



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Expiry Review No. RR-2019-004

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

*Order and reasons issued
Tuesday, November 10, 2020*

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IN THE MATTER OF an expiry review, pursuant to subsection 76.03(3) of the *Special Import Measures Act*, of the order made by the Canadian International Trade Tribunal on January 30, 2015, in Expiry Review No. RR-2014-002, concerning:

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

ORDER

The Canadian International Trade Tribunal, pursuant to subsection 76.03(3) of the *Special Import Measures Act*, has conducted an expiry review of the order made on January 30, 2015, in Expiry Review No. RR-2014-002, continuing, with amendment, its finding made on February 2, 2010, in Inquiry No. NQ-2009-003, concerning the dumping of hot-rolled carbon steel plate and high-strength low-alloy steel plate not further manufactured than hot-rolled, heat-treated or not, in cut lengths in widths from 24 inches (610 mm) to 152 inches (3,860 mm) inclusive and in thicknesses from 0.187 inch (4.75 mm) up to and including 3.0 inches (76.0 mm) inclusive (with all dimensions being plus or minus allowable tolerances contained in the applicable standards, e.g. ASTM standards A6/A6M and A20/A20M), originating in or exported from Ukraine, excluding universal mill plate, plate for use in the manufacture of pipe, plate having a rolled, raised figure at regular intervals on the surface (also known as floor plate), and the products listed in Appendix 1 to this order.

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

Susan D. Beaubien

Susan D. Beaubien
Presiding Member

Randolph W. Heggart

Randolph W. Heggart
Member

Serge Fréchette

Serge Fréchette
Member

APPENDIX 1**PRODUCTS EXCLUDED FROM THE ORDER**

- Hot-rolled carbon steel plate and high-strength low-alloy steel plate for use in the manufacture of tube (also known as skelp).
- Hot-rolled carbon steel plate and high-strength low-alloy steel plate in coil form.
- Hot-rolled carbon steel plate and high-strength low-alloy plate, made to any steel specification or grade, that is greater than 2.75 inches (70 mm) in thickness and 72 inches in width.
- Hot-rolled carbon steel plate in grade A516-70 normalized (heat-treated) with a thickness of 2.75 inches and of a width greater than 72 inches.

- Hot-rolled carbon steel plate manufactured to:

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

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

- Hot-rolled carbon steel plate manufactured to:

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

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

- Hot-rolled carbon steel plate manufactured to:

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

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

- Hot-rolled carbon steel plate manufactured to:

ASME SA-516/SA-516M or ASTM A-516/A-516M

ASME SA-285/SA-285M or ASTM A-285/A-285M

ASME SA-299/SA-299M or ASTM A-299/A-299M

ASME SA-537/SA-537M or ASTM A-537/A-537M

ASME SA-515/SA-515M or ASTM A-515/A-515M

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

Order Gauge	1.250		1.375		1.500		1.625		1.750	
	MIN	MAX								
40	438	512	398	465	365	426	336	393	311	363
42	383	511	348	464	319	425	294	392	272	363
44	366	510	333	463	305	424	281	391	260	362
46	351	509	319	462	292	423	269	391	249	361
48	337	508	306	462	280	423	258	390	239	361
50	323	507	294	461	269	422	248	389	229	360
52	311	506	283	460	259	422	239	389	221	360
54	300	506	272	460	249	421	230	388	216	359
56	289	505	263	459	241	421	222	388	214	359
58	280	505	254	459	232	420	214	387	214	358
60	270	504	245	458	225	420	216	387	215	358
62	262	504	238	458	217	419	214	387	216	358
64	254	503	230	457	215	419	216	386	216	357
66	246	503	223	457	216	418	214	386	216	357
68	239	502	217	456	215	418	216	386	216	357
70	232	942	216	456	215	418	216	385	216	357
72	226	942	216	948	216	948	215	945	215	945
74	219	942	216	948	215	945	215	945	215	945
76	214	942	215	945	215	945	215	945	215	945
78	215	945	215	945	215	945	215	945	215	945
80	214	942	215	945	215	945	215	945	215	945
82	214	942	215	945	215	945	215	945	215	945
84	214	816	215	742	215	681	215	630	215	583
86	215	817	215	744	215	682	215	630	215	584
88	216	808	215	736	215	675	215	630	215	578
90	216	798	215	720	215	660	215	610	215	565
92	216	774	215	704	215	646	215	597	215	553
94	216	758	215	690	215	633	215	584	215	541
96	215	742	215	676	215	620	215	572	215	530
98	215	730	215	662	215	607	215	561	215	520
100	216	713	215	649	215	595	215	550	215	509
102	215	699	215	636	215	584	215	539	215	500
104	216	686	215	630	215	572	215	530	215	492
106	216	673	215	613	215	562	215	519	215	482
108	216	661	215	601	215	551	215	509	215	473

Order Gauge	1.250		1.375		1.500		1.625		1.750	
Order Width	MIN	MAX								
110	216	649	215	590	215	541	215	500	215	465
112	216	638	215	580	215	532	215	493	215	456
114	215	630	215	570	215	523	215	484	215	448
116	215	616	215	560	215	514	215	476	215	440
118	216	605	215	551	215	505	215	457	215	433
120	215	595	215	541	215	498	215	450	215	425
122	216	586	215	533	215	490	215	452	215	418
124	215	561	215	510	215	482	215	445	215	411
126	216	553	215	502	215	462	215	426	215	394
128	215	544	215	496	215	455	215	419	215	388
130	216	536	215	489	215	448	215	413	215	382
132	216	532	215	481	215	441	215	407	215	376
134	215	520	215	474	215	434	215	401	215	371
136	216	512	215	467	215	428	215	395	215	365
138	216	505	215	460	215	422	215	389	215	360
140	216	500	215	454	215	416	215	383	215	355
142	216	488	215	444	215	406	215	375	215	347
144	216	476	215	432	215	396	215	365	215	338
146	216	472	215	429	215	393	215	362	215	335
148	216	472	215	429	215	393	215	362	215	335
150	216	469	215	426	215	390	215	360	215	333
152	216	463	215	421	215	385	215	355	215	329

Order Gauge	1.875		2.000		2.250		2.500		2.750	
Order Width	MIN	MAX								
40	290	339	272	318	241	282	217	253	217	229
42	253	338	238	317	215	281	214	252	217	229
44	242	337	227	317	215	280	216	252	217	228
46	232	337	218	316	215	280	216	251	217	228
48	222	336	214	316	216	280	216	251	217	228
50	214	336	214	315	216	279	216	251	217	227
52	214	335	216	315	216	279	216	250	217	227
54	214	335	216	314	216	278	216	250	217	227
56	214	334	216	314	216	278	216	250	217	226
58	215	334	216	313	216	278	216	249	217	226
60	215	334	216	313	216	277	216	249	217	226
62	215	333	216	313	216	277	216	249	217	226
64	215	333	216	313	216	277	216	249	217	266
66	215	333	216	312	216	277	216	248	217	225
68	215	332	216	312	216	276	216	248	217	225

Place of Hearing: Via videoconference
Date of Hearing: September 9, 2020
Tribunal Panel: Susan D. Beaubien, Presiding Member
Randolph W. Heggart, Member
Serge Fréchette, Member
Support Staff: Kalyn Eadie, Lead Counsel
Jessye Kilburn, Counsel
Gayatri Shankarraman, Lead Analyst
Grant MacDougall, Analyst
Mylène Lanthier, Analyst

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Algoma Steel Inc.

Evraz Inc. NA Canada

SSAB Central Inc.

Importers/Exporters/Others

Embassy of Ukraine in Canada

MetInvest International S.A.

The Department for Domestic Producer Defense
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STATEMENT OF REASONS

INTRODUCTION

[1] The Canadian International Trade Tribunal has conducted an expiry review¹ of the order made on January 30, 2015, in Expiry Review No. RR-2014-002. That order continued, with amendment, the finding in Inquiry No. NQ-2009-003, which provided a remedy for threat of injury arising from the dumping of hot-rolled carbon steel plate and high-strength low-alloy steel plate (collectively referred to as hot-rolled steel plate) originating in or exported from Ukraine (the subject goods).²

[2] The Tribunal's mandate in this expiry review is to determine whether the rescission of the order is likely to result in injury to the domestic industry. If so, the order may be continued, with or without amendment, for a further five years. In the absence of likely injury to the domestic industry, the order will be rescinded.

[3] In the present case, the Tribunal has determined that such injury is likely. Therefore, the Tribunal orders the continuation of the order without amendment. The reasons for its determination are set out below.

PROCEDURAL BACKGROUND

[4] According to the *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. If one or more orders continuing the finding have been made, the order will expire five years from the date of the last order made under paragraph 76.03(12)(b). In either case, a finding or order will not expire if an expiry review has been initiated before the expiry date.

[5] The Tribunal issued its notice of expiry review on January 6, 2020. This notice triggered the initiation of an investigation by the Canada Border Services Agency (CBSA) on January 7, 2020, to determine whether the expiry of the Tribunal's order was likely to result in the continuation or resumption of dumping of the subject goods.

[6] On June 4, 2020, the CBSA determined, pursuant to paragraph 76.03(7)(a) of *SIMA*, that the expiry of the order was likely to result in the continuation or resumption of dumping of the subject goods.

[7] On June 5, 2020, following the CBSA's determination, pursuant to subsection 76.03(10) of *SIMA*, the Tribunal began its review to determine whether the expiry of the order was likely to result in injury to the domestic industry.

[8] The period of review (POR) for the Tribunal's expiry review covers three full years from January 1, 2017, to December 31, 2019, as well as the interim period of January 1, to March 31, 2020 (interim 2020). For comparative purposes, the Tribunal also collected information for the interim period of January 1, to March 31, 2019 (interim 2019).

[9] 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

¹ The expiry review is conducted pursuant to subsection 76.03(3) of the *Special Import Measures Act*, R.S.C. 1985, c. S-15 [*SIMA*].

² The full product definition is set out at paragraphs 16-17.

received 7 completed and 2 partially completed domestic producers' questionnaires.³ The Tribunal received 15 completed importers' questionnaires from companies stating that they imported goods meeting the product definition and 1 foreign producers' questionnaire from a company indicating that it produces subject goods.⁴

[10] Using the questionnaire responses and other information on the record, public and protected investigation reports were prepared and placed on the record on July 27, 2020. Revisions to the investigation reports were issued on August 7, 2020. The Tribunal also sent requests for information to specific parties and received public and protected replies that were placed on the record.⁵ In addition, on August 10, 2020, the Tribunal sought further information from importers on how recent global events may be impacting the market and industry in unprecedented ways.

[11] Domestic producers Algoma Steel Inc. (Algoma), Evraz Inc. NA Canada (Evraz) and SSAB Central Inc. (SSAB), as well as the United Steelworkers, filed submissions in support of a continuation of the order. Submissions opposing the continuation of the order were filed by Metinvest International S.A. (Metinvest) and the Trade Defense Department of the Ministry for Development of Economy, Trade and Agriculture of Ukraine.

[12] On August 6, 2020, the Tribunal advised parties that, due to COVID-19 measures, the in-person hearing, previously scheduled for August 31, 2020, was cancelled. The Tribunal issued draft alternative hearing procedures and invited parties to comment on them. Comments were received on August 10, 2020.

[13] The Tribunal issued the final alternative hearing procedures on August 20, 2020, giving parties the opportunity to suggest written questions to be directed to other parties. Parties were also given the opportunity to file objections to the proposed questions and to reply to any objections. Metinvest suggested questions to be put to Algoma, and Algoma suggested one question to be put to Metinvest. Algoma objected to some of the questions suggested by Metinvest. Metinvest submitted replies to Algoma's objections.

[14] Based on these submissions, the Tribunal directed written questions to Metinvest and Algoma on August 31, and September 1, 2020. The Tribunal received written responses from the parties on September 2, and 3, 2020.

[15] On September 9, 2020, the Tribunal heard final closing arguments by public videoconference.

PRODUCT

Product definition

[16] The subject goods are 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)

³ Exhibit RR-2019-004-05, Table 3.

⁴ The Tribunal received four responses from importers indicating that they did not import subject goods over the POR and no response from a further four importers surveyed. The Tribunal also received no response from six of the seven foreign producers surveyed. Exhibit RR-2019-004-05, Table 3.

⁵ The Tribunal's requests are contained in Exhibits RR-2019-004-RFI-01 and RFI-01A (protected); the parties' responses are contained in Exhibits RR-2019-004-RI-01, RI-01A (protected), RI-02, RI-02A (protected), RI-03, RI-03A (protected), RI-05, RI-05A (protected).

to 152 inches (3,860 mm) inclusive and in thicknesses from 0.187 inch (4.75 mm) up to and including 3.0 inches (76.0 mm) inclusive (with all dimensions being plus or minus allowable tolerances contained in the applicable standards, e.g. ASTM standards A6/A6M and A20/A20M), originating in or exported from Ukraine; excluding universal mill plate, plate for use in the manufacture of pipe and plate having a rolled, raised figure at regular intervals on the surface (also known as floor plate).

[17] In accordance with the order in Expiry Review No. RR-2014-002, the goods listed in Appendix 1 to the order are also excluded from the product definition.⁶

Product information

[18] The CBSA provided the following additional product information:

[24] 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.

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

[26] 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.⁷

LEGAL FRAMEWORK

[19] 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”.

LIKE GOODS AND CLASSES OF GOODS

[20] 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 industry, 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.⁸

⁶ *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate* (30 January 2015), RR-2014-002 (CITT).

⁷ Exhibit RR-2019-004-03A at 6.

⁸ 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).

[21] 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.

[22] 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. These include 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).⁹

[23] In Inquiry No. NQ-2009-003, the Tribunal found that domestically produced hot-rolled steel plate, of the same specifications as the subject goods, constituted like goods in relation to the subject goods.¹⁰ In addition, after considering whether structural steel plate, high-strength low-alloy steel plate, and pressure vessel steel plate were separate classes of goods, the Tribunal found that they constituted a single class of goods. In the Tribunal’s view, even though the goods were not perfectly substitutable, they fell at various points along a continuum of like goods.¹¹ The Tribunal followed the same approach in Expiry Review No. RR-2014-002.¹²

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

DOMESTIC INDUSTRY

[25] 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.

⁹ See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at para. 48.

¹⁰ *Hot-Rolled Carbon Steel Plate and High-Strength Low-Alloy Steel Plate* (2 February 2010), NQ-2009-003 (CITT) at para. 59.

¹¹ *Ibid.* at paras. 65-66.

¹² *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate* (30 January 2015), RR-2014-002 (CITT) at para. 25.

[26] 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.¹³

[27] Algoma submitted that the domestic industry comprises the two domestic mills, itself and Evraz, and a variety of service centres which cut plate from coil. There were no submissions to the contrary.

[28] These submissions are consistent with a number of previous Tribunal decisions where the Tribunal found it appropriate to include the domestic mills and service centres within the scope of the domestic industry producing hot-rolled carbon steel plate, including Inquiry No. NQ-2009-003 and Expiry Review No. RR-2014-002.¹⁴ 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.

[29] Of the 11 known producers of like goods in Canada, 2 domestic mills, namely, Algoma and Evraz, as well as 7 of 9 service centres, namely, Acier Nova Inc., Del Metals, Janco Steel Ltd., Russel Metals Inc., Samuel, Son & Co. Ltd., SSAB and Varsteel Ltd., filed responses to the Tribunal’s domestic producers’ questionnaire.¹⁵

[30] Together, the 2 domestic mills and the 7 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 9 producers constitute the domestic industry for the purposes of this expiry review.

¹³ 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); Panel Report, *China – Automobiles (US)*, WT/DS440/R, at para. 7.207; Appellate Body Report, *EC – Fasteners (China)*, WT/DS397/AB/R, at paras. 411, 412, 419; Panel Report, *Argentina – Poultry (Brazil)*, WT/DS241/R, at para. 7.341.

¹⁴ *Hot-rolled Carbon Steel Plate and High-Strength Low-Alloy Steel Plate* (30 January 2015), RR-2014-002 (CITT) at paras. 29-30; *Hot-rolled Carbon Steel Plate and High-Strength Low-Alloy Steel Plate* (2 February 2010), NQ-2009-003 (CITT) at para. 68. See also *Hot-rolled Carbon Steel Plate* (13 March 2020), RR-2019-001 (CITT) at para. 31; *Hot-rolled Carbon Steel Plate* (9 August 2018), RR-2017-004 (CITT) 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.

¹⁵ The two non-responding service centres, Coilex and Alliance Steel Corporation, are estimated to account for a minor volume of production of the like goods. The responses provided by Del Metals and Varsteel Ltd. were incomplete, as they were 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, Del Metals and Varsteel Ltd.’s information could not be included 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.

LIKELIHOOD OF INJURY ANALYSIS

[31] An expiry review is forward-looking.¹⁶ Accordingly, 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.¹⁷

[32] 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.¹⁸ In the context of an expiry review, positive evidence can include evidence based on past facts that tend to support forward-looking conclusions.¹⁹

[33] 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.

[34] Current global conditions are volatile. This is attributable, at least in part, to the COVID-19 pandemic, whose effects have created major economic disruption worldwide. There is a nexus between an individual country's ability to effectively control the spread of the novel coronavirus within its borders and the speed at which that country's economy is able to recover from the economic impact of the pandemic and the extent to which it can. In turn, this creates challenges and exacerbates the situation for producers who need to adapt to changing conditions of supply and demand, whether in the domestic or export markets. The uncertainty is expected to be highest in the immediate to medium term and to gradually abate, as conditions stabilize, although the impact of short-term volatility may continue to be felt over a longer time frame.²⁰ The Tribunal considers that a 12- to 24-month period is optimal to enable the likely effect of these variables to be taken into account.

[35] Subsection 37.2(2) of the *Special Import Measures Regulations*²¹ lists factors that the Tribunal may consider in addressing the likelihood of injury in cases where the CBSA has determined that there is a likelihood of continued or resumed dumping. The factors that the Tribunal considers relevant in this expiry review are discussed in detail below.

[36] As a preliminary matter, the Tribunal notes that Metinvest argued that the CBSA made several conclusions and findings of fact “. . . that are inexplicably contrary to the evidence”²² in its determination that the expiry of the Tribunal's order is likely to result in the continuation or resumption of the dumping of the subject goods, and requested that the Tribunal make its own independent evaluation of that evidence. Specifically, Metinvest disputed the CBSA's findings that

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

¹⁷ *Copper Pipe Fittings* (17 February 2012), RR-2011-001 (CITT) at para. 56. In *Thermoelectric Containers* (9 December 2013), RR-2012-004 (CITT) [*Thermoelectric Containers*] at para. 14, the Tribunal stated that the analytical context pursuant to which an expiry review must be adjudged often includes the assessment of retrospective evidence supportive of prospective conclusions. See also *Aluminum Extrusions* (17 March 2014), RR-2013-003 (CITT) [*Aluminum Extrusions*] at para. 21.

¹⁸ *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (16 August 2006), RR-2005-002 (CITT) at para. 59.

¹⁹ *Thermoelectric Containers* at para. 14; *Aluminum Extrusions* at para. 21.

²⁰ Exhibit RR-2019-004-A-01, Attachments 4, 11, 12, 21, 22, 69, 71.

²¹ S.O.R./84-927 [*Regulations*].

²² Exhibit RR-2019-004-E-01 at para. 95.

the subject goods had been dumped during the POR and that safeguard measures in other countries would divert the subject goods to Canada.²³

[37] With respect to this first point, according to Metinvest, the hot-rolled steel plate it exported in 2019 was not in fact “dumped” as it was imported under the normal values established by ministerial specification, which are set as an advance over the export price, and the importer accordingly self-assessed anti-dumping duties at the time of importation. Metinvest further submitted that this importation was made in order to enable it to request a normal value review from the CBSA, which would allow the CBSA to update the normal values applicable to its products.

[38] The Tribunal considers that Metinvest’s challenge of the CBSA’s findings cannot be litigated before the Tribunal. The CBSA has determined that the subject goods were dumped during the POR and are likely to be dumped if the order expires.²⁴ That conclusion is binding on the Tribunal²⁵ and forms a baseline for the Tribunal’s analysis of the likelihood of injury to the domestic injury. The Tribunal has no jurisdiction to review or overrule the CBSA’s determination with respect to the likelihood of continued or resumed dumping of the subject goods if the order is allowed to expire.²⁶

[39] However, the Tribunal is entitled to make its own findings of fact and need not adopt the same conclusions as those drawn by the CBSA from the evidence on the record. The Tribunal has considered the evidence of record and conducted its own evaluation in arriving at its decision. In doing so, the Tribunal has taken into account the evidence with respect to the likelihood of diversion of the subject goods to the Canadian market due to trade measures in place elsewhere in the world, and with respect to the likely price effects of the subject goods should they re-enter the Canadian market. These considerations are further discussed below.

Changes in market conditions

[40] In order to assess the likely volumes and prices of the subject goods and their impact on the domestic industry if the order were rescinded, the Tribunal will first consider changes in international and domestic market conditions.²⁷

[41] The COVID-19 pandemic began to affect domestic and international markets near the end of the Tribunal’s POR, and pandemic-related uncertainty is expected to continue at least over the near to medium term. In order to better assess the effects of the pandemic on trade in the subject and like goods going forward, the Tribunal requested additional information from importers, beyond the POR, from the period of April 1, 2020, to July 31, 2020, as well as the period of August 1, 2020, and beyond. The Tribunal also considered economic forecasts from several sources, as detailed below.

International market conditions

[42] The International Monetary Fund (IMF) forecasts indicate that global economic growth is significantly lower than expected. In April 2020, the IMF projected world growth to decline in 2020.²⁸ By June 2020, the forecast had worsened by 1.9 percent, with global economic growth for

²³ Exhibit RR-2019-004-03A at 36, 38.

²⁴ Exhibit RR-2019-004-03A at 38, 40.

²⁵ *Aluminum Extrusions* at para. 33.

²⁶ *Ibid.*

²⁷ See paragraph 37.2(2)(j) of the *Regulations*.

²⁸ Exhibit RR-2019-004-A-01, Attachment 4 at 242.

2020 expected to be negative 4.9 percent.²⁹ The COVID-19 pandemic was a large factor in the negative outlook, and the recovery is anticipated to be more gradual than previously expected.

[43] The global demand for steel is soft, with supply exceeding demand by a significant margin. The World Steel Association has projected falling demand for steel of approximately 6 percent in 2020.³⁰ CRU predicts falling demand for steel plate in 2020.³¹ Growth in demand is expected to continue into 2021, and any expected recovery would still leave demand below 2019 levels (1,717 million metric tonnes [MT] v. 1,766.5 million MT).³²

[44] Global excess hot-rolled steel plate capacity is anticipated to continue through 2022.³³ Plate production is also expected to exceed plate consumption until at least 2022.³⁴

[45] In March 2018, acting pursuant to section 232 of the *U.S. Trade Expansion Act of 1962* (section 232 measures), the United States imposed a 25 percent duty on imports of certain steel products, including hot-rolled steel plate, from most countries, including Ukraine.³⁵

[46] 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.

Domestic market conditions

[47] The Canadian economy is expected to contract by about 6.1 percent in 2020, largely due to the COVID-19 pandemic, but weak oil prices are also expected to be a contributing factor.³⁶ Economic activity is forecast to improve during the second half of 2020 and into 2021. TD Bank has predicted that the Canadian economy will have a growth rate of about 5.2 percent in 2021, provided that governments do not shut down business activity in response to a second wave of the pandemic, and will return to pre-crisis levels in early 2022.³⁷

[48] In October 2018, Canada imposed provisional safeguards on seven classes of steel products, including heavy plate, which covers a subset of plate meeting the product definition in this case. The Tribunal determined 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 tariff rate quota (TRQ) on all imports of heavy plate, except those from the United States, Mexico, other countries with whom Canada has trade agreements, and countries

²⁹ *Ibid.*

³⁰ *Ibid.*, Attachment 7 at 264.

³¹ Exhibit RR-2019-004-A-02 (protected), Attachment 6 at 270.

³² Exhibit RR-2019-004-A-01, Attachment 8 at 269.

³³ *Ibid.* at paras. 48-49; Exhibit RR-2019-004-A-04 (protected), Attachments 5, 6.

³⁴ Exhibit RR-2019-004-A-01 at para. 54; Exhibit RR-2019-004-A-04 (protected), Attachment 5.

³⁵ Exhibit RR-2019-004-A-01, Attachment 50.

³⁶ *Ibid.*, Attachment 70 at 602.

³⁷ *Ibid.*

benefitting from the *General Preferential Tariff*.³⁸ The Tribunal's recommendations were implemented as final safeguard measures on May 9, 2019.³⁹

[49] Ukraine is a beneficiary of the *General Preferential Tariff* in accordance with section 33 of the *Customs Tariff* (S.C. 1997, c. 36) and the List of Countries and Applicable Tariff Treatments provided in the schedule to the *Customs Tariff*. It is not subject to the safeguard measures as its imports did not exceed the relevant thresholds during the period of investigation for the Tribunal's safeguard inquiry.⁴⁰ However, the provisional and final safeguards have had an impact on the Canadian plate market, as discussed below.

[50] The size of the Canadian market for domestic and imported hot-rolled steel plate has been in continuous decline since 2018.⁴¹ Demand was relatively stable in 2018 but was weak in mid-2019, and this persisted until the first quarter of 2020, when it briefly recovered before being affected by the pandemic.⁴²

[51] There is some variation in forecasts on how the hot-rolled steel plate market will recover from the decrease in demand and prices caused by COVID-19. However, the consensus is that the market will have seen improvement from COVID-related shocks by mid-2021, at the latest, although full recovery in sales volumes or prices is not expected in either 2021 or 2022.⁴³ CRU forecasts that Canadian consumption of plate produced on reversing mills⁴⁴ is expected to remain below 2017 levels into 2022.⁴⁵

[52] Imports of hot-rolled steel plate have decreased sharply since 2017.⁴⁶ Market volumes of subject imports remained negligible throughout the POR.⁴⁷

[53] Hot-rolled steel plate prices increased significantly in 2018 but those gains have been largely offset by price decreases since 2019 and through 2020.⁴⁸ The price increase in the second half of 2018 and early 2019 was driven by the imposition of the section 232 measures, the Canadian countermeasures and provisional safeguard measures, and was not supported by underlying demand. In the absence of this demand, prices began to fall in mid-2019 when the U.S. and Canadian

³⁸ *Certain Steel Goods* (3 April 2019), GC-2018-001 (CITT).

³⁹ *Order Imposing a Surtax on the Importation of Certain Steel Goods*, SOR/2018-206, C. Gaz. 2018.II.3724.

⁴⁰ *Ibid.* at subsection 2(4), which provides as follows:

This Order does not apply to goods originating in a World Trade Organization Member country that benefits from the General Preferential Tariff, as long as its share of importation of the goods of the class in question does not exceed 3% of the total importation of goods of that class, provided that the importation of goods of that class from all such countries with less than 3% import share does not collectively account for more than 9% of the total importation of the goods of that class.

⁴¹ Exhibit RR-2019-004-05, Table 14.

⁴² Exhibit RR-2019-004-A-05 at paras. 9-10.

⁴³ Exhibit RR-2019-004-RI-01 at 2; Exhibit RR-2019-004-RI-03 at 2; Exhibit RR-2019-004-RI-02 at 2.

⁴⁴ Reversing mills are the only type of mill dedicated to the production of discrete plate. Other types of mills, such as steckel and hot-strip mills, can produce both discrete plate and plate in coils (see Exhibit RR-2019-004-A-01 at footnote 34). Since plate in coil is excluded from the product definition in this case, the Tribunal has focused on reversing mill production, although it notes that discrete plate can be produced on all three types of mills.

⁴⁵ Exhibit RR-2019-004-A-04 (protected), Attachment 5 at 31.

⁴⁶ Exhibit RR-2019-004-05, Table 10.

⁴⁷ Exhibit RR-2019-004-06 (protected), Table 8.

⁴⁸ Exhibit RR-2019-004-05, Table 25.

measures were removed.⁴⁹ Prices had begun to recover in late 2019 and the first quarter of 2020, but the COVID-19 pandemic reversed this recovery.⁵⁰ The domestic industry expects modest price recovery in 2021.⁵¹

Likely import volume of dumped goods

[54] Paragraph 37.2(2)(a) of the *Regulations* directs the Tribunal to consider the likely volume of the dumped goods if the order or 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.

[55] The Tribunal's assessment of the likely volumes of dumped imports 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 trade measures adopted by other jurisdictions are likely to cause a diversion of the subject goods to Canada.⁵²

[56] The supporting parties argued that the subject goods will return to the Canadian market in large volumes if the order is rescinded, as Ukrainian steel producers are highly export-oriented and are being shut out of their largest export markets by trade measures.

[57] The Department for Producer Defense of the Ministry for Development of Economy, Trade and Agriculture of Ukraine argued that North America is not a target market for Ukrainian plate exporters, as evidenced by the negligible amount of subject goods imported during the POR. The Ministry further submitted that Ukrainian steel exports have been decreasing due to its ongoing conflict with Russia, as have its production and capacity.

[58] Metinvest similarly argued that Canada is not an important market for Ukrainian exporters and that any plate exports to Canada would be in small volumes. Metinvest submitted that the evidence it provided regarding its own intentions and business plans was uncontroverted and should be given greater weight than the assumptions about Metinvest's future behaviour submitted by the domestic industry.

[59] For the reasons set out below, the Tribunal finds that it is likely that the rescission of the order would result in a significant increase in the import volume of the subject goods in the next 12 to 24 months. Ukrainian steel production has continually outpaced domestic demand. Further, the imposition of quotas and other trade measures against Ukrainian steel plate exacerbates the risk that exporters will resume shipments of large volumes of the subject goods to Canada.

⁴⁹ Exhibit RR-2019-004-A-05 at paras. 18, 19, 23. The Tribunal has remarked on this dynamic in previous cases: see *Heavy Plate* (27 July 2020), PI-2020-001 (CITT) at para. 81; *Hot-Rolled Carbon Steel Plate* (13 March 2020), RR-2019-001 (CITT) at paras. 74, 80-81.

⁵⁰ Exhibit RR-2019-004-A-05 at para. 21.

⁵¹ *Ibid.* at 14.

⁵² Paragraphs 37.2(2)(a), (d), (f), (h) and (i) of the *Regulations*.

Likely performance of the foreign industry

[60] Ukraine's GDP fell with the onset of the conflict with Russia in 2014 and has not yet returned to pre-conflict levels.⁵³ The COVID-19 pandemic has exacerbated the situation. In June 2020, the IMF projected that Ukrainian real GDP would contract by 8.2 percent in 2020 and grow by only 1.1 percent in 2021 and 3.0 percent in 2022.⁵⁴

[61] The evidence confirms that the Ukrainian steel industry is heavily export-oriented. Steel exports as a share of production were 71.3 percent in 2017 and again in 2018.⁵⁵ In the first five months of 2020, Ukraine exported 83.5 percent of its steel production and consumed only 16.5 percent in its domestic market. Flat products (including steel plate) represented 32 percent of steel exports in the first five months of 2020.⁵⁶ In its questionnaire response, Metinvest reported that it exported a significant proportion of its production of subject goods.⁵⁷

[62] According to CRU, Ukrainian steel plate production and exports increased in 2019 as compared to 2018.⁵⁸ CRU projects that production on Ukrainian reversing mill equipment as well as plate consumption are expected to decrease in 2020 and then increase in 2021 and 2022, although production is still expected to outpace consumption.⁵⁹ Total capacity is expected to remain stable.⁶⁰

[63] Metinvest argued that the CRU production and capacity numbers are vastly overstated due to the inclusion of data from plate production facilities in areas affected by the conflict with Russia. Metinvest and the Ministry for Development of Economy, Trade and Agriculture of Ukraine argued that production at these facilities should not be considered part of Ukrainian production. Metinvest also submitted that it is not possible for any goods produced by those mills to be sold outside of "occupied territory".⁶¹ Algoma acknowledged that the CRU data include plate production data from facilities in conflict-affected areas but submitted that the Tribunal can still consider the trends in the data as Metinvest accounts for the majority of plate production in Ukraine. In contrast, Algoma noted that the practical plant capacity reported by Metinvest in its Tribunal questionnaire response was inconsistent with CRU information, with information submitted by Metinvest to the CBSA, and with Metinvest's response to the Tribunal's questionnaire in expiry review No. RR-2014-002. As a result, the Tribunal requested an updated questionnaire response from Metinvest, which was provided on September 8, 2020.⁶² This response forms part of the record and was considered by the Tribunal in its analysis.

[64] The evidence indicates that, even excluding the data from production facilities located within conflict-affected areas, the production capacity of the Ukrainian steel plate industry remains significant as compared to Canadian domestic production and the size of the Canadian market.⁶³

⁵³ Exhibit RR-2019-004-G-01 at 7.

⁵⁴ Exhibit RR-2019-004-A-01, Attachment 29 at 367.

⁵⁵ *Ibid.*, Attachment 45 at 445.

⁵⁶ *Ibid.*, Attachment 41 at 440.

⁵⁷ Exhibit RR-2019-004-06 (protected), Table 37.

⁵⁸ Exhibit RR-2019-004-24.06 (protected) at 238.

⁵⁹ Exhibit RR-2019-004-A-04 (protected), Attachment 5, Table 4.3, and Attachment 6, Tables S3, S5.

⁶⁰ *Ibid.*, Attachment 6, Global Capacity Table.

⁶¹ Exhibit RR-2019-004-E-03 at para. 4.

⁶² Exhibit RR-2019-004-20.01A (protected) at 3.

⁶³ Exhibit RR-2019-004-05, Table 13; Exhibit RR-2019-004-20.01A (protected) at 3.

[65] Similarly, the volume of exports of subject goods is significant as compared to the size of the Canadian market. Metinvest stressed repeatedly that Canada is not a target market for it and that exports of hot-rolled steel plate to Canada and North America (both historic and forecast) represent a fraction of its total sales. However, given the large volume of exports of subject goods that Metinvest reported in its questionnaire response, if even 1 percent of those exports were diverted to Canada, this volume could still be disruptive to the Canadian market.⁶⁴

[66] As the Ukrainian steel plate sector is heavily export-focused and domestic production is projected to outpace consumption, it is likely that significant volumes of hot-rolled steel plate will be exported. Further, there is evidence that, despite a brief increase in early 2020, plate prices in the Ukrainian market have been steadily decreasing since mid-2018 and are forecast to remain relatively flat through 2020.⁶⁵ This will further incentivize exporters to seek higher prices in export markets than those they can command in their domestic market.

Potential for diversion

[67] The European Union (EU) and Russia are among Ukraine's primary export destinations for hot-rolled steel plate.⁶⁶ Algoma submitted that economic conditions in those two markets are weak. The IMF anticipates Russia's economy will contract by 6.6 percent in 2020, before growing by 4.1 percent in 2021.⁶⁷ CRU estimates that both plate production and consumption in Russia will decline in 2020 before growing in 2021 and 2022.⁶⁸

[68] The European Commission projects that the EU economy will contract by 8.3 percent in 2020 and grow by 5.8 percent in 2021.⁶⁹ According to CRU, steel plate demand in the EU is expected to decline in 2020, before rebounding in 2021.⁷⁰ Metinvest argued that this recovery means that its products will remain in demand in the EU market. However, CRU also forecasts that reversing mill plate production, in terms of volume, will outpace demand for the same in the EU in 2020-2022.⁷¹

[69] The domestic industry argued that there are numerous trade measures on Ukrainian steel, which will push steel exporters to compete for market share wherever available.⁷² In particular, the domestic industry noted that measures have been imposed in some of Ukraine's top export markets, including the EU, the Eurasian Economic Commission (EEC), which includes Russia, and the Gulf Cooperation Council (GCC).

[70] Specifically, the EU has imposed safeguard measures on steel products, in the form of a TRQ aimed at preserving historic levels of imports, while placing a 25 percent tariff above these levels.⁷³ The EEC initiated a safeguard investigation on steel products, including hot-rolled steel plate, and in December 2019, imposed a quota on hot-rolled flat steel imports from Ukraine to members of the

⁶⁴ Exhibit RR-2019-004-20.01A (protected) at 3; Exhibit RR-2019-004-E-04 (protected), Table 1; Exhibit RR-2019-004-E-10 (protected) at para. 7.

⁶⁵ Exhibit RR-2019-004-A-02 (protected), Attachment 17 at 326.

⁶⁶ Exhibit RR-2019-004-A-01, Attachment 9; Exhibit RR-2019-004-A-01, Attachment 45 at 448.

⁶⁷ *Ibid.*, Attachment 4 at 248.

⁶⁸ Exhibit RR-2019-004-A-04 (protected), Attachment 5, Table 4.2.

⁶⁹ Exhibit RR-2019-004-A-01, Attachment 21 at 319.

⁷⁰ *Ibid.* at para. 80; Exhibit RR-2019-004-A-04 (protected), Attachment 5, Table 3.2.

⁷¹ Exhibit RR-2019-004-A-04 (protected), Attachment 5, Table 3.2.

⁷² Exhibit RR-2019-004-05, Table 2; Exhibit RR-2019-004-A-01, Attachment 62.

⁷³ Exhibit RR-2019-004-A-01, Attachments 59, 60.

ECC, which is composed of several members of the Commonwealth of Independent States, including Russia, Armenia, Belarus, Kazakhstan and Kyrgyzstan.⁷⁴ The GCC initiated a safeguard investigation on steel products, including hot-rolled steel plate, in October 2019.⁷⁵ On July 23, 2020, the GCC notified the WTO that it had made a preliminary determination of serious injury in this investigation, although no measures have yet been imposed.⁷⁶

[71] Further, the section 232 measures continue to restrict Ukrainian exporters' access to the U.S. market, and Ukrainian exports to the United States have declined since the measures were imposed in 2018.⁷⁷

[72] Metinvest argued that some of the anti-dumping measures referred to by Algoma have been in place for many years and there is no risk of diversion from these findings because Ukrainian exporters have long since stopped exporting to those regions and found alternative markets. With respect to the EU safeguard, Metinvest submitted that there is plenty of quota available to it as it is the only Ukrainian steel plate producer able to export to the EU, and that demand for its exports has actually increased as it has relatively more quota than producers in other countries. The Ministry for Development, Trade and Agriculture of Ukraine similarly argued that Ukrainian exporters maintain access to the EU market.

[73] With respect to the EEC safeguard, Metinvest submitted that it was set to expire in December 2020 and so was irrelevant to the Tribunal's examination of conditions in the next 18 to 24 months. With respect to the GCC safeguard, Metinvest submitted that, as no measures have yet been imposed, the Tribunal should not assume that this would impact plate imports in the GCC region.

[74] Algoma replied that some of the anti-dumping findings are more recent. For instance, Saudi Arabia has recently imposed 10 to 15 percent anti-dumping duties on flat products, which are estimated to impact 112,000 MT of Ukrainian flat products, including plate.⁷⁸

[75] The above demonstrates that anti-dumping, countervailing and other trade measures are in force against the subject goods in many markets, particularly in Ukraine's top export 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. In particular, safeguard actions combined with weak demand in Russia and the EU suggest that Ukrainian exporters will not be able to increase exports to those markets to absorb excess supply created by sustained domestic production levels and weak domestic demand, at least in the near term.

[76] In addition, domestic hot-rolled steel plate prices in Canada remain higher than the global average, making Canada an attractive export market. The evidence indicates that the CRU U.S. Midwest price for plate, which the Tribunal generally accepts as a proxy for the Canadian price, has been higher than prices in other non-North American markets, including Ukraine, since 2017. Further, the U.S. Midwest price is projected to remain higher than prices in other international

⁷⁴ *Ibid.*, Attachment 61.

⁷⁵ *Ibid.*, Attachment 64.

⁷⁶ Exhibit RR-2019-004-A-11, Attachment 3.

⁷⁷ Exhibit RR-2019-004-A-01, Attachment 51; Exhibit RR-2019-004-20.01A at 3.

⁷⁸ Exhibit RR-2019-004-A-01, Attachment 63 at 570.

markets until 2022, which strongly suggests that it will also remain higher than Ukrainian domestic prices.⁷⁹

[77] Finally, the domestic industry submitted that, after a finding against the subject goods was rescinded in May of 2004, Ukrainian exports to Canada resumed in high volumes and at low prices, despite the fact that, similarly to this case, there had only been small shipments that were relatively high-priced while the finding was in place.

[78] Metinvest submitted that the Ukrainian and Canadian hot-rolled steel plate markets were vastly different at that time, and that it was inappropriate to extrapolate behaviour from nearly 20 years ago to today. Metinvest also submitted that in 2004, it did not own either of its two Ukrainian mills that are currently capable of selling plate to Canada.⁸⁰

[79] Although the Tribunal agrees with Metinvest that such behaviour cannot be attributed to existing management, it remains a fact that it is a practice that has been witnessed by the Tribunal in the past and that contributes to forming its overall opinion about the likelihood of imports of subject goods in circumstances such as those in the present case.

[80] Finally, the Tribunal notes that, despite its insistence that Canada is not an important market for its exports, Metinvest also submitted that its sale to Canada in 2019 was made in part to allow it to request a normal value review, i.e. to allow it to receive individual normal values for its products, which had not been updated since 2010.⁸¹ While the Tribunal acknowledges that this would allow Metinvest to export to Canada at undumped prices, this interest in obtaining updated normal values tends to undercut Metinvest's argument that Canada is an insignificant market that is of little interest to it.

Conclusion on likely volumes

[81] Falling domestic prices in Ukraine, as well as general economic conditions in Ukraine and its primary export markets, create an incentive for exporters to find, and compete for, new export markets. In light of all of the above, the Tribunal finds that there will likely be a significant increase, in both absolute and relative terms, in the volume of subject goods if the order is rescinded.

Likely price effects of dumped goods

[82] The Tribunal must consider whether, if the order is allowed to expire, the dumping of 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.⁸² 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.

⁷⁹ *Ibid.* at paras. 149-150; Exhibit RR-2019-004-A-01, Attachment 9; Exhibit RR-2019-004-A-04 (protected), Attachment 5, Table S.18; Exhibit RR-2019-004-A-06 (protected), Attachment 20, Table S.18: Steel plate prices to 2024 (period averages). Even though specific factors can cause the Canadian prices to diverge from the U.S. Midwest price at times, the U.S. Midwest price remains a relevant and useful benchmark for Canadian prices. See *Hot-rolled Carbon Steel Plate* (13 March 2020), RR-2019-001 (CITT) at para. 118.

⁸⁰ Exhibit RR-2019-004-E-03, Attachment 8, Attachment 9 at para. 17.

⁸¹ *Ibid.* at para. 23.

⁸² Paragraph 37.2(2)(b) of the *Regulations*.

[83] Algoma submitted that the subject goods would likely re-enter Canada at low prices in order to compete with low-priced imported goods from a variety of other sources and would cause domestic prices to decline by \$75 to \$125 per MT more than prices would otherwise decline.

[84] Metinvest submitted that the subject goods command high prices in the Canadian market and are not likely to undercut the domestic industry's prices. Metinvest also submitted that it is only interested in export markets that allow sales at profitable prices, as evidenced by the fact that the only time the subject goods entered Canada during the POR was in 2019, when prices were high in the Canadian market.

[85] The Tribunal has repeatedly found that, all other things being equal, hot-rolled steel plate is a commodity product that competes on the basis of price.⁸³

[86] Although there were limited volumes of subject goods in the Canadian market during the POR, the Tribunal does not consider that the prices of the 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 hot-rolled steel plate from the United States and other non-subject countries.

[87] Unit import prices of hot-rolled steel plate from importers and domestic producers, all sources combined, trended upwards by 23 percent between 2017 and 2019 (from \$978 to \$1,207) before declining by 15 percent, from \$1,219 in interim 2019 to \$1,042 in interim 2020.⁸⁴ When looking at the aggregate import unit pricing of importers and domestic producers, U.S. imports were higher-priced in every period of the POR when compared to other non-subject countries.⁸⁵

[88] Total market unit prices increased by 17 percent from \$1,053 in 2017 to \$1,233 in 2018 before falling by 5 percent to \$1,168 in 2019. Total market prices declined 24 percent from \$1,291 in interim 2019 to \$975 in interim 2020. Market unit prices of U.S. imported hot-rolled steel plate were consistently higher than domestically produced plate prices and prices of hot-rolled steel plate imported from other non-subject countries over the POR. The market unit prices of imports from other non-subject countries undercut the domestic producers' unit selling prices in 2017 and 2018, during which sales volumes of imports from other non-subject countries increased by 50 percent. The domestic industry had the lowest aggregate market unit prices in 2019 and the first quarter of 2020.⁸⁶

[89] In addition, Algoma provided a number of specific allegations of undercutting by imports of hot-rolled steel plate from non-subject countries, including Germany, Turkey, Malaysia and Chinese Taipei. Algoma's import activity reports show significant undercutting of Algoma's prices during the POR. Algoma's evidence provides some apples-to-apples comparisons that, overall, give a sense of the level of undercutting by offshore imports beyond the annual average comparisons set out above.⁸⁷

[90] With respect to Ukrainian hot-rolled steel plate specifically, Algoma submitted evidence showing that in April 2019, Ukrainian plate was offered to a customer of Algoma at a price significantly lower than Algoma's price. Algoma lowered its price, which still remained higher than

⁸³ *Hot-rolled Carbon Steel Plate* (13 March 2020), RR-2019-001 (CITT) at para. 126.

⁸⁴ Exhibit RR-2019-004-05, Tables 22-23.

⁸⁵ Exhibit RR-2019-004-06 (protected), Table 22.

⁸⁶ Exhibit RR-2019-004-05, Tables 14, 24, 25; Exhibit RR-2019-004-06 (protected), Table 24.

⁸⁷ Exhibit RR-2019-004-A-06 (protected), Attachments 7-17.

the price of the Ukrainian plate.⁸⁸ Since the price of the Ukrainian plate included anti-dumping duties, this indicates that the Ukrainian price could have been even lower without these duties in order for the producer to win the sale. This indicates that, in order to gain market share, selling prices of the subject goods are likely to be lower than domestic industry prices, and the average selling price of U.S. imports and imports from non-subject countries.

[91] Algoma further submitted that UN Comtrade data indicates that the average export price of the subject goods from 2018 to 2019 was US\$593/MT, compared to the average North American price of US\$939/MT.⁸⁹ Algoma suggested that, adding an estimated 15 percent for freight and other costs, the subject goods would have undercut average domestic producer prices by \$256/MT in 2019.⁹⁰ The Tribunal notes that this data is based on HS Codes and may therefore include prices for goods outside of the product definition. It is unclear how much this affects price comparisons. Nevertheless, it tends to show the ability of Ukrainian exporters to price at levels that would undercut domestic industry prices.

[92] With respect to likely price depression, Mr. Rory Brandow of Algoma estimated that rescinding the finding would cause prices to drop by approximately \$75/MT to \$125/MT. This estimate was based on the degree of undercutting by the subject goods in 2019 as well as on Ukraine's export pricing in other markets, as described above.⁹¹

[93] While the subject goods had a limited presence during the POR, it is reasonable to consider that, in order to increase their market share, the subject goods would have to compete with products from other sources that are already present in the market, including low-priced imports and domestic products. This suggests a price that is lower than the price of the domestic products.

[94] The availability of subject goods at prices that are below domestic prices would incentivize buyers to purchase the subject goods, especially domestic buyers who also face a recessionary economy with an unpredictable timeline for expected recovery, underpinned by volatility and uncertainty caused by the pandemic. The resulting import prices would likely undercut and depress domestic prices.

Conclusion on likely price effects

[95] Accordingly, on the basis of the evidence, the Tribunal finds that the rescission of the order would likely result in the subject goods being imported at prices that would cause significant adverse price effects over the next 24 months.

Likely impact of the subject goods on the domestic industry

[96] The Tribunal will assess the likely impact of the above volumes and prices on the domestic industry if the order were rescinded,⁹² taking into consideration the domestic industry's recent

⁸⁸ *Ibid.* at para. 41 and Attachment 18.

⁸⁹ Exhibit RR-2019-004-A-01 at para. 187 and Attachment 9; Exhibit RR-2019-004-A-04 (protected), Attachment 5, Table S.18.

⁹⁰ Exhibit RR-2019-004-A-01, Table 10, para. 189 and Attachment 9; Exhibit RR-2019-004-05, Tables 24, 39.

⁹¹ Exhibit RR-2019-004-A-05 at paras. 55-56, 59; Exhibit RR-2019-004-A-13 at 6.

⁹² Paragraphs 37.2(2)(e) and (g) of the *Regulations*.

performance. 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.⁹³

Recent performance

[97] The domestic industry improved its market share during the POR, gaining 10 percentage points overall over the full POR and 2 percentage points in interim 2020 in comparison to interim 2019.⁹⁴ However, this gain was not reflected in its financial position, which showed a downturn after peaking in 2018.⁹⁵ In 2019 and interim 2020, the domestic industry faced volatile conditions⁹⁶ that have had a negative impact on its financial performance and negated the relatively stronger position that existed in 2018.

[98] Total production trended upward during the beginning of the POR, reaching a peak in 2018, before decreasing in 2019. The upward trend continued again in interim 2020 when compared to interim 2019.⁹⁷

[99] The trend in the domestic industry's selling price was similar to trends in production for the duration of the POR. After reaching a peak in 2018, domestic industry selling prices dropped in 2019 and in interim 2020 in comparison to interim 2019.⁹⁸

[100] Similarly, after increasing in 2018, the domestic industry's profitability decreased significantly in 2019 and in interim 2020 in comparison to interim 2019. Both the gross margin and the net income before taxes show an increasingly downward trend.⁹⁹

[101] Capacity utilization rates for plate remained low, but essentially stable throughout the POR, peaking at 33 percent during interim 2020.¹⁰⁰

[102] While there was a slight uptick in the total number of employees in 2018, employment levels remained generally stable during the POR.¹⁰¹ The downturn in 2019 caused some layoffs at Algoma's facilities. Additionally, temporary layoffs were caused by the COVID-19 pandemic, but the layoffs were mitigated and relatively brief.¹⁰² Productivity levels remained generally steady throughout the POR.¹⁰³

[103] The volume of domestic sales from domestic production increased between 2017 and 2019 before declining in interim 2020 as compared to interim 2019.¹⁰⁴ The domestic industry also faced

⁹³ See paragraph 37.2(2)(k) of the *Regulations*.

⁹⁴ Exhibit RR-2019-004-05, Table 15.

⁹⁵ Exhibit RR-2019-004-06A (protected), Table 30.

⁹⁶ These volatile conditions included declines in plate prices and the variable nature of costs. See Exhibit RR-2019-004-05, Table 25; Exhibit RR-2019-004-06A (protected), Table 30; Exhibit RR-2019-004-06 (protected), Table 31.

⁹⁷ Exhibit RR-2019-004-05, Table 7.

⁹⁸ *Ibid.*, Table 24.

⁹⁹ Exhibit RR-2019-004-05A, Table 30.

¹⁰⁰ Exhibit RR-2019-004-05, Table 33.

¹⁰¹ *Ibid.*, Tables 33-34.

¹⁰² Exhibit RR-2019-004-A-03 at paras. 29-30.

¹⁰³ Exhibit RR-2019-004-05, Tables 33-34.

¹⁰⁴ *Ibid.*

significant declines in export volumes throughout most of the POR until 2020, when export volumes improved, likely attributable, in part, to the removal of section 232 measures.¹⁰⁵

[104] As noted above, due to the ongoing economic impact of the COVID-19 pandemic and the uncertainty surrounding the projections for the expected recovery, the Tribunal requested data from domestic producers concerning their performance in the second quarter of 2020.

[105] Generally, domestic producers reported a decrease in orders and sales prices in the second quarter of 2020.¹⁰⁶ While SSAB reported some improvement in demand more recently, as provinces open up, it submitted that the budgets available for construction and infrastructure projects remain modest and insufficient to increase demand in a way that would drive a material increase in prices.¹⁰⁷

Likely performance of the domestic industry if the order is rescinded

[106] The domestic industry argued that it is in a vulnerable state, as prices dropped precipitously in the second half of 2019 and had only just begun to recover in the first quarter of 2020, when the COVID-19 pandemic shutdowns caused them to fall again. Going forward, while the economy in general and the plate market in particular are expected to begin to recover after the third quarter of 2020, full recovery in demand and prices is not expected until after 2022.

[107] In this context, the domestic industry submitted that the rescission of the finding will lead to resumed injury through volume and price pressures, which will negatively impact employment levels and investments.

[108] Metinvest submitted that the domestic industry performed well over the POR and is well positioned to maintain its strong financial performance, even despite the impact of the pandemic. For instance, Metinvest pointed out that the domestic industry is receiving government financial assistance in the form of various wage subsidy programs.

[109] The Tribunal has already found that, if the finding is rescinded, significant volumes of 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 undercutting and price depression effects of the subject goods are likely to result in the domestic industry losing sales and having to lower prices. Consequently, this is likely to force production to drop, driving up the cost of production and leading to layoffs at a time of relatively high unemployment. Overall, these effects are likely to significantly affect the profitability of the domestic industry. In this respect, the Tribunal considers that if the domestic industry's prices were to decline by the amount estimated by Mr. Brandow, it is not unreasonable to expect that this drop would have a significant impact on the domestic industry's profitability. In such circumstances, investments in innovation that would improve the profitability and efficiency of the domestic industry over the long term would be placed in jeopardy.

[110] In summary, the Tribunal is satisfied that, if the order is rescinded, the domestic industry will likely experience injury in terms of reduced production, sales, profitability, employment, and return on investment, and that such injury will be material.

¹⁰⁵ *Ibid.*

¹⁰⁶ Exhibit RR-2019-004-RI-01A (protected) at 2; Exhibit RR-2019-004-RI-03A (protected) at 1; Exhibit RR-2019-004-RI-02A (protected) at 2.

¹⁰⁷ Exhibit RR-2019-004-RI-02 at 2.

Factors other than the dumping

[111] Metinvest emphasized the speculative nature of predictions of post-pandemic economic recovery and cautioned against basing a continuation of anti-dumping duties, even partly, on speculative and poorly understood pandemic-related economic uncertainty. The Ministry for Development of Economy, Trade and Agriculture of Ukraine similarly argued that there is no causal link between pandemic-related economic difficulties and the subject goods.

[112] Algoma replied that the economic effect of COVID-19 is relevant not as a cause of injury in and of itself but as a factor that goes to the likelihood that injury will be suffered.

[113] The Tribunal is mindful that it must not conflate the damage caused by COVID-19 shutdowns, and the challenges of the projected recovery, with the potential effects of the resumption of dumping. With respect to the former, the Tribunal notes that, unlike in an injury inquiry, the Tribunal does not examine the presence of past injury caused by the subject goods. It is taken as a given that the subject goods were not a cause of injury during the Tribunal's POR. However, the Tribunal has previously found that it must take the domestic industry as it finds it,¹⁰⁸ and it cannot ignore that the impact of the pandemic on the domestic industry's performance in the first quarter of 2020 has made it more vulnerable to injury.

[114] The pandemic and the projected economic recovery are also important context for the Tribunal's forward-looking analysis of the likelihood of injury if the order were rescinded and have accordingly been factored into the discussion of both international and domestic economic conditions and forecasts throughout these reasons. It is important to note that there is nothing to indicate that the pandemic would have a disproportionate effect on the domestic industry as compared to its global counterparts.

[115] To be clear, the Tribunal is aware that the domestic industry will have to weather the effects of the pandemic even if the finding is continued. The Tribunal nevertheless finds that the subject goods would cause injury to the domestic industry over and above the impact of the pandemic.

[116] Metinvest submitted that competition with U.S. imports is another potential cause of injury, as imports from the United States are a significant part of the Canadian market and have regained some of the market share lost during the POR in the first quarter of 2020. Algoma submitted that this increase is mainly due to imports by SSAB and that the goods were imported at non-injurious prices.

[117] Generally, plate from the United States tends to be imported at prices similar to those of the domestic industry. Further, as noted above, the domestic industry increased its market share over the POR; the increase in market share for U.S. imports in 2020 came at the expense of other import sources. Accordingly, U.S. imports do not seem to represent a potential source of injury in terms of either lost volumes or price undercutting.

[118] Competition from low-priced offshore imports from sources other than the United States, which were present in the market in greater volumes during the POR, could also represent another cause of injury. As stated above, Ukrainian exporters 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 non-subject countries, on the basis of

¹⁰⁸ *Greenhouse Bell Peppers* (30 October 2015), RR-2014-005 (CITT) at para. 108.

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.

[119] Accordingly, for the above reasons, the Tribunal finds that the continued or resumed dumping of the subject goods will likely result, in and of itself, in material injury to the domestic industry.

CONCLUSION

[120] On the basis of the foregoing analysis, and pursuant to paragraph 76.03(12)(b) of *SIMA*, the Tribunal hereby continues its order in respect of hot-rolled carbon steel plate and high-strength low-alloy steel plate from Ukraine.

Susan D. Beaubien

Susan D. Beaubien
Presiding Member

Randolph W. Heggart

Randolph W. Heggart
Member

Serge Fréchette

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Member