



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDERS AND REASONS

Review No. RR-2003-003

Certain Corrosion-resistant Steel
Sheet Products

*Orders and Reasons issued
Tuesday, July 27, 2004*

Canada

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IN THE MATTER OF an expiry review, under subsection 76.03(3) of the *Special Import Measures Act*, of the orders made by the Canadian International Trade Tribunal on July 28, 1999, in Review No. RR-98-007, continuing, with amendment, its findings made on July 29, 1994, in Inquiry No. NQ-93-007, concerning:

**CERTAIN CORROSION-RESISTANT STEEL SHEET PRODUCTS
ORIGINATING IN OR EXPORTED FROM BRAZIL, THE FEDERAL
REPUBLIC OF GERMANY, JAPAN, THE REPUBLIC OF KOREA AND THE
UNITED STATES OF AMERICA**

ORDERS

The Canadian International Trade Tribunal, pursuant to subsection 76.03(3) of the *Special Import Measures Act*, has conducted an expiry review of its orders made on July 28, 1999, in Review No. RR-98-07, continuing, with amendment, its findings made on July 29, 1994, in Inquiry No. NQ-93-007, concerning certain corrosion-resistant steel sheet products originating in or exported from Brazil, the Federal Republic of Germany, Japan, the Republic of Korea and the United States of America.

Pursuant to subparagraph 76.03(12)(a)(ii) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby rescinds its order in respect of the above-mentioned products originating in or exported from Brazil, the Federal Republic of Germany, Japan and the Republic of Korea.

Pursuant to subparagraph 76.03(12)(a)(ii) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby rescinds its order in respect of the above-mentioned products originating in or exported from the United States of America.

Patricia M. Close
Patricia M. Close
Presiding Member

James A. Ogilvy
James A. Ogilvy
Member

Meriel V. M. Bradford
Meriel V. M. Bradford
Member

Susanne Grimes
Susanne Grimes
Acting Secretary

Place of Hearing: Ottawa, Ontario
Dates of Hearing: June 7 to 9, 2004

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Sorevco and Company, Limited

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STATEMENT OF REASONS

BACKGROUND

1. This is an expiry review, pursuant to subsection 76.03(3) of the *Special Import Measures Act*,¹ of the orders made by the Canadian International Trade Tribunal (the Tribunal) on July 28, 1999, in Review No. RR-98-007, continuing, with amendment, its findings made on July 29, 1994, in Inquiry No. NQ-93-007, concerning certain corrosion-resistant steel sheet products (CCRSS) originating in or exported from Brazil, the Federal Republic of Germany (Germany), Japan, the Republic of Korea (Korea) and the United States of America (the subject goods).
2. On November 13, 2003, the Tribunal issued a notice of expiry review² to known interested parties. As part of these proceedings, the Tribunal and the Canada Customs and Revenue Agency (CCRA) sent questionnaires to Canadian producers, importers and exporters/foreign producers of CCRSS. These questionnaires and the replies thereto form part of the expiry review records of both the CCRA and the Tribunal.
3. On November 14, 2003, the CCRA initiated an investigation to determine whether the expiry of the orders was likely to result in the continuation or resumption of dumping of the subject goods.
4. On March 12, 2004, the Canada Border Services Agency (CBSA)(formerly the CCRA) determined that, pursuant to paragraph 76.03(7)(a) of *SIMA*, the expiry of the orders was likely to result in the continuation or resumption of dumping of CCRSS from Brazil, Germany, Japan and Korea, and in the continuation or resumption of dumping of CCRSS from the United States.
5. On March 13, 2004, following the CBSA's determination, the Tribunal initiated an inquiry to determine whether the expiry of the orders was likely to result in injury or retardation to the domestic industry. As part of the process, the Tribunal sent questionnaires on market characteristics to domestic producers, importers and purchasers of CCRSS. The Tribunal also sent supplementary questionnaires to domestic producers and foreign producers of CCRSS, seeking additional information for the last quarter of 2003 and the first quarter of 2004.
6. The record of these proceedings consists of the following: the testimony heard during a hearing, which had public and *in camera* components, held in Ottawa, Ontario, from June 7 to 9, 2004; all relevant documents, including the CBSA's protected *Expiry Review Report*, statement of reasons, index of background information and related documents; the protected and public replies to the expiry review questionnaires; requests for information and parties' replies provided in accordance with the Tribunal's directions; the orders and the findings; the notice of expiry review; the public and protected pre-hearing staff reports prepared for Review No. RR-98-007, as well as those prepared for these proceedings; and the statement of reasons in *Corrosion-resistant Steel Sheet*.³ All public exhibits were made available to interested parties, while protected exhibits were provided only to counsel who had filed a declaration and undertaking with the Tribunal in respect of protected information.

1. R.S.C. 1985, c. S-15 [*SIMA*].

2. C. Gaz. 2003.I.3599.

3. (3 July 2001), NQ-2000-008 (CITT) [*Corrosion-resistant Steel Sheet*].

7. Dofasco Inc. (Dofasco), Stelco Inc. (Stelco), and Sorevco and Company, Limited (Sorevco) provided witnesses and were represented by counsel at the hearing. They submitted evidence and made arguments in support of a continuation of the orders.

8. Usinas Siderurgicas de Minas Gerais S/A (USIMINAS) and Companhia Siderurgica Nacional (CSN) from Brazil, United States Steel International, Inc. (USS), International Steel Group Inc. (ISG) and Pro-Tec Coating Company (Pro-Tec) from the United States were represented by counsel. ThyssenKrupp Stahl AG (TKS) and Salzgitter Flachstahl GmbH (Salzgitter) from Germany were represented by counsel, and TKS provided witnesses. These companies submitted evidence and made arguments in favour of a rescission of the orders.

PRODUCT

Product Definition and Description

9. The corrosion-resistant steel sheet that is the subject of this expiry review (i.e. CCRSS) is defined as flat-rolled steel⁴ sheet products of a thickness not exceeding 0.176 in. (4.47 mm), coated or plated with zinc or an alloy wherein zinc and iron are the predominant metals,⁵ excluding automotive exposed qualities designed for and used in the manufacture of outer body components for motor vehicles.

10. Specifically excluded from the definition of the goods subject to this expiry review are corrosion-resistant steel sheet products imported under tariff item No. 9959.00.00 of the schedule to the *Customs Tariff*⁶ for use in the manufacture of passenger automobiles, buses, trucks, ambulances or hearses, or chassis therefor, or parts, accessories or parts thereof; and corrosion-resistant steel sheet products, produced by the electrogalvanizing process, for use in the manufacture of motor vehicles. The appendix to these reasons provides the full product definition, as well as a complete listing of exclusions.

11. Corrosion-resistant steel sheet includes corrosion-resistant steel sheet in cut lengths and coils. The products are commonly referred to as galvanized (free zinc coating) or galvanized (zinc-iron alloy coating) steel sheet.

Production Process

12. Corrosion-resistant steel sheet is usually produced from cold-rolled carbon steel sheet and, sometimes, from hot-rolled carbon steel sheet. There are two processes that can be used to coat the substrate with zinc: hot-dip galvanizing (HDG) and electrogalvanizing (EZ).

13. The first step in the HDG process is to clean the surfaces of the substrate to improve the adhesion of the zinc coating, after which the substrate enters a continuous annealing furnace.⁷ The furnace heats the substrate to the temperature necessary to develop the desired metallurgical properties of the final product. The substrate is then placed in a molten zinc-coating bath and, as it emerges from the bath, an air, nitrogen or steam wipe is used to control the thickness of the zinc coating. The galvanized steel sheet is then cooled in a cooling tower. In some cases, the galvanized steel sheet is further processed into galvanized steel sheet, which has a thinner coating of zinc, and is easier to weld and paint.

4. The steel can be either carbon steel or alloy steel.

5. Steel sheet that is coated or plated with zinc in combination with nickel, silicon or aluminum (e.g. Galvalume™) is excluded.

6. S.C. 1997, c. 36.

7. Annealing is the process of heating and then cooling, which is usually done to soften the metal and to make it less brittle.

14. In the EZ process, as the charged steel passes through a plating bath, opposite electrical charges cause the zinc solution to coat the steel.

Product Applications

15. CCRSS is commonly used in the manufacture of farm buildings, grain bins, culverts, garden sheds, roofing material, siding, floor decks, roof decks, wall studs, drywall corner beads, doors, door frames, ducting and other heating and cooling applications, flashing, hardware products and appliance components. Electrogalvanized products are used primarily in excluded automotive applications, but are also used in some construction applications.

DOMESTIC PRODUCERS

16. The Canadian producers of CCRSS are Dofasco and Stelco of Hamilton, Ontario, Sorevco of Coteau-du-Lac, Quebec, and Continuous Colour Coat Limited (CCCL) of Rexdale, Ontario.⁸

Dofasco

17. Dofasco was founded in 1913. Dofasco is an integrated steel producer that manufactures CCRSS from its own substrate and from slabs purchased from third parties.

18. Dofasco produces a full range of carbon and high-strength steels for the automotive, construction and general manufacturing industries. Products produced by Dofasco and its steel-related joint ventures include: hot-rolled steel sheet, cold-rolled steel sheet, galvanized steel sheet, and Galvalume™ steel products; prepainted steel; tinsplate and chromium coated steel and Zyplex™; welded tubular products; Extragal™ for exposed automotive parts; and tailor-welded blanks.

19. Dofasco started production of corrosion-resistant steel sheet in the mid-1950s on two lines in Hamilton. It has since increased its production of corrosion-resistant steel by adding two more lines in Hamilton. As well, Dofasco has a 50 percent interest in a joint venture (the DJG line) in Windsor, Ontario, with JFE Steel Corp. of Japan (JFE), an 80 percent interest in a joint venture (the DoSol Galva line) in Hamilton with Arcelor, Europe's largest steel producer, and a 50 percent interest in Sorevco. The DoSol Galva line and the DJG line are dedicated to producing corrosion-resistant steel for the automotive industry.⁹

Stelco

20. Stelco, incorporated in 1910 as the Steel Company of Canada, is an integrated steel company that produces flat-rolled steel, bars and rods, as well as wire, wire products and pipes and tubes. Stelco began production of corrosion-resistant steel sheet in 1953 and currently produces the product on three

8. CCCL is exclusively a toll producer. During the period of review, it coated only a small amount of CCRSS on a toll basis for other parties.

9. The DJG line, formerly the DNN Galvanizing Limited Partnership line (DNN line), was originally 50 percent owned by Dofasco, 40 percent by JFE (formerly NKK Corporation of Japan and Kawasaki) and 10 percent by National Steel Corporation (National). On August 13, 2002, National sold its 10 percent interest in the partnership to JFE. Manufacturer's Exhibit A-01, Administrative Record, Vol. 11 at 6-7; Tribunal Exhibit RR-2003-003-31.11A, Administrative Record, Vol. 5.31 at 19. In 2003, Dofasco negotiated a new lease with JFE to use a greater proportion of the line, providing it with 200,000 tonnes more capacity for automotive corrosion-resistant steel sheet. Tribunal Exhibit RR-2003-003-11.05 (protected), Administrative Record, Vol. 2.2 at 126; Manufacturer's Exhibit A-01 at para. 20, Administrative Record, Vol. 11.

zinc-coating lines in Hamilton. Two lines are conventional HDG lines, while the third, the Z-line, manufactures both HDG and galvaneal steel coils. The conventional lines make product up to 55 in. wide, while the Z-line produces coils up to 72 in. wide.

21. On January 29, 2004, Stelco announced that it had obtained an order to initiate a court-supervised restructuring under the *Companies' Creditors Arrangement Act*.¹⁰

Sorevco

22. Sorevco was incorporated in 1989. It is a joint venture between Dofasco (50 percent) and Ispat Sidbec Inc. of Contrecoeur, Quebec (50 percent). Sorevco commenced operating an HDG line at its Coteau-du-Lac facilities in April 1991. The company is managed independently of its two joint-venture partners with its own marketing and sales organization.

FOREIGN PRODUCERS

23. Expiry review questionnaires were sent to 54 foreign producers. Of these, 6 responded and provided information on the subject goods. USIMINAS and TKS submitted that they did not ship CCRSS to Canada during the CBSA's period of review,¹¹ while Pro-Tec, USS, ISG and CSN provided information on their exports to Canada.

IMPORTERS

24. The Tribunal sent expiry review questionnaires to 20 importers. Eight importers responded to the questionnaires, stating that they had not imported the subject goods during the period of review. In the absence of more complete questionnaire responses from the importers, the CBSA estimated the volume and value of imports of CCRSS from its Facility for Information Retrieval Management reports.

PRODUCT DISTRIBUTION

25. Domestically produced CCRSS is sold to service centres and to end users. Foreign CCRSS is, in large part, imported into Canada by importers/brokers that, in turn, sell the goods to service centres and to end users. In Eastern Canada, service centres are more likely than end users to import CCRSS, whereas in Western Canada, the reverse is more likely to be the case.¹² The market in Western Canada is also different from that in Eastern Canada in that the CCRSS purchased tends to be of a lighter gauge.¹³ Prior to the findings, U.S. service centres sold a considerable volume of CCRSS in Canada.

26. Service centres may resell CCRSS to end users or to other, usually smaller, resellers. In addition to reselling CCRSS, service centres may perform services such as slitting, cutting and holding inventory for customers. Service centres generally purchase CCRSS in the spot market, placing orders three weeks to four months in advance of requirements, depending on such factors as product specifications and the location of the mill.

10. R.S.C. 1985, c. C-36 [CCA4].

11. From January 1, 2000, to September 30, 2003.

12. *Transcript of Public Hearing*, Vol. 1, 7 June 2004 at 218.

13. *Ibid.* at 290-91.

27. The end users are mainly firms that operate in the construction market. It is a highly fragmented market with many purchasers. End users either purchase in the spot market or use relatively short-term contracts.

SUMMARY OF PAST PROCEEDINGS

Findings

28. On July 29, 1994, the Tribunal found that the dumping in Canada of CCRSS originating in or exported from Australia, Brazil, France, Germany, Japan, Korea, New Zealand, Spain, Sweden and the United Kingdom had caused, was causing and was likely to cause material injury to the production in Canada of like goods.

29. The Tribunal found that the dumping in Canada of CCRSS originating in or exported from the United States had caused, was causing and was likely to cause material injury to the production in Canada of like goods.

Orders

30. On July 28, 1999, the Tribunal continued the finding in respect of CCRSS originating in or exported from Brazil, Germany, Japan and Korea, with an amendment to exclude CCRSS imported under tariff item No. 9959.00.00 for use in the manufacture of passenger automobiles, buses, trucks, ambulances or hearses, or chassis therefor, or parts, accessories or parts thereof. The Tribunal rescinded the finding with respect to France, Spain and the United Kingdom, on the ground that there was no likelihood of resumed dumping from these countries. The Tribunal rescinded the finding with respect to Australia, New Zealand and Sweden, on the ground that there was insufficient positive evidence in the record to conclude that these countries were likely to resume dumping.

31. The Tribunal continued the finding in respect of CCRSS originating in or exported from the United States, with an amendment to exclude CCRSS imported under tariff item No. 9959.00.00 for use in the manufacture of passenger automobiles, buses, trucks, ambulances or hearses, or chassis therefor, or parts, accessories or parts thereof.

32. On July 3, 2001, the Tribunal found that the dumping of corrosion-resistant steel sheet originating in or exported from the People's Republic of China (China), India, Malaysia, the Russian Federation, South Africa and Chinese Taipei and the subsidizing of corrosion-resistant steel sheet originating in or exported from India had not caused injury or retardation and were not threatening to cause injury to the domestic industry. The Tribunal determined that, although the domestic industry had suffered injury in 2000, in the form of price erosion and declining financial performance, the injury was caused by factors other than the dumped or subsidized corrosion-resistant steel sheet. With respect to the future, the Tribunal found that, with imports declining and the prices of imports continuing to be greater than those of the like goods, there was insufficient evidence to suggest that imports of the dumped or subsidized goods would cause injury in the foreseeable future.

POSITIONS OF THE PARTIES

Position of the Domestic Industry

Dofasco

33. Dofasco argued that the orders should be continued.

34. Dofasco argued that corrosion-resistant steel sheet was by far its most important product line in terms of financial contribution and that it must be able to fully participate in the upside of the current business cycle in order to generate the cash necessary to recoup a healthy return on the considerable capital investments that it has made in order to retain its competitive position. Although some of these new investments will produce additional capacity of the like goods, Dofasco maintained that it would go towards new business, thus expanding the market. Dofasco further argued that the recent, unprecedented increases in raw material costs make it tremendously vulnerable and that it must be able to continue to raise prices to recover these costs. According to Dofasco, it is important that the spot price for like goods remain high at the end of the year, so that, when annual contracts are up for renewal, they can be renegotiated at sufficiently high prices to offset the cost increases.

35. Dofasco argued that the like goods and the subject goods are commodity products, with price governing the purchasing decision. As a consequence, the goods are price-sensitive, meaning that even a small volume of low-priced imported product will cause Dofasco to lower its price to keep its customers competitive. According to Dofasco, if the orders are rescinded, the volumes of the dumped subject goods will be substantial, given the following: their commodity nature; the availability of an extensive distribution network of traders, brokers, and service centres; the current excess capacity globally and in the subject countries, especially the United States with its service centres that can service the entire Canadian market; the inevitable reduction in import demand from China; the increased dependency of producers in the subject countries on exports to maintain their utilization rates; and the high Canadian spot prices relative to export prices in the subject countries. In response to these conditions, Dofasco submitted, the domestic industry would have to reduce its prices, thereby impeding its ability to obtain sustained revenue growth that it requires to continue to make capital investments.

36. Dofasco also argued that there is “a demand bubble” caused by consumers of like goods trying to hedge in anticipation of price increases. According to Dofasco, demand will fall dramatically in the second half of 2004, and the severity and duration of this correction would be compounded by a flood of the subject goods.

Stelco

37. Stelco argued that the orders should be continued.

38. Stelco argued seven key points: there is no significant increased demand in the subject countries; the high utilization rates of the subject countries increase the risk to Canadian producers because they add to global supply; a relatively small volume of imports will cause injury because of the commodity nature of the product; Chinese demand is cooling off with a collapse of steel prices and the release of large volumes of CCRSS into world markets; the high prices in Canada are driven by cost and supply of raw materials, not by demand; and, finally, the orders are not a barrier to entry of the subject goods. Overall, the Canadian industry is vulnerable to renewed dumping, having lost substantial money on domestic sales in 2003, having thin margins and with Stelco being in the midst of a CCAA restructuring. Stelco argued that, as Chinese

demand falls, substantial excess supply of the subject goods will be diverted elsewhere. Canada will be an attractive market for the subject goods, given that North American prices are now the highest in the world and imports tend to flow to the highest-priced markets.

39. Stelco submitted that increases in the volume of all corrosion-resistant steel sheet from the United States had increased with concomitant declines in prices. According to Stelco, this was evidence of a relationship between the dumping of the subject goods and injury.

Sorevco

40. Sorevco also argued that the orders should be continued.

41. Sorevco submitted that any recent improvement in the domestic industry would not continue if the orders were rescinded, given the volatility in the Canadian market when it is affected by import pricing. Moreover, the market is already turning. Sorevco noted that corrosion-resistant steel sheet from Germany, Japan and Korea has been subject to U.S. trade remedies, effectively closing the U.S. market to those goods.

42. Sorevco argued that Canadian prices declined in late 2003 due to competition from imports from non-subject countries and that the subject goods would have to be dumped at low prices in order to compete with imports from non-subject countries, given the commodity nature of the subject goods. The domestic industry is highly capital intensive, and Sorevco's ability to make new investments and sustain positive financial results depends critically on maintaining continued relief from the subject goods.

43. Sorevco, on behalf of the other domestic producers, submitted that the Tribunal should assess the cumulative effects of the subject goods. In Sorevco's opinion, the Tribunal must cumulate unless the conditions of competition between the subject goods differ, and the conditions of competition between the subject goods and the like goods also differ.

Positions of the Foreign Producers

CSN and USIMINAS

44. The Brazilian mills argued that the order respecting Brazil should be rescinded.

45. According to the Brazilian mills, there is no evidence that Chinese import demand will fall in the near or medium term. In addition, other markets, such as India, will grow and absorb more global supply. The Brazilian mills argued that they do not have excess capacity and that CCRSS will likely be absorbed by a growing Brazilian economy. In addition, the North American economy will grow, suggesting that the domestic industry will do well in the foreseeable future—a prospect supported by bullish comments by senior executives of the domestic industry.

46. The Brazilian mills submitted that low-priced imports from non-subject countries have entered Canada since 2000, yet they have not affected domestic prices. On the contrary, domestic prices have been rising. The subject goods and like goods are not commodities. They are differentiated by specification, gauge, coating weight and product use. Therefore, the domestic industry is not as susceptible to injury as it claims. Rising material costs have been offset by surcharges, and Stelco will emerge from its restructuring as a stronger company, better able to compete.

USS, Pro-Tec and ISG

47. The U.S. mills argued that the order respecting the United States should be rescinded.
48. The U.S. mills argued that, since the Tribunal excluded automotive corrosion-resistant steel from its findings five years ago, the domestic industry has experienced no surge in import volumes from the United States and has enjoyed high prices. This is illustrative of what would happen if the order against the United States were rescinded.
49. The U.S. mills noted that there are no trade actions against CCRSS from the United States currently in place in any jurisdiction except Canada.
50. The U.S. mills also argued that the prospects for the domestic industry were good. They noted that domestic demand for flat-rolled steel will grow and pointed to Dofasco's proposal to build a 500,000-tonne galvanizing plant in the United States as an indication of a higher U.S. demand as well.

TKS and Salzgitter

51. The German mills argued that the order respecting Germany should be rescinded.
52. TKS argued that there was little chance of it exporting CCRSS to Canada because it had reduced capacity in order to increase prices in the European Union; it only supplies long-term customers; and demand in the European Union has been increasing. According to TKS, the EU market fully absorbs what it produces. Salzgitter noted that it has not exported CCRSS to Canada for more than a decade.
53. TKS argued that Chinese demand for steel would not change in the coming months. Even if Chinese demand were to drop, TKS was of the view that it would not affect German production. Meanwhile, according to TKS, coke shortages and high scrap prices are obliging U.S. producers to cut production. According to TKS, relatively high U.S. prices make the U.S. market more attractive to imports than the Canadian market. Regardless, TKS exports only to countries where it has followed its customers.
54. TKS noted that the domestic industry's losses in 2001 and 2003 coincided with the lowest levels of imports from subject and non-subject countries and argued that, consequently, these losses were not caused by imports. TKS also argued that the prospects of the domestic industry were bright due to high prices, high capacity utilization, rising demand, and new investments in production improvements and new capacity.

PRELIMINARY ISSUES**Jurisdiction of the Tribunal**

55. The domestic industry argued that, if the Tribunal were to review questions, or alter or vary findings of fact made by the CBSA in its statement of reasons, particularly in respect of prospective market conditions in China, it would in effect be exercising an appellate jurisdiction that it does not possess.
56. The Tribunal addressed this issue in *Flat Hot-rolled Carbon and Alloy Steel Sheet Products*.¹⁴ The Tribunal found that, although it is bound by the CBSA's determination of likelihood of resumed dumping and other determinations that rest entirely within the CBSA's jurisdiction, such as the margin of dumping, it is not necessarily bound by the factual findings made by the CBSA, nor by the opinions that support its

14. (30 June 2004), RR-2003-002 (CITT) at 10-11.

determination. The Tribunal reached this conclusion given that, unlike the CBSA, the Tribunal has access to more recent evidence, which it can examine in the course of hearings. Moreover, the *Special Import Measures Regulations*¹⁵ provide jurisdictions to the CBSA and the Tribunal that overlap in terms of what is to be assessed, including the performance of the foreign industries.¹⁶

57. In this regard, the Tribunal notes that the market outlook in China has changed, even since the CBSA's determination in March 2004. Fresh and cogent evidence on China, submitted by foreign and domestic producers alike, since the CBSA's determination, is on the record. The Chinese downturn now appears likely to be temporary, alleviating some of the concerns that gripped the industry at the end of the first quarter of 2004. The Tribunal also had before it new data on the export potential of some of the subject countries. The Tribunal finds that it would be incorrect to ignore this evidence, given the Tribunal's express authority under paragraphs 37.2(2)(d) and (j) of the *Regulations* to consider the likely performance of the foreign industry and changes to market conditions internationally.

Failure of Some Foreign Producers to Call Witnesses

58. Whereas witnesses appeared at the hearing on behalf of the domestic industry and TKS, no witnesses appeared on behalf of the other foreign producers. The domestic industry argued that this failure to appear denied the domestic industry the opportunity to test the assertions of the foreign producers. According to the domestic industry, consequences should flow from this, such as the drawing of an adverse inference. The foreign producers, on the other hand, argued that they are not obliged to provide witnesses.

59. The Tribunal agrees with the foreign producers on this point. While *SIMA* provides interested parties the right to participate in expiry review proceedings, it does not oblige them to call witnesses. Nor does *SIMA* contemplate any negative implications from a party's failure to provide witnesses.

60. This view is consistent with the Tribunal's past practice.¹⁷ It is also consistent with Article 6.2 of the World Trade Organization *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*¹⁸ (applicable to expiry reviews by reference of Article 11.4), which states that, during a dumping investigation, "[t]here shall be no obligation on any party to attend a meeting, and failure to do so shall not be prejudicial to that party's case." Therefore, the Tribunal has not drawn any negative inferences from the failure of some foreign parties to call witnesses. However, as the Tribunal has stated previously,¹⁹ it can give evidence provided by a party, unsupported by oral testimony, only the weight that it considers appropriate in the circumstances.

ANALYSIS

Like Goods

61. Subsection 2(1) of *SIMA* defines "like goods", in relation to any other goods, as: goods that are identical in all respects to the other goods, or, in the absence of any such goods, the uses and other characteristics of which closely resemble those of the other goods.

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

16. *Ibid.*, s. 37.2.

17. *Hot-rolled Carbon Steel Plate* (27 June 2000), NQ-99-004 (CITT).

18. 15 April 1994, online: World Trade Organization <http://www.wto.org/english/docs_e/legal_e/final_e.htm> [*Anti-dumping Agreement*].

19. *Hot-rolled Carbon Steel Plate* (27 June 2000), NQ-99-004 (CITT) at 16.

62. In considering the issue of like goods, the Tribunal typically looks at a number of factors, including the physical characteristics of the goods (such as appearance), their method of manufacture, their market characteristics (such as substitutability, pricing and distribution) and whether the domestic goods fulfill the same customer needs as the subject goods.

63. Based on the evidence, the Tribunal is of the opinion that the domestic industry produces substantially the same goods as the subject goods and does so in the same way. CCRSS produced domestically, for the most part, competes with the subject goods, has the same end uses and can be substituted for them. Therefore, the Tribunal finds that the domestic goods have uses and other characteristics that closely resemble those of the subject goods and, thus, that they are like goods to the subject goods.

Domestic Industry

64. Having decided that the like goods in this expiry review are domestically produced CCRSS, the Tribunal must consider which producers constitute the domestic industry. Subsection 2(1) of *SIMA* defines “domestic industry”, in part, 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.”

65. The Tribunal’s analysis of likelihood of injury has focused on the domestic producers that participated in the hearing, i.e. Dofasco, Sorevco and Stelco. These domestic producers’ collective production of the like goods constitutes a major proportion of the total domestic production of the like goods. Therefore, these domestic producers constitute the domestic industry for the purpose of this expiry review.

66. The Tribunal recognizes that Stelco is currently subject to proceedings under the *CCAA*. However, Stelco continues to produce like goods. At the time of its proceedings, the Tribunal must assume that this production will continue and that, even if Stelco’s *CCAA* restructuring eventually results in the liquidation of Stelco’s assets, its share of domestic production of like goods will likely wholly or substantially resume under a reconstituted Stelco or under new ownership.

Cumulation

67. Subsection 76.03(11) of *SIMA* provides that:

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

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

(b) like goods of domestic producers.

[Emphasis added]

68. The Tribunal does not accept the domestic industry’s argument that the Tribunal is obliged to cumulate. The “shall” in subsection 76.03(11) should be read together with the words “if the Tribunal is

satisfied” and “would be appropriate”. These words indicate that the Tribunal has some discretion to cumulate the goods in question after taking into account certain factors, i.e. the conditions set out in paragraph (a) or (b). The Tribunal’s exercise of this discretionary authority does not give any party a right to a particular outcome or to the application of a particular legal test.²⁰ Rather, this discretion is applied by the Tribunal within the conditions set out in subsection 76.03(11).

69. The legislation provides that the Tribunal may decide that it is not appropriate to cumulate if (a) the conditions of competition between the goods in question are not similar, or (b) the conditions of competition between the goods in question and the like goods are not similar. If the Tribunal did not apply this interpretation, the potential result would be the absurd consequence of grouping one country’s goods with the goods of other countries, despite the fact that the conditions of competition between them differed significantly. As a principle of statutory interpretation, it is presumed that legislation is not intended to produce absurd consequences.²¹ The wording of subsection 76.03(11) should be read to mean that the goods in question from the countries are to be cumulated when their conditions of competition are similar, not when they are different.

70. In past cases, when the Tribunal has not cumulated the goods of a country, it was satisfied that it was neither appropriate to cumulate the goods of that country with the goods of the other countries, nor appropriate to cumulate goods of that country with the like goods. For instance, in *Hot-rolled Carbon Steel Plate*,²² where the Tribunal determined that it would not be appropriate to cumulate the goods produced in Mexico with the goods of the other countries, the Tribunal found that the conditions of competition between the Mexican goods and the other goods in question were distinct and that Mexican goods would complement, rather than compete with, the like goods.²³ In *Oil and Gas Well Casing*,²⁴ the Tribunal found that it was not appropriate to cumulate the two countries, given that one of them did not have a presence in the Canadian market and, therefore, could not compete with the goods in question from the other country nor with the like goods.²⁵ Similarly, in *Carbon Steel Welded Pipe*,²⁶ the Tribunal found that it was not appropriate to cumulate the goods from Venezuela with the goods in question from the other countries because they were not likely to be present in the Canadian market and, as such, were neither in a position to compete with the other goods in question nor with the like goods.²⁷ Although in these cases, both conditions were met, this may not always be, nor necessarily have to be, the case.

71. The Tribunal notes in passing that this interpretation of subsection 76.03(11) is consistent with Article 3.3 of the *Anti-dumping Agreement*, which provides that the investigating authorities may cumulatively assess the effects of dumped imports “only if they determine that . . . a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic product.” [Emphasis added] This clearly suggests that, if the investigating authority is not satisfied that cumulation would be appropriate on the basis of the conditions of competition between the goods in question, notwithstanding any similarities or dissimilarities between the conditions of competition between the goods in question and the like goods, the investigating authority may choose not to cumulate.

20. *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 at para. 74.

21. Ruth Sullivan, ed., *Driedger on the Construction of Statutes*, 3d ed. (London: Butterworths, 1994) at 85.

22. (10 January 2003), RR-2001-006 (CITT).

23. *Ibid.* at 10.

24. (4 July 2001), RR-2000-001 (CITT).

25. *Ibid.*

26. (24 July 2001), RR-2000-002 (CITT).

27. *Ibid.* at 7.

72. In this regard, the Tribunal notes that the Binational Panel in *Concrete Panels*²⁸ held that, when the Tribunal is interpreting *SIMA*, “[a]n effort should be made to arrive at an interpretation consonant with a relevant international obligation”²⁹ like the *Anti-dumping Agreement*. The Supreme Court of Canada made a similar statement.³⁰ While Article 3.3 of the *Anti-dumping Agreement* applies to dumping investigations rather than to expiry reviews *per se*, the Tribunal observes that subsection 76.03(11) of *SIMA* mirrors the parts of subsection 42(3) that do cover cumulation in the context of dumping investigations. In the Tribunal’s view, by having the same wording, Parliament intended subsection 76.03(11) and the relevant parts of subsection 42(3) to have the same meaning. Therefore, in the Tribunal’s opinion, an effort should be made to arrive at an interpretation of subsection 76.03(11) that, because of its similarity to and being *in pari materia* with subsection 42(3), is consonant with Article 3.3.

73. In the event that the Tribunal determines that it would not be appropriate to assess the cumulative effect of the dumping of CCRSS from any subject country, based on its assessment of the conditions of competition of those goods, the Tribunal is required to conduct a separate injury analysis for that country.

74. In the past, the Tribunal has generally taken into account the following four conditions of competition: price, quality, mode of transportation and distribution channels.³¹ In this regard, the Tribunal finds that it would be appropriate to cumulate the CCRSS from Brazil, Germany, Japan and Korea. The CCRSS from these countries is likely to be similar in terms of price, given the tendency for prices to converge once they are in the Canadian marketplace.³² The CCRSS from these countries also has a high degree of substitutability and interchangeability, meaning that the quality of the goods from these countries is likely to be similar.³³ Further, the CCRSS from these countries reaches the Canadian marketplace by ship and, therefore, shares a common mode of transportation. Moreover, the CCRSS from these countries is typically distributed in Canada by international traders and brokers and by Canadian service centres, meaning that it is likely to share similar or common distribution channels.³⁴

75. The Tribunal has determined, however, that it would not be appropriate to cumulate the CCRSS from the United States with the CCRSS from the other subject countries for the purposes of this review. The Tribunal finds that two of the conditions of competition between the CCRSS from the United States and the CCRSS from the other subject countries are likely to differ significantly.

76. First, the Tribunal accepts the evidence of the domestic industry and TKS’s argument that, while the offshore subject countries would have to transport their goods to Canada via ship, U.S. goods would be transported primarily via truck. Trucks are more readily available than vessels, less expensive to use and more timely.³⁵

77. Second, U.S. mills and service centres sometimes deliver directly to Canadian end users instead of selling through traders and brokers or Canadian service centres, as do the offshore suppliers.³⁶ The Tribunal accepts the argument of the domestic industry that the relative proximity of the U.S. exporters gives them a competitive edge vis-à-vis the offshore producers in terms of immediate servicing and delivery to their

28. (26 August 1998), CDA-97-1904-01.

29. *Ibid.* at 10.

30. *National Corn Growers Assn. v. Canada (Import Tribunal)*, [1990] 2 S.C.R. 1324 at 1371.

31. See *Hot-rolled Carbon Steel Plate* (10 January 2003), RR-2001-006 (CITT) at 10.

32. Manufacturer’s Exhibit B-03 at 8 and 15, Administrative Record, Vol. 11.

33. Tribunal Exhibit RR-2003-003-09 (protected), Administrative Record, Vol. 2.1 at 78.

34. *Transcript of Public Hearing*, Vol. 1, 7 June 2004 at 35, 40.

35. *Ibid.* at 258-59.

36. *Ibid.* at 66-67, 261.

Canadian customers. Moreover, the CCRSS from the offshore producers would predominantly enter Canada's West Coast market. The Tribunal accepts Dofasco's testimony that the West Coast market is distinct in terms of higher prices and predominantly lighter gauge product.³⁷

78. The Tribunal notes that the conditions of competition between the CCRSS from the United States and the like goods are more similar than the conditions of competition between the CCRSS from the United States and the CCRSS from the other subject countries. The CCRSS from the United States and the like goods will likely share a common mode of transportation, a comparable price and a similar quality. They will also have broadly similar distribution channels in the form of direct sales and service centres. By contrast, the CCRSS from the other subject countries and the like goods are likely to have similarities in terms of price and quality only.

79. In light of the Tribunal's determination that two of the four conditions of competition between the CCRSS from the United States and the CCRSS from the other subject countries differ significantly, the Tribunal is not satisfied that it would be appropriate to cumulate the CCRSS from the United States with the CCRSS from the other subject countries. Therefore, the Tribunal has decided to conduct a separate injury analysis for the CCRSS from the United States.

Likelihood of Injury

80. The Tribunal has conducted an analysis of the likelihood of injury for Brazil, Germany, Korea and Japan (the cumulated countries) and a separate one for the United States. Some of the factors considered in both analyses are the same, such as changes in international and Canadian market conditions. When the factors are identical, the Tribunal has not repeated them in the reasons below.

81. Subsection 37.2(2) of the *Regulations* lists the factors that the Tribunal may consider in addressing the question of likelihood of injury in cases where the CBSA has determined that there is a likelihood of continued or resumed dumping if the finding or order is allowed to expire. The factors that the Tribunal considered important to its analyses of injury in this case are: changes in international market conditions; changes in domestic market conditions and the likely performance of the domestic industry; the likely volumes of dumped imports; the likely prices of dumped imports; the performance of the foreign industries and the potential to produce CCRSS in other facilities; the likely impact of dumped imports on the domestic industry; anti-dumping measures in other jurisdictions; and other factors.

82. In making its assessment of the likelihood of injury, the Tribunal has consistently taken the view that the focus must be on circumstances that can reasonably be expected to exist in the near to medium term, generally 18 to 24 months, as opposed to more remote circumstances.³⁸

37. *Ibid.* at 290-91.

38. *Preformed Fibreglass Pipe Insulation* (17 November 2003), RR-2002-005 (CITT) at 11; *Certain Prepared Baby Foods* (28 April 2003), RR-2002-002 (CITT) at 8; *Certain Solder Joint Pressure Pipe Fittings* (16 October 1998), RR-97-008 (CITT) at 10.

Likelihood of Injury from Cumulated Countries

– Changes in International Market Conditions

83. A dramatic change has occurred in international market conditions, as China increased its consumption of galvanized steel sheet³⁹ by nearly 45 percent in 2002 and by a further 40 percent in 2003.⁴⁰ In 2003, as the world's third largest consumer of galvanized steel sheet, China's consumption was 90 percent of that of Japan, the world's second largest consumer, whereas in 2002 China's consumption had been only 70 percent of that of Japan.⁴¹

84. China has become the largest consumer of steel worldwide,⁴² and the Tribunal observes that, by the first quarter of 2004, it accounted for nearly one quarter of the world's crude steel output and even more of its total consumption of finished steel.⁴³ China's tremendous demand for steel has led to supply shortages and resultant cost increases in steel-making inputs around the globe. These shortages and cost increases began to be felt by the end of 2003 and, by January 2004, prices of galvanized steel sheet began to rise at an unprecedented rate in all major markets.⁴⁴ Despite a correction in the Chinese market at the beginning of 2004, prices for galvanized steel sheet have continued to rise throughout the first half of the year, as have input shortages, including energy, albeit with some softening in recent months.⁴⁵

85. Prices for galvanized steel sheet have attained record levels, with U.S. prices, which include surcharges for the recovery of recent increases in input costs, leading global prices at levels of nearly US\$800/tonne.⁴⁶ Prices for galvanized steel sheet are continuing to rise with third-quarter price increases announced in Canada, and a further 10 percent increase in Europe,⁴⁷ as well as higher export prices in Korea and Japan.⁴⁸

86. Exacerbating the tight input supply situation is the rising demand for CCRSS in Japan, Europe and North America, caused by a global economic upturn, as the world economy and the non-residential construction markets, in particular, continue to improve.⁴⁹ The Tribunal notes, especially, the projected increase in infrastructure development and construction forecast for developing countries, such as India.⁵⁰

39. In the remainder of this statement of reasons, "galvanized steel sheet" refers to the broad spectrum of corrosion-resistant steel sheet products, including CCRSS and automotive corrosion-resistant steel sheet products.

40. *CRU Monitor*, March 2004, Tribunal Exhibit RR-2003-003-34.06, Administrative Record, Vol. 5.4, Tab 2 at 45.

41. Tribunal Exhibit RR-2003-003-34.06, Administrative Record, Vol. 5.4A, Tab 2 at 45.

42. *CRU Monitor*, May 2004, Tribunal Exhibit RR-2003-003-39.07, Administrative Record, Vol. 1.01 at 118.

43. *Ibid.*

44. *Purchasing Magazine Online*, February 27, 2004, Foreign Manufacturer's Exhibit D-03 at 1, Administrative Record, Vol. 13; Foreign Manufacturer's Exhibit I-02 (protected) at 5, Administrative Record, Vol. 14.

45. *CRU Monitor*, May 2004, Tribunal Exhibit RR-2003-003-39.07, Administrative Record, Vol. 1.01 at 121, 128.

46. *Ibid.* at 121.

47. *European Steel Review*, April 2004, Foreign Manufacturers' Exhibit D-03/E-03, Tab 17, Administrative Record, Vol. 13; *Transcript of Public Hearing*, Vol. 2, 8 June 2004 at 409-410; *Metal Bulletin Research, Coated Steels Monthly*, May 28, 2004, Manufacturer's Exhibit A-14 (protected) at 12, Administrative Record, Vol. 12.

48. *CRU Monitor*, March 2004, Tribunal Exhibit RR-2003-003-34.06, Administrative Record, Vol. 5.4A at 48.

49. *Goldman Sachs Steel Scraps Monthly*, May 2004, Foreign Manufacturers' Exhibit D-08 at 1, Administrative Record, Vol. 13; *MEPS International Steel Review*, March 2004, Tribunal Exhibit RR-2003-003-39.02, Administrative Record, Vol. 1.01 at 1.

50. *CRU Monitor*, April 2004, Tribunal Exhibit RR-2003-003-39.05, Administrative Record, Vol. 1.01 at 101.

87. The Tribunal expects that the shortages and elevated input costs will continue in the near to medium term. Although there has been some correction recently in scrap prices, coal and coke prices remain high, especially in North America, Germany, India and the Russian Federation.⁵¹

88. The future of market conditions for CCRSS in China was debated extensively throughout the review, reflecting both the importance of the issue and the difficulty of coming to conclusions about China, given the dearth of reliable statistics. There are numerous theories as to what will eventually happen to China's economy, ranging from an outright collapse to continued but slower levels of growth. Having considered the evidence on the record, the Tribunal agrees with the prevailing view that there will not be a radical drop in demand, but rather an easing of demand with periodic corrections—a “soft landing”—as underlying demand in China continues to grow, albeit at a reduced rate.⁵² In this regard, the Tribunal notes that, while China's economy grew by nearly 12.0 percent in 2003,⁵³ it is predicted to grow annually by a more sustainable 7.5 percent beginning in 2004, for the foreseeable future.⁵⁴ Further, the Tribunal notes that growth in Chinese industrial production for 2004 is forecast at 16.5 percent, down only slightly from the rate of 16.7 percent in 2003.⁵⁵

89. In the Tribunal's view, the demand for CCRSS will continue to be robust in China in the near to medium term.

90. The Tribunal received evidence in this regard from TKS, which predicted that demand for CCRSS would remain strong in China in the near to medium term.⁵⁶ It was asserted that China, still being in the development stage of industrialization and urbanization, would increase its apparent consumption of steel, which, for flat products, including CCRSS, would be at a rate of 20 percent in 2004 and 15 percent in 2005.⁵⁷

91. Likewise, the President of Beijing Metal Consulting concluded recently that Chinese steel demand was expected to remain strong in coming years despite the recent domestic price plunge.⁵⁸ He based his expectation of robust demand in the construction sector on the fact that China is preparing to host the 2008 Olympic Games and has booming shipbuilding and manufacturing industries. He predicted that most of the demand would be for flat products and that steel consumption would not ease before 2007 or 2008. He also noted: “China is only half way toward industrialization and the annual steel consumption per capita is currently only 200 kilograms. . . . By comparison South Korea's annual per capita steel consumption is 953 kilograms.”⁵⁹

92. The Chairman of the American Iron and Steel Institute and the President and CEO of IPSCO Inc. also agreed with the likelihood that there will be continuing Chinese demand for steel, with the resultant implications for global markets. In an April 29, 2004, address to shareholders, he noted: “The second important point about China is that its high demand is likely to last for some time. The population of that country is just starting to gain access to . . . bridges and appliances . . . per capita steel consumption in China

51. *CRU Monitor*, May 2004, Tribunal Exhibit RR-2003-003-39.07, Administrative Record, Vol. 1.01 at 128.

52. *Ibid.* at 126.

53. *Fortune Magazine*, May 17, 2004, Foreign Manufacturers' Exhibit D-03/E-03, Tab 1, Administrative Record, Vol. 13.

54. *Ibid.*

55. *CRU Monitor*, May 2004, Tribunal Exhibit RR-2003-003-39.07, Administrative Record, Vol. 1.01 at 119.

56. *Transcript of Public Hearing*, Vol. 2, 8 June 2004 at 423-30.

57. Foreign Manufacturer's Exhibit I-05 at 2, Administrative Record, Vol. 13A.

58. *AMM.com Steel News*, May 18, 2004, Tribunal Exhibit RR-2003-003-RI-01, Administrative Record, Vol. 9 at 9.

59. *Ibid.*

is only 14% of consumption in Korea. If the per capita consumption of steel in China were to equal that of Korea the overall Chinese market would be approximately seven times bigger than it is today.”⁶⁰

93. Moreover, the Tribunal notes that, with respect to steel supply, additions to Chinese capacity have been slowed. The Chinese government has recently implemented investment constraints to cool down the overheated Chinese economy⁶¹ (inflation was 3.8 percent in April, the highest for seven months⁶²). These investment constraints have not only slowed down construction projects, but have already shut down some Chinese steel-making capacity. According to a witness for TKS, one 8.4 million tonne mill and one 6 million tonne mill have closed.⁶³ It has also been reported that a planned US\$1.3 billion mill is not going ahead.⁶⁴ This latter mill would have produced 7 million tonnes per year and was cited by many around the world as evidence of Chinese overcapacity.⁶⁵

94. Chinese steelmaker Baosteel, on the other hand, believing that the government’s investment correction will not affect its expansion plans, has announced additional capacity of 4 million tonnes per year for flat-rolled steel, a portion of it for HDG, to come on-stream in the first half of 2005.⁶⁶ In the first week of June 2004, TKS started up a joint venture galvanizing plant in China, with 20 percent of its production going into the CCRSS market. This latter production will replace German exports, now planned to be sold into the European market.⁶⁷

95. Hence, the Tribunal agrees with TKS, which concluded that it is difficult to predict the effects of the investment slowdown, combined with input shortages, on the 4.7 million tonnes of additional Chinese steel-making capacity that the CBSA projected would come on-stream in 2004 and 2005.⁶⁸ Moreover, the current capacity figures for China do not accord with the current production. As the CBSA noted itself, although China has the capacity to produce 14.0 million tonnes of galvanized steel sheet, it produced only 1.6 million tonnes in the first three quarters of 2003, a year in which total Chinese consumption increased by over 40 percent.⁶⁹

96. The Tribunal recognizes that there will be periodic corrections in China, such as the one currently taking place.⁷⁰ The Chinese demand for CCRSS has fallen recently, and its prices fell to US\$600/tonne in May.⁷¹ Asia is now the weakest region for steel prices.⁷² This easing in demand led some to become “China phobic” around the end of the first quarter of 2004.⁷³ Some industry analysts increased to 70 percent their

60. Foreign Manufacturer’s Exhibit D-03 at 261, Administrative Record, Vol. 13.

61. *CRU Monitor*, May 2004, Tribunal Exhibit RR-2003-003-RI-02, Administrative Record, Vol. 9 at 7.

62. *GMP Equity Research*, May 21, 2004, Foreign Manufacturer’s Exhibit D-04 at 13, Administrative Record, Vol. 13.

63. *Transcript of Public Hearing*, Vol. 2, 8 June 2004 at 414.

64. *Indianapolis Star*, May 3, 2004, Manufacturer’s Exhibit B-05 at 261, Administrative Record, Vol. 11.

65. *AMM.com Steel News*, May 18, 2004, Tribunal Exhibit RR-2003-003-RI-01, Administrative Record, Vol. 9 at 10.

66. *Metal Bulletin Research*, May 2004, Manufacturer’s Exhibit A-14 (protected) at 19, Administrative Record, Vol. 12.

67. *Transcript of Public Hearing*, Vol. 2, 8 June 2004 at 317, 320, 329-32.

68. *CBSA Statement of Reasons*, Tribunal Exhibit RR-2003-003-03A, Administrative Record, Vol. 1 at 220.

69. *Ibid.* at 219.

70. *CSN Metal Bulletin*, May 2004, Foreign Manufacturer’s Exhibit D-03, Tab 2 at 10, Administrative Record, Vol. 13.

71. *Metal Bulletin Research*, May 2004, Manufacturer’s Exhibit A-14, Administrative Record, Vol. 12 at 14.

72. *CRU Monitor*, May 2004, Tribunal Exhibit RR-2003-003-39.07, Administrative Record, Vol. 1.01 at 117.

73. *AMM.com Steel News*, May 18, 2004, Tribunal Exhibit RR-2003-003-RI-01, Administrative Record, Vol. 9 at 10.

predictions of the likelihood of a major downturn in steel markets by or before May of this year.⁷⁴ That obviously has not happened. Even this most pessimistic prediction adds that the present downturn is perhaps “temporary”.⁷⁵

97. In the Tribunal’s view, prices for CCRSS in China are likely to recover in the near to medium term, although not necessarily to the peak levels seen in the first quarter of 2004.

98. While demand for CCRSS will most likely continue to be strong, the Tribunal foresees that imports into China may well drop eventually as capacity increases, but that they will not be dramatically reduced in the near to medium term. As noted above, not only have the capacity increases slowed down due to government intervention but also the Tribunal is of the view that future increases are likely to be geared towards the automotive industry. China is already the world’s fourth largest automobile producer, with sales of 4.2 million vehicles in 2003, and annual production is expected to reach 7.0 million vehicles by 2008.⁷⁶ According to the testimony of a witness for TKS, at present, two thirds of the Chinese galvanized capacity is of construction quality. Therefore, it appears reasonable to conclude that imports of CCRSS will continue to be required, given that Chinese capacity increases are not as likely to be directed toward the non-automotive segment of the market. The TKS joint venture in China supports this conclusion, with 80 percent of its production slated for the automotive market.

99. In response to the domestic industry’s reliance on the projections of significant Chinese decreases in imports and demand growth forecast in the April 2004 CORE III Report,⁷⁷ the Tribunal observes that these do not appear to have materialized.⁷⁸ In fact, evidence on the record indicates that, annualized for the first quarter, the imports of all steel into China were 40 million tonnes, up by 8 percent from last year.⁷⁹ The Tribunal has no reason to conclude that the pattern for CCRSS has been different from that for all steel.

100. In summary, the Tribunal expects that global conditions for CCRSS will continue to be robust in the near to medium term, with prices generally remaining high, viewed from a historic perspective, and with ongoing tightness of supply and shortages of steel-making inputs, even though there may be periodic corrections and slowdowns.

– Changes in Domestic Market Conditions and the Likely Performance of the Domestic Industry

101. There were also major changes in domestic market conditions for CCRSS in the first half of 2004, which are closely linked to those in the international market.

102. As Stelco’s CEO recently said: “no one has ever seen the explosive economic growth we’re seeing in a number of developing countries, including China in particular. These developments are transforming the steel industry from a regional business into a truly global marketplace in which events in one area have significant consequences for others.”⁸⁰ These comments were echoed by Dofasco’s CEO who said in his

74. *World Steel Dynamics Truth & Consequences* #19, March 10, 2004, Manufacturer’s Exhibit B-05, Administrative Record, Vol. 11A at 95.

75. *Ibid.*

76. CBSA *Statement of Reasons*, Tribunal Exhibit RR-2003-003-03A, Administrative Record, Vol. 1 at 219.

77. Manufacturer’s Exhibit A-05 Tab Q at 101-244, Administrative Record, Vol. 11.

78. *Transcript of Public Hearing*, Vol. 2, 8 June 2004 at 427-32; *Goldman Sachs Steel Scraps Monthly*, May 2004, Foreign Manufacturer’s Exhibit D-08 at 1, Administrative Record, Vol. 13.

79. *Goldman Sachs Steel Scraps Monthly*, May 2004, Foreign Manufacturer’s Exhibit D-08 at 3, Administrative Record, Vol. 13.

80. Foreign Manufacturers’ Exhibit D-03/E-03, Tab 12 at 2, Administrative Record, Vol. 13.

address to shareholders at the 2004 Annual and Special Meeting: “And with enormous markets like China driving demand and creating capacity, our competitive landscape is also becoming more international.”⁸¹

103. In response to global conditions, including the shortage of steel inputs, the domestic mills have raised base prices of CCRSS in nearly every month of the first half of 2004 and testified that they expect to increase them again in July.⁸² The domestic mills are also applying surcharges to cover recently increased input costs, and these reached over C\$100/tonne in April, before falling by up to 20 percent in May.⁸³ Accordingly, the total price for CCRSS is now over C\$1,000/tonne, well in excess of C\$796/tonne, the highest annual price experienced by the domestic industry in the four years preceding the present review. Even net of surcharges, average prices are now higher than at any time during this previous period.⁸⁴

104. In addition, the prices in the spot market are currently higher than those in the contract market, a situation that is the inverse of the usual relationship where CCRSS prices for contract customers tend to be higher than prices in the spot market.⁸⁵ According to witnesses for the domestic industry, the reason for this inversion of prices is that it has not been possible to pass all the surcharges through to contract customers, whose contracts tend to be negotiated later in the year.⁸⁶

105. Moreover, the Canadian spot price for CCRSS has changed its traditional position in relation to the U.S. spot price. The Tribunal heard testimony that, over the years, U.S. spot pricing has been below Canadian spot pricing,⁸⁷ but that Canadian spot prices had fallen below those in the United States.⁸⁸ The witnesses for the domestic industry claimed, however, that the U.S. spot prices will come down over the next six months and that the Canadian spot prices will once again rise above the U.S. spot prices.⁸⁹ As will be discussed below, the Tribunal does not concur with this view, at least for the period at issue.

106. Domestic sales of CCRSS have increased substantially since the beginning of 2004 and the domestic mills are now running at 90 percent capacity, that is to say, effectively at full capacity, with long lead times for orders.⁹⁰

107. Dofasco noted that its shipments had increased by 67 percent in the first quarter of 2004, compared to the same period in 2003.⁹¹ Because this dramatic increase in shipments was far above the growth in underlying demand, which Dofasco estimated at only 2 to 3 percent over the 2003 levels, a witness for Dofasco concluded that there was a “demand bubble” in the Canadian market.⁹² Because both the domestic mills and service centres currently have low levels of CCRSS inventory, he attributed this “bubble” to purchases by end users that he believed were hedging on price increases and stocking up to ensure supply for the summer construction season. He claimed that, when the “demand bubble” deflates, “there will be a

81. *Ibid.*, Tab 10 at 2.

82. *Transcript of In Camera Hearing*, Vol. 1, 8 June 2004 at 43, 162.

83. *Ibid.* at 7, 126.

84. Tribunal Exhibit RR-2003-003-05B, Administrative Record, Vol. 1A at 184.

85. *Transcript of Public Hearing*, Vol. 1, 7 June 2004 at 140-42.

86. *Ibid.* at 23.

87. *Ibid.* at 28, 151.

88. *Ibid.* at 151-53.

89. *Ibid.* at 28-29.

90. *Transcript of In Camera Hearing*, Vol. 1, 8 June 2004 at 65-66; Tribunal Exhibit RR-2003-003-06C (protected), Administrative Record, Vol. 2A at 186.

91. *Transcript of Public Hearing*, Vol. 1, 7 June 2004 at 24.

92. Manufacturer’s Exhibit A-03, para. 73, Administrative Record, Vol. 11.

price to pay later in the second half of this year . . . the volumes will drop and as the volumes drop the pricing will come down.”⁹³

108. The Tribunal notes that the 67 percent increase in the volume of Dofasco’s first quarter CCRSS sales to end users in 2004 reflects, in part, its comparable volume of sales in the first quarter of 2003.⁹⁴ Looking at the domestic industry as a whole, the situation is quite different, with the volume of first quarter sales to end users rising by a much smaller percentage.⁹⁵ Nevertheless, this increase is substantially above the optimistic forecasts of growth in the market. With regard to forecasts of future demand in Canada for CCRSS, the Tribunal notes that a witness for Dofasco testified that most experts, as well as Dofasco, expected a 10 percent increase in non-residential construction in Canada in 2004, compared to 2003.⁹⁶ This is substantially higher than the 2 to 3 percent figure used in argument.

109. The Tribunal accepts the evidence that the “demand bubble” is only with the end user and that there is no inventory build-up at either the domestic mills (with the possible exception of some modest increases recently at Sorevco) or the steel service centres, which, it was suggested, currently have only two months’ supply of CCRSS rather than their usual three months’ supply.⁹⁷ However, the Tribunal interprets these circumstances and the fact that the domestic industry is essentially operating at full capacity to mean that there are no excess mill or service centre stocks in the Canadian market to be liquidated at bargain prices, as is usually the case in the steel industry when there is an inventory sell-off at the service centre level of trade. In other words, although the “demand bubble” is likely to deflate in the medium, if not in the near, term, and although there will likely be a price correction in the market, it will not, in the Tribunal’s view, result in significantly lower prices for a lengthy period of time because of the underlying tightness of supply, reflective of both constraints on steel-making inputs and the improving demand for CCRSS.

110. As a result of the increased prices and volumes, the domestic CCRSS industry recovered financially in the first quarter of 2004 from its poor performance in 2003. Witnesses for the domestic industry testified that the third quarter of 2003 was especially difficult, as prices and volumes of CCRSS spiralled down due to service centre inventory sell-off.⁹⁸ Gross margins were up in the first quarter of 2004, as was net income, the latter reversing from a loss of C\$29/tonne in 2003 to a gain of C\$20/tonne in the first quarter of 2004.⁹⁹ This significant improvement in the average has been achieved even while Stelco, because of its current financial problems, is under *CCAA* protection.

111. The Tribunal also notes the recent and planned investments by the domestic industry, particularly Dofasco, which could free up considerable additional capacity in Canada for the production of the like goods.

112. In the case of Dofasco, as noted above, when it took over the 200,000 tonnes of automotive galvanized capacity at the DNN line in 2003, a certain percentage of capacity was freed up at the four existing Hamilton lines to produce additional CCRSS.¹⁰⁰ Dofasco has also begun implementing a five-year, C\$700 million capital investment program to improve the quality and efficiency of its Hamilton

93. *Transcript of Public Hearing*, Vol. 1, 7 June 2004 at 25.

94. Tribunal Exhibit RR-2003-003-14.01C (protected), Administrative Record, Vol. 4 at 315.

95. Tribunal Exhibit RR-2003-003-10, Administrative Record, Vol. 1.2 at 133, 148, 166; Tribunal Exhibit RR-2003-003-06A (protected), Administrative Record, Vol. 2A at 153.

96. *Transcript of Public Hearing*, Vol. 1, 7 June 2004 at 18.

97. *Ibid.* at 216-21.

98. *Ibid.* at 240-41.

99. Tribunal Exhibit RR-2003-003-05A, Administrative Record, Vol. 1A at 162.

100. *Transcript of Public Hearing*, Vol. 1, 7 June 2004 at 107.

steel-finishing operations. A witness for Dofasco testified that C\$200 million of the C\$700 million related to improvements in the galvanizing lines.¹⁰¹

113. With respect to the possible joint venture between Dofasco and Arcelor to develop galvanized sheet in the Southern United States to serve the automotive market, witnesses for Dofasco testified that the project is still under consideration and that the Board of Directors has yet to make a decision.¹⁰² If approved, the joint venture could free up some of the existing capacity in Hamilton to produce more CCRSS.

114. The Tribunal notes Dofasco's bullish view on the domestic CCRSS market, as demonstrated by its willingness to invest in further capacity. Dofasco has already made major commitments to improving the Hamilton lines and appears willing to add additional CCRSS capacity in Canada as a result of its U.S. joint venture.

115. As for Sorevco, its witness discussed the company's plans for future investments during *in camera* testimony.¹⁰³

116. For Stelco, any plans for investment are dependent on the outcome of the *CCAA* procedures, which will have a fundamental influence on its future. In response to a question, a witness for Stelco agreed that the only two outcomes facing the company are to emerge stronger from the *CCAA* process or to face liquidation.¹⁰⁴ Although it is difficult at this time for Stelco to provide information on the eventual outcome of its restructuring initiatives, in the Tribunal's view, Stelco's present capacity to produce like goods will likely remain in the domestic market, whether or not owned by Stelco.

117. In the Tribunal's view, given the continuing tight supply situation and the likely growth in the domestic construction market, the domestic industry, as a whole, will continue to produce at high capacity utilization levels, though not necessarily at full capacity, and will obtain high, if not necessarily the current record high, prices. In fact, the lowering of prices below present levels may even be of advantage to the Canadian industry since, if its prices fall somewhat as the demand bubble deflates, imports will not be as attracted to the Canadian market, allowing the Dofasco increase in CCRSS supply to be consumed domestically.

– Likely Volume of Dumped Imports from the Cumulated Countries

118. The Tribunal does not foresee significant volumes of dumped imports of CCRSS coming to Canada from the cumulated countries in the near to medium term.

119. As the Tribunal concluded above, it does not foresee a decrease in demand in China in the near to medium term, except for minor corrections, nor does it expect a significant decrease in imports of CCRSS into China over the same period. In the Tribunal's opinion, an economy the size of China's, growing at an average annual rate of 7.5 percent, with a questionable ability to increase capacity significantly in the near to medium term, will continue to demand considerable volumes of imports.

120. Moreover, as the economies in the cumulated countries are generally forecast to grow in the near to medium term, even in Brazil, which has a history of a more volatile economy, demand for CCRSS is likely

101. *Ibid.* at 169.

102. *Ibid.* at 165-66.

103. *Transcript of In Camera Hearing*, Vol. 1, 8 June 2004 at 174-76.

104. *Transcript of Public Hearing*, Vol. 1, 7 June 2004 at 124.

to improve.¹⁰⁵ Capacity to produce CCRSS is effectively being fully utilized in the cumulated countries, given the existing input supply constraints; for example, Korea has announced export licences for the export of steel and scrap.¹⁰⁶ These constraints are not likely to ease sufficiently to provide the cumulated countries with significant excess capacity for the export market. Further, the priority of domestic requirements with which steelmakers in the cumulated countries are concerned at present is unlikely to change in the near to medium term.

121. Of the cumulated countries, the Tribunal views Brazil as the most likely to ship CCRSS to Canada in the foreseeable future. Brazil combines a high degree of export dependence on China with an economy that may not grow consistently over the near to medium term. But a significant volume of exports to Canada would only likely occur if there was a correction in China at the same time as the Brazilian economy faltered. The Tribunal is of the opinion that such a coincidence of circumstances is far too speculative for it to conclude that significant volumes from Brazil are likely, should the order be rescinded.

122. In any event, as noted below, the Tribunal is of the view that prices will likely remain higher in the United States than in Canada in the near to medium term and, therefore, Brazil is far more likely to return to its traditional export market, the United States, than it is to turn to Canada.

123. Finally, given that prices are likely to correct in Canada as the “demand bubble” deflates and that there will be increased capacity as a result of Dofasco’s investments and possibly from a restructured, more competitive Stelco, there will not be the same demand pull for imports into the Canadian market as there is at present.

– Likely Prices of Dumped Imports from the Cumulated Countries

124. In the Tribunal’s view, based on the evidence on the record, the prices of dumped imports from the cumulated countries are likely to remain high over the near to medium term; Japan, for instance, announced, in the first quarter of 2004,¹⁰⁷ an increase in its export price, given input constraints.

125. The Tribunal notes the testimony of a witness for Dofasco, who claimed that the phenomenon of a “demand bubble” existed not only in Canada but also on a global scale and that this would eventually lead to a sharp downturn in prices. The Tribunal does not dispute the witness’s view of an end user “demand bubble” in the Canadian market, but it can find no evidence on the record that an end user buildup is happening elsewhere. In fact, the evidence on the record suggests that the inventory buildups that typically portend the turning point in the steel cycle are not materializing in the global markets at this time. Constraints on production, driven by shortages of raw materials, will likely continue to place a cap on global steel production growth for the foreseeable future¹⁰⁸ and, while prices may soften, a traditional collapse is implausible, given the supply constraints.¹⁰⁹ As a result, it is the Tribunal’s view that, while prices are likely to soften elsewhere, there is likely to be a greater decrease in Canada as the end users’ “demand bubble” deflates.

105. *International Iron and Steel Institute Short Range Outlook*, spring 2004, Foreign Manufacturer’s Exhibit J-01 at 28, Administrative Record, Vol. 13A.

106. Foreign Manufacturer’s Exhibit I-05 at 3, Administrative Record, Vol. 13A.

107. *Metal Bulletin Research*, November 2003, Tribunal Exhibit RR-2003-003-II.05 (protected), Administrative Record, Vol. 2.2, Tab 50 at 7.

108. *UBS Investment Research, Global Steel Perspectives*, Issue 4, May 27, 2004, Foreign Manufacturers’ Exhibit D-05/E-05 at 6, Administrative Record, Vol. 13A.

109. *Ibid.* at 2.

126. CCRSS is a commodity, in that, once technical specifications and quality requirements are met, there is no price premium accorded in the market for CCRSS produced by any particular mill or country. There are, however, a wide range of individual CCRSS products that reflect a multitude of combinations of gauges, coating weights and other parameters, and these individual products do have different prices and different uses.

127. Some low prices for imported CCRSS that were appearing in the domestic market at the time of the hearing were for CCRSS that was ordered at the end of 2003 and were comparable to domestic prices at that time.¹¹⁰ The Tribunal notes the lag time between the placement of an order and the setting of a price, and the actual delivery of the order, during which prices in the market may have changed. The Tribunal does not consider that such imports are indicative of future pricing. In a highly volatile market, such as the present one, imports may well arrive at a time when the domestic prices are significantly higher. Conversely, they may arrive at higher prices than those of the domestic market in a falling market situation. CCRSS prices quoted today for October 2004 delivery are still high, though somewhat below the prices of at least one of the domestic mills.¹¹¹ The Tribunal thinks it likely that the dumped import prices from the cumulated countries will remain at relatively high prices in the near to medium term.

128. The Tribunal heard testimony that, generally, prices of offshore CCRSS have to be at least C\$30/tonne lower than domestic prices before the goods are attractive to domestic customers to compensate for the longer lead times and other risks.¹¹² Given current global conditions of tight supply, the Tribunal sees no reason why the cumulated countries would have an incentive to sell into the Canadian market at prices that would provide more than the traditional discount.

- Likely Performance of the Industries in the Cumulated Countries and the Potential to Produce CCRSS in Other Facilities

129. The domestic industry argued that there is significant overcapacity for CCRSS in the cumulated countries and, accordingly, that they rely on export sales. Although strong demand for CCRSS in Asia currently absorbs much of the global excess, the domestic industry argued that, once the demand in China drops, there will be substantial supplies of CCRSS available for diversion to Canada, which would be an attractive market, given that North American CCRSS prices are now the highest in the world.¹¹³ As discussed above, the Tribunal does not agree with this “hard landing” scenario for China and does not consider that there is a likelihood of significant diversion of CCRSS into Canada.

130. The Tribunal does not dispute that Brazil, Germany, Japan and Korea have a combined capacity to produce galvanized steel sheet that is many times larger than the apparent domestic market.¹¹⁴ However, as the Tribunal has concluded in previous reviews on steel products,¹¹⁵ it is less concerned with the absolute size of the capacity in the countries than with the manner in which it considers that capacity will be used in the near to medium term.

110. *Transcript of In Camera Hearing*, Vol. 1, 8 June 2004 at 180-81.

111. *Ibid.* at 108-109.

112. *Transcript of Public Hearing*, Vol. 1, 7 June 2004 at 253-54.

113. Manufacturer's Exhibit B-07 at 12, Administrative Record, Vol. 11A; *Metal Bulletin Research*, May 28, 2004, Manufacturer's Exhibit A-14 at 10, Administrative Record, Vol. 12.

114. Tribunal Exhibit RR-2003-003-06 (protected), Administrative Record, Vol. 2A at 33; Tribunal Exhibit RR-2003-003-03A, Administrative Record, Vol. 1 at 222, 227, 231, 232, 236.

115. *Oil and Gas Well Casing* (4 July 2001), RR-2000-001 (CITT); *Carbon Steel Plate* (17 May 2004), RR-2003-001 (CITT).

131. In this instance, as the Tribunal noted above, there is ample evidence that demand for CCRSS in each of the cumulated countries is strong and that high prices are the order of the day.¹¹⁶ Further, with the continued demand in China for imports, there is little likelihood that any significant exports of CCRSS from the cumulated countries will be diverted to Canada in the near to medium term.

132. With respect to the cumulated countries' claimed reliance on exports, the Tribunal observes that, on average, the foreign producers that responded to the Tribunal's questionnaires exported about 20 percent of their sales of CCRSS during the Tribunal's period of review¹¹⁷ and that all are operating at high levels of capacity.¹¹⁸ In the Tribunal's view, export sales of this magnitude do not suggest a particular reliance on export sales, especially when the tight global input supply situation affects the markets of each of the foreign producers and demand is growing in each of their economies.

133. Turning to the question of the foreign producers using other facilities to produce CCRSS, the Tribunal notes that the facilities that produce CCRSS also produce galvanized steel sheet for automotive uses. It is unlikely, however, that a producer would switch from automotive galvanized steel sheet to CCRSS. Galvanized sheet for automotive use normally requires pre-certification, is sold under contract at higher prices and is not as susceptible to import price competition, as is CCRSS, which is sold, for the most part, on the spot market.¹¹⁹ Moreover, at present, China cannot satisfy its own demand for automotive grade corrosion-resistant steel sheet and, in the Tribunal's view, will continue to import large volumes of automotive grade corrosion-resistant steel sheet as it builds up its capacity.¹²⁰

– Likely Impact of Dumped Goods from the Cumulated Countries on the Domestic Industry

134. While the Tribunal has already determined that it is unlikely that there will be significant volumes of dumped goods from the cumulated countries, it heard evidence that volumes as small as 1,000 tonnes or 5,000 tonnes could injure the domestic industry.

135. To the extent that imports from non-subject countries are appearing in Canada, having been diverted from China, they have not detrimentally affected the performance of the domestic industry so far this year.

136. The domestic industry also argued that even the most minor of corrections in the Chinese market could injure the domestic industry, as shiploads of CCRSS imports from the cumulated countries would find their way into the domestic market. The Tribunal does not find this to be likely either. The domestic industry saw continued growth in its sales volumes and was able to achieve significant prices throughout the first half of 2004, even though a correction has been taking place in China. The Tribunal is of the opinion that this positive performance will continue if the order is rescinded and the cumulated countries ship the small volumes of dumped CCRSS to Canada, at the prices that the Tribunal expects.

137. The Tribunal notes that lower-priced imports from non-subject countries do not appear to have harmed the Canadian industry in the last couple of years, even those from the countries named in the finding

116. Tribunal Exhibit RR-2003-003-39.06, Administrative Record, Vol. 1.01 at 110; Tribunal Exhibit RR-2003-003-39.07, Administrative Record, Vol. 1.01 at 121.

117. Tribunal Exhibit RR-2003-003-06 (protected), Administrative Record, Vol. 2A at 92, 97, 102.

118. *Ibid.* at 91, 96, 101.

119. Manufacturer's Exhibit C-03 at 2, Administrative Record, Vol. 11A.

120. *Metal Bulletin Research*, December 2003, Tribunal Exhibit RR-2003-003-11.06 (protected), Administrative Record, Vol. 2.2 at 175.

in which the Tribunal found no injury.¹²¹ For example, 2002 was a particularly good year for the domestic industry, even though imports were higher in volume and lower in price than in 2003, when the industry had a particularly bad year.¹²² The witnesses for the domestic industry did not adequately explain this discrepancy to the Tribunal. The Tribunal concludes that the decrease in the domestic industry's profitability in 2003, a C\$60 million decline over 2002, was not due to import pressure.¹²³

138. The Tribunal also considered the domestic industry's assertion that it had to be able to participate in the upside of the business cycle in order to be able to continue to make the investments necessary to succeed in this highly capital-intensive industry. The Tribunal notes that Dofasco testified that its strategy is to be profitable at all points in the business cycle, which it has succeeded in doing.¹²⁴ The Tribunal also notes that Dofasco has made important capital investments on an ongoing basis throughout the past several years, even as the market for CCRSS and its own net income have fluctuated. Finally, the Tribunal notes the testimony of a witness for Dofasco with respect to the viability of its planned future investments even if the order were rescinded.¹²⁵

– Anti-dumping Measures Against CCRSS and Similar Goods from the Cumulated Countries in Other Jurisdictions

139. There are very few anti-dumping or countervailing measures against CCRSS from the cumulated countries in other jurisdictions. As for the United States, it has anti-dumping measures against galvanized steel sheet from Germany, Korea and Japan, as well as countervailing measures against Korea.¹²⁶ A countervailing measure against Germany was removed in April 2004, and the dumping margins in the United States are very low for most Korean exporters.¹²⁷ Argentina still has an anti-dumping measure against galvanized steel sheet from Korea.¹²⁸

140. Given the few cases of contingent protection, the low margins of dumping for Korea in the United States,¹²⁹ the Tribunal does not foresee much, if any, diverted CCRSS likely to enter Canada as a result.

– Other Factors

141. The Tribunal considers that there are several factors, other than the presence of dumped imports in the domestic market, that may cause injury to the domestic industry.

142. First, the Tribunal notes that, just as price increases in terms of surcharges for CCRSS were a response to the increased costs of inputs,¹³⁰ prices are likely to track the same costs downward as input costs

121. See *Corrosion-resistant Steel Sheet*.

122. Tribunal Exhibit RR-2003-003-06 (protected), Administrative Record, Vol. 2A at 55.

123. Tribunal Exhibit RR-2003-003-05A, Administrative Record, Vol. 1A at 162.

124. Manufacturer's Exhibit A-02 (protected) at 8, 16, Administrative Record, Vol. 12.

125. *Transcript of In Camera Hearing*, Vol. 1, 8 June 2004 at 78.

126. Tribunal Exhibit RR-2003-003-39.08, Administrative Record, Vol. 1.01 at 132-33.

127. Manufacturer's Exhibit A-14 (protected) at 15, Administrative Record, Vol. 12.

128. Tribunal Exhibit RR-2003-003-36.03, Administrative Record, Vol. 7 at 13.

129. There is also the possibility of the removal of anti-dumping duties for Japan. Manufacturer's Exhibit A-14 (protected) at 15, Administrative Record, Vol. 12.

130. Manufacturer's Exhibit B-02 (protected) at 24, Administrative Record, Vol. 12; Manufacturer's Exhibit B-04 (protected) at 6-7, Administrative Record, Vol. 12; Manufacturer's Exhibit A-01 at 11-13, Administrative Record, Vol. 11.

soften. Prices for CCRSS in all markets are likely to respond to worldwide fluctuations in the costs of inputs, such as scrap, which appear to be ameliorating. In fact, however, other input costs, such as those of the various energy sources, may remain high or even increase.¹³¹ It is, therefore, the Tribunal's view that margins will not be significantly reduced by anticipated shifts in surcharges. Moreover, it is the Tribunal's view that such shifts, and any injury associated with them, will not be attributable to the presence of dumped goods in the market, but rather to other factors.

143. The Tribunal also does not consider that any injury resulting from a decline in prices in the domestic market as the "demand bubble" deflates will be attributable to the renewal or continuation of dumping.

144. Finally, the Tribunal notes that the increases in domestic CCRSS capacity that may occur over the near to medium term could, in and of themselves, lead to increased competition and price decreases, as Dofasco, in particular, increases its domestic supply of like goods in the Canadian market. Again, any injury resulting from greater intra-industry competition will not be attributable to dumped imports from the cumulated countries.

Likelihood of Injury from the United States

- Changes in International Conditions, Changes in Domestic Market Conditions, the Domestic Industry's Likely Performance and Other Factors

145. The Tribunal's analysis of the likelihood of injury from dumped CCRSS from the United States will play out against the same changes in international and domestic conditions, the likely performance of the domestic industry and other factors discussed above under its analysis with respect to the likelihood of injury from dumped imports from the cumulated countries.

- Likely Volumes of Dumped Imports from the United States

146. The Tribunal heard testimony from a witness for Dofasco who claimed that 100,000 tonnes of dumped CCRSS would enter Canada from the United States if the order were rescinded.¹³²

147. However, the Tribunal has no evidence in support of this witness's estimations of the volumes that are likely to enter Canada if the order is rescinded. Given the lack of any other evidence on the record, the Tribunal can only give the predictions of the volume of dumped imports from the United States the weight of unsupported testimony.

148. In fact, the evidence on the record indicates that there are strong economic fundamentals underlying the demand in the United States. For example, in April 2004, total new construction spending was up by 12 percent over April 2003, after being depressed for three years.¹³³ If demand keeps growing as it has in

131. *CIBC World Markets*, January 7, 2004, Tribunal Exhibit RR-2003-003-11.13 (protected), Administrative Record, Vol. 2.2A at 69-70.

132. *Transcript of Public Hearing*, Vol. 1, 7 June 2004 at 36-39.

133. *Goldman Sachs High Yield Research*, June 1, 2004, Foreign Manufacturer's Exhibit D-07 at 2, Administrative Record, Vol. 13.

the United States, it appears that the United States will continue to require imports and will not be in a position to export significant volumes of CCRSS.¹³⁴

149. If Chinese prices for CCRSS do not firm up shortly, imports that went to China throughout 2003 will likely turn to the United States, as it is now the world's highest-priced market.¹³⁵ However, as noted above, the Tribunal is of the view that prices will probably soon firm up in China. Accordingly, the Tribunal concludes that the market in the United States will remain tight in the foreseeable future and that the volumes of dumped goods coming from the United States will not be significant, if the order is rescinded.

– Likely Prices of Dumped Imports from the United States

150. The Tribunal was told by a Dofasco witness that the end user “demand bubble” is a global phenomenon that is “perhaps more accentuated in the United States.”¹³⁶ The Tribunal finds no evidence on the record to indicate that this is the case in the United States, any more than it could find evidence of such a phenomenon in the global market generally. Information on steel inventories at service centres in the United States indicates that current levels are very low.¹³⁷ The Tribunal has no reason to conclude that the situation would be otherwise for CCRSS, nor that inventories of end users are high.

151. Prices for CCRSS in the United States are currently the highest in the world,¹³⁸ reflecting both the application of surcharges to offset surges in input costs and recent increases in base prices in response to tight supply conditions. Even though the Tribunal does not consider that there is a “demand bubble” in the United States, it notes that there is evidence that prices may be beginning to ease somewhat from the record peaks achieved so far in 2004. As one trade journal predicted, prices in the United States may see a correction in the third quarter, as transaction prices, minus surcharges, are beginning to wobble and lead times for delivery by the mills are “expected to fall”.¹³⁹

152. However, in the near term at least, and perhaps even in the medium term, the Tribunal does not expect U.S. prices to fall to such an extent that they will return to their traditional level below comparable Canadian prices. Given that U.S. prices for CCRSS are now higher than Canadian prices and given that the Tribunal expects that there will be a price correction in Canada as the “demand bubble” deflates, prices in the United States would have to fall by a proportionately greater amount to end up lower than domestic prices—a scenario that the Tribunal considers unlikely in view of the strong underlying demand for CCRSS in the United States.

153. In conclusion, given strong international demand and U.S. market growth, the Tribunal does not expect the prices of dumped imports from the United States to be so low as to be injurious.

134. *Goldman Sachs Steel Scraps Monthly*, May 2004, Foreign Manufacturer's Exhibit D-08 at 1, Administrative Record, Vol. 13.

135. Manufacturer's Exhibit B-07 at 12, Administrative Record, Vol. 11A; *Metal Bulletin Research*, May 28, 2004, Manufacturer's Exhibit A-14 at 10, Administrative Record, Vol. 12.

136. *Transcript of In Camera Hearing*, Vol. 1, 8 June 2004 at 66.

137. *Goldman Sachs Global Investment Research*, June 2, 2004, Foreign Manufacturer's Exhibit D-08 at 7, Administrative Record, Vol. 13.

138. Tribunal Exhibit RR-2003-003-39.07, Administrative Record, Vol. 1.01 at 121.

139. *Metal Bulletin Research, Coated Steels Monthly*, May 28, 2004, Manufacturer's Exhibit A-14 (protected) at 9-10, Administrative Record, Vol. 12.

- Likely Performance of the Industry in the United States and Likely Potential to Produce CCRSS in Other Facilities

154. The Tribunal agrees with the domestic industry that the capacity of the U.S. industry to produce CCRSS is significant and that it effectively dwarfs the Canadian market for these goods. Nonetheless, as discussed above, the evidence on the record indicates that the supply of CCRSS in the U.S. market is tight.¹⁴⁰ Input constraints are not likely to ease soon. For example, scrap prices, which had declined in May 2004 increased again for June 2004 orders,¹⁴¹ but still remained below the record high price of US\$300/short ton in March 2004.¹⁴²

155. There is considerable evidence on the record that suggests that demand for CCRSS is likely to increase as the U.S. economy continues to improve in 2004.¹⁴³ Low interest rates and recent tax cuts in the United States have provided consumers there with billions of after-tax dollars.¹⁴⁴ This, in addition to a weaker U.S. dollar, has provided the stimulus necessary to help the U.S. economy recover on a sustained basis.¹⁴⁵

156. With regard to the question of whether U.S. producers will use other facilities to produce CCRSS, the evidence is clear that, as it is in the cumulated countries and in China, demand for automobiles in the United States is expected to grow for the next several years.¹⁴⁶ The Tribunal is of the opinion that it would be highly unlikely for any producer of CCRSS in the United States to limit its production of automotive grade CCRSS so that it could produce construction grade CCRSS for export to Canada at lower prices. Furthermore, as indicated previously, China cannot supply all the galvanized sheet that it requires to produce its own automobiles. In the Tribunal's view, even if demand for automotive grade CCRSS in the United States fell off somewhat, the demand for that product in China is so large that much of any potential excess production in the United States would likely be used to satisfy the demand in China.

- Likely Effects of Dumped Imports from the United States on the Domestic Industry

157. As noted above, the Tribunal is not convinced that there is a "demand bubble" in the United States, or at least to the same extent as in Canada. Therefore, the United States may well ship in volumes in the 5,000-tonne range in the medium, or even near, term, but these are not seen by the Tribunal to be injurious because the price structure in the United States is likely to remain higher than that in the Canadian market.

158. The Tribunal is of the view that, for the foreseeable future, the supply of CCRSS in the United States will remain tight and U.S. prices for CCRSS will remain high.

159. Given the foreseen shortage of supply and growth in demand, it is also unlikely that the U.S. service centres will have a significant enough interest in the lower-priced, small Canadian market in the near to medium term to ship even insignificant volumes at prices low enough to cause injury.

140. Tribunal Exhibit RR-2003-003-39.06, Administrative Record, Vol. 1.01 at 110.

141. *Goldman Sachs Global High Yield Research*, June 1, 2004, Foreign Manufacturer's Exhibit D-07 at 4, Administrative Record, Vol. 13.

142. *Goldman Sachs Steel Scraps Monthly*, June 2, 2004, Foreign Manufacturer's Exhibit D-08 at 5, Administrative Record, Vol. 13.

143. *Metal Center Online News*, November 2003, Tribunal Exhibit RR-2003-003-10.32, Administrative Record, Vol. 1.2D at 1-2.

144. *Ibid.* at 1.

145. *Ibid.* at 2.

146. *Ibid.* at 4.

– Anti-dumping Measures in Other Jurisdictions on Goods from the United States

160. Other than Canada, there are no countries that maintain anti-dumping or countervailing measures against CCRSS from the United States. The Tribunal notes that a finding against coated flat products into Mexico expired in 1999 when the Mexican steel industry did not request a sunset review.¹⁴⁷

CONCLUSION

161. The Tribunal finds that it is not likely that the resumed or continued dumping of CCRSS from the cumulated countries will cause injury to the domestic industry. The Tribunal also finds that it is not likely that the resumed or continued dumping of CCRSS from the United States will cause injury to the domestic industry. Moreover, the Tribunal finds that, even if dumped imports of CCRSS from the cumulated countries and the United States were considered together, it is not likely that they would cause injury to the domestic industry.

162. Pursuant to subparagraph 76.03(12)(a)(ii) of *SIMA*, the Tribunal rescinds its order in respect of CCRSS originating in or exported from the cumulated countries.

163. Pursuant to subparagraph 76.03(12)(a)(ii) of *SIMA*, the Tribunal rescinds its order in respect of CCRSS originating in or exported from the United States.

Patricia M. Close
Patricia M. Close
Presiding Member

James A. Ogilvy
James A. Ogilvy
Member

Meriel V. M. Bradford
Meriel V. M. Bradford
Member

147. Foreign Manufacturers' Exhibit F-01/G-01/H-01 at 7, Administrative Record, Vol. 13.

APPENDIX

PRODUCT DEFINITION

Flat-rolled steel sheet products of a thickness not exceeding 0.176 in. (4.47 mm), coated or plated with zinc or an alloy wherein zinc and iron are the predominant metals, excluding automotive exposed qualities designed for and used in the manufacture of outer body components for motor vehicles, originating in or exported from Brazil, Germany, Japan, Korea and the United States, excluding:

- corrosion-resistant steel sheet products imported under tariff item No. 9959.00.00 for use in the manufacture of passenger automobiles, buses, trucks, ambulances or hearses, or chassis therefor, or parts, accessories or parts thereof;
- cold-rolled steel coil which has been cleaned and electrogalvanized in accordance with ASTM A591, the surface of which has been burnished with a system of 3-M Scotch-Brite rolls producing a polished or bright appearance, zinc weight both sides single spot 7.6-45.8 g/m² known as Tribrite, and exported from the United States by Triumph Industries, a Division of the Triumph Group Operations, Inc.;
- cold-rolled steel coil which has been cleaned and electrogalvanized in accordance with ASTM A591, the surface of which may or may not be burnished and which has been roll-coated with a clear, continuous film composed of metal chromates and phosphates producing a clear, lacquered appearance, zinc weight both sides single spot 7.6-45.8 g/m², and chromate coating 3-4 mg/sq. ft. each side, known as Triclear, and exported from the United States by Triumph Industries, a Division of the Triumph Group Operations, Inc.;
- cold-rolled steel coil which has been cleaned and electrogalvanized in accordance with ASTM A591, the surface of which is roll-coated with a continuous film composed of chromium chromates and oxides producing a green/gold appearance, zinc weight both sides single spot 7.6-45.8 g/m², and chromate coating, as chrome, of approximately 30 mg/sq. ft., known as Trichrome, and exported from the United States by Triumph Industries, a Division of the Triumph Group Operations, Inc.;
- corrosion-resistant steel sheet products exported from the United States for painting or printing by Metal Koting Continuous Colour Coat Limited and re-exported from Canada, provided that title to such goods as imported, further processed and re-exported from Canada remains with the U.S. exporters, and provided that such goods are not sold in Canada, but are re-exported;
- corrosion-resistant steel sheet products, with a zinc iron first coating, applied either electrolytically or by a hot-dipped process and an iron rich flash coating imposed electrolytically, known as Durgrip-E or Durexcelite, and exported from Japan by Nippon Steel Corporation, for use in the manufacture of motor vehicles; and
- corrosion-resistant steel sheet products, produced by the electrogalvanizing process, for use in the manufacture of motor vehicles.

For purposes of clarity, goods which are not subject to the application of anti-dumping duties also include:

- steel sheet which is coated or plated with zinc in combination with nickel, silicon or aluminum;
- galvanized product that has been pre-painted or coated with other finishes such as lacquers or varnishes; and

- galvanized armouring tape, which is narrow flat steel tape of 3 in. or less, that has been coated by a final operation with zinc by either the hot-dipped or electrogalvanizing process so that all surfaces, including the edges, are coated.