



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Dumping and Subsidizing

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## DETERMINATION AND REASONS

Preliminary Injury Inquiry  
No. PI-2015-001

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

*Determination issued  
Monday, August 10, 2015*

*Reasons issued  
Monday, August 24, 2015*

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IN THE MATTER OF a preliminary injury inquiry, pursuant to subsection 34(2) of the *Special Import Measures Act*, respecting:

**HOT-ROLLED CARBON STEEL PLATE AND HIGH-STRENGTH  
LOW-ALLOY STEEL PLATE ORIGINATING IN OR EXPORTED FROM THE  
REPUBLIC OF INDIA AND THE RUSSIAN FEDERATION**

**PRELIMINARY DETERMINATION OF INJURY**

The Canadian International Trade Tribunal, pursuant to the provisions of subsection 34(2) of the *Special Import Measures Act*, has conducted a preliminary injury inquiry into whether the evidence discloses a reasonable indication that the alleged injurious dumping and subsidizing of the goods subject to this preliminary injury inquiry have caused injury or retardation or are threatening to cause injury to the domestic industry.

The subject goods in this preliminary injury inquiry 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, and thicknesses from 0.187 inches (+/- 4.75 mm) up to and including 3.0 inches (76.2 mm) (with all dimensions being plus or minus allowable tolerances contained in the applicable standards), but excluding plate for use in the manufacture of pipe and tube (also known as skelp), plate in coil form, plate having a rolled, raised figure at regular intervals on the surface (also known as floor plate), originating in or exported from the Republic of India and the Russian Federation. For greater certainty, the subject goods include steel plate which contains alloys greater than required by recognized industry standards, provided the steel does not meet recognized industry standards for an alloy-grade steel plate.

Hot-rolled carbon steel plate and high-strength low-alloy steel plate are manufactured to meet certain Canadian Standards Association (CSA) and/or ASTM specifications, or equivalent specifications.

Also excluded from the subject goods is 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.

Also excluded from the subject goods is 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.

This preliminary injury inquiry follows the notification, on June 10, 2015, that the President of the Canada Border Services Agency had initiated investigations into the alleged injurious dumping and subsidizing of the above-mentioned goods.

Pursuant to subsection 37.1(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby determines that there is evidence that discloses a reasonable indication that the dumping and subsidizing of the above-mentioned goods have caused injury or are threatening to cause injury to the domestic industry.

Serge Fréchette  
Serge Fréchette  
Presiding Member

Peter Burn  
Peter Burn  
Member

Ann Penner  
Ann Penner  
Member

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## STATEMENT OF REASONS

### BACKGROUND

1. On June 10, 2015, following a complaint filed on April 20, 2015, by Essar Steel Algoma Inc. (Essar Algoma), the President of the Canada Border Services Agency (CBSA) initiated investigations into the alleged injurious dumping and subsidizing of certain hot-rolled carbon steel plate and high-strength low-alloy steel plate<sup>1</sup> (hot-rolled steel plate) originating in or exported from the Republic of India (India) and the Russian Federation (Russia) (the subject goods).
2. On June 11, 2015, the Canadian International Trade Tribunal (the Tribunal) issued a notice of commencement of preliminary injury inquiry.<sup>2</sup>
3. Two domestic producers of hot-rolled steel plate, Evraz Inc. NA Canada (Evraz) and SSAB Central Inc. (SSAB), filed letters with the CBSA indicating their support of the complaint.<sup>3</sup> Neither is a party to this proceeding or made any submissions.
4. The complaint is opposed by Jindal Steel and Power Limited (Jindal), AO Severstal Management (AO Severstal) and the Ministry of Industry and Trade of the Russian Federation (MITRF).
5. On August 10, 2015, pursuant to subsection 37.1(1) of the *Special Import Measures Act*,<sup>4</sup> the Tribunal determined that there was evidence that disclosed a reasonable indication that the dumping and subsidizing of the subject goods had caused or were threatening to cause injury to the domestic industry.

### CBSA'S DECISION TO INITIATE INVESTIGATIONS

6. The CBSA was of the opinion that there was evidence that the subject goods had been dumped and subsidized, as well as evidence that disclosed a reasonable indication that the dumping and subsidizing of the subject goods had caused injury or were threatening to cause injury.
7. In arriving at its decision to initiate the investigations pursuant to subsection 31(1) of *SIMA*, the CBSA relied on information with respect to the volume of dumped and subsidized goods for the period from January 1, 2014, to March 31, 2015 (POI).

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1. Exhibit PI-2015-001-05, Vol. 1X at 231, provides the full scope of the goods subject to this preliminary injury inquiry.
2. C. Gaz. 2015.I.1282-84.
3. Exhibit PI-2015-001-02.01, attachment 5, Vol. 1A at 70, 71.
4. R.S.C., 1985, c. S-15 [*SIMA*].

8. The CBSA estimated the margins of dumping, amounts of subsidy and the volumes of dumped and subsidized goods for each of the subject countries as follows:<sup>5</sup>

<b>Subject Country</b>	<b>Estimated Margin of Dumping (as a percentage of export price)</b>	<b>Estimated Amount of Subsidy (as a percentage of export price)</b>	<b>Estimated Volume of Dumped/Subsidized Imports (as a percentage of total imports)</b>
India	4.8	20.3	17.1
Russia	20.1	18.9	3.9

9. The CBSA determined that the estimated margins of dumping and amounts of subsidy were not insignificant and that the estimated volumes of dumped and subsidized goods were not negligible.<sup>6</sup>

## **SUBMISSIONS ON INJURY AND THREAT OF INJURY**

### **Essar Algoma**

10. Essar Algoma submitted that the dumping and subsidizing of the subject goods have caused material injury to the domestic industry. In support of its allegations, it provided evidence of increased volumes of imports of the subject goods, lost sales, price undercutting, price suppression, loss of market share, underutilization of production capacity, loss of profitability and adverse impacts on employment.

11. Essar Algoma also submitted that the dumping and subsidizing of the subject goods threaten to cause injury. It suggested that volumes of dumped and subsidized imports are increasing and will continue to do so, given the production capacity in the subject countries, their export focus on the Canadian market, and the existence of trade measures on hot-rolled steel plate and other flat-rolled steel products by countries other than Canada. Further, it argued that the prices of the subject imports are likely to undercut, depress and suppress domestic prices, which will translate into gains in market share for the subject goods at the expense of like goods.

### **Parties Opposed to the Complaint**

12. Jindal and MITRF alleged that Essar Algoma failed to discharge its evidentiary burden and that the evidence presented in the complaint does not disclose a reasonable indication that the alleged injurious dumping and subsidizing of the subject goods have caused injury or threaten to cause injury to the domestic industry.

## **ANALYSIS**

### **Legislative Framework**

13. The Tribunal's mandate in a preliminary injury inquiry is set out in subsection 34(2) of *SIMA*. It requires the Tribunal to determine "... whether the evidence discloses a reasonable indication that the dumping or subsidizing of the [subject] goods has caused injury or retardation or is threatening to cause injury."

5. Exhibit PI-2015-001-05, Vol. 1X at 242, 247.

6. *Ibid.* at 241-42, 247.

14. The “reasonable indication” standard that applies in a preliminary injury inquiry is lower than the evidentiary threshold that applies in a final injury inquiry under section 42 of *SIMA*. The evidence in question need not be “. . . conclusive, or probative on a balance of probabilities . . . .”<sup>7</sup> Nevertheless, simple assertions are not sufficient and must be supported by relevant evidence.<sup>8</sup>

15. In making its preliminary injury determination, the Tribunal takes into account the factors prescribed in section 37.1 of the *Special Import Measures Regulations*,<sup>9</sup> including the import volumes of the dumped and subsidized goods, the effect of the dumped and subsidized goods on the price of like goods, the resulting economic impact of the dumped and subsidized goods on the domestic industry and, if injury or threat of injury is found to exist, whether a causal relationship exists between the dumping and subsidizing of the goods and the injury or threat of injury.

16. However, before examining the allegations of injury and threat of injury, the Tribunal must identify the like goods and the domestic industry that produces those goods. This preliminary injury analysis is required because subsection 2(1) of *SIMA* defines “injury” as “. . . material injury to a domestic industry” and “domestic industry” 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 . . . .”

### Like Goods and Classes of Goods

17. In order to assess whether the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury or are threatening to cause injury to the domestic producers of like goods, the Tribunal must first define the scope of the like goods in relation to the subject goods. It may also consider whether the subject goods constitute one or more classes of goods.

18. Subsection 2(1) of the *SIMA* defines “like goods”, in relation to 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 characteristics of which closely resemble those of the other goods.

19. In deciding the issue of like goods and classes of goods, the Tribunal typically considers a number of factors, including the physical characteristics of the goods (such as composition and appearance), their market characteristics (such as substitutability, pricing, distribution channels and end uses) and whether the goods fulfill the same customer needs.<sup>10</sup>

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7. *Ronald A. Chisholm Ltd. v. Deputy M.N.R.C.E.* (1986), 11 CER 309 (FCTD).

8. Article 5 of the World Trade Organization *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* requires an investigating authority to examine the accuracy and adequacy of the evidence provided in a dumping and subsidizing complaint to determine whether there is sufficient evidence to justify the initiation of an investigation, to reject a complaint or to terminate an investigation as soon as an investigating authority is satisfied that there is not sufficient evidence of dumping and subsidizing or injury. Article 5 also specifies that simple assertions that are not substantiated by relevant evidence cannot be considered sufficient to meet the requirements of the article.

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

10. See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at para. 48; *Bacteriological Culture Media* (31 May 1996), NQ-95-004 (CITT) at 9-10; *Polyisocyanurate Thermal Insulation Board* (11 April 1997), NQ-96-003 (CITT) at 9-10; *Certain Fasteners* (7 January 2005), NQ-2004-005 (CITT) at paras. 60-75; *Cross-linked Polyethylene Tubing* (29 September 2006), NQ-2006-001 (CITT) at paras. 45-47.



20. The evidence indicates that domestically produced hot-rolled steel plate competes directly with, has similar end uses as and can be substituted for the subject goods. Moreover, it appears that domestically produced hot-rolled steel plate is sold through the same distribution channels and, in many cases, to the same customers as the subject goods. In terms of physical characteristics, the evidence on the record indicates that the same primary input materials are used for both domestically produced hot-rolled steel plate and the subject goods, and both undergo similar manufacturing processes. Accordingly, the Tribunal finds, in the context of this preliminary injury inquiry, that hot-rolled steel plate produced in Canada is like goods in relation to the subject goods.

21. Concerning the question of classes of goods, Essar Algoma submitted that, on the basis of the evidence on the record, there is one class of goods in this preliminary injury inquiry.

22. The Tribunal notes that it received no arguments to the contrary or evidence that would justify the Tribunal proceeding on the basis of separate classes of goods during this preliminary injury inquiry. Accordingly, for the purposes of determining whether there is a reasonable indication of injury, the Tribunal will consider hot-rolled steel plate as comprising a single class of goods.

### Domestic Industry

23. On the basis of the CBSA's analysis, which is based in part on the Tribunal's analysis in the most recent expiry review involving hot-rolled steel plate,<sup>11</sup> it is clear that the collective production volumes of Essar Algoma, Evraz and SSAB are sufficient to constitute a major proportion of total domestic production of like goods. Accordingly, for the purposes of this preliminary injury inquiry, the Tribunal will assess whether there is a reasonable indication of injury or threat of injury with respect to these three domestic mills.

24. Service centres are also typically considered to be part of the domestic industry. In past hot-rolled steel plate cases, the Tribunal has described the role of these service centres as "minimal" or representing only a small proportion of total domestic production of like goods.<sup>12</sup> However, the Tribunal notes that these service centres appear to have been playing a more prominent role in this industry in recent years. Indeed, at the time of the *Plate VI* expiry review, service centres accounted for approximately 36 percent of total domestic production of like goods in the first six months of 2014.<sup>13</sup> Whether comparing the first six-month data of 2013 and 2014 provided in *Plate VI* or the 2013 data and the estimated full year 2014 data for this preliminary injury inquiry, the total volume of like goods domestically produced by service centres increased significantly, while that of the three domestic mills decreased. More specifically, the estimated production by service centres for domestic sales increased by 7 percent in 2014 over 2013, at a time when the production by the three domestic mills declined by 16 percent from the previous year.<sup>14</sup> These varying trends within the domestic industry signal a need for the Tribunal to more fully canvass service centres during the final injury inquiry, in an effort to more comprehensively assess the impact of the subject goods on the domestic industry as a whole.

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11. *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate* (30 January 2015), RR-2014-002 (CITT) [*Plate VI*].

12. *Hot-rolled Carbon Steel Plate* (20 May 2014), NQ-2013-005 (CITT) [*Plate VII*] at para. 54; *Hot-rolled Carbon Steel Plate* (4 November 2013), PI-2013-003 (CITT) at para. 32; *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate* (7 January 2014), RR-2013-002 (CITT) at para. 28; *Hot-rolled Carbon Steel Plate* (8 January 2013), RR-2012-001 (CITT) at footnote 11.

13. Exhibit PI-2015-001-02.01, attachment 10, Vol. 1A at 103.

14. Full year 2014 data for service centres were derived by annualizing the data provided for the first six months of 2014 in *Plate VI*. Exhibit PI-2015-001-02.01, attachment 10, Vol. 1A at 103-104; Exhibit PI-2015-001-03.01 (protected), attachment 8, Vol. 2 at 221; Exhibit PI-2015-001-03.01 (protected), attachment 9, Vol. 2 at 228; Exhibit PI-2015-001-03.01 (protected), attachment 27, Vol. 2A at 165-66.

## Cumulation and Cross-cumulation

25. In the context of a final injury inquiry under section 42 of *SIMA*, subsection 42(3) requires the Tribunal to make a cumulative assessment of the injurious effects of dumped and subsidized goods that are imported into Canada if the Tribunal is satisfied that certain conditions are met. Specifically, the Tribunal must be satisfied that the margin of dumping or the amount of subsidy in relation to the goods from each of the subject countries are not insignificant,<sup>15</sup> that the volume of goods imported into Canada from any of those countries is not negligible<sup>16</sup> and that an assessment of the cumulative effect of the subject goods would be appropriate, taking into account the conditions of competition between the goods from any of the named countries, the other dumped and subsidized goods and the like goods.

26. While subsection 42(3) of *SIMA* deals with final injury inquiries, the Tribunal considers that it would be inconsistent not to cumulate the subject goods in preliminary injury inquiries when the evidence available appears to justify cumulation.<sup>17</sup> Moreover, the opposing parties' submissions did not specifically address whether the Tribunal should continue its practice of cross-cumulating nor did the parties submit any evidence that would justify de-cumulating the goods of either subject country.

## Margins of Dumping, Amounts of Subsidy and Volumes of Dumped and Subsidized Imports

27. In the context of a preliminary injury inquiry, the Tribunal relies on the estimated volumes, margins of dumping and amounts of subsidy provided by the CBSA, including the CBSA's assessment of whether the volumes of dumped and subsidized imports are negligible and whether the margins of dumping and amounts of subsidy are insignificant. Accordingly, the Tribunal is satisfied that the first condition under subsection 42(3) of *SIMA* is met (*i.e. the volumes of dumped and subsidized imports are not negligible and the margins of dumping and amounts of subsidy are not insignificant*).

## Conditions of Competition

28. The second requirement that the Tribunal must consider in determining whether or not cumulation is appropriate are the conditions of competition between the goods from the subject countries and the like goods.

29. A decision to de-cumulate on the basis of conditions of competition must turn on positive evidence of sufficiently differing conditions of competition among the subject goods, or between the subject goods and the like goods. This is essentially a question of fact for the Tribunal's consideration. In making this

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15. Subsection 2(1) of *SIMA* defines "insignificant" as meaning, "in relation to a margin of dumping, a margin of dumping that is less than two per cent of the export price of the goods" and "in relation to an amount of subsidy" as meaning "an amount of subsidy that is less than one per cent of the export price of the goods".

16. Subsection 2(1) of *SIMA* defines "negligible" as meaning "... in respect of the volume of dumped goods of a country, (a) less than three per cent of the total volume of goods that are released into Canada from all countries and that are of the same description as the dumped goods . . ." The Tribunal also notes that subsection 42(4) of *SIMA* obligates it to take into account the provisions of paragraph 12 of Article 27 of the *Agreement on Subsidies and Countervailing Measures*. This paragraph, which then makes reference to paragraph 10 of Article 27, requires investigations to be terminated against developing countries where "... the overall level of subsidies granted upon the product in question does not exceed 2 per cent of its value calculated on a per unit basis" or where "... the volume of the subsidized imports represents less than 4 per cent of the total imports of the like product in the importing Member . . ." While India is considered a developing country, the Tribunal is satisfied that these thresholds are met.

17. *Corrosion-resistant Steel Sheet* (2 February 2001), PI-2000-005 (CITT) at 4, 5.

decision, the Tribunal has previously taken into consideration such factors as whether the goods are interchangeable, whether they are present in the same geographic market at the same time and whether they are distributed through the same channels or using the same means of transportation.<sup>18</sup>

30. In this preliminary injury inquiry, Essar Algoma argued that hot-rolled steel plate is a commodity product and, as such, there is no disparity in conditions of competition affecting the like goods and the subject goods. The customers for imported hot-rolled steel plate are essentially the same as for the like goods.<sup>19</sup> Moreover, the subject goods and the like goods are distributed through the same channels.<sup>20</sup> Furthermore, Essar Algoma alleged that the same conditions of competition apply, whether the goods are produced in the subject countries or by the domestic industry, or originate in any other import source, as they are interchangeable.<sup>21</sup>

31. The Tribunal agrees with Essar Algoma that the conditions of competition support cumulation in this case, as there does not seem to be any evidence in this preliminary injury inquiry that would appear to warrant a different conclusion.

32. On the basis of the foregoing, the Tribunal will now examine whether the evidence discloses a reasonable indication of injury or threat of injury, taking into account the factors prescribed in section 37.1 of the *Regulations*.

### **Volume of Dumped and Subsidized Goods**

33. Essar Algoma submitted that the subject countries have become an important source of hot-rolled steel plate in Canada, citing increased volumes both in absolute terms and relative to the production and consumption of like goods in Canada.

34. For the purpose of its analysis, the Tribunal will consider the period from January 1, 2012, to March 31, 2015. Based on the evidence on the record, the total volume of subject imports increased significantly over this period, but most notably in 2014 when the volume of subject goods imported into Canada grew exponentially. During 2014 in particular, the subject goods comprised a significant proportion of all apparent imports of hot-rolled steel plate into Canada. That trend continued during the first quarter of 2015.<sup>22</sup>

35. Likewise, an examination of the volume of subject goods relative to domestic production and consumption of like goods reveals that the subject goods have become increasingly present in the Canadian market.<sup>23</sup> These ratios indicate that the most noticeable growth in respect of the subject goods occurred in 2014. This would appear to indicate that import sales of the subject goods were being realized to the detriment of like goods during that time.

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18. *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (17 August 2001), NQ-2001-001 (CITT) at 16.

19. Exhibit PI-2015-001-02.01, Vol. 1 at 17.

20. *Ibid.*

21. *Ibid.* at 17-18, 24.

22. Exhibit PI-2015-001-03.01 (protected), attachment 7, Vol. 2 at 215-19.

23. Service centres' sales in the Canadian market correspond to their production for domestic sales. Full year 2014 data for service centres were derived by annualizing the data provided for the first six months of 2014 in *Plate VI*. Exhibit PI-2015-001-02.01, attachment 10, Vol. 1A at 103-104; Exhibit PI-2015-001-03.01 (protected), attachment 7, Vol. 2 at 215-19; Exhibit PI-2015-001-03.01 (protected), attachment 8, Vol. 2 at 221; Exhibit PI-2015-001-03.01 (protected), attachment 9, Vol. 2 at 228; Exhibit PI-2015-001-03.01 (protected), attachment 27, Vol. 2A at 165-66; Exhibit PI-2015-001-03.02 (protected), Vol. 2B at 16-19; Exhibit PI-2015-001-05, Vol. 1X at 236.

36. Based on the foregoing, the evidence discloses a reasonable indication that there has been an absolute and relative increase in the volume of imports of the subject goods.

### **Effect on Price of Like Goods**

37. In its complaint, Essar Algoma argued that the subject goods captured sales and market share at the expense of the domestic industry by significantly undercutting prices. It submitted that the subject goods were the lowest-priced goods in the market and, as such, could be characterized as the price leaders in the Canadian market. Moreover, it argued that it was forced to substantially reduce its selling price in order to compete with the subject goods, notwithstanding increased costs, all of which resulted in substantial losses on its domestic sales of like goods.

38. A comparison of the import values of the subject goods with the sale prices of like goods indicates that the subject goods undercut the price of like goods in 2012, 2013 and 2014. Furthermore, the apparent gap between the prices of the like goods and the subject goods seems to have increased significantly in 2014. It appears that, by keeping prices relatively unchanged in 2014 as compared to 2013, thereby undercutting domestic producers' sales prices, the subject countries captured significant market share.<sup>24</sup>

39. According to the Tribunal's analysis of the domestic industry's selling prices, it appears that the average selling price of like goods declined from 2012 to 2013, but then increased in 2014 to surpass its 2012 level. In comparison, the average import values of the subject goods fell by a percentage equivalent to that of the domestic industry's average selling price between 2012 and 2013, before barely increasing in 2014. However, between 2012 and 2014, import values of the subject goods remained substantially lower than the domestic industry's selling prices.<sup>25</sup> Consequently, while there is some evidence to suggest price depression in 2013, there is less so in 2014. While the account-specific injury allegations provided by Essar Algoma suggest that there were situations in which Essar Algoma would have had to lower its selling price in order to secure sales, the Tribunal is not convinced, on the basis of the evidence on the record in this preliminary injury inquiry, that prices of the domestic industry, as a whole, were eroded by those of the subject goods.<sup>26</sup>

40. In response to Essar Algoma's claims of price erosion and price suppression, Jindal submitted that Evraz was in fact able to increase its selling prices in 2015. A comparison between the estimated average unit cost of goods sold and estimated average unit selling prices of the like goods suggests that the three domestic mills were able to increase their prices in the Canadian market between 2012 and 2014; however, it is not clear from the record of this proceeding whether these increases were sufficient to compensate for lower production volumes for domestic sales and higher costs of production, including the high fixed price paid by Essar Algoma for iron ore.<sup>27</sup> Accordingly, there is only limited evidence of price suppression caused by the subject goods.

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24. Exhibit PI-2015-001-02.01, attachment 10, Vol. 1A at 103; Exhibit PI-2015-001-03.01 (protected), attachment 7, Vol. 2 at 215-19.

25. *Ibid.*

26. Exhibit PI-2015-001-03.01 (protected), Vol. 2 at 38-44; Exhibit PI-2015-001-03.01 (protected), attachment 6, Vol. 2 at 205-206; Exhibit PI-2015-001-03.01 (protected), attachment 26, Vol. 2A at 3-163.

27. Full year 2014 consolidated data for the three domestic mills correspond to data provided in *Plate VI* for the first six months of 2014. Exhibit PI-2015-001-02.01, Vol. 1 at 54; Exhibit PI-2015-001-02.01, attachment 6, Vol. 1A at 84; Exhibit PI-2015-001-02.01, attachment 10, Vol. 1A at 107; Exhibit PI-2015-001-03.01 (protected), Vol. 2 at 49; Exhibit PI-2015-001-03.01 (protected), attachment 7, Vol. 2 at 215-18; Exhibit PI-2015-001-03.01 (protected), attachment 8, Vol. 2 at 221; Exhibit PI-2015-001-03.01 (protected), attachment 9, Vol. 2 at 228; Exhibit PI-2015-001-03.01 (protected), attachment 27, Vol. 2A at 165-66.

41. On the basis of the forgoing, the Tribunal finds that the evidence on the record discloses a reasonable indication that the dumping and subsidizing of the subject goods have resulted in price undercutting, and may have resulted in some price depression and price suppression. The relationship between the subject goods and these price effects, and the question of whether these price effects are felt by Essar Algoma only, the three domestic mills or the entire domestic industry, will need to be explored in further depth at the final injury inquiry.

### **Impact of the Dumped and Subsidized Goods on the State of the Domestic Industry**

42. As part of its analysis under paragraph 37.1(1)(c) of the *Regulations*, the Tribunal considers the impact of the dumped and subsidized goods on the state of the domestic industry. In particular, it takes into account factors such as actual or potential declines in output, sales, market share, profits, productivity, return on investment, capacity utilization, actual or potential negative effects on cash flow, inventories, employment, wages and various other economic factors that are relevant under the circumstances.

43. Essar Algoma submitted that the dumped and subsidized goods have resulted in declines in the domestic production of like goods, lost sales and market share, declines in the domestic industry's financial performance, overcapacity, negative impacts on capital investments and reduced employment levels.

44. The data indicate that the total annual domestic production of like goods trended upwards between 2012 and 2014. However, this appears attributable, in part, to increased production for export sales, as domestic production for domestic sales declined over that same period. The fact that domestic production for domestic sales was at its lowest point in 2014, and that this corresponds with the time in which the subject imports were at their highest volumes and captured a large market share,<sup>28</sup> suggests that there may be a relationship between reduced production levels and competition with the subject goods in the Canadian market.

45. The evidence on the record shows that, in terms of volume, the size of the Canadian market for hot-rolled steel plate increased between 2012 and 2014, notwithstanding a slight reduction in 2013. The domestic industry's market share registered an increase of 8 percentage points in 2013 over 2012, but then, in 2014, when the Canadian market was gaining strength, it returned to a level only slightly above 2012. The market share held by imports from the subject countries was stable and at a relatively low level in 2012 and 2013, but, in 2014, this share increased substantially.<sup>29</sup>

46. The Tribunal notes that, while Essar Algoma's practical plant capacity remained unchanged between 2012 and 2014, its capacity utilization rate for hot-rolled steel plate destined for both the Canadian and export markets increased. However, Essar Algoma was unable to translate this growth in total production of hot-rolled steel plate into a surge in hot-rolled steel plate productivity.<sup>30</sup> The consolidated practical plant capacity for the three domestic mills declined substantially in 2014, due, in part, to the sale of Evraz's cut-to-length facilities to service centres, Samuel, Son & Co., Limited and Varsteel Ltd. However,

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28. Exhibit PI-2015-001-02.01, attachment 10, Vol. 1A at 103-104; Exhibit PI-2015-001-03.01 (protected), attachment 7, Vol. 2 at 215-19; Exhibit PI-2015-001-03.01 (protected), attachment 8, Vol. 2 at 221; Exhibit PI-2015-001-03.01 (protected), attachment 9, Vol. 2 at 228; Exhibit PI-2015-001-03.01 (protected), attachment 27, Vol. 2A at 165-66.

29. Exhibit PI-205-001-03.01 (protected), attachment 7, Vol. 2 at 215-19.

30. Exhibit PI-2015-001-03.01 (protected), attachment 33, Vol. 2A at 171; Exhibit PI-2015-001-03.01 (protected), attachment 35, Vol. 2A at 175; Exhibit PI-2015-001-03.01 (protected), attachment 8, Vol. 2 at 221.

the domestic mills managed to slightly increase their capacity utilization rate for hot-rolled steel plate from 2012 to 2014.<sup>31</sup>

47. Essar Algoma submitted that the presence of the subject goods in Canada effectively prevented it from recapturing the sales and market share that it had previously lost to the six countries subject to the *Plate VII* threat of injury finding.<sup>32</sup> To this effect, the Tribunal notes that the share of the Canadian apparent market held by imports covered by an injury finding decreased sharply between 2012 and 2014. This drop coincides with the timing of measures in *Plate VII*; in particular, it corresponds with the Tribunal's preliminary determination of injury in November 2013 and its final determination of injury in May 2014 and the CBSA's imposition of definitive anti-dumping and countervailing measures. In 2012 and 2013, the market share held by the subject countries remained steady, before sharply increasing in 2014.<sup>33</sup> This pattern would seem to suggest that, once the market became aware that duties would be imposed on the *Plate VII* countries, purchasers initially shifted back to the domestic industry as their source of supply, but this shift was only temporary.

48. In the Tribunal's view, the evidence on the record supports in part Essar Algoma's argument that its financial performance was negatively affected between 2012 and 2014. The Tribunal notes that Essar Algoma's unit gross margin for its domestic sales declined in both 2012 and 2013 before returning to profitability in 2014. However, the three domestic mills, as a whole, saw their 2012 unit gross margin for domestic sales turn into increasing unit gross losses in 2013 and 2014.<sup>34</sup> While it is reasonable to presume that the price undercutting, and limited price erosion and price suppression by the subject goods have likely had some impact on the three domestic mills' financial performance, it is also equally apparent that at least some of these adverse effects may have been attributable to the dumped goods that are subject to the *Plate VII* threat of injury finding.

49. In summary, it is unclear whether the subject goods had a homogenous effect on Essar Algoma, on the three domestic mills or on the domestic industry as a whole. However, it appears that the consolidated financial performance of the three domestic mills can be tentatively described as not having improved and to have possibly worsened between 2012 and 2014. The overall impact of the subject goods on the entire domestic industry, which includes service centres, will therefore be of keen interest to the Tribunal during the next phase of its investigation.

### **Causation and Other Factors**

50. In a preliminary injury inquiry, the Tribunal must determine whether the evidence discloses a reasonable indication of a causal link between the dumping and subsidizing of the subject goods and the injury. The Tribunal must further consider, pursuant to paragraph 37.1(3)(b) of the *Regulations*, whether the reasonable indication of injury is attributable to factors other than the dumping and subsidizing.

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31. Exhibit PI-2015-001-02.01, attachment 10, Vol. 1A at 103, 108; Exhibit PI-2015-001-03.01 (protected), attachment 8, Vol. 2 at 221; Exhibit PI-2015-001-03.01 (protected), attachment 9, Vol. 2 at 228; Exhibit PI-2015-001-03.01 (protected), attachment 27, Vol. 2A at 165-66; Exhibit PI-2015-001-03.01 (protected), attachment 33, Vol. 2A at 171; *Plate VI* at para. 31.

32. The six countries are the Federative Republic of Brazil, the Kingdom of Denmark, the Republic of Indonesia, the Italian Republic, Japan and the Republic of Korea. Exhibit PI-2015-001-02.01, Vol. 1 at 52.

33. Exhibit PI-2015-001-03.01 (protected), attachment 7, Vol. 2 at 215-19.

34. Exhibit PI-2015-001-02.01, attachment 10, Vol. 1A at 107; Exhibit PI-2015-001-03.01 (protected), attachment 8, Vol. 2 at 221.

51. Jindal and MITRF submitted that there is insufficient evidence of a causal relationship between the alleged dumping and subsidizing and any injury in this case. Instead, they argued that a host of other factors are responsible for declines in price, declines in profitability and the various other impacts alleged by Essar Algoma. These other factors include large volumes of imports from the United States, corporate decisions regarding geographic focus (e.g. selling to the U.S. market to take advantage of higher U.S. Midwest pricing), declining oil prices and a general economic slowdown which have led to increased inventories, intra-industry competition, severe winter weather, the fact that Essar Algoma was locked into an expensive iron ore contract until early 2014, China's overcapacity and a global decline in demand for and prices of steel products.

52. In reply, Essar Algoma submitted that the data suggest a strong correlation between the subject goods and the indicators of injury to the domestic industry and argued that it is only through a final injury inquiry that the Tribunal will be able to fully explore the causation element and satisfy itself that the dumping and subsidizing of imports are causing and/or threatening to cause material injury.

53. In recent decisions, the Tribunal has not considered that a mere correlation between dumping, subsidizing and indicators of injury is sufficient to establish the required causal relationship in a preliminary injury inquiry.<sup>35</sup> Rather, in a preliminary injury inquiry, the standard is whether there is a reasonable indication that the dumping and subsidizing of goods have, *in and of themselves*, caused injury to a domestic industry.

54. In this preliminary injury inquiry, although the opposing parties have pointed to a number of factors that are indeed worthy of further exploration, there is insufficient evidence currently on the record for the Tribunal to determine that these factors, not the subject goods, have caused the injury to the domestic industry. Accordingly, the Tribunal believes that causation is a key issue in this case and one that must be fully explored in the context of an inquiry conducted under section 42 of *SIMA*.

### **Threat of Injury**

55. The Tribunal must now consider whether there is a reasonable indication that the dumping and subsidizing of the subject goods are threatening to cause material injury. The Tribunal is guided in its consideration of this question by subsection 37.1(2) of the *Regulations*, which prescribes factors to be taken into account for the purposes of its threat of injury analysis.

56. In regard to threat of injury, Essar Algoma urged the Tribunal to consider the weak global economic outlook, the continuing effects of the global economic crisis, global overcapacity and, in relation to the subject countries specifically, capacity increases and overproduction paired with low capacity utilization rates and insufficient plate demand. In addition, Essar Algoma asserted that various trade remedies in place against hot-rolled steel plate and other flat-rolled steel products would encourage dumping and subsidizing by the subject countries. Further, with respect to Russia in particular, Essar Algoma submitted that its spiraling currency and the suspension agreement between Russia and the United States increases the likelihood that high volumes of low-priced Russian hot-rolled steel plate will be imported into Canada in the short-to-medium term.

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35. *Copper Rod* (30 October 2006), PI-2006-002 (CITT) at paras. 40, 43; *Galvanized Steel Wire* (22 March 2013), PI-2012-005 (CITT) at para. 75; *Circular Copper Tube* (22 July 2013), PI-2013-002 (CITT) at para. 82.

57. MITRF countered that there is no threat of injury from goods from Russia, based on the fact that AO Severstal is the only Russian producer to have sold hot-rolled steel plate in Canada during the CBSA's POI.<sup>36</sup> With respect to MITRF's argument, the Tribunal notes that, while AO Severstal may have been the only Russian supplier of hot-rolled steel plate to Canada during the period from January 1, 2014, and March 31, 2015, the evidence on the record indicates that there are numerous reversing plate mills and hot-rolled strip mills that produce hot-rolled steel plate in Russia that are capable of shipping these goods to Canada.<sup>37</sup> There is also evidence that there exists, in addition to AO Severstal, a number of exporters of hot-rolled steel plate to Canada from Russia.<sup>38</sup> Additionally, the Tribunal notes that AO Severstal owns two reversing plate mills and one hot-rolled coil strip mill with capacities that, compared to the size of the apparent market in Canada, are significant.<sup>39</sup>

58. In respect of the market conditions in the subject countries, a review of the evidence provided by Essar Algoma suggests that production of hot-rolled steel plate is expected to outpace demand, leading to an increased reliance on exports by producers in those subject countries, particularly in light of the capital-intensive nature of hot-rolled steel plate production.<sup>40</sup>

59. The evidence on the record suggests that the subject countries have significant freely disposable hot-rolled steel plate production capacity, including reversing mill capacity (which is exclusively dedicated to the production of discrete plate), steckel mill capacity (which is used to produce both discrete plate and coil plate) and hot-rolled coil capacity (which can be used to produce both coil plate and hot-rolled sheet).<sup>41</sup> Moreover, as noted in the complaint, Essar Algoma suggested that several producers in the subject countries have plans to expand their hot-rolled steel plate production capacity, notwithstanding softening demand and already low capacity utilization rates.<sup>42</sup>

60. Essar Algoma has proffered reasonable evidence to support its assertions that the global economic outlook for hot-rolled steel plate is weak, driven to a significant extent by global overcapacity and an economic slowdown in China that appears to be pushing greater quantities of hot-rolled steel plate into export markets.<sup>43</sup>

61. Indeed, these developments could foreseeably make the domestic industry susceptible to injury from the subject goods in the future. Accordingly, the Tribunal concludes that the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods are threatening to cause injury.

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36. Exhibit PI-2015-001-06.01 at para. 2.3, Vol. 3.

37. Exhibit PI-2015-001-03.01 (protected), attachment 2, Vol. 2 at 190-92.

38. Exhibit PI-2015-001-03.05 (protected), attachment C, Vol. 2B at 168-70.

39. Exhibit PI-2015-001-03.01 (protected), attachment 2, Vol. 2 at 191-92.

40. Exhibit PI-2015-001-02.01, attachment 47, Vol. 1B at 215, 232; Exhibit PI-2015-001-03.01A (protected), attachment 25, Vol. 2.01 at 18-19.

41. Exhibit PI-2015-001-03.01 (protected), attachment 43, Vol. 2A at 177-79; Exhibit PI-2015-001-03.01 (protected), Vol. 2 at 59-61, 72-73; Exhibit PI-2015-001-02.01, Vol. 1 at 65-66, 77-78.

42. Exhibit PI-2015-001-09.01 at para. 116, Vol. 4.

43. Exhibit PI-2015-001-02.01, attachment 36, Vol. 1B at 93; Exhibit PI-2015-001-03.01A (protected), attachment 25, Vol. 2.01 at 15-16, 18-19, 130, 175-76; Exhibit PI-2015-001-03.01A (protected), attachment 42, Vol. 2.01B at 12; Exhibit PI-2015-001-02.01, attachment 37, Vol. 1B at 131; Exhibit PI-2015-001-02.01, attachment 38, Vol. 1B at 140; Exhibit PI-2015-001-02.01, attachment 39, Vol. 1B at 143; Exhibit PI-2015-001-02.01, attachment 40, Vol. 1B at 147-48.



**CONCLUSION**

62. On the basis of the foregoing analysis, the Tribunal finds that the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury or are threatening to cause injury to the domestic industry.

Serge Fréchette  
Serge Fréchette  
Presiding Member

Ann Penner  
Ann Penner  
Member

Peter Burn  
Peter Burn  
Member