



OTTAWA, July 21, 2009

STATEMENT OF REASONS

Concerning the initiation of an investigation into the dumping of

**CERTAIN CARBON STEEL PLATE AND HIGH STRENGTH LOW ALLOY STEEL
PLATE ORIGINATING IN OR EXPORTED FROM UKRAINE**

DECISION

On July 6, 2009, pursuant to subsection 31(1) of the *Special Import Measures Act*, the President of the Canada Border Services Agency initiated an investigation respecting the alleged injurious dumping of certain carbon steel plate and high strength low alloy steel plate originating in or exported from Ukraine.

Cet Énoncé des motifs est également disponible en français. Veuillez consulter la section "Information".
This *Statement of Reasons* is also available in French. Please refer to the "Information" section.

TABLE OF CONTENTS

SUMMARY	1
BACKGROUND	1
INTERESTED PARTIES	2
COMPLAINANT	2
OTHER CANADIAN PRODUCERS SUPPORTING THE COMPLAINT	3
EXPORTERS	3
IMPORTERS	3
PRODUCT INFORMATION.....	3
PRODUCT DEFINITION	3
TECHNICAL INFORMATION	3
PRODUCTION PROCESS	4
PRODUCT APPLICATIONS.....	5
CLASSIFICATION OF IMPORTS	5
LIKE GOODS.....	5
THE CANADIAN INDUSTRY	6
STANDING	6
THE CANADIAN MARKET	7
EVIDENCE OF DUMPING	7
ESTIMATED NORMAL VALUES	8
ESTIMATED EXPORT PRICES.....	8
ESTIMATED MARGINS OF DUMPING	9
NEGLIGIBILITY AND INSIGNIFICANCE.....	9
EVIDENCE OF INJURY	10
VOLUME OF ALLEGEDLY DUMPED IMPORTS	10
LOST ORDERS AND DISCOUNTED SALES	11
PRICE DEPRESSION	11
UNDERUTILIZATION OF CAPACITY	11
DECLINE IN FINANCIAL PERFORMANCE.....	12
THREAT OF INJURY.....	12
CONCLUSION	12
SCOPE OF THE INVESTIGATION	13
FUTURE ACTION.....	13
RETROACTIVE DUTY ON MASSIVE IMPORTATIONS	14
UNDERTAKINGS.....	14
PUBLICATION.....	14
INFORMATION	14

SUMMARY

[1] On May 26, 2009, the Canada Border Services Agency (CBSA) received a complaint from Essar Steel Algoma Inc. (Essar Algoma) (the “complainant”), a domestic producer of carbon steel plate and high strength low alloy steel plate (certain steel plate). The complainant alleges that imports into Canada of certain steel plate originating in or exported from Ukraine (subject goods) have been dumped and that this dumping has caused and threatens to cause material injury to the Canadian industry.

[2] On June 10, 2009, pursuant to paragraph 32(1)(a) of the *Special Import Measures Act* (SIMA), the CBSA informed the complainant that the complaint was properly documented, and on the same date notified the Government of Ukraine that a properly documented complaint had been received by the CBSA.

[3] The complainant provided evidence to support the allegations that certain steel plate from Ukraine has been dumped. The evidence also discloses a reasonable indication that the dumping has caused injury or is threatening to cause injury to the Canadian industry producing these goods.

[4] On July 6, 2009, pursuant to subsection 31(1) of SIMA, the President of the CBSA (President) initiated an investigation respecting the dumping of certain steel plate from Ukraine.

BACKGROUND

[5] This is the sixth in a series of complaints which have been filed by the Canadian industry on certain steel plate since 1992. Each of these complaints has resulted in the imposition of either anti-dumping measures or both anti-dumping and countervailing measures against imports from various countries. The measures resulting from two of the five investigations are still in force. Following is a brief history of the five previous plate investigations.

Plate I

[6] On May 6, 1993, in Inquiry No. NQ-92-007, the Canadian International Trade Tribunal (Tribunal) found that dumped imports from Belgium, Brazil, the Czech Republic, Denmark, Germany, Romania, the United Kingdom and the former Yugoslav Republic of Macedonia were injuring the production of plate in Canada. On May 5, 1998, in Expiry Review No. RR-97-006, the Tribunal concluded that there was no likelihood of resumed dumping from the subject countries and, therefore, rescinded its finding.

Plate II

[7] On May 17, 1994, in Inquiry No. NQ-93-004, the Tribunal found that dumped imports from Italy, the Republic of Korea, Spain and Ukraine were injuring the production of plate in Canada. On May 17, 1999, in Expiry Review No. RR-98-004, the Tribunal issued an order continuing its finding. On May 17, 2004, in Expiry Review No. RR-2003-001, the Tribunal concluded that the expiry of this order would not likely result in material injury to the domestic

industry in the near to medium term and therefore rescinded its order against the subject countries.

Plate III

[8] On October 27, 1997, in Inquiry No. NQ-97-001, the Tribunal found that dumped imports from Mexico, The People's Republic of China, The Republic of South Africa and the Russian Federation were threatening to cause material injury to the domestic industry. On January 10, 2003, in Expiry Review No. RR-2001-006, the Tribunal continued its finding against China, South Africa and the Russian Federation and rescinded its finding against Mexico. On January 9, 2008, in Expiry Review No. RR-2007-001, the Tribunal continued its order against China and rescinded its order against South Africa and the Russian Federation.

Plate IV

[9] On June 27, 2000, in Inquiry No. NQ-99-004, the Tribunal found that dumped imports from Brazil, Finland, India, Indonesia, Thailand and Ukraine and subsidized imports from India, Indonesia and Thailand had caused material injury to the domestic industry. On June 27, 2005, in Expiry Review No. RR-2004-004, the Tribunal concluded that the expiry of the finding would likely not result in material injury to the domestic industry in the near to medium term and therefore rescinded its finding against the subject countries.

Plate V

[10] On January 9, 2004, in Inquiry No. NQ-2003-002, the Tribunal found that dumped imports from the Republic of Bulgaria, the Czech Republic and Romania had caused material injury to the domestic industry. On January 8, 2009, in Expiry Review No. RR-2008-002, the Tribunal continued its finding against the subject countries.

INTERESTED PARTIES

Complainant

[11] The complainant, Essar Algoma, is a major producer of certain steel plate in Canada, accounting for a major proportion of the domestic industry for like goods. The name and address of the complainant is:

Essar Steel Algoma Inc.
105 West Street
Sault Ste. Marie, Ontario
P6A 7B4

Other Canadian Producers Supporting the Complaint

[12] Letters supporting the complaint were provided to the CBSA by two other Canadian producers of the goods, SSAB Central Inc. of Scarborough, Ontario (SSAB)¹ and Evraz Inc. NA² of Regina, Saskatchewan (Evraz).

Exporters

[13] The CBSA has identified 23 possible exporters of subject goods from its import documentation and from the complaint.

Importers

[14] The CBSA has identified 22 potential importers of the subject goods from its import documentation and from the complaint.

PRODUCT INFORMATION

Product Definition

[15] For the purpose of this investigation, the subject goods are defined as:

“hot-rolled carbon steel plate and high strength low alloy steel plate not further manufactured than hot-rolled, heat-treated or not, in cut lengths in widths from 24 inches (610 mm) to 152 inches (3,860 mm) inclusive and in thickness from 0.187 inches (4.75 mm) up to and including 3.0 inches (76.0 mm) inclusive (with all dimensions being plus or minus allowable tolerances contained in the applicable standards e.g. ASTM standards A6/A6M and A20/A20M), originating in or exported from Ukraine; excluding universal mill plate, plate for use in the manufacture of pipe and plate having a rolled, raised figure at regular intervals on the surface (also known as floor plate).”

Technical Information

[16] In general, steel is considered to be carbon steel when the manganese content does not exceed 1.65%, the silicon and copper contents do not exceed 0.60%, and no minimum content is specified for alloying elements such as aluminium, chromium, columbium, molybdenum, nickel and vanadium. If a minimum is specified for copper content, it must be less than 0.40%.

[17] High strength low alloy (HSLA) steel is carbon steel with alloying elements added. The selection of the particular combination of alloying elements depends on the desired properties of the steel, e.g. greater resistance to atmospheric corrosion, improved weldability or higher strength. HSLA steel generally costs more than carbon steel by weight, but can offer savings because of its superior qualities. References in this report to “certain steel plate” include both carbon steel plate and HSLA steel plate.

¹ Letter of support received May 26, 2009 from SSAB can be found in Dumping Exhibit 4.

² Letter of support received June 30, 2009 from Evraz can be found in Dumping Exhibit 13.

[18] Plate is categorized by different "qualities" which refer to the suitability and integrity of the steel for its intended purpose. In the case of the subject goods, the two most common qualities are structural quality and pressure vessel quality (PVQ). Structural quality plate is intended for general applications such as bridges, buildings, transportation equipment and machined parts. It is usually produced to meet specific composition limits and certain mechanical properties. PVQ plate on the other hand is intended for use in pressure vessels required to hold their contents under pressure and is of higher quality than structural plate.

[19] Heat-treated or normalized plate is heated in a furnace to homogenize and refine the grain structure in order to improve the steel's ability to resist fracture at low service temperatures. PVQ plate, particularly that which is thicker than 1.5 inches, is usually heat-treated, while structural quality plate tends not to be heat-treated.

[20] The Canadian Standards Association (CSA) specifications covered by the product definition represent different grades within the broad specification G40.21 that covers steel for general construction purposes.

[21] In the American Society for Testing & Materials (ASTM), specifications A283M/A283 and A36M/A36 include structural plate; specifications A572M/A572, A588M/A588 and A242M/A242 include HSLA plate and specifications A515M/A515 and A516M/A516 include PVQ plate.

[22] The ASTM specification A36M/A36 is considered to be equivalent to the CSA specification G40.21, grade 300W/44W and together these are the most common specifications of structural quality plate sold in Canada. The most common specification of PVQ plate sold in Canada is the ASTM specification A516M/A516, grade 70.

Production Process

[23] Carbon steel is, in effect, refined pig iron. Integrated producers make pig iron by combining iron ore, coke, limestone and oxygen and superheating the mixture in a blast furnace. The ensuing hot liquefied pig iron is combined with scrap metal and additional oxygen in a basic oxygen furnace. Mini-mills, on the other hand, produce molten carbon steel in electric arc furnaces (EAF's). The basic raw material used by mini-mills is scrap metal rather than virgin iron ore.

[24] In both integrated and mini-mill production, the molten carbon steel is poured from a ladle into the tundish of a continuous strand caster. From the tundish it flows into the caster's moulds to cool and to form a slab. The slab continues to move through the caster, cooling as it progresses, until it exits the caster, where it is cut to length with a torch. The slab is then either placed in inventory or immediately transferred to a reheat furnace where it is heated to a uniform rolling temperature. The plate is rolled to its final gauge in a series of rolling mills, leveled, identified and inspected for conformance to thickness tolerances and surface requirements. The plate is then either formed directly into rectangular shapes or coiled and later unwound and cut into lengths. The former is known as "discrete plate" and the latter as "plate from coil" or "cut to length plate".

[25] Heat-treated plate is manufactured in the manner as described above. However, after rolling, it is placed in a heat furnace (charged), reheated to a uniform temperature, removed from the furnace and allowed to cool.

Product Applications

[26] Some of the more common applications for steel plate are: rail cars, oil and gas storage tanks, heavy construction machinery, agricultural equipment, bridges, industrial buildings, high rise office towers, shipbuilding and repairs and pressure vessels.

Classification of Imports

[27] The certain steel plate subject to this investigation is normally imported into Canada under the following 18 Harmonized System (HS) classification numbers:

- 7208.51.91.10
- 7208.51.91.91
- 7208.51.91.92
- 7208.51.91.93
- 7208.51.91.94
- 7208.51.91.95
- 7208.51.99.10
- 7208.51.99.91
- 7208.51.99.92
- 7208.51.99.93
- 7208.51.99.94
- 7208.51.99.95
- 7208.52.90.10
- 7208.52.90.91
- 7208.52.90.92
- 7208.52.90.93
- 7208.52.90.94
- 7208.52.90.95

[28] This listing of HS codes is for convenience of reference only. Refer to the product definition for authoritative details regarding the subject goods.

LIKE GOODS

[29] 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 identical goods, goods the uses and other characteristics of which closely resemble those of the other goods.

[30] Certain steel plate produced by the domestic industry has the same physical characteristics and end uses as the subject goods imported from Ukraine. The goods produced in Canada and in Ukraine are fully interchangeable when manufactured to industry standards and specifications. Subject goods imported from Ukraine compete directly with like goods produced by the complainant. Therefore, the CBSA has concluded that certain steel plate produced by the Canadian industry constitute like goods to the subject goods.

[31] Like goods and the subject goods are made from the same primary input materials; in similar manufacturing processes. When chemical and dimensional specifications of either subject or like goods meet industry standards, the only differentiating factor is price. When sold, certain steel plate is sold in the same channels of distribution, whether subject or like goods, to the same types of customers and in many cases, to the same customers.

THE CANADIAN INDUSTRY

[32] The Canadian industry producing certain steel plate is currently comprised of the following three companies:

- Essar Steel Algoma Inc. of Sault Ste. Marie, Ontario
- SSAB Central Inc. of Scarborough, Ontario³
- Evraz Inc. NA of Regina, Saskatchewan

[33] Together, these three producers account for the vast majority of the total domestic production of certain steel plate and the CBSA will consider them to constitute the domestic industry for the purpose of this investigation. However, it should be noted that in addition to these three producers, some Canadian steel service centers also cut certain steel plate to length from coils. These service centers account for the remaining volume of the domestic production of like goods.

Standing

[34] SIMA requires that the following conditions be met in order to initiate an investigation:

- the complaint is supported by domestic producers whose production represents more than 50% of the total production of like goods by those domestic producers who express either support for or opposition to the complaint; and
- the production of the domestic producers who support the complaint represents 25% or more of the total production of like goods by the domestic industry.

[35] For the consideration of standing under SIMA, domestic industry means the domestic producers as a whole of the like goods except that, if a domestic producer is related to an exporter or importer of allegedly dumped goods, or is an importer of such goods, “domestic industry” may be interpreted as meaning the rest of those domestic producers.

[36] The complaint is supported by letters of support from SSAB Central Inc. of Scarborough, Ontario and Evraz Inc. NA of Regina, Saskatchewan.

[37] Based on an analysis of information provided in the complaint, the CBSA is satisfied that the complaint is supported by domestic producers whose production represents more than 50% of the total production of like goods by those domestic producers who express either support for or opposition to the complaint. Further, the domestic producers who support the complaint represent more than 25% of the total production of like goods by the domestic industry. The CBSA is satisfied that the standing requirements of subsection 31(2) of SIMA have been met.

³ In July 2007, IPSCO Inc. was purchased by SSAB of Sweden. Subsequently, on June 12, 2008, Evraz Group S.A. purchased a number of operations from SSAB of Sweden, including the plate mill and cut-to-length plate facility in Regina, Saskatchewan and the cut-to-length facility in Surrey, British Columbia. SSAB of Sweden retained ownership of the cut-to-length plate facility in Scarborough, Ontario following the sale to Evraz Group S.A.

THE CANADIAN MARKET

[38] Certain steel plate is marketed and sold by the domestic industry and by exporters/importers of subject goods through the same channels of distribution to both distributor and end-user customers in Canada. It is usually either sold directly to end-users or to service centres, which may re-sell standard cut-to-length sizes and grades or offer custom cutting services.

[39] Certain steel plate is generally imported through agents, brokers or trading companies for end-users and large service centres. These importers may also import on speculation and sell the product after its arrival in Canada.

[40] The complainant provided an estimate of the size of the Canadian market for certain steel plate for the years 2006 to 2008. This estimate is based on figures from their own production and sales data, their commercial intelligence, participation in the Canadian market and import data from Statistics Canada.

[41] The CBSA conducted its own analysis of imports of goods under the applicable HS classification numbers as outlined in the section "Classification of Imports". The results of the CBSA's review of import data was in line with information provided by the complainant.

[42] Detailed information regarding the volume of subject imports and domestic production cannot be divulged for confidentiality reasons. The CBSA has however prepared the following table to show the estimated import share of certain steel plate using internal import documentation.

CBSA'S ESTIMATES OF IMPORT SHARE (BY VOLUME)

COUNTRY	2006 %	2007 %	2008 %
UKRAINE	10.0 %	5.2 %	5.4 %
U.S.A.	58.7 %	71.8 %	82.2 %
OTHER COUNTRIES	31.3 %	23.0 %	12.4 %
TOTAL IMPORTS	100 %	100 %	100 %

EVIDENCE OF DUMPING

[43] The complainant alleges that certain steel plate from Ukraine is being injuriously dumped into Canada. Dumping occurs when the normal value of the goods exceeds their export price to importers in Canada.

[44] Normal values are generally based on the domestic selling price of the goods in the country of export, or on the full cost of the goods plus a reasonable amount for profit.

[45] The export price of goods sold to importers in Canada is the lesser of the exporter's selling price and the importer's purchase price, less all costs, charges, and expenses resulting from the exportation of the goods.

[46] Estimates of normal value and export price are discussed below.

Estimated Normal Values

[47] Normal values were estimated by the complainant and the CBSA in accordance with section 15 of SIMA based on selling prices of like goods in Ukraine.

[48] The complainant estimated normal values based on the average domestic FOB mill price per month from Ukrainian steel plate producers from the industry publication *Metal Expert CIS Flat Products Monthly* (Metal Expert)⁴. As this publication regularly provides a range of prices during a month for each of these domestic producers, the complainant used the average of this range to determine a monthly price. These average monthly prices, stated in Ukrainian Hryvnia (UAH), were then converted to Canadian dollars (CAD). Finally, these average monthly prices were used to estimate quarterly normal values for 2008.

[49] The CBSA also estimated normal values based on the average domestic FOB mill price per month using published prices from Metal Expert. As the complainant only provided the monthly average prices for 2008, the CBSA used the same approach to calculate monthly average prices for the first quarter of 2009. These monthly average prices, stated in UAH, were then converted to CAD.

[50] It should be noted that the exchange rates used by the CBSA differed from those used by the complainant. The CBSA used the official monthly average currency exchange rates as published by the National Bank of Ukraine⁵ to convert UAH to CAD in calculating estimated normal values. The CBSA was unable to use exchange rates from the Bank of Canada, as is standard practice, due to the fact that the Bank of Canada does not publish rates for UAH.

Estimated Export Prices

[51] The export price of imported goods is generally determined in accordance with section 24 of SIMA as being an amount equal to the lesser of the exporter's selling price for the goods and the price at which the importer has purchased or agreed to purchase the goods, adjusted by deducting all costs, charges and expenses resulting from the exportation of the goods.

[52] The complainant estimated export prices using three methods. Each method resulted in an average export price per quarter of 2008. These export prices were adjusted when necessary for distributor profit, freight, handling, and duty, to arrive at an estimated ex-factory price in Ukraine.

⁴ The CBSA believes Metal Expert CIS Flat Products Monthly to be a reliable independent source for price quotations in the global steel market.

⁵ This is Ukraine's Central Bank. The exchange rates are available in Excel format for download from their website: <http://www.bank.gov.ua/ENGL/Statist/index.htm>.

[53] The first method used to estimate export prices was based on data obtained from Statistics Canada using the average declared value of plate imports from Ukraine during the 2008 year. The complainant used the average price from the relevant HS codes with the highest volume during each quarter of 2008 to estimate quarterly export prices.

[54] For the second method to estimate export prices, the complainant used Ukrainian FOB mill export prices from the industry publication Metal Expert. As this publication regularly provides a range of export prices during each month for Ukrainian domestic producers, the complainant used the average of this range to estimate a monthly export price. The complainant removed an amount for inland freight to arrive at an ex-mill price in US dollars. These average monthly prices were then converted from US dollars to Canadian dollars. These converted prices were then used to form quarterly 2008 export prices.

[55] For the third method to estimate export prices, the complainant used a sample of internal commercial intelligence documents which indicate actual offer and selling prices in Canada throughout 2008. The prices found in these documents were converted to a price per metric tonne (MT) and then adjusted to estimate Ukrainian FOB mill prices. These adjustments included removing a distributor profit expense, ocean freight, and home country inland freight. These prices were used to estimate quarterly export prices for 2008.

[56] The CBSA estimated export prices based on actual import data from its Facility for Information Retrieval Management system (FIRM)⁶ and from customs documentation. The CBSA relied upon Value for Duty amounts provided in FIRM and on customs documentation and did not use the amounts estimated by the complainant.

Estimated Margins of Dumping

[57] The CBSA estimated margins of dumping by comparing its estimates of normal values with its estimates of export prices as explained above. The CBSA used this information to estimate the margin of dumping of subject goods imported into Canada for the 12 month period of April 1, 2008 to March 31, 2009.

[58] Based on this analysis, it is estimated that the subject goods from Ukraine were dumped. The overall weighted average margin of dumping is estimated to be 4.1%, expressed as a percentage of export prices.

NEGLIGIBILITY AND INSIGNIFICANCE

[59] Under section 35 of SIMA, if, at any time before the President makes a preliminary determination, the President is satisfied that the margin of dumping of the goods of a country is insignificant or the actual and potential volume of dumped goods of a country is negligible, the President must terminate the investigation with respect to that country.

[60] Pursuant to subsection 2 (1) of SIMA, a margin of dumping of less than 2% of the export price is defined as insignificant and a volume of dumped goods is considered negligible if it

⁶ FIRM is the CBSA's internal information system, which includes customs accounting information.

accounts for less than 3% of the total volume of goods that are released into Canada from all countries that are of the same description as the dumped goods.

[61] The estimated margin of dumping and the import data for the period of April 1, 2008 to March 31, 2009, are summarized in the table below. On the basis of the information available, the estimated margin of dumping is not insignificant and the estimated volume of dumped goods is not negligible.

ESTIMATED MARGIN OF DUMPING AND IMPORTS OF CERTAIN STEEL PLATE
APRIL 1, 2008 TO MARCH 31, 2009

Country	Estimated Share of Total Imports by Volume %	Estimated Margin of Dumping as % Export Price
Ukraine	6.3 %	4.1%
U.S.A.	78.5 %	N/A*
Other Countries	15.2 %	N/A*
Total Imports	100%	N/A*

* N/A indicates not applicable.

EVIDENCE OF INJURY

[62] The complainant has alleged that the subject goods have been dumped and that such dumping has caused and is threatening to cause material injury to the domestic industry producing like goods in Canada.

[63] SIMA refers to injury caused to the production of like goods in Canada. The CBSA has accepted that certain steel plate produced in Canada by the complainant are like goods to those imported from Ukraine. The CBSA's injury analysis focuses on the impact of the allegedly dumped goods on the complainant's production of like goods in Canada.

[64] In support of its allegations, the complainant provided evidence of volumes of dumped goods, lost orders, discounted sales, price depression, underutilization of capacity, and a decline in financial performance.

Volume of Allegedly Dumped Imports

[65] In terms of volumes, the complainant has alleged that since the Canadian International Trade Tribunal (Tribunal) rescinded the findings in place against certain steel plate from Ukraine, significant quantities of low priced dumped subject goods from Ukraine have reappeared in the Canadian marketplace.

[66] The import volumes into Canada, as provided by the complainant, indicated that subject goods from Ukraine, relative to imports of certain steel plate from all other countries, were

10.0% in 2006, 5.3% in 2007 and 6.5% in 2008. In Q4-2008, Ukrainian imports of certain steel plate accounted for 7.6% of all imports.

[67] The CBSA has analyzed these estimates against its FIRM and customs documentation and has confirmed them to be reasonably accurate.

Lost Orders and Discounted Sales

[68] The complainant alleged that it has suffered from a decline in shipments and lost orders to allegedly dumped imports of subject goods from Ukraine. The complainant underlined the fact that certain steel plate is a commodity product and as such, price is the most significant factor in choosing a source of supply.

[69] The complainant submitted Import Activity Reports⁷ documenting specific instances of lost orders due to the lower prices of dumped Ukrainian imports. In addition, the complainant submitted an import activity report providing indication that it was forced to discount a sale in order to secure the business.

[70] The complainant also provided its quarterly domestic shipments from Q2-2008 to Q1-2009 showing that their shipments have declined significantly as a result of competition with dumped import pricing and lost orders.

Price Depression

[71] The evidence provided by the complainant in support of its allegation of price depression allegedly caused by imports of dumped goods from Ukraine consists of data from 2006 to 2008 indicating that Ukraine priced consistently and significantly below prices of certain steel plate imported into Canada from the U.S.A. and compared to the total average prices from Total Other Countries.⁸

[72] In addition, the complainant submitted Import Activity Reports which demonstrated that sales to customers had to be discounted to meet the pricing of the allegedly dumped subject goods. In other instances, the Import Activity Reports displayed the presence of low-price offerings of imports from Ukraine. The complainant concluded that the reports illustrated the increasing instances and severity of competition from dumped Ukrainian prices. These repeated occurrences of price adjustments in order to compete with allegedly dumped imports indicate evidence of price depression.

Underutilization of Capacity

[73] The complainant provided evidence of capacity underutilization and argues that this deterioration in capacity utilization is due to the presence of dumped imports from Ukraine. The complainant argued that it could have produced and sold the volumes that were imported into the

⁷ These documents are internally generated reports by the complainant from customer contact and contain information regarding 'importer competitors' and their price offerings.

⁸ See Attachment 1 of the complaint, Exhibit 001 (Protected).

Canadian domestic market from Ukraine and provided evidence that this underutilization of capacity has injured them in the form of lost revenues from 2006 to 2008.

Decline in Financial Performance

[74] The complainant alleged that the impact of the various forms of injury referred to above has resulted in a decline in their financial performance. The deterioration in their financial position, notably at their gross margin and net income levels, which allegedly ensued from declining shipments and prices, was documented by the financial statements submitted with the complaint.⁹ The complainant considers their declining financial performance as a reliable indicator of the impact that the allegedly dumped imports from Ukraine have had on the domestic industry revenues.

Threat of Injury

[75] The complainant contended that the domestic industry continues to be threatened with continued injury from the allegedly dumped imports. In this regard, the complainant pointed to its gross margin level and net income level in Q4-2008.

[76] In terms of pricing and consumption in North America for steel plate, the complainant provided evidence pertaining to the forecasted levels in 2009 to 2013. The complainant echoed the resulting impact of the price reductions and volume declines forecasts on its financial performance in the foreseeable future.

[77] Finally the complainant contended that the exporters from Ukraine have a propensity to dump steel products. In support of its allegation, the complainant indicated that Ukrainian steel producers have previously been found to have dumped certain steel plate and other steel products in the Canadian market, as well as in other jurisdictions. The complainant further noted the current finding in the U.S.A. on certain cut-to-length carbon steel plate from Ukraine where on March 20, 2009, the Department of Commerce found that termination of the suspended antidumping duty investigation would likely lead to a continuation or recurrence of dumping.

CONCLUSION

[78] Based on the information provided in the complaint, other available information, and the CBSA's internal data on imports, there is evidence that certain steel plate originating in or exported from Ukraine have been dumped, and there is a reasonable indication that such dumping has caused or is threatening to cause injury to the Canadian industry. As such, a dumping investigation was initiated on July 6, 2009.

⁹ See Attachment 17 of the complaint, Exhibit 001 (Protected).

SCOPE OF THE INVESTIGATION

[79] The CBSA will conduct an investigation to determine whether the subject goods have been dumped.

[80] The CBSA has requested information relating to the subject goods imported into Canada from Ukraine during the period of April 1, 2008 to March 31, 2009, the period of investigation. The information requested from potential exporters and importers will be used to estimate normal values and export prices and ultimately to determine whether the subject goods have been dumped.

[81] All parties have been clearly advised of the CBSA's information requirements and the timeframes for providing their responses.

FUTURE ACTION

[82] The Canadian International Trade Tribunal (Tribunal) will conduct a preliminary inquiry to determine whether the evidence discloses a reasonable indication that the alleged dumping of the goods has caused or is threatening to cause injury to the Canadian industry. The Tribunal must make its decision within 60 days after the date of the initiation of the investigation. If the Tribunal concludes that the evidence does not disclose a reasonable indication of injury to the Canadian industry, the investigation will be terminated.

[83] If the Tribunal finds that the evidence discloses a reasonable indication of injury to the Canadian industry and the ongoing CBSA investigation reveals that the goods have been dumped, the CBSA will make a preliminary determination of dumping within 90 days after the date of the initiation of the investigation, by October 5, 2009. Where circumstances warrant, this period may be extended to 135 days from the date of the initiation of the investigation.

[84] If the CBSA's investigation reveals that imports of the subject goods have not been dumped, that the margin of dumping is insignificant or that the actual and potential volume of dumped goods is negligible, the investigation will be terminated.

[85] Imports of subject goods released by the CBSA on and after the date of a preliminary determination of dumping may be subject to provisional duty in an amount not greater than the estimated margin of dumping on the imported goods.

[86] Should the CBSA make a preliminary determination of dumping, the investigation will be continued for the purpose of making a final decision within 90 days after the date of the preliminary determination.

[87] If a final determination of dumping is made, the Tribunal will continue its inquiry and hold public hearings into the question of injury to the Canadian industry. The Tribunal is required to make a finding with respect to the goods to which the final determination of dumping applies, not later than 120 days after the CBSA's preliminary determination.

[88] In the event of an injury finding by the Tribunal, imports of subject goods released by the CBSA after that date will be subject to anti-dumping duty equal to the applicable margin of dumping on the imported goods.

RETROACTIVE DUTY ON MASSIVE IMPORTATIONS

[89] When the Tribunal conducts an inquiry concerning injury to the Canadian industry, it may consider if dumped goods that were imported close to or after the initiation of an investigation constitute massive importations over a relatively short period of time and have caused injury to the Canadian industry.

[90] Should the Tribunal issue such a finding, anti-dumping duty may be imposed retroactively on subject goods imported into Canada and released by the CBSA during the period of 90 days preceding the day of the CBSA making a preliminary determination of dumping.

UNDERTAKINGS

[91] After a preliminary determination of dumping by the CBSA, an exporter may submit a written undertaking to revise selling prices to Canada so that the margin of dumping or the injury caused by the dumping is eliminated. An acceptable undertaking must account for all or substantially all of the exports to Canada of the dumped goods.

[92] Interested parties may provide comments regarding the acceptability of undertakings within nine days of the receipt of an undertaking by the CBSA. The CBSA will maintain a list of parties who wish to be notified should an undertaking proposal be received. Those who are interested in being notified should provide their name; telephone and fax numbers, mailing address and e-mail address, if available, to one of the officers identified in the "Information" section of this document.

[93] If an undertaking were to be accepted, the investigation and the collection of provisional duty would be suspended. Notwithstanding the acceptance of an undertaking, an exporter may request that the CBSA's investigation be completed and that the Tribunal complete its injury inquiry.

PUBLICATION

[94] Notice of the initiation of this investigation is being published in the Canada Gazette pursuant to subparagraph 34(1)(a)(ii) of SIMA.

INFORMATION

[95] Interested parties are invited to file written submissions presenting facts, arguments, and evidence that they feel are relevant to the alleged dumping. Written submissions should be forwarded to the attention of one of the officers identified below.

[96] To be given consideration in this phase of the investigation, all information should be received by the CBSA by August 12, 2009.

[97] Any information submitted to the CBSA by interested parties concerning this investigation is considered to be public information unless clearly marked "confidential". Where the submission by an interested party is confidential, a non-confidential version of the submission must be provided at the same time. This non-confidential version will be made available to other interested parties upon request.

[98] Confidential information submitted to the President will be disclosed on written request to independent counsel for parties to these proceedings, subject to conditions to protect the confidentiality of the information. Confidential information may also be released to the Tribunal, any court in Canada, or a WTO/North American Free Trade Agreement dispute settlement panel. Additional information respecting the policy on the disclosure of information under SIMA may be obtained by contacting one of the officers identified below or by visiting the CBSA's Web site.

[99] The investigation schedule and a complete listing of all exhibits and information are available at www.cbsa-asfc.gc.ca/sima-lmsi/i-e/menu-eng.html. The exhibit listing will be updated as new exhibits and information are made available.

[100] This *Statement of Reasons* has been provided to persons directly interested in these proceedings. It is also posted on the CBSA's Web site at the address below. For further information, please contact the officers identified as follows:

Mail: SIMA Registry and Disclosure Unit
Anti-dumping and Countervailing Program
Canada Border Services Agency
100 Metcalfe Street, 11th floor
Ottawa, ON K1A 0L8
Canada

Telephone: Matthew Lurette 613-954-7398
Joël Joyal 613-954-7173
Benjamin Walker 613-952-8665

Fax: 613-948-4844

E-mail: simaregistry@cbsa-asfc.gc.ca

Web site: <http://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/menu-eng.html>



M.R. Jordan
Director General
Trade Programs Directorate