



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Expiry Review No. RR-2019-001

Hot-rolled Carbon Steel Plate

*Order and reasons issued
Friday, March 13, 2020*

TABLE OF CONTENTS

ORDER	i
APPENDIX	iii
PRODUCTS EXCLUDED FROM THE FINDING IN INQUIRY NO. NQ-2013-005	iii
STATEMENT OF REASONS	1
INTRODUCTION	1
PROCEDURAL BACKGROUND	1
PRODUCT	2
Product Definition	2
Additional Product Information	3
Production Process	3
Product Applications	3
Marketing and Distribution	4
LEGAL FRAMEWORK	4
LIKE GOODS AND CLASSES OF GOODS	4
DOMESTIC INDUSTRY	5
CUMULATION	6
Positions of the Parties	7
Analysis	8
LIKELIHOOD OF INJURY ANALYSIS	10
Changes in Market Conditions	11
Likely Import Volume of Dumped Goods	17
Likely Price Effects of Dumped Goods	25
Likely Impact of the Dumped Goods on the Domestic Industry	28
Concluding Remarks on the Likelihood of Injury	31
EXCLUSION REQUESTS	32
POSCO	32
Japanese Producers	33
Hyundai	34
CONCLUSION	47

IN THE MATTER OF an expiry review, pursuant to subsection 76.03(3) of the *Special Import Measures Act*, of the finding made by the Canadian International Trade Tribunal on May 20, 2014, in Inquiry No. NQ-2013-005, concerning:

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

ORDER

The Canadian International Trade Tribunal, pursuant to subsection 76.03(3) of the *Special Import Measures Act*, has conducted an expiry review of the finding made on May 20, 2014, in Inquiry No. NQ-2013-005, concerning the dumping of hot-rolled carbon steel plate and high-strength low-alloy steel plate, not further manufactured than hot-rolled, heat-treated or not, in cut lengths, in widths from 24 inches (+/-610 mm) to 152 inches (+/-3,860 mm) inclusive, and thicknesses from 0.187 inches (+/-4.75 mm) up to and including 3.0 inches (76.2 mm) (with all dimensions being plus or minus allowable tolerances contained in the applicable standards), but excluding plate for use in the manufacture of pipe and tube (also known as skelp); plate in coil form, plate having a rolled, raised figure at regular intervals on the surface (also known as floor plate), originating in or exported from the Federative Republic of Brazil, the Kingdom of Denmark, the Republic of Indonesia, the Italian Republic, Japan and the Republic of Korea. In accordance with the finding in Inquiry No. NQ-2013-005, the product definition also excludes the products described in the attached appendix.

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

Furthermore, the Canadian International Trade Tribunal excludes the following from its order:

- A553 TY1, the technical description of which is as follows: 9 percent nickel steel plate in widths from 24 inches (+/-610 mm) to 152 inches (+/-3,860 mm) inclusive, and thicknesses from 0.187 inches (+/-4.75 mm) up to and including 3.0 inches (76.2 mm) (with all dimensions being plus or minus allowable tolerances contained in the applicable standards), with a nickel content of no less than 9 percent by weight, for exclusive use in liquefied natural gas (LNG) storage tanks. For greater certainty, this exclusion is limited to the product single-stencilled as such. Product which is double-stencilled to meet these specifications and other specifications would not qualify for this exclusion.
- POSM CS400A, the technical description of which is as follows: high manganese cryogenic carbon steel plate in widths from 24 inches (+/-610 mm) to 152 inches (+/-3,860 mm) inclusive, and thicknesses from 0.187 inches (+/-4.75 mm) up to and including 3.0 inches (76.2 mm) (with all dimensions being plus or minus allowable tolerances contained in the applicable standards), with a manganese content of no less than 22 percent by weight, for exclusive use in liquefied natural gas (LNG) tanks and parts and liquefied ethylene/ethane gas

(LEG) tanks and parts. For greater certainty, this exclusion is limited to the product single-stencilled as such. Product which is double-stencilled to meet these specifications and other specifications would not qualify for this exclusion.

Rose Ann Ritcey

Rose Ann Ritcey
Presiding Member

Serge Fréchette

Serge Fréchette
Member

Cheryl Beckett

Cheryl Beckett
Member

APPENDIX**PRODUCTS EXCLUDED FROM THE FINDING IN INQUIRY NO. NQ-2013-005**

- Hot-rolled carbon steel plate and high-strength low-alloy plate, made to any steel specification or grade, that is greater than 2.75 inches (70 mm) in thickness and 72 inches in width.
- Hot-rolled carbon steel plate in grade A516-70 normalized (heat-treated) with a thickness of 2.75 inches and of width greater than 72 inches.
- Hot-rolled carbon steel plate manufactured to:

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

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

- Hot-rolled carbon steel plate manufactured to:

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

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

- Hot-rolled carbon steel plate manufactured to:

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

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

- Hot-rolled carbon steel plate manufactured to:

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

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

Order Gauge	1.250		1.375		1.500		1.625		1.750	
Order Width	MIN	MAX	MIN	MAX	MIN	MAX	MIN	MAX	MIN	MAX
40	438	512	398	465	365	426	336	393	311	363
42	383	511	348	464	319	425	294	392	272	363
44	366	510	333	463	305	424	281	391	260	362
46	351	509	319	462	292	423	269	391	249	361
48	337	508	306	462	280	423	258	390	239	361
50	323	507	294	461	269	422	248	389	229	360
52	311	506	283	460	259	422	239	389	221	360
54	300	506	272	460	249	421	230	388	216	359
56	289	505	263	459	241	421	222	388	214	359
58	280	505	254	459	232	420	214	387	214	358
60	270	504	245	458	225	420	216	387	215	358
62	262	504	238	458	217	419	214	387	216	358
64	254	503	230	457	215	419	216	386	216	357
66	246	503	223	457	216	418	214	386	216	357
68	239	502	217	456	215	418	216	386	216	357
70	232	942	216	456	215	418	216	385	216	357
72	226	942	216	948	216	948	215	945	215	945
74	219	942	216	948	215	945	215	945	215	945
76	214	942	215	945	215	945	215	945	215	945
78	215	945	215	945	215	945	215	945	215	945
80	214	942	215	945	215	945	215	945	215	945
82	214	942	215	945	215	945	215	945	215	945
84	214	816	215	742	215	681	215	630	215	583
86	215	817	215	744	215	682	215	630	215	584
88	216	808	215	736	215	675	215	630	215	578
90	216	798	215	720	215	660	215	610	215	565
92	216	774	215	704	215	646	215	597	215	553
94	216	758	215	690	215	633	215	584	215	541
96	215	742	215	676	215	620	215	572	215	530
98	215	730	215	662	215	607	215	561	215	520
100	216	713	215	649	215	595	215	550	215	509
102	215	699	215	636	215	584	215	539	215	500
104	216	686	215	630	215	572	215	530	215	492
106	216	673	215	613	215	562	215	519	215	482
108	216	661	215	601	215	551	215	509	215	473
110	216	649	215	590	215	541	215	500	215	465
112	216	638	215	580	215	532	215	493	215	456
114	215	630	215	570	215	523	215	484	215	448
116	215	616	215	560	215	514	215	476	215	440
118	216	605	215	551	215	505	215	457	215	433
120	215	595	215	541	215	498	215	450	215	425
122	216	586	215	533	215	490	215	452	215	418
124	215	561	215	510	215	482	215	445	215	411
126	216	553	215	502	215	462	215	426	215	394
128	215	544	215	496	215	455	215	419	215	388
130	216	536	215	489	215	448	215	413	215	382
132	216	532	215	481	215	441	215	407	215	376
134	215	520	215	474	215	434	215	401	215	371

Order Gauge	1.250		1.375		1.500		1.625		1.750	
Order Width	MIN	MAX	MIN	MAX	MIN	MAX	MIN	MAX	MIN	MAX
136	216	512	215	467	215	428	215	395	215	365
138	216	505	215	460	215	422	215	389	215	360
140	216	500	215	454	215	416	215	383	215	355
142	216	488	215	444	215	406	215	375	215	347
144	216	476	215	432	215	396	215	365	215	338
146	216	472	215	429	215	393	215	362	215	335
148	216	472	215	429	215	393	215	362	215	335
150	216	469	215	426	215	390	215	360	215	333
152	216	463	215	421	215	385	215	355	215	329

Order Gauge	1.875		2.000		2.250		2.500		2.750	
Order Width	MIN	MAX	MIN	MAX	MIN	MAX	MIN	MAX	MIN	MAX
40	290	339	272	318	241	282	217	253	217	229
42	253	338	238	317	215	281	214	252	217	229
44	242	337	227	317	215	280	216	252	217	228
46	232	337	218	316	215	280	216	251	217	228
48	222	336	214	316	216	280	216	251	217	228
50	214	336	214	315	216	279	216	251	217	227
52	214	335	216	315	216	279	216	250	217	227
54	214	335	216	314	216	278	216	250	217	227
56	214	334	216	314	216	278	216	250	217	226
58	215	334	216	313	216	278	216	249	217	226
60	215	334	216	313	216	277	216	249	217	226
62	215	333	216	313	216	277	216	249	217	226
64	215	333	216	313	216	277	216	249	217	266
66	215	333	216	312	216	277	216	248	217	225
68	215	332	216	312	216	276	216	248	217	225
70	215	332	216	312	216	276	216	248	217	225
72	215	945	216	948	216	872	216	798	216	716
74	215	945	216	948	216	850	216	767	216	698
76	215	945	216	948	216	832	216	747	216	680
78	215	945	216	910	216	809	216	732	216	664
80	215	945	216	888	216	798	216	712	216	648
82	215	795	216	798	216	632	216	632	216	632
84	215	544	216	512	216	450	216	405	216	368
86	215	545	216	512	216	451	216	406	216	368
88	215	539	216	507	216	452	216	406	216	369
90	215	530	216	498	216	441	216	397	216	360
92	215	516	216	487	216	432	216	388	216	352
94	215	505	216	477	216	422	216	380	216	345
96	215	497	216	467	216	414	216	372	216	337
98	215	486	216	457	216	405	216	364	216	330
100	215	477	216	448	216	397	216	357	0	0
102	215	467	216	439	216	389	216	350	0	0
104	215	458	216	430	216	381	216	343	0	0

[illegible]

Place of Hearing: Ottawa, Ontario

Dates of Hearing: January 13 to 16, 2020

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Evraz Inc. NA Canada

SSAB Central Inc.

Importers/Exporters/Others

POSCO

Usinas Siderurgicas de Minas Gerais S.A.
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STATEMENT OF REASONS

INTRODUCTION

[1] The Canadian International Trade Tribunal, pursuant to subsection 76.03(3) of the *Special Import Measures Act*,¹ has conducted an expiry review of the 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, originating in or exported from the Federative Republic of Brazil (Brazil), the Kingdom of Denmark (Denmark), the Republic of Indonesia (Indonesia), the Italian Republic (Italy), Japan and the Republic of Korea (Korea).

[2] Under *SIMA*, findings of injury or threat of injury and the associated protection in the form of anti-dumping or countervailing duties expire five years from the date of the finding, unless the Tribunal initiates an expiry review before that date. The finding in Inquiry No. NQ-2013-005 was therefore scheduled to expire on May 19, 2019.

[3] The Tribunal's mandate in this expiry review is to determine whether the expiry of the finding is likely to result in injury to the domestic industry and then, accordingly, to make an order either continuing or rescinding the finding, with or without amendment, for a further five years.

PROCEDURAL BACKGROUND

[4] The Tribunal issued its notice of expiry review on May 9, 2019. This notice triggered the initiation of an investigation by the Canada Border Services Agency (CBSA) on May 10, 2019, to determine whether the expiry of the Tribunal's finding was likely to result in the continuation or resumption of dumping of the subject goods.

[5] On October 4, 2019, the CBSA determined, pursuant to paragraph 76.03(7)(a) of *SIMA*, that the expiry of the finding was likely to result in the continuation or resumption of dumping of the subject goods.²

[6] On October 7, 2019, following the CBSA's determination, pursuant to subsection 76.03(10) of *SIMA*, the Tribunal began its expiry review to determine whether the expiry of the finding was likely to result in injury to the domestic industry.

[7] The period of review (POR) for the Tribunal's expiry review covered three full calendar years, from January 1, 2016, to December 31, 2018, as well as the interim period of January 1 to June 30, 2019 (interim 2019). For comparative purposes, information was also collected and presented for the interim period of January 1 to June 30, 2018 (interim 2018).

[8] The Tribunal sent questionnaires to known domestic producers and importers of plate meeting the product definition, and to known foreign producers of the subject goods. The Tribunal received seven completed and one partially completed³ domestic producers' questionnaires from

¹ R.S.C. 1985, c. S-15 [*SIMA*].

² Exhibit RR-2019-001-03, Vol. 1 at 1.

³ On November 13, 2019, the Tribunal issued a production order to Varsteel Limited (Varsteel), a domestic producer, requesting the completion of a producers' questionnaire, or an explanation why the order should not have been issued or why the required information or parts thereof could not be provided (see Exhibit RR-2019-001-13.09.05, Vol. 3). The Tribunal subsequently received a partially completed producers' questionnaire, along with satisfactory reasons why some of the information could not be provided. As such, Varsteel's questionnaire reply included data on production, domestic sales and export sales only.

companies stating that they produced steel plate meeting the product definition. The Tribunal received 18 completed importers' questionnaires from companies stating that they imported goods meeting the product definition (including three domestic producers) and nine replies from companies indicating that they did not import such goods. Finally, the Tribunal received eight completed foreign producers' questionnaires from companies indicating that they produce subject goods.

[9] Using the questionnaire responses and other information on the record, staff of the Canadian International Trade Tribunal Secretariat of the Administrative Tribunals Support Service of Canada prepared public and protected versions of the investigation report and placed them on the record on November 29, 2019.⁴

[10] Domestic producers Algoma Steel Inc. (Algoma), Evraz Inc. NA Canada (Evraz) and SSAB Central Inc. (SSAB), as well as the United Steelworkers (USW), filed submissions in support of a continuation of the finding. Submissions opposing the continuation of the finding were filed by Nippon Steel Nisshin Co., Ltd., Kobe Steel, Ltd., Nippon Steel Corporation, JFE Steel Corporation (collectively the Japanese Producers), Usinas Siderurgicas de Minas Gerais S.A. (USIMINAS), a Brazilian producer, the Government of Indonesia, and the Embassy of Japan.

[11] The Tribunal received two requests for product exclusions from POSCO, along with a request for a producer exclusion⁵ from Hyundai Steel Company (Hyundai).

[12] The Tribunal held a hearing, with both public and *in camera* testimony, in Ottawa, Ontario, from January 13 to 16, 2020. Algoma⁶ and the USW provided witnesses at the hearing. The Tribunal also called witnesses from Salzgitter Mannesmann International (Canada) Inc. (Salzgitter) and Acier Wirth Steel (Wirth), who are importers of plate meeting the definition of the finding under review. The hearing also included oral arguments on the exclusion requested by Hyundai.

[13] In addition, at the close of the hearing on January 16, 2020, the Tribunal indicated that it would leave the evidentiary record open with respect to the issue of the exclusion requested by Hyundai. On January 23, 2020, the Tribunal invited Hyundai and the parties opposing Hyundai's exclusion request to submit any additional comments and evidence in response to a new exhibit added to the record by the Tribunal. The Tribunal received comments on January 29, 2020, as well as replies on January 31, 2020.

PRODUCT

Product Definition

[14] The subject goods are defined as follows:⁷

⁴ Public and protected revisions of the investigation report were subsequently placed on the record.

⁵ Hyundai presented its exclusion as a product exclusion request covering all goods subject to the finding produced by Hyundai in Korea. In effect, this is a request for a producer exclusion.

⁶ Algoma called witnesses from Algoma, Nova Steel Inc. (Nova), and Janco Steel Ltd. (Janco).

⁷ Exhibit RR-2019-001-03A, Vol. 1 at para. 25. The definition of the goods subject to the finding being reviewed excludes a list of specific products which were excluded from the Tribunal's finding in *Hot-rolled Carbon Steel Plate* (20 May 2014), NQ-2013-005 (CITT) [*Plate VII*]. This list is reproduced in the appendix to the Tribunal's order in the present expiry review.

Hot-rolled carbon steel plate and high-strength low-alloy steel plate not further manufactured than hot-rolled, heat-treated or not, in cut lengths, in widths from 24 inches (+/-610 mm) to 152 inches (+/-3,860 mm) inclusive, and thicknesses from 0.187 inches (+/-4.75 mm) up to and including 3.0 inches (76.2 mm) (with all dimensions being plus or minus allowable tolerances contained in the applicable standards), but excluding plate for use in the manufacture of pipe and tube (also known as skelp); plate in coil form, plate having a rolled, raised figure at regular intervals on the surface (also known as floor plate), originating in or exported from the Federative Republic of Brazil, the Kingdom of Denmark, the Republic of Indonesia, the Italian Republic, Japan, and the Republic of Korea.

Additional Product Information

[15] The CBSA provided the following additional product information:⁸

[26] For greater certainty, the subject goods include steel plate which contains alloys greater than required by recognized industry standards provided that the steel does not meet recognized industry standards for an alloy-grade steel plate.

[27] Hot-rolled carbon steel plate is manufactured to meet certain Canadian Standards Association (CSA) and/or American Society for Testing & Materials (ASTM) specifications, or equivalent specifications.

[28] CSA specification G40.21 covers steel for general construction purposes. In the ASTM specifications, for instance, specification A36M/A36 comprises structural plate; specification A572M/A572 comprises high-strength low-alloy steel plate; and specification A516M/A516 comprises pressure vessel quality plate. ASTM standards, such as A6/A6M and A20/A20M, recognize permissible variations for dimensions.

Production Process

[16] While details may vary from mill to mill, the process by which hot-rolled carbon steel plate is produced entails the following: slab production, heating slabs before rolling, descaling, rolling, levelling, cutting to size, inspection and testing, and shipping.⁹

[17] In both integrated and mini-mill production, the molten steel is poured from a ladle into the tundish of a continuous strand caster. From the tundish, it flows into the caster moulds to cool and to form a slab. The slab continues to move through the caster, cooling as it progresses, until it exits the caster, where it is cut to length with a torch. The slab is then either placed in inventory or immediately transferred to a reheat furnace where it is heated to a uniform rolling temperature. The plate is rolled to its final gauge in a series of rolling mills, leveled, identified and inspected for conformance to thickness tolerances and surface requirements. The plate is then either formed directly into rectangular shapes or coiled and later unwound and cut into lengths. The former is known as “discrete plate” and the latter as “plate from coil” or “cut-to-length plate”.¹⁰

Product Applications

[18] The subject goods are used in a number of applications, the most common of which are the production of rail cars, oil and gas storage tanks, heavy machinery, agricultural equipment, bridges,

⁸ Exhibit RR-2019-001-03A, Vol. 1 at paras. 26-28.

⁹ *Plate VII* at para. 26.

¹⁰ *Plate VII* at para. 27; Exhibit RR-2019-001-10.11, Vol. 1.4 at 6.

industrial buildings, high-rise office towers, automobile and truck parts, ships and barges, and pressure vessels.¹¹

Marketing and Distribution

[19] Plate may be sold directly to distributors, end users or service centres, which may resell standard cut-to-length sizes and grades, or which offer custom cutting services.¹²

LEGAL FRAMEWORK

[20] The Tribunal is required, pursuant to subsection 76.03(10) of *SIMA*, to determine whether the expiry of the finding in respect of the subject goods is likely to result in injury or retardation for the domestic industry.¹³ Pursuant to subsection 76.03(12), if the Tribunal determines that the expiry of the finding is unlikely to result in injury, it is required to rescind it. However, if it determines that the expiry of the finding is likely to result in injury, the Tribunal is required to continue it, with or without amendment.

[21] Before proceeding with its analysis of the likelihood of injury, the Tribunal must first determine what constitutes “like goods”. Once that determination has been made, the Tribunal must determine what constitutes the “domestic industry”.

[22] The Tribunal must also determine whether it is appropriate to assess the likely effect of the resumed or continued dumping of the subject goods from all subject countries cumulatively, i.e. whether it will conduct a single analysis of the likely effect or a separate analysis for each subject country.

LIKE GOODS AND CLASSES OF GOODS

[23] In order for the Tribunal to determine whether the resumed or continued dumping of the subject goods is likely to cause material injury to the domestic producers of like goods, it must determine which domestically produced goods, if any, constitute like goods in relation to the subject goods. The Tribunal must also assess whether there is, within the subject goods and the like goods, more than one class of goods.¹⁴

[24] 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.

¹¹ *Plate VII* at para. 25.

¹² *Plate VII* at para. 28.

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, the issue of whether the expiry of the finding is likely to result in retardation does not arise in this expiry review.

¹⁴ Should the Tribunal determine that there is more than one class of goods in this expiry review, it must conduct a separate injury analysis and make a decision for each class that it identifies. See *Noury Chemical Corporation and Minerals & Chemicals Ltd. v. Pennwalt of Canada Ltd. and Anti-dumping Tribunal*, [1982] 2 F.C. 283 (FC).

[25] In deciding the issue of like goods when goods are not identical in all respects to the other goods, the Tribunal typically considers a number of factors, including the physical characteristics of the goods, such as composition and appearance, and their market characteristics, such as substitutability, pricing, distribution channels, end uses and whether the goods fulfill the same customer needs.¹⁵

[26] In Inquiry No. NQ-2013-005, the Tribunal found that the subject goods and domestically produced goods of the same description were like goods. The Tribunal found that the domestic industry produced substantially the same range of plate products as the subject goods, and that these products generally fulfilled the same customer needs, competed directly with each other and relied on the same channels of distribution.¹⁶ The Tribunal also found that there was a single class of goods.¹⁷

[27] There were no submissions or evidence in this expiry review to suggest that domestically produced plate described in the same way as the subject goods is not “like” the subject goods, or that there is more than one class of goods.¹⁸ Accordingly, the Tribunal finds that domestically produced plate of the same specifications as the subject goods constitutes like goods in relation to the subject goods and that there is a single class of goods.

DOMESTIC INDUSTRY

[28] Subsection 2(1) of *SIMA* defines “domestic industry” as follows:

... the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods except that, where a domestic producer is related to an exporter or importer of dumped or subsidized goods, or is an importer of such goods, “domestic industry” may be interpreted as meaning the rest of those domestic producers.

[29] The Tribunal must therefore determine whether there is a likelihood of injury to the domestic producers as a whole or those domestic producers whose production represents a major proportion of the total production of like goods.¹⁹

¹⁵ See e.g. *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at para. 48.

¹⁶ *Plate VII* at paras. 38-40. Similar conclusions were most recently reaffirmed in *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate* (31 October 2019), RR-2018-007 (CITT) [*Plate V*] at paras. 28-29.

¹⁷ *Plate VII* at paras. 46, 48.

¹⁸ The evidence instead continues to support the same conclusions. See e.g. Exhibit RR-2019-001-A-08, Vol. 12 (protected) at 3-4; *Transcript of Public Hearing* at 24-25, 74-76, 98. See also Exhibit RR-2019-001-13.02A, Vol. 3 at 6-7; Exhibit RR-2019-001-13.04B, Vol. 3 at 9-10; Exhibit RR-2019-001-13.05, Vol. 3 at 8; Exhibit RR-2019-001-13.06B, Vol. 3 at 6-7; Exhibit RR-2019-001-13.08B, Vol. 3 at 6-7; Exhibit RR-2019-001-13.09D, Vol. 3 at 8; Exhibit RR-2019-001-16.11A, Vol. 5 at 5-6; Exhibit RR-2019-001-16.12B, Vol. 5 at 5; Exhibit RR-2019-001-16.20A, Vol. 5 at 5-6; Exhibit RR-2019-001-16.22A, Vol. 5 at 5-6.

¹⁹ The term “major proportion” means an important or significant proportion of total domestic production of the like goods and not necessarily a majority of these goods: *Japan Electrical Manufacturers Assn. v. Canada (Anti-Dumping Tribunal)*, [1986] F.C.J. No. 652 (FCA); *McCulloch of Canada Limited and McCulloch Corporation v. Anti-Dumping Tribunal*, [1978] 1 F.C. 222 (FCA); *China – Anti-dumping and Countervailing Duties on Certain Automobiles from the United States* (23 May 2014), WTO Docs. WT/DS440/R, Report of the Panel at para. 7.207; *European Community – Definitive Anti-dumping Measures on Certain Iron or Steel Fasteners from China* (15 July 2011), WT/DS397/AB/R, Report of the Appellate Body at paras. 411, 412, 419; *Argentina – Definitive Anti-dumping Duties on Poultry from Brazil* (22 April 2003), WT/DS241/R, Report of the Panel at para. 7.341.

[30] Algoma submitted that the domestic industry is comprised of Algoma, Evraz, and a variety of service centres which produce plate from coil.²⁰ There were no submissions to the contrary.

[31] These submissions are consistent with a number of previous Tribunal decisions where the Tribunal has found it appropriate to include the domestic mills and service centres within the scope of the domestic industry producing hot-rolled carbon steel plate.²¹ Therefore, for the purposes of the present expiry review, the Tribunal will consider the domestic industry as comprised of domestic producers, including service centres, for which the collective production of the like goods constitutes at least a “major proportion” of the total domestic production of like goods.

[32] Of the 11 known producers of like goods in Canada, two domestic mills, namely, Algoma and Evraz, as well as six of nine service centres, namely, Nova, Janco, Russel Metals Inc., Samuel, Son & Co. Ltd., SSAB and Varsteel, filed responses to the Tribunal’s domestic producers’ questionnaire.²²

[33] Together, the two domestic mills and the six service centres that provided responses to the producers’ questionnaire account for nearly all known domestic production of the like goods. Accordingly, the Tribunal finds that these eight producers constitute the domestic industry for the purposes of this expiry review.

CUMULATION

[34] Subsection 76.03(11) of *SIMA* provides as follows:

. . . [T]he Tribunal shall make an assessment of the cumulative effect of the dumping or subsidizing of goods to which the determination of the President described in subsection (9) applies that are imported into Canada from more than one country if the Tribunal is satisfied that an assessment of the cumulative effect would be appropriate taking into account the conditions of competition between goods to which the order or finding applies that are imported into Canada from any of those countries and

(a) goods to which the order or finding applies that are imported into Canada from any other of those countries; or

(b) like goods of domestic producers.

²⁰ Exhibit RR-2019-001-A-01, Vol. 11 at 9.

²¹ See, e.g. *Hot-rolled Carbon Steel Plate* (9 August 2018), RR-2017-004 (CITT) [*Plate III*] at para. 33; *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate* (6 January 2016), NQ-2015-001 (CITT) at para. 51; *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate* (13 February 2015), RR-2014-002 (CITT) at para. 30.

²² The three non-responding service centers were Del Metals, Coilex, and Alliance Steel Corporation, and are estimated to account for a minor volume of production of the like goods. As noted above, the response provided by Varsteel was incomplete, as it was unable to provide data on practical plant capacity, employment, cost of goods manufactured, income statements and investments. As such, and as noted in the investigation report, Varsteel’s information could not be included along with that of other domestic producers in certain tables of the investigation report. Given the overall coverage obtained, despite these limitations, the data compiled from domestic producers provides a representative and accurate picture, in quantitative and qualitative terms, of a major proportion of the domestic industry.

[35] 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 from each subject country are interchangeable with the subject goods from the other subject countries or with the like goods; the presence or absence of sales of imports from different subject countries and of the like goods into the same geographical markets; the existence of common or similar channels of distribution; and differences in the timing of the arrival of imports from a subject country and of those from the other subject countries, and of the availability of like goods supplied by the domestic industry. In the context of an expiry review, the assessment of conditions of competition is forward-looking.²³

[36] In Inquiry No. NQ-2013-005, the Tribunal found that the goods of each subject country and the like goods are largely interchangeable, that they compete with each other on similar considerations of quality and price, that they rely on similar channels of distribution, and are present throughout Canada. The Tribunal was therefore satisfied that, taking into account the conditions of competition between the goods, it was appropriate to make an assessment of the cumulative effect of the dumping of hot-rolled carbon steel plate from Brazil, Denmark, Indonesia, Italy, Japan and Korea.²⁴

Positions of the Parties

[37] According to the Japanese Producers, the subject goods from Korea should be assessed separately from the other subject goods in this review, as the conditions of competition between them are materially different. They submitted that Korea is the only subject country with a bilateral free trade agreement with Canada and that it is uniquely situated relative to the other subject countries. In addition, they highlighted that Korea is not subject to Canada's safeguard measures on heavy plate, which is a subset of plate meeting the product definition in this expiry review, and that as such, it is not on a level playing field with the other subject countries. This is because heavy plate from the other subject countries would face a surtax of 10 to 20 percent if imported *outside* the quota established by the safeguard measures, as well as additional difficulties of a practical nature in accessing in-quota volumes. As such, the Japanese Producers submitted that the Tribunal should consider exercising its discretion to make a separate finding for the subject goods from Korea.²⁵

[38] The parties supporting a continuation of the finding submitted that a cumulated assessment is appropriate. They submitted that the subject goods from all countries and the like goods compete head-to-head, namely, on price.²⁶ In particular, they submitted that Korea's exclusion from the safeguard measures essentially comes down to a 15 percent price difference between Korean heavy plate and that from the other countries, and only to the extent that the imports arrive after the

²³ *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (12 August 2016), RR-2015-002 (CITT) at paras. 46-47; see also *Refined Sugar* (30 October 2015), RR-2014-006 (CITT) at paras. 32-33.

²⁴ *Plate VII* at paras. 78-79, 81.

²⁵ *Transcript of Public Hearing* at 412-414. The safeguard measures on heavy plate apply a tariff rate quota (TRQ) on all imports of heavy plate, with some countries being excluded, such as Korea. The TRQs cover a three-year period, with in-quota volumes assigned for each year. The in-quota volume represents average historic import volumes and is increased to allow for growth in each ensuing year. An above-quota surtax of 20 percent applies to the first year, beginning in May 2019, which diminishes to 15 percent for the second year, beginning in May 2020, and 10 percent for the third year, beginning in May 2021. The measure will cease to apply on October 24, 2021. The safeguard measure is described more fully in paras. 75-77 below.

²⁶ *Transcript of Public Hearing* at 310-311, 356.

safeguard quota has been filled. It was submitted that, at best, this is a difference applicable in limited circumstances, and that similar price differentials are not uncommon among imports.²⁷

Analysis

[39] Conditions of competition refer to how the goods compete in the marketplace. Any factor that affects how the goods compete may be relevant in the context of particular case circumstances. At the same time, as the Tribunal has consistently stated, no one factor is necessarily determinative of the decision whether it is appropriate to cumulate. Conditions of competition do not have to be identical in every aspect and goods do not have to be equally present in every market circumstance for conditions of competition to make cumulation appropriate.²⁸

[40] As indicated above, in expiry reviews the assessment is prospective and requires considering the likely conditions of competition in the near to medium term if the finding is allowed to expire.²⁹

[41] The Tribunal will follow its usual approach by addressing conditions of competition among the subject goods themselves, as well as between the subject goods and the like goods.

[42] In terms of the factors that the Tribunal typically considers, the subject goods from all the subject countries would be likely to compete among themselves and with the like goods in overlapping geographical areas and would be sold through similar channels of distribution; the subject goods would also likely see similar timing in the arrival of imports (with offshore import lead times being typically longer than those of the domestic like goods), and would be perceived by customers to be of similar quality among themselves and as compared to the like goods.³⁰ Except for the specific arguments discussed further below, no party argued otherwise.

[43] The Tribunal does not consider that the *Canada-Korea Free Trade Agreement*³¹ warrants a separate assessment in respect of Korea. The Tribunal does not normally consider such an agreement relevant without evidence that it will impact the conditions of competition.³² No such evidence was presented in this case.

[44] The Tribunal also finds that the fact that subject goods from Korea were imported during the POR does not conclusively speak to what the conditions of competition will be if the finding is allowed to expire.

[45] Finally, for the reasons that follow, the Tribunal is not convinced that Korea's admittedly different treatment under Canada's steel safeguard measures will affect the conditions of competition

²⁷ *Transcript of Public Hearing* at 313-314, 341-342, 356-357.

²⁸ See e.g. *Corrosion-resistant Steel Sheet* (21 February 2019), NQ-2018-004 (CITT) at para. 45; *Cold-rolled Steel* (21 December 2018), NQ-2018-002 (CITT) at para. 39.

²⁹ As indicated in para. 53, the Tribunal's period of analysis is the next 12 to 24 months.

³⁰ Exhibit RR-2019-001-13.02A, Vol. 3 at 7; Exhibit RR-2019-001-13.04B, Vol. 3 at 10; Exhibit RR-2019-001-13.05, Vol. 3 at 8; Exhibit RR-2019-001-13.06B, Vol. 3 at 7; Exhibit RR-2019-001-13.08B, Vol. 3 at 7; Exhibit RR-2019-001-13.09D, Vol. 3 at 8; Exhibit RR-2019-001-16.11A, Vol. 5 at 6; Exhibit RR-2019-001-16.12B, Vol. 5 at 5; Exhibit RR-2019-001-16.20A, Vol. 5 at 6; *Transcript of Public Hearing* at 23-26, 170, 180, 212-213; 216-217; *Transcript of In Camera Hearing* at 25.

³¹ Online: Global Affairs Canada <<http://international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/korea-coree/fta-ale/index.aspx?lang=eng>> (entered into force 1 January 2015).

³² *Cold-rolled Steel* at para. 42; *Corrosion-resistant Steel Sheet* at para. 48.

between Korean subject goods and goods from other subject countries and/or the like goods to a degree sufficient to warrant a separate assessment of the effect of subject goods from Korea.³³

[46] First, the imports of heavy plate from all sources subject to the safeguard will incur no surtaxes if they are imported within the quotas set. In this regard, the available quota volume is significant—it allows average historic volumes of imports of heavy plate to be imported surtax-free; further, the in-quota volume is designed to be progressively adjusted upwards 10 percent in the second and third years of the safeguard measure, i.e. on May 13, 2020, and on May 13, 2021. The safeguard will cease to apply altogether on October 24, 2021, that is, less than 24 months from the rescission of the finding.³⁴ Further, the evidence for quota usage during the POR and more recently suggests that the quotas will not be fully utilized.³⁵ While the Japanese Producers highlighted³⁶ the Tribunal witnesses' testimony about certain practical difficulties, or uncertainty, in using quota volumes, the evidence indicates that, going forward, the method for allocation of the quota is more predictable than previously, and thus will likely facilitate the importation of heavy plate within the available quota.³⁷ There is no evidence to conclude that the available quota volumes (based upon historical averages) would be too low to satisfy the likely heavy plate demand over the next 12 to 24 months. As such, any imports of heavy plate from the subject countries to which the safeguard measures apply would have significant opportunity to be imported without attracting the surtax.

[47] Second, the safeguard measures cover only a subset of the subject goods ("heavy plate"). Although witnesses were unable to quantify what proportion of the subject goods is heavy plate, there are clearly subject goods that fall outside of the safeguard definition of heavy plate and are thus not affected by the safeguard measure.³⁸

[48] Finally, as of May 13, 2020, the surtax applicable to any heavy plate imported outside the quota volumes established by the safeguard measures will decrease to 15 percent, and will decrease again to 10 percent on May 13, 2021, before ceasing to apply on October 24, 2021. Although the application of such a surtax on any eventual subject country imports of heavy plate outside the quotas would give Korean heavy plate a price advantage, it is unlikely to represent an insurmountable difference. Indeed, the evidence on record indicates that plate from a variety of non-subject sources was present in the market during and post-POR at a relatively wide range of prices.³⁹

³³ The safeguard regime does *de jure* set different conditions of competition. The Tribunal must assess the significance of those differences on the basis of the evidence before it.

³⁴ See *Safeguard Inquiry into the Importation of Certain Steel Goods* (3 April 2019), GC-2018-001 (CITT) [*Steel Safeguard Inquiry*] at 47-49.

³⁵ Exhibit RR-2019-001-33.03, Vol. 1; *Transcript of Public Hearing* at 48-49, 167-168, 171-172, 217-219.

³⁶ *Transcript of Public Hearing* at 414.

³⁷ *Transcript of Public Hearing* at 167-168, 217-220, 228-229. *Transcript of in-Camera Hearing*, at 116-118. The most recent Notice to Importers issued by Global Affairs Canada on December 31, 2019, establishes an allocation pool for importers based on their import history, along with a residual pool available on a first-come-first-serve basis to those importers who do not hold allocations. The Tribunal finds, consistent as well with witness testimony, that this more predictable administration and attribution of the safeguard quota for the remainder of its duration may alleviate concerns expressed by Mr. Ferreira, of Wirth, and Mr. Adkins, of Salzgitter, about the uncertain operation of the TRQ in the early quota periods. See Exhibit RR-2019-001-33.02, Vol. 1 at 2-4.

³⁸ *Transcript of Public Hearing* at 28, 45-46, 172, 177, 184-186, 220. In addition, as acknowledged by several witnesses, there has also been a practice of importing non-standard sizes of plate below 80 inches in thickness. Witnesses provided opposite views on whether this particular practice was likely to continue going forward.

³⁹ Exhibit RR-2019-001-A-03, Vol. 11 at 19-20; *Transcript of Public Hearing* at 19, 43, 75-76, 95, 111.

[49] For the foregoing reasons, the Tribunal finds that similar conditions of competition between the subject goods and between the subject goods and the like goods are likely to exist in the next 12 to 24 months if the finding is rescinded. As such, a cumulative assessment of the dumping of the goods from all subject countries is appropriate.

LIKELIHOOD OF INJURY ANALYSIS

[50] An expiry review is forward-looking.⁴⁰ It follows that evidence from the period during which an order or a finding was being enforced is relevant insofar as it bears upon the prospective analysis of whether the expiry of the order or finding is likely to result in injury.⁴¹

[51] There is no presumption of injury in an expiry review; findings must be based on positive evidence, in compliance with domestic law and consistent with the requirements of the World Trade Organization (WTO).⁴² In the context of an expiry review, positive evidence can include evidence based on past facts that tend to support forward-looking conclusions.⁴³

[52] The Tribunal's forward-looking analysis in this case includes the comprehensive data gathered for the POR, as well as other data and evidence for the period after the POR. In this case, post-POR evidence was made more relevant to the Tribunal's forward-looking analysis by reason of the fact that significant changes occurred in the Canadian market at the very end of the POR and after June 30, 2019.⁴⁴ As such, the Tribunal's record for this expiry review includes evidence about trends in imports, market volumes and prices and domestic industry performance that transpired since the end of the POR (i.e. since July 1, 2019), sourced from available publications (such as CRU, Statistics Canada and Global Affairs Canada import permit data), participating domestic producers' recent performance data, and testimonial evidence from the parties and Tribunal witnesses. In considering this evidence, the Tribunal was cognizant of some of its limitations (e.g. the fact that some such evidence could be less complete, or other evidence may not be tailored specifically to the product definition in issue), and took those into account in its assessment.

[53] 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. In this case, the Tribunal finds it appropriate to focus its analysis on the next 12 to 24 months.

[54] Subsection 37.2(2) of the *Special Import Measures Regulations*⁴⁵ lists factors that the Tribunal may consider in addressing the likelihood of injury in cases where the CBSA has

⁴⁰ *Certain Dishwashers and Dryers* (procedural order dated 25 April 2005), RR-2004-005 (CITT) at para. 16.

⁴¹ *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) at para. 21.

⁴² *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (16 August 2006), RR-2005-002 (CITT) at para. 59.

⁴³ *Thermoelectric Containers* at para. 14; *Aluminum Extrusions* at para. 21.

⁴⁴ Relevant evidence of past facts tending to support forward-looking conclusions is not limited to information on the performance of the relevant industries during the POR. The Tribunal must consider the totality of the evidence before it to assess what would likely happen if the duties were no longer in place. See e.g. *Thermoelectric Containers* (5 September 2019), RR-2018-004 (CITT) at paras. 37-38.

⁴⁵ SOR/84-927 [*Regulations*].

determined that there is a likelihood of continued or resumed dumping. The factors that the Tribunal considers relevant in this expiry review are discussed below.

Changes in Market Conditions

[55] In order to assess the likely volumes and prices of the subject goods and their impact on the domestic industry if the finding is rescinded, the Tribunal will first consider changes in international and domestic market conditions that occurred during the POR and that are likely to occur over the next 12 to 24 months.⁴⁶ As noted above, the Tribunal also considered post-POR evidence due to the significant changes that occurred in the Canadian market towards the end of the POR and after June 30, 2019. These changes provide general context for the Tribunal's analysis.

International Market Conditions

[56] The evidence indicates that the main factors affecting international plate market conditions remain those recently identified by the Tribunal in *Plate V*, namely the continuing global excess steel capacity crisis, a weakened global economic outlook, the European steel sector challenges and general economic downturn in the euro area, and an unprecedented wave of trade restrictions on steel.⁴⁷ There was no debate between the parties on these issues.

- **Global steel production, consumption and capacity**

[57] Global steel excess capacity, which was already highlighted in the finding of threat of injury under review,⁴⁸ remains an issue for the near to medium term. The Tribunal has, on numerous occasions, recognized the global steel overcapacity crisis, its relationship with the steel production imperative and the potential threat it poses to domestic steel producers. The most recent of these occasions were the *Steel Safeguard Inquiry* and *Plate V*.⁴⁹ Despite efforts to address the issue, recent indications show that the situation is deteriorating.⁵⁰

[58] For plate specifically, global excess capacity on reversing, steckel and hot strip mills is expected to remain over 105 million MT through 2021, while excess capacity on reversing mills alone is expected to remain above 52 million MT over the same period.⁵¹ In this regard, although total excess plate capacity has declined overall since 2016 and is expected to continue declining through 2021, the data shows that this downward trend is being driven by increases in production as opposed to overall decreases in capacity.⁵²

⁴⁶ See paragraph 37.2(2)(j) of the *Regulations*.

⁴⁷ *Plate V* at paras. 45-59.

⁴⁸ *Plate VII* at para. 186.

⁴⁹ *Steel Safeguard Inquiry* at 12-13, 36-37; *Plate V* at para. 46. See also *Plate III* at para. 48. *Corrosion-resistant Steel Sheet* at paras. 111-112.

⁵⁰ Exhibit RR-2019-001-A-01 at 111-112, 133, 135, 138, Vol. 11.

⁵¹ Exhibit RR-2019-001-A-01 at 21-22, Vol. 11; Exhibit RR-2019-001-A-04 (protected) at 19, Vol. 12. Reversing mills are dedicated exclusively to the production of discrete plate, whereas steckel mills can be used to produce both discrete plate and coil plate, and hot strip mills can be used to produce both coil plate and hot-rolled sheet.

⁵² Exhibit RR-2019-001-A-01 at 22-23, Vol. 11; Exhibit RR-2019-001-A-04 (protected) at 19, Vol. 12; Exhibit RR-2019-001-03A, Vol. 1 at 24.

[59] With regard to production and consumption of plate, global production of reversing mill and coil plate remains above global consumption by approximately 1.5 million MT in 2019, reaching 2.3 million MT in 2020 and 2 million MT in 2021.⁵³

- **Global economic conditions**

[60] Weak global economic conditions are forecast due to high levels of trade and policy uncertainty.⁵⁴ Since the Tribunal's decision in *Plate V*, the OECD has revised its global growth forecasts downwards to 2.9 percent in 2019 and 3 percent in 2020. TD further forecasts 3.4 percent growth in 2021.

[61] Evidence of global economic conditions in certain plate-consuming sectors shows mixed performance and expectations, depending on sector and region, resulting in a subdued overall forecast. According to the Worldsteel Short Range Outlook of October 2019, after growing by 2.8 percent in 2018, the global construction sector's growth is expected to slow to 1.5 percent in 2019 and 1.2 percent in 2020. The available evidence suggests that the shipbuilding outlook is characterized as "cautiously optimistic at best" in the majority of markets.⁵⁵

- **European Union steel market and economic conditions**

[62] Concerns are being raised regarding the European Union's (EU) steel market stability due to increased imports, softening demand and a weakened economy.⁵⁶ EUROFER reported in October 2019 that, despite the EU safeguard measures being in place, steel imports have increased by 12 percent in 2018, to their highest recorded level, and remained at high levels in 2019 even as demand was expected to fall by 3.1 percent.⁵⁷ According to its *Steel Plate Products Market Outlook* for November 2019, CRU forecasts that European plate demand will decline in 2019 following growth experienced in 2018, and then decline again in 2020. CRU also forecasts that plate production growth will outpace demand growth in both 2020 and 2021.⁵⁸

- **Trade restrictions on steel**

[63] Numerous trade restrictions have been imposed on steel imports by WTO members.

[64] In March 2018, acting pursuant to section 232 of the U.S. *Trade Expansion Act of 1962*, the United States imposed a 25 percent duty on imports of certain steel products, including plate, from most countries, including Brazil, Denmark, Indonesia, Italy and Japan (the section 232 measures).⁵⁹

⁵³ Exhibit RR-2019-001-A-01 at 23-24, Vol. 11; Exhibit RR-2019-001-A-02 (protected) at 155, 157, Vol. 12.

⁵⁴ Exhibit RR-2019-001-A-01 at 16-17, 105-106, 121, 305, 481-482, Vol. 11; Exhibit RR-2019-001-A-02 (protected) at 16-17, 106-107, Vol. 12; *Transcript of Public Hearing* at 13-14, 20-21.

⁵⁵ Exhibit RR-2019-001-A-01 at 107, 363, Vol. 11; Exhibit RR-2019-001-B-01, at 22, 63, 65, Vol. 11.

⁵⁶ Exhibit RR-2019-001-A-01 at 143, 145, Vol. 11.

⁵⁷ Exhibit RR-2019-001-A-01 at 149, Vol. 11.

⁵⁸ Exhibit RR-2019-001-A-01 at 27, Vol. 11; Exhibit RR-2019-001-A-02 (protected) at 170, Vol. 12.

⁵⁹ Exhibit RR-2019-001-A-01 at 439, 499-500, Vol. 11. Korea is exempted from the section 232 tariffs and is instead subject to quotas. Although Argentina and Brazil were previously exempted, the President of the United States announced on December 2, 2019, that tariffs on Brazilian and Argentinian steel and aluminum imports would be re-imposed.

[65] Although Canada was initially excluded from the application of the section 232 measures, the United States extended them to Canada on May 31, 2018. On July 1, 2018, Canada responded by imposing retaliatory tariffs, i.e. a 25 percent surtax on imports of certain products, including steel plate, from the United States. On May 17, 2019, the United States and Canada reached an agreement whereby the United States agreed to eliminate all tariffs imposed by the section 232 measures on imports of steel products from Canada, and Canada agreed to eliminate all tariffs imposed in retaliation thereof.⁶⁰

[66] The evidence indicates that, in the same timeframe as the implementation of the above trade measures, imports of all steel products into the U.S. declined by 3.9 million MT from 2017 to 2018, followed by a further decline of 2.9 million MT between January and August 2019 compared to the same period in 2018.⁶¹ Specifically, imports of plate in cut lengths in the U.S., from all sources combined, declined by around 150,000 MT from 2017 to 2018 and slightly increased in the period of January to August 2019 compared to the same period in 2018. However, due to a decrease in September 2019, there was a decline of just over 11,000 MT when comparing import volumes for the period from January to September 2019 with those in the same period in 2018.⁶²

[67] The EU imposed provisional safeguard measures on imports of steel products, including plate, on July 18, 2018, and definitive measures on January 31, 2019, in the form of a tariff-rate quota (TRQ) aimed at preserving historical levels of imports, while placing a 25 percent tariff above these levels.⁶³

[68] In addition to the above, there are numerous other trade measures concerning steel. The investigation report specifically shows 22 anti-dumping or countervailing measures against the subject countries alone, for heavy plate, steel plate in sheets, carbon steel plate, various hot-rolled flat products in coils or not, and various carbon and alloy steel cut-to-length plate.⁶⁴ In addition, as the Tribunal noted in the *Steel Safeguard Inquiry*, there has been an increase in the initiation and imposition of safeguard measures in relation to various steel products. As of 2018, at least six countries or customs unions other than the EU and Canada had safeguard measures in force or ongoing investigations on plate products.⁶⁵

[69] These various measures limit the access that steel exporters have to key markets and increase the risk that steel, including the subject goods, will be diverted to Canada. This risk did not exist at the time of the finding.

Domestic Market Conditions

- General economic conditions

[70] RBC data shows that real GDP growth rates were 3 percent and 1.9 percent in 2017 and 2018 respectively. According to RBC, “2019 will likely be a year of subpar economic performance” with

⁶⁰ Plate V at para. 55.

⁶¹ Exhibit RR-2019-001-A-01 at 504, Vol. 11.

⁶² Exhibit RR-2019-001-A-01 at 493, 507, Vol. 11.

⁶³ Online: https://eur-lex.europa.eu/eli/reg_impl/2019/159/oj.

⁶⁴ Exhibit RR-2019-001-05, Table 39, Vol. 1.1.

⁶⁵ Exhibit RR-2019-001-A-01 at 509, Vol. 11.

growth at 1.4 percent, which is only expected to increase to 1.8 percent in 2020.⁶⁶ TD forecasts similar numbers, along with 1.7 percent real GDP growth in 2021.⁶⁷ The Bank of Canada highlights a return to potential growth for the Canadian economy, though clouded by persistent trade tensions.⁶⁸

- Imports, Apparent Market and Prices During the POR

[71] Imports of subject goods remained relatively limited overall during the POR, although they increased towards the end of the POR.⁶⁹ Imports from non-subject countries increased in 2017, before declining in 2018 and again in interim 2019 compared to interim 2018. In addition, the sources of imports from non-subject countries shifted markedly, particularly in 2018 and interim 2019: imports of U.S. plate decreased, while those from non-subject countries other than the U.S. increased.⁷⁰ Statistics Canada evidence indicates that, as argued by Algoma, the bulk of non-subject imports from other countries during the POR came from specific countries, namely Turkey, Malaysia, Chinese Taipei, North Macedonia, Morocco⁷¹ and Germany (hereafter, the six non-subject countries).⁷²

[72] The Canadian market for plate corresponding to the product definition grew by 9 percent in 2017, contracted by 1 percent in 2018, and grew again by 6 percent in interim 2019 in comparison to interim 2018.⁷³ At its peak in 2017, the market was just below 1 million tonnes.⁷⁴

[73] The POR also saw a consistent increase in the average market price for plate, which rose from \$884/tonne in 2016 to \$1,232/tonne in 2018, and from \$1,118/tonne in interim 2018 to \$1,270/tonne in interim 2019.⁷⁵

[74] According to several witnesses, the trends seen during the POR were not due to strong market fundamentals.⁷⁶ Instead, pricing and demand trends, as well as the shifting sources of plate imports, appear to have been likely influenced by the anticipation, starting as early as April 2017, of section 232 measures (which caused stockpiling of inventory), and the trade-protective effects of the section 232 measures implemented by the U.S. in early 2018, and of the Canadian retaliatory

⁶⁶ Exhibit RR-2019-001-A-01 at 475, 480, Vol. 11.

⁶⁷ Exhibit RR-2019-001-A-01 at 142, 191, Vol. 11. TD forecasts 1.5 percent and 1.6 percent growth in 2019 and 2020, respectively. The IMF forecasts 1.5 percent growth in 2019 and 1.8 percent growth in 2020.

⁶⁸ Exhibit RR-2019-001-A-01 at 482, Vol. 11.

⁶⁹ Exhibit RR-2019-001-03A, Vol. 1 at 11; Exhibit RR-2019-001-05, Table 8, Vol. 1.1; Exhibit RR-2019-001-06 (protected), Tables 6, 7, Vol. 2.1.

⁷⁰ Exhibit RR-2019-001-05, Table 8, Vol. 1.1; Exhibit RR-2019-001-06 (protected), Table 7, Vol. 2.1; *Transcript of Public Hearing* at 15, 21-22, 34-35; *Transcript of In Camera Hearing* at 2.

⁷¹ Morocco is not covered by the safeguard on heavy plate, as it is a beneficiary of the General Preferential Tariff (GPT).

⁷² Exhibit RR-2019-001-A-03 at 19-20, Vol. 11. This Statistics Canada data based on HS Codes at the 10-digit level may include goods outside of the product definition in this case; it is, however, useful in providing general trends. These volume trends were not contested.

⁷³ Exhibit RR-2019-001-05, Table 12, Vol. 1.1.

⁷⁴ Exhibit RR-2019-001-05, Table 11, Vol. 1.1. See also Exhibit RR-2019-001-A-08 (protected) at 20, Vol. 12.

⁷⁵ Exhibit RR-2019-001-05, Table 22, Vol. 1.1.

⁷⁶ See e.g. *Transcript of Public Hearing* at 16-17, 51.

measures on U.S. imports put in place in July 2018.⁷⁷ Domestic industry witnesses also indicated that the industry felt “some relief” in the second half of 2018 and early 2019 from the Canadian provisional and final safeguard measures, discussed below.⁷⁸

- **Canadian Safeguard Measures on Heavy Plate**

[75] In October 2018, the government of Canada imposed provisional safeguard measures on imports of seven classes of steel products, including heavy plate, which covers a subset of plate meeting the product definition in this expiry review.⁷⁹

[76] On April 3, 2019, at the conclusion of its inquiry, the Tribunal determined, *inter alia*, that heavy plate was being imported in such increased quantities and under such conditions as to be a principal cause of a threat of serious injury to the domestic industry. The Tribunal recommended a remedy in the form of a progressively liberalized TRQ on all imports of heavy plate, other than such plate originating in the United States, Mexico, other countries with whom Canada has trade agreements, including Korea, and countries whose goods are eligible for GPT treatment.

[77] The Tribunal’s recommendations were implemented by the government of Canada as final safeguard measures on May 9, 2019. The first TRQ year began on May 13, 2019, and will end on May 12, 2020, with in-quota volumes of 100,000 MT and an above-quota surtax of 20 percent.⁸⁰ The second year begins on May 13, 2020, and ends on May 12, 2021, with in-quota volumes of 110,000 MT and an above-quota surtax of 15 percent. The third year will consist of a 165-day period beginning on May 13, 2021, and ending on October 24, 2021, with an adjusted in-quota volume of 54,699 MT and an above-quota surtax of 10 percent.⁸¹

- **Imports, Demand and Prices Post-POR & Forecasts**

[78] The witnesses generally agreed that the second half of 2019 contrasted substantially with the first. The evidence suggests changes in import volume trends into Canada following the removal of the section 232 measures and Canadian retaliatory tariffs on U.S. imports in May 2019. Witnesses disagreed, however, on the extent of the increase in the volume of U.S. imports and other country imports, as well as on their relative prices.⁸²

⁷⁷ Exhibit RR-2019-001-A-07 at paras. 8 to 14, Vol. 11; *Transcript of Public Hearing* at 14-15, 34-35, 50-51, 95, 163, 207-208; *Transcript of In Camera Hearing* at 2. Mr. Adkins, of Salzgitter, qualified demand since 2016 as “flat”: *Transcript of Public Hearing* at 161. See similarly, *Transcript of Public Hearing* at 209-210, where Mr. Ferreira, of Wirth, qualified demand as “good” and pricing “stable” in 2016 and 2017, with prices changing dramatically with the section 232 measures. See also Exhibit RR-2019-001-44, Vol. 1 at 3.

⁷⁸ *Transcript of Public Hearing* at 14-16; Exhibit RR-2019-001-A-03 at para. 13, Vol. 11.

⁷⁹ In brief, the safeguard measures cover plate in widths from 80 inches to 152 inches and thicknesses from 0.375 inches to 4.0 inches (for the complete product definition, see *Steel Safeguard Inquiry* at 32). Plate meeting the product definition in this expiry review is in widths from 24 inches to 152 inches and in thicknesses from 0.187 inches to 3.0 inches, minus the excluded products.

⁸⁰ Contrary to the second and third year, the first TRQ year was divided into several quota periods for administration purposes: Exhibit RR-2019-001-33.02, Vol. 1 at 2-3.

⁸¹ The quota for the first year is based on the average volume of heavy plate imported from countries other than those excluded in the years 2015-2018. The third year was shortened to 165 days for it to end on October 24, 2021, which is three years from the date of imposition of the provisional safeguard measures. The quota for that period was therefore prorated from the volume of 121,000 MT that would have applied for a full year.

⁸² See e.g. Exhibit RR-2019-001-45, Vol. 1 at 3-4; *Transcript of Public Hearing* at 17-18, 94-95, 189-190; *Transcript of In Camera Hearing* at 2-6; Exhibit RR-2019-001-A-03 at paras. 14-16, Vol. 11.

[79] The evidence indicates that U.S. import volumes increased following the removal of the tariffs in May 2019, but have remained below the relative proportion of U.S. imports during the early part of the POR.⁸³ On a month-to-month basis, although showing some volatility in certain months of the year 2019, both Statistics Canada and Global Affairs Canada data suggest that U.S. imports have increased their monthly share of total imports, particularly from September 2019 through the end of the year. Looking at the post-POR period on average (i.e. import data for the second half of 2019 on an aggregate basis), import volumes from the six non-subject countries maintained a substantial share of the imports they first acquired beginning in 2018. However, as noted above, U.S. imports came to hold a larger share on a monthly basis, particularly from September 2019 onwards, taking some share from those countries. The evidence also shows that total monthly import volumes have been decreasing since May 2019.⁸⁴

[80] Market conditions deteriorated significantly in the Canadian and North American plate market in the post-POR period. Following a price peak in the second half of 2018, which held into the first half of 2019, prices started declining in May 2019 and plunged in the second half of 2019.⁸⁵ The U.S. Midwest price for plate, which remains a useful benchmark for trends in Canadian market prices,⁸⁶ declined by more than \$500 CAD over the course of 2019.⁸⁷ The monthly data from Statistics Canada and Global Affairs Canada also show a declining overall trend in the second half of 2019 for the unit values of imports into Canada.⁸⁸ There was evidence, however, of the trend of modest price recovery in late 2019 and into early 2020.⁸⁹

[81] Several witnesses highlighted the impact, among other factors, of weak demand, in Canada and the United States.⁹⁰ Demand remained weak or worsened in this post-POR period, among others in the energy, machinery and service centre sectors in North America.⁹¹

[82] Going forward, a slow recovery in pricing and a flat to somewhat improved demand for plate are forecast for 2020 and 2021. According to the latest available CRU forecast, the U.S. Midwest

⁸³ Exhibit RR-2019-001-A-03 at 20, Vol. 11; Exhibit RR-2019-001-33.04, Vol. 1 (showing Statistics Canada data for plate imports at the 10-digit HS code level for January to November 2019); Exhibit RR-2019-001-45, Vol. 1 at 6-19 (showing Global Affairs Canada import permit data for certain classes of goods relevant to the subject goods for 2016-2018 on a yearly basis, and for January to December 2019 on a monthly basis). The Tribunal recognizes that this data does not perfectly reflect the product scope in this case. It nevertheless gives a useful indication of broad trends in the post-POR period; indeed, it was relied on by parties on both sides in this proceeding, as well as by the Tribunal witnesses.

⁸⁴ Exhibit RR-2019-001-G-03, Vol. 13; Exhibit RR-2019-001-G-03A, Vol. 13; Exhibit RR-2019-001-45, Vol. 1 at 16-19. See also *Transcript of Public Hearing* at 15-16, 43-44, 65-66, 116.

⁸⁵ Exhibit RR-2019-001-A-03 at 6-7, Vol. 11; Exhibit RR-2019-001-A-08 (protected) at 25-28, Vol. 12; *Transcript of Public Hearing* at 16-18, 76, 103; *Transcript of In Camera Hearing* at 3, 5-6.

⁸⁶ *Transcript of Public Hearing* at 17. While factors affecting the U.S. and Canadian markets can vary, it is clear on the evidence presented that these markets remain closely connected. As was apparent from witness testimony, these industry publications are used by market participants for pricing trends.

⁸⁷ Exhibit RR-2019-001-E-01 at 25, Vol. 13; *Transcript of Public Hearing* at 18.

⁸⁸ Exhibit RR-2019-001-G-03A at 1, Vol. 13.

⁸⁹ Exhibit RR-2019-001-E-01 at 14, 15, 25, Vol. 19. Exhibit RR-2019-001-A-08 (protected) at 6, Vol. 12; *Transcript of Public Hearing* at 161, 166; *Transcript of In Camera Hearing* at 2-4.

⁹⁰ See e.g. Exhibit RR-2019-001-A-03 at para. 16, Vol. 11. See e.g. *Transcript of Public Hearing* at 17, 75, 102-103, 161, 165, 201.

⁹¹ Exhibit RR-2019-001-A-01 at 17, Vol. 11; Exhibit RR-2019-001-A-02 (protected) at 17, 109, Vol. 12; Exhibit RR-2019-001-A-03 at 7, Vol. 11; Exhibit RR-2019-001-A-07 at 4-6, Vol. 11; Exhibit RR-2019-001-A-08 (protected) at 4-6, 20, Vol. 12; *Transcript of Public Hearing* at 18; *Transcript of In Camera Hearing* at 3-4, 6.

price is expected to start making gains in early 2020, with more sustained price recovery happening later in the year and in 2021. On average, the U.S. Midwest price in 2020 and 2021 is, however, forecast to remain well below the peaks seen in 2018 and 2019.⁹² Witnesses' expectations for Canadian market price trends were consistent on this point.⁹³ In terms of demand, CRU expects reversing mill plate consumption in Canada to remain below the 2016 to 2018 levels between 2019 and 2021, while slowly growing within that timeframe.⁹⁴ Witnesses generally agreed that they were not anticipating any major catalysts for demand in the near to medium term.⁹⁵

Likely Import Volume of Dumped Goods

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

[84] The Tribunal's assessment of the likely volumes of dumped 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.⁹⁶

[85] The parties supporting the continuation of the finding submitted that the subject goods would enter Canada in high volumes if the finding is rescinded. They argued that excess capacity in the subject countries, coupled with relatively weak home market and global conditions, trade restrictions in other markets, export orientation and production imperatives will push the subject countries to increase their exports to Canada should the finding be rescinded.

[86] USIMINAS and the Japanese producers focused on the likely volumes from Brazil and Japan. However, they also submitted generally that the argument that the subject goods would be coming back in significant volumes if the finding is rescinded was based on conjecture, and that such volumes would not in any event be injurious. The Government of Indonesia argued that exports of subject goods into Canada decreased between 2016 and 2018, which shows that the subject goods are no threat to the domestic industry. The Embassy of Japan highlighted that safeguard measures are already in effect, which it argued result in double and excessive trade remedies on the subject goods; it urged a thorough consideration of all views presented.

Capacity, export orientation and likely performance of the industry in the subject countries

[87] In its original inquiry, the Tribunal stated that plate producers have a production imperative to maintain high capacity utilization rates, which creates an incentive to rely on export markets to absorb excess production.⁹⁷ There is no evidence to indicate that this is no longer the case.

⁹² Exhibit RR-2019-001-A-16 (protected) at 2, Vol. 12.

⁹³ *Transcript of Public Hearing* at 26, 214. The domestic industry's witnesses predicted very different trends, however, should the finding be rescinded. The likely price effects from a rescission of the finding are discussed in sections below.

⁹⁴ Exhibit RR-2019-001-A-01 at para. 264, Vol. 11; Exhibit RR-2019-001-A-08 (protected) at 20, Vol. 12.

⁹⁵ *Transcript of Public Hearing* at 20, 51, 67-69, 75, 78, 96, 110, 164-167, 214.

⁹⁶ Paragraphs 37.2(2)(a), (d), (f), (h) and (i) of the *Regulations*.

⁹⁷ *Plate VII* at para. 188. See also *Plate V* at para. 81.

[88] Although circumstances vary somewhat among the subject countries,⁹⁸ the evidence shows that the subject countries have a combined excess capacity for reversing plate alone that is many times the size of the Canadian domestic market, that they remain significant exporters of plate and are likely to face challenging conditions in their home or export markets over the next 12 to 24 months.

- **Brazil**

[89] CRU data show that, while reversing mill plate capacity in Brazil is expected to remain steady over the next few years, this capacity alone is greater than the domestic industry's total practical plant capacity over the POR.⁹⁹ When the capacity for hot strip mills is included, Brazil's production capacity of plate increases several fold.¹⁰⁰ While both production and consumption of plate in Brazil are set to increase, production will continue to surpass consumption through 2022. Capacity utilization rates for reversing mills will remain below 35 percent through 2022, with excess capacity hovering close to 2.5 million tonnes—approximately 2.5 times the size of the Canadian market for subject plate during the POR.¹⁰¹

[90] The evidence indicates that Brazilian net exports of reversing mill plate are forecast to increase significantly between 2018 and 2022.¹⁰² Brazil's most important export markets for flat products are Turkey, Argentina and Portugal.¹⁰³ However, as indicated above, demand has been softening in Europe. Growth rates in Turkey and Argentina both were set to contract in 2019,¹⁰⁴ and

⁹⁸ The Tribunal also recognizes that there is more evidence for some of the subject countries than for others.

⁹⁹ Exhibit RR-2019-001-A-01 at para. 92, Vol. 11. Exhibit RR-2019-001-A-02 (protected) at 308, Vol. 12; Exhibit RR-2019-001-A-04 (protected) at 21, Vol. 12. See also Exhibit RR-2019-001-05, Table 31, Vol. 1.1. USIMINAS submitted that CRU data for Brazil was overestimated because USIMINAS has suspended the heavy plate rolling line and interrupted the activities in the primary areas of one of its mills in 2015: *Transcript of Public Hearing* at 371. See also Exhibit RR-2019-001-A-02 (protected) at 520, Vol. 12; Exhibit RR-2019-001-19.09, Vol. 5.1 at 4; Exhibit RR-2019-001-27.01, Vol. 7.1 at 15, 80. It argued that, when the idling of this capacity is taken into account, the figures show very little increase in operating capacity in Brazil. The Tribunal finds that, as argued by Algoma, reducing the overall Brazilian reversing mill production capacity, current and projected, as reported by CRU, by the figures associated with the idled USIMINAS plant still results in an overall significant figure for Brazilian reversing mill plate capacity, particularly when compared to the Canadian apparent market for plate and compared to the domestic industry's total practical plant capacity.

¹⁰⁰ Exhibit RR-2019-001-A-04 (protected) at 21, Vol. 12. The Tribunal notes USIMINAS' objection that some of the producers listed in the underlying evidence do not produce plate: *Transcript of Public Hearing* at 371-372. However, as noted by Algoma, no evidence was submitted in this regard. In any event, as noted above, the Tribunal is satisfied that Brazilian reversing mill plate production capacity alone is significant.

¹⁰¹ Exhibit RR-2019-001-A-01 at 32, Vol. 11; Exhibit RR-2019-001-A-02 (protected) at 154, 156, 308, Vol. 12; Exhibit RR-2019-001-A-04 (protected) at 21, Vol. 12. Brazilian overall utilization rates for reversing mill plate increase when taking into account the idling of the USIMINAS plant. The Tribunal also takes into account USIMINAS' reported practical plant capacity and utilization rate for the POR, in response to the Tribunal's questionnaire: Exhibit RR-2019-001-06 (protected), Table 35, Vol. 2.1.

¹⁰² Exhibit RR-2019-001-A-02 (protected) at 239, Vol. 12. USIMINAS' export sales of subject goods varied substantially from year-to-year but increased somewhat overall during the POR, as reported in its questionnaire response: Exhibit RR-2019-001-05, Table 35, Vol. 1.1.

¹⁰³ Exhibit RR-2019-001-A-01 at 213, Vol. 11; Exhibit RR-2019-001-27.01, Vol. 7.1 at 24.

¹⁰⁴ Exhibit RR-2019-001-A-01 at 107, 173, Vol. 11.

downside risks were raised in relation to the Argentina market in recent economic forecasts, although return to growth is expected in both countries in 2020 or 2021.¹⁰⁵

[91] Brazil is recovering from its 2015-2016 recession and from its current stagnation, with GDP projected to grow by 0.9 percent in 2019 and 2.0 percent in 2020.¹⁰⁶ Brazil's construction sector has shown positive growth in 2019, which could continue with infrastructure being a policy priority.¹⁰⁷ However, CRU's most recent plate update indicates that Brazilian plate demand in 2019 is weak, following which a return to growth is expected.¹⁰⁸

- Denmark

[92] CRU forecasts Denmark's reversing mill plate capacity increasing nearly 40 percent between 2018 and 2020.¹⁰⁹ The annual production of plate of NLMK DanSteel is reportedly just over 500,000 tonnes.¹¹⁰

[93] Data at the six-digit HS code level indicates that a significant portion of Danish plate production is exported.¹¹¹ Most Danish plate is destined for Europe, but Danish exports are negatively affected by stagnation in other European countries.¹¹²

[94] Denmark is only set for moderate GDP growth between 2019 and 2021.¹¹³ As reported in October 2019, plate demand is reported to be low in Denmark.¹¹⁴

- Italy

[95] CRU data show that the Italian production of reversing mill plate will increase in 2019 and 2020, but will remain above consumption.¹¹⁵ Reversing mill plate excess capacity will decrease from 1.9 million tonnes in 2019 to 1.5 million tonnes in 2022; however, this volume of excess capacity remains approximately 50 percent greater than the size of the Canadian market for subject plate. The utilization rate for Italian reversing mills is forecast to increase due to production increases.¹¹⁶

¹⁰⁵ Exhibit RR-2019-001-A-01 at 173-174, 187-188, Vol. 11; Exhibit RR-2019-001-A-02 (protected) at 110-111, 154-155.

¹⁰⁶ Exhibit RR-2019-001-A-01 at 174, 191, Vol. 11; Exhibit RR-2019-001-B-01 at 372, 382, Vol. 11. Tendências's *Long-Term Scenarios – September 2019* similarly forecasts 0.9 percent growth in 2019, followed by 1.8 percent and 2.4 percent in 2020 and 2021, respectively; Exhibit RR-2019-001-E-01 at 43, Vol. 13.

¹⁰⁷ Exhibit RR-2019-001-A-01 at 108, Vol. 11; Exhibit RR-2019-001-B-01 at 22, Vol. 11.

¹⁰⁸ Exhibit RR-2019-001-A-01 at paras. 96-97, Vol. 11; Exhibit RR-2019-001-A-02 (protected) at 110-111, Vol. 12.

¹⁰⁹ Exhibit RR-2019-001-A-01 at 37, Vol. 11; Exhibit RR-2019-001-A-04 (protected) at 38-41, Vol. 12. CRU does not publish production or consumption data for the Danish plate market.

¹¹⁰ Exhibit RR-2019-001-21.01 at 110, Vol. 7.

¹¹¹ Exhibit RR-2019-001-A-01 at 37, 242, Vol. 11.

¹¹² Exhibit RR-2019-001-A-01 at 110, 230, 243, Vol. 11; Exhibit RR-2019-001-B-01 at 332, Vol. 11.

¹¹³ Exhibit RR-2019-001-A-01 at 193, 196, Vol. 11; Exhibit RR-2019-001-B-01 at 332, 334, Vol. 11.

¹¹⁴ Exhibit RR-2019-001-B-01 at 342, Vol. 11.

¹¹⁵ Exhibit RR-2019-001-A-04 (protected) at 23, Vol. 12.

¹¹⁶ Exhibit RR-2019-001-A-01 at paras. 136-139, Vol. 11; Exhibit RR-2019-001-A-04 (protected) at 23, Vol. 12; Exhibit RR-2019-001-05, Table 11, Vol. 1.1.

[96] Italy's net exports of reversing mill plate are forecast to increase through 2022.¹¹⁷ Italian plate producers are reliant on the EU market for their exports of flat products. The weak conditions in other European countries will likely therefore also affect Italian exports.¹¹⁸

[97] Italy's economy is in a worse state than that of other European countries. Its GDP is expected to remain flat in 2019 and to grow by no more than 0.5 percent in 2020.¹¹⁹ As of September-October 2019, Italian plate demand is described as "patchy" and prices are declining.¹²⁰

- **Indonesia**

[98] CRU data show that a significant increase in reversing mill plate capacity occurred in 2017.¹²¹ Total plate capacity is forecast to increase in 2020. CRU expects Indonesian utilization rates for total plate capacity to increase from 68 percent in 2019 to 83 percent in 2020. Overall, CRU expects that the total excess capacity will decline from 1.5 million tonnes in 2019 to 1 million tonnes in 2022. However, even this reduced volume expected for 2022 remains approximately equivalent to the size of the entire Canadian market.¹²²

[99] UN Comtrade data at the six-digit HS code level shows increasing Indonesian plate exports since 2015 through 2018.¹²³ CRU forecasts that Indonesia will remain a net exporter of reversing mill plate until 2021, when it will become a net importer of reversing mill plate.¹²⁴ The three main export markets for Indonesian producers are China, Japan and Korea.¹²⁵ China is experiencing slowing economic growth and steel demand in particular, along with a drop in new shipbuilding orders; it has been embroiled in trade tensions with the United States.¹²⁶ As for Japan and Korea, both countries are facing soft market conditions, as discussed below. PT Krakatau POSCO, the only Indonesian producer having completed a foreign producer questionnaire in the Tribunal's review, has reported a significant increase in export sales in the first half of 2019 in comparison to the first half of 2018, and sales were destined to Asian countries.¹²⁷

[100] Indonesia's economy has seen growth of around 5 percent from 2016 to 2018 and is forecast to continue at a similar rate through 2020, though it faces risks from trade tension between China and the United States.¹²⁸ Recent indications are that there is plate demand weakness due to poor

¹¹⁷ Exhibit RR-2019-001-A-02 (protected) at 240, Vol. 12.

¹¹⁸ Exhibit RR-2019-001-A-01 at 110, 243, 294, 296-297, Vol. 11.

¹¹⁹ Exhibit RR-2019-001-A-01 at 143, 191-193, 196, 230, 288-293, Vol. 11.

¹²⁰ Exhibit RR-2019-001-B-01 at 344-346, Vol. 11.

¹²¹ Exhibit RR-2019-001-A-01 at para. 124, Vol. 11; Exhibit RR-2019-001-A-04 (protected) at 22, Vol. 12. The Tribunal notes Algoma's comments with regard to the reliability of these data in Exhibit RR-2019-001-A-02 (protected) at para. 125, Vol. 12. Accordingly, the Tribunal's analysis of Indonesian plate capacity considered data related to total plate, not just reversing mill plate.

¹²² Exhibit RR-2019-001-A-01 at para. 123, Vol. 11; Exhibit RR-2019-001-A-04 (protected) at 22, Vol. 12; Exhibit RR-2019-001-B-01 at 358, Vol. 11; Exhibit RR-2019-001-05, Table 11, Vol. 1.1.

¹²³ Exhibit RR-2019-001-A-01 at 287, Vol. 11.

¹²⁴ Exhibit RR-2019-001-A-02 (protected) at 235, Vol. 12.

¹²⁵ Exhibit RR-2019-001-A-01 at 247, Vol. 11.

¹²⁶ Exhibit RR-2019-001-A-01 at 105-106, 110, Vol. 11; Exhibit RR-2019-001-A-02 (protected) at 106, 115, 117-118, Vol. 12; Exhibit RR-2019-001-B-01 at 63, Vol. 11.

¹²⁷ Exhibit RR-2019-001-05, Schedule 89, Vol. 1.1. See also Exhibit RR-2019-001-20.02 (protected), Vol. 6.1 at 4.

¹²⁸ Exhibit RR-2019-001-A-01 at 187, 245, Vol. 11; Exhibit RR-2019-001-B-01 at 383, Vol. 11.

performance in end-use sectors, such as construction.¹²⁹ However, ASEAN-5¹³⁰ demand for finished steel products is forecast to increase in 2019 and 2020.¹³¹ Consistent with the backdrop of the global steel overcapacity crisis, the evidence also indicates that Indonesian producers are nevertheless being challenged due to import competition from China and other countries.¹³²

- **Japan**

[101] CRU data for Japan suggest that reversing mill plate capacity will remain stable, as will utilization rates; excess capacity will trend downwards but remain around 6 million tonnes from 2019 through 2022. Japan's reversing mill plate consumption will continue to be well below production through 2022, with the gap between reversing mill plate consumption and production reaching 1.9 million MT in 2021.¹³³

[102] Japan is forecast to remain a net exporter of reversing mill plate.¹³⁴ In 2018, Japan exported close to 3 million tonnes of medium and heavy plate.¹³⁵ In this regard, while the Tribunal notes the Japanese Producers' submissions on the confidential record on the topic of exports,¹³⁶ the Tribunal considers, however, that the third-party data from industry publications indicates that Japan is a very significant exporter of plate and that it continues to contend with high levels of excess capacity.

[103] Furthermore, the top export markets for Japanese flat products are China, Korea and Thailand.¹³⁷ As further discussed below, although Korea has seen an increase in new shipbuilding orders since 2018, it appears that there has nevertheless been a slowdown in the shipbuilding industry, leading to a decline in consumption of steel products.¹³⁸ As noted above, there has been slowing economic growth and steel demand in China; following recent challenges in certain sectors in some of the ASEAN countries, such as Indonesia, increased growth is expected for that region going forward.¹³⁹

[104] Japan's economy will stagnate in 2019 through 2020. It is also facing numerous market restrictions due to anti-dumping and countervailing duties in many markets as well as section 232 measures imposed by the United States.¹⁴⁰ Meanwhile, demand for steel in shipbuilding and construction in Japan has been declining.¹⁴¹

¹²⁹ Exhibit RR-2019-001-A-01 at para. 132, Vol. 11; Exhibit RR-2019-001-A-02 (protected) at 112, Vol. 12.

¹³⁰ More specifically, Indonesia, Malaysia, Philippines, Thailand, Vietnam.

¹³¹ Exhibit RR-2019-001-A-01 at 110, Vol. 11; Exhibit RR-2019-001-B-01 at 407, 410, Vol. 11. See also RR-2019-001-A-02 (protected) at 112, Vol. 12.

¹³² Exhibit RR-2019-001-A-01 at 255-257, Vol. 11.

¹³³ Exhibit RR-2019-001-A-01 at paras. 151-152, Vol. 11; Exhibit RR-2019-001-A-04 (protected) at 24, Vol. 12.

¹³⁴ Exhibit RR-2019-001-A-02 (protected) at 239, Vol. 12.

¹³⁵ Exhibit RR-2019-001-A-01 at 319, Vol. 11.

¹³⁶ Exhibit RR-2019-001-G-02 (protected) at paras. 51-54, Vol. 14.

¹³⁷ Exhibit RR-2019-001-A-01 at 314. The Japanese Producers' reported export sale destinations during the POR included China, Korea, Philippines and Singapore: Exhibit RR-2019-001-05, Table 37, Vol. 1.1.

¹³⁸ Exhibit RR-2019-001-B-01 at 63, 65, 185, 188, 393, Vol. 11.

¹³⁹ Exhibit RR-2019-001-A-01 at 107, 110, 305-306, 308-309; Exhibit RR-2019-001-A-02 (protected) at 112-113, Vol. 12.

¹⁴⁰ Exhibit RR-2019-001-A-01 at 173, 177, 191-192, 303, 305, 311, 317, Vol. 11; Exhibit RR-2019-001-B-01 at 322, 327, 372-373, 381, 383, Vol. 11. Japanese steel exports to the U.S. have declined by 13 percent from January to June 2019, compared to the same period in 2018: Exhibit RR-2019-001-A-01 at 504, Vol. 11.

¹⁴¹ Exhibit RR-2019-001-B-01 at para. 22 and at 363, Vol. 11. Demand in the shipbuilding industry was nearly 400,000 short tons less in 2018 than in 2016, and demand in the construction industry declined by as much as 379,000 short tons between 2017 and 2018.

- Korea

[105] CRU data shows Korean reversing mill plate excess capacity declining slightly from 2019 to 2020, but at over 6 million tonnes, it remains at levels that dwarf the Canadian plate market. Reversing mill plate utilization rate will increase through 2022 due to increasing production, although it will remain below 65 percent. Reversing mill plate production exceeds consumption and will continue to do so through 2022.¹⁴²

[106] Korea is forecast to remain a significant net exporter of reversing mill plate.¹⁴³ Korea's main export markets for flat products are Japan, China and India.¹⁴⁴ The foreign producer questionnaire responses from Hyundai and POSCO indicate that their combined export sales have declined overall during the POR, while their combined domestic sales increased, and they have identified Japan, India, Vietnam and the EU as export sales destinations.¹⁴⁵ As indicated above, Japan and the EU are experiencing soft market conditions while China is facing slowing economic growth. On the other hand, India and Vietnam's economies are expected to continue to grow in 2019 and 2020.¹⁴⁶

[107] Korea's economy is projected to grow by about 2.2 percent in 2020. Its export-oriented economy is being pressured by ongoing trade tensions. While the Korean construction sector is contracting, shipbuilding has shown a declining trend in deliveries since 2016 but an increasing one in new orders over the same years.¹⁴⁷ Nevertheless, according to a recent CRU report, due to weakness in their home market, Korean plate producers have exported to South East Asian markets at prices that undercut even Chinese prices (usually the lowest).¹⁴⁸

- Conclusion

[108] Considering the above, the Tribunal finds that the subject countries collectively have available capacity to produce large amounts of plate, are generally facing challenges in their home or export markets, and are significant exporters.

Ongoing interest in the Canadian market

[109] The record indicates that exporters from at least some of the subject countries have maintained relationships with Canadian importers of plate. In addition to imports of subject plate in some periods of the POR, plate not covered by the finding was imported over the POR, most notably from Korea.¹⁴⁹

¹⁴² Exhibit RR-2019-001-A-01 at paras. 161-162, Vol. 11; Exhibit RR-2019-001-A-04 (protected) at 25, Vol. 12; Exhibit RR-2019-001-05, Table 11, Vol. 1.1. See also Exhibit RR-2019-001-06 (protected), Table 38, Vol. 2.1, showing practical plant capacity and production for the responding Korean producers over the POR.

¹⁴³ Exhibit RR-2019-001-A-02 (protected) at 239, Vol. 12.

¹⁴⁴ Exhibit RR-2019-001-A-01 at 339, 342, Vol. 11.

¹⁴⁵ Exhibit RR-2019-001-05, Table 38 and Schedules 94-95, Vol. 1.1.

¹⁴⁶ Exhibit RR-2019-001-A-01 at 107, 110, 174, 177, 187, 194, Vol. 11; Exhibit RR-2019-001-B-01 at 22, 28, 322-323, 327, 372-373, 393, 407, 410, Vol. 11.

¹⁴⁷ Exhibit RR-2019-001-A-01 at 107, 194, 196, 328, Vol. 11; see also Exhibit RR-2019-001-A-02 (protected) at 114, Vol. 12; Exhibit RR-2019-001-B-01 at 22, 28, 63, 65, 192, 195, 383, 410, Vol. 11.

¹⁴⁸ Exhibit RR-2019-001-A-01 at para. 158, Vol. 11.

¹⁴⁹ Exhibit RR-2019-001-05, Table 38, Vol. 1.1; Exhibit RR-2019-001-06 (protected), Tables 7, 11, Vol. 2.1; Exhibit RR-2019-001-A-03 at 19-20, Vol. 11; Exhibit RR-2019-001-A-01 at 461-462, 512-513, Vol. 11; Exhibit RR-2019-001-A-07 at paras. 7, 47-52, Vol. 11; Exhibit RR-2019-001-A-08 (protected) at 56-58, Vol. 12.

[110] There is some evidence of offers from the subject countries for products closely related to the plate covered by the finding.¹⁵⁰ Subject country producers of other steel products, such as corrosion-resistant sheet, cold-rolled sheet and hot-rolled sheet, have also been exporting to Canada in recent years.¹⁵¹ These exports indicate an ongoing interest in the Canadian market on the part of producers in the subject countries. There is some evidence suggesting that such related products may be made by some of the same or related exporters as the subject goods.¹⁵²

[111] The Tribunal finds that the subject countries have shown an ongoing interest in the Canadian steel and plate markets. This could also facilitate re-entry into the market with regard to the subject goods.

Measures elsewhere

[112] As already noted, anti-dumping, countervailing and other trade measures are in force against the subject countries in many markets. This is likely to impede the subject goods' access to such markets and enhance the likelihood that they will seek any available opportunities elsewhere. There is no indication that this situation will change significantly in the near to medium term.

Effect of safeguard

[113] Algoma submitted that the safeguard TRQ does not prevent the subject goods from returning in significant volumes should the finding be rescinded. The Japanese Producers argued that the TRQ volume is modest relative to demand and domestic production. Further, they argued that this volume is likely to be captured by the six low-priced countries and that the subject goods would be uncompetitive with the surtax applied.¹⁵³

[114] For similar reasons as discussed in the section above on cumulation, the Tribunal does not consider that the safeguard on heavy plate is likely to significantly affect the likely volume of imports of the subject goods. First, imports of heavy plate incur no surtaxes if they are imported within quota, which reflects historical levels of heavy plate imports, and there is nothing to conclude that demand for heavy plate in the near to medium term will be such as to exceed these levels. The quota will be liberalized over the coming two years, before disappearing on October 24, 2021.

[115] Second, the safeguard measures also only cover a subset of the subject goods, meaning that subject goods not falling within the definition of heavy plate will remain unaffected by it. Furthermore, as mentioned above, several witnesses confirmed that plate in atypical widths narrower than 80 inches has been imported, although they disagreed as to whether this practice is likely to continue going forward.¹⁵⁴

[116] In addition, the surtax applicable on heavy plate potentially imported outside the quota will decrease to 15 percent in May 2020 and to 10 percent in May 2021. As noted previously, the

¹⁵⁰ Exhibit RR-2019-001-A-11 at para. 20, Vol. 11; Exhibit RR-2019-001-A-12 (protected) at 9-10, Vol. 12; *Transcript of Public Hearing* at 24, 75-76.

¹⁵¹ Exhibit RR-2019-001-A-01 at 461-472, Vol. 11.

¹⁵² Exhibit RR-2019-001-05, Tables 35-38, Schedules 88-95, Vol. 1.1; Exhibit RR-2019-001-06 (protected), Tables 5, 35-38, Schedules 88-95, Vol. 2.1.

¹⁵³ Exhibit RR-2019-001-G-01 at paras. 70-72, Vol. 13.

¹⁵⁴ Exhibit RR-2019-001-A-03 at para. 38, Vol. 11; Exhibit RR-2019-001-A-07 at para. 29, Vol. 11; Exhibit RR-2019-001-A-11 at para. 19, Vol. 11; *Transcript of Public Hearing* at 16, 28, 45-46, 48-49, 170-171, 219-220.

Tribunal is not convinced that there is evidence to suggest that the available quota volumes will be insufficient to satisfy likely heavy plate demand. In any event, to the extent that such a surtax should apply, the surtax applied to over-quota imports is not so large as to be insurmountable.¹⁵⁵

Attractiveness of the Canadian market

[117] In addition to the foregoing, the Tribunal must next consider whether, if the finding were to expire, the subject goods are likely to seek increased export opportunities in Canada.

[118] The parties supporting the continuation of the finding noted the higher Canadian prices relative to other markets. The evidence indicates that the CRU U.S. Midwest price for plate has been higher than other non-North American markets since 2016, and the available projections suggest that this is likely to continue through at least 2021.¹⁵⁶ The uncontroverted evidence is that the U.S. Midwest price remains a relevant and useful benchmark for Canadian prices, even though specific factors can cause the Canadian prices to diverge from the U.S. Midwest price at times.¹⁵⁷

[119] The parties opposing the continuation of the finding, referring to the testimony of the Tribunal witnesses, submitted that the market conditions in Canada will make the importation of subject goods unattractive. According to the Tribunal witnesses, North American prices are currently so low as to make offshore imports uncompetitive, once transportation costs and the risks associated with buying offshore due to long lead times are factored in. The Tribunal witnesses testified, however, that offshore imports would become attractive again in a scenario of rising prices.¹⁵⁸

[120] The evidence before the Tribunal shows that prices in the Canadian market have experienced dramatic swings in recent years, peaking in 2018 followed by a marked decline from May 2019 nearly through to the end of the year.¹⁵⁹ The evidence also indicates that, in a market where prices are falling, importers and their buyers are likely to be more reluctant to purchase offshore imports, which have a four- to five-month lead time, in order to avoid having to sell the imported goods at a loss.¹⁶⁰ Considering this lead time, the offshore imports that arrived in the Canadian market through the fall of 2019 would have likely been ordered in the spring of 2019, either immediately before or just as Canadian prices started to tumble.

[121] Moreover, the evidence indicates that Canadian market prices appear to be normalizing. Witnesses were generally of the view that prices have bottomed out and expect some upside going forward. Prices in the U.S. reached bottom in late 2019 and have since been on their way up.¹⁶¹ An excerpt of the American Metal Market dated December 16, 2019, also suggests that U.S. prices have

¹⁵⁵ Exhibit RR-2019-001-A-03 at paras. 41-42, Vol. 11.

¹⁵⁶ Exhibit RR-2019-001-A-01 at para. 184 and at 228, 242, 287, 302, 320, 347, Vol. 11; Exhibit RR-2019-001-A-02 (protected) at para. 184 and at 464, Vol. 12; Exhibit RR-2019-001-A-08 (protected) at 59, Vol. 12; Exhibit RR-2019-001-A-16 (protected) at 2, Vol. 12; *Transcript of Public Hearing* at 19.

¹⁵⁷ See e.g. Exhibit RR-2019-001-A-04 (protected) at para. 14, Vol. 12, comparing recent trends of CRU's U.S. Midwest Guidance with Algoma's Internal Price Guidance.

¹⁵⁸ *Transcript of Public Hearing* at 175-178, 187-189, 230-232.

¹⁵⁹ Exhibit RR-2019-001-A-03 at paras. 13-14, Vol. 11; Exhibit RR-2019-001-A-04 (protected) at 16, Vol. 12; Exhibit RR-2019-001-A-08 (protected) at 22-28, 59, Vol. 12; *Transcript of Public Hearing* at 17-18, 161; *Transcript of In Camera Hearing* at 2-3, 5-6.

¹⁶⁰ *Transcript of Public Hearing* at 19, 165, 188, 192-193, 225.

¹⁶¹ Exhibit RR-2019-001-E-01 at 25, Vol. 13; *Transcript of Public Hearing* at 76-78, 161, 166; *Transcript of In Camera Hearing* at 2-3, 6.

recently been firming up.¹⁶² This firming trend is expected to accelerate in the second half of 2020 and into 2021.¹⁶³

[122] The Tribunal finds that the Canadian market will be attractive to imports from the subject countries at some point over the next 12 to 24 months.

Conclusion on likely volumes

[123] The above analysis shows that producers in the subject countries are likely to have strong incentives to seek opportunities to increase their exports in Canada. As such, the conditions exist for a significant increase in the volume of subject goods should the finding expire.

[124] Accordingly, having considered the totality of the evidence on the relevant factors, the Tribunal finds that, if the finding is rescinded, there is likely to be a significant increase in volumes of subject goods, in absolute terms and relative to domestic production or consumption.

Likely Price Effects of Dumped Goods

[125] The Tribunal must consider whether, if the finding is allowed to expire, the dumping of 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.¹⁶⁴ In this regard, the Tribunal distinguishes the price effects of the dumped goods from any price effects that would likely result from other factors affecting prices.

[126] As noted in numerous past cases, all other criteria being equal, plate is a commodity product that competes on the basis of price. Testimony at the hearing confirmed that buyers are sometimes willing to pay a “domestic premium” for domestically produced plate because of shorter lead times and reduced risks as compared to offshore imports.¹⁶⁵

[127] The parties supporting the continuation of the finding submitted that, in order to gain sales and market share, the subject goods would re-enter the Canadian market at prices that compete with those of the six low-priced non-subject countries, which they submitted are the current price leaders. They submitted that this would cause domestic prices to decline further and would likely threaten the recovery forecast for the Canadian plate market in 2020.

[128] The parties opposed to the continuation of the finding submitted that there is no basis to consider that the subject goods will re-enter Canada at significantly lower prices than those of the current low-price leaders or that they will cause any further declines in the domestic industry’s prices. They further argued that any price pressures caused by other factors, such as imports from the six non-subject countries, cannot be attributed to the subject goods.

¹⁶² Exhibit RR-2019-001-E-01 at para. 63, Vol. 13; Exhibit RR-2019-001-E-02 (protected) at 52, Vol. 14.

¹⁶³ *Transcript of Public Hearing* at 166; Exhibit RR-2019-001-A-16 (protected), Vol. 12.

¹⁶⁴ Paragraph 37.2(2)(b) of the *Regulations*.

¹⁶⁵ *Transcript of Public Hearing* at 58-59, 115, 212. Customers may be willing to pay about \$60 to \$80 per tonne more for domestic products than for a competing offshore import. However, this premium is not guaranteed; for example, where the imported product is already in Canada, or depending on the customer.

[129] Although there were small volumes of subject goods in the Canadian market during the POR,¹⁶⁶ the Tribunal does not consider that the prices of these subject goods are a good indicator of what prices would likely be in the absence of the finding and the price discipline it imposes. In assessing the likely prices of the subject goods if the finding is rescinded, it is more useful to consider the import price of plate from the U.S. and other non-subject countries.

[130] U.S. imports were higher-priced in every period of the POR in comparison to the other non-subject countries.¹⁶⁷ The evidence also indicates undercutting of the domestic industry's average unit value in each period of the POR by the unit values of imports from non-subject countries other than the U.S.¹⁶⁸ Statistics Canada data show that the price leaders over the POR were the imports from the six non-subject countries. The aggregate average unit values per tonne for these countries were lower than for U.S. imports over the POR by between \$122 and \$281 per tonne.¹⁶⁹

[131] In addition, Algoma provided a number of specific allegations of undercutting by imports from the six non-subject countries. Algoma's import activity reports show significant undercutting of Algoma's price during the POR and in the months immediately following. Algoma's evidence provides some apples-to-apples comparisons that overall give a fair sense of the level of undercutting by offshore imports beyond average figures.¹⁷⁰

[132] The preponderance of the evidence shows that the same trends generally continued in the months following the POR. The available statistical data shows that, in the period from July 2019 to at least November 2019, the six non-subject countries remained among the price leaders.¹⁷¹ When considered on a monthly basis, the statistical data again show that, despite a decrease in the spread between the average U.S. import price and the average price of the six non-subject countries, the latter have remained the price leaders, except perhaps in December 2019 (where only partial Global Affairs Canada import permit data is available) when, incidentally, offshore imports were at their lowest volume.¹⁷²

[133] Both Tribunal witnesses testified that current U.S., and perhaps domestic, prices are too low for offshore imports to be competitive, or at least competitive enough for customers to consider buying "normal" volumes of offshore steel considering the associated higher risks and lead times; they testified that current offshore delivered price offers are higher, in absolute terms, than a

¹⁶⁶ Exhibit RR-2019-001-03A at 11, 13, Vol. 1; Exhibit RR-2019-001-06 (protected), Tables 6-7, Vol. 2.1.

¹⁶⁷ Exhibit RR-2019-001-06 (protected), Table 20, Vol. 2.1.

¹⁶⁸ Exhibit RR-2019-001-05, Table 22, Vol. 1.1; Exhibit RR-2019-001-06 (protected), Table 22, Vol. 2.1.

¹⁶⁹ Exhibit RR-2019-001-A-03 at 19, Vol. 11; Exhibit RR-2019-001-A-01 at para. 227, Vol. 11; Exhibit RR-2019-001-A-02 (protected) at para. 227, Vol. 12.

¹⁷⁰ Exhibit RR-2019-001-A-08 (protected) at 29-57, Vol. 12. Mr. Brandow, of Algoma, testified to the manner in which Algoma gathers such market intelligence from its customers: *Transcript of Public Hearing* at 22. He was not cross-examined on this point.

¹⁷¹ Exhibit RR-2019-001-33.04, Vol. 1; Exhibit RR-2019-001-45 at 16-19, Vol. 1; Exhibit RR-2019-001-G-03, Vol. 13. In relying on this evidence, the Tribunal is once again cognizant of its possible limitations: the data related to the subject plate may include goods outside of the product definition in this case. It also shows undelivered prices. Nevertheless, it provides a view of pricing trends. Indeed, parties on both sides of the issue as well as Tribunal witnesses relied on such data.

¹⁷² Exhibit RR-2019-001-45 at 16-19, Vol. 1; Exhibit RR-2019-001-G-03, Vol. 13. Global Affairs Canada 2019 data was only provided for category 1. "Cut plate: Carbon & Alloy (Discrete Plate – Excluding HGHR)" and does not include category 2. "Cut Plate: Heat Treated & Alloy (Discrete Plate – Excluding HGHR)".

delivered U.S. price.¹⁷³ This testimony seemed to contrast with other evidence on the record suggesting that, notwithstanding the general price decline seen in the second half of 2019, plate prices remain higher in the U.S. than in other global markets and that U.S. plate imported into Canada generally remained higher priced than plate from other sources.¹⁷⁴ In this regard, multiple factors might explain the contrasting evidence, such as the timing of the comparison; whether prices are compared on a delivered or ex-mill basis; whether they are for the Canadian or U.S. market; or whether they refer to current sales or offers.

[134] The Tribunal finds that, even if there was a short-term situation where U.S. plate has been lower-priced than offshore plate in the Canadian market, as Canadian and North American prices “normalize” over the next 12 to 24 months, offshore sources are likely to be the low-price leaders. This is consistent with historical trends. It is also consistent with the testimonies from Mr. Adkins and Mr. Ferreira that offshore imports become more attractive when prices are rising or stable, and the evidence that, typically, offshore plate has to be priced below domestic or U.S. plate in order to justify its heightened risks and lead times.¹⁷⁵

[135] Furthermore, going forward, there is nothing to suggest that the recent degree of undercutting of domestic prices seen from the six non-subject countries would not prevail in the next 12 to 24 months. Given the commodity nature of plate, the subject goods seeking to regain market share are likely to re-enter the Canadian market at competing or even lower prices, resulting in significant undercutting of the domestic price.

[136] This is supported by evidence of export prices of plate from the subject countries to other markets during the POR, which shows that, had the goods been exported to Canada, they would have had the ability to undercut not only domestic prices, but also the six low-priced non-subject countries. UN Comtrade data show prices at which the subject countries have exported plate over the POR, to which Algoma added an estimated 15 percent for freight and importer markup.¹⁷⁶ The data shows undercutting of the average domestic unit value by the aggregate subject countries’ unit values by amounts ranging from \$47 per tonne in 2016 to \$201 per tonne in 2018. It also shows that the subject countries undercut the six non-subject countries.¹⁷⁷

[137] The Japanese Producers argued that their prices would not materially undercut like goods, particularly once the safeguard surtax of 20 percent is added. They relied on an aggregate of Japanese

¹⁷³ *Transcript of Public Hearing* at 162-163, 165, 178-179, 191-193, 208-210.

¹⁷⁴ Exhibit RR-2019-001-A-02 (protected) at 464, 515, Vol. 12; Exhibit RR-2019-001-A-16 (protected) at 2, Vol. 12; *Transcript of Public Hearing* at 17, 43-44, 145, 162-163; Exhibit RR-2019-001-45 at 16-19, Vol. 1; Exhibit RR-2019-001-G-03, Vol. 13; Exhibit RR-2019-001-33.04, Vol. 1.

¹⁷⁵ *Transcript of Public Hearing* at 161, 166, 188-189, 191, 208, 210-212, 214, 232.

¹⁷⁶ Exhibit RR-2019-001-A-01 at paras. 241-242 and at 228, 242, 287, 302, 320, 347, Vol. 11. This data is based on HS codes that do not exactly match the product definition.

¹⁷⁷ See also a similar exercise in Exhibit RR-2019-001-A-02 (protected) at 545, Vol. 12. The Japanese Producers argued that a comparison on the basis of export data to worldwide markets is not a reliable indicator, as it includes an “arbitrary” assumption around freight and import pricing into Canada: *Transcript of Public Hearing* at 402-403. While recognizing that assumptions are built into the exercise, the Tribunal is satisfied that Algoma’s analysis rests on reasonable assumptions and the best available evidence regarding freight. Conversely, the alternative analysis submitted by the Japanese Producers (Exhibit RR-2019-001-G-01 at para. 41, Vol. 13), built from Statistics Canada import data over the POR for the subject countries is, in the Tribunal’s view, not representative, as subject country imports of plate would have been either subject plate to which anti-dumping duties applied or entirely non-subject products.

Producers' export prices for subject goods during the POR and added estimates for freight and importer markup informed by witnesses' testimony.¹⁷⁸ The Tribunal, however, finds the degree of undercutting shown by the derived prices (without the surtax) to be significant and the price levels to be competitive.¹⁷⁹

[138] Further, the Tribunal does not consider that the safeguard measures on heavy plate are likely to significantly lessen the expected adverse price effects. As discussed, quota volumes are likely to provide sufficient room, considering the overall market demand, for heavy plate imports within that quota. Indeed, any imports outside the heavy plate definition of the safeguard would not be subject to those measures. Finally, the amount of any eventual over-quota surtax, particularly as it is liberalized over time, is unlikely to be entirely insurmountable, especially for motivated exporters.

[139] Mr. Brandow of Algoma estimated that, whereas there is "limited upside" potential with the finding in place, if the finding is rescinded, the domestic industry's prices would decline by an additional \$75 to \$125 per tonne from their current level. He referred in particular to a specific occurrence of competition from non-subject goods as a basis for this estimate.¹⁸⁰ This estimate was rejected by both Tribunal witnesses.¹⁸¹

[140] As acknowledged by witnesses, it is challenging to quantify the extent by which the subject goods prices would likely depress domestic prices. The Tribunal does not consider it necessary to precisely quantify that effect. The evidence, however, indicates the likelihood that the rescission of the finding would lead to price undercutting on a significant scale, which would put additional downwards pressure on prices. Indeed, as the subject goods compete for market share with other available sources and with the domestic industry,¹⁸² prices are bound to be dragged down. In turn, the domestic industry is likely to face the choice of lowering its prices the requisite degree or risk losing sales.

[141] As such, the Tribunal finds that, if the finding is rescinded, the dumping of the subject goods is likely to significantly undercut and depress the prices of the like goods over the next 12 to 24 months.

Likely Impact of the Dumped Goods on the Domestic Industry

[142] The Tribunal will now assess the likely impact of the above volumes and prices on the domestic industry if the finding is rescinded, taking into consideration the recent performance of the domestic industry.¹⁸³ 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.¹⁸⁴

[143] The parties supporting the continuation of the finding submitted that its rescission would lead to resumed injury through volume and price pressures. Generally, they noted that the domestic

¹⁷⁸ *Transcript of Public Hearing* at 403-406; Japanese Producers' Aid to Argument (protected) at 11, Vol. 18.

¹⁷⁹ Exhibit RR-2019-001-05, Table 22, Vol. 1.1. Exhibit RR-2019-001-06 (protected), Table 22, Vol. 2.1. See also Exhibit RR-2019-001-A-02 (protected) at 545, Vol. 12.

¹⁸⁰ Exhibit RR-2019-001-A-07 at para. 64, Vol. 11. See also *Transcript of Public Hearing* at 26-27, 29; *Transcript of In Camera Hearing* at 4, 7.

¹⁸¹ *Transcript of Public Hearing* at 203, 222-223.

¹⁸² See e.g. *Transcript of Public Hearing* at 216-217.

¹⁸³ Paragraphs 37.2(2)(c), (e) and (g) of the *Regulations*.

¹⁸⁴ See paragraph 37.2(2)(k) of the *Regulations*.

industry is entering 2020 in a vulnerable state, where the domestic industry cannot afford further price deterioration. Further deterioration at this juncture would lower production and capacity utilization, put jobs at risk and negatively impact key investments.

[144] The parties opposed to a continuation of the finding submitted that the domestic industry performed strongly over the POR. They submitted that this, coupled with the benefit of substantial government loans and significant recent and ongoing investments, indicates that there is no likelihood of material injury if the finding is rescinded. They further submitted that the evidence in this case only points to the effect of imports from non-subject countries. The Japanese Producers further submitted that even if subject goods were to re-enter the market at low prices, they would primarily compete for sales with non-subject countries in the more price-sensitive market segment. Finally, the parties opposing the continuation of the finding argued that continuing the finding would represent an inappropriate “double remedy”, as the domestic industry already benefits from the protection of the safeguard measures on heavy plate. They also submitted that there is no likelihood of injury from the rescission of the finding because the safeguard already offers adequate protection.

Recent Performance of the Domestic Industry

[145] Over the POR, the domestic industry saw consistent improvement in most of its performance indicators. For instance, total production increased by 5 percent in 2017, 9 percent in 2018, and remained stable in interim 2019 compared to interim 2018. Domestic sales from domestic production increased by 10 percent in 2017, 12 percent in 2018 and 7 percent in interim 2019 compared to the previous interim period. Market share for sales from domestic production also improved, gaining 8 percentage points overall over the full years of the POR; market share remained relatively stable in the first half of 2019 compared to the first half of 2018.¹⁸⁵

[146] The domestic industry’s financial performance similarly improved throughout the POR.¹⁸⁶ This improvement appears to have been driven in large part by improving prices during the POR. The strongest financial results were registered in 2018 and interim 2019.

[147] On the other hand, the domestic industry’s export performance deteriorated during the POR, particularly in terms of the volume of exports. As well, despite an increase in overall production and sales volumes throughout the POR, the domestic industry’s capacity utilization rate for the production of like goods remained relatively low, at between 28 and 30 percent.¹⁸⁷

[148] The total number of employees, hours worked and wages paid increased over the POR, as did productivity. Investments by the domestic industry increased by 151 percent in 2017, decreased by 13 percent in 2018, and were projected to increase by 140 percent in 2019 and then decrease by 46 percent in 2020.¹⁸⁸

[149] It appears that the finding was beneficial to the domestic industry, considering the general improvement in its performance. However, as discussed above, the industry also likely benefited

¹⁸⁵ Exhibit RR-2019-001-06 (protected) at Tables 13, 28, 32, Vol. 2.1; Exhibit RR-2019-001-05, Tables 13, 32, Vol. 1.1.

¹⁸⁶ Exhibit RR-2019-001-06 (protected) at Table 28, Vol. 2.1.

¹⁸⁷ Practical plant capacity also increased (by 1 percent in 2017 and 6 percent in 2018), though declined again by 2 percent in interim 2019 in comparison to interim 2018. Exhibit RR-2019-001-A-09 at para. 4, Vol. 11. Exhibit RR-2019-001-05, Tables 31-32, Vol. 1.1; Exhibit RR-2019-001-06 (protected), Tables 29, 31, Vol. 2.1.

¹⁸⁸ Exhibit RR-2019-001-05, Tables 31-32, Vol. 1.1; Exhibit RR-2019-001-06 (protected), Tables 31-32, Vol. 2.1.

from the high prices prevailing in 2018 and the first half of 2019 that were likely triggered by the temporary combined effect of the U.S. section 232 measures and the Canadian retaliatory tariffs. Market circumstances have since changed significantly. The available evidence of the domestic industry's performance in Q3 2019 indicates that the domestic industry remains sensitive to declining prices.¹⁸⁹

[150] For the reasons that follow, the Tribunal finds that the domestic industry is unlikely to maintain its recent level of performance should the finding be rescinded. In fact, the evidence demonstrates that, without the finding, the domestic industry would likely be materially injured by the resumed or continued dumping of the subject goods.

Likely Impact on the Domestic Industry if the Finding is Rescinded

[151] The Tribunal has already found that, if the finding is rescinded, the subject goods will likely significantly undercut domestic producers' selling prices and that, as a result, domestic pricing will likely be significantly depressed. The Tribunal finds that the rescission of the finding would in turn likely lead to a significant negative impact on the domestic industry's revenues and profits. As such, the Tribunal finds that the domestic industry would find itself in a materially worse financial position without the finding in place, even before any additional sales volume losses are considered. To the extent that the domestic industry resists price declines, it is likely to lose sales volumes to the subject goods; such an outcome would lead to reduced production volumes and a compounding effect on the domestic industry's bottom line, particularly in light of the fact that the domestic industry has a low capacity utilization rate.

[152] The Tribunal also heard substantial evidence about the importance of ongoing investments to ensure the domestic industry's continued competitiveness. The Tribunal heard in particular about Algoma's major, ongoing plate modernization plan, which is expected to be completed in 2021 and aims to enhance Algoma's plate offering and efficiency, with a view to increasing sales. The evidence indicates that the return on that significant investment may be at risk should there be a substantial deterioration in its financial performance and sales in the Canadian market.¹⁹⁰

[153] The testimony of the USW's witnesses was useful and important in illustrating how falling prices in the steel sector can affect employment at Algoma and other domestic producers, and provides further indication that the negative price effects from the rescission of the finding are therefore also likely to impact employment and the employees directly and indirectly involved in the production of plate in Canada.¹⁹¹

[154] The foregoing indicates that the rescission of the finding will likely result in material injury to the domestic industry over the next 12 to 24 months. However, before concluding on the likely effects of the rescission of the finding, the Tribunal will further consider whether there are any factors other than the dumping of the subject goods that could adversely affect the domestic industry in the next 12 to 24 months, in order to avoid attributing effects of such factors to the subject goods.

¹⁸⁹ Exhibit RR-2019-001-A-04 (protected) at 9-10, 18, Vol. 12; Exhibit RR-2019-001-A-13 at 13, Vol. 11; Exhibit RR-2019-001-A-14 (protected) at 13, 31-33, Vol. 12; *Transcript of In-Camera Hearing* at 5-6.

¹⁹⁰ Exhibit RR-2019-001-A-02 (protected) at para. 301, Vol. 12; *Transcript of Public Hearing* at 13, 27, 29-30, 37-38, 54-55, 61-62; *Transcript of In Camera Hearing* at 40-42, 58-60, 67.

¹⁹¹ Exhibit RR-2019-001-K-03 at 7, 11, 15-16, 24, Vol. 11; Exhibit RR-2019-001-K-05 at 3, Vol. 11; Exhibit RR-2019-001-K-07 at 5, Vol. 11; *Transcript of Public Hearing* at 123-124, 129-130.

Factors Other than the Dumping

[155] Many factors other than dumping have been discussed extensively throughout these reasons. As discussed above, the outlook for plate demand in Canada is generally stable to somewhat improved over the next 12 to 24 months.¹⁹² There is also some evidence that, though improving, the overall size of the Canadian market will be smaller than in years past.¹⁹³ However, even if the domestic industry faces less than robust market conditions in the next 12 to 24 months, the material injury caused by the subject goods will still occur. The Tribunal expects the negative effects on the domestic industry caused by the subject goods to be above and beyond the challenges due to the general economic conditions.

[156] The Tribunal also considered the effect on the domestic industry from low-priced imports of plate from the six non-subject countries, and imports of plate from the United States. As stated above, the subject countries are likely to have strong incentives to seek additional sales and in order to re-enter the Canadian market will have to compete for sales and market share not only with the domestic industry but with the six non-subject countries, on the basis of price. In doing so, the subject goods, in and of themselves, are likely to cause significant price undercutting, depression and/or lost sales. These effects are properly attributable to the subject goods and are likely to lead to injury over and above any effects from the pricing pressures that may otherwise be felt from non-subject sources with the finding in place.

[157] The domestic industry's performance over the next 12 to 24 months may also be affected by the state of its export sales. Although the volume of the domestic industry's exports to the U.S. began to recover following the rescission of the section 232 measures against Canada, it is not clear whether export volumes will further increase and whether, in the next 12 to 24 months, they will return to their levels observed for the period before the imposition of those measures.¹⁹⁴ The domestic industry may experience some negative effects from a lower volume of exports as a result. However, material injury caused by the subject goods will likely occur regardless, and beyond any impact of reduced exports.

[158] In conclusion, having distinguished the likely impact of non-dumping factors above and in earlier sections, and having ensured that the cumulative effects of such factors are not attributed to the subject goods, the Tribunal finds that the rescission of the finding, in and of itself, will likely result in material injury to the domestic industry over the next 12 to 24 months.

Concluding Remarks on the Likelihood of Injury

[159] The matter of the effect of the safeguard measures on heavy plate has already been discussed extensively. Nevertheless, the Tribunal will address the argument of the opposing parties that extending the present finding would result in an inappropriate double remedy with respect to heavy plate that is subject to both the finding and the safeguard measures.

[160] Safeguard measures and anti-dumping and countervailing measures are different remedies, with different objectives and criteria, that intend to deal with different circumstances. The purpose of

¹⁹² *Transcript of Public Hearing* at 20, 67, 75, 78, 96, 164-167, 214. Evraz presented a somewhat more positive view, instead projecting an increase due to demand from the shipbuilding and non-residential construction sectors; see RR-2019-001-B-01 at 68-72, 83, 85, 91, Vol. 11.

¹⁹³ Exhibit RR-2019-001-A-01 at para. 264 Vol. 11; Exhibit RR-2019-001-A-08 (protected) at 20, Vol. 12.

¹⁹⁴ *Transcript of Public Hearing* at 64, 104.

the safeguard inquiry was to determine whether steel goods were being imported in such increased quantities and under such conditions as to be a principal cause of serious injury to domestic producers of like or directly competitive goods. Anti-dumping measures, for their part, address material injury caused or threatened by an unfair trade practice, the *dumping* of goods, through their injurious price and volume. The Tribunal has been presented with no authority to conclude that these remedies are incompatible as a matter of principle, or that they cannot be applied concurrently to the same product from the same origin when the respective requirements for the imposition of each type of measure are met pursuant to the applicable legislation and trade agreement.

[161] Furthermore, as explained throughout these reasons, in the case of the safeguard measures on heavy plate, the protection provided by those measures is not such as to be likely, as a matter of fact, to prevent the injury likely to result from the increased volumes and low prices of the subject goods that would ensue if the finding is rescinded. The foregoing also provides a complete answer to the Japanese Producers and USIMINAS' request to rescind the finding in respect of the portion that overlaps with the scope of the safeguard measures.

EXCLUSION REQUESTS

POSCO

[162] The Tribunal received two requests from POSCO to exclude products from an order continuing the existing finding.

[163] *SIMA* implicitly authorizes the Tribunal to grant exclusions from the scope of an order or finding.¹⁹⁵ Exclusions are an extraordinary remedy that may be granted at the Tribunal's discretion, i.e. when the Tribunal is of the view that such exclusions will not cause injury to the domestic industry.¹⁹⁶ In the context of an expiry review, the rationale is that, despite the general conclusion that all goods covered by an order are likely to cause injury to the domestic industry, there may be case-specific evidence that imports of particular products captured by the definition of the goods are not likely to cause injury.

[164] In determining whether an exclusion is likely to cause injury to the domestic industry, the Tribunal considers such factors as whether the domestic industry produces, actively supplies or is capable of producing like goods in relation to the subject goods for which the exclusion is requested.¹⁹⁷

[165] The onus is upon the requester to demonstrate that imports of the specific goods for which the exclusion is requested are not likely to be injurious to the domestic industry.¹⁹⁸ However, there is

¹⁹⁵ *Hetex Garn A.G. v. The Anti-dumping Tribunal*, [1978] 2 F.C. 507 (FCA); *Sacilor Aciéries v. Anti-dumping Tribunal* (1985) 9 C.E.R. 210 (CA); Binational Panel, *Induction Motors Originating in or Exported From the United States of America (Injury)* (11 September 1991), CDA-90-1904-01; Binational Panel, *Certain Cold-Rolled Steel Products Originating or Exported From the United States of America (Injury)* (13 July 1994), CDA-93-1904-09.

¹⁹⁶ See e.g. *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) at para. 339.

¹⁹⁷ *Certain Fasteners* (6 January 2010), RR-2009-001 (CITT) at para. 245.

¹⁹⁸ *Certain Fasteners* at para. 243.

also an evidentiary burden on the domestic producers to file evidence in order to rebut the evidence filed by the requester.¹⁹⁹

[166] Ultimately, the Tribunal must determine whether it will exercise its discretion to grant product exclusions on the basis of its assessment of the totality of the evidence.

[167] POSCO has requested exclusions for A553 TY1 and POSM CS400A plate in specified dimensions. POSCO submitted that the domestic industry does not produce, does not actively supply and is not capable of producing like goods in relation to A553 TY1, which is a specialized product for a specific use in cryogenic pressure vessels and structures, including LNG storage tanks. Similarly, POSCO submitted that the domestic industry does not produce, does not actively supply and is not capable of producing like goods in relation to POSM CS400A, which is also a specialized product for a specific use, and is in addition a patented product in Korea, with patent applications pending in the U.S., Japan, China and Canada.

[168] Algoma, Evraz and SSAB consented to the requested exclusions on the condition that the following wording be added at the end of each exclusion: “For greater certainty, this exclusion is limited to the product single-stencilled as such. Product which is double stencilled to meet these specifications and other specifications would not qualify for this exclusion.”

[169] In the circumstances, there is no evidence to indicate that the domestic industry produces, actively supplies or is capable of producing like goods in relation to the products for which exclusions are requested.

[170] As such, the Tribunal will grant the requested exclusions consistent with the wording agreed by the parties, but removing the initially proposed country of origin restriction. Any exclusion to a finding should normally be defined as generically as possible to avoid potential trade distortions and unfair competitive advantages.²⁰⁰ Following a question in this regard from the Tribunal, POSCO and the domestic producers, having responded to POSCO’s requests, each replied that they did not take issue with the removal of those words.

Japanese Producers

[171] The Japanese Producers submitted, on the last day of the hearing of this matter, that in the alternative to rescinding the finding in whole, the Tribunal should consider amending the finding to exclude “the Japanese subject goods”.²⁰¹ The domestic industry submitted that it would not be appropriate to grant such relief as the request was made late and is not supported by the evidence.

¹⁹⁹ A failure to do so could result in the requested exclusions being granted. In any case, much like its conclusion on the issue of whether the expiry of the finding in respect of the subject goods considered as a whole is likely to result in injury to the domestic industry, the Tribunal’s decision on exclusion requests must be based on positive evidence, irrespective of the party that filed them.

²⁰⁰ See e.g. *Fasteners* (24 October 2008), RD-2008-001 (CITT) at para. 26; *Certain Fasteners* at para. 272; *Concrete Reinforcing Bar* (9 January 2015), NQ-2014-001 (CITT) at para. 260.

²⁰¹ *Transcript of Public Hearing* at 415-416. It was not entirely clear if the request was to exclude all Japanese subject goods or the Japanese Producers.

[172] Given the late introduction of this request, the Tribunal does not consider it appropriate to entertain it. In any event, the Tribunal reiterates that country, producer or exporter exclusions may only be appropriate in the most compelling circumstances.²⁰² There are no such circumstances here.

Hyundai

[173] Hyundai requested an exclusion for all goods produced by it in Korea. It submitted that, at the time of the finding in Inquiry No. NQ-2013-005, the CBSA determined that its margin of dumping was 1.9 percent, but the CBSA did not have the authority to terminate an anti-dumping investigation against an individual exporter. However, the WTO Panel in *Canada – Welded Pipe*²⁰³ found that Article 5.8 of the *WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (ADA)*²⁰⁴ requires the CBSA to terminate an anti-dumping investigation against an exporter found to have a *de minimis* margin of dumping (i.e. a margin below 2 percent). As such, in light of *Canada – Welded Pipe*, Hyundai argued that its products should never have been subject to anti-dumping duties and that their continued inclusion in the finding breaches the *ADA*. Hyundai submitted that the Tribunal should grant this exclusion to uphold Canada's compliance with its international obligations.²⁰⁵

[174] Hyundai submitted that the Tribunal has the authority to grant this exclusion, as subsection 76.03(12) of *SIMA* gives it wide discretion to make amendments to an anti-dumping order. It further submitted that *SIMA* only protects domestic producers against *injurious dumping* and that Hyundai's goods will *not* injure the domestic producers if the exclusion is granted because "these goods were dumped at an insignificant margin in the first place and therefore never could have caused, or threatened to cause, injury."²⁰⁶

[175] Hyundai also argued that there is nothing in the amendments made by Parliament to *SIMA* following *Canada – Welded Pipe* that would either limit the Tribunal's jurisdiction to grant the exclusion under subsection 76.03(12) or provide a reason to deny it. According to Hyundai, the dominant purpose of the amendments was to bring *SIMA* into compliance with international obligations. Parliament did not amend subsection 76.03(12); it did not need to, because that provision already granted the Tribunal the authority to exclude goods of a *de minimis* exporter in an expiry review. Furthermore, Hyundai submitted that Parliament could have expressly limited the Tribunal's jurisdiction under subsection 76.03(12) to exclude goods based on *Canada – Welded Pipe*, but it chose not to, in contrast with the express limitation it included in the amendments on the Tribunal's discretion to initiate an *interim* review.

²⁰² See e.g. *Certain Fabricated Industrial Steel Components* (25 May 2017), NQ-2016-004 (CITT) [*FISC*] at para. 167; *Carbon Steel Welded Pipe* (11 December 2012), NQ-2012-003 (CITT) at para. 185.

²⁰³ Panel Report, *Canada – Anti-Dumping Measures on Imports of Certain Carbon Steel Welded Pipe from The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu*, WT/DS482/R, adopted on 25 January 2017 [*Canada – Welded Pipe*].

²⁰⁴ (15 April 1994), 1868 U.N.T.S. 201 (entered into force 1 January 1995), available at https://www.wto.org/english/docs_e/legal_e/19-adp.pdf.

²⁰⁵ Hyundai also submitted that the Panel Report, *Ukraine – Anti-Dumping Measures on Ammonium Nitrate*, WT/DS493/R, adopted on 30 September 2019, as upheld by the Appellate Body Report WTDS493/AB/R, found that there is an independent breach of Article 5.8 where a *de minimis* exporter is subjected to interim and expiry reviews.

²⁰⁶ Exhibit RR-2019-001-35.02, Vol. 1.5 at para. 20.

[176] Hyundai added that there is no alternative remedy to its situation. According to officials from the Department of Finance, the Minister of Finance would not consider requesting a review under section 76.1 of *SIMA*²⁰⁷ unless the government of the exporting country addresses a request to the Minister. In addition, the Minister of Finance has so far taken no action in response to a request submitted by the Government of Korea. Finally, Hyundai submitted that the existence of section 76.1 of *SIMA* does not oust the Tribunal's jurisdiction to grant the exclusion or provide a reason for its denial.

[177] In sum, Hyundai submitted that the Tribunal must exercise its discretion in accordance with *SIMA* and consistent with Canada's international trade obligations, which here posit the bright-line rule of immediate termination of an investigation against a *de minimis* exporter. According to Hyundai, the Tribunal has authority to grant the exclusion to ensure the WTO-consistent application of anti-dumping measures on goods subject to its continuation order in this review, and no contrary Parliamentary intent prevents the Tribunal from excluding the goods of a *de minimis* exporter. At the hearing, Hyundai added that the decision the Tribunal will be called on to make will be made under the former act, pre-amendments, and that the Tribunal has independent authority to exclude goods regardless of whether the CBSA had the authority to terminate the investigation against Hyundai.²⁰⁸

[178] Algoma, Evraz and SSAB opposed the exclusion request on multiple grounds. Algoma submitted that producer exclusions are only provided in exceptional circumstances,²⁰⁹ which are not present in this case. First, according to Algoma, the decision in *Canada – Welded Pipe* had effect as between Canada and Chinese Taipei. Algoma noted that Canada implemented the recommendations and rulings of the DSB through amendments to *SIMA*, and submitted a report to the WTO confirming such implementation. Algoma noted that the amendments to *SIMA* were not made retroactive.

[179] Second, Algoma argued that the proper recourse for Hyundai is through subsection 76.1(1) of *SIMA*.²¹⁰ Further, given that the government of Korea's request to the Minister of Finance to initiate a section 76.1 review with respect to Hyundai's *de minimis* margin of dumping in the original investigation is pending, Algoma submitted that it would be preemptive and contrary to its jurisdiction for the Tribunal to exclude Hyundai in the context of this expiry review, and that it would result in parallel proceedings with potential conflicting results.²¹¹

²⁰⁷ Pursuant to section 76.1, reproduced below, the Minister of Finance may, at any time, request that the CBSA or the Tribunal review any of their respective decisions where the Minister considers it necessary having regard to a recommendation or ruling issued by the WTO Dispute Settlement Body.

²⁰⁸ *Transcript of Public Hearing* at 242. This argument was not entirely clear. To the extent that Hyundai meant to highlight the breadth of the Tribunal's exclusion authority under subsection 76.03(12), regardless of specific *SIMA* provisions governing the CBSA, the Tribunal's interpretation is set out in the analysis below. To the extent that Hyundai intended to suggest that the Tribunal in this case acts under the version of *SIMA* predating the amendments, Hyundai did not specify the basis for this proposition, and the Tribunal does not see one. See also Exhibit RR-2019-001-56.04, Vol. 1 at para. 22.

²⁰⁹ *Carbon Steel Welded Pipe* (11 December 2012), NQ-2012-003 (CITT) at paras. 181-184; *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at para. 168.

²¹⁰ Evraz similarly noted that subsection 76.1(1) does not contemplate a self-initiated review by the Tribunal of an order or finding for compliance with WTO rulings, but only by the Minister of Finance.

²¹¹ Evraz submitted that this would also amount to forum shopping and would allow Hyundai to avail itself of two remedies. Evraz also submitted that the principles underlying the doctrine of abuse of process apply in the current case to prevent inconsistent decisions and results.

[180] Algoma argued that the Tribunal's jurisdiction flows only from statute and that *SIMA* does not allow the Tribunal in an expiry review to exclude an exporter based on the fact that its margin of dumping was below 2 percent at the time of the original investigation. Algoma argued that paragraph 76.03(12)(b) of *SIMA* allows for exclusions where there is evidence that the exclusion would not cause injury to the domestic industry. There is no ambiguity that would allow the Tribunal to expand its powers to adopt the reasoning of a WTO panel.

[181] Third, Algoma submitted that it cannot be said that Hyundai's goods will not injure the domestic industry. It submitted that the CBSA's final determination of dumping has limited relevance to the likelihood of injury analysis in this expiry review.

[182] Finally, Algoma submitted that other amendments to *SIMA* and its *Regulations* were introduced following *Canada – Welded Pipe* that could affect how Hyundai's margin of dumping would be calculated by the CBSA today.

[183] Evraz submitted that the Tribunal should decline to exercise its discretion to exclude Hyundai because this would be contrary to Parliament's intent in passing the relevant amendments to section 41 of *SIMA*. Evraz noted that, following *Canada – Welded Pipe*, amendments were only made to subsection 41(1) of *SIMA*, which enables the CBSA, on a prospective basis only, to terminate an original investigation against an exporter if there is no significant dumping or subsidizing. No corresponding amendments were made to provisions governing the Tribunal's expiry reviews.

[184] According to Evraz, Parliament did not intend the Tribunal to provide producer exclusions in expiry reviews to exporters with *de minimis* margins. Evraz noted that the amending legislation expressly prohibited the Tribunal from initiating an interim review of an existing finding as a result of that legislation coming into force. It submitted that this signals that the Tribunal should not modify existing orders and findings solely as a result of these amendments.

[185] Furthermore, Evraz submitted that, as a matter of statutory interpretation, where there is a conflict between a specific provision dealing with a matter and a more general one dealing with the same matter as well as others, the specific provision prevails. As such, according to Evraz, since subsection 76.1(1) is the only provision in *SIMA* to contemplate the review of existing orders or findings to bring them into compliance with WTO rulings and recommendations, it would be contrary to Parliament's intent for the Tribunal to assume the power to do the same under the more general provisions of subsections 76.01(1) and 76.03(3).

[186] Evraz also submitted that, as there is no way for the Tribunal to effectively determine whether Hyundai is dumping subject goods by today's definition, if Hyundai was dumping subject goods but was excluded by the Tribunal while the finding against Korea is continued, the domestic industry would have no means to address this injurious behaviour.

[187] SSAB also added to these arguments, stating that Hyundai is properly subject to the Tribunal's finding and this expiry review, and that the Tribunal therefore cannot grant an exclusion to Hyundai solely on the basis that it had a *de minimis* dumping margin at the time of the original investigation. SSAB noted that Hyundai made no submissions with respect to its dumping margin in the period of review or to the likelihood that domestic producers would be injured by imports from Hyundai.

Analysis

[188] The question before the Tribunal is whether it should exclude all goods produced by Hyundai in Korea pursuant to its implicit authority to grant exclusions from an order continuing an existing finding.

[189] Subsection 76.03(12) of *SIMA* reads as follows:

(12) The Tribunal shall make an order

(a) rescinding the order or finding in respect of goods

...

(ii) in respect of which it determines that the expiry of the order or finding is unlikely to result in injury or retardation; or

(b) continuing the order or finding, with or without amendment, in respect of goods which it determines that the expiry of the order or finding is likely to result in injury or retardation.

[190] This provision of *SIMA* (similar to subsection 43(1) of *SIMA*, which applies in the context of an injury inquiry) has been interpreted as implicitly authorizing the Tribunal to grant exclusions from the scope of an order or finding.²¹² Consistent with the Tribunal's overall mandate to determine whether dumped goods have caused injury, retardation or threat of injury (in the case of injury inquiries), or whether the rescission of an existing finding would likely lead to injury (in the case of expiry reviews), exclusions are typically described as remedies that may be granted at the Tribunal's discretion when it is of the view that such exclusions will not cause injury to the domestic industry.

[191] The Tribunal's discretion to grant exclusions from findings or orders has been interpreted broadly.²¹³ However, this discretion does not exist in a void; it must be interpreted and exercised in the context of other *SIMA* provisions and consistent with its purpose and the legislative scheme.²¹⁴

[192] The context relevant to statutory interpretation and that informs the exercise of discretion also includes Canada's international obligations. In addition, in choosing between possible interpretations, the presumption of compliance with international obligations requires preferring the

²¹² *Aluminum Extrusions* (17 March 2014), RR-2013-003 (CITT) at para. 186; *Hetex Garn A.G. v. The Anti-dumping Tribunal*, [1978] 2 F.C. 507 (FCA) [*Hetex Garn*]; *Sacilor Aciéries v. Anti-dumping Tribunal* (1985) 9 C.E.R. 210 (FCA) [*Sacilor Aciéries*]; Binational Panel, *Induction Motors Originating in or Exported From the United States of America (Injury)* (11 September 1991), CDA-90-1904-01; Binational Panel, *Certain Cold-Rolled Steel Products Originating or Exported From the United States of America (Injury)* (13 July 1994), CDA 93 1904-09.

²¹³ *Owen & Company Limited v. Globe Spring & Cushion Co. Ltd.*, 2010 FCA 288 at para. 13; *Sacilor Aciéries*, quoting *Hetex Garn*. Binational Panel, *Certain Dumped Integral Horsepower Induction Motors*, CDA-90-1904-01 at 55-56.

²¹⁴ *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras. 52-54, 56, 67, 69-71; *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paras. 108, 110, 114, 117-121. See also *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27, at para. 21, citing Elmer Driedger's formulation of the modern rule of statutory interpretation: "Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament."

interpretation consistent with international law. However, this presumption is rebuttable, and parliamentary sovereignty requires giving effect to a statute that demonstrates an unequivocal legislative intent to the contrary.²¹⁵

[193] In this regard, consistent with the modern rule of statutory interpretation, *unequivocal* legislative intent to default on international obligations should not be equated with the plain meaning of the text of a provision. Rather, it must be established by reading the text in its entire context. As explained by Ruth Sullivan, “[t]o determine whether the presumption of compliance is rebutted, therefore, the question to be asked is not whether the legislative text is unambiguous but whether, having regard to all relevant evidence, the court can conclude that the legislature intended to enact a rule or confer a power that is inconsistent with international law.”²¹⁶

[194] In addressing the issue of the exclusion requested by Hyundai, it is useful to first canvass the factual background, statutory and international context.

Background and Relevant Provisions

[195] The CBSA’s final determination, dated April 17, 2014, was issued pursuant to subsection 41(1) of *SIMA* as it read at the time. This provision required the CBSA to terminate dumping investigations where it was satisfied, in relation to goods of a *country*, that the margin of dumping of the goods of that country was insignificant.²¹⁷ While Hyundai’s margin of dumping, at 1.9 percent of the export price, was insignificant, the dumping margin calculated by the CBSA in relation to all goods from Korea was not. The CBSA accordingly made a final determination of dumping against Korea, including Hyundai. On May 20, 2014, the Tribunal issued its finding of threat of injury in Inquiry No. NQ-2013-005. It applied to all subject goods from Korea, including those produced by Hyundai.

[196] Article 5 of the *ADA* sets out criteria for the initiation of anti-dumping investigations, as well as certain parameters for their subsequent conduct or termination. In particular, Article 5.8 of the *ADA* provides that an anti-dumping investigation must be terminated as soon as an investigating authority determines, *inter alia*, that the margin of dumping is *de minimis*. The second sentence of Article 5.8 reads as follows:

5.8 . . . There shall be immediate termination in cases where the authorities determine that the margin of dumping is *de minimis*, . . .

²¹⁵ *R. v. Hape* [2007] 2 SCR 292 at para. 53; *National Corn Growers Assn. v. Canada (Import Tribunal)*, [1990] 2 SCR 1324 [*National Corn Growers*] at 1371-1372.

²¹⁶ R. Sullivan, *Sullivan on the Construction of Statutes*, 6th ed. at 581-582. See also *Kazemi Estate v. Islamic Republic of Iran*, 2014 SCC 62 at para. 60: “International law cannot be used to support an interpretation that is not permitted by the words of the statute. *Likewise, the presumption of conformity does not overthrow clear legislative intent*. Indeed, the presumption that legislation will conform to international law remains just that — merely a presumption. This Court has cautioned that the presumption can be rebutted by the clear words of the statute under consideration (*Hape*, at paras. 53-54)” [emphasis added].

²¹⁷ Subsection 2(1) of *SIMA* provides that “insignificant means, (a) in relation to a margin of dumping, a margin of dumping that is less than two per cent of the export price of the goods”. The *ADA* uses the expression “*de minimis*” to refer to the same concept.

[197] Appellate Body case law has made it clear that the term “margin of dumping” in the second sentence of Article 5.8 of the *ADA* refers to the individual margin of dumping of an exporter or producer, and not to a countrywide margin of dumping.²¹⁸

[198] In December 2016, the WTO Panel Report in *Canada – Welded Pipe* was issued. The Panel agreed with Chinese Taipei that Canada had violated Article 5.8 of the *ADA* by failing to terminate the investigation in respect of two Chinese Taipei exporters for which the CBSA determined *de minimis* final margins of dumping.²¹⁹ The Panel further found that subsection 41(1) of *SIMA* was inconsistent with the second sentence of Article 5.8 of the *ADA* as it based the *de minimis* test for the final dumping determination on a countrywide, rather than an exporter-specific, margin of dumping. The report was adopted by the WTO Dispute Settlement Body (DSB) on January 25, 2017.

[199] At the DSB meeting on February 20, 2017, Canada informed the DSB that, pursuant to Article 21.3 of the *Dispute Settlement Understanding*, it intended to implement the DSB’s recommendations and rulings in this dispute.²²⁰

[200] Amendments to *SIMA* were introduced through the *Budget Implementation Act, 2017, No. 1*,²²¹ tabled in Parliament by the Minister of Finance. Several provisions of the *BIA 2017* are relevant, starting with the preamble, which provided the following summary of the relevant amendments:

. . . Division 1 of Part 4 amends the *Special Import Measures Act* to provide for . . . the termination of a trade remedy investigation in respect of an exporter found to have an insignificant margin of dumping or amount of subsidy.

[Italics in original; underlining added for emphasis]

[201] Section 79 of the *BIA 2017* introduced amendments to the CBSA’s powers under subsection 41(1) of *SIMA*, with the new provision reading as follows:

Final determination or termination

41 (1) Within 90 days after making a preliminary determination under subsection 38(1), the President shall

(a) *terminate the investigation in respect of any goods of a particular exporter* if, on the available evidence, the President is satisfied that there has been no dumping or subsidizing of the goods or that the margin of dumping of, or amount of subsidy on, those goods is insignificant; and . . .

[Emphasis added]

²¹⁸ Appellate Body Report, *Mexico – Definitive Anti-Dumping Measures on Beef and Rice, Complaint with Respect to Rice*, WT/DS295/AB/R, adopted 20 December 2005; see also Panel Report, *Mexico – Definitive Anti-Dumping Measures on Beef and Rice, Complaint with Respect to Rice*, WT/DS295/R, adopted 20 December 2005, which came to the same conclusion on this issue. These reports were cited in the WTO Panel’s analysis of the same question in *Canada – Welded Pipe* at paras. 7.19 and 7.20.

²¹⁹ The Panel rejected Canada’s argument that the second sentence of Article 5.8 of the *ADA* only requires termination in respect of countrywide margins of dumping that are *de minimis*.

²²⁰ Exhibit RR-2019-001-37.03, Vol. 1.3 at 28.

²²¹ S.C. 2017, c. 20 [*BIA 2017*].

[202] Finally, the *BIA 2017* contained a number of transitional provisions, including the following:

Disposition of notified complaints

100 (1) Subject to subsections (2) to (7), if, before the commencement day, notice of a complaint respecting the dumping or subsidizing of goods that is properly documented, as defined in subsection 2(1) of the former Act, has been given under paragraph 32(1)(a) of that Act, any proceeding, process or action in respect of the goods shall be continued and disposed of in accordance with that Act.

...

New Act does not justify review

(4) For the purpose of subsection 76.01(3) of the new Act, the fact that this Act comes into force is not sufficient reason for the Canadian International Trade Tribunal to be satisfied that an interim review of an order or finding is warranted.

[203] The *BIA 2017* received Royal Assent on June 22, 2017. Section 79 thereof came into force on the same day.

[204] In parallel to the legislative amendment process, the Minister of Finance requested, pursuant to section 76.1 of *SIMA*, that the CBSA and the Tribunal review, respectively, their determination and finding in respect of certain carbon steel welded pipe from Chinese Taipei to bring Canada's measures into conformity with the DSB's findings and recommendations.²²² As mentioned above, section 76.1 of *SIMA* provides discretion to the Minister of Finance to request a review of a decision of the CBSA or a finding of the Tribunal where the Minister considers it necessary having regard to the recommendations or rulings of the WTO DSB. Section 76.1 of *SIMA* reads as follows in relevant part:

76.1 (1) Where at any time after the issuance, by the Dispute Settlement Body established pursuant to Article 2 of Annex 2 to the WTO Agreement, of a recommendation or ruling, the Minister of Finance considers it necessary to do so, having regard to the recommendation or ruling, the Minister of Finance may request that

(a) the President review any decision, determination or re-determination or any portion of a decision, determination or re-determination made under this Act; or

(b) the Tribunal review any order or finding described in any of sections 3 to 6, or any portion of such an order or finding and, in making the review, the Tribunal may re-hear any matter before deciding it.

[205] On January 10, 2018, the Delegation of Canada to the WTO informed the DSB that "[f]ollowing the legislative amendments and the issuance of the amended final determination of dumping and the threat of injury finding, Canada considers that it has fully implemented the DSB's recommendations and rulings in DS482."²²³

²²² Exhibit-RR-2019-001-37.03, Vol. 1.3 at 30-31.

²²³ Exhibit RR-2019-001-37.03, Vol. 1.3 at 28-29.

[206] The *SIMA* provisions governing the Tribunal's and the CBSA's responsibilities in expiry reviews are as follows. These provisions were not amended in any relevant respect by the *BIA 2017*, neither adding nor removing Tribunal or CBSA responsibilities:

Order or finding deemed to be rescinded

76.03 (1) If the Tribunal has not initiated an expiry review under subsection (3) with respect to an order or finding described in any of subsections 3(1) and (2) and sections 4 to 6 before the expiry of five years after whichever of the following days is applicable, the order or finding is deemed to have been rescinded as of the expiry of the five years: . . .

. . .

Review of orders by Tribunal

(3) The Tribunal may initiate an expiry review of an order or finding described in any of subsections 3(1) and (2) and sections 4 to 6

(a) on its own initiative; or

(b) at the request of the Minister of Finance, the President or any other person or of any government, if the request is made within the period specified in the notice of expiry.

Limitation

(4) The Tribunal shall not initiate an expiry review at the request of any person or government unless the person or government satisfies the Tribunal that a review is warranted.

. . .

If review initiated

(7) If the Tribunal decides to initiate an expiry review, the President shall

(a) within 150 days after the day on which the notice is received under subparagraph (6)(a)(i), determine whether the expiry of the order or finding in respect of goods of a country or countries is likely to result in the continuation or resumption of dumping or subsidizing of the goods; and

(b) provide the Tribunal with notice of the determination without delay after making it.

Consequences of President's determination

(8) If the President determines that the expiry of the order or finding in respect of any goods is unlikely to result in a continuation or resumption of dumping or subsidizing, the Tribunal

shall not take those goods into account in assessing the cumulative effect of dumping or subsidizing under subsection (11).²²⁴

Consequences of President's determination

(9) If the President determines that the expiry of the order or finding in respect of any goods is likely to result in a continuation or resumption of dumping or subsidizing, the President shall without delay provide the Tribunal with any information and material with respect to the matter that is required under the rules of the Tribunal.

Tribunal's determination

(10) If the President makes a determination described in subsection (9), the Tribunal shall, within 160 days after the day on which that determination was received, determine whether the expiry of the order or finding in respect of the goods referred to in that subsection is likely to result in injury or retardation.

...

Order of Tribunal

(12) The Tribunal shall make an order

(a) rescinding the order or finding in respect of goods

(i) referred to in subsection (8), or

(ii) in respect of which it determines that the expiry of the order or finding is unlikely to result in injury or retardation; or

(b) continuing the order or finding, with or without amendment, in respect of goods which it determines that the expiry of the order or finding is likely to result in injury or retardation.

The Scheme of the Act and Parliament's Intent in Implementing *Canada – Welded Pipe*

[207] When the legislative context and legislative evolution is appreciated as a whole, a few conclusions regarding Parliament's intent and the scheme of *SIMA* are apparent, which will be important in informing the interpretation and exercise of the Tribunal's discretion under subsection 76.03(12) in this case.

[208] First, prior to *Canada – Welded Pipe*, *SIMA* provided that a dumping investigation could only be terminated by the CBSA by reason of an insignificant margin of dumping if the countrywide margin of dumping was insignificant. This was a long-standing legislative choice. This choice stood

²²⁴ Subsection 76.03(11), not reproduced here, requires the Tribunal to make an assessment of the cumulative effect of the dumping of goods that are imported into Canada *from more than one country* where the prescribed conditions for cumulation are met.

in contrast to Canada's international obligations embodied in Article 5.8 of the *ADA*, as progressively clarified by WTO panels and the Appellate Body.

[209] Second, in amending *SIMA* to bring it into compliance with the WTO Report in *Canada – Welded Pipe*, Parliament amended *SIMA* on a narrow basis. It provided the CBSA with the power to terminate dumping investigations, on a prospective basis, as against individual *de minimis* exporters. The amendments concerned specifically the CBSA's powers under subsection 41(1) of *SIMA*. This is confirmed by the preamble to the *BIA 2017*, which speaks of "investigations".

[210] This narrow legislative amendment to subsection 41(1) of *SIMA* is no more and no less than was required for Canada to bring its legislation into compliance with the WTO DSB's recommendations and rulings in *Canada – Welded Pipe*. It is also in line with the obligation set forth under Article 5.8 of the *ADA* to terminate an original investigation in certain prescribed circumstances. However, it is also clear that a failure to terminate an original investigation in accordance with Article 5.8 lives on with every pre-existing finding that still captures *de minimis* exporters and subjects them to the duty enforcement regime and other *SIMA* mechanisms. Indeed, there are multiple pre-existing findings made further to CBSA final determinations under section 41 of *SIMA* as it read before the *BIA 2017* amendment, that include *de minimis* exporters in similar situations to those of the Chinese Taipei exporters in *Canada-Welded Pipe*. This is an operational and historical reality that Parliament must have considered when it enacted the *BIA 2017*.²²⁵

[211] In this regard, the legislative amendments that Parliament made and chose *not* to make in regard to the treatment of *de minimis* exporters subject to existing findings are informative. First, Parliament did not give the amendments to section 41 of *SIMA* retroactive or retrospective effect.

[212] Second, Parliament went so far as to indicate, in the transitional provisions of the *BIA 2017*, reproduced above, that the coming into force of the amendments was not sufficient reason for the Tribunal to be satisfied that an interim review of an order or finding is warranted.²²⁶ The purpose of an interim review is, generally, for the Tribunal to determine whether changed circumstances require a finding, or any aspect of a finding, to be rescinded or amended.

[213] Third, Parliament also chose not to amend the framework governing expiry reviews of existing findings in any way relevant to the issue of the exclusion of *de minimis* exporters. In this regard, the existing provisions only allow the Tribunal to initiate, where it considers it warranted, an expiry review of a finding as a whole; *SIMA* does *not* grant the Tribunal the power to exclude *de minimis* exporters at this stage.²²⁷ Parliament also made no changes to the expiry review provisions governing the CBSA's determination of the likelihood of continued or resumed dumping. In fact, in

²²⁵ R. Sullivan, *Sullivan on the Construction of Statutes*, 6th ed., at p. 643: "The meaning of legislation must be gathered from reading the words in context, and this includes the external context. The external context of a provision is the setting in which the provision was enacted, its historical background, and the setting in which it operates from time to time." Indeed, a well-established principle of statutory interpretation is that the legislature is "presumed to know all that is necessary to produce rational and effective legislation". This presumption is very far-reaching and holds that the legislature is not only cognizant of the law, but also of practical affairs, commercial practices, the functioning of public institutions, the mischief needing addressing—in brief, "the legislature is presumed to know whatever facts are relevant to the conception and operation of its legislation": R. Sullivan, *Sullivan on the Construction of Statutes*, 6th ed., p. 205. Here, the transitional provisions in the *BIA 2017* also indicate that Parliament was aware of pre-existing orders and findings.

²²⁶ Subsection 100(4) of the *BIA 2017*.

²²⁷ *Nova Tube Inc./Nova Steel Inc. v. Conares Metal Supply Ltd.*, 2019 FCA 52 [*Nova Tube*] at para. 61.

accordance with subsections 76.03(7) to (9) of *SIMA*, the CBSA makes determinations of likelihood of resumed or continued dumping *on a countrywide basis*.²²⁸ In other words, in amending *SIMA* to give the CBSA the power to terminate an original investigation in respect of an exporter found to have a *de minimis* margin of dumping, Parliament gave no similar powers to the CBSA in the context of expiry reviews.

[214] Finally, consistent with the express wording of *SIMA* in subsection 76.03(10), the Tribunal's role in an expiry review, in turn, is to determine whether the expiry of the order or finding in respect of the goods referred to in subsection 76.03(9) of *SIMA* is likely to result in injury or retardation—i.e. *whether injury or retardation is likely* as a result of the expiry of the finding as against *those goods in respect of which the CBSA made a determination of likely continued or resumed dumping*. As such, the legislative scheme through which an existing finding can be extended beyond its original duration of five years does not provide expressly for the exclusion of *de minimis* exporters and, indeed, leads to the inclusion of any *de minimis* exporters covered by an existing finding *within the scope* of any expiry review of the finding.

[215] The foregoing point to Parliament's intent to implement the WTO DSB's recommendations and rulings in *Canada – Welded Pipe* with respect to new investigations only and, conversely, to preserve the *status quo* with respect to pre-existing findings.

[216] The Tribunal notes that its conclusion regarding the narrow scope of the amendments is also consistent with evidence on the record of what appears to be the view and practice of the Executive since the *BIA 2017* amendments. Namely, statements of the Canadian delegation at the WTO as well as from officials of the Department of Finance show the government's awareness of *de minimis* exporters and view that they *remain* covered by pre-existing findings subject to reconsideration of the existing measure at the discretion of the Minister of Finance pursuant to section 76.1 of *SIMA*.²²⁹

The Tribunal's Authority to Grant Exclusions and Application to the Facts

[217] As stated above, the question before the Tribunal is whether it should exclude from the finding all goods made by Hyundai in Korea pursuant to its implicit discretion to grant exclusions from an order continuing a finding.

[218] At its heart, Hyundai's argument boils down to the basic fact that, in light of Canada's international obligations under the *ADA* and the WTO Panel Report in *Canada – Welded Pipe*, it never should have been included in the CBSA's 2014 final determination of dumping. By the same token, it should likely never have been subject to this expiry review. Hyundai argued that the

²²⁸ This is what the CBSA did in the case of the finding under review, as apparent from its statement of reasons concerning the decision that the expiry of the finding is likely to result in the continuation or resumption of dumping of subject plate from, *inter alia*, Korea. The CBSA's analysis and conclusion of likely resumed or continued dumping of subject goods from Korea includes the subject goods produced by Hyundai. See: Exhibit RR-2019-001-03A, Vol. 1 at paras. 165-174.

²²⁹ Exhibit RR-2019-001-54, Vol. 1 at para. 130-131; Exhibit RR-2019-001-35.02, Vol. 1.5 at 18. In this regard, the Tribunal notes Hyundai's arguments to the effect that the Tribunal cannot fetter its discretion by deferring to interpretations espoused by other bodies, such as the Minister of Finance or officials of his department. The Tribunal here has arrived at its own conclusions on the basis of the legislative scheme; the fact that others tasked with administering *SIMA* appear to have arrived at a conclusion not inconsistent with the Tribunal's own suggests only that they have reached a similar view, nothing more.

Tribunal can “right [this] wrong”²³⁰ by excluding it from any order continuing the finding, and that its authority to grant exclusions should be used to ensure its finding is WTO-consistent.

[219] Unfortunately, the Tribunal cannot interpret subsection 76.03(12) as giving it the power to make an exclusion that is contrary to the intent of Parliament. As stated above, Hyundai is properly part of this expiry review, by operation of *SIMA* provisions governing expiry reviews which Parliament did not choose to amend in implementing *Canada – Welded Pipe*.²³¹

[220] The Tribunal is not convinced, in light of its own mandate in expiry reviews and the broader legislative scheme with respect to the exclusion of *de minimis* exporters in specific prescribed circumstances, that its implicit power to exclude goods at the end of an expiry review can be used to exclude a *de minimis* exporter based solely on consistency with Canada’s international obligations, where the express legislative scheme for expiry reviews set out by Parliament (and maintained when considering the very issue of *de minimis* exporters) leads to the opposite result. The Tribunal recognizes that statutes should be interpreted consistent with Canada’s international obligations, to the extent such an interpretation can be reasonably ascribed to the words of the Act.²³² However, Parliament’s unequivocal intent was to not broadly bring *SIMA* into conformity with Article 5.8 of the *ADA*. Because *SIMA* clearly conveys a contrary intent, the Tribunal cannot here interpret its authority under subsection 76.03(12) in a way consistent with Canada’s international obligations. Further, the Tribunal’s implicit power to exclude goods from a finding cannot be used to “correct” outcomes of the express legislative scheme on the sole grounds that they are inconsistent with international obligations relating to *de minimis* exporters.

[221] Indeed, in light of the manner in which Parliament implemented the WTO DSB’s recommendations and rulings in *Canada – Welded Pipe*, it is clear to the Tribunal that Parliament left it to the discretion of the Minister of Finance to determine what, if any, *existing* measures resting on final determinations made by the CBSA under former subsection 41(1) should be re-examined in light of the recommendations in *Canada – Welded Pipe*. In other words, the decision on how to *further* implement *Canada – Welded Pipe* in regard to pre-existing findings is left up to the discretion of the executive, namely, the Minister of Finance, who has broad oversight of Canada’s trade remedy laws.²³³ Thus far, the Minister of Finance appears to have taken a narrow approach following the DSB’s recommendations in *Canada – Welded Pipe* and has only asked the CBSA and the Tribunal,

²³⁰ *Transcript of Public Hearing* at 235.

²³¹ As highlighted by Hyundai, in *Nova Tube*, in declining to grant a remedy despite its finding that the Tribunal erred in initiating an expiry review under section 76.03 of *SIMA* in regard to a portion of a finding, as opposed to the finding as a whole, the Federal Court of Appeal cited, among other reasons, the fact that “the applicants acknowledge that even if the goods of Conares had been included in the expiry review, it was likely that they would have been excluded upon its completion, and they did not challenge the Tribunal’s entitlement to exclude the goods at that stage” (*Nova Tube* at para. 66). The Tribunal does not read this statement as anything other than what it says—the fact that the applicants in that judicial review did not challenge the Tribunal’s entitlement to exclude goods at the end of an expiry review. The Tribunal does not read the Federal Court of Appeal’s reasons as making any pronouncement on the Tribunal’s authority to grant such exclusions.

²³² See e.g. *R. v. Hape* at para. 53; *National Corn Growers*; R. Sullivan, *Sullivan on the Construction of Statutes*, 6th ed, p. 569.

²³³ The Tribunal’s conclusion is consistent with subsequent statements by the Canadian delegation to the WTO, which suggest that such situations would be considered through the lens of section 76.1 of *SIMA*. See Exhibit RR-2019-001-54, Vol. 1 at paras. 130-131. Again, the Tribunal notes only that others tasked with administering *SIMA* appear to have arrived at the same conclusion as the Tribunal on this issue.

respectively, to review the measures against Chinese Taipei that were directly the object of *Canada – Welded Pipe*.

[222] The Tribunal’s implicit discretion to make amendments and grant exclusions must be interpreted and exercised consistent with the scheme of the Act and the intent of Parliament. This is a case where granting the exclusion on the sole basis that to do so would be consistent with *Canada – Welded Pipe* and the ADA would be inconsistent with the scheme set forth under SIMA, as adopted by Parliament, which only provides for the termination of original investigations against individual exporters on the basis of *de minimis* margins of dumping, by the CBSA, and in the context only of original investigations post-dating the BIA 2017 amendments.

[223] Quite apart from the issue of whether an exclusion can be granted on the basis of compliance with Article 5.8 of the ADA, the Tribunal can, of course, consider whether to exclude from the finding all goods made by Hyundai Steel because the evidence indicates that doing so will not cause injury to the domestic industry. However, Hyundai has not made out the case that no likelihood of injury is likely if all of its goods are excluded from the finding. Hyundai argued that its goods were dumped at an insignificant margin in the first place and cannot therefore have caused, or threatened to cause, injury.²³⁴ Its argument for exclusion relied on no evidence beyond the level of its margin.²³⁵ However, there is no necessary coincidence, as a matter of fact, between a *de minimis* margin obtained in the CBSA’s final determination, in respect to a discrete and long-past period of time, and the question the Tribunal is tasked with determining in this expiry review, which is whether the goods subject to the President’s determination of likely resumed or continued dumping are likely to result in injury.²³⁶ In light of all of the above, this is not a situation where the Tribunal can exercise its discretion to grant this exclusion.

[224] Finally, the Tribunal considers that exclusions granted to *de minimis* exporters in *FISC*²³⁷ and *Concrete Reinforcing Bar*²³⁸ are distinguishable. These decisions were rendered at a time when the BIA 2017 amendments to give the CBSA the power to terminate new dumping investigations against *de minimis* exporters were before Parliament but not yet enacted. In addition, as these cases concerned original investigations, they remain consistent with the intent of Parliament in respect to the termination of original investigations regarding *de minimis* exporters. In these findings, the Tribunal was able to interpret SIMA consistent with Canada’s international obligations as there was no indication of direct and contrary position of Parliament.

[225] In light of the foregoing, the Tribunal denies the exclusion requested by Hyundai.

²³⁴ Exhibit RR-2019-001-35.02, Vol. 1.5 at para. 20.

²³⁵ Hyundai provided certain data in Exhibit RR-2019-001-36.02 (protected), Vol. 2.5. It did not, however, rely on these data in support of its request for exclusion.

²³⁶ Indeed, in this regard, the Panel Report, in *United States – Sunset Review of Anti-dumping Duties on Corrosion-resistant Carbon Steel Flat Products from Japan*, WT/DS244/R, adopted 14 August 2003, at para. 7.73, stated as follows: “We fail to find any textual support in the *Anti-dumping Agreement* for the proposition that *de minimis* dumping is, by definition, non-injurious. The terms ‘dumping’ and ‘injury’ have different meanings in the *Anti-dumping Agreement*, independent from one another. Injury is not defined in the *Anti-dumping Agreement* in relation to any particular level of dumping.”

²³⁷ *FISC* at paras. 164-169.

²³⁸ (3 May 2017), NQ-2016-003 (CITT) at paras. 191-205.

CONCLUSION

[226] Pursuant to paragraph 76.03(12)(b) of *SIMA*, the Tribunal hereby continues its finding in respect of the subject goods.

[227] Furthermore, the Tribunal excludes the following from its order:

- A553 TY1, the technical description of which is as follows: 9 percent nickel steel plate in widths from 24 inches (+/- 610 mm) to 152 inches (+/- 3,860 mm) inclusive, and thicknesses from 0.187 inches (+/- 4.75 mm) up to and including 3.0 inches (76.2 mm) (with all dimensions being plus or minus allowable tolerances contained in the applicable standards), with a nickel content of no less than 9 percent by weight, for exclusive use in liquefied natural gas (LNG) storage tanks. For greater certainty, this exclusion is limited to the product single-stencilled as such. Product which is double-stencilled to meet these specifications and other specifications would not qualify for this exclusion.
- POSM CS400A, the technical description of which is as follows: high manganese cryogenic carbon steel plate in widths from 24 inches (+/- 610 mm) to 152 inches (+/- 3,860 mm) inclusive, and thicknesses from 0.187 inches (+/- 4.75 mm) up to and including 3.0 inches (76.2 mm) (with all dimensions being plus or minus allowable tolerances contained in the applicable standards), with a manganese content of no less than 22 percent by weight, for exclusive use in liquefied natural gas (LNG) tanks and parts and liquefied ethylene/ethane gas (LEG) tanks and parts. For greater certainty, this exclusion is limited to the product single-stencilled as such. Product which is double-stencilled to meet these specifications and other specifications would not qualify for this exclusion.

Rose Ann Ritcey

Rose Ann Ritcey
Presiding Member

Serge Fréchette

Serge Fréchette
Member

Cheryl Beckett

Cheryl Beckett
Member