



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Dumping and Subsidizing

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## FINDING AND REASONS

Inquiry No. NQ-2015-001

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

*Finding issued  
Wednesday, January 6, 2016*

*Reasons issued  
Wednesday, January 20, 2016*

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IN THE MATTER OF an inquiry, pursuant to section 42 of the *Special Import Measures Act*, respecting:

**HOT-ROLLED CARBON STEEL PLATE AND HIGH-STRENGTH  
LOW-ALLOY STEEL PLATE ORIGINATING IN OR EXPORTED FROM THE  
REPUBLIC OF INDIA AND THE RUSSIAN FEDERATION**

**FINDING**

On September 9, 2015, the Canadian International Trade Tribunal, pursuant to the provisions of section 42 of the *Special Import Measures Act*, initiated an inquiry to determine whether the dumping and subsidizing of the subject goods, as defined below, have caused injury or are threatening to cause injury to the domestic industry.

The subject goods are defined as follows:

hot-rolled carbon steel plate and high-strength low-alloy steel plate not further manufactured than hot-rolled, heat-treated or not, in cut lengths, in widths from 24 inches (+/- 610 mm) to 152 inches (+/- 3,860 mm) inclusive, and thicknesses from 0.187 inches (+/- 4.75 mm) up to and including 3.0 inches (76.2 mm) (with all dimensions being plus or minus allowable tolerances contained in the applicable standards), but excluding plate for use in the manufacture of pipe and tube (also known as skelp), plate in coil form, plate having a rolled, raised figure at regular intervals on the surface (also known as floor plate), originating in or exported from the Republic of India and the Russian Federation. For greater certainty, hot-rolled carbon steel plate and high-strength low-alloy steel plate include steel plate which contains alloys greater than required by recognized industry standards provided the steel does not meet recognized industry standards for an alloy-grade steel plate.

Hot-rolled carbon steel plate and high-strength low-alloy steel plate are manufactured to meet certain Canadian Standards Association (CSA) and/or ASTM specifications, or equivalent specifications.

Also excluded from the subject goods is hot-rolled carbon steel plate manufactured to:

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

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

Also excluded from the subject goods is hot-rolled carbon steel plate manufactured to:

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

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

This inquiry is conducted pursuant to the issuance by the President of the Canada Border Services Agency, on September 8, 2015, of preliminary determinations of dumping and subsidizing in respect of the aforementioned goods originating or exported from the Republic of India and the Russian Federation.

On December 7, 2015, the President of the Canada Border Services Agency made a final determination of dumping in respect of the aforementioned goods originating in or exported from the Republic of India and the Russian Federation and a final determination of subsidizing in respect of the aforementioned goods originating in or exported from the Republic of India. On the same day, the President of the Canada Border Services Agency terminated the subsidizing investigation in respect of the aforementioned goods originating in or exported from the Russian Federation.

Pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that the dumping of the aforementioned goods originating in or exported from the Republic of India and the Russian Federation and the subsidizing of the aforementioned goods originating in or exported from the Republic of India have not caused injury and are not threatening to cause injury to the domestic industry.

Serge Fréchette  
Serge Fréchette  
Presiding Member

Ann Penner  
Ann Penner  
Member

Peter Burn  
Peter Burn  
Member

The statement of reasons will be issued within 15 days.

Place of Hearing: Ottawa, Ontario  
Dates of Hearing: December 7 to 10, 2015

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## SUMMARY

*This summary is intended as a general and succinct overview for the convenience of readers. It is not intended to vary, supplement or supersede the detailed reasons for the decision of the Canadian International Trade Tribunal (the Tribunal) found in the following section.*

*The complainant, Essar Steel Algoma Inc. (Essar Algoma), sought protection from dumped and subsidized imports of Indian and Russian hot-rolled steel plate in widths from 24 inches to 152 inches and thicknesses from 0.187 inches to 3.0 inches. The Tribunal's mandate is to determine whether these dumped and subsidized goods have caused or are threatening to cause material injury to domestic producers of like goods, with the injury from the effects of the dumped and subsidized goods to be assessed net of any injury caused by other factors.*

*The scope of goods included in the product definition for the purposes of the injury inquiry captured the products of not only the traditional integrated steel mills that tend to produce wider plate but also steel service centres that tend to produce narrower, thinner plate cut to length from coil.*

*The Tribunal agreed with Essar Algoma's contention that the hot-rolled steel plate produced by the domestic industry are "like goods," in relation to the subject goods, in that they compete with one another in the Canadian marketplace, and are interchangeable. The Tribunal also concluded that there was no reason to depart from previous decisions in which it found that there was a single class of goods. This finding was supported by evidence that cut-to-length equipment has evolved to a point where it now creates a product from coil that is indistinguishable from discrete plate.*

*The evidence showed that the imported goods, during the period of inquiry, consisted mainly of discrete plate that had little impact on the domestic steel service centres, which, according to the data, have enjoyed continuous profitability and grown to be major players in the domestic steel plate industry. Furthermore, while the imported goods caused injury to the portion of the domestic industry focussed on the production of wider plate, there was substantial injury caused by other global market and firm-specific factors. Import data also reflected corporate decisions regarding the rationalization and specialization of production within the context of a single, unified, North American market. On the basis of the evidence, the Tribunal concluded that the dumped and subsidized imports from the Republic of India (India) and the dumped imports from the Russian Federation (Russia), in and of themselves, had not caused and were not threatening to cause material injury to the domestic industry.*



## STATEMENT OF REASONS

### BACKGROUND

1. The purpose of this inquiry is to determine whether the dumping of hot-rolled carbon steel plate and high-strength low-alloy steel plate (hot-rolled steel plate)<sup>1</sup> (the subject goods) originating in or exported from India and Russia and the subsidizing of the subject goods originating in or exported from India have caused or are threatening to cause injury to the domestic industry.

2. The inquiry stems from a complaint filed on April 20, 2015, by Essar Algoma, which was supported by Evraz Inc. NA Canada (Evraz) and SSAB Central Inc. (SSAB), and the decision of the President of the Canada Border Services Agency (CBSA) on June 10, 2015, to initiate dumping and subsidizing investigations.

3. The CBSA's decision to initiate dumping and subsidizing investigations triggered the initiation of a preliminary injury inquiry by the Tribunal on June 11, 2015, which culminated in the Tribunal's determination, on August 10, 2015, that the evidence disclosed a reasonable indication that the dumping and subsidizing of the subject goods had caused or were threatening to cause injury to the domestic industry.

4. On September 8, 2015, the CBSA made preliminary determinations of dumping and subsidizing, resulting in the imposition of provisional anti-dumping and countervailing duties on the subject goods and the commencement of this inquiry. On September 9, 2015, the Tribunal issued a notice of commencement of inquiry.<sup>2</sup>

5. On December 7, 2015, the CBSA made a final determination of dumping in respect of hot-rolled steel plate from India and Russia, and a final determination of subsidizing in respect of hot-rolled steel plate from India. On the same day, the CBSA terminated the subsidy investigation in respect of hot-rolled steel plate from Russia. As a result, the scope of the Tribunal's inquiry was narrowed and is confined to determining whether the dumping of hot-rolled steel plate from India and Russia, and the subsidizing of hot-rolled steel plate from India, have caused or are threatening to cause injury to the domestic industry.

6. The Tribunal's period of inquiry (POI) covered three years, from January 1, 2012, to December 31, 2014, as well as two interim periods, from January 1 to June 30, 2014, and the corresponding period in 2015. On this basis, on September 9, 2015, the Tribunal sent requests to complete questionnaires to domestic mills, service centres, importers, purchasers and foreign producers of hot-rolled steel plate. As will be discussed more fully below, the Tribunal had to issue several production orders on October 1 and 15, 2015, to certain service centres to obtain their complete questionnaire responses.

7. Using questionnaire replies and the CBSA's Facility Information Retrieval Management data, staff<sup>3</sup> prepared public and protected versions of the investigation report that were distributed, along with the

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1. A detailed description of the goods subject to this inquiry is found under "Product Definition".

2. C. Gaz. 2015.I.2310.

3. "Staff" refers to staff of the Trade Remedies Investigations Branch of the Secretariat to the Canadian International Trade Tribunal of the Administrative Tribunals Support Service of Canada.

questionnaire replies, to those parties that had filed a notice of participation in the inquiry.<sup>4</sup> Parties filed case briefs and evidence in response.

8. Of the parties supporting a finding of injury or threat thereof, only Essar Algoma participated fully in the inquiry. It submitted evidence and argument, and provided witnesses who testified at the hearing. SSAB submitted evidence in support of Essar Algoma's complaint and provided two witnesses who testified at the hearing.

9. The parties opposed to a finding of injury or threat thereof included Jindal Steel and Power Limited (Jindal), Steel Authority of India Ltd. (SAIL), the Ministry of Industry and Trade of the Russian Federation (Russian Ministry), the Ministry of Economic Development of the Russian Federation (MED) and the High Commission of India. Of these, Jindal and SAIL filed case briefs and were represented at the hearing, although they did not provide witnesses. The Russian Ministry and MED filed written case arguments. Written submissions were received from the High Commission of India on December 7, 2015, but these were not accepted onto the record because of the prejudice that such late written submissions would have caused to the parties.

10. The Tribunal called two witnesses to testify at the hearing: Mr. Stephen McNevitts of Evraz; and Mr. David Halcrow of Russel Metals Inc. (Russel Metals).

11. On November 4 and 5, 2015, the parties submitted to the Tribunal requests for information (RFIs) directed at the other parties. The Tribunal received an additional "special" RFI on November 9, 2015, which was after the deadline for RFI submissions had closed. As some parties objected to certain RFIs, the Tribunal issued directions to the parties on November 12, 2015, regarding the RFIs that required responses. The responses were received by November 20, 2015, and placed onto the record of the proceedings.

12. On December 4, 2015, MED indicated to the Tribunal that it wished to make a presentation at the hearing. Given the late stage of this request, MED was given until the close of business on December 7, 2015, to file a written summary of its presentation. MED did not meet this deadline. Accordingly, its written submissions, which were received on December 8, 2015, were not accepted onto the record, and MED was not permitted to make a presentation during the hearing.

13. The Tribunal held a hearing, which included public and *in camera* sessions, in Ottawa, Ontario, from December 7 to 10, 2015, with closing arguments made on December 10, 2015.

14. The Tribunal issued its finding on January 6, 2016.

## RESULTS OF THE CBSA'S INVESTIGATIONS

15. On December 7, 2015, the CBSA determined that 100 percent of the subject goods released into Canada between January 1, 2014, and March 31, 2015, were dumped. When expressed as a percentage of the export price, the weighted average margins of dumping were determined to be 98.1 percent for India and 16.2 percent for Russia. Accordingly, the CBSA concluded that the overall margins of dumping were not insignificant.<sup>5</sup>

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4. All public exhibits were made available to the parties. Protected exhibits were made available only to counsel who had filed the required declaration and confidentiality undertaking with the Tribunal in respect of confidential information.

5. Exhibit NQ-2015-001-04, Vol. 1 at 159; Exhibit NQ-2015-001-04A, Vol. 1A at 120.

16. With respect to subsidizing, the CBSA determined that the amount of subsidy in relation to hot-rolled steel plate from Russia was 0.2 percent, when expressed as a percentage of the export price. This amount of subsidy was found by the CBSA to be insignificant<sup>6</sup> and, as a result, the subsidizing investigation was terminated against Russia. Moreover, with respect to hot-rolled steel plate from India, the CBSA found that the amount of subsidy was 20.3 percent of the export price, which is considered to be significant.<sup>7</sup>

## PRODUCT

### Product Definition

17. The CBSA defined the subject goods as follows:

hot-rolled carbon steel plate and high-strength low-alloy steel plate not further manufactured than hot-rolled, heat-treated or not, in cut lengths, in widths from 24 inches (+/- 610 mm) to 152 inches (+/- 3,860 mm) inclusive, and thicknesses from 0.187 inches (+/- 4.75 mm) up to and including 3.0 inches (76.2 mm) (with all dimensions being plus or minus allowable tolerances contained in the applicable standards), but excluding plate for use in the manufacture of pipe and tube (also known as skelp), plate in coil form, plate having a rolled, raised figure at regular intervals on the surface (also known as floor plate), originating in or exported from India and Russia. For greater certainty, the subject goods include steel plate which contains alloys greater than required by recognized industry standards provided the steel does not meet recognized industry standards for an alloy-grade steel plate.

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Also excluded from the subject goods is hot-rolled carbon steel plate manufactured to:

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

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

Also excluded from the subject goods is hot-rolled carbon steel plate manufactured to:

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ASME SA-285/SA-285M or ASTM A-285/A-285M  
ASME SA-299/SA-299M or ASTM A-299/A-299M  
ASME SA-537/SA-537M or ASTM A-537/A-537M  
ASME SA-515/SA-515M or ASTM A-515/A-515M that is normalized (heat-treated) and has a sulfur content of less than 0.005 percent.<sup>8</sup>

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6. Exhibit NQ-2015-001-04A, Vol. 1A at 127. Subsection 2(1) of the *Special Import Measures Act*, R.S.C., 1985, c. S-15 [SIMA] defines “insignificant” as “. . . an amount of subsidy that is less than one per cent of the export price of the goods”.

7. Exhibit NQ-2015-001-04A, Vol. 1A at 127.

8. Exhibit NQ-2015-001-01A, Vol. 1 at 28.

18. In Inquiry No. NQ-2013-005<sup>9</sup> and Expiry Review No. RR-2014-002,<sup>10</sup> the Tribunal excluded certain products from its finding and order, respectively, i.e. hot-rolled steel plate greater than 2.75 inches (70 mm) in thickness and 72 inches in width (including normalized PVQ plate), hot-rolled steel plate with a sulfur content of less than 0.005 percent and hot-rolled steel plate that is vacuum degassed while molten and normalized (heat-treated).

19. In this case, Essar Algoma chose to include hot-rolled steel plate up to 3 inches in thickness in its product definition in the present case and not expressly exclude vacuum degassed and normalized plate. In her witness statement, Ms. Laura Devoni explained that Essar Algoma has been actively producing and selling 3-inch hot-rolled steel plate in the Canadian market and intends to continue to do so.<sup>11</sup> As such, Essar Algoma argued that these goods were properly within the product definition. Ms. Devoni's witness statement also indicated that, when the complaint was filed, Essar Algoma intended to enter the vacuum-degassed plate market.

20. This may be a concern for the Tribunal, as it could raise issues concerning most-favoured nation treatment. However, given that Essar Algoma abandoned its plans with respect to the vacuum-degassed plate, Ms. Devoni indicated that Essar Algoma would consent to a request that such hot-rolled steel plate be excluded from the Tribunal's finding.<sup>12</sup> The Tribunal will consider these issues upon reaching its final decision on the merit of the complaint.

### Product Information

21. As defined in the product definition, the subject goods are used in a number of applications, the most common of which is the production of rail cars, oil and gas storage tanks, heavy machinery, agricultural equipment, bridges, industrial buildings, high-rise office towers, automobile and truck parts, ships and barges, and pressure vessels.<sup>13</sup>

22. While production processes may vary slightly when looking at traditional, integrated mills and newer service centres, hot-rolled steel plate is typically produced in the same manner and entails the following steps:

- slab production;
- heating slabs before rolling;
- descaling;
- rolling;
- levelling;
- cutting to size;
- inspection and testing; and
- shipping.<sup>14</sup>

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9. *Hot-rolled Carbon Steel Plate* (20 May 2014) (CITT) [Plate VII].

10. *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate* (30 January 2015) (CITT).

11. Exhibit NQ-2015-001-A-03 at paras. 93-94, Vol. 11.

12. *Ibid.* at paras. 94-95.

13. Exhibit NQ-2015-001-01A, Vol. 1 at 29.

14. Exhibit PI-2015-001-03.02 (protected), Vol. 2B at 11, found in Exhibit NQ-2015-001-23 (protected); Exhibit PI-2015-001-05, Vol. 1X at 232, found in Exhibit NQ-2015-001-22.

23. Molten steel is poured from a ladle into the tundish of a continuous strand caster. From the tundish, it flows into the caster moulds to cool and to form a slab. The slab continues to move through the caster, cooling as it progresses, until it exits the caster, where it is cut to length with a torch. The slab is then either placed in inventory or immediately transferred to a reheat furnace where it is heated to a uniform rolling temperature. The plate is rolled to its final gauge in a series of rolling mills, leveled, identified and inspected for conformance to thickness tolerances and surface requirements. Plate that is formed directly into rectangular plate is known as “discrete plate”. Traditional, integrated mills and service centres also produce steel plate (known as “plate from coil” or “cut-to-length plate”<sup>15</sup>) by unwinding a hot-rolled coil through levelling rolls to produce a flat piece of hot-rolled steel plate and then cutting it to length.

24. Hot-rolled steel plate may be sold directly to distributors, end users or service centres, which may resell standard cut-to-length sizes and grades, or which offer custom cutting services. Service centres also have the ability to resell standard sizes and grades of discrete plate purchased from other Canadian and/or offshore sources.

## LEGAL FRAMEWORK

25. The Tribunal is required, pursuant to subsection 42(1) of *SIMA*, to inquire as to whether the dumping or subsidizing of the subject goods has caused injury or retardation or is threatening to cause injury to the domestic industry,<sup>16</sup> which is defined by reference to the domestic production of “like goods”.

26. Accordingly, the Tribunal must first determine what constitutes “like goods” and then determine what constitutes the “domestic industry” for purposes of its injury analysis.

27. Since the subject goods originate in or are exported from more than one country, the Tribunal must also determine whether the conditions are met for a cumulative assessment of the effect of the dumping of the subject goods from all the subject countries on the domestic industry. The Tribunal must also determine, if it decides to proceed on that basis, whether cross-cumulation is appropriate.

28. The Tribunal can then assess whether the dumping or subsidizing of the subject goods has caused material injury to the domestic industry. Should the Tribunal arrive at a finding of no material injury, it will determine whether there exists a threat of material injury to the domestic industry. If the Tribunal reaches a negative conclusion in that respect, it will not need to proceed with an examination of the two potential exclusions mentioned above.

29. In conducting its analysis, the Tribunal will also examine other factors that might have had an impact on the domestic industry to ensure that any injury or threat of injury caused by such factors is not attributed to the effects of the dumping or subsidizing.

## LIKE GOODS AND CLASSES OF GOODS

30. In order for the Tribunal to determine whether the dumping or subsidizing of the subject goods has caused or is threatening to cause injury to the domestic producers of like goods, it must determine which

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15. Exhibit NQ-2015-001-01A, Vol. 1 at 29.

16. Subsection 2(1) of *SIMA* defines “injury” as “material injury to a domestic industry” and “domestic industry” as “. . . 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”.

domestically produced goods, if any, constitute like goods in relation to the subject goods. The Tribunal must also assess whether there is, within the subject goods and the like goods, more than one class of goods.

### Like Goods

31. 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.

32. 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).<sup>17</sup>

33. Essar Algoma contended that the hot-rolled steel plate produced by the domestic industry constitutes “like goods” in relation to the subject goods. In support of this contention, Essar Algoma relied on the Tribunal’s finding in *Plate VII*, submitting that the circumstances that existed at the time of that finding (including production by the domestic industry of hot-rolled steel plate products in the same range as the subject goods, similar manufacturing processes and similar factors having an impact on pricing) persist in this case, warranting a similar finding.

34. There was much discussion at the hearing about the widths of hot-rolled steel plate produced by the domestic industry. Essar Algoma claimed that service centres tend to concentrate on widths that are less than 72 inches, whereas the vast majority of Essar Algoma’s production is hot-rolled steel plate in widths of 96 inches and greater.<sup>18</sup> Mr. Rory Brandow also indicated that, while he has seen competition between goods in narrower widths, the subject goods tend to be in widths of 96 inches and greater.<sup>19</sup>

35. Notwithstanding this seeming division within the domestic industry, the Tribunal is satisfied that the domestic industry, as a whole, produces the same range of hot-rolled steel plate products as the subject goods.<sup>20</sup> While imports of the subject goods may be mostly in widths of 96 inches and wider, they are occasionally imported in widths of 72 inches and narrower.<sup>21</sup> While service centres focus on the production of plate in widths of 72 inches and narrower, some are capable of producing plate in widths of 96 inches.<sup>22</sup> As such, although domestic mills and service centres may choose to focus much of their production in different widths, the Tribunal is satisfied that both are producers of like goods.

36. In addition, the domestic industry uses essentially the same general manufacturing processes as are used in the production of the subject goods, even though the equipment used to produce steel plate may vary from mill to mill and may vary between the mills and service centres.

37. Furthermore, the factors that determine the relative pricing of foreign-produced hot-rolled steel plate are similar to those that go into the pricing of comparable domestically produced hot-rolled steel plate. The

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17. *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) [*Pipe Fittings*] at para. 48.

18. *Transcript of Public Hearing*, Vol. 1, 7 December 2015, at 22.

19. *Ibid.* at 23.

20. Exhibit NQ-2015-001-06A, Tables 21, 22, Vol. 1.1A.

21. *Transcript of Public Hearing*, Vol. 1, 7 December 2015, at 23, 93-94, 141-42.

22. *Ibid.* at 61.

evidence before the Tribunal indicated that the pricing of hot-rolled steel plate is largely demand-driven.<sup>23</sup> The cost of raw materials, in particular iron ore, is another important factor that goes into the pricing of both domestically produced goods and the subject goods.<sup>24</sup> In addition, it is common for price premiums to be charged on both domestically produced goods and the subject goods for certain extras (such as normalizing),<sup>25</sup> for certain grades and sizes,<sup>26</sup> and for products that are required to be certified.<sup>27</sup> In terms of market characteristics, domestically produced goods and the subject goods generally fulfil the same customer needs,<sup>28</sup> compete directly with each other<sup>29</sup> and rely on the same channels of distribution.<sup>30</sup>

38. On the basis of the above considerations, the Tribunal is of the view that domestically produced hot-rolled steel plate products of the same description as the subject goods are like goods in relation to the subject goods. While the service centres may tend to concentrate on narrower widths and domestic mills may tend to concentrate on wider widths, they together produce a full range of like goods that compete with the subject goods of the same description and can be considered a single domestic industry (a point that will be discussed more fully below).

### Classes of Goods

39. The Tribunal will next consider whether there is more than one class of goods. In addressing the issue of classes of goods, the Tribunal typically examines whether goods potentially comprising separate classes of goods constitute “like goods” in relation to each other, in which case they will be regarded as comprising a single class of goods.<sup>31</sup>

40. Essar Algoma submitted that there was no reason for the Tribunal to depart from previous decisions in which it found that there was a single class of goods. In this respect, it submitted that the like goods and the subject goods are commodity products that compete with one another in the Canadian marketplace and are fully interchangeable.

41. Conversely, SAIL suggested that there are two classes of goods: discrete plate in widths of 96 inches and wider and in thicknesses of up to 3 inches; and cut-to-length plate. SAIL argued that these two classes of hot-rolled steel plate are produced on dissimilar machinery and are not produced by the same group of companies.<sup>32</sup> In support of this assertion, SAIL pointed to the fact that Essar Algoma, a single

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23. *Transcript of Public Hearing*, Vol. 1, 7 December 2015, at 25-26, 30, Vol. 2, 8 December 2015, at 188, 195-96; Exhibit NQ-2015-001-A-01 at para. 238, Vol. 11; Exhibit NQ-2015-001-A-03 at paras. 6, 24, Vol. 11; Exhibit NQ-2015-001-A-05 at para. 98, Vol. 11A; Exhibit NQ-2015-001-A-10 (protected), confidential attachment 12 at 22, Vol. 12B.

24. *Transcript of Public Hearing*, Vol. 1, 7 December 2015, at 24, 84-85.

25. *Transcript of Public Hearing*, Vol. 1, 7 December 2015, at 28-29, Vol. 3, 9 December 2015, at 257; *Transcript of In Camera Hearing*, Vol. 1, 7 December 2015, at 3-4, 96, 105, Vol. 2, 8 December 2015, at 107; Exhibit NQ-2015-001-A-06 (protected) at paras. 23-27, Vol. 12A; Exhibit NQ-2015-001-A-05 at paras. 23-27, Vol. 11A.

26. *Transcript of In Camera Hearing*, Vol. 1, 7 December 2015, at 86-87, 96, 106-107; Exhibit NQ-2015-001-07A (protected), Tables 83, 85, 87, 89, 91, 93, Vol. 2.1A.

27. Exhibit NQ-2015-001-07A (protected), Tables 31, 32, Vol. 2.1A.

28. Exhibit NQ-2015-001-06A, Table 36, Vol. 1.1A.

29. *Ibid.*, Tables 21, 22, 36.

30. *Ibid.*, Table 13; Exhibit NQ-2015-001-06A, Vol. 1.1A at 19.

31. *Unitized Wall Modules* (12 November 2013), NQ-2013-002 (CITT) at para. 26; *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) at para. 115; *Polyisocyanurate Thermal Insulation Board* (11 April 1997), NQ-96-003 (CITT) at 10.

32. *Transcript of Public Hearing*, Vol. 4, 10 December 2015, at 396.

producer and the unique producer of discrete plate in widths greater than 96 inches in Canada,<sup>33</sup> occupies the upper strata of this definition, namely, the heavy plate segment, whereas the lower strata is comprised primarily of service centres. SAIL also claimed that service centres are distinguishable from the domestic mills because service centres employ modernized and applied technologies to introduce cost-effective, high-quality products into the market. SAIL also pointed to testimony which suggests that there is no room for imports in the part of the market in which service centres compete since the cut-to-length production process tends to be more cost effective than that of discrete plate.

42. In reply to SAIL's arguments, Essar Algoma urged the Tribunal not to engage in a microanalysis of hot-rolled steel plate subtypes within the product definition. Essar Algoma asserted that there is no bright line between service centres and domestic mills because both can produce hot-rolled steel plate in widths of 96 inches and both also produce hot-rolled steel plate in widths of 72 inches. Essar Algoma also asserted that, while hot-rolled steel plate in widths of 96 inches can be discrete plate, it can also be cut-to-length plate.<sup>34</sup>

43. Weighing these arguments against the evidence, the Tribunal finds that there is no clear delineation between discrete plate and hot-rolled steel plate that has been cut to length from coil. Mr. Denis Boiteau's testimony was particularly instructive in this regard. He explained that cut-to-length equipment has evolved to a point where it now creates a product that is indistinguishable from discrete plate. In his view, this technological evolution differentiates today's hot-rolled steel plate from that of 20 years ago when hot-rolled steel plate cut to length from coil was not considered to be of the same quality as discrete plate.<sup>35</sup>

44. The fact that the different types of businesses within the domestic industry produce these products on different equipment and that they tend to focus on different dimensions is not a sufficient reason to find that the goods themselves ought to be separated into different classes, given that the final products, whether discrete plate or plate cut to length from coil, are virtually identical. On the basis of the evidence before the Tribunal in this case, the Tribunal finds that any differences existing between cut-to-length plate and discrete plate are offset by the important similarities in terms of physical characteristics, end use and pricing.

45. In the Tribunal's view, as it has found in past hot-rolled steel plate cases, while the like goods and the subject goods fall along a continuum of different grades and dimensions, it remains appropriate to treat both discrete plate and cut-to-length plate as comprising a single class of goods.

## DOMESTIC INDUSTRY

46. 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.

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33. *Transcript of Public Hearing*, Vol. 2, 8 December 2015, at 179. The Tribunal acknowledges that SSAB also produces plate in this range. However, this plate is cut to length from coil, rather than discrete plate.

34. *Transcript of Public Hearing*, Vol. 4, 10 December 2015, at 411.

35. *Transcript of Public Hearing*, Vol. 2, 8 December 2015, at 153-54.



47. The Tribunal must determine whether there has been injury, or whether there is a threat of injury, to the domestic producers as a whole or those domestic producers whose production represents a major proportion of the total domestic production of like goods.

48. Essar Algoma submitted that the domestic industry is comprised of traditional domestic mills, including itself, Evraz, SSAB and certain service centres. In its view, other service centres, namely, Samuel, Son & Co., Limited (Samuel), Varsteel Ltd. (Varsteel) and Russel Metals, should be excluded from the scope of the domestic industry given the nature and practices of their businesses.

49. Essar Algoma submitted that Samuel and Varsteel import substantial volumes of hot-rolled steel plate from various sources, including the subject countries, and that these imports have caused injury to the domestic mills.<sup>36</sup> With respect to Russel Metals, Essar Algoma stated that Russel Metals is related to an importer of the subject goods, Acier Wirth Steel (Wirth), and should be excluded from the domestic industry on that basis.<sup>37</sup>

50. Both SAIL and Jindal objected to Essar Algoma's request to exclude Samuel, Varsteel and Russel Metals from the domestic industry. SAIL argued that excluding these service centres would have a distorting impact on the data collected from the domestic industry, since these service centres, and Russel Metals in particular, produce substantial volumes of hot-rolled steel plate.<sup>38</sup> Jindal suggested that Essar Algoma's objective was to exclude these three particular producers because the financial position of these service centres is generally positive in comparison to that of the domestic mills.<sup>39</sup>

### **Service Centres as Part of the Domestic Industry**

51. The Tribunal finds that service centres are an increasingly important part of the domestic industry. The evidence is unequivocal that, although they tend to use different production processes and have different business models than the domestic mills, service centres produce goods falling within the definition of the subject goods. As in previous plate cases,<sup>40</sup> the Tribunal finds it appropriate to continue to include service centres within the scope of the domestic industry. This has not been disputed by Essar Algoma.

52. A growing number of service centres in Canada<sup>41</sup> cut hot-rolled steel plate to length from coil, while several also imported discrete plate as importers of record. In order to ensure that the Tribunal had a reasonable and representative understanding of the entire hot-rolled steel plate industry within Canada, the Tribunal requested that certain service centres complete a producers/service centres' questionnaire. These

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36. Exhibit NQ-2015-001-A-01 at para. 62, Vol. 11; Exhibit NQ-2015-001-A-02 (protected) at paras. 79, 90, Vol. 12.

37. Exhibit NQ-2015-001-A-01 at para. 62, Vol. 11; Exhibit NQ-2015-001-A-02 (protected) at paras. 92-93, Vol. 12.

38. Exhibit NQ-2015-001-D-01 at paras. 63-66, Vol. 13A; Exhibit NQ-2015-001-D-02 (protected) at paras. 63-66, Vol. 14A.

39. Exhibit NQ-2015-001-C-01 at para. 109, Vol. 13.

40. *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate* (30 January 2015), RR-2014-002 (CITT) at para. 30; *Hot-rolled Carbon Steel Plate* (20 May 2014), NQ-2013-005 (CITT) at para. 53.

41. The Tribunal initially noted increased participation by service centres within the domestic industry in *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate* (10 August 2015), PI-2015-001 (CITT) at para. 24, commenting that "... service centres appear to have been playing a more prominent role in this industry in recent years." At that time, the Tribunal also observed that there appeared to be "... varying trends within the domestic industry ...", namely, between service centres and domestic mills, that warranted further exploration during the final injury inquiry. These issues were also brought to the attention of parties during a conference call that took place between parties' counsel and the Tribunal on August 28, 2015.

service centres were identified by staff (through research and a review of past hot-rolled steel plate cases), and by companies that took part in the questionnaire consultation process.

53. A number of surveyed service centres were reluctant to reply to the questionnaire. Despite staff contacting them on numerous occasions to encourage them to complete the questionnaire and submit their responses by the Tribunal's deadline, the Tribunal had to issue several production orders to service centres on October 1 and 15, 2015, to obtain their questionnaire replies.<sup>42</sup> The Tribunal was subsequently provided with much of the required information.

54. In the Tribunal's view, obtaining information from service centres was critical in order for it to study whether the effects alleged by Essar Algoma were representative of the effects experienced by the domestic industry as a whole. This information allowed the Tribunal to better understand the evolving dynamic in the Canadian plate market and the roles played by its various actors. It also confirmed the impression gained by the Tribunal over the past few plate investigations that service centres play an increasingly important role in the industry.

### **Whether Samuel, Varsteel and Russel Metals Should be Excluded from the Domestic Industry**

55. On the issue of whether specific service centres should be excluded from the domestic industry, the Tribunal will start by addressing certain general considerations that are relevant to this issue. It will then examine the situation of Samuel and Varsteel, where the arguments for excluding these two producers are based on their importation of the subject goods. The Tribunal will then address the arguments regarding Russel Metals, which are based not on its own imports of the subject goods but on its relationship with Wirth, which is an importer of the subject goods. It will then place this issue in the broader context of *SIMA*'s policy objectives.

#### **General Considerations**

56. As indicated above, subsection 2(1) of *SIMA* defines "domestic industry" as 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.

57. The Tribunal typically treats a domestic producer of like goods as if it were not part of the domestic industry and limits its analysis of injury and threat of injury to the other domestic producers, if the domestic producer is first and foremost a conduit for the importation of the subject goods. In previous cases, the Tribunal set out the following factors to be assessed in determining whether to exclude a domestic producer from the domestic industry:<sup>43</sup>

- structural factors concerning the characteristics of the market and the producer's place in that market, including the ratio of the producer's sales of the subject goods to its total sales in the domestic market; the ratio of the producer's volume of the subject goods to its production of

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42. Exhibit NQ-2015-001-11.03.02, Vol. 3 at 11-17; Exhibit NQ-2015-001-11.05.02, Vol. 3 at 63-70; Exhibit NQ-2015-001-11.07.03, Vol. 3 at 109-113; Exhibit NQ-2015-001-11.12.02, Vol. 3A.

43. *Photovoltaic Modules and Laminates* (3 July 2015), NQ-2014-003 (CITT) at para. 50; *Cross-linked Polyethylene Tubing* (29 September 2006), NQ-2006-001 (CITT) at paras. 56-59 [*PEX Tubing*]; *Stainless Steel Sinks* (24 May 2012), NQ-2011-002 (CITT) at paras. 64-66; *Pipe Fittings* at para. 65.

like goods; and the producer's actual volume of imports of the subject goods and its share of the total volume of the subject goods; and

- factors focussing on the behaviour of the producer (both directly and in terms of its association with related companies), including whether the producer imported the subject goods as a defensive measure against other subject goods or as an aggressive measure to capture market share from other domestic producers of like goods; whether the producer imported the subject goods to fill a specific market niche or to compete broadly with the like goods produced by other domestic producers; and whether the producer's own like goods compete in the domestic market with the subject goods that it imports.

58. Upon a consideration of these factors, the Tribunal may however continue to include a domestic producer in the domestic industry despite its relationship with an exporter/importer or its import-related activities.<sup>44</sup> The Tribunal has stated that it will exercise its discretion in a manner that promotes the policies and objectives of *SIMA*, which are to provide protection, in appropriate circumstances, for companies that produce goods in Canada.<sup>45</sup>

#### Varsteel and Samuel

59. The evidence demonstrates that Varsteel did not import the subject goods until mid-2014, when it started producing cut-to-length plate after buying Evraz's cut-to-length line. As a result, the ratio of Varsteel's imports of the subject goods to its total domestic production grew substantially in 2014 and from January to June 2015 (the 2015 interim period) as compared to January to June 2014 (the 2014 interim period). As well, the subject goods comprised a greater proportion of Varsteel's total imports. That said, the Tribunal considers that, notwithstanding this growth, the ratio of Varsteel's imports of the subject goods to its total domestic production remained relatively low in both 2014 and the 2015 interim period. The Tribunal notes that Varsteel tends to rely on imports generally as part of its business strategy, though not to the extent to which domestic mills (and SSAB in particular) relied on imports from the United States.<sup>46</sup> Furthermore, Varsteel may have relied more on imports in 2014 and the 2015 interim period, as it had just started producing cut-to-length plate in the second half of 2014, after buying Evraz's cut-to-length line.<sup>47</sup>

60. While Samuel imported the subject goods throughout the POI, the data indicate that Samuel's ratio of imports of the subject goods to total domestic production varied significantly over the POI, reaching low points in both 2013 and the 2015 interim period.<sup>48</sup> Overall, the Tribunal is of the view that the volume of subject goods imported by Samuel was minimal vis-à-vis its own production.

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44. In *European Communities – Definitive Anti-dumping Measures on Certain Iron or Steel Fasteners from China [EC-Fasteners]* (3 December 2010), WTO Doc. WT/DS397/R, Report of the Panel at para. 7.244, the Panel rejected a claim regarding the inclusion of importers, or parties related to exporters or importers of the allegedly dumped product, finding that the use of the term “may” in Article 4.1 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*, [https://www.wto.org/english/docs\\_e/legal\\_e/19-adp.pdf](https://www.wto.org/english/docs_e/legal_e/19-adp.pdf) [*Anti-dumping Agreement*] makes it clear that investigating authorities are not required to exclude related producers or importing producers and that there is nothing in Article 3.1 or 4.1 that limits the discretion of investigating authorities to exclude, or not, related or importing domestic producers. This matter was not in dispute before the Appellate Body in *EC-Fasteners* (15 July 2011), WTO Doc. WT/DS397/AB/R, Report of the Appellate Body at para. 411.

45. *PEX Tubing* at para. 54.

46. Exhibit NQ-2015-001-07C (protected), Tables 3, 6, Vol. 2.1B.

47. Exhibit NQ-2015-001-11.07A, Vol. 3 at 128; Exhibit NQ-2015-001-11.09, Vol. 3A at 34.

48. Exhibit NQ-2015-001-07C (protected), Table 5, Vol. 2.1B.

61. Putting the evidence together, the Tribunal finds that the subject goods did not play an important role in the business models of Varsteel and Samuel, notwithstanding Essar Algoma's arguments to the contrary.<sup>49</sup> As Mr. Boiteau explained, while these companies do rely on imports to a large extent, the proportion of their hot-rolled steel plate imports that originate in the subject countries is not substantial, as compared to the total volumes that these companies import from all sources, their total production of like goods and in comparison to total imports of the subject goods (by all those that import, including domestic producers and importers) into Canada.

62. Furthermore, it appears that Samuel imported the subject goods primarily as a defensive tactic. Mr. Boiteau, in his witness statement, indicated that Samuel's competitors began to purchase offshore hot-rolled steel plate at prices substantially below the prices being offered by Canadian mills and that Samuel was then forced to respond by either seeking price concessions from domestic mills or buying the lower-priced offshore products or both.<sup>50</sup> During his testimony, Mr. Boiteau characterized the subject goods as "disruptive" in the Canadian market. He expressed some hesitation about buying the subject goods, but indicated that Samuel purchased the subject goods "...in order to remain competitive in the marketplace".<sup>51</sup> Indeed, he stated that "... we don't like it, but, if you want to stay in business, sometimes you have to do it."<sup>52</sup>

63. For the above reasons, the Tribunal is not persuaded that these companies are, first and foremost, conduits for the importation of the subject goods. As such, the Tribunal will include Samuel and Varsteel in the domestic industry.

#### Russel Metals

64. In regards to Essar Algoma's argument that Russel Metals should be excluded from the domestic industry because of its relationship with Wirth (as opposed to its own imports), the Tribunal is mindful that *SIMA* allows domestic producers to be excluded from the domestic industry where they are related to an importer or exporter of dumped or subsidized goods. Subsection 2(1.2) of *SIMA* further elaborates on this exclusion based on a relationship and provides as follows:

(1.2) For the purposes of the definition "domestic industry" in subsection (1), a domestic producer is related to an exporter or an importer of dumped or subsidized goods where

(a) the producer either directly or indirectly controls, or is controlled by, the exporter or importer

...

and there are grounds to believe that the producer behaves differently towards the exporter or importer than does a non-related producer.

65. Furthermore, subsection 2(1.3) of *SIMA* provides that a person is deemed to control another "... where the first person is legally or operationally in a position to exercise restraint or direction over the other person."

66. At the Tribunal's request, Mr. Halcrow testified, during the hearing, to the nature of Russel Metals' relationship with Wirth. He acknowledged that Russel Metals wholly owns Wirth, a large importer of

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49. *Transcript of Public Hearing*, Vol. 2, 8 December 2015, at 113-14, 141.

50. Exhibit NQ-2015-001-A-07 at para. 25, Vol. 11A.

51. *Transcript of Public Hearing*, Vol. 2, 8 December 2015, at 149-50.

52. *Ibid.* at 150.

products, including hot-rolled steel plate.<sup>53</sup> He also indicated that Russel Metals' biggest supplier of plate, after the mills, is Wirth.<sup>54</sup> Finally, he explained that Russel Metals and Wirth operate at arm's length of one another<sup>55</sup> and that any sales between the two are made at prevailing market prices.<sup>56</sup>

67. The Tribunal finds that the mere existence of a relationship between these two parties is insufficient to establish that Russel Metals should not be considered part of the domestic industry. According to subsections 2(1.2) and 2(1.3) of *SIMA*, the Tribunal must also have a reason to believe that Russel Metals behaved differently towards Wirth because of its ownership position.

68. Mr. Halcrow's testimony does not indicate that Russel Metals' intention or practice is to use Wirth as a conduit for the importation of low-priced imports. Rather, the Tribunal finds it more appropriate to characterize Russel Metals as a domestic producer on the basis of its practices and consider it alongside the rest of the domestic producers in the Tribunal's assessment of injury. When considering the evidence in its entirety, the Tribunal's impression is that, like most other producers that must rely on outside suppliers for materials, Russel Metals has adopted a strategy that is intended to make it less reliant on any single source. Russel Metals' purchases from Wirth seem to be only an element of that strategy, no more and no less. The fact that Russel Metals purchases plates from other foreign sources at prices higher than the prices of the subject goods is additional support for that impression.<sup>57</sup>

#### SIMA Policy and Objectives

69. Essar Algoma urged the Tribunal to exercise its discretion in determining what constitutes the domestic industry in a manner that takes into account the policy objectives of *SIMA*, i.e. the protection of domestic production.

70. There is no doubt that the objective of protecting domestic production is part of *SIMA*'s overall policy orientation. However, as the Tribunal indicated in *PEX Tubing*,<sup>58</sup> the discretion to exclude a producer from the domestic industry may be exercised in appropriate circumstances, and the Tribunal, in this case, would add that the protection must only be granted upon certain fundamental conditions being met. One such fundamental condition is that excluding one or more domestic producers from the domestic industry would not hinder the Tribunal's ability to objectively assess the impact of the subject goods on the domestic industry as a whole. This requirement to conduct an objective assessment across the entire domestic industry is a key obligation for Canada under Article 3.1 of the *Anti-dumping Agreement* and Article 15.1 of the *Agreement on Subsidies and Countervailing Measures*.<sup>59</sup>

71. The evidence in this case demonstrates that service centres, which were once thought to be marginal players in the production of like goods, now account for a significant and growing proportion of total domestic production of like goods.<sup>60</sup> Of those service centres, Russel Metals and Samuel are big players,

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53. *Transcript of Public Hearing*, Vol. 3, 9 December 2015, at 275-76.

54. *Ibid.* at 275.

55. *Ibid.* at 286-87.

56. *Ibid.* at 290; Exhibit NQ-2015-001-15.18 (protected), Vol. 6F at 98.

57. Exhibit NQ-2015-001-07C (protected), Table 4, Vol. 2.1B; Exhibit NQ-2015-001-12.14B (protected), Vol. 4K at 112; Exhibit NQ-2015-001-15.18 (protected), Vol. 6F at 98.

58. *PEX Tubing* at para. 54.

59. [https://www.wto.org/english/docs\\_e/legal\\_e/24-scm.pdf](https://www.wto.org/english/docs_e/legal_e/24-scm.pdf) [*SCM Agreement*].

60. Exhibit NQ-2015-001-06A, Table 41, Vol. 1.1A; Exhibit NQ-2015-001-07A (protected), Table 41, Vol. 2.1A.

while Varsteel started to produce cut-to-length plate in the second half of 2014.<sup>61</sup> The Tribunal is concerned that excluding these companies from its injury analysis would leave the Tribunal with an incomplete and possibly skewed picture of the industry as a whole, thereby potentially compromising the integrity of its investigation.

72. As indicated above, when comparing the production and import activities of Russel Metals, Samuel and Varsteel, it is evident that, from both a structural point of view and a behavioural point of view, their activities are more akin to those of producers. Furthermore, the evidence does not indicate that their motivations when importing the subject goods (whether directly or via a third party) are opportunistic. Throughout the POI, Russel Metals (via Wirth), Samuel and Varsteel imported hot-rolled steel plate from non-subject countries in greater quantities and at higher prices than from the subject countries.<sup>62</sup> This behaviour is consistent with a sourcing pattern that promotes multiple sources, as opposed to one that is based on opportunistic pricing considerations.

73. For these reasons, and because retaining the data from these three domestic producers will help the Tribunal conduct an objective assessment of the industry as a whole, the Tribunal finds that the domestic industry is comprised of the domestic mills (Essar Algoma, Evraz and SSAB) and the various other service centres that produce and sell cut-to-length plate within the scope of the product definition.

## CUMULATION AND CROSS CUMULATION

74. Subsection 42(3) of *SIMA* directs the Tribunal to make an assessment of the cumulative effect of the dumping or subsidizing of the subject goods if it is satisfied that the margin of dumping or the amount of subsidy in relation to the goods from each of the subject countries is not insignificant, the volume of the goods from each subject country is not negligible and cumulation is appropriate taking into account conditions of competition between the goods of each country or between them and the like goods.

75. As has been noted many times by the Tribunal, *SIMA* is silent in regard to cross-cumulation. In the past, that silence has been interpreted by the Tribunal as implicitly allowing goods from various countries to be cross-cumulated, that is, as enabling the Tribunal to consider the combined effect of goods that are dumped and goods that are subsidized, where the Tribunal is satisfied that such an assessment is appropriate based on conditions of competition.

76. However, since the WTO Appellate Body issued its report in *United States - Countervailing Measures on Certain Hot-rolled Carbon Steel Flat Products From India*,<sup>63</sup> the Tribunal has wrestled with issues related to whether, when and how to proceed with its practice of cross-cumulation. The Tribunal

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61. Exhibit NQ-2015-001-07A (protected), Table 41, Vol. 2.1A; Exhibit NQ-2015-001-12.07 (protected), Vol. 4B at 13; Exhibit NQ-2015-001-12.12 (protected), Vol. 4F at 14; Exhibit NQ-2015-001-12.14 (protected), Vol. 4K at 13.

62. Exhibit NQ-2015-001-12.07 (protected), Vol. 4B at 18; Exhibit NQ-2015-001-12.07A (protected), Vol. 4B at 102.2; Exhibit NQ-2015-001-12.12A (protected), Vol. 4F at 107; Exhibit NQ-2015-001-12.12D (protected), Vol. 4F at 153; Exhibit NQ-2015-001-12.14B (protected), Vol. 4K at 112.

63. (8 December 2014), WTO Doc. WT/DS436/AB/R, Report of the Appellate Body [*Indian Flat Products*]. In this dispute, India challenged countervailing duties imposed by the United States on imports of certain steel products from India, arguing that the U.S. International Trade Commission had acted inconsistently with Article 15.3 of the *SCM Agreement* by cumulating the effects of subsidized imports from India with those of imports from 10 other countries. Imports from 5 countries, including India, were subject to both dumping and subsidizing investigations. Imports from the remaining 6 countries were subject to dumping investigations only. India did not take issue with the former category but argued that, for the purposes of the subsidizing investigation, its goods should not have been cumulated with the latter category, i.e. with goods that were subject to a dumping investigation only.

interprets *Indian Flat Products* to mean that, insofar as dumping and subsidizing are concerned, the subject goods must essentially be considered in separate silos, given that the Appellate Body held that a consideration of goods that are dumped but not subsidized cumulatively with goods that are subject only to a countervailing duty investigation is inconsistent with Article 15.3 of the *SCM Agreement*.

77. Nevertheless, *Indian Flat Products* does not provide guidance as to how investigating authorities should separate the effects of dumping from the effects of subsidizing in situations such as this, where goods from one country are both dumped and subsidized, and goods from another country are dumped only. Given the facts in this case, the Tribunal has considered how to reconcile the conclusions in *Indian Flat Products* with subsection 42(3) of *SIMA*, which requires a cumulative assessment of all dumped goods, provided the conditions of this subsection are met.

78. To that end, the Tribunal specifically asked counsel to address the applicability of cumulation and cross-cumulation to this case in their closing arguments.

79. Essar Algoma submitted that cumulation is appropriate in this case based on conditions of competition, primarily because hot-rolled steel plate is a commodity product. As such, and as has been held in previous inquiries involving hot-rolled steel plate, Essar Algoma argued that hot-rolled steel plate imported from one subject country is interchangeable with hot-rolled steel plate from any other subject countries and with the like goods. Further, hot-rolled steel plate arrives in Canada from the subject countries via the same mode of transportation, namely, by ocean vessel. Both the subject goods and the like goods participate in similar channels of distribution (e.g. large distributors and service centres). Finally, the subject goods and the like goods appear to compete with each other on similar considerations of quality and price.

80. Essar Algoma also advocated for a fully cross-cumulated analysis, submitting that it is appropriate because there is a nexus between the Russian and Indian goods, that nexus being that both are subject to a dumping investigation. Essar Algoma also submitted that there is no reason to treat Russian goods differently from Indian goods based on their role in the market. In particular, the same conditions of competition apply to all subject goods and with respect to the like goods. Moreover, the effects of the goods from both India and Russia on the domestic industry are intertwined and inseparable. These arguments were said to apply to country-to-country cross-cumulation, as opposed to situations where both unfair trade practices are held to exist within imports from a single country, in which case, Essar Algoma suggested that it was practically impossible to separate the effects of dumping from the effects of subsidizing.

81. Finally, Essar Algoma argued that to separate the effects of subsidizing from the effects of dumping on the same goods in these circumstances would be largely speculative, as opposed to being based on positive and objective evidence in accordance with the fundamental obligations of those agreements. In its submission, such an analysis would not be accurate and would therefore contravene Article 3 of the *Anti-dumping Agreement* and Article 15 of the *SCM Agreement*.

82. Jindal argued that the Tribunal must make a separate finding against India because the subsidizing investigation against Russia was terminated by the CBSA. SAIL also argued that the dumped and subsidized goods from India need to be examined separately from the dumped goods from Russia. While opposing parties argued that separate findings are required for each country, they did not specifically address the cumulation of dumped goods from both sources.

## Cumulation

83. As noted in the section regarding the CBSA's final determination, the Tribunal is satisfied that the margins of dumping of the subject goods from India and Russia are not insignificant, as they are greater than the 2 percent of the export price threshold set out in subsection 2(1) of *SIMA*. Similarly, the Tribunal is satisfied that the amount of subsidy determined for India is significant, as it too is above the *SIMA* threshold.

84. Furthermore, the Tribunal is satisfied that the volume of the subject goods from each subject country is not negligible. Under subsection 2(1) of *SIMA*, "negligible" is defined as meaning a volume of dumped goods that is less than 3 percent of the total volume of imports of subject and non-subject goods meeting the product description and released into Canada. The information provided by the CBSA confirms that the volume of dumped and subsidized imports from India and the volume of dumped imports from Russia are greater than 3 percent and are therefore not negligible.<sup>64</sup>

85. Therefore, the Tribunal will assess whether it is appropriate to consider the cumulative effect of the dumped goods from India and Russia accounting for relevant factors relating to the conditions of competition, such as interchangeability, quality, pricing, distribution channels, modes of transportation, timing of arrivals and geographic dispersion.<sup>65</sup>

86. The evidence on the record confirms the Tribunal's previous findings that the like goods are sold through the same or similar channels of distribution as the subject goods and that these commodity products compete with one another in the Canadian marketplace on the basis of price and quality considerations.<sup>66</sup> Consequently, the Tribunal finds that it is appropriate to cumulate the dumped goods from India with the dumped goods from Russia.

87. Moreover, having met the provisions of subsection 42(3) of *SIMA*, namely, the margins of dumping and amount of subsidy must not be insignificant, the volumes must not be negligible and the conditions of competition must warrant a cumulated analysis, the language within *SIMA* implies, and in particular the use of the term "shall", suggests that, under such circumstances, cumulation is not only appropriate but indeed mandatory.

## Cross-cumulation

88. Having found it appropriate to cumulate the effects of the dumped goods from India with the dumped goods from Russia, the Tribunal will proceed with its injury analysis by considering the effects of the dumped and subsidized goods from India together with the dumped goods from Russia.

89. In order to ensure compliance with the direction provided by the Appellate Body on the practice of cross-cumulation, the Tribunal will then determine whether it should conduct a separate analysis of the allegedly injurious effects of the subsidized goods from India as an "other factor" in accordance with paragraph 37.1(3)(b) of the *Special Import Measures Regulations*.<sup>67</sup> This will ensure that the Tribunal is attuned to the possibility that this case could be a situation in which goods that are only subsidized have a different effect on domestic production than goods that are only dumped, a scenario envisioned by the Tribunal in Expiry Review No. RR-2008-004.<sup>68</sup>

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64. Exhibit NQ-2015-001-04A, Vol. 1.1A at 111.

65. *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (17 August 2001), NQ-2001-001 (CITT) at 16; *Waterproof Footwear* (25 September 2009), NQ-2009-001 (CITT) at note 28.

66. Exhibit NQ-2015-001-06A, Tables 13, 21, 22, 36, Vol. 1.1A.

67. S.O.R./84-927 [*Regulations*].

68. *Stainless Steel Wire* (29 July 2009) (CITT) at para. 54



90. In doing that, however, the Tribunal is mindful that the evidence in this case does not suggest that the dumped goods from Russia are in any way distinguishable, in terms of their effects or otherwise, from the dumped and subsidized goods from India. By all accounts, the subject goods from both countries and the like goods produced by the domestic industry are completely interchangeable commodity products.

91. The Tribunal is also aware of the risks that could arise in this type of analysis. Indeed, this type of analysis would not only be complicated but also require the Tribunal to make numerous and potentially problematic and/or imprecise assumptions.

92. In light of the foregoing legal and theoretical considerations, arguments of the parties and the facts of this case, the Tribunal will therefore begin by assessing injury to the domestic industry, including the causation of such injury, if it is found to exist, by combining the volumes and price effects from both sources of the subject goods. The Tribunal will then consider whether or not it is necessary to determine a methodology that enables it to exclude from its dumping analysis effects that are solely related to the subsidizing of the subject goods from India.

### **OVERVIEW OF THE TRIBUNAL'S APPROACH TO THE INJURY AND THREAT OF INJURY ANALYSES**

93. The Tribunal's mandate is to determine whether the dumping and subsidizing of subject goods have caused or are threatening to cause material injury to the domestic industry producing like goods. In conducting an injury inquiry, subsection 37.1(1) of the *Regulations* instructs the Tribunal to consider the volume of the dumped and subsidized goods, their effect on the price of like goods in the domestic market and their resulting impact on the state of the domestic industry. Subsection 37.1(1) also directs the Tribunal to consider whether a causal relationship exists between the dumping and subsidizing of the goods and the material injury on the basis of such factors.

94. In determining whether the dumping and subsidizing have caused material injury to the domestic industry, the Tribunal must consider whether any factors other than the dumping or subsidizing of the subject goods have caused injury, with the injury caused by such other factors not to be attributed to the subject goods. Such other factors to be considered include, *inter alia*, the volumes and prices of non-subject goods, a contraction in demand and developments in technology.<sup>69</sup>

95. In circumstances where the Tribunal makes a determination that the dumping and subsidizing of the subject goods have not caused material injury to the domestic industry, the Tribunal must then consider whether the dumping and subsidizing are threatening to cause material injury in the future. In assessing the threat of injury, the Tribunal typically considers a time frame of 12 to 18 months, and no more than 24 months, beyond the date of its finding.

96. The Tribunal is guided in its consideration of a potential threat of injury by the factors prescribed in subsection 37.1(2) of the *Regulations*.<sup>70</sup> A determination of a threat of material injury is to be based on facts

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69. See paragraph 37.1(3)(b) of the *Regulations*.

70. Subsection 37.1(2) of the *Regulations* reads as follows: "For the purposes of determining whether the dumping or subsidizing of any goods is threatening to cause injury, the following factors are prescribed: (a) the nature of the subsidy in question and the effects it is likely to have on trade; (b) whether there has been a significant rate of increase of dumped or subsidized goods imported into Canada, which rate of increase indicates a likelihood of substantially increased imports into Canada of the dumped or subsidized goods; (c) whether there is sufficient freely disposable capacity, or an imminent, substantial increase in the capacity of an exporter, that indicates a likelihood of a substantial increase of dumped or subsidized goods, taking into account the availability of other

and not merely on allegation, conjecture or remote possibility. Also of relevance is subsection 2(1.5) of *SIMA*, which indicates that a threat of injury finding cannot be made unless the change in circumstances which would create a situation in which the dumping and subsidizing of the goods would cause injury is clearly foreseen and imminent.

97. In considering the resulting or threatening impact of the dumped and subsidized goods on the state of the domestic industry, the Tribunal is required to consider all relevant economic factors and indices that have a bearing on the state of the domestic industry.

98. Having decided that the service centres that Essar Algoma sought to exclude—Russel Metals, Samuel and Varsteel—are included within the domestic industry, the information from those three companies will be included in the domestic industry data, and their performance forms part of the impact analysis found below. Even though the individual performance of certain companies within the domestic industry can be informative, the Tribunal must nonetheless examine whether the subject goods negatively impacted (or threatened to impact) the domestic industry as a whole. In this context, the Tribunal cannot put undue weight on the experience of one company while neglecting to consider the industry as a whole.

99. Therefore, the Tribunal will weigh the evidence regarding the impact that the subject goods had or may threaten to have on the entire domestic industry's production, sales, market share, profitability, productivity and capacity utilization, investments, cash flow, inventories and employment to determine whether or not it was materially injured and/or is threatened with material injury. At the same time, the Tribunal will weigh whether and how other non-related factors were the cause of such injury or threat thereof to all the domestic producers.

100. Both in written submissions and during the hearing, Essar Algoma stated that it was alleging injury for the year 2014 and onwards only, as opposed to the entire POI.<sup>71</sup> As such, Essar Algoma essentially conceded that no injury had occurred in 2012 and 2013. Thus, the Tribunal will focus the following analysis on whether injury occurred in 2014 and the 2015 interim period.

### Overview of the Canadian market

101. Before proceeding with its analysis, the Tribunal will set the context by describing the Canadian market as reflected by the evidence. The Canadian apparent market totalled approximately 1 million tonnes in 2012 and 2013, increasing by 19 percent to approximately 1.25 million tonnes in 2014.<sup>72</sup> The market totalled about 500,000 tonnes in the 2015 interim period, decreasing by 15 percent from the 2014 interim period.<sup>73</sup> Sales from domestic production (both domestic mills and service centres) accounted for a 48 percent market share in 2012, 59 percent in 2013, 50 percent in 2014 and 60 percent in the 2015 interim period.<sup>74</sup>

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export markets to absorb any increase; (d) the potential for product shifting where production facilities that can be used to produce the goods are currently being used to produce other goods; (e) whether the goods are entering the domestic market at prices that are likely to have a significant depressing or suppressing effect on the price of like goods and are likely to increase demand for further imports of the goods; (f) inventories of the goods; (g) the actual and potential negative effects on existing development and production efforts, including efforts to produce a derivative or more advanced version of like goods; (g.1) the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods; (g.2) evidence of the imposition of anti-dumping or countervailing measures by the authorities of a country other than Canada in respect of goods of the same description or in respect of similar goods; and (h) any other factors that are relevant in the circumstances.”

71. *Transcript of Public Hearing*, Vol. 1, 7 December 2015, at 9.

72. Exhibit NQ-2015-001-06A, Tables 49, 50, Vol. 1.1A.

73. *Ibid.*

74. *Ibid.*, Table 51.

102. Within the domestic industry as a whole, the apparent market share of the domestic mills declined from 2013 to 2014 and in the 2015 interim period as compared to the 2014 interim period.<sup>75</sup> At the same time, the apparent market share captured by the domestic service centres declined slightly between 2013 and 2014, but grew considerably in the 2015 interim period over the 2014 interim period. In both 2014 and the 2015 interim period, the domestic service centres' apparent market share remained higher than 2012 levels.<sup>76</sup>

103. Total imports from subject and non-subject countries fell between 2012 and 2013, before increasing in 2014.<sup>77</sup> The market share of imports from non-subject countries increased slightly between 2012 and 2013 and then decreased considerably in 2014, before increasing in the 2015 interim period relative to the 2014 interim period.<sup>78</sup>

104. It is important to indicate at this early stage that the evidence and testimony reveal a range of factors that play an important role in shaping the Canadian market for the subject goods, and these factors are described below; their effects on the performance of the domestic industry will be taken into account throughout the Tribunal's analysis.

### **Intra-industry Competition**

105. Domestic mills tend to focus production on different segments of the product definition than service centres. For instance, Essar Algoma and SSAB both concentrate production on plate that is wider than 72 inches,<sup>79</sup> while Evraz generally produces a "niche" product that is 72 inches and narrower.<sup>80</sup> By contrast, the service centres largely focus production on narrower plate that is cut from coil.<sup>81</sup> Nevertheless, testimony confirms that the domestic mills and service centres can and do compete with one another within the Canadian market,<sup>82</sup> with service centres having acquired a portion of the domestic mills' production volumes and sales.<sup>83</sup> Witnesses spoke to the evolution of cut-to-length technology lines, particularly with regard to flattening, and the increasing number of applications in which cut-to-length products can replace discrete plate.<sup>84</sup> In addition, the Tribunal heard evidence that the industry as a whole is evolving towards value-added production.<sup>85</sup>

### **Different Business and Service Models**

106. Questionnaire responses indicate that delivery times and terms are considered to be "very important" factors in purchasing decisions. Meanwhile, testimony revealed that service centres are often able to meet their customers' needs faster than certain domestic mills, given their different business

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75. Exhibit NQ-2015-001-07A (protected), Table 51, Vol. 2.1A.

76. *Ibid.*

77. Exhibit NQ-2015-001-06A, Table 42, Vol. 1.1A.

78. Exhibit NQ-2015-001-07A (protected), Table 44, Vol. 2.1A.

79. Whereas Essar Algoma's production in this area consists of discrete plate, SSAB produces cut-to-length product. *Transcript of Public Hearing*, Vol. 1, 7 December 2015, at 22, 93, Vol. 2, 8 December 2015, at 179.

80. *Transcript of Public Hearing*, Vol. 2, 8 December 2015, at 230.

81. *Ibid.* at 125.

82. *Transcript of Public Hearing*, Vol. 1, 7 December 2015, at 95, 100, Vol. 2 at 146-47, 230.

83. Exhibit NQ-2015-001-07A (protected), Tables 41, 50, 51, Vol. 2.1A; Exhibit NQ-2015-001-07B (protected), Table 39, Vol. 2.2A; *Transcript of Public Hearing*, Vol. 3, 9 December 2015, at 241; Exhibit NQ-2015-001-11.09, Vol. 3A at 34.

84. *Transcript of Public Hearing*, Vol. 2, 8 December 2015, at 154-55, Vol. 3, 9 December 2015, at 276.

85. *Transcript of Public Hearing*, Vol. 3, 9 December 2015, at 276, 285.

strategies, production volumes and delivery lead times.<sup>86</sup> The evidence also suggests that, even as between mills, there exist important differences in delivery times.<sup>87</sup> All this indicates that there are specific business and service models within the different segments of the market that are intended to address different demand requirements.

### **Integration of the North American Steel Industry**

107. The North American steel industry is now highly integrated. The rationalization and specialization of production by corporations within this single unified market have impacted the production and sales volumes of the domestic mills. For example, the evidence demonstrates that a significant percentage of non-subject goods are now imported from the United States by members of the domestic industry, reflecting rational business decisions to meet Canadian demand for certain plate products from affiliated production facilities in the United States (and vice-versa for other steel products).<sup>88</sup>

### **Falling Commodity Prices and Weak Demand**

108. The performance of the domestic industry in recent years must be considered in the broader context of low commodity (particularly oil) prices and weakening demand for steel not only in Canada and North America but also worldwide.<sup>89</sup>

### **Financial Situation of Essar Algoma**

109. Essar Algoma, a major player in the domestic industry, has experienced past operational problems and continuing financial difficulties. These issues have had a rippling effect throughout the domestic industry, given Essar Algoma's share of production, a point that will be developed more fully below.

## **INJURY ANALYSIS**

110. It is within this context that the Tribunal will conduct its injury analysis by, first examining the volume of the dumped and subsidized goods, second, analyzing the price effects of the subject goods and, third, determining what impact the dumping and subsidizing of the subject goods, in and of themselves, have had on the domestic industry.<sup>90</sup>

### **Import Volume of Dumped and Subsidized Goods**

111. Paragraph 37.1(1)(a) of the *Regulations* directs the Tribunal to consider the volume of the dumped and subsidized goods and, in particular, whether there has been a significant increase in the volume, either in absolute terms or relative to the production or consumption of the like goods.

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86. *Transcript of Public Hearing*, Vol. 2, 8 December 2015, at 168-69, 207, 215-16, Vol. 3, 9 December 2015, at 279.

87. *Transcript of Public Hearing*, Vol. 2, 8 December 2015, at 181-82.

88. Exhibit NQ-2015-001-07A (protected), Table 42, Vol. 2.1A; *Transcript of Public Hearing*, Vol. 2, 8 December 2015, at 189-90, 206-207.

89. Exhibit NQ-2015-001-C-01 at para. 83, Vol. 13; *Transcript of Public Hearing*, Vol. 2, 8 December 2015, at 117-18, 177-78, 183-85.

90. *Oil Country Tubular Goods* (23 March 2010), NQ-2009-004 (CITT) at para. 209; *Unitized Wall Modules* (12 November 2013), NQ-2013-002 (CITT) at footnote 35; *Mexico – Anti-dumping Duties on Steel Pipes and Tubes from Guatemala* (8 June 2007), WTO Doc. WT/DS331/R, Final Report of the Panel at 7.352; *United States – Anti-dumping Measures on Certain Hot-rolled Steel Products from Japan* (24 July 2001), WTO Doc. WT/DS184/AB/R, Report of the Appellate Body at paras. 223-24.

112. Essar Algoma submitted that substantial volumes of the subject goods have been imported into Canada. It contended that, once the finding in *Plate VII* entered into force, the subject goods filled the void left by the countries affected by that finding.<sup>91</sup> Essar Algoma stated that there was a sevenfold increase in imports of the subject from 2013 to 2014<sup>92</sup> and an increase of more than thirteenfold in sales of those imports from 2013 to 2014.<sup>93</sup> As a result, it argued that imports of the subject goods gained market share at the expense of the domestic industry.<sup>94</sup>

113. While acknowledging that imports of the subject goods from India increased over the POI, SAIL maintained that these goods did not result in any lost sales for the domestic industry in 2012. It also observed that a substantial proportion of the subject goods from India in 2013 were actually imported by Essar Algoma.<sup>95</sup> With respect to 2014, although SAIL acknowledged that the volume of the subject goods imported from India did increase, it contended that the entire apparent market also increased at the same time.<sup>96</sup>

114. Over the course of the POI, the evidence demonstrates that imports of the subject goods decreased from 2012 to 2013, before increasing significantly to their highest point in 2014.<sup>97</sup> While Essar Algoma did import a notable proportion of the subject goods in 2013, this was not the case in 2014.<sup>98</sup> In 2014, imports of the subject goods increased over 1,000 percent, before decreasing by 61 percent in the 2015 interim period as compared to the 2014 interim period.<sup>99</sup>

115. Furthermore, the evidence indicates that relative to total domestic production and to total domestic sales from domestic production, the magnitude of imports of the subject goods remained fairly low in both 2012 and 2013, while by 2014—a year in which domestic mills did *not* import the subject goods—the subject goods accounted for a higher percentage.<sup>100</sup> These percentages decreased in the 2015 interim period, but remained slightly higher than they were in 2012 and 2013.<sup>101</sup>

116. Therefore, the evidence confirms that the volumes of the subject goods did increase substantially in 2014 over 2013, both in absolute terms, and when considered relative to domestic production and domestic sales from domestic production.

### Price Effects of Dumped and Subsidized Goods

117. Paragraph 37.1(1)(b) of the *Regulations* directs the Tribunal to consider the effects of the dumped and subsidized goods on the price of like goods and, in particular, whether the dumped and subsidized goods have significantly undercut or depressed the price of like goods or suppressed the price of like goods by preventing price increases for those like goods that would otherwise likely have occurred.

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91. Exhibit NQ-2015-001-A-01 at para. 175, Vol. 11.

92. *Ibid.* at para. 10, citing Exhibit NQ-2015-001-07A (protected), Table 49, Vol. 2.1A.

93. Exhibit NQ-2015-001-A-02 (protected) at para. 132, Vol. 12.

94. Exhibit NQ-2015-001-A-01 at paras. 172, 199, Vol. 11, citing Exhibit NQ-2015-001-07A (protected), Tables 42, 51, Vol. 2.1A; Exhibit NQ-2015-001-A-01 at paras. 172, 199, Vol. 11, citing Exhibit NQ-2015-001-07B (protected), Tables 45, 59, Vol. 2.1B.

95. Exhibit NQ-2015-001-D-01 at paras. 81-86, Vol. 13A; Exhibit NQ-2015-001-11.13, Vol. 3B at 8.

96. Exhibit NQ-2015-001-D-01 at para. 88, Vol. 13A.

97. Exhibit NQ-2015-003-07A (protected), Tables 42, 43, Vol. 2.1A.

98. *Ibid.*; Exhibit NQ-2013-005-A-12 (protected) at paras. 171-74, Vol. 12B; Exhibit NQ-2015-001-11.13, Vol. 3B at 8.

99. Exhibit NQ-2015-003-07A (protected), Table 43, Vol. 2.1A.

100. Exhibit NQ-2015-003-07D (protected), Table 48, Vol. 2.1B.

101. *Ibid.*

118. To that end, the Tribunal collected data from domestic producers (both domestic mills and service centres) importers, purchasers and foreign producers regarding sales by trade level, sales by product type and specification, sales of benchmark products and sales to common accounts.<sup>102</sup>

119. The price effects of the dumped and subsidized goods must be considered within the context of other factors impacting price—in this case, the broader context of falling commodity (particularly oil) prices and weakening demand for steel in Canada, North America and around the world. The Tribunal heard repeated testimony regarding the world economic slowdown, and the concurrent impact on prices and sales throughout the industry.<sup>103</sup> Witnesses explained that price levels were currently lower than 2009 recession levels, which has resulted in a poor North American market and declines in demand from significant customers.<sup>104</sup>

120. Essar Algoma alleged that the subject goods caused injury to the domestic industry by significantly undercutting, depressing and suppressing the price of the like goods. While Essar Algoma acknowledged that Canadian market prices were significantly higher in 2014 over 2013, it noted that all market prices increased year over year.<sup>105</sup> Moreover, Essar Algoma submitted that, while the *average* Canadian market price in 2014 was higher than in 2013, the domestic industry in fact suffered a steep price decline from September 2014 to the present, due to a surge in low-priced subject imports.<sup>106</sup> Conversely, SAIL argued that Essar Algoma essentially harmed itself by importing the subject goods from India in 2013 at a time when prices were lowest.

### Price Undercutting

121. When examined at an aggregate level (i.e. all benchmark products and trade levels combined), the subject goods undercut the price of the like goods over every period in the POI.<sup>107</sup> Similarly, price undercutting was evident for benchmark products. For instance, for both ASTM A36/A36M, which represented significant volumes of sales from domestic production,<sup>108</sup> and ASTM 572/A572M, the subject goods undercut the price of the like goods in every period during which they were imported.<sup>109</sup> Even when divided at the trade level between sales to distributors and services centres and sales to end users, the subject goods undercut the price of the like goods in all but two instances.<sup>110</sup>

122. In regard to SAIL's argument about Essar Algoma's imports from India in 2013, the evidence shows that, out of 19 points of comparison (examining both benchmark products and trade levels), 14 instances of price undercutting occurred from the first quarter of 2014 and beyond, while just 2 out of 8 possible instances occurred in 2013.<sup>111</sup> As such, the evidence reveals that the majority of price undercutting took place when the domestic mills did not import any subject goods (i.e. in 2014 and beyond).

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102. Exhibit NQ-2015-001-06A, Vol. 1.1A at 6-7.

103. *Transcript of Public Hearing*, Vol. 2, 8 December 2015, at 117-18, 184.

104. *Transcript of Public Hearing*, Vol. 1, 7 December 2015, at 11-12, Vol. 2, 8 December 2015, at 177-78, 183-85.

105. Exhibit NQ-2015-001-A-01 at para. 143, Vol. 11.

106. *Ibid.* at paras. 145-46.

107. Exhibit NQ-2015-001-07A (protected), Table 52, Vol. 2.1A.

108. *Ibid.*, Tables 68, 70.

109. *Ibid.*, Table 80.

110. *Ibid.*, Tables 67, 69, 71, 73.

111. *Ibid.*

Moreover, the magnitude of the undercutting was considerable, as, on average, the subject goods undercut the price of the like goods by no more than 20 percent.<sup>112</sup>

123. As a result of the foregoing, the Tribunal finds that the subject goods did significantly undercut the prices of the like goods throughout the POI.

### Price Depression

124. The Tribunal will next examine whether the subject goods have caused price depression by forcing the domestic industry to lower prices in order to maintain sales or market share.

125. The evidence demonstrates that domestic prices dropped from 2012 to 2013, before recovering in 2014.<sup>113</sup> In fact, in the apparent market as a whole and at different trade levels, prices in 2014 were higher than they had been in 2012.<sup>114</sup> However, prices did fall in the 2015 interim period compared to the 2014 interim period.<sup>115</sup>

126. When compared to the pricing of the subject goods at the aggregate level, the trends remain similar. In particular, the prices of the subject goods fell between 2012 and 2013 before recovering somewhat in 2014.<sup>116</sup> Unlike the prices of like goods, however, prices of the subject goods in 2014 remained below 2012 levels.<sup>117</sup> Similarly, while the prices of the like goods decreased between the 2014 interim period and the 2015 interim period, the aggregate prices of the subject goods actually increased in that same period.<sup>118</sup>

127. With respect to benchmark products, prices of the like goods of both ASTM A36/A36M and ASTM A572/A572M increased steadily over each quarter of the POI from the third quarter of 2013 to the third quarter of 2014, with the exception of one instance.<sup>119</sup> Those prices reached their peak in either the third or the fourth quarter of 2014, before decreasing over the remaining quarters of the POI.<sup>120</sup>

128. Pricing trends for the subject goods at the benchmark level were decidedly more mixed. For both ASTM A36/A36M and ASTM A572/A572M sales to distributors and service centres, prices increased from the fourth quarter of 2013 to the third quarter of 2014, before decreasing slightly in the fourth quarter of 2014. However, they then reached their highest point of the POI in the first quarter of 2015 before decreasing again in the second quarter of 2015.<sup>121</sup> By contrast, for sales to end users of ASTM A36/A326M, which represented a significantly smaller volume of sales from imports, prices held fairly constant before increasing substantially in the second quarter of 2015.<sup>122</sup>

129. Essar Algoma provided some lost sale allegations which indicated that it had to lower its prices in certain instances in order to retain some portion of its sales. However, given that prices for both the like goods and the subject goods increased from 2013 to 2014, the Tribunal cannot conclude that price

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112. *Ibid.*

113. Exhibit NQ-2015-001-07B (protected), Tables 52-53, 60-66, Vol. 2.1B.

114. *Ibid.*, Tables 52, 60, 61, 63.

115. *Ibid.*, Tables 52-53, 60-61, 63.

116. *Ibid.*, Table 52.

117. *Ibid.*

118. *Ibid.*

119. Exhibit NQ-2015-001-07A (protected), Tables 67, 69, 71, 73, Vol. 2.1A.

120. *Ibid.*

121. *Ibid.*, Tables 67, 71.

122. *Ibid.*, Table 69.

depression occurred for the domestic industry as a whole. Moreover, while the price of like goods decreased in the 2015 interim period, the price of the subject goods actually increased during that same time. Therefore, the Tribunal finds that the subject goods did not cause price depression during the 2015 interim period.

### **Price Suppression**

130. In order to assess price suppression, the Tribunal typically compares the changes in the domestic industry's consolidated \$/tonne cost of goods manufactured to the changes in the weighted average selling prices of the like goods to determine if domestic producers have been able to increase selling prices in step with increases in their cost of goods manufactured.

131. Essar Algoma conceded that price suppression did not occur in the "usual" manner. However, it argued that the extremely low prices of 2013 meant that, even with price increases in 2014, it was not able to raise prices sufficiently to avert price suppression. In particular, Essar Algoma pointed to price suppression on plate in widths greater than 96 inches.

132. However, while some of the domestic mills may have experienced price suppression in 2014, when the domestic industry as a whole is considered, the Tribunal finds that the subject goods did not suppress the price of the like goods over the POI.

133. The evidence demonstrates that the net unit sales value of the like goods decreased in 2013. At the same time, however, the industry's cost of goods sold also decreased—indeed to a greater degree than selling prices.<sup>123</sup> In 2014, net unit sales value increased, as did the industry's overall cost of goods sold. In general, however, it appears that prices were high enough to exceed the cost of goods sold for the domestic industry as a whole.<sup>124</sup>

### **Resulting Impact**

134. As indicated above, the Tribunal will focus the following analysis on whether injury occurred in 2014 and the 2015 interim period.

### **Production**

135. The evidence demonstrates that domestic production increased steadily over the POI, with declining production by the domestic mills more than offset by increased production by service centres.<sup>125</sup>

136. The domestic mills alleged that the subject goods caused the decline in their production. However, the Tribunal believes that the evidence reveals the powerful impact on production of a range of other non-related factors. For instance, in October 2015, Essar Algoma experienced a raw material shortage due to a dispute with its iron ore supplier, which reduced its productivity.<sup>126</sup> Similarly, earlier in the year, difficult weather conditions resulted in a raw material shortage which impacted Essar Algoma's production levels.<sup>127</sup>

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123. *Ibid.*, Table 96; Exhibit NQ-205-001-07B (protected), Table 95, Vol. 2.1B.

124. Exhibit NQ-2015-001-07A (protected), Table 96, Vol. 2.1A; Exhibit NQ-205-001-07B (protected), Table 95, Vol. 2.1B.

125. Exhibit NQ-2015-001-07A, Table 41, Vol. 2.1A.

126. *Transcript of Public Hearing*, Vol. 1, 7 December 2015, at 26.

127. *Ibid.*



Moreover, in 2013 and 2014, Evraz sold its cut-to-length facilities to two service centres, Varsteel and Samuel,<sup>128</sup> causing a significant shift in the production statistics from domestic mills to service centres.

137. Another factor that cannot be ignored by the Tribunal is that of non-subject imports from the United States. The record shows that significant volumes of hot-rolled steel plate were imported into Canada from the United States during the POI, particularly in 2014 when imports from the United States increased by 24 percent over the previous year.<sup>129</sup> A large proportion of these imports were by domestic producers themselves.<sup>130</sup> Domestic mills are part of a larger group of enterprises that tend to allocate production and purchases on a North American basis.<sup>131</sup> Service centres tend to procure their imports in a similar fashion.<sup>132</sup> Accordingly, these levels of imports from the United States may be the result of business decisions that take into account the high degree of integration within North America, and leverage the regional proximities and freight advantages between some locations in Canada and the United States.<sup>133</sup> Although decisions to import products from the United States may be logical from a business point of view, to the extent that these imports could have been produced in Canada, they have displaced Canadian production.<sup>134</sup> In an analysis under *SIMA* that purports to consider the cause of the alleged injury, the effect that imports from the United States may have had on domestic production cannot be attributed to the subject goods.

138. Considering the above, the Tribunal finds that the subject goods did not negatively impact the production of the domestic industry as a whole and that the decline in the production level of the portion of the domestic industry composed of domestic mills was primarily attributable to other non-related factors rather than to the subject goods themselves.

### Sales and Market Share

139. The evidence demonstrates that sales from domestic production increased by 26 percent in 2013 and by 2 percent in 2014, before falling by 6 percent in the 2015 interim period.<sup>135</sup> However, as with production levels, sales from domestic production by domestic mills declined, while those of the domestic service centres increased. The total volume of the like goods sold by the domestic mills decreased by 11 percent between 2013 and 2014, while the total volume sold by service centres increased by 15 percent in that same period.<sup>136</sup> As such, the domestic industry as a whole did not lose sales.

140. When sales from domestic production are viewed relative to the subject goods, the evidence reveals that the subject goods gained market share at the expense of the domestic industry as a whole in 2014.<sup>137</sup> This growing market share coincided with both a surge in the absolute volume of imports of the subject

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128. *Transcript of Public Hearing*, Vol. 2, 8 December 2015, at 164, 168; *Transcript of Public Hearing*, Vol. 3, 9 December 2015, at 241; Exhibit NQ-2015-001-11.09, Vol. 3A, at 34.

129. Exhibit NQ-2015-001-06, Table 43, Vol. 1.1; Exhibit NQ-2015-001-07A (protected), Table 42, Vol. 2.1A.

130. Exhibit NQ-2015-001-07A (protected), Table 42, Vol. 2.1A.

131. *Transcript of Public Hearing*, Vol. 2, 8 December 2015, at 180, 189, 197-98, 217.

132. *Transcript of Public Hearing*, Vol. 2, 8 December 2015, at 136, Vol. 3, 9 December 2015, at 276, 281-84.

133. *Transcript of Public Hearing*, Vol. 1, 7 December 2015, at 90-91.

134. *Transcript of Public Hearing*, Vol. 2, 8 December 2015, at 217.

135. Exhibit NQ-2015-001-06A, Table 50, Vol. 1.1A.

136. *Ibid.*

137. Exhibit NQ-2015-001-07A (protected), Table 51, Vol. 2.1A.

goods,<sup>138</sup> and an increase in instances of price undercutting by the subject goods.<sup>139</sup> Moreover, sales from imports of non-subject goods also decreased in market share between 2013 and 2014.<sup>140</sup>

141. While recognizing that the market share of the domestic industry increased during the 2015 interim period,<sup>141</sup> the Tribunal finds that the subject goods did impact the domestic industry, particularly Essar Algoma, in the form of lost sales and market share.

142. In this regard, the Tribunal notes that Essar Algoma provided some lost sales allegations to confirm the trends in the data. While the Tribunal considers the lost sales allegations to have only limited evidentiary value, the Tribunal accepts Mr. Brandow's testimony that Essar had to lower its prices in certain instances to retain some portion of its sales. In other cases, Essar was unable to lower prices to preserve sales in the face of low-priced imports.<sup>142</sup>

143. However, the Tribunal also finds that the evidence confirms arguments made by the parties opposed regarding the role played by other factors in causing the domestic industry to lose sales and market share. Specifically, in its analysis of the causal relationship between imports of the subject goods and the alleged injury to domestic producers, the Tribunal finds compelling evidence about the role played by other factors.

144. As noted above, the Tribunal heard evidence regarding the evolution of cut-to-length lines, particularly with regard to flatness, and the increasing number of applications in which cut-to-length products can replace discrete plate.<sup>143</sup> This, combined with evidence that the industry as a whole is evolving towards value-added production,<sup>144</sup> leads the Tribunal to conclude that domestic mills lost sales to their intra-industry competitors, the service centres. As such, the lost sales and market share that the domestic mills have experienced cannot therefore be attributed strictly to the subject goods.

145. Similarly, witnesses testified that Essar Algoma was required to extend its delivery lead times in 2014 and that deliveries from Essar Algoma are not 100 percent on time at present.<sup>145</sup> Witnesses also noted that service centres operate on the basis of much shorter lead times, as their business models are focussed on providing service, adding value and meeting customers' needs quickly on a smaller production scale.<sup>146</sup> This difference in the manner in which service centres and domestic mills operate has resulted in the domestic mills forgoing a relatively important segment of the market.<sup>147</sup> Accordingly, the Tribunal finds that the domestic mills, through their own actions, lost potential sales and market share to the service centres, which negatively impacted their performance.

146. The Tribunal also notes that the integrated structure of the North American steel industry has resulted in self-inflicted injury to the domestic industry. In particular, witnesses for both SSAB and Evraz explained that they operate on an integrated business platform, whereby certain aspects of plate production

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138. *Ibid.*, Table 42.

139. *Ibid.*, Tables 67, 69, 71 73.

140. *Ibid.*, Table 51.

141. Exhibit NQ-2015-001-06A, Table 51, Vol. 2.1A.

142. *Transcript of Public Hearing*, Vol. 1, 7 December 2015, at 89.

143. *Transcript of Public Hearing*, Vol. 2, 8 December 2015, at 154-55, Vol. 3, 9 December 2015, at 276.

144. *Transcript of Public Hearing*, Vol. 3, 9 December 2015, at 276, 285.

145. *Transcript of Public Hearing*, Vol. 1, 7 December 2015, at 39, 41-43, Vol. 2, 8 December 2015, 131-32.

146. *Transcript of Public Hearing*, Vol. 2, 8 December 2015, at 168-69, 207, 215-16, Vol. 3, 9 December 2015, at 276, 279, 285.

147. *Transcript of Public Hearing*, Vol. 1, 7 December 2015, at 95.

have been allocated to the United States rather than Canada.<sup>148</sup> While the Tribunal in no way questions the legitimacy of this business model, it nonetheless must recognize the impact that this approach necessarily has on the production, sales and market share of the domestic industry. Again, however, this was a result of the domestic industry's internal decisions on production allocation, and any losses that resulted cannot be attributed to the subject goods.

147. Finally, The Tribunal heard repeated testimony regarding the global economic slowdown and the concurrent impact on prices and sales throughout the industry.<sup>149</sup> Witnesses explained that price levels were currently lower than 2009 recession levels, which has resulted in a poor North American market and declines in demand from significant customers.<sup>150</sup>

148. There is no doubt that this drop in prices, coupled with a drop in demand, has significantly impacted the domestic industry. This powerful global trend has occurred independently of the subject goods and cannot be attributed to their presence. While the Tribunal recognizes that the subject goods may have exacerbated the effect of this trend to some degree as demonstrated by Essar's lost sales allegations, the Tribunal finds that this global trend is the root cause of much of the injury being felt by steel producers in Canada and around the globe. This is in addition to the effects caused by all the others factors considered above.

### **Profitability**

149. The domestic industry experienced net losses in 2014; however, the Tribunal notes that these losses were less substantial than they had been in 2013.<sup>151</sup> Moreover, the Tribunal notes that, at the gross margin level, the domestic industry was the most profitable in 2014 over the previous years of the POI and in the 2015 interim period when compared to the 2014 interim period.<sup>152</sup> Thus, the domestic industry's profitability actually improved during the time in which the volume of imports of the subject goods increased.

150. Much of the lack of profitability appears to be concentrated in the domestic mills, as opposed to the service centres.<sup>153</sup> In fact, when profitability is concerned, the service centres did relatively well over the POI.<sup>154</sup>

151. The Tribunal acknowledges that the domestic mills (and especially Essar Algoma) experienced difficulties in terms of their net income and gross margins. In that sense, the domestic industry suffered some injury at the end of the POI. However, the Tribunal finds that the injury suffered by the domestic industry in terms of profitability cannot be attributed to imports of the subject goods alone. While there is no doubt that the subject goods negatively impacted prices and therefore profit margins over the POI, the Tribunal finds that the domestic industry's overall lack of profitability was caused by factors that had nothing to do with the subject goods in and of themselves.

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148. *Transcript of Public Hearing*, Vol. 2, 8 December 2015, at 189-90, 206-207, Vol. 3, 9 December 2015, at 281-82.

149. *Transcript of Public Hearing*, Vol. 2, 8 December 2015, at 117-18, 184.

150. *Ibid.* at 177-78, 183-85.

151. Exhibit NQ-2015-001-07B (protected), Table 95, Vol. 2.1B; Exhibit NQ-2015-001-07A (protected), Table 96, Vol. 2.1A. As noted in the investigation report, there are limitations with respect to the data received from the certain service centres for these tables.

152. Exhibit NQ-2015-001-07B (protected), Table 95, Vol. 2.1B; Exhibit NQ-2015-001-07A (protected), Table 96, Vol. 2.1A.

153. Exhibit NQ-2015-001-07B (protected), Table 95, Vol. 2.1B.

154. *Ibid.*, Tables 95-96.

152. This unfortunate conclusion is particularly true for Essar Algoma. The Tribunal accepts Jindal's allegations that Essar Algoma's contractual dispute with Cliffs Natural Resources (Cliffs) and its continuing financial difficulties made customers "reluctant to deal" with Essar Algoma. In fact, Essar Algoma stated that the contractual dispute did result in raw material shortages in October 2015 and that this had obvious implications for its production, sales and profits.<sup>155</sup> This shortage was in addition to the shortage caused by inclement weather earlier in 2015.<sup>156</sup> While Essar Algoma testified that it subsequently entered into a new iron ore deal which has met its raw material needs,<sup>157</sup> these earlier shortages undoubtedly had a negative impact on Essar Algoma's performance.

153. In addition to the impacts on Essar Algoma's performance, the dispute with Cliffs had even further and more serious ramifications for Essar Algoma's profitability. As characterized by Ms. Devoni, the dispute with Cliffs was the "... straw that broke the camel's back ...", as it forced Essar Algoma to file its third proceeding under the *Companies' Creditors Arrangement Act*<sup>158</sup> in 24 years.<sup>159</sup> Moreover, witnesses for Essar Algoma stated that resolving the iron ore supply situation was critical to the resolution of the proceeding under the CCAA.<sup>160</sup> Both this proceeding and Essar Algoma's difficulties in securing a reliable iron ore supply may have caused potential customers to view Essar Algoma with a certain amount of caution,<sup>161</sup> although the degree to which this has impacted customer relations is not clear.<sup>162</sup> Nonetheless, the proceeding under the CCAA has impacted, and continues to impact, the performance and profitability of Essar Algoma and, by extension, a substantial portion of the domestic industry, given its share of overall domestic production.

154. Similarly, Ms. Devoni explained the negative impacts that Essar Algoma's pension deficit and high debt obligations had on its profitability over the POI.<sup>163</sup> The evidence showed that this issue depleted Essar Algoma's liquidity and resulted in an over-leveraged balance sheet.<sup>164</sup> Essar Algoma itself stated that these factors, which are unrelated to the subject goods, negatively impacted its financial performance.<sup>165</sup> While this would undoubtedly have had a negative impact on Essar Algoma's profitability, the Tribunal also notes that, due to the size of Essar Algoma's apparent market share within the domestic industry,<sup>166</sup> it would also affect the overall profitability of the domestic industry as a whole. However, these pension deficits and high debt obligations and their resultant impact on the profitability of the domestic industry cannot be attributed to the subject goods.

155. On the basis of the foregoing, the Tribunal cannot conclude that the subject goods, in and of themselves, negatively impacted the domestic industry's profitability. Had the subject goods not been in the market, the profitability of the domestic industry would have likely been much better. Nevertheless, given

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155. *Transcript of Public Hearing*, Vol. 1, 7 December 2015, at 26-27.

156. *Ibid.* at 26.

157. *Ibid.* at 27.

158. R.S.C., 1985, c. C-36 [CCAA].

159. *Transcript of Public Hearing*, Vol. 1, 7 December 2015, at 26; Exhibit NQ-2015-001-C-01, tab 6, Vol. 13.

160. *Transcript of Public Hearing*, Vol. 1, 7 December 2015, at 31.

161. *Transcript of Public Hearing*, Vol. 2, 8 December 2015, at 130; Exhibit NQ-2015-001-A-12 (protected) at paras. 99-102, Vol. 12B; Exhibit NQ-2015-001-A-17, Public Attachment 2 at 13, Public Attachment 6 at 1-2, Vol. 11F.

162. *Transcript of Public Hearing*, Vol. 1, 7 December 2015, at 28-29, Vol. 2, 8 December 2015, at 130-31.

163. *Transcript of Public Hearing*, Vol. 1, 7 December 2015, at 24; Exhibit NQ-2015-001-A-17, Public Attachment 4 at 15-16, Vol. 11F.

164. Exhibit NQ-2015-001-A-17, Public Attachment 1 at 9, Public Attachment 4 at 23, Vol. 11F.

165. *Ibid.*, Public Attachment 4 at 30.

166. Exhibit NQ-2015-001-07A (protected), Table 41, Vol. 2.1A.

the other factors with which Essar Algoma was dealing, the Tribunal cannot attribute injury to the subject goods alone.

156. The fact that other players in the domestic industry performed well in terms of profitability, even in the face of increasing imports of the subject goods, reinforces the Tribunal's finding of the lack of a causal relationship between the subject goods and material injury caused to the domestic industry as a whole.

157. This is particularly true in light of evidence that the domestic mills operate with much higher costs of production and at greater volumes than the service centres. For the industry as a whole in 2014, while the increase in the domestic industry's net unit sales value outpaced the cost of goods sold in 2014, the cost of goods sold nonetheless comprised a significant portion of the domestic industry's consolidated income.<sup>167</sup> Again, however, this result was largely due to the operations of the domestic mills, as opposed to the service centres.<sup>168</sup> When considered in light of the differences in business models operated by the domestic mills and the service centres discussed above,<sup>169</sup> the Tribunal finds that the domestic mills' more capital-intensive production process continues to significantly impact their profitability compared to the lighter cut-to-length production process of the service centres.

### **Productivity and Capacity Utilization**

158. The evidence demonstrates that the domestic industry's productivity (measured in terms of average tonnes per employee) decreased between 2012 and 2014, and then increased in the 2015 interim period when compared to the 2014 interim period. At the same time, however, the domestic industry's average tonnes per hour worked remained virtually unchanged throughout the POI.<sup>170</sup> It therefore does not appear that the subject goods had any impact on the productivity of the domestic industry.

159. In fact, the Tribunal heard testimony about productivity improvements that the service centres have made over the past 20 years even in the face of low-priced imports. Service centres, in particular, have significantly improved the processes involved in cut-to-length production lines, especially with respect to increased flatness.<sup>171</sup> Furthermore, service centres operate on different business and production models that are far more efficient than those of the domestic mills and geared to adding value to their products across the range within the product definition.<sup>172</sup>

160. With respect to capacity utilization, the evidence demonstrates that the total capacity utilization rate for the domestic industry increased from 48 percent in 2013 to 52 percent in 2014.<sup>173</sup> This trend continued during the 2015 interim period, during which capacity utilization increased from 44 percent in the 2014 interim period to 49 percent.<sup>174</sup> Thus, the Tribunal finds that the subject goods did not negatively impact the capacity utilization of the domestic industry.

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167. *Ibid.*, Table 96; Exhibit NQ-205-001-07B (protected), Table 95, Vol. 2.1B.

168. Exhibit NQ-2015-001-07A (protected), Table 96, Vol. 2.1A; Exhibit NQ-205-001-07B (protected), Table 95, Vol. 2.1B.

169. *Transcript of Public Hearing*, Vol. 2, 8 December 2015, at 169, 207, 215-16, Vol. 3, 9 December 2015, at 276, 279, 285.

170. Exhibit NQ-2015-001-06A, Table 107, Vol. 1.1A.

171. *Transcript of Public Hearing*, Vol. 2, 8 December 2015, at 154.

172. *Transcript of Public Hearing*, Vol. 2, 8 December 2015, at 169, 207, 215-16, Vol. 3, 9 December 2015, at 276-79, 285.

173. Exhibit NQ-2015-001-06A, Table 108, Vol. 1.1A.

174. *Ibid.*

161. Therefore, the Tribunal finds that the subject goods did not cause injury to the domestic industry in terms of productivity and capacity utilization over the POI.

### **Investments and Innovation**

162. Overall, investments by the domestic industry increased substantially between 2013 and 2014.<sup>175</sup> While projected investments were significantly lower in 2015, they are forecast to increase for 2016 and 2017, though they are not projected to reach the previous high of 2014.<sup>176</sup>

163. The Tribunal heard testimony from Mr. McNevitts regarding the sale of one of Evraz's cut-to-length lines in 2013. In particular, Mr. McNevitts testified that Evraz decided to sell the line in question rather than invest "significant" amounts of money to upgrade it in response to pressure from low-priced imports.<sup>177</sup> While this represents a forgone investment opportunity on behalf of Evraz, the Tribunal notes that the facility was in fact purchased by a service centre (i.e. another domestic producer), which then made the necessary investments to upgrade it and operate in a niche market to increase sales and profitability.<sup>178</sup>

164. The Tribunal notes the different approaches being taken by various domestic mills to changing market dynamics. SSAB now operates on an integrated North American model, shipping product between plants throughout North America, with its facility in Toronto, Ontario, now more of a service centre.<sup>179</sup> Evraz also appears to have moved out of a segment of the market in which service centres are more efficient, given their lighter operations.<sup>180</sup> The evidence suggests that Essar Algoma has taken a different approach on this issue.<sup>181</sup>

165. Given the foregoing, the Tribunal finds that the subject goods did not have an impact on investments by the domestic industry.

### **Cash Flow**

166. The domestic mills argued that they experienced cash flow issues over the POI. In particular, Ms. Devoni testified that Essar Algoma's cash flow was negatively impacted by the subject goods, as they captured domestic sales and undercut domestic prices. In this, the Tribunal accepts that the subject goods had an injurious impact on the domestic industry, especially on the domestic mills.

167. Nevertheless, these negative impacts cannot strictly be attributed to the subject goods. Ms. Devoni also testified that Essar Algoma's already tight cash flow was impacted by other non-related factors at the same time as the subject goods entered the market. For example, she explained how Essar Algoma's cash flow had been reduced by the terms of the contract with Cliffs (its iron ore supplier) and its legacy costs and pension obligations. Moreover, these cash flow issues impacted Essar Algoma's ability to make necessary purchases, fund payroll, order raw materials and operate at full capacity.<sup>182</sup> These cash flow issues would

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175. Exhibit NQ-2015-001-07B (protected), Table 111, Vol. 2.1A.

176. *Ibid.*

177. *Transcript of Public Hearing*, Vol. 3, 9 December 2015, at 241.

178. *Transcript of Public Hearing*, Vol. 2, 8 December 2015, at 164, 168, Vol. 3, 9 December 2015, at 241.

179. *Transcript of Public Hearing*, Vol. 2, 8 December 2015, at 189-91, 205-207.

180. *Transcript of Public Hearing*, Vol. 3, 9 December 2015, at 241-46.

181. *Transcript of In Camera Hearing*, Vol. 1, 7 December 2015, at 86-88.

182. *Transcript of Public Hearing*, Vol. 1, 7 December 2015, at 24; Exhibit NQ-2015-001-A-17, Public Attachment 2 at 12, Public Attachment 6 at 1-3, Vol. 11F.

necessarily have had a considerable impact on the financial performance of Essar Algoma and, through it, the domestic industry as a whole.

168. Therefore, the Tribunal finds that subject goods were not the cause of material injury to the domestic industry as a whole. Once again, unrelated factors, rather than the presence of the subject goods, had a substantial impact on the domestic industry's cash flow.

### **Inventories**

169. Essar Algoma claimed that large inventories of the subject goods accumulated over the POI. However, the evidence does not support this claim. While the domestic industry's consolidated inventory was sizeable over the course of the POI, inventories of the subject goods remained substantially smaller,<sup>183</sup> even though witnesses noted that some inventories of the subject goods continue to work their way through the market.<sup>184</sup> On the basis of the evidence, the Tribunal cannot conclude that the subject goods caused injury to the domestic industry in terms of their inventories.

### **Employment and Wages**

170. The evidence demonstrates that the domestic industry actually increased its levels of direct employment over most of the POI, although direct employment fell by 22 percent in the 2015 interim period relative to the 2014 interim period.<sup>185</sup> Similarly, wages paid by the domestic industry increased from 2013 to 2014, before falling in the 2015 interim period.<sup>186</sup>

171. Witnesses for Essar Algoma testified that it had to lay off employees directly related to the production of plate. However, on cross-examination, Ms. Devoni conceded that half of these lay-offs were the result of the Essar Algoma's attempts to streamline operations and find efficiencies, and were thus attributable to other factors and irrespective of the subject goods.<sup>187</sup>

172. While Essar Algoma may have suffered injury in terms of employment losses, there is no indication of injury suffered by the domestic industry as a whole. Moreover, there is no evidence to support a causal relationship between employment, wages and imports of the subject goods.

### **Conclusion**

173. On the basis of the evidence and the testimony, the Tribunal finds that the domestic industry suffered injury in 2014 and the 2015 interim period and that some of this injury can be attributed to the subject goods. However, the injury was restricted to the domestic mills in general and Essar Algoma in particular, as opposed to the domestic industry as a whole. As well, a substantial portion of the injury can be attributed to a range of other unrelated factors—not the subject goods in and of themselves. Accordingly, the Tribunal finds that the subject goods have not caused material injury to the domestic industry.

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183. Exhibit NQ-2015-001-07A (protected), Table 112, Vol. 2.1A.

184. *Transcript of Public Hearing*, Vol. 2, 8 December 2015, at 180, Vol. 3, 9 December 2015, at 302.

185. Exhibit NQ-2015-001-06A, Table 104, Vol. 1.1A.

186. Exhibit NQ-2015-001-07B (protected), Table 106, Vol. 2.1B.

187. *Transcript of Public Hearing*, Vol. 1, 7 December 2015, at 26.

## THREAT OF INJURY ANALYSIS

174. Having found that the dumping and subsidizing of the subject goods have not caused material injury to the domestic industry, the Tribunal must now consider whether they are threatening to cause material injury.

### Positions of Parties

175. Essar Algoma contended that the dumping and subsidizing of the subject goods are threatening to cause injury. Essar Algoma pointed to falling plate prices,<sup>188</sup> weakening demand both domestically and internationally,<sup>189</sup> global oversupply,<sup>190</sup> and continued overproduction and exports of low-priced plate from the People's Republic of China (China).<sup>191</sup>

176. SAIL asserted that pending infrastructure projects will result in increased demand for plate within India and, consequently, will cause a decrease in exports to Canada.<sup>192</sup> In addition, SAIL pointed to the decrease in the subject goods imported from India between the 2014 interim period and the 2015 interim period as evidence that there is no imminent and clearly foreseeable threat to the domestic industry.<sup>193</sup>

### Overview of the Tribunal's Analytical Approach

177. As noted above, a determination of threat of material injury is to be based on facts and not merely on allegation, conjecture or remote possibility. Furthermore, a finding of threat of injury cannot be made unless it is clearly foreseen and imminent. In that sense, the Tribunal must start its analysis by considering whether and how factors affecting the current state of the domestic industry might change over the short term. It must consider all relevant economic factors and indices that have a bearing on the state of the domestic industry, as it considers any and all evidence that would indicate the degree to which the sustained presence of the subject goods in the Canadian market could impact the industry's condition.

178. To that end, the Tribunal will proceed by first establishing the time frame for its threat of injury analysis. It will then review the likelihood of substantially increased imports of the subject goods in Canada, as well as the likelihood that the subject goods would enter the domestic market at prices that could significantly undercut, depress or suppress the prices of like goods. Finally, the Tribunal will consider the likely impact that such volumes and prices could have on the performance of the domestic industry. In so doing, it will determine the likelihood of a threat of injury and, if so, whether that threat of injury is likely to be material and to be caused by the subject goods.

179. The Tribunal recognizes that this type of analysis must be done carefully and conscientiously, as it is forward-looking, meaning that the Tribunal must look to the future in a manner that reflects the domestic industry's present and past performance. As demonstrated above, the Tribunal has been particularly mindful of the causal relationship between other factors and the performance of the domestic industry vis-à-vis the relative impact of the subject goods over the POI. Therefore, in light of the Tribunal's mandate to assess materiality and causality in not only an injury analysis but also a threat of injury analysis, the Tribunal will

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188. Exhibit NQ-2015-001-A-01 at paras. 226-28, Vol. 11.

189. *Ibid.* at paras. 229, 235.

190. *Ibid.* at paras. 234, 239, 251.

191. *Ibid.* at paras. 256, 258.

192. Exhibit NQ-2015-001-D-01 at para. 161, Vol. 13A.

193. Exhibit NQ-2015-001-D-02 (protected) at para. 134, Vol. 14A; Exhibit NQ-2015-001-06A, Table 43, Vol. 1.1A.



continue to consider those other factors in the context of the potential threat that the subject goods could have on the domestic industry in the months to come.

### **Time Frame**

180. In assessing threat of injury, the Tribunal typically considers a time frame of 12 to 18 months, and no more than 24 months, beyond the date of its finding. The Tribunal is not necessarily bound by this time frame, as each case is unique.

181. The testimonial evidence in this case suggests that, in the absence of an injury finding, shipments of the subject goods will almost certainly resume and, despite some challenges associated with shipping over long distances, this resumption could occur within a relatively short period of time.<sup>194</sup> Furthermore, the evidence suggests that the impact of the subject goods, if any, will likely be felt prior to the arrival of any such shipments. As both Ms. Devoni and Mr. Boiteau indicated, news of offers at low prices travels quickly through the market.<sup>195</sup>

182. For the reasons above, the Tribunal is of the view that the next 12 to 18 months is a reasonable time frame over which to assess the effects of the dumping and subsidizing of the subject goods on the domestic industry.

### **Likelihood of Substantially Increased Imports of the Subject Goods in Canada**

183. As noted above, the evidence indicates that the volume of the subject goods significantly increased in 2014 (when the volume increased more than 1,000 percent over the previous year)<sup>196</sup> and then decreased in the 2015 interim period as compared to the 2014 interim period.

184. On the basis of these data, the Tribunal must consider whether the volume of the subject goods is likely to increase in the next 12 to 18 months. The testimony suggests that shipments of the subject goods will almost certainly resume based on the following three key considerations: the current and projected dynamics of the Indian and Russian plate markets; the export-oriented nature of Indian and Russian plate producers; and the attractiveness of the Canadian market for imports. The Tribunal will review the evidence in regard to these three considerations in turn.

#### Current and Projected Dynamics of the Indian and Russian Plate Markets

185. The evidence indicates that there is substantial plate production capacity and excess capacity in India and Russia.<sup>197</sup> Taken together, it was estimated that India and Russia have approximately 365 million metric tonnes of excess capacity on a hot strip mill basis,<sup>198</sup> and an estimated 95 million metric tonnes of excess capacity on a reversing plate mill basis.<sup>199</sup>

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194. *Transcript of Public Hearing*, Vol. 2, 8 December 2015, at 120, 166-68.

195. *Transcript of Public Hearing*, Vol. 2, 8 December 2015, at 116, Vol. 1, 7 December 2015, at 105.

196. Exhibit NQ-2015-001-06A, Table 43, Vol. 1.1A.

197. Exhibit NQ-2015-001-07 (protected), Tables 115, 116, Vol. 2.1.

198. *Transcript of Public Hearing*, Vol. 1, 7 December 2015, at 20.

199. *Ibid.*

186. The combined capacity of India and Russia has grown during the most recent periods<sup>200</sup> and continued expansion appears likely. Expansion efforts appear to be significant when compared to the current size of the Canadian market.

187. In regard to India, the Government of India recently announced a goal of reaching 300 million tons of production capacity by 2025, which represents a considerable increase over the 88 million tons of production capacity at present. Similarly, the Jindal Group, through JSW Steel, plans to expand capacity at its Dolvi and Vijayanagar mills from 3.3 million metric tonnes to 5 million metric tonnes per year and from 10 million metric tonnes to 12 million metric tonnes per year respectively.<sup>201</sup> These expansions total 3.7 million metric tonnes per year and affect mills that can be used to produce plate.

188. In regard to Russia, reports indicate that certain producers are continuing to make substantial capital expenditures in order to construct new plate-making facilities.<sup>202</sup> Ms. Devoni stated that CRU forecasts suggest that production will grow by 1.9 percent in 2016 and by 3.6 percent in 2017. These forecasts are supported by the evidence that is on the protected record.<sup>203</sup>

189. Given such production capacity, the domestic industry argued that volumes of the subject goods will increase in the face of weakening demand in India and Russia. Parties opposed disagreed. For example, they pointed to statements by the Government of India that claimed that production increases would be fully absorbed domestically. They also highlighted announcements by the Government of India that it anticipates considerable home-grown demand, given infrastructure projects involving roads, ports, housing and real estate.<sup>204</sup>

190. The evidence indicates that, notwithstanding arguments by the parties opposed, growth in India's supply is projected to outpace demand growth over the next couple of years. In 2016 and 2017, plate consumption in India is expected to grow by 0.6 percent and 4.8 percent, respectively, while production in those years is expected to increase by 5.5 percent and 9.1 percent respectively.<sup>205</sup> Similarly, forecasts by CRU predict that, although there will be increased demand for plate in India, the production of plate on reversing mills will be significantly greater than is necessary to meet increases in domestic demand.<sup>206</sup>

191. The same appears to be true for Russia where its economy has entered a downward spiral, stemming from a combination of sanctions, collapsing oil prices and the depreciation of the ruble. As of the fourth quarter of 2014, Russia officially entered a recession.<sup>207</sup> Not surprisingly, the demand for steel in Russia has generally followed a downward trend. In particular, CRU forecasts a meagre 0.1 percent growth in demand for 2016 and 3.2 percent growth in 2017. As is expected to be the case with India, plate production in Russia is expected to grow at a greater rate than demand.<sup>208</sup>

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200. Exhibit NQ-2015-001-07A (protected), Tables 115, 116, Vol. 2.1A; *Transcript of Public Hearing*, Vol. 1, 7 December 2015, at 20.

201. Exhibit NQ-2015-001-A-09, Attachment 45 at 7, 15, Vol. 11C.

202. Exhibit NQ-2015-001-24.18, Vol. 1.01 at 11.

203. *Transcript of Public Hearing*, Vol. 1, 7 December 2015, at 21; Exhibit NQ-2015-001-A-10 (protected), Attachment 5, Table 4.2, Vol. 12B.

204. Exhibit NQ-2015-001-A-09, Attachment 43, Vol. 11B.

205. Exhibit NQ-2015-001-A-10 (protected), Attachment 5, Tables S2, S10, Vol. 12B.

206. *Transcript of Public Hearing*, Vol. 1, 7 December 2015, at 21; Exhibit NQ-2015-001-A-10 (protected), Attachment 5, Table 8.2, Vol. 12B.

207. Exhibit NQ-2015-001-A-09, Attachment 37, Vol. 11B.

208. *Transcript of Public Hearing*, Vol. 1, 7 December 2015, at 21.

### Export-oriented Nature of Indian and Russian Plate Producers

192. On the basis of the widening gap between supply and demand in India, and the production imperative that exists in the steel industry,<sup>209</sup> the Tribunal finds it likely that Indian producers will continue to rely on exports of steel, including hot-rolled plate, in order to maintain healthy levels of capacity utilization.

193. Similarly, as a result of the economic instability in Russia and dampened demand for plate, it is likely that Russian exporters will increasingly look to export markets in order to maintain the production levels necessary to cover fixed costs. At the same time, the depreciation of the ruble is making Russia's export sales increasingly competitive and will likely encourage increased export volumes.<sup>210</sup>

194. Producers in India have been driven to rely more heavily on export markets, given the pressure that they face from imports from China in their home market. As indicated by Ms. Devoni, China continues to expand capacity despite recent declines in domestic and global demand.<sup>211</sup> This has led Chinese producers to become overly export-dependent, a condition noted many times by the Tribunal. Furthermore, Chinese overproduction has created ripple effects in plate markets all over the world, whereby domestic producers have been driven to export their plate in response to oversupply from imports.

195. Reports indicate that there is intense competition in the Indian market for steel products, resulting from increased volumes of low-priced steel from not only China but also Russia, Japan and the Republic of Korea. These imports continue to exert price pressures on Indian producers.<sup>212</sup> As certain large Indian producers have the flexibility to shift between domestic and international markets based on market conditions,<sup>213</sup> it is likely that Indian producers will rely more heavily on export markets to absorb the plate that they produce.<sup>214</sup> Moreover, this increased domestic competition has not dissuaded large Indian producers from continuing to invest in additional capacity to produce flat-rolled steel products.<sup>215</sup>

### Attractiveness of the Canadian Market for Exporters

196. The Canadian market is likely to remain an attractive destination for Indian and Russian exports of hot-rolled plate for several reasons. As indicated by Mr. Jeffery J. Moskaluk, Canada represents one of the few open markets for exporting countries.<sup>216</sup> In this respect, there is evidence that other export markets will not be able to absorb plate from India or Russia, as a number of countries have imposed anti-dumping and countervailing measures on goods that are identical or similar to the subject goods.<sup>217</sup>

197. Canada is also likely to be a desirable market for plate exports by the subject countries because it is one in which the subject countries will be insulated from competition with low-priced imports from China, due to the presence of anti-dumping and countervailing duties which were imposed on Chinese plate in Inquiry No. NQ-97-001<sup>218</sup> and continued in subsequent expiry reviews, the most recent of which was

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209. Exhibit NQ-2015-001-A-01 at para. 311, Vol. 11.

210. Exhibit NQ-2015-001-A-09, Public Attachment 20 at 5, Vol. 11B, Public Attachment 51 at 1, Vol. 11C.

211. *Transcript of Public Hearing*, Vol. 1, 7 December 2015, at 20.

212. Exhibit NQ-2015-001-A-09, Attachment 49, Vol. 11C.

213. *Ibid.*, Attachment 45 at 61.

214. Exhibit NQ-2015-001-A-10 (protected), Attachment 5 at 41, Vol. 12B.

215. Exhibit NQ-2015-001-24.16, Vol. 1.01 at 4.

216. *Transcript of Public Hearing*, Vol. 2, 8 December 2015, at 187.

217. Exhibit NQ-2015-001-06A, Table 2, Vol. 1.1A.

218. *Hot-rolled Carbon Steel Plate* (27 October 1997) (CITT).

Expiry Review No. RR-2012-001.<sup>219</sup> As was indicated by Ms. Devoni, competition with large quantities of imported Chinese plate has been a struggle for Indian producers in particular.<sup>220</sup>

198. Also of note, as of December 19, 2014, the United States terminated the suspension agreement which had existed since 1999 in respect of hot-rolled flat carbon-quality steel products from Russia.<sup>221</sup> Accordingly, Russian producers that had previously sold hot-rolled sheet into the U.S. market may be eager for an alternative market to absorb their products. It seems reasonable to think that those producers would shift from sheet production to plate production and then export said plate to Canada, given that the same equipment that is used to produce hot-rolled sheet can be used to produce hot-rolled plate.

199. Finally, the Canadian market is likely to be of interest to producers in the subject countries given that, in recent years, plate tends to be priced higher in Canada and the United States than in other markets worldwide.<sup>222</sup> This higher pricing in North American markets relative to other markets, exemplified by the spread between the U.S. Midwest price and other global benchmarks, will likely continue to prevail at least over the next 12 to 18 months.

### Summary

200. Accordingly, on the basis of the foregoing considerations and evidence, the Tribunal accepts the arguments of the domestic industry and finds that substantially increased volumes of imports of that subject goods are likely to enter the Canadian market over the next 12 to 18 months.

### **Likely Price Effects**

201. The Tribunal will now consider whether such volumes of subject goods could significantly undercut, depress or suppress the prices of like goods.

202. Both Essar Algoma and SAIL acknowledged that global steel prices are expected to remain low in the foreseeable future.<sup>223</sup> Their views correspond with the trend for domestic prices in the 2015 interim period, at which point the aggregate unit values were lower than at any time during the POI except 2013.<sup>224</sup> While aggregate unit values for the subject goods actually rose between the 2014 interim period and the 2015 interim period, they nonetheless remained lower than they were in 2012 and 2014.<sup>225</sup>

203. As noted above, the subject goods significantly undercut domestic prices throughout the POI. On the basis of that experience, the Tribunal finds that the subject goods are likely to enter Canada at prices that are lower than the prices of like goods. Undercutting is most likely to affect plate that is 96 inches wide or greater, as this is the range of the subject goods that tends to be imported into Canada. Given that plate is a commodity product, purchasers are likely to continue to be attracted to low-priced subject goods.

204. Similarly, domestic prices are expected to remain low. Mr. Boiteau testified that the pricing and demand for plate in Canada in 2016 will likely be much the same as they were in 2015.<sup>226</sup> Both Mr. Boiteau

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219. *Hot-rolled Carbon Steel Plate* (8 January 2013) (CITT).

220. *Transcript of Public Hearing*, Vol. 1, 7 December 2015, at 21.

221. Exhibit NQ-2015-001-A-09, Public Attachment 53 at 1, Vol. 11C.

222. Exhibit NQ-2015-001-A-01, Table 11 at para. 329, Vol. 11.

223. Exhibit NQ-2015-001-A-01 at paras. 226-28, Vol. 11; Exhibit NQ-2015-001-D-01 at para. 146, Vol. 13A.

224. Exhibit NQ-2015-001-06A, Table 52, Vol. 1.1A.

225. Exhibit NQ-2015-001-07B, Table 45, Vol. 2.1B.

226. *Transcript of Public Hearing*, Vol. 2, 8 December 2015, at 121.

and Mr. Brandow noted that the very low price of oil (which, at the time of the hearing, was in the range of CAN\$40/barrel) was having a significant negative influence on the levels of demand for plate, and consequently, a negative impact on the price of plate in the Canadian market.<sup>227</sup> There was a discussion of CRU forecasts, which project that plate prices will range between US\$607/metric tonne and \$633/metric tonne through to the end of 2017.<sup>228</sup>

205. While there are some reports that suggest that pricing will improve modestly in 2016, the Tribunal accepts the industry's general view that gains will generally be insignificant and will not push pricing anywhere near the levels that were seen from 2012 to 2014.<sup>229</sup>

206. Therefore, given that global prices are expected to remain low and Indian and Russian producers are likely to increase exports, the Tribunal finds that it is likely that the subject goods could, at minimum, undercut domestic prices over the next 12 to 18 months.

### Likely Impacts on the Domestic Industry

207. Having found that it is likely that the subject goods could undercut prices, the Tribunal will turn to the likely impact on the domestic industry in terms of potential production levels and sales. Production levels and sales are not likely to increase, given forecasts that demand will remain flat and possibly even decline. CRU forecasts Canadian plate demand to remain weak through 2016 and 2017, with a modest growth of 5.1 percent in 2016, which is projected to slow to 1.5 percent in 2017.<sup>230</sup> Canadian plate demand is generally forecasted to grow at a slower rate than the North American average and is not projected to return to 2014 levels until 2019.<sup>231</sup>

208. Mr. Moskaluk testified that demand in Canada will likely continue to be slow, with decreased consumption of plate extending through 2016.<sup>232</sup> Essar Algoma submitted evidence indicating that the outlook for the major plate-using sectors, namely, oil and gas, and mining and construction, is weak.<sup>233</sup> As a result, many of the domestic industry's typical customers have scaled back their capital investment projects that would have required steel plate. Moreover, Essar Algoma indicated that some of its fabrication customers, particularly those that build storage tanks for oil and gas, have reported that they have seen order cancellations or a decline in orders, and thus do not require plate in the same quantities as in the past when more positive market conditions prevailed.<sup>234</sup>

209. In response to questions about how Essar Algoma's production volumes might be affected by pending infrastructure and shipbuilding projects, Mr. Brandow indicated that, although there will be approximately 16,000 metric tonnes consumed by shipbuilding programs over the next two years, on average, that volume only accounts for 680 metric tonnes of plate per month for Essar Algoma, a quantity

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227. *Transcript of Public Hearing*, Vol. 1, 7 December 2015, at 29-30, Vol. 2, 8 December 2015, at 121-22.

228. *Transcript of Public Hearing*, Vol. 1, 7 December 2015, at 29-30. During his testimony, Mr. Brandow indicated that the price forecast by CRU is approximately US\$640/metric tonne through to the end of 2017; however, CRU's forecast, which is contained on the record at Exhibit NQ-2015-001-A-10 (protected), Attachment 5, Table S18, Vol. 12B, indicates pricing between US\$607/metric tonne and US\$633/metric tonne.

229. *Transcript of Public Hearing*, Vol. 2, 8 December 2015, at 187.

230. Exhibit NQ-2015-001-A-01 at para. 297, Vol. 11.

231. *Ibid.* at para. 298.

232. *Transcript of Public Hearing*, Vol. 2, 8 December 2015, at 184-85.

233. Exhibit NQ-2015-001-A-11 at para. 130, Vol. 11E; Exhibit NQ-2015-001-A-05 at paras. 85-89, Vol. 11A; Exhibit NQ-2015-001-A-01 at paras. 292-309, Vol. 11.

234. Exhibit NQ-2015-001-A-01 at para. 305, Vol. 11; Exhibit NQ-2015-001-A-05 at para. 89, Vol. 11A.

that Mr. Brandow characterized as minimal.<sup>235</sup> Mr. Brandow also discussed the fact that Essar Algoma will be supplying plate for the construction of the Champlain Bridge in Montréal, Quebec.<sup>236</sup>

210. Mr. Brandow also pointed to the cancellation of the Ontario government's Feed-in Tariff (FIT) Program<sup>237</sup> to support Essar Algoma's assertion that production levels are not likely to increase in the coming years. Although plate for wind towers benefitting from the FIT Program was previously a profitable line of business for the domestic industry, and Essar Algoma in particular, this business has essentially wound down. While there is some production volume expected for 2016, the prospects for this line of business in 2017 are minimal.<sup>238</sup>

211. Given Mr. Boiteau's stated expectation that prices and demand will remain much the same in 2016 as they were in 2015,<sup>239</sup> it can be expected that production by service centres will also remain relatively steady in the near future. While Mr. Boiteau acknowledged that he did not expect service centres to become more important deliverers of the final product,<sup>240</sup> he also mentioned that Samuel, in particular, has been expanding by purchasing other companies and that he expects that Samuel will "continue to grow".<sup>241</sup> Based on the questionnaire data, there is only one other service centre that appears to have investment plans in the near term.<sup>242</sup>

212. On this basis, the Tribunal finds it likely that the domestic industry and Essar Algoma in particular could be threatened with some injury from high volumes of low-priced subject goods in the forms of lower production and sales.

213. However, the Tribunal cannot extrapolate from that conclusion to a finding of threat of material injury. As noted above, the Tribunal found that, notwithstanding some indications of injury to the domestic industry, the subject goods were not a cause of material injury in and of themselves. Other significant factors were at play across the domestic industry, and it appears that the subject goods caused injury to only certain segments of the industry, and Essar Algoma in particular.

214. Looking ahead, the Tribunal finds it likely that the same will hold true in regard to the likelihood that the subject goods will pose a threat of material injury to the industry as a whole. Some of the very factors that caused injury to the domestic industry are not likely to change in the next 12 to 18 months even in the presence of a high volume of low-priced imports from India and Russia.

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235. *Transcript of Public Hearing*, Vol. 1, 7 December 2015, at 30-31.

236. *Ibid.* at 51; *Transcript of In Camera Hearing*, Vol. 1, 7 December 2015, at 24-25, 73.

237. *Transcript of Public Hearing*, Vol. 1, 7 December 2015, at 28-29. In 2009, the Government of Ontario introduced the FIT Program, which was designed to provide entities producing electricity from renewable energy a guaranteed price per kilowatt-hour under long-term contracts. In exchange, electricity-generating facilities, which utilized wind and solar power, were required to comply with 50 percent domestic content levels in the development and construction of facilities. The FIT Program significantly benefitted Ontario-based steel producers such as Essar Algoma, since plate was one of the means by which the domestic content requirement could be met. SAIL argued that the effect of this program was essentially to shelter a large portion of Essar Algoma's sales from foreign competition. The domestic content component of the FIT Program was eliminated on July 25, 2014, after the program was found to contravene Canada's WTO obligations.

238. *Transcript of Public Hearing*, Vol. 1, 7 December 2015, at 28-29.

239. *Transcript of Public Hearing*, Vol. 2, 8 December 2015, at 121.

240. *Ibid.* at 163.

241. *Ibid.* at 133.

242. Exhibit NQ-2015-001-07A (protected), Table 111, Vol. 2.1A.

215. In particular, the integration which defines the North American steel industry will not change. Certain domestic mills and service centres will likely continue to import from the United States as opposed to producing plate in Canada.

216. Similarly, the competitiveness of the service centres with the domestic mills is unlikely to change significantly in the next 12 to 18 months. In particular, the service centres are likely to continue focussing on value-added services. In addition, the existing reliance on imports by certain domestic producers, even where such imports are priced similarly to like goods produced by domestic mills, is unlikely to change in the next 12 to 18 months. Accordingly, the issue of intra-industry competition is unlikely to disappear. In fact, the Tribunal heard testimony from Mr. Boiteau and Mr. Halcrow that service centres are planning and expecting to increase their presence in the market even more as the market continues to evolve toward a demand that requires more value added to plate.<sup>243</sup> This, if anything, would actually suggest a potential intensification of intra-industry competition.

217. In addition, Essar's poor financial performance is unlikely to change, as Ms. Devoni testified that it has been in financial difficulties for many years.<sup>244</sup> Moreover, the result of Essar Algoma's current proceeding under the CCAA is uncertain, and it would be too speculative for the Tribunal to predict whether it could ultimately reduce Essar Algoma's financial burden.

218. The impact of these factors cannot be attributed to the dumping and subsidizing of the subject goods. Further, it is not clear that the presence of the subject goods will have any material impact above and beyond the impact of these other factors.

219. A correlation between the presence of the subject goods in Canada and the declining health of the domestic industry, or rather the declining health of certain producers within the domestic industry, is not enough, in this case, for the Tribunal to find that the dumping and subsidizing of the subject goods are likely to cause material injury or threaten to cause material injury to the industry as a whole. As noted above, the domestic industry as a whole was not impacted by the subject goods over the POI. Indeed, with the exception of the domestic mills and Essar Algoma in particular, the domestic industry fared relatively well even in the face of pressure from low-priced imports.

### **Conclusion—Threat of Injury**

220. Therefore, as in the case of its injury analysis, the Tribunal finds that, although imports of the low-priced subject goods could have some impact on the domestic industry in the coming 12 to 18 months, any such impact will not be material, in and of itself. As a result, the Tribunal finds that the dumping and subsidizing of the subject goods are not threatening to cause material injury to the domestic industry.

### **Cross-cumulation**

221. The Tribunal has found, in its fully cross-cumulated analysis which takes into account the combined effect of the dumping and subsidizing of all the subject goods, that there has been no material injury to the domestic industry and that there is no threat of material injury. It is therefore unnecessary to consider how to remove from its dumping analysis the effects that are solely attributable to the fact that the subject goods from India have been subsidized. Indeed, the Tribunal notes that excluding the effects of the subsidies in

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243. *Transcript of Public Hearing*, Vol. 3, 9 December 2015, at 276-78, Vol. 2, 8 December 2015, at 133.

244. *Transcript of Public Hearing*, Vol. 1, 7 December 2015, at 8-9, 24-25, 76; *Transcript of In Camera Hearing*, Vol. 1, 7 December 2015, at 8, 51.

India would serve only to reinforce the Tribunal's conclusion that there is no injury or threat of injury attributable to the dumping and subsidizing of the subject goods.

### **Exclusions**

222. As the Tribunal has found that there is no injury or threat of injury attributable to the subject goods, it is unnecessary to consider whether exclusions should be granted.

### **CONCLUSION**

223. Essar Algoma sought protection from dumped and subsidized imports of Indian steel plate and dumped imports of Russian steel plate in widths from 24 inches to 152 inches and in thicknesses from 0.187 inches to 3 inches. The Tribunal's mandate is to determine whether these dumped or subsidized subject goods have caused or are threatening to cause material injury to domestic producers of like goods, with the materiality of the injury caused by the subject goods to be assessed net of any injury caused by other factors.

224. Essar Algoma alleged that the subject goods caused injury to the domestic industry in the form of decreased production, lost sales and poor financial performance for the year 2014 and onwards, as opposed to over the entire POI commencing in 2012. Conversely, the parties opposed argued that any injury suffered by the domestic industry was due to other non-related factors, such as intra-industry competition, the volume of non-subject goods from the United States, changes in the domestic industry, firm-specific operating and financial problems, and broader economic issues, such as declining commodity prices and weak steel demand leading to falling steel prices and declining sales.

225. The product definition in this inquiry caused the scope of the domestic plate industry to include not only the traditional integrated steel mills (which tend to produce wider, thicker plate) but also steel service centres that focus on the production of narrower, thinner plate cut to length from coils.

226. The evidence shows that the subject goods imported during the POI were primarily wider, thicker discrete plate. The dumped and subsidized subject goods had limited impact on that portion of the domestic industry focussed on providing customers with narrower plate cut to length from coil. Rather, any negative impact was confined primarily to the domestic mill portion of the domestic industry.

227. The evidence reveals a wide range of performance between the domestic steel service centres and domestic mills, and among the domestic mill segment of the industry. While the evidence shows that the subject goods caused injury to the domestic mills, it also shows that the domestic mills suffered substantial injury caused by a range of other factors unrelated to imports of the subject goods. These unrelated factors included the negative impact of the global economic slowdown caused by falling commodity prices and weakening steel demand worldwide, intra-industry competition, the different business and service models of the mills and service centres, and the rationalization and specialization within the single unified North American steel market. In addition, there was evidence of serious operational problems and financial difficulties at Essar Algoma.

228. In determining whether the dumping and subsidizing of that subject goods have caused material injury to the domestic industry, the Tribunal must analyze the impact of the subject goods on the domestic industry as a whole, as dictated by the product definition. In addition, the Tribunal cannot attribute to the subject goods the injury caused by other non-related factors.



229. On the basis of the evidence, the Tribunal finds that the domestic industry suffered a certain amount of injury in 2014 and the 2015 interim period, and some of this can be attributed to the subject goods. However, the injury was restricted to the domestic mills in general and Essar Algoma in particular, as opposed to the domestic industry as whole. As well, the injury cannot be attributed to the subject goods in and of themselves, given the substantial injury caused by a range of other unrelated factors. The unrelated factors in this case, particularly the highly integrated nature of the North American steel industry, highlight the difficulties faced in assessing injury on the basis of a national market analysis.

230. The Tribunal also finds that, although imports of the low-priced subject goods could have some impact on the domestic industry in the coming 12 18 months, any such impact will not be material, in and of itself, on the domestic industry as a whole. Indeed, the domestic service centres fared well during the POI and should fare well into the future. As a result, the Tribunal finds that the subject goods did not cause and are not threatening to cause material injury to the domestic industry.

231. Accordingly, the law and the evidence lead the Tribunal to find that the dumped and subsidized imports of the subject goods from Russia and India have not caused and are not threatening to cause material injury to the domestic industry.

Serge Fréchette  
Serge Fréchette  
Presiding Member

Ann Penner  
Ann Penner  
Member

Peter Burn  
Peter Burn  
Member