



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Expiry review RR-2021-001

Flat Hot-rolled Carbon and Alloy
Steel Sheet and Strip

*Order and reasons issued
Friday, May 13, 2022*

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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 August 12, 2016, in expiry review RR-2015-002, concerning:

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

ORDER

The Canadian International Trade Tribunal, pursuant to subsection 76.03(3) of the *Special Import Measures Act* (SIMA), has conducted an expiry review of the order made on August 12, 2016, in expiry review RR-2015-002, continuing its order made on August 15, 2011, in expiry review RR-2010-001, continuing its order made on August 16, 2006, in expiry review RR-2005-002, continuing its finding made on August 17, 2001, in inquiry NQ-2001-001, concerning the dumping of flat hot-rolled carbon and alloy steel sheet and strip, including secondary or non-prime material, in various widths from 0.75 in. (19 mm) and wider, and (a) for product in coil form, in thicknesses from 0.054 in. to 0.625 in. (1.37 mm to 15.875 mm) inclusive, and (b) for product that is cut to length, in thicknesses from 0.054 in. up to but not including 0.187 in. (1.37 mm up to but not including 4.75 mm), excluding (i) flat-rolled stainless steel sheet and strip and (ii) flat hot-rolled, cut to length alloy steel products containing no less than 11.5 percent manganese, in thicknesses from 0.12 in. to 0.19 in. (3 mm to 4.75 mm), originating in or exported from Brazil, the People's Republic of China and Ukraine, and the subsidizing of such goods originating in or exported from India.

Pursuant to paragraph 76.03(12)(b) of SIMA, the Tribunal continues its order with respect to the dumping of the aforementioned goods originating in or exported from Brazil and the People's Republic of China and the subsidizing of the aforementioned goods originating in or exported from India.

Pursuant to subparagraph 76.03(12)(a)(ii) of SIMA, the Tribunal rescinds its order with respect to the dumping of the aforementioned goods originating in or exported from Ukraine.

Susan D. Beaubien

Susan D. Beaubien
Presiding Member

Cheryl Beckett

Cheryl Beckett
Member

Georges Bujold

Georges Bujold
Member

Place of Hearing: Ottawa, Ontario
Dates of Hearing: March 7 to 10, 2022

Tribunal Panel: Susan D. Beaubien, Presiding Member
Cheryl Beckett, Member
Georges Bujold, Member

Tribunal Secretariat Staff: Helen Byon, Lead Counsel
Heidi Lee, Counsel
Yannick Trudel, Counsel
Mylène Lanthier, Lead Analyst
Rebecca Campbell, Analyst
Erin Stach, Analyst
Marie-Josée Monette, Data Services Advisor
Kaitlin Fortier, Registrar Officer
Kim Gagnon-Lalonde, Registrar Officer

PARTICIPANTS:**Domestic Producers**

Algoma Steel Inc.
Stelco Inc.

ArcelorMittal Dofasco G.P.

Evraz Inc. NA Canada

United Steelworkers

Counsel/Representatives

Annie Arko
Benjamin P. Bedard
Manon Carpentier
Linden Dales
Greg Landry

Paul Conlin
Shannon L. McSheffrey
Nasrudin Mumin
Anne-Marie Oatway
M. Drew Tyler

E. Melisa Celebican
Christopher J. Cochlin
Alexander Hobbs
Christopher J. Kent
Andrew M. Lanouette
Jordan Lebold
Hugh Seong Seok Lee
Marc McLaren-Caux
Michael Milne
Jan M. Nitoslowski
Cynthia Wallace

Raghav Jain
Craig Logie
Mark Rowlinson
Christopher Somerville

Importers/Exporters/Others

Embassy of Brazil
Embassy of Ukraine in Canada
SSAB Central Inc.

The Department of Foreign Economic Activity
and Trade Defence, Ministry of Economy of
Ukraine

Usinas Siderúrgicas de Minas Gerais S.A.
(Usiminas)

Counsel/Representatives

Felipe Alexandre Gomes Sequeiros
Petro Petrenko
Alison FitzGerald
Erika Woolgar

Hanna Kizina
Olena Radchenko

Peter Clark

WITNESSES:

Vasudha Seth
Director, General Industry Sales
ArcelorMittal Dofasco G.P.

Brian Healey
General Manager, Distribution and Tubular
Industries
ArcelorMittal Dofasco G.P.

Robert Dionisi
Chief Commercial Officer
Algoma Steel Inc.

Laura Devoni
Director of Business Analytics & Government
Affairs
Algoma Steel Inc.

Gregory Anderson
Vice President, Sales
Stelco Inc.

Stephen Dunstall
Vice-President Purchasing – Carbon Flat-Rolled
Samuel, Son & Co., Limited

Rebecca McCracken
President, Local 2724
United Steelworkers

Gerardo Tadeo Delgado Izarra
Commercial Planning General Manager
Usinas Siderúrgicas de Minas Gerais S.A.
(Usiminas)

Henry Wegiel
Director of Government and Trade Relations
ArcelorMittal Dofasco G.P.

James Mauro
Director, Financial Controlling
ArcelorMittal Dofasco G.P.

Rory Brandow
Regional Sales Director
Algoma Steel Inc.

Trevor Harris
Vice President, Corporate Affairs
Stelco Inc.

Beric Sykes
Senior Vice President
Nova Steel Inc.

Randy Graham
President, Local 8782
United Steelworkers

John Kallio
Recording Secretary, Local 2251
United Steelworkers

Roberto Tavares Pinto Coelho
Foreign Trade General Manager
Usinas Siderúrgicas de Minas Gerais S.A.
(Usiminas)

Luciano Gonzales Ramos
Commercial Planning Specialist
Usinas Siderúrgicas de Minas Gerais S.A.
(Usiminas)

Isabela Cristina De Almeida Martins Effori
Commercial Planning Analyst
Usinas Siderúrgicas de Minas Gerais S.A.
(Usiminas)

Please address all communications to:

The Registrar
Telephone: 613-993-3595
Email: citt-tcce@tribunal.gc.ca

STATEMENT OF REASONS

INTRODUCTION

[1] The Canadian International Trade Tribunal, pursuant to subsection 76.03(3) of the *Special Import Measures Act* (SIMA),¹ has conducted an expiry review of the order made on August 12, 2016, in expiry review RR-2015-002,² continuing with amendment the order made on August 15, 2011, in expiry review RR-2010-001,³ continuing with amendment the order made on August 16, 2006, in expiry review RR-2005-002,⁴ continuing with amendment the finding in inquiry NQ-2001-001,⁵ concerning the dumping of certain flat hot-rolled carbon and alloy steel sheet and strip originating in or exported from Brazil, the People's Republic of China (China) and Ukraine, and the subsidizing of certain flat hot-rolled carbon and alloy steel sheet and strip originating in or exported from India (the subject goods).

[2] Under SIMA, findings of injury or threat of injury and the associated protection in the form of anti-dumping or countervailing duties expire five years from the date of the finding or, if one or more orders continuing the finding have been made, the date of the last order made under paragraph 76.03(12)(b), unless the Tribunal initiates an expiry review before that date. The order in *Steel Sheet RR 2016* was scheduled to expire on August 11, 2021.

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

PROCEDURAL BACKGROUND

[4] The Tribunal issued its notice of expiry review on July 9, 2021. This notice triggered the initiation of an investigation by the Canada Border Services Agency (CBSA) on July 12, 2021, to determine whether the expiry of the Tribunal's order was likely to result in the continuation or resumption of dumping and subsidizing of the subject goods.⁶

[5] On December 6, 2021, 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 and subsidizing of the subject goods.⁷

[6] Following the CBSA's determination, the Tribunal began its expiry review on December 7, 2021, pursuant to subsection 76.03(10) of SIMA, to determine whether the expiry of the order was likely to result in injury to the domestic industry.

[7] The period of review (POR) for the Tribunal's expiry review comprised three calendar years (January 1, 2018, to December 31, 2020) and the interim period of January 1 to September 30, 2021

¹ R.S.C., 1985, c. S-15.

² *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (12 August 2016), RR-2015-002 (CITT) [*Steel Sheet RR 2016*].

³ *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (15 August 2011), RR-2010-001 (CITT) [*Steel Sheet RR 2011*].

⁴ *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (16 August 2006), RR-2005-002 (CITT) [*Steel Sheet RR 2006*].

⁵ *Flat Hot-rolled Carbon and alloy Steel Sheet and Strip* (17 August 2001), NQ-2001-001 (CITT) [*Steel Sheet NQ*].

⁶ Exhibit RR-2021-001-03 at 1.

⁷ *Ibid.* See Exhibit RR-2021-001-04 (protected).

(interim 2021). For comparative purposes, information was also collected and presented for January 1 to September 30, 2020 (interim 2020).

[8] Domestic producers and importers of flat hot-rolled carbon and alloy steel sheet and strip as well as foreign producers of the subject goods were asked to respond to questionnaires from the Tribunal. The Tribunal received 4 replies to the domestic producers' questionnaire from companies stating that they produce like goods in relation to the subject goods. The Tribunal also received 22 completed replies to the importers' questionnaire, including one from a domestic producer.⁸ Finally, the Tribunal received 2 completed replies to the foreign producers' questionnaire.

[9] Using the questionnaire replies and other information on the record, staff of the Secretariat to the Tribunal prepared public and protected versions of the investigation report, which were placed on the record on January 28, 2022. Revised versions of the investigation report were placed on the record on February 15, 2022. The revisions included additional data from respondents that were received late.

[10] Algoma Steel Inc. (Algoma), Stelco Inc. (Stelco) and ArcelorMittal Dofasco G.P. (AMD) filed joint written submissions in support of a continuation of the order. A letter of support was also received from Evraz Inc. NA Canada (Evraz) as well as supporting written submissions from the United Steelworkers (USW).

[11] Usinas Siderúrgicas de Minas Gerais S.A. (Usiminas) filed written submissions opposing the continuation of the order, insofar as it pertained to exports from Brazil.

[12] By way of a motion filed on February 17, 2022, Algoma, Stelco and AMD challenged certain confidentiality designations in Usiminas's submissions.⁹ The motion was supported by the USW.¹⁰

[13] On February 18, 2022, the Tribunal directed Usiminas to review the scope of the confidentiality designations in its submissions and to limit redactions to relevant information that was confidential. Usiminas filed submissions with revised confidentiality designations on February 21, 2022. The three domestic producers accepted Usiminas's revisions to its confidentiality designations, rendering their objections moot, together with the associated motion.¹¹

[14] The Department of Foreign Economic Activity and Trade Defense of the Ministry of Economy of Ukraine filed written submissions opposing the continuation of the order. It was

⁸ Exhibit RR-2021-001-05.A at 9, 10; Exhibit RR-2021-001-06.A (protected) at 10. The Tribunal received an additional response to the importers' questionnaire, which was incomplete and therefore not included in the investigation report. See Exhibit RR-2021-001-05.A at 10.

⁹ Exhibit RR-2021-001-25; Exhibit RR-2021-001-26; Exhibit RR-2021-001-25.A; Exhibit RR-2021-001-26.A.

¹⁰ Exhibit RR-2021-001-28.

¹¹ Exhibit RR-2021-001-27.A; Exhibit RR-2021-001-26.C (protected); Exhibit RR-2021-001-26.D; Exhibit RR-2021-001-29. Usiminas's revised submissions are at Exhibit RR-2021-001-G-01.A; Exhibit RR-2021-001-G-02.A (protected); Exhibit RR-2021-001-G-03.A; Exhibit RR-2021-001-G-04.A (protected). On February 23, 2022, Usiminas filed with the Tribunal further clarification with respect to the changes to the text of the protected and public versions of its case brief in the revised submissions. Exhibit RR-2021-001-30; Exhibit RR-2021-001-26.E; Exhibit RR-2021-001-26.F (protected). At the hearing, counsel for AMD agreed to withdraw the motion. See *Transcript of Public Hearing* at 11.

represented at the hearing by the Embassy of Ukraine in Canada. Hereinafter, these entities are jointly referred to as the Government of Ukraine.

[15] SSAB Central Inc. (SSAB) and the Embassy of Brazil filed notices of participation but did not make submissions in these proceedings.

[16] On February 4, 2022, the Tribunal received requests for information (RFIs) from Algoma, AMD and Stelco directed to Usiminas. Usiminas objected to some of the RFIs. On February 11, 2022, the Tribunal issued directions requiring Usiminas to reply to certain of the contested RFIs.¹² Usiminas's response to the RFIs was received on February 21, 2022.¹³

[17] The Tribunal informed the parties on February 9, 2022, that a hearing would be held by way of videoconference starting on March 7, 2022.¹⁴ Detailed hearing procedures were provided to the parties on February 22, 2022.¹⁵

[18] In view of the invasion of Ukraine by the armed forces of the Russian Federation (Russia) that commenced on February 24, 2022, the Tribunal invited the parties, on March 1, 2022, to update their submissions and file additional evidence or submissions pertaining to the evolving situation in Ukraine as may be relevant to the issues in this expiry review.¹⁶

[19] On March 4, 2022, the Tribunal received additional individual submissions from Usiminas, the USW and AMD, as well as joint submissions from Algoma and Stelco.

[20] AMD informed the Tribunal that it no longer sought the continuation of the order with respect to the subject goods from Ukraine.¹⁷ Usiminas, Algoma, Stelco and the USW provided additional materials and submissions to assist the Tribunal but did not vary their request for continuation of the order as applied to all subject countries.

[21] The Tribunal commenced the hearing on March 7, 2022, and heard evidence from witnesses for AMD, Algoma, Stelco, the USW and Usiminas.¹⁸

[22] The Tribunal heard final arguments on March 10, 2022.

[23] The Tribunal issued its order on May 13, 2022.

¹² Exhibit RR-2021-001-RI-01 at 1.

¹³ Exhibit RR-2021-001-RI-07; Exhibit RR-2021-001-RI-07.A (protected).

¹⁴ A revised notice of expiry review of order was issued on February 9, 2022. See Exhibit RR-2021-001-02.A.

¹⁵ Exhibit RR-2021-001-31.

¹⁶ Exhibit RR-2021-001-32 at 1.

¹⁷ Exhibit RR-2021-001-D-15 at 1.

¹⁸ Prior to the hearing, each party accepted the risk of discussing its own confidential information through the Webex videoconferencing platform. As such, the Tribunal heard both public and *in camera* witness testimony through Webex.

PRODUCT

Product definition

[24] The subject goods (commonly referred to as “hot-rolled steel sheet”, “hot-rolled sheet”, “steel sheet” or simply “sheet”) are defined as follows:¹⁹

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

Additional product information²⁰

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

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

[27] The subject goods are manufactured from an alloy steel, other than stainless steel, that contains, by weight, one or more of certain specified elements in minimum specified proportions. The notes to chapter 72 of the *Customs Tariff*²¹ specify the elements and the minimum proportions for alloy steel.

Production process²²

[28] While details may vary from mill to mill, the process by which HRS is produced is generally the same for all domestic mills.

[29] HRS is rolled on a continuous strip mill at temperatures above 1600°F (870°C) from an incoming hot slab up to 9 in. (229 mm) thick. The slab can be produced from steel produced in a basic oxygen furnace or an electric arc furnace. The slab is progressively reduced to a sheet of the required thickness, 0.625 in. (15.875 mm), or less. The edges may be slit to remove minor edge imperfections and to provide closer width tolerances. Processing in the mill may include slitting or

¹⁹ *Steel Sheet RR 2016* at para. 8; Exhibit RR-2021-001-03.A at para. 23.

²⁰ *Steel Sheet RR 2016* at paras. 9–11. For additional information on the products see Exhibit RR-2021-001-03.A at paras. 24–28; *Steel Sheet NQ* at 4–5.

²¹ S.C. 1997, c. 36.

²² *Steel Sheet RR 2016* at paras. 12, 13.

shearing to remove tongues and tails from the sheet. During hot rolling, surface oxide (scale) forms, which is not acceptable for some applications. This scale may be removed by acid pickling. After pickling, rinsing and drying, an oil may be applied as a temporary protection against rust. Most HRS is sold by the domestic mills in coiled form.

Product applications²³

[30] HRS is primarily a generic commodity product. It may be sold as such in the open or merchant market or may be used by domestic mills as feedstock for further internal processing.

Merchant market

[31] In the merchant market, HRS is used in the following applications, among others:

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

Further internal processing

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

LEGAL FRAMEWORK

[33] The Tribunal is required, pursuant to subsection 76.03(10) of SIMA, to determine whether the expiry of the order in respect of the subject goods is likely to result in injury or retardation.²⁴ Pursuant to subsection 76.03(12), if the Tribunal determines that the expiry of the order is unlikely to result in injury, it is required to rescind it. However, if it determines that the expiry of the order is likely to result in injury, the Tribunal is required to continue the order, with or without amendment.

²³ *Ibid.* at paras. 14–16.

²⁴ Subsection 2(1) of SIMA defines “injury” as “material injury to the domestic industry” and “retardation” as “material retardation of the *establishment* of a domestic industry” [emphasis added]. Given that there is currently an established domestic industry, the issue of whether the expiry of the order is likely to result in retardation does not arise in this expiry review.

[34] 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”.

[35] The Tribunal must also determine whether it is appropriate to assess the likely effect of the resumed or continued dumping and subsidizing of the subject goods from all subject countries cumulatively, i.e. whether it will conduct a single analysis of the likely effect or separate analyses for certain subject countries. Relevant evidence, factors and legal arguments on the issue of whether the Tribunal’s analysis must be done separately for certain subject countries or cumulatively for all countries are addressed further below.

LIKE GOODS AND CLASSES OF GOODS

[36] In order for the Tribunal to determine whether the resumed or continued dumping and subsidizing of the subject goods is likely to cause material injury to the domestic producers of like goods, it must determine which domestically produced goods, if any, constitute like goods in relation to the subject goods. The Tribunal must also assess whether, within the subject goods and the like goods, there is more than one class of goods.²⁵

[37] 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.

[38] In deciding the issue of like goods when goods are not identical in all respects to the other goods, the Tribunal typically considers a number of factors, including the physical characteristics of the goods, such as composition and appearance, and their market characteristics, such as substitutability, pricing, distribution channels, end uses and whether the goods fulfill the same customer needs.²⁶

[39] In *Steel Sheet RR 2016*, the Tribunal found that domestically produced steel sheet is like goods in relation to the subject goods and that there is a single class of goods. In doing so, the Tribunal concluded that domestic goods are identical to, or closely resemble, imported steel sheet.²⁷ The Tribunal further found that subject goods and domestic goods cover a continuum of steel sheet products in different forms, including coils and cut-to-length sheet, and having different widths and thicknesses.²⁸ With regard to coils and cut-to-length sheet, the evidence indicated that these goods are fundamentally the same product and are substitutable for one another.²⁹

[40] The situation has not changed. Indeed, the evidence compels a finding that there are no grounds supporting a departure from, or a variation of, these findings. In their testimony, both

²⁵ 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).

²⁶ See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at para. 48.

²⁷ *Steel Sheet RR 2016* at para. 33.

²⁸ *Ibid.* at para. 34.

²⁹ *Ibid.*

Mr. Beric Sykes of Nova Steel Inc. (Nova) and Mr. Stephen Dunstall of Samuel, Son & Co., Limited (Samuel) confirmed that offshore and domestically produced HRS are interchangeable in terms of quality, availability and capabilities.³⁰ Therefore, the Tribunal finds that domestically produced steel sheet is like goods in relation to the subject goods and that there is a single class of goods.

DOMESTIC INDUSTRY

[41] 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.

[42] The Tribunal must therefore determine whether there is a likelihood of injury to the domestic producers as a whole or to those domestic producers whose production represents a major proportion of the total production of like goods.³¹

[43] There were four domestic integrated mills producing HRS covered by the product definition during the POR, namely AMD, Stelco,³² Algoma and Evraz.³³ As such, there have been no changes to the domestic industry since the previous expiry review.³⁴

[44] The Tribunal is therefore satisfied that these four producers comprise the domestic industry for the purposes of this expiry review.

[45] Accordingly, the Tribunal will therefore determine whether there is a likelihood of injury to the domestic industry consisting of these producers.

CUMULATION

[46] Subsection 76.03(11) of SIMA provides that the Tribunal shall make an assessment of the cumulative effect of the dumping or subsidizing of goods “. . . that are imported into Canada from more than one country if the Tribunal is satisfied that an assessment of the cumulative effect would be appropriate taking into account the conditions of competition . . .” between the goods imported into Canada from any of the countries and the goods from any other countries or between those goods and the like goods.

³⁰ *Transcript of Public Hearing* at 204, 214–215.

³¹ 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.

³² Stelco was formerly U.S. Steel Canada. See *Transcript of Public Hearing* at 148.

³³ Exhibit RR-2021-001-03.A at para. 32; Exhibit RR-2021-001-A-01 at paras. 11, 34.

³⁴ *Steel Sheet RR 2016* at paras. 23, 44.

[47] In considering the conditions of competition between goods, the Tribunal typically takes into account the following factors, as applicable: the degree to which the goods from each subject country are interchangeable with the subject goods from the other subject countries or with the like goods; the presence or absence of sales of imports from different subject countries and of the like goods into the same geographical markets; the existence of common or similar channels of distribution; and differences in the timing of the arrival of imports from a subject country and of those from the other subject countries, and of the availability of like goods supplied by the domestic industry.

[48] This expiry review involves subject goods from Brazil, China and Ukraine for which the CBSA determined that the expiry of the order was likely to result in the continuation or resumption of dumping. The CBSA also determined that the expiry of the order with respect to the subject goods from India was likely to result in the continuation or resumption of subsidizing in that country.

[49] In *Steel Sheet RR 2016*, the Tribunal found that it was appropriate to assess the cumulative effects of the subject goods from China, Brazil and Ukraine. The Tribunal considered that HRS from these sources was a commodity product which was interchangeable and would be marketed and distributed in the same manner. As such, the subject goods from the three countries would therefore directly compete or would compete with each other and with domestic products. The Tribunal also decided to conduct a separate likelihood of injury analysis for HRS from India based on its consideration of the World Trade Organization's (WTO) Appellate Body Report in *US – Carbon Steel (India)*.³⁵

[50] However, the domestic producers argued that, as the same conditions of competition extend to HRS from India, the Tribunal should (contrary to its decision in *Steel Sheet RR 2016*) cumulate the effects of the subject goods from India with the effects of the subject goods from the other subject countries. In this regard, Algoma, Stelco and AMD advanced submissions, as outlined further below, on the Tribunal's past interpretation and application of the cumulation provision in subsection 76.03(11) of SIMA.

[51] Another issue raised in this expiry review involves the question of whether the dumped goods from Ukraine should be assessed separately. In its submissions filed on February 15, 2022, the Government of Ukraine argued that Russian aggression, which has been ongoing since 2014, has negatively affected Ukraine's economy and steel sector. However, after the filing of these submissions, Russian troops invaded Ukraine on February 24, 2022. As a result, the Tribunal was compelled to consider the impact of this major development on Ukraine's ability to continue producing and exporting subject goods.

[52] As a consequence of its revised view that the order against subject goods from Ukraine should not be continued, AMD argued that Ukraine should not be cumulated with the other subject countries, because it is unlikely that there will be significant volumes of HRS produced in Ukraine over the foreseeable future, much less for export.

[53] In its closing arguments, the Government of Ukraine submitted that HRS from Ukraine posed no threat to the Canadian domestic industry in light of the war's impact on Ukraine and its industrial

³⁵ Appellate Body Report, *US – Carbon Steel (India)*, WT/DS436/AB/R. See also *Steel Sheet RR 2016* at paras. 45–53.

capacity. The Government of Ukraine stressed that a considerable part of Ukraine's steel-making capacity is concentrated in regions of Ukraine that are occupied by Russia.³⁶

[54] Algoma and Stelco submitted that the order against subject goods from Ukraine should be continued. In their view, the Russian invasion of Ukraine was a recent development and the duration and outcome is too uncertain to support a conclusion that injurious volumes of subject goods from Ukraine will *not* arrive in Canada in the next 12 to 24 months. The USW took the same position.³⁷

[55] Finally, with respect to the subject goods from Brazil, Usiminas submitted that the subject goods from Brazil should be assessed separately from the dumped goods from other countries. In Usiminas's view, the evidence demonstrates that there is no likelihood of resumed injurious dumping of the subject goods from Brazil where that evidence is segregated and examined on its own merit and context. Usiminas argued that, due to changed circumstances in Brazil since the original finding, it is unlikely that Brazilian imports will enter the Canadian market in significant volumes if the order is rescinded.

[56] The Tribunal will examine the relevant issues in turn.

Conditions of competition (China, Brazil and Ukraine)

[57] The assessment of the conditions of competition in an expiry review is forward-looking. A cumulated injury analysis therefore presupposes that competition will exist between the subject goods of different origins in the event of a rescission of the finding or order (i.e. in the absence of measures).³⁸ Accordingly, where those goods are not likely to be present in the Canadian market should the order expire, there is likely to be no competition between the subject goods from one country and the subject goods from any other subject country or between those goods and the like goods.

[58] The Tribunal has, in past expiry reviews, decided not to cumulate subject goods from a country where these were not likely to be present or were only likely to be present in negligible quantities in the Canadian market in the event of a rescission of the finding or order.³⁹

[59] While the evidence in this expiry review continues to indicate that HRS from all subject countries is interchangeable,⁴⁰ as discussed below, the Tribunal does not find it likely that the subject goods from Ukraine will be present in the Canadian market over the next 12 to 24 months. As such, there is likely to be no competition between HRS from Ukraine and HRS from the other subject

³⁶ *Transcript of Public Hearing* at 572.

³⁷ *Ibid.* at 105, 159, 314, 536–537; Exhibit RR-2021-001-E-09.

³⁸ See, for example, *Oil Country Tubular Goods* (30 December 2020), RR-2019-006 (CITT) [*OCTG II*] at paras. 42, 53; *Carbon Steel Welded Pipe* (24 July 2001), RR-2000-002 (CITT) [*CSWP*] at 7.

³⁹ See, for example, *OCTG II* at para. 53; *CSWP* at 7; *Hot-rolled Carbon Steel Plate* (9 January 2008), RR-2007-001 (CITT) at paras. 56–59; *Refined Sugar* (1 November 2010), RR-2009-003 (CITT) at paras. 96–102; *Refined Sugar* (28 September 2012), RR-2009-003R (CITT) at para. 54. See also *Oil and Gas Well Casing* (4 July 2001), RR-2000-001 (CITT) at 10; *CSWP* at 7.

⁴⁰ *Transcript of Public Hearing* at 204, 214–215.

countries if the order is rescinded. This conclusion provides a basis to conduct a separate analysis of the likelihood of injury with respect to the dumping of HRS from Ukraine.⁴¹

[60] In contrast, the Tribunal is not persuaded by Usiminas's arguments that it is unlikely that the subject goods from Brazil will enter the Canadian market in significant volumes if the order is rescinded. Having accounted for the relevant conditions of competition, the Tribunal is also unable to find that a separate injury analysis of the likelihood of injury with respect to the dumping of HRS from Brazil is warranted in this expiry review.

Ukraine

[61] As noted above, the Tribunal received written submissions on the situation in Ukraine and its impact on issues relevant to this expiry review from AMD, Stelco, Algoma and Usiminas on March 4, 2022. Witnesses for the parties provided additional testimony during the course of the oral hearing. Counsel for all parties and the Government of Ukraine addressed the circumstances in Ukraine during the course of oral argument.

[62] Despite the volatility and uncertainty of the Ukrainian situation, the Tribunal must conduct a forward-looking assessment and make a decision on the basis of a final record that all parties have had an opportunity to address. The Tribunal closed the record on March 11, 2022, shortly after completion of the hearing.

[63] The evidence filed with the Tribunal prior to the outbreak of the war on February 24, 2022, indicated that Ukraine would likely remain a significant exporting country for HRS. In 2020, due to government spending, Ukraine's production and consumption of HRS increased. In 2021, production increased while consumption decreased. Exports of HRS increased by 14 percent in 2020 and 32 percent in 2021. Forecasts predating the war suggested that both demand and production of HRS would decline in 2022 and remain steady in 2023 and 2024 and that, from 2022 to 2024, an average of 52 percent of Ukrainian production would be consumed domestically, with the remainder needing to find export markets.⁴²

[64] However, the Tribunal finds that this evidence is no longer an accurate or even reliable estimation of production levels, demand or exports of HRS over the next two years. The invasion has resulted in prolonged and ongoing destruction of significant parts of Ukraine's industrial infrastructure and displacement of large segments of the Ukrainian population. The wartime conditions have created volatile and unstable conditions within Ukraine that, at this time, appear

⁴¹ In fact, in *Steel Sheet RR 2011* at para. 83, that is, in the context of a previous expiry review of the order at issue in these proceedings, the Tribunal stated that, to examine the conditions of competition and determine whether it is appropriate to assess the cumulative effects of the dumping and subsidizing of HRS from Brazil, China, India and Ukraine, it must first be persuaded that HRS products from these countries are likely to be present in the Canadian market if the order is rescinded.

⁴² Exhibit RR-2021-001-D-04 (protected) at 42, 43, 368, 372, 376, 380, 384, 391, 392.

highly unlikely to normalize within a time frame that could support rebuilding of infrastructure and workforce mobilization required for the previously projected levels of HRS production.⁴³

[65] The Tribunal's record includes information on the impact of the war on Ukraine's population and infrastructure up to the closing of the record in these proceedings. For instance, it was reported on February 24, 2022, that Russia had launched attacks across Ukraine, including missile strikes on cities and infrastructure.⁴⁴ It was further reported on February 28, 2022, that Russian forces were placing pressure on strategic ports in the south of Ukraine and that at least three merchant ships had been hit by weapons fire.⁴⁵ The Washington Post reported on March 3, 2022, that the Russian siege and shelling had resulted in water, power and food being cut off to the port city of Mariupol. Moreover, while humanitarian corridors were opened, reports indicated that people could not flee due to the attacks and damage to infrastructure.⁴⁶

[66] At the time of the hearing, employment levels were down significantly due to the national conscription of men into the military. Moreover, approximately 2 million refugees had fled Ukraine.⁴⁷ Ukraine's railway operator suspended transport services to prioritize the evacuation of citizens.⁴⁸ As of March 2, 2022, it was reported that "by now all major steel production bases in Ukraine are temporarily halted."⁴⁹

[67] According to a report by SteelOrbis on March 2, 2022, HRS producer Metinvest, which accounted for 45 percent of Ukrainian crude steel output in 2021,⁵⁰ suspended operations in Zaporizhia on March 2, 2022, after suspending its operations in Mariupol on February 24, 2022 (at Illyich and Azovsteel iron and steel works).⁵¹ The same day, Metinvest announced that its factories in Mariupol were being used as bomb shelters.⁵² Mr. Henry Wegiel of AMD also acknowledged in his oral testimony reports that Metinvest had suspended contracts based on force majeure.⁵³

⁴³ The Tribunal is satisfied that the circumstances in the present expiry review are distinguishable from those in *OCTG II*. In that review, the Tribunal found that, despite the presence of Russian aggression, which may have been affecting steel production in Ukraine, more than negligible volumes of the subject goods from Ukraine were likely to be present in the Canadian market if the order were rescinded (see *OCTG II* at paras. 49–59). In particular, the Tribunal noted that Ukrainian producers continued and were projected to continue to produce and export significant quantities of oil country tubular goods. This is not the case in the present review, where the evidence indicates that steel production in Ukraine has slowed down dramatically, if not halted completely, and the supply chain to export steel products has stalled.

⁴⁴ Exhibit RR-2021-001-G-06 (protected) at 15.

⁴⁵ *Ibid.* at 17.

⁴⁶ Exhibit RR-2021-001-A-13 at 7–8.

⁴⁷ *Transcript of Public Hearing* at 134.

⁴⁸ Exhibit RR-2021-001-A-13 at 9, 10.

⁴⁹ *Ibid.* at 4, 9.

⁵⁰ *Ibid.* at 4, 9, 10; Exhibit RR-2021-001-D-03 at 43.

⁵¹ Metinvest's Illych and Azovsteel iron and steel works, and its Avdeevka coke plant, are all located close to the disputed Donetsk and Luhansk regions in eastern Ukraine. See Exhibit RR-2021-001-A-13 at 10. On February 24, 2022, SteelOrbis reported that Metinvest planned to use the hot metal and steel available at its Mariupol operations and then place operations on hold. At the time of reporting, equipment was planned to be suspended for seven days and restart would be rescheduled based on the ongoing situation. Shipments of key steel products, including various flat products, would be disrupted for some time. See Exhibit RR-2021-001-A-13 at 6.

⁵² Exhibit RR-2021-001-A-13 at 11.

⁵³ *Transcript of Public Hearing* at 71; Exhibit RR-2021-001-A-13 at 5.

[68] In his oral testimony, Mr. Wegiel stated that AMD's Ukrainian affiliate, ArcelorMittal Kryvyi Rih, a non-HRS producer, had decided on March 3, 2022, to idle its facilities due to an inability to guarantee that the plant could be operated safely.⁵⁴ Mr. Wegiel also acknowledged challenges facing the Ukrainian steel producer, including raw material sourcing, logistical transportation and infrastructure. Additionally, he noted that among its labour force, approximately 600 employees had joined the military efforts in Ukraine.⁵⁵

[69] According to Mr. Wegiel, all mills in Ukraine would be facing a similar experience at AMD's affiliate given the impact of the war on key infrastructure, including ports, rails, roads, as well as the destruction of bridges and sourcing of raw materials.⁵⁶ In this regard, Metinvest reported that rail blockages were "paralyzing" its steel trade.⁵⁷ Fastmarkets also reported that shipping lines were refusing to enter the Black Sea, ports were being blocked and freight costs had increased by 10 to 15 percent due to the imposition of a war risk surcharge.⁵⁸

[70] In support of the position that HRS exports from Ukraine could resume at any time and ramp up quickly, Algoma argued that Metinvest suspended its operations by keeping its blast furnaces in "hot idle" mode.⁵⁹ Ms. Laura Devoni of Algoma explained that, in "hot idle" mode, the furnace remains warm, meaning that the asset can return to production relatively quickly, whereas if the furnace were "banked", the furnace would be shut down and allowed to cool down.⁶⁰ Ms. Devoni explained that restarting a banked furnace is significantly more complex than resuming production from a hot-idled state.⁶¹

[71] Mr. Randy Graham of the USW further explained that hot idling, which is more costly than banking, is a temporary measure that would not be in place for more than three or four months due to the damage that would be caused to the equipment.⁶² Mr. Graham also noted that, with a workforce of 60 to 70 percent, a mill could be operational again relatively quickly.⁶³

[72] In assessing the witness testimonies regarding the situation in Ukraine, the Tribunal places greater weight on the testimony of Mr. Wegiel. ArcelorMittal has steel-making facilities and operations in Ukraine. Algoma, Stelco and the USW do not. As such, in these circumstances, Mr. Wegiel is better placed than Algoma, Stelco or the USW to have an informed view concerning the circumstances faced by Ukrainian steel producers with respect to mill operations and production capacity.

[73] The Tribunal cannot conclude solely from the fact that certain Ukrainian producers have chosen to "hot idle" their steel-making plants that exports to Canada could resume relatively quickly in the relevant time period. This is an unduly narrow view, as current circumstances in Ukraine are dramatically different than in a standard manufacturing context. In the Tribunal's view, the evidence

⁵⁴ On February 24, 2022, ArcelorMittal Kryvyi Rih announced that it would be slowing down production to a technical minimum and suspending mining operations. See Exhibit RR-2021-001-A-13 at 10.

⁵⁵ *Transcript of Public Hearing* at 24–25.

⁵⁶ Ms. Laura Devoni confirmed that Algoma has no operations in Ukraine. See *Transcript of Public Hearing* at 124.

⁵⁷ Exhibit RR-2021-001-A-13 at 9; *Transcript of Public Hearing* at 71, 72.

⁵⁸ Exhibit RR-2021-001-G-06 at 19–21.

⁵⁹ Exhibit RR-2021-001-A-13 at 4, 9.

⁶⁰ *Transcript of Public Hearing* at 124–125, 130–132.

⁶¹ *Ibid.* at 132.

⁶² *Ibid.* at 309–314, 351–357.

⁶³ *Ibid.* at 350.

on record indicates that there is ongoing damage to Ukrainian infrastructure and, as a result, Ukraine will need to rebuild that infrastructure, reconstruct transportation logistics and deal with the loss of skilled workers and other complex social and economic issues arising from population displacement due to emigration, conscription and other consequences attributable to wartime conditions.

[74] As such, based on the best information available, Ukrainian steel producers will have to overcome significant challenges before they can resume production. In addition, the Tribunal notes that a furnace in hot idle can later be banked and that either of these temporary measures carries a risk of damage to the furnace.⁶⁴

[75] The likelihood of Ukraine resuming exports in significant volumes is also diminished by the prospect that, once there is an end to the war, domestic demand for steel will likely increase given the need to rebuild the country.⁶⁵ On this point, Ms. Devoni submitted that the increase in domestic demand following the war likely will not address Ukraine's excess production capacity. Moreover, she stated that the rebuilding of infrastructure would more likely depend on rebar and plate and not necessarily on HRS, which is used more in the manufacturing of consumer goods.⁶⁶

[76] However, the argument that HRS is not a product that could be used for rebuilding Ukrainian infrastructure is not persuasive. First, it is the entire Ukrainian steel production capacity and output that is adversely affected by the war, including raw steel and slabs used to manufacture HRS.⁶⁷ To the extent that Ukrainian producers increase production of products necessary to support the rebuilding effort, it is likely that this will leave less steel available for the production of HRS. In other words, switching production to steel products other than HRS is plausible, which would lead to less HRS originating in Ukraine available for exports. In addition, as noted above, HRS is known to have various applications that would be used for rebuilding, including the production of pipe and tube, as well as other construction and structural applications. No evidence was submitted which casts doubt on the various applications of HRS that were described in *Steel Sheet RR 2016*.⁶⁸

[77] The availability of skilled labour that would be needed to operate mills in Ukraine is expected to be a further limiting factor. The domestic industry has led evidence demonstrating that Canadian mills face challenges in finding and retaining qualified employees under conditions that do not compare, even remotely, to those currently subsisting in Ukraine.⁶⁹ This evidence serves to emphasize the obstacles that Ukrainian mills are likely to face in staffing once hostilities cease and facilities begin to resume operations. Displacement, emigration and war casualties will likely limit Ukraine's ability to resume production in the near to medium term.

[78] Even when the Ukrainian mills resume operations, so long as the effects of the war continue, producers will likely face logistical supply chain issues, both in terms of sourcing raw materials and in transporting final products. As such, it is likely that the mills would be compromised, if not unable

⁶⁴ In this regard, Mr. Graham explained that a furnace on hot idle can be brought up to full capacity and then begin the process of banking, though he noted that this would not be a usual process for producers, which would normally opt to either hot idle or bank a furnace depending on the circumstances and expected length of the stoppage. See *Transcript of Public Hearing* at 356–357.

⁶⁵ *Transcript of Public Hearing* at 71, 72.

⁶⁶ *Ibid.* at 127, 129, 136.

⁶⁷ *Ibid.* at 71–72, 130–131, 572, 574.

⁶⁸ *Steel Sheet RR 2016* at paras. 14–16.

⁶⁹ *Transcript of Public Hearing* at 298–299, 331–332, 349–350, 357.

to compete with producers from other countries in terms of meeting delivery requirements of foreign customers, at the very minimum.

[79] Based on the available evidence, viewed prospectively, the Tribunal finds it unlikely that Ukraine's production and exports of HRS will reach the levels previously projected. The evidence is clear that the war will continue to profoundly impact the country and have a significant adverse impact on its steel-making capacity and output in the medium term.

[80] Consequently, the Tribunal finds that subject imports from Ukraine are not likely to reappear in the Canadian market over the next 12 to 24 months and will thus not compete with the other subject goods or like goods if the order is rescinded.⁷⁰ As such, the Tribunal will conduct a separate assessment of likelihood of injury for the subject goods from Ukraine.

Brazil

[81] Usiminas argued that the evidence in respect of Brazil should be considered in isolation from the other subject countries in conducting the likelihood of injury analysis.⁷¹ Usiminas submitted that there are unlikely to be significant volumes of Brazilian imports.

[82] Algoma, Stelco and AMD contended that there is no reason to conduct a separate analysis for subject goods from Brazil. They argued that cumulation is the general rule and it is only permissible to conduct a separate analysis of the effects of the dumped or subsidized goods from other subject countries if warranted by the conditions of competition.

[83] In this regard, the Tribunal recently reiterated in *Certain Small Power Transformers* that “[p]roceeding with an injury analysis on a cumulative basis cannot be assumed in each case . . . [subsection 42(3) of SIMA] requires the Tribunal, in each case, to examine whether it is ‘appropriate’ to do so considering the conditions of competition.”⁷²

[84] There is no evidence suggesting that HRS from Brazil will compete with the subject goods from other sources under different conditions of competition. Moreover, for the reasons below, the evidence on the record indicates that HRS products from Brazil are likely to be present in the

⁷⁰ During the hearing, Algoma noted that the Tribunal could initiate an interim review, at a later date, to reassess its likelihood of injury determination in respect of Ukraine. In this regard, Algoma referred to *Cold-rolled Steel Sheet Products* (27 August 1999), NQ-99-001 (CITT) [*Cold-rolled Steel*] at 28. In *Cold-rolled Steel*, a subject country, Turkey, had experienced a significant earthquake. In assessing the threat of material injury from Turkish subject goods, the Tribunal noted that it had not received any submissions on the effects of the earthquake on the Turkish steel industry but noted that it has the authority to conduct an interim review of any aspect of its findings if it was satisfied that such review would be warranted. The Tribunal finds that there is no reason, in the present case, to consider the possibility of an interim review, considering there is presently evidence on the record that permits the Tribunal to assess the impact of the war in Ukraine on the potential for imports from Ukraine over the near to medium term.

⁷¹ In its written submissions, Usiminas argued that Brazilian imports had not been dumped. It noted that its export prices of HRS are higher than both cost of production (higher-priced slabs) and domestic selling prices. See Exhibit RR-2021-001-G-04 (protected) at paras. 53–54. However, the Tribunal has no jurisdiction to determine whether there is likely to be continued or resumed dumping of the subject goods; this mandate rests solely with the CBSA. This view was confirmed by Usiminas in closing arguments. See *Transcript of Public Hearing* at 544. Accordingly, the Tribunal will not comment on whether Brazilian imports of HRS were dumped over the POR.

⁷² (24 December 2021), NQ-2021-003 (CITT) at para. 94.

Canadian market in more than negligible volumes if the order is rescinded. As such, a cumulated analysis is appropriate for the subject goods from Brazil.

[85] Usiminas submitted that the North American market is not a priority⁷³ for it or for other Brazilian mills. It pointed to the lack of evidence demonstrating any subject goods from Brazil being present in the Canadian market during the POR.⁷⁴ However, the CBSA Enforcement Data confirmed HRS imports from Brazil in 2020.⁷⁵

[86] While Usiminas provided foreign trade data published by the Government of Brazil showing HRS exports from Brazil to regions other than Canada during the POR,⁷⁶ the Tribunal finds the probative value of this evidence to be diminished by the fact that, as noted by Algoma, Stelco and AMD, exports under only one of several HS Codes applicable to HRS were surveyed. Furthermore, the Tribunal does not consider the question of whether the goods were imported into the Canadian market while duties were in place as being conclusive of whether the subject goods will be present in the medium term.

[87] With respect to specific Brazilian producers of HRS, Usiminas submitted that the possibility of exports from Companhia Siderúrgica Nacional (CSN), a key Brazilian producer, is lower, as the vast majority of CSN's exports are to its affiliate in Portugal.⁷⁷ However, the Tribunal is not persuaded that the evidence showing Brazilian producers currently exporting to destinations outside of Canada while duties have been in place is necessarily indicative of exporting trends that would ensue, should the order be rescinded.

[88] Usiminas also argued that ArcelorMittal Brasil, one of Brazil's largest HRS producers, does not export to Canada due to its own corporate policy. In Usiminas's view, this limits the potential for HRS exports from Brazil.⁷⁸

[89] In response, AMD argued that its corporate policy of not exporting to regions where ArcelorMittal has other facilities actually provides an opportunity for Usiminas to increase its exports to Canada if the order against subject goods from Brazil is rescinded. AMD noted that, in this scenario, Usiminas could target Canada with HRS exports marketed at low prices, knowing that it would not be competing in Canada against ArcelorMittal Brasil.

[90] For the reasons provided below, the Tribunal is persuaded that Brazilian HRS producers will likely remain export oriented. As such, if the order is rescinded, they will likely look to the Canadian market to absorb their exports, at least in part.

[91] According to CRU's Steel Sheet Market Outlook reports, HRS consumption and production in Brazil are expected to continue increasing in 2022, 2023 and 2024.⁷⁹ Meanwhile, production capacity is expected to remain at the same levels between 2022 and 2023, with an increase forecasted

⁷³ Exhibit RR-2021-001-G-03.A at para. 40; Exhibit RR-2021-001-G-04.A (protected) at paras. 56, 63.

⁷⁴ Exhibit RR-2021-001-G-03.A at para. 40.

⁷⁵ Exhibit RR-2021-001-05.A, Table 5.

⁷⁶ Exhibit RR-2021-001-G-03.A at 244–247. AMD, Algoma and Stelco noted that the documents cited by Usiminas are from Comex Stat, Brazil's foreign trade database. Exhibit RR-2021-001-A-11 at 54–63.

⁷⁷ Exhibit RR-2021-001-G-01.A at paras. 46–47; Exhibit G-01.A at 50. *Transcript of Public Hearing* at 390, 391.

⁷⁸ ArcelorMittal Brasil's corporate policy regarding exports to Canada was described in Ms. Seth of AMD's witness statement. See Exhibit RR-2021-001-D-05 at para. 12; Exhibit RR-2021-001-G-03.A at paras. 57, 65–67.

⁷⁹ Exhibit RR-2021-001-D-04 (protected) at 367, 371, 375, 379.

for 2024.⁸⁰ Usiminas's evidence indicates some decrease in demand in 2022 and 2023, followed by an increase in 2024.⁸¹ There was also evidence that one Brazilian producer, Gerdau S.A., will be expanding its production capacity by 250,000 tonnes annually, which is to be operational by 2024.⁸²

[92] CRU also forecasts that there will be excess capacity in Brazil over the medium term. However, levels will decline between 2022 and 2024.⁸³ Usiminas submitted that the reported excess capacity did not take into account the production capacity that was removed due to the closure of the hot-mill line at Cubatão. In Usiminas's revised estimates of the CRU forecasts, excess capacity will become obsolete by 2024.⁸⁴

[93] Notwithstanding the evidence with respect to excess capacity, the Tribunal finds that other factors more persuasively show the likelihood of non-negligible volumes of HRS from Brazil reaching Canada if the order were rescinded. The evidence indicates that, while Brazil's net exports of HRS declined from 2019 to 2021, increases are expected in 2022 and 2023.⁸⁵

[94] Moreover, there is evidence of increasing HRS imports into Brazil in 2021, particularly from Russia and China.⁸⁶ The evidence also indicates that Brazil has not imposed sanctions on Russian imports as a result of its invasion of Ukraine. As such, in the Tribunal's view, Russia will be incentivized to view Brazil as an export destination.

[95] As testified to by Usiminas's witness, Mr. Roberto Tavares Pinto Coelho, Usiminas has the flexibility to reduce or increase production depending on demand and may indeed sell HRS into Canada if the order were rescinded.⁸⁷ There is also some evidence indicating that, prior to the imposition of trade measures in the United States, Usiminas exported significant volumes to that country.⁸⁸ Mr. Coelho characterized the drop in exports since 2015 as reflecting a change in Usiminas's general business strategy, as opposed to being a reaction to the trade measures imposed

⁸⁰ *Ibid.* at 388. As discussed in *Steel Sheet RR 2016* at para. 85, due to the capital-intensive assets used to produce HRS, there is a strong incentive for steel mills to maintain high-capacity utilization rates to spread fixed costs over as much volume as possible. The evidence indicates that, although there is a less significant production imperative at Cubatão, mainly as HRS production relies largely on purchased slabs, one remains at Ipatinga. The Tribunal is of the view that, to maximize its crude steel-making capacity utilization rate, Usiminas will be incentivized to increase its HRS production. Exhibit RR-2021-001-A-11 at 21; *Transcript of Public Hearing* at paras. 368, 408.

⁸¹ Exhibit RR-2021-001-G-03.A at paras. 16–17; *Transcript of Public Hearing* at 399–401; Exhibit RR-2021-001-G-04.A (protected) at paras. 16–17.

⁸² Exhibit RR-2021-001-G-03.A at 250, 251.

⁸³ Exhibit RR-2021-001-D-04 (protected) at 26, 367, 371, 375, 388; Exhibit RR-2021-001-A-04 (protected) at 133. A summary table is set out at Exhibit RR-2021-001-A-02 (protected) at para. 209. Total production capacity includes capacity for steckle mills, which may also produce HRS. *Transcript of Public Hearing* at 37, 40, 90.

⁸⁴ Exhibit RR-2021-001-G-02.A (protected) at para. 97.

⁸⁵ Exhibit RR-2021-001-G-03.A at paras. 55, 56; Exhibit RR-2021-001-G-04.A (protected) at paras. 55, 56.

⁸⁶ *Transcript of Public Hearing* at 427–429. See table of Brazilian trade data in Exhibit RR-2021-001-G-03.A at para. 55. While Mr. Coelho characterized 2021 as an “outlier” year, the Tribunal finds that the increase of HRS imports into Brazil seen in 2021 provides evidence that Brazil could be targeted by Chinese or Russian exporters.

⁸⁷ *Transcript of Public Hearing* at 419.

⁸⁸ The domestic producers submitted that there has been a decline of Brazilian exports to the United States and the European Union after implementation of trade remedies in these jurisdictions. For instance, since 2016, export data from the Brazilian government show that there have been no exports to the United States from the Sao Paulo and Minas Gerais areas of Brazil, where Usiminas's facilities are located. This drop in exports coincided with the imposition of anti-dumping measures by the United States in 2016. Exhibit RR-2021-001-A-11 at paras. 42–43, at 54–57; Exhibit RR-2021-001-A-12 (protected) at paras. 42–43. Exhibit RR-2021-001-G-03.A at para. 50.

by the United States and the European Union against Brazilian HRS imports.⁸⁹ However, the Tribunal is not persuaded that the imposition of trade measures in important markets would have been an irrelevant factor when considering a revision to a business strategy, especially by a producer with a history of selling at least some of its production in other markets. At the very least, the Tribunal considers this evidence as a further indication that Usiminas can quickly shift sales and export strategy, including increasing sales to open markets, if there is demand in those markets and exports are deemed profitable.

[96] CRU forecasts indicate that HRS prices in North America will be higher than in other export markets over the next two years.⁹⁰ As such, the Tribunal finds it likely that Brazilian HRS producers will look to Canada to absorb their exports, particularly in light of the trade measures against Brazilian HRS in other export markets, as discussed further below.

[97] The Tribunal also notes evidence with respect to the impact of the 2016 closure of Usiminas's slab-making facilities and hot-rolling mill in Cubatão due to insufficient domestic demand (only one hot-rolling line remains operational at the Cubatão plant).⁹¹ Following this, Usiminas's production capacity was reduced and, between 2018 and 2020, its HRS exports declined.⁹² As described below, this has impacted Usiminas's HRS pricing.

[98] Without its slab-making facilities in Cubatão, Usiminas relies heavily on independent suppliers for slab and, as such, it submitted that its HRS is priced higher.⁹³ As described by Mr. Coelho during the hearing, Usiminas's pricing methodology is one that ensures "profitable operations".⁹⁴

[99] Usiminas submitted that it intends to increase the prices of steel products (e.g. by 5 percent for distributors; Usiminas is also in negotiations with its automotive clients).⁹⁵ In response, AMD, Algoma and Stelco argued that such increases did not offset, much less surpass, the price decreases that occurred in 2021 and that weak demand for steel will continue to affect pricing.

⁸⁹ *Transcript of Public Hearing* at 367, 368.

⁹⁰ Exhibit RR-2021-001-D-04 (protected) at para. 96, at 125; Exhibit RR-2021-001-A-02 (protected) at para. 165; Exhibit RR-2021-001-A-03 at para. 57.

⁹¹ *Transcript of Public Hearing* at 367–368, 396. Exhibit RR-2021-001-G-03.A at paras. 25, 28, 47, at 170. Exhibit RR-2021-001-G-01.A at 55. According to Mr. Delgado Izarra, the closure was due to insufficient domestic demand resulting from the political and economic crises that unfolded in Brazil in 2015. In that year, Brazil's president was impeached and Brazil's gross domestic product contracted by 10 percent. Moreover, in 2015, Chinese exports were at a high resulting in low international prices of steel. See *Transcript of Public Hearing* at 365, 366, 396.

⁹² Exhibit RR-2021-001-G-03.A at para. 50.

⁹³ *Ibid.* at para. 31; *Transcript of Public Hearing* at 372, 396, 397. Usiminas's purchases of slabs for two quarters of 2021 were reported on its Earnings Release for the third quarter of 2021. See Exhibit RR-2021-001-G-03.A at 232.

⁹⁴ *Transcript of Public Hearing* at paras. 368, 369, 370–372; *Transcript of In Camera Hearing* at 145. At the hearing, it was clarified that, as Usiminas was now operating with only two blast furnaces (the third furnace undergoing maintenance until later in the first half of 2022) and, therefore, 75 to 80 percent of slabs used at Ipatinga are produced at the facility, with the rest of the slabs needed for Ipatinga and for Cubatão being outsourced. See *Transcript of Public Hearing* at 393, 394, 397; *Transcript of In Camera Hearing* at 149; Exhibit RR-2021-001-G-04.A (protected) at paras. 53–54.

⁹⁵ Exhibit RR-2021-001-G-03.A at para. 22; *Transcript of In Camera Hearing* at 138–139.

[100] However, price increases were reflected in Fastmarkets reports for February 2022.⁹⁶ Moreover, the Tribunal notes that prices of slab may also be impacted by the reduced availability of Russian slab due to the situation in Ukraine.⁹⁷

[101] Even if Usiminas's export volumes were potentially impacted by higher pricing relative to other Brazilian producers, the Tribunal is not persuaded that Usiminas's pricing strategy would significantly diminish the likelihood of subject goods from Brazil being exported into the Canadian market, having regard to Usiminas's overall share of total HRS production in Brazil.⁹⁸ There are other producers in Brazil that export HRS. The question before the Tribunal is not limited to the actions of Usiminas alone but extends to all Brazilian producers. Should the order be rescinded, those other producers (which did not participate in the proceedings) would likely be motivated to target the Canadian market for ready opportunities.

[102] Furthermore, based on sales of downstream products in Canada, the evidence demonstrates that Brazilian producers have remained interested in the Canadian market over the POR. This supports the conclusion that Brazilian producers would similarly wish to access the Canadian market for HRS and offer prices lower than domestic prices to gain such access, should the order be rescinded. Mr. Sykes of Nova testified that his company regularly receives offers from Brazilian steel producers for cold-rolled and corrosion-resistant products that are "always well below domestic [Canadian] pricing."⁹⁹ This was corroborated by Mr. Dunstall of Samuel, who also indicated that the pricing differential between Canadian cold-rolled product and that offered from Brazil was "fairly significant."¹⁰⁰ This evidence suggests that, notwithstanding Usiminas's argument that domestic market conditions in Brazil would constrain its ability to export HRS at low prices, Brazilian producers remain able to sell their products at prices below domestic pricing, if deemed necessary to make a sale in Canada.

[103] For the reasons above, the Tribunal finds that Brazil will likely export HRS in more than negligible volumes should the order be rescinded and, as such, based on the conditions of competition, a cumulative assessment of the subject goods from Brazil is appropriate.

⁹⁶ Exhibit RR-2021-001-G-02.A (protected) at para. 64. Prices reported by Fastmarkets at Exhibit RR-2021-001-G-02.A (protected) at 88. SteelOrbis reported increases in the prices of slab charged by Brazilian slab producers. Exhibit RR-2021-001-G-03.A at para. 44; Exhibit RR-2021-001-G-04.A (protected) at para. 44, at 253.

⁹⁷ *Transcript of Public Hearing* at 193, 194; *Transcript of In Camera Hearing* at 165; Exhibit RR-2021-001-G-05 at 4–6; Exhibit RR-2021-001-G-06 at 23, 31–32, 33. The evidence indicates that Usiminas was an importer of slab from Russia in 2021. However, 90 percent of slabs are sourced within Brazil. At the time of the hearing, no sanctions by Brazil were imposed on Russian imports. *Transcript of Public Hearing* at 426.

⁹⁸ Exhibit RR-2021-001-A-02 (protected) at para. 209; Exhibit RR-2021-001-20.02B (protected) at 1. Usiminas also noted that it produces HRS for the production of downstream products, including to feed its cold-roll mills and galvanizing lines. In their witness statements, Mr. Coelho and Mr. Izarra also described another galvanizing line that is being considered by Usiminas which will also be fed by its HRS and cold-rolled steel mills. Exhibit RR-2021-001-G-03.A at paras. 24, 33.

⁹⁹ *Transcript of Public Hearing* at 240.

¹⁰⁰ *Ibid.* at 241–242.

CUMULATION OF DUMPED AND SUBSIDIZED GOODS

[104] The Tribunal now turns to the issue of whether it is appropriate to assess the dumped goods from China and Brazil together with the subsidized goods from India, as argued by AMD, Stelco and Algoma.

[105] According to the domestic producers, the Tribunal should not follow its previous approach, in *Steel Sheet RR 2016*, of conducting a separate likelihood of injury assessment for subsidized goods. The domestic producers submitted that the conditions of competition warrant a cumulated analysis, and subsection 76.03(11) of SIMA requires a cumulative analysis of goods that are likely to be dumped with those that are likely to be subsidized. This position was supported by the USW.

[106] For its part, Usiminas submitted that the Tribunal should not depart from the approach used in *Steel Sheet RR 2016*,¹⁰¹ that is, the effects of the subsidizing of subject goods from India should be assessed separately from the effects of the dumping of subject goods.

[107] In support of their position, Algoma, AMD and Stelco argued that the Tribunal's more recent interpretation of subsection 76.03(11) following the WTO Appellate Body Report in *US-Carbon Steel (India)* is inconsistent with the principles of statutory interpretation. In particular, they contended that the Tribunal's interpretation deviates from the plain meaning of the provision and, specifically, the inclusive reading of "or" in "dumping or subsidizing", as well as the guidance provided by Federal Court of Appeal in *Entertainment Software*¹⁰² with respect to the consideration of international law. Moreover, the WTO Appellate Body Report applied to an original investigation and not to an expiry review and was, in any event, non-binding on Canada.

[108] Similar issues have recently caused some debate before the Tribunal. The Tribunal recently discussed them extensively in *Rebar*¹⁰³ and *COR*,¹⁰⁴ which considered the similarly worded paragraph 42(3) of SIMA.

[109] In *Rebar*, after consideration of the role of the WTO panel and Appellate Body reports, separate obligations existing under the Agreement on Subsidies and Countervailing Measures (ASCM) and the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (ADA), and the SIMA statutory scheme, the majority held that the effects of the goods from the subject countries that are dumping only should be assessed separately from the goods of the subject country that are subsidizing only.¹⁰⁵

¹⁰¹ *Steel Sheet RR 2016* at para. 51. The Tribunal found that it would not be appropriate to cumulate subsidized goods from India with the dumped goods from China, Brazil and Ukraine (the cumulated countries).

¹⁰² *Entertainment Software Association v. Society of Composers, Authors and Music Publishers of Canada*, 2020 FCA 100 [*Entertainment Software*].

¹⁰³ *Concrete Reinforcing Bar* (14 October 2020), RR-2019-003 (CITT) [*Rebar*].

¹⁰⁴ *Corrosion-resistant Steel Sheet* (16 November 2020), NQ-2019-002 (CITT) [*COR*].

¹⁰⁵ The majority also held that a further separate assessment should be conducted with regard to goods from subject countries that are both dumping and subsidizing. *Rebar* at para. 39. The same approach was applied by the majority in *Carbon Steel Screws* (2 September 2020), RR-2019-002 (CITT) [*CSS*] at para. 58 and by the Tribunal in *Refined Sugar* (6 August 2021), RR-2020-003 (CITT) at paras. 88–89.

[110] In *COR*, the Tribunal found that, pursuant to subsection 42(3) of SIMA, the cumulation provision at issue in that case was not clear and unambiguous in mandating the cumulation or cross-cumulation of the effects of dumped goods with those of subsidized goods:¹⁰⁶

The phrase “dumping or subsidizing” in subsection 42(3) of SIMA is not limited to a conjunctive reading but may be read disjunctively so as to permit the separate analysis of the effects of the dumped goods from those of the goods that are subsidized. For the reasons articulated by the majority in *Rebar*, the Tribunal remains unconvinced of Stelco’s submissions that cumulation and cross-cumulation of the effects of dumped goods with those of subsidized goods is mandated under *SIMA* in a manner contrary to international obligations. One interpretation that takes into account that part of the provision [subsection 42(3)], which is clear and unambiguous and would also be consistent with Canada’s international obligations under the ASCM, would require the Tribunal to conduct separate analyses of the effects of dumped goods from those of subsidized goods. This was an approach acknowledged by the Tribunal previously (in *Rebar* and *Plate VIII*) and by the domestic industry in this case, as noted above. The Tribunal remains of the view that, in choosing between possible interpretations permitted by the text, *SIMA* should be interpreted in a manner consistent with international obligations.

[Emphasis added, footnotes omitted]

[111] The Tribunal remains unpersuaded that the expression “dumping or subsidizing” in subsection 76.03(11) unambiguously or expressly mandates a cumulative analysis of the effects of dumped goods with subsidized goods from different countries, as argued by the domestic producers, or that the Tribunal’s interpretation of it raises the problems identified in the domestic producers’ submissions. In any event, in the circumstances of this case, whether the subject goods from India are considered cumulatively with those from China and Brazil or on their own does not affect the Tribunal’s conclusion that the rescission of the order in respect of these goods is likely to lead to injury.

[112] As such, and having regard to the reasons articulated by the majority in *Rebar*, the Tribunal considers it appropriate to separately assess the effects of dumped goods and those of subsidized goods in this case.

[113] Accordingly, the Tribunal will cumulatively assess the effect of the goods subject to the dumping order (Brazil and China) and will separately assess the effects of the goods subject to the subsidizing order (India). As indicated earlier, the Tribunal will also separately analyze the effects of the subject goods from Ukraine.

SEPARATE OPINION OF MEMBER BUJOLD ON CUMULATION

[114] With respect, I am unable to agree with my colleagues’ conclusion that it is appropriate to separately assess the effects of dumped goods and those of subsidized goods in this case. I note that

¹⁰⁶ *COR* at para. 69. As also noted in *Rebar*, the WTO Appellate Body in *US – Carbon Steel (India)* stated that “. . . Article 15 is not silent on the question of cumulation of the effects of subsidized imports with the effects of non-subsidized imports. As we have explained above, Article 15.3 provides that investigating authorities may, if the conditions set out in the last clause of Article 15.3 are fulfilled, cumulatively assess the effects of imports that are simultaneously subject to countervailing duty investigations. It follows that a cumulative assessment pursuant to Article 15.3 must not encompass the effects of non-subsidized imports.” See *Rebar* at paras. 47, 66–71, 88–91.

my colleagues rely primarily on the reasons articulated by the majority in *Rebar* to support this conclusion. I have already discussed in my separate opinion in *Rebar* the legal basis for my conclusion that the interpretative approach of the majority in that case, which was also followed, in part, by the Tribunal in *COR*, is misguided.

[115] I will not repeat here the numerous problems with the majority's reasoning in *Rebar* that I previously discussed. However, the points that I made to outline what I consider to be the correct interpretative approach, pursuant to which there is no legal basis for the Tribunal to rely upon the decision of the WTO's Appellate Body in *US - Carbon Steel (India)*¹⁰⁷ to interpret subsection 76.03(11) of SIMA, remain pertinent.

[116] Suffice it to say that my colleagues' conclusion that the effects of goods from the subject countries that are dumped only should be assessed separately from goods of the subject country that are subsidized only (India) in the present expiry review rests on the same false premise, namely that such separate analyses are mandated by Canada's international obligations. A crucial flaw in this analysis is that there is simply no provision in the WTO agreements or other international obligation that constrain the Tribunal's ability to cumulatively assess the effects of subject goods that are only dumped and the effects of subject goods that are only subsidized in an expiry review.

[117] Indeed, neither the ASCM nor the ADA contains any provision governing cumulation in expiry reviews. Consequently, there are no international trade obligations that are directly relevant to the interpretation and application of subsection 76.03(11) of SIMA with respect to cumulation. Moreover, the provisions of the ASCM that ostensibly preclude a cumulative assessment of the effects of dumped and subsidized goods discussed by the WTO's Appellate Body in *US - Carbon Steel (India)* were found to apply in the context of an original investigation but were subsequently found to be inapplicable in the context of expiry reviews.¹⁰⁸ As correctly noted by the domestic producers, this means that the WTO provisions that may restrict a cumulative assessment of the effects of dumped and subsidized goods from different subject countries do not apply to expiry review proceedings such as this case.

[118] Therefore, this is not a situation in which the Tribunal must ask itself the question that my colleagues have focused on, that is whether cumulation or cross-cumulation of the effects of dumped goods with those of subsidized goods is mandated under SIMA in a manner contrary to international obligations. This question would only be relevant to the extent that there was a prohibition against such a cumulative assessment in the context of expiry reviews in the WTO agreements or other international treaties.

[119] In that event, consistent with the guidance provided by the Federal Court of Appeal in *Entertainment Software*, a determination that SIMA is clear and unambiguous in mandating the cumulation or cross-cumulation of the effects of dumped goods with those of subsidized goods would require the Tribunal to give effect to the authentic meaning of the legislative text and apply it, even if it is inconsistent with international law. However, in the absence of any international obligations governing cumulation or cross-cumulation in expiry reviews, the Tribunal does not have to reach that issue. Simply put, determining whether subsection 76.03(11) of SIMA can and should

¹⁰⁷ It warrants noting that this report of the Appellate Body was the impetus for the Tribunal's approach in *Steel Sheet RR 2016* of conducting a separate likelihood of injury assessment for subsidized goods from India.

¹⁰⁸ For a detailed discussion of this issue, see my separate opinion in *CSS* at paras. 80–95. In short, the provision noted by my colleagues, Article 15 of the ASCM, does not apply to expiry reviews.

be interpreted in a manner consistent with Canada's international obligation presupposes that an international law principle or covenant relevant to the interpretation exercise exists.

[120] Again, this is not the case here. As I explained in *Rebar* and aptly summarized by the domestic producers in their brief, a decision of the WTO Appellate Body that did not exist at the time a provision was enacted by Parliament is not international law that can be considered when interpreting domestic legislation. It is not an authoritative interpretation of the WTO agreements nor is it binding on any WTO members other than those that were party to the specific dispute considered by the Appellate Body. Therefore, as a matter of domestic legislative interpretation, a WTO Appellate Body decision is not international law with respect to which Canadian law is presumed to comply nor is it international law that may be used to resolve ambiguities in domestic legislation.

[121] It follows that, in the absence of an applicable international obligation prohibiting Canada and, by extension, this Tribunal, from making a cumulative assessment of the injurious effects of dumped and subsidized subject goods from different subject countries in an expiry review, whether the expression "dumping or subsidizing" in subsection 76.03(11) of SIMA unambiguously or expressly mandates such a cumulative analysis is not determinative. What matters is that this provision can clearly be interpreted as permitting a cumulative analysis of the effects of dumped goods with those of subsidized goods from different countries when deemed appropriate, taking into account the relevant conditions of competition. The Tribunal has found as much and made such a cumulative assessment of the injurious effects of both dumped and subsidized goods on numerous occasions.

[122] In fact, the Tribunal has previously stated that the very purpose of subsection 42(3) of SIMA, which also addresses cumulation and contains the expression "dumping or subsidizing", is to *allow* and even *direct* a cumulative assessment of the effects of any *dumping and subsidizing* of the subject goods, as long as the volumes from the subject countries are not *de minimis* and it is appropriate, considering the conditions of competition.¹⁰⁹ Thus, there is authority indicating that, contrary to my colleagues' view and the Tribunal's finding in *COR*, the expression "dumping or subsidizing" unambiguously or expressly mandates a cumulative analysis of the effects of dumped goods with subsidized goods from different countries in certain circumstances.

[123] In this regard, while nothing turns on this issue in view of the foregoing analysis, I deem it useful to comment on whether another interpretation is possible, as determined by my colleagues. On this question, it must be emphasized that their view that the phrase "dumping or subsidizing" is not limited to a conjunctive reading but may be read disjunctively so as to permit the separate analysis of the effects of the dumped goods from those of the goods that are subsidized is primarily based on the fact that "or" can always be said to be disjunctive grammatically. However, in *CSS* and *Rebar*, I examined the cumulation provisions of SIMA in their entire context within the scheme and object of the Act and reviewed the relevant legislative history. I concluded there was little indication, if any, that Parliament intended the phrase "dumping or subsidizing" in these provisions to be read disjunctively.

¹⁰⁹ *Circular Copper Tube* (18 December 2013), NQ-2013-004 (CITT) at para. 73.

[124] I remain unconvinced that, in the context of subsections 42(3) and 76.03(11) of SIMA, “or” can be read disjunctively. A disjunctive interpretation would be inconsistent with the intent of Parliament when it last amended these provisions and the authorities that I reviewed in *Rebar*, which both suggest that SIMA directs a cumulative assessment of the effects of any dumping *and* subsidizing of the goods to which the CBSA determinations apply, provided that the statutory conditions are met.

[125] A disjunctive interpretation would also be inconsistent with the presumption, in statutory interpretation, that “or” is to be read inclusively, i.e. as meaning “and/or”. I fail to see compelling textual or contextual elements in SIMA that would rebut this presumption and suggest that “or” in the cumulation provisions should rather be read disjunctively or exclusively, such that the listed alternatives (dumping or subsidizing) would be meant to be mutually exclusive.

[126] Finally, it bears repeating that a disjunctive interpretation of “or” would undermine the remedial objectives of SIMA.¹¹⁰ A basic tenet of statutory interpretation is that the words of a statute must be read harmoniously with the object of the Act and the intention of Parliament. The purpose of SIMA is to protect domestic manufacturers against the marketing in Canada of foreign-made articles at unreasonably low prices, either as a result of dumping or when the cost of manufacturing of foreign goods has been subsidized in the exporting country.¹¹¹ With respect, because it renders the demonstration of multiple injury cases necessary by requiring a separate analysis for certain subject countries, my colleagues’ interpretation of subsection 76.03(11) of SIMA is not congruent with the object and purpose of SIMA. As correctly noted by the domestic producers, this approach carries the risk that, ultimately, an inadequate remedy could be imposed.

[127] In my view, an interpretation of this provision consistent with the modern rule of statutory interpretation does not support my colleagues’ conclusion that the phrase “dumping or subsidizing” may be read disjunctively so as to permit the separate analysis of the effects of the dumped goods from those of the subsidized goods. Consequently, I find that, properly construed, subsection 76.03(11) of SIMA does not permit the Tribunal to “choose” an interpretation that complies with the pronouncements of the Appellate Body in *US - Carbon Steel (India)*.

[128] For these reasons, and considering that, based on an assessment of the conditions of competition between the subject goods from India and the other subject goods and between the Indian subject goods and the like goods, there is no reason to decumulate India from the other subject countries, I find that it would have been appropriate to cumulatively assess the effects of the subject goods from Brazil, China and India in this expiry review.¹¹²

¹¹⁰ *Rebar* at paras. 171–178.

¹¹¹ *Prairies Tubulars (2015) Inc. v. Canada (Border Services Agency)*, 2018 FC 991 (CanLII) at paras. 6–7.

¹¹² I agree with my colleagues for the reasons provided below that the separate analysis of the effects of the subject goods from India leads to the conclusion that the expiry of the order against India is likely to result in material injury to the domestic industry. It follows that the result would be the same if the effects of the subsidized goods from India were assessed cumulatively with the effects of the dumped goods from Brazil and China.

LIKELIHOOD OF INJURY ANALYSIS

[129] An expiry review is forward-looking.¹¹³ It follows that evidence from the period during which an order or a finding was being enforced is relevant insofar as it bears upon the prospective analysis of whether the expiry of the order or finding is likely to result in injury.¹¹⁴

[130] 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.¹¹⁵ In the context of an expiry review, positive evidence can include evidence based on past facts that tend to support forward-looking conclusions.¹¹⁶

[131] 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. This is generally considered to be a period that can extend up to 24 months from the date on which the order or finding would be rescinded.¹¹⁷

[132] In *Steel Sheet RR 2016*, the domestic producers submitted that the relevant period for analysis was 12 to 18 months due to conditions of the global market at that time.¹¹⁸ No such submissions were made in this expiry review. As such, in this case, the Tribunal finds it appropriate to focus its analysis on the next 12 to 24 months.

[133] Subsection 37.2(2) of the *Special Import Measures Regulations*¹¹⁹ 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. In view of the Tribunal's finding above in its cumulation analysis, the Tribunal will conduct three separate analyses – one concerning the subject goods from Brazil and China, one concerning the subject goods from Ukraine, and one concerning the subject goods from India.

Changes in market conditions

[134] In order to assess the likely volumes and prices of the subject goods and their impact on the domestic industry if the order is rescinded, the Tribunal will first consider changes in international and domestic market conditions that occurred during the POR and that are likely to occur over the next 24 months.¹²⁰ These changes provide important general context for the Tribunal's analysis.

¹¹³ *Certain Dishwashers and Dryers* (procedural order dated 25 April 2005), RR-2004-005 (CITT) at para. 16.

¹¹⁴ *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.

¹¹⁵ *Steel Sheet RR 2006* at para. 59.

¹¹⁶ *Thermoelectric Containers* at para. 14; *Aluminum Extrusions* at para. 21.

¹¹⁷ *Carbon Steel Screws* at para. 133.

¹¹⁸ At para. 56.

¹¹⁹ S.O.R./84-927 [Regulations]

¹²⁰ See paragraph 37.2(2)(j) of the Regulations.

International market conditions

[135] Algoma, AMD and Stelco submitted that the COVID-19 pandemic, starting in early 2020, resulted in an atypical and volatile global HRS market in the past two years and that, while the global economy has seen positive growth since 2021, it has not fully recovered from the slowdown caused by the pandemic. For its part, Usiminas submitted that market conditions will stabilize and be positive.

[136] In its January 2022 World Economic Outlook report, the International Monetary Fund (IMF) downgraded its forecasts to 4.4 percent for global Gross Domestic Product (GDP) growth in 2022 and 3.8 percent in 2023, and stated that “the global economy is entering 2022 in a weaker position than anticipated.”¹²¹ Similarly, the World Bank forecasted that global growth in 2022 would be 4.1 percent and soften to 3.2 percent in 2023.¹²² Both the IMF and the World Bank reported that the forecasts may see further downward revisions based on the emergence of higher-risk COVID-19 variants and rising inflation.¹²³ The World Bank also reported that output and investment in advanced economies are expected to return to pre-pandemic trends in 2023, while emerging market and developing economies are expected to remain at below pandemic levels.¹²⁴

[137] Global steel excess capacity, which has been recognized by the Tribunal on numerous occasions, also remains an issue for the medium term.¹²⁵ Global capacity increased by 37.6 million metric tonnes in 2020, which was worsened by lower demand due to the economic slowdown and is expected to further increase up to 4.6 percent by 2023.¹²⁶

[138] As noted, global HRS demand was in decline in 2019, prior to the pandemic, and dropped further in 2020.¹²⁷ Global demand is forecasted to increase significantly in 2021, above pre-pandemic levels in 2019, remain steady in 2022, and increase modestly in 2023 and 2024.¹²⁸ The domestic producers argued that while demand has begun rebounding in 2021, recovery is slow.

[139] Markets in the subject countries are also recovering from the effects of the pandemic, however, there remain challenges.

[140] With respect to Brazil, the World Bank reported that its path to economic recovery remains “steep” in the medium term, due to pre-existing structural and fiscal vulnerabilities and the impact of inflationary pressures.¹²⁹ Reports indicate that the Brazilian steel industry expects to see downward

¹²¹ Exhibit RR-2021-001-D-03 at 132–133, 136.

¹²² *Ibid.* at 516.

¹²³ *Ibid.* at 132, 133, 516.

¹²⁴ *Ibid.* at 516.

¹²⁵ *Hot-rolled Carbon Steel Plate* (13 March 2020), RR-2019-001 (CITT) at para. 57. See also *Rebar* at para. 193, as well as the *Safeguard Inquiry into the Importation of Certain Steel Goods* (3 April 2019), GC-2018-001 (CITT) [Certain Steel Goods] at 12–13, 36–37; *Carbon Steel Welded Pipe* (28 March 2019) RR-2018-001 (CITT) at para. 50; *Structural Tubing* (16 October 2019), RR-2018-006 (CITT) at para. 41; *Hot-rolled Carbon Steel Plate* (9 January 2004), NQ-2003-002 (CITT) at para. 21.

¹²⁶ Exhibit RR-2021-001-D-03 at 144, 149.

¹²⁷ Exhibit RR-2021-001-D-04 (protected) at 372.

¹²⁸ *Ibid.* at 368, 372.

¹²⁹ Exhibit RR-2021-001-A-01 at 228–230.

pressures in 2022, caused by economic deceleration, full inventories and falling demand.¹³⁰ However, CRU forecasts expect demand for HRS specifically to increase in 2022, 2023 and 2024.¹³¹

[141] China, contrary to global trends, saw GDP growth of 2.3 percent in 2020 and 8.1 percent in 2021.¹³² The IMF downgraded its projections and forecasted that China's GDP will grow only 4.8 percent in 2022 and 5.2 percent in 2023.¹³³ In doing so, the IMF reported that lower investment in the housing sector and the economic impacts of a strict zero-COVID strategy indicate a broader slowdown.¹³⁴ Similarly, HRS consumption is expected to decrease in 2021, 2022, 2023 and 2024.¹³⁵

[142] In India, GDP shrank in 2020 and recovered in 2021, with growth in 2021 exceeding the previous year's decline. India's GDP is forecasted to continue growing in 2022 and 2023.¹³⁶ India's consumption and production of HRS also increased in 2021 and are expected to continue increasing modestly in 2022, 2023 and 2024.¹³⁷ India also lifted anti-dumping duties against HRS from several jurisdictions, including China, in January 2022.¹³⁸ In this regard, the domestic producers argued that India will see increased imports and Indian producers will increasingly look to export markets to absorb production.

[143] For the reasons set out above, the Tribunal considers that the available economic evidence regarding Ukraine, which pre-dates the war, is no longer a reliable indicator of likely future conditions in that country in the near to medium term. With that said, as noted above, there is evidence on the record indicating that the war may have impacts on the global HRS market, such as reduced availability of slab and cost increases for input materials.¹³⁹

[144] Additionally, other major export markets have in place trade restrictions against HRS imports from the subject countries.¹⁴⁰ In the United States, HRS from all subject countries face anti-dumping duties while countervailing duties have been put in place against HRS from China and Brazil. Additionally, U.S. Section 232 duties under the *United States Trade Expansion Act of 1962*, remain imposed on imports from the subject countries. In the European Union, anti-dumping duties have been imposed on HRS from all subject countries as well as countervailing duties on HRS from China; steel safeguard measures have been extended until June 30, 2024.¹⁴¹ The subject goods also face trade restrictions in various other jurisdictions, including in Indonesia, Mexico and Thailand. Moreover, Brazil imposed trade remedies against HRS from China. Altogether, these measures limit

¹³⁰ *Ibid.* at 269.

¹³¹ Exhibit RR-2021-001-D-04 (protected) at 367, 371.

¹³² Exhibit RR-2021-001-D-03 at 136.

¹³³ *Ibid.* at 135–136.

¹³⁴ *Ibid.* at 135.

¹³⁵ Exhibit RR-2021-001-D-04 (protected) at 367, 371. In 2020, China alone increased consumption of HRS, while global consumption declined sharply. This demand was fuelled by a one-time government stimulus (see Exhibit RR-2021-001-D-04 (protected) at 123, 252).

¹³⁶ Exhibit RR-2021-001-D-03 at 136, 526.

¹³⁷ Exhibit RR-2021-001-D-04 (protected) at 367, 375.

¹³⁸ Exhibit RR-2021-001-A-01 at 368–370.

¹³⁹ See Exhibit RR-2021-001-G-04.A (protected) at para. 44; *Transcript of Public Hearing* at 46–47, 61–62, 78–80.

¹⁴⁰ Exhibit RR-2021-001-05.A, Table 37. In January 2022, it was reported that India removed its anti-dumping duty against HRS from China and other countries. Exhibit RR-2021-001-D-03 at 573, 636–648.

¹⁴¹ Exhibit RR-2021-001-D-03 at 594–635; Exhibit RR-2021-001-A-01 at 214–215. Usiminas submits that Brazil is not able to fulfill its European Union safeguards quota. However, no evidence in this regard was filed. Moreover, based on information on the record, Brazil does not have a tariff-rate quota in respect of HRS.

the access to key export markets and increase the likelihood that foreign producers and exporters of the subject goods will seek markets without such restrictions.

Domestic market conditions

[145] The domestic producers submitted that, since the issuance of the previous order, the Canadian market went through four distinct periods.¹⁴²

[146] First, demand and prices for HRS rose in 2018, which was followed by a downturn in demand in 2019 due to declines in downstream markets. Second, in early 2020, the pandemic began and the market suffered a sudden and severe drop in demand. As mills suddenly had higher than expected inventories, producers reduced production and drew down on their inventories. Third, starting at the end of 2020, consumption increased significantly as customers began to return to normal operations but began ordering higher than normal levels to re-stock. Due to the difficulty of bringing HRS production back to full capacity, HRS supply lagged and prices increased significantly during this time and into 2021. Fourth, beginning in the latter half of 2021 and into early 2022, demand stabilized and prices began to decline as a surge of low-priced imports entered the Canadian market. The domestic producers submitted that this most recent phase is continuing. With high inventories of low-priced imports, and customers taking a “wait-and-see” approach to ordering, the fourth quarter of 2021 and the first quarter of 2022 have been challenging for the domestic producers.¹⁴³ As a result, domestic prices have declined and will decline through at least 2023, stabilizing in 2024. In this regard, CRU forecasts for U.S. Midwest pricing indeed indicate that prices will continue to decline in 2022 and stabilize in 2023.¹⁴⁴

[147] The domestic producers’ views are largely supported by other evidence on the record. The investigation report shows that the apparent Canadian market for HRS declined by 19 percent in 2019 and by 9 percent in 2020, and increased by 34 percent in interim 2021 compared to interim 2020.¹⁴⁵ Prices of HRS also declined in 2019 and 2020 and increased markedly in interim 2021.¹⁴⁶

[148] More broadly, according to the Bank of Canada, Canada’s GDP contracted by 5.2 percent in 2020, and is estimated to grow 4.6 percent in 2021.¹⁴⁷ Looking forward, GDP is expected to grow by 4 percent in 2022 and 3.5 percent in 2023.¹⁴⁸ The Bank of Canada reported that the Canadian economy had strong momentum heading into 2022 and that consumer spending and business investment are anticipated to rebound and grow. The Bank of Canada also noted that impacts from

¹⁴² Exhibit RR-2021-001-13.01 at 24-25; Exhibit RR-2021-001-A-03 at paras. 11-13; Exhibit RR-2021-001-A-05 at paras. 18-26; Exhibit RR-2021-001-B-03 at paras. 38-39; Exhibit RR-2021-001-D-03 at paras. 37-45; Exhibit RR-2021-001-D-07 at paras. 15-26; *Transcript of Public Hearing* at 27-29.

¹⁴³ *Transcript of Public Hearing* at 29.

¹⁴⁴ Exhibit RR-2021-001-A-04 (protected) at 41. It was submitted that all things being equal, Canadian prices for HRS generally follow the same trends as prices in the U.S. market, although some factors may affect this, including exchange rate fluctuations, seasonal demand, variations in local markets, and trade measures imposed on imports. Exhibit RR-2021-001-D-05 at para. 24.

¹⁴⁵ Exhibit RR-2021-001-05.A, Table 11.

¹⁴⁶ *Ibid.*, Table 25.

¹⁴⁷ Exhibit RR-2021-001-A-01 at 163; Exhibit RR-2021-001-05.A, Table 38. Similarly, TD Bank reported that Canada’s GDP grew 4.5 percent in 2021 and is expected to grow 4.4 percent in 2022 and 3.1 percent in 2023 (see Exhibit RR-2021-001-A-01 at 182).

¹⁴⁸ Exhibit RR-2021-001-A-01 at 163.

global and domestic supply chains are driving up prices but that such inflationary pressures are expected to subside by the end of 2022.¹⁴⁹

[149] With respect to HRS specifically, domestic consumption is forecasted to increase considerably in 2022 and remain steady in 2023 and 2024 with marginal increases.¹⁵⁰ This is consistent with the domestic producers submitting that downstream industries are expected to see improvements in 2022. In this regard, the automotive sector's sales grew 6.6 percent in 2021 and are expected to increase further in 2022.¹⁵¹ The oil and gas industry also expects investments to increase in 2022, 2023 and 2024.¹⁵²

Likely import volume of the subject goods

[150] Paragraph 37.2(2)(a) of the Regulations directs the Tribunal to consider the likely volume of the dumped or subsidized goods if the order is allowed to expire and, in particular, whether there is likely to be a significant increase in the volume of imports of the dumped or subsidized goods, either in absolute terms or relative to the production or consumption of like goods. This assessment encompasses the likely performance of the foreign industry, the potential for the foreign producers to produce goods in facilities that are currently used to produce other goods, evidence of the imposition of anti-dumping and/or countervailing measures in other jurisdictions, and whether measures adopted by other jurisdictions are likely to cause a diversion of the subject goods to Canada.¹⁵³

Alleged deficiencies in the investigation report

[151] Algoma, Stelco and AMD submitted that the Tribunal should rely on the CBSA's enforcement and import data in its likelihood of injury analysis due to deficiencies in the investigation report data, namely that the volumes reported were substantially below both the CBSA data and Statistics Canada data.¹⁵⁴ It was noted that certain importers did not respond to the Tribunal's questionnaire.¹⁵⁵ Moreover, the domestic producers submitted that the CBSA enforcement data were more robust and reliable, as they rely on importer declarations, including those from non-resident importers.¹⁵⁶

[152] The Tribunal is not convinced that there is a material discrepancy with respect to the volume data reflected in the investigation report. As the CBSA import data and Statistics Canada data rely on HS Codes for the collection of import data, they may include data in respect of products that do not fall within the product definition. The Tribunal relies on import data provided in responses to the Tribunal's questionnaire and on estimations based on CBSA import data for non-surveyed and non-responding importers. One of the key objectives of the questionnaires and estimations is to

¹⁴⁹ *Ibid.* at 154–155, 162–175.

¹⁵⁰ Exhibit RR-2021-001-D-04 (protected) at 371. See also Exhibit RR-2021-001-D-06 (protected) at para. 36; Exhibit RR-2021-001-D-07 at para. 28; Exhibit RR-2021-001-A-06 (protected) at paras. 58–59; Exhibit RR-2021-001-14.01 (protected) at 100.

¹⁵¹ Exhibit RR-2021-001-A-01 at 192–193.

¹⁵² *Ibid.* at 195–201.

¹⁵³ Paragraphs 37.2(2)(a), (d), (f), (h) and (i) of the Regulations.

¹⁵⁴ Exhibit RR-2021-001-A-02 (protected) at para. 106; Exhibit RR-2021-001-A-04 (protected) at para. 62; Exhibit B-04 (protected) at para. 43.

¹⁵⁵ Exhibit A-02 (protected) at para. 102.

¹⁵⁶ *Ibid.* at 100–101.

capture imports *meeting the product definition*.¹⁵⁷ The Tribunal's methodology is well established.¹⁵⁸ Furthermore, in the present expiry review, the questionnaire response coverage was strong, ranging from 63 to 71 percent for the United States and from 51 to 79 percent for other countries. For the foregoing reasons, the Tribunal is of the view that the data in the investigation report reflect a reasonable estimate of imports meeting the product definition, particularly as there is a consistent trend between the datasets.

Ukraine

[153] Based on the evidence on the record, the Tribunal finds that, over the next 12 to 24 months, it is not likely that there will be significant volumes of subject goods from Ukraine entering the Canadian market. As discussed above, the ongoing war in Ukraine following Russia's invasion on February 24, 2022, has caused significant damage to Ukraine's infrastructure and has had devastating effects on its population. With steel producers halting production and no indication as to when production will resume, the Tribunal is unable to rely on previous projections for Ukraine's production and excess capacity which were filed with the Tribunal prior to the start of the war. The Tribunal finds that insofar as there is an end to the conflict, an outcome that at present cannot be determined, Ukrainian domestic demand for HRS is likely to increase as the country begins to rebuild itself.

[154] In this regard, the Tribunal finds that AMD's concession that the subject goods from Ukraine will, as a result of the war, not likely be present in the market to be cogent evidence that dumped goods from Ukraine will not be forthcoming so as to cause material injury to the domestic industry in Canada.

Brazil and China

[155] Imports of subject goods from Brazil and China were minimal over the POR.¹⁵⁹ Meanwhile, imports from the non-subject countries represented the majority of total imports over the POR. Imports from the United States remained consistent over the POR and represented the bulk of the import market.¹⁶⁰ However, imports from non-subject countries by importers increased significantly in interim 2021 as compared to interim 2020. The largest increase was experienced by imports from "other countries".¹⁶¹ The evidence with respect to imports of non-subject HRS indicates that there remains a demand in Canada for lower-priced HRS. It also indicates a sustained interest in the Canadian market on the part of HRS exporters that are unconstrained by SIMA duties.

[156] As discussed above, there is some evidence of increased domestic demand in Brazil. According to CRU forecasts, Brazil will also have excess production capacity over the medium term, though evidence from Usiminas suggests that Brazil may cease to have excess capacity by 2024.¹⁶²

¹⁵⁷ COR at para. 80.

¹⁵⁸ Exhibit RR-2021-001-05.A at 6. See also the Tribunal notice, Determining the volume of imports and sales of imports in investigation reports, available at <https://citt-tcce.gc.ca/en/anti-dumping-injury-inquiries/determining-volume-imports-and-sales-imports-investigation-reports>.

¹⁵⁹ Exhibit RR-2021-001-05.A, Table 6.

¹⁶⁰ Exhibit RR-2021-001-06.A (protected), Tables 6, 7, 8.

¹⁶¹ *Ibid.*, Table 7.

¹⁶² Exhibit RR-2021-001-D-04 (protected) at 375, 388; Exhibit RR-2021-001-G-02.A (protected) at para. 97; Exhibit RR-2021-001-G-01.A at para. 97.

However, as noted above, there is evidence of increasing HRS imports into Brazil in 2021, and that Usiminas has the ability to reduce or increase production relatively quickly depending on demand.¹⁶³

[157] The evidence indicates that China's excess capacity is significant and is forecasted to increase in 2022 and 2023.¹⁶⁴ With regard to exports, CRU reports that some mills are reallocating production to export markets.¹⁶⁵ In addition, the Chinese customs authorities note that Chinese exporters of steel sheet and plate reported a 37.8 percent increase in 2021 over 2020, and China posted a "record trade surplus in December and in 2021".¹⁶⁶

[158] As noted above, Chinese and Brazilian exports of HRS also face trade remedies measures in various jurisdictions.¹⁶⁷ The Tribunal finds that, with these trade measures in place, Chinese and Brazilian HRS producers are likely to seek other export markets.

[159] In addition, as considered by the Tribunal in previous reviews of the finding,¹⁶⁸ due to the capital-intensive nature of hot-rolled steel production, there is a strong incentive for steel mills to maintain high capacity utilization rates to spread fixed costs over as much volume as possible (also referred to as a production imperative).¹⁶⁹ As such, producers have a strong incentive to export steel at marginal cost to increase capacity utilization.

[160] In the Tribunal's view, with the levels of excess capacity in Brazil and China, the capital-intensive nature of HRS production will continue to ensure that producers remain highly export-oriented. This is particularly true for Chinese producers, in view of evidence that HRS consumption in China is expected to decrease year over year between 2022 and 2024.¹⁷⁰

[161] Furthermore, should the order be rescinded, Canada is likely to be an attractive market for exports from the subject countries. CRU reports that HRS U.S. Midwest prices will remain among the highest in the world over 2022 and 2023.¹⁷¹ In this regard, while Canadian market prices have generally been lower than U.S. Midwest prices over the POR, the evidence shows that Canadian prices have followed, and continue to trend, the U.S. Midwest price.¹⁷²

[162] As argued by AMD, Algoma and Stelco, the Tribunal agrees that injury findings for downstream products of HRS or products produced on the same equipment as HRS indicate that

¹⁶³ *Transcript of Public Hearing* at 368.

¹⁶⁴ Exhibit RR-2021-001-D-04 (protected) at 375, 388; Exhibit RR-2021-001-A-04 (protected) at 133–134. In its 2020 Ministerial Report, the Global Forum on Steel Excess Capacity reported that China's steelmaking capacity may be significantly higher than previously reported (see Exhibit RR-2021-001-D-03 at 219). This evidence suggests that China's excess capacity may be higher than reported.

¹⁶⁵ Exhibit RR-2021-001-D-04 (protected) at 528.

¹⁶⁶ Exhibit RR-2021-001-A-02 (protected) at 312, 314.

¹⁶⁷ Exhibit RR-2021-001-05.A, Table 37.

¹⁶⁸ *Steel Sheet RR 2011* at paras. 61–62, 132; *Steel Sheet RR 2016* at para. 85.

¹⁶⁹ Exhibit RR-2021-001-D-03 at para. 30; *Transcript of Public Hearing* at 36–38, 69–70, 109, 156–157. While the Tribunal has noted above that a production imperative is more limited at Cubatão given that this facility relies heavily on slabs purchased from third parties, the Tribunal is of the view that Usiminas retains a production imperative with its operations at Ipatinga.

¹⁷⁰ Exhibit RR-2021-001-D-04 (protected) at 367, 371.

¹⁷¹ *Ibid.* at 125; Exhibit RR-2021-001-A-04 (protected) at paras. 55–57.

¹⁷² Exhibit RR-2021-001-06.A (protected), Table 24; Exhibit RR-2021-001-D-04 (protected) at 125; Exhibit RR-2021-001-A-04 (protected) at para. 16; Exhibit RR-2021-001-B-05 at para. 11.

Brazilian and Chinese producers of HRS are interested in Canada's flat-rolled sector (e.g. plate, cold-rolled steel (CRS), corrosion-resistant steel (COR) and tubular products such as line pipe, oil country tubular goods, piling pipe, pup joints, etc.).¹⁷³ This indicates that as these foreign producers became impacted by injury findings in HRS, they shifted to exporting downstream steel products that use HRS as an input or products that may be produced on the same equipment due to an attractive Canadian steel market. Further evidence that Canada is an attractive market includes the testimony of the witnesses for Nova and Samuel with respect to regular offers from Brazilian steel producers for CRS and COR products, which are downstream products of HRS.¹⁷⁴ Moreover, Usiminas's evidence indicates that it sold CRS to Canada during the POR and into 2022.¹⁷⁵ Importantly, witnesses for Usiminas confirmed its intention to possibly sell HRS into Canada if the order is rescinded.¹⁷⁶

[163] Based on the foregoing, the Tribunal finds that a significant increase in the volume of subject goods from China and Brazil is likely, should the order be rescinded.

India

[164] The evidence indicates that India's excess capacity for HRS was significant in 2021. While there was no capacity figure for the period from 2022 to 2029, the evidence suggests that India's HRS capacity will expand extensively to "almost double" by 2030.¹⁷⁷

[165] Trade remedies have been imposed on HRS from India in the United States, the European Union, Thailand and Indonesia.¹⁷⁸ This increases the likelihood that Indian HRS exporters will look to other export markets, such as Canada, should the order be rescinded.

[166] As discussed above, Canada will be an attractive market considering its higher pricing relative to other export markets. According to CRU, the HRS pricing in India is expected to be lower than the U.S. Midwest price in 2022 but is projected to rise in 2023 and 2024 and surpass the U.S. Midwest price.¹⁷⁹ However, according to AMD's affiliate in India, AM/NS, the HRS market price in India is equivalent to China's HRS market price plus freight and a 7.5 percent duty rate.¹⁸⁰ At these prices, Indian HRS will remain below U.S. Midwest pricing in 2023 and 2024.¹⁸¹ As noted by Mr. Wegiel, when Chinese HRS pricing is low, Indian HRS pricing is also low.¹⁸²

[167] Based on AM/NS's estimate, prices in the Indian market would remain below U.S. Midwest pricing in 2023 and 2024. Given the extent of excess capacity and planned expansions in India, the

¹⁷³ Exhibit RR-2021-001-A-02 (protected) at paras. 140–142.

¹⁷⁴ *Transcript of Public Hearing* at 240–242.

¹⁷⁵ Exhibit RR-2021-001-G-04.A (protected) at 252.

¹⁷⁶ *Transcript of Public Hearing* at 419.

¹⁷⁷ Exhibit RR-2021-001-D-04 (protected) at paras. 163, 167–168, at 636. *Transcript of Public Hearing* at 37–38, 40, 90. The domestic producers submitted that certain CRU data relating to excess capacity in India for 2019 to 2025 contain discrepancies and were, at the time of these proceeding, in the process of being updated. See Exhibit RR-2021-001-D-03 at para. 166. The Tribunal notes the evidence that ArcelorMittal Nippon Steel India (AM/NS) would not export HRS to Canada given that AMD is responsible for the Canadian market within the ArcelorMittal group.

¹⁷⁸ RR-2021-001-05.A, Table 37.

¹⁷⁹ Exhibit RR-2021-001-D-04 (protected) at 125.

¹⁸⁰ *Ibid.* at paras. 162, 171.

¹⁸¹ *Ibid.* at 125; Exhibit RR-2021-001-A-02 (protected) at paras. 165–166.

¹⁸² Exhibit RR-2021-001-D-03 at para. 171.

Tribunal is of the view that India will still need to export in 2023 and 2024, and that Canada will be an attractive market given the U.S. Midwest price, which Canadian pricing typically follows, and trade restrictions in the U.S.¹⁸³

[168] Strong interest in the Canadian market is also evidenced by testimony from Mr. Sykes and Mr. Dunstall regarding recent offers for Indian HRS¹⁸⁴ as well as offers for downstream products. In this regard, Mr. Sykes testified that his company regularly receives offers from Indian steel producers for cold-rolled and corrosion-resistant products that are “always well below domestic [Canadian] pricing.”¹⁸⁵ This was corroborated by Mr. Dunstall who also indicated that the pricing differential between Canadian cold rolled product and that offered from India was “fairly significant.”¹⁸⁶ Based on the evidence with respect to offers for downstream products, the Tribunal is of the view that there will be strong interest from Indian HRS producers and exporters should the order be rescinded.

[169] Based on the foregoing, the Tribunal finds that a significant increase in the volume of subject goods from India is likely, should the order be rescinded.

Likely price effects of the subject goods

[170] The Tribunal must consider whether, if the order is allowed to expire, the dumping or subsidizing 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.¹⁸⁷ In this regard, the Tribunal distinguishes the price effect of the subject goods from any price effects that would likely result from other factors affecting prices.

[171] In *Steel Sheet RR 2016*, the Tribunal found that HRS is an interchangeable commodity product which, all other conditions being the same, competes on the basis of price.¹⁸⁸ This continues to be the case based on the evidence in this expiry review. The Tribunal heard testimony from Mr. Sykes and Mr. Dunstall affirming that all competing mills, whether domestic or offshore, provide similar quality and reliability and as such, the main driver of purchasing decisions is price.¹⁸⁹ Mr. Healey also described the Canadian market for HRS being a mature one with limited opportunities for growth, being made up of a relatively small number of customers who purchase high volumes.¹⁹⁰ Additionally, the evidence continues to reflect that HRS sales are made on either a contractual basis (commonly used for sales to the automotive sector) or on a non-contractual basis,

¹⁸³ The Tribunal has previously acknowledged that Canadian steel producers have long operated in a highly integrated cross-border market with American producers. See, for example, *Certain Steel Goods* at 15.

¹⁸⁴ *Transcript of Public Hearing* at 224, 263–264, 274–275.

¹⁸⁵ *Ibid.* at 240.

¹⁸⁶ *Ibid.* at 241–242.

¹⁸⁷ Paragraph 37.2(2)(b) of the Regulations.

¹⁸⁸ At paras. 14, 52, 102.

¹⁸⁹ *Transcript of Public Hearing* at 213. Mr. Healey also noted that HRS is the most commodified product sold by AMD and is highly interchangeable with HRS made all over the world, with multiple import sources in similar sizes, grades and specifications. *Transcript of Public Hearing* at 26. However, Mr. Coelho testified that offshore suppliers can offer levels of service below those of domestic mills in Brazil (*Transcript of Public Hearing* at 405–406, 428–429).

¹⁹⁰ *Transcript of Public Hearing* at 25.

which is based on spot market pricing. The evidence indicates that spot market pricing has less impact on HRS prices for contracts.¹⁹¹

[172] Considering the importance of price, the Tribunal accepts the evidence that import offers may have a significant impact on pricing discussions between domestic producers and purchasers. In this regard, Mr. Dunstall explained that discussing offshore pricing with domestic mills is “critical” to maintain a competitive price in the marketplace.¹⁹² The Tribunal also heard that the service center sector is particularly sensitive to price, as it is highly competitive and operates on a high volume and low margin basis.¹⁹³ Mr. Sykes explained that when other service centres purchase low-priced offshore HRS, Nova will follow suit, unless domestic producers can offer pricing that is competitive with the offshore HRS.¹⁹⁴

[173] The domestic producers submitted that while they would normally expect to see a domestic premium of \$50 to \$60 per metric tonne, customers are less likely to pay the premium in the current market due to falling HRS prices and the risk of devaluation of inventory.¹⁹⁵ In this regard, Mr. Sykes confirmed that a domestic premium of 10 to 15 percent is possible, but in an environment of decreasing prices, domestic mills must offer import level pricing in order to secure the sale.¹⁹⁶

Likely price effects of subject goods from Ukraine

[174] Having found above that HRS from Ukraine is unlikely to be present in the Canadian market if the order is rescinded, the Tribunal must conclude that these subject goods are unlikely to have any price effect on domestic like goods in the near to medium term.

Likely price effects of subject goods from Brazil and China

[175] Imports of the subject goods from Brazil and China were minimal during the POR, which suggests that Brazilian and Chinese exporters have been unable to secure sales at undumped prices.¹⁹⁷ This also limits the relevance of price comparisons between the subject goods and like goods during the POR, i.e. while measures were in place. As such, in assessing the likely prices of the subject goods from Brazil and China if the order is rescinded, it is more useful to consider the selling prices of imports from non-subject countries.

[176] Over the POR, the average market selling prices of domestic like goods decreased from 2018 to 2020, then increased significantly from interim 2020 to interim 2021.¹⁹⁸ However, based on the evidence on the record, the Tribunal does not find that the price rebound seen in interim 2021 is

¹⁹¹ *Steel Sheet RR 2016* at paras. 21, 22; Exhibit RR-2021-001-D-05 at para. 22; Exhibit RR-2021-001-D-07 at para. 9. Contract pricing involves a negotiated price or price formula for a specific period, and is based on market conditions and outlook at the time a contract is signed.

¹⁹² *Transcript of Public Hearing* at 227–228.

¹⁹³ *Ibid.* at 211–212.

¹⁹⁴ Exhibit RR-2021-001-B-07 at para. 19.

¹⁹⁵ Exhibit RR-2021-001-A-05 at para. 17.

¹⁹⁶ *Transcript of Public Hearing* at 226–227.

¹⁹⁷ Exhibit RR-2021-001-05.A, Table 10.

¹⁹⁸ *Ibid.*, Tables 24, 25.

likely to be indicative of price trends in the near to medium future. Indeed, the evidence indicates that prices have started to decline and are likely to continue declining through 2023.¹⁹⁹

[177] In terms of price undercutting by imports, the data in the investigation report indicate that selling prices of subject goods from Brazil and China did not undercut the selling price of like goods during the POR, when duties were in place.²⁰⁰ The investigation report also did not show undercutting of the domestic like goods' selling prices by imports from non-subject countries between 2018 and 2020, except for interim 2021, during which the selling prices of imports of non-subject goods from the United States undercut the like goods.²⁰¹ However, the Tribunal must determine whether this situation is likely to continue in the event of the rescission of the order and in the market conditions that are forecasted in the next 12 to 24 months.

[178] In this regard, other evidence on the record indicates that the low prices of non-subject goods, namely offers of HRS imports from Chinese Taipei, Egypt, Mexico, South Korea, Russia, Turkey and Vietnam during the POR, undercut the price of like goods at a level exceeding the domestic premium.²⁰² In particular, Mr. Sykes stated that his firm received offers of HRS from non-subject countries that were about 30 percent lower than domestic pricing.²⁰³ Mr. Dunstall indicated that in the last year, offers from offshore sources were seen ranging from \$300 to \$800 per tonne lower than domestic pricing.²⁰⁴ Mr. Dunstall also explained that the spread of undercutting has been dropping significantly as domestic pricing has been moving closer to offshore levels.²⁰⁵

[179] The domestic producers' evidence shows that, starting in the second half of 2021, Canadian spot pricing began to move closer to non-subject import parity pricing (based on average import offers seen by AMD in the Canadian market plus ocean freight).²⁰⁶ As volumes of non-subject imports increased in the second half of 2021, Canadian spot pricing began to fall below U.S. Midwest pricing and continued to remain lower through to the beginning of 2022.²⁰⁷ The divergence between the two sets of pricing, in the Tribunal's view, confirms the price depressing effects of offshore pricing. CRU forecasts indicate that U.S. Midwest pricing will continue declining in 2023 and through 2024.²⁰⁸

[180] However, the evidence further shows that the price at which the subject goods would compete with domestic like goods if the order were rescinded, may be lower than prices of non-subject imports. In this regard, the domestic producers' evidence shows that Chinese import parity pricing, meaning Chinese HRS export prices plus freight to Canada (i.e. landed prices), was consistently below that of non-subject imports beginning in 2021. According to both Mr. Healey and Mr. Wegiel, if the order were rescinded, Chinese subject goods would be expected to enter the

¹⁹⁹ Exhibit RR-2021-001-D-04 (protected) at 126.

²⁰⁰ Exhibit RR-2021-001-05.A, Table 24.

²⁰¹ *Ibid.*, Table 24; Exhibit RR-2021-001-06.A (protected), Table 24.

²⁰² Exhibit RR-2021-001-A-06 (protected) at paras. 34–51, 53; Exhibit RR-2021-001-B-04 (protected) at para. 51; Exhibit RR-2021-001-B-06 (protected) at 16–32; Exhibit RR-2021-001-A-06 (protected) at para. 71; Exhibit RR-2021-001-D-08 (protected) at paras. 30-32.

²⁰³ Exhibit RR-2021-001-B-07 at para. 22.

²⁰⁴ *Transcript of Public Hearing* at 223.

²⁰⁵ *Ibid.* at 225.

²⁰⁶ Exhibit RR-2021-001-A-11 at 65; Exhibit RR-2021-001-A-12 (protected) at 64–65.

²⁰⁷ Exhibit RR-2021-001-D-03 at paras. 26, 27; Exhibit RR-2021-001-D-04 (protected) at 125–126; Exhibit RR-2021-001-A-11 at 65.

²⁰⁸ Exhibit RR-2021-001-D-04 (protected) at 125–126.

Canadian market at Chinese import parity prices; Canadian HRS pricing would be pulled down to the Chinese import parity price.²⁰⁹ Mr. Wegiel noted that China is the low-price leader on global HRS export markets, a fact which is supported by CRU reports that Chinese export prices will be among the lowest globally.²¹⁰

[181] Having considered the evidence above, and in view of the commodity nature of HRS and the price sensitivity of purchasers, the Tribunal finds that subject goods from Brazil and China would likely re-enter the Canadian market at prices below prevailing market prices in order to capture sales. In response to this competition, the domestic industry would have to lower prices or lose sales.

[182] The Tribunal also notes that it is unlikely that any increased costs incurred by the domestic industry could be passed on to customers if the order were to be rescinded, given the increased competition with low-priced dumped subject goods.

[183] In conclusion, if the order is rescinded, the domestic industry is likely to see the subject goods from Brazil and China entering the Canadian market at low prices in order to compete with non-subject imports. Accordingly, the Tribunal finds that, should the order be rescinded, the dumped subject goods from Brazil and China will likely significantly undercut and depress the prices of like goods.

Likely price effects of subsidized subject goods from India

[184] There were no imports of the subject goods from India during the POR, which suggests that Indian exporters have been unable to secure sales at unsubsidized prices.²¹¹ The Tribunal however heard evidence of offers of HRS from India in 2021 priced well below prices offered by Canadian mills.²¹² This indicates that, in the absence of the countervailing order, Indian HRS could enter the Canadian market at prices which will significantly undercut domestic prices of like goods.

[185] As discussed above, HRS is a commodity product that is, where specifications are equal, largely purchased on the basis of price. In addition, the evidence demonstrates that purchasers are highly price-sensitive. Therefore, similarly to the subject goods from Brazil and China, and based on the evidence referenced above, the Tribunal finds that, in order to re-enter the Canadian market, subject goods from India would have to compete at the lowest market price in order to win sales. This would have the same effect of forcing domestic producers to lower prices or risk losing sales.

[186] For these reasons, the Tribunal finds that if the order were rescinded, subsidized subject goods from India would likely significantly undercut and depress prices of like goods.

Likely impact on the domestic industry

[187] The Tribunal will assess the likely impact of the above volumes and prices of each group of subject goods on the domestic industry should the order be rescinded,²¹³ taking into consideration the

²⁰⁹ *Transcript of Public Hearing* at 31–32, 35–36, 40–41.

²¹⁰ *Ibid.*; Exhibit RR-2021-001-D-04 (protected) at 125–126.

²¹¹ Exhibit RR-2021-001-05.A, Tables 10, 24.

²¹² *Transcript of Public Hearing* at 224; *Transcript of In Camera Hearing* at 124–125.

²¹³ Paragraphs 37.2(2)(c), (e) and (g) of the Regulations.

recent performance of the domestic industry.²¹⁴ In this analysis, the Tribunal distinguishes the likely impact of the subject goods from the likely impact of any other factors affecting or likely to affect the domestic industry.²¹⁵

Recent performance of the domestic industry

[188] As described above, the Canadian market for HRS saw a downturn in 2019, with some improvements seen at the start of 2020. Beginning in March 2020, the Canadian market experienced a sudden and severe drop in demand due to the COVID-19 pandemic. This period of “pandemic shock” persisted until the fourth quarter of 2020, when consumption and prices started to increase. In the latter half of 2021, prices started to decline and are expected to continue declining through 2023.²¹⁶

[189] These trends are reflected in the domestic industry’s financial performance, which generally declined from 2018 to 2020, but saw considerable improvements in interim 2021.²¹⁷

[190] Net sales value, both at the aggregate and unit levels, declined in 2019 and 2020, while unit COGS increased in 2019 and declined in 2020. Unit gross margins decreased in 2019 and 2020, and the domestic industry’s unit net income declined in 2019 and worsened further in 2020. In interim 2021, as compared to interim 2020, the domestic industry’s net sales volume and unit net sales value increased considerably. Despite an increase in unit COGS in interim 2021, the domestic industry saw its highest gross margins and net income levels of the POR during that period.²¹⁸

[191] Domestic sales from domestic production declined year over year between 2018 and 2020, and increased in interim 2021 from interim 2020.²¹⁹ Production volumes for domestic sales followed the same trend. From 2018 to 2020, including interim 2020, the domestic industry held between 88 and 90 percent of the market, but that declined to 84 percent in interim 2021.²²⁰ The domestic industry’s loss in market share in interim 2021 was attributable to an increase in imports from non-subject countries in that period.

[192] With respect to export performance, the domestic industry’s export sales volumes, as well as production volumes and net sales values for exports, declined in 2019 and 2020 and saw an increase in interim 2021.²²¹

[193] Other key performance indicators followed similar trends.²²² Capacity utilization rates for domestic sales, export sales and further internal processing declined in 2019 and 2020, and increased

²¹⁴ *Hot-Rolled Carbon Steel Plate and High-Strength Low-Alloy Steel Plate* (7 January 2014), RR-2013-002 (CITT) at para. 85. In *Thermoelectric Containers* at para. 14, the Tribunal stated that the requirement in an expiry review is that the Tribunal draw logical conclusions from the relevant information before it, and that information will often appropriately include the performance of the domestic and foreign industries during the period of review, when anti-dumping and countervailing duties were in place; see also *Aluminum Extrusions* at para. 21.

²¹⁵ See paragraph 37.2(2)(k) of the Regulations.

²¹⁶ Exhibit RR-2021-001-D-04 (protected) at 125–126.

²¹⁷ Exhibit RR-2021-001-06.A (protected), Table 30.

²¹⁸ *Ibid.*, Table 30.

²¹⁹ *Ibid.*, Table 30.

²²⁰ Exhibit RR-2021-001-05.A, Table 12.

²²¹ Exhibit RR-2021-001-06.A (protected), Table 31.

²²² *Ibid.*, Tables 33, 34.

in interim 2021. Productivity declined in 2019 and 2020. There was a marginal increase in wages from 2018 to 2019, which was followed by a more significant decline in 2020. Wages in interim 2021 were higher than in interim 2020.²²³ Total employment also declined in 2019 and 2020, but increased in interim 2021 in comparison to interim 2020. Inventory levels increased in 2019, declined in 2020, and increased in interim 2021 in comparison to interim 2020. Investments also increased in 2019 and declined in 2020.

[194] The domestic producers submitted that investments made during the POR were possible due to the order being in place. In 2019, investments by the domestic industry increased by 72 percent. This was followed by a 31 percent decline in 2020, but year-over-year increases in investments are projected between 2021 and 2023.²²⁴ Investments include upgrades to production facilities, capital investments and carbon reduction projects.²²⁵

[195] The evidence with respect to the domestic industry's recent performance was uncontroverted. Overall, the Tribunal finds that the domestic market experienced some recovery in interim 2021. This can be attributed to the broader post-pandemic economic recovery beginning at the end of 2020. However, the uncontroverted data on the domestic industry's performance over the POR, and more specifically in 2019 and 2020, underline the vulnerability of the domestic producers. This is particularly the case in the current context of a recovering economy that has yet to return to pre-pandemic levels. The evidence therefore supports the domestic producers' claims that the domestic industry will struggle to perform profitably if it is forced to compete with increased volumes of lower-priced subject goods in the near to medium term.

Likely impact on the domestic industry if the order is rescinded

[196] The Tribunal must ultimately assess whether the likely volume and price effects of the dumped and subsidized goods will likely, *in and of themselves*, result in material injury to the domestic industry, taking into account the impact from other factors unrelated to the dumping and subsidizing.

- Brazil and China

[197] As discussed above, the Tribunal has found that if the order were rescinded, subject goods from Brazil and China would likely re-enter the Canadian market in significant volumes and at prices that would undercut and depress prices of like goods.

[198] The evidence shows that HRS prices will continue declining throughout 2022, from post-pandemic highs observed in the third quarter of 2021, and stabilize by the end of 2023.²²⁶ In this context, Algoma, Stelco and AMD submitted that if the order were rescinded, domestic prices of like goods would be driven further downward and the domestic industry would suffer material injury in

²²³ Mr. John Kallio of the USW indicated that there were some wage increases in 2020 (1 percent) and in August 2021 (1.5 percent). *Transcript of Public Hearing* at 321–322.

²²⁴ Exhibit RR-2021-001-05.A, Table 34.

²²⁵ Exhibit RR-2021-001-14-02 (protected) at 10; Exhibit RR-2021-001-A-07 at paras. 12–15; Exhibit RR-2021-001-A-08 (protected) at paras. 12–15; Exhibit RR-2021-001-D-05 at paras. 58–68; Exhibit RR-2021-001-D-06 (protected) at paras. 58–68; Exhibit RR-2021-001-14.03 (protected) at 17–18; Exhibit RR-2021-001-B-03 at paras. 12, 35; *Transcript of Public Hearing* at 103–104, 150–152.

²²⁶ Exhibit RR-2021-001-A-04 (protected) at paras. 14–18; Exhibit RR-2021-001-A-03 at paras. 14–18.

the form of reduced margins and reduced profitability, reduced employment,²²⁷ and reduced returns on investments that were made over the POR and put at risk the investments that are planned in the medium term.²²⁸ The USW also submitted that if the order were rescinded, the subject goods would have injurious effects on employment and wages.²²⁹

[199] To further support the likely impact of the subject goods, AMD, Algoma and Stelco each provided financial forecasts showing anticipated pricing and profit levels in comparative scenarios, i.e. their financial performance in the case that the order is continued as well as if it were to expire.

[200] Algoma's evidence included projections of financial performance in the case where the order is maintained or rescinded.²³⁰ Based on forecasted prices and applying a conservative estimated price decline based on recent pricing observed in non-subject import offers, Algoma submitted it would expect to see significant negative impacts on sales revenue and profitability if the order were rescinded. Mr. Robert Dionisi of Algoma stated that Algoma "could not afford" HRS prices to decline further than the levels expected should the order remain in place, and its returns on investment would be jeopardized.²³¹

[201] Stelco also provided financial forecasts for both scenarios.²³² Mr. Trevor Harris of Stelco stated that, should the order be rescinded, Stelco would expect to see reduced sales volumes and lower prices resulting in significant financial injury.²³³

[202] Ms. Vasudha Seth of AMD stated that even with the order in place, AMD forecasts price declines in 2022 based on its own internal estimates and CRU forecasts as well as declines in AMD's costs of goods manufactured.²³⁴ AMD also expects that the spread between selling prices and COGM will contract in 2022, resulting in a projected fall of net income in the second half of 2022. Based on the price decline forecasted for 2023, AMD also provided its confidential forecasts for net income in 2023.²³⁵ AMD expects that results from spot sales, which generally reflect sales to non-automotive

²²⁷ Mr. Harris stated that the rescission of the order would have a destabilizing effect on Stelco employees. Ms. Seth of AMD also addressed the potential impact of the subject goods on employment in her confidential written statement. Exhibit RR-2021-001-B-03 at para. 8; Exhibit RR-2021-001-B-04 (protected) at para. 15; Exhibit RR-2021-001-D-06 (protected) at paras. 75, 80.

²²⁸ Exhibit RR-2021-005-D-05 at paras. 57–69. The Tribunal notes that planned investments to AMD's hot-mill modernization and decarbonization project will not be impacted. Exhibit RR-2021-005-D-05 at para. 71.

²²⁹ The USW argued that the term "employment" in the Regulations should be construed broadly to include the terms and conditions of employment, including, for instance, pensions, benefits, training and safety measures and that the likely negative impact of the importation of the subject goods on such factors should be taken into account by the Tribunal. Insofar as the Tribunal's conclusion is that the rescission of the order would likely have a material adverse impact on employment even on a more limited construction of the term "employment", the Tribunal does not need to address the question of statutory interpretation raised by the USW. See *OCTG II* at footnote 175.

²³⁰ Exhibit RR-2021-001-A-04 (protected) at paras. 22, 27, 30–36.

²³¹ *Transcript of Public Hearing* at 111. See also Exhibit RR-2021-001-A-04 (protected) at paras. 34–36; Exhibit RR-2021-001-A-03 at paras. 34–36.

²³² Exhibit RR-2021-001-B-04 (protected) at paras. 17, 46–59, 61–62.

²³³ *Transcript of Public Hearing* at 162. See also Exhibit RR-2021-001-B-04 (protected) at paras. 50, 52.

²³⁴ Exhibit RR-2021-001-D-06 (protected) at paras. 47–51, 53.

²³⁵ *Ibid.* at paras. 73–78.

markets and account for a significant portion of AMD's HRS sales, will face particular pricing challenges.²³⁶

[203] If the order is rescinded, Ms. Seth stated that AMD would expect a price drop in its selling prices of \$100 per tonne starting in the third quarter of 2022, for non-automotive sales, and in the first quarter of 2023, for automotive sales, if not more.²³⁷ The Tribunal finds this estimate to be reasonable considering that, as discussed above, it is likely that, if the order were rescinded, Canadian pricing would decrease to the Chinese import parity price, or at the very least, to the price of non-subject imports. In this regard, Mr. Wegiel noted that prices could drop by another \$100 to \$160 per tonne.²³⁸

[204] With this price depression, even if AMD is able to maintain consistent costs and sales volumes, AMD would experience a considerably negative impact on its financial performance in terms of revenue and diminished profitability. Additionally, AMD's ability to see reasonable returns on its investments would be impeded, while its ability to secure future investments would be jeopardized. In this regard, Ms. Seth noted that AMD competes with other ArcelorMittal subsidiaries for capital investments, which are necessary to maintain and improve operations, based on financial performance.²³⁹

[205] These arguments are supported by evidence showing that the domestic industry reduced prices to win sales and maintain market share against competition from low-priced non-subject imports over the POR.²⁴⁰ Ms. Seth testified that HRS from non-subject countries in the latter part of 2021 have already contributed to significant price declines in the Canadian market.²⁴¹ This is consistent with the evidence of Mr. Rory Brandow, where he explained that Algoma lowered its prices in response to offers of non-subject goods that undercut Algoma's initial pricing, but was not always successful in keeping the sale.²⁴²

[206] Based on the evidence discussed above, the Tribunal is of the view that, if the order is rescinded, subject goods from Brazil and China will likely cause a further decline in domestic prices over the next 12 to 24 months. The rescission of the order will likely result in the subject goods entering the Canadian market in significant volumes and at low prices. The price floor set by the non-subject imports will likely be targeted and further undercut by motivated Brazilian and Chinese producers in order to gain market share.

[207] The decline in the domestic industry's prices of like goods will likely have a significant negative impact on the financial performance of the domestic industry, as well as on output, cash

²³⁶ Exhibit RR-2021-001-D-05 at paras. 50–51.

²³⁷ *Ibid.* at para. 77; *Transcript of Public Hearing* at 23.

²³⁸ *Transcript of Public Hearing* at 36.

²³⁹ *Ibid.* at 47–48; Exhibit RR-2021-001-D-05 at paras. 55–59, 65–69, 71, 77–79, 81; Exhibit RR-2021-001-D-06 (protected) at paras. 75, 80.

²⁴⁰ *Transcript of Public Hearing* at 30–32, 93–94, 108, 155–156, 220–228.

²⁴¹ Exhibit RR-2021-001-D-05 at para. 40.

²⁴² Exhibit RR-2021-001-A-05 at paras. 35–36, 41, 46.

flow, capacity utilization, employment,²⁴³ wages and returns on investments. These adverse effects, in particular reduced profitability, would jeopardize the domestic industry's planned investments.

[208] Furthermore, while the domestic industry will also likely face negative pressure due to the effects of the subject goods from India, which the Tribunal found will likely be present in the Canadian market in significant volumes, the subject goods from Brazil and China will, through their own volume and price effects, contribute to the domestic industry's likely injury.

[209] Accordingly, for the above reasons, the Tribunal finds that the resumption of dumping of the subject goods from Brazil and China will likely cause, in and of itself, material injury to the domestic industry should the order be rescinded.

- Ukraine

[210] The Tribunal found above that subject goods from Ukraine are unlikely to return to the Canadian market in the next 12 to 24 months and as such, they are unlikely to have any price effect on the domestic industry within that time period.

[211] Accordingly, the Tribunal can only conclude that the dumping of subject goods from Ukraine would not result in material injury to the domestic industry, if the order were to expire.

- India

[212] The Tribunal found above that if the order were rescinded, subject goods from India would re-enter the Canadian market at in significant volumes and undercut and depress prices of like goods.

[213] As in the case of the dumped subject goods, if the order is rescinded, subsidized subject goods are likely to re-enter the market at prices at or below market pricing. The domestic industry would then be forced to either lower prices of like goods or lose sales. For the reasons described above, the Tribunal finds that this decline in domestic prices would have a significant negative impact on the financial performance of the domestic industry, as well as on output, cash flow, capacity utilization, employment, wages and returns on investments. These adverse effects, in particular reduced profitability, would jeopardize the domestic industry's planned investments.

[214] While the domestic industry will also likely face negative pressure due to the effects of the subject goods from Brazil and India, as set out above, the subject goods from India will, through their own volume and price effects, contribute to the domestic industry's likely injury.

²⁴³ The Tribunal notes that the domestic industry faces challenges in attracting and retaining skilled workers. For example, in his testimony, Mr. Graham of the USW discussed issues relating to workers having insufficient ties to the communities in which plants are situated and uncertainties created by the cyclical nature of the market. Ms. Rebecca McCracken of the USW also described a situation where employees without ties to the Sault Ste. Marie area leave the Algoma plant, though she noted that employees can leave to work for other domestic producers. *Transcript of Public Hearing* at 299, 315–316. The Tribunal is of the view that these existing challenges are likely to be seriously exacerbated by the negative impact of the subject goods on the domestic industry's financial performance, such as through layoffs or stagnant wages. See also *OCTG II* at paras. 183–174.

[215] In view of the evidence set out above, the Tribunal finds that the resumption of subsidizing of subject goods from India would likely cause, in and of itself, material injury to the domestic industry.

CONCLUSION

[216] On the basis of the foregoing analysis, and pursuant to paragraph 76.03(12)(b) of SIMA, the Tribunal continues its order with respect to the dumping of the subject goods from Brazil and China, and the subsidizing of the subject goods from India.

[217] Pursuant to subparagraph 76.03(12)(a)(ii) of SIMA, the Tribunal rescinds its order with respect to the dumping of the subject goods from Ukraine.

Susan D. Beaubien

Susan D. Beaubien
Presiding Member

Cheryl Beckett

Cheryl Beckett
Member

Georges Bujold

Georges Bujold
Member