Canadian International Trade Tribunal

Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Dumping and Subsidizing

ORDERS AND REASONS

Expiry Review No. RR-2015-002

Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip

Orders issued
Friday, August 12, 2016

Reasons issued
Friday, August 26, 2016

Canada

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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 orders made by the Canadian International Trade Tribunal on August 15, 2011, in Expiry Review No. RR-2010-001, continuing its orders made on August 16, 2006, in Expiry Review No. RR-2005-002, continuing its finding made on August 17, 2001, in Inquiry No. NQ-2001-001, concerning:

THE DUMPING OF FLAT HOT-ROLLED CARBON AND ALLOY STEEL SHEET AND STRIP ORIGINATING IN OR EXPORTED FROM BRAZIL, THE PEOPLE'S REPUBLIC OF CHINA, CHINESE TAIPEI, INDIA AND UKRAINE AND THE SUBSIDIZING OF FLAT HOT-ROLLED CARBON AND ALLOY STEEL SHEET AND STRIP ORIGINATING IN OR EXPORTED FROM INDIA

ORDERS

The Canadian International Trade Tribunal, pursuant to subsection 76.03(3) of the *Special Import Measures Act*, has conducted an expiry review of its orders made on August 15, 2011, in Expiry Review No. RR-2010-001, concerning the dumping of flat hot-rolled carbon and alloy steel sheet and strip, including secondary or non-prime material, in various widths from 0.75 in. (19 mm) and wider, and (a) for product in coil form, in thicknesses from 0.054 in. to 0.625 in. (1.37 mm to 15.875 mm) inclusive, and (b) for product that is cut to length, in thicknesses from 0.054 in. up to but not including 0.187 in. (1.37 mm up to but not including 4.75 mm), excluding (i) flat-rolled stainless steel sheet and strip and (ii) flat hot-rolled, cut-to-length alloy steel products containing no less than 11.5 percent manganese, in thicknesses from 0.12 in. to 0.19 in. (3 mm to 4.75 mm), originating in or exported from Brazil, the People's Republic of China, Chinese Taipei, India and Ukraine, and the subsidizing of such products originating in or exported from India.

Pursuant to paragraph 76.03(12)(b) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby continues its orders with respect to the dumping of the aforementioned goods originating in or exported from Brazil, the People's Republic of China and Ukraine and the subsidizing of aforementioned goods originating or exported from India.

Pursuant to subparagraph 76.03(12)(a)(i) of the *Special Import Measures Act*, and following the determination of the President of the Canada Border Service Agency that the expiry of the orders is unlikely to result in the continuation or resumption of dumping of the aforementioned goods originating in or exported from Chinese Taipei and India, the Canadian International Trade Tribunal hereby rescinds its orders with respect to those goods.

Peter Burn
Peter Burn
Presiding Member

Jean Bédard
Jean Bédard
Member

Rose Ritcey
Rose Ritcey
Member

The statement of reasons will be issued within 15 days.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	June 27 to 29, 2016
Tribunal Members:	Peter Burn, Presiding Member Jean Bédard, Member Rose Ritcey, Member
Director, Trade Remedies Investigations:	Greg Gallo
Trade Remedies Investigations Officers:	Rhonda Heintzman Julie Charlebois Thy Dao Mylène Lanthier Jyotsna Venkatesh
Counsel for the Tribunal:	Peter Jarosz Kalyn Eadie
Senior Registrar Officer:	Julie Lescom
Registrar Support Officer:	Bianca Zamor

PARTICIPANTS:

Domestic Producers	**Counsel/Representatives**
ArcelorMittal Dofasco G.P.	Paul Conlin Drew Tyler Catherine Walsh
Essar Steel Algoma Inc.	Benjamin P. Bedard Linden Dales Shannel J. Rajan
Evraz Inc. NA Canada	Christopher J. Kent Christopher J. Cochlin Christopher R. N. McLeod Hugh Seong Seok Lee Michael Milne Susana May Yon Lee
U.S. Steel Canada Inc.	Lawrence L. Herman

Importers/Exporters/Others	**Counsel/Representatives**
JSW Steel Limited Government of India	Dhruv Gupta
Ministry of Economic Development and Trade of Ukraine	Yurii Kozlenko

WITNESSES:

Steve Eljuga
Director Controlling
ArcelorMittal Dofasco

Andrew Connor
Vice-President – Commercial
ArcelorMittal Dofasco

Henry Wegiel
Director, Trade and Government Relations
ArcelorMittal Dofasco

T.J. (Jeff) Goddard
General Manager, Distribution Sales
ArcelorMittal Dofasco

Rob Lachapelle
Vice-President, Purchasing
Samuel 1855

William T. Chisholm
President & CEO
Samuel 1855

Robert W. Dionisi
Chief Commercial Officer
Essar Steel Algoma Inc.

Laura Devoni
Manager – Trade & Economics
Essar Steel Algoma Inc.

Rory Brandow
Regional Sales Director
Essar Steel Algoma Inc.

Trevor Harris
Director, Government & Public Affairs
U.S. Steel Canada

Michael A. McQuade
President and General Manager
U.S. Steel Canada

Gregory J. Anderson
Vice-President – Commercial
U.S. Steel Canada

Barry Zekelman
Chairman and CEO
Zekelman Industries

R.S. (Butch) Mandel
President
Welded Tube of Canada Corp.

Brian Kristofic
Director, Trade and Government Affairs
Evraz North America

Please address all communications to:

The Registrar
Secretariat to the Canadian International Trade Tribunal
333 Laurier Avenue West
15th Floor
Ottawa, Ontario K1A 0G7

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

STATEMENT OF REASONS

INTRODUCTION

1. This is an expiry review, pursuant to subsection 76.03(3) of the *Special Import Measures Act*,[1] of the order made by the Canadian International Trade Tribunal (the Tribunal) in Expiry Review No. RR-2010-001[2] continuing, with amendment, its order in Expiry Review No. RR-2005-002[3] continuing, with amendment, the finding in Inquiry No. NQ-2001-001,[4] concerning the dumping of flat hot-rolled carbon and alloy steel sheet and strip (the subject goods), originating in or exported from Brazil, the People's Republic of China (China), Chinese Taipei, India and Ukraine, and the subsidizing of the subject goods originating in or exported from India.

2. Under *SIMA*, findings of injury or threat of injury and the associated special protection in the form of anti-dumping or countervailing duties expire five years from the date of the last order or finding, unless an expiry review has been initiated before that date. The order made on August 15, 2011, is therefore scheduled to expire on August 14, 2016.

3. The Tribunal initiated its expiry review on December 8, 2015. On April 6, 2016, the President of the Canada Border Services Agency (CBSA) determined that the expiry of the order was likely to result in the continuation or resumption of dumping of the subject goods from Brazil, China and Ukraine and the continuation or resumption of subsidizing of the subject goods from India.[5] The Tribunal's mandate is to determine whether the continued or resumed dumping and subsidizing are likely to result in injury.

4. The period of review (POR) in this case is from January 1, 2013, to December 31, 2015.

PROCEDURAL BACKGROUND

5. As part of its expiry review, the Tribunal requested that domestic producers, importers and foreign producers of hot-rolled steel sheet complete questionnaires. From the replies to the questionnaires, and other information on the record, the Tribunal's staff[6] prepared public and protected investigation reports.

6. The Tribunal did not receive any requests for product exclusions.

7. The Tribunal held a public hearing from June 27 to 29, 2016. The four domestic mills provided witnesses and were represented by counsel who made arguments at the hearing. The Government of India`s representative also made arguments.

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1. R.S.C., 1985, c. S-15 [*SIMA*].
2. *Flat Hot-rolled Carbon and alloy Steel Sheet and Strip* (15 August 2011) (CITT) [*Steel Sheet Review (2010)*].
3. *Flat Hot-rolled Carbon and alloy Steel Sheet and Strip* (16 August 2006) (CITT) [*Steel Sheet Review (2005)*].
4. *Flat Hot-rolled Carbon and alloy Steel Sheet and Strip* (17 August 2001) (CITT) [*Steel Sheet NQ*].
5. The CBSA also determined that the expiry of the order was unlikely to result in the continuation or resumption of dumping of the subject goods from Chinese Taipei and India.
6. "Staff" refers to staff of the Trade Remedies Investigations Branch of the Secretariat to the Canadian International Trade Tribunal of the Administrative Tribunals Support Service of Canada.

PRODUCT

Product Definition

8. The subject goods (commonly referred to as "hot-rolled steel sheet", "hot-rolled sheet", "steel sheet" or simply "sheet") are defined as follows:

> flat hot-rolled carbon and alloy steel sheet and strip, including secondary or non-prime material, in various widths from 0.75 in. (19 mm) and wider, and (a) for product in coil form, in thicknesses from 0.054 in. to 0.625 in. (1.37 mm to 15.875 mm) inclusive, and (b) for product that is cut to length, in thicknesses from 0.054 in. up to but not including 0.187 in. (1.37 mm up to but not including 4.75 mm), excluding (i) flat-rolled stainless steel sheet and strip and (ii) flat hot-rolled, cut-to-length alloy steel products containing no less than 11.5 percent manganese, in thicknesses from 0.12 in. to 0.19 in. (3 mm to 4.75 mm), originating in or exported from Brazil, China, Chinese Taipei, India and Ukraine.

Additional Product Information[7]

9. Hot-rolled steel sheet includes strip and sheet, but does not include floor plate. Strip is usually produced in widths of up to 12 in. (305 mm). Sheet is usually produced in widths greater than 12 in. (305 mm).

10. Hot-rolled steel sheet is normally produced to a specification of the American Society for Testing and Materials (ASTM), to some other international standard or to proprietary specifications. ASTM specifications for hot-rolled steel sheet include, but are not limited to, A505, A506, A507, A568, A569, A570, A606, A607, A621, A622, A635, A659, A715, A749, A907, A935 and A936. Hot-rolled steel sheet is usually classified as either carbon-manganese or high-strength low-alloy steel and is available in several qualities and grades, which are usually reflected in the ASTM or equivalent specifications or standards.

11. The subject goods are manufactured from an alloy steel, other than stainless steel, that contains, by weight, one or more of certain specified elements in minimum specified proportions. The notes to Chapter 72 of the *Customs Tariff*[8] specify the elements and the minimum proportions for alloy steel.

Production Process

12. While details may vary from mill to mill, the process by which hot-rolled steel sheet is produced is generally the same for all domestic mills.

13. Hot-rolled steel sheet is rolled on a continuous strip mill at temperatures above 1600°F (870°C) from an incoming hot slab up to 9 in. (229 mm) thick. The slab can be produced from steel produced in a basic oxygen furnace or an electric arc furnace. The slab is progressively reduced to a sheet of the required thickness, 0.625 in. (15.875 mm) or less. The edges may be slit to remove minor edge imperfections and to provide closer width tolerances. Processing in the mill may include slitting or shearing to remove tongues and tails from the sheet. During hot rolling, surface oxide (scale) forms, which is not acceptable for some applications. This scale may be removed by acid pickling. After pickling, rinsing and drying, an oil may be

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7. The descriptions of additional product information, product application, production process, pricing and distribution are largely taken from the Tribunal's statement of reasons in *Steel Sheet Review (2010)*. Exhibit RR-2015-002-01, Vol. 1 at 10-12

8. S.C. 1997, c. 36.

applied as a temporary protection against rust. Most hot-rolled steel sheet is sold by the domestic mills in coiled form.[9]

Product Applications

14. Hot-rolled steel sheet is primarily a generic commodity product. It may be sold as such in the open or merchant market or may be used by domestic mills as feedstock for further internal processing.

Merchant Market

15. In the merchant market, hot-rolled steel sheet is used in the following applications, among others:

- the production of pipe and tube;
- various manufacturing applications, i.e. brackets, trailer applications and drawn sheets;
- various construction/structural applications, i.e. bridges, buildings, railway cars, guard rails and sheet pilings;
- the manufacture of automobiles, i.e. frames, bumpers, wheels, hood hinges, brake shoes, seat tracking, wheel rims, impact support, washer base and automotive brace; and
- the manufacture of various agricultural products, i.e. tractors, ground tillers and disks used in tilling.

Further Internal Processing

16. Hot-rolled steel sheet is also used by domestic mills as feedstock or substrate for the manufacture of further internally processed goods or value-added products, such as cold-rolled steel sheet, corrosion-resistant steel sheet and tubular products, including pipe, tube and hollow structural products. The hot-rolled steel sheet used in the manufacture of pipe and tube is often referred to as “skelp”.

Distribution and Pricing

Distribution

17. The distribution channels for domestically produced and imported hot-rolled steel sheet did not change over the POR.

18. Hot-rolled steel sheet produced domestically is sold directly to end users, steel service centres, and pipe and tube producers.

19. Of the three market segments noted above, the steel service centres are the largest purchasers of hot-rolled steel sheet, followed by the pipe and tube producers and the end users, which include automobile producers.

20. Hot-rolled steel sheet is imported either by traders for resale to end users, steel service centres, and pipe and tube producers, or by domestic mills, end users, steel service centres, and pipe and tube producers. Steel trading companies either receive inquiries from domestic users or solicit orders.

9. *Transcript of Public Hearing*, Vol. 1, 27 June 2016, at 69.

Pricing

21. Sales of hot-rolled steel sheet in the domestic market are made on a contractual or non-contractual (i.e. spot price) basis. Sales made on a spot price basis are negotiated individually with the client on the basis of prevailing market prices, with adjustments for transaction-specific demands. Sales made on a contractual basis are negotiated on the basis of specifications, price, volume and duration of the contract.

22. The price of hot-rolled steel sheet consists of a "base coil price" to which charges are added for a variety of features that may be specified by the customer to meet the technical requirements of the application for which the steel is intended. The important features in determining the price of hot-rolled steel sheet are grade, thickness, width, processing and surface finish.

INTEGRATED MILLS

23. There are four integrated mills that produce steel sheet in Canada, namely, ArcelorMittal Dofasco G.P. (AMD) in Hamilton, Ontario, U.S. Steel Canada Inc. (USSC) in Nanticoke, Ontario, Essar Steel Algoma Inc. (Algoma) in Sault Ste. Marie, Ontario, and Evraz Inc. NA Canada in Regina, Saskatchewan. All these companies provided replies to the Tribunal's integrated steel mill/steel service centre questionnaire.

SERVICE CENTRES

24. There are many service centres which further process steel sheet and supply smaller end users and contractors. These steel service centres may also supply the more immediate needs of accounts that would normally purchase directly from domestic mills. As a result of the consolidation in the steel service centre industry, there are now several very large players in Canada that can buy and distribute large boatloads of imported hot-rolled steel sheet in the Canadian market.

25. Thirteen service centres were requested to provide a response to the integrated steel mill/steel service centre questionnaire. Twelve responses were received; however, some of these responses were only partially complete.

IMPORTERS AND FOREIGN PRODUCERS

26. The Tribunal requested potential importers of steel sheet to complete the importers' questionnaire. The Tribunal received nine replies from companies stating that they import the subject goods and/or goods meeting the product definition from non-subject countries[10] and thirteen replies from companies that do not import steel sheet.[11]

27. The Tribunal requested potential foreign producers and exporters to complete the foreign producers' questionnaire. It received replies from three that indicated that they were foreign producers of the steel sheet covered by the Tribunal's expiry review.[12]

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10. During the POR, imports of hot-rolled steel sheet originated only in non-subject countries.
11. Exhibit RR-2015-002-05A, Vol. 1.1A at 17.
12. *Ibid.*

LEGAL FRAMEWORK

28. The Tribunal is required, pursuant to subsection 76.03(10) of *SIMA*, to determine whether the expiry of the order is likely to result in injury.[13] The Tribunal is also required, pursuant to subsection 76.03(12), to make an order rescinding the previous order, if it determines that the expiry of the order is unlikely to result in injury, or continuing the order, with or without amendment, if it determines that the expiry of the order is likely to result in injury.

29. There are a number of framework or threshold issues that must be decided before the Tribunal makes the above determinations.

30. As the Tribunal recently stated in Expiry Review No. RR-2015-001,[14] legal framework decisions are based on the evidence before it in the case under review. Although the Tribunal infrequently changes legal framework decisions in subsequent reviews, it retains the jurisdiction to do so if circumstances warrant.[15]

LIKE GOODS AND CLASSES OF GOODS

31. The likelihood of injury to the domestic industry must be assessed regarding domestic producers of goods which are like goods in relation to the subject goods.

32. 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.

33. The evidence confirmed that domestically produced steel sheet is identical to or closely resembles imported steel sheet.[16] Therefore, for the purpose of this expiry review, domestically produced steel sheet is like goods in relation to the subject goods.

34. The subject goods and like goods cover a continuum of steel sheet products in different forms, including coils and cut-to-length sheet, and in different widths and thicknesses. With regard to coils and cut-to-length sheet, the Tribunal heard evidence from several witnesses that these goods are fundamentally the same product and are substitutable for one another.[17]

35. Overall, there was no evidence submitted in this expiry review to suggest that the Tribunal should reach a different conclusion, i.e. that there is one class of goods, than in previous cases, including *Steel Sheet NQ* and *Steel Sheet Review (2010)*.

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13. Subsection 2(1) of *SIMA* defines "injury" as ". . . material injury to the 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 in this case, the issue of whether the expiry of the order is likely to result in retardation does not arise in this expiry review.
14. *Steel Grating* (18 April 2016), RR-2015-001 (CITT) [*Steel Grating*].
15. *Steel Grating* at para. 59.
16. Exhibit RR-2015-002-B-01 at paras. 30-34, Vol. 11B.
17. *Transcript of Public Hearing*, Vol. 1, 27 June 2016, at 110, 125-26.

36. Therefore, for the purpose of this expiry review, the Tribunal determines that there is a single class of goods.

DOMESTIC INDUSTRY

37. Subsection 2(1) of *SIMA* defines "domestic industry" as follows: ". . . the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods . . . ."

Domestic Mills Constitute the Domestic Industry

38. In defining the domestic industry, the Tribunal must determine if there are domestic producers of like goods and, in doing so, which, if any, of their activities constitute "production" of the like goods.

39. As it did in *Steel Grating*, the Tribunal notes the ordinary meaning of the term "production"; "production" is defined, *inter alia*, as "**1** The action of making or manufacturing from components or raw materials . . . 1.3 The creation or formation of something as part of a physical . . . process".[18]

40. In other words, "production" requires a change beyond mere finishing which results in the substantial transformation of the original good into a new and significantly different set of goods. Although production often involves significant value added, this is not, in and by itself, an essential element of the test of what constitutes production for the Tribunal. The Tribunal looks at the totality of the process to determine whether substantial transformation has occurred.

41. The Tribunal assesses what constitutes "production" in a case-specific manner using the above test.[19] In the context of this expiry review, the Tribunal finds that the domestic mills are domestic producers of like goods because they use various manufacturing processes in Canada to transform raw materials into like goods, i.e. molten steel into slab into hot-rolled sheet.

42. Given that the like goods in this case include both coiled and cut-to-length sheet, the issue arises whether companies that *only* cut coil in Canada are also domestic producers of like goods. More specifically, the Tribunal must consider whether service centres that cut coil to make cut-to-length sheet in Canada should be included in the definition of the domestic industry.

43. Sheet acquires its essential metallurgical characteristics when it is first manufactured before it is formed into coil. The unrolling and cutting of sheet does not change its essential character or properties; there is no substantial transformation of the nature of the product. Witnesses testified that sheet remains

18. *Steel Grating* at para. 53.

19. In *Steel Grating* at para. 55, the Tribunal determined that companies that only fabricate plain grating in Canada are not domestic producers of like goods, as fabricated steel grating panels still have the same broad end uses as plain steel grating panels. In *Carbon and Alloy Steel Line Pipe* (29 March 2016), NQ-2015-002 (CITT) at paras. 64-69, the Tribunal determined that the transformation of imported mother tubes into line pipe constituted production of the like goods because the transformation involved a material change of the size (i.e. length, wall thickness and outer diameter) of the original product, which went beyond finishing operations and amounted to the creation of a new and significantly different product. The Tribunal has determined in many cases involving hot-rolled steel plate, for example, in Inquiry No. NQ-2015-001 and Expiry Review No. RR-2014-002, that cutting plate from coil does constitute production of like goods, as the coil is only transformed into cut-to-length plate once, and only if it has been unrolled, cut, flattened and tested (including "lead", "centre" and "tail" tests) to meet plate specifications. *Transcript of Public Hearing*, Vol. 1, 27 June 2016, at 99.

sheet, whether it is unrolled or cut.[20] In fact, witnesses testified that coils must always be unrolled and cut before they can be used by the ultimate end user.[21] In this context, the unrolling and cutting should therefore be viewed akin to finishing.

44. As a result, the Tribunal finds that service centres do not engage in the production of the like goods. Therefore, in this expiry review, the Tribunal maintains the conclusion reached in the *Steel Sheet NQ* and *Steel Sheet Review (2010)*, namely, that the domestic mills constitute the domestic industry.

CUMULATION AND CROSS-CUMULATION

45. In accordance with subsection 76.03(11) of *SIMA*, the Tribunal is required to make an assessment of the cumulative effect of imported goods from more than one country if it is satisfied that such an assessment would be appropriate, taking into account the conditions of competition between the goods imported from any of the countries and the goods from any other of those countries, or like goods of domestic producers. If the Tribunal is not satisfied that such an assessment would be appropriate, then it must assess the effects for imports from each country separately.

46. In considering the conditions of competition between goods, the Tribunal typically takes into account the following factors, as applicable: the degree to which the goods are interchangeable; the extent to which the goods are sold, or offered for sale, into the same geographical markets; the existence of common or similar channels of distribution for the goods; and differences in the timing, if any, of the availability of the goods. However, the Tribunal has stated that other factors may also be considered and that no single factor is necessarily determinative.

47. In the context of expiry reviews, the Tribunal has stated in the past that the effect of continued or resumed dumping or subsidizing and the assessment of conditions of competition must be looked at prospectively.[11] Accordingly, when the Tribunal makes a prospective assessment of the conditions of competition in expiry reviews, its examination presupposes that competition will actually exist, i.e. if a finding or an order expires, goods from each subject country will likely be present in the Canadian market at the same time.

48. Although *SIMA* is silent with regard to the issue of cross-cumulation, the Tribunal is cognizant of decisions of World Trade Organization (WTO) dispute settlement panels and appellate bodies on this issue. In particular, the Tribunal notes the WTO's decision in *United States - Countervailing Measures on Certain Hot-rolled Carbon Steel Flat Products from India*,[22] in which the Appellate Body found that

20. *Transcript of Public Hearing*, Vol. 1, 27 June 2016, at 68.
21. Although not determinative in and of itself as to whether cutting sheet constitutes production, the Tribunal notes that the cost of the cutting service is very low and is approximately $40/MT or about 5 percent of the final selling price on a fully absorbed cost basis. *Transcript of Public Hearing*, Vol. 1, 27 June 2016, at 98, 108.
22. (8 December 2014), WT/DS436/AB/R, Report of the Appellate Body [*Indian Flat Products*]. In this dispute, India challenged countervailing duties imposed by the United States on imports of certain steel products from India, arguing that the U.S. International Trade Commission had acted inconsistently with Article 15.3 of the *Agreement on Subsidies and Countervailing Measures*, https://www.wto.org/english/docs_e/legal_e/24-scm.pdf [*Subsidies Agreement*], by cumulating the effects of subsidized imports from India with those of imports from 10 other countries. Imports from 5 countries, including India, were subject to both dumping and subsidizing investigations. Imports from the remaining 6 countries were subject to dumping investigations only. India argued that, for the purposes of the subsidizing investigation, its goods should not have been cumulated with the latter category, i.e. with goods that were subject to a dumping investigation only.

cross-cumulating imports that were subject to a dumping investigation with those that were subject only to a subsidizing investigation constituted a violation of the *Subsidies Agreement*.

49. In essence, the Appellate Body decision stands for the proposition that ". . . being subject to simultaneous countervailing duty investigations 'is a necessary pre-condition for a cumulative assessment to be undertaken consistently with Article 15.3'."[23]

50. The Tribunal has consistently expressed the view that the appropriateness of cross-cumulation must be determined on a case-by-case basis.

51. In the present expiry review, the situation is analogous to that in *Indian Flat Products* because India is subject only to a subsidizing investigation, whereas the other three countries are subject only to dumping investigations. Accordingly, the Tribunal is of the view that assessing the effects of subsidized imports from India cumulatively with the effects of dumped imports from the other subject countries would not be appropriate.

52. It is appropriate to assess the cumulative effects of imports from China, Brazil and Ukraine. Hot-rolled steel sheet from these sources is a commodity product which is interchangeable, and is and will be marketed and distributed in the same manner.[24] The subject goods from these three countries directly compete or would compete with each other, and with domestic products, and their effects should be assessed cumulatively.

53. Accordingly, the Tribunal will conduct its injury analysis separately for India and cumulatively for China, Brazil and Ukraine (the cumulated countries).

LIKELIHOOD OF INJURY ANALYSIS

54. An expiry review is forward-looking.[25] It follows that evidence from the POR during which a finding or order was being enforced is relevant insofar as it bears upon the prospective analysis of whether the expiry of the finding or order is likely to result in injury.[26]

55. There is no presumption of injury in an expiry review; the Tribunal's findings must be based on positive evidence, in compliance with domestic law and consistent with the requirements of the WTO agreements.[27] In the context of an expiry review, positive evidence can include evidence based on past facts that tend to support forward-looking conclusions.[28]

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23. *Indian Flat Products* at para. 4.589. The WTO Appellate Body agreed with the WTO Panel that Article 15.3 of the *Subsidies Agreement* ". . . refers to imports 'simultaneously subject to countervailing duty investigations'", such that the authorization to cumulatively assess the effects of "such imports" requires that the imports be "subject to countervailing duty investigations". Conversely, ". . . the effects of imports other than such subsidized imports must not be incorporated in a cumulative assessment pursuant to Article 15.3". *Indian Flat Products* at para. 4.579.
24. *Transcript of Public Hearing*, Vol. 1, 27 June 2016, at 16, 26, 52, 116, 138-39.
25. *Certain Dishwashers and Dryers* (25 April 2005), RD-2004-010 (CITT) at paras. 15-16.
26. *Copper Pipe Fittings* (17 February 2012), RR-2011-001 (CITT) at para. 56. In *Thermoelectric Containers* (9 December 2013), RR-2012-004 (CITT) [*Thermoelectric Containers*] at para. 14, the Tribunal stated that the analytical context pursuant to which an expiry review must be adjudged often includes the assessment of retrospective evidence supportive of prospective conclusions. See, also, *Aluminum Extrusions* (17 March 2014), RR-2013-003 (CITT) [*Aluminum Extrusions*] at para. 21.
27. *Steel Sheet Review (2005)* at para. 59.
28. *Thermoelectric Containers* at para. 14; *Aluminum Extrusions* at para. 21.

56. In making its assessment of likelihood of injury, the Tribunal has consistently taken the view that the focus should be on circumstances that can reasonably be expected to exist in the near to medium term, which is generally from 12 to 24 months after the expiry of the finding or order. The domestic mills submitted that, in this case, the relevant period should be from 12 to 18 months due to the significant volatility in both the global steel market in general and the global hot-rolled steel sheet market in particular. The Tribunal concurs.

57. Subsection 37.2(2) of the *Special Import Measures Regulations*[29] lists factors that the Tribunal may consider in addressing the likelihood of injury. The factors that the Tribunal considers relevant in this expiry review are discussed below.

58. As noted above, in this expiry review, the Tribunal will conduct its injury analysis separately for India and the cumulated countries. However, its assessment of the changes in international and domestic market conditions and of the likely performance of the domestic industry, if the order were continued, is applicable to both injury analyses.

Changes in Market Conditions

59. In order to assess the likely volumes and prices of the subject goods and their impact on the domestic industry if the order is rescinded, the Tribunal will first consider any changes in international and domestic market conditions.[30]

<u>International Market Conditions</u>

60. It is generally recognized that the market for hot-rolled steel sheet is a global market, albeit with some regional differences. Since the last expiry review, and during the POR, there have been some significant changes in the domestic and global steel markets in general, and for hot-rolled steel sheet in particular.

61. Although the global economy has improved since the previous expiry review, which took place during the aftermath of the global financial crisis of 2008, the drop in commodity prices during the POR had a significant impact on economic performance. Economic activity softened in advanced economies at the end of the POR, and the global economic growth rate slowed to 2.8 percent.[31]

62. Forecasts for global economic growth during the next 12 to 18 months remain modest. Among the factors expected to hinder a stronger recovery are continued turbulence in financial markets, slowing trade and investment growth in emerging market economies, particularly in China due to its transition to a more balanced growth path, continued weakness in oil prices and general uncertainty.[32]

63. World steel demand contracted sharply following the global economic crisis in 2008, recovered slowly in the subsequent years, but then dropped again in 2015.[33] Among other factors, the rebalancing in

29. S.O.R./84-927 [*Regulations*].
30. Paragraph 37.2(2)(j) of the *Regulations* states that the Tribunal may consider ". . . any changes in market conditions domestically or internationally, including changes in the supply of and demand for the goods, as well as any changes in trends and in sources of imports into Canada . . . ."
31. Exhibit RR-2015-002-A-09, tab 1, Vol. 11A.
32. *Ibid.*, tabs 1, 11.
33. *Ibid.*, tab 7 at 3.

the Chinese economy contributed significantly to the slowdown in global steel consumption in 2015,[34] which in turn weakened demand forecasts for 2016.[35] According to one source, global steel consumption is forecast to contract by 0.8 percent in 2016 and to see growth of only 0.4 percent in 2017.[36] In line with the decreased demand, global steel production decreased by 2.5 percent in year-over-year terms in the first 10 months of 2015, although global steel exports did not decline.[37]

64. In the hot-rolled steel sheet sector, the monthly consumption indicator for the major steel-consuming economies declined by slightly more than 4.0 percent in year-on-year terms in the first eight months of 2015.[38] Global hot-rolled steel sheet production is expected to increase by 1.9 percent from 2015 to 2016 and by 2.8 percent from 2016 to 2017. Although consumption is expected to also increase in 2016 and 2017, overall, production growth is projected to be higher than consumption growth.[39]

65. Overcapacity in the global steel industry remains a significant issue.[40] In April 2016, the Organisation for Economic Co-operation and Development convened a special high-level meeting to address excess capacity and structural adjustments in the steel sector.[41] Global excess capacity was projected to exceed 700 million metric tonnes in 2015.[42] Proposed production capacity increases are expected to further exacerbate the overcapacity situation from 2016 to 2018.[43]

66. In the hot-rolled steel sheet sector, global excess capacity was approximately 237 million metric tonnes in 2015 and is projected to remain above 200 million metric tonnes through 2018. While capacity utilization rates are expected to rise from 72 percent in 2015 to 76 percent in 2018, significant excess capacity remains.[44]

67. Overcapacity has contributed to falling prices and decreased profitability in the steel industry overall.[45] Specifically, in the international market for hot-rolled steel sheet, prices fell by 29 percent on a year-over-year basis between February 2015 and February 2016.[46] Prices began to recover from this drop in the first quarter of 2016, supported by the rise in raw materials prices, a shortage of supply caused by previous destocking efforts and trade actions in several key markets.[47] Despite these rising prices, the profitability of global hot-rolled steel sheet producers is expected to remain low, as average global prices are expected to remain below average integrated mill costs until the first quarter of 2017.[48]

68. Overcapacity and falling prices have also caused a disruption in global trade flows, as steel producers seek access to export markets. Influxes of low-priced exports resulted in an increase in trade

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34. *Ibid.*, tab 3; Exhibit RR-2015-002-B-11 at 10, tab 4, Vol. 11D.
35. Exhibit RR-2015-002-B-11, tab 4 at 18, Vol. 11D.
36. *Ibid.*, tab 5.
37. Exhibit RR-2015-002-A-09, tab 2 at 1-2, Vol. 11A.
38. Exhibit RR-2015-002-B-11, tab 4 at 9, Vol. 11D.
39. Exhibit RR-2015-002-A-03, tab 1, Vol. 11.
40. Exhibit RR-2015-002-A-09, tabs 2-10, Vol. 11A.
41. *Ibid.*, tab 10.
42. *Ibid.*, tab 7 at 3.
43. *Ibid.*, tab 7 at 4.
44. Exhibit RR-2015-002-A-03, tab 1, Vol. 11; Exhibit RR-2015-002-B-07, tab 5, Vol.
45. Exhibit RR-2015-002-B-11, tab 4 at 15 and 17, Vol. 11D.
46. Exhibit RR-2015-002-A-09, tab 5 at 5, Vol. 11A.
47. Exhibit RR-2015-002-A-04 (protected), tab 3 at 3, Vol. 12.
48. *Ibid.*, tab 3 at 4.

actions in 2015 in various countries, including in the subject countries themselves.[49] As previously noted, global steel export volumes did not decline in 2015,[50] which suggests that, as some export markets became closed to them, exporters sought out alternative markets.

Domestic Market Conditions

69. The Canadian economy was weak in 2015, as real GDP grew at a below-average rate of only 1.2 percent, largely due to falling oil and gas prices and the resulting significant reduction in investment in that sector.[51] Economic growth is expected to remain slow in 2016 and 2017, but will improve from 2015 levels. In 2016, exports and the manufacturing and services sectors are expected to drive the real GDP growth rate to 1.7 percent.[52] Government spending is expected to further boost the Canadian economy in 2017, pushing the growth rate to 2.0 percent. Thereafter, the economy is expected to remain near its long-term potential growth rate of 1.6 to 1.7 percent.[53]

70. The downturn in the oil and gas sector decreased demand for hot-rolled steel sheet in the Canadian market in 2015.[54] Total Canadian consumption of hot-rolled steel sheet increased by 15 percent in 2014 compared to 2013, but declined by 11 percent in 2015.[55] During the same time frame, the Canadian market for hot-rolled steel sheet grew by 24 percent and then decreased by 14 percent.[56]

71. Canadian consumption of hot-rolled steel sheet is projected to improve significantly in 2016 over 2015 levels and further improve, albeit to a lesser extent, in 2017.[57] Demand in the non-renewable energy, mining and infrastructure sectors is expected to remain weak in 2016 and 2017. However, demand in the renewable energy and commercial construction sectors is expected to remain consistent, while demand in the automotive sector is expected to remain relatively strong.[58]

72. There were no imports of hot-rolled steel sheet from the subject countries during the POR. Among non-subject imports, the United States has remained a consistently important source. There were small volumes of imports from other non-subject countries.[59]

73. The Canadian market price for hot-rolled steel sheet fluctuated during the POR, rising significantly in 2014 above 2013 levels before dropping in 2015 below 2013 levels.[60] The testimony at the hearing was that the 2015 prices were "historically low" and "unsustainable".[61] The Canadian market price recovered significantly in the first half of 2016; at the time of the hearing, the domestic spot market price for hot-rolled steel sheet was between $835 and $850 per metric tonne (not including delivery costs).[62] However, the

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49. Exhibit RR-2015-002-B-11, tab 8 at 5-7, Vol. 11D.
50. Exhibit RR-2015-002-A-09, tab 6 at 2-3, Vol. 11A.
51. *Ibid.*, tab 11 at 2-3.
52. *Ibid.*, tab 11 at 3.
53. *Ibid.*, tab 12.
54. *Transcript of Public Hearing*, 28 June 2016, at 140.
55. Exhibit RR-2015-002-05A, Table 18, Vol. 1.1A. The Tribunal notes that the values in the investigation report are different than those reported by CRU; however, the trends are the same.
56. Exhibit RR-2015-002-05A, Table 13, Vol. 1.1A.
57. Exhibit RR-2015-002-A-04 (protected), tab 3, Table s.14, Vol. 12.
58. *Transcript of Public Hearing*, 27 June 2016, at 117.
59. Exhibit RR-2015-002-06A (protected), Table 7, Vol. 2.1A; Exhibit RR-2015-002-13.07 (protected), Vol. 2.4 at 45-46.
60. Exhibit RR-2015-002-06A (protected), Table 15, Vol. 2.1A.
61. *Transcript of Public Hearing*, 28 June 2016, at 158-59.
62. *Transcript of Public Hearing*, 27 June 2016, at 53.

witnesses also agreed that this increase represented an overcorrection and that prices are expected to fall significantly by the end of the first half of 2017, returning to "healthy" levels.[63]

74. Further, the Tribunal heard evidence that the price increase observed in the first half of 2016 was not the result of any improvement in underlying demand, but instead due to other factors such as supply tightening in the United States as a result of trade remedy cases, as well as the idling of production facilities, and rising iron ore prices.[64]

Likely Performance of the Domestic Industry if the Order is Continued

75. Paragraph 37.2(2)(c) of the *Regulations* directs the Tribunal to examine the likely performance of the domestic industry, taking into account the industry's recent performance, including trends in production, capacity utilization, employment levels, prices, sales, inventories, market share, exports and profits.

76. For the purposes of this analysis, the Tribunal will first consider the domestic industry's recent performance and then assess the likely performance of the domestic industry *if the order is continued*. In so doing, the Tribunal will look at whether there are any relevant factors other than the dumping and subsidizing of the subject goods that affect or are likely to affect the domestic industry's performance in the near to medium term.

77. The domestic industry's financial performance at both the net income and gross margin levels was poor throughout the POR, but worsened significantly in 2015 as compared to 2014. In particular, between 2014 and 2015, costs did not decline as quickly as prices.[65] Going forward, the domestic mills indicated that the continuation of the order would be beneficial to their financial performance.[66]

78. Two of the domestic mills, Algoma and USSC, are currently undergoing restructuring processes under the *Companies' Creditors Arrangement Act*.[67] As part of this process, both companies are engaged in a Sale and Investor Solicitation Process (SISP), which allows for potential bidders to express interest in connection with the potential investment in or sale of the property and assets of an insolvent company.[68] As of the date of the hearing, Algoma had entered into a preliminary purchase agreement with a group led by KPS Capital Partners,[69] while USSC's SISP was still ongoing. The witnesses for USSC testified that its restructuring has resulted in some loss of business to its automotive customers; however, it was able to counter the losses by increasing sales in other sectors.[70]

79. In the Tribunal's view, even if the order is continued, the domestic industry as a whole will continue to face challenges because of the less than robust growth forecast for Canada in the near to medium term, especially in the oil and gas sector. Further, those mills currently undergoing restructuring processes may or may not be successful.

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63. *Transcript of Public Hearing*, 28 June 2016, at 159-60.
64. *Ibid.* at 140-41, 157, 159.
65. Exhibit RR-2015-002-06A (protected), Table 69, Vol. 2.1A.
66. *Transcript of Public Hearing*, 27 June 2016, at 130; Exhibit RR-2015-002-16.02 (protected), Vol. 4 at 115; Exhibit RR-2015-002-16.03A (protected), Vol. 4A at 80; Exhibit RR-2015-002-16.04 (protected), Vol. 4A at 151; Exhibit RR-2015-002-16.05 (protected), Vol. 4C at 54.
67. R.S.C., 1985, c. C-36.
68. Exhibit RR-2015-002-A-03 at paras. 7-8, Vol. 11; Exhibit RR-2015-002-C-01 at paras. 18-19, Vol. 11G.
69. *Transcript of Public Hearing*, 27 June 2016, at 126, 129.
70. *Transcript of Public Hearing*, 28 June 2016, at 146-47.

Injury Analysis—Cumulated Countries

80. The Tribunal will now determine whether the expiry of the order is likely to result in injury to the domestic industry. In making this determination, the Tribunal will distinguish the likely impact of the dumped or subsidized goods from the likely impact of any other factors that affect or are likely to affect the domestic industry as discussed above in the section on the likely performance of the domestic industry if the order is continued.

81. The Tribunal will first conduct its injury assessment with regard to the cumulated countries, i.e. China, Brazil and Ukraine. It will assess the likely volumes and likely prices of dumped goods and their likely impact on the domestic industry if *only* the anti-dumping duties are no longer in place.

Likely Volumes of Dumped Goods

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

83. The Tribunal's assessment of the likely volumes of imports of the subject goods encompasses 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 and/or countervailing measures in other jurisdictions and whether measures adopted by other jurisdictions are likely to cause a diversion of the subject goods to Canada.

84. As noted above, there were no imports of the subject goods during the POR. However, volumes in the POR are not necessarily an indicator of future volumes. Instead, the volumes during the POR may solely indicate that duties have prevented the subject goods from being competitive in the Canadian market and have altered market dynamics.

85. The Tribunal has previously recognized that, due to the capital-intensive nature of hot-rolled steel production, there is a strong incentive for steel mills to maintain high capacity utilization rates to spread fixed costs over as much volume as possible (the production imperative).[71] Accordingly, where domestic demand is weak, there is a strong incentive to export steel at marginal cost to increase capacity utilization.

86. As a result, production capacity relative to demand in the subject countries is a key factor that is likely to influence the volume of subject goods exported to Canada. In this respect, the evidence indicates that the aggregate production capacity of producers of hot-rolled steel sheet in the cumulated countries is very large and that significant excess capacity exists.

– Economic Conditions and Production Capacity in China, Brazil and Ukraine

87. The evidence on the record is that China is the main driver of the global excess capacity crisis in the steel industry.[72] Steel demand in China has decreased as a result of the slowdown in the Chinese economy, but production is not expected to decrease and may even increase.[73]

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71. *Steel Sheet Review (2010)* at paras. 61-62, 132.
72. Exhibit RR-2015-002-A-09, tabs 13-19, Vol. 11A; *Transcript of Public Hearing*, 27 June 2016, at 24-25.
73. Exhibit RR-2015-002-A-09, tabs 13-19, Vol. 11A; *Transcript of Public Hearing*, 27 June 2016, at 32-33.

88. In terms of hot-rolled steel sheet, Chinese production peaked at 248.4 million metric tonnes in 2015, is expected to drop slightly to 246.6 million metric tonnes by the end of 2016 and to stay at this approximate level through 2018. However, Chinese hot-rolled steel sheet production capacity was 393.0 million metric tonnes in 2015 and is expected to increase to over 399.0 million metric tonnes by 2018. Consequently, there will continue to be significant excess capacity in China. Capacity utilization rates are expected to remain low, at 62 to 63 percent.[74]

89. There is also evidence on the record that China is a significant producer of cold-rolled and galvanized steel sheet, which are produced from hot-rolled steel sheet, and that they have been shipping significant volumes of these downstream products to Canada at low prices.[75] It is reasonable to conclude that, should the order as it applies to the cumulated countries be rescinded, these exporters would use the same distribution channels to resume shipping hot-rolled steel sheet to Canada.

90. Economic conditions in Brazil are currently weak, which is having a significant impact on steel-consuming sectors such as construction and automotive. Generally, steel demand contracted by 16.7 percent in 2015 and by 8.8 percent in 2016, and is expected to recover by only 3.1 percent in 2017.[76]

91. Hot-rolled steel sheet consumption in Brazil declined by more than 3 million metric tonnes over the POR and is forecast to remain steady in 2016 before increasing slightly in 2017 and 2018. Production also decreased over the POR, although not to the same degree as consumption, and is forecast to decline further in 2016 and 2017 before rebounding slightly in 2018. In contrast, hot-rolled steel sheet capacity increased by 820,000 metric tonnes over the POR and is forecast to remain constant through 2016, before increasing in 2017 and then declining in 2018. Capacity utilization declined from 81 percent in 2013 to 70 percent in 2015 and is expected to drop to 68 percent in 2016 and 2017.[77]

92. Weakening demand in Brazil has contributed to an increase in exports. Brazil was a net exporter of hot-rolled steel sheet over the POR, with net exports increasing from 850,000 metric tonnes in 2014 to 1.875 million metric tonnes in 2015. Although the absolute volume of exports is expected to decline somewhat, Brazil is predicted to remain a net exporter of significant volumes of hot-rolled steel sheet through 2018.[78] Brazilian producers also export significant volumes of cold-rolled and galvanized steel sheet to the North American market at low prices.[79]

93. The evidence submitted to the Tribunal by one Brazilian producer confirms that its plant capacity utilization is low and that exports to countries other than the United States and Canada increased significantly over the POR, while domestic sales declined.[80]

94. Net exports from Ukraine decreased from approximately 3.2 million metric tonnes in 2013 to 2.8 million metric tonnes in 2015, but are expected to increase to approximately 3.0 million metric tonnes in 2016, 3.3 million metric tonnes in 2017 and 3.4 million metric tonnes in 2018. Ukrainian production decreased from approximately 6.3 million metric tonnes to 5.2 million metric tonnes over the POR but is

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74. Exhibit RR-2015-002-B-07, tab 5 at 2, Vol. 11C.
75. Exhibit RR-2015-002-A-09, tab 25, Vol. 11A.
76. Exhibit RR-2015-002-A-04 (protected), tab 3 at 5-6, Vol. 12.
77. Exhibit RR-2015-002-B-07, tab 5 at 1, Vol. 11C.
78. *Ibid.*
79. Exhibit RR-2015-002-A-01 at para. 124, Vol. 11.
80. Exhibit RR-2015-002-06A (protected), Tables 91, 92, Vol. 2.1A.

expected to increase to 6.4 million metric tonnes by 2018.[81] Ukraine's net exports therefore consistently represent approximately 50 percent of Ukrainian production.

95. It is well documented that Ukraine has faced significant political and economic instability in recent years. The ongoing conflict with Russia, combined with a significant contraction in steel demand in that country, has restricted Ukraine's ability to export to this important market.[82] Since Ukraine exports such a significant proportion of its hot-rolled steel sheet production, this will provide an incentive to seek access to other export markets.

96. Taken together, the cumulated countries account for significant global excess capacity. During the POR, excess capacity in the cumulated countries rose from 148 million metric tonnes to 153 million metric tonnes, and is expected to further increase to 159 million metric tonnes by 2018. Furthermore, excess capacity in the cumulated countries is expected to represent 67 percent of global excess capacity in 2016 and is forecast to reach 76 percent by 2018.[83]

– Imposition of Measures in Other Countries

97. There are trade measures concerning hot-rolled steel sheet exports from the cumulated countries in various jurisdictions around the world. In particular, the United States has existing dumping findings against China and Ukraine[84] and recently imposed anti-dumping duties on imports of hot-rolled steel sheet from Brazil.[85] Lack of access to the U.S. market for the cumulated countries increases the risk that exports of hot-rolled steel from those countries will enter the Canadian market if the Tribunal's order against them is rescinded.

– Attractiveness of Canadian Market

98. Prices in the Canadian market are generally higher than those in the home markets of the cumulated countries. As noted above, the Canadian spot market price at the time of the hearing was between $835 and $850 per metric tonne. In contrast, home market prices in the third quarter of 2016 were forecast to be $506 per metric tonne for Brazil, $452 per metric tonne for China and $456 per metric tonne for Ukraine.[86] Although the Canadian market price is expected to fall in the remainder of 2016 and 2017, the price disparity between the Canadian market price and the home market prices in the cumulated countries is expected to remain significant.[87]

– Conclusion

99. In the Tribunal's view, the relatively weak overall demand growth in the cumulated countries' domestic and current major export markets, coupled with significant overcapacity, increased competition and continued pressure of the production imperative, means that the cumulated countries will be highly motivated to find markets for their goods. With its high domestic prices, Canada would likely be a very attractive export destination for the subject goods from the cumulated countries.

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81. Exhibit RR-2015-002-B-07, tab 5 at 3, Vol. 11C.
82. Exhibit RR-2015-002-A-03 at para. 37, Vol. 11.
83. Exhibit RR-2015-002-B-07, tab 5 at 4, Vol. 11C.
84. Exhibit RR-2015-002-05A, Table 1, Vol. 1.1A.
85. Exhibit RR-2015-002-A-09, tab 30, Vol. 11A.
86. Exhibit RR-2015-002-B-17 at 16, 17, 19, Vol. 11F.
87. *Ibid.* at 14-15.

100. Accordingly, the Tribunal is of the opinion that, should the order be rescinded with respect to the cumulated countries, the likely volumes of hot-rolled steel sheet that would be exported to Canada would be significant in relation to the size of the Canadian market.

Likely Price Effects of the Dumped Goods

101. Paragraph 37.2(2)(b) of the *Regulations* directs the Tribunal to consider, if the order is rescinded, the likely prices of the dumped or subsidized goods and whether the dumping or subsidizing 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. In this regard, the Tribunal distinguishes the price effects of the dumped or subsidized goods from any price effects that would likely result from other factors affecting prices.

– Price Undercutting

102. As noted above, there were no imports from the cumulated countries during the POR. However, there was consistent undercutting by non-subject countries (not including the United States) during the POR. This dynamic is confirmed by the commercial intelligence of the domestic producers. According to witnesses from the domestic mills, the Republic of Korea and Russia have emerged as major low-priced sources of supply since the beginning of 2015, as well as New Zealand, Turkey, Italy and the Netherlands.[88] Due to the commodity nature of hot-rolled steel sheet, prices tend to converge around the lowest offer in the market; therefore, should the order be rescinded with respect to the cumulated countries, they would have to compete at these low prices in order to secure sales to Canada.

103. As noted above, producers from the cumulated countries are also offering other steel products in Canada, such as cold-rolled and galvanized steel sheet, at prices that are significantly lower than Canadian prices.

104. Further, forecast landed prices indicate that the cumulated countries would undercut domestic prices by a significant margin. Mr. Henry Wegiel of AMD prepared estimates of landed prices on a quarterly basis over the next 18 months by adding freight and logistics costs to published domestic prices in each of the cumulated countries.[89] Mr. Wegiel also added an amount for the "domestic premium", which is a price premium that purchasers will pay to secure domestic supply because the lead times are shorter and there is less risk.[90]

105. According to this analysis, even taking into account the domestic premium, import prices from the cumulated countries would theoretically undercut the forecast Canadian prices in the next four quarters by an average of $205 per metric tonne for Brazil, $216 per metric tonne for China and $241 per metric tonne for Ukraine.[91]

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88. Exhibit RR-2015-002-A-04 (protected) at paras. 57-60, Vol. 12; Exhibit RR-2015-002-B-06 (protected) at paras. 24-34, Vol. 12A; *Transcript of Public Hearing*, 27 June 2016, at 61-62.
89. Exhibit RR-2015-002-B-17 at 16, 17 and 19, Vol. 11F.
90. *Transcript of Public Hearing*, 27 June 2016, at 49.
91. Exhibit RR-2015-002-B-17 at 16, 17, 19, Vol. 11F.

– Price Depression

106. The witnesses estimated that the Canadian price would decrease by at least $75 to $100 per metric tonne if duties are eliminated.[92] Further, the witnesses testified that this decrease would occur almost immediately after the rescission of the order,[93] as the requisite supply chains are in place and it is only necessary for one low-priced offer to be made to a Canadian importer for the market price to drop significantly.[94]

– Conclusion

107. In light of the above, the Tribunal considers that it is likely that hot-rolled steel sheet from the cumulated countries will be sold at prices that will significantly undercut the Canadian domestic price, resulting in significant price depression, if the Tribunal's order with respect to them is rescinded.

Likely Impact of the Dumped Goods on the Domestic Industry

108. The Tribunal will now assess the likely impact of the above likely volumes and prices of the dumped goods on the domestic industry, taking into consideration the likely performance of the domestic industry if the order is continued, as discussed above. In this analysis, the Tribunal distinguishes the likely impact of the dumped goods from the likely impact of any other factors affecting or likely to affect the domestic industry.

109. The domestic industry was able to maintain a steady market share during the POR despite facing increasing competition from low-priced imports from non-subject countries. However, the return of significant volumes of dumped hot-rolled steel sheet from the cumulated countries would cause the domestic industry to lose significant market share. The witnesses testified that, although they will drop their price as much as possible in order to maintain a sale, there is a threshold price where they can no longer compete.[95] Extremely low-priced imports from the cumulated countries could therefore result in significant volumes of lost sales.

110. In turn, a loss of market share would negatively impact the domestic industry's production volume and reduce its capacity utilization, which the domestic industry already characterizes as "low".[96] Significant unused capacity is problematic in capital-intensive industries such as the steel industry and contributes to poor financial performance by increasing the cost of production per metric tonne.

111. As already noted, the financial performance of the domestic industry was generally poor over the POR. AMD estimated that, if prices had been $100 per metric tonne lower than they were during the POR, its net income would have been significantly worse and that it would not have been able to make necessary investments.[97]

92. Exhibit RR-2015-002-A-05 at para. 49, Vol. 11; Exhibit RR-2015-002-B-04 (protected) at para. 49, Vol. 12A; Exhibit RR-2015-002-B-06 (protected) at paras. 35, 41, Vol. 12A. These estimates were based on resumed imports of hot-rolled steel sheet from all four subject countries. In the Tribunal's view, if imports from only the three cumulated countries were to resume, the Canadian price of hot-rolled steel sheet would likely decrease by more than $100 per metric tonne, given that the projected price for exports from India is higher than for any of the cumulated countries.

93. *Transcript of Public Hearing*, 27 June 2016, at 81-82.

94. *Ibid.* at 92-93.

95. *Ibid.* at 83.

96. Exhibit RR-2015-002-B-01 at para. 273, Vol. 11B.

97. Exhibit RR-2015-002-B-03 at paras. 52-53, Vol. 11A.

112. Going forward, a $100 per metric tonne decrease in the Canadian market price would have a similar negative impact on the forecast net income of AMD and the other domestic mills. Further, lower net incomes will negatively affect the ability of the domestic mills to make future capital investments. For example, AMD submitted that its ability to compete for investment dollars with the other members of its parent company is based on financial performance and that, as a result, a price drop in the Canadian market would jeopardize planned investments.[98] Similarly, Algoma submitted that its capital expenditures are funded through internally generated revenue. If it cannot achieve satisfactory financial results, then planned investments for 2016 and 2017 will not be made.[99] USSC also indicated that its ability to make planned investments could be put in jeopardy if the order is rescinded.[100]

113. The rescission of the order against the cumulated countries could also have a negative impact on the respective court-supervised restructuring processes of Algoma and USSC, as potential bidders are concerned about the ability of the Canadian market to sustain the domestic producers in the absence of anti-dumping duties.[101]

114. The Tribunal notes that it is possible that other factors, such as pension liabilities and, as discussed above, loss of business due to restructuring, will have a negative impact on the financial performance of the domestic industry going forward.[102]

115. Nonetheless, the Tribunal is of the view that the resumption of the dumping, in and of itself, will likely cause material injury to the domestic industry.

Conclusion

116. In light of the above, the Tribunal finds that the resumption of significant volumes of imports of the dumped subject goods at low prices from the cumulated countries will likely cause material injury to the domestic industry in terms of a reduction in market share, production and capacity utilization, decreased net income and an inability to make necessary investments.

Injury Analysis—India

117. The Tribunal will now conduct its injury assessment with regard to India. It will assess the likely volumes and likely prices of subsidized goods and their likely impact on the domestic industry if *only* the countervailing duties are no longer in place.

Likely Volumes of Subsidized Goods

118. The Government of India submitted that capacity utilization among Indian steel producers is relatively high as compared to the producers in the cumulated countries. It also argued that it expects that increasing domestic demand and a relatively high domestic market price will serve to ensure that Indian exporters remain focussed on their domestic market and do not export significant volumes of hot-rolled steel sheet to Canada if the Tribunal’s order against India is rescinded. Further, the Government of India has imposed several trade-restrictive measures on imports of hot-rolled steel sheet from China and other countries, which will further ensure that Indian steel production will serve domestic demand.

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98. *Transcript of Public Hearing*, 27 June 2016, at 17, 19, 21-24, 67.
99. Exhibit RR-2015-002-A-03 at para. 22, Vol. 11.
100. *Transcript of Public Hearing*, 28 June 2016, at 147-48.
101. *Transcript of Public Hearing*, 27 June 2016, at 127.
102. *Ibid.* at 129; Exhibit RR-2015-002-C-03 at para. 32, Vol. 11H; *Transcript of Public Hearing*, 28 June 2016, at 146-47.

119. Economic conditions in India were strong during the POR. India's economy grew by 7.3 percent in 2015, and is expected to see further growth of 7.5 percent in both 2016 and 2017.[103]

120. Hot-rolled steel sheet consumption increased substantially in India during the POR, growing by 8.5 percent in 2014 and 10.3 percent in 2015, in response to demand in the construction sector as a result of significant infrastructure investment by the Indian government, as well as in the automotive sector.[104] However, the most recent forecasts indicate that growth in consumption will slow significantly in the near to medium term, increasing by only 1.8 percent in 2016, 3.7 percent in 2017 and 2.0 percent in 2018.[105]

121. In contrast, production grew more slowly during the POR, increasing by 7 percent in 2014 and 3 percent in 2015.[106] Looking to the future, production is expected to increase by 5 percent in 2016 and 2017 and 3 percent in 2018.[107] Increases in production are therefore expected to outpace increases in consumption for the foreseeable future.

122. The forecast increases in production reflect the fact that, after remaining flat in 2015, capacity in India is forecast to increase by 6 percent in 2016 and a further 7 percent in 2017, before decreasing by 6 percent in 2018.[108]

123. Although capacity utilization in India decreased from 95 percent to 88 percent over the POR, utilization is expected to increase to 92 percent by 2018.[109] However, planned capacity expansions and the Indian government's stated policy objective to become a world leader in steel production may affect these forecasts.[110]

124. Furthermore, the data submitted to the Tribunal by Indian exporters show capacity utilization rates over the POR that were significantly lower than the CRU estimates.[111] These producers are also among those that have announced large capacity expansion projects.[112]

125. In the first two years of the POR, India was a net exporter of hot-rolled steel sheet, with exports of 1.5 million metric tonnes in each of 2013 and 2014. Although India became a net importer of hot-rolled steel sheet in 2015, it still exported 844,000 metric tonnes of hot-rolled steel sheet,[113] which is a significant volume when considered in the context of the size of the Canadian market.

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103. Exhibit RR-2015-002-B-11, tab 2 at 3, Vol. 11D.
104. Exhibit RR-2015-002-A-04 (protected), tab 3, Table s.14, Vol. 12; Exhibit RR-2015-002-A-03, tab 6 at 12, Vol. 11; Exhibit RR-2015-002-24.01 (protected), Vol. 8 at 93-94.
105. Exhibit RR-2015-002-A-04 (protected), tab 3, table s.14, Vol. 12.
106. Exhibit RR-2015-002-B-07, tab 5 at 2, Vol. 11C.
107. *Ibid.*
108. *Ibid.*
109. Exhibit RR-2015-002-A-03, tab 1, Vol. 11.
110. *Ibid.*, tab 5; Exhibit RR-2015-002-A-04 (protected), tab 3 at 59, Vol. 12; Exhibit RR-2015-002-A-09, tab 44, Vol. 11A.
111. Exhibit RR-2015-002-06A (protected), Table 93, Vol. 2.1A.
112. Exhibit RR-2015-002-A-09, tab 45, Vol. 11A; Exhibit RR-2015-002-A-03, tab 6, Vol. 11.
113. Exhibit RR-2015-002-B-07, tab 5 at 2, Vol. 11C.

126. Although the Indian government has implemented several trade measures to try to curtail imports of hot-rolled steel sheet,[114] it is too soon to know how successful these measures will be. Furthermore, some of these measures will be ending soon.[115]

127. Despite the fact that India is projected to remain a net importer through 2018,[116] the Tribunal is of the view that this does not mean that India will necessarily cease exporting hot-rolled steel sheet in volumes that could be large relative to the Canadian market. In fact, the most recent information on the record indicates Indian exports of hot-rolled steel sheet of 100,000 metric tonnes per month.[117]

128. Indian steel producers are also exporting significant volumes of other products, such as hot-rolled plate and galvanized steel sheet, to Canada,[118] which indicates that they have existing distribution channels that could easily be used to resume exports of hot-rolled steel sheet.

129. Further, with access to the U.S. market curtailed by existing trade measures,[119] Canada remains one of the few markets where Indian exports of hot-rolled steel sheet could command a price above that of their home market price.[120]

130. In view of the above, the Tribunal is of the opinion that producers in India will likely resume exporting significant volumes[121] of hot-rolled steel sheet to Canada if the Tribunal's order against India is rescinded.

Likely Price Effects of the Subsidized Goods

131. Prices in the Indian domestic market are higher and are forecast to remain higher than those in the cumulated countries.[122] However, there is evidence that this may not prevent Indian producers from adjusting their prices to enter the Canadian market.

132. Using the most recent information on Indian export prices, the forecast landed prices prepared by Mr. Wegiel for Indian hot-rolled steel sheet indicate that these prices would, in fact, undercut Canadian prices by more than $200 per metric tonne,[123] which is significantly more than the average $37 per metric tonne that AMD had previously estimated for the next 12 months or the zero undercutting that would occur on average over the next 18 months.[124]

133. In any event, as with producers in the cumulated countries, if the order is rescinded against India, Indian producers will have to compete against the low prices offered by producers in other non-subject countries in order to regain sales to Canada.

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114. Exhibit RR-2015-002-G-01 at paras. 17-18, Vol. 13.
115. Exhibit RR-2015-002-A-04 (protected), tab 3 at 13, Vol. 12.
116. Exhibit RR-2015-002-B-07, tab 5 at 2, Vol. 11C.
117. *Transcript of Public Hearing*, 27 June 2016, at 40; Exhibit RR-2015-002-B-18 (protected), Vol. 12B.
118. Exhibit RR-2015-002-A-04 (protected), tab 8, Vol. 12; Exhibit RR-2015-002-A-09, tab 25, Vol. 11A.
119. Exhibit RR-2015-002-05A, Table 1, Vol. 1.1A.
120. Exhibit RR-2015-002-B-17 at 18, Vol. 11F.
121. In absolute terms, the volume of imports of the subject goods may likely be lower than the volume of imports of the subject goods from the cumulated countries, since India has less excess. However, the volumes would still be significant.
122. Exhibit RR-2015-002-A-04 (protected), tab 3, Table s.39, Vol. 12.
123. *Transcript of Public Hearing*, 27 June 2016, at 51; Exhibit RR-2015-002-B-18 (protected), Vol. 12B.
124. Exhibit RR-2015-002-B-17 at 18, Vol. 11F.

134. The witnesses testified that, even in a scenario where only the countervailing duty on imports from India is removed, they still expected that the Canadian price would decrease by approximately $100 per metric tonne and that this decrease would take place almost immediately after a rescission of the order.[125]

135. Furthermore, Indian producers are currently undercutting domestic sales of similar goods in the Canadian market. For example, there is evidence on the record of one Indian offer of corrosion-resistant steel sheet at 30 percent lower than the Canadian price.[126]

136. The witnesses also noted that low-priced offers of Indian plate were made to Canadian customers the day after the Tribunal's finding of no injury in Inquiry No. NQ-2015-001 was announced.[127]

137. In light of the above, despite the evidence of a relatively high domestic selling price in India, the Tribunal is of the opinion that it is likely that imports from India will enter the Canadian market at prices that significantly undercut the Canadian domestic price, resulting in significant price depression.

Likely Impact on the Domestic Industry of the Subsidized Goods

138. As noted above, the witnesses testified that they expected the Canadian market price to decrease by $100 per metric tonne even in a scenario where only the order against India is rescinded. Accordingly, as the above discussion with respect to the impact on the domestic industry if the order against the cumulated countries is rescinded is based on the $100 per metric tonne decrease scenario, that analysis can be applied *mutatis mutandis* here.

139. Therefore, the Tribunal finds that the resumption of imports of subsidized goods will, in and of itself, likely cause material injury to the domestic industry.

Conclusion

140. In view of the above, the Tribunal finds that the resumption of significant volumes of imports of the subsidized subject goods at low prices from India will likely be materially injurious to the domestic industry in terms of a reduction in market share, production and capacity utilization, decreased net income and an inability to make necessary investments.

DETERMINATION

141. On the basis of the foregoing analysis, the Tribunal finds that, if the order is rescinded, the likely resumption or continuation of the dumping of the subject goods from Brazil, China, and Ukraine will likely cause material injury to the domestic industry.

142. On the basis of the foregoing analysis, the Tribunal also finds that, if the order is rescinded, the likely resumption or continuation of the subsidizing of the subject goods from India will likely cause material injury to the domestic industry.

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125. *Transcript of Public Hearing*, 27 June 2016, at 78-80.
126. *Ibid.* at 79.
127. *Ibid.* at 118; Exhibit RR-2015-002-A-02 (protected) at paras. 179-82, Vol. 12; Exhibit RR-2015-002-A-04 (protected) at paras. 42-45, tab 8, Vol. 12.

CONCLUSION

143. Pursuant to paragraph 76.03(12)(b) of *SIMA*, the Tribunal continues its orders with respect to the dumping of the subject goods from Brazil, China, Ukraine and the subsidizing of the subject goods from India.

144. Pursuant to subparagraph 76.03(12)(a)(i) of *SIMA*, and following the determination of the President of the CBSA that the expiry of the orders is unlikely to result in the continuation or resumption of dumping of the subject goods from Chinese Taipei and India, the Tribunal rescinds its orders with respect to those goods.

Peter Burn
Peter Burn
Presiding Member

Jean Bédard
Jean Bédard
Member

Rose Ritcey
Rose Ritcey
Member