Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Inquiry NQ-2013-005R

Hot-rolled Carbon Steel Plate

Order issued
Thursday, September 8, 2022

Reasons issued
Friday, September 23, 2022

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IN THE MATTER OF a review, pursuant to paragraph 76.1(1)(b) of the *Special Import Measures Act*, of the threat of injury finding made by the Canadian International Trade Tribunal on May 20, 2014, in inquiry 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 a request by the Minister of Finance under paragraph 76.1(1)(b) of the *Special Import Measures Act* (SIMA), has conducted a review of its threat of injury finding made on May 20, 2014, in inquiry 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 (South Korea).

On August 7, 2020, the President of the Canada Border Services Agency, pursuant to paragraph 76.1(2)(b) of SIMA, continued the final determination of dumping in respect of the aforementioned goods originating in or exported from South Korea with the following amendment: the termination of the dumping investigation in respect of the aforementioned goods exported from South Korea by Hyundai Steel Company (Hyundai Steel).

Further to its review, the Tribunal continues, pursuant to paragraph 76.1(2)(b) of SIMA, its threat of injury finding in respect of the aforementioned goods, other than those exported from South Korea by Hyundai Steel. For greater certainty, the product exclusions granted by the Tribunal in inquiry NQ-2013-005 and in expiry review RR-2019-001 remain in effect.

Peter Burn

Peter Burn
Presiding Member

Georges Bujold

Georges Bujold
Member

Susan D. Beaubien

Susan D. Beaubien
Member

The statement of reasons will be issued within 15 days.

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STATEMENT OF REASONS

INTRODUCTION

[1] The Canadian International Trade Tribunal, pursuant to a request by the Minister of Finance under paragraph 76.1(1)(b) of the *Special Import Measures Act*[1] (SIMA), has conducted a review of its threat of injury finding made on May 20, 2014, in inquiry 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 (South Korea) (the subject goods).

[2] For the reasons that follow, the Tribunal continues, pursuant to paragraph 76.1(2)(b) of SIMA, its threat of injury finding in respect of the subject goods, other than those exported from South Korea by Hyundai Steel Company (Hyundai Steel).

BACKGROUND

[3] On April 17, 2014, the Canada Border Services Agency (CBSA) made a final determination of dumping in respect of the subject goods. While the CBSA found that the subject goods exported to Canada by Hyundai Steel were dumped by a margin of 1.9 percent (when expressed as a percentage of the export price of the goods), it did not terminate its investigation in respect of these goods, as it had determined that the margin of dumping of all subject goods originating in or exported from South Korea was 29.2 percent and therefore not "insignificant".[2] At the time, subsection 41(1) of SIMA only provided that the CBSA would terminate an investigation in respect of the goods of a *country* if the margin of dumping of the goods of *that country* was insignificant.[3]

[4] On May 20, 2014, the Tribunal issued its finding in inquiry NQ-2013-005 (*Plate VII*).[4] The Tribunal found that the dumping of the subject goods had not caused injury but was threatening to cause injury to the domestic industry.[5] This provided the CBSA with the legal authority to levy and collect anti-dumping duties on imports of subject goods.

[5] On March 13, 2020, following the conduct of an expiry review pursuant to subsection 76.03(3) of SIMA, the Tribunal made an order continuing, with amendment, its finding in

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1 R.S.C., 1985, c. S-15.

2 CBSA Final Determination – Statement of Reasons (2 May 2014), online: <https://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/ad1402/ad1402-i13-fd-eng.html>, at paras. 92, 102–103. Pursuant to subsection 2(1) of SIMA, a margin of dumping that is less than 2 percent of the export price of the goods is defined as insignificant. Under the World Trade Organization (WTO) Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-dumping Agreement), such a margin is referred to as being *de minimis* (see article 5.8).

3 The CBSA did terminate its investigation in respect of plate from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, as it found that the margin of dumping of the goods of that country was 1.5 percent and thus insignificant. Consequently, the Tribunal confined its inquiry to the subject goods from the countries to which the CBSA's final determination applied, i.e. Brazil, Denmark, Indonesia, Italy, Japan and South Korea (the subject countries).

4 *Hot-rolled Carbon Steel Plate* (20 May 2014), NQ-2013-005 (CITT) [*Plate VII*].

5 The Tribunal also excluded certain products from the scope of its finding.

respect of the subject goods.[6] This followed the CBSA's determination, made on October 4, 2019, that the expiry of the finding was likely to result in the continuation or resumption of dumping of the subject goods.

[6] On April 30, 2020, pursuant to paragraph 76.1(1)(a) of SIMA, the Minister of Finance requested that the President of the CBSA review its final determination of dumping in respect of subject goods exported to Canada by Hyundai Steel, having regard to the recommendations and rulings of the WTO Dispute Settlement Body (DSB) in *Canada – Anti-Dumping Measures on Imports of Certain Carbon Steel Welded Pipe from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu* (DS482), concerning the termination of investigations in respect of individual exporters with *de minimis* margins of dumping.[7]

[7] Recognizing that the outcome of the CBSA's review may have an impact on the Tribunal's threat of injury finding in *Plate VII*, the Minister of Finance further requested, pursuant to paragraph 76.1(1)(b) of SIMA, that the Tribunal review its threat of injury finding in *Plate VII* having regard to the DSB recommendations and rulings in DS482.[8]

[8] The Tribunal initiated the present review on June 1, 2020.

[9] On August 7, 2020, the CBSA completed its review of its final determination of dumping in respect of the subject goods exported to Canada by Hyundai Steel. Pursuant to paragraph 76.1(2)(b) of SIMA, the CBSA continued its final determination of dumping in respect of the subject goods originating in or exported from South Korea but terminated its dumping investigation in respect of those goods exported by Hyundai Steel.[9] Consequently, Hyundai Steel is no longer subject to the Tribunal's finding nor to this review. In its statement of reasons, the CBSA indicated that, as a result

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6 *Hot-rolled Carbon Steel Plate* (13 March 2020), RR-2019-001 (CITT). The Tribunal's order at the conclusion of the expiry review excluded certain additional products from the scope of the original finding. These exclusions, together with the ones granted in the original inquiry, are unaffected by the present order continuing the finding pursuant to paragraph 76.1(2)(b) of SIMA and thus continue to apply.

7 See the letter from the Minister of Finance (Exhibit NQ-2013-005R-01). The dispute in DS482 concerned the Tribunal's finding in *Carbon Steel Welded Pipe* (11 December 2012), NQ-2012-003 (CITT) [*CSWP*]. In its report in that dispute, the WTO panel found, *inter alia*, that Canada had acted inconsistently with its obligations under Article VI:2 of the General Agreement on Tariffs and Trade 1994 and under various provisions of the Anti-Dumping Agreement due to its failure to immediately terminate its investigation in respect of two exporters with *de minimis* margins of dumping, the treatment of imports from these exporters as "dumped imports" in the Tribunal's injury analysis, and the imposition of definitive anti-dumping duties on imports from these exporters. Panel Report, *Canada—Welded Pipe*, WT/DS482/R, at para. 8.1.

8 Following a similar request by the Minister of Finance under paragraph 76.1(1)(b) of SIMA for the Tribunal to review its threat of injury finding in *CSWP* having regard to the DSB recommendations and rulings in DS482, the Tribunal confirmed that the dumping of the subject goods in that case, excluding those exported by two named exporters with *de minimis* margins of dumping, had threatened to cause injury. The Tribunal therefore continued, with amendment, its finding in *CSWP*. See *Carbon Steel Welded Pipe* (8 December 2017), NQ-2012-003R (CITT).

9 Exhibit NQ-2013-005R-04 at 12–13. In response to the DSB recommendations and rulings in DS482, Parliament amended SIMA to enable the CBSA to terminate dumping investigations in respect of exporters with insignificant (i.e. *de minimis*) margins of dumping.

of this termination, anti-dumping duties would no longer be imposed on imports of subject goods from Hyundai Steel.[10]

[10] On August 14, 2020, the Tribunal issued a revised investigation report (Revised IR), which contained only the tables and schedules from the investigation report distributed to parties in the original inquiry that were updated as part of the present review.[11] In the revised tables, the data concerning Hyundai Steel were removed entirely from those of the subject imports from South Korea and moved to those of the non-subject imports from South Korea.[12] The Tribunal issued an addendum to the Revised IR on August 19, 2020.[13]

[11] On August 18, 2020, Algoma Steel Inc. (Algoma), a domestic plate producer, filed a notice of application for judicial review of the CBSA's decision to terminate its dumping investigation in respect of the subject goods exported from South Korea by Hyundai Steel. On August 26, 2020, further to a request made by Algoma, the Tribunal placed the present review in abeyance pending the resolution of the application for judicial review. The Federal Court of Appeal dismissed the application on May 19, 2022.[14] Consequently, on June 17, 2022, the Tribunal resumed its review.

[12] On July 6, 2022, Algoma filed submissions in support of the continuation of the Tribunal's threat of injury finding made in *Plate VII*.[15] It submitted that the evidence demonstrates that Hyundai Steel's exports to Canada were not a determinative or necessary element to the Tribunal's finding. No other submissions were received.

[13] The Tribunal has disposed of the matter without an oral hearing, having regard to the written submissions filed by Algoma, the Revised IR, the Tribunal's record in the original inquiry, its statement of reasons for the threat of injury finding made on May 20, 2014, and the DSB recommendations and rulings in DS482.

LEGAL FRAMEWORK

[14] The request by the Minister of Finance that the Tribunal review its threat of injury finding in *Plate VII* was made pursuant to paragraph 76.1(1)(b) of SIMA, which provides as follows:

> **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

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10 Exhibit NQ-2013-005R-04B at 9 (para. 35). The CBSA made a similar statement in its notice of conclusion of the review of final determinations of dumping (online: <https://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/ad1402-1404/ad1402-1404-nc-eng.html>).

11 Exhibit NQ-2013-005R-11 at 5–6.

12 Due to the lack of exporter-specific data pertaining to the period of inquiry in the original inquiry, the Tribunal requested certain data from Hyundai Steel regarding its exports to Canada during this period. Details with respect to the methodology followed by the Tribunal to remove the data concerning Hyundai Steel are provided in the Revised IR (Exhibit NQ-2013-005R-11 at 7).

13 Exhibit NQ-2013-005R-11A.

14 *Algoma Tubes Inc. v. Canada (Attorney General)*, 2022 FCA 89.

15 The Tribunal's notice of review indicated that submissions were to consist solely of argument strictly in relation to the threat of injury finding, having particular regard to the Revised IR, and that no new or supplemental evidence would be accepted (Exhibit NQ-2013-005R-03 at 3).

> . . .
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> **(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.

[15] The responsibility of the Tribunal at the conclusion of the review is set out in subsections 76.1(2) and (3) of SIMA, which provide as follows:

> **(2)** On completion of a review under subsection (1), the President or the Tribunal, as the case may be, shall
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> **(a)** continue the decision, determination, re-determination, order or finding without amendment;
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> **(b)** continue the decision, determination, re-determination, order or finding with any amendments that the President or the Tribunal, as the case may be, considers necessary; or
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> **(c)** rescind the decision, determination, re-determination, order or finding and make any other decision, determination, re-determination, order or finding that the President or the Tribunal, as the case may be, considers necessary.
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> **(3)** If a decision, determination, re-determination, order or finding is continued under paragraph (2)(a) or (b) or made under paragraph (2)(c), the President or the Tribunal, as the case may be, shall give reasons for doing so and shall set out to what goods, including, if practicable, the name of the supplier and the country of export, the decision, determination, re-determination, order or finding applies.

[16] In the present case, the Minister of Finance requested that the Tribunal review its threat of injury finding in *Plate VII*, having regard to the DSB recommendations and rulings in DS482, which, for all intents and purposes, means having regard to the termination by the CBSA of its dumping investigation in respect of subject goods exported to Canada by Hyundai Steel (i.e. the *de minimis* exporter). In practical terms, the Tribunal is tasked with considering whether, with the removal of Hyundai Steel's goods, its threat of injury finding continues to be supported by the evidence on the record. This entails examining the impact of the revised data on the Tribunal's analysis in the original inquiry.

[17] In the conduct of its inquiry pursuant to subsection 42(1) of SIMA, the Tribunal had determined that the subject goods and domestically produced hot-rolled carbon steel plate products of the same description were like goods, that there was a single class of goods, and that Algoma and two other domestic producers comprised the domestic industry for the purposes of its injury analysis.[16] These determinations are unaffected by the termination of the CBSA's dumping investigation in respect of Hyundai Steel and therefore do not need to be revisited in the context of the present review.

[18] The Tribunal had also conducted its injury analysis in the original inquiry on the basis of a cumulative assessment of the effect of the dumping of the subject goods from South Korea and from

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16 *Plate VII* at paras. 40, 48, 54.

all other subject countries, pursuant to subsection 42(3) of SIMA.[17] As the conditions that must be met in order to proceed with a cumulative assessment of injury may have been impacted by the termination of the CBSA's dumping investigation in respect of Hyundai Steel, the Tribunal will first need to determine whether these conditions were still met before it can consider whether the subject goods, other than those exported to Canada by Hyundai Steel, were threatening to cause injury to the domestic industry.

[19] In considering whether goods are threatening to cause injury, the Tribunal is guided by the factors prescribed in subsection 37.1(2) of the *Special Import Measures Regulations* (Regulations).[18] Further, subsection 37.1(3) of the Regulations directs the Tribunal to consider whether a causal relationship exists between the goods and the threat of injury on the basis of the factors listed in subsection 37.1(2) and whether any factors other than the dumping of the goods are threatening to cause injury. Also of relevance is subsection 2(1.5) of SIMA, which indicates that a threat of injury finding cannot be made unless the circumstances in which the dumping of the goods would cause injury are clearly foreseen and imminent.

[20] Before proceeding with its analysis, the Tribunal will provide a brief summary of its finding in *Plate VII* in order to provide context for that analysis.

SUMMARY OF THE TRIBUNAL'S FINDING IN *PLATE VII*

[21] The Tribunal's period of inquiry (POI) in *Plate VII* was from January 1, 2010, to September 30, 2013, and included two interim periods: January 1, 2012, to September 30, 2012 (interim 2012), and January 1, 2013, to September 30, 2013 (interim 2013).

[22] As mentioned above, the Tribunal conducted its injury analysis in *Plate VII* on the basis of a cumulative assessment of the effect of the dumping of the subject goods from all subject countries, including South Korea. With respect to past injury (i.e. injury occurring during the POI), the Tribunal found that, while the dumping of the subject goods did have an adverse effect on the domestic industry, it was not, in and of itself, a cause of "material" injury. Rather, the Tribunal found that the confluence of a number of factors other than the dumping of the subject goods, including the

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17 *Ibid.* at para. 81.

18. SOR/84-927. Subsection 37.1(2) of the Regulations reads as follows:

> The following factors may be considered in determining whether the dumping or subsidizing of goods is threatening to cause injury: **(a)** the nature of the subsidy in question and the effects it is likely to have on trade; **(b)** whether there has been a significant rate of increase of dumped or subsidized goods imported into Canada, which rate of increase indicates a likelihood of substantially increased imports into Canada of the dumped or subsidized goods; **(c)** whether there is sufficient freely disposable capacity, or an imminent, substantial increase in the capacity of an exporter, that indicates a likelihood of a substantial increase of dumped or subsidized goods, taking into account the availability of other export markets to absorb any increase; **(d)** the potential for product shifting where production facilities that can be used to produce the goods are currently being used to produce other goods; **(e)** whether the goods are entering the domestic market at prices that are likely to have a significant depressing or suppressing effect on the price of like goods and are likely to increase demand for further imports of the goods; **(f)** inventories of the goods; **(g)** the actual and potential negative effects on existing development and production efforts, including efforts to produce a derivative or more advanced version of like goods; **(g.1)** the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods; **(g.2)** evidence of the imposition of anti-dumping or countervailing measures by the authorities of a country other than Canada in respect of goods of the same description or in respect of similar goods; and **(h)** any other factor that is relevant in the circumstances.

domestic industry's own imports of significant volumes of price-leading steel plate from the United States, contributed significantly to the injury sustained by the domestic industry during the POI.[19]

[23] The Tribunal did, however, find that the dumping of the subject goods was threatening to cause material injury to the domestic industry in the 24 months beyond the date of its finding based on several factors, including, *inter alia*, forecasted increases in plate excess capacity, both globally and in the subject countries, production imperatives and low maritime shipping rates prompting foreign producers facing weak domestic demand to seek to export their production, the attractiveness of the Canadian market given higher relative prices and the projected growth in sectors that relied on plate, adverse price effects on domestic producers that were evident in the latter part of the POI, plate prices beginning to flatten in the Canadian market, and opportunistic behaviour on the part of certain importers and foreign producers.[20]

ANALYSIS

[24] Before reviewing the impact that the removal of Hyundai Steel's goods has on its threat of injury finding in *Plate VII*, the Tribunal will first determine whether the conditions necessary for the conduct of a cumulative assessment of injury were still met.

Cumulation

[25] Subsection 42(3) of SIMA directs the Tribunal to make an assessment of the cumulative effect of the dumping of goods that are imported into Canada from more than one subject country if it is satisfied that (1) the margin of dumping in relation to the goods from each of those countries is not insignificant and the volume of the goods from each of those countries is not negligible;[21] and (2) such an assessment would be appropriate taking into account the conditions of competition between the goods from any of those countries and the goods from any other of those countries or the domestically produced like goods.

[26] Algoma submitted that, despite the removal of Hyundai Steel's exports, volumes of subject imports from South Korea remain non-negligible and a cumulative assessment remains warranted in the context of the present review.

[27] The Tribunal is of the view that the conditions set out in subsection 42(3) of SIMA continue to be met in this instance:

- The countrywide margins of dumping originally calculated by the CBSA for each subject country over its period of investigation,[22] including a margin of 29.2 percent for South

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19 *Plate VII* at para. 179.

20 See *Plate VII* at paras. 184–197 for the Tribunal's threat of injury analysis.

21 Subsection 2(1) of SIMA defines "negligible" as meaning a volume that represents less than 3 percent of the total volume of goods meeting the product definition that are released into Canada from all countries. However, if the total volume of imports of 3 or more countries, each accounting for less than 3 percent of the total volume of all imports, is more than 7 percent of the total volume of imports, the volume of goods of any of those countries is not negligible. The Tribunal notes that, in accordance with subsection 42(4.1) of SIMA, if the volume of dumped goods from a country is negligible, it is required to terminate its inquiry in respect of those goods.

22 The CBSA's period of investigation ran from January 1, 2012, to March 31, 2013.

Korea, *which included Hyundai Steel's margin of dumping of 1.9 percent*, were already greater than 2 percent of the export price of the goods and therefore not insignificant.[23]

- The Addendum to the Revised IR shows that some of the subject countries, including South Korea, still accounted for more than 3 percent of all plate imports during the CBSA's period of investigation and were therefore not negligible.[24] Imports from the remaining subject countries (i.e. those that individually accounted for less than 3 percent of all imports) together still accounted for more than 7 percent of all imports. Thus, the imports from all subject countries were not negligible within the meaning of subsection 2(1) of SIMA.
- In the original inquiry, the Tribunal was satisfied that the same conditions of competition existed between the subject goods and between the subject goods and the like goods on the basis that the goods were largely interchangeable, competed with each other on similar considerations of quality and price, and relied on similar channels of distribution.[25] There is nothing in the evidence or the arguments before the Tribunal to suggest that the removal of exports from Hyundai Steel would impact the Tribunal's analysis, from the original inquiry, of the conditions of competition between the remaining subject goods and between these goods and the like goods. Thus, the removal of the subject goods exported to Canada by Hyundai Steel does not materially impact the Tribunal's finding that the conditions of competition support a cumulative assessment.

[28] Consequently, the Tribunal will proceed with its analysis on the basis of a cumulative assessment of the effect of the dumping of the subject goods from South Korea, other than those exported to Canada by Hyundai Steel, and from all other subject countries.

Threat of injury

Disposable capacity and likelihood of increased dumped goods

[29] The Tribunal's threat of injury finding in *Plate VII*, insofar as it relates to the likelihood of increased volumes of dumped goods, was based on a propensity for foreign producers to export excess plate production to Canada, primarily due to the following factors:

- significant and increasing excess production capacity for plate, both globally and in the subject countries;
- production imperatives in the steel industry;
- low maritime shipping rates;
- significant Chinese excess capacity exerting pressure on the plate industries in the subject countries;
- in the case of South Korea specifically, shipbuilding orders being at relatively low levels in comparison to the past 10-year period;
- opportunistic behaviour on the part of certain importers and foreign producers; and

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23 CBSA Final Determination – Statement of Reasons (2 May 2014), online: <https://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/ad1402/ad1402-i13-fd-eng.html>, at para. 102 (Table 2).

24 Exhibit NQ-2013-005R-12A (protected), Table 1.

25 *Plate VII* at para. 78.

- attractiveness of the Canadian market given higher relative prices and the projected growth in sectors that relied on plate.[26]

[30] Of the above factors, only the one pertaining to a significant and increasing excess production capacity for plate in the subject countries is directly impacted by the removal of Hyundai Steel's goods. The remaining factors considered by the Tribunal addressed general trends and tendencies that were not specific to Hyundai Steel. For example, the Tribunal's findings with respect to the exhibition of opportunistic behaviour on the part of certain importers and foreign producers was not supported by any evidence specific to Hyundai Steel.[27]

[31] With respect to excess production capacity, Algoma submitted that the data on the record supports that any threat posed by Hyundai Steel was in no way material to the Tribunal's threat of injury finding. In particular, it submitted that the facility-specific data it filed in the original inquiry show that Hyundai Steel's total production capacity represented a relatively small proportion of the subject countries' capacity on equipment that could be used to produce plate, as well as a minority of total production capacity in South Korea. In this regard, it noted that testimony at the Tribunal's hearing in the original inquiry confirmed that Pohang Iron & Steel Co. (POSCO) was the largest producer and exporter of plate from South Korea.

[32] The Tribunal agrees that, in this case, the evidence on the record indicates that Hyundai Steel's total production capacity represented a relatively small percentage of the total production capacity in the subject countries. Indeed, the evidence indicates that, even without Hyundai Steel, the subject countries' total production capacity was still very significant throughout the POI and was still expected to increase in the 24 months following the Tribunal's finding.[28] Therefore, the Tribunal is of the view that the removal of Hyundai Steel and its associated production capacity does not materially affect the finding of fact it made in the original inquiry regarding excess production capacity in the subject countries.

[33] The Tribunal adds that, although its threat of injury analysis in the original inquiry did not specifically address the question of whether there had been a significant rate of increase of dumped goods imported into Canada during the POI,[29] to the extent that broad volumes trends did influence its decision with respect to the likelihood of increased volumes of dumped goods, the evidence on the record demonstrates that imports from Hyundai Steel would not have been a determinative factor.[30] Moreover, the data in the Revised IR indicates that, in each period of the POI, the major proportion of subject goods exported to Canada from South Korea was from producers other than Hyundai Steel.[31]

[34] In light of the foregoing, the Tribunal finds that the removal of Hyundai Steel's goods does not provide a basis to change the finding it made in the original inquiry that foreign producers in the

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26 *Ibid.* at paras. 186–193.

27 See *Plate VII* at para. 191 and the evidence referenced in the footnotes to that paragraph.

28 See Exhibit NQ-2013-005-A-03 at para. 52 (Table 2); Exhibit NQ-2013-005-A-04 (protected) at para. 51 and Confidential Attachment 3 (single copy exhibit). This information is summarized in Algoma's brief. See Exhibit NQ-2013-005R-19.01 (protected) at 16 (Table 2).

29 See paragraph 37.1(2)(b) of the Regulations.

30 Exhibit NQ-2013-005R-08E (protected), Tables 39–41; Exhibit NQ-2013-005R-12 (protected), Tables 1–3.

31 Exhibit NQ-2013-005R-12 (protected), Table 1.

subject countries had a propensity to export excess plate production to Canada and that this would likely lead to an increase in the import volumes of dumped goods.

Likely price effects and performance of the domestic industry

[35] With respect to likely price effects and the likely performance of the domestic industry, the Tribunal's analysis in the original inquiry focused on the following key factors:

- adverse price effects, particularly price suppression, were evident in the latter part of the POI;
- while the Canadian plate market had shown signs of recovery in early 2014, prices were beginning to flatten, and it was anticipated that longer-term recovery may have been more modest than originally envisioned; and
- opportunistic behaviour on the part of foreign producers would likely impede the ability of the domestic industry to maintain sales, realize better margins and improve its financial situation.[32]

[36] On their face, the above factors are not directly impacted by the removal of Hyundai Steel's goods. Price suppression is established by having regard to the domestic industry's consolidated income statements[33] and price effects caused by a slower than anticipated recovery in the Canadian market are not directly related to Hyundai Steel's exports to Canada. As for the opportunistic behaviour exhibited by foreign producers, the Tribunal has already confirmed above that this finding was not supported by evidence specific to Hyundai Steel.

[37] That being said, while price depression and suppression (both of which were present in the latter part of the POI)[34] are price effects that are established by having regard to domestic industry data, the Tribunal has frequently stated that these are typically the result of price undercutting.[35] Therefore, given the possibility that the price suppression (and, to a lesser degree, the price depression) found by the Tribunal in the original inquiry were caused or influenced by the prices of the subject goods, the Tribunal should assess whether the removal of Hyundai Steel's goods would have affected these prices and thus possibly its finding of adverse price effects in the latter part of the POI. This, in turn, would have influenced its finding of likely adverse price effects in the following 24 months.

[38] In this regard, Algoma submitted that the revised import unit values for interim 2013 (i.e. the most recent period of the POI and the most relevant for purposes of the Tribunal's threat of injury analysis) show that other subject goods were more likely than those of Hyundai Steel to have significant price effects and cause an increase in demand for further imports. Algoma added that, while Hyundai Steel's imports or impact on the market was not raised once during the public hearing in the original inquiry, the Tribunal did hear testimony that imports from South Korean producer POSCO had negatively impacted prices in interim 2013.

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32 *Plate VII* at paras. 194–197.

33 This is typically done by comparing the domestic industry's average unit costs of goods sold or costs of goods manufactured with its average unit selling values in the domestic market.

34 Exhibit NQ-2013-005R-07, Table 54; Exhibit NQ-2013-005R-08 (protected), Table 92.

35 See, for example, *Decorative and Other Non-structural Plywood* (19 February 2021), NQ-2020-002 (CITT) at para. 131.

[39] The Tribunal agrees with the position put forth by Algoma, as the revised import unit values for interim 2013 do indeed indicate that other subject goods likely had greater price effects and impact on the market.[36] Furthermore, the evidence on the record indicates that the removal of Hyundai Steel's goods had a very minimal impact on both import and market unit values for subject goods (on a cumulated basis) throughout the POI.[37] This means that, to the extent that the Tribunal's finding of adverse price effects in the latter part of the POI and likely adverse price effects in the future were influenced by the prices of subject goods, imports from Hyundai Steel would not have been a determinative factor.

[40] Consequently, the Tribunal finds that the removal of Hyundai Steel's goods does not provide a basis to change the finding it made in the original inquiry that the subject goods were likely to cause adverse price effects and negatively impact the performance of the domestic industry.

Conclusion

[41] The Tribunal therefore finds that exports of subject goods from Hyundai Steel were not a determinative factor in the Tribunal's threat of injury analysis in the original inquiry and the impact of removing these goods is limited and insufficient to justify the rescission of the Tribunal's finding. Accordingly, the Tribunal confirms that the dumping of the subject goods, other than those exported to Canada by Hyundai Steel, threatened to cause material injury to the domestic industry.

REQUEST FOR THE TRIBUNAL TO CLARIFY THAT DUTIES SHOULD HAVE CONTINUED TO APPLY

[42] In its submissions, Algoma took issue with the CBSA's decision to cease imposing anti-dumping duties on imports of subject goods from Hyundai Steel.[38] In its view, the CBSA did not have jurisdiction to do so in advance of the Tribunal's decision in the present review, as subsection 3(1) of SIMA requires that duty be levied, collected and paid on all dumped goods imported into Canada "in respect of which the Tribunal has made an order or finding". It therefore reasoned that, unless or until the Tribunal excludes Hyundai Steel at the conclusion of this proceeding, SIMA provides that the imposition of duties on imports of plate from Hyundai Steel remains mandatory.

[43] Algoma therefore requested that the Tribunal clarify that anti-dumping duties should have continued to apply on all imports of subject goods from Hyundai Steel until the completion of the present review. Although Algoma recognized that the Tribunal has no authority to review the decision made by the CBSA under section 76.1 of SIMA, it submitted that it would be appropriate

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36 Exhibit NQ-2013-005R-12 (protected), Table 7.

37 Exhibit NQ-2013-005R-08E (protected), Tables 45, 54; Exhibit NQ-2013-005R-12 (protected), Tables 7, 9. The Tribunal notes that the market unit values for non-subject goods from South Korea (i.e. for Hyundai Steel) found at Table 9 of the Revised IR were incorrect, which had the effect of skewing the market unit values for South Korea and the subject countries as a whole. Once the methodology explained at page 7 of the Revised IR was applied to Hyundai Steel's import unit values (i.e. the application of a markup to obtain a net delivered selling value in the Canadian market), the resulting market unit values for the subject goods were very similar to those in the original investigation (i.e. those including Hyundai Steel).

38 As previously mentioned, in both its statement of reasons and its notice of conclusion of the review of final determinations of dumping, the CBSA indicated that, as a result of the termination of its dumping investigation in respect of subject goods exported to Canada by Hyundai Steel, anti-dumping duties would no longer be imposed on those goods.

for the Tribunal to make such clarification, as it is the body endowed with the jurisdiction the CBSA has purported to exercise.

[44] Having considered the matter, the Tribunal has determined that it would be inappropriate for it to make the clarification sought by Algoma. As noted by Algoma, the Tribunal has no authority to review the CBSA's decision made pursuant to section 76.1 of SIMA (assuming that this was actually a decision *made* under that provision). Further, other than in the context of appeals filed with the Tribunal under section 61 of SIMA (which is clearly not the case here), the Tribunal is without authority to review decisions made by the CBSA with respect to duty enforcement.

[45] The Tribunal adds that, even if it could have reviewed the CBSA's decision to cease imposing anti-dumping duties on imports of subject goods from Hyundai Steel, the Tribunal may not have come to the same conclusion as Algoma, as there are several cogent arguments that could be made in support of the CBSA's position on this issue.[39]

[46] In light of the foregoing, the Tribunal will not, in the context of this review, make any pronouncements on whether anti-dumping duties should have continued to apply on imports of subject goods from Hyundai Steel until the date of the present order.

CONCLUSION

[47] The Tribunal continues, pursuant to paragraph 76.1(2)(b) of SIMA, its threat of injury finding in respect of the subject goods, other than those exported from South Korea by Hyundai Steel. For greater certainty, the product exclusions granted by the Tribunal in inquiry NQ-2013-005 and in expiry review RR-2019-001 remain in effect.

Peter Burn

Peter Burn
Presiding Member

Georges Bujold

Georges Bujold
Member

Susan D. Beaubien

Susan D. Beaubien
Member

[39] The Tribunal notes that it did not receive any submissions on this issue, or on any issue for that matter, from parties opposed in interest to Algoma.