



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Dumping and Subsidizing

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## ORDER AND REASONS

Interim Review No. RD-2016-002

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

*Order issued  
Thursday, December 27, 2018*

*Reasons issued  
Friday, January 11, 2019*

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IN THE MATTER OF an interim review, pursuant to subsection 76.01(1) of the *Special Import Measures Act*, of the order made by the Canadian International Trade Tribunal on January 7, 2014, in Expiry Review No. RR-2013-002, the order made by the Canadian International Trade Tribunal on January 30, 2015, in Expiry Review No. RR-2014-002, and its finding made on May 20, 2014, in Inquiry No. NQ-2013-005 concerning:

**HOT-ROLLED CARBON STEEL PLATE AND HIGH-STRENGTH  
LOW-ALLOW STEEL PLATE**

**ORDER**

The Canadian International Trade Tribunal, pursuant to subsection 76.01(1) of the Special Import Measures Act, conducted an interim review of the following:

- its order made on January 7, 2014, in Expiry Review No. RR-2013-002,
- its order made on January 30, 2015, in Expiry Review No. RR-2014-002, and
- its finding made on May 20, 2014, in Inquiry No. NQ-2013-005

concerning the dumping of certain hot-rolled carbon steel plate and high-strength low-alloy steel plate, as defined in each of the aforementioned proceedings. The aforementioned proceedings involved certain plate originating in or exported from the Republic of Bulgaria, the Czech Republic, Romania, Ukraine, the Federative Republic of Brazil, the Kingdom of Denmark, the Republic of Indonesia, the Italian Republic, Japan and the Republic of Korea.

Pursuant to paragraph 76.01(5)(a) of the Special Import Measures Act, the Canadian International Trade Tribunal hereby continues the above orders and finding without amendment.

Serge Fréchette

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Serge Fréchette

Presiding Member

Ann Penner

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Ann Penner

Member

Peter Burn

\_\_\_\_\_  
Peter Burn

Member

The statement of reasons will be issued within 15 days.

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## STATEMENT OF REASONS

### INTRODUCTION AND PROCEDURAL HISTORY

[1] In Inquiry No. NQ-2013-005 (*Plate VII*) and Expiry Reviews No. RR-2013-002 (*Plate V*) and RR-2014-002 (*Plate VI*), the Tribunal determined that imports of steel plate had caused, threatened to cause or were likely to cause material injury to domestic plate producers – a mix of mills and service centres.

[2] In Inquiry No. NQ-2015-001 (*Plate VIII*),<sup>1</sup> facts were put into evidence which revealed that service centres had played a more prominent role and had performed more strongly in the Canadian plate market in 2012-2013 than had been discovered in the earlier proceedings.<sup>2</sup> These and other facts led the Tribunal to conclude that the dumping of the plate imports that were the subject of the *Plate VIII* inquiry had not caused and were not threatening to cause material injury to the domestic industry.

[3] On the basis of its finding in *Plate VIII*, the Tribunal queried whether the same facts regarding the service centres, had they been put into evidence in the three earlier proceedings, would have led to different determinations, including that of no injury.

[4] Consequently, on May 11, 2016, the Tribunal requested submissions on whether an interim review of the finding made in *Plate VII* and of the orders made in *Plate V* and *Plate VI*, in whole or in part, was warranted. On May 31, 2016, the Tribunal issued a report in which it juxtaposed the data collected in *Plate V*, *Plate VI* and *Plate VII* with the data collected for the same period in *Plate VIII*,<sup>3</sup> thereby showing that the service centres produced significantly more plate in 2012 than was estimated in *Plate V*, *Plate VI* or *Plate VII*.

[5] On July 5, 2016, the Tribunal received submissions from Essar Steel Algoma Inc. (Essar), from Wirth Steel (Wirth), and from Metinvest International SA (Metinvest), PJSC “Azovstal Iron & Steel Works” (Azovstal) and PJSC “Ilyich Iron and Steel Works of Mariupol” (Ilyich) on whether an interim review was warranted. Replies from the parties were received on July 28-29, 2016. On August 8, 2016, the Tribunal decided that an interim review was warranted.

[6] On September 16, 2016, following consideration of parties’ submissions, the Tribunal decided to hold the interim appeal in abeyance pending judicial review of its finding in *Plate VIII*. On August 9, 2017, the Federal Court of Appeal rendered a decision dismissing the judicial review application.<sup>4</sup> On April 26, 2018, the Supreme Court of Canada dismissed Essar’s application for leave to appeal.

[7] On June 22, 2018, the Tribunal issued a notice of commencement of interim review, which included a time line for the written submissions by interested parties. The Tribunal also informed

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1. 6 January 2016, NQ-2015-001.

2. This revelation became apparent in *Plate VIII* because the Tribunal aggressively pursued data from the service centres, as opposed to placing reliance on the total volume of domestic production as estimated by Evraz Inc. NA Canada, Essar Steel Algoma Inc. and SSAB Central Inc. as it had been done in the past.

3. Exhibit RD-2016-002-08 (protected), Vol. 2.

4. 2017 FCA 166.

parties that it would determine whether an oral hearing was warranted after receipt of written submissions.

[8] At the same time, questionnaires were sent to eight known plate service centres in Canada.<sup>5</sup> The information requested in these questionnaires was due to the Tribunal no later than July 13, 2018. The Tribunal received a completed questionnaire from each of the following five companies: Acier Nova Inc., Alliance Steel Corporation, Janco Steel Ltd., Russel Metals Inc., and Samuel, Son & Co. Limited. Varsteel Ltd. submitted a certification page, for each of the period of review (POR) of the three plate cases covered by this interim review, stating it did not produce like goods. Finally, Coilex Inc. and Del Metals did not complete the questionnaire.

[9] On July 9, 2018, Essar expressed concerns about the information that was not collected in the interim review, including information regarding imports and sales of imports by service centres, investments, employment or other information normally collected in a domestic producer questionnaire. In its view, the collection of a broader set of information was necessary for the Tribunal to make a fully informed and fair decision in this review. It also requested that the original investigation reports in the underlying proceedings and any service centre questionnaires obtained in the underlying proceedings be added to the record of the interim review.

[10] On July 17, 2018, the Tribunal replied that it had deliberately chosen not to collect such information to alleviate some of the burden on questionnaire respondents, particularly taking into consideration that the data requested was several years old and would entail a significant level of effort to retrieve and compile. Moreover, the Tribunal emphasized that the scope of the interim review was intended to be limited to assessing the importance and performance of service centres in the market during the periods in question. The Tribunal also stated that its primary concern was whether the volume of production by service centres during the years in question was of a magnitude other than what was estimated in the underlying proceedings, and if so, whether this impacted the appropriateness of the Tribunal's determinations in those proceedings. The Tribunal also confirmed that the original Investigation Reports from all three underlying proceedings had already been placed on the record of this interim review, and that those Reports contained the information in question. The Tribunal did, however, respond to one of Essar's requests, and placed the limited number of questionnaires that were received from service centres during those investigations onto the record of this interim review.<sup>6</sup>

[11] Staff of the CITT Secretariat used the data obtained from questionnaire respondents to create three Investigation Reports, one in respect of each of the underlying proceedings. These reports combined information that was gathered in the underlying proceedings from the domestic industry (mills and cooperating service centres) and importers. These reports were distributed to parties (public versions only) and counsel on August 10, 2018.

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5. The service centres directed to respond to questionnaires included Acier Nova Inc., Alliance Steel Corporation, Coilex Inc., Del Metals, Janco Steel, Russel Metals Inc., Samuel, Son & Co., Limited, and Varsteel Ltd. It should be noted that some of these service centres participated in and/or provided questionnaire responses in some of the underlying proceedings. It should also be noted that not all of these service centres were able to provide complete information in these proceedings due to the passage of time and internal challenges in accessing and retrieving the information requested. The tables included in the Investigation Report (protected) for each of the proceedings in issue clearly indicate which service centre data are included.

6. A list of the service centres that responded in each of the underlying proceedings is available in Exhibit RD-2016-002-08, Vol. 2, Table 1.



[12] Meanwhile, the Tribunal received notices of participation in the interim review from the following organizations: Wirth, Essar, Metinvest, Ilyich, Azovstal, POSCO, SSAB Central Inc. (SSAB), Edmonton Steel Plate Ltd., Evraz Inc. NA Canada (Evraz), the United Steelworkers, JFE Steel Corporation (JFE), Kobe Steel, Ltd. (Kobe), Nisshin Steel Co., Ltd. (Nisshin), Nippon Steel & Sumitomo Metal Corporation (Nippon), Nova Tube Inc./Nova Steel Inc. (Nova), the Embassy of Brazil in Ottawa, the Delegation of the European Union to Canada, the Ministry of Economic Development and Trade of Ukraine, the Embassy of Ukraine to Canada, the Association of Enterprises UKRMETALURGPROM, the Directorate General of the Foreign Trade Ministry of the Republic of Indonesia, the Embassy of Indonesia, PT KRAKATAU POSCO, and Dongkuk Steel.

[13] Interested parties were invited to file written submissions on August 24, 2018. The Tribunal received submissions from Essar, Evraz, Nova, the United Steelworkers, Wirth, Metinvest, PT KRAKATAU POSCO, JFE, Kobe, Nisshin and Nippon (the Japanese producers), and the Embassy of Ukraine to Canada. Replies from some of these parties were filed with the Tribunal on September 7, 2018.

[14] On October 26, 2018, the Tribunal announced that no further evidence collection or submissions were necessary. In accordance with paragraph 25(c) of the *Canadian International Trade Tribunal Rules*<sup>7</sup>, the Tribunal decided to conduct the interim review by way of written submissions.

## LEGAL FRAMEWORK

[15] Subsection 76.01(1) of the *Special Import Measures Act*<sup>8</sup> states that, at any time after the making of an order or finding described in any of sections 3 to 6, the Tribunal may, on its own initiative or at the request of the Minister of Finance, the President of the Canada Border Services Agency or any other person or government, conduct an interim review of (a) the order or finding, or (b) any aspect of the order or finding.

## SCOPE OF THIS INTERIM REVIEW

[16] From the outset, the Tribunal has been clear that the scope of this interim review is to assess the importance and performance of service centres in the market during the years between 2012 and 2013. The Tribunal's primary concern is whether the volume of production by service centres during those years was of a magnitude other than what was estimated in the underlying proceedings, and if so, whether that impacted the appropriateness of the Tribunal's injury determinations in those proceedings.

[17] On several occasions, Essar raised concerns about the scope of this interim review. While at the same time appreciating that the scope of the interim review was to be limited, it continued to argue that the Tribunal should collect additional information, as noted above, if it determined that it was necessary to re-assess threatened or likely injury. Essar maintained that it, Evraz and SSAB constituted a major proportion of total domestic production of like goods at the time of the underlying finding and orders and, because additional data collected in this interim review show that they continue to constitute a major proportion, the Tribunal's finding and orders remain appropriate

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7. S.O.R./91-499.

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

and must stand. In other words, Essar maintained that the scope of the interim review should start and stop with the issue of major proportion of the domestic industry.

[18] The Tribunal disagrees. For the reasons explained below, the Tribunal must fully consider the case before it. A review that takes into account major proportion only is too cursory to be an effective check that the conclusions the Tribunal reached in the underlying proceedings remain appropriate.

[19] Subsection 76.01(1)(b) of SIMA is clear that the Tribunal may conduct an interim review of “any aspect of the order or finding”. Subsection 76.01(2) of SIMA provides the Tribunal with authority to rehear “any matter” before deciding it in the context of an interim review. Taken together, these broad authorities enable the Tribunal to reconsider previous decisions in whole or in part, when it has concerns about their integrity.

[20] Such an interpretation is consonant with the Tribunal’s international obligations. In particular, Article 11.1 of the *Anti-Dumping Agreement* stipulates that an anti-dumping duty shall remain in force only as long and to the extent necessary to counteract dumping which is causing injury. The Tribunal’s *Interim Review Guidelines* also imply a broad discretion to review a finding of injury, threat of injury or any order continuing such a finding, “in whole or in part”.

[21] The data collected in *Plate VIII* showed that service centres produced a significant volume of plate in 2012 and constituted a significant part of the domestic industry as a whole. As such, their performance in combination with the mills factored heavily in the Tribunal’s determination that the subject goods neither caused injury, nor threatened to cause injury, to the domestic industry. To the extent that such data cast doubt on the data relied on by the Tribunal in the earlier plate proceedings, it is well within the Tribunal’s authority to ensure that the finding and orders arising from those proceedings are justified in light of the recent evidence. To do otherwise (or rather, to do nothing) in spite of this concern, the Tribunal risks leaving in place duties that may not be necessary to counteract injurious dumping.

[22] That is not to say, however, that the Tribunal will reconsider its analysis of the domestic or international market conditions that existed at the time of the relevant finding and orders, as urged by Metinvest. There is no reason to believe that those portions of the Tribunal’s determinations were based on incomplete or inaccurate information at the time they were made.

## **POSITIONS OF THE PARTIES**

[23] Essar submitted that the additional information obtained from service centres in this interim review does not constitute a sufficient change of circumstances to warrant the amendment or rescission of the underlying proceedings subject to this interim review. Essar suggested that the data in all three revised investigation reports demonstrates that the domestic producers who supported each of the underlying proceedings continue to constitute the major proportion of the domestic industry, and therefore the findings of injury and threat of injury remain appropriate.

[24] In the alternative, Essar submitted that the Tribunal must not amend or rescind any of the orders or finding under review because (i) the threshold to do so in the context of an interim review is high and has not been met in the present case; (ii) it is inappropriate and imprecise to retroactively supplant revised or amended data to the 2012-2013 context because the scope of the subject goods differed between from one proceeding to the next, service centres were not involved in the earlier

proceedings and perhaps did not present evidence that they otherwise would have, and current market conditions justify the continuation of the finding and orders.

[25] Evraz argued that the Tribunal should not amend or rescind the finding and orders subject to this interim review. It pointed out that it sold its cut-to-length plate facilities in British Columbia and Saskatchewan to two service centres in late 2013 and mid-2014; this explained in part why the volume of plate produced by service centres seemed to have increased substantially in recent years. Evraz also argued that the additional data obtained from service centres in this interim review does not change the appropriateness of the Tribunal's findings in those proceedings. While the data confirms that Evraz, SSAB and Essar continue to constitute a major proportion of domestic plate production, the trends observed in the underlying proceedings remain largely the same notwithstanding the inclusion of additional service centre data.

[26] The United Steelworkers argued that the new information about the importance and performance of service centres in the market in 2012-2013 does not constitute a sufficient change of circumstances so as to warrant an amendment or rescission of the underlying finding or orders. Moreover, it echoed Essar's comments that the threshold to rescind or amend a finding in an interim review is a high bar that has not been satisfied in this case.

[27] Nova stated it supports the continuation of the finding and orders.

[28] The Japanese producers submitted that, with respect to *Plate VII*, "the additional data from service centres obtained in this Interim Review confirm the finding in *Plate VII* that dumping of subject imports did not cause material injury to the domestic industry, but also reveal that dumping of subject imports was not threatening to cause material injury to the domestic industry. Consequently, the Tribunal's threat of injury finding in *Plate VII* should be rescinded."

[29] Wirth submitted that the additional data gathered from service centres demonstrates that domestic production, market share and profitability were seriously understated in the underlying proceedings, *Plate VII* in particular, and that the addition of the service centre data painted a healthier picture of the domestic industry, and *Plate VII* should be rescinded. Metinvest made very similar arguments in respect of *Plate VI*.

[30] PT KRAKATAU POSCO's submissions were largely based on the conditions affecting exports of plate from Indonesia to Canada, rather than the consequences of the additional data collected from service centres or the resulting impact this may have had on the underlying determinations. The Embassy of Ukraine to Canada's submission reported the changes in the Ukrainian economy since 2014 and submitted that *Plate VI* should be rescinded.

## ANALYSIS

### Major Proportion

[31] The analysis of injury is made on the basis of a "domestic industry", which is defined in SIMA as meaning "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 . . . ."

[32] Typically, the Tribunal will strive to obtain data on the state of the domestic producers as a whole. This will not always be feasible, however, particularly in a highly fragmented industry. In

those cases, the Tribunal will obtain data on at least a major proportion of the total domestic production.

[33] Jurisprudence of the Tribunal and Federal Court of Appeal clearly establishes that a “major proportion” means “an important, serious or significant proportion of total domestic production of like goods and not necessarily a majority”.<sup>9</sup> Accordingly, it is not necessary for a domestic producer or producers to be responsible for 50 percent or more of total domestic production in order for the Tribunal to find that they meet the “major proportion” threshold.

[34] Although the data collected in this interim review indicates that the domestic mills (namely, Essar and Evraz)<sup>10</sup> are responsible for a lesser proportion of total domestic production than was previously believed in each of the underlying proceedings, the proportion for which they are responsible is still significant enough to meet the major proportion threshold.<sup>11</sup>

[35] Nevertheless, the Tribunal will not ignore the fact, which became apparent in *Plate VIII*, that the service centres also account for a significant share of total domestic production and, overall, have performed relatively well in the relevant periods. As such, it is incumbent upon the Tribunal to assure itself that the determinations of injury made in *Plate V, VI and VII* were valid having regard to all the data on the state of the domestic industry, i.e. the mills and the service centres collectively.

#### ***Plate V (RR-2013-002)***

[36] In *Plate V*, the Tribunal considered whether the expiry of its order against certain plate originating in or exported from the Republic of Bulgaria, the Czech Republic and Romania was likely to result in injury to the domestic industry. In that expiry review, the Tribunal found that there were three domestic producers of plate: Essar, Evraz and SSAB. It was aware that there were other producers of like goods, and mentioned that service centres that cut plate from coil accounted for the remaining volume of the domestic production of like goods. However, it found that the aforementioned three producers accounted for the vast majority of total domestic production of like goods in Canada, and assessed injury on the basis of their data.

[37] As described above, in this interim review the Tribunal collected certain production and financial data from service centres that was not collected in the *Plate V* expiry review, with the intention of examining the extent to which that data would have impacted the Tribunal’s

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9. CITT, *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate* (RR-2014-002) at footnote 11. See also *McCulloch Ltd. v. Canada (Anti-dumping Tribunal)*, {1978} 1 F.C. 222 (FCA) at para. 6: “[W]hen one examines the various senses that may be attributed to the word ‘major’, in my view, the sense in which it is used in Article 4(a) is ‘significant’ and not the more precise mathematical sense of more than one-half that may be dictated by the context, in certain cases, as, for example, where one speaks of the major of two portions of a whole. Reading the Anti-dumping Act in its entirety, the meaning urged by applicants’ counsel for the word ‘major’ would, in my view, if it has any effect at all, tend to frustrate in part the obvious intent of the statute.” CITT, *Galvanized Steel Wire*, (PI-2012-005) at para. 37: “[T]he term ‘major’ is construed as meaning ‘significant’ rather than having the more precise mathematical sense of more than 50 percent.”

10. Although SSAB has been considered alongside the domestic mills in previous proceedings, the Tribunal understands that SSAB is more akin to a service centre than to a mill. See NQ-2013-005 at para. 53.

11. Evraz has provided a helpful summary table at para. 22 of its confidential submission. Exhibit RD-2016-002-52.12, Vol. 6 at para. 22.

consideration of price effects and domestic industry performance, and the extent to which this would have changed any of the Tribunal's conclusions.

[38] As will be demonstrated below, the Tribunal is satisfied, on the basis of the more fulsome record it now has, that the evidence continues to support its conclusion in *Plate V* that the expiry of its order would result in injury to the domestic industry.

#### Likely Volumes of Dumped Goods

[39] There is no reason to re-examine the validity of the Tribunal's determinations with respect to the likely volumes of dumped goods in *Plate V*. In particular, the addition of service centre data in this interim review has no impact on the likely performance of the foreign industry, the potential for foreign producers to produce goods in facilities that are currently used to produce other goods, evidence of the imposition of anti-dumping or countervailing duties in other jurisdictions or whether measures adopted by other jurisdictions are likely to cause a diversion of the subject goods to Canada.

[40] Accordingly, the Tribunal's findings in RR-2013-002 on all of those factors and its conclusion that significant volumes of Bulgarian, Romanian and Czech plate would likely enter Canada if the order was rescinded must stand.

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

[41] In *Plate V*, the Tribunal noted that, given the absence of Bulgarian, Romanian and Czech plate from the market during the POR, there was limited data upon which to compare the prices of imports of Bulgarian, Romanian and Czech plate into Canada with the prices of non-subject and like goods. Instead, the Tribunal considered the export prices published by the International Steel Statistics Bureau, which were significantly lower, as being a more reasonable indicator of likely prices.

[42] Furthermore, the Tribunal observed that low-priced imports from third countries (namely, Brazil, Chinese Taipei, Denmark, Indonesia, Italy, Japan and South Korea) were exacerbating competition in the Canadian market. Although that situation may have changed since the Tribunal's decision in the *Plate V* expiry review because of the Tribunal's finding in *Plate VII* (which involved those named third countries), that change in circumstance is irrelevant to the Tribunal's exercise in this interim review; as noted, the intent of this interim review is only to consider the integrity of the Tribunal's findings based on the additional collection of information from service centres. For the purpose of this interim review, the Tribunal must ask whether, on the basis of more complete information from service centres, its previous findings on price undercutting, price suppression and price depression continue to be supported by the data.

[43] In 2010 and 2012, the addition of service centre data pushes the domestic industry's aggregate unit values for domestic sales higher, and in 2011, the addition of service centre data brings down average unit values slightly.<sup>12</sup> On the whole, this is not a significant change. Further, whether based only on the *Plate V* data or considering the additional data collected in this interim

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12. Here, the Tribunal compares Table 8 of the RD report for Plate V (Exhibit RD-2016-002-46 (protected), Vol. 2.1 at 20) to Table 23 of the original investigation report in RR-2013-002 (Exhibit RD-2016-002-34.01A (protected), Vol. 2.3 at 159).

review, aggregate unit values follow the same trend; increasing somewhat in 2011 and then falling in 2012, albeit above the unit values observed in 2010.

[44] The fact that aggregate domestic unit values are slightly higher in 2010 and 2012 for this interim review reinforces the Tribunal's finding that the price of Bulgarian, Romanian and Czech plate would likely have undercut the price of like goods in the event that the order were allowed to expire.

[45] In *Plate V*, the Tribunal found that Bulgarian, Romanian and Czech plate would likely depress the prices of like goods to the extent the order were allowed to expire. The rationale was that to the extent Bulgarian, Romanian and Czech plate entered the market at low prices, the domestic industry would likely need to respond by lowering its prices in order to maintain existing sales levels. The data collected in this interim review does not suggest otherwise.

[46] In regard to price suppression, the Tribunal in the *Plate V* expiry review relied on the testimony of witnesses from Essar and SSAB; witnesses indicated that those companies had encountered significant resistance from customers when trying to pass along price increases meant to cover increasing costs. The additional data obtained from service centres in this interim review continues to support the conclusion that cost of goods sold (COGS) increased over the course of the POR.<sup>13</sup> Given the low prices that existed in the market at that time, it is unlikely that customers would have been willing to accept price increases from either the mills or by services centres. Accordingly, the Tribunal's conclusion that the prices of Bulgarian, Romanian and Czech plate would likely suppress the prices of like goods continues to be adequately borne out by the evidence.

[47] In summary, the additional data supplied by service centres in this interim review continues to support the Tribunal's findings in the *Plate V* expiry review that, if the finding were rescinded, plate imported from Bulgaria, Romania and the Czech Republic would likely undercut, depress and suppress the prices of like goods.

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

[48] In an expiry review, the Tribunal assesses the likely impact of the likely volumes and prices on the domestic industry if the finding is rescinded, in contrast with the likely performance of the domestic industry if the finding were to be continued. In the *Plate V* expiry review, the Tribunal found that the domestic industry would likely experience further lost sales, decreased revenues, reduced levels of production and increased costs of production if the order were rescinded, exacerbating the existing financial difficulties of the domestic industry.

[49] Now that the Tribunal has obtained additional information from the service centres that produce plate in Canada, it is clear that the volume of domestic production was underestimated in the *Plate V* expiry review.<sup>14</sup> However, nothing indicates that any party (or parties) acted in bad faith or

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13. Here, the Tribunal compares the data in Table 14 of the interim review investigation report for Plate V (Exhibit RD-2016-002-46 (protected), Vol. 2.1 at 26), with Table 49 in the original investigation report for Plate V (Exhibit RD-2016-002-34.01 (protected), Vol. 2.3 at 67).

14. Plate V Table 7 (Exhibit RD-2016-002-34.01 (protected), Vol. 2.3 at 25) compared to RD Table 3 (Exhibit RD-2016-002-46 (protected), Vol. 2.1 at 15).

intended to mislead the Tribunal during the *Plate V* review, as suggested by some in this interim review.

[50] In the *Plate V* expiry review, the Tribunal noted a small but steady decrease in domestic plate production throughout the POR. Taking into account the additional data obtained from service centres in this interim review, the trend differs somewhat: total domestic production increased in 2011, but then fell in 2012.<sup>15</sup>

[51] In the *Plate V* expiry review, domestic sales from domestic production declined slightly in 2011, but then increased in 2012, reaching a level that exceeded domestic sales from domestic production in 2010. Based on the data collected during this interim review, sales from domestic production also increased between 2010 and 2012. The primary difference is seen in 2011, where domestic sales declined slightly, in the *Plate V* expiry review, whereas the interim review data shows an increase by 12 percent. In 2012, however, the data from the interim review suggests a smaller increase in 2012 (2 percent) compared to the *Plate V* expiry review (4 percent).<sup>16</sup>

[52] In the *Plate V* expiry review, the Tribunal observed that the domestic industry's gross margins and net income before taxes improved from 2010 to 2011, but then deteriorated in 2012. This remains to be the case taking into account the additional data collected from service centres in this interim review.<sup>17</sup>

[53] In regard to capacity utilization, the additional data gathered from service centres in this interim review shows that the capacity utilization rate for plate for 2010 remains unchanged; however, the interim review data for 2011 and 2012 suggest industry-wide capacity utilization rates in 2011 and 2012 were actually lower than previously believed.<sup>18</sup> This data continues to support the Tribunal's observation in the *Plate V* expiry review that there had been a significant contraction in utilization rates with respect to the like goods.

[54] Even with the additional data gathered from service centres in this interim review, the domestic industry's market share steadily declined over the period 2010 to 2012, just as the figures in the *Plate V* expiry review suggested.<sup>19</sup>

[55] On the whole, the data collected during this interim review shows that although the domestic industry was larger than previously estimated, the impact of subject goods on the mills and service centres was the same: declines in production in certain periods, poor capacity utilization rates, loss of market share, and deterioration to gross margins and net incomes. As such, the Tribunal affirms its order in *Plate V*.

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15. Plate V Table 7 (Exhibit RD-2016-002-34.01 (protected), Vol. 2.3 at 25) compared to RD Table 3 (Exhibit RD-2016-002-46 (protected), Vol. 2.1 at 15).

16. Plate V Table 18 (Exhibit RD-2016-002-33.01A, Vol. 1.3 at 154) compared to RD Table 6 (Exhibit RD-2016-002-45, Vol. 1.1 at 18).

17. Plate V Table 49 (Exhibit RD-2016-002-34.01 (protected), Vol. 2.3 at 67) compared to RD Table 14 (Exhibit RD-2016-002-46 (protected), Vol. 2.1 at 26).

18. Plate V Table 58 (Exhibit RD-2016-002-34.01 (protected), Vol. 2.3 at 76) compared to RD Table 20 (Exhibit RD-2016-002-46 (protected), Vol. 2.1 at 32).

19. Plate V Table 19 (Exhibit RD-2016-002-34.01A (protected), Vol. 2.3 at 155) compared to RD Table 7 (Exhibit RD-2016-002-46 (protected), Vol. 2.1 at 19).

***Plate VI (RR-2014-002)***

[56] In *Plate VI*, the Tribunal considered whether the expiry of its finding against certain plate originating in or exported from Ukraine was likely to result in injury to the domestic industry. In that expiry review, the Tribunal found that the domestic producers included Evraz, Essar, SSAB and service centres that produced cut-to-length plate from coil. However, a challenge faced by the Tribunal was that the data provided at that time by service centres was incomplete. Accordingly, the Tribunal focussed its analysis on prices, financial information and related economic indicia on the domestic mills (namely, Essar, Evraz and SSAB), but considered total domestic production of like goods as part of its materiality assessment.

[57] As described above, in this interim review, the Tribunal collected certain production and financial data from service centres that was not collected in the *Plate VI* expiry review, to examine the extent to which that data would have impacted the Tribunal's consideration of price effects and domestic industry performance, and the extent to which this would have changed any of the Tribunal's conclusions.

[58] As will be discussed below, the Tribunal is satisfied, on the basis of the more fulsome record it now has, that the evidence continues to support its conclusion in *Plate VI* that the expiry of its finding would result in injury to the domestic industry.

Likely Volumes of Dumped Goods

[59] There is no reason to re-examine the validity of the Tribunal's determinations with respect to the likely volumes of dumped goods in *Plate VI*. In particular, the addition of service centre data in this interim review does not impact the Tribunal's findings that Ukrainian plate production was not severely curtailed by the conflict between Ukraine and Russia, that Ukrainian producers sought export markets for their production in the face of lower domestic plate consumption, or that Ukrainian producers had significant capacity and excess capacity.

[60] Accordingly, the Tribunal's findings in RR-2014-002 on all of those factors and its conclusion that significant volumes of Ukrainian plate would likely enter Canada if the finding was rescinded must stand.

Likely Prices of Dumped Goods

[61] As stated above, the Tribunal must ask whether, on the basis of more complete information from service centres, its previous findings on likely prices, which took into account undercutting, price suppression and price depression, continue to be supported by the data.

[62] In *Plate VI*, the Tribunal noted that there were almost no imports of plate from Ukraine during the POR, and as a result, there was limited data with which to compare prices of the subject goods in Canada to the prices of non-subject imports and like goods. In fact, the small volume of Ukrainian plate that was sold in Canada during the POR was priced substantially higher than the aggregate unit values of the domestic industry. The Tribunal therefore found that the prices associated with these small volumes were not indicative of the likely prices at which Ukrainian plate would be sold in Canada if the finding were to be rescinded. Accordingly, the Tribunal looked at evidence on the record, finding transaction prices of the subject goods in export markets in October



2014 to be as low as \$656/tonne, and prices provided in foreign producer questionnaires indicated a similar average export price for the subject goods in interim 2014.

[63] Based on the data collected from service centres in this interim review, the domestic industry's aggregate unit values increased slightly in comparison to those in the expiry review of *Plate VI*.<sup>20</sup> If anything, this suggests that the degree of undercutting expected to result from resumed imports of Ukrainian plate would be greater. Accordingly, the Tribunal's finding that Ukrainian plate would "almost certainly undercut" the prices of like goods continues to be well-supported by the evidence.

[64] Of importance in the Tribunal's *Plate VI* expiry review finding was that certain non-subject goods, primarily from Russia and India, had been entering Canada at low prices. Witnesses for the domestic mills testified that without the imposition of anti-dumping duties, Ukrainian plate would need to be priced lower than these non-subject goods, and lower than domestically produced plate, in order to regain sales and market share. The Tribunal found that competition between Ukrainian plate and other non-subject plate would lead to a downward price spiral, depressing domestic unit values. The data obtained in this interim does not cast any doubt on this conclusion.

[65] Accordingly, the additional data supplied by service centres in this interim review does not change the Tribunal's findings in the *Plate VI* expiry review that, if the finding were rescinded, plate imported from Ukraine would likely undercut and depress the prices of like goods.

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

[66] In the *Plate VI* expiry review, the Tribunal held that an influx of Ukrainian plate would have serious consequences for an already vulnerable domestic industry. In particular, the Tribunal found that resumed dumping of Ukrainian plate would likely result in additional pricing pressures (undercutting and depression), lost sales, declines in market share and even poorer financial performance. The data collected in this interim review indicates that total domestic production of plate was significantly higher during the POR than the Tribunal estimated in the *Plate VI* expiry review. Moreover, service centres accounted for a greater percentage of total domestic plate production than was estimated in the *Plate VI* expiry review.<sup>21</sup> However, in the *Plate VI* expiry review, the Tribunal noted that domestic production had grown continuously over the POR, and the data collected from service centres in this interim review confirms this trend. Moreover, with the service centre data included, growth was somewhat less than initially estimated.<sup>22</sup>

[67] In terms of domestic sales from domestic production, a comparison of the data relied on by the Tribunal in the *Plate VI* expiry review with the data gathered in this interim review suggests a

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20. RD Table 6 (Exhibit RD-2016-002-50 (protected), Vol. 2.1B at 19) compared to RR-2014-002 Table 24 (Exhibit RD-2016-002-38.01 (protected), Vol. 2.3B at 133).

21. RD Table 2 (Exhibit RD-2016-002-50 (protected), Vol. 2.1B at 15) compared to RR-2014-002 Table 7 (Exhibit RD-2016-002-38.01 (protected), Vol. 2.3B at 96).

22. RD Table 2 (Exhibit RD-2016-002-50 (protected), Vol. 2.1B at 15) compared to RR-2014-002 Table 7 (Exhibit RD-2016-002-38.01 (protected), Vol. 2.3B at 96).

higher level of domestic sales with the service centres included, but the same trend of year-to-year growth in domestic sales.<sup>23</sup>

[68] The additional data obtained from service centres in this interim review suggests that capacity utilization levels remain roughly the same as were estimated in the *Plate VI* expiry review.

[69] In the *Plate VI* expiry review, the Tribunal found that the domestic industry's market share was flat in 2011 and 2012, and increased by 9 percentage points in 2013. Although the market share of the domestic industry is higher with the additional data collected in this interim review, it illustrates the same trend, a relatively flat market share in 2011 and 2012, and an increased market share in 2013.<sup>24</sup>

[70] As indicated above, with the service centre data included, unit values are higher during the period 2011 to 2013 than were estimated in the *Plate VI* expiry review during the same period.<sup>25</sup> Moreover, just as was the case in the *Plate VI* expiry review, unit values fell over the course of the POR. The percentage by which unit values fell is almost the same with service centres included in the data as compared to without.

[71] The impact that these falling unit values had was seen and continues to be seen in domestic producers' margins, which dropped in each complete year of the POR. Losses at the gross margin level were even more apparent after the inclusion of the additional service centre data gathered during this interim review.<sup>26</sup>

[72] As was seen in the expiry review, the domestic industry was profitable in 2011, more so than in that year with the service centre data included. However, notwithstanding growth in production and domestic sales, in 2012 and 2013, the domestic industry experienced significant financial losses. This remains true regardless of whether the Tribunal considers only the financial performance of the domestic mills,<sup>27</sup> as was done in the expiry review, or whether the Tribunal considers the mills' data merged with the service centre data. In fact, in 2012 and 2013, the losses with the service centre data included are even greater than when the mills were considered on their own. Moreover, the trends in respect of the financial performance are unchanged from the expiry review in *Plate VI*, namely, that the severity of the financial loss increased in the last full year of the POR.<sup>28</sup>

[73] In conclusion, the data collected during this interim review shows that although the domestic industry produced a larger volume of plate than was previously estimated and had a higher share of the market than was previously estimated, it was impacted by very similar trends – most notably, the

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23. RD Table 3 (Exhibit RD-2016-002-50 (protected), Vol. 2.1B at 16) compared to RR-2014-002 Table 18 (Exhibit RD-2016-002-38.01 (protected), Vol. 2.3B at 107).

24. RD Table 5 (Exhibit RD-2016-002-50 (protected), Vol. 2.1B at 18) compared to RR-2014-002 Table 20 (Exhibit RD-2016-002-38.01 (protected), Vol. 2.3B at 109).

25. RD Table 6 (Exhibit RD-2016-002-50 (protected), Vol. 2.1B at 19) compared to RR-2014-002 Table 24 (Exhibit RD-2016-002-38.01 (protected), Vol. 2.3B at 113).

26. RD Table 13 (Exhibit RD-2016-002-50 (protected), Vol. 2.1B at 26) compared to RR-2014-002 Table 36 (Exhibit RD-2016-002-37.01, Vol. 1.3B at 125).

27. In RR-2014-002, SSAB was identified as one of three domestic mills as part of the domestic industry. SOR, RR-2014-002, *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate*, para. 29.

28. RD Table 13 (Exhibit RD-2016-002-50 (protected), Vol. 2.1B at 26) compared to RR-2014-002 Table 36 (Exhibit RD-2016-002-37.01, Vol. 1.3B at 125).

deterioration to gross margins and net incomes. It is this financial vulnerability, combined with the very low pricing in the domestic market for plate, prices which Ukrainian plate would need to beat in order to gain sales and market share, that were the driving forces behind the Tribunal's decision in the *Plate VI* expiry review that the expiry of the order applicable to Ukrainian plate would likely cause injury to the domestic industry. The additional data collected from service centres over the course of this interim review reaffirms the Tribunal's finding in that regard.

### ***Plate VII (NQ-2013-005)***

[74] In *Plate VII*, the Tribunal considered whether the dumping of certain plate originating in or exported from the Federative Republic of Brazil, the Kingdom of Denmark, the Republic of Indonesia, the Italian Republic, Japan and the Republic of Korea had caused injury or threatened to cause injury to the domestic industry. In that inquiry, the Tribunal found that the domestic producers included mills, such as Essar and Evraz, but also service centres, such as SSAB. The Tribunal held that there was "minimal" production of like goods by parties other than Essar, Evraz and SSAB, and accordingly evaluated injury and threat of injury by considering the data of only those three domestic producers.

[75] As described above, in this interim review, the Tribunal collected certain production and financial data from service centres that was not collected in the *Plate VII* inquiry, to examine the extent to which that data would have impacted the Tribunal's consideration of price effects and domestic industry performance, and the extent to which this would have changed any of the Tribunal's conclusions.

[76] In summary, the Tribunal is satisfied, on the basis of the more fulsome record it now has, that the evidence continues to support its conclusion in *Plate VII* that the dumping of the goods that were subject goods in that proceeding threatened to cause injury to the domestic industry.

#### Likely Volumes of Dumped Goods

[77] There is no reason to re-examine the validity of the Tribunal's determinations with respect to the likely volumes of dumped goods in *Plate VII*. In particular, the addition of service centre data in this interim review does not impact the Tribunal's findings that there was a significant increase in the volume of subject imports over the POI, both in absolute and relative terms. Moreover, keeping in mind that the Tribunal's finding was based on threat, the Tribunal also considered the production capacity and excess capacity of the subject countries, market conditions in the subject countries, the opportunistic behaviour of certain countries in the marketplace and the attractiveness of the Canadian market, all of which were indicative of increased volumes of subject imports. Likewise, the addition of service centre data does not impact the Tribunal's conclusions on these factors.

#### Likely Prices Effects of Dumped Goods and Performance of Domestic Industry

[78] In the *Plate VII* injury inquiry, the Tribunal found that the subject goods did not significantly undercut the prices of like goods. However, while the subject goods suppressed the prices of like goods in 2012, this price suppression was not significant during the POI. The Tribunal was unable to conclude from the evidence on record that the subject goods caused price depression. In its threat of injury analysis, the Tribunal found that price suppression was only evident in 2012 and that, as prices were set on a course towards recovery, the Tribunal expected foreign producers to continue pricing

opportunistically, impeding the ability of the domestic industry to maintain sales, realize better margins and improve its current financial situation.

[79] The data collected in this interim review nudges the domestic industry's unit prices slightly lower in 2011 and 2012. In 2012, the domestic industry's unit value changed very slightly with the inclusion of data from service centres. This is not a significant change. That said, in the original inquiry, the unit value of like goods was slightly higher than the unit value of subject imports in 2012, whereas, based on the revised data, the unit value of like goods is slightly lower than the subject goods.<sup>29</sup>

[80] Moreover, in Plate VII, the Tribunal noted that COGS had increased minimally from 2010 to 2011, but then more substantially in 2012. The data collected in this interim review suggests that when the data of service centres is included, the value of the COGS per tonne is lower than when it is reflected in the values of Essar, Evraz and SSAB alone. This is not surprising given that the production of plate by mills starts from raw materials and is a more intensive and expensive process than the production of plate by the service centres: service centres simply cut plate to length from coil. That said, although the value of the COGS per tonne is somewhat lower including the service centres' data, it generally follows the same trend as that found in Plate VII, increasing between 2010 and 2012.

[81] Also in Plate VII, the Tribunal noted that domestic unit values decreased in 2012 despite this increase in COGS and in the value of COGS per tonne in 2012. The data collected in this interim review continues to support this conclusion, as unit values of sales from domestic production declined in 2012, as COGS and the value of COGS per tonne increased.<sup>30</sup>

[82] Even with the addition of service centre data, the domestic industry experienced net losses in both 2010 and 2012.<sup>31</sup> In general, the losses were not to the same degree as seen in the data from the original inquiry, but they are still significant. Likewise, in Plate VII, 2011 was the only year in which the domestic industry was profitable on a dollar per tonne basis. This trend holds with the service centre data included. This suggests that the difficulties experienced by the domestic industry were not strictly limited to Essar, Evraz and SSAB.

[83] In summary, the data continues to support the trends observed by the Tribunal in the injury inquiry. As there is no reason to question the opportunistic pricing behaviour of foreign producers of subject goods, the Tribunal's finding that the subject goods would impede the ability of the domestic industry to maintain sales, realize better margins and improve its financial situation, and thereby threaten it with injury, holds.

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29. RD Table 6 (Exhibit RD-2016-002-48 (protected), Vol. 2.1A at 19) compared to NQ Schedule 9 (Exhibit RD-2016-002-36.01E (protected), Vol. 2.3B at 53).

30. RD Table 6 (Exhibit RD-2016-002-48 (protected), Vol. 2.1A at 19) compared to NQ Schedule 9 (Exhibit RD-2016-002-36.01E (protected), Vol. 2.3B at 53), and RD Table 12 (Exhibit RD-2016-002-48 (protected), Vol. 2.1A at 25) compared to NQ Table 92 (Exhibit RD-2016-002-36.01 (protected), Vol. 2.3A at 103).

31. RD Table 12 (Exhibit RD-2016-002-48 (protected), Vol. 2.1A at 25) compared to NQ Table 92 (Exhibit RD-2016-002-36.01 (protected), Vol. 2.3A at 103).

**CONCLUSION**

[84] For the reasons described above, the Tribunal finds that the conclusions it drawn in all three of the underlying proceedings subject to this interim review can withstand a reasonably probing analysis, notwithstanding the information that came to light in *Plate VIII* regarding increased production by service centres and the relative performance of those service centres.

[85] Accordingly, the Tribunal will neither amend nor rescind the finding or the orders subject to this interim review.

Serge Fréchette  
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Serge Fréchette  
Presiding Member

Ann Penner  
\_\_\_\_\_  
Ann Penner  
Member

Peter Burn  
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Peter Burn  
Member