁷ In the context of an expiry review, the rationale is that, despite the general conclusion that all goods covered by an order are likely to cause injury to the domestic industry, there may be case-specific evidence that imports of particular products captured by the definition of the goods are not likely to cause injury to the domestic industry.

110. In determining whether the granting of an exclusion is likely to cause injury to the domestic industry, the Tribunal has considered such factors as whether the domestic industry produces, actively supplies or is capable of producing goods that are like or substitutable for the subject goods for which the exclusion is requested.¹³⁸

111. While this is not an exhaustive list and the weight given to each factor will vary on a case-by-case basis, the Tribunal, in *Fasteners Review 2009*, stated that the emphasis on whether the domestic industry has the capability to produce identical or substitutable products is more appropriate in the context of an injury inquiry and that this factor is much less relevant in the context of an expiry review.¹³⁹ The Tribunal reasoned that, if, after five years of protection against injurious dumping and/or subsidizing, the domestic industry had not produced like or substitutable goods to the product for which an exclusion was requested, it would be difficult to understand how the domestic industry would be injured if it was unable to sell like goods or substitutable goods in the 18 to 24 months that followed the expiry review.¹⁴⁰

112. However, in *Aluminum Extrusions Review*, the Tribunal held that it was still appropriate to consider whether or not the domestic industry was capable of producing like goods when the goods in question were custom products that were generally only produced when ordered by a customer, as opposed to the off-the-shelf products which were the subject of *Fasteners Review 2009*.¹⁴¹

113. Additionally, the Tribunal, in *Aluminum Extrusions Review*, clarified that requesters of exclusions have an evidentiary burden to file evidence supporting their requests and that the Tribunal would generally reject product exclusion requests where there was a lack of documentary evidence supporting the requesters' claims. However, the Tribunal considered that there was also an evidentiary burden on domestic producers to file evidence rebutting the evidence filed by the requesters and that a failure to do so could result in the requested exclusions being granted.¹⁴² Accordingly, each party ought to put forward its best evidence either in support of or against the granting of exclusions so that the Tribunal has all the evidence necessary to reach an informed decision on the issue of whether the importation of particular products covered by the definition of the subject goods for which exclusions are requested is likely to cause injury to the domestic industry.¹⁴³

136. Binational Panel, *Certain Cold-rolled Steel Products Originating or Exported From the United States of America (Injury)* (13 July 1994), CDA-93-1904-09.

137. *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) [*Aluminum Extrusions*] at para. 339.

138. *Aluminum Extrusions Review* at para. 188; *Certain Fasteners* (6 January 2010), RR-2009-001 (CITT) [*Fasteners Review 2009*] at para. 242; *Certain Stainless Steel Wire* (30 July 2004), NQ-2004-001 (CITT) at para. 96.

139. *Fasteners Review 2009* at para. 246.

140. *Ibid.* at para. 248.

141. *Aluminum Extrusions Review* at para. 205.

142. *Ibid.* at paras. 192-94.

143. *Ibid.* at para. 195.

Analysis of Specific Product Exclusion Requests

114. The Tribunal will now address Metinvest's remaining eight product exclusion requests. These requests can generally be divided into three categories: requests relating to the scope of the product definition in *Plate VII*, requests based on thickness and width, and requests based on material chemical properties, such as vacuum degassing, normalization and low-sulfur content.

115. In its submissions, Metinvest noted that granting its product exclusion requests would ensure that the scope of the product definition in this expiry review matched the product definition in *Plate VII*. In this regard, Metinvest's product exclusion requests matched either a product exclusion contained within the product definition in *Plate VII* or an exclusion granted by the Tribunal in that case. Metinvest contended that granting the same exclusions in this case would simplify enforcement for the CBSA¹⁴⁴ and would ensure that Ukraine received the same most-favoured-nation treatment as that accorded to the countries subject to the Tribunal's finding in *Plate VII*.¹⁴⁵

Product Exclusion Request Nos. 1 and 2

116. Metinvest's first two requests were as follows:

- hot-rolled carbon steel plate and high-strength low-alloy steel plate for use in the manufacture of tube (also known as skelp); and
- hot-rolled carbon steel plate and high-strength low-alloy steel plate in coil form.

117. Essar Algoma consented to these exclusion requests but maintained that they covered products that were already excluded from the scope of the product definition. Specifically, Essar Algoma submitted that tubes and pipes are terms used interchangeably in the industry and that, since pipes are explicitly excluded by the product definition, tubes are also excluded. Essar Algoma also submitted that the expression "cut to length" in the product definition implies that plate in coil form is excluded from its scope.¹⁴⁶

118. Metinvest argued that granting these product exclusion requests would eliminate certain points of ambiguity in the scope of the product.¹⁴⁷ Metinvest also noted that the domestic industry included these same clarifications in *Plate VII* when defining the scope of the product, which demonstrates that the changes are necessary.¹⁴⁸

119. The Tribunal agrees with Essar Algoma that these changes may not technically be necessary. Even so, the Tribunal does not have the authority in an expiry review to determine which goods will ultimately be subject to anti-dumping or countervailing duties, as this is an issue to be determined by the CBSA at the time of importation.¹⁴⁹ Therefore, the Tribunal accepts that granting both exclusions may be useful for clarifying the scope of the order.

120. In light of the foregoing, and noting the consent of Essar Algoma, these two product exclusion requests are granted.

144. Exhibit RR-2014-002-36.01, Vol. 1.5 at 4, 8, 11, 14, 21, 29.

145. *Transcript of Public Hearing*, 8 December 2014, at 147-48; Exhibit RR-2014-002-40.01, Vol. 1.5 at 145-47, 223-25.

146. Exhibit RR-2014-002-38.01, Vol. 1.5 at 67; *Transcript of Public Hearing*, 8 December 2014, at 35.

147. Exhibit RR-2014-002-36.01, Vol. 1.5 at 4, 8.

148. *Transcript of Public Hearing*, 8 December 2014, at 140.

149. *Aluminum Extrusions Review* at para. 196.

Product Exclusion Request Nos. 5 and 7

121. Metinvest made the following two product exclusion requests on the basis of the sulfur content of the imported goods:

- 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; and

- 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.

122. Essar Algoma consented to these two requests on the condition that they be revised from “. . . has a sulfur content of less than 0.005 percent” to “. . . is certified to contain a sulfur content of less than 0.005 percent”.¹⁵⁰ While Essar Algoma had consented to the wording of these exclusion requests in *Plate VII* without the stated certification standard, it argued in this case that the clarification ought to be included.¹⁵¹

123. Metinvest disputed the addition of the certification requirement, arguing that it would be discriminatory against Ukraine, since proving certification is not necessary for the named countries in *Plate VII*.¹⁵² Essar Algoma maintained that such a requirement would not be discriminatory because, unless the CBSA were to sample each plate, it would already be looking to the mill test report for proof of the chemical composition of the plate.¹⁵³ Furthermore, both Messrs. Brandow and Clark testified that customers require a mill test certificate (also known as a material test report) in order to be satisfied that a plate product has a sulfur content of less than 0.005 percent.¹⁵⁴ Therefore, practically speaking, sales of this product would not take place unless the goods were delivered with the certification.

124. Considering that there is no evidence of potential injury to the domestic industry from granting the exclusion request as worded and that, according to witness testimony, shipments made under this exclusion would necessarily be accompanied by a mill certificate based on demands from the importer, the Tribunal sees no justification for imposing an additional certification requirement that was not deemed necessary by

150. Exhibit RR-2014-002-38.01, Vol. 1.5 at 68.

151. *Transcript of Public Hearing*, 8 December 2014, at 134-35.

152. *Ibid.* at 144-54.

153. *Ibid.* at 134-35.

154. *Ibid.* at 39-40.

the domestic industry when the same request was made in *Plate VII*. Therefore, request Nos. 5 and 7 are granted without amendment.

Product Exclusion Request No. 3

125. Metinvest requested that the following product be excluded from the Tribunal's order in this expiry review:

- 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.

126. The same product exclusion was accepted by Essar Algoma and granted by the Tribunal in *Plate VII*.¹⁵⁵

127. Metinvest submitted that the Tribunal should grant its request in this case because there has not been a change in circumstances in Essar Algoma's ability to produce these products since the Tribunal's finding in *Plate VII*.¹⁵⁶ Essar Algoma objected to this exclusion request on the basis that it is now capable of producing these products, as it has recently imported the slabs necessary to roll plate thicker than 2.75 inches and that no capital investment would be required for it to do so.¹⁵⁷

128. The Tribunal accepts that evidence on the record demonstrates that Essar Algoma has imported slabs that can be used to produce products meeting the description of the products in this exclusion request. Accordingly, the Tribunal finds that Essar Algoma is now capable of producing hot-rolled steel plate with the above dimensions using imported slabs.

129. However, this is not where the Tribunal's analysis ends. In the Tribunal's view, even if Essar Algoma is capable of producing these products, there is no evidence on the record to suggest that Essar Algoma has actually produced or is currently producing them. Moreover, on balance, the Tribunal is not convinced by either the witness testimony or the documentary evidence that Essar Algoma has a meaningful business plan for penetrating this segment of the plate market that goes beyond the wishes and general statements that it heard during the hearing.¹⁵⁸ In particular, the Tribunal finds the witness testimony with respect to the planned pricing and marketing of these products to be quite non-specific.¹⁵⁹ At the time of the inquiry in *Plate VII*, Essar Algoma did not object to the granting of this product exclusion.¹⁶⁰ Therefore, the Tribunal finds that any plans to serve this segment of the market must be relatively new and are not yet at the execution stage. Finally, the Tribunal heard testimony that Essar Algoma initially imported these thicker slabs in order for it to maintain production throughout a period of blast furnace maintenance.¹⁶¹ After weighing the evidence, the Tribunal finds that producing the products described in product exclusion request No. 3 was not the main purpose of importing these slabs.

130. Furthermore, the Tribunal is not convinced that, even if Essar Algoma produced these goods, it would be able to compete with imports in this segment of the market. In this respect, the Tribunal must consider the unique circumstances arising from the fact that potentially dumped plate produced to these

155. *Plate VII* at para. 206.

156. *Transcript of Public Hearing*, 8 December 2014, at 146-47.

157. *Transcript of Public Hearing*, 8 December 2014, at 36-37, 75, 133; Exhibit RR-2014-002-39.01 (protected), Vol. 2.5 at 16.

158. *Transcript of Public Hearing*, 8 December 2014, at 50-51.

159. *Transcript of In Camera Hearing*, 8 December 2014, at 23-25.

160. *Plate VII* at para. 206.

161. *Transcript of Public Hearing*, 8 December 2014, at 75-76.

specifications from the Plate VII countries is able to enter Canada without the imposition of anti-dumping duties as a result of the exclusion that the Tribunal granted in that case. Essar Algoma's products would have to compete directly with these imports. In that regard, the Tribunal recalls that, in the context of its submissions on the likelihood of injury, witnesses for the domestic industry indicated that it is very difficult to compete with dumped imports in other segments of the plate market.¹⁶² The Tribunal sees no reason why it would be any easier for the domestic industry to compete with dumped imports in this segment of the plate market. In addition, when cross-examined about the pricing of these goods in light of the low-priced imports from the Plate VII countries, including the additional freight charges associated with importing slab, Ms. Devoni indicated only that these were value-added goods and that Essar Algoma has found it economical to import slabs.¹⁶³ While the Tribunal accepts that these are value-added products, the Tribunal is not convinced that this fact makes the domestic industry more competitive with imported goods produced to the same specifications.

131. The Tribunal finds that, if the domestic industry were injured, this injury would largely be attributable to the exclusion granted by the Tribunal in *Plate VII*. The Tribunal is not convinced that Essar Algoma would suffer any additional injury as a result of this exclusion request being granted and finds accordingly.

132. In light of the foregoing, the Tribunal grants product exclusion request No. 3.

Product Exclusion Request Nos. 4, 6 and 8

133. As with exclusion request No. 3, Essar Algoma objected to the following three remaining exclusion requests on the basis that it could produce identical products by importing the slabs necessary to roll these types of hot-rolled steel plate.¹⁶⁴

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

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

- 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 table appended to the order.

162. *Ibid.* at 102; *Transcript of In Camera Hearing*, 8 December 2014, at 24, 31.

163. *Transcript of Public Hearing*, 8 December 2014, at 84-85.

164. Exhibit RR-2014-002-38.01, Vol. 1.5 at 69-71.

134. In *Plate VII*, the Tribunal granted these three exclusion requests, request No. 4 because it was unopposed by the domestic industry, request No. 6 on the basis that it was unlikely that the domestic industry would be able to import the vacuum-degassed slabs required to produce these products and request No. 8 on the basis that the domestic industry was not capable of producing a substitutable product.¹⁶⁵

135. In this case, Essar Algoma argued that it could import the slabs necessary to make products of these descriptions.¹⁶⁶ Moreover, witnesses testified that Essar Algoma had made inquiries with respect to importing such slabs and had received a positive response.¹⁶⁷

136. However, during cross-examination, Essar Algoma's ability to import slabs meeting the necessary specifications was challenged.¹⁶⁸ In its appreciation of the evidence heard at the hearing, the Tribunal finds that the arguments put forward by Essar Algoma on this topic were less than convincing.

137. In addition, the Tribunal notes its findings in *Plate VII* that it would be difficult for the domestic industry to import the vacuum-degassed slabs necessary to produce products meeting the description in exclusion request No. 6.¹⁶⁹

138. In any event, even if the Tribunal accepts that the domestic industry were capable of producing products meeting the specifications of these exclusion requests with imported slabs, the Tribunal is not convinced that the domestic industry would be injured by the subject goods meeting these specifications and finds accordingly. As discussed more fully with respect to exclusion request No. 3, the Tribunal does not consider that the granting of these exclusion requests would result in material injury to the domestic industry in light of the fact that the domestic industry is not currently producing products meeting these descriptions and the fact that dumped imports from the *Plate VII* countries meeting these descriptions would likely make it difficult for the domestic industry to compete.

139. In light of the foregoing, the Tribunal grants product exclusion request Nos. 4, 6 and 8.

CONCLUSION

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

165. *Plate VII* at paras. 206, 213-17, 230-32.

166. Exhibit RR-2014-002-38.01A, Vol. 1.5 at 110-12; Exhibit RR-2014-002-39.01A (protected), Vol. 2.5 at 51-53.

167. *Transcript of Public Hearing*, 8 December 2014, at 38, 41-42, 48; *Transcript of In Camera Hearing*, 8 December 2014, at 11-12.

168. *Transcript of In Camera Hearing*, 8 December 2014, at 12-18; *Transcript of Public Hearing*, 8 December 2014, at 47-51.

169. *Plate VII* at paras. 230-32.

141. On the basis of the foregoing analysis, and pursuant to paragraph 76.03(12)(b) of *SIMA*, the Tribunal hereby continues its finding in respect of the subject goods, but excludes the goods described in the appendix attached to its order.

Serge Fréchette
Serge Fréchette
Presiding Member

Daniel Petit
Daniel Petit
Member

Jean Bédard
Jean Bédard
Member